

## Odd Vs. Even: The Case of Arbitral Tribunals

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### ABSTRACT

The aim of this paper is to focus on the accepted number of arbitrators in law and practice. It is common practice for arbitration agreements to address the number of the arbitrators. Selecting the number of arbitrators is one of the most critical issues in arbitration and it is vitally important to the effectiveness and speed of the arbitration process. Indeed, arbitration clauses often specify the number of persons who will comprise the tribunal in the event of future disputes. However, if the parties do not agree upon the number of arbitrators, institutional rules usually grant the institution power to do so. On the other hand and in the case of ad hoc arbitration, national courts will have the power to decide on the default number rules in based on the arbitration legislation. This paper points out that although the sole or odd number for an arbitral tribunal is commonly used to the extent that it seems to be the only accepted rule, the even number is also accepted under certain trades, rules and legislation, nationally and internationally. Many questions arise from applying the odd number in arbitration, which this paper aims to answer. Moreover, there are some conditions that need to be met in the case of choosing an even number. This paper highlights the underpinning arguments behind both the odd and even number rules in arbitration, evaluating the advantages and disadvantages of each case.

**Keywords:** Number of Arbitral Tribunal, Odd Number of Arbitral Tribunal, Even Number of Arbitral Tribunal, Sole Arbitrator, Umpire.

### 1. Introduction:

There are many issues that should be taking in consideration in establishing an arbitral tribunal, the first of which is probably the number of arbitrators. Although the selection of the number of arbitrators is not a requirement for the validity of the arbitration agreement, it is common for arbitration agreements to address it. This might be of vital importance to ensure effectiveness of the arbitration process. If the contracting parties, however, do not agree upon the number of arbitrators, it is left to either specified institutional rules or national courts to decide on the number of the arbitrators to settle the dispute.<sup>1</sup> While the number of arbitrators may vary depending on circumstances, value of the disputes<sup>2</sup> and whether it is national or international, it is generally accepted, from a practical point of view, that the number is either a sole arbitrator, or an arbitral tribunal consisting of three arbitrators.<sup>3</sup>

It could also be practically noted that in institutional arbitration, arbitrators are appointed when the dispute arises. On the other hand, in *ad hoc* arbitration, arbitrators

are sometimes appointed at the point of forming the contract.<sup>4</sup> In both institutional and *ad hoc* arbitration, if the agreement decides that there should be more than one arbitrator, then the questions that arise are: 1) 'how many?'; 2) what is the general rule, if there is one, on the number of arbitrators that has to be appointed to settle a dispute?, and 3) does that depend on the circumstances of a particular dispute?

This paper sheds lights on the controversy of the odd number rule in arbitration. Although, some take the odd number in arbitral tribunal for granted, it is not necessarily the case. According to the odd number rule, the arbitral tribunal must consist of a sole or multiple arbitrators which should be an odd number in the case of the latter (i.e. three, five, seven or more), whether that choice has been made by the parties, the court, or by any arbitration center. In general however, most arbitral tribunals consist of three arbitrators.<sup>5</sup>

The underlying argument for the odd number rule is that it is seen as the necessity rule to prevent deadlocks and ensure the formation of a majority in decision-

making. Hence, it should be noted that, in theory, the odd number rule and majority rule are two sides of the same coin. That is to say if arbitrators in an even number scenario have different opinions, it would lead to the impossibility of reaching a final award. Hence, most domestic arbitration legislation and international convention not only allow odd number rule but they view it as the only accepted model in settling disputes via arbitration. If otherwise parties agreed on an even number, it could be under certain circumstances a reason for termination of the arbitration proceedings. Indeed under these jurisdictions agreeing on an even number could lead to one of two possible outcomes, depending on the strictness of applying the odd number rule of a specific legislation which is dealt with below, namely: changing the even number that was initially selected to an odd number<sup>6</sup>, or to invalidation of the whole arbitration agreement.<sup>7</sup> This means that it is the mandatory law that would prevail over party autonomy under those jurisdictions that does not allow even number arbitral tribunal.<sup>8</sup>

However, party autonomy is the fundamental argument for an even number rule. If parties are willingly select to have an even number of arbitrators because they want the arbitrators to endeavor for consensual solutions, their choice should be respected. Moreover, why should a legislator bother interfering with parties' autonomy basing its interference on expense, speed and efficiency when parties are willing to bear the consequences of their choice? In addition, there are many model that could be adopted to make even number rule work. For example, if an arbitral tribunal that consists of two arbitrators cannot reach a consensus, indeed the parties may use other procedural arrangements to overcome such a deadlock, such as the eventual appointment of an 'umpire'. Indeed, initial presumption that arbitrators are going to have difference which in turn lead a deadlock is flawed and unreasonable. It is unlikely for the two arbitrators to have difference in opinions that lead to impossibility to reach a consensually acceptable solution. If, however, arbitrators

in the unlikely scenario reach a deadlock then solution such as an umpire could be applied.

Viewing parties' autonomy redundant based on the odd number rule is illogical when taking in consideration that the whole idea of ADR and is based on parties' autonomy. Deadlock could also be envisaged in at least two scenarios when applying a trio odd number rule. The first one is when each arbitrator have different opinion on how the case should be settled the disputes not granting the final say to the presiding arbitrator. Majority of democracy rule might be appropriate when there are two possible options to the question, (i.e., a simple yes or no answer). Hence, the majority rule is not necessarily a perfect rule when dealing with complex international legal issues as indeed we could have as many opinions as for the number of the arbitrators themselves. The second scenario is when parties, although unlikely, agree that the decision should be unanimous, (i.e., unanimous decision or no decision at all). The deadlock in this scenario would arise when the three arbitrators could not reach unanimous award. The argument here is why a possible deadlock should be allowed in the latter situation but not the former.

Although an even number of arbitrators is not common and could indeed cause practical controversy, it is commonly used in shipping and commodities disputes. Some legislation; as will be pointed out below; also allow to all sorts of commercial arbitration. Moreover, the limitation of an even number might not end at the point of whether the arbitration rule or agreement allows it or not, but could exceed to the enforceability of the arbitral award itself, especially if the law of where the arbitral award is going to be enforced does not allow an even number of arbitrators. The next section of this paper outlines the rules for specifying the number of arbitrators in the agreement, and addresses its limitations.

## **2. Number of the Arbitrators in the Arbitration Agreement**

Arbitration is contractual in nature. Hence, specifying

the number of arbitrators could be found in the arbitration agreement. Generally, respecting the will of contracting parties is an overriding principle in the law of contract with the condition that such a will should not be contradictory to public policy. Hence, contracts between parties is the first document to refer to in determining the number of arbitrators, whether the arbitration is *ad hoc* or institutional, domestic or international. The advantage of specifying the number or arbitrators in the agreement is that it ensures effectiveness and speed of the process of arbitration, rather than resorting to the arbitral institution or national courts to decide on the number of arbitrators.

The disadvantage of specifying the number or arbitrators in the preset arbitration agreement, however, is that parties are unable to visualize the size or complexity of the dispute that might arise in the future. This could be easily overcome if parties agree on the number when the dispute occurs. Agreeing on the number of arbitrators whether in the preset agreement or in an agreement when the dispute occurs would, however, overcome delays in the arbitration process if otherwise defaulted to the arbitration institution or the national courts. Hence, one could consider specifying the number of arbitrators by the contractual parties when the disputes occurs, to be a good practice, as the number of arbitrators and their qualifications would be based on the real nature, value and the complexity of the dispute.<sup>9</sup>

As for public policy however, in relation to the number of arbitrators, it varies from one system to another.<sup>10</sup> For example, article 14 (2) of the Jordanian Arbitration Act (2001) provides: "The number of arbitrators, if more than one, shall be odd, otherwise the arbitration is void." Hence, it is self-manifested in article 14 (2) of the Jordanian Arbitration Act (2001), that it is against the law / public policy to have an even number of arbitrators to settle a dispute. On the other hand, other jurisdiction such as the Scottish Arbitration rules in part 1, rule 5, allow an even number of arbitrators, stating: "Where there is no agreement as to the number of arbitrators, the tribunal is to consist of a sole arbitrator."

This means that it is not against the law / public policy in Scotland for parties to agree on an even number of arbitrators.

The same argument in relation to public policy and the number of arbitrators can also be found in the rules of international conventions. For example, the Washington Convention (1965), the Convention on the Settlement of Investment Disputes between States and Nationals of Other States - International Centre for Settlement Of Investment Disputes, in article 37 (2) (a), states: "The Tribunal shall consist of a sole arbitrator or any uneven number of arbitrators appointed as the parties shall agree." This means that arbitration parties could not ask for an even number of arbitrators within an arbitral tribunal. On the other hand, the UNCITRAL Model Law 1994 does not *per se* require this condition. Article 10 (1) of the UNCITRAL Model Law 1994 provides: "The parties are free to determine the number of arbitrators. (2) Failing such determination, the number of arbitrators shall be three." This means that parties would not be contradicting public policy / rules of the UNCITRAL Model Law 1994, if they decide on an even number of arbitrators. Moreover, according to Islamic Law, the number of arbitrators is left to the arbitration agreement. According to the four Islamic Law Schools, contracting parties could appoint one arbitrator or more, whether it be an odd or even number.<sup>11</sup>

By and large, jurisdiction where public policy does not allow for an even number rule have two standpoints. The first and less strict stance is to consider the arbitration agreement valid upon the condition of appointing another arbitrator to make the number of the arbitral tribunal odd. Article 586 of the Austrian Code of Civil Procedure (2006), for example states: "(1) The parties are free to determine the number of arbitrators. If the parties have, however, agreed on an even number of arbitrators, then the arbitrators shall determine a further person as presiding arbitrator. (2) Failing such determination, the number shall be three." Similar article could be found in Annex 1 of the European Convention

providing a Uniform Law on Arbitration of 1966, as Article 5 states: 1 "The arbitral tribunal shall be composed of an uneven number of arbitrators. There may be a sole arbitrator. 2 If the arbitration agreement provides for an even number of arbitrators an additional arbitrator shall be appointed. 3 If the parties have not settled the number of arbitrators in the arbitration agreement and do not agree on the number, the arbitral tribunal shall be composed of three arbitrators." The posture here is to salvage the will of the contractual parties rather than rendering the arbitration agreement null and void. The other and stricter stance is to consider the agreement null and void if the parties agree on even number arbitral tribunal. There are many legislation that took such a stance such as the Jordanian Arbitration Law 2001 (article 14 (2) explained above).

In conclusion, the will of the contracting parties about the number of arbitrators should be respected, as far as this will does not contradict public policy. Contracting parties, however, need to be aware of the public policy of the jurisdiction where the arbitration award is going to be enforced. This is of particular importance as going against such a public policy might basically amount to looking for trouble.<sup>12</sup> The next three sections of this article illustrate the concepts of sole, odd and even arbitral tribunal rules.

### 3. Sole Arbitral Rule

Indeed, appointing a sole arbitrator makes sense from the point of view of speed and economy. This is because on one hand, meeting and hearing in the arbitration process could be easily arranged in the case of a sole arbitrator which serves speedy arbitration. The arbitral proceeding would be accomplished more quickly, as a sole arbitrator is not faced with issue of deliberation with other colleagues in an attempt to attain an agreed majority determination of the matter in dispute. Furthermore, this would incur less cost, as parties would only have to endure the cost of hiring one, rather than several arbitrators.<sup>13</sup>

Defaulting into a sole arbitrator in the absence of an agreement on the arbitrators' number is a rule that is adopted amongst some known legislations and arbitration institutions. Hence, the question of enforceability is not likely to exist in any jurisdiction, as it is unlikely to have a jurisdiction that outlaws such a practice. The ICC rules states in Article 8.2: "Where the parties have not agreed upon the number of arbitrators, the Court shall appoint a sole arbitrator, save where it appears to the Court that the dispute is such as to warrant the appointment of three arbitrators." Article 5 of the American Arbitration Association's International Arbitration Rules (2009), provides: "If the parties have not agreed on the number of arbitrators, one arbitrator shall be appointed unless the administrator determines in its discretion that three arbitrators are appropriate because of the large size, complexity or other circumstances of the case." Article 9.1 of the Arbitration Rules of the European Court of Arbitration 2015 provides: "The Arbitral Tribunal consists of a sole arbitrator unless the parties have agreed to appoint three arbitrators."<sup>14</sup>

Hence, it can be deduced that the inclination for a sole arbitrator is the general norm, particularly for settling disputes particularly under domestic laws. International commercial arbitration practice, however, might have an inclination towards three arbitrators as the disputes are likely to be more technically complex in international arbitration in comparison to disputes in national arbitration.

### 4. Three/Trio Arbitral Tribunal Rule:

In the practice of international arbitration, there is however, a clear trend for the appointment of three arbitrators. This would overcome the risk of a 'rogue decision' or error from a sole arbitrator and is seen as a balancing factor.<sup>15</sup> Such a preference in the practice of international arbitration is highly commended. This is because, an arbitral tribunal of three arbitrators is likely to prove more satisfactory to the parties; and the 'quality of justice' is likely to be less subject to the predispositions

and characteristics of an individual member, whilst ensuring points of discussion and debate.

It is common practice in an arbitral tribunal that consists of three arbitrators for each party to nominate an arbitrator, leaving the third arbitrator to be chosen by the agreement of both arbitrators or by a third party institution.<sup>16</sup> The advantage to a party of being able to nominate an arbitrator is that it gives the party a sense of protection, since its point of view will be listened to. This might be of particular importance in international commercial arbitration where there is often differences in languages, traditions, and cultures between the parties or / and, indeed, between the members of the arbitral tribunal members.<sup>17</sup> In such a case, an arbitrator nominated by a party will be able to make sure that the point of view of the appointing party is properly understood by the arbitral. It may appear to be difficult in practice, but it is possible for an arbitrator to fulfil a useful role in representing the interests of the party who nominated him or her in the process of arbitration, without jeopardizing his or her independence and impartiality. However, a three-member tribunal is more expensive than an arbitration conducted by a sole arbitrator. It is also usually slower in reaching an award.<sup>18</sup>

Appointing an arbitral tribunal that consists of three arbitrators for each party to nominate an arbitrator, and leaving the third arbitrator to be chosen by the agreement of both arbitrators or by a third party institution, however, is not the only means to appoint a trio arbitral tribunal. Kaplan<sup>19</sup> (2006, p. 19), for example, introduced an interesting solution for appointing a trio, whilst maintaining the impartiality of arbitrators. The proposal here is when parties agree to appoint an arbitrator, they authorize that arbitrator to appoint two other arbitrators based on experience and knowledge in a specific dispute. This proposal does not only ensure neutrality among three arbitrators, but also knowledge in law and technical issues proposed the concept of 'bipartisan trio', viewing those arbitrators who are appointed by the contracting parties to be partial to the party that appointed them.

Moreover, Consolo<sup>20</sup> introduced another form of an impartial trio arbitral tribunal. In Consolo's view, the tribunal should consist of an arbitrator (bipartisan) with the authority to decide on the disputed issues, considering the other two arbitrators, (each of whom are appointed by a party) to be a representative for the party that appointed him. The bipartisan here would be acting as a sole arbitrator. The situation here is not much different to appointing a sole arbitrator.

Establishing a trio arbitral tribunal arises many questions that need to be answered. Among which is whether the award should be reached by a majority or unanimous decision. What is the stance if they cannot reach a majority decision? What is the role of the presiding arbitrator? Jurisdictions have differences in tackling these questions. It is, however, considered best practice to answer these questions in the arbitration agreement. Yet, and as pointed out above, parties have to take into consideration the stance of the applicable law and the law where the arbitral award is going to be enforced, not to contradict public policy.

In a scenario of trio arbitrators, the arbitral award could be principally reached by either unanimous or majority decision. However, if the contract does not specify the method of reaching an award, the applicable law would be the reference on deciding on whether the award could be reached by majority or unanimous award. Most jurisdictions tend to agree on the majority rule. Indeed, majority rule could also serve speedy arbitration as the role of the third arbitrator is often to weight the arguments of the other two sides endorsing one them. For example, article 36 (3) of Vienna Arbitral Centre Rules (2013), stipulates: "... if the award is a majority award and not a unanimous award, this shall be noted upon the request of the dissenting arbitrator." Moreover, article 63 of the WIPO Arbitration Rules (2014), states: "Unless the parties have agreed otherwise, where there is more than one arbitrator, any award, order or other decision of the Tribunal shall be made by a majority. In the absence of a majority, the presiding arbitrator shall make the award

order or other decision as if acting as a sole arbitrator.”

The role of the presiding arbitrator in a trio arbitral tribunal; (also referred to as chairperson or president of the arbitral tribunal); in reaching the award depends on the rules in which the arbitration is being conducted. Although the role of the presiding arbitrator is greater than that of his/her co-arbitrators when it during the course of the arbitration process as s/he would take control of deliberation of the arbitral tribunal and of the conduct of the meetings and hearings, it often the case that the presiding arbitrator would have an equal voice to her / his co-arbitrators when it comes to decision making (i.e., the final decision must be reached by the entire arbitral tribunal).<sup>21</sup>

Under Article 33 of the CIArb Arbitration Rules (2015), for example, provides: "1. When there is more than one arbitrator, any award or other decision of the arbitral tribunal shall be made by a majority of the arbitrators. 2. In the case of questions of procedure, when there is no majority or when the arbitral tribunal so authorizes, the presiding arbitrator may decide alone, subject to revision, if any, by the arbitral tribunal." Moreover, Article 14.3 of the Rules of the London Court of International Arbitration provides: "In case of a three-member tribunal the Chairman may, with the prior consent of the other two arbitrators, make procedural ruling alone."<sup>22</sup> Hence, it is evident that the both the Rules of CIArb and the Rules of the London Court of International Arbitration as for many other international and domestic rules; such as the UNCITRAL Model Law (1985) and the Jordanian Arbitration Law (2001); that there is distinction between the final awards where the majority of the arbitrators is needed, while the presiding arbitrator might have the upper hand in deciding alone on a procedural question.

Under Paris Arbitration Rules (2011), Article 6.10, however, states: "... In the event that there is more than one arbitrator, the award shall be rendered by a majority decision. In the event that there is no majority, the presiding arbitrator shall make the award alone." The

same could be found in the International Chamber of Commerce Rules (2012). Article 31 provides: "Making of the Award 1) When the arbitral tribunal is composed of more than one arbitrator, an award is made by a majority decision. If there is no majority, the award shall be made by the president of the arbitral tribunal alone." Although, Paris Arbitration Rules (2011) and International Chamber of Commerce Rules (2012) do not differentiate between a procedural and final rulings when it comes to the presiding arbitrator, they nonetheless grant the presiding arbitrator the right to decide alone on the procedural and final award when a majority ruling has not been reached.

##### 5. Even Arbitral Tribunal Rule:

It could be noticed that the trend of the odd sole or trio number rule in arbitration is not always observed. For example, it is noticed that the UNCITRAL Model Law (1985) does not require this condition. Article 10 states: "(1) The parties are free to determine the number of arbitrators. (2) Failing such determination, the number of arbitrators shall be three." Hence, one could deduce from this article that parties are free to determine that arbitrators are to be of an even number. The London Court of International Arbitration Rules (2014) also allow for an even number arbitral tribunal. Article 5.8 of the London Court of International Arbitration Rules provides: "A sole arbitrator shall be appointed unless the parties have agreed in writing otherwise or if the LCIA Court determines that in the circumstances a three-member tribunal is appropriate (or, exceptionally, more than three)." The same position can also be found in the ICC rules. Article 11.6 reads: "Insofar as the parties have not provided otherwise, the arbitral tribunal shall be constituted in accordance with the provisions of Articles 12 and 13."

This trend is further displayed in England in the case of *Fletamentos Maritimos SA vs. Effjohn International BV*<sup>23</sup> where the reference was made to "arbitration in London", and the parties could not agree on the number of the arbitrators. Tuckey J. concluded "logically, if it is

more than one, and there is no indication in the clause that there should be three, the parties must have intended that there should be two arbitrators.” The opinion of the judge here might not seem particularly logical, as there is no indication that parties had a common intention. Tuckey J., however, based his opinion on the context of sections 6 of the Arbitration Act in England (1950). Article 6, provided: "Unless a contrary intention is expressed therein, every arbitration agreement shall, if no other mode of reference is provided, be deemed to include a provision that the reference shall be to a single arbitrator." Section 6, which only deems the reference to be to a single arbitrator in the absence of the expression of a contrary intention.

The current Arbitration Act of England, Wales and Northern Ireland (1996) in remained unchanged from the 1950 Act as far as the arbitrators' number is concerned. Article 15 of the 1996 Act provides: "(1). The parties are free to agree on the number of arbitrators to form the tribunal and whether there is to be a chairman or umpire. (2). Unless otherwise agreed by the parties, an agreement that the number of arbitrators shall be two or any other even number shall be understood as requiring the appointment of an additional arbitrator as chairman of the tribunal. (3). If there is no agreement as to the number of arbitrators, the tribunal shall consist of a sole arbitrator." The Arbitration (Scotland) Act 2010 adopted similar position. Schedule 1 rule (5) of the Scottish Arbitration Rules states, "Where there is no agreement as to the numbers of arbitrators, the tribunal is to consist of a sole arbitrator."

Moreover, in certain trades and specialized markets, the practice is to resort to an arbitral tribunal of two arbitrators. In such trades or markets, it is perceived that if two arbitrators do not agree on a decision, a reference will be made to an umpire arbitrator. The latter would then deliver the final decision on the case. This practice is derived from the concept of a 'friendly way of settling disputes', as it assumed that the two arbitrators would reach a reasonable decision. It is a system that may work

reasonably well. Yet, it is not a practice to be recommended in international commercial arbitration as problems might arise in implementing the decision, where a legal system does not allow an even-number arbitration as a matter of public policy. The problem could be even deeper when faced with questions such as who is to lead? Who should take the lead on the required times for discussion and deliberation? Who should take the lead and responsibility to inform the parties of the procedures? And if they can agree on a decision, who should take the lead in appointing an umpire? Although such scenarios could be rare in practice, it is still preferable in the case of international trade to avoid all of these problems, resorting to an odd rather than even number.<sup>24</sup>

According to articles 1843 and 1844 of The **Mecelle** (Majallah el-Ahkam-i-Adliya), which is based on the Hanifi School of Islamic thoughts and was the civil code of the Ottoman Empire in the late 19th and early 20th centuries, "more than one arbitrator may be appointed, that is to say, two or more persons may be appointed to give a decision in respect to one matter. Both plaintiff and defendant may each validly appoint an arbitrator." In article 1844. "In the event of several arbitrators being appointed as above, their decision must be unanimous. One alone may not give a decision."

It should be noted that under Islamic Law, in the case of several arbitrators whether even or odd, the number should be unanimous. Hence, majority award in such a scenario (i.e., several arbitrators) is not accepted. However, under Islamic Law, if the several appointed arbitrators (even or odd) could not reach a unanimous decision, the arbitrators then would, (if authorized by the contracting parties), be able to appoint another arbitrator (the umpire). Article 1845 of the Mecelle states: "The arbitrators may, if they are duly authorised thereunto by the parties, appoint another person to act as arbitrator. They may not do so otherwise." This means that the appointed person to act as arbitrator would act as sole arbitrator (umpire). The umpire's job here is not to weight

the points of views of the predecessor arbitrators, reaching a majority arbitral award. It is rather to reach a new award based solely on his point of view. The same rule could be found in the other three schools of thoughts of Islamic jurisprudence, namely: Maliki, Hanbali and Sahafi'i.<sup>25</sup>

It is probably appropriate here to point out that the argument for even (two) arbitral tribunal sounds convincing, when unanimous award is needed. Not only that an even two arbitral tribunal when unanimous award is needed cheaper than a trio arbitral tribunal, but also it is friendlier as the parties and consequently arbitrators are likely to be willingly to endeavor for reach a consensual award. If, however, the arbitral tribunal of two arbitrators, cannot reach a consensus cannot, the parties may use other procedural arrangements to overcome a deadlock, such as the appointment of an umpire.

## 6. Conclusion

According to the American Arbitration Association (2006), "An arbitration agreement is a contractual commitment by the parties to resolve issues of facts, law and contract through an alternative adjudicative forum, and accept the decision of a neutral arbitrator." Parties' autonomy should be observed as it is the basis not only for arbitration but also the whole kinds of the ADR methods. It is established that agreeing on the number of arbitral tribunal is commended practice, if parties observe the law in which the arbitration is settled and enforced, as

it ensures speedy arbitration process. Observing the applicable law over the arbitration process and the law where the arbitration award going to be enforced is important as contradicting public policy might cause delay in the arbitration process under some jurisdiction, or in other more strict jurisdiction would render the whole arbitration agreement void. Hence, opting to odd number arbitral tribunal is safer than even number arbitral tribunal, as in a strict approach towards even number would render the arbitration agreement void. That is not, however, to say that even number arbitral tribunal is flawed in theory or practice.

This articles established that both odd and even number arbitral tribunal rules are sound. Odd number rule goes hand in hand with majority rule. Hence, opting to unanimous award with odd number arbitral tribunal that consist of three or more arbitrators would not make sense as it would incur more cost and time. Moreover, such a rule would only work if there is a presiding arbitrator who weights the argument of the other two arbitrator taking side with one. That is not always reachable, especially in complex disputes where there is possibility to have as many opinion as the number of the arbitrators. On the other hand, even number arbitral tribunal rule only work with consensual unanimous award. If, however, a unanimous award could not be reached there will deadlock unless an umpire is appointed. Majority rule and procedure.

## Margins

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1. Gary B. Born, *International Arbitration: Law and Practice*, (2012) Kluwer Law International BV, The Hague, p. 247
2. Some institutions provides that in the absence of the parties' agreement, a value threshold would determine whether a sole arbitrator or a panel of arbitrators has to be selected. Article 6 of the Rules of Arbitration of the Permanent

- Arbitration Court at the Croatian Chamber of Commerce ('Zagreb Rules') of 2002, for example, states that a sole arbitrator will be appointed if the amount in dispute does not exceed 50,000 euros. On the other hand, an arbitral tribunal of three arbitrator will be appointed for higher values the arbitration will be conducted by a panel of three arbitrators. This main reason for this is to 'save expense'.
3. Nigel Blackaby, et al, *Redfern and Hunter on International Arbitration*, Oxford University Press, Oxford (2009), p. 247.
  4. Mauro Rubino-Sammartano, *International Arbitration Law and Practice*, third edition, (2014), Juris, New York, p. 449.

5. From practical commercial arbitration cases point of view, the choices by and large are either sole or three arbitral tribunal. Trio arbitral tribunal is the preference of international commercial disputes unless the disputed amount is small where the cost of the arbitrators would not be justifiable in comparison to the disputed amount. On the other hand, an odd number arbitral tribunal of more than three is not a common practice in international commercial disputes, unless the disputed parties are states where arbitrators would be appointed on political affiliation rather than practical consideration.
6. For example the Uniform Law on Arbitration of 1966 of the European Convention in Article 5 provides: "1. The arbitral tribunal shall be composed of an uneven number of arbitrators. There may be a sole arbitrator. 2. If the arbitration agreement provides for an even number of arbitrators an additional arbitrator shall be appointed."
7. Likewise Article 809 of the Italian Code of Civil Procedures as amended in 2006 provides: "There may be one or more arbitrators, provided their number is uneven. The arbitration agreement must contain the appointment of the arbitrators or establish their number and the manner by which they are to be appointed. Where an even number of arbitrators is indicated, an additional arbitrator shall be appointed by the president of the tribunal ..."
8. Similarly Article 1684 of the Belgian Judicial Code 2013 in provides: "1. The Arbitral Tribunal must be composed of an odd number of arbitrators a sole arbitrator is allowed. 2. Should the arbitration agreement provide for an even number of arbitrators, an additional arbitrator shall be appointed..."
9. All of the Arab countries arbitration laws provides for such a rule. If the arbitral tribunal is not an odd number in the arab countries then the arbitration clause would be void. This is evident in Article 13 of the Saudi Arbitration Law 2012, for example, stipulates: "The arbitration tribunal shall be composed of one arbitrator or more, provided the number of arbitrators is an odd number; otherwise, the arbitration shall be void." Likewise, Article 14 of the Jordanian Arbitration Law 2001, Article 15 of the Omani Arbitration Law 1997, Article 18 of the Tunisian Arbitration Code 1993, Article 12 of the Syrian Arbitration Act 2008, and Article 771 of the Lebanese Civil Procedural Law 1983.
10. See, Mohammad A. M. Ismail, *Globalization and New International Public Works Agreements in Developing Countries*, 2016, Routledge, UK, p.183.
11. Nigel Blackaby, et al, *Redfern and Hunter on International Arbitration*, Oxford University Press, Oxford (2009), p. 247.
12. Matti, S. Kurkela and Santtu Turunen, *Due Process in International Commercial Arbitration*, second edition, Oxford University Press: New York, 2010, p. 20.
13. Baamir, Abdulrahman Yahya, *Shari'a Law in Commercail and Banking arbitration: Law and Practice in Saudi Arabia*, Rutledge, London, 2016, p. 83.
14. Mauro Rubino-Sammartano, *supra*, p. 451.
15. Nigel Blackaby, et al, *Redfern and Hunter on International Arbitration*, Oxford University Press, Oxford (2009), p. 248.
16. Article 5.8 of the Rules of the London Court of International Arbitration (LCIA Rules), 2014, provides: "A sole arbitrator shall be appointed unless the parties have agreed in writing otherwise or if the LCIA Court determines that in the circumstances a three-member tribunal is appropriate (or, exceptionally, more than three). Moreover, the Singapore International Arbitration Center (SIAC) Rules (Rule 6.1) provide for a default of one arbitrator.
17. *Ibid*
18. *Ibid*.
19. Matti, S. Kurkela and Santtu Turunen, *Due Process in International Commercial Arbitration*, second edition, Oxford University Press: New York, 2010, p. 149; and Paola Catenaccio, *Culture Variation in Arbitration Journals: The International Court of Arbitration Court of Arbitration Bulletin and Arbitration International Compared*, in *International Commercial Arbitration: Issues, Challenges and Prospects*, edited by: Vijay K. Bhatia, Christopher N. Candline and Maurizio Gotti, Routledge: London, (2016) p.163
20. Blackaby, et al., p. 250
21. Kaplan (2006)
22. C. Consolo, *Arbitri delle parti "non neutrali" (Non Neutral Arbitrators Appointed by the Parties)*, *Riv. Arb.* 2001, p. 9.
23. Nigel Blackaby, et al., *supra* p. 246.
24. Matti, S. Kurkela and Santtu Turunen, *Due Process in International Commercial Arbitration*, second edition, Oxford University Press: New York, 2010, p. 173.
25. [1995] 1 Lloyd's Rep.311
26. Blackaby, et al., p. 250
27. Baamir, Abdulrahman Yahya, *supra*, p. 83.

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## اختيار العدد الفردي أم العدد الزوجي في تشكيل هيئات التحكيم

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## ملخص

تهدف هذه الورقة البحثية الى التركيز على العدد المقبول للمحكمين في القانون والممارسة. وأنه من الشائع في اتفاقيات التحكيم معالجة عدد المحكمين، حيث أن اختيار عدد من المحكمين يعتبر أحد أهم القضايا في التحكيم لما له من أهمية بالغة لفاعلية وسرعة عملية التحكيم. في الواقع، فإن شروط التحكيم غالباً ما تحدد عدد الأشخاص الذين سوف تتضمنهم هيئة التحكيم في حال حدوث خلافات مستقبلية. لكن، في حال عدم اتفاق الأطراف على عدد المحكمين فإن القواعد المؤسسية عادة ما تمنح مؤسسة التحكيم السلطة على القيام بذلك. من ناحية أخرى، وفي التحكيم الحر، فإن المحاكم الوطنية هي صاحبة الصلاحية بتحديد العدد المناسب لهيئة التحكيم. وتبين هذه الورقة البحثية على أنه وبالرغم من أن العدد الفردي لهيئة التحكيم هو الأكثر شيوعاً في التطبيق، إلا أنه يتم أيضاً قبول العدد الزوجي لهيئة التحكيم تحت شروط معينة في بعض التشريعات الوطنية والدولية. وتهدف هذه الورقة البحثية للإجابة على العديد من الأسئلة التي تنشأ من تطبيق العدد الفردي في هيئة التحكيم. وعلاوة على ذلك، فإن هناك بعض الشروط التي يجب مراعاتها في حالة اختيار العدد الزوجي. تسلط هذه الورقة البحثية الضوء على النقاش الدائر حول قواعد اختيار الأعداد الفردية أو الزوجية في التحكيم من خلال تقييم المزايا والعيوب لكلا الحالتين.

**الكلمات الدالة:** عدد المحكمين، هيئة التحكيم، العدد الفردي لهيئة التحكيم، العدد الزوجي لهيئة التحكيم، المحكم الفرد، المحكم الفيصل.

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