

**Freewheeling arbitration award (the sender) and the
possibility of its implementation**

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Research Summary

This research addresses the issue of renewed international commercial arbitration and private governance award freewheeling and whether it can be implemented according to the New York Convention and national laws, where looking the issues partial , such as the identification and definition of the arbitration award freewheeling and liquefied implemented in accordance with the New York Convention to implement the provisions of Foreign Arbitral Awards 1958 (2) , problematic because the implementation and whether or not that can affect in many types of arbitration free (non- institutional) ad hoc so-called individual arbitration.

In the case of the absence or impossibility of implementing such provisions may die to the cancellation of an important part of the types of arbitration , which is the simple image of the arbitration before the emergence of institutional arbitration centers and before the existence of rules followed in the arbitration proceedings . For the imposition of health opinion Method legal deny the possibility of the applicability of the Treaty of New York, we will go back to the issue of the lack of this type of arbitration to become in front of institutional arbitration and the ordinary courts (the courts) , if not parties to the arbitration to choose the place of arbitration explicitly and choice of sentencing (i.e., working to identify the nationality of the arbitration award in the arbitration clause or arbitration stipulation) , and this required the confiscation of the arbitration and the confiscation of the realistic choice of place of the arbitration award and its association with the truth.

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The concept of the rule of arbitration freewheeling

Idiomatic meaning of the rule of a unified " operative implementation of what is due him ," If the arbitration spend a special or extraordinary , because the basic principle that the courts have jurisdiction to adjudicate disputes as a device that initiate judicial power of the state (3) .

So briefly introduce the concept of the rule of arbitration by dividing it into two demands dedicate the first requirement : the definition by virtue of the arbitration , and the second requirement : the status of the arbitration award (national , foreign , international , loosely (4).

First requirement: definition by virtue of the arbitration

If determining the meaning of rule a matter of conditioning , trying to determine the meaning of the arbitration award is not an easy task , because it must from the outset and as a preliminary to determine whether the parties' agreement to refer the dispute to a third person is such as the agreement to arbitrate , or that such experience or mediation , then the judge has to take into account as a matter of Ole when doing the adaptation of the work of that third person to determine whether issued by him in his capacity as an arbitrator or as an expert or a mediator between the two parties , and will be identifying the nature of the task entrusted to him , and the judge required that including his discretion , it must exclude air the decision as an arbitrator 's decision when it seems that the solution to the conflict was not due to decisive action issued by the arbitrator (5) .

If concluded that the agreement to refer the dispute to a third person is an agreement to arbitrate must determine then whether the work was issued by the arbitrator is the work of a court whether or not to determine whether the decision is to the rule of arbitration or not (6) , because the judicial function conferred the arbitrator based on the arbitration agreement , the arbitrator makes the work is shrouded in many hypotheses , in one case free arbitrator explaining his point of view in the solution due to the conflict , said the Paris appeals court that such a view is not the work of the judiciary.

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Thus, it is clear that trying to define the arbitration award is not an easy thing, in terms of the legal, which put the Model Law on International Arbitration (UNCITRAL) tried to put a definition of the rule of the arbitration, but they backed away from it, and it was proposed text for the definition of judgment arbitration is that the word judgment arbitration must be understood as a final judgment in separating all the topics on the tribunal (7) .

But the New York Convention to implement the provisions of the arbitrators Foreign identified the intended provisions of the arbitrators stating in Article I , paragraph (2) that he intended the provisions of the arbitrators, not the judgments of the arbitrators appointed to adjudicate specific cases , but also the judgments of the tribunals permanent invoked by the parties , and notes on this definition it general definition of a comprehensive because it may issue a preliminary provisions for arbitrators or partial is not a comma to the dispute , however provisions are arbitrary and in accordance with this definition.

And as such, can be determined by arbitration intended executable internationally that is the rule of binding arbitration for dispute Terminator , any lapse in judgment at issue antagonism Terminator (8) , whether it was issued to answer the prosecutor requests all or some or all of refusing.

The second requirement: capacity to govern arbitration

After we finished determining the meaning of the arbitration award , we must statement attribute to the arbitration award , because to determine capacity to govern the arbitration of great importance which have a distinction between the rule of foreign arbitration and the arbitration ruling National and the rule of international arbitration and the arbitration award freewheeling difference in the legal rules applicable to each, arbitration is national entails the application of national law , unlike the case should involve an element of foreign arbitration or more , then we are in front of the possibility of application of the law or the laws of a foreign or international treaty alone.

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It also entails a distinction between the rule of foreign arbitration and the arbitration ruling National particularly important in determining the rules of international jurisdiction of the courts into command request implementation or an appeal against arbitration or file a lawsuit struck down , as well as highlight the idea of public order when contrary to the arbitration award with the public order in the requested State implementation , the idea of public order in the foreign arbitration narrowing the idea of public order in the national arbitration as we will see that later , as they seem to know the importance of prescription arbitration and affiliation to a particular state to apply the principle of reciprocity or exchange.

Hence, the question arises on what basis can distinguish between the arbitration award and another to give it a certain recipe?

To answer this question , there are several criteria to distinguish the arbitration award as a national or foreign or international or at large , most notably the standard place of the judgment and it is called the "standard geographic " standard procedural and called it " legal standard " , but before getting carried away in a statement these criteria should note to the nationality of the arbitrator , or the nationality of the parties to the arbitration are not any consideration in determining the status of the arbitration award , because the focus of discrimination focused on the link between the issue of affiliation and arbitration procedures for a particular item , whether this element geographic or legal . (9)

1 - Standard geographic (place of the judgment (10) .

The implication of this standard that the arbitrators 'award takes the nationality of the place where it was made (11) lesson in the proven capacity of foreign arbitrators' award is the need to release in a foreign country , regardless of the country that held the arbitration stipulation , and regardless of the nationality of the parties or the arbitrators (12) , in the case of the multiplicity of the countries that hold the arbitration , Viand state which took place where the arbitration is mainly issued by the arbitration award , because the judgment bears the name of the authority of the state that issued them , Almsmen in charge of the judiciary by the mandate issued to them from the state's authority over its territory (13) , and arbitrators do not sit to judge usually only in the country that has a conflict related to the subject of the arbitration document.

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The question that arises here , is it permissible for the state judge who is conditioning the arbitration award to determine the state of the nationality rule for certain just where its release , or simply adjective foreign Basal it?

Some see not the possibility of a judge of state who conditioning arbitration ruling Baspag citizenship of another country to govern the arbitration just to its release in them, and that all he owns is to decide whether a significant criterion replace the verdict all the way to a foreign judgment in any of the other states , he may specify a recipe judgment (national or foreign , etc.) but does not have to determine his nationality (14) , and it seems that most of the laws have not been exposed explicitly to the issue of the nationality of the arbitration award and that was understood by some of the laws considered the arbitration award issued in a foreign country the rule of a foreign arbitral , as is the case in the Egyptian law , where Article 299 proceedings that the (provisions of the preceding articles "which related to the implementation of foreign judgments " on the provisions of the arbitrators issued in a foreign country) , so it is difficult delivery opinion former , because determining the nationality of the arbitration award may be necessary for the application of the principle of exchange of any transaction Similarly , or for the realization of the provisions of the Convention on the particular implementation of the provisions of the arbitrators or the execution of judgments in general.

And take most of the international conventions relating to arbitration standard place of the judgment to determine status of foreign arbitration award , the most important international agreement to implement the provisions of Foreign Arbitral Awards , the New York Convention in 1958 , stipulates in its first article that (apply the present Convention to the recognition and implementation of the provisions of the arbitrators issued in the territory of a State is called upon to recognize and implement these provisions on its territory) .

It features a standard place the issuance of the arbitration award is clear and easy to access, but it does not vacate of cash , where not enough units to determine the nationality of the arbitration award , it may be coincidence alone behind the meeting of the arbitrators in a particular state for a verdict and signature as well as there is no benefit to taking this criterion in the case of not at all correspond to the arbitrators , and if so what was the exchange of views by correspondence which is possible in accordance with

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(15) , and the place of the standard arbitration ruling also says the French judiciary may have a marginal importance for the arbitration proceedings on the whole (16) .

Indeed, it is difficult for us to delivery this standard is absolutely because in addition to the criticisms earlier , we find that this standard is supposed match the legal rules in the states and this is hard to happen, because , for example, in France the arbitration award issued by a foreigner, in the case of the application of the arbitrators foreign law is French law , where a court in Paris sentenced 07/05/1955 m saying (that the arbitration award issued in arbitration conducted in France is a foreign judgment because it is issued in accordance with the provisions of English law) , and in Germany is considered the arbitration award issued nationally , even abroad If underwent procedural law (17) .

Moreover, this criterion is compared to the standard foreign judicial decisions , a measure with a difference because as we know that arbitration is a special nature , and therefore not fit traditional standards because formulate provisions of its own as the standard place of the judgment of judicial critic of the possibility of legal rulings abroad Yet this is a national provisions as is the case in terms of consular courts and the provisions of the courts of the country under military occupation , and in addition to all that the New York Convention to implement the provisions of Foreign Arbitral not only the introduction of this standard single-handedly took the standard of other beside him , a fact that the provisions of the arbitration foreign and according to the law of the requested State where recognition by virtue of the arbitration and its implementation , as stated in the first article on this by saying (... as well as the provisions of the arbitration considered unpatriotic in the State of enforcement) , but it does not mean what Othernah by saying that we reject the introduction of this standard , but on the contrary we agree upon , and support the work by , every thing is that this standard is not in our opinion is the sole criterion for determining the national character and national arbitration ruling so that it is an exhaustive account of the introduction of any other criterion to determine the status of foreign rule.

2 - standard procedural (the legal standard) (18)

The implication of this standard to acquire the nationality of the arbitration award, which has been applied to the arbitration procedural law (19) .

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According to this standard have a foreign arbitration award , even if the state was within the territory of being under the procedural law of another State , and the arbitration award and nationally , despite its release abroad if it is in accordance with national law (20) .

Individuals can through this standard control status of foreign or national arbitration ruling indirectly through the choice of the place of arbitration, because it will be in this case, the application of procedural law for this place on the arbitration proceedings.

It features a standard procedural being more cohesive than the standard geographical, because it is a legal standard is not subject to changes in place, and hits some scholars example of this by saying that if he went arbitrator Italian, for example, after the end of the arbitration on vacation to Yugoslavia, taking with him the case file and the written judgment and signed there, that will be thanks to this ruling Yugoslavia standard procedural(21) .

The standard procedural consistent with air conditioning mostly for arbitration as a judicial nature or with a special character closest to eliminate , and drew some commentators support the New York Convention of the standard procedural and so when you talk to the Convention definition of foreign judgments are primarily those judgments in the state is intended to recognize the judgment and implementation of the addition Convention applies also to judgments in the same state required the implementation if it considered this state with so foreign , and this is the result of the arbitration underwent procedural law different from the law of the requested State where the recognition of governance and implementation, so as to bring about conciliation inevitable between requirements for some countries to recognize the standard procedural objections and between other countries (22) .

And neither taken this standard to observe the voluntary side in arbitration, because the will of the parties shall not be implemented in the process apart arbitrary nor separated them.

It is clear to us that the introduction of this standard to determine status of foreign arbitration award and then the nationality of the arbitration ruling is consistent with the special nature of arbitration as a system for resolving disputes because it is no doubt that

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the standard geographical may seem illogical in some cases , when making sexual arbitration ruling parked on the place of issue , even if this place is much lower in importance compared to the other elements involved in the arbitration process.

In conclusion we can say that there is no uniform rule on the level of countries of the world to consider the rule of arbitration as a foreigner or not , every judge is intended to recognize the virtue of arbitration is , is that that would assess the fact that provision foreigner or not it is being this estimate in accordance with its domestic law and in accordance with agreements Organization to state , but is impotent with reference to the criteria, the former as the most common among nations , it takes a country either one or both or controls certain prescribed by its domestic law , and this is what Raah the authors of the texts of the Treaty of New York when they stated that the arbitration award be a foreigner when it was issued in a State and intended to be implemented in another state and that this does not mean that is the state of the rule of arbitration foreigner when its domestic law decide it according to certain controls such as the subject of the dispute , and the nationality and place of residence of the limbs and the nationality of the arbitrators and the place of arbitration , and the applicable law to resolve the dispute , and place of signing the contract or its implementation.

It should be noted that the legal development rapidly in the area of arbitration has resulted in the existence of the so-called international arbitration next to arbitration national and foreign arbitration which arbitration that belongs to more than one country more than its elements is difficult to determine his allegiance to a particular state without the other State (23) , has been provided for this kind of arbitration arbitration Act Egypt's new No. 27 for the year 1994 in the third article of it, and the law of international arbitration Lebanese year 1983 in Article (809) , paragraph (20) , and the Arbitration Act Yemeni year 1992 , and the Arbitration Act Tunisian year 1993 and the Arbitration Act Algerian year 1993 , and the law Bahraini arbitration in 1994 and the Arbitration Act of Oman in 1997 , and the Swiss arbitration Act in 1987 and the Belgian arbitration Act 1985.

At the level of international conventions it does not exist only in the scope of the Washington Convention for Settlement of Investment Disputes between States and Nationals of other countries in 1965 The former regional arbitration did not result in them

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having a international arbitration has the entry into force of international direct even on a regional scale , which exercised when these centers of activity , Verdicts issued in the scope of these centers are being discussed patriotism and Ojunbatha replaced by publication or by one of the other criteria that take them out of State of enforcement(24) .

The question that arises here is there is a difference between the rule of international arbitration and foreign arbitration award?

To answer this question , we say: some see no difference between the rule of foreign arbitration and the rule of international arbitration , and combines them under one name is the rule of international arbitration and that all arbitration is national is international because any judgment of a foreign arbitral for a country that is nationally for another state , and then the connection arbitration more than a legal system makes international arbitration , and because the distinction between foreign arbitration and international arbitration lead to confusion between the arbitration that are between individuals or private bodies and arbitration , which can be located between the states (25) , and others believe that it is essential to distinguish between the rule of foreign arbitration and the rule of international arbitration , especially after the establishment of some of the laws by providing him and develop criteria to select it , it will be the judge in the request to perform an arbitration award that adapts between hypotheses three is to have the arbitration award and a national , or to have the arbitration award foreigner or to have the arbitration award international (26) .

In fact, a review of cases of international arbitration set forth in the various laws , including the Egyptian law in Article 24 of the Arbitration Act in Civil and Commercial Matters No. 27 of 1994 , and the Model Law on International Commercial Arbitration established by the United Nations Commission on International Trade Law (UNCITRAL) , it is clear that all foreign award is international arbitration , but not all international arbitration is a foreign arbitral because arbitration can be located on the territory of a State specific However acquires international character which makes the opinion of the second merit and weight , as there are differences arising on the acquisition of the arbitration award to describe foreign or international raised on the occasion of determining the extent of the authority of the national judge when exposed to the rule of a foreign arbitral or international in terms of exposure to the validity or invalidity and

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promulgation or rejected , for example, the rules concerning the virtue of arbitration in the same terms of the terms of his health and controls the issuance of the order of execution is subject to the law of the state that have been arbitration procedure on its territory whether the arbitration nationally or internationally , but if the arbitration is going on outside , it is not subject to this law unless it agree limbs.

And also at the beginning of the fifties of this century created legal thought , particularly in France , Germany and Switzerland kind of the provisions of the arbitration call provisions loose or Allamtmih , a rule which does not fall within the scope of any national law by agreement of the parties, and the main difference between him and the arbitration award international , the latter relates to more than one national legal system while the first is not related to any national legal system , and in the fact that if this type of provision has arisen Ktrfh found in the field of international trade contracts when trying to isolate the contract for any legal system and application called the institution of the habits of trade , but there is a great reluctance to acknowledge its existence in fact , it is strongly opposed by the judiciary and jurisprudence , for it to be any relationship that is based on a law , and therefore any arbitration must be associated legal system specific) (both national or foreign or international.

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(2) After the Geneva Convention of 1927 on the implementation of the provisions of the Foreign Arbitral Awards , and to achieve the desired end of Arbitration , in order to establish new international rules to facilitate the recognition of the provisions of the Arbitration and accelerate implementation, adopted by the Economic and Social Council of the United Nations a new draft international convention and decided in 1956 to hold conference international adoption new international convention on the recognition and implementation of the provisions of the foreign Arbitral instead of implementing the provisions of the Convention on foreign Arbitral Awards (Geneva, 1927) . And the conference was held in New York on 30 March 1958 and concluded discussions

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participants and delegates of the Chartered on June 10 in June 1958 to adopt a new convention on the recognition and implementation of the provisions of Foreign Arbitral Awards, known as the "New York Convention in 1958." On 06/07/1959 the Convention entered into force.

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(4) Decision to the Court of Cassation Jordanian human rights as No. 3203/2003 (the five-year) Date 15/3/2004

" Taken advantage of the second article of the Law on the implementation of foreign judgments No. 8 of 1952 , the foreign rule includes the decision of the arbitrators in arbitration proceedings if the decision has become the rule of law in force in the country , which was by the arbitration enforceable as a decision issued by the court in that country . Thus the arbitrator's decision needed foreign implemented and ratified by the court in that country is enforceable in Jordan if it fulfills all the conditions required by the law of the implementation of foreign judgments and free of irregularities that prevent the implementation and set forth in Article VII of the Act . "

(5) - Abdul Hamid humpback, Encyclopedia of arbitration, international arbitration (Cairo: Dar knowledge 0.1998 m) 0.302.

(6) - The Paris Court of Appeal has developed a definition of the arbitration award in its judgment of 25.03.1994 SARDISUD m in the case , saying the work in a way that separates the arbitrators are final in all or part of the dispute before them , whether in the basis of the conflict , or in the jurisdiction, or in the proceedings trial , and lead to a definitive end to the suit . Published in Ibid, 302.

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(11) - Bronchial Essam El-Din, the international force to the provisions of the International Arbitration (Cairo: Dar al- Arab renaissance 0.1993 m) 0.36.

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(13) - See: Abu Zaid Radwan, the general principles of the International Commercial Arbitration (Cairo: Dar al- Arab Thought 0.1981 m) 0.61. , Abdul Hamid humpback , Encyclopedia of arbitration, international arbitration, c 2 (Cairo , Dar knowledge 0.1998 m) 0.18 . , Issam bronchial religion, ibid 0.28.

(14) - Muhammad Ali Ezzat Buhairi , OP 0.57.

(15) - For more information about this standard see: dr.Nabeel Zaid magableh - Ibid - p 37.

(16) - Radwan Abu Zeid, OP 0.61.

(17) - Ezzat Mohamed Ali Buhairi , OP 0.60.

(18) - The origins of this standard to judicial work England , in England , and before 1979 , it was the Supreme Court to force the arbitrator to determine the subject of a specific legal under what was called the conduct special case , In the case summarized the facts of the English company contracted with the establishment of a Scottish To create based in Scotland , and agreed to be the interpretation of the contract is subject to English law , and the Scotland -based arbitration , and after completing the procedures of the hearing of witnesses and submission of n asked the English company of the arbitrator to present the case to the Supreme Court , but the arbitrator rejected this demand , where he

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was Scottish law final arbiter to resolve the issues of law and fact, was approved by the House of Lords this rejection . Dr.Mohammed Ezzat Buhairi - Ibid 0.60.

(19) - See dr.Nabeel Zaid magableh - ibid p 38.39.

(20) - Mohammed Ezzat Buhairi - Ibid - p 63.

(21) - Dr.Samia Rashid, arbitration under the Regional Centre in Cairo, and the extent of undergoing Egyptian law (Alexandria: plant knowledge 0.1986 m) 0.157.

(22) - Dr.Ibrahim Ahmed Ibrahim - the implementation of the provisions of the Foreign Arbitral Awards - Egyptian Journal of International Law - Op - p 7.8 .

(23) - Dr.Ezzat Buhairi - Ibid - p 73.

(24) - Ahmad Sharaf al-Din, the Egyptian authority to judge about the provisions of the Arbitration, 2nd Floor, (Cairo: Golden Eagle Print 0.1997 m) 0.37 and Beyond

(25) - Ahmad Sharaf al-Din, the Egyptian authority to judge about the provisions of the Arbitration, 2nd Floor, ibid - 96 p.

(26) - It appears from the extensive discussions that took place on this idea in the United Nations Conference , which resulted in the New York Convention in 1958 , that most states did not want to run the risk of taking this idea (the referee freewheeling) because it might lead to the prejudice of justice and abuse of the freedom of the parties in the field of arbitration.