

International Arbitration as an Alternative to International Justice (Jurisdictional Means of International Dispute Resolution)

Author: Researcher / Diana khoder El-Kheir | Lebanese Republic

PhD Student in Law - Public Law | Islamic University of Lebanon

E-mail: dianakheir123@gmail.com | <https://orcid.org/0009-0002-2153-1946>

<https://doi.org/10.70758/elqarar/8.22.11>

Received : 5/10/2025

Accepted : 13/10/2025

Published : 15/10/2025

Cite this article as: El-Kheir, Diana Khoder, International Arbitration as an Alternative to International Justice (Jurisdictional Means of International Dispute Resolution), *ElQarar Journal for Peer-Reviewed Scientific Research*, vol 8, issue 22, 2025, pp. 232-266. <https://doi.org/10.70758/elqarar/8.22.11>

Abstract

Arbitration is an essential method for resolving international disputes, addressing the limitations of courts in handling varied conflicts. The General Act of Arbitration, adopted by the League of Nations on September 26, 1928, promotes this mechanism when diplomatic resolutions fail, detailing the constitution and procedures of arbitral tribunals. Historically, arbitration evolved from traditional dispute resolution practices towards a system governed by legal rules, influenced by economic and industrial demands. In modern times, the focus on arbitration has increased, with dedicated research centers and numerous conventions developed by international organizations to regulate it. Border disputes, often arising from colonial legacies and resource conflicts, are particularly complex and sensitive, necessitating enforceable judicial decisions to prevent violence and uphold international sovereignty.

Keywords: Arbitration, Justice, Settlement, Border disputes.

Résumé

L'arbitrage est une méthode essentielle pour résoudre les différends internationaux, en tenant compte des limites des tribunaux dans le traitement des conflits variés. L'Acte général d'arbitrage, adopté par la Société des Nations le 26 septembre 1928, promeut ce mécanisme lorsque les résolutions diplomatiques échouent, détaillant la constitution et les procédures des tribunaux arbitraux. Historiquement, l'arbitrage a évolué des pratiques traditionnelles de résolution des conflits vers un système régi par des règles juridiques, influencé par les exigences économiques et industrielles. Dans les temps modernes, l'accent mis sur l'arbitrage a augmenté, avec des centres de recherche dédiés et de nombreuses conventions développées par des organisations internationales pour le réglementer. Les différends frontaliers, souvent issus d'héritages coloniaux et de conflits de ressources, sont particulièrement complexes et sensibles, nécessitant des décisions judiciaires exécutoires pour prévenir la violence et défendre la souveraineté internationale.

Mots-clés: arbitrage, justice, règlement, litiges frontaliers.

التحكيم الدولي كبديل عن القضاء الدولي (الوسائل القضائية لتسوية المنازعات الدولية)

إعداد: الباحثة / ديانا خضر الخير | الجمهورية اللبنانية

دكتوراه في الحقوق - القانون العام / الجامعة الإسلامية في لبنان

E-mail: dianakheir123@gmail.com | <https://orcid.org/0009-0002-2153-1946>

<https://doi.org/10.70758/elqarar/8.22.11>

تاريخ النشر: 2025/10/15	تاريخ القبول: 2025/10/6	تاريخ الاستلام: 2025/10/1
-------------------------	-------------------------	---------------------------

للاقتباس: الخير، ديانا خضر، التحكيم الدولي كبديل عن القضاء الدولي (الوسائل القضائية لتسوية المنازعات الدولية)، مجلة القرار للبحوث العلمية المحكمة، المجلد الثامن، العدد 22، السنة 2، 2025، ص-ص: 232-266. <https://doi.org/10.70758/elqarar/8.22.11>

المُلخَص

يتزايد الاعتراف بالتحكيم كبديل حيوي لحل النزاعات الدولية، لا سيما في ضوء تصاعد عبء العمل على المحاكم المحلية والطلب على حلول قانونية متخصصة. أدى إدخال الأداة العامة للتحكيم من قبل عصبة الأمم في 26 أيلول من العام 1928 إلى تعزيز فعالية هذه الطريقة في معالجة النزاعات الدبلوماسية المعقدة، وجعلها أداة محورية ضمن مختلف الاتفاقيات الثنائية والمتعددة الأطراف بسبب طبيعتها الإجرائية. تاريخياً، اعتمد حل النزاعات بشكل كبير على القوة، ولكن مع انتقال المجتمعات من الأنظمة القبلية إلى أطر أكثر تنظيمًا، ظهر التحكيم كآلية محايدة. وقد تزايدت أهميتها استجابة لمتطلبات المشهد التجاري الدولي، مما أدى إلى زيادة الاهتمام وإنشاء مراكز البحوث والمؤتمرات والمنظمات التي تهدف إلى تحسين قواعد التحكيم. ومع ذلك، لا تزال النزاعات الحدودية التي غالباً ما تكون إرثاً من الاستعمار أو الصراعات التي تتعلق بالموارد، تهدد بالتصعيد إلى أعمال عنف. وعليه، إن هذا ما يؤكد الحاجة الملحة إلى إطار تحكيم موثوق قادر على إصدار أحكام قضائية ملزمة.

الكلمات المفتاحية: التحكيم، العدالة، التسوية، النزاعات الحدودية.

Introduction:

Anyone who meditates on the pedagogical function of the means and methods of settling international disputes will note that the creation of the League of Nations, and later the United Nations, as world organizations with broad powers to preserve peace, ensure security and prohibit wars, has profoundly changed the mechanisms for the settlement of disputes between member states. The latter are now required to choose one of two means: to submit their disputes to arbitration or to the courts, or to the Council of the Company, which then acts as a mediator to restore understanding between the parties. If the report prepared by these bodies is adopted unanimously — after its publication and excluding the votes of the parties to the conflict — it becomes a binding solution. On the other hand, if it is adopted by a majority, war remains legally possible, as the resolution is not binding⁽¹⁾. Thus, arbitration has become a phenomenon of the modern era, and its value has increased as a dispute resolution system offering practical advantages that the overburdened state justice cannot provide. It thus spares contracting parties from different countries the difficulty of disregarding the substantive and procedural rules of foreign law. It is no exaggeration to say that this is one of the most widely used legal innovations in international border disputes, which represent the most complex problems because they affect the sovereignty of States, especially neighboring States that disagree over the delimitation of borders or are plagued by ambitions over natural resources. Further, due to the lack of precision in the delimitation and demarcation inherited from the colonial period. Despite everything, these conflicts remain, with all their tension, below direct military confrontation⁽²⁾. Additionally, the purposes and principles of the United Nations Charter devote a special chapter to the obligation of peaceful settlement of disputes and their handling, entrusting this mission to the General Assembly, the Security Council, or regional organizations. This is what we will try to examine in this study, using the legal framework to clarify the points addressed, according to the following plan:

(1) Articles 33 to 38, enshrined in Chapter VI of the Charter of the United Nations, relating to the peaceful settlement of disputes, 2020.

(2) Ismaïl Sabri Maqlad, *International Political Relations: A Study of Foundations and Theories*, Cairo, La Bibliothèque Académique, 1991, p. 34.

Section One: Overview of the Birth of Arbitration and the Stages of its Historical Evolution

We will limit ourselves to a brief overview on this subject. It can be said that arbitration has existed for a long time, while today it is a modern system in terms of its subject, its rules and its research. It enjoys advantages such as speed, confidentiality and mutual consent in the resolution of disputes that may arise in the future, especially due to the expansion of common interests, particularly in international trade relations and related areas that occupy an important place in legal and economic thinking.

Thus, arbitration, both ancient and modern, is a deep-rooted principle already known to the Greek cities, which had a permanent arbitration council to settle certain religious disputes. The Christian states of the Middle Ages also resorted to this method of settlement, relying on the Pope — the head of the Catholic Church or the supreme pontiff — or even kings and emperors. Subsequently, they began to use arbitral bodies to settle disputes over the interpretation or performance of treaties, before preferring to conclude general arbitration agreements applicable when necessary.

International arbitration, in its modern form, emerged after the American Civil War (1861-1865), on the occasion of the Alabama ship, which was the subject of an arbitral award in 1872. This decision attracted attention and became a model to follow because of the novelties it introduced. As a result of this practice and the successful experience it represented, the method of arbitration was perfected, and the first major step was taken at the Hague Conference of 1899, which adopted a Convention for the Pacific Settlement of International Disputes⁽¹⁾.

Subsequently, following the First and Second World Wars, arbitration experienced a new boom. The United Nations paid particular attention to this: in 1949, the General Assembly re-examined the General Act for the Pacific Settlement of International Disputes drawn up by the League of Nations and instructed the International Law Commission to draft a code of arbitration. The latter presented a draft convention in 1955, but the Assembly rejected this proposal.

Thus, we can conclude from the foregoing that the arbitration agreement remains a contract suspended by the mutual consent of the parties and does not produce its binding effect until the arbitrator examines the dispute submitted by the parties. Consequently, if one of them

(1) Fayçal Abdel Rahman Ali Taha, International Law and Border Disputes, Dar Al-Amine for Publishing and Distribution, 2nd edition, 1999, p. 215.

refers the matter to the State court to settle the dispute without regard for the arbitration agreement, that referral has no legal basis⁽¹⁾.

First request: Clarify the meaning of the definitions of arbitration in its various aspects

Arbitration is based, in its general principle, on the agreement of the parties not to submit their dispute to the competent court, but to entrust it to arbitrators responsible for deciding it. The essential idea on which it is based, in all contemporary legislation, is the right of the parties to choose their judges and to undertake to execute in good faith the award rendered by them, motivated by their conscience and integrity, under the influence of the social relations particular to the parties concerned.

Let us now turn to the linguistic and legal definition of arbitration. According to Ibn Manzûr, “aḥkamûhu baynahum” means “they ordered him to judge among themselves”, and it is said “ḥakkamnâ fulânan baynanâ”, meaning “we have agreed on his judgment among ourselves”. In terminological terms, arbitration refers to the appointment, by mutual consent, of a third party responsible for deciding the dispute. Some Muslim jurists have examined this notion and have concluded, based on the analysis of the Qur’anic verse: (فَابْعَثُوا) (“Send... “), that order implies an obligation⁽²⁾. Thus, the quintessence of the different definitions of international arbitration can thus be found in the definition contained in Article 37 of the 1907 Hague Convention for the Pacific Settlement of International Disputes, which provides:

“The purpose of international arbitration is the settlement of disputes between States by judges chosen by them on the basis of respect for law. Recourse to arbitration implies an undertaking to submit in good faith to the award rendered. “

First Part: International Arbitration in the Doctrine of Public International Law

The League of Nations attempted to revive the hopes raised by the first Hague Conference in 1899, which had worked seriously to persuade states to resort to peaceful means such as negotiation, mediation, good offices and arbitration. The Second Hague Conference, held in 1907, reaffirmed these same principles and envisaged their codification in international conventions to be adopted in 1915. However, the outbreak of the First World War in 1914 prevented the conference from taking place, and the Second World War highlighted the

(1) Mohamed Ismaïl, The Foundations and International Procedures of Arbitration, Al-Hiwar Al-Moutamaddin Magazine, No. 3969, January 11, 2013.

(2) Abdel-Basset Mohamed Abdel-Wassie Al-Dorrassi, The Legal Regime of the Arbitration Agreement, Modern University Book Library, Alexandria, 1st edition, 2005, p. 15.

failure of the League of Nations' efforts.

Convinced of the need for the peaceful resolution of international disputes, the founding fathers of the United Nations decided to take this step by enshrining in the Charter the creation of a permanent International Court of Justice, established as one of the principal organs of the Organization⁽¹⁾.

Thus, the Charter of the United Nations leaves States free to choose between the judicial and the arbitral route. A review of international statistics in this area reveals a preference for arbitration, presumably because of its flexibility of understanding and application⁽²⁾.

Second Branch: International Arbitration in the Doctrine of International Trade and Investment Law

Arbitration is now the most common method of resolving commercial disputes; due to its ability to adapt to the particularities of each dispute. The study of arbitration, as an essential and fundamental means of settling disputes arising from international private transactions, is therefore of considerable interest among researchers and practitioners of international law, both public and private⁽³⁾.

First: The New York Convention and the Model Law on International Commercial Arbitration

The New York Convention, followed by the Model Law on International Arbitration, had established two solid foundations for a system of international arbitration that would ensure that the freedom of global trade and provide a smooth and secure path to ensuring the parties' rights. These instruments created an organic link between international trade and the legal framework of arbitration, incorporating unified universal rules. These served as a catalyst for the emergence of the 1958 New York Convention, which brought about a real revolution in international arbitration law, particularly in terms of the recognition and enforcement of foreign awards. It was not only a step forward but a major qualitative

(1) In accordance with Article 33 of Chapter VI, Ahmed Si Ali, The Dispute between the United Kingdom and Argentina in the Falkland Islands Region in the Light of Public International Law, doctoral thesis in public international law and international relations, University of Algiers, 2005, p. 326.

(2) Ahmed Abdel-Fattah Saqr, Dispute Resolution through International Arbitration, 1st edition, Alexandria, Al-Wafa Al-Qanouniya Library, 2019, p. 16.

(3) In this connection, mention should be made of the numerous international conferences devoted to international commercial arbitration, such as: the Vienna Conference (1969), the Moscow Conference (1972), the New Delhi Conference (1975) bringing together jurists from Western, socialist and Third World countries, and the meeting organized by the International Council for Commercial Arbitration on technology transfer contracts held in Vienna on 30 September 1976; the Sixth Arbitration Conference in Mexico City (13 March 1978); and finally the European Conference in Helsinki.

leap⁽¹⁾.

It is recognized that the Model Law does not have the value of an international treaty that is binding on States. It is, in fact, a uniform draft law that takes into account the different national legal systems in the field of arbitration. Its essential usefulness lies in the codification of the usages and customs in force in the field of international arbitration and private international law⁽²⁾.

Second: The GATT Agreements (Uruguay Round, 1994)

The objective of the GATT was the liberalization of world trade. Arbitration was not provided for in the 1947 General Agreement, but it began to appear from 1989 onwards. The 1994 Agreement made it a means of dispute settlement, organized in several levels, without, however, establishing an appellate body, except within the limits set out in Article 17 et seq. of Annex 2 on the settlement of disputes. In reality, those agreements are subject to compulsory arbitration only in the case provided for in Article 21(3)(c) of that Annex⁽³⁾.

Third: International Arbitration in Administrative and Electronic Contracts

Most legislation, foremost French law, prohibits legal entities governed by public law from resorting to arbitration. This prohibition stems from the concern that arbitration would remove administrative disputes from the jurisdiction of the administrative courts, and thus expose public assets and national wealth to risks under foreign legal systems. However, with the policy of privatization and the transition to the liberal economic system, as well as under pressure from the major economic powers demanding the opening of national markets to foreign investment and the removal of all obstacles to the free movement of capital, States have been led to broaden the scope of recourse to arbitration as an alternative method of resolving administrative disputes. By authorizing it, States have abandoned the strict adherence to their domestic legal rules, which previously constituted an obstacle to the flow of foreign investment⁽⁴⁾.

(1) Ibrahim Ahmed Ibrahim, The Execution of Foreign Arbitral Awards, Egyptian Journal of International Law, No. 37, 1981, p. 6.

(2) The United Nations General Assembly established the United Nations Commission on International Trade Law (UNCITRAL) in 1966, by resolution 2205 (XXI) of 17 December 1966. International Information Network, Official Records of the General Assembly, Seventy-sixth Session, Annex No. 17 (A/76/17), Chapter VII, Annex IV).

Derqa Souad, The United Nations Commission on International Trade Law, 2013/2014, p. 11.

(3) Abdelwahad Al-Afour, Globalization and the GATT – Opportunities and Challenges, Madbouli Library, Cairo, 2000, p. 89.

(4) Georges Ahmar, Arbitration Law, course paper, Lebanese University, Faculty of Law and Political Science – Branch III, Tripoli, 2020, p. 5.

In this context, electronic arbitration is a form of dispute resolution whose procedure takes place via the Internet. It derives its qualification as “electronic” from the fact that it relies on audiovisual communications through an open global network, allowing for remote settlement without a physical meeting between the parties and the arbitrators. The introduction of modern technologies marked the starting point for the virtual arbitral tribunal project in 1996, which took up a single case, which was finally settled amicably before the award was issued.

In 1994, David Stodolsky launched a project called the Judges’ Network, which consisted of the creation of an electronic list of participating members, comprising more than forty judges under the “one vote per judge” rule⁽¹⁾.

Chapter Two: The Conceptual Framework of International Arbitration

First of all, it should be emphasized that arbitration is a topic of paramount importance, occupying a prominent place in legal and economic thought both at the global and local levels.

Thus, arbitration is defined as the agreement by which two parties agree to submit to arbitrators all or part of the disputes that have arisen or are likely to arise between them in the course of a specific legal relationship. Only natural or legal persons with the free enjoyment of their rights may enter into an arbitration agreement. In addition, the latter must clearly specify the issues it covers, excluding those that can be settled by amicable settlement; otherwise, the arbitration agreement would be null and void⁽²⁾.

Section One: The Meaning and Characteristics of International Arbitration – Its Advantages and Disadvantages

Arbitration, as an alternative to the court system, has many advantages that make it an attractive means for public law persons wishing to settle their international commercial disputes. However, it is not without its weaknesses, which we will examine below.

Frari Tani (Mustapha), The New Algerian Law of International Commercial Arbitration (2008-2009) Compared to the New French Law of Arbitration, *Annales de la Faculté de droit de l’Université d’Oran*, No. 3, 2011, p. 63.

(1) Imad Eddine Al-Mohammed, Arbitration, with a Focus on Online Arbitration, Faculty of Law, Damascus University, p. 84.

(2) Mahmoud Lotfi Abdel Aziz, Précis du droit de l’arbitrage omanais, Maison du Livre Universitaire, United Arab Emirates, 2017, p. 35.

I. The Benefits of Arbitration

The choice of arbitration as a method of dispute resolution is justified by many positive aspects which, compared to its disadvantages, demonstrate its relevance. Among the most important are:

1. Speed in the resolution of disputes (Article 37 of the Arbitration Code, in conjunction with Article 3).
2. The confidentiality of the relationship between the parties to the dispute.
3. The absence of judicial control and sometimes of remedies, the arbitral award being rendered only at one level and being subject only to an action for nullity⁽¹⁾.
4. Reduction of costs and procedural costs.
5. The non-application of the principle of immunity in certain cases.
6. The ease of enforcement of rights for the benefit of the parties concerned.
7. Preventing disputes before they arise.
8. The promotion of international trade and the foreign investor's confidence in the arbitration clause⁽²⁾.

II. The disadvantages and limits of arbitration

Faced with these advantages, arbitration also has several disadvantages, which can be summarized as follows:

1. High cost: Arbitration is often considered an expensive procedure, due to the increase in arbitration fees and arbitrators' fees in some specialized centers⁽³⁾.
2. The solidity of state justice: unlike arbitration, ordinary justice better guarantees legal certainty and judicial fairness.
3. The lack of impartiality of some referees.
4. Difficult enforcement: Arbitration does not always put a definitive end to the dispute. The main disadvantage is the practical obstacles that can arise when one of the parties refuses to voluntarily enforce the award. The opposing party must then resort to the courts

(1) René Rodière and Roger Houin, *Droit commercial*, Dalloz, Paris, 1970, No. 298, p. 272.

(2) Ali Awad Hassan, *L'arbitrage volontaire et obligatoire dans les disputes civiles et commerciales*, Dar Al-Fikr Al-Jamii, Alexandria, 2004, p. 29.

(3) Ibrahim Ahmed Ibrahim, *Private International Arbitration*, Dar Al-Nahda Al-Arabia, Egypt, 2005, p. 12.

to initiate proceedings that it initially thought it would avoid.

5. Negative economic effects: Some arbitral awards can have serious adverse consequences on the national economy⁽¹⁾.

First Part: The Legal Classification of International Arbitration and its Forms

The characteristics of abstraction and generality reflect the neutrality of the rule of law and its independence from the persons or situations to which it applies. However, its practical implementation presupposes a preliminary operation of legal classification, which is the first essential step and the basis for any correct application of a rule of law⁽²⁾.

The arbitration agreement can take several forms, including **the arbitration clause** and **the arbitration agreement** (*compromise*). The essential difference between the two lies in the moment when the agreement is concluded:

- when it predates **the origin of the dispute**, it is an **arbitration clause** ;
- When it occurs **after the occurrence of an already existing dispute**, it is an **arbitration agreement**.

A **third form** has also developed, known as an **arbitration agreement by reference**, where the parties' agreement refers to an arbitration clause contained in another contract or document⁽³⁾.

Second Branch: Types of Arbitration and Their Legal Nature

It can be said that arbitration has a hybrid and dual nature: it combines both contractual and jurisdictional aspects. In other words, it begins as a contract based on the parties' consent and culminates in a binding award, whether it is made voluntarily or under duress⁽⁴⁾.

Arbitration is divided into several categories whose importance continues to grow, reflecting the central role this mechanism plays today in legal and economic life, both nationally

(1) Hatem Khalifa Bureism Al-Ajili, Proposal for the Reform of Iraqi Arbitration Law in the Light of a Comparative Study of Certain Arab Laws, *Revue Ingénierie et Développement*, Vol. 16, No. 2, June 2012, p. 240.

(2) Ahmed Refaï, *Introduction aux sciences juridiques: Théorie du droit*, Centre d'enseignement ouvert, Université de Benha, Egypt, 2008, pp. 20-21.

(3) Jean Salmon (1979), Some Observations on Characterization in Public International Law, in : Antonio Cassese (ed.), *UN Law, Fundamental Rights – Two Topics in International Law*, Sijthoff & Noordhoff International Publishers, Alphen aan den Rijn, Pays-Bas, p. 3.

(4) Mounir Abdel-Meguid, *Les principes généraux de l'arbitrage international et interne en droit privé à la lumière de la doctrine et de la jurisprudence*, Manshat Al-Maaref, Alexandria, 2000, p. 112, in accordance with Article 1504 of the French Code of Civil Procedure (2011) relating to the legal nature of arbitration.

and internationally⁽¹⁾. The main types of arbitration are:

1. **Voluntary (or optional) arbitration** : based on the **principle of freedom of contract** and on the **mutual consent of the parties**, it is the most common form in international trade, as it promotes mutual trust between economic actors.
2. **Mandatory arbitration** : this is arbitration **imposed by law**, when the legislator sets rules relating to the appointment of arbitrators, the procedure to be followed and the applicable law, thus limiting the freedom of the parties.
3. **Free (or ad hoc) arbitration** : representing the traditional form of arbitration, it allows the parties to **freely choose the arbitrators**, to determine their **identity** as well as **the place of arbitration**, without the intervention of a permanent institution⁽²⁾.
4. **Institutional (or administered) arbitration**: this method of arbitration has the advantage of **guaranteeing the smooth running of the procedure** thanks to the **professional competence** and experience of specialists attached to a recognized arbitration center⁽³⁾.

Third Part: The Criteria for Distinguishing Between International and Domestic Arbitration

The importance of distinguishing between domestic and international arbitration is manifested in several aspects. Despite the similarity of the final result — namely the decision rendered by the arbitral tribunal — the most essential differences are:⁽⁴⁾

One of the key differences lies in the extent of the judge's power of review over the arbitral proceedings. In domestic arbitration, the national court has a broader supervisory power: it applies the rules of domestic law laid down by the legislature and can set aside an award that violates them. On the other hand, in international arbitration, the judge cannot intervene in the merits of the dispute, and the award is subject only to respect for international public policy. Some laws have established specific regimes for international commercial

(1) Mourad Mahmoud Al-Mawajda, *Arbitration in State Contracts of an International Character (Comparative Study)*, 1st edition, Dar Al-Thaqafa for Publication and Distribution, Egypt, 2010, pp. 31-32.

(2) Mohamed Naïm Alouiha, *L'arbitrage international*, Dar Al-Qanoun Al-Mouqaran, Lebanon, 2014, p. 45. An important legal debate has developed in Lebanon concerning the arbitrability of public contracts and state contracts. The Lebanese legislator responded by adopting Law No. 440/2002, authorizing recourse to arbitration regardless of the nature of the contract, provided that a decree of the Council of Ministers, on the proposal of the competent minister, lays down the modalities.

(3) Mohamed Abdel-Meguid Ismail, *Les contrats de travaux internationales*, Maison de l'Édition Juridique, Cairo, 2001, p. 305.

(4) Qamar Abdel-Wahhab, *L'arbitrage dans les disputes relatives aux contrats administratifs en droit algérien: étude comparative*, Dar Al-Maarefa, Algiers, 2009, pp. 61-64.

arbitration, distinct from domestic law — this is the case in France and Tunisia.

In other States, on the other hand, unified arbitration rules apply without distinction between domestic and international arbitration. However, this uniformity may lead to difficulties in **determining** the international nature of the legal relationship, especially where the parties have not designated the applicable law.

The French legislator was keen to maintain this distinction, considering that it reflects the desire not to grant the parties to a domestic arbitration the same degree of freedom as that accorded to the parties to an international arbitration. However, it has also taken care to mitigate the differences between the two regimes, in line with the evolution of case law, which tends to bring the treatment of domestic arbitration and international arbitration closer together⁽¹⁾.

Chapter Three: International Settlement by the Arbitration Convention

It is recognized, both in doctrine and in practice, that the peaceful settlement of international disputes is a fundamental element in maintaining global stability. This underscores the necessity for effective mechanisms to resolve conflicts between parties. Arbitration is one such legal instrument: it is based on the use of a neutral third party — an arbitrator or an arbitral tribunal — chosen by the disputing parties, and operating outside state courts. This method allows disputes to be settled according to internationally recognized procedures and rules, fostering a spirit of international legal cooperation. Crucially, it serves to encourage states to resort to peaceful means before the use of force, thus safeguarding international peace and security, as illustrated by the Qur'anic verse:

« ... Whoever kills a person without that person having killed or committed corruption on earth, it is as if he had killed all of humanity... (Surah Al-Maida, v. 32).

(1) CA Paris, 1st Ch., 14 June 2000: Rev. Arb. 2001, p. 773, note Seraglini.

CA Paris, 20 March 2001: Rev. Arb. 2001, p. 543, note Bureau.

Cass. 1st Civ., 3 June 2003: JCP 2004, I, 119, n° 5, obs. Ortscheidt.

CA Paris, 7 April 2011: Gazette du Palais, 24 July 2011, p. 12, note Bensaude.

CA Rouen, 27 Nov. 1986: Rev. Arb. 1987, p. 339, note Mézager.

Ph. Fauchard, Civil Procedure, fasc. 1050.

P. Duprey, Presentation of the new decree on arbitration, in L'arbitrage: principes et pratiques, Les Cahiers du Conseil National des Barreaux, 2011. In a doctrinal current opposed to the distinction between domestic and international arbitration:

P. Mayer, "Faut-il distinction arbitrage interne et arbitrage international?" , Rev. Arb. 2005, p. 361;

J. Pellerin, "Monism or dualism of arbitration: the French point of view", Gazette du Palais, 15-17 October 2006, p. 3037.

Section One: The Scope of the Permanent Court of Arbitration

The Permanent Court of Arbitration (PCA) is classified as an alternative **dispute** institution. It was created following the First Hague Conference (1899), with an optional nature, the Member States having preferred to retain the freedom to have recourse to other bodies of their choice. The Court was not composed of permanent judges sitting continuously in The Hague: each State party to the convention appointed up to four renowned jurists for a renewable six-year term, to be included in a common list, from which the States in conflict chose a five-member arbitral tribunal.

Between 1899 and 1907, the Court examined five cases, then twelve between 1908 and 1922. Its activity then declined, and its last decision was handed down in 1932, bringing the total to twenty sentences. Attempts to revive it in 1962 failed, although they were intended to broaden the scope of recourse to arbitration⁽¹⁾.

First Part: Referral of Disputes and Enforcement of Arbitral Awards

States may submit to arbitration any dispute of a legal nature, in particular those relating to the interpretation of a treaty, the application of an international rule, or frontier disputes. The procedure can be initiated before, after or during the conflict.

1. The composition and procedure of the arbitral tribunal

The disputing States have full freedom in the choice of the arbitral body:

- It may be composed of a sole arbitrator or several arbitrators;
- States may refer the dispute to a foreign head of State, an international legal or judicial institution, or the Permanent Court of Arbitration. Traditionally, ad hoc arbitral tribunals consist of five arbitrators, two appointed by each party, and the fifth — president of the tribunal — elected by the other four⁽²⁾.

Arbitrators shall limit themselves to the matters expressly submitted by the parties, unless expressly authorized to judge in accordance with general principles of law or equity.

The procedure combines:⁽³⁾

(1) Charlotte L. Bynum, International Commercial Arbitration – Research Guide, Cornell Law School Library : <http://library.lawschool.cornell.edu/whatwedo/researchguides/intl-commercial-arbitration.cfm>.

(2) Hosni Al-Masri, International Commercial Arbitration (Comparative Study), Dar Al-Kutub Al-Qanouniya, Egypt, 2006, pp. 164-168.

(3) Abdel-Aziz Abdel-Moneim Khalifa, Arbitration in Contractual and Non-Contractual Administrative

- a written phase, including the filing of briefs, documents and evidence, a copy of which is communicated to the opposing party;
- an oral phase, where the parties' representatives present their pleadings before the arbitral tribunal.

Second Branch: Arbitration in Lebanon and the Role of Regional Organizations in the Settlement of International Disputes

The principle of international public order is based on reciprocity between **states**. The reduction in sovereign prerogatives results in particular from the rise of private actors, such as multinational corporations (**MNCs**), which have favored the regulation of world trade by contractual agreements rather than by national laws. The rise of international and regional arbitral institutions has thus strengthened the role of a transnational private justice system capable of settling disputes outside state jurisdictions.

In Lebanon, the legal framework for arbitration has been developed by:

- accession to the Amman Arab Convention on International Commercial Arbitration (14 April 1987), ratified by Law No. 166 of 13 August 1992;
- then, more recently, the accession to the New York Convention (1958) on the Recognition and Enforcement of Foreign Arbitral Awards.

Two main institutions have left their mark on the Lebanese landscape⁽¹⁾ :

1. The Conciliation and Arbitration Center of the Beirut Chamber of Commerce and Industry, affiliated to the International Court of Arbitration of Paris (ICC);
2. The Lebanese Arbitration Association, recently integrated into the first center.

Regional organizations also play a dual role:

- **Strengthening** links between neighbouring states (geographical, economic or cultural),
- **Promoting** cooperation and peace; by peacefully settling disputes and supporting the work of the UN.

However, despite their increased effectiveness **in addressing** regional conflicts, these

Disputes, 1st edition, Dar Al-Kutub wa Al-Wathāiq Al-Qawmiyya, 2015, p. 53, in accordance with Articles 61, 63, 64, 65, 67 and 72 of the 1907 Hague Convention on the Pacific Settlement of International Disputes.

(1) In this regard, it should be noted that Lebanon has not remained on the sidelines of the evolution of arbitration law. This system has been fully integrated into its legal order, through clear and explicit provisions contained in articles 762 to 821 of the Code of Civil Procedure. See: Abdel-Razzaq Al-Sanhouri, The Theory of Contract, Volume I, 2nd ed., Al-Halabi Publications, Beirut, 1988, p. 314.

mechanisms remain vulnerable to exceptions and repeated violations of their founding principles⁽¹⁾.

Third Part: The Effects of the Principle of the Binding Force of International Arbitral Awards

What is the real legal value of international arbitral awards? Under international law, their **enforcement** depends on the will of States parties and their good faith in their implementation.

The **referee's decision** must:

- **Be reached** by a majority.
- Contain the reasons.
- Mentions the names of the referees.
- Be signed by the president and the secretary of the court.
- Be delivered publicly after the parties have been summoned.

It is binding upon both parties in the same way as a judicial decision, is final and not subject to appeal, except in cases of nullity⁽²⁾.

Chapter Four: Settlement by International Justice

Following numerous experiments, international doctrine established rules aimed at the creation of a permanent international court capable of settling legal disputes between States. Thus, the Permanent Court of International Justice was founded in 1920, and it was replaced in 1946 by the current International Court of Justice (ICJ), which continues its mission.

(1) The Charter of the United Nations devotes chapter VIII to regional agreements and organizations, in accordance with Articles 52 (paragraphs 1, 2 and 3), 53 (paragraph 1) and 54. Thus, when a regional dispute evolves to the point of threatening world peace, its resolution in principle becomes the responsibility of the United Nations, regardless of the steps taken by the regional organization in this regard. Boutros Boutros-Ghali, *The Arab League and the Settlement of Local Disputes*, Publications of the Institute of Arab Research and Studies, Cairo, 1977, pp. 16-17.

(2) This is referred to in articles 47 and 54 of the Hague Conventions of 1899 and 1907, and the text has been taken up in articles 73 and 81 of the 1907 Hague Convention, which confirm the finality of the arbitral award.

Section One: The Relationship Between Arbitration and International Justice – A Governance Relationship⁽¹⁾

Several States have taken an important step by providing in their international treaties for the submission to arbitration of any dispute relating to their application.

Despite the fundamental differences between arbitration and state justice, both result in a binding decision rendered by an independent body, after:

- the filing of an application,
- the holding of an adversarial procedure,
- the respect for the rights of the defence,
- and the deliberation based on legal considerations⁽²⁾.

Arbitration, therefore, retains a jurisdictional dimension, although it differs from national judicial disputes through the freedom of the parties in constituting the tribunal and choosing the arbitrators, whereas international justice is based on permanent courts independent of the will of States⁽³⁾.

Part I: The role of the Permanent Court of International Justice in the settlement of disputes

International experience has shown that arbitral jurisprudence has served as a basis for the formation of the law and decisions of the Permanent Court of International Justice (PCIJ). The Court relied on precedents from other jurisdictions, including:

- the 1969 decision on the continental shelf, which drew upon 1927 judgment;
- the 1957 decision on Norwegian loans, which was inspired by the 1939 judgment in the Sofia Electricity Company case.

Article 14 of the Covenant of the League of Nations provided for the establishment of this Court. A committee of jurists met in The Hague in 1920 to draw up the draft statute, which was subsequently adopted by the Council and the Assembly⁽⁴⁾.

(1) Omar Abou Bakr Bakhshab, The Legal Regime of the Notion of Border in Public International Law, Egyptian Journal of International Law, No. 44, 1988, p. 110.

(2) Abdel-Basset Mohamed Abdel-Wasseh Al-Dorassi, The Legal Regime of the Arbitration Agreement, Maison du Livre Universitaire Moderne, Alexandria, 1st ed., 2005, p. 26.

(3) Mohamed Hafez Ghanem, Droit international public, Dar Al-Nahda Al-Arabiya, 1972, pp. 730-731.

(4) In accordance with Articles 16, 19, 21, 25, 30, 31 and 42 of the Statute of the International Court of Justice.

The Court is composed of 15 judges elected by a majority of both the Council and the Assembly, and in the event of disagreement, a three-member joint committee is set up. Its functions are both contentious and advisory, and its jurisdiction remains optional⁽¹⁾.

The arbitration agreement is the very source of the arbitral tribunal's jurisdiction: it gives it the power to decide the dispute (the mission) and delimits the issues on which it can rule (the jurisdiction).⁽²⁾

Example: Taba Arbitration

By way of illustration, the Taba dispute between Egypt and Israel was resolved in the framework of an international arbitration provided for by the peace treaty of 26 March 1979. The award, handed down on 29 September 1988, ruled in favor of Egypt. It was distinguished by three major elements:

1. This was the first arbitration applied under the framework of a bilateral peace treaty.
2. It represented an episode of decolonization in the Arab region.
3. It provided a striking example of the peaceful settlement of a border dispute between sovereign states⁽³⁾.

Second Part: The Influence of National Courts in the Enforcement of International Arbitral Awards

It can be observed today that, in international relations, the legal debate relating to the enforcement of foreign arbitral awards revolves around the role of the national judge and the extent of his or her power of review. Two systems emerge: the revision system and the control system. The central question then remains the following: how can the effectiveness

Yearbook of the International Court of Justice, 1968-1969-1970, pp. 53-55.

Pierre-Michel Etsemann, *Le petit manuel de la jurisprudence de la Cour internationale de Justice*, work already cited, pp. 322-323.

(1) The advisory function of the Court is defined by the Charter of the United Nations and by the provisions of Chapter IV of the Statute of the International Court of Justice, in particular Articles 96, 65 and 36 (1), while Article 34 (paragraph 1) determines the contentious jurisdiction of the Court.

(2) Emmanuel Gaillard, *Arbitration Agreement – Effects – Common Law, Treaty Law, JurisClasseur Droit International Privé*, fasc. 586-5; or *JurisClasseur Procédure Civile*, fasc. 1062. Éric Loquin, *Arbitral Jurisdiction: General Introduction*, *JurisClasseur Procédure Civile*, fasc. 1030 / *JurisClasseur Commerce*, fasc. 214.

(3) Bastid (S.), *La fonction judiciaire dans les relations internationales*, Cours de droit, Paris, 1956-1967, p. 12.

G. Gurdeau, *L'épilogue de l'affaire de Taba*, *Annuaire Français de Droit International (AFDI)*, 1988, pp. 195-208.

of the arbitral award be reconciled with the principle of State sovereignty?

1. The system of revision (or re-examination)

This system is based on two essential elements:

- o The sovereignty of the state, which denies any foreign court the power to impose decisions on its territory⁽¹⁾.
- o The principle of territoriality of judgments, according to which a court decision has binding effect only in the state that issued it. Thus, the enforcement of a foreign arbitral award depends on the full review of the court judge, who can examine not only the form, but also the substance of the decision⁽²⁾.

2. The system of control (or limited supervision)

Since 1964, international practice has gradually moved towards this second model, in reaction to the criticisms levelled against the system of revision. This regime confers on the national court a limited power of verification: it can only order the enforcement of a foreign award after having satisfied itself that certain essential formal conditions have been complied with (jurisdiction of the arbitral tribunal, procedural regularity, respect for public policy, etc.), without re-examining the merits of the dispute. This system, based on the 1958 New York Convention, promotes greater legal certainty and a freer circulation of arbitral awards across States.

Third Part: The Appointment of Arbitrators, the Procedure for Bringing the Action and Its Conditions

With regard to the appointment of arbitrators, it should be emphasized that the arbitrator is not legally bound to accept the assignment offered to him⁽³⁾. His commitment becomes effective only after the conclusion of a separate contract between him and the parties, independent of the arbitration agreement itself.

As for the initiation of the action and its conditions, it is subject to the procedural rules in force in the State where enforcement is sought:

- The party with standing and interest in bringing proceedings submits an application for enforcement of a foreign arbitral award before the national courts of the State concerned.

(1) Ould Cheikh Cherifa, L'exécution des jugements étrangers, Dar Houma pour l'impression, l'édition et la distribution, Algiers, 2004, p. 64.

(2) Abdallah Ezzeddine, The Conflict of Laws in International Arbitration, Misr Al-Moasira Review (Contemporary Egypt), Cairo, No. 371, January 1978.

(3) Ghaleb Ali Al-Daoui, The Enforcement of Foreign Judgments: A Comparative Study, 1st ed., Dar Al-Thaqafa for Publication and Distribution, Amman, Jordan, 2011, p. 364.

- The judge hearing the case rules on the application for exequatur, thus conferring on the award enforceable on the national territory⁽¹⁾.

Chapter Five: The Legal Basis for the Settlement of International Disputes Relating to Territorial Sovereignty

When an international court — whether an arbitral tribunal or a court of justice — takes a position in a territorial dispute, it does so on the basis of contemporary legal principles applied to the facts of the case. These decisions may favor one state to the detriment of another, depending on the elements of law and evidence.

It is therefore important to examine a number of international cases to clearly identify the principles of law adopted, whether they fall within the scope of classical international law or modern international law.

Section One: International Arbitral Awards in the Settlement of International Disputes

Arbitration is one of the most important means of resolving regional and international disputes. Its efficiency is evident in the cases submitted to international arbitral tribunals since the advent of this settlement method, whose methodology has proven effective in the resolution of numerous disputes⁽²⁾. Territorial disputes account for the majority of these cases, some of which are of particular historical significance, and are presented below:

First Branch: Examples of International Arbitrations

1. The dispute between Honduras and Guatemala In this case, the arbitral tribunal ruled in favor of Guatemala, following the reasoning subsequently adopted by the International Court of Justice (ICJ): since Honduras had never protested against the continued exercise of Guatemala's sovereignty over the disputed territory, this lack of opposition was interpreted as a tacit recognition of Guatemalan sovereignty.
2. The Clipperton Island (*Islas Clipperton*) Affair: This case raised an essential question: the effective and uninterrupted continuity of the exercise of sovereignty. The tribunal considered this continuity a decisive condition for a State to legitimately claim possession of a particular territory.

(1) Achour Mabrouk, *The Procedural Regime of Arbitral Dispute*, Al-Jalaa Al-Jadida Library, 2015, p. 19.

(2) Fayçal Abdel Rahman Ali Taha, *International Law and Border Disputes*, Dar Al-Amin for Publication and Distribution, 2nd ed., 1999, p. 244.

3. The Franco-British dispute over the islands of *Minquiers* and *Écréhous* In this dispute, France lost sovereignty to the United Kingdom, which had carried out a more sustained activity on the islands, despite certain periods of interruption. The question of the length of time required to acquire sovereignty, however, remains controversial, as it is a matter of relative assessment **dependent** on the circumstances. This uncertainty remains a potential source of international tension, thus justifying the implementation of “*Preventive Diplomacy*”, which is intended to prevent the escalation of crises or, failing that, to contain their effects in their early stages⁽¹⁾.

Second Part: Organs of International Justice with Limited Jurisdiction

The international judicial system comprises several specialised bodies; whose jurisdiction is limited either to a select number of Member States or to certain particular types of disputes. They cannot, therefore, hear all cases between States.

In this context, an essential question arises: What are the origins and foundations of the interim measures adopted within the context of international litigation?

The historical evolution of conservatory proceedings shows that their importance has increased considerably. International tribunals and arbitral bodies now recognize their crucial role in the protection of the rights and legal positions of the parties to a dispute. These measures constitute an essential regulatory instrument at both the national and international level, aimed at dealing with various emergency situations.

Recent international case law has **significantly** developed the use of these measures, emphasizing their function:

- To prevent any escalation of the dispute,
- To avoid actions that could **jeopardize** the implementation of the final decision⁽²⁾.

Third part: The legal basis of the Court’s power to order interim measures

The question of what conditions must be met for an international court to be able to adopt

(1) Charles Rousseau, Les rapports conflictuels, Droit International Privé, t. V, Sirey, 1981, p. 332; De La Pradelle and Politis, «L’excès de pouvoir de l’arbitre», Revue de Droit International, 1928, pp. 5 and 55.

(2) Case concerning Certain Activities carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua), Judgment, Merits, 16 December 2015, Separate Opinion of Judge Cançado Trindade, paras 8–9, pp. 761–762.

interim measures remains at the heart of the doctrinal and jurisprudential debates⁽¹⁾.

A recent illustrative example is the case brought by South Africa against Israel before the International Court of Justice, in which the Court ordered Israel to take provisional measures to prevent any act of genocide and to guarantee humanitarian access to the people of Gaza. However, the Court refrained from ordering the suspension of military operations, which surprised many observers.

This decision is in line with the Court's previous jurisprudence, in particular the case of *Gambia v. Myanmar*, where similar measures had been imposed under the Genocide Convention⁽²⁾.

The Court found that the conditions for such measures were met, **specifically**:

- The urgency of the situation,
- The plausibility of the rights invoked in relation to alleged violations of international humanitarian law.

It also stated that its orders do not prejudice the merits of the case or its final jurisdiction⁽³⁾.

Under **Article 41**, paragraphs 1 and 2, of its Statute, as well as **Articles 73 to 76 of its Rules of Court**, the International Court of Justice may adopt binding provisional measures. These must be respected by the parties, although they do not have the force of *res judicata* and may be modified or lifted according to the evolution of the dispute, as they do not constitute the final settlement of the dispute⁽⁴⁾.

Chapter Six: The Effectiveness of International Arbitration in the Settlement of Frontier Disputes

The essence of the current world order is defined by borders, as they are fundamental to stability, regional and international cooperation, and the recognition of state sovereignty. Border disputes, often inherited from the colonial era or fuelled by greed for natural

(1) Jake Whylatt, *Provisional Measures and the Authority of the International Court of Justice: Sovereignty vs. Efficiency*, Leeds Journal of Law & Criminology, vol. 1, n° 1, 2013, pp. 49–50.

(2) On 11 November 2019, The Gambia filed a case against Myanmar at the International Court of Justice, accusing it of committing genocide against the Rohingya.

(3) Mark Lattimer, *The International Court of Justice's Interim Measures to Prevent Genocide in Gaza*, The Lawfare Institute, vendredi 26 janvier 2024.

(4) Haver, pp. 518–519. Id., p. 519 : « The equally French version of Art. 41 uses the expression *a le pouvoir d'indiquer* (has the power to indicate) instead of the verbs *indicate* and *suggest* in the English version. » Article 66(7) des Rules of the ICJ : il stipule que « the issuance of an interim order does not have the force of *res judicata*. »

resources, have necessitated the establishment of mechanisms for peaceful settlement.⁽¹⁾ Among these mechanisms, arbitration occupies an essential place, alongside mediation, good offices, conciliation (political modes) and international jurisdiction (judicial modes).

The complex legal nature of these disputes —often characterized by the absence or contestation of border agreements —necessitates a peaceful settlement. Such a resolution must **bolster the authority of international documents and instruments** to effectively prevent the recurrence of conflicts.

Section One: The Importance of International Borders and Their Characteristics

The spectacular development of communication, **transportation**, and warfare **technologies** has led to the appearance of modern weapons capable of **overcoming** all natural barriers between states. These advances have also enabled the exploration and exploitation of natural resources located in shared border areas, effectively transforming the former natural boundaries into legally defined linear **borders**.⁽²⁾

1. Distinction of international boundaries

International borders are distinguished from other demarcation lines by specific characteristics:

- Armistice line: it marks a more stable stage than a simple ceasefire, since it sets explicit commitments in time and space, accompanied by precise conditions. An emblematic example is that of the armistice line between Lebanon and occupied Palestine, resulting from the war of 1948. La Security Council Resolution 425 demanded Israel 's withdrawal to the internationally recognized borders, and Lebanese diplomatic efforts, including those of President Nabih Berri, were successful, after thirteen years of negotiations, the final delimitation of the maritime and land borders of southern Lebanon, ratified on September 22, 2020.
- Ceasefire line: unlike the armistice, it does not include political commitments or military clauses, which can be decided unilaterally or by bilateral agreement, and is limited to

(1) Ezzedine Fouda, The General Theory of Borders: Civilizational Vision with Special Reference to the Borders of Dar al-Islam, in Les Frontières Internationales de l'Égypte, Centre de Recherches et d'Études Politiques, Faculty of Economics and Political Science, Cairo University, 1993, p. 6.

(2) R. Yakemtchuk, Les frontières africaines, Revue Générale de Droit International Public, 1970, pp. 35 et seq.

temporarily suspending hostilities within a defined perimeter⁽¹⁾.

- Separation lines: they are temporary in nature, resulting from a compromise or a provisional settlement, unlike legally recognized permanent borders⁽²⁾.
- Buffer zone: This is a neutral strip of land between two sovereign territories, often intended to prevent direct confrontations.

Section Two: Causes and Types of Border Disputes

An international dispute is defined as a disagreement on a point of fact or law. Border disputes may concern the delimitation, ~~delimitation~~, mapping, or even the contestation of the legal validity of an established boundary⁽³⁾.

The main types of border disputes are:

1. Disputes over natural resources, including rivers, groundwater and minerals.
2. Disputes over the location of the border.
3. Disputes over the function of the border, as in the case of the Italian-French border in the Alpes Maritimes (1947).
4. Disputes concerning a specific portion of territory, often raised by a single State in the name of the right of ownership or sovereignty⁽⁴⁾.

Section Three: The Legal Dimension of the Handling of Disputes According to the Case Law of the International Court of Justice

Precedents in the case law show that the recognition or admission of a State constitutes

(1) On July 8, 1969, Moshe Dayan published an article in the journal *Haolam Hazeh*, in which he claimed that his ancestors had obtained the borders recognized by the 1947 partition plan, that his generation had reached those of 1949, and that the generation of the Six Day War had conquered the Sinai, the Jordan and the Golan. He added that this would not be the end: after the current ceasefire lines, there would be new lines stretching "from the Jordan River to Lebanon, and even to central Syria." These words were reported by the Lebanese Foreign Minister in his speech to the United Nations General Assembly on September 23, 1969, and published in the newspaper *An-Nahar* the next day.

(2) Abdel Nasser Abou Zayd, *International Border Disputes: An Applied Study*, Dar Al-Nahda Al-Arabiya, Cairo, 2006, p. 13.

(3) Moo, *The International Arbitrations*, vol. 1945, p. 11 ; *British and Foreign State Papers*, vol. 95, p. 162 ; *Africa Research Bulletin*, vol. 4, n° 7, 15 août 1967, p. 817 ; 38 *International Law Reports*, pp. 85-86 ; Brownlie, *African Boundaries*, p. 830.

(4) Nouman Ahmad Al-Khatib, *The Mediator in Political Systems and Constitutional Law*, 1st ed., Dar Al-Thaqafa, Amman, Jordan, 2006, p. 22.

a binding legal act. This principle is firmly established in the jurisprudence of the International Court of Justice (ICJ).

In Lebanon, for example, Israeli positions after the June 1967 war were aimed at cancelling the armistice agreement for southern Lebanon, under unfounded pretexts. Israel has repeatedly violated the armistice lines set by the Arab-Israeli agreements, as evidenced by the United Nations archives⁽¹⁾.

The ICJ has confirmed in the cases concerning nuclear tests (Australia and New Zealand v. France) that unilateral declarations by a State engage its international responsibility, when they manifest a clear legal intention. By analogy, this jurisprudence requires Israel to withdraw from all occupied Lebanese areas, regardless of its status vis-à-vis the United Nations.

I. The adoption of documents as the basis for the delimitation of borders

The determination of a boundary precedes its material demarcation. It consists of legally describing the delineation of the boundary line in a constitutive instrument, generally:

- a boundary treaty or protocol annexed to an agreement,
- mutual consent between states,
- an international arbitral or judicial award,
- a report of a joint boundary commission ,
- or an administrative act emanating from a colonial authority, hence the expression “inherited borders” (borders inherited from colonialism).⁽²⁾

II. The specificity and enforceability of border arbitral awards

An award issued by an arbitral tribunal, which is not a State judicial body, requires subsequent **judicial** review to ensure its validity and enforcement. This exequatur phase confers binding force and the authority of res judicata upon the decision. This review is an essential condition for granting the award enforceability and ensuring its effective

(1) Issam Khalifé, Water and Borders: The Arab-Israeli Armistice Agreements (February – July 1949), Basic Documents Series, No. 3, Institute of Palestinian Studies, Beirut, 1968, p. 142; see also Le Monde, 16 August 1967, and the newspaper An-Nahar (Lebanon), 5 February 1970.

(2) A. O. Cukwurah, The Settlement of Boundary Disputes in International Law, Manchester University Press, 1967, p. 78.

application⁽¹⁾.

In Lebanon, the issue of southern and maritime borders remains one of the most complex issues. Since 2009, the country has faced multiple maritime delimitation disputes, particularly due to the discovery of oil and gas deposits in the eastern Mediterranean basin. These disputes, concerning the exploitation of shared maritime areas, perfectly illustrate the new energy and geopolitical issues related to territorial sovereignty, where the international law of the sea and international arbitration are now the preferred tools for peaceful settlement⁽²⁾.

Chapter Seven: Towards a Constitutional Charter for the Question of Lebanon's Southern Borders

A fundamental question arises: to what extent is the question of Lebanon's southern borders linked, legally, politically and historically, to the principle of the succession of states in the field of treaties? And is it not true that the successive manipulations of the Franco-British border agreements and their reinterpretation constitute a form of legal artifice aimed at legitimizing, under the guise of the "armistice agreements" of 1949, a disguised mutual recognition between parties still in a state of conflict?

This chapter therefore proposes to briefly re-examine the legal aspects of this issue in the light of the following steps.

Section One: The Shebaa Farms Affair and the Artifices of Legal Fraud

Between the proclamation of Greater Lebanon (September 1, 1920) and the Israeli withdrawal in 2000, Lebanon lost about 172 km² of territory. During the delimitation of the so-called "Blue Line", materializing the Israeli withdrawal, the Lebanese delegation succeeded in recovering a strip of 16 km², illegally annexed by Israel since 1949, in violation of the Paulet-Newcombe agreement (which defined the villages of Meiss El

(1) Wali Fathi Wali, *The Law of Arbitration in Theory and Practice*, Manshat Al-Maaref, Alexandria, Egypt, 2007, p. 545.

(2) A United Nations source confirmed that the issue of the land borders between Lebanon and Israel must first be resolved before moving on to the issue of maritime borders.

S. Aalabi, *Energy – Like Oil and Water*, Executive Magazine (online), accessed July 25, 2025, www.executive-magazine.com/getarticle.php?article=12033. In addition, Timur Goksel, spokesman for UNIFIL (UNIFIL), said that "as long as the Blue Line is not fully finalized, it is unlikely that the United Nations will intervene in the maritime delimitation." See also:

N. Blanford, *Oil and Gas Discoveries Produce Potential Israel-Lebanon Flash Points*, The Christian Science Monitor (online), 1 November 2010;

A. Barkat, *Iran to Begin Lebanese Offshore Oil Exploration*, Globes (online), November 2, 2010.

Jabal, El Manara, El Aadeisseh and Hounine). These discrepancies in measurements and plots have led to significant differences as to the exact size of the Sheba'a farms, making it essential to have a precise scientific and operational determination; prior to any legitimate claim at the national and international levels⁽¹⁾.

The general principles of law, applied in international arbitral jurisprudence, prohibit the contradiction of a state with a position it has previously adopted. However, Israel interpreted resolution 242 (1967) extensively and unilaterally, exploiting the linguistic differences between the French and English versions to justify its territorial ambitions⁽²⁾.

From a legal point of view, the will of the parties remains the only valid basis for the delimitation of borders. However, many of the old border agreements are automatically null and void, because they were concluded in the name of a Palestinian entity that did not exist at the time, and not with sovereign Lebanon. However, Lebanon still retains the right to demand the return of the Shebaa farms and other occupied territories, on the basis of Security Council resolutions 425 (1978) and 1701 (2006), which require Israel to fully withdraw from the occupied Lebanese territories to the internationally recognized borders⁽³⁾.

Second section: The villages of the “Seven” and the logic of colonial partitions

There is no doubt, not even to a small extent, that the birth of the Lebanese state acquired international legitimacy only with the promulgation of the French mandate in 1922, or, at the very least, with the signing of the Treaty of Lausanne on July 23, 1923. Logically, it should therefore be considered that all the inhabitants of the seven villages are of Lebanese origin, as evidenced by their proven residence on Lebanese territory on 30 August 1924. They held civil status certificates issued by the State of Greater Lebanon, attesting to their administrative membership in the governorate of South Lebanon⁽⁴⁾.

(1) Al-Hayat newspaper, 16 May 2000 and 19 March 2006; An-Nahar newspaper, 9 June 2000, 26 April 2001, 7 March 2003 and 14 March 2006;

Mustafa Murad Al-Dabbagh, Biladuna Filastin (Our Country, Palestine), vol. 6, Part 2, 1st ed., Dar Al-Tali'a, Beirut, 1974, pp. 142-161, 219-237 and 337-438.

(2) It should be noted, in this context, that resolution 242 (1967) did not specify to which borders it referred — those before or after the June 1967 war — which forces a choice between the recognition of the mandatory borders, those of the 1949 armistice or the blue line of 2000.

(3) Le Sud-Liban 1948-1986: faits et figures, Ministry of Information, Beirut, 1986, p. 23; Lassémaani, La frontière galiléenne et ses conséquences géographiques, économiques et politiques sur le Sud-Liban, Haliyat (Annales), n° 36, autumn 1984, p. 24.

(4) It should be recalled that the term “villages of the seven” refers to the localities in southern Lebanon detached from Lebanese territory as a result of military agreements conclud-

Putting the facts in context:

- the Paulet–Newcombe Agreement of 3 February 1922 and the Franco-British Convention on Mandates in the Near East (23 December 1920) preceded the promulgation of the French Mandate over Lebanon (24 July 1922, which came into force on 29 September 1923).
- However, the good neighbourly agreement of 2 February 1926, which Tel Aviv contested in 1953, was already part of this fragile legal context.

Thus, France has failed to comply with its international obligations, both with regard to Article 4 of the mandate and with regard to Article 2 of the Lebanese Constitution, which enshrines the integrity of the national territory⁽¹⁾.

Section Three: The Historic Milestones of Lebanon's Border Agreements

According to Shabtai Rosenne, legal adviser to the Israeli Foreign Ministry, it was appropriate for Israel to renegotiate new border agreements, clarifying the fate of the old ones. After the Lebanese-Israeli armistice agreement (23 March 1949), the 38 border points were re-established and supplemented by 105 additional points, for a total of 143 landmarks. In 2000, after the Israeli withdrawal, a new technical delimitation was carried out in accordance with Security Council resolutions 425 and 426 (19 March 1978), establishing the Blue Line. However, this is not a legal border, but a line of withdrawal: Israel continues to occupy thirteen separate positions, thus violating the obligations arising from the armistice agreement⁽²⁾.

Most of the previous boundaries had been carried out in a theoretical manner, on the basis of discussions in joint commissions, without precise topographical surveys. This cartographic deficiency explains the persistence of ambiguities and the vulnerability of

ed between the French and British mandatory authorities, and attached to Palestine. These villages are: Aibel al-Qamh, Tirbikha / Tarbikha, Sahla / Salha, Quds, al-Malkiya, Nabi Yusha', and Hunin. Lebanese Official Gazette, Special Supplement No. 2, No. 26 of 30 June 1994, p. 1280; Communiqué of the Lebanese Prime Minister's Office regarding the demand for the restitution of the "seven villages" as a Lebanese national demand, An-Nahar newspaper, December 23, 1999.

(1) It should be noted that the mandatory power carried out a demographic reshuffle that amputated Lebanese territory at the time of the demarcation of its border with Palestine.

F. C. Hof, op. cit., pp. 3-16 ;

Issam Khalifé, *The Southern Borders of Lebanon between the Positions of the Community Elites and the International Conflict (1908-1936)*, D.N., D.M., 1985, p. 28 et seq.;

B. Ménassa, *Dictionary of the Lebanese Constitution*, Editions Dar An-Nahar, Beirut, 2010, pp. 61-62.

(2) Article 5 of the Armistice Agreement is of paramount importance in that it enshrines international borders and curbs Israeli ambitions.

S. Rosenne, *Israel and the International Treaties...*, op. cit., pp. 1141-1161.

current borders⁽¹⁾.

As a result, institutional weakness and lack of government oversight in the management of the border issue have favored Israeli expansion. Thus, as early as 1948, the Israeli Karmeli Brigade crossed the border and occupied 17 Lebanese villages west of the Manara road, reaching the Doubba Valley (near Houla) and the Litani River in the north, before seizing the Shebaa farms, as documented in an official report by the Lebanese Ministry of Information (1982).

From a legal point of view, no agreement concluded under occupation can be considered valid for lack of freedom of consent. The Israeli notion of “secure and recognized borders” thus remains a fraudulent construct, concealing a constant expansionist objective⁽²⁾.

Lebanon, for its part, must activate its internal legal levers:

- apply the Penal Code against politicians who have made statements or decisions that infringe on territorial sovereignty;
- allow the citizens concerned (owners of land in Shebaa, Kfarchouba, Aabbassieh, En-Nakhileh, etc.) to file appeals before the Lebanese courts to restore their property rights;
- and require the State to provide the land titles and cadastral documents necessary to demonstrate Lebanese ownership of the disputed areas⁽³⁾.

Fourth section: The UN resolutions of 1978 and their extensions

Lebanon went through a fifteen-year civil war, from 1975 to 1990, punctuated by several Israeli invasions and aggressions at different times. During this conflict, the United Nations Security Council adopted more than seventy-six resolutions calling for Israel's withdrawal from Lebanese territory, the cessation of violence, the protection of civilians, and the restoration of state authority while respecting national sovereignty.

The Zionist movement, for its part, has not ceased to resort to pressure and means of political blackmail, in order to satisfy its territorial ambitions. In the face of the gradual loss of Lebanese territory, some historical delimitation errors have been confirmed on the

(1) Imad Marmal, “Transcript of the Discussions of the Military Delegation in New York: Thus It Responded to Complaints About the Missiles, the Presence of Hezbollah and the Restrictions on UNIFIL,” *As-Safir* Newspaper, June 30, 2010.

(2) Issam Khalifé, *Lebanon: Water and Borders (1916-1975)*, D.N., Beirut, 1996, p. 178; F. C. Hof, *op. cit.*, p. 25.

(3) Articles 302 and 277 of the Lebanese Penal Code provide for the punishment of any person attempting to detach part of its territory from the sovereignty of the Lebanese State, through temporary detention or expulsion.

ground, consolidating faits accomplis that are contrary to international law. For example, the village of Salha, whose border originally formed a triangle towards Palestine, has seen its route changed towards the interior of Lebanese territory. Similarly, a similar border alteration occurred between the village of Metulla and the Wazzani River, revealing Israel's strategy of successive adjustments to redefine the southern border to its advantage⁽¹⁾.

Furthermore, the United Nations General Assembly has consistently condemned Israeli acts of aggression, which illustrate a systematic and persistent violation of the principles of the Charter of the United Nations and a flagrant failure to comply with the obligations arising from resolution 273 of 11 May 1949, which made Israel's admission to the United Nations conditional on its commitment to respect international decisions. However, a study published in 2002 showed that Israel is at the top of the list of States refusing to implement Security Council resolutions⁽²⁾.

The importance of these international resolutions is clear from the continuity of their orientation: from resolutions 425 and 426 of 1978 to resolution 520 of 1982, they reaffirm the Security Council's commitment to protecting the independence, sovereignty and territorial unity of Lebanon. In addition, Resolution 1757 joins Resolution 1701 in the same binding legal reinforcement imposed on the Lebanese government, in accordance with Chapter VII of the Charter of the United Nations, in order to establish its exclusive authority over the entire national territory and to preserve the credibility of the Lebanese judicial system. Thus, Lebanon participates fully in the implementation of international criminal justice, within a legal framework that guarantees both its sovereignty and its territorial integrity⁽³⁾.

(1) Shamir, Study: Israel Leads in Ignoring Security Council Resolutions, Haaretz (en ligne), 10 octobre 2002.

(2) Terje Roed-Larsen, statement at the press conference of the United Nations Secretary-General, 16 June 2000 :

“But it is not up to the United Nations to demarcate borders.” (Communiqué de presse n° UNIS/SG/2594, date de publication : 19 juin 2000, Transcript of Press Conference of Secretary-General Kofi Annan at Headquarters, 16 June).

(3) The Council of the League of Nations, at its 86th session in 1934, approved the 1923 Boundary Demarcation Agreement.

F. C. Hof, op. cit., p. 14 ; League of Nations, Treaty Series, vol. 22, p. 364;

United Nations Resolutions on Palestine and the Arab-Israeli Conflict, vol. II, pp. 282-283; vol. III, pp. 350-351, 354 and 355.

Conclusion and Recommendations

Summary of results

We conclude this research by stating that our contribution remains an attempt to shed light on a subject of great legal and political significance. The settlement of international disputes today is based on the application of the rules of international law, derived from treaties, customs and general principles of law, within a defined institutional framework — whether it is the International Court of Justice or international arbitration.

However, the use of such mechanisms depended on the sovereign will of States, large or small, and on the confidence they placed in those bodies by applying the principles of public international law in good faith. The international arbitrator, a true private judge, renders a decision that has the value of a judicial judgment. In the event of voluntary non-performance, the injured party may apply to the national courts to obtain an exequatur, that is, an enforceable decision authorizing the forced execution of the arbitral award, subject to review of the validity of the arbitration clause and the regularity of the award.

Arbitration is thus distinguished from international judicial litigation:

- The parties to the arbitration have a large degree of autonomy to choose the applicable law and the composition of the tribunal.
- Whereas in a permanent international court, the parties have no choice but to accept the jurisdiction, procedure and predefined composition of the Court.

Border disputes are the most sensitive disputes, as they directly affect the sovereignty and security of neighboring states. Their peaceful settlement requires the existence of clear border agreements, otherwise the legal vacuum fuels the emergence and escalation of conflicts⁽¹⁾.

Recommendations and proposals

In a constructive spirit, and in order to defend a Lebanon that still lacks a forward-looking vision and rigorous scientific planning, we make the following recommendations:

1. Encourage states to use international arbitration as a privileged and civilized means of peaceful settlement of disputes.

(1) Ahmad Sadiq Al-Qushari, From Taba to Hanish, Al-Thawabit Magazine, No. 20, June 2000, Sana'a, p. 114.

2. To ensure the competence, integrity and neutrality of arbitrators, by establishing an international authority with effective executive power, responsible for ensuring the implementation of the decisions rendered by the International Court of Justice in border disputes.
3. Establish a Court of Arbitration specific to the Arab States, so that they can settle their disputes without depending exclusively on existing international mechanisms.
4. Establish and revise border treaties to clearly demarcate and demarcate borders, with a view to preventing future conflicts — especially in the face of the imbalance between Israeli military power and national resistance, guaranteeing Lebanon the full exploitation of its oil and gas resources⁽¹⁾.
5. To set up, under the aegis of the United Nations, a global geographical and documentary database, bringing together all official maps and border documents, in order to serve as a reference in the event of a territorial dispute. Note that Lebanese maps place Israel's northern boundary west of the Rosh Hanikra caves, while Israeli maps move it to the west of Metula⁽²⁾.
6. Strengthening Lebanon's diplomatic and legal position, based on the historical coherence of its borders: the proclamation of Greater Lebanon (1920) to the Paulet-Newcombe Agreement (1923), then to the armistice of 1949 and finally to the Blue Line of 2000, the Naqoura land border (point B1) has never been questioned.
7. Give regional organizations a greater role and institutional autonomy in the resolution of border disputes, in coordination with the United Nations.

Closing Remarks

Who will put an end to the tragedy of the conflict between Lebanon and Israel? How long will Lebanon's borders remain exposed to Zionist arrogance? Perhaps it is the armistice agreement that must regain its full legal value, as an acquired right recognized by international law, and because of the essential role it plays in Israel's obligation to fully implement United Nations resolutions and to cease all serious violations of Lebanon's sovereignty.

(1) D. Peskin, Lebanon: Israeli Gas Fields to Cause Conflict, Yedioth Ahronoth (en ligne).

(2) T. Goldstein, Landau: Israel Willing to Use Force to Protect Gas Finds, Yedioth Ahronoth (en ligne).