

## Online arbitration in E commerce Disputes

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### Abstract

E-commerce is based on the speedy execution of contracts, and the importance of electronic arbitration appears. Because of its ease and flexibility that are not available in the ordinary judiciary, where in Online arbitration it's not necessary for the parties of dispute to move or to do a physic attendance in front of the arbitrators, but rather the litigants can be heard via electronic means of communication via satellite.

In addition, the speed of issuing judgments is due to the ease of procedures, as documents and papers are submitted via e-mail, and it is also possible to contact experts directly or exchange conversations with them via the Internet. Therefore, electronic arbitration courts and tribunals have spread to contribute to resolving electronic commerce disputes, which is represented in the immediate settlement of these disputes that resulted from the tremendous development of economic life, the increase in international trade, and the conclusion of contracts and legal works using electronic technology.

Thus, Online arbitration can be defined as the arbitration procedures that take place via the Internet, and it acquires an electronic character from the way in which it is conducted. And this can be establish by using audio-visual way through an open distance international network communication without the need of the dispute parties and the arbitrators to meet in a specific place.

### Key words :

Online arbitration- E-commerce- Dispute- parties of dispute- audio-visual.

## **1.Introduction :**

Arbitration is considered one of the alternative means in the judiciary to settle commercial disputes, and it is widely used in international contracts in particular, so that we rarely find that an international contract does not include an arbitration clause to settle disputes arising from the contract. By arbitration here, we mean optional arbitration in which the parties to a commercial contract agree to settle disputes that will arise or have arisen between them by resorting to arbitration.

Arbitration, in general, is the agreement of two or more wills to abstain from natural judgment and resort to the arbitrator. In particular, it means the agreement of two or more persons to resolve disputes that have arisen or will arise as a result of a contractual or non-contractual legal relationship by arbitration through another or others chosen by them. A binding judgment is passed to settle the dispute according to the applicable law, the place, the language and the chosen time.

The arbitration system was established in commercial and civil matters, as the Arab legislation enacted independent laws for it, due to its positive impact on encouraging internal and international trade and investment, which would have a positive impact on the economy of countries. And according to the provisions of the arbitration laws, it has become established that arbitration is appropriate for issues that raise disputes regarding their importance in civil and commercial transactions.

## **2.The First Topic: The current Reality of Online Arbitration :**

Online arbitration does not differ from arbitration in its traditional form except in terms of employing the means provided by the modern information and communication revolution in all stages of the arbitration process, starting from the agreement on it, through its procedures, and ending with the issuance of a judgment in it.

Moreover ,Online arbitration, is an optional means for resolving disputes arising from e-commerce by selecting an arbitrator, or arbitrators, who decide on those disputes through and through the Internet with a binding decision for the parties. Perhaps one of the most important advantages achieved by Online arbitration is more speed in adjudicating the dispute and economy in expenses, in addition to the advantage of experience in the field of electronic commerce, which is available in the arbitrators who specialize in it.

The Online arbitration is one of the modern practical ideas that have been associated with the rapid increase in the volume of electronic commerce. As the increase in the volume of electronic commerce entailed an increase in the rate of disputes arising from it. Which in turn prompted the search for the most effective means from a practical point of view to resolve these disputes in a manner consistent with the

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requirements of electronic commerce, which is based on high speed and economy in expenditures, due to the psychological burden that resorting to the national judiciary in a country to resolve disputes arising from electronic commerce , and economic impedes the development of electronic commerce itself(1).

For this reason, Western jurisprudence began to investigate how to employ alternative means in resolving disputes (ADR: Alternative Dispute Resolution) for the purposes of using them electronically to resolve disputes arising from electronic commerce, bypassing the legal obstacles imposed by the current legal system of arbitration .In this sense, we began to notice clearly, since the late nineties, the proliferation of many centers that took it upon themselves to formulate projects to serve the resolution of disputes arising from e-commerce through the Internet (ODR. Online Dispute Resolution).

These projects generally aim to use Internet technology in the field of Alternative Dispute Resolution (ADR), represented by negotiation, mediation, and arbitration. In the latest statistics of the Center for Information Technology and Dispute Resolution, the number of these centers reached forty, each of which presents a project to serve electronic dispute resolution. All these centers share in employing digital means of communication that allow the parties to present their case on pre-prepared electronic forms through their website.

All these centers share in employing digital means of communication that allow the parties to present their case on pre-prepared electronic forms through their website. Some of these centers also provide the possibility of telephone calls, or video-conferencing. Most of these centers offer mediation and negotiation services, and a few of them have started launching (online arbitration) projects(2).

Through a quick look at the services and projects offered by the electronic centers for dispute resolution shown in the previous table, it is noted that they have all employed all possible technical means for the purposes of resolving some or all disputes arising in the scope of e-commerce. It is also noted that most of them provide these services free of charge. Because it is still in the experimental stage.

These centers were also able to employ mediators or arbitrators specialized in resolving disputes electronically, either for symbolic fees, or by volunteering because they believe in the need to promote these services; In order to turn into profitable institutions in the future after achieving public confidence in them.

However, this does not mean that some of these centers do not charge fees for the services they provide. For example, the Square Trade Center does not charge wages from the consumer, but rather from companies that accept its involvement in negotiation or mediation to resolve disputes arising between those companies and consumers.

This center is considered one of the leading centers in the field of negotiation and mediation. This center has proven successful in resolving disputes arising in the famous auction market on the Internet, which is called (eBay), as nearly two million auction deals are executed through this site per week. The company based on this site prefers to resolve disputes arising between it and the bidders through the negotiation and mediation service provided by the Square (Trade) center away from the courts. This center offers a simple program for resolving disputes by following a step-by-step procedure(3).

The aggrieved party visits the center's website and fills out the form prepared to present his dispute with the seller, and the compensation he requests such as refunding the price, or replacing the sold item, then he presses the button at the end of the form. The center receives this request, then sends an e-mail notification to the seller about the buyer's complaint, and asks him to respond to that, and then asks the parties to specify if they wish to negotiate directly through the center's website or appoint a specialized mediator from the center to provide an appropriate solution to the dispute.

However, the solution proposed by the mediator is not binding on the parties. Rather, it depends on its effectiveness on their acceptance of it, and what applies to the services of these two centers applies to the services of other centers that offer negotiation and mediation services.

As for the field of electronic arbitration, which is the main subject of our study, we consider it appropriate to present the reality of two important experiences: the first is represented in the virtual court arbitration (Virtual Magistrate Arbitration program), and the second: in the arbitration of website addresses, according to the unified policy for resolving disputes related to addresses Websites, prepared by the Internet Foundation.

-The Online arbitration procedures proceed faster than the traditional arbitration procedures. This is because the Internet can provide the service of communication, exchange of documents, and notes by direct electronic means. In a more precise sense, cyberspace has become a spacious place in which massive technical means are used to store, communicate, and exchange many data very quickly. Such a technique, if it is well exploited, will deepen the acceptance of arbitration by those concerned.

-If the arbitrators in traditional arbitration are experts in trade-related disputes, the arbitrators in electronic arbitration are experts in e-commerce disputes. That is, they are among the people who have specialized knowledge in e-commerce disputes.

E-commerce, like every new market, needs careful and appropriate regulation. Because e-commerce is international in nature, it will need a balanced set of international rules to free it from crippling constraints at the national levels.

- Most of the disputes arising from electronic commerce at the present time are disputes related to the consumer, with simple financial values that are not suitable for resolving in any traditional, expensive way.

### **2.1 First Requirement: Legal justifications :**

There are a number of legal justifications for Online arbitration dictated by the total legal system governing international trade in general, and electronic commerce in particular. The world of the Internet and electronic commerce does not know geographical borders. As a person in Algeria can conclude a contract through the Internet with a person in France, or any other country, without seeing or knowing him, or even knowing his workplace.

Despite this fact, the law that regulates the rights and obligations of the parties to the contract concluded through the Internet remains a national law according to the traditional approach to conflict of laws that crystallized during the pre-informatics revolution. The effectiveness of national courts' ability to apply foreign laws, or to pass judgment on persons residing outside their jurisdiction, remains limited.

### **3. Second Topic : the issue of applying national laws to e-commerce disputes:**

The new form of arbitration and its placement in an electronic template led to a change in the law applicable to the subject of Online arbitration, because the matter is completely different between traditional arbitration and Online arbitration, especially that it is based on a society in which there are no spatial links, which we mean by the Internet.

The most complex legal issues in the field of electronic commerce at the present time are those related to jurisdiction and the law applicable to disputes arising in the context of electronic commerce; And many companies operating via the Internet seem concerned about being subject to the courts of a foreign country that applies its internal law. Just because a consumer in that country purchases a commodity through the company's website(4).

There is no doubt that most countries in the world do not yet have unified rules in international jurisdiction that are appropriate to the special nature of electronic commerce and other transactions via the Internet. There is also no international agreement that includes unified objective rules to which countries are bound in the field of electronic commerce. Accordingly, the matter of choosing the law applicable to disputes related to electronic commerce remains dependent on the national court before which the case is instituted.

The national courts in any country refer to the rules of attribution in its internal law in order to determine the substantive rules applicable to the dispute tainted by a foreign element. Such as disputes arising from electronic commerce, and this law may be strange to one of the parties, if not strange to them both. Many companies operating on the Internet have realized this problem.

Therefore, it was keen to include in its contracts conditions that define the law applicable to the subject matter of the dispute and the competent court to hear it. However, it is not possible in this regard to mention the problem of the extent to which national courts in some countries recognize the scope of the will's authority in choosing the applicable law, or in choosing the competent courts to hear the dispute. As the recognition by national courts in the negative conditions of their jurisdiction of the interest of a foreign court is subject to certain determinants imposed by the peremptory rules in national laws.

In light of this reality, the jurisprudence of international trade law at the present time argues that the complete lack of respect by many national legal systems for the principle of will power in choosing the applicable law, and in choosing the competent courts constitutes an obstacle in the face of international trade in general, and electronic commerce in particular.

Therefore, there is a need for governmental action at an international level to set unified rules in order to respect the freedom of the parties to choose the applicable law, or the competent court in the field of international contracts, whether it takes place via the Internet, or through traditional methods, and they also call for the need to develop reserve rules to determine the applicable law, , or the competent court in the field of electronic commerce in the event that the parties do not choose to do so.

Accordingly, and in light of the current situation remaining as it is, it seems necessary to formulate rules for Online arbitration, and work towards it. That is, if the national legal systems hesitate to respect the negative conditions of their jurisdiction in favor of a foreign court, they accept, and are even committed to accepting the agreement of the parties to the contract to refer their disputes to arbitration pursuant to their internal arbitration laws, and Article 2 of the New York Convention on the recognition and implementation of foreign arbitrators' awards of 1958(5).But despite it all, consumer contracts remain contentious.

Most consumer protection laws in many countries tend to invalidate every agreement that deprives the national consumer of requesting protection of his rights by his national courts.. In light of this legal reality, such companies face a clear challenge from large companies. As it will hesitate to expand its trade in multiple markets due to the legal and judicial challenges it may face in some countries, as it does not have the same economic power as the large companies. Such a challenge is to provide the

opportunity for small and medium-sized companies to enter the global markets without restrictions(6).

In light of the absence of rules of attribution, substantive rules, or rules of internationally unified jurisdiction, although electronic commerce is international in nature, legal logic dictates the need to respect the principle of will power in choosing the law applicable to electronic commerce disputes and in choosing the appropriate judiciary to resolve those disputes. Since arbitration is a judiciary parallel to the judiciary of the state, and is widely recognized in the field of international contracts, its recognition and development in the scope of electronic transactions is dictated by the nature of these transactions and the current reality of the international community.

### **3.1 First requirement: the application of the Vienna Convention on International Sales to electronic commerce disputes:**

Electronic sales contracts are the most important legal tools in the practice of electronic commerce. These contracts are international in nature. Therefore, the issue of natural law is always raised, differing in the electronic means of practicing its procedures, beginning with the conclusion of the arbitration agreement, when the arbitral award is issued, through the procedures of its opponents, the arbitration.

### **3.2The second requirement: the advantages and risks of Online arbitration**

The advantages of this arbitration are many and are related to electronic commerce and electronic contracts in a way that distinguishes it from resorting to national courts and even from traditional commercial arbitration, and among these advantages.

Resorting to Online arbitration ,Arbitration via the Internet avoids the parties to the contract not keeping pace with the law and the judiciary regarding electronic contracts, whether legally or judicially, as it avoids the lack of legal recognition of these contracts or the difficulty of determining the applicable law and determining the competent court, and this matter is not easy according to the ordinary judiciary when the dispute is referred to it.

- The most important feature of Online arbitration is the speed in adjudicating the dispute, and this feature greatly exceeds the slowness and accumulation of cases in the corridors of these disputes in the corridors of national courts, especially with the increase in electronic commerce contracts, so that this arbitration exceeds much the speed of adjudication of disputes before it compared to recourse For ordinary commercial arbitration, which requires a much longer period than this arbitration requires.

- The desire to present the dispute to persons with special technical experience and trustworthy means keeping pace with the development of electronic commerce, especially in the technical and legal field of this trade.

- Reducing litigation expenses, in proportion to the volume of concluded electronic contracts, which are usually not large, but rather modest; Multimedia systems that allow the use of audio-visual means are sometimes used in holding arbitration sessions on the direct line for the parties and experts, and this reduces travel and transportation expenses.

- Confidentiality, which is the advantage of arbitration in terms of its existence, results and at all stages, which prevents damage to the reputation of the arbitrators.

- Ease of obtaining a judgment by submitting documents via e-mail, or through a special interface designed by the arbitrator or the electronic arbitration center to provide data and obtain judgments signed by the arbitrators.

The existence of an international agreement on the recognition and implementation of arbitrators' awards, which is the New York Convention on the recognition and implementation of arbitrators' awards of 1958, unlike judicial rulings, where there is not yet an agreement governing international recognition and implementation such as: the New York Convention, although there are regional and bilateral agreements for its implementation, and with importance For these advantages that distinguish Online arbitration from ordinary judiciary and traditional arbitration, however, there are risks and criticisms associated with it, which may question the extent of its feasibility and effectiveness, and among these dangers.

The failure of the current legal systems to keep up with the rapid development taking place in the field of electronic commerce, if not these systems do not legitimize these transactions and electronic commerce in their laws, in addition to the rigidity of the legal rules existing in many countries of the world related to traditional litigation procedures from recognizing the arbitration procedure by electronic means.

And not to amend the existing legislation to recognize Online arbitration provisions, and from here the question arises about the validity of settlement procedures by electronic means, and the extent of recognition of the Online arbitration award. It is the place of the individual arbitrator, or the place of the supplier, or the user in electronic information services contracts, if the arbitrator is an individual, or the place of concluding or executing the contract.

The UNCITRAL Committee had a clear and important role in issuing the United Nations Convention on the Use of Electronic Communications in International Contracts, which stipulates in Article (20/1) that "the provisions of this agreement apply to the use of electronic communications in the context of the formation or implementation of a contract or agreement to which any of the The following international agreements, to which the Contracting State is or may become a Contracting State to this Agreement:

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Agreement on the recognition and enforcement of foreign arbitral awards New York, June 10" (1958) Thus, this agreement gave - when it included the New York Convention 1958 - electronic writing the advantage of regular writing, and this is what is found in the text of Article 2/2 of the New York Convention, and Article 1/1/5 of the New York Convention through which the validity of the arbitration agreement is assessed, and Article 1/5 of the New York Convention With regard to the violation of the arbitration procedures to the law of this country and thus the refusal to recognize and implement the award, this is what we will explain in detail in the implementation of the arbitration rulings. This is for the countries subject to the New York Convention. As for the countries that are not subject to it, or with regard to internal Online arbitration, this matter requires legislative intervention.

### **4. Conclusion:**

Online arbitration does not differ in its nature or in its provisions from traditional arbitration, but the regulations of some Online arbitration bodies constitute an aggression against the unilateral will in some cases when it excludes any role for the agreement of the parties in some issues such as the formation of the arbitral tribunal, and the choice of its location and language.

the method of deliberation on the Online arbitration ruling Online arbitration does not have a garment of prestige, but rather it is a system based on benefiting from the services of the Internet, and it is a system that aims to automate the institutional arbitration system, and that this arbitration does not differ in its folds any difference in nature and the implementation of the ruling issued by it takes place in the light of the rules established in Every country without distinction, especially the countries that issued its project on electronic signature and electronic commerce, to determine absolute equality.

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