

# Evaluating Commercial Dispute Resolution Through International Commercial Arbitration (ICA): The Context Of Libya

Elhadi Eltweri

Faculty of Business and Law, Liverpool John Moores University

[e.m.eltweri@2019.ljmu.ac.uk](mailto:e.m.eltweri@2019.ljmu.ac.uk)

## 1. Introduction

This study focuses upon some of the significant aspects of the law concerning resort to arbitration within commercial disputes. Amongst the variety of methods for dispute resolution within international commerce, arbitration is seen as being the instrument that has the most prominence.[1] As such, the interest shown for international arbitration has also grown, a reason for this is because of the expense and length of time taken for the more traditional approach to settling disputes, i.e., recourse to the court. largely, with international trade growing, businesses have become exposed to different working partners and cultures, and various trade practices and legal systems within various countries; such diversity has brought higher risk and also given rise to many disputes and international disagreements. At the international level, further difficulties arise with the variety in jurisdictions, differing laws, procedures and legal transactions and, sometimes differing languages, Etc; the consequence is that there are large legal conflicts and potentially high costs, especially for commercial firms operating their trade across international frontiers. Consequently, international commercial arbitration (ICA) has become the most important of ADR that has been most widely adopted for the resolution of business disputes, particularly across national political borders. The parties should have faith and trust in this procedure or At least have been in a position appropriate to the parties, International trade contracts parties often appeal to arbitration as a neutral system, private and independent.[2] This study has the aim of undertaking evaluation of the role that has been played by arbitration within Libya, involving an evaluation of the development of the case law and legislation for arbitration in Libya for addressing various complex disputes that have the potential to arise internationally in the extremely broad range of trading relationships. For this study, the adopted methodology will be that of the doctrinal study and the empirical study, the comparative study. The agreement of parties to submit to the proceedings of arbitration is a significant initial step to success in resolving disputes or addressing potential issues that could arise.

## 2. Literature review

### 2.1 *The significance of arbitration within international trade*

There is a common denominator within international arbitration for all types of disputes with regard to the purpose being pursued. Arbitrators within all cases have a focus on the resolution of disputes put in front of them.[3] Due to the significance of arbitration in the resolution of disputes, there has been exertion of efforts within developed countries for the promotion of arbitration use and improvement to the institutional and legal support in place in relation to international commercial arbitration.[4] Lots of effort has been invested by many states in enhancing their rules of arbitration, particularly through the adoption of UNCITRAL Model Law so that they can have greater competitiveness and be more attractive for foreign investors. Arbitration has importance for commerce in respect to it being a service industry, and this is a primary factor behind Hong Kong and China being encouraged to enhance their rules for arbitration.[5] Foreign investors seek basic protection standards and need to be assured that any disputes that may arise in relation to their investments can be settled through arbitration that leads to an award that is enforceable. International commercial arbitration has great importance within the development of the commerce of the states of Africa, in general, and within Libya particularly; as such, more attention ought to be paid to it than is currently the case. Arbitration could well facilitate commerce and serve as a tool for economic development and greater prosperity within Africa. Arbitration rule quality raises the numbers and types of contact involving clauses of arbitration and

employment of arbitration for resolution of economic crises.[4] Therefore, improvement to the rules of arbitration offers commerce a procedural safeguard and this would impact positively upon investment and consequent growth in business. Within that context, this study focuses upon the experience of Libya.

### *2.2 Arbitration within the Libyan state*

Libya is one of the most oil exporters in the North African worldwide oil markets. In addition, there are areas of arbitration within international commercial is of very special importance, especially to Libya. i.e. the gas and oil and construction sectors, Work undertaken in these areas have been the primary drivers of the economy of Libya.[6] Whilst, an energy supply that is reliable forms a basis for the economies of modern societies, within countries with economies based on the exportation of energy, included Libya, there is often a heavy reliance upon energy export revenues.[7] The codified system of civil law in Libya is ‘mixed’ with a basis in Islamic law and the civil codes of both France and Egypt. [8] There is no modern law of arbitration in Libya; in fact, the law for arbitration in the country hails from 1953 and the Oil Law from back in 1955. Within Libya, there is governance of both international and domestic arbitration through the Code of Civil and Commercial Procedure (Articles 739 – 771).[8] Moreover, arbitration is divided through two sections of the Code of Civil and Commercial Procedure; firstly, there is coverage of arbitration of civil and commercial matters and secondly, there is coverage of arbitration in family matters between spouses according to the Sharia Islamic.[9] The Code of Civil and Commercial Procedure is led to arbitral procedure being prohibited within certain fields such as those relating to nationality, public order, disputes between employers and workers and matters with regard to personal status such as racism differentiation. Arbitration has popularity within Libya as a way of resolving disputes. So, treaties or statutes have been adopted within countries along with the establishment of specialist institutions in order to facilitate Procedures arbitration and enable it to function in an enhanced manner. Nevertheless, Libya is a signatory to around another forty-five bilateral treaties as well as other investment treaties.[10] However, Libya is not a signatory to most important arbitration conventions such as the ICSID Convention and the New York Convention.[11] Nonetheless, the courts in Libya will recognise foreign awards and enforce them if it is satisfied that such awards are definitive and enforceable as well as aligned with rules internal in the country wherein there was issuing of the award. There will also be a request by Libyan courts of proof that Libyan awards are given reciprocal treatment by foreign courts, i.e. those courts wherein an award was rendered within another country.[9] However, the arbitration law in Libya is one of the old laws established in Libya since 1953 of the Code of Civil and Commercial Procedure. Whilst several neighbouring countries recently developed new arbitration laws. Moreover, a new arbitration law was drafted for Libya that had been inspired by numerous sources, such as the UNCITRAL model and the Unified Arab Code of Civil Procedure, as well as the French and Tunisian laws on arbitration. However, this reform has been suspended.

### **3. The research methodology**

This study employs a research strategy that is qualitative since that is more appropriate for use within legal studies. In addition, the study is split into 3 primary phases, the adopted methodology will be that of the doctrinal study and the empirical study, the comparative study. The basis for the doctrinal method is employed, in general, for the exploration of detailed knowledge with regard to legal frameworks that govern the arbitration of international commerce. An empirical study lies with interviews that are both structured and semi-structured, that to support the analytical study of those documents that will be done in the first phase. Comparative is adopt to help in discovering solutions to issues will list from information collect within the two aforementioned study phases. The comparison will make between draft law and current provisions for arbitration within the context of UK arbitration law, Egyptian Arbitration Law and United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration, as well as reference, at certain points, to various other laws and jurisdictions.

#### 4. Expected Findings

The Commercial is a mainstay for the economies of developing countries, so it was natural to provide the appropriate capabilities to attract and encourage these investments. To provide job opportunities, as well as openness to global markets, thus improving the economic and social situation in the countries hosting the investment. Given the special nature of commercial contracts and the multiplicity of their parties, it is conceivable that disputes may arise between their parties about the application or interpretation of their terms, which necessitated the provision of effective legal means in settling commercial disputes. These methods were represented in the International Court of Justice, the Permanent Court of Arbitration, the International Centre for Settlement of Commercial Disputes. Concerning the arbitration law in Libya is one of the old laws established in Libya since 1953 of the Code of Civil and Commercial Procedure and requires enacting a modern arbitration law to Keep pace with global development. In addition to that arbitration centres in Libya, expertise and experts lack international arbitration to support and assist disputants to settle their disputes in arbitration centres local.

#### 5. The original contribution that the research makes to knowledge

Libya is one of the important exporters of oil within the worldwide market relating to North Africa, and activities within the sector of oil and energy account for over fifty percent of the gross domestic product GDP of the Libyan economy. So, unlike many developed countries blessed with commercial arbitration approaches that are well-developed, there is limited literature paying attention to the role of arbitration within commerce in Libya. Therefore, within the arbitration context, this current study has the primary purpose of examining the current laws and practices related to arbitration within Libya and determining issues that have an impact upon arbitration practice within the country. The study has the aim of presenting suitable methods for the enhancement of the practice, legislation and the bodies of arbitration within Libya so that international standards can be matched, enabling the Libyan economy to keep pace with the global economic boom. Therefore, this study aims to shed more light upon the situation with regard to commercial arbitration in Libya.

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