REVIEW OF INTERNATIONAL GEOGRAPHICAL EDUCATION

ISSN: 2146-0353 ● © RIGEO ● 11(2), SPRING, 2021

www.rigeo.org

Research Article

Mediation as an alternative means of resolving disputes

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Abstract

The subject of the article research is the Mediation as an alternative means of resolving disputes, the methodological basis of the article research is the controversial Approach to the problem under consideration using general and private methods of scientific Knowledge, formal legal, and logical, socio-psychological, system analysis. In the process of research the achievements of the sciences of civil, private international, Iraqi law, and civil procedure. And labor law This Study is divided into two parts: the first part presents the concept and types of mediation, and the second part Presents Development of mediation and the sources of its regulation in the Iraqi law.

Keywords

Resolving disputes

To cite this article: Al-Khafaji, F. A. H. (2021). Mediation as an alternative means of resolving disputes. *Review of International Geographical Education (RIGEO), 11*(2), 183-194. Retrieved from http://www.rigeo.org/vol10no2/Number2Spring/RIGEO-V11-N2-1.pdf. doi: 10.33403/rigeo.XXX

Submitted: 4.01.2021 ● **Revised:** 10.02.2021 ● **Accepted:** 20.03.2021

Introduction

As it's known the judiciary is considered a mean of settling disputes and there are other means for that. Represented in (reconciliation, mediation, and arbitration).which are considered old compared to the judiciary. Nowadays various modern legislations have adopted them including the Iraqi legislation for various reasons such as economic consideration.

In Iraq today for multiple reasons in addition to the challenges that the judicial system faces. Represented by a large number of cases filed. The courts may not be the best or first option for the parties to the conflict to resolve their commercial or civil disputes. Due to the complexity of the judicial procedure, the huge effort, and the high cost. Which in general are required to litigation under the current circumstances. Mediation remains an alternative method for resolving local and international disputes instead of resorting to the use of force or judiciary.

Given the transformations and tensions that overwhelms international relations at the present times. Disputes are settled through mediation in the presence of a third party settling the dispute between the two conflicting parties. Where this party can be a state, international organization, or a prominent figure. This party plays a positive role to alleviate the tension that exists between the conflicting parties.

It's an optional method .and its origin has a historical depth that extends back to thousands of years as if we look to ancient history we will find that mediation was known during the era of the Pharaohs, ancient Babylon, and Greece. It was also well-known at that time as mediation was often resorted to instead of resorting to the traditional judiciary and the evidence of that is what was mentioned by the history books (Abaryan, 2012). The inhabitants of some countries that maintain ancient customs still resort to mediation to resolve their conflicts. An example of that is the Arab world where some clans resort to mediation to resolve their conflicts instead of the use of force or judiciary. It can be said that mediation is the foundation of the alternative means system. It is the engine and the first way to find a consensual solution between the disputants and it is the most common way to resolve local and international disputes. As a mean of interaction to reach an agreement.it began to take a huge role in various types of conflicts. It also became the proper face or image of the modern effective judiciary and justice system.

Resorting to the judiciary has become a matter that costs the litigants exorbitant expenses. On the other hand, the judiciary is a heavy burden on the state (Abd Alsalam, 2012). And this is what prompted the legislator to consider adopting alternative means of settling disputes to alleviate this overcrowding on the judicial authority.

Mediation has played a major role in many disputes between individuals and states. As in recent times, the concept of political mediation began to appear as a method to avoid international and regional conflicts between individuals and countries. Due to that, it was necessary to shed light on mediation as a mean of resolving disputes.

The problem of this issue arises in that Iraqi law did not take mediation through the enactment of a special law or the existence of a special section regarding it in its legislation like all other Arab or foreign legislations.

Methodology used:

To answer the problem of the topic we will mainly use the method of analyzing the topic which is evident through the analysis of the legal texts related to mediation. In addition to the use of the descriptive method that focuses on the scientific facts and describes them as they are. To reach conclusions that will contribute in the understanding and developing of the concepts related to mediation while shedding light upon the mediation in the Iraqi law.

The purpose and objectives of the study:

The purpose of this research article is to conduct a comprehensive analysis of the legal status of Mediation in the Republic of Iraq and the Middle East. The purpose is achieved through the following objectives:

− To define the concept of Mediation in the Republic of Iraq and the Middle East.

− To characterize The Types of Mediation.

− To discuss some of the laws and decisions of the Mediation in the Republic of Iraq and the Middle East.

The concept and types of mediation

The concept of Mediation:

Mediation is a social phenomenon before it was a legal means of settling disputes. It was associated with societies in periods of ancient and modern history, and it played a very important role in organizing social relations for thousands of years (Al-Btanwny, 2012). It has been used as a means of handling social conflicts. In fact, most Iraqi legislations do not define the term "mediation". As a result, there is no unified definition for it, as those working on this issue differed in defining what is meant by it, each according to his/her point of view. Some jurists have defined (mediation) as (the endeavor of the conflicting parties through a third party called "The mediator" for the sake of Settling the dispute arising between them and reaching an agreement acceptable to the disputing parties, and this requires that (The mediator) submits proposals and recommendations that bring the views closer and are acceptable to the conflicting parties). And the other side of the jurists defines mediation as (a process by which a third party helps one or more persons to reach a solution stemming from them regarding one or more disputed issues) and based on that, mediators do not take decisions in confronting the parties to the dispute - as in Arbitration and The Judiciary - rather, they assist the concerned parties by building a process of communication and negotiation that allows them to analyze problems and find relevant or desired solutions.

The Iraqi judge, Fathi Al-Jawary, defined mediation as (it is an intervention in a dispute or a negotiation process accepted by the parties to the conflict, carried out by a third party to help them in a voluntary way to reach an acceptable agreement of their own(Clark, 2002).

Some researchers defined it as a "dispute settlement mechanism in which a third party helps the disputing parties to reach an agreeable settlement of their disputes arising out of or related to a contractual or other legal relationship. Whether it results from the agreement or not, and whatever the content of that agreement, if any, The parties themselves decide instead of accepting something suggested by a third party, "and this definition is closer to contractual mediation.

On the other hand, the United Nations has encouraged internal mediation to avoid means of force in conflicts. Internal mediation has been defined as (the process of supporting negotiations - as well as a variety of other forms of dialogue - to prevent, manage, and settle disputes at different levels of society.) What distinguishes internal mediation from other, more traditional 'Western' forms of mediation are that they involve credible and internally relevant personalities, groups, or institutions to the conflict, who can use their influence and credibility to play a role - often behind the scenes or through unspecified positions - to directly influence. It is noticed from the definition that The United Nations has shown great interest in this system because it plays a great role in reducing time and effort, bringing points of view, and maintaining existing relationships between individuals or companies in place.

As for Arab legislation and laws, definitions differed and varied, as the Kingdom of Bahrain defined mediation in Article 1 of Royal Decree No. 22 of 2019 (every process in which the parties ask another person called the mediator to help them in their quest to reach a settlement in a dispute between them about a legal contractual Or non-contractual relationship. without the mediator having the power to impose a solution to the dispute (Della Noce, 2001).

The Lebanese legislator has defined mediation in Law No. 82 of 2018 (it is an alternative means of resolving disputes in which the parties rely on a neutral third party (the mediator) whose role is to help and encourage them to communicate and negotiate to resolve the conflict that arose between them) whereas the Lebanese legislator devoted Chapter 1 (to definitions) Chapter Two (Scope of Application of this Law) and Chapter Five (Mediation Procedures). This law is considered a turning point for the mediation system in Lebanon, especially since there are a lot of deficiencies in the legislations related to alternative means of settling disputes in the Arab world (Dusuqaa, 2008).

As for Iraqi legislation, it has defined (commercial mediation) in the Second Paragraph of Article Three of Law No. 11 of 1983 as ("every act of mediation aimed at bringing together two parties willing to enter into a contract or register the conclusion of a contract between them") (Earish, 2011) and set many definitions for many terms related to mediation. Where a reference is also made in Article 3 of the same law to the definition of a mediator (a neutral or legal person who performs one of the acts of the mediation described in the Second Paragraph of this Article). It is worth noting that the Iraqi legislator Didn't seriously consider legislating a special law on means of conflict resolution (mediation, arbitration), as the importance of this type of legislation on investment and the Iraqi economy wasn't taken into consideration and what these means represented in terms of solving the problems of the Iraqi courts that Cases abound in them. While most of these cases can be resolved in another way, far from the court itself.

As for the French legislator, it was sufficed In Article 1532 of the French government's instructions on mediation, to define the mediator's task, which is to hear the parties, in order to help them find a solution to the dispute at hand.

As for the Bahraini legislator, He defined mediation as ("every process in which the parties ask another person called the mediator to assist them in their endeavor to settle a dispute between them regarding a contractual or non-contractual legal relationship, without the mediator having the authority to impose a solution to the dispute) (Ghazyul, 2020), It is worth noting that the Bahraini legislator distinguishes himself from the rest of the Arab legislators by setting clear concepts and a special law that regulates mediation at the local or international level, which facilitates the process of resorting to mediation.

Mediation Evolution:

It is recognized that mediation is a social phenomenon that has a long history with roots in many cultures, and has been known by various civilizations through successive historical eras [14]. When individuals chose to leave the jungle life and take revenge, and replace it with all the means that achieve peace, the need arose to settle their disputes through peaceful means. To preserve the social harmony of the group, and thus the application of unregulated mediation spread (Hawaam, 2013)

It is useful to note that mediation is not a new idea To the Arab community, as many Quranic verses called for it and applied it by the Islamic Arab tribes in the past and present, but the Arab countries did not concern it with a legal framework that regulates it except at a late stage, and some of its legislations have issued it only along the lines of Iraqi legislation.

On the other hand, the United States of America took the lead in developing legislation related to mediation, according to the Erdman Act of 1898. Who approved reliance on mediation to settle railway-related labor disputes.

It is not surprising. Given that this path is not new to American society. Community mediation was applied by the first immigrants to settle their social disputes peacefully.

It is useful to point out the great role that jurists have played to consecrate mediation, as its development in America has been linked to the calls of jurists to apply it as an alternative to the Litigation. So that the United States of America is considered the motherland of mediation, Many American jurists have contributed a great deal to this development, however, that does not negate the efforts of the American legislator and judiciary.

It is known that the rate and speed of mediation development in Britain are less than in the United States of America, and the reason for this is due to the disparity that exists between American society and British society, as the British individual often prefers to resort to court. This situation contributed to the delay of the British authorities 'interest in this alternative way until the nineties, and it was issued in The British legislation differently than it is in the United States of America (Khawla, 2012), so this is evidence that mediation in Britain occupies a lesser position than it did in America. It seems that the British legislator has been influenced by his American counterpart, and has adopted mediation in family and labor issues since the mid-seventies, and has established judicial mediation under the Civil Justice Reform Act of 1990, which contributed to its development at the judicial standard.

The difference between mediation and reconciliation:

Reconciliation can be reached between the parties to the Dispute without an intermediary. The Iraqi Civil law referred to it in Article (698) as the reconciliation contract (a contract that ends the Dispute and breaks it by mutual consent) (Main, 2005).

Through the definition and concept of mediation and reconciliation, it is clear that mediation differs from reconciliation by the following:

a. Mediation is a means of resolving the dispute through another party to reach reconciliation, while reconciliation may take place between the litigants themselves without a mediator.

b. Mediation is an optional agreement away from the judiciary. As for reconciliation, it is a contract that ends the dispute as stated in the Iraqi civil law.

c. Mediation and reconciliation are two means to achieve the goal of reconciliation.

Mediation Advantages:

1- Flexibility: Mediation is distinguished from the other concepts by the fact that it is not related to the courts and long complex formal procedures, but rather that it is an easy and flexible means aimed at reaching fair and satisfying results for the parties to the conflict, as they remain in their natural state of contentment and reassurance, unlike litigation that requires complex procedures and Adherence to it under the pain of resolving the dispute with the required speed. so we see that mediation procedures are practical procedures that keep pace with the times, i.e. the age of speed, especially in the commercial field, as mediation aims to follow any means that leads to reaching a satisfying solution to all parties to the conflict where the mediator has the right to meet with each of the parties to the conflict and transferring the position of each of them to the other, this is what we do not find during the litigation procedures. The parties to the dispute have the freedom to move their dispute to the judiciary or any other legal methods of resolving disputes in case that mediation fails to resolve the dispute (such as litigation, arbitration) (Mistelis, 2003).

2- Speed: One of the advantages of mediation is the speed in contrast to the classic dispute that is raised before the courts or judicial councils, as it is not subject to formal restrictions in this capacity, and responds to the needs of the parties following the law of reconciliation that assesses their interests, which makes them satisfied with the solutions

reached after negotiation. As the law did not specify a specific period for resolving disputes before the courts and leaving the matter to the courts, on the other hand, the Iraqi legislator specified mediation in the Labor Law of 1987 with a period of 3 days from the date of notification of the minister. As a result, mediation ensures that the parties use the time and obtain quick solutions. In some cases, the procedures may take between two to four hours, and it is rare for a long time to be needed. Through the mediator's skills, persuasive style, scientific ability, and experience in managing the mediation process he/she has.

3-Confidentiality: The principle in the judiciary is the publicity of the sessions that take place in the presence of the public, to deter society from deviation through the verdicts issued by them, in contrast to mediation which is distinguished by secrecy that brings together the conflicting parties to the side of the mediator to make the dispute in private secrecy, as some cases cannot be brought into a public session because of the leaks that will result from these open sessions and may harm the interests and reputation of the parties, The secrecy that distinguishes the mediation procedures encourages the parties to have freedom of dialogue, to make the statements and testimonies they have, and to make concessions in the negotiation stage with complete freedom, without this being authorized before the judiciary or any other party in case the mediation efforts failed. This matter would help the mediator to close the gap between the two parties to reach a settlement. Consequently, mediation, in general, is distinguished by a confidential, consensual nature that maintains the social relationship between individuals, in addition to the great role it plays in the framework of reducing the pressure on the courts (Nolan-Haley, 2009). Which is considered an advantage in many countries such as France, which considered it an important pillar of mediation (Nolan-Haley, 2004).

4- Maintaining friendly relations between the litigants (Pauliat, 2008): Judicial mediation depends on the parties 'consent to accept the settlement of the dispute in a consensual manner that is, providing an opportunity for the opponents to meet and present their views, eliminating the Disharmony between the parties and trying to find a solution that satisfies them both. The litigants aspire to reach a settlement that satisfies the parties to the dispute. The way to unite the divergent opinions to reach a solution that eliminates all disagreements. On the other hand, presenting the dispute before the judiciary would escalate the dispute between the two conflicting parties and widen the gap between them throughout the period that it takes before the courts. Therefore, mediation gives the opportunity to convert dead ends into proposals and solutions without having a winning party and a loser party, as everyone in mediation wins as long as the solution satisfies both parties, that means that the two parties to the dispute will maintain their previous relationship without any tensions between them, contrary to the settlement of the dispute before the court, which leaves a bad impression on the parties and is not accepted by the losing party of the case. which makes him practice various means to obstruct the implementation increasing the escalation of the conflict and the tension between him and his opponent in the future, as the judicial dispute ends in many cases with the issuance of a verdict that serves One party without the other, this leads to the tearing of relations and the emergence of enmity between the disputants in particular and society in general (Perkovich, 1996).

Mediation Types:

1- Agreement Mediation:

The definitions of this type of mediation varied, so the Moroccan Mediation Law defined it in Chapter Three of it / Article 55-327 (as the contract whereby the parties agree to appoint a mediator to be entrusted with registering the conclusion of conciliation to end a dispute that has arisen, or that may arise in the future) (Rasheed, 2012). Systemic justice is done according to the common will of the conflicting parties, who determine the power that they delegate to the mediator, and thus it can be said that this type of

mediation is purely voluntary.

This type of mediation is divided into two parts:

a) The Simple Agreement Mediation: Under it, the parties to the conflict agree to resort to mediation on their own initiative, whether upon concluding the contract or when a dispute arises between them (Rasnic, 2004).

b) MEDIATION/ARBITRATION [MED/ARB] AGREEMENT: It is based on the existence of a clause in the contract stating that in the case of a dispute it will be brought before the mediator, also in failure to settle it through mediation, the mediator turns into an arbitrator, and this type of mediation is in fact a mixture between mediation and arbitration to find a solution to The dispute far from the court, if not through the first method, then it will definitely be through the second one (Regulating of Commercial Mediation Law, 1983). Hence, the importance of this form of mediation becomes clear, as it puts the parties before a fait accompli, and pushes them to seriously strive to reach an amicable and consensual settlement to the dispute, as long as their failure to mediate will lead them towards arbitration; which leads to a critical solution that they adhere to regardless of their satisfaction.

2- Judicial Mediation:

It is ordered by the judge, who appoints a third person who appears to be playing the facilitating role of conflict resolution. Thus, the judge can order judicial mediation if it appears to him that this is possible or in the interest of the two parties, and judicial mediation is not a judicial authorization from the judge, because he does not authorize the mediator any authority, but rather the mediator remains under his control and the judge is the competent person to decide in case the mediation fails, so the judge plays here two rolls, The first role is a preventive role to maintain the integrity of the procedure, and the affirmative role to order the judicial administration procedures through, to reach a solution to the dispute with the help of the mediator (Shaw, 1997).

Jordan is one of the Arab countries that have legalized this type of mediation, where Article 2 of the Jordanian Mediation Law No. 37 of 2003 stipulated a definition of this type (the formation of the Mediation management by a number of First Instance and conciliation judges, called mediation judges by the head of the court of the first instance for the period that he determines. He chooses the necessary number of them for this management from the court personnel (Silbey & Sarat, 1988).

3- Private Mediation:

This type of mediation is provided by a group of private organizations or private mediators in exchange for certain fees for their services, many developed countries have used this type of mediation, such as the United States of America, Canada, and the United Kingdom.

4- International Mediation:

Mediation is international if all or most of its elements are in contact with more than one country or are distributed among several other countries, it is usually political or related to an international contract to move funds, goods, and services across state borders (Tarman, 2016). Whereas, in the second chapter/article 3 of the 2018 UNCITRAL Model Law, the following are the cases where mediation is international:

A) If the headquarters of business of the parties to the mediation agreement, at the time of its conclusion, were located in different countries.

B) If the headquarters of the parties business are located in different countries.

It has stipulated mediation as a means of resolving international disputes in many international conventions, including The Hague Convention of 1899 and 1907 on the

Peaceful Settlement of International Disputes, which introduced the concept of mediation and set the rules for its practice, considering it merely non-mandatory advice, whether it was done spontaneously or upon the request of one of the conflicting countries, it also stipulated that mediation in itself is considered a friendly act and the states have the right to re-offer their mediation despite its first refusal. Article 2 of the 1899 Convention created the principle of resorting to mediation and benefiting from it before resorting to arms, but it restricted this principle by the words as far as circumstances permit.

The Charter of the United Nations and regional organizations have also been approved, with the Charter of the League of the Arab States and the Charter of the former Organization of African Unity, which was mentioned in the text of Article 5 of the Charter of the League of Arab States. The Council mediates in the disputes that might lead to war between a state and the League countries, the mediation initiative Takes place early, to try to end the conflict and for the parties to the conflict to be fully prepared to accept the principle of negotiation. The mediator must be acceptable to the parties to the conflict and must be characterized by absolute neutrality and impartiality, as these factors must be available for the success of the mediation. Mediation ends upon reaching a solution acceptable to the parties to the conflict without forcing one of the parties to accept it, and also ends when the mediator believes that the mediation has not resulted in solving to end the dispute between the conflicting parties and that it is useless to continue his mission.

Based on the foregoing, it clarifies the international interest that mediation is exerting as an alternative means of resolving international disputes peacefully, as it is the alternative idea of coercion, force, and violence that arises between the conflicting countries, it is considered an alternative method even to the judiciary, which aims to resolve international disputes between persons of international law.

1.2 Development of mediation and the sources of its regulation in the Iraqi law:

Development of mediation:

The Iraqi legislator implicitly referred to mediation in a few laws and legislations and did not show much interest in this regard. Perhaps the reason for this is the legislator's attempt to limit the jurisdiction of adjudicating disputes to the Iraqi courts.

We will address these laws in this part of the research article:

1- Iraqi Labor Law of 2015 [43]:

As the Iraqi legislator indicated in Chapter Sixteen of the Labor Law of 2015 in Article 159 of this law on the Permissibility to intervene for the purpose of resolving disputes that represent a common interest of workers that arise between the employers or the project, with the scope of a profession or industry or more, Due to the application of individual contracts or conflicting views, as the Iraqi legislator permitted in this type of disputes (about future interests related to a proposal to change terms of use or adopt new terms of use) to use friendly methods through the intervention of experts to settle this dispute through a convergence of viewpoints, and the law stipulates in Article 159 / Second that the mediator must have experience in the subject of the dispute and that he has no interest in it or has previously participated in any way in discussing the dispute or trying to settle it (Walker & Hayes, 2006).

In Article 158, the Iraqi legislator indicated that the parties to the dispute must notify (inform) the directorate with a written notification of the existence of the dispute, and they must provide copies of this notice to the rest of the parties to the conflict. It is required that this notice or notification includes the following:

a) Names and addresses of the parties to the dispute.

b) The subject of the dispute and the facts and circumstances that led to it.

c) The measures taken to resolve this dispute if any.

On the other hand, the Iraqi legislator, in Article 159/3, gave the mediator all the authority necessary to review aspects of the dispute and the parties' documents related to the subject, aspects of the dispute and its causes, and to request data and information related to the subject of the dispute from the two parties.

In case the mediator fails to Convergence the views between the conflicting parties, the Iraqi law stipulates in Article 159/5 that the mediator must present to the disputing parties written recommendations he proposes to resolve the dispute. In case a part of the mediator's recommendations is agreed upon and not all of the recommendations, the conflicting parties must confirm that, with reference to the recommendations agreed upon by the parties, and this is what was stated in Article 159 / 8.

In case the mediation did not lead to a solution acceptable to both parties in whole or in part, the mediator must submit a report on this to the directorate that includes a summary of the dispute, the proposed recommendations, and the position of the parties regarding them within a period of (14) fourteen days from the date of the first session.

The legislator explicitly indicated that the role of the mediator is only to Convergence the views and present solutions, and this description does not correspond to (arbitration). On the other hand, the Iraqi legislator specified in Article 159 /4 of the labor law that The mediator has a certain period of (5 days) from the date of notifying the concerned department to settle the dispute amicably, and in case the dispute could not be resolved during the above period, the law requires the mediator to inform the concerned department.

The Iraqi legislator went even further, allowing in Article 159/10 of the Labor Law of 2015 to permit resorting to voluntary arbitration in case the mediation fails to settle the dispute.

2- The procuration and Commercial Mediation Regulation's Law of 1983 [44]:

In this law, the Iraqi legislator regulated commercial mediation, as it was defined in Article 3 of it as (every act of mediation aimed at bringing together two parties willing to enter into a contract or register the conclusion of a contract between them).

The Iraqi legislator stipulated in Article 4 of the same law the most important conditions that must be met in the commercial mediator:

a) A holder of the Iraqi nationality and residing in Iraq if it is a company, all of its shares or stakes must be owned by Iraqis and registered in Iraq.

b) He has legal capacity and has completed twenty-five years of age.

c) Known for his integrity and good behavior.

d) Registered in one of the chambers of commerce in Iraq.

e) Full-time as a commercial mediator.

It is worth noting that most of the Iraqi legislations are old and do not correspond to the type of conflicts that we are witnessing nowadays, in addition to that this law was canceled in 1994 and has not been implemented to the present day.

3- The Iraqi Stock Market Law of 1991 [45]:

The Iraqi legislator also referred to the mediator in this law, as he defined mediation in Article 1 thereof (every neutral or legal person authorized by the Council (the Market Board of Directors) to practice mediation in the sale and purchase of Stocks), It stipulated the same conditions as the law regulating commercial mediation in Article 12 thereof. On the other hand, the mediator has been restricted by several instructions in Article 19,

namely:

a) Not to divulge the secrets or names of the dealers unless he is legally obligated to do so.

b) Integrity and adherence to the regulations and instructions of work in the market and observance of commercial laws, and to pursue the interest of those dealing with him, protect their rights, and inform them of all the data that he knows in the deal and its special circumstances.

c) Refraining from any act that would arrange, create or contribute to fake transactions that do not lead to a real transfer of the stocks subject to the transaction. The mediator is permitted to charge his fees in percentages or amounts determined in the internal system, and it is worth noting that this law is no longer in use since 2004.

4-- Regional and international agreements:

Iraq has been associated with a number of regional agreements concluded within the framework of the League of the Arab States and some international agreements related to the promotion and protection of investment in general and others related to resolving disputes related to Arab investments in particular. These agreements require commitment from its parties to resort to mediation to solve the investment dispute.

Among these agreements are the following:

a) The Investment Promotion and Protection Agreement between the Government of the Republic of Iraq and the Government of the Hashemite Kingdom of Jordan (2015): mediation was explicitly stipulated as a means of settling disputes in this agreement in Article 9 thereof and Article 10 as well, as it permitted resorting to mediation in the event of a dispute between an investor and a contracting party or between the two contracting parties. it also set a specific period of (180) days from the date of the request submitted for settlement through mediation, and in the event of failure to reach a solution that satisfies the disputing parties, one of the parties may resort to the national courts in which the investment was made, or resort to arbitration, but provided that the aforementioned period has elapsed (180), on the one hand, the stipulation of mediation in the agreement is considered important because of its important role in maintaining friendly relations between the conflicting parties. It can also be said that mediation is one of the guarantees for investment, especially for foreign investors.

b) The Agreement of the promotion and Reciprocal Protection of Investments between the Government of the Republic of Iraq and the Government of the Islamic Republic of Iran (2017): Article 12 of this agreement gave the right to the investor and the contracting party or the contracting parties to resort to mediation in the event of any dispute and stipulated in the interpretation of the article that the contracting parties must resort to mediation Before resorting to court or arbitration, the purpose of that is to try to maintain relations between investors and contractors in the two countries, and he also referred to a period of 6 months to resolve this dispute through mediation, and in the event that mediation fails to Consolidate the views during this period, the contracting parties and the investor are entitled to resort to arbitration Or the judiciary.

c) UNESCO Convention of the Protection of Cultural Heritage (2019): Article 25/2 stipulates that in the event of failure of negotiations, the dispute can be resorted to the UNESCO for mediation, and it is worth noting that the Iraqi legislator (the Iraqi parliament) in all regional and international agreements is trying to open up to the world and take the Peaceful roads such as mediation [48].

Conclusions and recommendations

1- The Iraqi legislator has not enacted a special law to regulate the mediation, he was limited to the implicit texts in some laws and legislations. Based on that, we propose to the Iraqi legislator to enact a law for the alternative means of settling disputes (mediation, arbitration, conciliation ...), or adopt the law of another country. The reason for that is because of the great effect of mediation in reducing the pressure on the Iraqi courts and the guarantees it represents for local and foreign investors.

2- He did not define a fixed or clear concept of mediation and left it open to debate for researchers and those interested in this topic. We suggest that the Iraqi legislator add this definition to the Iraqi civil law ("every process in which the parties ask another person called the mediator to assist them in their endeavor to reach a settlement in a dispute between them regarding a contractual or non-contractual legal relationship, without the mediator having the authority to impose a solution to the dispute").

3- We suggest that the Iraqi legislator should add the mediation and the types of mediation to the Iraqi investment law because of the encouragement it represents to foreign investors, it also increases the confidence of these investors in the Iraqi legislation, because of the flexibility and confidentiality of mediation, and to add the definition of the mediation agreement (that it is the contract in which the parties agree to appoint a mediator and assign him to register the conciliation conclusion to end a dispute that has arisen, or that may arise in the future.)

4- Activating the eighth section of the agreement of the strategic framework for the relationship of friendship and cooperation between the Republic of Iraq and the United States of America, and benefiting from the American experiences in legislating a special law on the alternative means of settling disputes represented in mediation and arbitration.

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