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Fundamentals of Applying the Substantive Rules Approach

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Abstract

The diversity of modern international contracts models, which are accompanied by the emergence of traditional approaches of conflict that fail at finding appropriate solutions for these advanced contracts. In view of what leads to the application of one of the national laws that were originally enacted to govern internal relations, which in turn has led to the lack of response to the nature of these contracts that require multiple attribution links , making it difficult to claim a single legal and sufficient system for its rule. This has called on the private international law jurists to stress the need for some rules with direct application to find solutions to the problem of conflict within the framework of private international relations. When considering the adoption of the substantive rules approach, the issue under investigation must be taken into consideration in terms of the way in which the topic is pondered via investigating the cases that are within the jurisdiction of the national judiciary or cases that fall outside the realm of this jurisdiction. As far as the first case is concerned, the substantive rules are applied for the settlement of disputes is within the provisions of the national law. As for the second case, the arbitrator shall apply the substantive rules to find solutions to the issues of conflict resolution. The current study has touched upon the first requirement to the implementation of the provisions of the rules of national substantive ones, while in the second requirement, the present paper has concentrated on the implementation of the provisions of the rules of foreign substantive rules, and finally the most important results and recommendations that are mentioned in the work are discussed.

Keyterms: Fundamentals, Approaches of Disputes, Substantive Rules, Settlement of Disputes,

Introduction

The variant ways to define the problem of conflict of laws has been given due attention by jurists of private international law due to the importance of the issue of conflict of laws since it is seen as one of the most important axes of the private international law, and as a result of the development in the jurisprudence of private international law that accords with the development of the international life associated with the progress of economic and social life, certain rules with direct application to the private international relations represented by the "substantive rules" derived in its inception on the international agreements and commercial practices. This problem has escalated in a way that has raised controversy in criticizing the conflict approach, because it did not give an objective solution to international disputes, as it was the only technical means for the rules of conflict in Cases in which there were no objective rules, and therefore the development of economic life and the increase in demand for

international trade contracts led to an increase in the intervention of the substantive rules approach in resolving disputes instead of the traditional approach, and the objective rules appeared that worked to fill the shortcoming that was afflicting the application of the rules of attribution, which It may be the result of the latter's lack of international character, and objective rules are an important means of The legal means for settling international disputes because they are a set of legal provisions that apply directly to private international relations. The substantive approach is based on the substantive rules. These rules aim to protect the economic, political and social order within the state territory , as well as the way these rules work in settling the conflicts directly Without referring to the implementation of the rules of conflict, the law that can be applied here, which is the foreign law, cannot be adopted or applied even if the national attribution rules refer to it, since such application leads to prejudice and distortion in the course of the political and economic system of the state, and to determine the competent law according to these rules, it must be closely related to the legal system of the state. Thus, the current study is divided into the following two sections:

The first section: The Implementation of the provisions of the rules of national substantive.
The second section: The implementation of the provisions of the rules of foreign substantive.

The Implementation of the provisions of the rules of the national substantive

The substantive rules can be approached either by virtue of legislation or are determined by some national judicial bodies, as many legislations include certain substantive rules that are enacted within the field of commercial relations, and the judiciary system has also found another source of substantive rules to enact many rules that directly control the international relations; so these rules act as special means to ensure the resolution of conflicts in legal relations in all relations across countries, therefore, they have been initiated for the international considerations, although they belong with a national source. The study is divided into the following two inquiries:

The Application of the provisions of the rules of national substantive

The legislation of the substantive rules taken from a national source states that they have a preventive or resolution function as they are seen as decisive means for many competing laws to rule the legal relationship in conflict, meaning that it operates on resolving the issue of conflict arising from legal relations, through the direct application, a distinction must be made here between the presence of the foreign element in the legal relationship and between the occurrence of conflict situations, and therefore, the substantive rules are applied. The presence of the foreign element does not impose such conflicts, and that is what the legal center often performs to solve them through the so-called (laws of direct application), where the national substantive rules impose or propose a legislative solution that prevents applying another law, which is represented in (The Center for Foreigners and International Commercial Contracts), if the judge applies his national law because there is compatibility between the court that considers the relationship in dispute and the applicable law.

Among the most prominent legislation that has established a substantive regulation (substantive rules) is the Czech legislation1963, and Article 3of it stipulates that the substantive rules contained in it are not applied unless the Czech law is the law that must be applied under the rules of conflict, especially if the two contracting parties have agreed On choosing this law to rule the legal relationship as the law of will, if the Czech law set substantive rules that handle regulating the international trade in its inclination to organize rules that are appropriate with the field of international trade contracts since they are characterized by being of an international

nature because they include a foreign element, which in turn differs from the rules that regulate the relations within the internal framework, and the Czech legislation is represented by these rules by the issuance of three laws, namely, “Law No. 97of 1963(on the rules of private international law and judicial conflict)” , “Law No. 101of 1963 (on the legal ties within the jurisdiction of the International commercial relations).)", and Law No. 68of 1963 (Concerning Arbitration in International Trade Relations)"

Adding to that the legislation issued by Germany in1967, which contains many material rules that are concerned with regulating the work of international contracts in the field of trade, since it has included 333articles distributed over 14sections, including various rules of substantive that directly resolve the issues of the international contracts concluded in the field of international trade. It does not apply to national contracts that remain governed by the rules of the civil and commercial law, as German law stipulate that the rules of attribution indicate its competence regarding the contractual relationship in dispute, and the Egyptian Arbitration Law No. 27of 1994as well as the English Arbitration Law 1997 , and the Egyptian legislator included the rule of objectivity in Article (27) of the Egyptian Trade Law in the Field of Technology Transfer No. 17of1999.

The significance and necessity of these rules is seen in the field of international trade, as they regulate all the areas that incur shortages, and require legal rules to ensure their regulation, either to keep the law away from interfering in these areas that happen across the international borders or to avoid the inadequacy of the national rules that seem to pop up in these areas of an international nature. Both legislations include the substantive rules that are formulated to regulate links related to the international trade in a way that goes out of the jurisdiction of the internal relations that are governed by the rules of the civil and commercial law in Czech and German legislations, as well as its demand for the international rights to implement these rules

Some essential part of the jurisprudence stipulates that the content and tenor of the substantive rules in the private international law and the goal it seeks to achieve as it was established as a basis for regulating private international ties, requires its direct application to all private relations of the state as long as they are related to the legal system followed by the judge without considering the jurisdiction of this system under the rules of attribution Some also confirmed the validity of this saying unless the legislator stipulates otherwise, as in the Czech and German legislation, where the legislator stipulates the application of the judge’s law, whether it is Czech or German explicitly, and that the origin of applying the rules of private international law in a direct material way, requires its affiliation with the judge’s law (In the event that a dispute is presented to the judiciary of another country whose system of law does not include substantive rules, the implementation of the objective rules prevailing in a foreign country is only through the rules of conflict, and in this case it is not possible to imagine the application of Czech law in international trade contracts before the judiciary of a country whose law does not include rules. material, but applies to the international contract such a case on this judiciary if its choice leads to the will of the parties, and therefore, the implementation of the provisions of the rules of substantive in the court of the law of a foreigner can only be performed through the rules of conflict. As for the substantive rules that are present within the legal system of the judge’s country, the judge’s right to apply the rules of his law directly has been confirmed, unless the legislator provides otherwise .

As far as the Iraqi legislation, it has not regulated the approach of substantive rules within the framework of private international relations, and it can be stated that some applications that implicitly refer to substantive rules, and these applications include the following:

The Iraqi legislator has legislated the rule of substantive in which the Iraqi judge is obligated to apply the act to all relations, whether these relations are national or private international, especially when the act has placed the rules of the consumer protection in a legal text an order, where the in action Article 2of the Consumer Protection Act stipulates:

That (this law applies to all normal and legally approved persons who manufacture, sell, buy, market, import, provide or advertise services).

The legislator has clearly laid down a mandatory rule that obliges the judge to apply his national law without relying on the attribution rule on the special international relations with regard to the contracts for commercial production activities that are related to goods and services that take place between producers and consumers that arise in this regard in a special international conflict, as Article 3of the Law stipulates Competition and effective monopoly prevention on (The provisions of this law apply to the production, trade and services activities carried out by normal and legally approved persons inside Iraq, and its provisions apply to any economic activities outside Iraq).

The investment laws also have specified the jurisdiction of the substantive rules and the nature of the relationship governed by them and how to apply them, as the Arab Investments Law No. 62of 2002has organized all investment projects owned by Iraqis or foreigners and subjected them to the provisions of the Iraqi law , and has also subjected the provisions of the aforementioned law through all the work related to the investment projects, as well as their application to the obligations arising from them.

As the amended Iraqi Investment Law has stipulated on the rules that apply directly to the internal and private international relations, as well as Article 10of the aforementioned law, where these rules directly apply to investment contracts

The first clause of Article 27 of the same law stipulates that (The conflicts arising from the application of this law are subject to Iraqi law and the jurisdiction of the Iraqi judiciary, where it is permissible to agree with the investor to resort to commercial arbitration (national or international) according to an agreement that is concluded between the two parties specifying under the arbitration procedure and applicable law.

The first clause that is mentioned in the text above clearly states that the Iraqi legislator has stipulated the substantive rules, when making an explicit text and with direct application in the event of a conflict to be subject to the Iraqi law and make the jurisdiction of the Iraqi courts. The Iraqi legislator has also granted freedom of will for the parties to resort to the commercial arbitration (national or international), as well as an agreement on the applicable law and the court that adjudicates the conflict.

Also, the effective Iraqi inheritance tax law has referred to the substantive rules in Article2, which stipulate that "1- The provisions of the Iraqi inheritance tax law covers: A- Movable and invested funds in Iraq that is left by a non-Iraqi deceased, regardless of his place

of residence, B- Movable funds that s/he leaves in Iraq as a dead non-Iraqi residing in Iraq".

Jurisprudence has played a role in setting substantive rules as a source of substantive rules as it has been mentioned earlier, as some countries have worked to develop some substantive rules in their judicial rulings to be governed directly by the international contracts without looking at the competent law for application under the rules of attribution . An Example of this case is seen in the action taken by the Paris Appeal Court on December 13th 1975 in recognizing the arbitration clause and its independence of the original contract that contains it, as well as in contracts that have a connection with international trade interests, and the validity of the arbitration clause is evaluated independently of the reference to any state law that is applicable to the arbitration agreement, because there is in the judge's law, which is a French one, an international substantive rule that verifies its validity, as the Paris Court of Appeal has since formalized its law by saying that "in matters of the international arbitration, the principle of the independence of the arbitration clause is of general application. An international substantive rule that determines the legality of the arbitration agreement, without reference to the conflict of laws system. The Court of Cassation has upheld this method by ruling, according to a fundamental rule of the law International arbitration, the existence and effectiveness of the arbitration clause is evaluated according to the common will of the parties, without the need to refer to the state law.

The French judiciary also has recognized the validity of the arbitration agreement concluded by a state or a person in the international contracts, in violation of the provisions of Articles (1004-83)of the Procedural French Code of such an agreement is prohibited in contracts of which the state is one of the contracting parties. Consequently, it is clear that the French Court of Cassation has recognized the substantive rules of direct application on the grounds that the international contracts escape the jurisdiction of this prohibition

The national judiciary also has played a role in setting the substantive rules, as it has obligated for the implementation of these rules that the association be international on the one hand and in the field of trade on the other hand. Moreover, if the rules that are governing (commanding) the internal legislation prohibit such a condition, as well as the rules that call for asserting the right of the state to submit to arbitration in the international trade links.

It is noted that the French judiciary, by making these rules in the field of the international trade, tries to hide other ideas to characterize these rules with the positional (situational) feature to within the framework of general principles. These ideas are represented by the "idea of public order" and the "idea of implementing the traditional approach", which led to the use of these rules to associate them with the generality property, abstraction and the force of compulsion that stem from judicial stability until it ended up with the independence of these rules as one of the rules of the material private international law of judicial origin, and it has direct applicability without referring to the methods of conflict , and this is proved by the procedure taken by the French Court of cassation in its judgment issued in June 21st, 1950 which was based on the provisions of the system, the validity of the gold condition contained in the international loan contract and despite its violation of the provisions of the law, which is the Canadian law, where in another provision that has permitted the state to resort to arbitration under the foreign law referred to in the rules of conflict, and then the French judiciary's tendency towards adopting the independence of substantive rules from the conflict rules approach, as they are considered as applicable rules as long as they are related to international trade affairs)

However, these rules of national origin have been criticized, on the grounds that they have led to contradiction between the internal regulations and provisions on the solutions that must be adopted in the commercial relations, which turns the internal legislator into a global legislator, and this leads to finding appropriate solutions and the belief that they are some personal expectations of the parties and those who are unaware of the applicable law, which led to a trend towards addressing this issue by developing solutions and applications to achieve legal security, whether in agreements, norms and customs that are related to the field of the international trade.

Criticisms directed against the rules of national substantive

As mentioned earlier, raising some criticisms against the approach of the national substantive rules in their application on the private international transactions, criticisms have been raised in relation to their legal value, and the substantive rules here are associated with a number of issues:

Denying the characteristic of the legal system of the substantive rules.

Some jurisprudence tended to deny the legal value of the substantive rules approach in the private international law, by denying the characteristic of the legal system for those rules based on several things, including that the basis of the legal system is based only on the commanding ones, and it is noted that the substantive rules are, of course, Complementary rules that is the matter of its implementation on the agreement of the parties to contracts within the international trade circles, including model contracts and customs. The legal system cannot be established on complementary rules. In addition, the essence of the legal system is based on the existence of the group (organization), and this is what is not found in relation to the substantive rules. Since the international trade community that is represented by(seller and buyer), lacks real organization that adds the right of consolidation , as it can be said that the commercial groups are heterogeneous groups that do not agree with the idea of public order , and denying the characteristic of the legal system for these rules can be attributed to the fact that the substantive rules lose the penalty included in the rules of the legal system, because the rules of the system include a penalty for their respect and survival, while the legal system that is characterized by the presence of These rules, although it is within the international trade law, but it is a penalty of a special kind, remains in the circle of implementation of arbitration rulings, which does not come in the commercial environment, but in resorting to the public authorities who have the right to reject this arbitration, and thus his decision becomes of no legal value.

The substantive rules approach grants the judge unlimited power

The legislature or the judiciary's' issuance of specific substantive rules and status, to which the public authorities guarantee respect and impose on the parties (individuals) to abide by them, and achieve safety and reassurance for the proper conduct of transactions and the parties' ties , as well as commercial customs and habits, as the implementation of the substantive law leaves a wide opportunity for a judge that means that his/her decisions are subject to his/her impression and his/her professional idea that sometimes does not reach a sound judgment , as some have pointed out that the objective rules approach gives the judge unlimited discretion as it grants him/her the possibility of providing solutions that suit his/her personal conviction, which calls into question that "the judicial strictness of the material private international law can lead outside the case before the judiciary, to real legal rules." Here, the benefit of the traditional attribution rules approach become clearer, since the application of national law prevents control and deviation In developing solutions, which provides a guarantee for the parties to the dispute, and perhaps what the French judiciary has taken regarding the application of the substantive rules in the international contracts, despite M from their recognition that these rules serve the interests of international trade, but they

have not been implemented independently of the rules of attribution in order to fulfill the expectations of the parties to the international contract.

The difficulty of implementing judgments and decisions issued by arbitral tribunals under the substantive rules

Some jurisprudence believes that once arbitration is resorted to, the substantive rules of the international trade must be applied, or if the contract contains an arbitration clause, as these rules must be automatically applied in such cases. The judgment is foreign, the same can happen if a judgment is issued by an arbitral body, which makes it difficult to verify that it has applied the correct procedures to reach the applicable law or not, and despite the recognition of this criticism process, it was not spared from the reactions that came other than it is compatible with them, on the basis that there is no need to enforce the judgments and decisions issued by the judiciary as long as the substantive rules on which it is based are the product of international agreements and fall within the scope of domestic legislation as well. By the arbitral tribunals, the 1958New York Convention "Concerning the Implementation of Foreign Arbitral Awards" ensured their organization, which did not condition the implementation of arbitral awards with any condition regarding their legal basis.

The Implementation of the provisions of the rules of the international substantive

Aiming to realize the idea of justice within the framework of the international relations, it is assumed that some conflict substantive rule is found, and avoiding the weighting and realization of what is national, but rather working to achieve what is more and more worthy of application in some cases, due to the consistency that we realize in the field of conflict ; in addition to that in some cases. Sometimes the category of national and international legislation is the framework for finding quick and immediate solutions to the issues arising within the special international relations, which in turn also has led some countries recently to recognize and reconcile the established international rules in the context of international trade, and their application in the field of international trade in cases of the emergence of international disputes, because These rules have characteristics that exceed the ability of the national legislator in settling international disputes . In addition to the national substantive rules, international substantive rules have emerged, as the latter is based on a number of factors, including model contracts, general terms, international trade terms, standard rules, norms and standards, which are considered legitimate for professionals , and these rules were known as "rules of International substantive "because it has an international content that filters the private international relations exclusively within the jurisdiction of the international trade. It is noted that the implementation of the substantive rules in resolving the issue of conflict of laws, can be addressed in certain places, including:

The International Convention

The International Convention assume a vital role in setting unified substantive rules applied to the signatory countries that engage in the international commercial activity, where the agreements form one of the significant principles of substantive rules, especially those that directly regulate some international contracts , including the Geneva Convention that was founded in 1930a unified law for checks and promissory notes, as well as on checks1931, where this agreement became part of the domestic law of the signatory countries and applies to the international relations, and this agreement is directly applied by the judge.

It seems that the basis sought by the agreements that took place on the unification of national laws in the contracting states is to eliminate the issue of conflict between the laws

within the framework of the international special relations that are the subject of the convention organization in the treaty, and that the realization of this goal is a direct application of the unified rules, and that the judge's reference to the rules of attribution result in conflict between the laws, and some assert that these rules under the conventions are international rules that require their implementation directly in the separation of the international conflict without giving heed to the applicable law under the rules of conflict On the other hand. Some refuse to consider the standard rules under the conventions that address the unification of national laws, in the contracting states, from the material rules in private international law, because the most important characteristic of the substantive rules is their response to the nature of the special international relations, which makes them relevant direct application without the need to implement the rules of attribution, because they are the rules legislated to organize international life, which distinguishes them from the rules of internal law that govern internal links, although it can be applied to international links under the traditional rules of attribution, in the event that there is no rule with direct application of the rules Objectivity, and in this sense, the existence of the objective rules that were originally enacted to organize international relations within the framework of the legal system in the state of the judge, in addition to the national rules that were established to organize internal relations, and the matter is different for the agreements that provided for the unification of local laws in the contracting states, because these agreements and that It was found to resolve the conflict substantive, but its behavior in this way does not necessarily mean that it was initiated to meet the special conditions of the international trade guardian.

As well as the Warsaw Convention that was signed on October 12th, 1929, in recognition of the unification of some rules of air transport to achieve compatibility in the provisions of private international air law, as well as to secure the interests of consumers in air transport to resolve the problems of disputes resulting from conflict of laws in internal transport with its successive amendments relating to air transport , and the Convention Brussels concluded on August 25, 1924, “concerning the unification of some rules of bills of lading” and partially amended by the 1968 Protocol, and the 1978 Hamburg Convention on the International Maritime Carriage of Goods, where the Warsaw Convention 1929 stipulated to apply its provisions to the contract of carriage that the destination and arrival station be located in both of the contracting states.

It is found here that the 1968Brussels Convention on “Jurisdiction in International Contracts”, the 1980Rome Convention on “Conflict of Laws in International Contracts”, as well as the Rome Convention on “Contract for the International Sale of Goods” that are signed in Vienna on April11, 1980, which is a legal tool for organizing and managing the contract in international economic relations, and it is noted that this agreement is not applied to all international sales contracts because it includes the conditions stipulated in its clauses, its application is accompanied by the condition according to which the parties are residents, or in the absence of the place of residence that they have the usual residence , and this is The international standard taken into account in the application without regard to the nationalities of the parties( )

The application of the substantive rules that are contained in the international agreements appears before the judge who is looking into the dispute, meaning that the substantive rules are applied directly, whether the body looking into the dispute is national or international arbitration. Explicitly stipulated in the contract, because the parties have the freedom to choose the material and the contentious before the arbitral tribunal. Taking the will

of the parties to the international agreement as a conflictual choice, because the judge applies the conflict rule that contains the condition that there is conflict between internal laws exclusively, and the rules of the agreement are not applied unless the judge's law stipulates the application of the agreement to fulfill the conditions of its application to the conflict, considering that the agreement is the legislation within the system The legal framework of the agreed state within the framework of special international relations, and the substantive rules can be applied through the choice of The parties are the law applicable to the relationship, i.e. the law of a particular state.

It must be taken into account that the substantive rules established by the agreements concluded for the purpose of regulating the private international relations, these are not necessarily rules of direct application and automatic application without the need to refer to the implementation of the conflict rules approach, but it is noted that their application relies on some cases on the conflict approach, for example , Article one of the Vienna Convention, we note that it has specified in its content the jurisdiction of application of the agreement to contracts for the sale of goods between the parties to the contract. Their workplaces are located in different countries in two cases, where the first case represents when these countries are from the contracting countries and the second case, when it states The rules of international law for the application of the law of a contracting state, where it is not required in the second case that the workplace of the parties to the sale be in two different states, as is the case in the first case, but rather that they are assumed to be in two different states, or they may be non-contracting, or one of them is a contracting party . Accordingly, the substantive rules that are found in the agreements play a major role in determining the applicable law to the subject in dispute. The provisions and texts of agreements, for example (GATS Agreement) and (Anti-Dumping Agreement), in order to achieve the main aim of concluding them to resolve the problem of conflict within the field of international trade.

Customs and International Arbitration

The customs and commercial practices prevailing in the international commercial markets are the basis of international trade law, and when extrapolating the texts of the national and international legislation. It is found that there is a confusion between the concepts of custom and habit, where it is noted that most of customs are called habit, and habit are customs. The stable criterion to distinguish between them is that custom consists of two pillars, one of which is material and the other is moral, as the material pillar represents the continuous long-term habituation, whether it is getting used to positive or negative behavior. The distinction between customs and mores has an important outcome. Custom is a binding legal rule, so it has become applicable without the need for an agreement of the parties. As for custom, it is not considered binding, but its binding force is based on the agreement of the contracting parties

Since commercial customs and customs are the basis for the international trade law, which has been applied to the private international conflicts, as these customs are a part of the legal system to which the arbitrators belong, if commercial arbitration is considered as the general judiciary of the cross-border trade community, where it is the same society that has appeared within Its framework, it is the customs and habits that are part of the legal system of this judiciary.

If the non-affiliation of the international commercial norms and customs is the main reason for the difference in their treatment before the judiciary, which does not include a direct application, and even cannot be implemented even through the conflict rules approach, because

the conflict does not perceive the traditional ideas in private international law, except between the positive laws of different countries, so it is considered The prevailing commercial customs and customs are international objective rules that are directly applicable without the need for attribution rules. Examples of customs with an objective base are the stable customs in maritime sales (such as selling (F.O.B and selling C.I.F)) within the group (Incoterms) 1953 issued by the International Chamber of Commerce ICC, As well as the "Rules Relating to Documentary Credits 1964 "

These rules, which date back to the holding of the first conference of the International Chamber of Commerce in 1920, are important because they are codified rules, as they were established within the scope of international trade activity, especially in the areas of commercial sales, and crystallized as a self-regulation of all contractual relations between the parties to international trade due to the rights and obligations imposed on them. And the norms of international trade are objective rules that are considered as “the law of the judge” for the international arbitrator, and if the source of these rules does not belong to the authority that takes the form of the state, it is similar to the effectiveness of the legal rules in their response to the needs of the international trade community, the implementation of the international arbitrator is the application of the substantive rules of the arbitrators’ decisions He helped crystallize these rules on the one hand, and from the presence of these rules, whether they were codified or not, they facilitate working with the rules of customs and customs on the other hand, and when the arbitrator applies customs and habits, they help in resolving the conflict between the parties because it includes the most principles regulated by positive law .

The doctrinal dispute appears about the extent of the arbitrator’s freedom to apply the substantive rules contained in commercial customs and habits, as the first trend went to oblige the international arbitrator to apply the substantive rules and elicit solutions to resolve the dispute submitted to arbitration in accordance with legal concepts of an international nature, and given that the arbitrator rules under the law that It represents mores and customs, working on the assumption that the contract in question has a link with the state law (national law) more than any law, in application of the rule that the contract must be linked to a specific law, while another trend went that it obliges the arbitrator to apply rules that replace the national law, if it falls outside the scope of The arbitrator’s task is restricted by law, because the latter must apply to the subject of the dispute the law or the rules agreed upon by the parties, and in the absence of the parties’ agreement, or the absence of a rule of attribution in the law, it refers to the applicable law, then it applies the substantive rules directly.

Modern private international legal jurisprudence distinguishes between the application of international substantive rules and this application, if before international arbitration, the application of rules before arbitration is a system imposed by the parties, while the prevailing opinion before the internal judiciary is still that the conflict is limited to national law, so the choice is not considered a retroactive choice, but it is just a material choice according to which these rules in their various forms are relegated to the status of contractual conditions, in which the contract is based on the local law determined by the rule of precautionary attribution of the judge’s state, when the will is silent about the choice. Therefore, the application of these rules before the internal judiciary is conditional on not violating its rules in contract law.

However, when these rules form part of the applicable law under the rules of

attribution, the arbitrator does not prevent the application of substantive (cross-state) rules in the national judiciary. Whether these laws, the law of the will or the law of the chosen one based on the precautionary attribution controls in the absence of that will.

Conclusions

The current study has reached certain conclusions in terms of the foundations of applying the substantive rules approach along with its role in settling private international conflicts at the national and international legislation levels, it has been necessary to advance the most significant results that the study has arrived at and then to elicit some recommendations based on the following conclusions:

The Conclusions

The study has confirmed that the substantive rules are an expression of the legitimate needs in the international trade circles as they are a set of material provisions that are derived from different sources that provide self-solutions for the international commercial transactions, making them a special law independent of the law governing purely internal relations.

The rules of substantive derive their basis from multiple sources represented by internal sources (legislation, the judiciary) in addition to the international sources (conventions, customs and international arbitration), which have contributed to the construction of the substantive rules approach as it represents an important tool in the development of the private international law and the expansion of the scope of Apply it to face the changes that occur in private international life.

The ability of the substantive rules approach to harmonize in the international solutions and coexist with the national legal systems along with the other rules of the private international law for their suitability in regulating relations of an international nature, so that it has become a global law that achieves legal security in relations tainted by a foreign element.

The study has revealed that the agreements have had a role in putting and unifying the substantive rules for regulating relations within the commercial circles, as well as the role of the arbitrator in implementing the objective rules contained in the commercial norms, where the important principles of these rules were developed.

The substantive rules have seen an important place in the context of the international trade conflicts, because of their considerations in developing direct solutions without going through the implementation of the traditional rules of conflict, because they are direct qualitative rules that have been enacted mainly to regulate the international private ties.

Recommendations

1 It is suggested that the substantive rules approach is to be adopted and the material rules be enacted directly and explicitly within our specific legislation, and rely on it as an approach within the approaches to conflict of laws alongside the traditional rules of conflict to resolve the problem of the private international conflicts.

2 Iraqi legislators are called on to approve the draft of the Iraqi arbitration law, and to establish their own centers for the speedy settlement of the international conflicts, especially within the international trade community.

3 It is necessary to join the conventions that unify the substantive rules to resolve the

issue of competing laws.

The necessity of restricting the arbitrator's authority within national legislation in the application of the substantive rules governing the conflicts and derived from customs and norms so that these rules are within the limits of the parties' expectations.

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