

The role of international commercial arbitration in establishing legal security and encouraging foreign investment in Algeria

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Abstract:

This article examines the function of international commercial arbitration in bolstering legal security and fostering foreign investments in Algeria. In its endeavor to diversify beyond hydrocarbons, Algeria has enacted Law No. 22-18, which encompasses changes such as the establishment of the Algerian Investment Promotion Agency and the use of digital platforms to enhance transparency. The paper underscores the complexities in investment dispute settlement, as national courts emphasize sovereignty while investors pursue neutrality, frequently via arbitration. It contends that international arbitration offers a just, efficient, and impartial process for dispute resolution, hence enhancing investor trust. Algeria's adherence to international agreements such as the New York and Washington Conventions enhances its attractiveness as an investment locale. The document advocates for legal reforms, heightened openness, and improved international collaboration to foster arbitration and draw increased foreign investment.

Key words: International Commercial Arbitration, Legal Security, Foreign Investment.

Introduction

In light of Algeria's pursuit of achieving a sustainable economic revival based on diversifying income sources and liberating the economy from dependence on hydrocarbons, foreign investments have emerged as a strategic tool to drive growth, bring in technology and expertise, and create jobs. However, attracting this type of investment can only be achieved in a stable and transparent legal environment that guarantees the investor security and confidence in the judicial and administrative system. The foreign investor, before injecting their funds into a country, places utmost importance on guarantees of legal protection and the clarity of the rules governing their relationship with the host country, especially in the event of a dispute.

In this context, Law No. 22-18 on investment came to embody the Algerian state's desire to establish an attractive and legally secure investment climate. The legislator has introduced profound reforms affecting procedural and institutional aspects, including the establishment of the Algerian Investment Promotion Agency as a unified body responsible for receiving and monitoring projects, ensuring swift processing and transparency in granting privileges. The

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digital investor platform was also established, providing all the legal and economic information related to investment opportunities, which allowed for the reduction of bureaucratic nature and physical contact in procedures, and the enhancement of the principles of governance and digitization. In addition, the Supreme National Committee for Investment Appeals was established at the level of the Presidency of the Republic, in a step that confirms the state's commitment to protecting the investor and ensuring high-level oversight of the investment projects' trajectory.

However, achieving legal security in the field of investment does not stop at the reception stage or administrative procedures, but extends to how to resolve investment disputes. Conflicts between investors and the host state are likely in any international economic relationship, which necessitates the existence of effective and swift mechanisms to resolve them, away from the slowness and complexity of ordinary courts. From here, the Algerian legislator allowed resorting to alternative dispute resolution methods such as reconciliation, mediation, and arbitration, due to the flexibility, confidentiality, and independence they provide in resolving international disputes.

International commercial arbitration is considered the most important and widely used mechanism in global economic transactions, as it provides a fundamental guarantee for foreign investors, enabling them to be assured of a fair and neutral means to protect their rights. It also contributes to enhancing the confidence of economic actors in the national legal framework, making it a pivotal element in establishing legal security and encouraging foreign investment in Algeria.

Based on that, this study raises the following question: To what extent can international commercial arbitration be an effective legal mechanism to establish legal security and encourage foreign investments in Algeria?

Through it, we seek to analyze the legal and institutional framework of arbitration in Algeria, and to demonstrate its role in supporting trust between the state and the investor, as a fundamental pillar for realizing economic openness in light of the current legislative transformations.

1: The Priority of National Judiciary Jurisdiction in Resolving Investment Disputes

Determining the competent authority to adjudicate investment disputes is considered one of the most important issues that has sparked extensive debate in legal scholarship, due to its direct impact on the investment climate and the legal security of investors. While host countries strive to maintain their judicial sovereignty and not infringe upon the jurisdiction of their national courts, foreign investors, on the other hand, demand guarantees of neutrality and fairness that they believe may not be found within the judicial system of the host country. Thus, the priority of national judicial jurisdiction directly reflects the idea of sovereignty as a fundamental pillar in public law, where states believe that the resolution of disputes arising on their territory should remain within the scope of their judicial authority to preserve their political and legal independence ¹.

In addition, the insistence of states on prioritizing their national judiciary is based on the constitutional right to litigation, as it is one of the fundamental rights guaranteed to both

individuals and institutions. This principle affirms that resorting to national courts is the natural means of protecting rights and ensuring equality before justice, reflecting the state's desire to assert its legal sovereignty and organize justice in a manner that guarantees its internal security and judicial stability ².

However, this approach is not without practical and legal obstacles that limit its effectiveness in the context of international investment disputes, as it is noted that the rules of conflict of laws and jurisdiction in national legislations were not originally designed to deal with the specific nature of these disputes that transcend territorial boundaries. Moreover, imposing recourse to national courts may be interpreted as a restriction on the foreign investor's choice of dispute resolution, which weakens their sense of legal security and negatively impacts their investment decisions ³.

Accordingly, this section raises the issue of balancing the requirements of national sovereignty with the demands of attracting foreign investment, by analyzing the justifications for the priority of national courts on one hand, and the obstacles that limit the subjection of investment disputes to their jurisdiction on the other hand.

1.1: Justifications for the priority of national judiciary jurisdiction

The jurisdiction of national courts in settling investment disputes is considered one of the fundamental principles upon which state sovereignty is based, as it embodies the state's right to control its judicial affairs. This principle is highlighted through the constitutional right to litigation, which ensures the protection of rights within the framework of the domestic legal system. It is also closely related to the principle of judicial immunity, which protects the state from judicial intervention by the courts of other countries, thereby enhancing its legal and political independence in managing its disputes.

1.1.1: State Sovereignty as a Fundamental Principle in Public Law

State sovereignty is considered one of the fundamental principles in both international and domestic public law, and it is one of the pillars upon which the political and legal system of any state is built. This principle is defined as the state's ability to exercise its supreme and absolute authority within its geographical boundaries, including legislative, executive, and judicial powers. Sovereignty also means the state's independence from any form of external interference, granting it the right to determine its internal and external policies without interference from any other state or international organization. Sovereignty is considered "the absolute authority that is not surpassed by any other authority" and "the right to make final decisions regarding internal and external affairs without external interference"⁴. Therefore, it can be said that sovereignty is embodied in the state's ability to impose its laws on its territory and the people who are subject to it.

The judiciary is considered one of the most prominent manifestations of national sovereignty, as it is one of the foundations upon which the state relies to ensure legal security and justice within its borders. Judicial sovereignty means that the state is the sole authority empowered to adjudicate disputes that arise within its territory, whether between its citizens or between foreign investors and the state itself. In this sense, the jurisdiction of the national judiciary in resolving disputes related to foreign investment is an integral part of national sovereignty. This includes cases that may arise between foreign investors and the host state due to

differences in the interpretation and application of contracts or due to disputes over property rights, taxes, or environmental laws, which may affect the flow of investment ⁵.

On the other hand, maintaining judicial sovereignty is considered one of the fundamental pillars upon which the state is built to ensure its legal protection against other countries. Despite the importance of attracting foreign investments to stimulate the national economy, the state is keen on maintaining its authority to enforce local laws, which may be contradictory to some international laws or to the demands made by investors. In this regard, states seek to affirm their judicial sovereignty as an inviolable principle, especially when it comes to their constitutional rights to litigate ⁶. This sovereignty allows the state to control its own legal rules regarding investment and to handle disputes according to its national laws.

In this context, the important role played by international arbitration in disputes related to foreign investment emerges. Despite countries' adherence to their judicial sovereignty, these countries, especially in light of globalization and commercial expansion, are opening the door to the application of alternative dispute resolution mechanisms such as international arbitration, which allows both parties (the state and the investor) to resolve disputes away from national courts. International arbitration, as one of the means of dispute resolution without interfering with the state's judicial sovereignty, contributes to creating a balance between the desire of states to protect their sovereignty and the need to ensure legal stability and security for foreign investors. However, despite this, it cannot be ignored that the acceptance of international arbitration by states may involve a partial concession of a part of their judicial sovereignty in favor of an international mechanism ⁷.

With the evolution of legal concepts related to investment, the principle of sovereignty no longer only means the state's ability to impose its laws, but also its ability to protect its interests and define the limits of dealing with foreign investors. Countries that wish to attract foreign investments strive to build a legal environment that ensures security for investors while simultaneously maintaining their judicial sovereignty by providing flexible legal mechanisms that contribute to dispute resolution and offer the necessary guarantees to the concerned parties.

1.1.2: The constitutional right to litigation as a guarantee for the protection of rights

The constitutional right to litigation is considered one of the fundamental rights guaranteed to individuals and groups within the state. This right guarantees individuals the ability to resort to the judiciary to protect their rights and freedoms in the face of any aggression or injustice they may encounter from any entity, whether governmental or private. This right is considered an integral part of the fundamental principles of democracy, as it contributes to ensuring justice and equality before the law, and thus positively reflects on strengthening the legal system and the political stability of the state.

According to the traditional concept, the right to litigate is viewed as one of the guarantees that protect individuals from the arbitrary use of power and a means of judicial oversight over public authorities. The right to litigate is one of the means to affirm the equality of citizens before the authority that guarantees individual freedom ⁸. The judiciary is a mechanism to protect individuals from violations that may be committed by the executive or legislative authorities, making the right to litigation a constitutional right that cannot be waived or

violated.

At the state level, the right to litigation is an essential means of maintaining the rule of law and ensuring its application to everyone, as it contributes to providing social justice and protecting individual rights. The constitution is considered the supreme reference that protects this right, as it often stipulates the right to litigate as a constitutional right guaranteed by the national legal system⁹. Countries consider the right to litigation not only as a means to resolve disputes but also as a tool to ensure individuals' rights in the face of violations that may occur within various types of disputes, whether legal, economic, or political.

When discussing foreign investment, the constitutional right to litigation clearly manifests as a fundamental guarantee for foreign investors. The foreign investor who chooses to invest in a particular country is in urgent need of legal guarantees that ensure their rights in the face of any dispute that may arise with the host country. This right is considered a fundamental guarantee for the investor, and it includes both the right to access neutral and independent courts and the right to appeal decisions that may affect their interests¹⁰. Based on that, the protection of the legal rights of foreign investors through the right to litigate is one of the most important pillars that encourage the attraction of foreign investments, as this right reflects the state's commitment to applying international legal principles, such as transparency and justice in handling disputes.

In addition, we find that some countries may provide alternative mechanisms for dispute resolution, such as international arbitration or mediation, but this does not mean the right to litigate is abolished; rather, it serves as a complementary option for the investor, especially if the national court does not provide sufficient guarantees. Countries that recognize the right to litigate guarantee foreign investors a fundamental right to protect their rights, and these guarantees are considered an important factor in promoting foreign investment¹¹.

The constitutional right to litigation, as stipulated by the constitution in most countries, is considered one of the fundamental rights that ensure the effectiveness and efficiency of the judicial system for the state. This right is considered one of the principles that contribute to building legal trust between the state and the foreign investor, thereby enhancing legal stability and supporting the investment environment.

1.1.3: The Principle of State Sovereign Immunity in the Face of Other Countries' Courts

The principle of judicial immunity is one of the fundamental legal principles that holds great importance in the field of international relations, as the jurisdiction of a state's national judiciary is limited to disputes that arise on its territory or between parties subject to its national laws. This principle stipulates that the state, as a sovereign entity, cannot be tried before the courts of other states unless it chooses to do so itself, or if it has waived its judicial immunity in a specific case. This principle is considered one of the most important foundations of national sovereignty of states and reflects the desire of states to protect their judicial independence from any external interference¹².

The concept of state immunity is not new in the history of international law; rather, it has deep roots that date back to ancient times. In past centuries, the state was viewed as a superior entity not only politically but also legally. Judicial neutrality is one of the essential characteristics that distinguish the international legal system, where the judicial authorities of

one state are not permitted to intervene in matters concerning the sovereignty of another state¹³. This principle is considered fundamental in avoiding disputes between countries regarding jurisdiction and reinforces the idea of absolute sovereignty in judicial matters.

Through the principle of judicial immunity, the state seeks to prevent foreign courts from interfering in its internal affairs or prosecuting its official employees or any of its executive and legislative bodies. This principle has been applied through a series of international agreements and treaties that emphasize the protection of states from foreign judiciary. Judicial immunity prohibits any attempt by the courts of another state to make decisions concerning the sovereignty of another state in matters directly related to its internal activities¹⁴. Thus, judicial immunity represents a protection for the state against external judicial interventions that may negatively affect its independence in making legal and political decisions. However, in some cases, a state may voluntarily waive its judicial immunity, which can occur when it signs international treaties that include provisions for dispute resolution through arbitration or any other judicial mechanism. For example, agreements related to foreign investment may include clauses allowing for international arbitration between the state and foreign investors, which represents an exception to state immunity¹⁵. This waiver of judicial immunity ensures international justice and is considered a step towards enhancing trust between countries and foreign investors. But it must be emphasized that this waiver does not mean compromising the state's sovereignty or fully delegating its judicial powers to other countries.

On the other hand, some countries may refuse to apply the principle of state immunity when there are international crimes such as crimes against humanity or war crimes, where the prosecution of individuals in this context represents an exception to state immunity, based on the principle of international justice.

The principle of judicial immunity is one of the principles that supports national sovereignty and prevents external judicial interventions. However, the increasing reliance on international arbitration to resolve disputes related to international investment has affected the application of this principle, allowing for greater flexibility in some cases without posing a threat to state sovereignty.

1.2: Obstacles to the submission of investment disputes to national courts

The subjection of investment disputes to national courts faces significant challenges related to the incompatibility of conflict-of-laws rules in the national judicial system for resolving international disputes, which hinders the effective handling of complex cases that arise between foreign investors and the host state. Additionally, restricting the investor's choice of dispute resolution forum enhances the feeling of legal insecurity, which may negatively impact their investment decisions and limit the attraction of foreign investments. Here are the main obstacles to subjecting investment disputes to national courts.

1.2.1: The inadequacy of conflict of laws rules for resolving international investment disputes

Conflict of laws rules are considered one of the fundamental mechanisms that regulate the relationship between national and international laws, and they are used to determine which law should be applied in the event of a dispute between parties belonging to different countries. Despite the importance of these rules in regulating international relations, they are

not always suitable for resolving international investment disputes due to the nature of these disputes, which require flexible legal standards that align with international norms. This issue becomes particularly prominent when a foreign investor faces difficulty applying national laws to a dispute involving international laws.

In the context of international investment disputes, the biggest challenge lies in the divergence between the legal systems of different countries, which makes it difficult for foreign investors to identify the appropriate legal mechanisms for resolving disputes. While many countries regulate their investments through local laws that may not be compatible with international standards, traditional conflict of laws rules adopt regional or national criteria to determine the applicable law, leading to delays in resolving disputes or their complexities ¹⁶.

Conflict of laws rules usually rely on regional criteria, such as the location of the dispute or the nationality of the parties involved, and these criteria are often insufficient to resolve complex international disputes that involve multiple countries, such as issues related to foreign investment. These rules also face difficulties in addressing the unique characteristics of investment disputes, such as the special guarantees required for foreign investment to protect investors' rights in countries with different legal systems ¹⁷.

One of the biggest problems raised by conflict of laws rules is their incompatibility with the international standards adopted in bilateral investment treaties or international trade agreements. In many cases, these agreements require international arbitration to be the preferred method for resolving disputes between foreign investors and states, which contrasts with the idea of national jurisdiction stipulated by conflict of laws rules. In this context, most countries do not adhere to dispute resolution mechanisms that align with international standards, which hinders the settlement of disputes and increases the sense of legal instability for foreign investors ¹⁸.

In this regard, the inadequacy of conflict of laws rules in international investment disputes can be explained by the challenges posed by legal differences between countries, which can range from tax laws to intellectual property laws. Additionally, traditional rules do not handle the rapid changes in the global economy well, as contemporary reality demonstrates the urgent need for more flexible mechanisms to resolve disputes. International commercial arbitration has become the most suitable and efficient option for resolving investment disputes, as it provides independence and neutrality away from local laws that may be inadequate in addressing these complex issues ¹⁹.

Moreover, international arbitration reflects the essence of international investment disputes due to its ability to provide non-local legal solutions that transcend traditional judicial boundaries. International arbitration allows the parties to choose arbitration rules that are internationally recognised, such as the rules of the International Centre for Settlement of Investment Disputes (ICSID) or the rules of the International Chamber of Commerce (ICC), ensuring that disputes are resolved based on independent legal principles unaffected by differences between various legal systems. Thus, traditional national conflict-of-law rules become incapable of providing legal security for foreign investors who prefer to resort to international arbitration mechanisms to ensure prompt and fair resolution of their disputes ²⁰.

1.2.2: Restricting the investor's choice of dispute resolution authority, which reduces their sense of legal security.

Choosing the forum for resolving investment disputes is considered one of the fundamental rights that a foreign investor should enjoy to ensure legal security in the host country. However, restricting this will by the host country may reduce the investor's confidence in the national judicial system and create a sense of instability that could negatively impact their investment decisions. In Algeria, this challenge is particularly prominent due to changing legal circumstances and the increasing importance of local laws in dealing with foreign investments²¹.

The investor's will to choose the adjudicating authority, whether a national court or an international arbitration tribunal, is one of the crucial factors that enhance legal security and increase the country's attractiveness for foreign investments. The investor who feels that he has the ability to choose the neutral entity to resolve any dispute that may arise between him and the host country can be assured that he will be treated fairly and that his rights will be preserved according to international standards. Therefore, international arbitration, for example, is considered one of the optimal options for investors, as it provides guarantees of the neutrality of arbitrators and transparency that are often not available within national courts²².

Countries that impose legal restrictions on the investor's ability to choose the forum create an unstable legal environment that may lead to a decline in foreign investments, as the investor does not feel secure in the presence of effective legal protection²³. Several studies have shown that foreign investors often prefer international commercial arbitration because it offers faster and more neutral procedures compared to national courts, especially in countries that do not have a strong or stable legal reputation²⁴.

In addition, restricting the investor's right to choose the forum for dispute resolution is considered a violation of one of the fundamental principles governing international investment, namely the principle of justice and equality before the law. Many international agreements, such as the International Arbitration Convention under the International Centre for Settlement of Investment Disputes (ICSID) or the United Nations Convention on International Trade (UNCITRAL), provide foreign investors with the option of international arbitration in the event of a dispute with the host country, thereby offering greater guarantees for investors²⁵.

On the other hand, it is observed that many developing countries seeking to attract foreign investments adopt more flexible policies in this area, allowing investors to choose the appropriate dispute resolution forum, whether it be a national court or an international arbitration body, which enhances the stability of the business environment and contributes to economic growth.

Restricting the investor's choice of the competent authority can create a kind of uncertainty regarding legal guarantees, reflecting the state's desire to protect its economic interests at the expense of the legal security of the foreign investor, which may lead to a decline in trust in the country's legal system²⁶.

From this standpoint, it is clear that the freedom to choose the jurisdiction is considered the

cornerstone in enhancing the legal security for foreign investors, and that restricting this right in Algeria could negatively affect the attractiveness of investment in the country.

2: International Commercial Arbitration as an Effective Mechanism to Encourage Foreign Investment

International commercial arbitration is a vital mechanism for resolving investment disputes, and it is an effective tool that contributes to enhancing the business environment and attracting foreign investments. In light of the economic challenges and legal fluctuations that companies may face in international markets, arbitration has become a preferred option for investors seeking to resolve disputes in a neutral and flexible manner. This trend reflects the legislative development in Algeria, which has recognized arbitration as an alternative means for resolving investment disputes, thereby enhancing the stability of the legal environment and contributing to improving the level of trust in the judicial system. Algeria's accession to international arbitration agreements also ensures the protection of investors' rights and enhances the attraction of foreign investments. Arbitration is also characterized by technical and economic aspects that make it faster and more efficient compared to traditional judicial procedures, in addition to providing an independent and neutral legal environment that ensures justice and transparency.

2.1: The legal justifications for adopting international commercial arbitration as an alternative method for resolving investment disputes

International commercial arbitration in Algeria is an alternative legal tool for resolving investment disputes, based on a set of legal justifications that make it a legitimate and effective option. First, arbitration has been enshrined in Algerian legislation through Article 12 of Investment Law No. 22-18, which allows recourse to it as an alternative means of resolving investment disputes, reflecting the state's desire to promote a flexible legal environment that respects the principle of contracting and the free choice of the adjudicating authority. Secondly, Algeria's alignment with international agreements, such as the New York Convention of 1958 and the Washington Convention of 1965, enhances its position in the global legal system and ensures international recognition of arbitration decisions. Finally, arbitration provides a neutral and independent legal environment, which enhances legal security and ensures trust in dispute resolution without local judicial influences, thereby serving as an incentive to attract foreign investments.

2.1.1: The legislative enshrinement of arbitration in Algerian law

For decades, Algeria has been striving to improve the business environment and attract foreign investments. To achieve this goal, it was necessary to adopt alternative methods for resolving commercial and investment disputes. It has been shown through Algerian laws that there is an increasing trend towards adopting these alternative methods, such as arbitration and mediation, to resolve disputes instead of resorting to traditional courts, which may be characterized by slowness and inefficiency in some cases. These methods have been included in many Algerian laws, such as the Civil and Administrative Procedure Code, which mentioned the possibility of resorting to arbitration as an alternative means of dispute resolution ²⁷.

International commercial arbitration is one of the most prominent legal tools relied upon globally for resolving investment disputes. The Algerian legislator has recognized the importance of this mechanism to ensure the protection of investors' rights, especially foreign ones, who seek neutrality and efficiency in dispute resolution. In line with this direction, Algeria has joined several international agreements that ensure the enforcement of international commercial arbitration decisions, such as the New York Convention of 1958 and the Washington Convention of 1965, which aim to resolve disputes between states and foreign investors within a neutral legal framework ²⁸

Through a review of Algerian legislation, it becomes clear that the Algerian legislator has long begun to establish arbitration as a mechanism for resolving disputes in various fields. In the Algerian Commercial Code, arbitration was defined as a tool for resolving commercial disputes between individuals and companies ²⁹. Arbitration has also been included in the Civil and Administrative Procedure Code, which has dedicated sections related to the arbitration of civil and commercial disputes, reflecting the legislator's belief in the necessity of providing effective legal alternatives for dispute resolution.

In the field of investment, the Algerian legislator sought to incorporate arbitration as an effective legal tool for resolving disputes between investors and the state. This right was first enshrined in Investment Law No. 01-03 of 2001, which stipulated the possibility of resorting to arbitration to resolve investment disputes ³⁰. With the issuance of the new Investment Law No. 22-18 in 2022, this idea was further reinforced by stipulating in Article 12 the possibility of resorting to arbitration as an alternative means of resolving disputes related to investment agreements ³¹. This amendment aims to facilitate a legal environment suitable for investors, thereby enhancing their confidence in the Algerian legal system.

Joining the New York Convention and the Washington Convention is a strategic step in supporting international commercial arbitration within Algeria. Through these agreements, Algeria ensures the recognition and enforcement of arbitration decisions in the countries that participate in these agreements, providing legal guarantees to foreign investors that arbitration decisions issued in Algeria can be enforced in other countries, and vice versa. These agreements also enhance Algeria's credibility on the international stage and make it a more attractive destination for foreign investments.

The Algerian legislator has demonstrated a strong commitment to developing effective mechanisms for resolving investment disputes by enshrining arbitration as an internationally recognized legal means. By incorporating arbitration into various national laws such as the Commercial Code and the Code of Civil and Administrative Procedure, as well as by joining international agreements like the New York and Washington Conventions, the Algerian legislator has laid the necessary foundations to make Algeria an attractive and safe destination for foreign investors.

2.1.2. Harmony with international agreements and mechanisms

The Algerian legislator has been keen on enhancing the investment environment by establishing arbitration as an effective mechanism for dispute resolution, which is evident in its alignment with relevant international agreements and mechanisms. Algeria's commitment to international standards and agreements enhances its position as a country striving to

improve the investment environment and protect investors' rights, including facilitating the resolution of commercial disputes through arbitration. This alignment with international agreements also reflects Algeria's commitment to keeping pace with global developments in arbitration and ensuring the rights of disputing parties in accordance with international law standards.

Algeria is one of the countries that joined the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, which is considered the cornerstone of the international commercial arbitration system. This agreement allows member states to recognize and enforce arbitration decisions issued in other countries, ensuring that there are no legal complications in resolving cross-border disputes ³². Thus, Algeria contributes to enhancing trust in its judicial system by providing guarantees for the enforcement of arbitration decisions issued in other countries, which helps attract foreign investments and makes it more flexible.

Algeria has also ratified the Washington Convention of 1965, which aims to settle investment disputes between states and foreign investors. This agreement provides an international arbitration mechanism that enables the disputing parties to resort to neutral and independent arbitration to resolve investment-related disputes, which enhances Algeria's attractiveness as a safe investment destination ³³. With this accession, Algeria commits to providing a legal environment that guarantees and protects the rights of foreign investors through international commercial arbitration.

Algeria's alignment with these agreements reflects its commitment to providing legal guarantees to foreign investors and enhances confidence in its legal environment. Joining these agreements contributes to enhancing transparency and neutrality in dispute resolution, making Algeria a more attractive destination for investment and reducing the legal risks that foreign investors might face in the event of a dispute with local parties.

In this way, it becomes clear that the Algerian legislator does not only focus on promoting arbitration as a means of resolving commercial disputes internally, but goes beyond that to ensure the compatibility of the national legal system with international standards. This integration between national legislation and international agreements ensures that investors' rights are protected and that disputes can be resolved in a fair and transparent manner according to recognize international standards.

2.1.3: Achieving legal security and protecting the principle of neutrality

Providing legal security represents an essential element in attracting foreign investment, as foreign investors seek a legal environment where legislation is stable and clear, and procedures are predictable, which reduces the risks of legislative surprises or unexpected changes in the host state's treatment. In this context, international commercial arbitration plays an important role as an alternative means that gives the investor greater confidence that the dispute may be referred to a neutral body, instead of relying solely on national courts that may suffer from delays or changes, or the investor's feeling that neutrality may not be guaranteed. This matter, from a legal analysis perspective, is directly related to legal security as a guarantee that the investment will not be affected by arbitrary or unexpected measures ³⁴. As for the principle of neutrality in the context of international commercial arbitration, it is a

guarantee that the arbitration panel does not have a prior inclination towards one party at the expense of another, and that the parties – the state and the investor – agreed on clear arbitration rules, the applicable law, the place of arbitration, the number of arbitrators, and other guarantees that enhance the feeling that the dispute will be judged by objective standards. This is very important in investment disputes, as the foreign investor often fears that the national courts of the host country may be biased or influenced in favor of that country. Therefore, the choice of international commercial arbitration enhances the principle of neutrality and brings closer a more predictable and impartial legal environment ³⁵.

Regarding the application of this principle by the Algerian legislator, Algeria has adopted clear investment laws that establish guarantees for foreign investors. For example, the Algerian legislator has enshrined the principle of transparency and equality in treatment among the principles guaranteed by law for investors, as stated in Article 03 of Law 22-18 .It also allows the foreign investor to resort to alternative dispute resolution methods, provided there is a bilateral or multilateral treaty regulating arbitration, mediation, and conciliation ³⁶.

Therefore, it can be said that the Algerian legislator has justified that international commercial arbitration provides investors with guarantees of legal security and neutrality through legislation that allows recourse to international commercial arbitration, in addition to international treaties that obligate the host country to treat investors fairly and equitably. This legislative environment makes the option of international commercial arbitration a preferred choice for investors because it reduces the risks associated with national courts and enhances the confidence that the dispute will be resolved through a known and neutral process ³⁷.

2.2: The technical and economic justifications for international commercial arbitration

International commercial arbitration is an effective tool not only used to overcome legal obstacles but also to achieve economic efficiency and advanced technical organization in the settlement of investment disputes. Thanks to its procedural flexibility, it enables the parties to choose the appropriate technical rules for the nature of the dispute, providing speed in resolution and cost reduction compared to national courts. Arbitration also allows for the involvement of specialized experts in the commercial or industrial field, which imparts a precise practical character to the decision, taking into account the specificity of international economic relations. With these characteristics, arbitration combines legal neutrality and economic feasibility, making it a preferred method for both investors and countries alike.

2.2.1: Technical justifications

International commercial arbitration is considered an advanced technical means for resolving disputes of a technical or specialized nature, as it allows for the selection of arbitrators who possess field expertise in the areas related to the dispute, such as oil contracts, construction projects, or complex financial transactions. This feature gives the parties confidence that the arbitral decision will be based on a precise understanding of the technical and technological reality, rather than just a mere legal interpretation. Therefore, the specialized nature of the arbitration panel enhances the quality of the decisions issued by it and reduces the likelihood of errors in technical assessment ³⁸

International commercial arbitration is also characterized by significant procedural flexibility, as the parties can agree on the rules governing the conduct of the proceedings, whether

according to the rules of the International Chamber of Commerce (ICC), the United Nations Commission on International Trade Law (UNCITRAL), or others. This flexibility enables them to adapt the procedural course to the nature of the dispute, whether in terms of language, number of arbitrators, or the time frame set for resolving the case, achieving greater efficiency compared to litigation before national courts that are subject to rigid procedures³⁹.

It is also added that arbitration takes confidentiality into consideration in the procedures, which is an important technical aspect for large commercial institutions that seek to protect their industrial secrets and sensitive information. While court sessions are usually public, arbitration ensures a degree of privacy that prevents harm to the commercial interests or economic reputation of companies. This confidentiality is not only an organizational advantage but also a technical mechanism that maintains mutual trust between the disputing parties⁴⁰.

From the perspective of the Algerian legislator, these technical justifications were inspired by the developments in the international commercial environment. The law No. 08-09, which includes the Civil and Administrative Procedure Code (2008), enshrined specific provisions for arbitration, allowing parties to agree on appointing competent arbitrators and determining their own procedures, provided they respect public order. The law also allowed for the application of international arbitration rules whenever the parties agreed to it, which reflects the Algerian legislator's recognition of the technical nature of arbitration as an effective means of resolving international commercial disputes⁴¹.

2.2.2: Economic justifications

Economic justifications are among the most prominent factors that have given international commercial arbitration a distinguished position in resolving investment disputes, as this system is characterized by the speed of case resolution compared to ordinary courts, which often involve lengthy procedures and multiple levels of litigation. This speed grants investors the advantage of maintaining the continuity of their projects without interruption and reduces the losses resulting from the freezing of capital or the disruption of commercial contracts. International commercial arbitration primarily aims to achieve economic efficiency by resolving disputes quickly and effectively, which is a key factor in attracting international investments⁴².

In addition, arbitration contributes to reducing the overall costs of the dispute in the long term. Although the fees of arbitrators may be relatively high at the beginning, the absence of appeal stages and the simplification of procedures make the final cost lower than what is spent on lawsuits that last for years in national courts. The ability of the parties to determine the schedule and location of the sessions also contributes to reducing administrative and travel expenses, which is an important economic factor for international companies. Arbitration also achieves a balance between costs and outcomes through a fast and enforceable mechanism, making it a more sustainable economic tool than national courts⁴³.

The guarantee of enforcing arbitral awards also represents one of the essential economic justifications. Thanks to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, arbitral awards have become enforceable in over 160 countries, giving investors confidence that their rights will be restored without the need to enter into

new disputes before local courts. This rapid enforceability reduces the economic risks associated with investing in unstable legal environments and supports the principle of financial security for cross-border projects. Arbitration not only achieves justice but also ensures financial efficiency, which is the cornerstone of the global investment climate ⁴⁴.

Another important economic aspect is that international commercial arbitration enhances trust between the foreign investor and the host state, as it provides both parties with a neutral environment to resolve disputes without either party feeling unequal or subject to the other's authority. This climate of trust is considered a fundamental condition for attracting foreign direct investments, as economic studies show that the presence of an effective international arbitration mechanism boosts the indicators of foreign capital inflows in developing countries. Arbitration constitutes an economic guarantee no less important than legal guarantees, as it reduces the cost of political and regulatory risks anticipated by foreign investors ⁴⁵.

Conclusion

Amid the economic challenges facing Algeria, international commercial arbitration is one of the important legal tools that can contribute to creating a sustainable and attractive legal environment for foreign investment. By providing a flexible and rapid mechanism for resolving disputes between investors and the state, arbitration ensures the enhancement of legal security and boosts investors' confidence in the national legal system. Algeria, by aligning itself with international treaties, has strengthened its position as a country that respects global standards in resolving investment disputes.

Results:

1. **Enhancing legal security:** International commercial arbitration is considered an effective tool in enhancing legal security for foreign investors in Algeria, as it provides them with a neutral and transparent mechanism for resolving disputes away from traditional judicial procedures.
2. **Improving the investment climate:** By adopting international commercial arbitration, Algeria improves the investment climate, which contributes to attracting foreign investments to the country thanks to a stable legal environment.
3. **Procedural flexibility:** International commercial arbitration offers greater flexibility compared to national courts, allowing parties to choose the arbitrators, arbitration rules, and the place of arbitration in accordance with the nature of the dispute.
4. **Speed of resolving disputes:** International commercial arbitration contributes to speeding up the resolution of investment disputes compared to national courts, which may be characterized by delays and legal complexities.
5. **The role of arbitration in building trust:** International commercial arbitration is a key factor in building trust between investors and the host state, as it is considered a guarantee for resolving disputes in a neutral and independent manner.
6. **Supporting transparency:** International commercial arbitration adheres to the principle of transparency, ensuring that clear and public procedures uphold the legal rights of the

disputing parties.

7. Algeria's commitment to international standards: By joining international agreements such as the New York and Washington Conventions, Algeria has affirmed its commitment to global standards for protecting foreign investors' rights and ensuring the enforcement of arbitration decisions.

Recommendations:

1. Developing local legislation: Algeria should amend its laws to ensure greater harmony between international commercial arbitration and national judiciary, contributing to a more stable and transparent legal environment.

2. Enhancing transparency in arbitration: It is essential for Algeria to implement comprehensive standards to ensure full transparency in all arbitration procedures, including the selection of arbitrators and the dispute resolution mechanism.

3. Increasing investor awareness: The Algerian government should organize awareness campaigns to explain the benefits of international commercial arbitration to foreign investors and clarify the procedures followed in case of a dispute.

4. Enhancing the capacity of local courts to handle arbitration: Local judges and lawyers should be trained on the laws and practices related to international commercial arbitration to ensure effective handling of arbitration cases that may arise.

5. Implementing Legal reforms to keep pace with economic developments: The changing economic situation requires the introduction of legal reforms that keep up with global economic shifts, including enhancing arbitration legislation in new areas such as technology and the environment.

6. Reducing bureaucracy in investment procedures: It is recommended to work on reducing bureaucracy in procedures related to international commercial arbitration, which contributes to speeding up dispute resolution and attracting foreign investments.

7. Enhancing international cooperation: Algeria should enhance cooperation with countries and international organizations to exchange experiences and promote understanding of international arbitration mechanisms, thereby supporting Algeria's ability to handle investment disputes effectively and efficiently.

Footnotes:

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⁷ Dolzer, Rudolf, and Christoph Schreuer. Principles of International Investment Law. Oxford: Oxford University Press, 2012 p. 56

⁸ Tocqueville, Alexis de. De la Démocratie en Amérique. Paris: Gallimard, 1835 p. 115 <https://www.gutenberg.org/>

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¹⁵ Dolzer, Rudolf, and Christoph Schreuer. Principles of International Investment Law. Oxford: Oxford University Press, 2012. p. 115

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- ²⁰ Born, Gary. International Commercial Arbitration. 2nd ed. The Hague: Kluwer Law International, 2014. p. 125
- ²¹ BAKHTA BENSAID, MOKADEM HAMEURLAINE, MOHAMED BENSAID , Judicial Guarantees for Foreign Investment Disputes in Algeria: Effectiveness and Comparative Perspectives" RUSSIAN LAW JOURNAL, Vol. 13 No. 01 2025, pp 4-5
- ²² BAKHTA BENSAID, MOKADEM HAMEURLAINE, MOHAMED BENSAID , Judicial Guarantees for Foreign Investment Disputes in Algeria: Effectiveness and Comparative Perspectives" RUSSIAN LAW JOURNAL, Vol. 13 No. 01 2025, pp 4-5
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- ²⁷ Civil and Administrative Procedure Code, Article 975
- ²⁸ New York Convention of 1958 and Washington Convention of 1965.
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- ³⁰ Investment Law No. 01-03, Article 17
- ³¹ République Algérienne Démocratique et Populaire. Loi n° 22-18 du 24 juillet 2022 relative à l'investissement. Journal Officiel n° 50 du 27 juillet 2022
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- ³⁵ Gus Van Harten & Martin Loughlin, "Investment Treaty Arbitration as a Species of Global Administrative Law," European Journal of International Law 17/1 (2006): 121-150.

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