Introduction
INTRODUCTION

United Nations is non-governmental and an intergovernmental organization established to promote international cooperation. Its primary role, however, is to discuss issues and give recommendations. It has no power to enforce and compel its resolutions to the State action. The united nations has five\(^1\) main organs: the General Assembly (the main deliberative assembly) the security council (for deciding main resolutions for peace and security) the Economic and Social Council (ECOSOC) (for Promoting International Economic and Social Cooperation and Development); the secretariat (for providing studies, information, and facilities needed by the UN), the International Court of Justice (the primary judicial organs). So as aforesaid, the General Assembly has a main role to make resolutions and recommendations. It is composed by all the United Nations member States and the General Assembly meets in regular yearly sessions. The General Assembly by its majority members votes on important matters. It may make resolutions on any matter within the scope of the United Nations except matters of peace and security under the consideration by the Security Council. The resolutions are not binding on the States but they are to promote and cooperate and also in some areas to solve the problems between the members.

The General Assembly established the UNCITRAL by its resolution 2205(XXI) in 1966 to promote the progressive harmonization and unification in international trade law and international trade co-operation among States. The UNCITRAL is a main legal core body of United Nations system in field of international trade (it is a subsidiary organ of General Assembly). The aim of establishing UNCITRAL began when world trade began to expand dramatically in the 1960s. National governments began to realize the need a global set of rules to harmonize international and regional regulations to govern international trade. They need to identify and support a global system of rules and global level to ensure universal rights. The act all levels to ensure that legal rules are taken at the most international and regional level to pursue norms and laws. They shape the global opportunities and disputes across countries that influence international trade opportunities. It plays an important role in developing that framework in pursuance of its mandate to further progress by preparing and

\(^1\) The United Nations had six main organs but The United Nations trusteeship council now is inactive since 1994.
promoting international trade. The commission may establish appropriate working relationships with intergovernmental organizations and international nongovernmental organizations concerned with the progressive harmonization and unification of the law of international trade. \(^2\) International trade refers broadly to economic and commercial activities that cross national boundaries or that have an effect across national boundaries. In the modern world, there are four major channels of international trade: 1) trade in goods 2) trade in services, 3) technology transfer, and 4) foreign direct investment. Trade in goods the most basic and oldest channel of international trade, but the other channels are rapidly gaining in importance. \(^3\)

UNCITRAL’s business is the modernization and harmonization of rules on international trade or business. Now the question is what is the trade? Trade means faster growth, higher living standards, and new opportunities through commerce and cover matters arising from all relationship of a commercial nature, whether contractual relation or not and transaction on trade. So the UNCITRAL formulations are modern, fair, and harmonized rules on commercial transactions. The UNCITRAL is a mechanism to solve international trade problems (disputes) which are chosen by the both parties for dispute settlement between themselves. It has several instruments which include: conventions, model laws and rules which are acceptable worldwide-legal and legislative guides. It also has recommendations of great practical value-updated information on case law and enactments of uniform commercial law-technical assistance in law reform projects-regional and seminars on uniform commercial law. In its website, UNCITRAL defines the terms harmonization and unification:

Harmonization and unification of the law of international trade refers to the process through which the law facilitating international commerce is created and adopted. International commerce may be hindered by factors such as the lack of a predictable governing law or out-of-date laws unsuited to commercial practice. UNCITRAL identifies such problems and then carefully crafts solutions which acceptable of States having legal and levels of economic and social development. \(^4\)

UNCITRAL develops the framework of harmonization procedure and in pursuance of mandate to the further progressive harmonization and modernization the international


trade law. It prepares and promote in using and adoption of legislative and non-legislative instruments in a various number of norms of international commercial area. The observations of justice between the parties applied by both and to choose the UNCITRAL rules which they should apply with an arbitration agreement. The areas of UNCITRAL vary which those areas include dispute resolution, international contract practices, transport, insolvency, electronic commerce, international payments, secured transactions, procurement and sale of goods. As a result of this inclusive process, these texts are widely accepted as solutions appropriate to different legal traditions and to countries at different stage of economic development.\(^5\)

The UNCITRAL carried out its work yearly depending on the subject-matters with alternative matters. The UNCITRAL has established six working groups to perform the substantive preparatory work on topics within commission’s program of work. Each working group of the commission typically holds one or two sessions yearly. Each of the working group is composed of all member states of the commission. The UNCITRAL working group II is arbitration and conciliation that relates to the private methods, as it provides. Though, the resolution mechanisms are created but current statement of UNCITRAL initially spoke in terms of the ‘progressive harmonization and unification’ of the law of international trade. Arguably, the task of modernizing the law of international trade was implicit in UNCITRAL’s core mission.

The resolution creating UNCITRAL referred to the ‘progressive’ harmonization and unification of trade law not simply its harmonization and unification. The resolution also emphasized that the progressive harmonization and unification of trade law based on the United Nation’s broad agenda of economic development and the promotion of friendly relations among nations. Reports to the General Assembly and the commission in the late 1660s suggest that international actors understood the “progressive harmonization and unification” of trade law as involving the reconciliation of divergent practices and an articulation of emerging of international norms.\(^6\)

The nature of the arbitration may give the public a legitimate interest in certain aspects of the arbitration. The UNCITRAL arbitration is acceptable to private parties because it offers flexibility of Ad hoc arbitration coupled with safeguard of an established, tested set of procedural rules. The UNCITRAL arbitration is more

\(^5\) UNCITRAL secretariat, Vienna international center, 2013.

confidential and less public; it designed for using in Ad hoc international commercial arbitrations. The UNCITRAL arbitration rules occupy an important position, both historically and in contemporary arbitration practice. The objective of the UNCITRAL Rules was to create a unified, predictable, and stable procedural framework for international arbitrations without stifling the informal and flexible character of such dispute resolution mechanism. The UNCITRAL Rules includes provision for initiating an arbitration, selection and challenge of arbitrators, conduct of the arbitral tribunal proceedings, choice of applicable law, award, and costs of the arbitration. The UNCITRAL Rules contain provisions confirming the presumptive separability of the arbitration clause from the underlying contract and the tribunal’s power to consider jurisdictional objections.  

Arbitration is a well-recognized mode for resolving disputes arising out of commercial and trade transactions. This is equally true for international commercial transactions. With the growth of international commerce there was an increase in dispute arising out of such transactions being adjudicated through arbitration. After the end of WWI, commensurate with the importance of international trade and the increased use of international commercial arbitration, a need was felt for providing proper arbitral machinery for the resolution of disputes between the contracting parties subject to the jurisdiction of different States.  

The choice of arbitration as a method of resolving disputes also gives each party an opportunity to participate in the selection of ‘neutral’ tribunal. One or more arbitrators may be chosen for their special skill and expertise in commercial law, intellectual property, civil engineering or some other relevant discipline.  

Traditionally speaking arbitration is a private process to solve disputes in the field of international trade with selection of the parties, because it is normally neutral stranger. Arbitration mechanism is a private process where the arbitrators are appointed based on the agreement. International trade area is the scope of the arbitration to get on with umpires under the privately appointment. Arbitrator is a third party which the parties have got trust with them. It has evaluated new and free form of the procedures to extend the privacies and voluntaries of the parties. It got some evaluations because the parties may appoint one or more than two arbitrators to resolve the problem during recent decades. So it needs to get on the agreement then appoint the arbitrators and all procedures.

However, it depends on the parties’ agreement to be by the decision of the arbitral tribunal. The compulsory form of dispute settlement with evidences is submitted to a neutral third party. Notwithstanding, there are differences between private umpiring. The parties typically attempt to resolve their disputes by recourse to procedures much less formal. In fact, arbitration is a private form of adjudication with the third party intervening to control and bind an award on the parties. It means that arbitration mechanism is flexibility and simplified procedure. The parties agree that specified type of disputes which have arisen or certain differences which may arise between the parties in respect of a defined legal relationship will be arbitrate or enter into an Ad hoc agreement to arbitrate. The parties also agreed that the decision of the arbitration process will be binding on them. In many judicial procedures, the award should be binding needless to accept the parties but the decision of the arbitration will recognize and enforce unless it is against the public policy.

The parties themselves are able to select the umpire who will decide the outcome. They are free to select a decision-maker (who is called arbitrator) with his own experiences and expert knowledge of the substitutive facts of the dispute. Thus, there is no need to attempt to educate umpire. It is motivating to appoint the arbitrators to be a decision-maker. In fact, at this point it might emphasize that the origins of ‘modern arbitration’ appear to lie the preference of eighteenth-century English merchants to resolve their disputes. The modern arbitration is in accordance with either trade customs rather than by ‘the laws of the state’. Moreover, the arbitration has increasingly come to be used in a wide variety of disputing contexts over years.

As the number of international commercial disputes mushroom, the arbitration mechanism is a suitable facility to resolve commercial disputes. The non-judicial nature of arbitration makes it both attractive and effective for several reasons. There may be distrust of a foreign legal system on the part of one or more parties involved in the dispute. In addition, legislation in a court can be time-consuming, complicated, and expensive. Another reason for choosing arbitration is that the process is administered by a panel of arbitrators who agree upon by both parties. In addition, the confidentiality of the arbitration process may appeal to those who do not wish the terms of a settlement to be known.10

In the case of inherently confidential documents within the arbitration, the parties shall disclose the documents, so the confidentiality of awards depends on what the applicable rules provide. Ad hoc arbitration depends on the law applicable and the rule of United Nations Commission on International Trade (UNCITRAL). This is rarely likely to have any express provision governing confidentiality, in the case of documents disclosed by the parties. They will have the protection afforded to similar documents in litigation, which means that they may not be disclosed without the permission of the other party or the tribunal.\textsuperscript{11} The authorization of the arbitral tribunal to give effect to the agreement of the parties relating to the applicable rules of law by the parties, not only represent a national legal systems but also in cases where the parties have referred to legal texts of international organs such as international conventions that have not yet come into force, or informal international codifications. If the parties provide in the contract that the arbitral shall apply particular rule of law of international origin chosen by the parties as \textit{lex contractus}, a more balanced and transparent situation as to the contractual parties.\textsuperscript{12}

Today arbitration solves the problems in the field of international trade under the procedure and process given to the arbitrators by the parties. The good faith of the arbitrators is under the surveillance of the parties. Furthermore, it is a motivational factor for the parties to select the arbitration process for solving the problems will be a mechanism in future. In UNCITRAL process of arbitration all developed and developing countries are using these rules and mechanism to settle international trade disputes. As it is a mechanism of dispute settlements between the parties, all UN members may use these rules. It became an international mechanism for disputing parties. It is separated of others sections of United Nations. The mandate of UNCITRAL does not extend to either participate in private or public disputes. It is related to international commercial disputes as well. It neither uses legal advice in particular dispute nor offer any legal advice to any recommendation to private and legal practitioner for legal assistances. The UNCITRAL neither keep any list of potential administers or arbitrator nor appoints any appointing authority to dispute under the UNCITRAL arbitration rules.


The UNCITRAL arbitration Rules are a procedure to be appointed by the disputing parties and it has nothing to do with other inter-governmental or non-governmental organizations. All parts of United Nations have special determined roles based on their rules. They cannot advise to UNCITRAL because it is a mechanism appointed by the disputing parties. It is also separated from other arbitral institutions and Ad hoc arbitration to be a procedure of solving trade disputes. The UNCITRAL Rules essentially are under the agreement of the parties and their acceptance to refer to the UNCITRAL. The arbitrability of subject matter is very important in being referred to it. By virtue, the final can present the award for recognition and enforcement by national courts. Each arbitral institution has special rules and it may be similar to the UNCITRAL in proceeding arbitration but the rules might not impose its own effectiveness to it. To use the UNCITRAL arbitration rules, the disputing parties shall refer the subject matter with agreement in writing. It might be agreed at the time of arising problem or in future. The parties would like to settle the disputes with the private procedure of arbitration as well. UNCITRAL provided that in proceeding of its arbitration rules, the parties have to appoint the rule and the composition of the arbitral tribunal to arbitrate the trade and commercial disputes. They should be satisfied with their acceptance and shall give confidentiality and separatability of their relationships with the parties and also to the other arbitrators in person. It normally relates to all the international arbitration rules around the world concerning to international trade problems. All procedures, provision of composition of arbitral tribunal in field of international trade are under the parties’ governance. The process of hearing is under taking of the arbitrators. The law application and the place, languages, appointing the arbitrators, challenges of arbitrators and other requirements of hearing to commence shall be appointed by the parties and submit to the arbitral tribunal.

The duties of the arbitrators are to do the hearing of the arbitration while the duties of the parties are to submit and arrange all documents for the arbitral tribunal. The parties shall do ancillary duty which includes: the fee of arbitral tribunal, expert and witnesses which the parties shall pay to them. Today the arbitration technically has become a mechanism of solving the international trade and commercial disputes. It uses technology to facilitate the hearing for both the parties and to control the hearing by the parties. New technology provides the appearance of the experts and witnesses to participate to the hearing. To use arbitration, new current technology and device
would develop the mechanism of hearing. It will develop the mechanism of hearing and it may depend on the place of arbitration and application of the arbitral to do so.

In general it is assumed that arbitration has the following benefits: 1) confidentiality and privacy. 2) Informality of the proceeding. 3) lower costs 4) efficiency 5) technical specialism 6) a final award which could be enforced at the courts. The above mentioned benefits however, appoint the arbitration as a mechanism of the disputing settlement in international trade and commercial relationship. The arbitration agreement is not discharged by the death of a party to such agreement, either with respect to the deceased or with respect to any other party. The main reason to choose the arbitration to be a mechanism of the dispute settlement in the field of international trade law and commercial that it is a regular process to reach a good decision and binding on the parties. It is undertaken by the States for recognition and enforcement of the international arbitration to recognize and enforce the arbitration award. In general the UNCITRAL arbitration rules are closely related to international principle of the hearing for solving the disputes between the merchandises’ parties. In addition, for making any the application to enter the process of arbitration the parties shall choose an arbitration mechanism with the especial arbitration agreement in writing, if they have been appointed the UNCITRAL Arbitration Rules.

1. SIGNIFICANCE OF STUDY TO CHOOSE OF TOPIC

One of the most significant trends to preferred means of resolving international commercial dispute is increase to the support of arbitration by national courts in most States. Ratify of international convention by new states and accept of international arbitration process globally. The freedom of UNCITRAL arbitration rules from other direct divisions of United Nations as a mechanism of resolving trade is significant to study.

2. OBJECTIVES OF STUDY

The objective is to undertake this research work pertaining to:

1) Generally analyze international arbitration process and its position in international trade.
2) To find out the position of UNCITRAL Arbitration Rules to the resolution of international trade disputes.

3) To find out the characters to highlight the factor in which affects international trade resolution in developed and developing countries.

4) To study the power of arbitrators and jurisdictions of arbitral tribunal to play the dominant role of arbitration in international disputes resolution. To find out the power of parties to choose arbitration in order to save the expense, delays and avoid rigidity of litigation of traditional courts.

5) The arbitration was initiated by legal framework and the enactment of modern international statutes in many developed jurisdictions during last three decades. Studying the legal frameworks such as Geneva Protocol 1923 and Geneva Convention 1927, the United Nations Conventions of Recognition and enforcement of foreign Awards in 1958, UNCITRAL Arbitration Rules and Model Law 1985 to apply for interim measure of protection after an award has been made.

6) Studying the process of arbitration reflects on neutral, speedy and expert resolution process with enforceability of dispute resolution and finality of foreign awards under Iranian and Indian National Laws.

3. HYPOTHESIS

The following hypothesizes have been evolved:

I. The international arbitration mechanism takes steps to promote cooperation among arbitration organization. Arbitration is seen as a better means for disputing parties to resolve legal disputes due to speed and cost.

II. The increasing role of international trade in the economic development of nations has increased manifold over the years. Consequently the importance of international dispute resolution mechanism, including arbitration as a means of resolving trade disputes, assumes greater significance.

III. UNCITRAL Arbitration Rules affect the developed as well as developing countries and increase global standards to settle both of Iranian and Indian international trade disputes. The private sectors, non-governmental groups and multinational groups choose UNCITRAL arbitration rules as a mechanism of resolving the trade disputes.
IV. The UNCITRAL Rules mostly unify and harmonize the international trade rules for resolving the international trade disputes. The UNCITRAL sets its programme of work to examine the feasibility of unification, simplification of national rules on arbitration and it promotes a balanced use of arbitration facilities.

V. Arbitration Rules increase the standards of hearing for making final awards and increase global trends to attract and choose arbitration to the resolution of international trade disputes under the international legal framework.

VI. Arbitration is a process which is developed under non-governmental organization and is truly neutral and independent. The parties can fix deadline for anything. The Rules of arbitration can be faster and cheaper than court litigation. There is generally no appeal from an international arbitral award.

4. STATEMENT OF PROBLEMS

The main problems on the subject of the international arbitration mechanism are in details of selecting law applicable to the settlement of international disputes because it is hard to appoint the suitable law. The recognition and enforcement of final award should be under the national laws and public policy of countries. It is one of the important objects of international arbitration mechanism under the UNCITRAL Arbitration Rules, if the recognition and enforcement of award has no reasonable relationship with place of recognition, it shall be with mutual arrangement for mutual enforcement and recognition of foreign judgment. The bilateral or multilateral agreements need for enforceability of foreign judgment, in this respect, international litigation is not a reasonable alternative to international arbitration. Only New York convention is to the recognition and enforcement of the foreign awards, and there is no availability of regional arrangement to recognize and enforce them. The most important salient feature of international arbitration is the absence of appellate review of arbitral awards by supreme committee. The other important salient feature in international arbitration mechanism is that it seldom guarantees the confidentiality. This imposes some obligations on the parties, their counsel and the arbitrators to respect the confidentiality of international arbitration process. The duty of confidentiality is no clear in some jurisdiction where obligations and arbitral awards are made public. The arbitration, in some case, involves the costs and the parties may have to pay fees of arbitrators.
5. RESEARCH METHODOLOGY

Method is the way of doing something. The systematic investigation of problem and of matter of law such as code, Act etc. is legal research. The legal research deals with social and behavioral phenomena. It studies behavioral of society and attitudes under different circumstances. Legal research is carried on both for discovering new legal facts and verification of the old ones. The object of legal research may be classified into two parts; firstly academic objects and secondly utilitarian objects. Legal research can be classified in various ways. It can be divided on the basis of the nature of data, tools of data collection, interpretation of already available data, purpose and other such criteria. A doctrine research means a research that has been out legal proposition or proposition by way of analyzing the existing study provisions and cases by applying the reasoning power. The doctrinal research attempts to verify the hypothesis by a firsthand study of authoritative sources. Primarily this research is based on doctrinal method and this research carried out on the basis of legal proposition by way analyzing the existing statutory provisions and principles reasoning powers. The research is based on the source and materials which collected from Books, Research papers, Articles, Journals, Websites, declaration of various rounds, News Papers, etc.

6. REVIEW OF LITERATURE

The review of literature may describe the title of research to know how to demonstrate the field of the research and it reads critically to know about work and also it shows that the researcher understood its work. It provides that the examining of the subject matters will be easy to review for someone in particular or everyone in general. The review of literature is an important stage to be found and familiar with the structure of thesis in relation of the title and topic of research. Research topic is about United Nations Commission on International Trade Law in abbreviated form that means UNCITRAL arbitration rules, as it is a mechanism of dispute settlements of international trade relationship by selecting the parties. In concerning arbitration and UNCITRAL arbitration, some of the authors and jurists provided the meaning of arbitration. This work has explained the previous work which has been done by others.

Professor Fudicker N has discussed about examining the importance of arbitration in 1875. He argued that the specialty of expert knowledge for choosing to be as an arbitrator is a norm in arbitration. He provided that the regular court could not be able
to reach a result of arbitration. The regular courts are in contrast to the arbitrators, in result of this argument for importance of arbitration and to be useless for another process to dispute of international problems. As the above aforesaid the regular court is not able to understand the complicated social and also economic problems, whereas today merely the arbitration has selected to be a mechanism of process on own experiences in life.\textsuperscript{13}

The importance of international dispute worked by Professor Georg Erler in 1957. He provided that, private arbitration is usually alleged to better than public courts for a number of reasons. One of the most persistent arguments is that determination of a case by arbitration is faster and less expensive than resorting to the regular courts. He stipulated that the arbitration process is a private mechanism of dispute settlements because the regular courts give the parties’ three chances and it is entirely uninteresting to economy. The results of the argument related to the importance of arbitration as the aforesaid are now encouraged as an easy, expeditious an inexpensive method of settling disputes.\textsuperscript{14}

In 1957 Professor F. Eisemann has spoken about recognition of expert in field of arbitration process. It is a codification of customs of trade by fixing conditions of sale and delivery through the trade. In addition, he provided that a legal situation has developed. Although to be effective in this field, in most litigation, very special actual economic situations and technical details are to be considered. It was this new development rather than criticism machinery which led to institutional arbitration in almost every field. As a result in these areas of international arbitration he found that private arbitration is absolutely essential in international trade; by virtue of international commercial litigation before regular courts at least one of the parties must be found before a court which is certainly foreign to him. It depends on the reasons that the regular court which does not have the slightest chance for the enforcement of a regular judgment outside the country of the forum will become possible, either by chance of legislation or by international agreement. This view is supported by two authors namely E. Mezeger and D.J. Shotelius, they examined the benefit of private arbitration and criticism of the judiciary in a regular court for dispute settlement in the field of international trade.\textsuperscript{15}

\textsuperscript{13} Arbitration-what is it- wesley A. Sturges.1960, Yale legal Scholarship Repository.
\textsuperscript{14} Ibid.
\textsuperscript{15} International arbitration article,doi/10.1093/arbitration.
The arbitration process has been selected by many authors as an important mechanism of dispute settlements. In 1960 at this point Professor A. Baumbach provided that in favour of the parties arbitration process has potential to solve trade problem in connection with application and anybody who is looking for the dispute settlement. Further, the adherents of private arbitration points out that cases decided by the arbitrators may be doing so on an “equitable” and on the basis of strict “law”. As a result of this, viewpoint is; the arbitration is trustful and many people feel the arbitration is suitable to their problems. So arbitration procedure has the advantage that it is not bound by all the details of regular judicial proceeding, but a fairer solution may be obtained by all parties concerned.\(^{16}\)

The civil countries for dispute related international matters should be under facilities to a mechanical, this work has done by Dr. E. Langen (in Munich), in 1963.\(^{17}\) He however, worked over the German law but it was related to the arbitration process. His research indicates the present preference for arbitration, a short survey only about one-sixth of the total actual deal with international trade, including dealing with shipping, industrial property rights, and competition but not labor law. He goes on to say that the twenty published decisions concerning international trade are only an extremely small percentage of the annual litigation in the field of German international commerce. He provided that the international arbitration as a procedure to be a mechanism for arbitration is effective to do so. International trade has practically developed an independent legal system which has more or less separated itself from the countries as well as from conflict of law. International trade law shows less and less interest in the legal rules including an international legal system. Since, arbitration is becoming more powerful, and decides cases entirely on different tests the regular court of the countries involved.

In 2005 the mandatory rules of law in International Commercial Arbitration worked by Andrew Barraclough and Jeff Waincymer. They provided that the mandatory rules of law govern the contractual relations of the parties, and the role of mandatory rules of law in International Commercial Arbitration. Mandatory rules are laws that irrespective of a contractual relation, or any procedures appointed by the parties. Mandatory rules reflect state’s internal and international public policy. The role of mandatory rules is uniquely complicated, and also it may arise about conflicts

\(^{16}\) The German Advantage in Civil procedure, 1985, Yale law school.

\(^{17}\) International Encyclopedia of comparative law, 1963, vol III.
between States’ interests. The arbitrators could apply all mandatory rules, they considered are relevant to the issues of the mandatory rules. Any commercial dispute would be overly to link arbitration with inconsistent approach to mandatory rules, aspect of efficiency looks importance of mandatory rules themselves. Mandatory rules emphasizes on the interest of the wider community, force majeure allows arbitrators to take into account mandatory rules.

Thus, they found that important role of mandatory rules is a body of legislative, increasingly number of arbitral tribunals confronted with mandatory rules issues. The mandatory rules leave arbitrators tangled up in arbitration’s identity crisis; and have been equally unhelpful in establishing arbitration’s identity to give arbitrators a wider discretion to be most attractive method of determining mandatory rules’ applicability.  

General international commercial arbitration work explained by Mr. Eric. E in 2005. The explanations of United Nations in relating dispute settlements by the arbitration mechanism based on the arbitration agreement of the parties and third party may involve into dispute settlement. The author described the importance of arbitration mechanism, its elements of definition, and also private procedures of hearing under the application of the parties. It does not work as a part of the state system of national court. He found that, it is a confident and flexible way for disputing parties. Today arbitration is governing upon international dispute settlement, and the model law uses a very broad test to determine its scope of application.

The enforcement of the final award of international ICSID Convention argued by three authors who were Edward, Mark Kanfor and Michael Nohsan, in 2006. They examined the Convention on the Settlement of Investment Dispute between States and the conduct of the National courts, for the execution of the award. They had found in their examination all the enforcement challenges were unsuccessful, because of the courts had not treated the awards with the defence. In fact, the arbitrations are pending and a number of the concluded arbitration did not reach a finding of liability. The increasing number of ICSID awards will lead to an increase in the number of challenges by disappointed parties. At last, they argued that in relating some of the


tactics that disappointed parties may employ in national courts to avoid compliance with ICSID awards. In accordance with the ICSID convention the award shall be binding on the parties and shall not be subject to any appeal.

Thus, their result was that the award shall be in accordance with general international principles. It shall not be in contrary to international public policy and general provisions accepted by the national policy. The award shall not change the allegations of lack of impartiality or independence on the part of an arbitrator, false testimony during the arbitral hearing, lack of jurisdiction and lack of proper arbitration procedure, corruption or misrepresentations and any circumstances. As these general provisions are provided by Vienna Convention on the law of treaties eventually customary international law principles of good faith affect enforcement proceeding as well.20

In 2007 two authors Susan Black-Lieb and Terence Halliday argued about the harmonization and modernization of international commercial rules by creating the UNCITRAL rules in the concern to harmonize trade law. They worked to harmonize and modernize trade law followed by the United Nations for broader agenda of economic development. The two authors argued an enormous difference between the task of harmonizing and unifying existing bodies of national law and modernization would require an international organization to create new law. The goal is modernization but may not be necessary. In fact, there is room to question whether law reform projects intending to modernize the law of international trade with regard to international instruments meant to produce a single, uniform legal standard.

Thus they found that the countries may not alter any part of the convention to suit domestic political and legal differences. Although it appears a less harmonizing instrument than a convention and they viewed that international convention may not provide the best route towards modernization, while model law generally is soft tool in the hands of international reformer than conventions. They argued that the UNCITRAL’s shift away from the goal of the unification towards that of modernization simultaneously solves a number of problems.21

In 2007 Susan D. Franck worked on relation the investment arbitration may play role in investment determinations. She argued on the role of investment treaty and investment treaty arbitration and impact investment treaty arbitration to the investment decisions. An investor may be unable to resolve its dispute with a host government, so that the host government cannot solve the problem. The investor typically initiates arbitration by picking one of neutral arbitral institutions listed in the investment treaty, and submitting a Notice and Request for Arbitration. The author has found some result in relating to the investment arbitration, national courts provide critical support to the investment arbitration process, as to the investment arbitration is also unclear. The investment arbitration focuses upon minimizing investment risk, to affect investor confidence, create incentives for investing abroad. Because of the investors are more sensitized to the benefits, because the investment arbitration can offer the benefits, create confidence and minimize investment risk at the time of structuring the initial investment and dealing with problem after they arise.\textsuperscript{22}

The Scottish Arbitration code deals with UNCITRAL model law examined by Professor Derek Roebuck in 2008. He provided that to how the bills were the subject of a masterful analysis and power to award interest, to order interim measures, disposal of property under the control of a party and the subject matter of the arbitration in Scots law. The author argued about the process of arbitration deals with the Scots provision such as the place of arbitration if it is in Scotland, challenging the arbitrators and then finally he discussed the time limit for making award. Thus as a result thorough review of the code of arbitration is Scots law, this code and the sorts of points raised will not be as practical issues in most cases. This work analyzed the code occasionally that creates potential differences and there are no easy answers.\textsuperscript{23}

The time limit for challenging Arbitral tribunal award in England and Wales was stipulated by David Altaras in 2008. He argued the time is limited in England and Wales, in neither case are the time limits wholly perspective. The time limits are an important adjunct to the proper administration of justice, and also is a column of a statutory. The time limits are adequate safeguards, in the form of judicial discretion to set them aside, it saves the right of the parties. So it is to remember that justice, time limiting provision do not amount to a denial of the right to a fair hearing. So the time

\textsuperscript{23} Roebuck prof.Derek, Arbitration, the international Journal of arbitration, mediation and dispute management, 2008, vol 74, No, 4.
Electronic disclosure to the International Commercial Arbitration worked by Dr. Cher Seat Devey in 2008. He argued that the electronic discovery refers to any process in connecting to the electronic data and documents such as emails, word documents, located, secured, and searched with the intent to use them. Electronic discovery is an evolutionary step to interpret technical terms in the context of electronic disputes. The rules related to the technology are broad enough to address future developments and the issues which are complex. They require an understanding of laws, rules and technology and it will be interesting to see the rules. Also it will interpret to new technology to evaluate the benefits and managing costs to achieve the efficiency gains can be complex contemporary documentary evidence which includes emails exchanged with parties, records of discussions or phone calls. He also argued that the preliminary hearing or case management is the first stage of arbitration proceedings. Electronic disclosure has the tendency to incur transaction costs, the challenge and agree on a flexible procedure, and also produce documents in the most cost effective way. Thus if this research is a result of electronic disclosure, a tribunal may have to resort to such a power in order to control proceeding and combat delays. Electronic discovery has triggered concern that litigants were abusing the discovery process to wage a war of attrition against their opponents. The focus will be on collection of electronic evidence within and outside the organization to manage this process.25

In 2008, the resolution of patent disputes under arbitration worked by Craig Metcalf. The author provided that the patent problems and disputes arbitration mechanism are very important to apply than other mechanisms because the regular courts cannot understand issues by the judges and it is a risk for the parties to submit to the regular courts. It is found that the arbitration process provides many advantages with general procedure for arbitration. The result of the paper is that the arbitrators understand the

24 Altaras David, Time limits for Appealing Against or challenging and Arbitral Award in England and Wales, 2008.
25 Rseat Devey Cher, electronic disclosure; litigation, 2008.
issues and arbitration saves time, expedite arbitration may be important in patent cases. So arbitration provides better decisions, and it offers the parties more confidentiality.\textsuperscript{26}

Important arbitration in England under the 1996 act was worked by Paolo Esposito in 2008. He did his work based on the England arbitration rules and effect of arbitration to the dispute settlement in England. In common law system, it has considered the contiguous development of commercial law and importance of arbitration in England legal system in accordance with arbitration acts like 1996. He provided that to develop the law of bargains into a body of law, England courts have taken a primary role to the development of commercial law. The act of 1996 delimits significantly the role of the courts as merely supportive to the arbitral proceedings. Consequently the result was that the choice of the parties to submit the arbitration instead of litigates their dispute, to extent specific form of judicial control over the arbitrators should be limited.\textsuperscript{27}

Dr. Agens Oguntosin worked in relation \textit{lex arbitri} or place of arbitration in 2009. It is a norm for arbitration in which the parties have selected and there is a place for arbitral tribunal on proceeding and it is one of the provisions for recognition and enforcement of final award. She examined that the legal implication of \textit{lex arbitri} the options available to the parties on discovering that \textit{lex arbitri} turns out unfavorable on proceedings and to the award. She discussed that the place of arbitration determines issues that include all provision of arbitration such as capability of subject matter to settlement by arbitration, validity and competence of arbitral tribunal, composition of arbitral tribunal. The power of arbitral tribunal and validity of the final award are under the place of arbitration. She also considered that the place of arbitration may not be real physical place.

She concluded in her research that the place of arbitration was given effect to validity and enforceability of award. The place of arbitration may not be unfavorable for arbitration proceedings and moreover award may set aside in place of arbitration. Eventually, it ensures that the principle of equality of the parties is not departed from the rules of the arbitration proceeding. The parties and tribunal are departed from the principles and rules that are not expressed or are hidden stated to be mandatory in the \textit{lex arbitri}.\textsuperscript{28}

\begin{footnotesize}
\begin{enumerate}
\item Metcalf Craig, Resolution of Patent and Technology Disputes by Arbitration and Meditational View from the United State, 2008.
\item Oguntosin Dr Agens, with lex arbitrate Turns out Unfavorable, what the options available to the parties, 2009, Un of Dundee, Vand.J.Transant’l Law.
\end{enumerate}
\end{footnotesize}
The confidentiality of arbitration process has been examined by two authors Michael Hwang S.C. and Katie Chung in 2009. They examined the confidentiality of the arbitration in international law though. They argued that, in practice, it is not difficult to come up with a comprehensive formula or list of all the exceptions to the obligation of confidentiality. They tried to find out how to define the scope of the duty of the confidentiality.

This work has resulted in that the existing definitions are not successful. They found that the confidentiality of the arbitration depend on the applicable law of any institute and ad hoc rules. Another exception of confidentiality in result of arbitration process is related to disclosure. They stipulated that the consent of the parties to public disclosure of existence of the arbitration is one of implied obligations of confidentiality. The implied consent of the parties can arise after a dispute has risen. The disclosure of arbitration documents and confidentiality of final award for protection of legitimate interests of an arbitrating party is clearly and potentially very wide exception. In case of submitting inconsistent evidence in two separate arbitration. It is clear that the interests’ justice might require to disclosure of arbitration documents despite of any obligation of confidentiality. In circumstances, if obligation of confidentiality inform to the interested people like shareholders or bondholders, who certainly have a legitimate interest in the progress and outcome of the arbitration. One of the other exceptions of obligation of confidentiality and disclosure arbitration documents is made to professional or other advisors and persons assisting in the conduct of the arbitration. 29

The international commercial arbitration rules and its relation with the Panama Convention 1975 has been done by Jonathan C. Hahilton And White Qcasellp. In 2009 the authors considered the importance of convention and explained the type of the legal framework in international commercial trade during the past three decades. To highlight relationship between the Panama convention and New York convention for recognition and enforcement and also in light of the ratification of New York convention based on Panama convention across Latin America, they explained the jurisdiction of arbitral tribunal across the region. Over the last decade legal frame work was treaty ratification by treaty ratification, law by law, jurisdiction by

29 Supra Note,11,Vol.25:5.
jurisdiction. Therefore, they found that in their survey, the Latin American lacked a comprehensive legal framework to recognize and enforce the final awards. However, the Latin Americans’ have broadly adapted international convention, instances Panama convention and New York convention disturbs Latin America’s own jurisdictions. This continued evolution for commercial arbitration in Latin America.\(^{30}\)

The research work in relation to international arbitration in particular AAA and ICC rules has been done by Igor M. Borda in 2009. In general, the arbitration process and method of resolution in international arbitration to dispute settlement are common method, because of most important international treaties and laws are related to the arbitration. Therefore the international laws were suggested perspective regarding non-governmental institutions or organizations to dispute between the parties if the case is under the international trade relation and the parties have selected the arbitration method. Particularly, they have analyzed that the principle of International Chamber of Commerce (ICC) and the American Arbitration Association. They select a method to the disputes, in fact these provisions which the author discussed that the international arbitration developed consequence of human necessities. Many countries adopted for recognizing and enforcing international arbitration awards. In twentieth century, it clearly reminded that the AAA and ICC were serious and competent Non-Governmental Organizations that perform essential services for the international community. The AAA is the largest institution and would be able to perform better work while the ICC may have fewer important rules to perform and the AAA is a very effective international arbitration institution.\(^{31}\)

Cooperation of UNCITRAL in Asia with some or all Asian institutions worked by Qisheng, H. E and Dayony Zhou, in 2010. This article highlights the role of UNCITRAL Arbitration Rules and its performance. This work has discussed about the task of UNCITRAL to be more effective to the progressive harmonization and modernization of international trade law. Present article has taken into account the weight of cooperation of UNCITRAL in Asia that will enable to better understand the effect of UNCITRAL in the region. It also examines coordination, improvement, the regional arbitral tribunal professional quality and harmonization of regional legal environment.

Therefore, the author concluded that the impact of international commercial law by means of international arbitration has significant meaning to resolve commercial


dispute. The harmonization of international commercial laws in Asia has a long process. It might need to improve procedural rules to do by UNCITRAL Rules that to be effective in fulfilling its task. It strengthens cooperation with governments and institutions to conclude all aspects. International commercial arbitration in Asia could achieve a new era through a serious UNCITRAL’s cooperation.³²

Dr. Maciej Tomaszewski has discussed about the 2010 UNCITRAL Arbitration Rules in 2010. This article described that how the arbitration rules in 2010 replaced the provision of the UNCITRAL in 1976 by Resolution No. 31/98 of the General Assembly of The United Nations. The author explained that the 1976 Rules were used as inspiring model while new rules of UNCITRAL Rules as hereinafter called revised 2010 for solution of dispute settlements only indispensable corrections. Therefore in result it was dictated by the needs of arbitration practice and new rules. The provision of rules did not breach mandatory provisions which govern the arbitral proceedings.³³

In 2010 Katarzyna Miichal Owska has worked about the 2010 UNCITRAL Arbitration Rules. It highlights how to analyze the law applicable related to resolve dispute between foreign investor and a host state. Author examined the procedure of law applicable as it should be under any arbitration rules and analyzed its merits. It promotes reciprocal protection of investment and the dispute settlement process shall be based on the law which will govern the hearing. The article concluded that the legal rules that are part of various legal proceedings in order that are applicable for the resolution of investment disputes.³⁴

Grounds for a challenge -comments under the ICSID decision in the Urbaser Case worked by Maria Hauser-Morel in 2010. He analyzed that the challenge of arbitrators in relation one of the cases issued by the ICSID arbitral tribunal. The challenge was based on published statements and the decision rendered by the two arbitrators where legal views previously expressed prevent the arbitrator from prejudging the case. The final result was that the future challenge should not prevent arbitrators to publish or revise books and article at all.³⁵

³⁴ Michal Owska Katarzyna, The law applicable to resolution of Investment disputes, 2010, court of arbitration at Ppene lewiaton.
³⁵ Hauser-Morel Maria, View previously expressed by an arbitrator as grounds for a challenge - comments based on the ICSID decision in the Urbaser Case, 2010, court of arbitration at Ppene lewiaton.
The procedure of amendment of international arbitration process in China has been considered by Tom Christofer in 2011. He worked for the process of growth of rules related to the important arbitration process to dispute settlement in China. He supported China the biggest exporter of merchandise in the world. This work has also supported the rapid growth generally applied to the biggest relationship between Chinese economy, market attracted, attracted foreign companies and capital. In terms of dispute, China conducted several reforms of its laws on international trade and international arbitration. Arbitral institutions and procedural rules are related to the Chinese institutions. The numerous international bilateral and multilateral treaties are concerning arbitration. The treaties apply to arbitration and provide procedural arbitration rules. It is relevant to the new Chinese international arbitration rules reflected by the New York convention and the model law on international commercial arbitration. Thus it is a result of the examination of China’s international arbitration. The international arbitration in China’s legislation on international arbitration has come a long way over the last two decades. It is both unified and modern, taking up many fundamental principles common to arbitration in the rest of the world. Finally, while some major differences remain, they appear to be well manageable for a generally informed party. To establish an arbitration institution to deal with foreign trade then was peculiar.\(^\text{36}\)

In 2012 Kesiki Omer worked about arbitration in United States. He has discussed that arbitration was generally accepted in the legal community as a typical method of alternative dispute resolution. Arbitration is widely used as variety of contexts, which include commercial transaction, consumer transaction, and employment relationship. He provided that the sources of arbitration in Federal Arbitration Act derived from five sources; constitutions, international treaties, statutes, regulations promulgated by the administrative agencies and appellate opinion’s courts. This article has stipulated that the Federal Arbitration Act is not self-executing. It does not define and prescribe any mandatory procedure for arbitration or specify the controversies that are subject to arbitration. Eventually, he provided that the purpose of the Federal Arbitration Act compel courts to honor contractual covenants to arbitrate disputes. In general, it is found that the arbitration agreement needs to be under governance of the parties intention. In addition, general requirements for making agreement add the general

\(^{36}\) Christofer Tom, the rise of on arbitration Giant, Chinese law and the CIETAC Rules, 2011.
requirements for construction of a contract to be met. In general, both the parties have
to agree on the applicable law. If the parties have failed to specify a governing law,
the court has almost uniformly held that the arbitrators have broad freedom to
determine the applicable law rules and substantive law. Agreement should be signed
by both parties; and the subject matter shall be arbitrability. 37

The challenge facing the regime of international commercial arbitration in global
economy has been worked by Mohammed Muddasir Hossain, in 2012. He has
analyzed the process of the harmonization of the law applicable to the international
commercial arbitration. In practice law affects the requirement of “court ordered
interim measures in the arbitration process”. Therefore, in result, he found that interim
measures have protected the arbitration and it has proliferated that it is necessary to
refine and alter the system to meet the needs of contemporary world to change world
of business. Some of mechanisms necessary to ensure that interim measure can be
enforced. 38

In 1981 Professor Clive Schmitt has spoken about international place of arbitration.
He discussed that international place of arbitration is a norm of international
arbitration and agreement which worked over the lex mercatoria. He believed that
there were in expectance a set of international norms and it did regulate commercial
arbitration agreement between the parties from different countries. He believed that
the form of international regime was essential and inevitable for harmonization,
development and also effective for lex mercatoria. His work was concerned to
substantive rules and principles which could be applied to international agreement as
neutral, non-national and transactions norms.

As a result of this research it should be motive and exceptions of different parties’
arbitration. The parties may employ different tactics to achieve those motives and
exceptions. However, the parties are looking for a solution to their dispute by taking
an international mechanism like the model law, UNCITRAL arbitration rules and the
New York convention all have influence to arbitration and also are conduced. 39

7. CHAPTER-WISE INTRODUCTION

The present work contains six chapters.

Chapter first has discussed about historical background trade, international trade, arbitration in general and UNCITRAL Arbitration. This chapter also has analyzed the evolution of the international trade which it formed and how the processes of promotion of transactions have grown gradually. Subsequently, this work has discussed about all aspects of international trade which have been changed today into the new form of trade. Apart from discussing some common issues had taken up at different historical backgrounds of the League of Nations and World War I and II since 1914 to 1939 separately. The historical background of international trade and commercial arbitration mechanism has examined at the developing of international trade up to now. This chapter has also discussed about the growth of international trade and commercial arbitration from 1920 to 1950 and also its growth from 1950 to the present.

The importance position of international arbitration has been discussed in chapter two. This chapter finds legal position of international arbitration and focus on the promotion of the international trade to use arbitration mechanism of resolving international disputes. This work has also discussed about legal obligation of international institutions to promote and encourage using of arbitration mechanism. The reasons to choose of arbitration facility under its benefits or advantages have been analyzed in this chapter.

Chapter three is devoted to find the objective, philosophy behind the UNCITRAL and Arbitration Rules systematically the process of arbitration has been discussed in more details in this chapter. This chapter has been taken up the concept of arbitration in the UNCITRAL process. This chapter has scrutinized the arbitration mechanism under the UNCITRAL Rules and analyzed the process of arbitration from the intention of the parties to refer the subject matter to this mechanism under the arbitration agreement to end of the process.

Chapter four discusses to find the procedure of the development of the mechanism for the solution of international dispute settlement and presenting international institutions of solving international disputes. The development of WTO dispute settlement system under the panel and Appellate Body system and the procedure of the hearing have
analyzed. The impact of new technology on the development of dispute settlement mechanism has been taken up in chapter fourth. This chapter has taken up about the impact of Information technology facility and hearing of the arbitration on information technology for solution trade and commercial settlement which have included; online filing, case management websites, and videoconferencing base on its applications.

Chapter five deals with judicial response under the text of that article of UNCITRAL Arbitration Rules and brief summary of fact, hearing of tribunal of how the courts and tribunals have applied. This chapter seeks to assist in attaining to each article with cases related. Present work has provided that each case summary information on its decision and where it is reported. This chapter has been analyzed a summary of principal cases from the UNCITRAL and also other rules in relation.

In the last, in chapter six, conclusion and suggestion have been given to highlight to the various important concepts of arbitration and its position and historical background of UNCITRAL and international legal instruments of resolving trade and commercial disputes. The suggestions have given to affect to the development of using arbitration mechanism and support by national courts.