

Jurisdictions of International Commercial Arbitration in Afghanistan and UNCITRAL Laws

Eid Mohammad Fallah*

Associate Professor of Law and Political Science faculty, Parwan University, Parwan Province, Afghanistan.

*Corresponding Author

Email: eid_mohammad_fallah@yahoo.com

Abstract

One of the important issues in international commercial arbitration is the arbitration board, which consists of one or more arbitrators to resolve commercial disputes based on the agreement of the parties to the dispute, or by the arbitration organization or the court, and is dissolved after dealing with the commercial disputes. In this research we examine the competence of the arbitration board in international commercial arbitration, focusing on its ability to make decisions regarding jurisdiction and the examination of the existence of the arbitration agreement. The research employs a descriptive-analytical method and relies on library and electronic sources for data collection. The findings designate that the arbitration board, per the Afghanistan Arbitration Law and the UNCITRAL Model Law on International Commercial Arbitration, has the authority to determine its jurisdiction and observe the existence of the arbitration agreement. It is established that the principle of competence-competence is widely accepted by the laws of many countries. However, it is elucidated that the subject matter jurisdiction lies with the agreement of the parties involved. The research highlights the importance of the arbitration board in impartially resolving commercial disputes evolving from economic and commercial contracts and emphasizes its role in achieving quick and fair dispute resolution.

Keywords: *Arbitration, Arbitration Agreement, Arbitrator, Board, and Jurisdiction.*

INTRODUCTION

Arbitrations, both national and international, are one of the informal dispute resolution methods of the alternative commercial dispute resolution (ADR) method. In judicial dispute resolution methods, the authority for dealing with disputes is the judicial board, but in commercial arbitrations, the authority for dealing with commercial disputes is the arbitration board. The legal establishment called the arbitration board has the same role as the judicial board in the courts. The arbitration board is a commercial dispute settlement authority that is formed by congregating two or more arbitrators to deal with a specific commercial dispute. This research under the title of "Jurisdiction of the Arbitration Board in Afghanistan's Commercial Arbitration Law and the UNCITRAL Model Law on International Commercial Arbitration " has only dealt with the jurisdiction of this institution. The most basic research question is what kind of jurisdiction does the arbitration board have?

Based on result of the relevant researches entitled investor-state arbitration problems in Afghanistan and analysis of Afghanistan's commercial arbitration law, several key inferences regarding the jurisdiction of the arbitration board. The arbitration board can be identified as having three distinct types of jurisdiction: arbitration jurisdiction, administrative jurisdiction, and jurisdiction about the arbitration agreement. Within the realm of arbitration jurisdiction, the board is responsible for handling commercial disputes and rendering decisions in the form of arbitration agreements. This type of jurisdiction encompasses the board's authority to determine its jurisdiction, address disputes, and issue arbitration orders. Administrative competencies also fall within the jurisdiction of the arbitration board, encompassing tasks that serve as means to achieve its objectives rather than being the primary focus themselves. These competencies include determining the venue and language of arbitration, selecting experts, and providing

notifications. Additionally, the jurisdiction of the arbitration board extends to matters concerning the existence or non-existence of the arbitration agreement (Nikzad & Anwari, 2023).

The significance of this research lies in its relevance to scholars, arbitration organizations, and arbitrators. It aims to undertake a comparative investigation of the jurisdiction of the arbitration board. Notably, while Afghanistan's Commercial Arbitration Law draws inspiration from the UNCITRAL Model Law on International Commercial Arbitration, there are instances where the Afghan legislature deviates from the provisions of the model law. Consequently, discrepancies exist between the two laws regarding certain issues. Given that commercial arbitration is a relatively recent development in Afghanistan's legal system, with the country's first commercial arbitration law being enacted in 2005, independent research on the jurisdiction of the arbitration board remains limited (Mafy, 2014).

. This research contributes by addressing two vital topics: firstly, providing definitions of concepts such as competence, arbitration, and arbitration board, and secondly, exploring the various types of jurisdiction exercised by the arbitration board.

RESEARCH METHODS

This is a type of analytical and descriptive research based on library data collocation that employs like every research a series of concepts that are necessary to be examined and studied to explain the discussion. Current study, it is necessary to define concepts such as jurisdiction, arbitration board, and arbitration.

RESULT AND DISCUSSION

Jurisdiction definition

Jurisdiction in the word means to be competent, to be worthy, to deserve, and to be eligible (amid, 2002). In legal terms, it is the competence and legal ability of courts or non-judicial authorities to deal with claims and disputes and resolve them (Bahrami, 2000).

From the above definition, it is understood that jurisdiction is a type of right, the relevant authority has the right to use its right and not to use it, while jurisdiction is a duty for courts and other authorities, not a right. Therefore, we can say that jurisdiction is an obligation that is imposed on the courts as a result of the decree of the law to deal with the claims presented according to the law (Afzali, 2013).

Arbitration board

The term "Board" used in the Afghan Commercial Arbitration Law is an English word derived from the term "Board", which means board. In Afghanistan Commercial Arbitration Law, the term "Arbitration Board" is used, and in the UNCITRAL Model Law on International Commercial Arbitration, Arbitral Tribunal is used. The arbitration board is not defined in the Afghan Commercial Arbitration Law, but it is defined in the UNCITRAL Law as follows: Arbitral Tribunal means a single arbitrator or a group of arbitrators. So we can say that the arbitration board consists of one or more arbitrators that handle and resolve commercial disputes.

Definition of arbitration

Hakamiat is the Arabic word and the fake infinitive of haqam, in the word it means asking for arbitration and making a ruling, giving a fatwa, judging and giving an opinion. Azarnoush (2008), Clause 2 of Article 2 of the Afghan Commercial Arbitration Law defines arbitration as follows: "Arbitration is an enforceable process based on which the arbitrator or arbitrators or the arbitration department, based on the request and agreement of the parties or the court order,

perform impartial services to quickly and justly resolve disputes arising from economic and commercial transactions contracts." Clause C of Article II of the UNCITRAL Arbitration Model Law defines arbitration as follows: "Arbitration means any type of arbitration, regardless of whether it is administered by a permanent institution or not."

If the above definitions are carefully observed, it can be seen that both laws follow a mixed theory about the legal nature of arbitration. This issue is somewhat vaguely stated in the UNCITRAL Model Law on International Commercial Arbitration, but it is clearly stated in the Afghanistan Commercial Arbitration Law. Regarding the legal nature of the institution of arbitration, there is a difference of opinion. (1) Contractual theory (2) judicial theory (3) mixed theory (4) original theory. (Mafy, 2014)

Types of jurisdiction of the arbitration board

According to the Afghan Commercial Arbitration Law and the UNCITRAL Model Law on International Commercial Arbitration, the jurisdictions of the arbitration board can be classified into three general groups:

- 1- Arbitration jurisdiction
- 2- Administrative jurisdiction
- 3- The authority to interpret the contract and determine the governing laws

Jurisdictions of arbitration

This type of jurisdiction is the jurisdiction related to the settlement of commercial disputes, or in other words, the jurisdiction related to the existential philosophy of arbitration that justifies the existence of the arbitration institution. In this research, the most important of them are mentioned as follows:

Settlement of all disputes including the jurisdiction of the arbitration board

Article 25 of the Commercial Arbitration Law of Afghanistan states the following about the jurisdiction of the arbitration board: The arbitration board has the following jurisdictions:

- 1- Resolve all disputes including own jurisdiction
- 2- Dealing with objections regarding the existence of the arbitration agreement or its validity

According to clause 1 of Article 25 of the Afghanistan Commercial Arbitration Law, one of the jurisdictions of the arbitration board is to resolve all disputes within its jurisdiction. This clause is not very clear. Two meanings and concepts are taken from the appearance of the clause. One is that the arbitration board has the jurisdiction to settle all disputes under its competence. This means that the arbitration board can only resolve disputes under their jurisdiction. The second meaning is that the arbitration board has the jurisdiction to resolve disputes regarding its jurisdiction. In this sense, if it is claimed by one of the parties to the dispute that the arbitration board does not have full or partial jurisdiction to deal with the dispute, in this case, the arbitration board can deal with this claim and decide on its jurisdiction and lack of jurisdiction. Adopt Jurists have studied and investigated this issue under the title of the principle of competence – competence of the arbitration board.

From the appearance of the mentioned clause, the first concept can be inferred, while the second concept can be inferred from Article 16 of the UNCITRAL Model Law on International Commercial Arbitration, which is the source of the commercial arbitration law. Article 16 of the aforementioned law stipulates that: the arbitration board can decide on its competence, as well as on the existence or validity of the arbitration agreement. Article 25 of the Afghan Commercial Arbitration Law is taken from Article 16 of the UNCITRAL Model Law on International Commercial Arbitration. Unfortunately, the mentioned article has not been accurately and completely translated. So, as a result, it can be said that the first clause of Article 25 of the Commercial Arbitration Law, like Article 16 of the International Arbitration Model Law, discusses the jurisdiction of the arbitration board concerning their jurisdiction. According to the above article, the arbitration board has the competence to decide on its jurisdiction. The principle

of competence - competence has been discussed in arbitration law for a long time because one of the important issues in arbitration is the discussion of the arbitrator's jurisdiction. This issue is specifically raised with reference to the principle of competence - competence, which originates from the German term (competence - competence). This principle means the referee's ability to recognize his competence (Sahar, 2023).

Dealing with disputes

One of the jurisdictions of the arbitration board is to deal with commercial disputes. The meaning of the word "scrutiny" is verification, accuracy, and investigation. (Omid, 2011) In the term of law, investigation also means to investigate. The question that may be raised in this context is, from which date does the arbitration proceedings begin? According to Article 34 of the Commercial Arbitration Law of Afghanistan, the arbitration proceedings regarding the related dispute shall begin from the date the defendant receives the request for arbitration unless the parties have agreed otherwise.

Article 34 of the aforementioned law is a translation of Article 21 of the UNCITRAL Model Law on International Commercial Arbitration, and the aforementioned article stipulates the following in the context: Arbitration proceedings regarding a specific lawsuit shall begin on the date when the request to refer the dispute to arbitration is communicated to the respondent unless the parties agree otherwise.

Dealing with disputes in arbitration and dealing with lawsuits in courts has a series of procedures, which are called proceedings. The most important of them are described below:

A) Examining the statement of claim and the statement of defense

As mentioned, many actions are taken in the investigation. One of the measures related to the investigation is to review and study the statement of claim and defense. After the formation of the arbitration board, the claimant is obliged to submit his claim to the arbitration board within a certain period, if he does not submit it, the arbitration board has the authority to terminate the arbitration. The second clause of Article 40 of the Afghan Commercial Arbitration Law stipulates as follows: If the claimant fails to present his statement of claim according to the provision of Article 54 Part (1) of this law, in this case, the arbitration board can issue a decision to terminate the proceedings.

The UNCITRAL Model Law on International Commercial Arbitration also has the same provision. Clause "A" of Article 25 of the aforementioned law states: If the claimant fails to submit his petition based on Article 23, the arbitration board will end the proceedings. If the defendant does not submit his defense, according to the third clause of Article 40 of the Afghanistan Commercial Arbitration Law, the arbitration board can continue the proceedings and set a period for the defense to be presented to the defendant. Clause "b" of Article 25 of the International Arbitration Model Law has expressed this issue with a different ruling: if the defendant fails to submit his defense based on Article 23, the arbitration panel will not consider this failure in itself as the acceptance of the plaintiff's claims. Will continue the investigation.

b) Holding meetings

One of the jurisdictions of the arbitration board is to organize hearings. The purpose of hearing a lawsuit is that the parties or their lawyers attend the hearing and present their requests and defenses orally (Shiravi, 2019) . According to the first clause of Article 38 of the Commercial Arbitration Law of Afghanistan, the need to hold a hearing is deferred to the discretion of the arbitration board, that is, if the arbitration board deems it necessary to hold hearings, hearings or hearings will be held in Otherwise, it will not be formed. The first clause of Article 25 of the UNCITRAL Model Law on International Commercial Arbitration provides as follows:

Except in the case where the parties have agreed otherwise, the arbitration panel will decide whether to hold an oral hearing to present evidence or oral arguments or whether to continue the proceedings based on the evidence and based on the cases. However, if one of the parties requests

the hearing at an appropriate stage, the arbitration board must hold an oral hearing, unless the parties have agreed that no oral hearing will be held.

According to the first and third clauses of Article 38 of the Afghan Commercial Arbitration Law and Article 25 of the UNCITRAL Model Law on International Commercial Arbitration, the necessity of holding meetings is left to the discretion of the parties in addition to the decision of the arbitration board. The arbitration board can, based on the request of one of the parties, conduct oral proceedings in appropriate stages. Perform arbitration, unless the parties have agreed otherwise.

For the parties to participate in the hearing sessions at the appointed time, the arbitration board must inform the parties before holding the hearings. Afghanistan's commercial arbitration law states that the notice period must be at least 30 days. However, the UNCITRAL Model Law on International Commercial Arbitration did not specify a time and only stated that the parties should be notified before holding meetings. The second paragraph of Article 24 of the aforementioned law stipulates the following: The arbitration board must notify the parties before holding any hearing or board meeting to inspect goods or other property or documents.

c) Evaluation and access to documents

During the proceedings, the arbitration board has the authority to review the submitted documents and ensure their correctness. Afghanistan's commercial arbitration law does not have specific provisions regarding what are the proofs of arbitration and how to evaluate and recognize them. Article 31 of the Afghanistan Commercial Arbitration Law has allowed the parties to the dispute to determine the procedure for the implementation of the proceedings, and if they do not agree or do not reach an agreement, the arbitration board can determine the procedure for the implementation of the proceedings. According to the mentioned article, the arbitration board is responsible for evaluating and recognizing the evidentiary value and validity of the evidence.

When the parties have not agreed or cannot agree on the procedure of the arbitration board's proceedings, the arbitration board can, according to the provisions of this law, appropriately and including making decisions about the admissibility, relevance, and importance of the supporting documents and obliging the parties to the conflict to provide evidence through the imposition of punishment.

The UNCITRAL Model Law on International Commercial Arbitration also has the same ruling in Article 19 in two clauses: (1) the parties are free to agree on the formalities that must be followed by the arbitration panel, according to the provisions of this law. (2) In the absence of such an agreement, the arbitration board can administer and administer the arbitration in accordance with the provisions of this law. Or the value of any reason.

Another debate that is raised in this context is how to access the reasons. Sometimes it is suggested to provide reasons from the parties to the conflict, and sometimes it is suggested to provide reasons from a third party. The ruling of the first case is stated in the second clause of Article 31 of the Afghan Commercial Arbitration Law, which states that the parties are obliged to submit supporting documents to the arbitration board, and in case of refusal, the arbitration board can oblige them to submit them by imposing a penalty. In the case of the second case, which is related to the presentation of reasons by a third party, according to the Afghan Commercial Arbitration Law, the arbitration board cannot demand and request them to provide reasons directly but can provide them through the court. Article 42 of the Commercial Arbitration Law of Afghanistan stipulates the following in this case: The arbitration board or any of the parties, if necessary, can request relevant documents from the court or other authorities.

The possibility of going to the court for access to evidence is explicitly stated in Article 27 of the International Arbitration Model Law. According to Article 27 of the aforementioned law, "the arbitration board or any of the parties with the approval of the arbitration board can request the competent court for assistance in obtaining evidence." The court shall take action

within the framework of its jurisdiction and per its provisions regarding the request for evidence." In the UNCITRAL Model Law on International Commercial Arbitration, the authority to punish the arbitration board in case of failure to provide evidence by the parties to the dispute is not recognized. Contrary to the Afghan Commercial Arbitration Law, the authority has recognized the punishment for the arbitration board, but there is no clear ruling on the type and nature of the punishment. Does the board have jurisdiction over the type of prison sentence? It can determine any type of punishment, including cash imprisonment, etc. The arbitration law is silent about nothing, but the subject of arbitration is commercial issues. From the provisions of this law, it is understood that the commercial arbitration board can only impose a monetary penalty and not a prison sentence. However, the guarantee of non-presentation of reasons, which is invalidation of the arbitration agreement, is stated in the Commercial Arbitration Law of Afghanistan and the UNCITRAL Model Law on International Commercial Arbitration.

Issuance of arbitration award

One of the arbitration jurisdictions of the Commercial Arbitration Board is to issue an arbitration award. After determining the jurisdiction and dealing with the dispute (exchange of statement of claim and defense, holding hearings, and evaluation of reasons), the arbitration has reached the final stage, and the arbitration board must decide the dispute. The decision of the arbitration board is drafted in the form of an arbitration award. The arbitration award is not defined in the International Arbitration Model Law, but the fourth part of the second article of the Afghan Commercial Arbitration Law defines the arbitration award as follows: the arbitration award is the final decision made by the arbitrator, arbitrators or the arbitration board or the court regarding the settlement And the season of conflict is adopted. According to Afghanistan's commercial arbitration law, the arbitration award is issued by the arbitration board. The arbitration board may consist of a single arbitrator or may consist of several arbitrators. If the arbitration order is issued by a single arbitrator, the issue of majority and minority is not raised in the issuance of the order, the arbitration order is only signed by one arbitrator. If the arbitration order is issued by multiple arbitrators, the majority of the arbitrator is required. Article 45 of the Commercial Arbitration Law of Afghanistan stipulates the following in this case: A dispute that is dealt with by more than one arbitrator, the decision about it is made by the majority of the votes of the members unless the parties have agreed otherwise. The arbitration procedure is determined by the chairman of the board, provided that the parties or other members of the arbitration board have agreed to it.

Article 25 of the UNCITRAL Drug Sample Law has a similar ruling in this case and provides the following provision: In proceedings conducted by more than one arbitrator, each decision of the arbitration board must be taken by a majority of all members of the arbitration board, unless the parties otherwise agree. Have agreed however, matters related to the procedure of the proceedings are decided by the chief arbitrator, provided that the parties or all the members of the arbitration board have given such permission.

According to the Afghanistan Commercial Arbitration Law and the UNCITRAL Model Law on International Commercial Arbitration, the arbitration agreement is divided into three types, each of which is described as follows:

a) Final award

The meaning of the final award is not that it cannot contested, but the finality is examined in terms of arbitration proceedings, based on which it should be distinguished from the partial award. The meaning of this award is an award that decides all the disputed issues and puts an end to the mandate of arbitration. The final decision refers to the last decision of the arbitration board regarding the nature of the dispute, which will end the arbitration proceeding except in exceptional cases (such as correction, completion, or interpretation of the decision (Shiravi, 2019). According to the second clause of article 47 of the Afghanistan Arbitration law, "the

process of dealing with the duty of the arbitration board shall be terminated after issuing a decision in the dispute case."

b) Compromise vote

In some cases, before the arbitration board issues the original award, the parties reach an agreement among themselves, and the arbitration board informs that they will no longer continue their disputes through arbitration, but will proceed through conciliation. In this case, the arbitration board issues a decision based on the collapse of the arbitration, this type of decision is called a compromise decision. The second clause of Article 46 of the Afghan Commercial Arbitration Law states this issue as follows:

If the parties resolve their dispute during the arbitration proceedings, the arbitration board terminates the proceedings and, upon the request of the parties and the board's agreement, registers the agreement as an arbitration award.

The first clause of Article 30 of the Model Law of International Arbitration stipulates the following in this case: if the parties resolve their differences through compromise during the proceedings, the arbitration board will end the proceedings, and if one of the parties requests and the other party does not object, Compromise agreement in the form of an arbitration award based on the conditions agreed upon by the parties, (Issued and recorded).

c) Provisional award

One of the awards issued by the arbitration board is a temporary award. Temporary award is not defined in the Afghan Commercial Arbitration Law and also in the UNCITRAL Model Law on International Commercial Arbitration. However, the meaning of the temporary order is the decision of the arbitration board to maintain the status quo during the proceedings (Shiravi, 2019).

One of the characteristics of the arbitration proceeding is its continuity, which covers a period of time, during this period, issues may arise that need to be dealt with urgently, and the decisions made regarding these issues are called temporary orders. For example, the subject of the dispute is the jurisdiction of several cars whose ownership is in dispute and the possessor intends to sell that Car. To maintain the status quo, the owner must be prohibited from selling the car until the arbitration board issues its final decision, or if the subject of the dispute is the jurisdiction of perishable goods and goods, in this case, the dispute must be dealt with immediately and a temporary order for its sale issued. And still, when the cited reasons are disappearing, Wiki is trying to erase the documents and works of its merits.

Regarding whether the arbitration board has the authority to issue a temporary order or not? There are four views. The laws of some countries, such as Italy and Argentina, prohibit the arbitration board from issuing temporary orders (Adhipathi, 2003). Some national laws, such as the United States Federal Arbitration Act, are silent on this jurisdiction. In some countries, such as England, the arbitration board can issue a temporary order only if the parties agree. However, the laws of some other countries have given the arbitration board the authority to issue a temporary order, provided that the parties have not agreed otherwise. Afghanistan's Commercial Arbitration Law, which has been influenced by the International Arbitration Model Law, has followed the recent method. That is, the Commercial Arbitration Law of Afghanistan and the UNCITRAL Model Law on International Commercial Arbitration have both granted the arbitration board the authority to issue a temporary order. Article 17 of the Model Law of International Arbitration has the following provisions: The arbitration board can, at the request of either party, order the other party to take the security measures that the board deems necessary given the main issue of the dispute unless the parties have agreed otherwise. The arbitration board can order that each of the parties submit appropriate security concerning such actions.

Article 29 of Afghanistan's Commercial Arbitration Law deals with the issuance of a temporary order as follows:

(1) The arbitration board can, upon the request of each of the parties, take necessary precautionary measures during the proceedings to protect the claimant, including entrusting them to a third party or selling perishable property. Adopt and issue the temporary order, unless the parties have agreed otherwise.

(2) The arbitration board can request compensation from the parties for the precautionary measures mentioned in paragraph (1) of this article.

(3) The request of each of the parties to issue an order to take precautionary measures from the court is not considered a violation of the arbitration agreement and its withdrawal.

d) Supplementary award

One of the awards that the arbitration board can issue is a supplementary award, which is also known as an additional award. During the drafting of the final decision, one or more issues may be inadvertently hidden from the view of the arbitration board, and the board may decide without addressing all the issues that need to be decided. In such a situation, the rules and regulations of arbitration stipulate the possibility of obtaining an additional or supplementary award. Even in cases of silence of the laws, it seems that the arbitrators can always issue a supplementary order. However, some people believe that about the supplementary power of arbitrators, either the arbitration rules of this code should be determined or the parties should recognize this power for arbitrators through an explicit agreement, otherwise without the support of enforceable arbitration laws and rules or the agreement of the parties. Rulings cannot be considered as having the authority to issue these types of orders. The action of arbitrators to issue this type of order depends on the recognition of the applicant's request. If the arbitration board finds out the truth of the matter based on the same documents and the previous request, they will take action to complete their task in the same way as prescribed in Article 50 of the Commercial Arbitration Law. The reason for issuing a supplementary order in the same way as for issuing the original order is to: "remove the obstacles to identification and the grounds for the invalidity and invalidity of the order before the competent courts." According to most arbitration rules, an additional or supplementary award, such as an interpretive award, is provided only at the request of one of the parties and not at the discretion of the arbitrators. (Mostafa, 2018)

Article 50 of the Afghan Commercial Arbitration Law has the following provisions regarding the issuance of a supplementary award: one of the parties can request the arbitration board to make another award (supplementary award) by sending a notice to the other party within thirty days from the date of receipt of the arbitration award. The issue is about the claims that were presented in the hearing but were deleted in the order. If the arbitration board deems the aforementioned request to be justified, the board is obliged to decide on the supplementary decision within sixty days from the date of receiving the request.

The third paragraph of Article 33 of the UNCITRAL Model Law on International Commercial Arbitration has the following provision regarding the supplementary decision: each of the parties can while sending a notice to the other party, within thirty days from the date of receiving the decision, ask the arbitration panel to remain silent on the claims they made but remained silent in the decision. Is, to issue an additional decision, unless otherwise agreed between the parties. If the arbitration board deems this request justified, it will issue an additional decision within sixty days.

Administrative powers of the arbitration board

One of the types of powers of the arbitration board is the powers related to administrative issues. Administrative competencies give authority to the arbitration board to deal with administrative tasks in addition to resolving the content of disputes. The most important of them are the following:

a) Determining the place of arbitration

One of the jurisdictions of the arbitration board is to determine the place of arbitration if the parties have not specified in the arbitration agreement. The first Clause of Article 33 of the Commercial Arbitration Law of Afghanistan is clear in this matter: the parties can agree on the place of arbitration, in case of disagreement, the place of arbitration will be determined by the arbitration board considering the circumstances of the case, including the consideration of the parties. The first clause of Article 20 of the International Arbitration Model Law also deals with this issue and states its ruling as follows: The parties are free to agree on the place of arbitration. In the absence of such an agreement, the place of arbitration will be determined by arbitration according to the circumstances of the case, including the convenience of the parties.

Of course, it should be remembered that determining the place of meeting and consultation is different from determining the place of arbitration. Determining the location of the meeting or meetings is intended to agree on the formal arrangements and process of the hearing by the judge or judges, which may be in a place outside the place of arbitration (Rahimzadeh, 2018).

b) Determining the language of arbitration

The arbitration board also has the authority to determine the language of arbitration if the parties have not determined the language of arbitration. Article 35 of the Afghanistan Commercial Arbitration Law stipulates the following: the parties can agree on the language or languages used in the arbitration proceedings, in case of disagreement, the arbitration board determines the language or languages used in the proceedings. The written statements of the parties, the hearing of statements, and the issuance of orders, decisions, or other announcements of the board are made in the designated language unless the parties have agreed otherwise. The arbitration board can decide on the translation of documents into the language or languages agreed upon by the parties or the languages determined by the arbitration board.

Article 22 of the UNCITRAL Model Law on International Commercial Arbitration also stipulates the following in this case:

(1) The parties are free to agree on the language or languages used in the arbitration proceedings. In the absence of such an agreement, the arbitral tribunal shall decide on the language or languages to be used in the arbitration. The agreement of the parties or the decision of the arbitration panel (in this case) shall include any written bill of the parties, any hearing or (issuance of) opinions, decisions, or other communications of the arbitration panel unless otherwise provided.

(2) The arbitration board can stipulate that the written evidence is accompanied by their translation in the language or languages agreed upon by the parties or determined by the arbitration board itself.

c) Determination of an expert

According to clause (1) of Article 41 of the Commercial Arbitration Law of Afghanistan, the Arbitration Board can appoint one or more experts to report on the disputes under the Board's consideration, unless the parties have agreed otherwise.

Also, clause (2) of the above article gives the arbitration board the authority to request the parties to the dispute to provide relevant information to the expert and to provide the expert with property documents or other assets for inspection and examination.

The first clause of Article 26 of the International Arbitration Model Law states: The arbitration board can:

A- To appoint one or more experts to submit a report on a specific issue specified by the jury.

B- Order that each of the parties provide any relevant information to the expert. or provide access of the expert to the documents related to the goods or other properties for review (exploration), unless the parties have agreed otherwise.

d) Notification of meetings

One of the administrative powers of the arbitration board is to notify the parties to the dispute before holding the arbitration session. The means of notifying the holding of the arbitration session does not have a specific form, it may be a letter, email, telephone, or other means of notification. Also, the notification procedure is not clear, and in the commercial arbitration law of Afghanistan, the notification time is set one month before the meeting.

According to the first paragraph of Article 38 of the aforementioned law, "the arbitration board can, according to the agreement of the parties, decide on the organization of oral hearings and other matters, and at least (30) days before the organization of the hearing, it can send the notification in writing to the parties." However, the 30 days is not mentioned in the UNCITRAL Model Law on International Commercial Arbitration, and it is only stipulated that the arbitration board informs the parties before holding a hearing. The second paragraph of Article 24 of the International Arbitration Model Law is also applicable in this case: the arbitration board must inform the parties through a notice before holding any hearing or board meeting to inspect goods or other property or documents.

Jurisdiction regarding the validity of the agreement and determining the governing laws

One of the jurisdictions of the arbitration board is to decide on the existence and validity of the arbitration agreement. When one of the parties objects to the existence and validity of the arbitration agreement, two situations are envisaged. One is that the objection is correct, in this case, the jurisdiction of the arbitration board is terminated. In the second case, if the objection is not correct, in this case, the arbitration board will issue a decision based on its competence and continue with the arbitration proceedings (Mirzaei, 2021).

In this way, not only the arbitration board will decide the scope and territory of its jurisdiction but also has the right to the validity of the arbitration agreement in the assumption of an objection by one of the parties to the lawsuit or even more fundamentally concerning its existence or non-existence. Mobzoro agreed to comment and make a decision (Abedi, 2015). The second paragraph of Article 25 of the Afghan Commercial Arbitration Law and Article 16 of the International Arbitration Model Law explicitly gives this authority to the arbitration board and stipulates the following in the context: of handling objections regarding the existence of the arbitration agreement or its validity.

Article 16 of the model law also states: The arbitration board can decide on its competence, as well as on the existence or validity of the arbitration agreement.

CONCLUSION

After reviewing and studying the Afghan Commercial Arbitration Law and the UNCITRAL Model Law on International Commercial Arbitration, we reached the following conclusions. After appointing the arbitrators and forming the arbitration board, the first issue that is raised is the jurisdiction of the arbitration board. The authority that decides in this case is the arbitration board, which refers to this issue as the principle of jurisdiction - jurisdiction, which is recognized in both laws. After the arbitral panel has declared itself competent, it starts the proceedings, the proceedings include reviewing the claim form and disposing of it, holding hearings, and evaluating the evidence to prove the claim. According to both laws (Afghanistan Trade arbitration and UNCITRAL law), the arbitration board has the authority to request the form and disposal of the claim from the parties to the dispute, and if the claimant does not submit his claim form, the arbitration board ends the proceedings, and if the claimant opposes his defense does not submit, the arbitration board does not accept the non-submission and continues the proceedings.

According to both laws, the arbitration board has the authority to hold meetings to hear the evidence of the parties and to request information from them. In addition, the arbitration panel has the authority to evaluate the evidence of the claim and make a decision regarding its validity. After the proceedings, the arbitration board issues its decision in the form of a verdict. In both laws, three types of decision or decision (final decision, temporary decision, and supplementary decision) may be issued by the arbitration board.

In addition to the jurisdiction of arbitration, the arbitration board also has administrative jurisdiction. According to both laws, the arbitration board can determine the place and language of arbitration if the parties do not specify them. In addition, the jury has the authority to appoint an expert or expert for investigation. One of the administrative powers of the arbitration board is to notify the parties of the holding of the meetings, which is stipulated in the Afghanistan Commercial Arbitration Law that the parties must be notified thirty days before the holding of the meetings, but in the UNCITRAL Model Law on International Commercial Arbitration, it is only stated that Before holding meetings, information must be given and its duration has not been mentioned. According to both laws, the arbitration board has the authority to decide on the existence and non-existence of the arbitration agreement, and in addition, it has the authority to decide on the validity of the agreement.

REFERENCES

- Afzali, Ab. (2013). civil procedure in Afghan law. Kabul: Afghanistan. Irfan.
- Azarnoush, & Azart, A.S. (2008). Contemporary Arabic-Persian Dictionary. Tehran: Iran. Ney.
- Bahrami, B. (2000). civil procedure. Tehran. Behnami publication.
- Mirzaei, M. A. & Afzali, A. W. (2021). Arbitration and commercial mediation. Kabul: Afghanistan Trade Dispute Resolution Center.
- Amid, H. (2008). Amid's Persian Dictionary. Tehran: Amir Kabir.
- Rahimzadeh, S. & Adel, S. (2018). Methods of resolving commercial disputes. Kabul: Asia Foundation.
- Shiravi, Ab. H. (2019). International commercial arbitration. Tehran: Samt.
- Abedi, M. T. (2015). Jurisdiction and arbitration jurisdiction. Legal Magazine, Journal of Center for International Legal Affairs, Deputy Legal Affairs and Presidential Assembly Affairs. Year 23th, Spring - summer, series 35: 89-146. Available at: <https://www.Ensani.ir.com>
- Adhipathi, S. (2003). Interim measures in international commercial Arbitration past, present and future. LLM Theses and Essays.p1. Georgia Law School.
- Fallah, E. M. (2010). The principles of commercial arbitration with an emphasis on the legal system of Afghanistan. Adalat magazine. Year 12th, mizan, Series 92: 99-119. Available at: <https://moj.gov.af/en/adalat-magazine>
- Fleischhauer, C. A. (1986). UNCITRAL Model Law on International Commercial Arbitration. *Arbitration journal*, 41(1).
- Mafy.H. & Taqi poor.m.h (2014). Legal nature of arbitration. Private law Research Quarterly. Year 6th, Winter, series 21: 177-205. Available at: <https://www.Ensani.ir.com>
- Mostafa, B. & Mitra, A. (2018). Types of verdicts in international commercial arbitration with an emphasis on Iran's law. *International Law Review and Academic Journal*. 35(58): 273-298. <https://doi.org/10.22066/cilamag.2018.31690>.
- Ministry of Justice, Official Gazette, Commercial Arbitration Law of Afghanistan. 2006, No. 913: 1-53. Available at: <https://moj.gov.af.com>.
- Nikzad, N., & Anwari, G. (2023). Investigation of Investor-State Arbitration Problems in Afghanistan. *International Journal of Social Science Research and Review*, 6(2), 152-160

Sahar, K.; Javad, S. & Milad, S. (2023). The principle of jurisdiction over jurisdiction in Iranian and French law. *Journals of comparative law*. 10(1): 7-28.
<https://doi.org/10.22096/law.2023.534348.1917>.