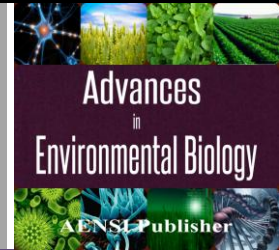




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### Examining Some Effects of International Commercial Arbitration Act of Iran (1977) from UNCITRAL Arbitration Model Law

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#### ABSTRACT

The International Commercial Arbitration Act of Iran (approved in September 17, 1997) consists of nine chapters and 36 articles. In terms of this act, arbitration is generally resolving the dispute between the disputed parties out of court by a mutually agreed or appointed natural or legal person(s). About the governing law, the Commercial Arbitration Act of Iran reads: The arbitrator will decide on the nature of the dispute between the parties based on legal rules. It also says that the arbitrator's award must be in writing and signed by the arbitrator(s). In cases where there is more than one arbitrator, the signature of the majority will be sufficient, provided that the reason for the lack of signature of other members is noted. By the request of each party or directly, the arbitrator can modify or clarify any mistake in calculation, writing, or similar errors in the award. The arbitration award is voidable by the court in some cases by the request of each party. The desirability of harmonization of wide differences in domestic law, particularly in relation to the recognition and enforcement of arbitration award led to the formulation of UNCITRAL model law on international commercial arbitration in 1985. This law was used as a model for new legislation in many states. The law model was developed for harmonization of the UNCITRAL arbitration rules and the 1958 New York Convention on the recognition and enforcement of the arbitration awards. The International Commercial Arbitration Act of Iran was affected by UNCITRAL arbitration model law in many cases, some of which are described below. The arbitration beginning, delivering papers and notices, competency of the court of arbitration, the law governing the arbitration, the hearing procedure, claim evidence, terms of the arbitration award and protest to the arbitration award.

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#### INTRODUCTION

It seems that the Iranian legislator considered the UNCITRAL model law as the main reference for the International Commercial Arbitration Act of Iran and yet adapted it to conditions inside Iran. The Commercial Arbitration Act of Iran has two important properties: First, applying the dominant rules and norms in theory and practice of international arbitration and second, modification of defects in the current rules of arbitration in Iran. In terms of the latter, it has some successes, including: proper attention to freedom of arbitrators and the parties for determining how to handle the arbitration, broad identification of the validity of arbitration agreements in terms of form, particular focus on international commercial arbitration, unequivocal identification and confirmation of arbitration under the auspices of the arbitration organization, applicability of the arbitration agreement in a more clear manner, strong emphasis on the impartiality of arbitrators regardless of the manner of their selection, approving the authority of the court of arbitration to determine its competency and determine the validity of arbitration agreement, developing the authority of the court of arbitration to determine the applicable law in the nature of the dispute, greater emphasis on uncertainty, and identification and implementation of the award. However, these items were already identified pursuant to the arbitration provisions. The International Commercial Arbitration Act of Iran does not provide a definition of international commercial relations. Instead, it only offers a non-limitative list of the types of commercial activities which is somewhat inconsistent with Clause 1 of Article 1 of the UNCITRAL arbitration model law that set its application limits by referring to the arbitration character rather than the type of commercial relationship. Pursuant to Clause 1 of Article 2 of the International Commercial Arbitration Act of Iran, the arbitration of disputes *in* international trade can be referred to arbitration. Seemingly, the word "in" shows that this law broadly encompasses disputes arising from

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commercial relationships. It also appears that the list of commercial activities mentioned in this law is quite broad and non-limitative. This is quite close to the broad interpretation of the term "commercial" in Clause 1 of Article 1 of the UNCITRAL model law. Like Article 7 of the UNCITRAL model law, the new law stipulates that disputes arising out of (commercial relations), both contractual and non-contractual, can be referred to arbitration.

This paper, which is a selection of a dissertation of the writer in the MA level and other references, includes three chapters. Chapter 1 explains the concept of arbitration and its variants and specific principles governing international commercial arbitration. Chapter 2 explains arbitration beginning, delivering papers and notices, competency of the court of arbitration and the law governing the arbitration. Chapter 3 explains the hearing procedure, claim evidence, terms of the arbitration award and protest to the arbitration award.

*Chapter 1: The concept of arbitration and its variants and certain principles governing the international commercial arbitration:*

*Section 1: The concept of arbitration:*

Several definitions have been proposed on arbitration by the legal doctrine and sometimes, its similarities with other concepts have been examined. Some definitions of arbitration will be presented in this chapter.

Arbitration literally means judgment and justice, resolving disputes between people and ending the quarrel between two or more persons. Lawyers in private law and private international law and other fields have offered numerous definitions of arbitration.

Rene David says: "Arbitration is a technique that aims to resolve an issue regarding the relationship between two or more persons by one or more other persons called arbitrator(s) who obtained their powers from a private agreement and issue an award based on that agreement and they are assigned such a task the state." Based on this definition, a dispute is referred to arbitration based on the agreement of the parties, and the competency of arbitrators is derived from the same agreement. According to this definition, arbitrators issue an award to resolve disputes, and actually they do a judicial work. Based on another definition, "in arbitration, people ignore the intervention of formal judicial authorities in resolving disputes related to their own private rights, and submit to the private governance of trusted persons in terms of information and technical data or honesty and integrity."

Dr. Abdullah Shams defines arbitration as resolving disputes between the parties out of court by the person(s) selected by or the parties or third party for this purpose."

Others have defined arbitration as resolving disputes by agreeing to accept and abide the decision of a third party that is trusted by the parties. In the Civil Procedure Code, there is no specific definition of arbitration but Clause 1 of Article 1 of the International Commercial Arbitration Act approved in 1977, arbitration is defined as: "Resolving disputes between the litigants, out of court by mutually agreed or appointed natural or juridical person(s)." The term "arbitration" in this definition includes both national and international arbitration and it is interpreted that arbitration is to resolve disputes by impartial person(s) optionally and with the agreement of litigants. Like other former definitions, this definition is not comprehensive and does not include all the key features and essential elements in the arbitration and only refers to the extrajudicial characteristics of arbitration and ignores other characteristics such as the agreement of the parties to refer the dispute to arbitration and that the arbitration award is binding.

The perfect definition of arbitration is: "Arbitration is a way in which two or more persons jointly refer a problem in which they are stakeholders to one or more impartial persons for resolving the disputed subject, according to law, general principles of law, custom and fairness rules and consider their award binding for themselves."

*Section 2: Types of arbitration and international arbitration organizations:*

*Discussion 1: Types of arbitration:*

In general, how the arbitration is held depends on its type. There are two basic types or forms for arbitration: ad hoc and institutional. Holding arbitration under each of these forms depends on the selection and arrangement of the parties.

*Clause 1: Ad hoc arbitration:*

As the name implies, in ad hoc or proprietary arbitration, the arbitration structure and procedure is specific to the case and is determined by the agreement of the parties appropriate to their dispute. This type of arbitration is characterized by independence from all arbitration organizations, and the rules set by the parties will apply for that case and the same parties.

*Clause 2: Institutional arbitration:*

Institutional arbitration occurs when the parties agree that their dispute arbitration is to be held by or under the supervision of an existing arbitration organization or controlled or managed by such organization.

The first issue for the parties is to select an appropriate arbitration organization for their contractor dispute. For example, in claims relating to investment where a state is involved, the ICSID arbitration would be more appropriate. The major institutional arbitration centers in Iran are: 1. arbitration center for Chamber of Commerce, Industries and Mines, 2. regional arbitration center in Tehran, 3. arbitration center of Central Bar Association, 4. arbitration center for the Country's Cooperation Chamber, 5. exchange arbitration panel, and 6. arbitration panel for Article 20 of the Third Plan.

*Discussion 2: Some international arbitration organizations:*

*Clause 1: Private international arbitration organizations:*

Some of the famous arbitration organizations at the international level include International Arbitration Court of International Chamber of Commerce called ICC arbitration, International Arbitration Court of London, Arbitration Association of America, Arbitration Institute of Stockholm Chamber of Commerce, International Commercial and Economic Arbitration Commissions of China, International Arbitration Center of Singapore, International Arbitration Center of Hong Kong, Regional Center for International Commercial Arbitration of Cairo, and Arbitration Center for Intellectual Property Organization.

*Clause 2: International organization of public law arbitration:*

The Permanent Arbitration Court and the International Center of Investment Dispute Settlement (ICSID)

*Section 3: Specific rules governing the international commercial arbitration:*

*Clause 1: The concept of independence principle of arbitration clause and its acceptance:*

The independence of the arbitration clause from the underlying agreement is among the important principles of arbitration which is adopted by most domestic and international arbitration rules. It essentially means that the invalidity claim of the main agreement under which the arbitration clause is stipulated is not transmitted to the said clause and the arbitration authority can handle it and decide on the validity or invalidity of the main agreement and its effects unless there is a reason to invalidate the arbitration clause. This principle complies with the arbitration specifications and makes arbitration closer to its goal. It is worth noting that this principle is in conflict with the traditional thinking about the relationship between agreement and stipulation. According to traditional thinking, the relationship between the original agreement and stipulation is a subordinated relation and the commitment stipulation takes the form of a subordinated commitment. Thus, it can be said that the clause is subject to the original agreement and follows the original agreement in terms of existence and effects, and the invalidity of the main agreement will transmit to the subordinated entity and will invalidate the clause. The UNCITRAL arbitration rules in Clause 2 of Article 21 have accepted the principle of independence of the arbitration clause. The International Commercial Arbitration Act of Iran has accepted this principle in Clause 1 of Article 16.

*Clause 2: The competency in competency principle and its acceptance:*

Sometimes there may be disagreement between the parties about the validity or invalidity of the arbitration agreement or even the competency of arbitrators. Here a question arises: what authority has the competency to handle this disagreement? Most rules and conventions consider the arbitrators as the competent authority. This is called competency in competency principle. This principle is mentioned and accepted in clauses 1 and 2 of Article 21 of UNCITRAL arbitration model law and in fact, the International Commercial Arbitration Act explicitly accepts it in Clause 1 of Article 16.

*Chapter 2: A review of some problems in arbitration during and before the proceedings by the court of arbitration or the arbitrator:*

*Section 1: Arbitration beginning:*

Arbitration usually begins by submitting a request or petition for arbitration. When the arbitration starts depends on the agreements between the parties and in the absence of agreement, a decision is made based on the law of the seat of court. According to Article 21 of the UNCITRAL arbitration model law and Article 4 of the International Commercial Arbitration Act, the arbitration beginning is up to the agreement of the parties. In the silence of the parties, arbitration starts when the arbitration request is notified to the defendant.

*Section 2: Delivery of papers and notices:*

The need for sending papers and notices to the parties may raise before, during or after the hearing. It seems that the International Commercial Arbitration Act does not distinguish between the two. However, the UNCITRAL arbitration model law explicitly provides provisions regarding notifications before or after the commencement of arbitration. Article 2 of the International Commercial Arbitration Act and Article 3 of the UNCITRAL arbitration model law, on how to deliver papers and notices, initially mention the agreement of the parties. In accordance with Clause (b) of Article 3 of the International Commercial Arbitration Act, if the

parties agree on notice delivery procedure and the arbitration is not institutional, then the court of arbitration specifies the delivery procedure and its authority.

*Section 3: Competency of the court of arbitration:*

In Article 16 of the UNCITRAL arbitration model law and Article 16 of the International Commercial Arbitration Act, the decision right on competency is given to the arbitrators.

*Clause 1: Hearing procedure:*

In Clause 1 of Article 19 of the UNCITRAL arbitration model law and Clause 1 of Article 19 of the International Commercial Arbitration Act, the determination of the hearing rules is first given to the parties and then to arbitrators.

*Clause 2: Determining the language of arbitration:*

In accordance with Article 22 of the UNCITRAL arbitration model law and Article 21 of the International Commercial Arbitration Act, the parties can first agree on the used language(s). In the absence of such agreement, the arbitrator together with the court of arbitration will decide.

*Clause 3: Determining the seat of arbitration:*

In accordance with Clause 1 of Article 20 of the UNCITRAL arbitration model law and Clause 1 and Article 20 of the International Commercial Arbitration Act, the parties are initially allowed to set the seat of arbitration. Otherwise the seat of arbitration will be determined by the arbitrator or the court of arbitration due to the circumstances of the case, including convenience of the parties.

*Clause 4: Issuing a temporary order:*

In accordance with Article 17 of the UNCITRAL arbitration model law and Article 17 of the International Commercial Arbitration Act, the court of arbitration or the arbitrator are allowed to issue a temporary order. Of course, in Article 17 of the UNCITRAL arbitration model law, the term "support measures" is used from which the concept of temporary order is acquired.

*Section 4: The law governing the arbitration procedure:*

*Clause 1: The law governing the arbitration procedure:*

According to Article 19 of the UNCITRAL arbitration model law and Article 19 of the International Commercial Arbitration Act, the right to determine the law governing the hearing procedure (form) is first given to the parties' agreement. However, in the International Commercial Arbitration Act it is conditional to respecting mandatory rules of the said law. In the absence of such agreement, the arbitrator of the International Commercial Arbitration Act is permitted to select the appropriate hearing procedure provided that the provisions of the said law are respected. As stated in Article 19 of the UNCITRAL arbitration model law, in the absence of such agreement, the court of arbitration can, at its discretion, hold the arbitration in an appropriate manner subject to the provisions of this law.

*Clause 2: The law governing the nature of the dispute:*

In accordance with Clause 1 of Article 28 of the UNCITRAL arbitration and Clause 1 of Article 27 of the International Commercial Arbitration Act, determining the law governing the nature of the dispute is up to the parties. In silence of the parties, both laws delegate it to the court of arbitration or the arbitrator, subject to the dispute settlement rules.

*Clause 3: Dispute settlement based on equity:*

According to Clause 3 of Article 28 of the UNCITRAL arbitration model law and Clause 3 of Article 27 of the International Commercial Arbitration Act, in case of explicit agreement, the parties can resolve their dispute based on equity. In the absence of such agreement, arbitrators do not have such permit.

*Chapter 3: A review of some arbitration issues during and after the hearing of the court of arbitration or the arbitrator:*

*Section 1: Hearing, claim evidence and terms of arbitration award:*

*Discussion 1: Hearing:*

After forming the court of arbitration, it gets ready to hear the dispute. Although the complainant has already noted his request by a request or petition, the parties must discuss in detail their claims and defenses. On this basis, the complainant must first submit his request bill and the defendant must submit his defense bill.

*Clause 1: Exchange of bills:*

In accordance with Article 23 of the UNCITRAL arbitration model law and Article 22 of the International Commercial Arbitration Act, determining the deadline to submit bills to the arbitration or the court of arbitration is first up to the agreement of the parties. In case of disagreement, it is delegated to the court of arbitration or the arbitrator.

*Clause 2: Compromise:*

Clause 1 of Article 30 of the UNCITRAL arbitration model law and Article 28 of the International Commercial Arbitration Act point to compromise. In both cases, arbitration can issue compromise awards due to the agreement of the parties, but in the UNCITRAL arbitration model law, it is subject to the approval of the court of arbitration.

*Discussion 2: Regulations concerning the evidence in arbitration:*

In Clause (2) of Article 19 of the UNCITRAL arbitration model law and Clause (2) of Article 19 of the International Commercial Arbitration Act, recognizing the relation, relevance and value of any reason rest with the arbitrator. In the UNCITRAL arbitration model law and the International Commercial Arbitration Act, the evidence is not recognized but both acts point to some cases, including:

Testimony and inspection of property or documents in Clause (2) of Article 20 of the UNCITRAL arbitration model law and in Clause (2) of Article 20 of the International Commercial Arbitration Act, documents in Clause (1) of Article 23 of the UNCITRAL arbitration model law and in Clause (1) of Article 22 of the International Commercial Arbitration Act. Expertise in Article 26 of the UNCITRAL arbitration model law and Article 25 of the International Commercial Arbitration Act.

*Discussion 3: Terms of arbitration award:*

The parties can prescribe certain form or content terms for arbitration in the arbitration agreement. For example, if they have selected the rules of the International Commercial Arbitration Act, the terms in Article 30 of that law will govern. Article 31 of the UNCITRAL model law and Article 30 of the International Commercial Arbitration Act stipulate that the arbitration award must be in writing and signed with the date and place of the arbitration award issuance, the award citation reasons and the award notification. The arbitration award registration is not cited in the UNCITRAL arbitration model law, so it is not cited in the International Commercial Arbitration Act.

*Section 2:*

Protest to the arbitrator award.

*Discussion 1:*

Appeals from the court of arbitration

When the arbitration award is issued, arbitrators are released from the hearing and basically cannot reexamine the case or change the issued award. However, sometimes there may be punctuation, typographical or computational errors in the award or something in the award is missing, so the award must be corrected or completed. In these cases, the court of arbitration corrects or completes the award without reentering the nature of the claim. In some cases, an appeal in the arbitration award requires re-entry of arbitrators to the nature of the claim.

*Clause 1:*

Correction, interpretation or completion of the award

In Article 33 of the UNCITRAL arbitration model law and Article 32 of the International Commercial Arbitration Act, the arbitrator or the court of arbitration is allowed to, directly or at the request of any of the parties, modify or clarify any mistake in calculation, writing, or similar mistakes in the award.

*Clause 2:*

Revision of the award in accordance with law.

In Clause (4) of Article 34 of the UNCITRAL arbitration model law, with some conditions, the court of arbitration is allowed to make substantive comment on the arbitration award. But there is no such regulation in the International Commercial Arbitration Act. Clause (4) of Article 34 of the UNCITRAL arbitration model law reads: "When the court is demanded to revoke the award, it can do so where it is appropriate and a party makes such a request, in order to give opportunity to the court of arbitration for review."

The arbitration or other measures that will cancel the revocation of the court of arbitration, at its discretion, will suspend the revocation proceedings for a self-determined time period.

*Discussion 2:*

Objecting to the arbitration award before the court

Although the International Commercial Arbitration Act of Iran was adapted from the UNCITRAL arbitration model law, it adds some award violations other than the original ones. Violation items are divided into two categories. The first category includes violation items shared between the International Commercial Arbitration Act and the UNCITRAL model law and the second category includes violation items only available in the International Commercial Arbitration, some of which have no deadlines and some have.

*Clause 1:*

Seven common violation items between the two acts:

1. Lack of competency of one party in Article 2-34 of the law model, Clause A of Article 1-33 International Commercial Arbitration Act.
2. Invalidation of the arbitration agreement, Clause 1(a) of Article 2-34 of the law model and Clause a of Article 1-33 of the International Commercial Arbitration Act.
3. Failure to comply with the notification provisions, Clause (c) of Article 1-33 of the International Commercial Arbitration Act and Clause 2(a) of Article 2-34 of the law model.
4. The arbitrators exceed the powers limits, Clause (e) of Article 1-33 of International Commercial Arbitration Act and Clause (b) of Article 2-34 of the UNCITRAL arbitration model law.
5. The members of the court of the arbitration or the procedure is not in accordance with the arbitration agreement, Clause (f) of Article 1-33 of Clause 4 (a) and Article 2-34 of the law model.
6. The dispute cannot be arbitrated, Clause 1 of Article 34 of the International Commercial Arbitration Act and Clause 1 of Article 2-34 of the UNCITRAL arbitration model law.
7. The award is against the public order and good morals, Clause (29) of Article 34 of the International Commercial Arbitration Act and Clause 2(b) of Article 34 of the law model.

*Clause 2:*

Six items related solely to the International Commercial Arbitration

1. Failing to provide reasons and evidence under Clause (d) of Article 1-33 of the International Commercial Arbitration Act that must be addressed in the deadline.
2. The arbitrator's participation in the award under Clause (g) of Article 1-33 of the International Commercial Arbitration Act that must be addressed in the deadline.
3. Award issuance based on forged documents under Clause (c) of Article 1-33 of the International Commercial Arbitration Act that must be addressed in the deadline.
4. Concealing evidence, pursuant to Clause (i) of Article 1-33 of the International Commercial Arbitration Act that must be addressed in the deadline.
5. The award is opposed to mandatory rules under Clause (2) of Article 34 of the International Commercial Arbitration Act which is not bound by a specific deadline.
6. The property-related award is opposed to mandatory rules and nominal documents, Clause (3) of Article 34 of the International Commercial Arbitration Act, which is not bound by a specific deadline.

In summary, according to the International Commercial Arbitration, the award is void or voidable in 13 items, which is more than the international standards in documents such as the UNCITRAL arbitration model law and the New York Convention. It is remarkable that the International Commercial Arbitration Act does not stipulate that the award violation items are limited to the above-mentioned 13 items, so the arbitration award can be violated for other reasons. The term "only" which is mentioned at the beginning of Clause (2) of Article 34 of the UNCITRAL model law and indicates that violation items are exclusive is absent in the International Commercial Arbitration Act.

*Conclusion:*

The International Commercial Arbitration Act of Iran is the first text on international commercial arbitrations in Iran's legal system, which is almost consistent with the UNCITRAL arbitration model law and thus new procedures for this type of arbitration.

This act creates new facilities in order to perform international commercial arbitrations in trade-economic relations between Iran and other countries and also brighter prospects from a legal point of view. The articles of this act are based on the fundamental principles relating to international commercial arbitrations. In short, innovations and positive points of the International Commercial Arbitration Act adopted from the arbitration law model are as follows: creating a separate system for international commercial arbitrations and disposing of existing bottlenecks which is not compatible with this type of arbitration, consequently, facilitating the practical implementation of international commercial arbitration, acceptance of the competency in competency principle, admission of the independence of the arbitration from the original agreement and relief from compliance of the clause with the agreement as addressed in existing act, explicit recognition of the arbitration institution and

delegating some arbitration-related powers of the courts to it, explicit acceptance and declaration of the parties' freedom in determining the legal rules governing the claim, granting relatively broad freedom to arbitrators in the tenure of the arbitration.

Weaknesses of the International Commercial Arbitration Act: ambiguity in some articles due to the concise and succinct writing, the Iranian legislator has merged many clauses of the law model, which led to the removal of some words and even phrases, resulted to ambiguity which provides the possibility for different interpretations, and not using and removing some of the law model articles led to defects in the International Commercial Arbitration Act.

#### *Shortcomings in the International Commercial Arbitration Act of Iran:*

1. There is no regulation to prescribe obtaining documents from the other party.
2. Despite for determining intervention cases for the court of justice as the regulatory authority for Article (6) in various articles, there is no regulation to determine the scope of intervention for general courts in problems of this law, except in cases that are allowed.
3. The information and trade secrets confidentiality rule.
4. The arbitration letter of this document immediately after the board of arbitration is set.
5. Due to the limitations prescribed in the national legislation on the sentencing with the interest of monetary requests and the acceptance of the sentencing principle based on the interest in international arbitrations, there is no regulation in this law on this issue of Article 30 onwards.
6. There is no regulation in this law for arbitration costs and fees and imposing them to the sentenced party or the parties when issuing an award. Iran Chamber Arbitration Center has addressed this shortcoming in a separate document in recent years.

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