TECHNOLOGY TRANSFERRING CONTRACTS IN EGYPT COMPARED TO KINGDOM OF SAUDI ARABIA EXPERIENCE

aMohammad Saud Khasawneh, bWalid Ali Mohammad Ali, cAhmed Hamza Mansour

ABSTRACT

Purpose: This study deals with the conflict between the major industrialized and developing countries regarding transfer of technology and the concept of technology transfer contract for suppliers. The research highlights how this concept differs between the supplier countries and those importing the technology. The research shows the legal nature of technology transfer contracts and the extent to which developing countries contribute to bridging the gap between the countries supplying and importing technology and whether it is used as a tool by industrialized countries to deepen the gap of economic and political dependence and impose their influence on the countries importing this technology. It sheds light on the experience of the Arab Republic of Egypt compared to the Kingdom of Saudi Arabia.

Method: This research relies on the descriptive analytical approach in addition to the comparative method to obtain the best results.

Results: This research concluded several results; the most important of them is that the technology transfer contract in industrialized countries affects the political and economic dependence of importing countries, especially developing countries, including Egypt and Saudi Arabia. It may also lead to a doubling of public debt, which reinforced by the absence of domestic and international legislation regulating the provisions of this contract.

Conclusion: Based on the findings of the research, one of the most important recommendations contained therein is to reach a consensual formulation of these contracts at the international level to ensure the rights of parties and prevent the encroachment of one on another.

Keywords: legal nature, technology transfer, developing countries, industrialized countries, economic dependence.
CONTRATOS DE TRANSFERÊNCIA DE TECNOLOGIA NO EGITO COMPARADOS COM A EXPERIÊNCIA DO REINO DA ARÁBIA SAUDITA

RESUMO

Objetivo: Este estudio aborda el conflicto entre los principales países industrializados y en desarrollo en materia de transferencia de tecnología y el concepto de contrato de transferencia de tecnología para proveedores. La investigación pone de relieve las diferencias que presenta este concepto entre los países proveedores y los importadores de la tecnología. La investigación muestra la naturaleza jurídica de los contratos de transferencia de tecnología y la medida en que los países en desarrollo contribuyen a reducir la brecha entre los países que suministran e importan tecnología y si los países industrializados la utilizan como instrumento para profundizar la brecha de dependencia económica y política e imponer su influencia a los países que importan esta tecnología. Se pone de relieve la experiencia de la República Árabe de Egipto en comparación con el Reino de Arabia Saudita.

Método: Esta investigación se basa en el enfoque analítico descriptivo además del método comparativo para obtener los mejores resultados.

Resultados: Esta pesquisa concluiu vários resultados; o mais importante deles é que o contrato de transferência de tecnologia nos países industrializados afeta a dependência política e económica dos países importadores, especialmente os países em desenvolvimento, incluindo o Egito e a Arábia Saudita. Pode igualmente conduzir a uma duplicação da dívida pública, reforçada pela ausência de legislação nacional e internacional que regulamente as disposições deste contrato.

Conclusão: Com base nos resultados da pesquisa, uma das recomendações mais importantes contidas no mesmo é chegar a uma formulación consensual desses contratos a nível internacional para garantir os direitos das partes e evitar a ingerência de uma sobre a outra.

Palavras-chave: natureza jurídica, transferência de tecnologia, países em desenvolvimento, países industrializados, dependência económica.

LA TRANSFERENCIA DE TECNOLOGÍA EN EGIPTO COMPARADA CON LA EXPERIENCIA DEL REINO DE ARABIA SAUDITA

RESUMEN

Objeto: El presente estudio aborda el conflicto entre los principales países industrializados y en desarrollo en materia de transferencia de tecnología y el concepto de contrato de transferencia de tecnología para proveedores. La investigación pone de relieve las diferencias que presenta este concepto entre los países proveedores y los importadores de la tecnología. La investigación muestra la naturaleza jurídica de los contratos de transferencia de tecnología y la medida en que los países en desarrollo contribuyen a reducir la brecha entre los países que suministran e importan tecnología y si los países industrializados la utilizan como instrumento para profundizar la brecha de dependencia económica y política e imponer su influencia a los países que importan esta tecnología. Se pone de relieve la experiencia de la República Árabe de Egipto en comparación con el Reino de Arabia Saudita.

Método: Esta investigación se basa en el enfoque analítico descriptivo además del método comparativo para obtener los mejores resultados.
Resultados: Esta investigación concluyó varios resultados; el más importante de ellos es que el contrato de transferencia de tecnología en los países industrializados afecta la dependencia política y económica de los países importadores, especialmente los países en desarrollo, incluidos Egipto y Arabia Saudita. También puede conducir a una duplicación de la deuda pública, que se ve reforzada por la ausencia de legislación nacional e internacional que regule las disposiciones de este contrato.

Conclusión: Sobre la base de los resultados de la investigación, una de las recomendaciones más importantes que figuran en ella es llegar a una formulación consensual de estos contratos a nivel internacional para garantizar los derechos de las partes y evitar la usurpación de unos contra otros.

Palabras clave: naturaleza jurídica, transferencia de tecnología, países en desarrollo, países industrializados, dependencia económica.

1 INTRODUCTION

Many developing countries seek to import technology from major industrialized countries in the hope of absorbing and developing this technology to improve their technology capabilities, and to reserve a place for themselves in the international competition market. On the other hand, developed countries transfer technology to developing countries through unequal contracts whereby the stronger party is a technology transferor to control the weaker party, who is receiving technology, which raises the concept of "technological dependence". This concept has many dimensions that are difficult to define. Thus, there is a need to present the concepts that reflect what this term includes. Technological dependence is the import of technology and its tools from developed countries instead of producing them and working to develop them locally. In other words, technology does not represent productive assets in developing countries, and the concept of dependence is not limited to the financing process only but also includes design dependence, creation dependence, monitoring dependence, and maintenance dependence. The concept of dependence theory is the growth and progress of industrialized countries, which are based on the underdevelopment by developing countries with the support of industrialized countries for poverty situation and political instability of developing countries. Developed countries claim that developing countries have not succeeded in catching up with global technology and integrating into the macroeconomic system. On the other hand, it is an inevitable result of the spread of corruption and ignorance among people in developing countries. The undisputed fact is that developed countries are always working to deepen technological dependence due to their need and greed for developing countries' resources, to increase their growth, meanwhile developing countries continue to strive to obtain technology and catch up with
the desired economic growth. Thus, the method for developed countries to achieve this goal is to deepen the restrictions of dependence and not to enable developing countries to control their economic growth and industrial progress, so they always remain in need of developed countries.

The gap between developed and developing countries has helped to deepen technological dependence, as developing countries represent 75% of the world's population, while developed countries represent 25% of the world's population only. There is an inverse relationship between this percentage and the size of income in these countries, as the size of income in developing countries represents 20% of global income, while the size of income in developed countries represents 80% of global size income. It must be noted that the term "technology transfer" from a developing country's perspective is intended to strengthen and support the economy so the transfer is not only for technology but also includes skills, knowledge, production methods, management, maintenance, and development. This paves the way for developing countries to discover modified technology for new products, processes, applications, and services, which expresses the real meaning of know-how transfer or so-called technology.

One of the concepts related to technology transfer is "local technologies development", this path is important as a technology transfer path, besides reducing the gap and dependence on technology to achieve sustainable development in developing countries and finding solutions stemming from the local environment. Therefore, there was an urgent need to create a legislative environment that would ensure the real transfer of technology and would not eventually turn into a technological dependence.

The Arab Republic of Egypt and the Kingdom of Saudi Arabia are some of the most developing countries importing technology. Accordingly, there is a need to determine the legal nature of the technology transfer contract in order to settle the dispute between technology suppliers and importers in accordance with both parties' interests, especially with the absence of international legislation specifying this nature. Consequently, there is a need to identify the obstacles that prevent the development of international legislation regulating the transfer of technology to ensure the rights of both parties, without encroaching on the interest of one party over the other party, in addition to finding ways to remove these obstacles.

Based on the above, this research deals with several issues including the legal nature of technology transfer contracts; the legal obstacles that prevent the development
of legislation regulating transfer of technology; methods to remove barriers to technology transfer legislation; and the impact of technology transfer contracts on the political and economic situation in the Arab Republic of Egypt compared to the Kingdom of Saudi Arabia. In addition, this research aim to achieve the several objectives including determine the legal nature of the technology transfer contract; Identify the most important legal obstacles that prevent the development of legislation regulating the transfer of technology; describe the most important legal means necessary to remove obstacles that can develop legislation regarding the transfer of technology, and Indicating the extent of existing legal regulation of technology transfer contracts affects the political and economic situation in the Arab Republic of Egypt compared to the Kingdom of Saudi Arabia.

The importance of this research comes from the fact that is one of the first research dealing with the mechanisms of technology transfer, and the obstacles that prevent a real transfer of technology between technology supplier and importer. This research discussed impartially away from giving priority to the interest of one party at the expense of another party to reach a real consensus of interests between parties, which results in the real transfer of technology away from any political dependence and encroachment from one party to another, this what international community aspires in field of technology transfer. The research also discussed the obstacles that prevent the real transfer or localization of technology away from political niceties, which helps to end the dependence on technology for importing countries to countries supplying them or at least reduce this dependence.

2 THEORITICAL FRAMWORK
2.1 LEGAL NATURE OF TECHNOLOGY TRANSFER CONTRACT

The Egyptian legislator defined a technology transfer contract in Article (73) as “the agreement between two parties, the supplier, who is obligated to transfer technical information to another party, which is the importer, to be used in a special technical method and produce a specific commodity, or develop it, install or operate machines or devices, or provide services.”

In the same context, jurisprudence defined it as “a legal construction that indicates the direction of will the parties on undertaking of the party that owns or possesses a certain technology to transfer it to the other party in return of compensation”7. The International
Code of Conduct defines a technology transfer contract as “the transfer of methodological knowledge for the manufacture of a product, or application of a method, or the provision of a service, not including qualities that deal only with the sale or lease of goods”\(^8\).

Based on the previous definitions, a technology transfer contract (TT) is defined as “the transfer or dissemination of know-how and retention of technology from a different nature, such as applicable knowledge (intangible assets) and/or the result of its implementation, and the generation of the product (tangible assets) and/or an infinite number of applicable elements between two or more persons, industries, institutions and/or entities”\(^9\).

As a result of the above definitions presented, this research defines Technology Transfer (TT) as the process of dissemination and retention of technologies of different natures, such as an applicable knowledge (Intangible asset) and/or a result of its implementation and generating the product (tangible assets) and/or other infinity of applicable elements between two or more involved persons and/or industries And/or institutions and/or entity\(^10\).

### 2.1.1 Mechanism of Technology Transfer

The Saudi regulator did not enact a technology transfer contract in a special regulation\(^11\), but the Saudi Local Content and Government Procurement Authority developed a model to guide this matter, as same does by the Ministry of National Guard for Health Affairs\(^12\). Therefore, there is no explicit text that defines the meaning of technology transfer in Saudi regulations. However, jurisprudence and comparative law can be used to develop a definition of a technology transfer contract. One of the most prominent of these definitions is stated in Article 73 of the Egyptian Trade Law No. 17 of 1999, which defines a technology transfer contract as “the agreement between two parties, the supplier, who is obligated to transfer technical information to other parties, which is the importer, to be used in a special technical method and produce a specific commodity, or develop it, install or operate machines or devices, or provide services”\(^13\).

The technology transfer contract can also be defined as: “An agreement whereby the technology supplier undertakes to transfer technical information to the technology importer in return for compensation, to use it technically in producing or developing a particular goods, install or operate machines or devices, or provide services”\(^14\).
One of the usual methods in the field of technology transfer between developed and developing countries is the so-called key-in-hand contract. This contract is intended to extend the technology transfer contract to include the sale of an integrated industrial group, according to which the supplier is committed to not only handing over the factory with technical assistance but also includes technical training for local workers. This contract is widespread between developed and developing countries or those countries that are in the process of growth\textsuperscript{15}. However, the reality of international practice in the field of technology transfer indicates the exact opposite, as the international community in the field of technology transfer does not witness cooperation in this regard, and there are conflicts of interest between countries transferring technology and others importing it, which made technology transfer contracts an area for contractual and legal abuses.

Conflict of interest and other negative reasons plus ambiguity in most aspects of technology transfer contracts, especially matters regarding technology transfer methods and settling disputes resulting from them, constitute an essential aspect that must be highlighted\textsuperscript{16}, as the mechanisms used in technology transfer do not take one form, and its vary from contractual to non-contractual methods, such as international agreements for technology transfer, and even these agreements, including those between countries and individuals. Even the contracts adopted for technology transfers also differ in form and content from other international contracts. Hence, it can be noted that these mechanisms are variable, ambiguous, and different in many aspects, including their legal nature and their role in technology transfers\textsuperscript{17}.

The development of technology transfer concepts reflects the unique nature of this type of international transaction, with traditional mechanisms in the field of international contracting that are not suitable, as a result of the expansion of the circle of obligations in the process of technology transfer, as it is not limited to only transfer or selling information and technical equipment, but goes beyond and include other services such as transport, construction, production and in some cases ensuring this marketing. On the other hand, the concept of technology transfer is focused on the special nature of material transfer that is mixed in nature between being a material commodity and technical services\textsuperscript{18}. Also, the existence of permanent conflicts between the technology supplier and the importer is represented by the supplier's desire to retain technological superiority to ensure that the technology importer is always dependent on him, and the importer's desire to be free of the technology supplier's cloak and dependency\textsuperscript{19}.
Determining the legal nature of technology transfer mechanisms is not easy, due to the complexity of relations and similarity with international agreements, as well as the different perspectives in international jurisprudence regarding this nature went into two trends\textsuperscript{20}. The first trend believes that technology transfer contracts are international agreements, and the definition of international agreements does not differ from international contracts for the transfer of technology. International agreements are defined as contracts concluded by States to regulate an international legal relationship and determine its rules. Thus, both of these contracts are considered an international agreement, due to the reason that it takes place between two countries or more, and this perspective is supported by the arbitral award issued in the Texaco case, where the arbitrator considered that an international contract is an international agreement. As for the second trend, it supported the perspective that technology transfer contracts are not international agreements, but an advanced form of internal contracts known in the legislation of countries necessitated by the urgent need for technological development.

2.2 TECHNOLOGY TRANSFER CONTRACTS AS A TOOL OF POLITICAL DEPENDENCE

The economy is known to be ahead of the law, and law is issued to keep pace with economy, thus, economic relations between international trade operators develop faster than laws. In this sense, laws are issued in response to the legislature in order to solve problems facing economic relations related to international trade for the emergence of new economic relations\textsuperscript{21}. There is a direct temporal relationship in law issuance. First, new economic relations emerge that raise a problem related to international trade, and then the legislative authority responds by issuing a new law to solve this problem that threatens economic interest. However, this temporal equation is not constant. The situation may be reversed temporally while the law is issued in a chronological precedent for the economy and development of its relations, this in response to a political novelty without any economic feasibility, and thus the impact of politics on the economy extends to laws\textsuperscript{24}.

One of the most prominent examples is the General Lockdown Law in France, during the COVID-19 pandemic in 2020 and 2021. The obvious need for this law seems to be to confront the pandemic, but – in fact - this law came to respond to the demonstrations of yellow vests against the French government policies, and its expansion
in French cities. This is supported by presence of the European countries such as Sweden, which never issued any closure law during 2020 and 2021. On the other hand, the closure laws in Europe were withdrawn after the Russian-Ukrainian war started in the second month of 2022 due to the fear of a war outbreak. Accordingly, the general closure in France was a political reflection of interest for the ruling class in indirectly preventing demonstrations because a direct ban contradicts the constitutional freedom to demonstrate. It can be concluded that the law can have negative effects leading to the paralysis of the economy in issuing state and constituting burdens on the state budget, which applies to technology transfer contracts that are used as a tool for political promotion in the interest of the ruling political class regardless of economic feasibility of this law. Based on the economic and political importance of technology transfer contracts, it is usually issued in the form of law ratifying the contract and obliging the technology-importing country to pay the contract fees to the technology supplier.

Anyone who contemplates this matter finds that there are two ways to issue laws related to technology transfer, the first is the law enacted after the economic problem, which means issuing the law to solve an economic problem, and the second is pre-issuance of law for economic problem, so the economic problem considers as a reflection of this law. This will be clarified by explaining the political roots of the technology transfer concept, and the legal consequences of this political interference in technology transfer contracts, in this case, the law is often issued as a result of the state's responsibility for its actions in compensating the second party economically, as a result of the intervention of the political authority in issuance of laws instead of legislative authority.

2.3 THE HISTORY OF POLITICAL DEPENDENCE IN TECHNOLOGY TRANSFER CONTRACTS

Technology transfer contracts began to emerge in the 1950s after foreign companies refrained from investing in countries with a socialist approach for fear of nationalization risk; for example, Russian President Putin had the intention of nationalizing the profits of private companies to carry out his electoral promises in 2018. Since there is disagreement about the legal nature of technology transfer contracts according to characteristics that distinguish this contract from other traditional contracts, this differentiation has led to a difference in legal rules applicable to this contract. On the other hand, there is disagreement between countries supplying technology and countries
importing it regarding the definition of this contract. Each country defines this contract in a way that serves its economic and political interests. Technology-supplying countries often resort to a definition that preserves and deepens political and economic dependence while importing countries seek to get rid of this dependence\textsuperscript{26}. This difference ultimately led to the failure of international regulation regarding technology transfer.

2.3.1 First, the Role of Nationalization in the Emergence of Technology Transfer Contracts in Developing Countries

Within 1952 and 1970, the Egyptian government pursued a socialist economic policy. Under former President Abdel Nasser, the means of production, foreign capital, and foreign investments were nationalized to free trade from modern methods of colonization. However, this approach was changed by the Sadat President, who adopted a different approach in the 1970s, President Anwar Sadat followed a mixed economic method based on state intervention in all economic activities, while allowing market freedom in Egypt. This led to the emergence of technology transfer contracts intensively during his reign, but this method resulted in problems for the Egyptian economy, and the growth rates in that period, given that Egyptian public sector companies were the backbone of the Egyptian economy at that time in internal and international trade in Egypt.

As a result of Egypt's mixed economic approach, Egypt was unable to repay foreign debts, especially between 1987 and 1991. The Egyptian external debt reached 44.7 billion US dollars\textsuperscript{27}, due to losses in Egyptian public companies, estimated at 500 million Egyptian pounds. In 1993 and 1994, these losses increased to 2.5 billion Egyptian pounds, which had negative effects on economic growth and development. At the beginning of the 1990s, the Egyptian government was forced to follow a privatization approach to reform the economy and develop the country, through the issuance of the Egyptian Arab and Foreign Capital Investment Law, which included 314 public companies, except the General Authority of Suez Canal, aviation, military industries, oil sector, and Egyptian gas. In the period of privatization in Egypt - which lasted between 1993 and 2003 – resulted in an urgent need to issue a law regulating the transfer of technology between the Egyptian government and foreign companies due to the huge number of disputes related to the transfer of technology to Egypt before international
arbitration courts. Thus, Law No. 17 of 1999 emerged which included a section on technology transfer contracts.

It should be noted that the economic transformations that resulted due to amendments of investment laws during this period are only a reflection of political will and confirm the idea of economic and legal dependence on the political will of the regime.

Based on the previous discussion, it is clear that the nationalization system failed to build a well-founded economy, as foreign companies refrained from direct investment in Egypt and began to replace it with another idea, which is the division and fragmentation of investment by dismantling investment into a series of services, each corresponds to a contractual process because the technology supplier prefers to invest technology itself on importer's land under the pretext of productivity. This is the exact situation in direct investment, with the result that there is no real technology transfer. This is due to the difference in the concept of the contracting subject (technology transfer) from the point of view of both the supplier and the importer, as each of them sees this according to the political and economic approach prevailing in his country.

### 2.3.2 Second, Legal Nature of Technology Transfer Differs According to the Political Approach of the State

Some scholars define technology as “a complex set of scientific knowledge, machines, and tools, as well as effective systematic control over given production unit, as well as the machines that embody it.” This definition includes the set of technical knowledge and methods as well as experience or skill (Know-how). This definition differs in understanding and interpretation according to the point of view of each party in a technology contract, where the technology supplier believes that the subject of the contract is a moral property within the framework of a commercial deal followed by a number of cash and in-kind flows, where it can provide many services related to this moral property for technology importer, which benefits him materially and more commercial expenses as maximizes his profits from technology transfer process and enhances the technological dependence idea, while the technology importer, who is often from developing countries, believes that the contracting subject is the participation of technology in achieving development and growth of the national economy within the technology-importing country so that he can provide the state with real localization of technology and contribute to the advancement of the economy.
2.3.3 Technology as a Moral Money

French jurisprudence and jurisprudence believe that the concept of money is not limited to material money; rather, it extends to moral money, so that the rare and useful thing is considered money by law, and thus becomes legally acceptable to be the object of contract. Based on the adaptation of moral things as money, the concept of ownership expands to include the acquisition of the right to invest in moral things. The European trend is consistent with French jurisprudence and judiciary in adapting intellectual property rights as money that gives the holder an exclusive right to invest and protect it within law provisions. Accordingly, the French jurisprudence and judiciary gave the idea of possession of moral property and applied the principle of possession in the movable title of the holder, and defined legal possession as the appearance that investment of moral money can create publicly or with knowledge of non-patented technical information, this protection also includes confidential technical and commercial information.

The recognition of industrial and literary property rights as a property right and the possibility of giving it the status of money dates back to an important political era, the era of the French Revolution in 1789. Legal possession of moral money (technology) gives the importer in the technology transfer contract only the right to use technology, while the supplier - the owner of technology - remains able to use and invest in technology, so he can transfer the technology more than once, which maximizes his profits despite the transfer of technology to importer. In return, the party importing technology can give the right to use the technology to others. Therefore, it is customary in technology transfer contracts to set legal restrictions on the use of technology, such as preventing transferring it to others or preventing using it for purposes other than those specified in the contract, especially military purposes.

All this is due to political dependence on these contracts; politics plays a role in the conclusion of these contracts and the mutual obligations they contain. One of the most prominent restrictions included in technology transfer contracts is the requirement for a supplier from his country to obtain prior administrative approval before starting negotiations to conclude the contract about technology in general, and dual-use technology for civil and military use in particular.

The technology supplier always invokes these restrictions under the pretext of preserving the economic value of confidential information, as its publication and
availability to the public make it worthless to him. No one will pay for technical and commercial information that has occurred in the public domain and has become freely available for the public, while technology importer seeks to obtain the right to use technology in the production process without any restrictions and then technological mastery, so that the technology is absorbed into the arms and minds of national expertise, and to make improvements to transferred technology; or to reach the stage of technological mastery.

It should be noted that the conflict of interests between technology suppliers and importers has led to disagreement in the nature of technology. The political and economic interest of suppliers is to consider technology as moral property, not a means for the development of developing countries. Thus, it has the right to impose restrictions on the right to use technology, but this right to impose restrictions on technology use becomes ineffective if considered as a mechanism of economic development for the importer. Therefore, it is taken advantage of that the process of technological mastery is always subject to political compatibility between the State of the supplier and importer. Thus, the dealers in the field of technology transfer note that there is a great difference between technology transfer contracts in Eastern European countries and Arab countries in the subject of contracts.

2.3.4 Technology and Economic Growth

When contracting for a technological transfer, it must be taken into account that technology is one of the mechanisms for economic growth, so the technology-importing country must select the technology that achieves economic growth for it and what is commensurate with the nature of its economic conditions. For example, countries with abundant labor do not import technology and rely on layoffs, which in turn will ultimately lead to the creation of some kind of unemployment.

The goal of technology transfer is to bridge the technology gap between technology supplier and importer, so the reason for this gap must be known before choosing the technology to be transferred, as inappropriate technology leads to technological duplication in production sectors and can lead to increased unemployment rates in the technology-importing country. In this regard, Egyptian jurists have tried to set standards that can be considered to determine whether technology is suitable for the national economy or not. These standards include the following:
There is no need for high-production technology, as markets in developing countries are low and purchasing power is low, which results in the inability to dispose of products resulting from technology in the importing country, which makes there a surplus of untapped production.

Choosing technology that relies on labor-intensive use, as industrialized countries have a labor problem, so they try to compensate for this by using technology that relies on huge capital and reduces dependence on labor while developing countries have an abundance of labor and therefore it is appropriate for them to choose technology that relies on labor-intensive use.

Provide a technical and administrative device capable of absorbing the technology that is imported, since often the expertise in a technology-importing country is not as efficient in absorbing the technology transferred.

Choosing the technology that fits the basic needs of the technology-importing country.

The previous standards show that they deepen the idea of radical differences at the location of technology transfer contracts between technology suppliers and importers, as these standards confirm that technology is a mechanism of development from the point of view of developing countries. Because of this difference between technology suppliers and importers in their views on the concept of technology, the UN Economic Conference tried to find a settlement that would meet the economic interests of the parties in the contract, but political disagreement between the member states of the conference failed in these efforts.

3 METHODOLOGY

This research relies on the descriptive analytical approach, which is an analysis method based on gathering sufficient information about a specific topic or phenomenon during specific periods. This method also used when studying a current situation or phenomenon in terms of its shape, characteristics, relationships, and factors that affect it. This method is not limited to describing a phenomenon only but goes beyond that to explore the facts and their effects and interpret the aspects related to them and the laws that regulate them objectively. Therefore, the aim of adopting this approach is to explore and accurately describe the facts, and then determine their characteristics adequately to detect defects and find appropriate solutions for them. In addition, the comparative
approach used in this research to reach best experiences and practices enhances the results and reflects on the realism of scientific contribution.

4 RESULTS AND DISCUSSION

4.1 THE FAILURE OF THE INTERNATIONAL RATIONING PROJECT FOR TECHNOLOGY TRANSFER DUE TO POLITICAL DISAGREEMENT

Due to the difference in technology concept between supplier and importer, and the difference in technology transfer concept between developing countries – technology importers – in each other, some countries tend to believe that the technology transfer is the best solution to achieve economic development and growth, while others believe that technology transfer contracts are insufficient to achieve this desired goal, but they are mechanisms to deepen economic dependence and technology between industrialized countries exporting technology and importing developing countries, as the restrictive conditions included by industrialized countries transferring technology in the contract make them monopolized by supplier without a real transfer of technology to importing country.

Because of the difference in the technology transfer concept between technology-supplying and technology-importing countries and developing countries in each other, led to the failure of the international rationing project for technology transfer contracts held under the United Nations umbrella in 1979, which aimed at the entitlement of developing countries to obtain technology in exchange for paying a fair price to the technology supplier, and setting fair standards that achieve technological empowerment of technology-importing countries and adapting them to the needs of local market. This project was an attempt to find a settlement between countries participating in the conference, which, according to their political approach, clustered into three groups, each of which has conflicting interests with each other, as the developing countries group - the former colonies - clustered in Group of 77 (a). The capitalist industrialized countries were grouped in group (B), while the socialist countries were grouped in group (D)36.

The difference in interests had an impact on the failure to reach binding international legalization between these countries, as each party had its agenda that served its economic and political interests which contradicted the other party’s agenda, and had a great recommendation in conference failure, as well as the refusal to develop general and abstract rules that are binding on all parties. On the other hand, the conference failed
to find a way to resolve disputes arising from technology transfer and determine the applicable law to these disputes. Each of the aforementioned groups has a project that contradicts the project of other groups. The majority of industrialized countries tend to resolve these disputes through international arbitration while developing countries tend to apply their internal laws to regulate this contract. They think that international commercial arbitration is a colonial tool to internationalize the contract and impose international responsibility on countries in the event of their loss before arbitral tribunals. Developing countries believe that the national law is considered as first fence of protection for any country, so they insisted that their national courts have jurisdiction, and their national law governs these contracts, which also led to the conference's failure.

The first fence of protection for any state is applying their national law for pending disputes, but the submission of a dispute to international commercial arbitration from a developing countries' point of view is only a mechanism of doubt and suspicion for several reasons, for example, the recognition of arbitral award canceled from the issuance country, and the legal basis for this recognition under international jurisprudence is led by two theories:

The first theory is French, which advocates the independence of international commercial arbitration, from any national or non-national legal system. In other words, once the international arbitral award is issued, it belongs to an independent legal system, and the matter becomes merely a confession by a holding judge or non-recognition. The international arbitrator is like a foreign judge to the national judge who is required to put the executive wording.

The second theory is American, which establishes recognition of an annulled award in the issuance country, based on Article V (of the 1958 New York Convention) for the recognition and enforcement of foreign arbitral awards has an optional character.

Thus, the jurisprudential disagreement between the two theories is evident, as French jurisprudence considers this article mandatory, while the American interpretation of Article V of the New York Convention stipulates that the holding judge can refuse to recognize annulled arbitral award in the issuance country, which has had a great impact on the findings based on the difference in interpretation, while French interpretation stipulates that the national judge must cancel the annulled arbitral award in issuance country unless the national law is more preferable to arbitration, as judges can recognize the annulled arbitral award in the issuance country under Article VII of 1958 New York
Convention. This is according to Article 1520 of the French Code of Civil Procedure, which does not stipulate that the annulment of an arbitral award in the issuance country is a reason for non-recognition or non-implementation of the arbitral award. French law becomes the most preferable for the implementation of foreign arbitral awards, and therefore, French law is applied according to the conflict-of-laws rule stipulated in Article VII of the 1958 New York Convention, while the American interpretation ends with a different result, which is that Article V of the New York Convention is not binding for national judge by the annulled arbitral award. This shows that the result is the same, which is the possibility of recognizing an annulled arbitral award in the issuance country, and this happened for Egypt in the Al-Ahram Plateau case of 1974, where the annulled arbitral award in Egypt was given the form of enforcement in United States of America and France. Consequently, Egypt was obliged to pay huge sums and compensation to USA. In considering all the above, it can be noted that all of this is due to the political role of these provisions’ aspects. After President Sadat withdrew the approval of the Al-Ahram Plateau project, these interpretations of the New York Convention were obliged Egypt to pay these compensations. Without doubt and suspicion in the political approach of both the supplier and importer of technology, this would not have been reflected at the legal level and resulted in the emergence of the defense laws in developing countries versus industrialized countries and their technological and legal control over technology transfer contract. For example, Argentine Law No. 21617 dated August 12, 1977, excludes all restrictive conditions for using technology right without considering the fact of technological acquisition importance for importers and their technological independence on suppliers.

4.2 POLITICAL DEPENDENCE ON TECHNOLOGY TRANSFER CONTRACTS IN EGYPT COMPARED TO SAUDI EXPERIENCE

Because of the differences in political ideology among countries regarding technology transfer contracts, this is reflected in internal legislation in all countries, including the Arab Republic of Egypt and the Kingdom of Saudi Arabia, which had also undesirable effects on the national economy. It is not shameful for each system to promote a legal situation that serves its political interests, by inviting the legislator to enact laws that meet with these interests and struggle for the formulation of a fair and appropriate legal text to solve this problem. The emergence of defense laws in developing
countries is considered as healthy intervention, but the problem arises once legislation authority resorts to issuing laws that meet with the country's interests regarding political propaganda for people. Thus, the consequences are dire economic disasters, as interference in legislators' and lawyers' work, as well as the pressure on them to ratify technology transfer contracts, do not give any real value to the economy; rather, the state incurs economic loss and decline in growth.

4.2.1 Technology Transfer Contracts in Egypt

The problem raised in Egypt in technology transfer contracts once Egypt adopted defensive laws against the political interests of technology-exporting countries, in imposing their control on developing countries. This was through the internationalization of contracts and international commercial arbitration, which caused problems such as the contradiction of laws and jurisdiction as a legal, political, and economic problems in this field42. Developing countries consider international commercial arbitration as an arbitrary condition in technology transfer contracts for the industrialized countries' benefit. One of the most prominent examples is losses incurred by the Arab Republic of Egypt, estimated at 22 billion US dollars in thirteen cases at international commercial arbitration disputes. In this regard, it should be noted that since 2011, the Arab Republic of Egypt has entered 26 international commercial arbitration disputes, while three disputes were ruled in favor of the Egyptian government only. This is due to the absence of qualified cadres to negotiate technology transfer contracts and the apparent conflict between Egyptian laws and international agreements in technology transfer materials.

A clear example of this conflict is Article 87 of the Egyptian Trade Law, which stipulates that Egyptian law shall be applied for every technology transfer contract internally or internationally, if the contract is executed in Egypt and the Egyptian judiciary is the competent judiciary, with the possibility of arbitration provided the place of arbitration be in Egypt. This raised questions regarding the extent of this provision to be enforced in the presence of international commercial arbitration disputes, and whether the other party can accept submission or subservience for such a provision? This is what needs to be clarified by legislators and political authorities in Egypt.

There is a clear contradiction between Article 87 of the Egyptian Trade Law, which deprived parties of the freedom to choose applicable law, and Article III of the Rome Convention of 1980 in the field of contractual obligations, which Egypt signed.
This makes the Egyptian government obligated to fulfill its contractual obligations in accordance with international agreements with the international community. Otherwise, Egypt will live in technological isolation, which will result in the Egyptian government being charged fines and compensations regarding this conflict, because of Article 87 of the Egyptian Trade Law.

This may go for one of two interpretations. First: The Egyptian legislator's lack of awareness regarding the content of this article, and the clear contradiction with Article III of the Rome Convention 1980. Second: Political pressure and interference from the Egyptian authority put this article in conflict with the Rome Convention of 1980. The interference of the political authority led to a conflict between Article 87 and Egypt's obligations under the International Convention. For political propaganda of Egyptians. However, such an approach does not benefit Egyptian government in anything, while Egyptian government is greatly affected by this in contractual obligations and international arbitration disputes pertaining to technology transfer contracts. If political authority in Egypt does not abide by its contractual obligations, this will lead Egypt to live in technological isolation because of technology supplier's reluctance to contract with the Egyptian state.

Concerning the defensive laws adopted by developing countries in their domestic laws regarding technology transfer contracts, it can be noted that the technology suppliers also did not stand idly about this but used their mechanisms that hit political propaganda and economy strongly in technology transfer materials. Where the technology suppliers’ resort to protecting part of the technology as a right of intellectual property rights, and the other part is confidential. Technology can only be exploited in both parts together, as this gives suppliers an advantage in controlling the technology transfer by keeping this confidential part, which technology importers are not aware of through international conventions related to investment.

Egyptian experience has proven the existence of a catastrophic failure in technology transfer contracts, especially in the field of building industrial complexes, as the foreign party which is the technology supplier, was entrusted with the responsibility of operating industrial complexes, due to the lack of trained labor, expertise and technical capabilities that absorb the transferred technology, unlike the situation in technology transfer contracts between Western and Eastern European countries, which met with unparalleled success in this field due to the presence of expertise and advanced
technologies to absorb the transferred technology. In this regard, we do not overlook the clear political interference in these contracts’ failure with the Arab countries, and their success with Eastern European countries. The political authority promotes its success through political propaganda for its economic program and gives its people hope for huge ambitions, while there are obstacles standing in the way of achieving true technological mastery of technology transferred, so it lives in the illusion of the desired economic growth and development.

There is a constant conflict between what the state announces through its government media regarding the ambitious plans to reach high technologies, such as the invasion of space and so on, and the real development growth. For example, the Egyptian government announced cooperation with German companies in building a space station to monitor and manage Egyptian space activities, while in reality there is no echo or indicator to achieve any step of this matter, which the government has been talking about for nearly half a century. Moreover, the Egyptian government media does not hesitate to advertise many Egyptian infrastructure projects, while nothing has been achieved, as the Egyptian external debt reached 167 billion US dollars in 2023, according to the reports announced by the Egyptian government, and this debt is increasing continuously.

Accordingly, the problem of technology transfer in Egypt is political, which includes the problem of corruption in Egyptian public institutions that further complicates this matters. The lack of transparency in Egyptian gas contracts, which Egyptian economists have long talked about, led to wasting Egyptian rights arising from these contracts and prevented the achievement of the desired goal of these contracts in economic development. Since 2000, Egypt has tended to modernize and improve gas projects by relying on foreign companies that own technology in this field. The Egyptian General Gas Company concluded a contract with a foreign company for investment and exploration of the West Nile Delta field for a value of money exceeding 12 billion US dollars. The Egyptian Government media has been promoting the ambitious plan to obtain 25 percent of electricity from alternative energy by 2030, but nothing has been achieved. In the same context, the Egyptian government media advertised an ambitious plan for peaceful investment of nuclear energy dating back to the 1960s, and the Egyptian Authority for Nuclear Energy has been established but until today there is no trace of a nuclear reactor for military or peaceful use.
In summary, the Egyptian government has wasted its economic and human resources without achieving any economic growth in the field of technology transfer, due to the political media promotion of the Egyptian government, as the technology transfer contract has become a tool for the media to promote economic success for authorities without any real return for economic growth⁴⁷.

4.2.2 Technology Transfer Contracts in the Kingdom of Saudi Arabia

The Saudi legislator did not regulate technology transfer contracts in a special legal system, but since the Islamic Shariah is the main source of legislation in the Kingdom, and the principle in commercial contracts is permissible unless it is stipulated to prohibit them, technology transfer contracts are considered as legitimate contracts from a legal point of view.

Technology transfer contracts, like other contracts in the Kingdom of Saudi Arabia, are required to meet the main elements and conditions of the contract in general, as must be legitimate and do not violate the provisions of Islamic Shariah or morals in the State. Otherwise, the contract shall be considered null and void. From this point of view, the technology transfer contract is considered a permissible contract according to the general principle in commercial contracts, unless there is evidence of illegality or violation of public order or the provisions of Islamic Shariah.

The jurists of Islamic Shariah unanimously agreed on the legitimacy of technology transfer contracts from a legal point of view, and they inferred their legitimacy in the Qur'an and Sunnah. From the Qur'an, the Almighty says: “O you who believed, fulfill contracts,” as the principle in consensual contracts is permissibility and technology transfer contracts of this kind are considered legitimate. In addition, from the purified Sunnah, may Allah's peace and blessings be upon him: “The lawful is what Allah has made lawful in His books, and the forbidden is what Allah has forbidden in His book, and what He is silent about is what He has pardoned.” The moral of this hadith is that the God Almighty has permitted trade, transactions, and contracts. Every contract or transaction that Shariah is silent about can be considered a legitimate transaction, this includes technology transfer contracts.

Although there is no special legal regulation for technology transfer contracts in Saudi Arabia, the Kingdom is making great efforts to attract commercial and industrial investments including transferring and localizing technology plus technical knowledge to
the Kingdom, in line with the Kingdom's Vision 2030. One of the efforts exerted by the Kingdom to transfer and localize technology is the initiative announced by the Local Content and Government Procurement Authority, which represents a so-called contracting method for the localization of industry and transfer of know-how.

Industry localization and know-how transfer agreements are defined as agreements addressed to investors who own pioneering and advanced technologies around the world, to motivate them to transfer technology and their know-how to the Kingdom, as the government guarantee purchase whose duration and percentage are agreed upon, according to economic feasibility studies that consider the returns on investment for both government and investor commitment.

The method of contracting for localization of industry and know-how transfer is one of the developed methods in governmental contracts, as initiated under the Government Tenders and Procurement Law issued in 2019. Article 35 of the Law stipulates that the Authority shall supervise the activation of this method, in addition to enforcing the agreements related to the localization of industry and know-how transfer, these contracts shall also be prepared by government agencies, after the approval of the Ministry of Finance.

Article 58 of the Executive Regulations of the Government Tenders and Procurement Law stipulates legal controls to be followed when preparing industry localization and know-how transfer agreements, including that the localization of industry or know-how transfer shall not result in a monopoly of that industry or know-how, and considering changes and developments in technology, industry, and know-how when preparing these agreements.

This method aims to develop local content through the establishment of manufacturing centers for major international companies within the Kingdom, which works to provide job opportunities and transfer knowledge and technologies to the Kingdom, and attract foreign investment entities looking for a business environment that encourages agreements to localize the industry and know-how transfer, also reducing dependence on imported products and providing new opportunities to export local products to countries worldwide. It is clear from the above discussion that the legal regulation of technology transfer contracts in the Kingdom is represented, as they are governmental contracts, concluded and implemented by government agencies. Therefore, this contract is an administrative contract because the state or one of the governmental
agencies is a party to such contract, which may enhance political dependence that may result from the making this contract between foreign companies and the state, and thus cause the imbalance of rights and obligations between the contracting parties.

5 CONCLUSION

The legal nature of the technology transfer contract in both Egypt and the Kingdom of Saudi Arabia is not precisely clear and not regulated by clear provisions. However, the provisions of this contract in both countries fall under the public law umbrella, and the state is party to such contract with a foreign party that may be a state or one of foreign companies. In addition, the Saudi experience, despite its modernity, remains better than the Egyptian experience in technology transfer. The Kingdom of Saudi Arabia has been able to stimulate foreign industries and attract them to the Kingdom localize them, and transfer technology related for them to the Kingdom, without obeying the country's policies exporting this technology or political dependence on it. It turns out that the Egyptian experience ranges between the political dependence of the countries supplying technology and the financial burden represented by high public debt due to its importation of technology from foreign countries.

There is no consensus of interests between technology suppliers and importers until a fair formula reached in creating an international law that serves the interests of both parties and achieves the common interests of both supplier and importer. The technology transfer contract, like any other contract, must consider both party's interests to reach an equation and mutual benefit. Any deviation from this goal will cost developing countries an expensive cost, because of issuing laws with a political motive that does not consider the state's economic interests. Political interference in these contracts can cause high expenses to import countries and make them dive into paying endless debts. Many of the debts for developing countries are due to decades of technology transfer, as these countries have failed to meet their contractual obligations regarding technology transfer, which is an obstacle to economic growth and technological empowerment in these countries.

Based on the findings of this research, there is a need to Create a consensual formula that achieves the interest of both the technology supplier and importer, it is necessary to create a definition that combines the fact that technology is a moral asset for the supplier and a mechanism of economic development for the importer while ensuring
that there is neutrality in the country that will play the role of technology supplier, so it
does not overshadow the interests of importing country, as well as discussing and
renegotiating contracts containing unfair and economically useless terms, to reach fair
mechanisms that avoid further disputes before international commercial arbitration courts
and stop the bleeding of huge expenses incurred by developing countries in this field.
Also, requesting international organizations, within the framework of their mandate will
be useful to expand their activities aimed at bridging the technological gap between
developing and developed countries.
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Thus, French and European jurisprudence and jurisprudence have adapted intellectual property as part of the property in reason No. 11 of European Directive 2001/29 of 2001, when it gave the intellectual right holder an exclusive right to invest it. The French Constitutional Council also gave intellectual property rights constitutional protection; by affirming that the French Declaration of the Rights of Man and Citizenship of 1789 guarantees to the owner of the intellectual property right the protection of this right within the framework of the law and France's international obligations.

In Egypt, Law No. 43 of 1974, entitled "Law on the Investment of Arab and Foreign Capital and Free Zones", was issued to encourage foreign and Gulf Arab investment in Egypt, especially after Egypt was subjected to great destruction in many vital facilities due to the October 1973 war. Delegations of large investment companies from all countries of the world began to return successively to Egypt to search for favorable investment opportunities in various fields to collect sufficient information about these opportunities and to study, plan and submit offers to the Egyptian government on the proposed new investments. A large investment delegation of different nationalities arrived in Cairo, and their new idea was to establish large chalets and villas on the pyramids plateau in the well-known tourist area of Al-Ahram, and to create a large industrial lake with a rubber bottom next to the pyramids while exploiting the northern coast to establish villages, nightclubs and tourist hotels... etc In order to support and develop tourism facilities in Egypt and to increase the national income from free currencies. The investor delegation met with the Egyptian Minister of Tourism, who directed all its agencies in the Ministry of Tourism, headed by the "Igloth" Authority for International Tourism, to study the issue in all its aspects for the purpose of agreement with the investing companies and immediate implementation. It was agreed to sign an
investment contract for the project area in Al-Ahram. Under this contract, there is an "arbitration clause" to settle disputes before the International Chamber of Commerce in Paris.

Subsequently, based on the recommendations of the Egyptian authorities competent in tourism matters, a presidential decision was issued approving the granting of the required investments in Al-Ahram Plateau to the investment group that called itself "SBB" Company. After granting the required approvals to this company to proceed with the implementation of the investment projects they submitted, some ideas emerged in Egypt against this project on the basis that the foreign investment team is thinking of taking Al-Ahram Plateau as a center for excavating antiquities in the sand and smuggling them out of the country. This issue was escalated, and it was written in the daily newspapers, technical studies were presented, anti-seminars were held, and multiple protests were held to reveal the disadvantages of the project on Egypt. Among these disadvantages are the impact of the proposed rubber lake on the effects of Giza due to the filling of the area with lake water vapor, as well as the devastating effects of sewage leakage from tourist facilities in the region... and other ideas that stand against the project in principle. In response to this move against the establishment of the project, President Sadat issued another Republican decision that revoked his first decision to approve the establishment of the investment project... Accordingly, in response to this action, the foreign-invested company "SPB" submitted an arbitration case before the International Chamber of Commerce in Paris in accordance with the provisions contained in the contract concluded for the tourism investment of the region. The arbitration proceedings began, and the award (Final Award – Urud) was issued by the arbitral tribunal against Egypt to compensate the company and pay amounts up to $13 million. The basis of this ruling was the final arbitration decision that the “Igoth” panel was dissolved and its funds liquidated before the case was filed so that the foreign company and its owners would not take anything. However, the International Arbitral Tribunal said: The Minister of Tourism agreed and signed the contract with the foreign investment company. This contract is binding on the Egyptian government and includes an arbitration clause before the International Chamber of Commerce Arbitration Tribunal. That is, the dissolution and liquidation of the Authority does not affect the Company's right to claim compensation.

We note that one of the points of defense submitted by the Egyptian government and received before the arbitral tribunal relates to the arbitration clause and its suitability and validity. However, the arbitral tribunal courageously decided that the arbitration clause contained in the contract is valid and must be applied to this dispute. Here, the importance of formulating the arbitration clause in a clear, complete and far from creating any confusion or being a "face brace" with multiple meanings that may bounce and harm the person who prepared it more than it benefits him. Quoted from Dr. Abdulqader and drawn by Ghaleb https://www.omandaily.om/ Cases and Opinions/Al-Ahram plateau-issue-from-arbitration-cases.


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