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Research Article

Arbitration in Construction Contracts and Dispute Resolution Between Project Parties

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Abstract

In his research, the researcher employed several techniques to determine the best approach for resolving disputes between litigation and alternative dispute resolution methods in construction contracts, which are considered commercial contracts. He also explored how the parties to a dispute could agree on a solution to disagreements arising from the interpretation, execution, termination, or continuation of the contract. The researcher conducted several interviews and visits to a number of construction projects, using specific techniques to collect, analyze, present, and make decisions based on the data. These techniques included: (focus groups- checklists-check sheets) for data collection, (document analysis- performance reviews) for data analysis, (mind mapping) for data presentation, and (voting) for making appropriate decisions based on the opinions of several experienced engineers and project managers. In his research, the researcher relied on a number of techniques in collecting, analyzing, presenting, and making decisions to clarify the research idea and to collect the required data through interviews with a number of project managers, specialists, and experts in conflict resolution in the construction field.

Keywords: *Arbitration, Construction contract, Dispute Resolution, Litigation, Negotiation.*

1. INTRODUCTION

The researcher examines the nature of construction contracts from the perspective of the project manager, addressing the engineering, scientific, and legal aspects [1]. Given that project management is a specialized field combining management, law, and engineering, it is essential that the project manager be well-versed in all the aforementioned areas [2]. The reason for this study is the researcher's observations of disputes arising from commercial construction contracts, where the parties to the dispute may have disagreements regarding the interpretation and execution of these contracts [3]. The researcher found in his study the necessity of linking the legal aspect with the engineering aspect in order to differentiate the disadvantages and advantages of international arbitration and national judiciary [4]. This type of study requires gathering ideas using the opinions and perspectives of specialists, brainstorming, utilizing social media, and conducting field visits to effectively implement the research techniques employed [5]. Staff performance appraisals are periodic, formal assessments of experts' work and achievements in arbitration, comparing them to national judicial standards and benchmarking goals against objectives [6]. These appraisals are typically conducted annually, quarterly, or semi-annually. Their purpose is to align individual performance with project goals, provide constructive feedback, identify opportunities for improvement, and contribute to decision-making related to dispute resolution. Effective appraisals focus on both past achievements and future growth [7]. Focus group discussion involves bringing together people from similar backgrounds or experiences to discuss a specific topic of interest. It is a form of qualitative research where questions are posed about their perceptions, attitudes, beliefs, opinions, and ideas. In focus group discussion, participants are free to talk with other group members; unlike other research methods, it encourages discussions with other participants. It generally involves a group interview, typically with a small group of 8 to 12 people, facilitated by a moderator, in a highly unstructured discussion about various topics of interest [8]. Check lists: these tools help ensure consistency and comprehensiveness in completing tasks related to conflict resolution. A simple example is a to-do list. More sophisticated checklists include schedules that outline tasks to be completed according to the time of day or other factors [9].

2. METHODOLOGY

In this study, a suggested methodology can be represented in Figure 1. The researcher used a number of techniques to help him/her collect and analyze the relative information that can be used and discussed with project managers and experts in the legal and engineering fields. The following figures are illustrative examples of the adaptive tools as shown in Figures 2 and 3.

Figure 1: Employees performance review technique

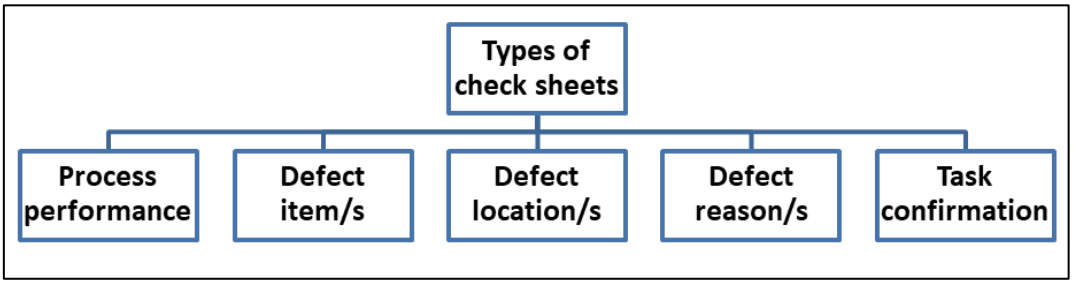

Figure 2: Five types of check sheets

Figure 3: Focus group technique

3. RESULTS AND DISCUSSION

After the researcher collected and analyzed the relative information and data, he/she presented the results obtained in the form of tables. Table 1 represents six categories of disputes arising from commercial construction contracts, with a description detailing each.

On the other hand, most disputes in construction contracts arise between the employer and the contractor, or between the employer and the consultant, or with a group of companies that won the contract, or between the contractor and the subcontractor can be explained as shown Table 2. These aspects of specific disputes are related to construction contracts [10].

Furthermore, the most important procedures and opinions followed to address disputes arising from construction contracts and how to resolve them can be described as presented in Table 3.

Finally, the advantages and disadvantages of arbitration compared to national courts are well described and presented in the next subsections.

Table 1: Nature of disputes in construction and contract agreements

No.	Titles	Description
1	Multiple contracts, one goal	The first characteristic of the project is the multiplicity of parties and specializations, and this requires multiple contracts such as the owner, the contractor, the consulting firm, the executing engineer, and the subcontractor[11].
2	Emergency contracts in public sector institutions	The multiplicity of documents, drawings, and plans is the second characteristic of construction contracts, which are created during the execution of the contract and may require modification by some parties, potentially leading to disputes[12].
3	Multiple drawings, documents, and plans	The third characteristic of contracts is their lengthy duration, which is linked to the previous two characteristics. Contracts involve several stages, including planning, tendering, contracting, execution, initial and final acceptance, guarantees, and insurance. This leads to fluctuating circumstances; therefore, when drafting a contract, clauses addressing unforeseen events and their variations must be included[13].
4	The existence of pre-prepared contractual templates	The fifth characteristic of construction contracts is that they are pre-arranged contracts by various countries and entities that place projects within a public tender. These contracts do not conform to all projects and contractors, resulting in various disputes due to a lack of understanding by public sector entities regarding the specific nature of these projects. Therefore, arbitrators and judges must understand the project circumstances and the contract conditions when interpreting the contract[14].
5	Public sector party presence	There is a characteristic in construction contracts where one of the contracting parties is the state or one of its public institutions and agencies. This type of contract is subject to special laws, as the contractual relationship between the private and public sectors faces a kind of bureaucracy[15].
6	Construction contracts are fertile ground for the emergence of disputes.	This type of dispute relates to delays in contract execution and non-payment on time, especially regarding additional expenses incurred during execution[16].

Table 2: Breakdown of disputes according to the parties of contract

No.	Titles	Description
1	Disputes may arise between the employer and the contractor	The most significant disputes between employers and contractors arise when an employer cancels a project after the contract has been signed but before implementation begins. These disputes often concern the recovery of preparation expenses and lost profits[17]. A dispute arises when the contractor refuses to execute the contract after signing, and the employer demands compensation for the unjustified termination of the contract[18]. Disputes arising from causes beyond the control of the contracting parties Disputes arise when a contractor abandons a project, forcing the employer to seek compensation and contract with another contractor[19].
2	Disputes can arise	This type of dispute between the employer and the consulting engineer, consulting firm,

	between the employer and the consultant.	or engineering company results from poor design or supervision[20].
3	Conflicts may occur between members of the implementation team.	This type of conflict arises in the construction of large and massive projects such as road projects or oil pipeline projects, as these types of projects require different engineering, technical, and administrative specializations, which necessitates the formation of an alliance of several specialized companies, with one specific company leading this alliance[21].
4	Disputes may occur between the primary contractor and the secondary contractor.	In large projects such as five-star hotel projects, finishing work and specialized tasks require the main contractor to contract with a number of subcontractors. Any delays by these subcontractors result in penalties and late fines borne by the main contractor[22].

Table 3: Solutions identification from the experts' point of view (Conflict resolution methods)

No.	Titles	Description
1	Direct negotiation or alternative methods	Direct negotiation is the preferred method for finding quick and direct solutions to conflicts, or at least one of the parties involved. The contractors' position may become more difficult if there is a delay in resolving simple disputes, which may become more complex and require a number of documents, evidence, and witnesses [23]. One of the alternative and quick solutions for settling disputes is to present the problem to an expert engineer. In this case, the expert engineer must make his decision to resolve the dispute within 90 days of his appointment [20]. If the parties are not satisfied with the expert's decision, the disputing parties have the right to appeal the expert's decision within a new 90 days to initiate an arbitration case. Otherwise, the expert engineer's decision becomes binding and final on the disputing parties [16].
2	Arbitration and recourse to ordinary courts	According to statistics provided by international arbitration bodies, the percentage of international disputes presented to these bodies is high. Many project owners and contractors prefer arbitration to avoid the complexities of national courts [15].

3.1 Advantages of arbitration compared to national courts

The techniques employed by the researcher in his investigation of the advantages and benefits that arbitration offers to disputing parties, the growing influence of international arbitration institutions, and the increasing number of international commercial disputes brought before arbitration bodies are all noteworthy. Furthermore, any project manager will observe that contracting parties seeking to resolve future disputes often resort to arbitration, avoiding the complexities of national courts. Table 4 illustrates the advanced characteristics.

Table 4: Advantages of arbitration compared to national courts

No.	Titles	Description
1	Secrecy	Confidentiality in arbitration means that litigation and arbitration proceedings are not public, unlike national courts. This allows businesspeople to keep their disputes and litigation procedures hidden from the public[8].
2	Flexibility	Flexibility in arbitration procedures is a key advantage, as disputing parties have the right to choose the appropriate procedures and can get rid of the rules and bureaucracy imposed by national courts[9].
3	Experience and impartiality of arbitrators	The expertise of arbitrators selected by independent international bodies is of great importance in international contracts, giving disputing parties the freedom to choose arbitrators outside the cultural context of the national judiciary[10].
4	Speed	Speed is one of the most important advantages of arbitration compared to ordinary national courts. It relates to the speed with which a final arbitration decision is reached, a crucial feature in commercial life that relies on two important attributes: commercial credit and the speed of completing business transactions. Arbitration decisions are typically issued within six months to a year[13].

3.2 Disadvantages of arbitration compared to national courts

National courts are specifically responsible for adjudicating international disputes, and this leads to many drawbacks when using arbitration. These drawbacks are outlined in Table 5.

Table 5: Disadvantages of arbitration compared to national courts

No.	Titles	Description
1	Giving the arbitration decision an enforcement order	The most important advantages of arbitration are speed and confidentiality. These lose their importance when the arbitrators' decision is given the force of enforcement before the national judiciary, which often requires the arbitration decision to rule on the validity or invalidity of the arbitrators' decision, and this requires additional effort and time[4].
2	Binding nature of judicial decisions	An arbitrator's decision cannot be final until it is enforced by the national courts; that is, a national court's decision is more binding than an arbitrator's decision. This criticism is accepted nationally but rejected internationally[17].
3	The arbitrators do not have judicial powers.	Arbitrators lack many of the powers enjoyed by the judiciary; therefore, disputing parties are often forced to resort to arbitration and the national courts to obtain an expedited ruling from the national judiciary, as it is legally binding[11].
4	The arbitration process is limited to the parties who agree upon it.	Arbitrators lack the authority to consolidate arbitration files or bring another party into the arbitration proceedings because arbitration is limited to the agreed-upon parties. This point is of great importance in construction contracts, which involve several parties, and an arbitration decision cannot be fair unless all disputing parties are present[8].
5	Arbitration is more expensive than regular litigation.	The issue of costs is an important one that must be addressed. Arbitration is generally more expensive than traditional litigation, especially in civil law countries where disputing parties do not pay court fees. In arbitration, however, arbitrators' fees are paid, in addition to administrative expenses that are a percentage of the value of the dispute. Since arbitration is not conducted according to the rules of the arbitration institution, the disputing parties must bear the costs of administrative expenses such as renting the meeting place and the necessary equipment for arbitration, such as the travel expenses of witnesses[20].
6	The tendency to reach a mutually agreeable solution	One of the disadvantages of arbitration is reaching a mutually agreeable solution by sharing and distributing profits and losses among the disputing parties without definitively resolving the dispute presented to them according to the law, without regard to the applicable law for restoring the rights of the disputing parties[19].

4. CONCLUSIONS AND RECOMMENDATIONS

The researcher suggests that arbitration should be viewed independently of international relations, both in its general and specific senses, as arbitration is considered part of international economic and commercial relations. Therefore, we find that the Middle East and developing countries have begun to take steps in this field. Arbitration, in both its institutional and consensual forms, is Western in nature, from the arbitration bodies and authorities to the applicable laws and arbitral awards. We find that Western companies are more legally versed than companies in the Middle East to defend their interests, even in the public sector. The researcher proposes the idea of elevating national arbitration to the level of international arbitration and improving its legal framework. Due to the multiplicity of parties and stakeholders involved in the project—contractors, subcontractors, engineers, suppliers, and financiers—the use of standard contracts such as FIDIC, which require specialized knowledge of risk allocation and the obligations of the parties, is necessary.

Furthermore, the complexity of proving these disputes, along with the need to manage technical evidence and engineering reports, necessitates the use of Scott schedules to simplify the presentation of complex disputes. Target Audiences of the Guide: Arbitrators and lawyers specializing in arbitration: It provides them with a practical and analytical reference to help them handle construction arbitration cases. In-house legal advisors in contracting companies: It gives them a clear understanding of the claims, rights, and obligations of the parties under standard contracts. Engineers and project managers: It helps them understand arbitration procedures and dispute management. Students pursuing academic studies and professional diplomas: It provides them with in-depth, applied scientific material in the field of international construction arbitration. The training methodology focuses on enhancing participants' skills through a variety of teaching methods, including lectures delivered by experienced practitioners and consultants, exercises, and discussions. Other activities include brainstorming, group work, role-playing, case studies, and presentations. Choosing the place of arbitration is not merely a geographical decision; it is a crucial factor that determines the competent judicial body to oversee the arbitration proceedings. It also affects the possibility of appealing or setting aside the award.

Moreover, it influences the ease of recognition and enforcement of the arbitration award under the 1958 New York Convention. For example, choosing London means the proceedings will be governed by English arbitration law, while choosing Baghdad would subject them to the jurisdiction of Iraqi courts. A poorly drafted arbitration clause is essential; an ill-considered clause can lead to the invalidity of the arbitration or difficulties in its enforcement. It must clearly specify the number of arbitrators, the method of their appointment, and the language to be used for the arbitration. The arbitration clause must also be carefully drafted. Procedural rules (such as the ICC rules, how to choose an arbitration panel). If the contract does not specify the names of the arbitrators or the mechanism for their appointment, procedural rules or national laws apply, often as follows: If there are three arbitrators, each party chooses one. The two chosen arbitrators agree on the selection of the chairperson. If they cannot agree, the arbitration administrative body or the competent court intervenes to appoint the chairperson. If there is only one arbitrator: they are appointed by agreement between the parties or by the chosen arbitral institution. In the absence of any provision, refer to the supplementary rules in the national arbitration law or the arbitral institution's rules. Practical recommendations for drafting the arbitration clause: Explicitly state the law governing the contract and the procedural law of the arbitration to avoid conflict. Specify the place of arbitration precisely, taking into account its legal implications. Clearly state the number of arbitrators and the mechanism for their selection. Specify the arbitral institution or the rules adopted for managing the proceedings. State the language, ensuring it is appropriate to the language of the contract and the parties. The arbitration clause is not a mere formality in construction contracts, but rather the primary line of defense for protecting rights and ensuring effective dispute resolution. Examine its dimensions in terms of the governing laws, the location of the arbitration, and the mechanism for selecting the arbitration panel ensure clarity in the contractual relationship and reduce the chances of projects being disrupted by disputes.

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