

# Impacts of cultural differences on international arbitration based on the example of Iran.

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**IMPACTS OF CULTURAL DIFFERENCES ON  
INTERNATIONAL ARBITRATION  
BASED ON THE EXAMPLE OF IRAN**

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## ABSTRACT

### IMPACTS OF CULTURAL ISSUES ON INTERNATIONAL ARBITRATION BASED ON THE EXAMPLE OF IRAN

This research aims to ascertain whether and to what extent cultural issues impact the accessibility and effectiveness of international arbitration, and to provide recommendations which will contribute to the improvement of international arbitration. It examines the origin of arbitration as a means of resolving disputes, the development of current international arbitration law and the UNCITRAL Model Arbitration Law. It compares the arbitration law and procedures of the US, England and Wales (E&W), and Iran. It then focuses on the effect of social and legal culture on international arbitration.

The aim of this research is achieved through a multi methods study. An extensive review of the relevant literature in both Farsi and English was conducted. A case study from the Iran and the US international arbitration tribunal of the 1980s. A comparative study of the law and procedures was carried out to ascertain the similarities and differences of each jurisdiction. Finally, a series of semi-structured questionnaires was conducted, as well as interviews with experts in both languages in order to identify the practical effect of social and cultural differences.

The recent increase in international arbitration indicates the necessity of a reliable, friendly forum and enforceable dispute resolution system as an alternative to destructive and devastating fights and wars.

The research fills a gap in the literature on international arbitration. There is very little research on the impact of social and legal culture. The research identifies common underlying principles and an attempt to harmonise the modern law of arbitration in each jurisdiction. This work further contributes to existing knowledge by discovering several examples of underlying legal and cultural issues experienced by arbitrators and arbitration trainers.

This research explains the importance of understanding underlying cultural issues in international arbitration and the role of arbitrators, arbitration tribunals and arbitration trainers in ensuring cultural issues do not adversely impact on arbitration outcomes. It concludes that understanding of cultural issues is an important element in the effective practice of international arbitration, just as legal and technical skills are, and as such the study of issues of cultural difference is necessary in general and in international arbitration in particular. It makes recommendations for arbitrators, arbitration tribunals and arbitration trainers. The methods used for this research may be applied to other international arbitration jurisdictions.

International, Arbitration, Commercial, Law, Culture, Iran, Cross-culture, Empirical, Qualitative, Interview.

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## Table of Abbreviations

AAA: American Arbitration Association.....	
ADR: Alternative Dispute Resolution.....	
CE: Common Era.....	
BCE: Before Common Era.....	
CISG: Contracts for the International Sale of Goods.....	
FAA: Federal Arbitration Act .....	
<i>FedArb: Federal Arbitration</i> .....	
<i>FRCP: Federal Rules of Civil Procedure</i> .....	
IACCP: International Association for Cross-Cultural Psychology.....	
ICC: International Chamber of Commerce.....	
LCIA: London Court of International Arbitration .....	
<u>NIOC: National Iranian Oil Company</u> .....	
PhD: Doctor of Philosophy.....	
TRAC: Tehran Regional Arbitration Centre.....	
UK: United Kingdom.....	
UNCITRAL: United Nation Commission on International Trade Law.....	
UNESCO: United Nations Educational, Scientific, Cultural Organisation.....	
USA: United States of America .....	
GATT: General Agreement on Tariffs and Trade.....	

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- C)** Copy of the handout for the talk at RGU Research seminar, 14<sup>th</sup> February 2018
- D)** Copy of UNCITRAL Arbitration Model Law
- E)** US Arbitration Law
- F)** UK Arbitration Law
- G)** Iran's Arbitration Law

## **1. CHAPTER ONE INTRODUCTION**

### **1.1 Background**

This study argues for the importance of understanding the impacts of underlying cultural issues on the effectiveness of international arbitration, based on the example of Iran. Legal normalisation between nations in some cases has come at the expense of other important underlying problems, such as sophisticated social cultural issues. These include how people think and feel, their expectations, and understanding, values that might be different from one's own. Most importantly, in the long term, these cultural differences affect the accessibility of and satisfaction with international arbitration.

Additionally, research suggests that states are competing regionally and internationally to become centres of excellence for international trade including arbitration in commercial disputes. This competition exists because of the financial benefits and prestige that international arbitration offers. Where variables such as legal and technical skills and administration facilities are of a similar standard, commercial success depends on the understanding and management of cultural issues as a unique selling point.

This research draws on first-hand experience, the expertise and the relevant contacts of the researcher, who has lived, worked, studied and taught extensively for over 40 years in both Eastern and Western cultures (Iranian and British). This experience has shown that cultural differences go deeper than skin colour. Culture is not fixed but evolves along with the need for survival; it changes from generation to generation and location to location. Therefore, cultural understanding requires regular updating, and having fixed ideas about other cultures is misleading.

The availability and the ease of transportation and communication between countries result in the perception of a shrinking world. This has led to the continuous expansion and increase of international trade. With the growth of world trade comes the need for a system of international law and regulation for better management of disputes. Example of these laws and regulations is the recent development and proliferation of international arbitration laws, including the United Nations Commission on International Trade Law 1985

(UNCITRAL, Arbitration Model Law), please refer to Appendix D. To this point, much of the lawyers' efforts have centred on resolving legal differences in order to improve and stabilise legal understanding and conformity between countries' arbitration laws.

The harsh reality is that while it has become easy to visit different countries by traveling, the human mind and understanding requires much deeper observation and takes a longer time to catch up with the quick physical movement from one country to another. There is evidence of ongoing development in approaches to international arbitration law; however, the wide-ranging and long-term underlying cultural issues have clearly become secondary considerations compared with original arbitration by some international arbitrators. This research investigates the effect of these issues on the success of international arbitration.

The researcher has been involved in study, work, teaching, marriage, family, reading and writing in both Farsi and English for more than forty years in the UK, paying special attention to cultural differences and their effects. In her work life she has been immersed in arbitration and witnessed the importance of the effects of social cultural issues. The researcher has been a Fellow of Chartered Institute of Arbitrators since 2010. She worked as the Company Secretary of the Chartered Institute of Arbitrators Southern Branch for two years. She became a member of the Worshipful Company of Arbitrators in 2010 and has attended many seminars, symposia and conferences related to international arbitration. She also has regular contact with a number of prominent international arbitrators and trainers.

Furthermore, the author of this thesis visited and studied some of the major international museums and historical sites, such as the remains of ancient Minoan civilisation in Crete and Roman sights in Pompeii in order to understand ancient international trade, disputes and methods of resolving them. Additionally, as part of this study the researcher visited the Peace Palace in The Hague, where the tribunals of the Iran-US arbitration of the 1980s took place. In addition, visits were made, and evidence was collected about the historical disputes and treaties to solve them from the British Museum, British Library, Paris Sorbonne Law Library, Peace Palace Library,

Crete and Louvre Museum. This literature review was enriched by visits to the Peace Palace Library, which specialises in providing published materials related to international arbitration.

The British Library has a number of books on international arbitration with a special section of the library devoted to Iranian literature in English and in Farsi. The Chartered Institute of Arbitration offers a small collection of books and journals related to arbitration. There is also an Iranian library in London that holds many books, journals and periodicals in Farsi. The British Museum was a valuable resource for the study of documents and archaeological evidence used in this research on the history of international arbitration. The museums on the Greek island of Crete hold abundant evidence of commercial trade between classical countries and the neoclassical period from more than 3,000 years ago, which are included in this research.

Several meetings were conducted with an experienced Iranian arbitrator who was directly involved in the Iran/US international arbitration of the 1980 in The Hague. This first-hand information provided valuable insight into the legal and cultural difficulties that the Iranian and US arbitrators encountered during the international arbitration. One example is the first-hand information and feelings of frustration regarding a fist fight between the Iranian and the US arbitrators at The Hague (presented as a case study, page 176).

This case study is a major instance of modern time international arbitration where two states, Iran and the US, tried to resolve the settlement of numerous individual private commercial claims. This case study is a key example of ineffective international arbitration mainly due to cultural misunderstanding. This international arbitration therefore intensified the animosity and failed to improve the relationship between the parties. This case study plays an important role in this investigation as there is evidence that points to the parties' lack of understanding of cultural differences that existed outside the disputed financial claims.

#### **1.1.1 Stages of development of the research**

- Year one: research training, literature review to help refine research question. I continued to make contacts with arbitrators in a variety of

institutions. I also attended a week-long research training event in London held by London University (St Mary), met and conversed with other fellow researchers.

- Year two: Piloting of tools to be used, development of research techniques. I attended a social science conference held at Robert Gordon University and a social science research training course in London.
- Year three: Main empirical phase; I increased my background knowledge of the subject by travelling to The Hague Peace Palace, Paris Sorbonne University's Law Library, Crete University Library, Iranian Library in London, attended many conferences and found connections for approaching interviewees.
- Years four and five: Completion of write-up phase; I delivered a talk about my thesis at a seminar on 14 February 2018 for peer reviews.

### **1.1.2 Research Aim**

This research aims to ascertain whether and to what extent cultural issues impact on international arbitration and to make recommendations which will contribute to improving the procedural practice of international arbitration.

### **1.1.3 Research Question**

The main research question is: do cultural differences impact on the outcome of international arbitration?

1. Why does legal normalisation result in overlooking cultural differences?
2. Why is arbitration beneficial for a nation/country?
3. Is there regional or international competition for becoming a centre of excellence?
4. Is there competition between arbitrators for selection?
5. Do cultural differences matter to arbitrators?
6. What issues are created by cultural differences?



7. Are all cultural issues visible to an arbitrator?
8. What are the cultural issues experienced by arbitration trainers?
9. What are the recommendations for improvement in cultural competence?

These questions form the basis for interviews as part of the empirical study, .

#### **1.1.4 Objectives**

This research will:

- Identify whether and to what extent cultural diversity has an effect on international arbitration by conducting literature reviews, questionnaires, interviews and legal comparison.
- Assess how and why cultural differences affect current international arbitration.
- Evaluate the cultural awareness of arbitrators and present recommendations for the improvement of international commercial arbitration law and procedures by analysing the findings.

#### **1.1.5 Information Sources**

The following types of information sources were consulted:

- Printed Journals (e.g. Update, Program, Library, Trends, and Library Review)
- Online gateways and databases, including West Law
- Standard-making and arbitration laws, substantive laws
- Online journals
- Government and other regulatory body publications
- Online books in the context of library management
- Legal libraries
- Seminars, meetings and networking opportunities

- International libraries
- Specialised libraries such as the Peace Palace in The Hague and the Persian Library in London

## **1.2. Chapter Two: Literature Review in two parts-Arbitration and Culture**

The literature review is divided into two chapters: chapter two and chapter three. Chapter two has two parts, Arbitration and Culture, and chapter three relates to the effects of cultural issues on arbitration

### **1.2.1 Chapter two, Part one: Arbitration**

This research concerns international arbitration. An important part of the research is the review of the relevant English and Farsi literature from books, journals, conferences and symposium materials. The first part of the literature review discusses the origins and the importance of international arbitration as a means of resolving disputes.

Chapter two, Part one analyses the historical development of the system of international arbitration, from simple self-regulation to the United Nations Commission on International Trade Law (UNCITRAL or Arbitration Model Law). The effects of ancient arbitration on modern arbitration are also examined. This section discusses an example of the legal differences, the Iran-US Arbitration in The Hague 1980s. Different cultures have different substantive laws relevant to contracts, as well as different arbitration procedural laws and Rules.

### **1.2.2. Chapter two, Part two: Social culture**

In the second part of chapter two, the literature review focuses on culture and begins with the basic introduction and the definition of culture, why people have culture and its particular features. Different interpretations of culture are examined. The formation and variation of many subcultures within the main culture are illustrated to explain cultural differences within the same culture. The effects of free society and democracy in the creation of subcultures are also discussed.

Iranian culture and arbitration are discussed and compared with English culture as an example of cultural differences. The relationship between the formation of a culture and the geographical position of a country in the world is also discussed, as is the effect of historical events on the language.

The limited scope of this part does not allow for in-depth discussion of every aspect of cultural diversity, nor does it enter into the theory of culture. A brief explanation of the differences between cultures, customs and traditions is included to clarify the terms used.

### **1.3. Chapter Three: Literature Review of Cross-cultural Issues**

This part analyses the effects of cultural issues on international arbitration and specifically aims to highlight the role of cultural awareness in the success of international arbitration in today's commercially competitive world. This chapter also assesses the cross-cultural difficulties faced by some end-users of international arbitration. Chapter three concludes by summarising the literature on cultural issues affecting the three jurisdictions studied in this thesis.

### **1.4. Chapter Four: Methodology**

Chapter four explains and justifies the methodology chosen for this thesis. This research is multi-disciplinary, based on social science, law and arbitration, observing the social and cultural effects on international arbitration. This thesis also involves observing the culture in international arbitration and the need for in-depth analysis, therefore qualitative research proved to be a suitable methodology.

The empirical investigation into the issues of cultural diversity is based on unstructured and semi-structured questions and observations of the interviewees' reactions and responses; therefore, the style of research was inductive. Body language and impressions of the interviewees were also observed as part of the analysis. Two forms of primary data were collected. One was a questionnaire assessing the background of the system and the input of higher education regarding awareness of cultural differences as a possible background to international arbitrators. The second type of data was collected through one-on-one interviews with prominent experienced international arbitrators, half of whom had had at least one Iranian party (as an example) in the cases that they had conducted.

Use of questionnaires was based on qualitative and quantitative research, both observing and analysing the responses. The survey was developed to be piloted before use in the main phase of the study. This was a background to the interviews with international arbitrators. Countries were chosen for discussion from Western and the Eastern cultures to reflect their geographical and geopolitical positions in the world, and included in the West England, US and Iran in the Middle East.

Core issues for empirical investigation include: The experience of international arbitrators and trainers in practicing international arbitration, including cultural influence, when dealing with Iranian clients, as well as examples of their cultural issues in international arbitration.

The sources of information about cultural awareness in higher education, using questionnaire. Other related issues that have arisen from the questionnaire, please see Appendix B:

- Perception and interpretation of other cultures and language barriers
- The need for guidelines to clarify cultural issues in international arbitration
- Need and demand for the training of arbitrators in the awareness of cultural issues
- Need provide training in order for more women to become arbitrators
- Need and demand for a programme of cultural awareness for university students

Approach of the study:

The thesis takes an insider's view of the role that socio and cultural issues play in international arbitration. It reflects the human factors underlying the application of legal formalities.

Empirical research style:

The main empirical research method was the interview, using semi-structured and unstructured interviews discussing the experience of cultural issues and their effects on international arbitration. Also, a survey data through questionnaire.

Software used

The study used the NVivo software to assist with the organisation of interview data analysis. Another software called Snap Surveys was used for designing, amending and redesigning the questionnaire.

### **1.5. Chapter Five: Findings**

Chapter five presents the details of the data collected by questionnaire, interviews and legal comparison. A sample questionnaire is included in the appendix. The findings of ten in-depth interviews of up to two hours with international arbitrators are discussed. Chapter five concludes with a summary of the findings from the empirical research.

### **1.6. Chapter Six: Discussion**

This chapter discusses and analysis the findings of the literature review, the comparison of the UK, US and Iranian arbitration systems and the empirical research. It develops and tests theories about the role of cultural issues in international arbitration. This chapter applies the findings to answer the research questions. Additionally, culture and the knowledge gap are discussed in the context of the development of international arbitration.

### **1.7. Chapter Seven: Conclusion and Recommendations**

The conclusion and recommendations chapter assess the outcome of the research regarding the effects of cultural issues on international arbitration and makes recommendations for improvement of existing arbitration systems and practices.

## **2. CHAPTER TWO LITERATURE REVIEW(A)**

### **2.1. Part one of Chapter two Literature Review- Arbitration**

#### **2.2. Introduction**

This chapter is the overview and the introduction to the main components of arbitration in general and international arbitration in particular. The literature was reviewed with regard to both ancient evidence and the modern historical development of the practice of arbitration into formal legal statutes. A comparison is made between the three arbitration laws of the US, UK and Iran, taking into consideration their similarities and differences with the UNCITRAL Arbitration Model Law.

Arbitration has various definitions, of which one is "*settlement of a dispute by an arbitrator*" (Oxford dictionary 1964:58). Another example of the contemporary meaning of arbitration is a method of formal alternative dispute resolution (ADR). However, a further definition is given by JarRosson (1987), who states that it is the institution that confers judicial power on a third party to decide on disputes between two or more parties. However, the UNCITRAL Model Law on International Commercial Arbitration defines arbitration as "*... a method of settling disputes arising in international commercial relations*".(Nations, 1994).

The difference between litigation and arbitration in general is that: litigation in courts is based on establishing the rule of law, which is, based on the relationship between society and the State(Greenberg et al., 2011). In contrast, arbitration is concerned with fairness and the impact on the parties' relationship after the dispute is resolved, hence "Peace Palace" (in The Hague).

Procedural differences between litigation in courts and arbitration include:

(a) in a court case, one of the parties in the dispute can take the case to court without the agreement of the other party;

(b) the court procedures are under the control of the court, while in arbitration, whether national or international parties have the authority to decide the details.

(1) All parties have autonomy in agreeing to take the case to arbitration before or after the dispute arises; and

(2) the parties have the power to agree on the selection of an arbitrator as well as the procedural law of a country in international arbitration, (Greenberg et al., 2011).

If the arbitration is international the opportunity arises to agree on many more details, such as place of arbitration, language, permission to appeal and documentation evidence. Arbitration has always been concerned with bringing peace, whereas courts are concerned with upholding the government laws (Kuehn, 1994).

### **2.3 Arbitration History**

Arbitration is the oldest form of dispute settlement (Grant, 1994). Disputes and disagreements are part of human psychology in general, in trade and commerce in particular. Roebuck (2000) writes that "*...there cannot be trade without disputes*" (Roebuck, 2000) and adds that the continuation of trade would have been unlikely if the historical disputes were resolved only by violence,(Roebuck, 2000). Arbitration was used as early as 2100 BCE in Babylon, (Roebuck, 2000). Another example is the well-documented arbitration treaty entered by King Koorush of Persia in 376 BCE, bringing 200 years' peace, which is well documented, (Westermann, 1907).

In ancient and classical history most people were illiterate, (HARRIS and Harris, 2009). This contrasts with modern systems of arbitration, which consist of contracts where the appointment of an arbitrator is in writing and usually as part of a main contract (Article 7(2) UNCITRAL Arbitration Rules) Article 7(2): "*The arbitration agreement shall be in writing*" (UNCITRAL Arbitration Rules revised 2010).

In prehistoric times people were mainly tribal. In their dealings they ran into disagreements, arguments and power struggles, which often resulted in violence, but it became apparent that violence was destructive and expensive, (Roebuck2000). Trade by people outside the tribe was by a simple system of barter prior to antiquity (Roebuck 2000). Roebuck (2000) describes the two



major problems with barter as being: a) lack of proper value measurement and b) a situation in which the buyer must also be a seller, resulted in disputes. The problem of value measurement was first solved by ancient Egyptians through the invention of a weight of copper for measurement, (Roebuck, 2000).

Tribal disputes were traditionally solved by arbitration between kin and tribes. Disputes between people are part of any relationship including commerce, therefore arbitration helped maintain relationships and brought peace where there was a dispute, (Roebuck 2000).

Merchandise grew organically; in ancient times people lived in small groups and the groups soon became known for a particular type of merchandise, ancient time between 6000 and 1100BCE, (Gilbert et al., 2004). Bennet (2002) confirms that "*Arbitration was an established method of dispute resolution among merchants*" (Bennett, 2002). They used merchant law of the local market which was made informally by the local heads of tribes. Also, the use of Hammurabi Law (Babylon code) as early as 1754 BCE and Rhodian Maritime Law (900BCE) is recorded, (REDDIE, 1841). Hammurabi Code is the Oldest Code of Laws in the World. It is one of the most important monuments in the history of the human race. Containing as it does the laws which were enacted by a king of Babylonia, Hammurabi. "The code of laws promulgated by Hammurabi, King of Babylon B.C.E. 2285-2242", (Johns and Collection, 1903).

*"These 282 laws include economic provisions (prices, tariffs, trade, and commerce), family law (marriage and divorce), as well as criminal law (assault, theft) and civil law (slavery, debt). Penalties varied according to the status of the offenders and the circumstances of the offenses",* Encyclopaedia Britannica.

In ancient time most people worked on the land and under the landowner's law. As most people in classical antiquity were involved in farming, disputes were often over boundaries or stealing animals. Von Reden (2010) states that landowners often arbitrated with peasants. For example, the peasants in Greece, when they found the law to be draconian, went on strike and forced the landowners to give them more rights, contributing to the process of

democracy in the 6<sup>th</sup> century BCE(von Reden, 2010). The history of Greece provides that arbitration contributed greatly to the ancient Greece's democracy. In the 6<sup>th</sup> century arbitration system had launched to ease the rising crisis between the landowners and the peasants who were deeply in debt and find it hard to meet the demand from the creditors. The system of arbitration for freeing these peasants said to be the seed of democracy of Athens, (Chigbo, May 4th, 2009).

There is very little evidence of how the disputes in a barter economy were resolved. Historical accounts of arbitration inform us of the establishment of arbitration as an alternative to war for resolving disputes internally and externally amongst nations. Roebuck (2000) describes many disputes were related to religion, slaves and international trade in Mesopotamia, Egypt, Syria and Persia in 2800 BCE. Control of money (coinage) was often in the hands of the monarchy and the king was the only arbitrator for the value of foreign money. There are detailed accounts of resolving disputes by arbitration, establishing public order for disputes between people of Athens and the Romans in about 5<sup>th</sup> century BCE (Roebuck, 2000), (Raymond, 1980).

There is much evidence of Greek Minoans trading with neighbouring societies. Another famous example of international trade is the Silk Road with merchants travelling on a route spanning from China to India and Persia. Commerce was mainly based on trade, trust and merchant laws. Trade between civilisations such as the Phoenicians, Mesopotamians, Persians, Greeks and Romans is well recorded(Roebuck, 2000).

#### **2.4 Development of Arbitration**

This socio-legal thesis shows that, through fundamental changes in societies, the simple process of ancient and classical arbitration has had to change into sophisticated legal systems requiring harmonisation, both in law and in social culture. It has become a priority for arbitrators to try to understand legal differences between nations and come to an agreement on what laws to choose and how to use them. This was the result of these developments in arbitration acts and the differences between the substantive laws of the parties: "*Conflict takes place in a diverse world*" (Randolph, 2016).

The long history of arbitration in this thesis can be briefly divided into three periods from the history of arbitration in antiquity, however, part two of this historical account is divided into CE and Renaissance. The antiquity and classical period of arbitration refers to the ancient Egyptians, Phoenicians, Persians, Greeks and Romans. The next period goes back to the start of the Common Era, when the Roman period overlaps with the Common Era: The Republic ends, and the Empire begins right around 0CE, (beginning of Common Era). The last part is the development of arbitration from the formation of UNESCO on 16 November 1945 until today. The final part is the focus of this research and the earlier parts are only used as an historical overview. In expanding on the final part, we may take a closer look at examples of the legal differences between Iranian, English and American arbitration in comparison to the UNCITRAL (Model Arbitration Law). In the ancient times, arbitration law was based mainly on personal power and the social status of the arbitrator such as a king, (Roebuck, 2000). In modern arbitration, the arbitrator is selected by the parties due to skill or professional status (Dražozal and Naimark, 2005). The arbitrator's authority derives from the parties' agreement at first instance, (Jenkins and Stebbings, 2006).

Iran is an example of a country that based their arbitration laws on the UNCITRAL (Model Arbitration Law), not all nations' arbitration laws have uniform provisions. Their laws are influenced by important cultural differences, as well as by differences in the substantive laws of these countries. Therefore, international arbitration, with different national laws (substantive) and arbitration acts, is continually going through a major process of legal harmonisation in each international arbitration.

## **2.5 Arbitration in BCE**

Most arbitration in antiquity involved the resolution of disputes over resources such as land and water rights, (Westermann, 1907). There is evidence of arbitration from earlier civilisations as far back as Mesopotamia (in present-day Iraq) about 800 BCE. Roebuck (2000) states that the classical history of Greece shows that arbitration was a secular way of resolving disputes without the need to refer to the government. It was used for disputes during the Olympic Games.

The Greek custom of mediation and arbitration is evidenced by many agreements, maps, archaeological documents, decisions, charts and writings. The Romans continued these customs for their international mediation and arbitration. During this period there is much evidence of the Romans using written contracts for arbitration which effectively stemmed from Greek education for example the idea of separation of powers comes from classical Greece, ,(Westermann, 1907). According to (Roebuck 2000) before the arrival of the Romans CE 43 no written documents existed in England.

## **2.6 Arbitration in CE**

Due to the scope and the time limitation of the study one major historical arbitration example is used for this period, which comes from the early Islamic period. The Islamic prophet, The Prophet Mohamed was an arbitrator between the local tribes and the Jews. "*There is evidence of a fight to death in Islamic history of Husain al Shahid in 680CE the grandson of the Prophet Mohammad*" (The Oxford dictionary of Islam). A famous historical Islamic arbitration took place between Imam Ali (the Prophet Mohamed's cousin and son-in-law) and the fourth caliph Mu'awiya, ruler of Syria" part of Master's degree thesis of (Shahin, 2009). The war broke out between Muslims, this led to a bloody battle between Imam Ali, the Governor and caliph called Mu'awiya over the right to succeed Mohamed (656-661 CE). Arbitration was offered in an attempt to end the war. In 658 CE both sides appointed a representative and engaged in arbitration. A council of judges was elected, they began the negotiation and arbitration. The war stopped but they failed to reach an agreement.

Imam Ali was assassinated in Kofa (661 CE), upon which Mu'awiya became caliph by default and started the Umayyad dynasty (661-671CE) (Rodissi, 2016). Imam Ali's assassination and this schism led to the formation of the Shi'a branch of Islam(Salami, 1998). Marranci (2006) explains that the arbitration between the two parties was to bring solutions.

## **2.7 Arbitration in the Renaissance**

Roebuck (2000) writes about arbitration in CE that there was a period with no arbitration in Europe in the sixteenth and seventeenth centuries after the medieval golden era of arbitration. He explains that the lack of historical

connection of arbitration with official legal systems led to its omission from official historical writing/evidence. This was despite the important role that arbitration played in resolving disputes by secular arbitration awards instead of turning to violence,(Lembo, 2010). He adds that the continued existence of secular judicial arbitration, alongside that of the official governmental system, is proof of the usefulness of this system.

## 2.8 Modern Arbitration

Table one shows the arbitration history it is stated that using arbitration in the past may have been because of the lack of academic knowledge of formal legal procedure, which was remedied by changing to the formal system of arbitration as a result of Western developments since the Renaissance, (Kuehn, 1994). The change in arbitration started in the West with the growth/development of industrialisation in early nineteenth century, (Kuehn, 1994). Additionally, Kuehn (1994) explains that at the beginning of industrial civilisation, the system of compromise in dispute resolution changed to referring disputes to an independent arbitrator instead of family or tribal relations.

**Table 1 Timeline of Arbitration History**

Arbitration Timeline		Areas	Ancient written Code
1.	BCE-Archaic and classical arbitration from 6000-1100BCE  Ancient- from 2700 BCE,	Mesopotamia, Babylon, Minoan  Persians, Greeks, Egypt, Roman	1780 BCE Oldest record of Hammurabi's Code
2.	Arbitration from CE-14 <sup>th</sup> Century	Europe and other countries around world	

**Table2 Timeline from Arbitration Training Cyprus Branch**

(BCE) -3200-1000 - 337(CE)100- 1224- 1794-1899- 1958

This is an example of arbitration time line used by arbitration Cyprus Branch

Lagash <i>versus</i> Ummah (boundary dispute) AWARD <i>circa</i> 3200 BCE
Code of Ur-Nammu <i>circa</i> 2370 BCE
Code of Lipish Ishtar <i>circa</i> 1868 BCE
Code of Hammurabi <i>circa</i> 1792 BCE
King Solomon ( <i>circa</i> 979 – 927 BCE) <i>practical wisdom</i>
dispute between two mothers over a baby
Macedonia King Philip II (treaty with Southern Greek states <i>circa</i> 337 BCE) boundary disputes
<b>AWARDS:</b>
Greece, Aristotle: “equity <i>versus</i> strict law”)
Demosthenes: “let the arbitrator’s decision stand supreme”
Rome ( <i>through</i> 100 CE)
<i>praetor; iudex</i>
Justinian’s Code
Marcus Tullius Cicero (pro Aulus Caecina)
England ( <i>through</i> 1224 CE) “ <i>The Dark Ages</i> ” ‘contract’
Mansfield (1705 – 1793 CE)
Treaty of Versailles 1919
Covenant of the League of Nations 1919
Geneva General Act for the Settlement of Disputes 1928
General Treaty of Inter-American Arbitration 1929
The United Nations 1945
American Treaty on Pacific Settlement of Disputes 1948
European Convention- Peaceful Settlement of Dispute 1957
Arbitration Rules of the UN Economic Commission for Europe 1966
Far East Rules for International Commercial Arbitration 1966
UN Commission on International Trade Law 1966
UNCITRAL Arbitration Rules 1976 (amended 2010)

Guidelines for Administering Arbitration under the UNCITRAL Arbitration Rules 1982
UNCITRAL Model Law on International Commercial Arbitration 1985 (amended 2006)
Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) 1994
World Trade Organization (WTO) 1995
Notes on Organizing Arbitral Proceedings 1996 (amended 2012)

Examples of informal historical international trade before the formation of UNCITRAL include the Silk Road trading on silk and spices across the Arabian Peninsula, trade of slaves and other trade between Europe and Asia, (Davidson, 2017). These examples are evidence of a long history of a foreign investment economy and examples of merchant capitalism (Chase-Dunn and Babones, 2006). The idea of formulating specific policies for multinational enterprise surfaced around 1800 CE with industrialised capitalism. Sadegi-Nejad (2008) writes that the devastating effects of protectionism of the 1930s brought together the members of 'The League of Nations', many of them European and American private foreign investors (mainly American, British, French, German and Dutch) to explore the idea of an effective liberal international economic system (Sagafi-nejad and Dunning, 2008).

The following is a summary of the key events leading from the development of historical arbitration to the formal arbitration acts:

- Second World War 1945,
- Proliferation of American and European multinational companies
- Economic competition and disputes
- Treaty of John Jay 1794
- Alabama Arbitration 1869
- Treaty of Washington 1871

- Establishment of permanent Court of Arbitration in The Hague 1900
- Peace Palace by Andrew Carnegie donation 1913 in The Hague (PCA)
- 1923 Genoa Convention
- New York convention 1954
- Panama Convention 1975
- United Nation Commission on International Arbitration Trade Law 1966

Complete details of the events are outside the scope of this research and could be the subject of the further research.

Firstly, according to the development in arbitration is related to the development of technology as a result of the Industrial Revolution, when skills and activities became increasingly focused and complex, (Lambo 2010). Additionally, after the Second World War ended in 1945, the proliferation of American and European multinational companies created many economic competitions and disputes, (Lambo 2010). Modern arbitration since around the eighteenth/nineteenth century has been a service industry with arbitrators promoting arbitration instead of litigation, (Lambo 2010). As a service industry, arbitration needs to have a suitable infrastructure for its clients, with skilled lawyers and arbitrators, (Weigand, 2009). The normalisation and uniformity in managing international arbitration organisations was mainly inspired in Europe, (Lambo 2010). However, Bennet (2002) writes that the industrial revolution weakened community ties, resulting in specialisation and more defined boundaries for skills, including arbitrators who needed to be specialised in a particular field of arbitration (Bennett, 2002). This specialisation, whether legal or technical, seems to have taken priority over the importance of socio culture that was the important principle of original arbitration (Slate 2004).

Secondly there are different claims over the history of modern arbitration. Roebuck (2000), writes that the arbitration system of Us and UK today originated with the "Alabama arbitration of 1869", (United Nation), a series of claims brought by the USA against the United Kingdom. The two countries settled their disputes in Genoa in 1871, known as the Treaty of Washington; Britain paid \$15.5 million in compensation for sinking American ships and the



settlement was negotiated by party-appointed arbitrators(Roebuck, 2000). On the other hand, Roelofsen (1990) claims that modern arbitration history began with the John Jay treaty of 1794, against the background of diplomatic relations among European powers. He believes that this treaty was one of the most important agreements in modern arbitration history,(Verzijl et al., 1990). The treaty was negotiated by John Jay in 1794 for resolving unresolved issues between Britain and the USA, (Combs et al., 1970).

In 1923 the Geneva Convention on International Arbitration was the first, and remains one of the most important international conventions, to recognise the validity of international arbitrations(Lembo, 2010). The establishment of the International Court of Arbitration (ICC) in Paris in 1923 made it the world's leading international arbitration institute, known only for international cases. The ICC has its own Arbitration Rules, which were revised in 2012. Under these Rules the ICC is extensively involved with the administration of each case. However, in addition to European arbitration institutions, Americans have a frequently used arbitration institute founded in 1926 called the American Arbitration Association based in New York and with a large number of its cases being national,(Born, 2001).

In 1927 the Geneva Convention for the Execution of Foreign Awards was passed,(Redfern, 2004). This was followed the adaptation of another well-known and commonly used convention in the field of international arbitration, the New York Convention 1958, to recognise and enforce foreign arbitration awards, (Redfern, 2004). This convention was then followed by the Panama Convention in 1975, ratified by a significant number of Latin American countries, for recognition of foreign international arbitration awards, (Leathley, 2007).

On 17 December 1966 the United Nations Commission on International Trade Law (UNCITRAL) was established for further harmonisation and unification of international trade law,(Nations, 1996), this was important because the United Nation Economic Commission . In current arbitration legislation the existence of a dispute must be proved, and this process is one of the fundamentals of arbitration, (Lew, 2013). Parties in dispute have the option of arbitration open to them, and this is a formal method that is legally enforceable just as

litigation in Court. The UN General Assembly passed a resolution in 1966 to encourage the use of arbitration rules and to recognise the value of international arbitration in international commercial relationship, (Nations, 1996) . Modern arbitration is based on the adaptation by the West of historical arbitration principles and is still in the early stages of development. It is a part of the transition from the historical power of rulers to the law made by the elected members of parliaments. As we can see in a series of historical events, the formation of institutions resulted in a steady development of international arbitration into the modern system we see today. There are several commonly used international arbitration institutes, and they are mainly located in Europe. One of the well-known and firmly established international Arbitration centres is the London Court of International Arbitration (LCIA), founded in 1892, having about 50 cases a year (Punabantu, 2010).

Roebuck (2000) states that current legal powers of arbitration stem from countries' principal laws. In English law, arbitration is considered part of contract law, as arbitration originally stems from private contractual agreements (Roebuck, 2000); Weigand (2009) states that this view was accepted by Germany and France. Substantive law is an important part of arbitration cases, as the arbitration clause must be part of the body of the contract if agreed at the time of the formation of the contract. In fact, Mauro Rubino-Sammartano (2014) states, in referring to a judgment: "*In the Anderson agreement it held that*"..."*[t]he arbitrator shall decide in accordance with the terms of the agreement*" (Rubino-Sammartano and Mayer, 2014).

However, arbitration is not only a private contract but also now has a legal procedural nature, a dual character or hybrid personality. An arbitration clause must expressly select arbitration as a resolution for any dispute between the parties, (Ramsey, 2000).

The expansion of international trade in the nineteenth century that significantly increased international arbitration as a means of alternative dispute resolution (Lembo, 2010). Several attempts were made through international sources for the development and harmonisation of international law, including The Hague Convention, the International Chamber of Commerce (ICC) and its Court of Arbitration and the New York Convention. Finally, the

Commission of the General Assembly of the United Nations on 21 June 1985 adopted the Draft Model Arbitration Law from UNCITRAL. The Commission consisted of 29 states elected by the General Assembly for a six-year term (Lembo 2010).

The General Assembly of the United Nations adopted the UNCITRAL Model Arbitration Law on 11 December 1985 with resolution 40/72, and recommended "*that all states give due consideration to the Model Law on International Commercial Arbitration*", UNCITRAL MODEL LAW ON INTERNATIONAL COMMERCIAL ARBITRATION, United Nations documents A/40/17, annex 1 and A/61/17, annex 1 (Appendix D). The UNCITRAL Model Arbitration Law was amended in 2006. The United Nations Commission on International Trade Law was established "*with the purpose of furthering the progressive harmonisation and unification of the law of international trade in the interests of all peoples, in particular those of developing countries*", On the report of Six Committee (A/65/465). "*Also, recalling its resolution 31/98 of 15 December 1976 recommending the use of the Arbitration Rules*" (Arbitration Model Law). The purpose of the Arbitration Rules was to provide procedural rules which may be used in a range of situations to cover a variety of dispute resolutions, including private commercial arbitration between parties, investor and state disputes, as well as state to state disputes around the world, Resolution adopted by the General Assembly of 2010 in Vienna. These rules were last revised in 2010.

The following are some of the key features of the Model Arbitration Law:

- a) Parties autonomy for agreement in selection of arbitration details
- b) Neutrality of the arbitrator (impartiality)

In (2017) the Model Law has been adopted/adapted by 74 countries for their arbitration law. Queen Mary University London's survey of "*Cross Border Litigation International Arbitration Mediation and other ADR Mechanisms*", in 2008 in response to the question "*Does your organisation have experience with the following dispute resolution mechanisms regarding international disputes?*" shows that 44% of disputes between large corporations are resolved by arbitration, in contrast to 41% by litigation in Courts.

## 2.9 International Arbitration

*"Like most legal specialties, international arbitration is very much a product of its history"* (Strong, 2009b). Before 2000 BCE, the struggle for access to limited resources led to wars, and therefore warfare was one of the main occupations. There were limited opportunities and little wealth for many people. For weaker nations, the best way to limit damages and destruction was to admit defeat and submit to the stronger nation through international arbitration treaties, (Emerson, 1970).

An excellent example of international arbitration by classical civilisations is the Greeks and Romans, where the institution of settling disputes by the decision of a secular third party was common at the Olympic Games, (Mitten et al., 2016). Mitten et al (2016) explain that the Olympic games were first held in 776 BCE in Elis Greece, in the valley of Olympia, to honour the god Zeus. The prize was a simple olive Wreath, symbolising peace through sports, and a peace agreement was formed as "ekecheiria". The Olympic Games were created to promote goodwill, to use the competition for fun and enjoyment and bring unity amongst nations through sports, (Mitten et al., 2016).

The history of the Olympic Games continued even after the Roman takeover of Greece in 146 BCE, (Mitten et al., 2016). The games were abolished by the Christian Byzantine emperor Theodosius I in 393 CE. The Olympic Games were re-established in 1892 for modern world competitions based on the same principles as the original Greek games in 1892, Baron Pierre de Coubertin of France sought to re-establish the Olympic game. At the Congress of Paris in 1894, the representatives of 13 nations, including the US, met to create the modern Olympic Games", (Mitten et al., 2016). International arbitration is a common system of resolving Olympic disputes as it was in the ancient world for goodwill and keeping the peace. An example of current Olympic case law is *PRYOR V. NCAA*, 288 F.3d 548, (Mitten et al., 2016). (Cir. 2002), "MICHEL CIRCUIT Judge. In this close and complex appeal, we must decide whether plaintiffs have stated a claim for purposeful, racial discrimination under Title VI of Civil Right Act of 1964, 42 U.S.C 2000det seq (1994) and 42 U.S.C. 1981(1994))".

According to the history of ancient arbitration belongs to the elite and the rulers, since literacy was not available to the ordinary people. Additionally, any records were manually and individually produced. The evidence often refers to arbitration between states and far less often to public arbitration. We have little written information about how the public resolved their disputes and how much they used arbitration and must instead rely on archaeological evidence.

International arbitration is a means by which international disputes can be resolved by independent, non-governmental decision-makers (JARROSSON, 1987). Born (2001) defines the current characteristics of international commercial arbitration as being common in domestic and international contexts. Arbitrators are private persons who produce binding and enforceable awards. The parties in arbitration are allowed to be flexible with the parties' agreement, unlike court procedures (Born, 2010).

What distinguishes domestic arbitration from international arbitration are the cross-cultural aspects. In the Model Arbitration Law this is referred to as the different places of the parties' residences or domiciles. This includes the relationship between the substantive and procedural law used in arbitration. International arbitration is different from national arbitration in that national arbitration is only concerned with national law and national arbitration law. In international arbitration, on the other hand, arbitration cases concern other international law as well as other international elements in the arbitration, such as seat of arbitration, language and substantive law.

There is a further legal addition to international arbitration, which is the existence of the United Nations Convention on the International Sale of Goods (CISG, signed 11<sup>th</sup> April 1980). This is more commonly used in Middle Eastern and Arabic contracts.

### **2.9.1 Principles of Arbitration**

In ancient times the lack of access by the public to a central legal system and under-developed public services led to a community-organised system of arbitration. Furthermore, most people were illiterate and relied on personal relationships and contacts. Literacy was a luxury, not a necessity, and only governments (leaders) used their elementary laws for international treaties.

The agreement of parties on the selection of their arbitrators remains at the heart of all types of arbitration today.

Historically, successful arbitration in communities was based on selecting arbitrators based on parties' confidence (Duff, 1840). The principle of selecting an arbitrator based on parties' confidence was carried on for thousands of years without relying on the law, highlighting the understanding of parties' values, culture and customs in traditional arbitration.

The King Solomon's wisdom is an example of the principle that the initial party agreement to take their dispute to a mutually selected arbitrator could ensure the enforceability of the award. Naon (2005) states that it would be easier to enforce awards because there is harmony and consideration for all parties, (Naón, 1985) This shows the value of the agreement between the parties as well as the power of the leaders in resolving disputes in a community, which included their familiarity and knowledge of the disputing parties' cultural and family backgrounds, securing the enforceability of the judgment, King Solomon, the Old Testament, verses 16-28, (Emerson, 1970).

There were two types of arbitration; One was verbal between members of a tribe or between different tribes. The other was well documented and for central governments, used for international treaties between nations for example, treaties made by Greeks, Romans and Persians (Greenberg et al., 2011).

Furthermore, established international laws did not exist for international treaties to be based on. Countries mainly arbitrated with their neighbours based on customs, (Mason, 2016) . Dominant countries sometimes used the threat of their military forces to negotiate arbitration agreements to avoid expensive wars, (Mason, 2016). Evidence is recorded by archaeologists of treaties made as early as 3000 BCE by the Minoans (a dynasty in Crete) with their neighbouring countries.

Although this ancient form of arbitration functioned, its limitations became apparent. Therefore, the inefficient system of past arbitration needed to change with the times,(Emerson, 1970).

### **2.9.2. General Principles of current arbitration**

Arbitration is generally considered to be a private and a secular way of dealing with disputes with its own particular principles as follow, (Broyde, 2007).

### **2.9.3 Parties' autonomy**

The main principle of arbitration remains the parties' autonomy, (Strong, 2009b).; this means that there must be agreement between the parties on the resolution of dispute by arbitration either as part of the contract or after the emergence of the dispute. In current arbitration, just as in litigation, the parties must also follow sets of formal laws and procedures that enable a decision made by a judge or an arbitrator to be legally enforced. Principles of arbitration are based on the ability to "*tailor the procedure to best suit the dispute*" (Strong, 2009b).

### **2.9.4. Enforceability**

Another important feature of international arbitration Acts is the enforceability of the awards. In the past, it was the power of kings or the head of a tribe to enforce the arbitration decision, together with pressure from the community: "*arbitration depended on community ties and pressures for its effectiveness*"(Bennett, 2002). Parties often referred their disputes to the powerful members of their community whom they knew well and whose fairness they trusted and did not want to disrespect them by defying their judgment (Raaflaub, 2008). In contrast, various national and international laws are now the power behind the enforceability of today's arbitration decisions. Parties involved in disputes, after the selection of arbitration, can rely on a power of the law for enforceability of a decision made by an arbitrator. Enforceability is now part of the arbitration law an example is the arbitration law of the US, UK and Iran( please see appendix E,F and G).

Moreover, today's arbitration is based on the law of the countries and the international community and not the law made by ancient Kings. It has always been important that all parties in arbitration agree on the basic principle of arbitration, which is the selection of an arbitrator who needs to be respected by all parties in the dispute in order for the judgment to be accepted and enforceable. Historically, the problem of enforceability was better resolved by

belief in the arbitrator's power, authority and fairness. Before relying on the power of the law for enforceability it was apparent that becoming an arbitrator carried with it not just the respect of the parties but also the power and the governance. By the same token, arbitration was not just for resolving disputes but establishing authority and the unwritten law.

#### **2.9.5. Impartiality**

Impartiality is an important part of the ethical policy of international arbitration. For example; Part one of the Arbitration Procedures and practice of the England and Wales Act 1996 states that "*the object of arbitration is to obtain the fair resolution of disputes by an impartial tribunal without unnecessary delay or expense*". The Washington Convention Article 38, UNCITRAL Arbitration Rule Article 6(4), as well as ICC Rules Article 9(5), all recommend the neutrality of the arbitral presidency in an arbitration tribunal. However, Ameli (1999) "Impartiality and Independence of International Arbitrators," in First International Conference on Arbitration, *Revue de Recherche Juridique* No. 27-28, at 89 (1999) states that the appearance of impartiality is as important as the actual impartiality and independence of nationalities.

TRAC (Tehran Regional Arbitration Centre) was established in 2005 and its Rules are based on the UNCITRAL Arbitration Rules of 1976. Impartiality, independence and neutrality of the arbitrators are included in the TRAC rules, particularly with regard to the parties' nationalities. This is demonstrated by article 9.3 of the TRAC Rules. The president of a tribunal must not be of the nationality of either party, yet the Rules are silent on the impartiality and independence of party-appointed arbitrators.

Nationality alone is misleading and does not suit the purpose of international arbitration. The impartiality and independence of arbitrators is a basic rule of arbitration and "*even more importantly, the appearance of their impartiality and independence*" (Abghari, 1999), in First International Conference on Arbitration, *Revue de Recherche Juridique* No. 27-28, pp. 89-109, (Conference in Tehran 1999). As Ameli (1999) explains, impartiality is not limited simply to nationality, but also religion, politics, the arbitrator's economic ideology as well



as social environment. Ameli believes that these factors make up an arbitrator's way of thinking, maybe the case that two persons from the same nationality have completely different beliefs and ways of thinking, (Ameli, 1999).

Ameli (1999) states that the problem with international arbitration is the lack of a supranational authority to supervise arbitrator behaviour. He explains that when lawyers act nationally they are under pressure from their institutions to restrain and follow ethical rules, but when they are acting internationally that pressure is off. At the same time, Ameli believes that arbitrators act on trust because their selection is based on party authority, and personal reputation matters.

#### **2.9.6. Confidentiality**

An important principle of arbitration is that it should be private and confidential. Roebuck (2000) writes about the story of a classical Greek claim (related to property) that was brought to court. The lawyer (orator) said to the judge that he advised his client to take the case to arbitration because the dispute was between relatives, reasoning that in this case their disputes should remain private "After repeated requests to both sides I persuaded them to entrust the case to the arbitration of friends, since I thought it very important that no outsiders should know of their problems" (Carey, 2002;103). This principle of confidentiality is still relevant today, and arbitration still remains confidential and private.

*"The confidential nature and the duration of the proceedings make it practically impossible to actually observe a large number of international commercial arbitrations" (Roebuck 2000).*

Confidentiality in international arbitration is one of the most important attractions for selecting arbitration instead of litigation. Litigation is public and may be a subject of public debate and discussion. On the other hand, confidentiality is often part of arbitration acts, though not all countries have the same attitude toward confidentiality. For example, Saudi Arabia does not mention confidentiality as part of their arbitration rules, (El-Awa, 2016).

## **2.10. International arbitration and legal diversity**

There is frequent discussion and focus on the management of legal differences in international arbitration. Legal diversity issues are the subject of many fundamental considerations that have consumed lawyers and arbitrators for many years. Controversial issues arise such as legal drafting, legal language, legal systems, legal training, concepts, strategies, arbitration acts, contract laws, *"The ability to communicate concepts across the legal cultural divide is therefore central to an international practice"* (Goodman-Everard, 1991b). For example, the misunderstanding between the parties coming from common law or civil law may involve differences between a Chinese and Brazilian party (Goodman-Everard, 1991b).

These differences may be crucial in terms of sources of law and how the precedent is used, including the role of judges, the type of court proceedings, the function of the institution that uses this type of laws, and the type of legal training including education as well as contractual interpretations, (Dawson, 2002). Dawson (2002) states that these differences continue even in techniques of resolving the disputes by different reasoning, as they are taught differently. For example, one may search for precedent cases while the other searches the civil codes (Dawson, 2002).

There are different systems of controlling societies *"there can be no single universal idea of order, but rather there are a variety of different versions of order"* (Slapper 2011). Slapper (2011) explains that the meaning of law and order may be different in different societies.

As Goodman-Everard (1991) states, discussion on the qualities of international arbitration often focuses on independence and impartiality. Different national systems require different legal jargon, jurisprudence, assumptions, expectation and prohibitions. Misunderstanding of these legal differences can cause distrust between the parties to an agreement (Goodman-Everard, 1991b).

Most of the literature deals with the techniques of handling legal systems that are not uniform in international arbitrations. Frommel (2000) stated that ways of managing evidence need to be discussed and properly understood. The

different legal systems of European countries such as Germany (Coded Law) and other countries with a Common Law system is a problem in international arbitration. For example, Frommel(2000), referring to the subject of "amicable settlement", states that in the German legal system settlement can be suggested by the arbitrator, but in Common Law countries it is unethical to suggest negotiation/settlement in arbitration. There are numerous legal authorities, publications and conferences that provide evidence of the engagement on the conflicts within the law when it comes to international arbitration, (Born, 2001).

The focus on the topic of legal conflict engaging legal communities and professionals around the world meant that there has been little time and attention given to the importance of social cultural differences, (Slate, 2004).

Diversity is one of the main parts of a sophisticated system of international arbitration. Harmonisation of law in international arbitration is necessary and is provided through professional discussions and sharing of experiences. Identification of legal and cultural differences is part of the process of harmonisation of international arbitration.

### **2.11. Types of legal differences**

International arbitration suggests the presence of more than one nationality in the arbitration. Different nationalities sometimes follow different systems of law as well as legal understanding and interpretations of the law. These legal differences may also involve differences between the legal systems, such as common law or civil law. This also implicates legal differences that are subtler, such as interpretation of law and perception of law, for example arbitrators' impartiality, the role of women in arbitration and enforceability criteria.

There are four major legal systems in the world: religious, statutory, common law and civil law, (Shippey, 2009). Also, there are mixture of different systems such as Iranian legal system which is the mixture of French Civil and Islamic law, (Abrahamian, 2008). The two most commonly used legal systems are common law and civil law systems. Legal communities recognise the country's legal system, whether common law or civil law; examples of common law countries are England and Wales, The United States of America and most of

the commonwealth countries including Australia, Canada and Bangladesh. The Civil Law is another of the most frequently used legal systems in the world, particularly in Europe, e.g. Germany, France, Italy and Switzerland. The following is a basic introduction to these two influential legal systems. However, Merryman and Pérez-Perdomo (2007) state that although these countries group together as common law and civil law systems, there are many differences between their legal procedures based on their history and culture.

#### **a) Common law system**

The use of precedent as well as the unpredictability of the outcome are some of the well-known characteristics of common law systems, the emphasis on cases and the importance of case law, (Samuel, 2013) . Mattar et al. (2015) explain the theory of common law as follows: *"there is a legal answer to every question that takes the form 'What is the law concerning this matter'"*. The history of Common law goes back to 1066 CE with the success of the Normans after the battle of Hastings (Merryman and Pérez-Perdomo, 2007).

#### **b) Civil law system**

Civil law, Roman law or "Text-Based Theories of law" (Mattar et al., 2015), law is much older than common law, dating back to 450 BCE, and is a more influential system throughout the world. It is commonly known as a codified system of the law where case laws are secondary to statutes(Mattar et al., 2015).

#### **c) Problem of conflict of laws**

It would be difficult to compare the difference of outcome if alternative law systems were selected. This has particular importance when the case involves the state and the public interest. Additionally, the problem of normalisation of the law in the event of a conflict is that the normalisation takes priority over fairness and justice(Friedman, 1975).

While the basic recognition of the legal system is not difficult, the details and subtle differences are not always easily identified. This is because the subtle legal differences run deeper and could be related to cultural differences.

## **2.12. International Arbitration and Substantive Law**

Arbitration law is not isolated from national and contract law, which become important as the rule for evidence before the tribunal and a basis for reasoning in award allocation. In fact, arbitration begins with the substantive law on which the contract is based. Historically, local and national laws were made to assist in the survival from the danger of natural elements, such as flood or famine, and were also concerned with the distribution of resources, (Roebuck, 2000), (as detailed later in the culture chapter).

Substantive law in international arbitration was focused on the discussion of legal systems in general and the differences in procedural style which might cause confusion for the parties, lawyers and tribunals who are trained differently.

Early law was needed to establish a centre of power to manage survival against the natural elements and attacks by other groups. These laws (often unwritten) established as cultures and customs that directed the people to behave in a certain way, (Friedman, 1975). Iranian substantive law may be taken as one example of current practice. The substantive Law of the current Islamic regime of Iran is based mainly on the instructions of the prophet Mohammad. This type of law imposes its own characteristics.

The law and cultures are not static and fixed, but rather they change and may be made irrelevant by changes in the situation and environment. Different parts of the world have different situations, histories and environments, and therefore national laws are made to suit the particularities of a nation in its environment. There is evidence of Roman classical law in today's English legal system and customs. Indeed, English law was originally based mainly on Roman laws, as there is no evidence of written law before the Roman occupation in England((Roebuck, 2000).

Rulers in the past gave little priority to what people thought of them. Their power was mainly dependent on their armies and the ability of their generals. The wealth was brought by the generals from wars and stealing from other groups by force. In comparison, in the modern democratic countries of today, the lawmakers are dependent on the people's votes to enter into the process

of law-making. Politicians who make laws in parliaments pay special attention to their popularity. Managing the country's economy (resources) well can be used to enhance this popularity in current politics and help secure re-election (Roebuck, 2000).

Arbitration is a method of dispute resolution that is based on both substantive and procedural law, (Strong, 2009b). In other words, the arbitration case is based on a formal written legal contract. The contract that is the base of the party's agreement comes from substantive law. After the existence of a written contract is confirmed, then follows the arbitration procedural law. National arbitration is less complicated than international arbitration. In national arbitration parties agree on the selection of arbitrator, venue, appeal process, and other details such as documents, discovery etc. An arbitration-related section is often found in the substantive part of a contract. However, it is not sufficient for international arbitrators to know only their own countries' substantive laws. International arbitration is cross-cultural, and the parties' nationalities may have different substantive and procedural laws (Strong, 2009b).

For example, in some countries substantive law is based on common law, and in others it may be coded. Examples of common law countries are the UK, South Africa and Nigeria. In these countries, the judgment may make use of past cases. In countries with coded law, such as France and Germany, judgments are based on written instructions known as Codes. The following section describes the substantive law systems of three countries, Iran, England and the USA. Background to the formation of their substantive laws and legal system is offered for better understanding of the current systems. The study of these legal systems highlights the major differences between them, which arbitrators must understand and normalise at international arbitration tribunals.

Examples of these differences in the arbitration systems of US, UK, Iran as well as UNCITRAL Arbitration Model Law is provided below with a brief introduction to the overview of a country's background including reference to their legal culture.

### **2.13. Comparative analysis**

Similarity and differences of arbitration law of USA, England & Wales (E&W) and Iran with UNCITRAL (Arbitration Model Law)

The following is the United Nations Commission on International Trade Law that has been adapted by several countries around the world. A copy of the UNCITRAL Arbitration Model Law, US Federal Arbitration Act 125, UK Arbitration Act 1996 and Iranian Arbitration Act 1997 are reproduced in Appendices D, E, and G respectively.

In international arbitration, different countries have different substantive and arbitration procedural, some of which have. This shows substantive law plays a fundamental role in the hidden and subtle interpretation of arbitration laws.

### **2.14. USA substantive Law**

The United States' legal system originates from its constitution, (Scheb, 2014). The bases of the US country's system on the separation of powers, referring to how the government functions through the legislative, executive and judicial branches, which is always referred to as the "branches" of government of the US, (Ferguson, 2006). United States Law is based on Common law as in the UK, and they are fundamentally similar. This means that the law is developed in cases through judicial opinions as well as legislation, not like Coded legal systems of Civil Law countries that only rely on the legislation. The American legal system is based on the country's constitution, from which they derive their procedural rules. The two areas of law that international arbitration is concerned with are substantive law, as above, and arbitration laws, (Strong, 2009b) which are explained in the following sections.

#### **2.14.1. USA Arbitration Act similarities with UNCITRAL**

The Federal Arbitration Act (FAA) 1925 accepts the main principles of arbitration in line with UNCITRAL Model Arbitration Law such as party autonomy, impartiality and shielding from judicial review on merit, (Born, 2001). The provisions of USA Arbitration with regard to parties' autonomy and impartiality are as follows:

Section 206, of FAA Order to compel arbitration: appointment of arbitrators:  
*"The agreement at any place therein provided for, whether that place is within*

*or without the United State*". This quote refers to the fact that the parties may decide about the place of the arbitration in or outside of the USA.

Section 10. (2); vacation; grounds; rehearing: Where there was evident partiality or corruption in the arbitration, or either of them.

The evidence in respect for parties' agreement is continually repeated in most sections of the FAA.

#### **2.14.2. Differences between the UNCITRAL Model Law and FAA**

The differences between Article 34 of the Model Arbitration Law and Article 10 of the FAA may be significant depending on the formation of the arbitration clause as suggested by Freyer (2006). Article 34 of the Model Arbitration Law and Section 10 of FAA discusses the grounds for setting aside an award where the emphasis is on misconduct of the arbitration tribunal. On the other hand, the focus of the Model Arbitration Law is on the parties receiving proper notice (Freyer 2006) Appendix E. Please see Article 34, in the UNCITRAL Model Arbitration Law in the appendix D.

The rule of UNCITRAL Arbitration Model Law on setting aside an award based on:

*"The party making the application was not given proper notice of the appointment of an arbitrator or of the proceeding of the appointment..."*

Whereby the FAA Rule 10 Rules of proceeding states:

*"Where the arbitrator were guilty of misconduct..."*

However, Freyre (1990) explains that, despite the differences between the FAA and UNCITRAL Model Arbitration Law, the agreement between the parties takes precedence over the FAA default rules based on the principle of arbitration of party autonomy.

#### **2.15. England, Scotland and Wales (E &W) substantive Law**

Great Britain has historically been divided into England, Scotland and Wales, Wales meaning foreigners, the name given by the English, (Breverton, 2009) . England, Scotland and Wales were not united until the 10<sup>th</sup> Century CE. England was conquered by Romans and Normans and London was founded as the capital by Romans as Londinium about 50 CE, (Editors and River, 2017).



Romans brought Common law to England which continued until the arrival of Normans. In the 12<sup>th</sup> century when the Normans were the elite in England, the English King Henry I married Matilda, a Scottish princess. This helped the two countries form an alliance. In 1707 the three parts of the island, England, Wales and Scotland, joined under the Act of Union (Bederman, 2001).

Although this led to the two countries being united, English had different laws to Scotland, and these are related to political differences. Scotland and England have different parliaments and pass different laws. The Scottish have a special Scottish Committee in the UK House of Commons in London. Scottish bills are dealt with in the UK Parliament annually, and the differences remain mainly political and administrative (Bederman, 2001).

English law is based on Common law and is the focus of this thesis. In the UK, the rule of law is based on an unwritten constitution, therefore, the separation of powers is a matter of interpretation. Bederman (2001) states that the fact that the constitution is unwritten makes it easier to reform when there is a conflict and "*Law permeates into every cell of social life*" (von Reden 2000).

Slapper (2011) explains how the law in the UK governs everything in the everyday life of the nation, including the air, food, family, relationships, neighbourhoods, property, education, health, etc. This close relationship between the law and the normal everyday life of the people makes the law a valuable subject for study.

The development of English legal system, which originated from Roman legal system (Hoeflich, 1997). The current form of the law and legal system is based on many recent changes in the economy, science, court system, human rights, and developments in Europe (Slapper and Kelly, 2011). However, Bederman (2001) stated that the most important contribution of the law to society is how it deals with conflicts and disorders. The law has a formal nature and it is important that lawyers be familiar with the formal system of the specific law.

Originally, there was Roman Law in the UK which came from the Roman era when the laws were made by the common people. This type of law-making was changed in 1066 by the Norman Conquest. The law was then made by the

Kings' selected judges who travelled around the country and used tradition as a basis for the law, hence precedence cases were used as the law. However, while the Roman Common law system changed, the name Common Law was preserved in England. Both these two sources of law exist in the UK today, (Bederman, 2001).

The UK law is further divided into Civil Law and Criminal Law. Civil Law deals with disputes between individuals through Civil Courts such as County Courts and the High Court. These courts review cases involving compensations, loss or harm, and the terms used include liability, action, etc, (Slapper and Kelly, 2011). The standard of proof in these types of cases must be based on the balance of probability; the action is brought by the claimant, (Slapper and Kelly, 2011). Criminal courts regulate people's behaviour and actions, and in the UK these cases are dealt with by Magistrates and Crown Courts. These criminal courts enforce punishment, protection and habitation, and the terms used in these cases are prosecution, guilt, etc. The standard of proof must be beyond a reasonable doubt, and the action is brought by the police. Two more categories are worth noting: private law, which normalises the relationships between ordinary citizens, and public law, which involves governmental bodies(Slapper and Kelly, 2011).

#### **2.15.1 The E&W Arbitration similarities with UNCITRAL Model Arbitration Law:**

The E&W Arbitration Act of 1996 below and, in Appendix F, has three parts with seventy-one sections (Part 1) and has been significantly analysed in detail in the unpublished PhD thesis of Sara Lembo (2010).

Through analysing this work the researcher has identified that the E&W Arbitration Act 1996 is the same as the Iranian Arbitration Act in that it agrees with the key principles of international arbitration, such as autonomy of the parties and the impartiality of the arbitrator/arbitrators: This confirms that the UK and Iranian Arbitration Laws are similar in autonomy of the parties.

Part 1(a) *"the object of arbitration is to obtain the fair resolution of disputes by an impartial tribunal"*

*(b) "the parties should be free to agree how their disputes are resolved"*

### **2.15.2. E&W Arbitration Act differences with UNCITRAL Model Arbitration Law**

One of the main differences between the UNCITRAL (Model Arbitration Law) and 1996 E&W Arbitration law is in Article 16 of UNCITRAL, separability of the arbitration clause and the contract between the parties derived from substantive law, and part one Section 30 of the 1996 E&W Arbitration Act as follows:

UNCITRAL Model Arbitration Law Article 16, Competence of Arbitral Tribunal:

*(1) The arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement.*

*For that purpose, an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract.*

*A decision by the arbitral tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration clause.*

E&W Arbitration Act 1996, Section 30(1), (2)

Jurisdiction of the arbitral tribunal:

*(1) Unless otherwise agreed by the parties, the arbitral tribunal may rule on its own substantive jurisdiction, that is, as to—*

*(a) whether there is a valid arbitration agreement,*

*(b) whether the tribunal is properly constituted, and*

*(c) what matters have been submitted to arbitration in accordance with the arbitration agreement.*

*(2) Any such ruling may be challenged by any available arbitral process of appeal or review or in accordance with the provisions of this Part.*

The analysis of the differences points to the UK's tighter control and authority over the decision-making of tribunal and in the process the authority is conferred to the parties' autonomy in the decision-making process.

Sarah Lembo (2010) states that this separation of arbitration competence encourages more authority of the parties in control over their arbitration agreement which Lembo suggests that is a positive aspect of the E&W Arbitration Act 1996.

As we see, the section related to the competence of arbitrators in ruling within their jurisdiction is in two parts, compared with Chapter 4 article 16 of UNCITRAL Model Arbitration Law, in which the power of ruling on jurisdiction is vested only in the tribunal authority and not the parties. Roebuck(2000) writes that the root of modern arbitration in England in the 1970s is in fact in the nineteenth century. These nineteenth century arbitration laws on the European continent were incorporated in Codes of Civil Procedures in modern European Law. However, Roebuck stated that in England, on the contrary, the law of arbitration was part of Common Law and reaches back to seventeenth century and various arbitration regulations, including the Arbitration Act1889.

The E&W Arbitration Act 1996 combined the piecemeal arbitration rules of the past. This act is relevant to certain international treaties and rules such as the International Chamber of Commerce (ICC) and the London Courts of International Arbitration (LCIA). English arbitration, until recently (1979) contained no international arbitration law, and arbitration cases were closely related to English substantive law and High Court cases. For example, the 1996 Arbitration Act contains no differentiation between national and international arbitration, (Lembo 2010).

Since the thesis focused on the author's access to Farsi and English materials related to the Iranian subject, the overview of the Iranian substantive law is presented in more detail in this thesis.

### **2.16. Iranian substantive Law**

Iran, meaning 'noble' based on its Indo-European root, is used by the Iranians to mean 'the land of Aryans'(Institute, 1992), (Frye, 1976). However, the term 'Persian empire' was used by the Greeks in antiquity for thousands of years and then by Romans and Europeans for the people living in Pars, south of Iran. Archaeologists in Persepolis and Pasargadae discovered evidence that the name 'Iran' was used by the Sasanian Dynasty from the 3<sup>rd</sup> century CE,

and re-established and used by the International community after Pahlavi's Dynasty on the first day of Persian New Year 1935 CE,(Willey, 2005 ).

Iran, located in south-west of Asia, is currently divided into 30 counties and has a population of over 70 million (Axworthy, 2008). It comprises one of the longest-lasting empires in history and can be traced back to 7,000 BCE to the pre-Achaemenians, "full of violence and drama: invasions, conquerors, battles and revolutions" (Axworthy, 2008).

The country's judicial system goes back to centuries even before the Aryans, which is where the name Iran originally stems from, beginning with a primitive legal system, (Willey, 2005 ). Ancient Iranian rules were based on the law of Zoroaster ( زرتشت ) the first official Persian Prophet who started a religion with the book (1000 BCE),(Willey, 2005 ). The Zoroastrian religion had two opposing powers of good and bad and three legal principles: Good Deeds, Good Thoughts and Good Words. One of this religion's beliefs was that the mediation by "angels" was needed between humans and God. God was so good that the deity could not directly contact ordinary humans' beings. Villages in Iran still use wise men as arbitrators, called *Katkhda*, دادخدا as an effective way of solving their conflicts, (Willey, 2005 ). This suggests that Persians have always preferred arbitration as a way to resolve their disputes.

As the country became more advanced, the judicial system also became more advanced; Abghari (2008) divides history of Iran into the three distinct periods: Pre-Islamic, Islamic and Contemporary. Most of the pre-historic evidence was destroyed by the conquerors of Iran, such as the Greeks, Arabs, Mongols and Tatars. The most famous law-makers before Islam are the kings and the emperors Darius and Cyrus, known for justice and organised administration. The country's religion was Zoroastrianism, as described above, and the king received his Divine power from the Zoroaster God, Ahura Mazda,(Shahin, 2009).

The first human rights declaration was published on a stone cylinder in 539 BCE by Cyrus the Great. The writing on the cylinder reads:

*"As long as I am alive and Mazda grants me the kingdom, I will respect the tradition, custom and religions of the nations of my empire and*

*never let any government and subordinates look down on or insult them or other nations”(Abghari, 2008b).*

After the periods of Darius and Cyrus came the Arsacid period, with a feudal structure implementing more or less the same judicial system(Abghari, 2008b). The heads of the Zoroastrian religion were the magi, who could influence judicial matters.

Iran has a Shi'a Athna Ashri(twelve Imam) branch of Islam, they believe that the Imam Ali was the true successor to the prophet which covers 98% of the population of Iran and is the second largest denomination of Islam, (Abghari, 2008). The Sunni Muslims believed that Abobaker was legitimately elected as the successor. The division between the Shi'a and the Sunni Muslims partly stems from the succession of Prophet Mohammad after the prophet's death in 632 CE,(Abghari, 2008b) .

After the conquest of Iran by the Muslims, Iranians became Sunni Muslims, but a group of Iranian intellectuals became Shi'a and the authors of the four Shi'a books and the Islamic Hadith. Examples include the famous Iranian intellectuals of the time, such as Nasir Din Tusi. The Islamic Caliph Umar waged an all-out attack on Iran in 642 CE. This brought an unforgivable humiliation to the Persians and their empire and they resented the defeat. This was exacerbated by battles over Iraq in the seventh century, which were lost and won and lost again in quick succession. Although the history was written to suggest that the Iranians welcomed the Arab conquerors with open arms, it is now accepted that this claim is questionable, as *“ history is written by the victors” (Paige, 2014).*

After this Sasanian period and the conquest of Iran by Islamic Arabs around 700 CE, the official religion and the legal systems were based on Islamic laws. These included courts that dealt with most disputes according to Mogul regulations. This was a period of dissatisfaction and corruption, and the system then returned to the pre-Mogul period of Islam. However, this time the ruling power of the Sasanians changed the Sunni Islam of the Arabic conquerors to an Iranian version Shi'a Islam, (Abghari, 2008b). The Shi'a Islam legal system continues in Iran to the present day. The contemporary

period of the legal system is divided into periods before and after the Islamic revolution of 1979 by (Abghari, 2008a) .

The following is evidence of the effects of political culture not only on the population but also on the form of the country's substantive law. In 1906 Iran changed from absolute monarchy to a constitutional monarchy with the separation of three state powers, which establishes the background to today's Iranian judicial system. During the Pahlavi dynasty from 1925-1979, begun by the father of the deposed Shah of Iran, effort was made to remove all religious influence from the government. People from the secular universities were employed in the judiciary. Several secular laws were adopted based on French laws instead of the existing religious laws. This legal background helps us to better understand the basis of religious legal influence and the system of accumulation and concentration of legal power in Iran, (Abghari, 2008a).

In 1911 the judicial system was reformed and divided into two separate categories: general and special. The general court dealt with preliminary proceedings, appeals and reconciliation. The special court dealt with military, trade and judicial disciplinary matters. Iran came under the influence of foreign nations such as Russia and the UK through written treaties of Anglo-Russian Convention of 1907, (Abghari, 2008a).

These treaties were rescinded in 1928 but revived in 1961 at the demand of the US government. This period reverted to having no separation of powers, and the kings and local government had a great influence on legislation, leading to legal injustice. Islamic clerics also had great influence, so there was a two-tiered religious and secular judicial system, leading up to the pre-revolution period of 1979 (Abghari, 2008b).

Current Iranian legal history began in 1979, the beginning of the political system known as the Islamic Republic of Iran. As a result of the Islamic revolution in Iran, efforts were made to make fundamental reforms of the legal and political system by reverting to laws based on Islamic standards. This was implemented through inexperienced and untrained judges that wanted to assume key roles in the judiciary of the country in the chaotic aftermath of the revolution. In 1982 the Supreme Leader ordered that all laws

not based on Islamic law be abandoned and appeals were made impossible,(Poudret et al., 2007).

The post-revolution legal system of the country began with a constitution made up of three parts: legislative, executive and judiciary powers under the Supreme Leader, (Abghari, 2008a). The Supreme leader of Iran is elected or removed by the 86 members of the Assembly of Experts. Abghari (2008) further explains that the system of legislative power in Iran is unitary, with the parliament of 270 elected members being the only legislative authority. At the same time, in exceptional cases a direct decision may be referred to referendum under Article 59 of the Constitution. There are also two other institutions alongside the parliamentary power: The Guardian Council and the Expediency Council. The Guardian Council has 12 members of which six are selected by Iran's Supreme leader and six are selected by the head of the judiciary. These two councils oversee compliance with and respect of Shari'a Islamic laws, and all affairs of the country, including legislation. Any decisions made in the Iranian parliament must be approved by the Guardian Council before they become law.

If a disagreement between the legislative power and the Guardian Council arises regarding a piece of legislation, then the Expediency Council comes into play as an arbitrator. As the second legal authority outside parliament, the Expediency Council has two groups, one permanent and the other comprised of non-permanent members, all selected by the Supreme leader. If the problem is not resolved after review by the Expediency Council, it is referred to the Supreme leader,(Abghari, 2008a).

The second highest power in the legal system of the country after the Supreme leader is the President. The co-ordination of the legislative, executive and judiciary branches, which was under the power of President, was changed in 1989 by an amendment to the Constitution to come under the power of the Supreme leader,(Abghari, 2008a).

The third Iranian legal power is the judiciary. The head of this part of the country's system is selected by the Supreme leader for five years. Among



other powers, the head of judiciary is responsible for the selection of the judges, including the Minister of Justice,(Abghari, 2008a).

In 1994 a general court for universal jurisdiction by one judge was established. This caused more chaos, as there was no reason for giving judgment. In 2002 another reform was made by the passing of the General and Revolutionary Courts Act, reinstating the prosecuting institution and examining magistrates.

### **2.16.2. Current Iranian Constitution and substantive Law**

Current substantive law as well as the national and international aspects of the Arbitration Act of Iran are directly affected by the Constitution of Iran. An example of its effect on arbitration law is that any international arbitration which involves National Iranian Oil Companies (NIOC) must have approval of the parliament and the Guardian Council. On 24 October 1979 the constitution of the Islamic Republic of Iran was adopted by referendum, replacing the previous constitutions of 1906, the adaptation of the French constitution with the fundamental diversion to the authoritarian Islamic rules, (Wayne, 1993). The official government website of Iran claims that the Iranian constitution of Iran is a hybrid of authoritarian religious and democratic secular laws where the emphasis and priority is given to the Islamic Shi'a Athena Ashari taken from the Quran, the Prophet Mohamed and Imam Khomeini.

### **2.16.3. Iran's Arbitration Law**

Arbitration was and still is culturally one of the dispute resolution methods among friends, family and merchants in Iran. This tribal use of arbitration was respected and recognised in the international arbitration method of dispute resolution. Iranian Civil law recognised arbitration as early as 1911 and a further revision was made in 1928, (Gharavi, 1999). However, in practice it was mainly used for commercial purposes and disallowed for matrimonial disputes by the 1935 Act, which was incorporated into Iranian Law by 1939.

After 1939, commercial arbitration law was no longer a priority for Iran, which was concerned about its sovereignty. The Iranian Arbitration Act of 1955 shows concerns for national sovereignty more than security of foreign investors and their investments. It seems that the Western legal system had sufficient influence to protect its investments, however. The 1963 award in the

case of International Petroleum Ltd. v. National Iranian Oil Company ("NIOC") is a good example, (Amanat, 1997) that has now set a recognised precedent for cases brought before Western jurisdictions. The current Iranian Arbitration Act was passed in 1966, in which judgment was informal with simple hearings. Most judges had little legal education and served as volunteers and in a temporary capacity.

The security of national sovereignty and independence from foreign manipulation was the priority and concern of the regime in Iran, resulting in a restriction on foreign judgements under Article 169, as indicated above. The law was dominated by a struggle for independence and protection of national sovereignty and the control over national resources from the superpowers. At the same time, since the discovery of oil reserves and the industrial revolution in the West (19<sup>th</sup>-20<sup>th</sup> centuries), energy resources in Iran were an important objective for Europe and the USA.

Iran had long been a country of nomadic and pastoral people with a tribal system. Prime Minister Amir Kabir Khan tried to modernise Persia in 1850. An example of his work is the opening of Dar-ol Phonon University and administration system, the first modern university in the Middle East.

However, he was exiled and murdered by order of the shah of Iran Nasera-din as a result of the influence of foreign powers in Iran.

The first Reza Pahlavi known as Reza Shah came to power as a dictator for the punishment of Ahmad Shah Qajar, who requested a share of the profit from Iran's sale of oil. Reza Pahlavi (Reza Shah) tried to modernise the system through force and dictatorship, but changes were superficial and the internal systems of running everyday life in the country were never modernised to replace the old tribal system, (Amanat, 1997).

His son Mohamed Reza Pahlavi and the USA did not foresee the revolution of 1979. The 1939 Arbitration Act remained unchanged in the 1983 Act after the Islamic revolution. The Arbitration Law of 1983 was modified and was used as the basis for Iranian Arbitration. The 1997 Iranian arbitration act was based on the UNCITRAL Model Arbitration Law with some modifications. Arbitration clauses are now an important part of Iranian commercial contracts in general

and in the oil and gas industry in particular, (TRAC, TRAC standard Arbitration Clause,(TRAC, 2009)).The change gave the same selection rights of an arbitrator to both parties at the time of formation of contract(Amuzegar, 1991).

The transcript of current laws is published in the official government Gazette after 72 hours on the website of the official journal of the government, equivalent to British Hansard parliament service, [www.gazette.ir](http://www.gazette.ir). Iran has prominent arbitrators at the International Court of justice as well as the very active National Arbitration Centres of Iran.

Iran's current arbitration law (Law on International Commercial Arbitration of 17 September 1997 (LICA)) has adapted the UNCITRAL Arbitration Law and the Iranian authority claims that it closely follows it, (Gharavi, 1999). As described above, they agree on the general principles such as autonomy of the parties, selection of the arbitrator, the recognition of the arbitration clause, enforcement and equal treatment of parties. The 1997 Act has 36 articles and 9 chapters, adopted from UNCITRAL 21 June 1985 version, which has 36 articles and 8 chapters. However, some parts are not a full reflection of this law and they are adapted to domestic conditions. One of the differences between the Iranian law and UNCITRAL is the role of women in national and international arbitration as arbitrators. Article 2 of UNCITRAL states that "*arbitral tribunal*" means a sole arbitrator or a panel of arbitrators describing an arbitrator as an arbitral tribunal and technically men or women who may be engaged in arbitration.

Although Iranians claim that their arbitration law follows UNCITRAL there are significant differences in practice. There are noticeable differences between the written Act and compliance with it: the Iranian arbitration Act Article 1 specifies that "*Arbitrator*" means a sole arbitrator or panel of arbitration". There is no differentiation between men and women in the law. It is explained that Iranian women are not recognised as competent to be an arbitrator by the Islamic substantive law of Iran, Haddadi (2014). Haddadi adds that Iranian practical law follows the customs, culture and tradition instead of the written law. He compares the differences of the unwritten religious law of Iran to international laws worldwide.

This also clashes with the basic principle of arbitration, which offers the freedom to choose arbitrators, whereas the parties in Iran are not allowed to choose a woman as an arbitrator. This limitation is not part of the Act but it is as part of the culture, which in practice trumps the Act, (Haddadi, 2014).

Another example of the differences is in the Iranian Arbitration Act of 1997 and its departure from UNCITRAL arbitration rules concerning enforceability of the award, one of the most important parts of arbitration. According to Hamid G. Gharavi (2014) the Iranian Arbitration Act article 11 presents a fundamental change to Articles 8-10 of UNCITRAL (the appointment of arbitrators). It is suggested, as described above, that this Iranian change in Article 11 of the Arbitration Act is intended to provide grounds for refusing enforcement of foreign awards. The Iranian regime has an intense suspicion of the West, stemming from their historical grievance with political interference.

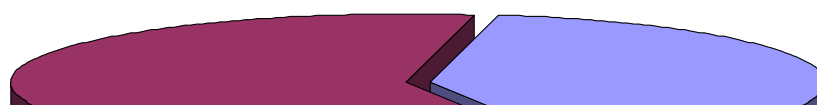
Iran's active national and regional arbitration centres are frequently used by business communities. The Tehran Regional Arbitration Centre provides an arbitration model clause for contracts on its official website as follows:

*"Any and all disputes arising out of, relating to or in connection with the present contract shall be finally settled under the Rules of Arbitration of Tehran Regional Arbitration Centre" (TRAC) [www.trac.ir/static.aspx?id=3](http://www.trac.ir/static.aspx?id=3)>.*

The following table present a sample of data collection regarding the uses of arbitration in Iran. They are used in this research with the kind permission of the directors of the arbitration centres of Iran in 2009 as part of the author's Master's degree thesis ([www.arbitration.ir](http://www.arbitration.ir)).

**Table 3 Iranian Arbitration Centre**

براساس شرط داوری در  
قرارداد  
101 مورد 41%

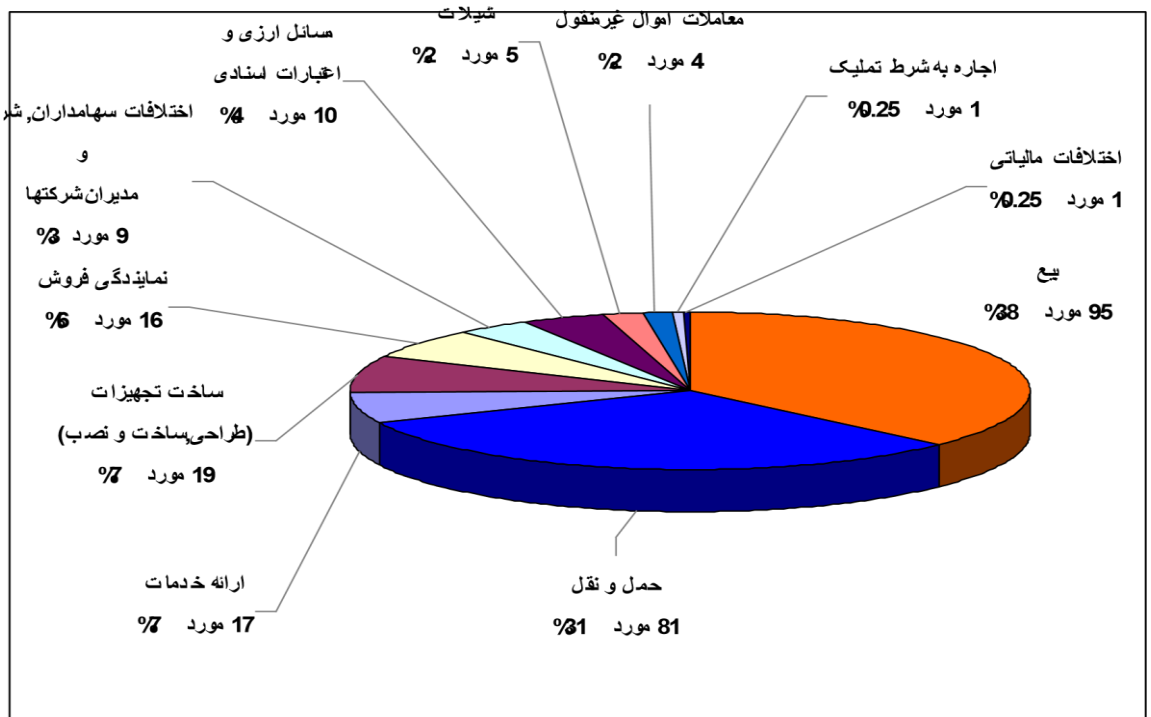


(Shahin 2009)

**Figure 1** March 2001-February 2007.

Of 248 total cases 101 were rereferred to the Arbitration Centre with contracts containing the arbitration clause. There were 147 cases of *ad hoc* arbitration, (TRAC, 2009).

**Table 4 Data from Iranian Arbitration**



(Shahin-December 2009) RGU Master's Thesis

**Figure 4** Categories of disputes:

Tax.....	0.25%
Letting.....	0.25%
Immovable properties.....	2%
Fishery.....	2%
Bonds + shares.....	4%
Company Directors.....	3%
Trade Agents.....	6%
Civil engineering and auxiliaries.....	7%
Service industry.....	7%
Transport.....	31%
Lending.....	38%

#### 2.16.4. Key similarities and Differences

##### **Similarities:**

Current Iranian Arbitration Law and UNCITRAL

Similarities of Iranian Law of International Arbitration and UNCITRAL Model Arbitration Law are on some key principles such as party autonomy and impartiality:

Party autonomy for agreement:

- UNCITRAL: Article 2(d) "*...the parties free to determine ...*".
- UNCITRAL: Article 2(e) "*...to the agreement of the parties*".
- Iranian Article 1(a) "*...between parties...common consent*".
- Iranian Article 1(c) "*'Arbitration agreement' is an agreement by the parties*"

There are other similarities, as well as some major differences, including the selection of arbitrators and enforceability, as discussed later.

The similarity between the UNCITRAL Model Arbitration Law and the Iranian arbitration law stems from the Iranian adaptation of the Model Law in 1997. Hence some of the similarities between the two arbitration laws include:

- A) There are a similar number of articles.
- B) Both arbitration systems define national and international arbitration through different Articles, for example the Iranian 'Definition and rules of interpretation' is Article 1 and the UNCITRAL Model Arbitration Law is in Article 2.
- C) Definition of Arbitration is similar but with different wordings.
- D) Definition of 'court' appears similar.

##### **Key Differences:**

The major difference between the Iranian Arbitration Law and UNCITRAL is the provision related to enforceability:

UNCITRAL Model Arbitration Law Chapter VIII. Article 35. Recognition and enforcement: (1) *"An arbitral award, irrespective of the country in which it was made, shall be recognised as binding..."*

In the Iranian Arbitration Act article 35 (enforcement), the law confers the power of a foreign award's enforcement to the Iranian Court/Courts, showing evidence of distrust and concern: Articles 33 and 34, cited below, relate to setting aside awards and nullity of awards; Further, the Iranian arbitration law differs from the UNCITRAL Model Arbitration Law of 1985 in the interpretation of international arbitration. The UNCITRAL Model Arbitration Law defines international arbitration differently and the emphasis is on the place of business or the residence of the party and not their nationality:

UNCITRAL Model Arbitration Law Article 1(3): *"An arbitration is international if:*

*(a) the parties to an arbitration agreement have, at the time of the conclusion of that agreement, their places of business in different States; or*

*(b) one of the following places is situated outside the State in which the parties have their places of business:*

*(i) the place of arbitration if determined in, or pursuant to, the arbitration agreement;*

*(ii) any place where a substantial part of the obligations of the commercial relationship is to be performed or the place with which the subject-matter of the dispute is most closely connected; or*

*(c) the parties have expressly agreed that the subject matter of the arbitration agreement relates to more than one country.*

*(4) For the purpose of paragraph (3) of this article:*

*(a) if a party has more than one place of business, the place of business is that which has the closest relationship to the business, reference is to be made to his habitual residence."*



The Iranian arbitration law in Article (1) defines International Arbitration as related only to the nationality of the party as follows:

*"...one of the parties, at the time of conclusion of the arbitration agreement, is not considered an Iranian national according to Iranian law".* Other differences include the following:

- A) There is no interpretation in Iranian Arbitration Law of '*arbitration tribunal*'
- B) The UNCITRAL Model Arbitration Law defines a tribunal as an arbitrator or arbitrators
- C) The UNCITRAL Arbitration Law has no limitation for selecting an arbitration tribunal and authority of the selection is given entirely to the parties while the Iranian Arbitration Law refers to other conditions in paragraphs 3 (default for selecting an arbitrator) and 4 (emphasis on independence and impartiality of the arbitrator); more importantly paragraph 6 does not exist in the UNCITRAL Model Arbitration Law. This is addressed in more detail below.

The extra Iranian provision in article 11(6) "Appointment of arbitrators" reads as follows:

*6 Unless otherwise agreed by the parties, in cases where the arbitration comprises more than two parties, the arbitral panel shall be appointed as follows:*

*(a) The claimant shall appoint one arbitrator; and where there are more than one claimant, they shall jointly appoint one arbitrator. The arbitrator of the respondent or respondents shall also be appointed in the same manner.*

*If the claimants or respondents do not reach agreement on their respective arbitrators, the arbitrator for either one of the parties (claimants or respondents) shall be appointed by the authority specified in Article (6).*

*(b) The appointment of the President shall be vested in the appointed arbitrators and in case they do not reach agreement, the President shall be appointed by the authority specified in Article (6).*

*(c) Where there is a dispute as to whether one or more parties to arbitration are claimant or respondent disagreement over the capacity, as claimant or respondent, then the arbitral panel shall be composed of three persons appointed by the authority specified in Article (6).*

The purpose of the addition of this sixth paragraph, Gharavi (1999) believes, is to protect Iran in international arbitration tribunals. The Iranian Arbitration Act provides this extra authority to the parties in case of disagreement over the selection of arbitrators. It is a reminder of Iran's serious disagreement over the selection of the tribunal's president at the Iran-USA tribunal.

Another, more important, difference is the Iranian Arbitration Act article 35 (enforcement), as shown below:

*1 Except for the provisions specified in Articles (33) and (34), the arbitral awards made in accordance with the provisions of this Law are final and enforceable after being serviced and, upon written application to the court specified in Article (6), shall be enforced in accordance with the procedure applicable to the enforcement of judgments of courts.*

*2 If one party requests the court specified in Article (6) of this Law for setting aside the arbitral award and the other party makes application for the recognition or the enforcement thereof, the court may, if so requested by the applicant for recognition or enforcement of the award, order that the party requesting the setting aside provide appropriate security.*

The Iranian enforcement article is influenced by the fact that article 169 regarding civil judgment (in the Iranian constitutional law) does not allow foreign arbitration awards unless a reciprocal arrangement is in place. Furthermore, a foreign award must be approved by the Iranian court for approving foreign awards acts as a ground for avoidance of accepting foreign awards.

This difference in enforceability points to the Iranian authorities' wish to have control over foreign awards, perhaps demonstrating a lack of trust.

The following shows the overview of the Iranian substantive law before the overview of the arbitration law.

**Table 5 UNCITRAL, USA, E&W, Iran Arbitration**

UNCITRAL Model Arbitration Law 1985	USA (Federal Arbitration Act 1975)	E&W Arbitration Act 1996	Iran Arbitration Act 1997
8 Chapters, 36 articles	3 Chapters, 31 Sections	4 Parts, 110 Sections	9 Chapters, 36 Articles

The UNCITRAL Model Arbitration law, the E&W, the USA and the Iranian arbitration acts are presented in full in the appendices (A-G). As one can see there, the Iranian, E&W and US arbitration laws agree in terms of key principles with the Model Arbitration Law and with each other's arbitration laws. However, there are some differences. The scope of this research limits the number of differences that can be discussed in detail, but a few key similarities and differences are described below, beginning with Iran, followed by E&W and then the US.

**2.17. Similarity in arbitration Laws and practical differences**

The comparison of the Iranian, E&W and USA arbitration laws with the UNCITRAL Model Arbitration law in arbitration chapter 2 shows that the three countries' arbitration laws are in agreement in general principle with the UNCITRAL Model Arbitration Law. For example, the Iranian authorities claim that Iran follows the Model Law rules closely, and generally it does, (Gharavi, 1999).

However, a major difference appears in arbitration practice because of the influence of religious and constitutional law at the background. An example is the differences in the role of Iranian women in arbitration,(Haddadi, 2014).

According to the Article 1(a) of the Iranian arbitration law the party can select a person as an arbitrator. Article 1 of the Iranian arbitration law is as follows:

Article 1(a)

(a) *"Arbitration" means the extra-judicial settlement of disputes between parties by one or more natural or judicial persons thus nominated by common consent or appointed.*

In constitutional law, which trumps all other Iranian law, an Iranian woman is not considered to be competent enough to be a judge or an arbitrator, competence being a requirement for the job. This difference between men and women is not mentioned in the wording of the arbitration law. On the surface in the written Iranian arbitration law, there are no differences between men and women, but in practice a major difference appears with the Model Law in this respect. This major Iranian difference stems from the Islamic religion, which has not been expressed in arbitration law and prevents the selection of women, (Haddadi, 2014).

In practice, this difference also restricts the authority of the party in selection of an arbitrator of their choice. This is despite Article 11(1) expressing the freedom to choose an arbitrator:

*1. The parties are free, subject to the provisions of paragraphs (3) and (4) of this Article, to agree on a procedure for appointing the arbitrator*

*Provisions 3 and 4 of Article 11 mentioned above:*

*3- Where, under an appointment procedure agreed upon by the parties, a party fails to act as required under such procedure, or the parties, or the appointed arbitrators, are unable to reach an agreement, or a third party, whether a natural or judicial person, fails to perform any function entrusted to it under such procedure, any party may request the authority specified in Article (6) to decide the matter, unless another procedure has been agreed upon by the parties.*

*4- The appointing authority shall have due regard to any qualifications required of the "arbitrator" by the agreement of the parties and secure the independence and impartiality of the "arbitrator". In any event the President*

*shall be appointed from amongst nationals of a third country and the arbitrator of the defaulting party shall not be appointed from amongst nationals of the country of the other party.*

Current Iranian constitution based on religious law has created a culture where bias against women is the norm. This bias extends to the sanction against the selection of a woman as a competent arbitrator, which is not apparent in the arbitration law if a tribunal relies only on the written arbitration law.

Another major practical and unstated difference is the understanding of the concept of impartiality between different cultures.

Concerning the impartiality and independence of arbitrators, the Iranian arbitration law states in Article 11(4):

*4- The appointing authority shall have due regard to any qualifications required of the "arbitrator" by the agreement of the parties and secure the independence and impartiality of the "arbitrator". In any event the President shall be appointed from amongst nationals of a third country and the arbitrator of the defaulting party shall not be appointed from amongst nationals of the country of the other party.*

The above is an example of the effect of a different understanding of the meaning of "impartiality" which was clearly demonstrated in the Iran and US international arbitration of 1980s. Koorosh Ameli (1999) writes that the independence of arbitrators is not the only difference between their countries, but that their school of thought, religion, where they have studied and their national interests are all important as well. These differences in understanding are invisible in the letter of the law that some arbitrators solely rely on.

**The following is the second part of Chapter 2 Literature Review.**

## **2.2 CHAPTER TWO LITERATURE REVIEW(B)**

### **2.2.1. Part two of Chapter two Literature Review- Social Culture**

#### *2.2.2 Introduction*

The focus of this second part of chapter 2 is culture in general and cultural diversity in particular.

This is because cultural diversity is one of the main parts of a sophisticated system of international arbitration. As Carrithers (1992) explains, there are issues of sheer complexity and comprehensiveness in one culture alone, to say nothing of the interaction of several cultures. If the varieties of cultures are added to international arbitration, it is faced with the logistics of everyday life, as well as all other dimensions such as politics, history, economics, religion, etc(Carrithers, 1992). The research on cultural differences within international arbitration requires the examination of various layers of background material. The scope of this research does not allow for an in-depth discussion of every aspect of cultural diversity in international arbitration and does not delve deeply into the theory of culture.

The terms culture, custom and tradition are sometimes used interchangeably, therefore a brief description of their differences is provided for clarity. The research will cover their relationship to each other. The cultural differences between the British and Iranians are used as an example in this research. This is to best utilize the author's resources, knowledge, experience and understanding of these two cultures and languages. Additionally, the data collected from this different cultures' perspectives of each other is analysed in order to indicate how they perceive each other's cultures in general and regarding specific matters.

#### **2.2.3 Differences between Culture, Custom and Tradition**

Although there are some underlying connections between these concepts, social science recognises subtle differences between them. This research intends to observe the relationships between culture, custom and tradition in society. The fundamental effects of culture in creating custom and tradition are addressed. Interpretation of the collected data highlights the effects and relationship between these aspects.

#### 2.2.4 Culture

Culture, the subject of this thesis is abstract and applies to anything that is related to thoughts, values, beliefs, ways of thinking and perception of the world. Kalman (2009) states that culture is the way we live, which includes what we believe in, what we eat, our clothing, the way we celebrate, and our arts, music and dance,(Kalman, 2009). As TS Elliot (2010) says, culture:

*"... is the product of variety of more or less harmonious activities, each pursued for its own sake.... the recognition that these conditions of culture is natural to human beings; that although we can do little to encourage them, we can combat the intellectual errors and emotional prejudices which stand in their way"* (Eliot, 2014).

Geertz (2016) states in his book *"Interpretation of Culture"* *"culture is 'a way of thinking, feeling and believing"* (Geertz, 2016). Culture has aims; it is designed by a society in order to live. Adaptation is a condition of survival, and culture must be flexible and able to adapt to new situations in order to survive. People make sense of the world through their own particular world view. This world view is like a special coloured glass placed in front of people's minds and eyes by their society to see the world in a particular way and colour (Waring et al., 1998).

This glass is painted based on environment, geography, history and geopolitics, and most importantly the availability of material and intellectual resources. Everyone thinks their world view (the colour of their glass) is the best and the true colour to view the world (ethnocentrism). One should not judge people in other cultures using an ethnocentric perception. Jun(2018) writes that *"racism is based on these types of ethnocentric biases, especially by the dominant racial group"* (Jun, 2018). Therefore, we should be aware of the glasses that we are wearing, and also the glasses that others are wearing, before comparing and judging another person's culture(Jun, 2018).

Our world view is invisible; it is too close to us for us to be able see it. It is a fundamental part of us, not separated from us. The aim is to try to be aware of it and separate it from ourselves and others. It is our cultural bias that we are often not fully aware of. Our world view consists of *"perceptual biases*

*about how the world functions*" (Waring et al., 1998). While we can see and judge other cultures, we have difficulty seeing our own culture and how other people see and judge us (Waring et al., 1998).

### **2.2.5 Custom**

Custom, on the other hand, is what people "do" habitually. It is the distinct way in which people behave in a community. Customs in a community are not written by law but consist of the long-standing and persistent way that people do things (Bederman, 2001). Custom is the physical manifestation of abstract thoughts and beliefs. Custom presents itself in body language, behaviour, dress codes and even lifestyles. It is the behaviour and actions that are repeated through people's lives habitually and are often copied by the next generation, who are brought up with it. If you continually see a certain behaviour and way of living, it becomes so much a part of you that it is difficult to comprehend living without these things (Bederman, 2001).

For example, a Persian custom is to celebrate the New Year on 21 March every year. Iranians set a table with seven foods whose names begin with the letter S (in Farsi), including apple and garlic. There is of course a belief behind this tradition of having seven items at the New Year ceremony (Zameen, 2008). This is an example of the effects of culture on customs, although one is intangible (culture) and the other is tangible (custom).

### **2.2.6 Tradition**

"...they are models of living which are embraced by successive generations" (Trenery and Kilby, 2014). The Oxford English Dictionary definition of tradition is: "*The transmission of customs or beliefs from generation to generation, or the fact of being passed on in this way*". Not every member of a society is a traditionalist. Traditionalists are a sub-culture within a culture and may conflict with modernists. Traditionalists may perceive their holding on to tradition as being secure (Reckwitz et al, ed. 1994). Trying to adapt to a new way which is unknown involves risks and creates insecurities. According to Zoran Pavlovic (2010), traditionalists perceive change as threatening: "*it interferes with existing, deeply embedded ways of doing things*" (Pavlovic and Gritzner, 2010).



This research concentrates on communication issues between different cultures in international arbitration.

### **2.2.7 The origin of the word 'culture'**

According to Cicero, culture is cultivation of soul or a learnt behaviour. It means the process of improvement or cultivation of the soul (Fantham, 1999). The term culture was first used in antiquity by Roman politician and orator Cicero, who lived until 43 BCE. Cicero is known as the father of values, Cicero was interested in human behaviour and he had command of classical Greek and translated a large amount of literature from Greek to Latin. Most of his knowledge came from Greek teaching, especially religious, and the discovery of the power of spirit that formed the Judaism, (Fantham, 1999).

Culture is a networking skill between members of a society that makes social life possible. It runs through society like an invisible thread that connects its members at the base of the community, where it creates a code of conduct and personal identification for members to belong to a particular society. It is the understanding of the other member's behaviour between groups of people. Bobbie Kalman (2009), in his book "*What is Culture*", writes that culture is the way we live, including what we wear, eat, our arts, and even our ancestors. Kalman also claims that culture is our identity in terms of our beliefs and behaviour (Kalman, 2009).

Culture is an abstraction rather than a biological inheritance. It is people's learnt beliefs and values that form their perception of the world, which expresses itself in their appearance and behaviour. It is common for people to believe the only normal behaviour is their own and that all other cultures are abnormal, which is called "*ethnocentrism*". The term ethnocentric was popularized by Sumner (1906) to mean the belief that one's culture is the best, which results in a feeling of superiority. Ethnocentricity has a close connection with bias against what belongs to others, 'us and them' attitudes, intergroup relations and prejudices. It stems from one's world view or 'perceptual culture', the interpretation by people of their known world. There are many subcultures in any culture, but people of one culture share the basic

rules of that culture and then divide into subcultures within a culture given their own particular circumstances (Sumner, 1960).

### **2.2.8 Social science and culture**

For thousands of years humanity was mainly concerned with survival and the day-to-day problems of living, such as making fire, finding food, surviving disease, and death, and these were more significant than studying the social sciences. Scientists before the nineteenth century were mainly concerned with hard sciences such as mathematics, physics and medical science. The formal study of culture as a science is relatively new, starting with anthropologists in the nineteenth century (Wagner, 2001). Anthropologists began to study the behaviour of non-Western tribes by observation of the tribes' symbols and actions.

Earlier social science tends to be concerned with observation in isolation and not with underlying matters such as economics. Robert Levine (1984) reminds us that sometimes anthropologists present vague and unexplained things that are beyond our current understanding of culture, *"sometimes with the implication that the concept is outdated and ambiguous and that use is an indication of quantitative social science..."* (Levine, 1984) . Therefore, those studies were not useful examples for studying modern societies with sophisticated structures (Burton, 1972). However, these studies developed and branched out as the time passed and became more relevant to today's developed societies.

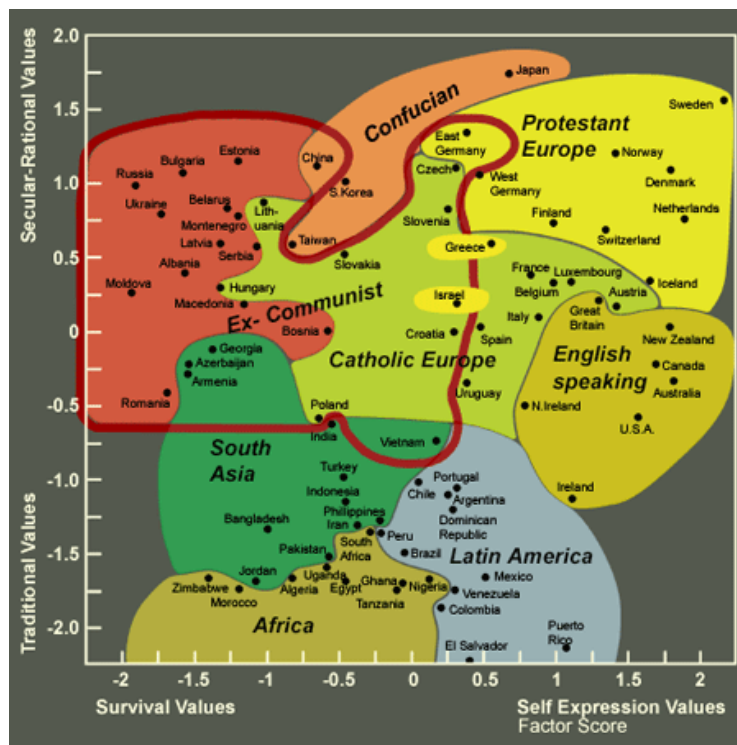
Redding (2003) states that after the early anthropologists, social science began to study different groups of people in Western and contemporary settings. This is still developing, and examples of the branches of social science and subcultures include labour culture, management culture, gender culture, youth culture, media culture, etc. The gap between anthropologists was filled in by psychologists and management consultants. Their efforts were evaluated by empirical testing using multiple countries (Redding and Stening, 2003). Social science began to regard culture as being made up of many layers built up through the centuries. It is accepted that culture is not fixed

but is constantly changing and developing to fit the changing, living world (Trener and Kilby, 2014).

At the basic level, it appears to be the shared values and common understanding between members of a group or a nation that defines it. Culture began to have different definitions from different standpoints, although there remain some social scientists who refuse to define culture, Samovar et al (2016), in "*Communication Between Cultures*", explains that culture is complex, powerful and difficult to define. He states that culture is like membership of a group which has similar beliefs and values (Samovar et al., 2016). On the other hand, Hofstede (2004) believes that culture is a programming of the mind (Hofstede and Hofstede, 2004). If we accept that culture is a collection of values and beliefs, then Wagner (2008) reasonably argues that, as there are different cultures, there must be different values and beliefs between people (Wagner, 2008).

**Figure 1 The World Value Survey-Culture**

Cultural Map 1999-2004



Source: Ronald Inglehart and Christian Welzel, *Modernization, Cultural Change and Democracy* New York: Cambridge University Press, 2005:63.

Sometimes these values are close to each other, and often people who live in the same part of the world have closer beliefs and values. For example, Western countries share closer values and have closer cultural understanding with each other when compared to their relationship with Eastern countries. In *"What are European values?"* (Grant, 2007) takes for granted that Europeans have the same values. Serif Mardin (1993) describes Middle Eastern culture in *"Cultural Transitions in Middle East"*. There is evidence to support a belief that a regional cultural identity exists that distinguishes people from different parts of the world (Mardin, 1993). This work will consider how people from different regions of the world have a distinct culture and differing values from peoples of other parts of the world, and how these differences impact their understanding of the application of the law and their legal arguments (Mardin, 1993).

Cultural differences are often classified based on their geographical location in the world. For example, a culture is identified as Western, European, Eastern, Middle Eastern, African, Arabic etc. This indicates the relationship between culture and the geographical position of the people. Human beings are part of the environment that they live in, as other things around us such as plants, animals, water, mountains, rivers, etc. A closer look at the environment highlights the natural harmony between everything around us, as if everything mimics the environment that they live in (Paxman, 1998). The question is why this harmony exists?

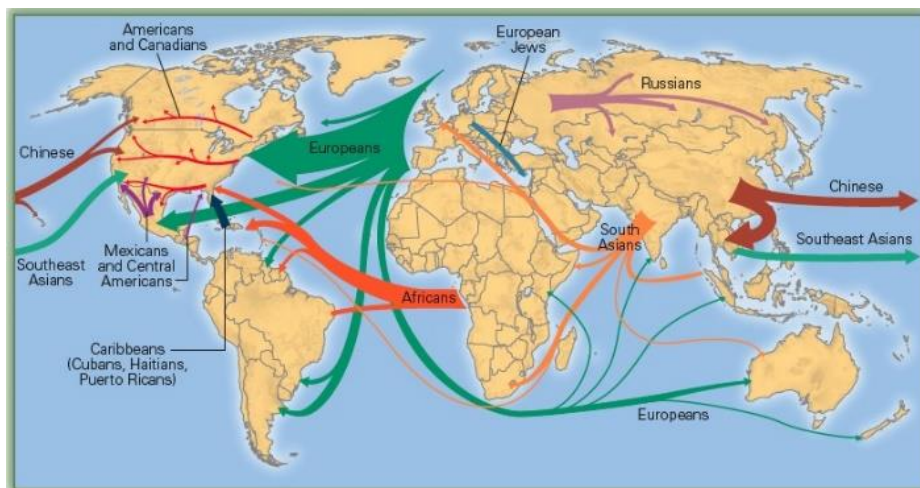
Survival requires following basic rules/systems in an orderly manner that the members of a group must obey such as the rules in Bakersfield College Education (2014) USA California. The primary aim of culture is survival and the challenge of existence through access to resources (Matsumoto et al., 2012). Survival does not exist in isolation, and there is a need for adaptation and toleration. Culture is designed to form relevant beliefs, values, ideas and actions for the survival of a group under specific conditions.

Jeremy Paxman (1998) claims that English geography allowed the English to achieve freedom in law and democracy. England, he claims, having the particular characteristics of an island and the geographic position in the world at a certain point in time had "...a people who were observers rather than

*experiencers. And their geography had given them the freedom to be pioneers in Law and democracy” (Paxman, 1998). The geographic isolation of the British Isles led its people to be mainly on the lookout for foreign naval invasion over the water that surrounded the land(Paxman, 1998).*

As culture is not fixed, and everything in the world is in a state of flux, motion results in change, and when one thing changes it causes changes in other things, *“cultural change in all its aspects namely society, economy, religion, art and literature”*(Prakash, 2005). It is vitally important for long-term survival to be aware of the inevitable changes that are happening in the world in general and in one’s immediate surroundings in particular. These changes affect the strategy for survival and the scarcity or abundance of resources, on which survival depends. One important aspect of following the effects of the changes in the availability of resources is observing the footsteps of history. History shows us the role that resources, or the lack thereof have played in bringing about wars, peace, the balance of power, law, order, immigrations and culture changes.

**Figure 2 World Migration**



World Migrations (Havilland College Education Formation of Cultures) mostly 19<sup>th</sup>-20<sup>th</sup> century.

### 2.2.9 Water

Archaeology provides us with evidence that early settlements (farmers as opposed to nomads) began civilisations (towns, city-states, trade, writing etc.) around rivers. Water is the most essential resource for the survival of humans, animals, plants, farming, fishing and food. However, water can be dangerous and requires control and infrastructure to minimise the danger of flooding. Control and infrastructure need people, organisation and a hierarchical system to implement the plans for survival from the dangers of water. This system of organising people developed into politics, and rulemaking was the basis for the formation of culture. Egypt (river Nile), Mesopotamia (today's Iraq and Persian Gulf), Babylon Tigris and Euphrates are examples of great early water civilisations of around 6000 BC (Childe, 1954).

According to the geography and the environment, different systems and rules of survival were needed, hence the development of different cultures "*different societies have different rules because of their different cultures*" (Matsumoto et al., 2012). Over time populations expanded and new resources were needed, requiring greater organisational complexity. Examples of these added requirements include the need for intellectuals, communication, planning, strategy, industry, etc. (Matsumoto et al., 2012).

People live in different environments, so the survival systems are designed differently to satisfy the different survival and communication rules (Anderson, 2012). These survival rules are designed to direct the way people think, act, and dress so that they can survive the challenges of their particular environment, geopolitics and ultimately their communication (Anderson, 2012). As the environment is in a constant state of motion, so is the change in cultures. People who are aware of these changes and are prepared for them have a better chance of survival when the changes finally occur, as they are aware of the need for communication, planning, strategy, industry etc. These new resources and greater organisation led to the creation of subcultures (Boldt, 1993)

### **2.2.10 Subcultures**

"...the earliest coherent set of subcultural studies was carried out by sociologists at the University of Chicago during the 1920s and 1930s" (Williams, 2013).

Apart from the world's cultural differences, there are sub-branches of cultures based on different groups inside a culture, known as subcultures. People of the same culture may have different ways of thinking and living and belong to different groups based on religion. These people have a shared base culture which belongs to the whole of nation and includes historical identity.

Even members of the same family may divide into subcultures. This is where human uniqueness emerges, which can be partly related to the genetic makeup of individuals. Bernice Lott (2010) describe this as "The Cultural Mosaic": *"everyone of us, as a unique multicultural individual, has multiple social identifications as a consequence of our multiple cultural membership"*(Lott, 2010). When there are subcultural differences between the people of the same nations, these differences could become wider and reach the core of the people's beliefs and moral values. Sissila Bok (1996) claims that there remain basic common values between people in all nations and cultures. However, there are differences between people belonging to the same culture, with subcultural division and people with highly diverse cultures(Bok, 1995).

### **2.2.11 Cultural Diversity**

Barkett (2009) describes multiculturalism or a cross-cultural society as a society where people from different cultures interact with each other(Barkett JM and Paulsson J, 2009). On the other hand, Bernice Lott (2010: 1) writes that all of us who live in contemporary heterogeneous societies are multicultural(Lott, 2010). This refers to the present world in which we are not only in contact with other cultures, face to face, but also electronically through the Internet. News travels fast and we hear about the crises, fortunes or misfortunes of other nations immediately, which affects our values and beliefs(Lott, 2010).

Traveling abroad is nothing unusual and many people regularly do so. There are many organised tours in most countries for exploring their culture and history, as well as a wealth of information available in print and on the Internet. While the age of easy travel and communication brings people of different cultures closer together, it remains the case that a little knowledge is a dangerous thing. The disadvantage of this type of 'touch and go' information is misunderstandings, when travellers may just observe the surface, compare their observations with their own culture and make superficial and often biased judgments(Bauman, 1999).

Culture should be translated in its entirety within its own context if the hope is to reach cultural harmony instead of ethnocentric judgments. Superficial observations may lead to a sense of superiority or inferiority, as well as actions and reactions to superficial observation such as becoming prejudiced. Joyce S. Osland and Allan Bird (2000) explain that cultural sense-making should be in context(Bird, 2000).

Awareness of one's own culture in isolation is difficult, and observing other cultures helps us to become aware of our own culture. Bernice Lott (2010) notes that, in relation to cultural diversity, psychology has been of tremendous help in becoming sensitive to the importance of cultural awareness. Cultural awareness is helpful in learning about human behaviour(Lott, 2010).

#### **2.2.12 Psychology of cross-cultural diversity**

Psychology is divided into different branches and each branch looks closely at particular questions from different perspectives to find the answers to a question or a problem. Cross-cultural psychology looks at the effects of cross-cultural factors on human behaviours. The International Association of Cross-Cultural Psychology or (IACCP)was formed in 1972. This branch of psychology studies the behaviour of people belonging to different cultures.

Individuals are unique, whether they belong to the same culture or different cultures. As Curling (2006) explain, multiculturalism is like a healthy salad bowl which is made up of different tastes and textures, and not a melting pot. The message here is that not everyone from a culture is identical ,(Curling, 2006). When one is faced with a person from a different culture it should be



remembered that each person in that culture could be different from another person in the same culture. This is despite the fact that they may have underlying similar beliefs, because people have multiple layers of personalities depending on the particular situation in which they were raised. One example of cultural diversity which arises is the concept of being on time(White, 2011).

### **2.2.13 Different Meanings of "On Time"**

An example of different cultural interpretations of a concept can be seen in the empirical research carried out by Jones and Brown (2005), referenced by White (2011). This study concerned the interpretation of the phrase "on time", which is not the same in every culture (White, 2011). It appears that the understanding of this phrase depends on the norm of the local culture and other factors; in some cultures "events starts when the principals arrive, and not when the appointed hour is reached" (White, 2011).

For example, in Anglo-American culture, people measure punctuality in time as the equivalent of monetary value. However, the Spanish word "manana" is used to express that today's business can be put off to tomorrow. Others assess punctuality as politeness. Of course, all of this depends on the occasion. However, it seems that there are different meanings and perceptions of time that need to be normalised when necessary by setting a rule that can be followed in a formal setting such as international arbitration. Even when there is a rule, the parties may interpret it differently (White 2011).

In this study, two cultures of Iranian and English were tested with underlying similar and different beliefs amongst the members of the same culture. The details of this study are presented below as an example of different conceptions of an important issue within a single overarching culture.

#### 2.2.14 Iranian (Persian) Culture

This section attempts to compare Iranian and English culture and the relationship between the culture and the environment or geographical situations as an example. The aim is to highlight the effects of the geographical characteristics on the character and the culture of the people

The differences between Iranian and English culture are chosen as an example for comparison because of the writer's experience and insights of living in these two countries. The purpose is to highlight the relevant basic cultural differences, as the scope of this research does not allow expansion of the analysis to all of the cultural facts related to Iran and Britain.

The root of the Iranian language is Indo-European (Fortson, 2009). Persia was conquered by the Arabs (Islamists) in the seventh century and the modern language is influenced by the Arabic alphabet ('Izzatī and Ezzati, 2002), although the language is still Persian or Parsi (in Arabic Parsi is called Farsi, as there is no P in the Arabic language) ('Izzatī and Ezzati, 2002). Early Persian civilisation included Mesopotamia (today's Iraq), the remainder of the past Zoroastrian around the Zayandeh Rood river (Nafisi, 2009). Many Iranians and others prefer the name Persia to Iran due to the negative media attitude caused by the recent geopolitical situation of Iran and its relationship with the West (Butler and Hinch, 2007).

Iran is surrounded by high mountains, hills and rivers. The environment is made up of extremes, from hot to cold, highs to lows, green to desert. It is a mosaic of diverse environments, of peace and volatility. It has four defined seasons and its environmental volatility causes regular storms, earthquakes and floods.

**Figure 3 Current Map of Iran**



<https://www.worldatlas.com/webimage/countrys/asia/iran/irmaps.htm#page>

### **Place of Iran in the world**



<http://triptopersia.com/iran-nature/geography>

### **Iranian Cultural Characteristics**

Iranians are confident and regard themselves as a people from an old civilisation (noble), (Bar and Center, 2004). They distinguish themselves from some primitive cultures, as confirmed by many Western scholars (Bar and Center, 2004). Iranians identify each other by their local place of origin in Iran, each section or county of which has distinctive characteristics and subcultures. For example, people from the Gilan and Mazandran in the north

of the country have distinctive characters and subcultures compared to people from Lorestan in the east of the country(Bar and Center, 2004). This regional stereotyping also holds true in British culture. Iranians prefer to express and display their emotions and expect to receive the same. This attitude extends to both happy and sad occasions such as weddings or funerals. At greetings and partings, expressions of warmth and hierarchical respect are extremely important and complex(Beeman, 1982).

As Kautlaki(2002) writes

*"In the wake of the media focus on Iran's nuclear technology development and its place in Middle East politics, the West continues its quest to understand this paradoxical nation: its politics, yes, but also its people, their culture, and even their everyday customs and rituals"* (kautlaki, 2002).

#### **(a) Values**

Iranians are known to be individualistic as opposed to community-minded, and this is the most prominent trait associated with Iranian culture. Mehrzad Boroujerdi (1996) believes that Iranians' individuality comes from cultural immaturity(Boroujerdi, 1996). However, Shmuel Bar (2004) states that this trait is as a result of Iranians' suspicion and mistrust, because historically they have been under the rule of despotic powers.

On the one hand, as a developing country Iran is not yet fully developed in terms of implementing a sophisticated social system of management for running the country. There is evidence of Iran being partly managed by the old tribal system, as in many Middle Eastern countries. According to Arash Khazeni (2009) in the early nineteenth century almost half of Iran was nomadic. In developed countries, people generally rely on the system for their required services instead of relying on individual connections(Khazeni, 2010).

Iran's recent history shows that the entire country was run mainly by tribal and nomadic powers as recently as the 1930s(Cronin, 2012) . In the 19<sup>th</sup> Century Amir Kabir, Iran's Prime Minister, tried to industrialise and modernise Iran in line with Iranian tradition, but he was put to death in 1852 by Naser-

al-Din Qajar (Shah of Iran) in order to secure his own personal power with influence from the West(Arasteh, 1962).

**(b) Communication**

Iranian culture shows a great love for poetry and the language is full of poems that are used regularly in everyday conversations for reference(Tavassoli, 2011). Iranians have a florid language and use many pleasant words to the person that they speak with and express their language skills without much real meaning. This is in line with the importance of the individuality of their culture and the value of personal relations. It is known that people in power had poets to constantly write poems 'to sing their praises'. Intellectuals historically wrote their comments and criticisms in verse(Tavassoli, 2011).

**Figure 4 Current Map of England**



Lonely Planet, England, Travel guide 2015

### **2.2.15 English culture**

England is part of an island, which it shares with Scotland and Wales. The climate is relatively mild without extremes, of hot to cold, highs to lows and green to desert. It is wise to have umbrella and raincoat handy, and people complain about the lack of sunshine anywhere in Britain, unlike Iran. The following is a comparative analysis with Iran.

#### **(a) Values**

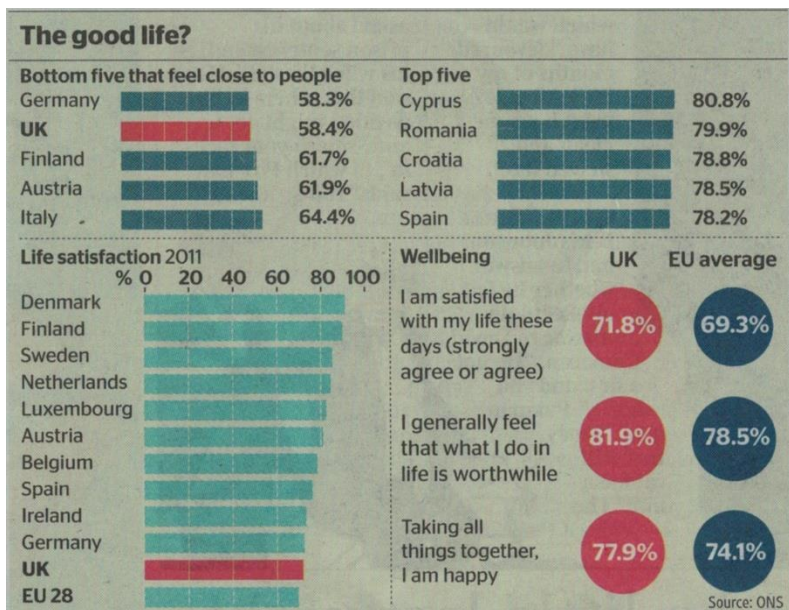
The English, unlike Iranians, are known to be community-spirited people as opposed to individualistic. They are at their best in forming a group before making a major decision and acting on any significant matter. The creation of and participation on committees, associations, and groups of any sort is almost a national pastime, (Wintle, 2016). It is much easier to be close to someone, find a friend and be trusted as a member of a group or a club. This is because the British are a suspicious and pessimistic nation in general; they share with each other their opinions found by investigation, being watchful and

gossiping,(Millman, 2014) although of course there are many subcultures with variations.

**(b) Emotions**

English people do not like to express their emotions publicly, they are considered reserved, and excessive emotion makes them uncomfortable,(Fox, 2005). This is unlike Iranians. This includes happy or sad occasions such as weddings and funerals. Their emotions are private and not for public display,(SIRC, 2006). The English often panic when they make a mistake, unlike Iranians. Table 6 shows the British are identified as “A nation of loners”. This article refers to a survey conducted in 28 countries, where Britain ranked third from last in terms of having a close friend.

**Table 6 The Times 19th June 2014**



Rosemary Bennet: “A nation of loners, only Germans are less friendly than the British”

**2.2.16 Common values in cultural diversity**

“It is not possible, many argue, to insist on respecting both difference and sameness when it comes to moral values: on honouring individual and cultural diversity while also holding that certain moral values go to the heart of what it means to be human and always have, since the beginning of time, and always must if we are not to lose touch with our humanity”(Bok, 1995).

Sissela Bok, who has extensive experience in multiculturalism through working with many nations, has found common ground between people of all cultures. Considering that businesses are dependent on global trade, it becomes vital to understand the culture of the people whom our business depends on. It is a basic rule to start from what we share and find out what we have in common in cultural diversity.

### **2.2.17 Managing cross-cultural situations**

In this contemporary world of fast commuting and communication between nations, multiculturalism is part of businesses of all sizes. Despite the importance of acquiring skills in cultural management of companies, the knowledge of cultural differences remains very superficial. *"People when they travel become inward looking instead of outward looking"*(Pavlovic. Z, 2010).

One problem is that most cultural information comes from popular media through publications, television and internet headlines. These media often base their products on either the politics of the day or commercial value and not the long-term development of human relations. Taylor (20017) writes that managing cultural diversity goes deeper than the *"track of best practice"*, and suggests that *understanding cultural diversity is "how organisations utilise mental models"* (Taylor, 2017).

### **2.2.18 The cross-cultural nature of international arbitration**

It can be seen from the above that arbitration is not a new phenomenon, but rather has deep roots in history. It has been used as a means of dispute resolution between friends, family and public for personal problems, as seen in the famous biblical story of Solomon and the child(Elkouri and Elkouri, 1973).

However, (Karton, 2013) claims that arbitration has its own commercial culture. He uses case studies to explain in detail that international arbitration culture is very different from court culture. He believes that the driving force behind arbitration culture is the merit of the case and the specialisation in the technical nature of the subject that is being arbitrated.



## 2.2.19 Chapter Two Conclusion (A and B) Legal and Cultural

### **A-Arbitration**

Arbitration is an ancient practice used by friends, family, the general public, governments and the commercial community in order to resolve their disputes and bring peace. Historical arbitration was informal and mainly based on culture and customs. Arbitrators often knew the parties' backgrounds well, so they were able to recognise the issues outside their dispute. Selection of arbitrators in ancient times was based on reputation and trustworthiness. The key principles were the parties' agreement to arbitration, selection and impartiality of the arbitrator, who carried the authority and the power that secured enforceability and this principle is part of the modern arbitration.

Demographic changes as a result of the industrial revolution required legalisation of arbitration beginning around the eighteenth century. The key principles of historical arbitration were transferred into formal arbitration. The authority and the power have been shifted from the person to arbitration laws, and arbitration is still developing.

From the above, certain common features can be identified from the historical development of arbitration in both East and West, which can still be seen in modern arbitration:

- i) Autonomy of the parties
- ii) Impartiality of the tribunal
- iii) Enforceability of the arbitration award

Modern arbitration was developed further by the UNCITRAL Model Arbitration Law which has been adopted/adapted by different nations. Arbitration laws are not uniform. An arbitration agreement may be drawn up in advance, at the time of the drafting of the written contract or later after a dispute arises. Normalisation of the legal differences is a complex activity that requires legal skill.

## **B-Culture**

However, Culture is created based on the local and national needs of people for survival and prosperity. People from different parts of the world have different cultures. Culture is not fixed, but rather is flexible in order to fit the purpose of survival. Therefore, information about other cultures needs updating. People belonging to the same culture have similar basic beliefs, values and perceptions of the world around them. Additionally, there are many different layers of branches of these same beliefs, and values are built on top of these basic beliefs and values, creating subcultures and individualities amongst members of a group.

Awareness of cross-cultural issues in the contemporary world of fast travel and fast communication, is highly important in general and in business in particular. Multiculturalism is helpful in bringing awareness of one's own culture. One's own culture is invisible until it is compared to others. This is because our beliefs, values and thoughts are not always clear to us unless there are compared with other beliefs and thoughts.

The study of culture and subcultures is relatively new and started with anthropologists observing the behaviour of people from under-developed places in the world. The anthropological branch of social science has developed into many branches. The study of social behaviour of groups amongst local culture as well as cross-cultural behaviour is continually developing.

The comparison of Iranian (Persian) culture and English culture in this research is an example of cultural differences. People from different cultures have different understandings of the application of laws, including matters such as impartiality, the authority of the parties and the enforceability of international arbitration award.

### **3 CHAPTER THREE CROSS-CULTURAL ARBITRATION**

#### *3.1 Introduction*

The focus of this chapter is cultural diversity in particular in different jurisdictions and how this may effects the arbitration process and outcomes. (item three in correction)

This chapter presents the interaction between cultures and international arbitration. It contains a review of the literature regarding the variables in cross-cultural international arbitration, constructing a unique identity for the people of each geographical place in the world. The depth and breadth of variables in international arbitration are examples of this sophistication. This multidisciplinary research is constrained by space and time limitations in discussing every angle and particularly the full effects of social cultural differences in international arbitration.

This chapter` focuses on the following:

- The role of culture within international arbitration
- The culture gap in the development of international arbitration
- Significance of theoretical perspectives regarding what is known as legal culture in international arbitration

There is much literature on the technicalities and the processes of arbitration. However, these works and the technicalities of arbitration are outside the focus of this research. For example, Strong (2009) notes that there is no literature regarding research methods on international arbitration, which is why he wrote on that topic. Strong confirms that writing on international arbitration is radically different from research on other areas of law. It requires gathering information that is scattered, complex and often uncodified. The uniqueness of research on international arbitration includes arbitration acts as well as substantive laws unique to individual countries. There is little literature in English on the problems of legal differences in international arbitration (Strong, 2009b).

International arbitration in its current form is relatively new(Strong, 2009b). It appears that the relevant literature is scattered amongst different countries, languages and world libraries. Therefore, the researcher felt the need to make several visits to world libraries. Entering the law library in the Sorbonne upon production of a student ID was not very difficult and there were many books on international arbitration in French, but a limited number of books and articles in English. University of Crete in city of Heraklion possessed several books on international arbitration in Greek and a small number of books in English about arbitration in general.

The Iranian Library in London have available Iranian main historical journals particularly the publications after the Iranian Islamic Revolution of 1979, as well as many Farsi language books. Unfortunately it is short of Iranian law books. The British Library contains little literature on international arbitration culture, as does the Advanced Legal Study library in London. However, the Peace Palace Library in The Hague was fruitful and particularly useful in providing arbitration journals in English. Although the wealth of information and evidence at the British Museum and Louvre is undeniable, the collection at the archaeological Museum and Historical Museum of Crete both in Heraklion were impressively helpful with regard to ancient international trade.

### **3.2 The role of culture in international arbitration**

#### **3.2.1 Legal culture**

In searching for “culture” in international arbitration, one will come across literature that defines the culture in general as cultivation of the soul and learnt behaviour that was used by the famous Roman orator Cicero,(Fantham, 1999).

Culture differences in international arbitration is mainly refers to the clash of legal cultural differences. The physical corpus of published works and also the extensive body of writing on the topic of cultural differences in international arbitration show the traditional perspective of “culture” known as legal culture (Strong, 2009b). Fadlallah (2009) refers to the 2008 international lecture regarding the conflict of cultures, in which culture exclusively referred to legal

culture in international arbitration and there was no reference to social culture; the author stated that:

*"The issue of conflicts of culture in international arbitration and the possibilities to alleviate them are analysed through three topics: (i) the application of the Shari'a by Western judges (East-West conflict); (ii) the recognition of awards despite their annulment in the arbitration seat country (a specifically French aspect); (iii) divergence between the practice of Common Law countries, the Civil Law countries and the Middle-East, related to evidence and procedure", (Fadlallah, 2009).*

Furthermore, Fadlallah(2009) states that his aim is to resolve the conflict of culture, while there is no reference to social culture. The word culture is used exclusively for legal issues.

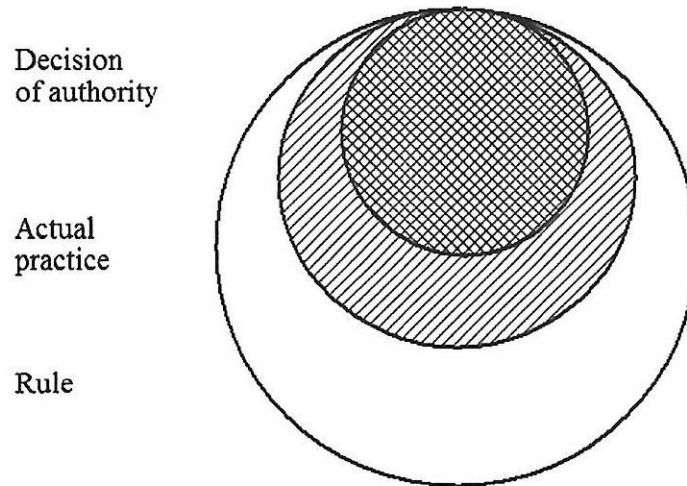
Focusing on the legal aspect of culture exclusively depicts the paradigm of legal thinking, which is a function of the reasoning and argumentation that lawyers employ in their profession. Varga (2012) identified this as "the discipline of so-called methodological thinking". This methodological thinking is related to the nature of the law, which is conceived as aggregated rules created by institutions,(Varga, 2012). The following illustration demonstrates the role of rules in decision-making.

## Figure 5 Paradigm of legal thinking

(Varga 2012)

### 6. PARADIGMS OF LEGAL THINKING

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The above drawing shows the decision making of the authority is based on the rules and the practical parts of the rules. The smaller part of the drawing is the process of decision making. The second or middle part is practical parts of the rules and finally the larger section is the rules.

Lawyers, judges and arbitrators operate within a framework of the legal system, and their reality is what they interpret from the law, (Sumner, 1960).

The variety of legal diversities becomes the main part of a sophisticated system of international arbitration, requiring unique and specialized research materials (Strong 2009). The sample of these legal varieties are Arbitration Acts, procedures, as well as substantive laws. Therefore, harmonisation of law in international arbitration is necessary and it will be provided through professional discussions and sharing experiences.

However, Bhatia writes that "...variations in the formation of legal concepts in normative texts are mainly to be attributed to the different cultural traits and legal tradition of the communities for which are meant" (Bhatia et al., 2008). It seems that this confusion between social culture and the legal culture comes at the expense of understanding social cultural differences. Legal cultural differences should be identified as legal differences, as shown in this example:

“the transnational nature of the dispute means that there will be conflicts of legal rules and, more importantly, legal culture” (Strong, 2009a). Legal culture has been introduced in the chapter 2(A) in the section on “Legal Cultural”.

In international cases these legal rules are not universal and uniform but are instead closely connected to the social backgrounds of the places where they developed. Arbitration and the laws around it developed through time as a device for local and national people to resolve their disputes (Frommel, 2000). It is the application of these rules that take different forms, such as common laws and coded civil laws, as in continental systems. For example, in contrast, traditionally in common law countries it would not be appropriate for the tribunal to make a proposal for an out-of-court settlement. In a civil law country such as Germany, encouragement for settlement is part of the Civil Procedure in Article 279 (Frommel, 2000).

In an international setting, such as arbitration, legal differences become the subject of a clash of legal forms, and lawyers call this cultural diversity. Some lawyers and arbitrators deny that the social culture of parties and arbitrators plays any role in international arbitration. Lawyers have often invoked “cultural diversity” to mean a conflict of laws. In fact, culture in this context means “legal culture” and this is the preferred way that lawyers deal with culture (Slate, 2004). For example, cultural differences mean different procedures used in civil law and common law countries.

A three-day conference in Berlin entitled “Cultural Differences in International Arbitration” in September 2014 at the Humboldt University was devoted entirely to legal differences. This conference included discussion of important issues regarding the interpretation of different laws. An example of cultural diversity was the understanding of the disclosure of documents. However, there was no mention of social cultural differences. In response to claims regarding the conference being silent on social culture differences, lawyers dismissed the role of non-legal culture factors having any role in international dispute resolution.

Arbitrators and lawyers belong to a legal community with their own legal culture, and as in other professions the big players often know each other. The

judges, lawyers and arbitrators who profit from justice need to have a national platform for their professional development. This implies that they concentrate on a line of hierarchy which is based on legal performance and not social performance (Dezalay and Garth, 1998). "Social performance is defined as "the effective translation of an institution's mission into practice in line with accepted social values." In other words, social performance is about making an organization's social mission a reality, whatever that mission is". Candlin and Bhatia (2016) complained about the ever expanding role of the lawyers in international arbitration:

*"However, in practice, the appropriation of arbitration practice by litigation experts continues, and arbitration, as a non-legal practice, continues to be influenced by litigation practice, a development which seems to be contrary to the spirit of arbitration to resolve disputes outside of the courts."*(Candlin and Bhatia, 2016).

This lack of sensitivity regarding social culture in formal analysis of international arbitration is noticeable and is seen as arrogance and psychological condescending by some. El-Kosheri (1996-ICC conference Seoul) stated that there is:

*"...a lack of sensitivity towards the national laws of developing countries and their mandatory application, either due to the ignorance, carelessness, or to unjustified psychological superiority complexes, negatively affecting the legal environment required to promote the concept of arbitration in the field of international business relationships"* (Slate, 2004)

This is a clear indication that local law stemming from social cultures in international arbitration deserve more attention and consideration. On the other hand, while legal clashes are a fundamental issue in ever-expanding internationalism, the development of the international community in its current form still is in its infancy, despite the ease of travel and communication. As a result, there are many situations with regard to legal differences that still need to be resolved, (Slate 2004). The importance of achieving international legal standards in international arbitration is



undeniably based on procedural and contract law: "International commercial arbitration reflects a unique blend of civil and commercial law traditions" (Strong, 2009b). Strong discusses how the law is uniquely used in international arbitration (Strong, 2009a).

However, social culture grows organically and is deeply rooted in people's lives; it relates directly to how a society works (Carrithers, 1992). as El-Kosheri stated in his speech at the ICC Conference 1996: "legal cultures do not exist in an intellectual vacuum" (Slate, 2004). There has been development in the commercial success of international arbitration at the expense of the understanding of underlying cultural issues. It highlights the need for a bridge between theoretical development and intellectual advancement in where international arbitration is heading (Mustill, 1993). The details of a dispute may be in the technicalities but the arguments are made by people with different beliefs and values based on different historical cultures and traditional customs.

### **3.3 Social culture in international arbitration**

Lawrence Friedman (1975) describes legal culture as an output and states that one needs to pay attention to the variety and the importance of the inputs in legal behaviour. (Creason, 2004) also cites the importance of this input:

*"The cultural value of native populations is a significant source of law, because modern society develops from the practices and belief of indigenous cultures. The strong influence ancient practices have on present cultures is apparent in the religious, dietary, economic and political facets of today's societies"* (Creason, 2004).

Not everyone agrees with this, for example, Cao (2016) criticises cultures that are biased against women and human rights. Cao (2016) suggests that the law must endeavour to make these unhelpful cultures develop instead of following them.

*"Culture, in all its wild, irrational forms oppresses women in the developing world"* (Cao, 2016). Cao (2016) continues that cultures biased against woman should not be legitimate.

*" International Women's Rights Action Watch, Asia/ Pacific, similarly rejects the notion that culturally based practices that harm women should be deemed legitimate on cultural grounds"* (Cao, 2016).

Slate (2004) refers to the impact on the success of international arbitration of a lack of awareness of cultural differences. Some lawyers and arbitrators concentrate on harmonisation of legal differences exclusively, while the understanding of underlying problems of social culture becomes secondary and unnoticed.

*"While every effort is made to bring about neutrality for international arbitration, a cultural factor that has the power to swing the pendulum of success seems to have gone unnoticed"* (Slate, 2004). *"Cultural background strongly influences legal systems and understandings"* (Sanders, 1999). Law is only one of the social differences in comparing one society with another, and the legal system is explained in behavioural terms (Friedman, 1975).

However, Bower (2001) conducted empirical research into law and order amongst parties with different cultures. The results of the research showed that the most important factor in dealing with disputes was that the process be perceived as fair. In that research it is stated that parties felt satisfied with the result even if it went against them as long as the process of resolving the dispute was perceived as fair:

*"When people feel that they have been treated fairly by authorities, they are likely to go along with the decisions authorities make, even the outcome is not favourable to them."* (Bower et al., 2001).

Nevertheless, some lawyers expect that people simply shed their personal cultures that they were born with and lived with all their lives just because they are in international arbitration: *"In the process of resolving disputes on an international construction project, the disputing parties and the neutral party are expected to participate in 'shedding home-grown habits and prejudices'"* (Shilston and Hughes 1997).

This example illustrates the attitude towards the "home-grown habits and prejudices" in some international ADR, showing the importance of attention to national culture and custom.

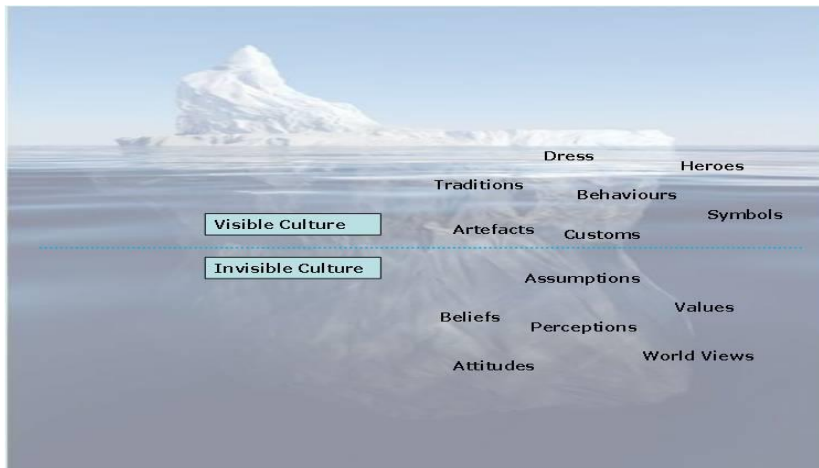
The difficulty in addressing social culture and custom, despite its importance, is that they are subtle, unlike legal differences. They are highlighted and become visible only by observation, education, information and actively learning by training or from international experience. Learning about other cultures requires not only willingness, but also active training. This is confirmed by a study conducted to assess the awareness of American and Chinese students in higher education at Georgia State University in Atlanta: "...It is also important to explore avenues for students that develop global perspective and skills while at their home institution" (Commander, 2016). There is little legal requirement in this regard, and while there are many references to the lack of attention to social culture in international arbitration, there has been no primary research on these cultural issues.

In the following example, culture is compared to an iceberg: "An iceberg is a good illustration of what parties to dispute perceive. Only about 10% of the iceberg is above the water, and the 90% that is underwater sank the Titanic" (Rovine, 2008).

It is suggested by Rovine (2008) that missing the reality of the hidden parts of the 'iceberg' with regard to disputes can derail the negotiation process. It is also suggested that correct perception of the hidden parts of any dispute is imperative for all parties if they wish to resolve the issues. The recommended way forward is to dive under the water and investigate the nature of the 'iceberg'. Pair(2002) states that: "In International Commercial Arbitration more than just the legal issues are issues". (Pair, 2002b) here refers to Harris and Morgan (1991) and states that "Every person operates in his or her own private world perceptual field. Culture is part of what creates this field"(Pair, 2002b).

The following image depicts the visible/invisible part of the social culture which appears frequently in cross cultural dealings.

**Figure 6 Iceberg theory**



(Hanley, 1999) Illustration of the iceberg theory of culture

The image explains that the invisible part of the culture is less apparent than the visible one, and as with an iceberg not paying attention to the invisible part could result in disaster. There are arbitrators who believe that there is no connection between 'misapplication of rules' and misunderstanding of the scope of the examination could be the result of cultural differences;

"...lawyer is presenting the witness; an objection is likely to be raised to the scope of the cross-examination. The objection is not the product of a culture clash. It is the product of a misapplication of a rule of evidence" (Barkett JM and Paulsson J, 2009).

### **3.4 Visible communication differences**

Arbitration is communication on multiple levels (Cooley and Lubet, 2003). Communication can be further divided into spoken and written differences that affect the outcomes of international arbitration. Communication differences in this thesis include pronunciation of the word and placing a wrong emphasis on different parts of the word or sentence that results in misunderstanding or confusion(Cooley and Lubet, 2003).

#### **3.4.1 Language and communication in cross cultural arbitration**

International arbitration is based on communication and the most basic ingredient of communication is language, which comes before the legal arguments. Some argue that international arbitration should be described as

“communication between people of different cultures”(Ogawa, 1972).Furthermore, parties may talk at cross purposes even when they speak the same language: “It may turn the tools of dispute resolution, word and reason, into dangerous weapons that may unexpectedly attack as well as backfire” (Goodman-Everard, 1991b).

#### **3.4.2 Written communication differences**

Writing is also an important part of communication(Dawson, 2002). The awareness of cultural differences at the time of drafting is as valuable as verbally expressing a point, particularly for non-native English speakers. Another example of conceptual difference is the understanding and use of the idea of the notary, which is important in civil law, particularly in Germany, but not in English Common Law (Dawson, 2002). Although historically both common law and civil law systems had the same interpretation for notary, they grew to place different importance and value on the notary (public) (Merryman and Pérez-Perdomo, 2007).

(Chan, 2003a) states that in international commercial projects, parties are concerned about understanding the local laws as clearly as possible, which is important in interpretation of contracts based on these laws. This implies that parties’ misunderstanding of the local laws that the contract is based on could affect the outcome. Local laws are closely connected to the social culture and custom, which must be understood.

#### **3.5 Unspoken language in international arbitration**

Park(1982) describes international communication as coded messages that originate from people’s experiences and cultural histories. At the same time, receivers of these coded communications decode them through the communication tools that are available to them, including their experience, cultural relations with others and what is recorded in their memories (Park 1982).

Examples of these coded and decoded communications are apparent in court documents exchanged between parties, even within the same social culture. The difficulties of misunderstanding are multiplied when parties from different cultures communicate regarding valuable cargo, while successful international

communication is a necessity for the survival of international trade. (Rovine, 2012):312) states that "*He (the mediator) must understand the cultural and linguistic nuances of the parties as these differences can become much more significant when the parties are in dispute*" (Rovine, 2012).

An example of the effects of nonverbal legal communication is when a party failing to perform in a contract by nonverbal communication may indicate that a party will not comply with the terms of the agreement. In the US, this is known by the legal term anticipatory breach of contract, (Self, 2009a). In this case, a dispute will occur, and each party would therefore prefer to take legal action in its own national court. In order to avoid this, most international agreements contain arbitration clauses to resolve the parties' disputes (Self, 2009a). Another example of the effects of nonverbal communication in intercultural cases is the effect of countries' negative reputations. An example of this effect is the failure of South Africa to become a centre for arbitration for African countries because of the nonverbal (reputation) allegation of racism in the South African legal system(Temkin, 2008) (Tamkin 2008, cited by Self 2009).

### **3.6 Overview of socio culture in international arbitration**

National lawyers who become arbitrators have been criticised for being unfamiliar with the requirements of international arbitration, Goodman (1991). Additionally, lawyers generally consider their own national law as the only just system of law. Goodman(1991) states that all international lawyers and arbitrators' thoughts are rooted in their national framework of social circumstances, politics, religions, values, culture, economics, law and convictions, providing them with personal cultural baggage that may cause them to misunderstand other cultures,(Goodman-Everard, 1991a).

Goodman (1991) suggests that the key to resolve these cultural issues is to be aware of diversity instead of ignoring it. Arbitrators must always be self-critical regarding their limited understanding of other cultures, as well as being aware of their own deep-rooted national culture and beliefs and avoiding cultural sterility in order to become neutral in their arbitration tasks.

The phenomena of arbitration neutrality appear to be a worldwide issue, not only belonging to one culture. The key requirement is for the arbitrator to stay equally distant from the cultural differences of both parties. The subject of the arbitrator's culture, its neutrality, or the lack thereof, is the crucial point between the parties when it comes to a party-appointed arbitrator, (Goodman-Everard, 1991a) .

Pair (2002) states that cultural differences are not just legal, and even if the differences were legal, there could be emotional repercussions. She provides an example of an international arbitration hearing where a French lawyer is perplexed by the arbitrator limiting the number of witness statements. The French lawyer is not used to this particular legal technique, and Pair (2002) refers to diverse legal issues that cause confusion by differences in expectations. This shows how culture provides patterns and direction for how to do things and meet expectations (Pair, 2002a). The differences between China or Japan and the West, for example, may be far greater than merely legal points, and may stem from the human understanding and expectations of the parties being as important as procedural and substantive laws(Goodman-Everard, 1991a). Arbitration may be interpreted differently by different parties, who may have different meanings in mind when they agreed to arbitration.

These unwritten attributes connect the written and spoken law to the nation's cultures and customs. The close relationship between culture and the law becomes apparent, and with it the importance of the impacts of culture on cross-cultural arbitration. "...the English legal system is not just about learning legal rules, but is also about considering a social institution of fundamental importance" (von Reden, 2010).

As words and body language have subtle spoken and unwritten meaning, these hidden meanings of culture enter subtly into formal written and spoken legal processes. Lawyers and judges are not always conscious of these familiar cultural innuendos; therefore, they deny the role of their culture in legal practices: "...law is considerably more than just the trade of lawyers" (von Reden, 2010). It is stated that it is not enough to just learn the law, but one must also know about how the law is made. It is further stated that law is

not separate from social norms and is in fact a “social phenomenon”, as it operates within a social context, (von Reden, 2010).

### **3.7 Cultural diversity and international arbitration**

Most social culture or custom differences in international arbitration are subtle and invisible. Some of the examples include innuendos, verbal, non-verbal and written communications, expectations, conceptualization, value differences, religions, different male/female relations and their role definition, and race relations. “While the substantive outcome in international commercial arbitration is not usually based on cultural expectation, procedural is. Substantive law and even basic norms will differ not only from culture to culture but also from country to county”, (Pair, 2002b).

Dismissing the influence of social culture may lead to social resentment from the client. Goodman (1991) goes as far as suggesting that cultural diversity in international arbitration could cause many problems. Resolving these problems requires flexibility instead of strictly enforcing a rule. Trakman (2006), who is known for his extensive research on legal culture, also states that it is not limited to legal traditions. He argues that the origins of legal culture is in history and socio-political factors. It is also possible that culture might have special social traits, such as businessmen conducting business at social gatherings. Considering the variety of factors that influence the legal culture, relying on the strict letter of law is likely to be a flawed solution.

Self (2009) agrees that international commercial arbitration is a suitable alternative dispute resolution and one of its advantages is the flexibility that allows parties with different cultures to shop for friendly forums instead of bringing their differences to national court systems (Self, 2009b). Trakman (2006) argues, with regard to different aspects of international commercial arbitration, that it is more applicable considering the lack of uniformity in the laws of different states and countries.

To understand the challenge of communication between international community you only have to observe the multiple variables that may exist including, religion, socioeconomic, age, regional, national and other cultural differences between the parties, (Goodman-Evrard,1991).



Misunderstanding the issue of cultural diversity in international arbitration is not reduced by just traveling to different destinations. "The problem and misunderstanding caused by cultural diversity are more than ever evident", (Goodman-Everard, 1991a).

### **3.8 Knowledge gap in the development of international arbitration**

Chan(2003) calls for research on the impact of socio cultural issues in legal cases which is an example of this gap that is occasionally picked up by scholars in the field, but no serious research has been carried out,(Chan, 2003b).

Friedman (1975) explains how surprisingly little is written about the effects of social science on legal systems, and suggested more research is needed. He claims that lack of research is the result of social science being the product of very recent time, (Friedman, 1975).

The lack of formal analysis of social culture in legal publications is noticeable,(Slate, 2004).

While there is evidence of an outcry from various parties regarding the dissatisfaction with the lack of sensitivity towards the parties' social culture some arbitrators are in denial of the role of social culture in international arbitration; Ahmad El-Kosheri, at the ICCA conference in 1996, attributed the attitude of superiority by Westerners towards Arabs in international arbitration to possible ignorance or carelessness. He suggested that it comes from a "psychological superiority complex" (Slate 2004). Slate (2004) continues by stating that while every effort is made to bring about neutrality in international arbitration, cultural factors that have the power to swing the pendulum of success seem to have gone unnoticed(Slate, 2004).

The recent expansion in international trade requires that attention should be paid to a better understanding of the expectations of international clients with cultural differences (ICC conference 2004). Progress and satisfaction in cross-cultural disputes demands these facilities, including an awareness of cultural bias amongst the parties to be expected from arbitrators and lawyers. Furthermore, paying attention to the importance of a changing world and the

problems that international arbitration will face in the future is a necessity (Lord Mustill 1980:1). Ultimately, it is the commercial clients and the parties in international arbitration that direct the flow of commerce and not the arbitrators; therefore, the fact that international arbitration is the servant of international commerce must not be overlooked (Lord Mustill 1993:2).

(Weigand, 2009) states that satisfactory international arbitration depends on the skill of the arbitrator, especially the responsibility of the chairman (in panel arbitration) bridging the cultural differences. Goodman (1991) states that in a panel arbitration each party may employ an arbitrator from their culture and the other party does the same, but the chairman should be neutral. It is suggested that this provides: "a clearer picture of the problems and pitfalls in the arbitration case in hand"(Goodman-Everard, 1991a). In order to prevent possible obstruction, clear rules are needed, the chairman must be of an equal distance from both parties. The party-appointed arbitrator that is of the same culture should act as a cultural intermediary.

### **3.9 Comments on international arbitration**

Professor Grigera Nelson (2000), cited in Frommel (2000) explains that there is a need for improvement of international arbitration. He suggests that each case be considered in a micro-cultural environment, meaning that each case has its own cultural needs and characteristics. In this context it would be easier to enforce awards because there is harmony and consideration for all parties(Grigera Naón, 2005).

Current international commercial arbitration is based on a culture used by lawyers, parties and arbitrators that involves remaining detached from differences in order to achieve uniformity in approach. As a result, cultural differences are ignored. However, Nelson (2000) suggests that uniformity should be less important than proper understanding of differences.

Understanding one's own culture and understanding others' cultures is not an academic exercise, but rather 'a scholarly imperative'. He goes on to state that the practitioners and thinkers must be aware that, although they aim at sameness, 'it must be from differences'. Comparative study of history and cultures is the only way to correct any misunderstanding. There are other

suggestions for improvement of international arbitration, including special legal cross-cultural training for lawyers and judges, involving skills in legal drafting and communications and studying cultural differences. It is recommended that lawyers compare their own legal background with that of the other culture that they are dealing with; for example, the common and civil law systems and their impacts on contract drafting. The best cross-cultural trainers are those who are also experienced in cross-border practice and familiar with different legal cultures (Dawson 2002).

A recommendation has also been put forth regarding the conduct of tribunals with respect to fairness. It is necessary that the tribunal be clear in its directions, as diplomatic language should not allow misunderstandings or vagueness (Ameli 1999).

Parties and arbitrators from different cultures have different expectations related to "divergence in cultural background" (Pair 2002). Pair suggests that arbitrators take a uniform approach to cases with cultural differences instead of case-by-case determination. Different cultures have different emotional reactions, leading to misunderstandings which are often subconscious.

These conscious and subconscious behavioural differences are due to different cultural backgrounds, affecting one's judgment and reasoning, whether legal or social. Individual culture strongly impacts understanding of the legal systems (Sunders 1999, cited by Pair 2002).

Bok suggests that common ethics and values needs to be shared between nations. She believes that we should find common ground in a world that makes nations too close to allow for separation. She comments that there are limited common values in cultural differences. These values must be simple enough to be easily recognised by all nations. Shared values in all human groups provide mutual support, loyalty and reciprocity. Nature brings humans together for survival (Bok 2002:12).

Maslow (1970) agrees with Bok's comments on the similarities between people of different cultures. Maslow (cited by Thorsen 2007) states that "*Human beings are more alike than one would think at first*". Bernice Lott discusses multiculturalism and diversity from a psychological point of view, studying

individuals or a group as a whole. She believes a person has the ability to be multicultural in his or her behaviour depending on a particular situation. For this reason, and because a person is a complex being, the suggestion is that the research on the issues of diversity should be cross disciplinary (Lott 2010:3).

Self cites (Klopf, 1998), stating that people's nonverbal communication is encoded based on their background knowledge, culture, history and their experience in life. These encoded messages need to be decoded by the receiver who has a different background, experience and history. This complication encoding and decoding exists in people of the same culture as well as people of different cultures. One can imagine the difficulty of the challenge of communication between peoples of different cultures.

The suggestion is that available technologies, as well as the vital need for cross-cultural trade, improve intercultural communication. For example, the creation of World Trade Organisation and the North American Free Trade Association demonstrated how important cross-cultural trade is for the survival of the healthy commercial relationship between nations. Trading parties are aware of the expensive and damaging results of miscommunication in cross-cultural commerce.

Misunderstanding can result in uncertainty and mistrust. Different jurisdictions that result in different expectations from legal processes and outcomes add to the difficulties of cross-cultural communication, which is already complicated. Different legal jurisdictions use different legal jargon which complicates the decoding of communication between parties from diverse cultures.

These difficulties often result in disputes and expensive legal battles. Self (2009) believes that nonverbal communication may result in one party's inability to apply the terms of contract. When one party is unable to perform successfully, this affects the ability of the other parties to perform the contract. This brings the trade between the parties to a halt and the parties bring a law suit for breach of contract that may be based on anticipatory breach or repudiation. In these cases, parties may wish to bring a law suit through the courts of their own culture, which is not likely to be agreed to by

the other parties. The solution is therefore to refer to international arbitration, meaning that the arbitration clause becomes part of the international trade.

Sheldon Eisen (2006, cited by Self 2009) suggests that international arbitration has been beneficial in understanding cultural differences. Global public tradition has been also beneficial to the development of international commercial arbitration. This is due to the reduction of global barriers to trade through the 1946 GATT (Trakman 2006). This resulted in international commercial arbitration's expansion from limited private use, and the uniformity of law, leading to the formation of the World Trade Organisation (WTO) (Cantuarias, 2008), cited by Self 2006).

The doctoral research of (Al-Obaidli, 2016) is another example of the drive for the economic success of international arbitration creating fierce competition between nations regionally.

In competition between nations for market share in international commercial arbitration, attention to the importance of cross-cultural issues is apparent. For example, Singapore promotes itself as a centre for international arbitration by welcoming any nation for dispute resolution. Singapore is rated sixth in the world as a centre of international arbitration. On the other hand, South Africa, although it is successful among African countries for arbitration because of its reputation for racism, has failed to gain a prominent position internationally, (Temkin 2008).

Alleged racism includes nonverbal as well as verbal communication (Temkin, 2008), cited by Self 2006). Self concludes that skilful handling of intercultural issues in commercial arbitration can bring economic, social and private success for the arbitrator. On the other hand, an arbitrator who is biased when working on a cross-cultural case may bring difficulty and loss.

Torsen (2007) also refers to the rapid expansion of international arbitration, mainly used initially by Europeans, and then expanding to become worldwide, acceptable by all cultures and nations in recent history. This expansion of international arbitration has broken through the legal systems of the Middle Eastern countries as well, helping them to form their own arbitration laws that

use the available tools of international arbitration and helping them emerge from the disrepute created by the colonial period.

These useful tools include various tribunals, treaties, codes, rules and procedures, varying among the large number of countries that use them. Torsen(2007) emphasises the importance of paying attention to cultural differences in international arbitration for success in providing this service. However, she notes that awareness of cultural diversity, while vital for a successful arbitration, is a difficult skill to implement. One of its difficulties, as Torsen(2007) explains, is that the parties must analyse the legal systems that the other party is used to as well as their own.

Torsen(2007) concludes by suggesting that the parties could be a useful resource to explore the existence of cultural differences that may cause difficulties. This could be done by subtle matters such as pre-hearing conferences. Useful subtle questions may include enquiries about the needs for interpreters or translators. It is also useful to ask about requirements for special religious rituals during the tribunal procedures, such as a place and time for prayer. Different nations may have different national holidays as well. It is useful to discuss this in advance and this can help increase awareness of cultural differences among the parties in any international tribunals.

(Pair, 2002b) writes about the effects of cultural differences in international arbitration. She aims to demonstrate that attention should be paid to cultural issues as well as legal issues in international arbitration. In her example, the claimant in the arbitration hearing is represented by an Anglo-American lawyer, while the other parties are East Asian. The arbitrator is French and the parties have agreed to use UNCITRAL Model Law. At the start of the hearing, the Claimant attempts to start the case when the French arbitrator instructed to limit the time for each witness to twenty minutes. Pair depicts the perplexed French lawyer, who has a different expectation and experience. She demonstrates that although all the legal decisions are taken to bring harmonisation, the problem of expectations remains. She then explains that the problems of differences in expectations come from the cultural backgrounds of the parties and their representatives, something that

arbitrators may not be interested in. She notes that the expectations of the parties and their cultural backgrounds are varied and not uniform.

Pair (2002) suggested that the experience of working with people of different cultures is helpful in overcoming some of the problems related to cultural differences. Pair comments that there are parts of cultures that are hidden and difficult to detect, and it is not easy to learn about these, and that their effects are not easy to detect. These hidden parts of the cultures often cause confusion and misunderstanding and may be emotionally charged. People have unconscious and automatic responses to these emotionally charged cultural problems. The only way to learn about these parts of cultures is by being exposed to modelling examples, for example in terms of how men and women interact in a particular culture.

Another important cultural effect that Pair refers to is the culture's influence on the process of reasoning, be it legal or otherwise. "Cultural background strongly influences the legal system and understandings" (Sanders 1999, cited by Pair 2002). Pair goes on to state that creativity in understanding of cultural differences of the parties is one of the keys to solving the problem.

### **3.10 Arbitration is different from litigation**

The argument has been raised by Karton (2013), that arbitration has its own culture which stems from commercial law and it is different from litigation. Nevertheless, the discussion over legal differences in arbitration relates to the criticism of litigation-style procedures in international arbitration. Joshua Karton (2013), in his book about the culture of commercial arbitration, uses the word culture to mean the culture of decision-making in international arbitration. He makes a comparison between the rule of law and the rule of merchant law without international boundaries, as well as a comparison of litigation and arbitration.

However, in the current situation there are arguments against the distinction of arbitration from litigation. Currently, arbitration is mainly utilised by larger legal firms under the influence of lawyers recommending arbitrators to their clients. Cases are often reviewed, argued and administered by lawyers from large legal firms. Therefore, legal thinking, which turns a blind eye to social

culture, is common. Big players in the field of international arbitration are a well-known group of arbitration actors, (Ranasinghe, 2007).

Singh (1998) claims that

*"in the context of large international projects where there are several parties of different nationalities involved, ADR offers the immediate attraction of avoiding difficulties of conflict of laws or jurisdictional problems which may arise. It also allows the parties to reach agreement as to how their disputes should be resolved which can take account of national and cultural differences"*(Singh, 1998)'.

Although, this claim is in line with what international arbitration should be, the evidence above shows that this is not always the case in practice, (Jemielniak, 2016). A study involving law students from St John University in the USA provides evidence that the students' training made them believe that social cultural differences should be ignored for quicker assimilation of the case, which would financially be beneficial to the parties. This may be true as a short-sighted view with a long-term negative effect.

### **3.11 Conclusion**

Study of literature reveals the feeling of dissatisfaction with the lack of cultural awareness. Research on the issues of cultural differences is called for and evidence shows that normalisation of legal differences is important and necessary but not sufficient. Legal and technical details are essential, but disputes between the parties remain at the human level. The agreement comes from humans, not from law or technical mechanisms. International arbitration is different from litigation in court, which relies exclusively on legal codes. International arbitration is about the parties' autonomy and agreement. Therefore, cultural understanding is important and cultural awareness on the part of the arbitrators is expected for the better reputation of the ADR selection by the parties for resolving their disputes.

Arbitrators should put themselves in the shoes of the parties from a different culture. The flow of international arbitration is towards the West and there seems to be a cultural divide between the East and the West. Arbitrators'



awareness is necessary for the promotion of ADR in general and arbitration in particular.

## **4 CHAPTER FOUR METHODOLOGY**

### *4.1 Introduction*

This chapter presents the methodology for this research and the reasons for this selection. The illustrations used in the conceptual framework depicts the direction of the thought process for this methodology.

This research highlights the importance of cultural awareness in international arbitration. Multiple cultural differences create issues that require awareness for a long-term successful international arbitration. While cultural differences have impacts, they are not always visible.

The research question is unique, but the method that was employed to answer it was based on traditionally accepted academic research. Furthermore, the research design, concept, theory, proposition, and obstacles are discussed in this chapter. The areas of the research in this project are also identified in order to justify the decision regarding the appropriate methodologies.

#### **4.1.1 Motivation for the research**

This programme of study has resulted from a personal interest in cultural differences because of the dual nationality of the researcher. This led to the awareness of the importance of these underlying cultural issues that impact the process of international arbitration. The previous academic research on "*Iranian commercial arbitration law and its impact on the international oil and gas industry*", (Shahin, 2009), motivated the researcher to explore Iranian and English cultures academically. This is in order to understand not just what is happening on the surface but also the thought processes of various cultural issues with regard to international arbitration.

The researcher has been closely involved in professional practice in the field of international arbitration. As an insider, the researcher has noticed that there is evidence of constant development in approaches to providing international arbitration; however, literature evidence shows, (Slate, 2004) that wide-ranging and long-term underlying cultural issues

have clearly become a secondary consideration to some international arbitrators.

#### **4.1.2 Purpose of this research project**

The purpose of this research is to highlight the importance of cultural awareness in order to enrich and improve international arbitration in this competitive field.

Arbitration practice has become an important feature of dispute resolution systems nationally and internationally. Therefore, international arbitration demands close attention to issues of functionality, usability, effectiveness and legality. While some research, (van den Berg and Bureau, 2005) has begun to examine the enforceability of international arbitration systems, little attention has been paid to underlying issues, in particular to the understanding of complex interference of clashes of different cultures and customs of the users of international arbitration. Legal enforceability via arbitration laws has been established, (Born, 2001). However, what remains to be focused on is where the conflicts might be between the arbitration systems, tradition and cultural influence. Institutions need to comply with legislation and fulfil government targets to deliver widening access to national and international arbitration as a preferred means for dispute resolution, which can only be achieved by evaluating underlying influences in arbitration systems and identifying obstructions.

This research project examines the current levels of culture and custom issues and their interference in international arbitration and assesses the difficulties faced by the end users of the international arbitration system. For empirical research on international arbitration in different cultures, Iran is selected as an example of the effects of cultural issues in international arbitration practices. This is achieved by practical investigation through examining cultural awareness by research activities to obtain the perspectives of academics and arbitrators on cultural differences.

The direction of this qualitative research was vertical and not horizontal (seeking depth rather than breadth). The aim was to achieve a deeper understanding of what was available (vertical) rather than trying to increase

the number of cases to study (horizontal). Additionally, as the study had a time limit, it was not possible to undertake too many interviews.

10 interviews were conducted, each involving one to two hours of talk by the interviewees. This number was due to time constrain and the availability of the interviewees. These criteria for the selection of these interviewees includes their close involvement with Iranian arbitration cases, experience in international arbitration and willingness to participate.

The participants included a range of international arbitrators which included male, female, European, American, Indian, Iranian, Australasian and British interviewees. Interviews were carried out, as agreed by the interviewees, in their offices, so that they felt at ease.

#### **4.1.3 Ethical issues of writing about cross-cultural research**

Research on cultural diversity is now an established part of social science. However, Pranee Liamputtong (2010), quoting Linda Tuhiwai Smith (2008;116), raises concerns about some research that is "so deeply embedded in colonialization that it has been regarded as a tool only of colonialization and not as a potential tool for self-determination and development".

However, Barberis, E.(2011) criticised that while Liamputtong's comments are a "heartly focus on ethic issues", practical suggestions of how to ethically deal with these issues is disappointing,(Barberis, 2011).

The researcher of this study is aware that ethical social science writing in cross-cultural research should be in a way that cannot be used against the interviewees or against a nation. It means the findings should be written in a responsible way and no society should be the subject of exploitation by any study. Taking a sentence out of context to explain a cultural behaviour without fully understanding the background to the cultural meaning is a dangerous route leading to abuse. The researcher was careful not to use comments out of context.

The same ethical consideration applies to writing about subcultures in a society. One of the tools used in cultural differences is language, and the meaning of a word should be explained when the whole culture is fully

understood. Comparing words between two different cultures carries a meaning that may belong to one culture but not to the other culture. These ethical issues lead to a policy for managing cross-cultural situations and best practices related to cultural diversity.

#### **4.1.4 Theory**

It is important to define the concept of theory in general before explaining the particular research theory that underpins this study.

Theory relates to explaining why and how something happens. Both confirmatory and exploratory methods require theory, i.e. explaining how a generalisation works systematically. A theory may also explain how a phenomenon works, the operation of something that has been generalised. The criteria for a theory is the capability to be tested for acceptance or refutation (falsification) by experimentation (Johnson, 2016).

Study of available literature on a selected topic provides the background for a theoretical perspective that leads a researcher to investigate the details. Understanding the details of what investigation is needed helps determine the research approach and the methodological decision for collecting data, and in this way a theory can be created for a study. Assumptions are parts of every theory that can be tested. It is important that the assumptions be explained in detail in a doctoral research project and that they be an identifiable part of the research theory (Trafford and Leshem, 2008). A basic proposition is often a foundation for a rich research tradition. The observation, findings and the conclusion can lead to further research (Yin, 2015).

#### **4.1.5 The research theory underpinning this study**

The basis for the theory of this study is that the importance of normalisation of legal differences in international arbitration has resulted in the neglect of cultural issues, (Slate, 2004). The following four propositions (in line with aims and objectives) are the basis for investigation as part of the empirical research and results of this study:

- International arbitration brings economic benefits as well as legal prestige for a country.

- Cultural awareness of arbitrators helps minimise cultural issues and their negative impacts on arbitration.
- Arbitrators with cultural competence will have a greater chance of being selected for international arbitration cases by the parties.
- Countries presenting more international arbitrators with cultural competence have a better chance of becoming centres of excellence both regionally and internationally.

#### **4.1.6 Research question**

The research question is the assessment of the impacts of cultural differences on the outcome of international arbitration and whether the results can be used as a competitive edge in the selection of international arbitrators. This is based on the research aim which is to ascertain whether and to what extent cultural issues impact the accessibility and effectiveness of international arbitration and to make recommendations which will contribute to improving the practice of international arbitration.

The research question includes both visible and invisible factors in international arbitration which form the objectives for this study:

1. Why does legal normalisation result in overlooking cultural differences?
2. Why is arbitration beneficial for a nation/country?
3. Is there regional or international competition for becoming a centre of excellence?
4. Is there competition between arbitrators for selection?
5. Do cultural differences matter to arbitrators?
6. What issues are created by cultural differences?
7. Are all cultural issues visible to an arbitrator?
8. What are the cultural issues experienced by arbitration trainers?
9. What are the recommendations for improvement in cultural competence?

These questions form the basis for interviews as part of the empirical study.

#### **4.1.7 Research design**

This is a multi-disciplinary study, combining many elements including legal and social science. The research design consists of a strategy for investigation and data collection that results in achieving and presenting the thesis (Trafford and Leshem, 2008). Following the clear identification of the specific goal of the research a plan of action was formulated. The overview of the whole project (paradigm of the research) requires a suitable strategy for the best prospect of success that includes consideration for feasibility and ethical policy (Denscombe, 2010). Critical thinking brought to light the practical limitations, word counts and research boundaries. This was particularly apparent with this research that was concerned with international arbitration and its many components. It felt like taming an octopus with numerous tentacles each doing different tasks.

For this reason, the research design involved an in-depth study and used many methods of investigation such as literature review, questionnaire, interviews, personal experience of cultural differences, and case study, (Denscombe, 2010). Each of these methods required special skill. Providing full details of the methods was restrained by the availability of time and words. One of the achievements of this study was the interviews that were carried out to access the deeper thoughts of the highly experienced international arbitrators, lawyers and trainers.

#### **4.2 Methodology**

The most appropriate method for answering the research questions was selected from the research methods including: grounded theory, ethnography, experimental, qualitative, quantitative, or mixed, inductive and thematic research. The methods chosen for this empirical research were qualitative, mainly through interviews, and quantitative data collected through questionnaires, (Tracy, 2012). This form of data collection resulted in narrative enquiries in which participants tell their experiences and the researcher presents questions to gain a deeper understanding of what is said. This deeper understanding is essential to answering the research questions,

which involve complex issues requiring investigation into personal experiences of a wide range of arbitrators from different nationalities. These experiences are very personal and sensitive and therefore needed individualised approaches from a trusted and often known interviewer. This method of collecting data in this particular field has not been used previously. Questionnaires were distributed to reinforce the interviews and to provide additional quantitative data to achieve triangulation.

This research uses inductive and thematic systems. Through the inductive method the researcher uses particular observations to arrive at a generalisation (Popper, 2005). After the data has been inductively coded the researcher uses a thematic technique for systematically comparing thematic data across groups of data (Guest et al., 2011).

#### **4.2.1 Scientific Methods**

According to the American Association for the Advancement of Science (Freyer, 1990) "Science is a process for producing knowledge". Scientific methods are dynamic and based on a variety of activities. Some of the key features of scientific methods are empirical observation that may lead to generalisation, testing hypotheses and educated predictions that may prove a theory. In an exploratory method, the first stage is to observe, then search for emergence of patterns and finally make generalisations or conclusions. However, in a confirmatory method, the first step is to make a hypothesis based on an existing theory and through the empirical research of collecting data either confirm or reject the theory (Johnson, 2016). The scientific method used in this research is an exploratory method. This research is not based on an existing theory. Additionally, concerning the confidentiality of arbitration process a research based on observation will not be suitable for this study. Therefore, the Method selected for this research is scientific method.

#### **4.3 Empirical research**

Empirical observation is one of the key methods of scientific research. Empirical statements are based on observation, experience or experiment, and the evidence can be validated by observation, experiment or experience. Empirical data collection is an approach that can generate knowledge,



following practices and norms developed over time (Johnson, 2016). The researcher of this project sought to answer the research questions by using empirical data collection.

This purpose of the empirical data collection was to research the cultural issues that arbitrators and trainers faced that impacted the outcomes. The interviews were based on social science and qualitative research methods. A questionnaire was employed to provide background information, assessing the academic contribution to cultural awareness, assuming that most arbitrators were at a higher education level.

Therefore, referring to (Denscombe, 2010) several methods are used such as the empirical data collection which was divided into two parts:

- I. Questionnaire: mixed quantitative and qualitative data collection
- II. Interviews: qualitative data collection

#### **4.3.1 Qualitative research methods**

A qualitative method is used when one wants to know more about the subject or to explore and know about people, their behaviour, experience and perspectives and choices, (Tracy, 2012). Qualitative methods involve studying the behaviour and world view of a special group of people who are changeable, . These methods study human behaviour holistically and naturalistically, affecting the choices they make. The researcher observes in multiple dimensions, moving from looking at the subject from a wide angle to a narrow one. Whilst observing, the researcher does not want to influence or intervene in the behaviour and the way of thinking of the participants. Janson (2016) explains these holistic observations are analysed in order to describe the group; for example, language and social construction create a norm. In qualitative methods, the researcher's role is to be an instrument for collecting data. The researcher analyses the viewpoints of the participants empathetically and the data is interpreted and explained. The important point is that in qualitative methods the researcher tries to understand the participant as an insider, therefore contact by the researcher with the participants is necessary (Johnson, 2016).

As an example of cultural awareness, the research investigated how much English people know about Iranian culture. This is because the researcher is able to assess their level of awareness of another culture, in this case an Iranian culture. The empirical survey of a sample through a questionnaire was conducted to answer the above question. This research bases its reviews on people who have acquired higher education. This is because the response to these questionnaires could reflect the example of English academic community's cultural awareness about Iran. The information collected is also relevant to the parties involved in international arbitration. General review of the English-language literature shows that a fair amount of Iranian cultural study already exists. This demonstrates that Iran is well known amongst scholars and authors who write in English. As an example, Michael Craig Hillmann, an American university professor specialised in Persian culture, has written widely, focusing on many aspects of Iranian culture. Hillmann (1990) is particularly interested in the Persian language, arts and religion, old and new. The world-famous Iranian poet Rumi has been the subject of countless books and reviews. Rumi's well-known book "Hafez" is another subject of Hillmann's writing (Hillmann, 1990).

The results are based on a mixed qualitative and quantitative methodology focusing on the quality of the analysis of the findings and not just the quantity. A questionnaire is one of the tools used for collecting information for this part of the research.

#### **4.3.2 Inductive reasoning**

Inductive reasoning occurs when a phenomenon is observed, and conclusions are drawn from it. The difference between deductive and inductive reasoning is that deductive reasoning is only true if the premise is true (Johnson, 2016).

Traditionally, social science investigations were usefully and successfully employed for this type of research. In the process of decision-making, regarding the selection of the methods, the researcher used several weeks of academic research training in RGU (Robert Gordon University) as well as St Mary's University in London. The researcher also attended courses run by the Social Science Association in London regarding qualitative research methods

and in-depth study on research methodology, such as "Stepping Stones to Achieving your Doctorate" by Vernon Trafford(2008) and "The Good Research Guide" by Martyn Denscombe(2010).

This research required in-depth investigation into the arbitrators' thoughts and experience of cross cultural issues in international arbitration. The depth of the investigation in this research is more important than numerical data analysis, therefore the suitable method of empirical investigation is qualitative. The aim of the investigation is to collect the data and analyse the findings in order to answer the research question, please see appendix for a copy of the questionnaire.

### **4.3.3 Questionnaire**

There are many ways of forming a questionnaire (Denscombe, 2010). Through the questionnaire, for this research, the researcher's aim is to discover the sources of English academics' information about Iranians. Finally, what impact do their perceptions have on some of their judgments on Iranian culture? The design of the questionnaire was partly structured and partly semi-structured to gain information in the form of both facts and opinions, "the choice of experimental variables predetermines what we can hope to get out of our study" (Oppenheim, 1966):14. A pilot test with the questionnaire was carried out. Distribution of the questionnaire and collection of the responses was in person with an academic helper who is familiar with the research and has read the draft chapters. The personal delivery and collection of the questionnaire gives the opportunity to collect the responses quickly and ask for comments/feedback on the design of the questionnaire. The advantage of a questionnaire is that it is possible to collect data in a relatively short time and it can form the basis for further research by inviting the respondents to participate in an interview. The limitation is that a question may not be clear or may be misunderstood, leading to an unreliable response.

Additionally, this questionnaire survey is to evaluate the audiences' sources of information and the effects of awareness, or lack thereof, about the cultural differences. A search of literature for the existence of a similar cultural survey regarding Iranians and the English revealed nothing. There are several

comparative cross-cultural articles published about the Iranian and English languages, as well as articles regarding the basic cultural differences related to the greeting customs between these two nations, published by both Iranians and English sources on the Internet. However, this survey is different and relates to the source of information as well as the degree of ethnocentric effects of cultural comparison.

#### **4.4 Data collection software**

In order to manage the collected data, the "Snap Survey" software was used to help design the questionnaire. This software was chosen because it had positive reviews and it was economical. The Software that was used was initially very time-consuming to comprehend taking about two months of trial, but it did add to the efficiency of the design. The trial version of the software helped in the design of a simple basic, one-page questionnaire.

Training for academic survey: In order to better understand the required structure of a questionnaire, the author attended a course provided by the Social Research Association (SRA). The design plan starts by clearly defining the aims and objectives of the research. It was also reiterated that the questionnaire should be viewed with the end result in mind. This meant imagining how it would feel when completed.

A pilot test resulted in further editing and testing with the use of at least five further responses each time. Respondents were helpful in suggesting improvements to the questionnaire. Occasionally, a respondent accepted the invitation to be interviewed. A copy of the Ethical policy (including the author's details) was always offered to the respondents. It became apparent that a mature working person makes a better candidate for the questionnaire rather than a younger (under 25) respondent. The more mature respondents showed more interest in the survey and the assumption is that this kind of respondent is more similar to the parties involved in arbitration.

Sample participants must be representative of the selected group for the research (Oppenheim, 1966). Therefore, a questionnaire was designed to investigate the role of higher education in promoting cultural competence. The development of a global perspective and skills is important at educational

institutions to prepare students for real life international work experience (Commander, 2016).

A further reason for employing a questionnaire is to provide mixed strategies as evidence for a single point for collecting data in order to produce more solid evidence in educational research, resulting in convincing conclusions. One primary rule in educational research is to gather evidence provided by multiple sources. A questionnaire may use mixed qualitative and quantitative methods and can be printed out and completed by participants and returned to the researcher (Johnson, 2016).

A quantitative method standardises the questions presented to the participants. The idea is to collect quantitative data that can be analysed using percentage accounting, therefore this type of data collection is more controlled than qualitative data collection (Johnson, 2016). In mixed qualitative and quantitative data collection, both standard and open-ended questions are used. The questionnaire for this research was designed with 11 questions which were mainly quantitative, with 'yes' or 'no' answers, as well as two open-ended qualitative enquiries.

A pilot test was conducted with five student volunteers from the University of Brighton, with one in-depth interview which unfortunately was damaged and was lost.

Altogether 50 volunteers were randomly selected from the universities of Sussex and Brighton. Most of the data was collected by the researcher and some data by a colleague who was familiar with the project. The collected data was then interpreted in the form of text and charts, explained in Chapters 5 and 6.

The following is a clustered image of responses to the interview regarding Iranian culture (by the researcher 2015, using NVivo software)

#### **4.5 Interviews**

Academic interviews are more than just a conversation; rather, they are a series of research assumptions and understanding of the situation. The interviewer not only needs the consent of the interviewee but also needs

permission to record the conversation used for reporting of the data collected. Additionally, the universities' rules and regulations must be followed, including the university's ethics policy, (Denscombe, 2010). The tactic and the degree of control depends on the style of the interview decided upon in the research design. Interviews are most suitable for a study that intends to gain insight into people's opinions, thoughts, experiences, understandings, feelings and emotions. Interviews explore the details of the inner thoughts of the participants. For this reason, it is important that the researcher have contact as an insider and the skill of building trust is essential for having access to privileged information. The researcher should not contemplate interviews as a form of data collection unless there is reliable evidence of the possibility of the interviewer accessing the prospective interviewee directly to pursue the idea of conducting professional interviews (Denscombe, 2010).

There are three main interview styles: structured, semi-structured and unstructured, (Denscombe, 2010). In structured interviews, all aspects of the interview are tightly controlled by the interviewer. Structured questionnaires follow the same format. In structured questionnaires and interviews questions are predetermined with a limited opportunity for the participant to offer an opinion. This makes it possible for the responses to be standardised and relatively easy to analyse. This type of quantitative data collection is used for many respondents with a wide range of questions and is suitable for very large projects with sizable funding resources.

Semi-structured interviews and questionnaires use some standardised questions about the topic. However, the questions can be more flexible, giving an opportunity for the respondents to express opinions to the open-ended questions.

In unstructured interviews and questionnaires, as is the case for this research, the focus is on the respondent's thoughts. In this type of interview and questionnaire, the topic or the title of the research is introduced, allowing the respondents to follow their train of thought. This is a better way of accessing the inner thoughts of participants about a complex issue. The most frequently practiced type of unstructured interview is the one-to-one meeting of interviewer and the respondent. The advantage of this style is that it is

possible to refer to a particular respondent in the finding as evidence (Denscombe, 2010).

The interviews for this research were based on an unstructured qualitative method. A member of the same organisation and profession as the participants becomes the insider, interviewing other members as participants. The interviewees were selected by the "snowballing" method; at the end of each interview the interviewee asked to be introduced to a colleague with specific criteria. An email was sent to the participant with reference to the colleague that recommended them with a copy of the brief autobiography of the researcher and the topic for research. Additionally, the email included a copy of the university's approved ethics policy as an attachment. Emails were exchanged regarding the venue, date and time of the interview. Permission regarding audio recording was obtained before the interview. Only one participant (an Iranian) refused the audio recording despite the prior agreement, and the interview was cut short as he became uncomfortable with recording.

The interviews were conducted between 2014 and 2017. Each interview took between one and two hours. Most of the discussions took place in their office and during office hours at the negotiated time that suited them. They were often traveling, making it difficult to organise an interview. Two of the interviews were conducted by Skype and two by telephone. As part of the selection criteria, the interviewees were very experienced and familiar with cross-cultural international arbitration. In the case of experience with Iran the interviewees were working in and traveling to Iran regularly. However, they said they frequently worked with different world cultures, including the Middle East and Far East, and were able to compare different cultures. Some of the interviewees had other roles as well as arbitration, such as advocacy, or were lawyers in international cases. The interviewees included Iranian and American arbitrators who made comments about Western and Iranian cultures and their differences from their own points of view.

The ten interviews were conducted to follow an empirical, qualitative, thematic and inductive scientific method. Five of the ten interviewees were involved

very closely with Iranian cases, meaning that in their international arbitration tribunal cases an Iranian was one of the parties.

#### **4.6 Obstacles**

Approaching this group of sophisticated, experienced professionals for interviews for a PhD by cold calling, emails, or telephone calls proved to be unsuccessful. The breakthrough only occurred through meeting high-profile, highly respected and well-known individual international arbitrators at the events where they were often the guest speakers. These events are attended by small groups of arbitrators who often know each other well, and new faces standing out quickly; the arbitrators seemed interested in getting to know the new-comers at those events, which frequently take place in central London. There would be an important opportunity to approach these professionals and ask for interviews or recommendations to their friends and colleagues. Furthermore, one needs to be a member of several exclusive organisations, such as the Worshipful Company of Arbitrators and the British International Institute for Comparative Law.

The international arbitrators who participated were from different legal backgrounds, nationalities and genders, which enabled richer data collection. Iran was selected as an example of cultural differences with Americans and Europeans as one of the selection criteria. This criterion placed a limitation on the pool of available international arbitrators, as Iran was suffering from sanctions that affect their payments to arbitrators. Therefore, there was a limited number of arbitrators who have lengthy experience working with Iran and a deep understanding of Iranian culture.

In order to reach some of these interviewees, the researcher had to travel to their residences in different parts of Europe. Arbitration has a well-known culture of guarding the privacy and confidentiality of the parties and their cases, providing strong grounds for refusing to be interviewed even when the identity of the clients is not required. Additionally, people were reluctant to introduce a suitable candidate for interview, as they were concerned about rejection. The other obstacle for interviewing international arbitrators and trainers was that they were in constant international travel (as the name



suggests) and it was difficult to negotiate a time and a place for an interview. Furthermore, entry to membership to some of these organisations is difficult and expensive. However, once the membership becomes successful, connections can be made and the process of requests for interviews can then begin.

The biggest challenge proved to be finding interview candidates from the USA and Iran. This was related to the hostility between the two governments towards each other, on the one hand, and, on the other hand, the attitude towards the East/West divide from the Iranian/USA point of view. This added to the intense suspicion of any research involving Iran or the USA by an Iranian researcher. Nevertheless, overcoming these obstacles for interviews multiplied the value of the research.

Express permission for recording of the interviews was obtained prior to each interview (Plucknett, 2001). The interviews were recorded using a Dictaphone and the audio interviews were transcribed later, taking into consideration the importance of confidentiality. Only two interviewees requested an audio copy of their interview. The interviews began without any structure or much detail about the research, apart from the Ethical policy. Questions asked were incomplete and often related to clarification of what was said by the interviewee at the time, allowing them to complete the sentence so that they stayed in control of the response. The idea was to test the conscious and subconscious of the candidate regarding the existence, value or influence of social culture within international arbitration. The reason was that this topic has not been researched before and it is not a popular subject of discussion for analysis by arbitrators. The results confirmed that the style of interview was suitable and successful for this research.

#### **4.7 Interviewer effect**

It is well known that people's responses are affected by the personal identity of the interviewer, such as gender, ethnicity, age or religion, as well as whether the interview is face-to-face or on the Internet. This of course depends further on who is being interviewed, the topic of the interview and the amount of trust between the interviewee and the interviewer. The data may suffer from the interviewee trying to please the interviewer. On the other hand, the interviewee may become defensive and challenge the identity of the interviewer or the topic of the research. Some of the interviewer's attributes cannot be altered to suit the interview, such as gender, ethnicity and age. However, these effects can be minimised by the awareness of the interviewer, including by taking a neutral stance regarding the responses. The researcher is expected not to preach about the topic but remain as a listener and observer. This does not entail becoming remote and uninterested; the idea is that, while remaining attentive, the interviewer should not lead the interviewee, being able to tolerate silence and read between the lines.

The participants were selected because of their profession and their insights needed for the research. The selected participants are representatives of the group and active in the field that is targeted for the research (Denscombe, 2010). The investigation of the cultural issues in international arbitration was enriched through the authority and deep understanding of the researcher on both Western and Iranian culture and command of both English and Farsi. This had a positive effect in the questioning and discussion in both languages with regard to Iran's cultural differences, taking advantage of this unique opportunity to add to the knowledge through this research.

The researcher was aware and careful not to allow her experiences and background to influence the findings by using unstructured interviews and having minimal input in the questioning.

#### **4.8 Conceptual framework**

##### *4.8.1 Introduction*

A conceptual framework is a visual representation of the study that is derived from the literature review and research activities. It is also a conceptual

representation linking all of research elements and the research process. The conceptual framework should demonstrate the appropriateness and rigour of the research (Ravitch and Riggan, 2016).

The conceptual framework helps organise the process in deductive empirical research and constitutes an analytical tool that makes it easy to understand and remember the idea that is applied. It often uses a metaphor. It is an abstract representation of a study and answers the “why”.

#### **4.8.2 This study’s conceptual framework**

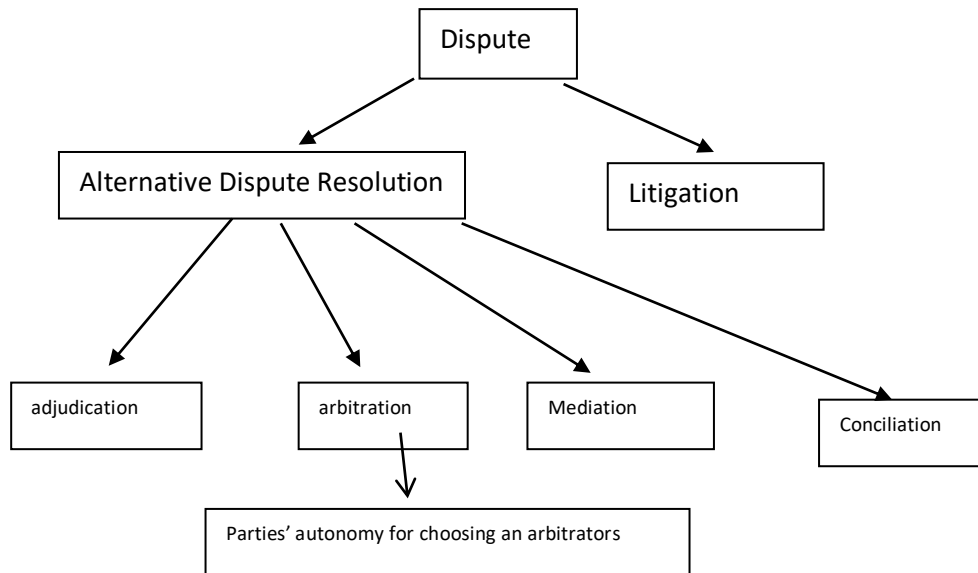
A conceptual framework which underpins the choice of methodology in this research is to demonstrate the importance of understanding the parties’ underlying cross-cultural issues in the process of international arbitration. In this research, cultural competence is examined as a tool for dealing with cultural issues and a means for the improvement of international arbitration. Although cultural issues have been widely discussed in literature and various international arbitration conferences, the implementation of cultural competence in international arbitration remains a challenge. The suggestion is that the framework of practical development in cultural competence, as a unique selling point, would benefit arbitrators as well as the seat of arbitration. This research aims to provide such a framework.

International arbitration is a profitable business, not only for the selected arbitrators but also for a chosen country as a seat of arbitration. The benefits of international arbitration are not limited to financial gains, but also include the legal trust and prestige that comes with it.

The process of selecting arbitration as an alternative dispute resolution begins with the parties’ agreement on alternative dispute resolution instead of litigation. If they choose dispute resolution they have four choices: arbitration, mediation, adjudication or conciliation. If the parties agree on arbitration, then they each have the autonomy to select an arbitrator, creating competition between the arbitrators for selection, as seen in the following conceptual framework. This follows the business model of supply and demand.

### Figure 7 Selection of arbitration

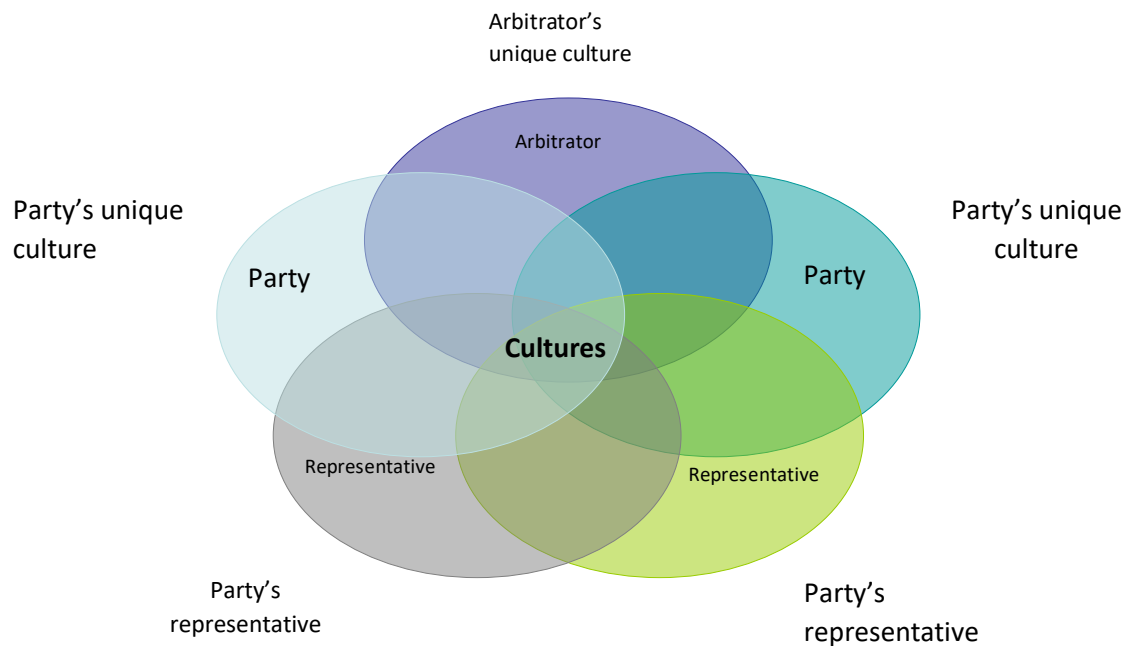
The diagram shows the parties' autonomy in the selection of arbitrators and the seat of arbitration creates fierce competition between international arbitrators.



The above diagram is the process of parties selecting an arbitrator

- 1- the top tier of this diagram shows parties' options in dispute
- 2- Second tier shows options in ADR (Alternative Dispute Resolution)
- 3-Third tier shows the parties' selection of arbitration option
- 4-Fourth tier demonstrates the importance of parties' autonomy in selection of arbitrators- creating arbitrator's competition for being selected

**Figure 8 Cross-Cultural Arbitration**



The above diagram depicts the theoretical conception of cultures overlapping each other. The literature review provided evidence of clashes of cultures in the process of international arbitration.

The researcher was aware of the issues of hidden parts of the culture (as depicted below) through the interview process. The strategy to access the awareness of the interviewee was to remain as neutral as possible and allow the interviewee to have the maximum platform for remembering relevant cases. This was with minimum interruption and without a list of questions. Only by taking the ongoing discussion continually deeper by asking further short questions.

The following image is the theoretical conception to show that 20% of cultural differences are visible, such as communication, knowledge and skills. On the other hand, 80% of cultural differences are invisible, such as beliefs and self, values and self-image (culture and iceberg theory).

There is little literature that explores the reasons and impacts of the socio cultural component in international arbitration. Therefore, this research fills this gap in knowledge related to cultural differences in international arbitration. This is particularly relevant and important in today's multicultural business climate.

### **Figures 9 Arbitration and Iceberg**



Issues were noted in the literature reviews with regard to the parties' negative reactions toward lack of cultural competence of a tribunal. Most international arbitrators are from the West and they are often equal in their legal ability and professional skills, but they are often not sufficiently culturally aware.

The following diagram illustrates that when other variables such as legal knowledge and professional skills are equal, cultural competence is a key to the successful selection of an arbitrator.

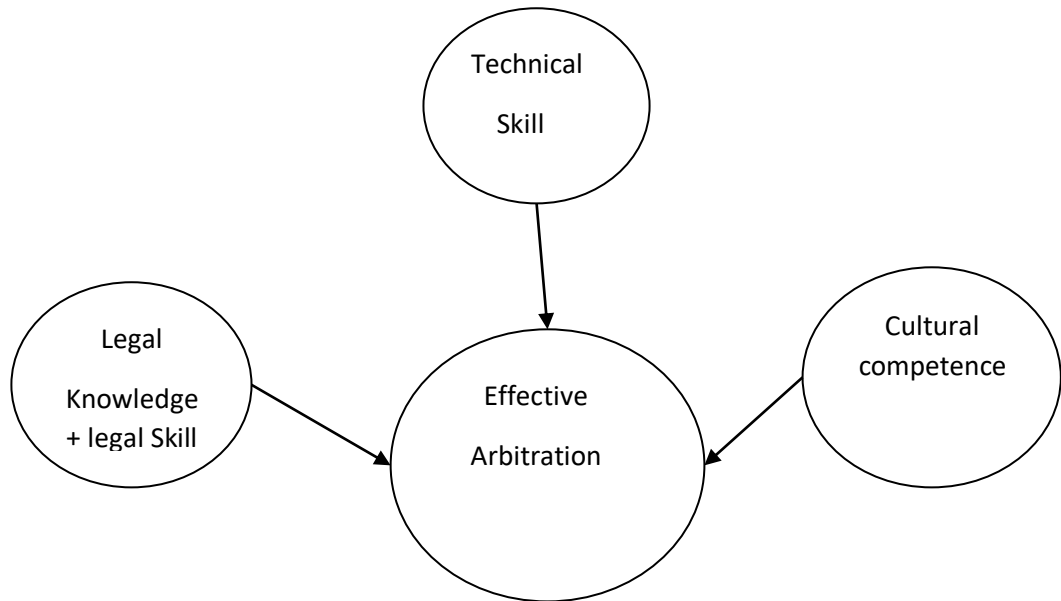
Figure below shows skills required for effective international arbitration

**Figure 10 image- a competent arbitrator**

This diagram summarises the researcher’s conceptual frame work.

In current International arbitration the flow of business is to the West and Western arbitrators/ educated and lawyers from the other parts of the world. Western educated international arbitrators are similar in legal or skill.

The following diagram is depicting the situation that amongst these Western international arbitrators the one that achieves the state of cultural awareness has an edge over the others. This



#### **4.9 Observations -Author's travel to Iran in 2010**

The following observation is as part of the qualitative methodology in order to arrive at a richer data collection. "Observation has been characterised as a fundamental base of all research methods" Handbook of Qualitative Research(2000). Angrosino et al (2000) states that "it is proper to speak of "naturalistic observation ," or field work, (Argrosino, 2000).

The author, who left Iran in 1977 before the Islamic revolution, returned to Iran in 2010 to make close observations of the country of Iran and the Iranian people for the first time in 34 years. This allowed her to see for herself some of the cultural issues facing modern Iranians. It is difficult for UK citizens to gain entry to Iran and the author was in a unique position to do so, having dual Iranian and British citizenship. Before traveling to Iran in 2010, her observations of the public opinion of Iran in London were as follows. Attending a reception in London for international oil and gas lawyers prior to travel to Iran, every time she discussed travel to Iran for a visit she was faced by surprise and warned of the possible danger of travel to Iran by European, Canadian and British colleagues. On the other hand, when discussing the same subject with Iranians who had travelled back and forth to Iran, the idea was met with delight and the author was encouraged to go and told "you will enjoy it".

In Iran, she was pleasantly surprised, particularly by witnessing that women were seen in all areas of the workforce. For example, in a very busy restaurant, serving workers lunch there was a woman sitting behind a desk managing the staff. She was adept, confident and quickly dealt with our problem of a shortage of local currency to pay for our meal, sending a member of the staff to exchange our money. At the bank, women were serving behind the counter. Walking in the street at 10pm on quiet roads, the author witnessed women walking alone and unconcerned about safety. The issue that woman in the public arena were most unhappy about was being forced to cover their hair, as they found it humiliating and it made them feel helpless. The other problem was too many obstacles to do anything related to business, such as starting or running a basic small business. There was a



general feeling of pessimism, about trusting any improvement made by the government in public services.

Another observation was the lack of respect for certain laws which did not suit individuals. Traffic in Tehran was very difficult, and when a taxi driver was asked why he ignored the pedestrian crossing, not stopping for people to pass, he replied that it was because people do not respect the driver's right of way and walk in the road wherever and whenever they wish. The writer's observations confirm the distortion of reality about Iran's safety in the Western media when the political relationship between Iran and the West is unstable. It also confirms the results of the writer's empirical survey of academics regarding Iranian culture, which found that most people's information about Iran stems from the popular media (see below).

#### **4.10 Summary**

As a result of the methodological examination, as presented in this chapter, it was decided that the most suitable methods for answering the research question are a questionnaire, a series of interviews, observations and a case study. These methods combined both quantitative and qualitative approaches. These two empirical methods, together with the literature review, provide triangulation of the study. The scientific methodology of qualitative, inductive interviews and the questionnaire based on a mixed method of qualitative and quantitative research proved to be successful for this research, highlighting the cultural differences.

In addition, the method chosen facilitates exploration of the importance of cultural competence in the competitive world of international arbitration. The method was also suitable for important issues to be discussed in-depth and brought to the surface. Some of the problems and obstacles regarding contacting the interviewees were overcome through creative problem-solving, e.g. negotiating time and place of interview was not always easy and the researcher's travel to The Netherlands (The Hague) to conduct interview became necessary.

## **5 CHAPTER FIVE FINDINGS**

### **5.1 Introduction**

The main aim of this research is to examine the cultural issues of international arbitration. The secondary aim is to examine the effect of cultural issues in nations achieving the status of a centre of excellence in international arbitration. In today's competitive world nations are seeking ways to become centres of excellence for international arbitration. This brings with it prestige, respect and, above all, economic benefits such as hospitality expenses incurred by the arbitrators, the parties, legal teams and the administration services.

The main themes from the empirical research, through the interviews and questionnaires, are the problems with cross-cultural communication, including visible aspects, such as verbal statements, and invisible aspects such as coded language (innuendo), emotional expressions, body language and misunderstandings of the legal language and procedures.

This chapter divided into two parts, the first is the questionnaire regarding the contribution of higher education to the awareness of cultural differences. The second is the data collected from the interviews regarding international arbitrators' personal experiences of cultural differences in international arbitration.

The purpose of the questionnaires was to explore the role of two higher-education institutes in cultural awareness of students and academics (Brighton and Sussex universities as examples of higher education institutions). This examination of cultural awareness is more important between England as an example of a Western culture and Iran as an example of Eastern culture. The response to the questionnaire is a data source from Western students and academics to the questions on their perceptions of Iranian culture. The results provided information regarding the divergence of participants' perspectives from the real Iranian culture. Unfortunately, access to the Iranian students (in their own country) was not possible because of the political complications of travel to Iran and the Iran's suspicion of researcher's. Therefore it was not possible to gain the Iranian views of Western culture.

Furthermore, the interviews with arbitrators as part of this research offer new insights into the problems of cross-cultural arbitration. These findings are important because nations across the world are seeking ways to attract international arbitration by becoming more international in their perspectives. Cultural awareness is gaining value as international relations become more complex. Internationalisation brings opportunities to develop intercultural knowledge that can result in deeper understanding between cultures, necessary for international arbitration. This study's empirical data through interviews shows the demand for arbitrators who can work successfully with people from different cultures.

The main themes from the interviews focused on the range of communication between the parties, their legal teams and the tribunals in international arbitration. This communication includes attributes of spoken language, such as different accents, word stress, interpretations and their effects on the outcome of the arbitration, as well as non-verbal communication, such as invisible language, writing, expressions and display of emotions. The interviews indicated that these topics are the most frequent areas of confusion and ambiguities in cross-cultural arbitration.

The interviewees often discussed the chosen themes that are highlighted here, even though the interviews were intended to be unstructured, open discussions. This demonstrates that these topics for discussion are worthy of in-depth further research.

## **5.2 Questionnaire**

The questionnaire was distributed randomly amongst 50 student and academic respondents from two universities, Brighton and Sussex in England. The purpose was to explore the level of awareness of the Iranian culture as an example of a culture different from their own. This chapter presents some of the most important results from the responses to the questionnaires. This work was carried out with the view that anyone can be an arbitrator, while most arbitrators do have legal backgrounds and credentials (many are attorneys or retired judges) (Slapper and Kelly, 2011), and therefore are expected to have higher education.

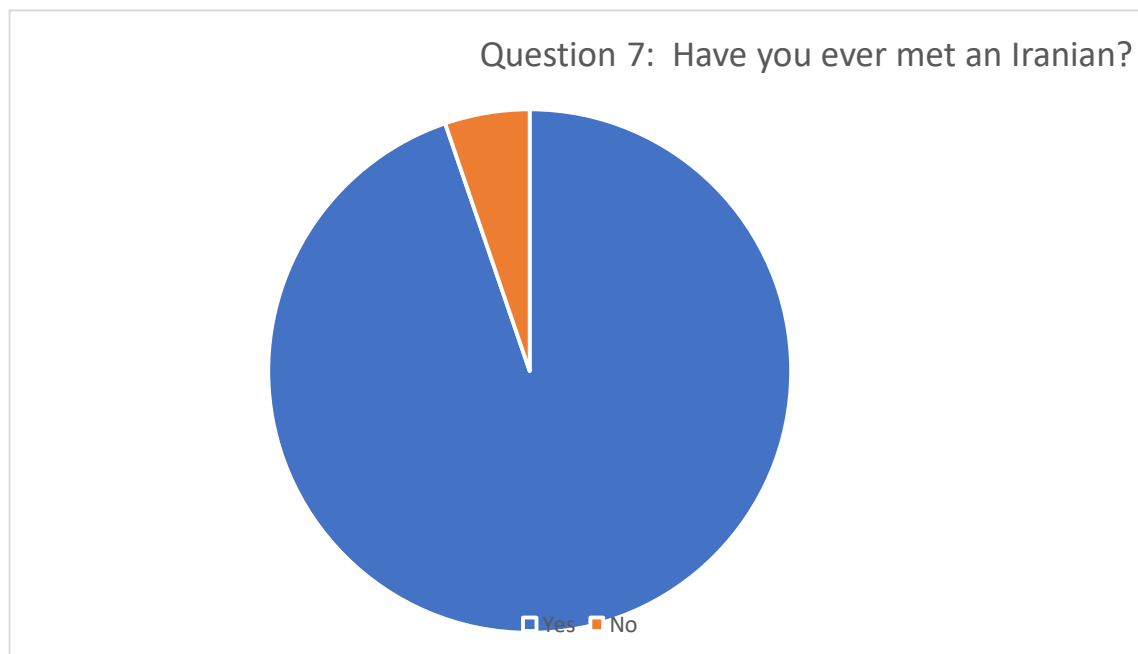
The findings showed that:

- Only one man out of fifty respondents aged between 25 and 44 had never travelled abroad.
- Only one person, a woman between 25 and 44, had not met an Iranian.
- Three-quarters of the respondents had their main source of information through the mass media.

Analysis of the questionnaires indicated that, despite their higher education, seven out of 50 (4%) respondents confused Iran with Iraq. For example, one respondent answered question which asked "What comes to mind when you hear the word Iran" by stating "hot, sand, desert, at war with US a little while ago".

### **Table 8 Meeting an Iranian-questionnaire**

Empirical test 2014, from Middle class, educated in Brighton UK



The above pie chart shows that 94.74% respondents met an Iranian and only 5.24% never met an Iranian.

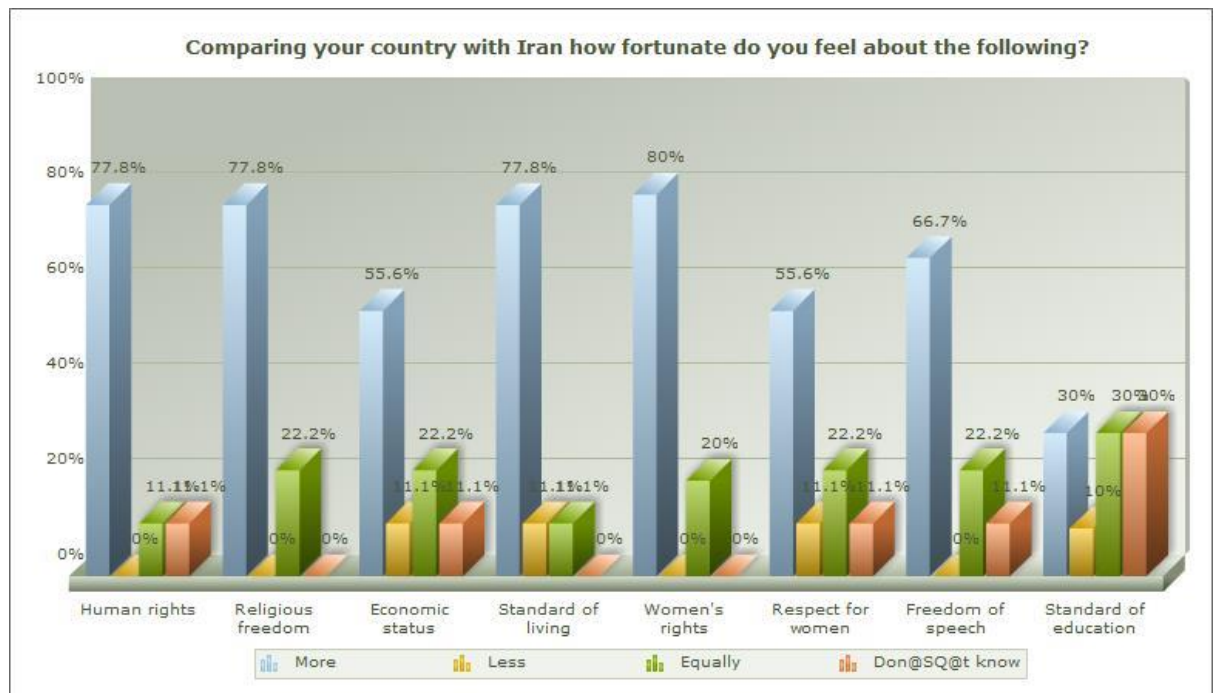
Most respondents said they would be interested to know more about Iran. They would, however, not go out of their way to find out more. If the

information was available in the form of film, theatre, stand-up comedy, art, books or stories, people would be prepared to spend time and money to learn more. One of the respondents was asked: what is the reason that you only rely on the mass media for your information? She replied that she will not invest time to read about Iran because Iran has no immediate benefit for her, such as work or travel, unlike other European countries, and it is too far away.

Research shows that most, if not all, of the main information about Iran came from mass media. It also shows that 90% of the respondents have personally known an Iranian in the academic environment.

**Table 8 Responses to question 10 in questionnaire**

Empirical survey of this research from academics in Brighton 2014,



Interpretation:

Interpretation of question 10: This graph shows that:

- About 80% of respondents stated that they felt far more confident in their own country's commitment to human rights than that of Iran. The majority of respondents were aged between 18 and 24.
- Over 75% believed they have more religious freedom than Iranians.

- Only 30% believed that they had had a better state of education than Iranians, demonstrating either a lack of confidence in their education or believing that Iran has a good state of education.
- 80% believed that Western women have more rights than Iranian women.
- 26% of the respondents felt that they were more fortunate than Iranians in every way.
- 8% felt they were less fortunate in terms of the weather.

Question 8 “ where does your information about Iran come from” that most of the main information about Iran came from mass media. It also shows that 90% of the respondents have personally known an Iranian in the academic environment.

The researcher conducted discussion with some of the respondents to the questionnaire (after the completion of the questionnaire). The point that can be highlighted here is that several of these interviewees mixed up Iran and Iraq. They even mixed up Iran with African countries. They also said their lack of attention to the details of where Iran is, comes from the fact that they cannot see themselves traveling to Iran or finding a job there. However, the subject of women’s freedom and freedom of speech was at the forefront of their attention.

To conclude, the findings from the questionnaire show that media such as television have a powerful impact on the students’ and academics’ cultural awareness or lack thereof:

*Iran is "hot, sand, desert, At war With U.S. a little while ago"*

These comments were in response to the question about their opinion of Iran. It seems that one person had memories of sporadic images of Iran on the news and no further or deeper knowledge of the country. Another person said that: *"It's sad that people have to live oppressed"*.

### **5.3 Interviews**

The interviewer asked the interviewees to share their experience of international arbitration in what ever way they chose.

All the interviewees, seeing that they had a platform to speak with little interruption, happily discussed their deeper feelings, apart from one example who was strongly against the importance of cultural differences in cross-cultural arbitration and refused to continue the interview. There are a number of themes that interviewees referred to and discussed. However, the most suitable interviewees for offering recommendations for improvement on cross cultural arbitration were those with dual nationality or in mixed marriages who have a deep understanding of both cultures.

Fifty percent (five out of ten interviewees) had a very clear understanding of the detailed effects of the cultural differences; others indicated contradictions and confusion regarding the effects of social culture in arbitration tribunals. The international arbitrators with dual nationality or who were married to someone from a different culture had a clearer understanding of social culture in international arbitration and took full advantage of it in their professions. The following section presents excerpts from the transcripts.

#### **5.3.1 Confirmation of the international arbitrators' experiences**

Arbitrators who worked with Iranian cases were: number one, two, three, four, five, six.

All of the interviewees' main experience of arbitration was international and they were well-known in this regard. The following examples confirm their cross-cultural arbitration experience:

*"Arbitration, for example Kuwait, Pakistan, Kazakhstan, arbitration against Brunei, so it is very rare that I don't have an arbitration which involves English clients, or the two sides are from the same culture, but if you want to ask about Iran that's fine". (Interviewee number two)*

And commented that:

*"Generally, almost all my arbitrations are cross-cultural".* (interviewee number two)

*"Yes, I have worked with Iranians and I have done a number of international arbitrations in this country and in The Hague".*  
(Interviewee number two)

Another arbitrator, who is also an international arbitration trainer, stated that:

*"Well, it's a long one over thirty years, may be thirty-five, I can't think off-hand and my particular interest is very much of a practical one. And because I have found being an engineer and not a lawyer what I need to work with to know the law is the actual practicality of each situation is more important because we are dealing with commercial arbitration".*  
(Interviewee number ten)

This example shows that practical experience in arbitration is as important as knowledge of the law.

The following is from interviewee number nine:

*"...my experience is from 25 countries "*

Another arbitrator confirmed that:

*"in all of those situations at least one of the people to whom I was speaking was not of my nationality or of my legal background and that poses a challenge".* (Interviewee number one)

He then went on to state that:

*"It poses a challenge just as a communicator, because one has to think about a whole host of issues that we might, one might ordinarily take for granted with respect to language with respect to meaning".*

The following is another example of the interviewee's international experience:

*"I've been for a while, working on an international level, I'm based in Switzerland and I've worked all over the world, so I have a very international background. London is just a very good place to meet a lot of people." (Interviewee number four)*



### 5.3.2 Cultural and legal differences

In some cases of international arbitration, legal differences can be seen as cultural differences. In answer to the question about cultural differences the interviewee replied with the following; an example that shows some arbitrators believe that in international arbitration culture means legal culture:

*"... there is a big interest that I found between the two major streams of attitude to dispute resolution; the Civil Law and the Common Law, especially in arbitration". Interviewee nine*

The above comment is also evidence of the importance of the challenges that legal differences could produce for arbitration tribunals.

The same interviewee continued:

*"the most important (cultural difference) is a distinction between the lawyers in civil law countries ... and the history of common law... its procedures are adversarial... but lot of lawyers do not really understand what that means. It means ... two lawyers [in a] fencing contest and that is what adversarial litigation is... Because a lot of arbitrators and the lawyers who can work in these situations are conversant with adversarial system and concept. So it used most of the time, so lawyers who are not used to that have to change their mind set into becoming obnoxious, they have to become fighters" (Interviewee number nine)*

And further:

*"A lot of lawyers, particularly the overseas ones, don't really know the difference between the rules, they think the rules are similar, they may be similar but there are differences and they need to know these".*

He then continued by relating the use of law to the language

*"I am not looking at [this] necessarily in the context of individual countries where they would use their own language, but even so I came across a case in 2012 in Sweden when the parties used English as the language of their contract and then used Swedish law and the Court had to decide how particular words should be interpreted, in Swedish law or English law; they [came down] on the side of English law so this is one*

*of the problems: English is used not exclusively but to the majority of cases that get to international arbitration, English is the lingua franca of arbitration and the form of law is also English-based”.*

He then added:

*“Sometimes they (lawyers) do not know the language, sometimes they do not know the terminology of arbitration, sometimes they have other problems”.*

As we see, the interviewee states that the English language is important in international arbitration and with it the dominance of English Law. The following comment is also from the same interviewee:

*“...and there are the minor ones, the different cultures in different cases, Africa for instance...”*

He then explained how important these minor differences are after several repeated questions about social cultural differences:

*“culture is part of our lives; it’s the driving force of the way we behave and if we don’t recognise that different cultures behave differently then what kind of lawyer are you? There are of course differences. Yes, certainly Chinese lawyers, Indian lawyers will behave differently, their training would be different, the way they represent their parties is different, the parties themselves are different, and you cannot just have some kind of religious feud that everything is done the same way and you get the same result no matter what, you have to recognise this, maybe sometimes you have to accept that corruption is endemic in some countries if you go to Africa, central Africa, (see) the evidence from them you may treat it with some degree of suspicion and scepticism; these are the effects of culture there and religious belief as well. I mentioned Sharia law, it can influence the way people look at things differently”.*

The above reply demonstrates that if the focus is shifted to the importance of social culture differences, eventually the balance between understanding legal

differences and the cultural differences may emerge and seem like an alternative opinion. It could also be that the importance of social cultural differences is obscured until it is brought into the attention of arbitrators.

### **5.3.3 Conflicting comments about social culture issues**

Interviewee number one suggested that cross-cultural arbitration opens up a "whole host of issues". However, the interviewee then contradicted himself at this point of the interview as if he was questioning himself and continued:

*"...in an international tribunal... in which international law as such is the governing law, I wonder if there is any difference (between cultures) given the assumed universal character of international law. But in any case, the way in which lawyers from different jurisdictions come at international legal issues, even if conceptually the law is the same, it influences the way in which we communicate, the way in which we talk about the law to an arbitrator; at least sub-consciously, I suppose sometimes consciously".*

He added:

*"it is interesting, cultural diversity in international commercial arbitration, they are all (about) culture in arbitral decision making."*

It seems that he is talking about legal differences when he says 'cultural diversity' because all through the interview he was denying any role that social culture may play in international arbitration and yet his comments about the differences of impartiality and independence of arbitrators tell a different story:

*"The sad fact is that ... (a lawyer) was not trying to convince any of the Iranian appointed judges on the tribunal because we had determined that no Iranian judge was going to vote against Iran or in favour of the United States, so they in a sense were written off ... one of the US judges in particular would vote against the US or US companies, so I mean you had to convince the judge as well as then the three judges who were not from either Iran or the United States and it was those three that really felt like they were the swing".*

The above statement shows the interviewee's assumption about the differences between the Iranian and US arbitrators' despite everyone working under international arbitration law. There is a suggestion of judgment and differences in perception of impartiality. In the case study of the Iran-US arbitration, it can be seen that both the Iranian and the US arbitrators accuse each other of lacking impartiality. This is another demonstration of different understanding of impartiality and the impact of these cultural differences that cause different expectations and confusion.

Interviewee number two stated:

*"...when one is acting for them (a party) ...they realise they have got to disclose documents, they have got to look for the documents, they have to marshal their arguments, instructed properly, witnesses, give the evidence they have got to give it truthfully, they realise all those things... when we get to arbitration there is no particular difference"*

It appears that, depending on the focus of the interviewees on legal or social culture, the argument changes from the existence of differences to familiarity with the legal procedures. It seems that these legal familiarities, for the Western arbitrator, camouflage the social differences and related issues. These camouflages appear to also lead to a degree of comfort for Western educated lawyers and arbitrators with international arbitration procedure.

The following comment was made by interviewee number seven with a deeper understanding of cultural differences, as he was closely involved with two cultures. He was interested in working in different cultures and found it uninteresting to work only with people of the same culture as him.

*"...three people, effectively a closed triplet, as one might imagine, will possibly see everything in the same way and deliberation would be in my view less effective".*

The above comment indicates that the arbitrator is also interested in learning more from each case and each culture and is not afraid of being challenged. In fact, a case without a challenge seems as if 'everything is the same' to him. In the researcher's view, this is a quality that can lead to advancement of international arbitration.

When the question of culture and its differences was raised with interviewees number five, at first it did not make sense to them. These respondents commented that there was little difference between cultures at the international arbitration tribunals. However, as the discussion continued and became deeper, slowly the realisation of important differences began to surface, and with it the effects on arbitration. For example, interviewee five commented that:

*"So, I'm not quite sure I understand how culture operates as between, you know, say between Americans and Iranians". (interviewee five)*

And added:

*"...all largely the same as any other arbitrations. Largely there is nothing unusual about, nothing peculiar about Iran, for example Egypt, Pakistan or Kazakhstan or otherwise, so most of the people I work with in arbitration are all run in the same standard good manner".*

The same interviewee replied to the question of understanding of culture:

*"I mean if you talk about culture in a general sense, it is used in so many different contexts".*

From this comment one assumes that these "so many contexts" also apply to arbitration, but he then added:

*"It's quite hard to understand how it applies to arbitration".*

We may compare this to the following comment from another interview in which the arbitrator states that cultural differences are what makes arbitration international. He comments on how cultural differences are dealt with and suggests the best way is to choose a third culture to deal with the case:

*"Generally, cultural differences are the particularity of international arbitration, it means if these cultural differences were not there, you could say that there would not have been many disputes, because cultural issues go back to the law. Therefore, the best place to deal correctly with the cultural issues is international arbitration. You may say litigation in court also deals with cultural differences, but if a*

*litigation is brought to the court between an American company and an Iranian company, the case will be taken directly to an American court. Now whether in an American court or an Iranian court they deal with the issue very differently and very aggressively because the court system is strict, and there is no easy understanding of each other because of the different languages. The system of the court is different, procedures are different, everything is different. It is to avoid these differences they go to the arbitration, it means not my system, not your system but a third system". (interviewee number three)*

This interviewee explains the importance of international arbitration in dealing with cross-cultural cases and compares the suitability of the arbitration for cross-cultural cases in comparison to court cases.

#### **5.3.4 Different cultures communicate differently**

A very experienced international arbitrator states that the difficulty in communication in cross-cultural tribunals goes to the heart of the decision-making. In the case below the interviewee refers to a communication problem within an arbitral panel:

*"...and they are also decision makers, so he should have the ability to communicate with his co-arbitrators, that is the most important thing. Because I find many arbitrators from Iran and Eastern countries, they may be good, they may be courteous, polite, but at the important times of the decision-making process of hearings they intervene and that goes on, and on". (Interviewee number six)*

This example shows that cultural differences affect the arbitrators as well as the parties.

The same respondent continues:

*"...but the decision-making process is the most difficult process, because you have to decide rightly, to get it right and if you are a conscientious arbitrator you have to make sure you get it right, so at that time the Iranian arbitrator very often is unable to communicate, their style is different".*

This type of behaviour seems to be related to the general cultures of certain nationalities. It is clear that, in his opinion, this type of communication affects the focus of the decision-making process, which could affect the outcome.

Another interviewee cited the effects of difficulties with communication between the members of a panel from different cultures, genders and ages:

*"I was a chair and there were two other co arbitrators, one of whom was an English barrister, he really, really wanted to be in charge. I did not know if it was because of his personality or because of his English upbringing. Now is that a cultural thing? (Interviewee number eight)*

The co-arbitrator was changing the words of the chairman which seemed unnecessary and caused confusion about why he was doing that. His behaviour seemed like an incomprehensible code. The interviewee asked herself whether this was part of his culture. A person from his native culture might have recognised this type of behaviour.

The communication problem could impact the cross-cultural tribunal from multiple angles. The following interviewee used the example of a challenge for the advocate in a cross-cultural tribunal:

*"...at least one of the people to whom I was speaking was not of my nationality or of my legal background and that poses a challenge as an advocate, because it poses a challenge just as a communicator". (Interviewee number one)*

The above comment shows that an advocate in a cross-cultural tribunal not only has to deal with a different legal culture, but also he must deal with the problem of communication with his colleagues at the tribunal. The interviewee showed stress at the time of the interview when remembering the case.

From the following example, it can be seen that arbitrator is clearly aware of many aspects of cultural differences. In her interview, she appeared quite proud and excited about the depth of her awareness that brought her arbitration successes:

*"...the way they (Iranians) interact with me in correspondence, on the phone, when I meet with them. I felt that their communication is*

*different, a "no" is not a "no" and a "yes" is not a "yes". "Maybe", is certainly not a "maybe" the way they present it. That is very different to how we would communicate, and I've learnt, I think, over the years that they're incredibly shrewd, intelligent and very courteous of course".*  
(Interviewee number four)

The following comment from the same interviewee relates to the cultural differences and how they affected communication in arbitration:

*"...the different cultures in different cases, Africa for instance, teaching an African I found the norm is that everybody learns absolutely everything and then they repeat it and that is absolutely no good for arbitration because I have to get people to get out of their mental blocks and start being pro-active and start thinking for themselves and this is right through the arbitration, so you find people in Africa conducting arbitration very much like court unless you teach them otherwise".*

### **5.3.5 Communication and procedure of international arbitration**

From the extract below, it appears that the arbitration procedure could be misunderstood by non-natives. The incorrect use of emphasis may change the meaning of what is said:

*"...the emphasis in the English language is also very different, there are subtle puns and subtle nuances of language so they have to make an effort to understand. They must recognise, the most important thing is first to recognise the risk of them not following the proceedings properly because of cultural differences." (Interviewee number six)*

In the following comment we see that social cultural differences affect the understanding of the international arbitration procedure:

*"I think they may have difficulties of understanding some of the processes such as disclosure of documents. Perhaps they're not so, perhaps they take longer in responding to requests for information and correspondence, and perhaps there is a mistrust as to whether or not the tribunal in question is fully independent or not." (Interviewee*



number four)

### **5.3.6 Language differences in international arbitration**

Empirical data through interviews as well as literature review such as Pair(2002) shows language in cross-cultural arbitration affects procedures in many ways because it appears in many facets, including speech, which may change meaning with different intonation and stress in different parts of words and sentences: innuendos, body language, emotional language, and written language all play a part in communication. Legal language has its own style and professional jargon, (Bergsten and Kröll, 2011) and, some suggest, even dress code can be seen as a language, which may take different shapes and forms according to the cultures, .

The subject of language differences in cross-cultural arbitration is widely understood. However, subtleties of language in cross-cultural arbitration become a deeper and more fundamental problem as they are invisible and often hidden from non-native speakers:

*"the English language is understood very differently for an emphasis".*  
(Interviewee number six)

Miscalculation about the level of understanding is another problem:

*"the problem comes when people say they speak English but they do not really understand English".* (Interviewee number six)

The following interviewee connected language differences with cultural differences:

*"... what I am saying is that, language is very important, if that makes sense".* (Interviewee number four)

The following passage from the same interviewee is more descriptive of the recognition of the effects of different languages. There is a style of expression in a language at different levels of communication which affects formal communication. This interviewee became fully aware of subtle differences that Iranian culture presents. She refers to Iranian culture as something that she

learnt by observation and close regular contact. This clearly shows that she recognised that different cultures impact legal communication:

*"(cultural differences) Yes, certainly very different, everything about it is different. So from a cultural point of view I would say that, it is on the face of it when you first get involved with the culture very, very different."*

The researcher followed up by asking "In what way?"

*"Oh in every way, particularly coming from my perspective being ...(Western) and we are very blunt, outspoken and very direct and very open, always tell you exactly how it is without really seeing any underlying feelings or potentially other issues that might arise. We are very black and white. Now obviously the Iranian culture that's very different and I've obviously learnt to understand their language and their body language and their culture in terms of the communication. The way they behave, the way they write and behave in a legal environment also. It's all driven by, in my opinion, old ancient values, they believe in the family, they believe in very different things to what we believe in. I think that's why they behave in different ways even in negotiation. So, I think when you understand the culture you are actually able to solve a dispute much more easily than if you don't. I think it's key, in fact, because in my opinion, this is what I've learned in the last 12 years' culture, is obviously a combination of language but also old ancient values and how you behave in a society, and how you behave in a society is obviously is driven by what is needed a hundred, two hundred, five hundred, a thousand years ago, that's important, and that is still the culture of the Iranians today. It's very, very obvious to me, that is still with them".*

The researcher then asked for specific examples:

*"They're all very sophisticated, incredibly well-written, well-read, educated, very bright, very shrewd and they're very proud of that, but they would never show that. There's always a humbleness about it, in them that they never demonstrate it to the outside world. But you need to know that to understand who they are, that's how I felt."*

The respondent continued:

*"...well it's like chess, it's like playing chess, they're always three steps ahead. As a Westerner, on the face of that you would never know. I know that now, because they're three steps ahead of you always, they can see things that you don't see, because we, as I said being a ...(Westerner) I think in black and white, you know, one and two is three, they don't think like that. They can see bigger things, wider things, they have a much better understanding of a whole issue or issues in general"*

The interviewer asked whether Iranians seem courteous:

*"Yes, courteous, I find them very courteous in terms of their cultural acceptance of other cultures. They would never be rude about anything and they find it incredibly rude, I found, if we had the Western approach to tell them certain things, you know, this is black and white, they don't like that. So I'm learning to say, this is my view, but obviously I can say it Iranian style or Western style. There're different ways of saying it".*

The interviewer asked: "How would they say it?"

*"Oh, they would say it probably in a very elegant, very flowery way. You know, this phone is black, they would never say that or there are black clouds in the sky. They wouldn't say that; (they say) I think the reflection of the moon might be dark in the eyes of the beholder, when the sun doesn't shine, which means there's no black cloud but .... We (Westerners) would say there is a black cloud, very blunt, it's a black phone or this is a blue pen. No I think, in Farsi it is more like you know the water of the seas will reflect upon the beauty of this pen – Yeah, it's blue or you know, it's much more elaborate much more flowery and beautiful. So even if they say no, it'll be a beautiful way of saying I'm really sorry but at this point in time I'm perhaps unable to accommodate your wish. It's an interesting way of saying no".*

The researcher asked: "So does it make it more difficult for you to understand what they really want to say, particularly in a legal atmosphere or environment to find out what it is really, is it black or white or is it blue? In the limited time you have, limited resources?"

*"Yes it certainly took time to learn that, to learn how they feel, because a lot is driven by their cultural structures. Obviously, the political, economic, cultural environment is very important and that's how they would structure their response in a way. Now to say, to give you an example – they say at this point in time we're not able to accommodate this particular request and the reason obviously is given in a way that you would have to find out yourself what the real reason is. They can't state it, because they are restricted, the government is obviously such that would restrict their actions, restrict the way they would potentially like to act but they can't. So that's what I've found".*

The interviewer asked: "So it's mixed up, is the culture mixing up with politics?"

*With politics, yeah, I think so, it's, I think if you take them out of their environment they have a different way of behaving because obviously it's a different environment that shapes their views and how they act. But the core of the Iranian is still the core and that's, what I mean is the core is still that very strong intellectual, powerful, sophisticated person. Who is very sensitive and passionate. That is still there even if you take them out of the situation, the cultural situation there and put them into the West, they might be able to communicate in the Western way and that works, but underneath you'll still find that very different powerful Iranian passionate person".*

The interviewer asked: "can you explain one of these arbitrations, how did it go or how did it present itself this culture?"

*"Yes I can give you an example. For instance, we have an Iranian arbitration with Iranian opponents and Iranian lawyers and we have Iranian experts, opining on Iranian law, which is obviously derived from French law. So it's very similar to the Western law in fact, although there's obviously Islamic influences, if you look at the issue of prescription for instance, is there prescription under Iranian law? No there isn't. It doesn't exist, you have no time law in Iranian law. So if you owe a debt you always owe that debt, but again you find that in the culture, why is it you always owe the debt? Why is it that you find in Iranian law for instance,*

*once you're a sinner you're always a sinner? Until you go and redeem yourself, because then you can go back into the community. So what I am saying is a very intensely intertwined law with the culture".*

The interviewer asked for further clarification: "are you talking about Iranians in the past or the present?"

*"Yes, absolutely, absolutely, here I mean if you're a sinner, you're a sinner, you pay back your debt or not or you run away and so be it. People still think you're a hero, not there, because it's different. I think in their culture it's very different. Once you're a criminal in that culture you're always a criminal until you redeem yourself and pay either the debt back or you may have to remedy it. Only then can you go back and join the community and pray. Other than that they don't want you. So it's a totally different theme, here it's black and white, after six years you don't pay your debt back and that's it, so what..."*

*"It's completely different, you're out of time, so what, you don't have to pay your debt back. You were too late with your claim and that's the way it is, you're time barred. Now in Iran it's different. I know that when we had Iranian experts for instance in the arbitration, there were Iranian lawyers opining on time bar... obviously I have to work closely with the Iranians because I need an Iranian lawyer to help me and I have Iranian co-counsel. I have an Iranian expert who will tell me what the law is on time bar and so I work very closely in my team, with Iranians".*

The researcher asked for clarification of language issues:

*"...Yes, the language is English in Paris and we obviously had to agree on the language because sometimes the arbitration agreement in a contract is not clear on the language. Normally it says the arbitration clause, as you know, is ICC rules or LCIA rules or whatever and then the law is Iranian law or English law or whatever and then the seat of arbitration could be Paris, Madrid, wherever or Hong Kong. Then sometimes obviously the language is not specified and we have to argue about the language and say why we thought it was English, maybe because the contract is in English or all the correspondence in the case was in English. So you have*

*to find the evidence that is overwhelming for the point that the arbitration should also be in English. Had for instance the arbitration, had the parties only correspondence been in Farsi the entire time ...”*

The researcher asked: “Did they?”

*“No, they had Farsi communication, yes, but the majority was in English, all the drawings that they had and all the communication on the drawings of the project was all in English... basically what happened was we said English is the language of the arbitration ... the other side will need to understand exactly what I am saying because it is all about language at the end of the day. That's why culture and language again is very closely linked... If you're not capable of understanding the language... And so we had this very interesting Iranian lawyer, coming from Iran, obviously, opinion on as to whether there is prescription time bar in Iranian law and it's a big issue... Yes limited time to bring a claim. You owe me money, you haven't paid me back, when would you be out of time claiming that money back or is there such a concept? As you know in the U.K. it's six years in general. Yes, exactly in general cases, in Germany it's three years and so on and so forth. And it's interesting because first of all you have to argue, on the Iranian side argued that it's one year, then they said it was ten years and they keep changing the goal post is another thing. Yes, the Iranian side obviously changed their approach on whether there is a time bar and they kept bringing new ideas and new philosophies. They're very creative. Very creative, always finding another angle to it. I mean, here you say that UK English law says six years in general. Oh, the Iranian interpretation would be very different. There's many creative angles on it. Our expert obviously wanted to say in Iranian law there is actually no time bar, once you owe a debt you owe that debt. Even twenty years later you still owe that. That's what our expert said”.*

The following excerpt shows the result of an interviewee's experience gained after a long time dealing with language problems in cross-cultural arbitration. This arbitrator suggested that if an arbitrator tries to speak a foreign language, even if it is not spoken well they may understand the difficulty that a foreigner feels when speaking English. Therefore, the understanding of their

difficulty may help them to be flexible when dealing with foreigners speaking English:

*"...so the listener needs to devote a flexibility to deal with her or his language spoken". (Interviewee number seven)*

However, this interviewee seemed to be very creative in overcoming the issues as much as possible. Furthermore, this interviewee prefers cross-cultural arbitration despite all the difficulties, because he believes that there is so much that can be learned if one is open-minded:

*"I think, it is essential that the wheel is oiled by the degree of personal rapport and communication when two meet (arbitrators in a panel) is enhanced and the two are from different background, we can discuss how each one deals with certain issues of law in our respective countries".*

The following is an interesting story from the same interviewee, brought into the discussion to demonstrate foreign language difficulties from a doctor as the example of the seriousness of the issues in the opinion of the interviewee:

*"African-born French-speaking doctor practising in London who telephones 999 and patient was in his surgery and told the ambulance that his patient was asleep, after 58 minutes the ambulance had arrived, what the doctor meant was my patient is in a coma, so the patient died because of the doctor's inability to speak English; anyway, there was a big problem in England for the foreign doctor's inability to speak English but (also) in an arbitration one can easily imagine that something is easily misunderstood".*

Multiple misunderstandings may have occurred during international arbitration at different levels between different members. One misunderstanding can lead to further misunderstandings, affecting the ethos of arbitration, which is the understanding of the issue between the parties

### **5.3.7 Dialect and accent differences in international arbitration**

Different dialects and accents play a role in the understanding of a language. Leather (2008) quotes Street and Hopper (1982), stating that the sound of the

voice affects the judgment of a person's credibility, with standard dialects adding to the credibility of a person in a formal setting. Accents and dialects lead to stereotyping people: "the more intense the accent, the more negative the impact on credibility" (Friedman, 1975).

The extract below from interviewee six reflects the importance of the effects of language on judgments:

*"there are other issues too, the English language, because many Iranians know the English language and (it) is the same for India because we do a lot of work for (them). I always say the English language in different countries is understood differently, the emphasis is different and that is also very, very important. I remember when I was on the International Court of Arbitration of the ICC, I found it, the few Iranian arbitrators involved which came before us for approval. The Iranians used to appoint an Iranian arbitrator whereas most of the opponents were multinational, were appointed an American arbitrator or a European arbitrator and the chairman was also European or American and consequently I found that in almost 90% of the cases almost all the Awards would be against Iran". (Interviewee number six).*

This interviewee is relating the multiple failures of Iranian arbitration cases to their cultural differences. It also appears that cultural differences take multiple forms, including understanding the language, as well as the way in which the language is expressed, such as using the emphasis of the words correctly to convey the right expression.

The following comments are from a very experienced lawyer who is also an international arbitration trainer:

*"I have classes, they are normally about 8 or 10 people and most of the time they are completely different nationalities, I had lawyers from Turkey, Finland, Belgium, and from Germany, all sitting together, and all have, obviously, difficulty with language". (Interviewee number nine).*

He continued:



*"...the most is a language problem as well as legal problem, so it's the most difficult where somebody has problem with language which they often can't pronounce things very well. And I found this with Chinese students, I found this with some Arab students, they have difficulty to be able to express their idea in speech... there are times when things get confused, because they are thinking in their own language at the same time... yes confused, because if you try to translate directly from your own understanding something and you can get caught...you have two languages that we are dealing with, you have your own language and the second language that you have... I do not know if you would find this in Iranian coming to using English whether they find these kinds of interferences that the way language happens. Certainly, I noticed in different ways with people from Netherlands and Germany. They in a different way use the language so it can interfere. Unless you spend a lot of time in an English country you will always have (this problem)".*

The respondent here refers to his student lawyers who are having difficulty expressing themselves in English as a foreign language.

It is possible to imagine how frustrating and humiliating it would be for a lawyer not being able fully understand or able to express himself when dealing with a case. The above interviewee gave an example of this confusion from lawyers trying to speak English:

*"...in Chinese there is no difference between 'to give' and 'to take' but they do have quite a distinct meaning in English. So, if you say I took something to someone, you really meaning you are receiving a gift. This affects the other side misunderstand what you are trying to say, isn't it?" (Interviewee number nine)*

The following passage relates to a witness trying to give evidence in English, and clearly the tribunal had difficulty understanding him:

*"It affects the judgement because the arbitrator is a judge and he has to evaluate the evidence of the witness and when an Iranian witness*

*gives evidence very often that is not understood by, say, a European arbitrator or an American arbitrator". (Interviewee number five).*

The above was further evidence from an experienced arbitrator that language can have an impact on the outcome of an arbitration case in cross cultural arbitration.

The following example concerns a witness from an Eastern country:

*"many witnesses from the East do not have patience enough to understand the question under cross-examination and they think they know the answer, so they rattle out the answer without understanding the question and that goes against the party". (Interviewee number six)*

In the example below, when someone speaks English with an accent or dialect it can cause confusion for the non-native speaker of English:

*"the accents are different, for example, in the West English accent is very often not understood by Iranians and therefore they may understand it wrongly". (Interviewee number six)*

In the following example the arbitrator, who is an expert in mediation, talked about her understanding of cultural differences in her work. This interviewee explained that she had experience of first-hand cultural differences because she has a multi-cultural background.

*"I have done some studies on mediation, and cultural differences in mediation and how it can trip up mediation because people do not realise they are offending someone because of their body language or some kind of language that they are using. You know how important that framing or reframing is in mediation, and if you are dealing in a second language you just don't have the finesse. Sometimes you can't find the right word to say, it comes in a wrong way and instead of cooling the water you are making the world at war". (Interviewee number eight)*

The same arbitrator continued talking about a key witness who did not understand what was said because of her language difficulty and perhaps cultural differences:

*"what I saw during the hearing was that she tended to not to engage very much, she is not educated, it is not just cultural, it is also that she probably did not quite understand what was said all the time, but what I saw was that she was not engaging with the process so she would answer the questions in a way which was very short answers, which was not very helpful. She did not know if she did say it one way it would help rather than if she said it in another way. There was no specification (in what she said) (and) part of that may have been politeness because she did not have an education, but I think a lot of it was because she was not engaging in the processes because of the language and the cultural differences. This was something which those professionals that were there, they all (talked) about it. She was almost an adjunct to the procedure, which I felt really bad about it. I tried to engage her at times, but I can't really, actually it means that she was very close to me. I tried to make her comfortable, but it happened in the past despite the hearing, you know, she was actually there for the two days of examining".*

There are time pressures for a quick result in arbitration more than litigation in court. This is because the whole process is funded by the parties, so extra engagement with the key witness or parties creates expenses, as explained by the interviewee in the above case.

The following example shows that arbitrators follow acts, rules, and their legal obligations even if they feel there are inadequacies in explaining the whole story by a key witness or a party. The interviewee explains that it is not the role of the arbitrator to help the witness or the party to understand the questions and become fully engaged, due to the fear that the arbitrator might be accused of taking sides:

*"...it is secondary in arbitration, secondary is a funny thing, because you get a certain feeling as an arbitrator from listening to the people, you look at the people and see how they act and what their attitudes are, etc., but at the same time you are there to decide according to the law, so really it's up to what do they prove, what facts they can prove, what law they can prove and then you apply your intellect to that. So I think*

*that the subjective part, the pre-inside part that they don't necessarily tell you, although you become aware of it especially if you're tuned to the cultural essentials, if you become aware of it and that sometimes helps me dealing with it, but it's not what I am particularly interested in doing in a legal position. I may be very unhappy and feeling very sorry for a person because I had to decide against that person but I can't do anything about that". (Interviewee number 8)*

The same respondent continued:

*"I am hoping that the lawyers would be confident enough in writing to be able to give me enough evidence for it, but now there is an interesting thing because her lawyer... is an Anglican (English language) and probably have never left...(the country). I do not think he has a clue about what is going on culturally, she did not give the right answers. I tried to use body language and occasional comments to try to make her at ease and we wanted to hear from her, but it is common that an arbitrator is not so active and it was a very difficult situation, but she must be used to withdrawing in that case but it was very difficult".*

This reminds us of a multitude of problems in cross-cultural arbitration. Not only do the witnesses have language and cultural understanding difficulties, but also there seems to be lack of understanding between the key witness and her lawyer, who is expected to overcome the shortcomings of the witness and the party's language difficulties.

### **5.3.8 Cultural differences and their impact on writing**

"Writing is an efficient means for transmitting messages, but it is also a domain of enquiry". (Adams and Bomhoff, 2012). Cross-cultural language issues in arbitration are not limited to pronunciation. Other difficulties include difficulty in translating accurately in written communication, causing confusion due to misunderstanding.

The following excerpts show examples of difficulties with writing in English in cross-cultural arbitration. The statement below is derived from the experience of an experienced international arbitration trainer who travels around the world conducting training in English for international lawyers and arbitrators:

*"...one of the problems is the cultural differences, lawyers learning English for their work they look at the writing that had been written in the past, and England has this tradition of... obscure writing"*  
(Interviewee number nine)

And further:

*"Obscure writing, it is difficult to read, much of legal writing is very bad, very badly written in the past, a lot of lawyers who I have taught looked at judgements in cases of that sort. Things are written by English-speaking lawyers and they (foreign lawyers) try to use the same kinds of syntax and same type of language. These are badly written, and it looks like they are trying to adopt badly written texts, and use them. Because they don't use it necessarily as the English lawyer would, it becomes very confusing and it can end up as a mess really. In arbitration, a lot of work is in writing, your statement of case is written, your brief will write to the arbitrator. Something that you write, could be a long document, if you don't write clear and if you use a lot of technical jargon which lawyers use, in an inappropriate way, it is not going to help the arbitrator, and it does not help your case".*

It appears that some non-native English speakers have difficulty recognising the style of writing. It also seems as if the non-native English speakers have an image that writing English legal documents must sound difficult, pompous and flowery. They may feel that if they write simply and clearly it will not sound like legal writing:

*"I try to get the student to forget about legally and write in a simple way and convey their own idea in a simple way". (interviewee nine)*

In the following text the same arbitration trainer relates the difficulty in understanding English to the psychology and the different mindset of some lawyers who try to work in English:

*"The difficulty is a psychological one because it is a mindset because we all are people of habits. I try to show people (how to) adapt to a different habit becoming aggressive but not completely aggressive, but mainly quite positive about how you want to win a case. You want to*

*really be assertive in explaining your case and that is a question of writing, showing how to put together for example statement of case how best you can do that”.*

He continued:

*“...Sometimes they do not know the language, sometimes they do not know the terminology of arbitration, sometimes they have other problems, for example many arbitrations become about the boiler plate that comes to a contract and boiler plate is that something comes at the last minute and they think: we have got to deal with it. People from chamber of commerce apply rules in Singapore or America. A lot of lawyers, particularly the overseas ones, don't really know the difference between the rules. They think the rules are similar, they may be similar but there are differences and they need to know these. These are what I try to train them to look at before they even get to the arbitration training, maybe to avoid it in a way. So these are difficulties, people may be lawyers, maybe not, they should've thought about the consequences of documents they produced”.* (Interviewee number nine)

The trainer might be frustrated by differences that are too deep and fundamental. The following statement is from an arbitrator commenting on not just the style of writing, but also the effects of culture on note-taking This a reply to the question, “ Do different cultures have an effect on the outcome of a case”:

*“It could have an effect, because of the contracting procedure or implementation... (these two) relate to each other, if one comes from a sophisticated system with a dispute reduction mechanism, then a dispute will not arise, and if it arises everything is documented, they will have evidence so one can easily prove it in a court of law or in arbitration. If one comes from a system that does not take notes, and they do not object in court when they should, that is what usually happens when a party is from third-world countries. When a dispute arises, they do not have any evidence, most of the time, and the contract is not properly written, does not have the proper provisions,*

*there is no proper mechanism for avoiding these pitfalls, or if it has everything but it was not taken seriously in the implementation stages, the administration is either corrupt or uneducated or careless. In a recent treaty dispute in which I was involved, in an investment treaty, arbitration the Iranian party had no common sense, they had no minutes for the negotiation of the treaty that they concluded, only a standard draft and we did not have much evidence to prove their assertions, to me or anyone else. My point is that, it was unbelievable, but it was the fact that they do not take notes, they do not keep minutes, they do not take notes even for themselves. It is not only Iranians, Turkish and, the Middle East as well, that is the whole problem, unfortunately in the unsophisticated cultures, it is not only the system, it is the culture. It is not just Iran, it is Saudi Arabia, and all that, in this country (in Europe) even a taxi driver has worksheet, everywhere he takes you he makes a record because he must report to his boss, and his boss would only pay him on this basis, whereas Iran is completely different, so they do not have the sophistication, they do not have notes. They should write it down, and have evidence, so if there is a dispute they have proof, unfortunately the other side is 100% sophisticated and most of the time they are cheaters, as one side is honest but the other side is cheating. They think that the Middle Easterners are cheating all the time, unfortunately no (they are wrong), those that keep the records are most of the time cheaters, they are professional in keeping their evidence in a way that they can cheat in disputes and are making a business out of it, just keeping a record is not necessarily being honest. It is difficult to tell who is honest, but at least one side has a lot to present and the other side has nothing to present and not the arbitral tribunal or the attorneys for the parties can do anything because there is nothing to prove. You may be completely right but you have nothing to prove it with, and unfortunately most of the time this is what you are faced with as an arbitrator, then you feel that one side is right but has nothing to offer (to prove it), and you do not know what to do about it. The other side knows they are wrong but has brought a lot of evidence and an arbitrator cannot ignore it, so*

*again, unfortunately it's the culture. The system that works in the courts in Europe and the United States is that as soon as you do not like something, you object and write it down, and keep a record of it for yourself. Whether it is a teacher of your child, whether something is done by your neighbours, they document everything, and today evidence even is made by camera, and if something comes up they have evidence. Unfortunately, (in developing countries) this is not just in government administration; business also has the same problem, they do not have the mechanism of documentation, so this common problem exists even if we forget about the corruption which can be seen everywhere, and it is difficult to say who is corrupt. I am just saying that not everybody is honest, unfortunately, this frequently happens but when there are not good recordings it is much easier to (accuse someone) of corruption, and it is difficult to disprove it, to prove or not prove is difficult, so all of this in one way or other comes to the sophistication of the Court". (Interviewee number three)*

The arbitrator in this example is referring to the culture of written evidence in dispute, but also the culture of taking notes for written evidence for most things: even taxi drivers take notes. This is evidence that a culture runs to the heart of the legal setting, just as in other areas of life. As we have seen, this cultural difference of note-taking can indeed determine the outcome of a case in international arbitration.

### **5.3.9 Cross-cultural emotions and their effects on arbitration**

Arbitration is an experience of formal communication in an unnatural setting (Loughran, 1996). Formal communication requires formal language. The question arises: can formal communication in international arbitration be conducted in a vacuum and in isolation from personal likes and dislikes, religion, history, reading, writing and listening skills of an arbitrator?

*"I will give you also an example of the approach in arbitration, which is very important. In England and in the West the approach is very calm and polite, and you don't make allegations of fraud or dishonesty easily but it is generally people from the East, especially from Iran, they tend*



*to make the allegations of fraud and dishonesty on the opponent very quickly and that does put off the European arbitrators... They do not understand or appreciate that in English court and English arbitration, international arbitration, it is important that you have a balanced approach in your submissions and not go aggressive". (Interviewee number six)*

The above experience provides evidence that arbitrators are human, they carry their background, culture, understanding, limitations, likes and dislikes with them. A formal arbitration tribunal, with its acts, laws and directions, is not conducted in a vacuum away from different reaction to human emotions.

Interviewees noted that the misunderstanding between cultures in the style of presentation causes problems and affects the outcome. The example below shows a situation in which different cultures have different expectations.

*"...when one is dealing with the niceties, soft language may not register with a non-native speaker". (Interviewee number five)*

The question arises as to how one recognises that the niceties in one's culture are not appreciated by another culture. Is this expectation mutual? As one interviewee stated:

*"The most important cultural difference is the courtesy, the Iranians tend to be, in the conversation, tend not to offend, not want to offend, whereas the British people are straight to the point and that could be misunderstood in arbitration many times, because people are not talking completely straight, not straight in a bad sense but they are very polite and very courteous and that is also typically Asian culture". (Interviewee number six)*

In the above example a person is not speaking directly and to the point and is using flowery language and replying around the subject, avoiding giving straight answers in an attempt to be polite. Is he/she being respectful to the tribunal in one culture or being deceitful? Is this an example of niceties and expecting to be appreciated, or is he/she being deceitful by avoiding looking straight at the tribunal and answering directly, as Europeans do? The question

is whether perceiving someone to be deceitful based on his behaviour will affect the arbitrator's judgment:

*"The effect of this confusion, especially in international arbitration, is that very often when the Iranian witness gives evidence, because of his gentleness in the way he speaks he may not be really believed. Because he will probably answer in a very long-winded manner and politely, whereas sort of a European witness will sometimes answer with anger and feelings and that could affect the judge's mind. After all, the judges are human beings". (Interviewee number six)*

Further evidence of cultural differences can be seen in the following excerpt from another respondent:

*"I think the fundamental root of the culture remained the same, it is still underneath there, which means... the courteousness was still there... absolutely, even in the most difficult situation... pushing, they would not push as rude and impolite as the Europeans would. Absolutely not, absolutely not, whereas Europeans would have pushed like 'that is out of the question' and would call them names. That would never happen from the Iranian side. They push hard, they push even harder than the Europeans, but not in an impolite, rude way. So the core of their culture remains the same in a way. But that can also mean that they are as ruthless as they are in their geopolitical outlook or whatever, they are as ruthless as they are". (Interviewee number four)*

It appears that this arbitrator did not expect people from other cultures to behave as expected. She understood they are different and their approach is different. She seemed to perceive that the cultural differences of Iranians are because they are traditional and holding on to their past:

*"...the interesting part was that he (a Western witness) should sit down and say in a very international way my name is John Blogs, I am an expert and I'm going to give opinion on the question, 'is there a time bar for claims under Iranian law', but he (an Iranian witness) said, 'No let me tell you', he said and the arbitration panel was sitting there and he said, 'I want to tell you what my name means in Farsi', and the*

*arbitration panel saying, 'I'm sorry, can you just state your name for the record'. You know, very Western, we just need your name, you're a witness. 'I will tell you what my name means'. 'No, no, no, we're not interested in what your name means; tell your name'. 'No, it's not that simple', he said, 'You know, it is cosmic, it is Farshadyekta, and it means'..., and then he went into this long elaboration of about half an hour of where the name comes from, what the origin of the name is and why it is a cosmic name and why it is beautiful and the arbitrators literally looked at him and thought, you know, this is an expert?, a legal expert?, opining on a point of law?, which should be very simple (in a Western way). Number one, name, number two, issue, number three, please answer five minutes, but he went into this long elaborate way of why his name was so beautiful and they were totally puzzled, and this is how this started. Our own expert went off on this complete tangent of explaining about his original name and why it was beautiful.*

*"... it was our side, the UK side, and the tribunal was very puzzled by that and obviously that affects the credibility of a witness, because you think in a Western world, in Paris with a Western tribunal, they don't think like that, they don't think Eastern, don't have this culture or appreciating the person and saying, 'oh that's a very interesting explanation as to where you come from, we are very grateful for that explanation, thank you, you know that is very interesting would you now tell us maybe about the law?' That would have been, now 12 years with them, Iranians, an appropriate answer. Appreciating the person and saying thank you, 'I really find it interesting where you come from and your family and your ancestors and why your name is cosmic. Please now ...' instead of saying 'goodness, the man must be insane, we must obviously discredit his ability to give evidence'. Again, very flowery. Carried on and obviously, you're not focused in a way, culturally different.*

*We had an English expert as well on the quantum, on the figures. He was very British, saying 'I work for the British Institute of Engineers and I'll tell you why I think that this claim is worth this much, if you add this*

*and this and add this and that the total sum would be this, thank you very much', very different. Not the Iranian, very flowery, very different, culturally very different. He appeared as a complete idiot and fool. To say, what has it got to do that his great grandfather in Esfahan did with his grandmother, when they were digging in the well. It didn't really have any relevance on the case. But I think he wanted to explain why he did what he did and where he came from and that was important to him, and in a way he was a more honest person than the other side's lawyer. Who was also Iranian, interestingly enough, who was much more academic, more well-read, certainly more academic, had a better background in the law as us. Ours was not very experienced. He said 'Look, I know nothing about arbitration' he said, 'I've never given evidence before', but he said, it was very funny he took the microphone and said, 'I'll do my really best Mr Chairman, I promise you', that didn't go down very well because everybody thought, 'oh goodness this is terrible, this is going to go awfully wrong', and we thought, that's the end of the case, and the other one was a professor and very well-read and he spoke very well and was very eminent and he could express his opinion very well". (Interviewee number four)*

This is a very strong example of cultural differences and problems of cross-cultural arbitration. It shows the impact that these differences may have on the outcome and on judgment about the credibility of witness, expert, lawyer, etc., because of cultural differences.

### **5.3.10 Cultural differences and international arbitration**

The example quoted above from interviewee number 4, of the witness's long explanation of the origin of his name, shows some people's different understanding of important issues in the arbitration process: the respondent characterised the conduct of this Iranian witness at a tribunal hearing as shocking. The interviewee said that in the arbitrator's own culture, a witness gives their name and answers the questions often by 'yes' or 'no' and does not argue with the tribunal about how important their name is. It seems that if the tribunal explained what type of facts are important to the witness in advance, the witness might not have behaved as he did. This shows the lack of

awareness of cultures from both parties caused confusion and a clash of cultures.

Another interviewee(eight) explained that an arbitrator was faced with a female party from the East who came across as lost and passive. It seemed that she had difficulty explaining herself and her Western lawyer did not seem to understand his client either. It was explained that the arbitrator found it difficult to help this party, as the role of the arbitrator must be to remain neutral.

### **5.3.11 Ethical differences**

Cultural differences include ethical differences that have direct and indirect influences on law and the behaviour of people as part of the issues outside the disputes brought into any international arbitration. One example may be seen in the following comment from an arbitrator, also quoted above in the "Conflicting Comments" section, who bitterly referred to the partiality of arbitrators as an ethical difference:

*"...the sad fact is that as a representative of the US government I wasn't trying to convince any of the Iranian appointed judges on the tribunal because we had determined that no Iranian judge was going to vote against Iran or in favour of the United States, so they in essence were written off".*

And he continued:

*"One of the US judges in particular would vote against the US or US companies, so I mean you had to convince this judge as well as the three judges who were not from either Iran or the United States and it was those three that really felt like they were the swing, if you lost the one, the one US judge who would more often vote against the US ..."*

This interviewee was clearly puzzled about the partiality of Iranian arbitrators, and he was exclusively relying on the legal principles, dismissing the interference of any cultural effects. The interviewer challenged the interviewee by asking the question of what if the tribunal was conducted in Iran and the

behaviour of the Iranian judges was accepted. The interviewee showed a visible shocked expression at being asked this question.

### **5.3.12 Competition for becoming a centre of excellence**

In response to the question regarding competition between arbitrators and nations for becoming a centre of excellence regionally or globally. Interviewee eight responded:

*""Certainly, certainly, oh yes ...it's a competition, yes of course it's not just for the cities and countries but also institutions. Why do you think the institution change their rules like socks and they offer something that other people don't, as in their contracts?"*

And continued:

*"...the most vivid example is Singapore because Hong Kong has been a centre of arbitration 35 years or so. Singapore always felt it had a good arbitration culture and it does, it has a lot of very, very competent special nice people but the two centres like Paris and Marseille, it's like New York and San Francisco you have two cities both of which believe they are the centre of universe and they think great these centres having a prestige and the income of becoming a centre of arbitration." (Interviewee eight).*

And in response to the question Do you think awareness of culture would help this competition? The same interviewee responded:

*"it is interesting that you say that, I think for international rules even in regional rules of institutions, for example Kuala Lumpur has rules for arbitration that has Sharia law so maybe they only get cases more than anybody else because there is a Chinese European arbitration centre which has a head office in Germany which has rules similar to UNCITRAL rules but also interested in twist in their rules which are about Chinese arbitration. So I think they are doing well started up but slowly. I think they have quite good cases now" (interviewee eight).*

#### **5.4 Conclusion**

This is the first socio-legal empirical research of its kind that has been conducted using interviews. While most of the interviewees were aware of the complications and the difficulties of social culture harmonisation, there are some that deny the existence of social culture and the extent to which it may affect the outcomes of international arbitration. Some of these social differences include spoken and written communication style, language, style of expressing emotions and administration style.

On the other hand cultural awareness, where there is also legal and technical competence, can give rise to the success of arbitrators, arbitration institutes and nations achieving the status of a centre of excellence.

#### **5.5 Case Study**

The following case study of the Iran-US tribunal of 1980s is an example of social-cultural issues in international arbitration:

*"The Traumatic International Arbitration of 1984-1988 Iran-v-US Tribunal"*

The problem caused by cultural issues during the 1980s Iran-US Arbitration Tribunal is one example of the impact of legal and non-legal issues in cross-cultural arbitration. These differences caused severe frustration for arbitrators, resulting in the breakdown of communication. As Judge Aldrich (an American arbitrator at the tribunal) writes, *"Discussion among the American and Iranian members proved fruitless" ... "The Americans had no idea how the Iranians would behave at their first meeting"*(Aldrich and Aldrich, 1996).

Below we see the drama and the human emotions behind the rigid legal rules. These frustrations led to a fist fight between arbitrators at The Hague while the claim tribunal was in progress (Aldrich 1996).

##### **5.5.1 Iran-US Arbitration Tribunal in the 1980s**

In 1983 US citizens and companies brought arbitration claims against Iran's government shortly after the Iranian revolution. Around 4000 commercial claims were brought by American companies and individuals against the Iranian government, most related to international commercial contracts under the Iranian government's control.

Mapp (1993) describes the claims as the domination of the superpowers through their legal system:

*"although the principal of equality of states required that there should be equal access to the Tribunal for nationals of either party, there is no doubt that the Tribunal was primarily established for the settlement of the claims of United States nationals"(Mapp and Mapp, 1993).*

Mapp goes on to add:

*"Typically, the European nations and the United States had been able to impose tribunals upon the weaker respondent states through the exercise of economic and military power"(Mapp and Mapp, 1993)*

Mapp suggests that such a tribunal was established after World War II by the victorious nations, which became known as a demonstration of power over weaker countries.

### **5.5.2 Background**

Overview of the incident

In January 1979 there was a revolution in Iran which ousted the Shah, who fled to the US. On 4 November 1979, Iranian militants stormed the US embassy in Tehran in retaliation for the US hosting the deposed Shah and demanded that he and his assets be return to Iran. They took 61 US diplomats as hostages (Salinger. P 1981:48). In return, the US froze Iranian assets in the US; this was followed by the US claiming damages against Iran in a US federal court. Some 4000 claims were filed in US courts for termination of contracts and the expropriation of properties owned by American nationals. Iranians also brought 407 claims in their courts against the US government and US nationals. Both governments agreed to take the disputes to arbitration instead of their national courts (Mapp1993: 6). However, Redfern(2004) explains that the claim by the US against Iran involved 1,500,000 individual small claims with their sophisticated fast data processing(Redfern, 2004).

In January 1981, in The Hague at the Peace Palace, the agreement was signed for one of the most significant international arbitration tribunals. This was part of the process of solving the hostage crisis between Iran and the US.



A nine-member international arbitration tribunal, with the appearance of a court system, was formed to settle the property claims between the two states.

The tribunal was primarily established for the settlement of commercial claims by American nationals against the Iranian government, despite the principle of the equality of the estates in access to justice. These claims were related to the termination of contracts by Iran after the Iranian revolution. The administration of complex financial issues was mainly in writing.

Mapp writes that this case demonstrated the limitations of international arbitration in dealing with social and cultural differences (Mapp and Mapp, 1993).

### **5.5.3 Iran and the tribunal: background**

After the Iranian revolution, Iran was under economic pressure as a result of the war with Iraq and the freezing of assets by the US. At the time of the Iran-US tribunal of 1982, Iran was a newly revolutionised country and engaged in a full-fledged war with Iraq. The economic pressure was such that Iran was not able to send an equal number of arbitrators to the Iran-US tribunal. The Iranian lawyers had lived in a country which had been under a dictatorship for centuries and was inexperienced in democracy and international arbitration. The Iranian understanding of an international arbitration was mainly emotional, unrelated to reality, and their understanding appeared childish. (Mapp 1993). By taking part in the international arbitration they wanted to prove to the world the consequences of past American influence in Iran. This particularly concerned the US organising a coup on 19 August 1953. The US CIA had organised the fall of the popular democratic government of Mohamad Mossadegh and the return of dictator Reza Pahlavi as the Shah of Iran (Mapp 1993).

An example of a past Iranian international arbitration is the 1963 award in the case of International Petroleum Ltd. v. National Iranian Oil Company ("NIO"). This case has now set an important precedent for cases brought before Western jurisdictions, in particular in dealing with developing countries. The case was an example of the long history in the misuse of international

arbitration against developing countries. Examples include the arbitration cases between Latin American countries, the US and the European countries (Mapp 1993). Calvo doctrine: initiated by Argentinian jurist Calvo and states that developing countries lack the high standard of administrative ability to deal with international law. The Iran-US tribunal paved the way for the return of Holocaust mass claims by the Jews and their heirs around the world (Redfern, 2004).

#### **5.5.4 The US and the Tribunal: Background**

Modern international arbitration was initiated by the John Jay Treaty of 19 November 1794 between the US and the UK. This was a mixed claim commission established to deal with claims from citizens of UK and the US (Bernhardt et al., 1997) The arbitration under the Jay treaty between the US and the UK resulted in termination of the war of 1812-14.

However, that type of arbitration was suitable for nations that had a closer understanding of each other. They spoke the same language and they arbitrated through consent. Nations with different cultures and languages will have more complex problems (Verzijl et al., 1990)

Self(2009) states that after the Jay treaty, the US and the European countries developed a long history of using international arbitration to settle claims, particularly against developing countries (a colonial culture). An example is the US claim against the Latin American states in the nineteenth century. This tribunal was imposed through the exercise of military and economic power. Another example was the peace process after World War II,(Self, 2009b).

The US arbitration is different from Iranian arbitration law in that US has a federal government where different states have different legal systems. For example, the law in Louisiana stems from the French civil law system, whilst the law of the other 49 states originates from English Common Law systems. Uncertainty may arise as a result of these legal differences among the US states,(Self, 2009b).

### **5.5.5 The Tribunal in The Hague**

In the 1981 US-Iran Tribunal, Iran could only send three Iranian arbitrators. This was due to economic hardship and a naive belief in the impartiality of the international arbitration system (Mapp and Mapp, 1993). The other six arbitrators were from the US and Europe. The Americans and the neutral judges were in the majority. At the Iran-US tribunal Judge Lagergren (Swedish) was selected as a president to determine the composition of the Iran-US tribunal of 1981, (Mapp and Mapp, 1993).

The Judges sat in panels of three to expedite the progress of the tribunals. Each panel had one Iranian, one American and one arbitrator from European countries (who had been educated in Western legal thought and traditions). The Swedish president decided to appoint Europeans as the chairmen of all the arbitration panels (Mapp and Mapp, 1993). Interviewee three (in this study's empirical research) stated that any candidate whom Iran suggested for presidency of the tribunal was refused by the majority. All US and the European judges were highly experienced judges of international standing, (Mapp and Mapp, 1993). The majority of Iranian arbitrators were all lawyers working nationally and/or Iranian university professors with little international arbitration experience, (interviewee three).

Cultural differences and the divergence of attitudes between the Iranian and Western judges caused a substantial increase in tension. The US and European judges had the attitude of only concentrating on the law, as if the "legal culture" existed in a vacuum away from emotion, politics and geopolitics, (Slate, 2004). The Iranian attitude was that everything was emotion, politics and geopolitics, and the law was only the "Tip of the iceberg". An interviewee suggested that once the hostages were released, the Americans lost interest.

The Iranian Judge Kashani, an arbitrator at the tribunal, was shocked and distressed that at one of the coffee breaks Judge Mangard (Swedish) criticised the Iranian government for their execution policy. On 28 December 1981 Judge Mangard received a letter from Judge Kashani calling into question his neutrality and requesting his resignation. Further letters followed about the

same issue, but every time the demand for Mr Mangard's resignation was refused by a majority vote by American and European judges.

With regard to the resignation of Judge Mangard, Judge Aldrich suggested that Iranian arbitrators did not produce references from international law precedents in their arguments, (Aldrich and Aldrich, 1996). Interviewee number one stated that: "Americans acted on law but Iranians were acting on emotions". The Iranian judges followed Articles 9-12 of UNCITRAL rules. However, the Western arbitrators refused to accept the interpretation of the articles by Iranian arbitrators.

The Western arbitrators argued that the only valid method of challenge would be made by the majority of the High Contracting Party (Aldrich and Aldrich, 1996). This meant the parties that signed and ratified the original agreement, in this case Iran and the US. The issue could only be resolved by a majority vote. In this case, it would be decided by the Americans and the Europeans, as the Iranian judges were in the minority. In protest, the Iranian arbitrators boycotted the vote.

The resulting hostility, distrust and tension made smooth conduct of the tribunal extremely difficult. George Aldrich writes that mutual respects and confidence had decreased between the Americans and the Iranian Judges (Aldrich and Aldrich, 1996).

Iranian arbitrators approached the Dutch court with their grievances, but the Dutch parliament quickly passed a law stating that it did not have jurisdiction to interfere. The Iranian arbitrators requested that all the chairmen of the three panels be changed, claiming that there was too close a relationship between the Europeans and the Americans to allow them to remain neutral. This request was repeatedly refused and their grievances were ignored by majority vote. One of the basic rules of arbitration is impartiality, not only by deed but also in appearance; as Ameli writes "neutrality is not limited to simply a third nationality, but also includes religion, economic ideology and social environment that may form an arbitrator's way of thinking" (Ameli 89-109).

On 9 April 1984, a telephone threat was received by Judge Lagergren and that his team had "only a few days". On the morning of 3 September 1984, as Judge Mangard walked towards the meeting room "he was accosted by judge Kashani and Shafeiei". Judge Aldrich rushed to investigate the situation and saw that Judge Kashani had taken Judge Mangard by his collar and was pushing him out of the door while Judge Shafeiei was hitting him (Aldrich 1993).

The day after this incident Judge Lagergren had a conversation with Judge Kashaneii, followed by a discussion with Judge Aldrich. They asked Judge Kashaneii to promise that there would be no further violence. Judge Lagergren stopped the tribunal's activities for several months. Eventually Judges Mangard, Lagergren, Kashaneii and Shafeiei resigned, but the tribunal continued.

To summarise, the Americans should have had empathy with the Iranian situation, as Mapp concludes that Iranian independence was new, in the international sense, and they did not share the required habits and moral traditions with the Americans and the Europeans (Mapp 1993:54). Furthermore, as Bok (2002) reminds us: "do unto others as you would have them do unto you" (Matthew 7).

### **5.6 Suggestions for the improvement of international arbitration**

Professor (Naón, 1985) cited in Frommel (2000) explains that there is a need for improvement of international arbitration. He suggests that each case be considered in a micro-cultural environment, meaning that each case has its own cultural needs and characteristics. In this context it would be easier to enforce awards because there is harmony and consideration for all parties.

Current international commercial arbitration is based on a culture used by lawyers' parties' and arbitrators that involves remaining detached from differences in order to achieve uniformity in approach. As a result, cultural differences are ignored. However, Nelson(2000) suggests that uniformity should be less important than proper understanding of differences. Understanding one's own culture and understanding others' cultures is not an academic exercise, but rather 'a scholarly imperative'. He goes on to state that

the practitioners and thinkers must be aware that, although they aim at sameness, 'it must be from differences'. Comparative study of history and cultures is the only way to correct any misunderstanding.

There are other suggestions for improvement of international arbitration, including special legal cross-cultural training for lawyers and judges, involving skills in legal drafting and communications and studying cultural differences. It is recommended that lawyers compare their own legal background with that of the other culture that they are dealing with; for example, the common and civil law systems and their impacts on contract drafting. The best cross-cultural trainers are those who are also experienced in cross-border practice and familiar with different legal cultures (Dawson, 2002).

A recommendation has also been put forth regarding the conduct of tribunals with respect to fairness. It is necessary that the tribunal be clear in its directions, as diplomatic language should not allow misunderstandings or vagueness (Ameli 1999).

Parties and arbitrators from different cultures have different expectations related to "divergence in cultural background" (Pair 2002). Pair suggests that arbitrators take a uniform approach to cases with cultural differences instead of case-by-case determination. Different cultures have different emotional reactions, leading to misunderstandings which are often subconscious.

These conscious and subconscious behavioural differences are due to different cultural backgrounds, affecting one's judgment and reasoning, whether legal or social. Individual culture strongly impacts understanding of the legal systems (Sunders (1999), cited by Pair (2002)).

Bok(1995) suggests that common ethics and values need to be shared between nations. She believes that we should find common ground in a world that makes nations too close to allow for separation. She comments that there are limited common values in cultural differences. These values must be simple enough to be easily recognised by all nations. Shared values in all human groups provide mutual support, loyalty and reciprocity. Nature brings humans together for survival(Bok, 1995).

Maslow (1970) agrees with Bok's comments on the similarities between people of different cultures. Maslow cited by (Torsen et al., 2010) states that "*Human beings are more alike than one would think at first*" (Maslow, 1970) . Bernice Lott discusses multiculturalism and diversity from a psychological point of view, studying individuals or a group as a whole. She believes a person has the ability to be multicultural in his or her behaviour depending on a particular situation. For this reason, and because a person is a complex being, the suggestion is that the research on the issues of diversity should be cross disciplinary (Lott, 2010).

Self(2009) cites (Klopf, 1998), stating that people's nonverbal communication is encoded based on their background knowledge, culture, history and their experience in life. These encoded messages need to be decoded by the receiver who has a different background, experience and history. This complication of encoding, and decoding exists in people of the same culture as well as people of different cultures. One can imagine the difficulty of the challenge of communication between peoples of different cultures.

Available technologies, as well as the vital need for cross-cultural trade, improve intercultural communication. For example, the creation of World Trade Organisation and the North American Free Trade Association demonstrated how important cross-cultural trade is for the survival of the healthy commercial relationship between nations. Trading parties are aware of the expensive and damaging results of miscommunication in cross-cultural commerce.

Misunderstanding can result in uncertainty and mistrust. Different jurisdictions that result in different expectations from legal processes and outcomes add to the difficulties of cross-cultural communication, which is already complicated. Different legal jurisdictions use different legal jargon which complicates the decoding of communication between parties from diverse cultures

These difficulties often result in disputes and expensive legal battles. Self (2009) believes that nonverbal communication may result in one party's inability to apply the terms of contract. When one party is unable to perform successfully, this affects the ability of the other parties to perform the

contract. This brings the trade between the parties to a halt and the parties bring a law suit for breach of contract that may be based on anticipatory breach or repudiation. In these cases, parties may wish to bring a law suit through the courts of their own culture, which is not likely to be agreed to by the other parties. The solution is therefore to refer to international arbitration, meaning that the arbitration clause becomes part of the international trade.

(Trakman, 2006), cited by Self (2009) suggests that businessmen from different cultures should look for a friendly forum instead of bringing controversies about their cultural differences to arbitration. Sheldon Eisen (2006, cited by Self 2009) suggests that international arbitration has been beneficial in understanding cultural differences. Global public tradition has been also beneficial to the development of international commercial arbitration. This is due to the reduction of global barriers to trade through the 1946 General Agreement on Tariffs and Trade (GATT) (Trakman 2006). This resulted in international commercial arbitration's expansion from limited private use, and the uniformity of law, leading to the formation of the World Trade Organisation (WTO) (Cantuarias, 2008), cited by Self 2006).

In competition between nations for market share in international commercial arbitration, attention to the importance of cross-cultural issues is apparent. For example, Singapore promotes itself as a centre for international arbitration by welcoming any nation for dispute resolution. Singapore is rated sixth in the world as a centre of international arbitration. On the other hand, South Africa, although it is successful among African countries for arbitration because of its reputation for racism, has failed to gain prominent position regionally (Temkin, 2008).

Alleged racism includes nonverbal as well as verbal communication (Temkin, 2008), cited by Self 2006). Self concludes that skilful handling of intercultural issues in commercial arbitration can bring economic, social and private success for arbitrators. On the other hand, an arbitrator who is biased when working on a cross-cultural case may bring difficulty and loss.

Torsen(2007) also refers to the rapid expansion of international arbitration, initially, mainly used by Europeans, and then expanding to become worldwide,



acceptable by all cultures and nations in recent history. This expansion of international arbitration has broken through the legal systems of the Middle Eastern countries as well, helping them to form their own arbitration laws that use the available tools of international arbitration and helping them emerge from the disrepute created by the colonial period.

These useful tools include various tribunals, treaties, codes, rules and procedures, varying among the large number of countries that use them. Torsen(2007) emphasises the importance of paying attention to cultural differences in international arbitration for success in providing this service. However, she notes that awareness of cultural diversity, while vital for a successful arbitration, is a difficult skill to implement. One of its difficulties, as Torsen(2007) explains, is that the parties must analyse the legal systems that the other party is used to as well as their own.

Torsen(2007) concludes by suggesting that the parties could be a useful resource to explore the existence of cultural differences that may cause difficulties. This could be done by subtle matters such as pre-hearing conferences. Useful subtle questions may include enquiries about the needs for interpreters or translators. It is also useful to ask about requirements for special religious rituals during the tribunal procedures, such as a place and time for prayer. Different nations may have different national holidays as well. It is useful to discuss this in advance and this can help increase awareness of cultural differences among the parties in any international tribunals.

(Pair, 2002b) writes about the effects of cultural differences in international arbitration. She aims to demonstrate that attention should be paid to cultural issues as well as legal issues in international arbitration. In her example, the claimant in the arbitration hearing is represented by an Anglo-American lawyer, while the other parties are East Asian. The arbitrator is French and the parties have agreed to use UNCITRAL Model Law. At the start of the hearing, the claimant attempts to start the case when the French arbitrator instructed him to limit the time for each witness to twenty minutes. Pair depicts the perplexed American lawyer, who has a different expectation and experience. She demonstrates that although all the legal decisions are taken to bring harmonisation, the problem of expectations remains. She then explains that

the problems of differences in expectations come from the cultural backgrounds of the parties and their representatives, something that arbitrators may not be interested in. She notes that the expectations of the parties and their cultural backgrounds are varied and not uniform.

(Pair, 2002b) suggests the experience of working with people of different cultures is helpful in overcoming some of the problems related to cultural differences. Pair (2002) comments that there are parts of cultures that are hidden and difficult to detect, and it is not easy to learn about these, and that their effects are not easy to detect. These hidden parts of the cultures often cause confusion and misunderstanding and may be emotionally charged. People have unconscious and automatic responses to these emotionally charged cultural problems. The only way to learn about these parts of cultures is by being exposed to modelling examples, for example in terms of how men and women interact in a particular culture(Pair, 2002b) .

Another important cultural effect that Pair refers to is the culture's influence on the process of reasoning, be it legal or otherwise. "Cultural background strongly influences the legal system and understandings" (Sanders 1999, cited by Pair 2002). Pair goes on to state that creativity in understanding of cultural differences of the parties is one of the keys to solving the problem.

A study,(Commander, 2012) involving law students from St John University in the USA provides evidence that the students' training made them believe that social cultural differences should be ignored for quicker assimilation of the case, which would financially be beneficial to the parties. This may be true as a short-sighted view with a long-term negative effect.

### **5.7 Conclusion**

This study of literature, empirical research and the case study reveals the feeling of dissatisfaction with the lack of cultural awareness. Research on the issues of cultural differences is called for and evidence shows that normalisation of legal differences is important and necessary but not sufficient. Legal and technical details are essential, but disputes between the parties remain at the human level. The agreement comes from humans, not from law or technical mechanisms. International arbitration is different from litigation in

court, which relies exclusively on legal codes. International arbitration is about the parties' autonomy and agreement. Therefore, cultural understanding is important and cultural awareness on the part of the arbitrators is expected for the better reputation of the ADR selection by the parties for resolving their disputes. There seems to be a cultural divide between the East and the West. Arbitrators' awareness of this is necessary for the promotion of ADR in general and arbitration in particular.

## **6 CHAPTER SIX DISCUSSION**

### *6.1 Introduction*

The purpose of this chapter is to analyse and synthesise the responses from the interviews, surveys and the literature review to drive answers to the research question. The emphasis of this discussion chapter is on the issues of someone from a different culture dealing with another legal and social culture in international arbitration. Furthermore, the importance of competence in understanding cultural issues to the long-term commercial success of international arbitration is discussed.

It discusses the effects of cultural issues on the practice of international arbitration. It analysis the responses for interviews, surveys and links them to the literature to find answers to the research question. International business is rapidly increasing due to the globalization of the economy, highlighting the importance of understanding issues arising from cultural differences in international arbitration.

This research argues that arbitration has been practiced effectively since ancient times and beyond as an alternative to war, bringing peace by relying on the wisdom and insights of arbitrators before the existence of formal legal systems. Evidence of arbitration agreement reaches back to BCE in Babylon. Examples can be seen in religious books, i.e. Bible including the wisdom of King Solomon the arbitrator.

The research has described the long history of arbitration through the different eras, leading to the necessity of the current development into the formal legal systems due to the Industrial Revolution. This was when focus on complex skills and activities in international arbitration became essential.

The research argues that the Industrial Revolution weakened community ties, resulting in arbitrators being selected for specialisation in a particular field instead of personal ties in communities, as was practiced in ancient times. This specialisation, whether legal or technical, seems to have taken priority over the importance of understanding underlying cultural issues that was the dominant principle of original arbitration.

From the eighteenth century, commerce between nations needed to be regulated, harmonised and managed by law and treaties in order to limit the damage of conflicts and wars. The legal harmonisation led some countries, including Iran, to adapt the UNCITRAL Arbitration Model Law, (copy of UNCITRAL and Iranian arbitration can be seen in appendix D and G. Modern international arbitration has become a profitable service industry, with arbitrators promoting arbitration with the same formal enforceable power as litigation in courts.

However, this research argues that current legal powers of arbitration stem from the countries' principal laws (substantive laws), as stated by Roebuck (2000). For example, in English law, arbitration is considered part of contract law. Current arbitration laws originally stem from private contractual agreements; Weigand (2009) states that this view was accepted by Germany and France; therefore, arbitration has a dual character or hybrid personality.

Substantive law is an important part of arbitration cases, as the arbitration clause must be part of the body of the contract, if agreed at the time of the formation of the contract. In fact, Mauro Rubino-Sammartano (2014) in referring to a judgment: "*In the Anderson agreement it held that*"..."*[t]he arbitrator shall decide in accordance with the terms of the agreement*"(Rubino-Sammartano and Mayer, 2014).

This research argues that, despite the efforts made to harmonise arbitration laws, the comparison made between the three current arbitration laws of Iran, England & Wales and the USA, shows major differences, including unresolved cultural issues in international arbitration arising from cultural variation. The key similarities of the three countries' international laws are party authority, the tribunal's impartiality and enforceability.

This deeper examination of each of the three countries' cultural, historical and legal backgrounds revealed fundamental differences impacting their procedures and implementation of their arbitration laws. Detailed examination shows that, despite the apparent similarity in arbitration laws, there are major differences in understanding and implementation of the selection of arbitration, impartiality and enforceability of international foreign awards. This research

argues that the selection of arbitration and enforceability of foreign laws are the cornerstone of international arbitration law. It further argues that these significant differences are often invisible at first glance to some international arbitrators who exclusively focus on law or technicality, ignoring the importance of understanding the underlying cultural issues.

This research found that cultural identity distinguishes people from different parts of the world. This research argues that there is a general identity for people of a certain area of the world and that different regions of the world have a distinctive culture and values that differ from peoples of other parts of the world, and these differences impact their understanding of the application of the law and their legal arguments.

This research aims to ascertain to what extent cultural issues impact the accessibility and effectiveness of international arbitration and to make recommendations which will contribute to the improvement of the practice of international arbitration.

The following are included in the research questions:

- Identifies the extent to which cultural diversity issues have an effect on international arbitration.
- Assesses how and why cultural issues affect current international arbitration.
- Evaluates the cultural awareness of arbitrator(s) and makes recommendations for the improvement of international commercial arbitration law and procedure.

The cultural comparison of England, the USA and Iran in chapter two demonstrates the fundamental cultural differences between the West and the East that impact the application of the international arbitration laws of those countries.

The findings identified the impact of cultural differences at a practical level. This research argues that these differences are result of the differences between peoples' beliefs, world views and differences in understanding of the law. The findings suggest that, unlike legal differences, cultural differences are invisible, as suggested in the iceberg theory in chapter four. The iceberg

theory in this context symbolises the lack of awareness of the depth of the issues, instead concentrating on what is immediately apparent. This relates to the attitude of some international arbitrators, who dismiss the importance of the subtle but significant impact of cultural issues. The empirical findings in chapter five show that many world-class international arbitrators and lawyers are fully aware of these cultural issues. For example, interviewee number four stated that: *"I felt that their communication is different, a 'no' is not a 'no' and a 'yes' is not a 'yes', 'maybe' is certainly not a 'maybe'; that is very different to how we communicate"*.

However, there are some lawyers and arbitrators who greatly underestimate the importance of the effects of cultural issues in international arbitration. In some cases they denied that cultural issues exist or insisted that they are insignificant. On the other hand, some arbitrators and lawyers are puzzled about how to apply cultural awareness in an international arbitration. For example, interviewee number five: *" ... it is quite hard to understand how it (culture) applies to arbitration"*. An example from the literature also called ignoring cultural differences by some international arbitrators a result of a "psychological superiority complex" (Slate, 2004).

Due to the more advanced and efficient legal systems of the West, the flow of international arbitration is predominantly from East to West. The direction of the international arbitration brought job security and international recognition for Western and Western-educated lawyers and arbitrators, creating complacency amongst some international arbitrators. This has led to their focus being exclusively on technical and legal issues, dismissing cultural issues in international arbitration.

Furthermore, little interest is shown by some international arbitrators in training and achieving competence for understanding cultural issues in international arbitration. An experienced international trainer of arbitrators commented that he writes off any training programme for many well-known international arbitrators due to their inflexibility and arrogance.

The findings of this research can be divided into three main themes:

- A) Common basic principles for arbitration
- B) Legal differences
- C) Communication issues:
  - i) Visible communication examples are language and documentation.
  - ii) Invisible communication differences include subtleties in language, such as body language, effects of an accent, and innuendo.

## **6.2 Common basic principles for arbitration**

This study shows that the main principles of ancient arbitration as a method of resolving disputes have been transferred to modern arbitration laws. The shared common principles of arbitration which can be identified from the account of the historical analysis are: autonomy of the parties, impartiality of the arbitrator and enforceability of the award. Historically, the status, authority and the cultural knowledge of arbitrators (as customary in tribal systems) secured the enforceability and the popularity of arbitration, as can be seen in chapters two and three.

This research argues that, although the common principles are legally the same, looking deeper reveals major latent differences due to cultural diversity. One example is that, although Iranian law respects the parties' autonomy to choose an arbitrator, in practice parties in Iranian arbitration do not have the authority to select a woman as an arbitrator. Although impartiality is important in all of these legal systems in practice, arbitrators are not always impartial. The impartiality of Western arbitrators was challenged by Iranians at the Iran-US tribunal of the 1980s. The differences are also extended to the enforceability of laws in Iran, the USA and England, which have either different or added clauses for their enforceability of foreign awards.



This indicates that:

- A) The common features of ancient arbitration can be identified in the modern arbitral laws of these countries (for example articles related to party agreement (autonomy), impartiality and enforceability of foreign award).
- B) In the modern era, arbitration has been formalised by being codified into the legal systems; for example, the Iranian Arbitration Act 1997, England & Wales Arbitration Act 1996 and USA Arbitration Act 1925, copy of the above can be found in Appendix, D,E,F,G.
- C) Modernisation of international arbitration requires more than codification of the practice.

This research argues that serious attention should be paid to cultural issues in order to achieve more meaningful modernisation of international arbitration.

### **6.3 Legal issues**

This study shows there are major differences in the application of different legal systems, such as common law, civil law and religious law, which impact the practice of international arbitration. An international arbitral trainer voiced this concern at the interview regarding the cultural and legal issues that lawyers from different legal systems face. He gave the example of civil law lawyers preparing documents according to civil law: they rely on the judges' inquisition at the hearings, whereas common law lawyers are in charge of enquiry at the hearing and judges are merely observers of the argument. Furthermore, religious law countries follow religious law, which differs from both common law and civil law.

This research shows that legal differences are due in great part to the impacts of cultural differences; as an example, the differences between documentation in Iranian culture and Western culture was explained by an Iranian interviewee. The interviewee pointed out that lack of production of written evidence by Iranian parties affected the credibility of the Iranian party and their witnesses in international arbitration. At the same time, misunderstanding of the tribunal regulations about the importance of

submitting written evidence resulted in frustration and mistrust of the tribunal by the Iranian party.

The evidence shows that the differences in the application of arbitration laws depend on the background and geopolitical position of each country. Differences in law and practice can be obvious, but there are also latent differences which arise from the legal and social culture. For example, modern Iranian arbitration law claims party autonomy,(Gharavi, 1999), but it does not allow women to conduct arbitration. What is often missing in current international arbitration is appreciation of the impact of culture on the practice of arbitration. For example, an Iranian witness at an arbitration tribunal was asked by a panel of Western arbitrators to identify himself by his name and his surname. The witness insisted on talking about the origin of his name instead of responding to the question that he was asked causing confusion, frustration (interviewee 4 chapter 5) and doubt about the credibility of the witness, affecting the outcome of the judgment. This research argues that cultural issues are important because culture affects the outcome, e.g. different understanding of disclosure materials, witness statements, legal drafting and inquisition style at tribunals.

The research shows that people from the East in international arbitration situations are generally more emotional in their approach; people from the West are generally more factual and less emotional, as explained by interviewee four in the findings chapter. A tribunal without awareness of cultural issues will not provide a satisfactory method of dispute resolution because one party will be disadvantaged.

#### **6.4 Communication issues**

Arbitration is based on communication at multiple levels. The literature review in chapter two finds evidence of the impact of communication issues, including misunderstanding and misinterpretation of communication in cross-cultural arbitration. This is confirmed by the empirical findings of this research.

The importance of the cultural dimension and norms of provision of evidence in arbitration processes in different jurisdictions effects the arbitration process and outcomes. This can be seen in interviewee three who explained that

different cultures have different systems of producing evidence. For example, generally in the Iranian culture taking notes of events is not common unlike Western cultures. This can result in misunderstanding of facts through lack of documented evidence leading to unfair results of international arbitration.

Interviewee number seven gave an example of a doctor that interpreted a coma as sleeping in his language, causing delay in the emergency assistance and resulting in death.

Furthermore, emphasis on the wrong part of a word and incorrect pronunciation can change the meaning and lead to a party's disadvantage in international arbitration. Interviewee number six explained that improper pronunciation of English words disadvantaged Farsi-speaking parties in international arbitrations.

Communication issues in international arbitration are not limited to verbal communication. The literature review shows evidence of written communication issues in cross-cultural arbitration. An example of these issues is the different approach to drafting between civil law and common law for lawyers and arbitrators, e.g. the different understanding of the notion and application of the notary. Additionally, misunderstanding of the hidden meanings of a language puts the non-native parties in a disadvantaged position, leading to unfair and unsatisfactory completion of international arbitration. This is supported by the empirical evidence, as stated by an interviewee number six that an Iranian's incorrect pronunciation of Western language caused misunderstanding of what was said, and that this affected the outcome of their case.

In addition to the visible communication issues identified by the literature and empirical data, there are invisible communication issues, such as innuendos in vocal and written communication, Tamkin (2008), von Reden(2010), Self(2009). Generally, communication is described as coded messages, as shown in chapter two, and people need experience and cultural understanding to decode the messages that they send and receive. People from the same culture have a deeper understanding of messages from each other, whether spoken or written. An example of unspoken communication is the importance

of courtesy for Iranians, which results in the use of flowery language to soften the communication rather than getting straight to the point with short replies (see the example provided by interviewee number four). Different cultures have different understandings of courtesy and politeness.

### **6.5 International arbitration and socio-cultural issues**

This thesis argues that not enough importance is given to identifying and rectifying cultural issues. On the contrary, these important communication issues have been pushed aside by some international arbitrators and parties' legal teams as insignificant and unimportant. This thesis highlights underlying social cultural issues that are part of today's cross-cultural arbitration tribunals, bringing attention to the deeper understanding of cultural issues. The literature review and the empirical research show the need for understanding deeper levels of human interaction. The research shows the need for a more holistic approach to the sophisticated international arbitration of today, rather than solely focusing on the legal and technical issues.

This study argues that the spirit of the ancient practice of arbitration for resolving disputes based on the wisdom of arbitrators has been lost in some international arbitration. Moreover, historically the arbitrators understood all parties involved well, so that they could assess the issues outside those disputed as well as the disputed issues. Considering this historical depth of the practice of arbitration, understanding its key principles is essential. As Kuo (2004) writes, "...modern and ancient cultures are so intertwined, indigenous practices have an important impact on modern laws", (Kuo SS, (2004)).

The study shows that each nation requires different (unique) laws and procedures to secure the culture of that environment. Therefore, different laws are made for the benefit of the security of an individual culture. This thesis is not arguing against the valuable contribution of the rule of law for the security and stability of a nation. However, the argument here is that awareness of the lawyers and arbitrators of the underlying cross-cultural issues is a necessary component for achieving fairer outcomes in international arbitration.

## **6.6 The value of socio cultural competence**

This thesis argues that the legal and technical efficiency of some of international arbitration has come at the expense of other important underlying issues, such as social cultural differences. Highlighting the importance of social cultural differences is not intended to undermine the significance placed on issues of the legal differences, but rather to enrich and enhance international arbitration by understanding the cultural differences that the legal differences are based on.

This research agrees with the claim made by Slate (2004) at the ICCA 2004 conference that it is the awareness of the subtlety of social culture that tips the balance of success in international arbitration. Legal and cultural differences have their own important issues, which both need to be considered for harmonisation.

The example of iceberg theory is used to illustrate how acting on the law without understanding the culture behind it is like the captain of a ship only concentrating on what is seen above the surface and ignoring the risk of the possible size of the iceberg below the surface.

The author argues that in some international cases legal normalisation and technical details, as well as commitment to speedy conclusions, eclipse the importance of understanding cultural issues. The literature review and the empirical research show that some international arbitrators ignore cultural issues and prefer that international arbitration remains distant from the underlying social cultural differences. These arbitrators believe that legal and technical issues in international arbitration are isolated from cultural issues.

Based on the evidence from the literature review, this thesis argues that relying solely on legal acts, as some international arbitration today does, as if legal acts exist in a vacuum, can be perceived as 'arrogance'. Social cultural issues that surround the disputes are invisible and require knowledge of the parties' cultural background. The important factor in disputes is understanding that people from the world around them are different.

Additionally, paying attention to the root of the ancient practice of arbitrators' empathy with parties' cultural issues through familiarity with the parties is as important as the legal development of current international arbitration.

The report from the 2004 ICC conference shows the awareness of the underlying cultural differences tips the balance of success in international arbitration, which seems to be missed by some international arbitrators. It is alarming how much the attitude of some arbitrators can make a difference to the outcome of international arbitration.

The researcher argues often the only cultural issues discussed in international arbitration are legal differences which are recognised as cultural differences. That is one of the problems of undermining social culture in international arbitration. This was detailed in chapter 2.

This thesis, based on the literature review and the empirical research, argues that arbitrators and the parties' legal teams should be aware that people from different cultures have different values, expectations and world views that have been established based on their history over thousands of years. The issues with cultural differences must be skilfully identified, acknowledged and rectified for fairer international arbitration.

Cultural competence can be achieved by having the humility to recognise the need for cultural training and active learning about the hidden facts of cultural issues in international arbitration. This research argues that the rewards of paying attention to the importance of cultural competence come with time and patience, not just for the arbitrator but also for their countries' success in international arbitration.

Culture is not fixed, but rather adapts over time with the environmental, political and economic changes, as should arbitrators. Laws are mechanical tools, but disputes are between people, often with different cultures made up of different values, beliefs and understandings.

This thesis argues that some international arbitrators underestimate that parties may have different understandings of the facts that arbitration tribunals have in hand. Cultural awareness opens the window to valuable

information about issues outside the dispute and helps illuminate the issues at hand.

An example of cultural differences is described in the Iranian-US international arbitration tribunal of the 1980s. An interviewee's comment confirmed the material from the literature review suggesting that the Iranian understanding of legal argument at that tribunal was based on emotional and political argument, while their American counterparts were relying on the letter of the law and legal argument. An American interviewee bitterly complained that the Iranians did not rely on legal arguments, and that Iranian arbitrators' opinions were a 'write-off' in the opinion of the Western lawyers. Iranian arbitrators, likewise, did not believe in the impartiality and independence of the tribunals.

The following comment from an experienced arbitrator shows that a tribunal's lack of awareness of cultural issues could result in dissatisfaction and long-term complications. George Aldrich (1999) writes that American arbitrators had no idea about how the Iranians would behave at the tribunals. Mapp (1993) states that the Iranians did not have enough understanding of the international legal world. For example, they were not aware that refusing to send an equal number of arbitrators to the tribunals, because of its high cost and lack of Iranian international arbitrators with expertise, would damage their equal chance of winning awards; they did not understand that the awards are based on a majority vote of the tribunals and not emotional appeals and political statements.

In the Iran-US tribunal, Western arbitrators were relying on the practice of decisions, awards and rules being made by a majority decision at the tribunals. The Iranian perception of international arbitration was based on their own ideas of fairness. The Iranian misunderstanding of international arbitration law and procedure could be related to the tribal system of the past and living under a dictatorial regime, which constrained people from understanding the impartiality and independence of judges and arbitrators. This is an example of people brought up with different systems having different expectations, values, beliefs and behaviour. The clash of Iranian, American and European cultures caused frustration and disputes that remain ongoing.

The researcher believes that if the Western arbitrators had had awareness of Iranian culture and explained the criteria for winning the award or the election of the tribunal president (the subject of the clash between the members of the tribunals), Iranians might have had the chance to behave differently and establish trust. Iranians might have realised the risk that they were taking by not sending enough arbitrators for their arbitration case and working on an 'equal footing' numerically in order to have an equal chance of winning awards at the tribunals. The result of this historical cultural ignorance on both sides may have contributed to the continued animosity and distrust between the heads of the two countries. The two countries are thus losing the economic benefits of trading with each other based on mutual understanding of their cultural differences.

This example shows that Western legal understanding is based on skill of legal argument and the independence of the judiciary, whereas some cultures may have different understanding of international laws.

In addition, interviewee number four explained Iranian culture as a thousand-year-old system and understanding of the Iranians' culture and their historical background shows that they have not had the opportunity to experience a social democracy. In contrast Western arbitrators had the advantage of experience with the independence of the judiciary for the entire post-industrial era. Nepotism and corruption on a micro-level is necessary for a tribal regime that relies on kin and close relationships of a tribe's members. In industrial advanced societies nepotism and corruption are dealt with through the legal system (interviewee 3). This example shows that ignoring the different understanding of the parties' cultural background affects the outcome of international arbitration, causing long-term distrust and confusion, as in the Iran-US tribunal.

Interviewee 4, a highly successful arbitrator, explained the enjoyment of a deep understanding of a different culture and thus working with parties and tribunals in trust and harmony. Cultural understanding can lead to fair results, effective arbitration and financial benefit for the arbitrators and their nation. Evidence shows that cultural misunderstandings on the part of some of the



interviewees affected the trust between the arbitrators and the parties in the Iran-US tribunal of the 1980s.

### **6.7 Arbitration's financial benefits and ancient values**

This research argues that the customary familiarity of the arbitrator with original arbitration is not always extended to the understanding of cross-cultural issues in some current international arbitration. This thesis argues that financial benefits are added to international arbitration today, creating competition (interviewee 8), but in some cases it loses its ancient value of familiarity of the arbitrator with cultural issues. This in turn impoverishes international arbitration, as suggested by Slate (2004).

The literature review, as confirmed by the empirical research, shows that different Western arbitrators have a different world view. Lack of cultural awareness on the part of some of the Western arbitrators could affect the outcome of international arbitration, as reported in the findings chapter.

One of the cultural issues relates to language differences. Language is a very powerful tool, in particular in the formal setting of a tribunal, whether in speech or writing. Language is used to explain the issues at hand clearly and powerfully. The lack of command of this powerful tool has fundamental impacts on the outcome. It is like going to war without either having a defensive tool or knowing how to use a weapon. For a novice in such a situation, the battle is lost before it begins.

Some arbitrators are not aware of language issues and their subtleties when these are visible and comprehensible to a native speaker or anyone at that level, and legal language also has its own vocabulary. Language awareness connects people of the same culture but creates differences with other cultures.

This thesis argues, based on the findings in chapter 5, that language issues have an important impact on the outcome of arbitration, often by causing frustration that can lead to loss of trust in arbitration. Arbitrators are expected to understand the cultural issues, including language differences, surrounding international arbitration tribunals.

The interviewees explained that the legal style of using language can have an impact on the outcome of the arbitration. For example, in some legal systems inquisition and case argument is left to the arbitrator and the parties just provide the evidence and look on as observers. In other legal cultures, such as in common law systems, the parties are adversarial. Roebuck (2000) writes that there is no evidence of legal writing in England before the Romans. Even today the advocacy of the English legal system, legal argument relies mainly on spoken legal argument. In civil law systems, legal arguments are mainly based on written codes, and these different styles of legal argument cause difficulty and confusion for the parties and their legal representatives.

Language issues are closely connected with understanding the issues in cultural differences. This research argues that cultural issues, including differences in the use of language, are important in international arbitration. The maximum satisfaction of all parties in international arbitration must include understanding language issues.

Furthermore, dissatisfaction of the parties and their frustration with a lack of cultural awareness of the tribunal can have an impact on the arbitrator's long-term business success. There is much evidence of complaints in the literature and through the empirical research about unresolved cultural issues, including language differences.

This literature review addressed the question of the impact of culture on the outcome of international arbitration, and this was confirmed by analysis of empirical data in the Findings chapter. The evidence shows that cultural issues can cause misunderstanding, confusion, frustration and loss of trust in the practice of arbitration. Cultural understanding is more than traveling and noticing what is on the surface. It involves observation, training, study and long-term close contact with other cultures. Evidence shows the unhelpful attitude of some international arbitrators with regard to the importance of understanding social cultural issues in international arbitration. This is more noticeable with the arbitrators that place exclusive focus on legal issues at the expense of cultural understanding. One respondent (interviewee nine) criticised arbitrators that mimic the style of litigation in international arbitration tribunals.

The issues of language and its subtleties that surround tribunals are easily missed, as the literature review (e.g. Pair 2002) and empirical data (interviewee six) shows. This is made more apparent when arbitration is resolved solely based on legal or technical facts. Legal training is based on the paradigm of a reasoning mental model and referring to the codes from books and documents. Disputes are between people and not between codes and technical facts. In fact, Paul Randolph (2016) goes further and writes that all disputes are based on emotions,(Randolph, 2016). This thesis argues that cultural competence could help identify these emotions as part of the process of resolving a dispute.

This thesis argues that international arbitration is an international service offered by arbitrators to the parties. Attention to cultural issues protects the full interest of the parties that invest their trust and finance in international arbitration.

### **6.8 Summary**

To sum up, the literature review and empirical findings indicated that there are many unresolved issues around the damaging effects of the lack of cultural awareness on the part of some lawyers and arbitrators. These unresolved issues include visible and invisible problems such as language, innuendos, drafting and disclosure. Unresolved issues of clash of cultures in international arbitration results in multiple losses. These losses could include loss of business on multiple levels, such as loss of the financial benefits that a tribunal brings to a country resulting in the loss of trust.

Arbitration is an ancient practice based on human relationships and contacts. Arbitration has always been based on the parties' authority to select arbitrators for resolving disputes. Originally, the selection of an arbitrator was based on trust and deep understanding of the parties involved.

Multiple advancements in society have resulted in the need for development in international arbitration. Arbitrators have begun to follow the law, and the law secures the enforceability of the international arbitrations. However, current international arbitration is historically a relatively new development. This research argues that in some cases it has been principally engaged with legal

harmonisation between the different arbitration and national (contract) laws at the expense of understanding cultural issues.

The main empirical finding confirmed that cultural issues in international arbitration has direct impact on outcomes in multiple ways, affecting all parties involved. The cultural issues in the findings highlight that resolving the legal and technical differences comes at the expense of important underlying cultural issues. These may cause the reputation of international arbitration to be perceived as superficial. Many experienced and sophisticated arbitrators understand that cultural issues require resolution in order to avoid long-term dissatisfaction and frustration with international arbitration.

The second major finding was that legal differences are considered by some as the only differences in international arbitration today. Additionally, the investigation of the cultural understanding of university students and academic faculty members shows that there is not enough cultural education in these institutions.

This study has found, based on the experience of the interviewees, that generally the flow of international arbitration is one-way, from Africa, the Middle East and the Far East to the West. This creates contentment and job security for Western arbitrators. Frequent travel failed to significantly develop understanding of the invisible but important underlying cultural differences that exist in international arbitration.

The success of those international arbitrators that were interviewed in this study with cultural awareness emerged as reliable predictors of their cultural interest and willingness to actively learn. Arbitrator's cultural competence is an achievement that often comes through cultural understanding and training. Training seems to be a difficult task for some well-known international arbitrators.

**Table 9 Research question: Does Cultural issues impacts the outcome of the arbitration?**

<b>Procedural differences</b>	Authority of the parties to choose (men or women as an arbitrators) had been limited by some resinous law, bias against women.
<b>Impartiality and ethical differences</b>	Some arbitrators are under the strict control of their government and do not have power/authority to exercise impartiality and independence.
<b>Religious laws</b>	Religious laws are different from secular laws.
<b>Interference of substantive laws</b>	International arbitration enforceability in Iran, England &Wales and the USA is affected by the legislation and Courts.
<b>The Role of Women</b>	Women have different status in the world, reflected in the arbitration practice of those countries.
<b>Evidence</b>	Each country has its own system of production of evidence, formal or informal
<b>Expectation</b>	The tribunals often have expectation that parties fully understand written and unwritten foreign laws.

**The followings are examples of invisible issues that effects the outcome of international arbitration**

<b>Meaning of 'in time'</b>	'In time' has different meaning in different cultures effecting legal behaviour and production of documents
<b>Understanding production of evidence</b>	Some cultures do not have experience of keeping notes of events.
<b>Language effects</b>	Accents, wrong emphasis on parts of a word, wrong interpretation, flowery language verses direct answers, innuendos, hidden meanings,
<b>Behaviour difference</b>	Tone of voice, interruptions, passive/aggressive
<b>Ethical behaviour</b>	There is different perception about ethical behaviour
<b>Understanding impartiality</b>	Post-industrial countries have different understanding of impartiality to compare with people with tribal system

## **7 CHAPTER SEVEN CONCLUSION AND RECOMMENDATIONS**

### *Introduction*

The purpose of this chapter is to firstly draw conclusions from the discussion to provide answers to the research questions (please see 4.1.6 for the main research question and the nine sub-questions).

Furthermore, this chapter makes recommendations in order to enrich and enhance international arbitration through cultural awareness. Additionally, this chapter makes suggestions regarding future research in this field, including more in-depth studies based on this research.

The following are the main conclusions drawn from previous chapters

This study has demonstrated that international arbitrators are faced with unresolved cultural issues that effects the outcome of international arbitration.

- The review of the literature on the history of arbitration confirmed that arbitration has been practiced as a dispute resolution system since ancient times and has continued through history to the present day.
- The basic principles of arbitration are the parties' autonomy, arbitrators' impartiality and enforcement of the arbitration awards, which have survived the test of time and remain in place in modern international arbitration.
- In historical arbitration, the authority and the power of the selected arbitrator secured enforceability. From around the eighteenth century, with many fundamental changes, including demography as a result of the Industrial Revolution, arbitration needed to be formalised through legalisation. The key principles of historical arbitration have been transferred to a new formal arbitration system that confers the power of enforceability from the person to arbitration laws.
- Since around the eighteen century, arbitrators and lawyers have been engaged in harmonisation between different legal systems in international arbitration.

- Exploration of the literature and the empirical research suggested that some international arbitrators believe that the only differences of significance between nations are those of the legal systems. This shows a lack of awareness of issues of cultural differences among some international arbitrators.
- Overlooking the cultural issues in international arbitration contributes to some arbitrators being concerned almost exclusively with legal differences and technical details that are obvious and identifiable. By contrast, cultural differences are less tangible, often invisible, requiring arbitrator's insight. In this thesis this is illustrated using the "Iceberg theory" see chapter four figure 9.
- The unresolved cultural issues could leave a mark on the reputation and the success or failure of future international arbitration.
- Cultural competence is a unique selling point in the competitive world of international arbitration where other variables are equal.
- This research makes an original contribution to the advancement of international arbitration for the benefit of international parties as well as international arbitration stakeholders. This was achieved by reviewing the literature, comparing the legal procedures of the USA, England & Wales and Iran and interviewing highly experienced stakeholders in international arbitration.
- Understanding cultural issues and the associated language emerged as having significance equal to legal and technical skills, impacting the outcome on international arbitration.
- As a by-product of this research, the secondary findings demonstrated the relevance of cultural awareness of some of the interviewee to their success as arbitrators in international arbitration.
- This research shows evidence of fierce competition in international arbitration between nations to achieve the status of a centre of excellence in international arbitration as a result of the financial benefits and the prestige that is created by hosting international arbitration.



- In international arbitration there can be problems with understanding the tribunal's questions or the style of questions being asked.
- The international arbitration success partly depends on empathy towards cultural issues.
- The findings of this study suggest that disputing parties in arbitration have major difficulties understanding the cultural requirements of the tribunal, including language issues. As a result, the process of arbitration involves more than mere legal and technical issues. Social culture plays a major role in parties' maximum satisfaction. An implication of not paying attention to the parties' cultural issues is the possible erosion of the success of those international arbitrators.
- Arbitration is a very sophisticated mixture of legal, technical and human relationships. The results of this research indicate that arbitration is a private service giving the parties autonomy of selection of arbitrators for their tribunals. It requires the clients' maximum satisfaction from the tribunals. This is different from litigation, which is a public service under control of the courts.
- The study suggests that the effects are slow, long-term and invisible, and that the idea that arbitration will continue to exist as an alternative dispute resolution as it has for thousands of years. The results of this research support the idea that disputes are between people, while arguments are either legal or technical.

### **7.1 Limitations of this research**

The scope of this research was limited by constraints of time and volume based on the university's regulations. Making appointments with interviewee candidates was made difficult by their frequent international travel and their busy schedules.

Additionally, selection of Iran as a sample for cultural differences narrowed the choice of candidates for one-to-one deep discussion on the subject of cultural differences.

The difficulty in negotiating deep discussion with some arbitrators involved in cases with Iran was compounded by the difficult national and international political situation in Iran. Furthermore, because of the sensitive nature of Iran's political situation in the world at the time of this research, some of the discussions were too politically charged to be used in this research.

Comparison of reports of parties' experience with international arbitrators, was outside the scope of this research.

It is also unfortunate that many Iranian arbitrators did not want to voice their comments about the problems related to 1980s Iran-USA arbitration, nor did the European arbitrators working in The Hague.

The generalisation of these results is subject to certain limitations, e.g. the nationality of the arbitrators.

## **7.2 Contribution of the study**

The literature review shows that this is the first study to investigate in this way the effects of arbitrators' attitudes towards the parties' cultural issues. It is the first time that individual in-depth discussions with these prominent international arbitrators and trainers about their personal experience with parties' cultural issues has been used to explore social cultural issues in international arbitration.

A key strength of the present study was the generosity and willingness of the interviewees in sharing their personal experience of social cultural issues in international arbitration. The present study makes several noteworthy contributions to the successful promotion and development of international arbitration. It should prove to be particularly valuable to the existing body of arbitration literature, providing additional evidence with respect to the importance of underlying cultural issues, in international arbitration.

This research extends our knowledge of international arbitration and may serve as a basis for future study and practice of international arbitration. It also provides a framework for the exploration of cultural issues in international arbitration with several practical applications.

It points to international arbitration as an ancient practice based on relationships and a deeper understanding of the parties' issues outside their dispute.

These findings enhance our understanding of the human issues of international arbitration which lie beneath the surface. The findings of this thesis could be used to help develop an international business edge over competitors in international arbitration when all other variables are equal. The current findings add to a growing body of literature on international arbitration. Taken together, these findings suggest the importance of tribunal teams understanding the parties' underlying cultural issues in international arbitration.

The study confirms previous contributions with additional evidence suggesting that social cultural issues have effects on the outcome of international arbitration. The study has gone some way towards enhancing our understanding of human issues in international arbitration.

Other key strengths of this study are its long duration and requirement for deeper understanding of parties' issues, leading to their maximum satisfaction.

The empirical findings in this study provide a new understanding of parties' cultural issues in international arbitration. The study has confirmed the writing of Slate (2004). It suggests that the cultural competence of a tribunal team is what tips the balance of success in international arbitration.

The gap shown by the literature review involved research about examples of the impact of unresolved cultural and language issues in international arbitration. This gap was filled by this research and its confirmation of the impacts of some of the unresolved cultural and language issues as examples. There is a need for guidelines regarding cultural understanding and harmonisation, including language issues. This is the first study reporting an advantage of valuing cultural competence in arbitral duties, and the impacts of denying the impacts of cultural issues in international arbitration.

This work contributes to existing knowledge of underlying cultural issues by providing details of several examples of cultural issues experienced by arbitrators and international arbitration trainers. The analysis of collected data related to these issues undertaken here, has extended our knowledge of social cultural importance. The methods used for this research may be applied to other international arbitration elsewhere in the world. The importance of social cultural issues in international arbitration that the researcher has identified assists in our better understanding of the role of international arbitration tribunals.

### **7.3 Personal Reflection**

This research led to consideration of cultural competence in international arbitration, and in particular one aspect of cultural 'empathy', which is understood as a universal human interconnection.

I came to agree with the arbitrators and the parties' legal teams who subconsciously or consciously work in a state of 'anxiety' and tedium, both of which can be overwhelming and destructive. Arbitrators with cultural competence learn how to induce a state of reaching for interconnectivity of their human side to search deeper under what appears to be the tip of the 'iceberg'. Understanding others' difficulties is extremely important, as it is a defining aspect of what it means to be human.

Considering the arbitrators' cultural competence from a wider perspective validated my commitment to this research in a way that would have previously been difficult. It brought to my realisation that I and other people have the same fundamental needs for each other's empathy that connects us as humans.

The original contribution to knowledge in this research has been to assimilate this and combine this point of view into practical and professional practices, arriving at a new understanding of the state of contemplation on the importance of understanding that international arbitration disputes are between humans, not between laws and technical devices.

The impact of this cultural awareness necessitates understanding and empathy with cultural issues in international arbitration. For example, recognising the feeling of superiority of one party over another regarding legal training and technical advancement, as well as better understanding of the language of the tribunal.

This research has shown how the entire process of international arbitration is the phenomenon of human communication, visibly and invisibly, that requires cultural understanding and skills beyond legal and technical knowledge.

This process is crucial for establishing professional international arbitration based on human trust, empathy and connections as human beings. Cultural competence, therefore, is a human quality in international arbitration.

#### **7.4 Recommendations**

If the debate is to be moved forward, a better understanding of social cultural issues needs to be developed. More information on comparing the parties' cultural issues with arbitrators' understanding of cultural issues would help us to establish a greater degree of accuracy on this matter.

A reasonable approach to tackle cultural issues could be to promote examples of cultural competence at conferences and symposia.

Unless international arbitration institutes and legal companies adopt attitudes promoting the importance of parties' maximum satisfaction, socio cultural issues will not be resolved.

Continued efforts to enhance understanding of parties' and arbitrators' cultural issues might involve discussion between the two groups after the case is finalised as feedback.

A key policy priority should therefore be to plan for the long-term care of fundamental development of international arbitration that includes arbitrators' cultural awareness.

Evidence shows that cultural understanding involves empathy with parties' cultural background. This is by clarifying the necessary facts required in any arbitration tribunal, normalising the different cultural issues. This could create

trust which is a vital ingredient for a successful commercial relationship, creating stability and certainty. The international arbitrators should make sure at the pre-hearing that parties clearly understand the legal system used at the tribunal, use clear language without jargon or innuendos, etc.

This information can be used for better understanding between the international arbitrators and some of the parties' cultural issues. Taken together, these findings support strong recommendations for Ensuring appropriate systems, services and support for resolving parties' social cultural issues and should be a priority for better international arbitration tribunals.

It is not possible for an arbitrator to learn all languages and cultures that are part of international arbitration. However, the arbitrators' understanding of their own subtleties, culturally and linguistically, is helpful. The arbitrators can encourage the parties by admitting their own lack of understanding of the parties' responses. These are basic human interactions outside legal practice that can have an impact on the success of international arbitration.

Following the study and analysis of the impacts of cultural issues on the outcome of international arbitration, this research also makes the following recommendations for the advancement and improvement of the international arbitration:

- A) Creating a resource hub to be used by international arbitrators, parties and researchers, including relevant publications and studies. Contributions should be invited from multiple sources from different parts of the world, genders and languages.
- B) The hub should include a list of contact details of culturally competent consultants specialising in cultures and languages.
- C) Designing a questionnaire to be answered by international arbitrators, parties and their representatives in their own language to be used as anonymous feedback and guaranteeing confidentiality, to be added to the hub.

- D) Training programmes on interesting topics related to cultural competence that inspire the sophisticated minds of professionals and arbitrators.
- E) Discussion forums for cross-cultural arbitrators to share their cultural experiences and issues.
- F) A list of international arbitrators that would take new arbitrators into their tribunals as observers.
- G) Available lists of Courts and organisations that offer voluntary positions for practicing arbitrators, including a feedback questionnaire for addition to the hub.
- H) Publication of research funding sources for cultural competence for international arbitral research.
- I) The role and the contribution of women needs to be encouraged and appreciated.

### **7.5 Further research**

This qualitative research provides some understanding of the cultural issues. Therefore, the issues identified could form the basis of further qualitative study of cultural competence, in the future.

A recommendation for further research involves understanding the underlying cultural issues. Therefore, future research should investigate how some international arbitrators become better trusted by the parties from developing countries.

This research has highlighted how cultural awareness affects the success of some international arbitration business. Therefore, the principal theoretical implication of this study is that basic human needs for emotional and cultural understanding are important for the success of international arbitration. It is proposed that further research look at different current models of successful international arbitration, such as Singapore, in order to compare their facilities for different cultures and languages.

Future research should explore international arbitration parties' reasons for choosing a particular arbitrator or venue. This should be compared with the arbitrator's opinion in this research to gain insight into his or her understanding of the parties' cultural issues in international arbitration.

Notwithstanding the limitations, the study suggests that experienced international arbitrators and trainers are valuable resources for further research in this subject. Further research will be needed to assess the impacts of active learning of international arbitrators about cultural issues through their observations and reports.

More research is needed to collect more data from international arbitrators. What is now needed is a cross-national study involving the parties in international arbitration.

More broadly, research is also needed to determine the extent to which cultural issues affect the outcome of international arbitration.

More research is also required to determine the efficacy of socio cultural awareness in international arbitration.

This research has raised many questions in need of further investigation. It would be interesting to assess the effects of social culture on the selection of arbitrators and to compare the experiences of individual arbitrators, including women, within the same three-member tribunal with regard to social cultural issues.

Additionally, it is suggested that further research be undertaken in the following areas:

1. Language understanding between parties' and a tribunal.
2. Understanding the extent and impact of legal differences between the parties and tribunal members.
3. Relationship between understanding of cultural and legal differences.
4. Comparing the understanding between parties and tribunals about impartiality, honesty and independence of arbitrators.



5. A further study could assess the long-term effects of cultural competence of international arbitrators. Further work needs to be done to clarify whether established and successful international arbitrators are willing to actively learn about management and normalisation of cultural differences.
6. Further research into the role and participation of women in international arbitration.
7. Examine and compare the cultural diversity of arbitrators and judges.
8. Examine and compare the cultural diversity of arbitration and litigation.
9. Further research on information and guidance for arbitrators on cultural diversity.

Further studies also need to be carried out to validate the cultural understanding of international arbitrators.

Further experimental investigations are needed to estimate how widely the social cultural difference affects the reputation of international arbitrators.

Further studies regarding the role of guidelines for normalisation of cultural differences would be worthwhile.

Further investigation and experimentation regarding parties' experience of social cultural issues in international arbitration is strongly recommended.

Future research should assess the impact of the lack of tribunals' understanding of cultural issues.

A future study investigating parties' understanding of their social cultural differences with the tribunals would be very interesting.

Further work could also involve skilled interviewers accessing deeper feelings of interviewees about their experience of cultural differences in international arbitration. Future research should therefore concentrate on the investigation of emotional effects of parties about their cultural issues in international arbitration.

Another possible area of future research would be to investigate why some arbitrators are competent in social cultural issues and other international arbitrators are not.

The study should be repeated using a whole team of parties and arbitrators for interview, either as a group or individuals. A natural progression of this work is to analyse the need of international arbitration for further development in the understanding of cultural issues.

Considerably more work will need to be done to determine the normalisation of social cultural issues in international arbitration cases. The precise mechanism of value creation by the social competence of international arbitrators remains to be elucidated. This would be a fruitful area for further work. A large randomised selection of parties and arbitrators as interviewees could provide more definitive evidence.

A greater focus on parties' maximum satisfaction of international arbitration could produce interesting findings that account for more effective international arbitration and better reputations of arbitration centres.

The issue of the selection of international arbitrators for arbitration cases is an intriguing one which could be usefully explored in further research.

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