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Perspectives on Mediation and Arbitration in the Singapore and New York Conventions

Reza Farajpour[1], Younes gharghani[2]

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Abstract

With the acceptance of international trade and its expansion in the 20th century, the need to prepare a suitable mechanism to resolve disputes, especially in non-international dimensions, became one of the important concerns to maintain commercial relations and contracts. And this caused that, despite the global skepticism towards arbitration, in a short time arbitration and mediation were considered as a way to resolve conflicts, especially regarding international commercial disputes. On June 26, 2018, the Singapore Convention was approved by the United Nations Commission on International Trade Law (UNCITRAL) regarding international agreements resulting from mediation. And the plan of UNCITRAL was modified in the field of international commercial mediation and international settlement agreements resulting from mediation. The purpose of ratifying this convention is to establish a binding legal system and an efficient framework and legal platform for the implementation of international agreements resulting from mediation. Previously, the adoption of the New York Convention by expanding the use of the arbitration method as a way to settle disputes was considered one of the most successful international treaties in this field. In total, the present research, with an analytical and argumentative method, seeks to respond to the main philosophy of concluding and the scope of application of each of the two New York and Singapore Conventions, by examining the weak and strong points of each, it explains the position of these two treaties in resolving conflicts and disputes and discusses the similarities and differences between the New York Convention and the Singapore Convention on Mediation.

Keywords: Singapore Convention, New York Convention, Arbitration, Dispute Resolution

[1] Department of Law, Behbahan Branch, Islamic Azad University, Behbahan, Iran Email: dr.r.farajpour@gmail.com

[2] Assistant Professor, Department of Law, Behbahan Branch, Islamic Azad University, Behbahan, Iran (corresponding author) , Email: younesgh79@Gmail.com

Introduction

The international community has always been full of conflicts, wars and countless conflicts between countries and caused great losses to the nation and governments. The rapid development of new industries and technologies, especially in the field of transportation and trade, led to the expansion of relations between countries, and this expansion of relations increased conflicts between countries, to the extent that it led to multilateral and international conflicts. On the other hand, the development of technologies such as war weapons and mass killing changed the nature and consequences of wars compared to the past and caused many human and material losses. This caused public opinion to come together to deal with the war and its material and human losses and, as a result, governments also took action to achieve peace and tranquility and maintain their security.

In this way, the attitude of governments to resolving conflicts has changed. In order to achieve peace with the aim of avoiding any force and illegitimate use of power, peace solutions are proposed, which include various methods. And thus, the use of peaceful methods replaced the resort to force. In the 20th century, as well as holding various international conferences and approving conventions, as well as forming international organizations such as the League of Nations and then the United Nations, extensive efforts were made to establish peaceful laws. This caused mediation-arbitration to be considered as one of the proposed combined and coordinated solutions to resolve disputes which, with features such as flexibility and negotiation, are non-judicial, and more importantly, the certainty of the arbitration system. It was introduced as a single proceeding process. Mediation should be considered as one of the political and diplomatic ways of resolving disputes which can be effective in ending the conflict.

Many supporters of mediation consider its enforceability as a missing piece that can have a significant impact on the use of mediation in solving international conflicts (Chua, 2020: 113).

The resolution of the conflict in each case depends on many factors according to the prevailing conditions. Quasi-judicial methods such as arbitration and non-judicial methods such as mediation, conciliation, dispute resolution Committees, etc. at the global level through laws and Treaties have been discussed and still, by examining the strengths and weaknesses of each, researchers are seeking to identify the scope of application and their impact

on resolving disputes. Today, the use of peaceful dispute resolution methods has expanded, and the main reasons for this increase are saving time and money, as well as the desire to maintain professional relations between activists of different trends in industry and commerce (Barkett, 2011: 374). On the other hand, the institution of arbitration, which is undoubtedly one of the most obvious manifestations of the sovereignty of the will in the dispute settlement system. It has evolved over the years in different judicial systems of the world and is considered a self-sufficient system to a large extent. It is criticized due to the high costs of proceedings and the length of the process. Arbitration, which is thought to be less expensive than other dispute resolution methods, imposes costs in some cases even as much as the judicial proceedings of all parties to the dispute, which is one of the reasons for turning to alternative and more economical methods of conflict resolution. On the other hand, non-judicial dispute resolution methods such as mediation, in spite of several advantages such as the peacefulness and of the proceeding system, low cost and high speed in disputed proceedings, do not guarantee necessary and effective measures, especially in the field of certainty, such as arbitration. This has caused attention to the use of combined arbitration-mediation methods to enjoy the benefits of both quasi-judicial and non-judicial systems. Arbitration mediation is a method in which the parties agree that if a dispute occurs, they will resolve it through mediation at the beginning, and if there are no special disputes or if the desired success is not achieved through mediation, the proceedings will be continued through arbitration by the same person. In this article, mediation is analyzed as a way to resolve disputes from the perspective of valid legal conventions such as the New York Convention and the Singapore Convention, and the opportunities and challenges of each are analyzed separately. The process of preparation of two commissions and the topics of each one are explained in detail and the differences and similarities are examined regarding the subject of the conventions, the role of the parties, the challenges of the two treaties, the scope of each one and the mediation procedure in the New York and Singapore Conventions.

1. Mediation

Mediation is one of the methods of dispute resolution where the parties to the arbitration agree to refer to an experienced and impartial third party as a

mediator so that he directs their negotiations using the appropriate method and tries to resolve the existing differences to reach the desired agreement. Mediation is a suitable method, especially for resolving disputes arising from business relationships, because it resolves conflicts with features such as speed, low cost, and a confidential atmosphere. And the other is that the parties to the dispute, especially in the international dimension, for reasons such as distrust of national courts, ignorance of foreign laws, the unpredictability of the court's decision and the difficulties related to the implementation of the court's decision in foreign countries, tend to resolve their international disputes through refer to mediation and reach a global solution in a Single cassation reference and during one stage (Shahbazinia and Maleknia, 1395: 34).

In the last half century, mediation as a method of conflict management has taken on an expanding and important role in international relations (Vaezi, 1384: 24). According to clause 33, Paragraph 1 of the United Nations Charter, it is recommended to resolve disputes through mediation. The most basic rules related to solving international disputes through mediation and conciliation should be found in the first agreement of the 1899 Hague Conference. This agreement and the first agreement of The Hague Conference in 1907 form the basis of similar rules in numerous international agreements concluded based on the provisions of international law (Hahn, 1981: 476). Although the 1907 Hague Convention did not distinguish between arbitration and mediation, it seems that they have differences with each other (Arthur, 1966: 14). The American legal system can be seen as the cradle of modern mediation (LEE, 2019). Generally, the two terms mediation and compromise are used together, although in some legal systems, these two meanings are different. In mediation, a third person as a mediator tries to bring the positions of the parties closer to each other, and this does not create an obligation for any of them. The important difference between conciliation and judicial proceedings and arbitration is that the mediator cannot decide the issue by herself and impose her opinion on the parties (Shiravi, 1391: 67). This feature is the most important reason for not welcoming this dispute.

Resolution method, which, despite the establishment of regulations by UNCITRAL and the European Union, could not have a significant impact in this regard. On the other hand, the difference between mediation and other judicial and quasi-judicial dispute resolution methods, such as arbitration, is that the mediator does not have the necessary legal authority to end the

dispute, or he cannot accept his point of view to the parties, and he can only try to get the parties to reach an amicable solution (Shiravi, 1393: 491).

Previously, the term Conciliation was used in UNCITRAL's 2002 Model Law on International Commercial Conciliation. However, in the Singapore Convention, the decision of the UNCITRAL Working Group was to replace the mentioned term with the term Mediation, and the reason for this was the more widespread use of this term, (Alexander, 2018; Rooney, 2019:113) Some law writers believe that the difference between these two terms is that Conciliation refers to the appraiser's compromise and the term Mediation refers to the facilitator's compromise. In this regard, the mediator facilitates the parties in the dispute to terminate their dispute, and the role of the mediator here is only to obtain the consent of the parties for the purpose of compromise. But on the other hand, in the evaluative compromise, the mediator, in addition to having legal information, in order to establish peace and compromise between the parties of the dispute, taking into account the circumstances of the case and its legal issues, provides solutions for each of the parties (Roberts, 2007: 187).

2. Arbitration

The method of arbitration, which is another method of resolving disputes by one or more people called arbitrators or arbitrators, is a non-judicial method and has a long history, as some consider it to be the predecessor to dissolving disputes through judicial methods (Jonaidi, 1376: 13). The ineffectiveness of referring disputes to government courts has increased the desire of business people to use other methods (Jonaidi, 1380: 1).

The desire of economic Operators, especially in the international arena, and their agreement to refer the dispute to arbitration and replace it with judicial are a normal thing, and resistance to it causes more unusual behavior that causes transaction costs to increase. Of course, it is also necessary to pay attention to the fact that people incur large sums of money in arbitration in order to resolve their disputes, in such a way that court proceedings and arbitration are now criticized in terms of the time it takes to process claims and pay the related costs, because the principle it does not meet the economic speed and efficiency that international trade relations require and it cannot be achieved by dealing with the arbitration method. Also, during the

proceedings, the relations between the parties are at risk due to investments of large sums and the long duration of the proceedings. What is evident is that the use of arbitration (Wälde, 2006: 227), despite its many advantages over other methods, cannot be effective in the continuity of the relations between the parties, since it has an adversarial nature (Nikbakht and Adib, 1395: 11). However, it is important to pay attention to the fact that choosing the right method depends on several factors related to which of the features of each method is more important and priority for the parties to a dispute. Especially in transactions where the dispute resolution method is not responsive to all types of disputes (Chua, 2018).

3. The process of developing the Singapore Convention

The Singapore Convention was signed in August 2019 by 46 countries, including Iran, with the aim of creating a binding legal system for the implementation of international agreements resulting from mediation, and finally became enforceable in September 2020 (Merril, 2018: 4). Before World War II, mediation was one of the most common ways to resolve disputes (Moghadam Abrishami, 1400: 280). Following the increase in the use of mediation between business people and in investments in international dimensions and with the demand to strengthen this way of resolving disputes, it is proposed to formulate a binding convention for the implementation of the international agreement resulting from mediation by lawyers and representatives of the United States in UNCITRAL (Nitschke, 2014: 122). The task of reviewing this plan was assigned to UNCITRAL Working Group No. 2. After UNCITRAL agreed in December 2018, the Singapore Convention was ratified. The idea of compiling this convention belonged to Professor Strong (Strong, 2016: 1973).

After that, in August 2019, 46 countries joined this convention, and finally, with the accession of Qatar on September 12, 2020, this convention became enforceable (United Nations, 2018). The main purpose of the Singapore Convention is to give enforcement definition (Schnabel, 2019) to Agreement 26 as a result of the conciliation process, and the aforementioned agreement has not established rules and regulations regarding the obligation of the parties to use the method of resolving disputes through mediation (Maboudi Neishabouri and Rezaei, 1400: 179). The Singapore Convention seeks to play a role similar to the New York Convention regarding the

recognition and enforcement of foreign arbitration awards, in order to increase the use of mediation in the settlement of international commercial disputes. Therefore, this convention, by giving an enforcement definition to compromise letters, has also provided special protection for regulatory compromise letters. In addition to giving an enforceable character to conciliation letters, the Singapore Convention allows litigants to rely on mediated settlement letters as a defense against similar claims (Schnabel, 2019: 114).

4. The process of codification the New York Convention

The 1958 New York Convention can be seen as a successful example (United Nations Commission of Trade Law, 1958) of international treaties in the field of international commercial dispute settlement. Because one of the most important advantages of arbitration among commercial actors is the executive support of the New York Convention for arbitration votes. This has led to the expansion of the use of arbitration in related disputes.

This convention, contrary to its title regarding arbitration, is not allocated to the recognition and implementation of foreign arbitral awards, and the identification and implementation of arbitration agreements is under its portfolio. This is mentioned in Article 2 of the Convention, which was stated in the text of the above-mentioned document at the suggestion of the Dutch delegation on the last day of the conference, and this has caused many uncertainties of the Convention in the judicial procedure. The recognition and implementation of arbitration agreements at the international level, which was first implemented with the approval of the 1923 Geneva Protocol on Arbitration Terms, is one of the two major obligations imposed by the New York Convention on countries. This document was written with the aim of creating International support for arbitration agreements, in order to officially eliminate the traditional view of conflict resolution through arbitration, which was prevented from recognizing arbitration agreements by domestic courts (Quigley, 1961). These two obligations include the obligation to recognize and enforce arbitration agreements and the commitment to recognize and implement arbitration decisions. Four years later, the Geneva Convention followed the recognition and implementation of arbitral awards in order to create a new legal system for the first time, to recognize the international level to support arbitration and by implementing

its agreements on the one hand and recognizing and implementing arbitration awards on the other hand, establish a foundation. Despite the strengths of this treaty and with the revelation of its weaknesses, the idea of the evolution of the legal system governing this dispute resolution mechanism was strengthened in the authorities and institutions involved in the issue and forced the International Chamber of Commerce to provide a convention in order to take an effective step towards improving the implementation of arbitration awards issued in international commercial disputes.

Little by little, the shortcomings of these two documents appeared, and in order to try to fix these shortcomings, the International Chamber of Commerce prepared a draft for the first time in 1953 which promised a new convention regarding the implementation of arbitration awards and, following this action was branched in 1955 was a committee under the auspices of the branches and Social Council of the United Nations prepared a draft which the New York Convention is branched from. Later in 1958, with some changes, the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards was drafted. The Universal and Comprehensive Convention of New York is due to the efforts of the New York Conference, combining the conflicting interests and making effective amendments to the Geneva Treaties, gained public acceptance according to the level of preparation and the vision of different countries of the world. It should be kept in mind that the obligation to recognize and enforce arbitration agreements is no less than the obligation to recognize and enforce arbitration awards. This is because if there were no first obligation, national courts would not have the duty to recognize and enforce arbitration agreements and refer claims subject to arbitration agreements to arbitration. Compared to the Geneva Convention of 1927, this convention has provided more suitable provisions for the implementation of foreign arbitration awards:

1- The New York Convention, contrary to the Geneva Convention, canceled the obligation of the courts to reject the request to implement the vote, if there is one of the reasons for the proven

2- Rejection and gave a wide discretion to the courts to accept or reject the request for enforcement.

3- The reasons for rejecting the request for enforcement are explained in Article 5 of the New York Convention with the help of its opposite concept, the implementation of the judgment was made by the court.

It should be noted that sometimes the court becomes aware of one of the prohibitions, but the losing party does not rely on it.

4- According to Article 7 of the New York Convention, the principle of the most favorable rule allows the local courts to enforce votes on their internal regulations or other treaties that are more appropriate (United Nations Commission of Trade Law, 2016: 287).

5. The subject of conventions

5.1 Subject of the Singapore Convention

The 2019 Singapore Convention on International Commercial Agreements was developed by the United Nations with the aim of promoting mediation. One of the most important issues is the scope of this convention. This convention, according to Article 1, is applied only in cases where the settlement agreement is concluded in writing and resulted from mediation. an agreement between two or more parties whose place of business is in different countries, and the place of business of each of the parties to the agreement, be in a country that has acceded to the convention or ratified it. The Singapore Convention does not apply to settlement agreements concluded for personal, family or inheritance matters or labor law. Also, agreements approved by a court or entered into during court proceedings and enforceable as a judgment in the country of the seat of that court or as an arbitral award are not subject to this Convention. It is expected that the courts of the member countries of the convention will implement the relevant agreements according to their procedures and under the conditions stipulated in the convention. According to Article 5 of this convention, the member courts can refuse to implement the settlement agreement for the reasons listed in the convention including:

1- If the party to the settlement agreement resulting from mediation does not have competence.

2- If the settlement agreement is not binding, void, ineffective and a person with a disability, or if this agreement is unable to enforce the law to which it is subject.

3- In case of serious violation of the applicable standards for mediation by the mediator, without this violation, the parties to the settlement

agreement would not have entered into the agreement.

4- If the implementation of that agreement is against the public order of that country,

The Singapore Convention also accepts the possibility of applying the reservation[3] in a limited way. According to Article 8 of this convention, the member party can declare that it does not apply this convention to some agreements resulting from mediation to the extent specified in the declaration of the Reservation of that state or applies this convention only to the extent that both parties to the mediated settlement agreement are members of the convention.

In order for the agreement to be considered under the protection of the Singapore Convention, it needs to have the following characteristics: First of all, it is necessary that the agreement be the result of the mediation process and a third party should be involved as a mediator in the mediation process. Secondly, it is necessary for the agreement to have an international character, and also the subject of the agreement must be commercial, as stated earlier.

Another point is the way of implementing compromises. Before the Singapore Convention was established, compromise was known as a contract and it was implemented in the same way, and it was the prevailing opinion that, because the compromise is based on the agreement of the parties, there is no place for coercion in it. Therefore, compromise agreements cannot be enforced like arbitration awards (Hadikusumo & Chua, 2015: 15), (Titi & Gómez, 2019: 24). The lack of enforceability of the agreement leads the parties to go to the competent judicial authority to request the implementation of their agreement, and this is not desirable for the parties, because in this case, they would have referred to the authority from the beginning. In this regard, the opinion of some authors (Titi & Gómez, 2019: 24) is that if the agreements lack the definition of enforceability, after concluding it, the parties to the dispute have remained at the beginning of the road because they have to resort to arbitration or proceedings to implement the agreement (Schnabel, 2019: 3). This convention was trying to set conditions for the agreements like the New York Convention (Strong, 2014: 28), (Sim, 2019: 691). Because the possibility of implementing arbitration decisions is an important advantage for resolving disputes, and the main reasons for the lack

[3]. Reservations

of popularity of the compromise method among economic activists is the lack of enforceability of compromise agreements (Avai, 1398: 1., Jonaidi, 1398:1). The process of compiling the Singapore codification can be considered to include sextet methods, which are:

Consultations, group meetings, training programs for country representatives, the help of the European Union and non-governmental organizations, recording of negotiations and voting based on consensus, which should be mentioned, voting based on consensus caused changes in the initial draft, and its purpose was to create consensus for drafting the convention. The stages of drafting the Singapore Convention can be considered the product of a kind of coordination and compromise between different countries, both developed and developing, which, like other agreements and treaties, have been gathered to achieve a single goal.

The Singapore Convention has quintuple conciliation. As explained that an initial proposal was presented to the UNCITRAL working group, but despite the opposition of the representatives of the countries to each other, solutions were inevitably presented: The first proposal was to remove such a convention from the agenda of the and the other thing was to reach common points and create a compromise by making changes in the draft. Finally, the second item was agreed with quintuple basic changes. The will of the compromise parties in making enforceable the convention, the role of the mediator's behavior in preventing the implementation of the compromise agreement, the convention forceable-interference between the Singapore Convention and other conventions, not using terms of recognition and enforcement, and finally drafting the convention and the law of mediation at the same time.

During the development of the convention, some governments believed that the scope of the convention should include institutionalized mediation processes. And in this way, informal processes are excluded from the scope of the convention, but against this opinion, it was suggested that organized and legalized mediation is covered by the convention in domestic systems. Despite the long discussions, no agreement was reached in the end, and the working group did not put forward an answer to this matter in the

Convention, so resorting to mediation was not considered important for the implementation of the convention. Finally, reaching an agreement and compromise between the parties to the dispute should be before, after, or even

arising from a legal obligation or resulting from a court decision or even arbitration. It is also possible to consider the choice of mediation as a result of the coercion of the parties or as a result of their free and voluntary choice. It is also possible to consider the choice of mediation as a result of the assumption of the parties or as a result of their free and voluntary choice. In addition to the above in this convention, the judge handling the dispute between the parties will not have the right to intervene and settle the dispute as a mediator. And the reason for this verdict is to avoid the judge's power and pressure on the parties to resolve the dispute (Schnabel, 2019: 14).

5.2 New York Convention

With the expansion of commercial relations at the international level, arbitration has become universally accepted as a practical and fast way to resolve disputes. The reflection of this caused efforts to strengthen the efficiency and improve the implementation of the issued decisions, which led to the establishment of various treaties, including the 1958 New York Convention. The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, approved on June 10, 1958, was developed with the aim of facilitating and speeding up the implementation of commercial arbitration awards in international dimensions. And regardless of any dependence on the internal system, it has its own special rules. For this reason, it is necessary for countries to be informed about the provisions of this convention in order to use its principles and rules regarding the implementation of its resolutions. The scope of the New York Convention is broad because the votes issued in any foreign country are valid whether it is a member country or not (Rubinstein & Georgina, 2008). The New York Convention was trying to make the recognition and implementation of the process of arbitral awards predictable and effective. To achieve this, the convention must have a single and identical function in all member states. In this way, the most effective factor in the success of the New York Convention is its uniform implementation by the courts of member states.

This convention includes a list of reasons for refusing to recognize and enforce arbitral awards by national courts. In Article 5 of the Convention, the aforementioned aspects are mentioned and this article has become one of the most important articles. The purpose of establishing these controversial causes is to gain the satisfaction of the member states and prevent them from

withdrawing from the New York Convention. The main subject of the New York Convention is the foreign arbitrator's decision (Jonaidi, 1395: 38), which consists of two parts: the arbitration decision and foreignness. The effects of recognizing foreign votes and providing a clear definition of it are reflected in the implementation of the vote, because most countries have put the implementation of internal arbitration decisions under their internal rules and for that, they have set different regulations that are possible because they are not in line with the procedure of implementation of foreign arbitration awards. In international arbitration, there are many factors such as the place of residence of the parties, the arbitration agreement, the place of holding the arbitration meetings and finally the place of issuing the verdict, which can overshadow the geography, territory and consequently, its criteria and face changes in the voting process. Another importance of foreign voting refers to international documents that generally and even in some cases, explicitly state their rules only regarding foreign voting. In this regard, Article 1 of the 1927 Geneva Convention and Article 1 of the New York Convention 1958 can be referenced (Chia- Jui, 1990: 1122). The New York Convention, in paragraph 2 of Article 1, states that the term arbitral votes doesn't only include the votes of the arbitrators appointed for each case, but also includes the votes issued by the permanent arbitration members. Therefore, the responsibility of determining the rules in order to explain the necessary components of the arbitrator's decision is placed on the internal rules of the governments (Alfons, 2010: 29).

5.3 Lessons from the New York Convention for the Singapore Convention

Article 5 of the New York Convention states that the request for recognition and enforcement of the arbitration award can only be rejected at the request of the person against whom the award was issued if that person presents valid reasons and documents to the competent local authority based on that:

a) The parties to the arbitration agreement, according to their law, are incompetent for some reason, or the agreement, according to the law of the country where the arbitration award was issued, is a person with a disability, or in the absence of any signs of agreement between the parties about governing law.

b) The determination of the arbitrator or the process of the arbitration proceedings has not been properly notified to the party against whom

the judgment was invoked or who was not able to present his opinions and positions in the arbitration for other reasons;

c) The arbitration ruling is related to a dispute that was not considered to be referred to arbitration or the arbitration includes decisions that exceed the scope of the subject matter referred to the arbitration, which includes whether the decisions about the matters referred to arbitration can be separated from the decisions that are not related to the subject of arbitration includes, that part of the arbitration award which contains decisions relating to matters referred to arbitration shall be recognized and enforceable;

d) The manner of forming the arbitration authority or the arbitration procedures was not in accordance with the agreement of the parties.

e) The arbitration award has not yet been enforced against the parties or the decision has been revoked or suspended by the competent authority of the country in whose territory the judgment was issued, according to its laws.

The competent authority of the country from which the recognition and enforcement of the arbitration award is requested can also reject the request for recognition and enforcement of the award in case of one of the following cases:

a) According to the laws of that country, it was not possible to resolve various issues through arbitration.

b) Recognition and enforcement of the award is contrary to the public order of that country.

And Article 5 of the Singapore Convention, which states the grounds for refusal to accept implementation. According to Article 4, the competent authority can refuse to accept the judgment upon the request of the party against whom the enforcement request has been made, only if that party presents documents to the competent authority indicating that:

a) One of the parties to the settlement agreement lacks legal competence;

b) The settlement agreement requested:

1) According to the law to which the parties are subject as a valid law, or in the absence of any evidence indicating it, under the assumed law applicable by the competent authority of the party to the

convention where the request for enforcement is made based on Article 4

2) According to its conditions; not binding or not finalized;

3) Or subsequently modified;

c) Obligations included in the settlement agreement: have been implemented; or not clear and understandable.

d) The acceptance of performance is contrary to the conditions of the settlement agreement;

e) There has been a gross violation of the criteria applicable to the mediator or mediation by the mediator, without which the party would not have concluded the settlement agreement; or

f) The failure of the mediator to disclose conditions to the parties that have had a material impact or undue influence on one party, without such failure, that party would not have concluded the settlement agreement.

The competent authority of the convention, where the request for enforcement has been submitted according to Article 4, can also refuse to accept the enforcement if it finds out that:

A) The acceptance of execution is contrary to the public order of that party; or

B) The issue of dispute cannot be resolved through mediation according to the law of that party.

As can be seen, the above cases have stated the reasons for rejecting the request for the execution of the compromise agreement or the arbitration award. It caused similarities between the two above-mentioned conventions. It can be said that both conventions deal with issues such as the invalidity and finality of the compromise agreement or arbitration award, the lack of competence of the parties to the dispute, the possibility of refusing to implement due to irreconcilability or non-arbitrability, and violation of public order.

6. Examining the differences between the New York Convention and the Singapore Convention

6.1 Methods of refusal to identify and implement

According to Article 5 of the New York Convention, the losing party who objects to the implementation of the arbitration award can object to the recognition and enforcement of the arbitration award in two ways:

Sometimes by litigants and sometimes it may be stated by the litigants or directly by the court. The first step has been legislated in order to prevent injustice towards the accused and the second step allows countries to refuse implementation to protect their domestic interests. The objections that can be raised by the losing party include the lack of competence and invalidity of the arbitration agreement. The common definition of competency is (Fouchard & Goldman, 1999): the legal ability of a person to enter into a contract in his name and on his behalf. In the Geneva Convention, the term incompetency was limited only to cases where one of the parties could not properly present his evidence due to ineligibility, but in the New York Conference, considering that such a situation was rare, it was decided to remove it. In this way, the condition of incompetency disappeared. But the Dutch delegation finally succeeded in adding this phrase to the text of the New York Convention. But the difference between the text of the Geneva Convention and the New York Convention is that in the New York Convention, lack of competence is discussed when concluding a contract (Van den Berg & Den Haag, 1981).

The second direction for non-recognition and enforcement of arbitration awards in Article 5 is related to the validity of the arbitration agreement. The invalidity of the agreement may be substantive or formal. Therefore, if there is no agreement or if it was obtained due to fraud, coercion and reluctance, the losing party can object to the recognition and implementation of the decision. Article 2 of the New York Convention stipulates that the agreement must be in writing. The New York Convention is silent on the proper method for notification, and it also does not specify which law or international standard determines whether the proceedings are right or not. Due to the fact that arbitration is considered a private method of resolving disputes, there is

no official and specific method for notification. There is no mention of recognition in the Singapore Convention. Also, contrary to the New York Convention on identification and enforcement of foreign arbitral awards, the expression of recognition is not used in any way in the name of Singapore Convention or its articles.

6.2 Failure to establish rules for the agreement to settle disputes through compromise

The most important difference between the Singapore and New York Conventions is that the Singapore Convention is only about the conciliation agreement as a result of the mediation process, and it did not say anything about the settlement agreement through conciliation (Sussman, 2018: 49).

Of course, there were discussions in the working group meetings about the compromise agreement, but due to the necessity of uncomplicated regulations, such an idea was rejected. Also, according to this convention, it is not necessary for the parties to the dispute to conclude a compromise agreement, and the convention will be applied to the compromise agreement if there is or is no previous agreement. And finally, the compromise agreement can prove the condition that the compromise agreement was the result of the mediation process. As a result of the working group's decision, in the absence of inclusion of articles about the compromise agreement in the text of the convention, it should be accepted that there is no connection between the final agreement and the convention and the final settlement agreement can be about issues outside of the settlement agreement because the parties to the dispute can resolve any disputes they want at the time of concluding the settlement agreement. This issue is contrary to the New York Convention, according to which the arbitral award should be only on matters that are within the scope of the arbitration agreement (Schnabel, 2019: 14).

6.3 Reasons for rejecting implementation are based on supporting the dispute settlement agreement in the New York Convention and not mentioning it in the Singapore Convention

One of the most important issues in arbitration is the existence of a dispute resolution agreement that has acceptable credibility. According to the

arbitration agreement, the arbitrators have the jurisdiction to handle the dispute, and the scope of the arbitrators' jurisdiction and the manner of handling the dispute by the agreement is specified (Shiravi, 1393). For this reason, there must be an arbitration agreement that delegates authority to the arbitrator, and secondly, the scope and framework of the contract must not be violated (Jonaidi, 1390: 13). Some reasons for rejecting the request to enforce the arbitration award in the New York Convention due to the support of the arbitration agreement are not mentioned in the Singapore Convention, which are:

1- The arbitration agreement is not valid according to the law established by the ruling parties or if the parties remain silent, according to the law of the issuing country, the arbitration award is a person with a disability;

2- The arbitration award has been issued regarding a lawsuit that was not included in the provisions of the arbitration agreement, or includes decisions about issues beyond the scope of the arbitration agreement.

3- The composition of the arbitration board or the arbitration procedures are not according to the agreement of the parties, or in the absence of such an agreement, it is not according to the law of the country where the arbitration was conducted. In the Singapore Convention, there is no need for such a connection between the conciliation agreements, because this treaty does not contain provisions regarding the agreement to refer the dispute to conciliation (Claxton, 2020: 14).

4- The Singapore Convention, with the aim of giving a binding character to the agreement as a result of the conciliation process, has not established provisions to oblige the parties to use the mediation method of dispute resolution.

6.4 Reasons for rejection of enforcement based on the importance of the place of dispute resolution in the New York Convention

Some of the aspects mentioned in the New York Convention are due to the importance of the concept of place of arbitration in the arbitration process, which are: If the arbitration agreement is not valid according to the governing

law, or if the parties remain silent regarding the governing law, according to the law of the country where the arbitration award is issued, it is person with a disability; or the award has not yet become binding for the parties or has been violated or suspended by the competent authority of the country in whose territory the award was issued according to its laws In contrast the Singapore Convention regarding the validity of the agreement has not paid any attention to the place of dispute resolution, only the consent judgment and the competent law of the country where enforcement is requested are considered as the owner. Also, from the point of view of the Singapore Convention, the cancellation of the agreement at the place of its conclusion does not affect the implementation of the agreement. The concept of seat of arbitration plays a fundamental role in the implementation of the New York Convention. In the title of the New York Convention, it is necessary to have a foreign description of the arbitration award, so the arbitration award must be related to a country in order to benefit from the executive support of this convention.

On the other hand, the conditions of arbitration are determined by the seat of arbitration. According to paragraph 3 of article 1 of the mentioned convention, the courts can refuse to enforce an arbitral award made in a country that is not a member of the convention. According to Article 5, Clause 1 of the Convention, the courts can refuse to enforce an arbitral award that has been annulled at the seat of arbitration (Silvestre, 2019: 193).

The concept of seat of arbitration in the Convention Singapore has not been predicted and explained, and this has caused important legal effects. Based on the articles included in the Singapore Convention, it is not necessary for the compromise and the agreement to be in accordance with the conditions of the country's national law, and the court executing the agreement cannot refuse to implement the agreement for this reason. The New York Convention's approach of not supporting annulled arbitral awards in the seat of arbitration is defensible due to the rule of international influence of law (Jonaidi, 1390: 13 ; 1395: 155). Because the right should not have more effect than what is envisioned for it in the country of establishment (Almasi, 1370: 13).

The Singapore Convention declares that the decision of the court of one country to annul the agreement is not enforceable on other countries. And

one of the differences between the New York and Singapore conventions is in the way national courts deal with the annulment of arbitration awards or compromise agreements in the country where they are issued (Schnabel, 2019: 22). The difference between the New York Convention and the Singapore Convention in the present discussion is that according to the provisions of the New York Convention, if the court of the seat of the arbitration annuls the arbitration award, the country of recognition and enforcement will not be forced to implement the arbitration award. But the opposite point is the Singapore Convention. This treaty does not pay attention to the cancellation of the agreement but, it is based on the nullity of the agreement. In the Singapore Convention, the criteria for the invalidity of the agreement is the conformity of the consent judgment or the competent law in the opinion of the country where the judgment is executed. In fact, the court in the seat of arbitration must determine the governing law and also decide on the invalidity of the agreement.

6.5 Aspects of rejection of implementation related to the characteristics and provisions of the agreement in the Singapore Convention

Regardless of the common aspects that exist between the two conventions regarding the rejection of the request for enforcement, some aspects of the rejection of the request for enforcement can only be seen in the Singapore Convention. And they do not have similar provisions in the New York Convention. The reasons for rejecting the request are divided into a classification into: the characteristics and provisions of the agreement or the characteristics and behavior of the mediator. Considering that according to the organizers of the Singapore Convention, compromise, unlike arbitration, does not have a seat, the Singapore Convention makes it possible for the agreement to be implemented in the geographical territory where the members are located, directly and without the need to identify the origin. And this rule is because the lack of a valid and final description, according to the text of the arbitration award, is not mentioned in the New York Convention as a reason for rejecting the request for enforcement. Basically, the mentioned two features are part of the basic components of the arbitration award and textual, which lacks the aforementioned two attributes, basically cannot be considered a vote. While regulatory agreements between individuals do not necessarily have the aforementioned characteristics, for

example, compromise agreements whose provisions only indicate that the parties have reached a common conclusion to avoid filing lawsuits against each other. It is obvious that the aforementioned agreement is also a kind of compromise, but it is not final and the proposed executive measures will result in the rejection of the issue. Therefore, although it is possible to draw up compromise agreements with the absence of the aforementioned two attributes, it will not be possible to issue an arbitration award that does not have the aforementioned characteristics.

In the Singapore Convention, the implementation of the agreement can face the risk of rejection due to the difference between the implementation request and the provisions of the agreement. And that is when the request for enforcement is in direct conflict with the provisions of the agreement, because according to the principle of freedom of contract, the purpose of mediation is to grant the authority to settle the dispute to the parties and if the agreement is implemented contrary to its agreed contents, such a goal will not be achieved. For example, the condition of court selection, which must be agreed upon by special national courts, must be met. The implementation of this provision allows the parties to the contract to prevent the implementation of the convention because if the parties agree that the convention will not be applied to the agreement, applying the Convention to such compromises is contrary to the provisions of Paragraph D of Article 5 of the Convention. Not mention this condition in the provisions of the New York Convention because this condition is obvious in the implementation of the dispute settlement document.

6.6 The ways of rejecting the implementation related to the characteristics and behavior of the mediator in the Singapore Convention

In Article 5 of the Singapore Convention, one of the reasons for rejecting the request for implementation of the agreement is stated that the applicable standards regarding mediation or conciliation have been fundamentally violated by the mediator, in such a way that, if the other party was informed of the above-mentioned violation, it would not proceed to conclude the settlement agreement. The legal sources for determining applicable professional standards in the Convention have not been specified, but in the discussions of the UNCITRAL working group, examples of these standards

were stated, such as confidentiality, fair treatment of the parties, bylaws related to obtaining a mediation license, organizational and behavioral rules. Mediators in the international arena may be worried that, on the assumption that mediation is related to several legal systems, the unknown regulations of the domestic laws of the countries will impose professional obligations on them, or there may even be conflicts between the regulations of the mentioned countries (Tirado & Maravall, 2019: 358-359).

In conciliation, the mediator cannot make a decision for the parties, but the arbitrator does not have the duty to reach an agreement between the parties and, according to his discretion, he issues the arbitration verdict like a judge (Taghipour, 1392: 6). Due to the need to limit the reasons for refusing to enforce the arbitration award, such an issue was not mentioned in the New York Convention.

Pursuant to paragraph 3 of Article 1 of the Singapore Convention, it is stated: Cases that are not covered by the mentioned convention agreements registered as an arbitrator's decision are valid. However, a similar phrase is found in the UNCITRAL model law on international commercial arbitration and international arbitration agreements resulting from the mediation process, which, with a different statement in paragraph 9 of article 1, declares that in cases where a judge or arbitrator tries to reach an agreement in the position of judgment or arbitration, it is excluded from the scope of this provision. What has led to the establishment of this provision is to avoid the interference between the scope of the Singapore Convention and the New York Convention, because regardless of the aforementioned discussion, the Compromise can be implemented in two ways, and according to some jurists, this can provide grounds for abuse (Žukauskaitė, 2019: 212).

On the other hand, based on the general principles, a legal act or legal document is not the subject of several enforcement methods, and there is a single enforcement system for the compromise agreement, and it is necessary to carry out different behaviors for the implementation of the compromise agreement and arbitration award and each has its own implementation method.

On the other hand, the opinion of the group was that the interference between the implementation of the two mentioned conventions could be beneficial to the parties because they choose a method to settle their dispute

that is suitable for their defense, but the mentioned objection causes the parties to be deprived of such a right (Žukauskaitė, 2019: 212). Another thing is that the issued arbitration award that includes mediation may not be covered by the New York Convention. In such a case, despite this Singapore Convention law, the possibility of enforcing this arbitration award or compromise agreement will be ruled out. But what is of special importance here is that a country may be a member of the Singapore Convention and has not signed the New York Convention. In this case, the agreement will not be applicable.

7. Conclusion

Although the ratification of the Singapore Convention as the first comprehensive treaty regarding the enforcement support of an international trade agreement is a step forward, however, the excessive number of reasons for rejecting the request for implementation of the agreement, although it was aimed at achieving international consensus, does not show a positive prospect of success for the said agreement on a level comparable to the New York Convention. Because the purpose of drafting and approving the above-mentioned treaty, which is to strengthen the foundation of executive support of the agreement, it is not in sync with the development of the rejection of the request for the agreement implementation in the text of the treaty and it does not show the consistency of its purpose with the content in comparison with the New York Convention.

Before every point, the success of any international convention requires its acceptance by the countries of the world. In this regard, the coverage of the New York Convention is now significantly broader than that of the Singapore Convention. But still, some countries have taken a wait-and-see approach for it. United Nations organization with the successful experience gained from the New York Convention to increase using the mediation method, developed the Singapore Convention.

Considering the many benefits of using conciliation in resolving disputes between parties, the main goal of the Singapore Convention is to play a role similar to the New York Convention regarding the recognition and enforcement of foreign arbitration awards, in order to increase the use of the mediation method in the settlement of international commercial disputes.

Therefore, this convention has special patronage from the usual regulatory agreements. In addition to giving enforcement character to agreements, the Singapore Convention provides this possibility for the agreement to be implemented directly and without the need to identify the source, in the territory of each of the contracting countries. Also, by identifying compromises, it is possible to rely on compromises as a defense against similar lawsuits, which is in conflict with the provisions of the New York Convention.

In 1958, when the New York Convention was prepared and regulated, international trade had a more primitive form and dimension. The passage of years since the drafting of this convention and the age of its text and its non-responsiveness reveal the need to formulate regulations appropriate to the time. But this age and the passage of time has determined the formation of a long legal tradition based on the New York Convention. In the meantime, most of the world's countries have accepted the New York Convention, and thousands of analyses and opinions have been published about the articles of the Convention and related files. The New York Convention is a convention for the recognition and enforcement of arbitral awards, and the Singapore Convention is for the enforcement of agreements and not the enforcement of awards. Although Article 5 of the Convention contains directions to refuse recognition and enforcement, some sections of this article are ambiguous and open the way for broad interpretation and even abuse, but according to the legal custom formed over the years, the courts tend to narrow and limited interpretation. Judges understand the spirit and purpose of the convention and try to recognize and implement arbitration decisions. They prioritize the will of the parties and respect the authority of the arbitrators and do not enter into the nature of arbitration votes. The interference of national laws in the matter of arbitration has been minimized. Referring to the directions mentioned in Article 5, judges often refuse to recognize and execute only when a fundamental violation has occurred. The purpose of the New York Convention is to try to identify and implement foreign arbitration awards with a broad interpretation of the non-domestic arbitration award and for this reason, its compilers deliberately kept the non-domestic element of the vote silent and left it to the internal regulations of the countries.

The successful experience of the New York Convention led the United Nations to take a new step by setting up the Singapore Convention to develop mediation. Considering the inherent and essential differences between the

methods of conciliation and arbitration, it is obvious that some aspects of the rejection in the New York Convention did not make it to the Singapore Convention, and vice versa. For example, the ways of rejecting the implementation of the compromise agreement, which belongs to the Singapore Convention, were not proposed in the New York Conference and the reason for this is due to the approach of the Singapore Convention regarding delocalization of compromise and not mentioning provisions regarding the compromise agreement, more than anything. This is the result of the consensus of the countries and does not carry any special legal logic with it. On the other hand, by explaining the reasons for rejecting the implementation of the agreement in the Singapore Convention, it is clear that these reasons are not necessary and the possibility of causing disruption in the implementation of the agreements is not far from the mind. In the aforementioned conventions, the parties are absolutely not forced to implement the arbitration award or the compromise agreement, and even the possibility of refusing to implement the arbitration award and the agreement is specified.

What shows the scope of the New York and Singapore conventions is the support of each of these two conventions for the agreement and arbitration award. The examination of the obstacles to the implementation of the provisions of the treaties, which caused the dismissal of some agreements and arbitration opinions from the executive support of these treaties, was brought up above.

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