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Arbitration in Air Cargo Transport Contracts: Between International Conventions and National Legislation

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Abstract - **This study aimed considering the growing trends in the air cargo transport sector—to provide a concise summary of international arbitration's development as a workable substitute for resolving disputes arising from air cargo transport contracts. It also highlighted the innovative provisions introduced by international conventions regulating air arbitration, which differ from traditional arbitration rules. Based on this analysis, the study reached several conclusions and recommendations. The key findings indicated that arbitration in air transport disputes is inherently judicial arbitration, as it relies on strict legal rules under the Montreal Convention. Consequently, the relevant international conventions (Montreal and Warsaw) imply that arbitration in this field is limited to judicial arbitration, excluding amicable arbitration (conciliation), reflecting a clear trend toward restricting parties' autonomy in arbitration agreements within air transport. The primary recommendation was the necessity to amend Jordanian legislation governing air cargo transport contracts and the Jordanian Arbitration Law by introducing specialized provisions for air cargo disputes and their arbitration mechanisms, as these are now essential for protecting affected parties.**

Keywords: **Air Arbitration, Air Cargo Transport Contract, Montreal Convention ؛International Arbitration Agreements؛ Civil Aviation Law**

I. INTRODUCTION

Much of air travel is regulated under the Convention on International Civil Aviation, which is otherwise known as the "Chicago Convention" (Baggyalakshmi, 2025). One structure of the financial and technological management of world aviation was developed within the Chicago Convention. It also created the International Civil Aviation Organization (ICAO), a specialized United Nations agency responsible for overseeing the Convention. ICAO collaborates with Chicago Convention Participating nations and to establish agreement on Standards and Recommended Practices (SARPs), industry stakeholders for international civil aviation, thereby supporting the civil aviation industry (Abdel Radi Hegazy, 2023).

The Association for International Air Transport (IATA) serves as the global airline trade association (Raeisi, 2017). It helps shape industry policies on important aviation issues and supports a range of aviation activities (Xiang, 2017). But these bodies are typically not taken into account when resolving accounting problems Aviation disputes arise at different levels, including:

- Disputes between states,
- Disputes between airlines, and
- Disputes between airlines and consumers.

Resolving aviation disputes requires specialized expertise in technology, science, and aviation law (Ibrahim Mohamed Al-Anani, 2016). Researchers have observed a trend toward selecting Since 1962, bilateral agreements have included arbitration. For example, the U.S.-EU Agreement on Open Skies stipulates arbitration as the exclusive mechanism for dispute resolution (Saleem Sameer Al-Khasawneh & Abdelsalam Ali Al-Fadl, 2019).

The inherently international nature of air transport has increased exposure to risks, despite significant modern advancements in science and technology (Murali 2020). Aircraft operating in passenger, baggage, or cargo transport face numerous hazards (Nahaa Al-Sayed Mohamed Al-Shanqiti, 2024). Due to these risks and the commercial exploitation of aircraft, the international community has relied on international conventions to regulate civil aviation relations since the initial stages of cross-border Key international aviation conventions include:

Public Law Treaties

- Convention of Paris (1919),
- The 1928 Havana Convention,
- The 1944 Chicago Convention.

Private Law Treaties

- Convention of Warsaw (1929),
- Montreal Convention (1999).

This study examines dispute resolution mechanisms for air cargo transport contracts under the Montreal Convention 1999 and relevant national legislation.

Significance of The Research

This Research study holds significant importance as it sheds light on the subject of arbitration in air cargo transport contracts between international conventions and national legislations (Attia, & Adnan, 2021). This will enhance understanding of air commerce and the mechanisms for resolving disputes arising in this field (Abdel Radi Hegazy, 2023).

1.1 Problem Statement

The issue of air arbitration has long been a contentious topic among legal scholars and judicial opinions at the international level. One perspective argues that international conventions regulating the air transport sector have stripped arbitration of its essential advantages by imposing restrictive rules. Conversely, other viewpoints emphasize the necessity of arbitration as a successful conflict resolution method related to air cargo transport contracts, given their inherently international nature, as well as the commercial and adhesion-based characteristics of such contracts.

Thus, the core issue can be framed by posing the following question:

"To what extent can air arbitration be activated as a mechanism to encourage international air commerce and attract investors?"

1.2 Objectives of the Study

In light of the growing significance of the air cargo transport sector, this study aims to:

1. Provide a concise summary of how international arbitration has developed as a workable substitute for resolving disputes arising from air cargo transport contracts.

2. Highlight the innovative provisions introduced by international conventions regulating air arbitration, particularly those that differ from traditional arbitration rules.

II. METHODOLOGY

The study adopts the following research methodologies:

1. **Analytical Approach**: To examine and interpret legal texts in **relevant international conventions** and **national legislations**.
2. **Descriptive Approach**: To define and explain key concepts related to **arbitration** and **air cargo transport contracts**.
3. **Comparative Approach**: To contrast arbitration provisions in air cargo contracts under different international conventions (**Warsaw vs. Montreal**) and national laws, identifying **similarities and differences** in:
    - Arbitration regulations,
    - Carrier liability,
    - Rights of the involved parties.

III. PREVIOUS STUDIES

3.1 Study

Al-Ali, Aref bin Saleh bin Saud. "Jurisdictional Authority over Disputes Arising from Air Transport Contracts: A Comparative Study Between the Saudi System and International Conventions." Al-Huqooq Journal, Vol. 34, No. 3 (2010). This research examined the provisions of domestic and international jurisdiction over disputes arising from air transport contracts, presenting a A comparison of the Saudi system, international conventions, and Islamic jurisprudence. The most important findings of the research were as follows:

- Jurisdictional authority over domestic air transport contracts rests with commercial courts Regarding territorial jurisdiction, the plaintiff has the option of bringing the case in the court that has authority over a carrier branch or the court that has jurisdiction over the transport administration center.
- In the event the contract is an international one, the plaintiff may choose to file the lawsuit in any of the Montreal Convention's courts: the court of the carrier's domicile, the carrier's principal business location's court, the court of the contract making location of the carrier's business establishment, the country of destination court, or the court of the principal and permanent home of the passenger in the event the claim relates to the damage resulting from accidents that kill or hurt.

3.2 Study

Al-Hajjaya, Noor Hamad. (2017). "Jurisdictional Authority over Disputes Arising from International Air Transport Contracts: A Study of the Montreal Convention 1999 and UAE Law." Vol. 9, No. 3, Jordanian Journal of Law and Political Science (2017). This study's main focus was on the UAE Commercial Transactions Law and the 1999 Montreal Convention's jurisdictional power standards as they relate to international air transport contract disputes (Rao 2021). The court of the carrier's domicile, the court where the carrier's main business center is located, the court of the destination, or the court where the company that entered into the contract is located are the jurisdictions covered by these provisions, it was shown (Samah Salman Bousta & Mayya Abdurraouf Al-Dabbas, 2024).

The Montreal Convention added a special jurisdictional rule concerning disputes related to reimbursement for passengers' fatalities or injuries, granting jurisdiction to the court where the passenger's permanent residence is located (Diaa

Nu'man., 2007). All these rules were discussed analytically and critically (Aisha Fadhil, 2001). The research also addressed the highly important issue regarding the permissibility of deviating from the special jurisdictional rules for disputes of international air transport contracts as outlined in Article 368 and Articles 33 and 46 of the UAE Commercial Transactions Law's Montreal Convention (Abeer Al-Sayeh, 2017). The conclusion affirmed that deviation is permissible, and its conditions were clarified in the body of the research. The study concluded with a summary of the most important findings and recommendations.

3.3 Section One: The Evolution of Arbitration in Air Transport

Arbitration offers distinct advantages in resolving transport disputes. Parties may appoint arbitrators with specialized expertise in the relevant transport sector. Moreover, arbitration proceedings are typically private and confidential, making them particularly appropriate for delicate business transportation issues (Mounir Abdel Majid, 2015). Because arbitration rulings are typically not appealable, it can also be quicker and less expensive than litigation. Additionally, arbitral findings can be enforced in a number of countries through regional or bilateral agreements, as well as the New York Convention on the Recognition and Enforcement of Foreign Arbitral rulings ("New York Convention") (Al-Qadi, 2002). As a result, the following will describe the development of arbitration in air transport dispute resolution:

3.3.1 Chapter One: A Historical Perspective on Arbitration in Multilateral Aviation Treaties

Following International air travel grew and became a crucial means of international transportation after World War I. This necessitated unified regulations for air navigation, leading to two international conventions incorporating arbitration provisions for dispute resolution: The Pan American Convention on Commercial Aviation (Article 36 of the 1928 Havana Convention) and the Convention Concerning the Regulation of Aerial Navigation (Article 37 of the 1919 Paris Convention) (Attiya, 2021). These agreements were replaced in 1944 by the Chicago Convention on International Civil Aviation. The 1919 Paris Convention's fundamental tenet—that every state maintains sovereignty over its airspace—was maintained by the Chicago Convention, which also established regulations centered on security, safety, and navigation (Pushpavalli 2024). Its creation of the International Civil Aviation Organization (ICAO), a specialized UN agency, in 1947 was a significant accomplishment. tasked with administering this historic convention (Arbitration in Air Transport, 2014).

Anticipating delays in ratification, conference delegates in order to create the Provisional International Civil Aviation Organization (PICAO) as a temporary advising and coordinating organization while the Chicago Convention was being ratified, they signed the Interim Agreement on International Civil Aviation in 1945 (Khaled Mohamed Al-Qadi, 2002). Article III authorized PICAO to "act as an arbitral body for disputes between member states concerning international civil aviation matters referred to it" (Héctor Fernández, 2023).

Arbitration gained its first major foothold in intergovernmental agreements when ICAO replaced PICAO on April 4, 1947, following sufficient ratifications. Today, ICAO has 193 member states (Hijazi, 2023).

Chapter XVIII (Articles 84–88) of the Chicago Convention gives the ICAO Council the authority to settle disagreements between contracting parties over how to interpret or implement the convention in the event that talks break down. The International Court of Justice, whose decisions are final and enforceable, or an ad hoc arbitral tribunal may be appealed by parties. For non-compliance, ICAO may impose penalties, such as the loss of landing rights or other privileges. These laws are supplemented by the Rules for the Settlement of Differences (adopted 1957, revised 1975) (Bousta, 2024). In ICAO's 70+ year history, The Council has only received seven official disputes:

India v. Pakistan (1952)

1. UK v. Spain (1969)
2. Pakistan v. India (1971)
3. Cuba v. USA (1998)
4. USA v. 15 European States (2003)
5. Brazil v. USA (2016)
6. Qatar v. Egypt, Bahrain, Saudi Arabia & UAE (2017)

Most were resolved through **negotiations** facilitated by ICAO Council mediation rather than formal arbitration (Héctor Fernández, 2023).

Additionally, Rules and procedures are established by the World Trade Organization (WTO) to settle trade disputes amongst its members. The WTO Dispute Settlement Body (DSB) has rendered decisions in a number of cases involving aircraft and airport construction. The U.S.-EU aviation subsidy dispute was the longest-running WTO trade dispute (2004–2021) **(Airbus-Boeing conflict**). The WTO found both manufacturers received billions in illegal subsidies, leading to reciprocal tariffs affecting $11.5 billion in trade. In June 2021, parties agreed to a five-year tariff suspension (www.airbus.com).

3.3.2 Chapter Two: The Evolution of Arbitration in Air Cargo Transport Contract Disputes

The field of arbitration in air cargo transport disputes has witnessed significant progress due to the international and complex nature of this mode of transport. This development seeks to provide an effective and flexible mechanism for dispute resolution, while maintaining a balance between the interests of various parties - whether carriers, shippers, or

consignees - and enhancing the stability of liability rules (Al-Shuqanqiri, 2024).

The Warsaw Convention of 1929, which sought to unify certain rules of international air transport, marked the starting point for establishing liability in air transport and regulating such liability. However, it did not explicitly address arbitration as a dispute resolution procedure in this area. While the Convention contained no express prohibition against arbitration, its signatory states relied on general principles of private international law regarding arbitration, which required a written agreement between parties consenting to arbitration (Al-Sayeh, 2017).

During this period under the Warsaw Convention 1929, resorting to arbitration for resolving air transport contract disputes faced numerous challenges and obstacles. The most significant was the legislative vacuum, as there was no unified international text specifying arbitration conditions or procedures for resolving disputes in this field, including those related to air cargo transport (Al-Mutairi, 2020).

The adoption of the Montreal Convention 1999 represented a pivotal and radical shift in regulating arbitration specifically in air transport (Majid bin Zaid bin Abdulaziz Al-Fayyadh, 2021). This Convention explicitly recognized the validity of parties to air cargo transport contracts agreeing to arbitrate any disputes arising from such contracts. Thus, the Convention included explicit and official recognition of arbitration's legitimacy as an alternative dispute resolution mechanism for air cargo transport contracts. Currently, arbitration has become a common and detailed means for resolving disputes arising from air cargo transport contracts, owing to its advantages of speed, confidentiality, effectiveness, neutrality, and specialized expertise in air transport disputes (Abdul Majeed, 2015).

Jordan accepted the Montreal Convention and confirmed its implementation in the Civil aircraft Law, which reads: "a. The regulations of the Montreal Convention apply to all individuals, passengers, and cargo in international commercial aircraft. Jordanian Civil Aviation Law No. 41 of 2007 and its amendments provide in Article 41/a, b, "Unless this Law specifies otherwise, the provisions of the Montreal Convention shall apply to persons, baggage, and cargo in domestic commercial air transport."

Article 41 of the Law on the Carriage of Passengers and Goods by Air No. provides that "any clause contained in the contract and all special agreement entered into before the damage occurred by which the parties purport to infringe the rules laid down by this Law, whether by deciding the law to be applied or by altering the rules as to jurisdiction, shall be null and void." 34 of 1936 and its amendments, which further permits the inclusion of arbitration clauses in air cargo contracts. But arbitration clauses for the transport of goods are permissible if and only if they are in writing, in accordance with this law's requirements. Therefore, parties to air freight transport contracts are not prohibited by Jordanian law from agreeing to arbitrate disputes resulting from such contracts.

Therefore, in accordance with Article 32 of the Warsaw Convention and Article 34 of the Montreal Convention, both international conventions and national laws allow air cargo transport contracts to contain clauses mandating that any disagreement about carrier liability under these conventions be settled through arbitration.

Air arbitration is not limited to any specific type, thereby excluding arbitration by compromise (ex aequo et bono), as this would compel parties and arbitral tribunals to apply the provisions of international air transport conventions.

Consequently, parties involved in disputes regarding international air carrier liability may choose to resort to an established arbitration center to conduct proceedings under its auspices, or may organize the arbitration process themselves as in ad hoc arbitration. Air arbitration may also involve multiple parties, due to either multiple claimants or respondents (or both) in a single arbitration proceeding, or through the consolidation of separate arbitrations into a single case resulting in a unified award.

3.4 Section Two: Special Provisions for Arbitration in Air Cargo Transport Contracts

Since arbitration is the best method for fostering and sustaining global trade, it is especially important in international business ties. An arbitration clause that states that all disputes resulting from the contract or its execution should be addressed by arbitration is uncommon in international commercial contracts (Sadiq, 1995). International commercial arbitration has become widely accepted as the preferable method of resolving business disputes originating from air freight transport contracts due to the insufficiency of national legislation in this area. This gap was filled by the 1999 Montreal Convention, which established comprehensive guidelines for arbitration as a dispute resolution process for contracts involving the transportation of air cargo (Fadhil, 2001). Thus, arbitration within air cargo transport contracts represents a detailed and precise legal and procedural framework aimed at effectively and efficiently resolving disputes arising from such contracts, while considering their international nature. This section examines the substantive and procedural provisions of arbitration under the Montreal Convention 1999 and the compatibility of Jordanian arbitration law with these rules, as follows:

3.4.1 Chapter One: Special Provisions Regarding the Applicable Law for Arbitration in Air Cargo Transport Contracts

Initially, it must be noted that air arbitration under international conventions and national legislation has a unique nature. In order to improve aviation safety, the International Civil Aviation Organization (ICAO) has created a number of conventions that regulate air travel and

harmonize its regulations. Among the most important rules related to arbitration is the Montreal Convention 1999, which established special provisions for arbitration in air cargo transport, most notably requiring a written arbitration agreement in air cargo transport contracts (Nu'man, 2007).

It is stipulated under article 9 of the Jordanian Arbitration Law No. 31 of 2001 and its amendments that "a) An arbitration agreement is an agreement between parties, whether natural or juridical persons having legal capacity to contract, to refer to arbitration all or certain disputes which have arisen or may arise between them in respect of a defined legal relationship, whether contractual or not..."

Usually agreed in the transport contract or in an ancillary document for arbitration in air cargo transport agreements, the provision for arbitration binds the parties to craft the agreement of arbitration within the confines of their dispute. The following is reaffirmed under Article 34(1) of the Montreal Convention: "The parties to the contract of carriage for cargo may stipulate that any dispute relating to the carrier's liability under this Convention shall be settled by arbitration, subject to the provisions of this Article." This agreement must be in writing, according to Article 25(1) of the ICSID Convention of 1965 and Article II (1) of the New York Convention of 1985.

Accordingly, the arbitration agreement must be in writing, with writing being a condition for validity rather than merely for evidence. International conventions and national legislation have stipulated nullity for failure to observe this requirement in international arbitration agreements concerning air cargo transport disputes.

The worldwide nature of air cargo transport contracts creates many difficulties with regard to the law that applies to air arbitration, chief among them being the identification of the relevant legal framework. Since parties cannot reasonably agree to subject arbitration clauses to foreign law under the principle of party autonomy, which only applies in cases where there is an actual conflict of laws and is absent in disputes that are solely domestic and do not involve foreign elements, arbitration clauses for domestic disputes do not raise conflicts of law issues and are therefore subject to the national law of the relevant state (Abu Al-Ala, 2012).

For arbitration clauses in international private relations, multiple potentially applicable laws may exist, making the selection of governing law particularly important as legal provisions vary across jurisdictions - a clause may be valid under some laws while void under others (Waincymer, 2013).

In Jordanian legislation, the Arbitration Law contains no explicit provision regarding the applicable law for international arbitration clauses. Nevertheless, party autonomy in selecting the governing law for arbitration agreements represents the prevailing principle under Jordanian law, considering arbitration agreements as voluntary legal acts and international contracts being subject to conflict of laws rules under Article 21 of the Jordanian Civil Code. These provisions indicate that international contracts are governed by the principle of lex voluntatis. The majority of the UNCITRAL Model Law 1985's provisions that support party autonomy in arbitration have also been incorporated into Jordan's arbitration law, and the country has ratified the 1958 New York Convention on the Recognition and Enforcement of Arbitral Awards. The relevant procedural rules were particularly addressed by the Jordanian legislator in Article 36 of the Arbitration Law.

However, arbitration in air cargo transport contracts constitutes an exception to the general rules governing arbitration and the freedom typically granted to parties in selecting the applicable law for their disputes - a freedom normally essential for international commerce. Under the Montreal Convention's provisions on arbitration, we find a departure from this principle, as the Convention establishes specific rules for determining the applicable law in arbitration, as stated in Article 34(3): "The arbitrator or arbitration tribunal shall apply the provisions of this Convention."

Article 34 of the Montreal Convention introduces a novel and distinctive approach to arbitration by restricting party autonomy in selecting the applicable law. The Convention obligates arbitrators or tribunals to apply its provisions, rendering void any arbitration clause or agreement that conflicts with these provisions. Consequently, while parties to air cargo contracts retain the right to resort to arbitration, their freedom remains constrained regarding choice of applicable law, with the Convention's provisions being mandatory.

"2- If the relationship between the plaintiff and defendant is contractual (air transport contract) governed by the terms and provisions of the contract, then the Convention for the Unification of Certain Rules for International Carriage by Air (Montreal) becomes applicable to the case's facts by virtue of Articles 2 and 41 of the Jordanian Civil Aviation Law," the Jordanian Court of Cassation affirmed this position, confirming the application of the Montreal Convention to air transport disputes (Judgment No. 5974 of 2023 - Court of Cassation, Civil Division, 2023-11-12).

This context demonstrates that arbitration in air transport disputes constitutes judicial arbitration by nature, as it relies on specific legal rules under the Montreal Convention. Consequently, the referenced Article implies that arbitration in this field is limited to judicial arbitration, excluding amiable composition (ex aequo et bono), reflecting a clear trend toward restricting party autonomy regarding arbitration agreements in air transport (Falahuz, 2008).

Arbitration must adhere to legal rules when conducted under international air transport conventions. Outside these conventions' scope, arbitrators may apply principles of equity and fairness.

3.4.2 Chapter Two: Special Provisions Regarding the Place of Arbitration in Air Cargo Transport Contracts

The location of the arbitration is one of the most important and delicate issues in the field of international arbitration. The arbitration seat is the state that the parties agree will serve as the legal location of the arbitral dispute. "(a) The parties to arbitration may agree on the place of arbitration inside or outside the Kingdom," states Article 27 of the Jordanian Arbitration Law, which states that the parties' will is the main factor in determining the arbitration's location. In the absence of such an agreement, the arbitral tribunal shall select the arbitration venue based on the particulars of the case and whether the venue is appropriate for the parties. This won't stop the arbitral tribunal from convening wherever it thinks fit to carry out arbitration procedures, including hearing the disputing parties, witnesses, or experts, examining documents, examining property or goods, holding member discussions, or any other procedure."

Regarding air arbitration in pertinent aviation accords, it should be mentioned that the Warsaw Convention's procedural provisions (Article 32) and the Montreal Convention's procedural provisions (Article 34) gave the party seeking arbitration the freedom to select the arbitration location. This method is in opposition to the standard procedure in traditional commercial arbitration, which allows the opposing parties to mutually agree on the arbitration location rather than having one side choose it. Stated differently, the two conventions limited the parties' freedom on this issue and interfered with the specifics of the arbitration agreement reached based on the parties' agreement (Al Ali, 2020).

Article 34(2) of the Montreal Convention clarified this briefly when it said, "The arbitration proceedings shall take place at the option of the claimant in one of the jurisdictions referred to in Article 33." By Article 33 of the Montreal Convention (and Article 28 of the Warsaw Convention), judicial claims in carrier liability may be initiated in the courts of the principal business or residence of the carrier, the court of the business of the carrier where the contract has been concluded, and the court of the final destination of goods transported under the air route. Here is an overview of that territorial jurisdiction in arbitration:

First: The carrier's original or actual domicile. The claimant party in arbitration disputes regarding air cargo transport contracts has the right to choose the carrier's original or actual domicile as the place of arbitration according to the Montreal Convention 1999. There was no definition of "domicile" in the Convention. We discover that the definition of residence varies based on whether it refers to a natural or juridical person when we consult Jordanian legislation. "1. The domicile is the place where a person habitually resides," the Jordanian lawmaker stated in the Civil Law. 2. A person may simultaneously reside in multiple residences. 3. A person is deemed to have no domicile if they do not have a habitual place of abode. Another option is an elected domicile, which the Jordanian lawmaker described as follows: "Electing a domicile for the execution of a particular legal act is acceptable, and it will serve as the domicile for all matters pertaining to this act unless specifically limited to certain acts. The Jordanian Civil Procedure Law's Article 19 states No. 24 of 1988 and its revisions, the elected domicile can only be verified in writing. According to Al-Khasawneh (2019), a juridical person's domicile is the location of its administrative center.

Accordingly, The following requirements must be met in order for the claimant to select the carrier's domicile as a criterion for the arbitration location when addressing disputes pertaining to air freight transport under the Montreal Convention:

- It involves an agreement for the transportation of air cargo internationally (Article 1(2) of the Montreal Convention 1999);
- It is filed by the interested party against the air carrrier under the contract or any of its subordinates or representatives or the real carrier;
- The topic deals with goods such as loss, destruction or damage thereto;
- It is grounded on the contract that defines the point of departure and the point of destination or at least one point;
- It is established in one of the contracting states (Al-Hajjaya, 2017).

Second: arbitration at the carrier's principal place of operation. Article 33 of the Montreal Convention and Article 44 of the Jordanian Civil Procedure Law both state that "In commercial matters, jurisdiction lies with the court of the defendant or the court in whose district the agreement was made and the goods were delivered or in whose district performance is due."

Third: arbitration in the business location of the carrier where the contract was executed. The provision that arbitration be held at the carrier's place of business where the air freight transport contract was signed is one of the common clauses in these agreements. This is more advantageous to the carrier than the claimant because it lowers the carrier's legal and administrative expenses and guarantees that disputes are heard in a jurisdiction or arbitration forum that it is familiar with, lowering the possibility of encountering odd, expensive, and convoluted legal proceedings (Al-Anani, 2017). The other party, the claimant (the shipper, consignee, or passenger), however, finds this clause concerning the territorial jurisdiction of arbitration problematic because it requires extra costs and expenses to attend arbitration hearings, even if they are held remotely, in addition to variations in applicable laws that make matters more complicated from the claimant's point of view (Fawzi, 2008).

Fourth: arbitration when the air-transported items arrive to their destination (Hisham Ali Sadiq, 1995). If the destination is expressly mentioned in the transport contract, the claimant

is entitled to sue the contracting carrier at the destination jurisdiction's competent court (Wafa Mazeed Falahuz, 2008). The court will not have the authority to hear the issue if the destination is not mentioned in the contract (Al-Hajjaya, 2017).

According to the prevailing opinion (Afyadh, 2021), the parties to an air cargo transport contract enjoy great flexibility in determining their preferred place of arbitration. This place can be in any country, even if it has no direct connection to the contract, its parties or the location of the dispute, provided that this choice is compatible with the relevant arbitration laws, such as the Jordanian Arbitration Law if arbitration is to be conducted in Jordan.

The rationale behind it all is likely to enable the claimant to seek the venue that is best for its interests as a claimant. These proceedings will be determined with regard to the decision of the arbitrator, depending on the Montreal Convention. For example, proceedings are effected in the seat of the principal business of the carrier, or the seat of the destination of the goods or the seat of the domicile of the carrier. Most of the venues, therefore, are attached to the carrier, as most of the claims of liability entail something that has to do with the carrier that has violated its contractual obligation, and if the shipper and the carrier claim and the carrier is the claimant and the shipper is the defendant, then the venue of the destination of the goods may be best for it (Al-Shanqiti, 2024).

Where the arbitration is used in any of the centers of institutional arbitration within the limits of jurisdiction as defined in the conventions of the international air transport, it is taken that an air arbitration agreement is valid in an international air carrier claim of liability, if the air arbitration court is ready to apply the rules of procedure and the rules of substance contained in the afore-mentioned conventions of the international air transport (Al-Hajjaya, 2017).

Although the air arbitration clause was not clearly in effect within many institutional arbitration chambers, the Montreal Convention came to establish an explicit text regarding the arbitration clause in its Article 34. Nevertheless, the arbitration clause in air transport contracts remains rarely used, as the majority of arbitration cases are related to agency contracts (Al-Shanqiti, 2024).

Therefore, in the location selected by the claimant in the arbitration dispute in the air cargo transport contract, the remaining air arbitration proceedings are subject to the same procedures to which the arbitration law is subject. Since the success of the arbitration process is tied to the management of the arbitration case, most legislation has given the advantage related to the role of the parties' will from the formation of the arbitral tribunal through all procedures until the ruling ending the dispute. For instance, if Jordan is chosen as the location for arbitration, we find that the Jordanian Arbitration Law included the regulation of all procedures related to the arbitration process in all its stages. As long as the rules and procedures agreed upon by the parties in the arbitration agreement do not violate public order and are founded on justice, equality, respect for defense rights, legal deadlines and principles, and procedures of proof until reaching a fair ruling, the case will proceed through these arbitration procedures from the start of the arbitration process until the final ruling is issued.

IV. CONCLUSION

In conclusion of this research titled *"Arbitration in Air Cargo Transport Contracts: Between International Conventions and* National *Legislation,"* which examined the evolution of arbitration in air transport given the highly specialized nature of disputes in this field, as well as the unique provisions governing arbitration in air cargo contracts and the innovative rules introduced by international conventions, the study has reached the following key findings and recommendations:

4.1 Findings

1. **International conventions**, particularly the **Montreal Convention 1999 (Article 34)**, have affirmed the validity of arbitration in air transport contracts, enhancing its legitimacy and effectiveness in resolving disputes in this evolving sector.
2. **Arbitration in air transport disputes is inherently judicial in nature**, as it relies on specific legal rules under the Montreal Convention. Consequently, the relevant international conventions (Montreal and Warsaw) limit arbitration to **judicial arbitration**, excluding amicable settlement (*ex aequo et bono*), reflecting a clear trend toward restricting party autonomy in arbitration agreements within air transport.
3. **Arbitration in air cargo contracts deviates from general arbitration principles** that grant parties freedom in selecting arbitral tribunals and applicable laws—a flexibility typically essential for international commerce. However, under the Montreal Convention (Article 34(3)), arbitration is subject to strict rules, mandating that *"the arbitrator or arbitral tribunal shall apply the provisions of this Convention."*
4. **Arbitration remains an effective mechanism** for resolving air cargo disputes due to their international and commercial nature, as well as the adhesion-based character of such contracts. While the Montreal Convention imposes specific rules on applicable law and arbitration seats, this does not undermine arbitration's advantages.
5. **Jordanian legislation** (Civil Aviation Law, Arbitration Law, and Law on the Carriage of Passengers and Goods by Air) aligns with international principles, providing a national legal framework that supports and regulates arbitration in air cargo disputes.

4.2 Recommendations

1. **While the Montreal Convention grants claimants unilateral authority to choose the arbitration seat**, this freedom is not absolute. Claimants should consider practical and legal factors, such as:

a. The neutrality of the chosen seat.

b. The availability of qualified arbitrators/specialized arbitration centers in air transport.

c. The seat's jurisdiction being a party to the **1958 New York Convention**.

2. **Despite the clarity of Article 34 of the Montreal Convention**, we recommend amending it to specify that *"jurisdiction"* refers to the **State** (not just the court) to avoid ambiguity.

3. **Amendments to Jordanian legislation** governing air cargo transport and arbitration are necessary to include dedicated provisions on air cargo arbitration, ensuring adequate protection for affected parties.

4. **Establish a specialized ad hoc arbitration center** for air cargo transport disputes. Such centers play a vital role in resolving disputes impartially and professionally, fostering trust in arbitral awards and ensuring their enforcement.

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