Chapter 1

Historical Background
CHAPTER-1

HISTORICAL BACKGROUND

1.1 Introduction

The beginning of evolution of international trade was based on rule less and informal agreement, subsequently, the processes of promotion of trade transactions have grown gradually. All aspects of international trade have been changed today to the new form of trade. Historical background of new international trade relationship traced back to the League of Nations. It was based on the WWI as well as its economic effects on the international trade laws during the wartime and post war. The World War II was yet another atrocity of human which out broke in Europe in 1939. Consequently, the United Nations was established based on steady ensue of negotiation. The causes which got in establishment were to preserve the peace and security between the countries in future. Today in developing of its role, the United Nations has become more concerned about the international trade and protects the adequate measurement of trade. Generally, the trade is most important branch of law, based on this specific viewpoint, one of the aims of the United Nations is supporting international trade. Trade is also most important for the United Nations to support transaction between the private sectors of different countries.

The UNCITRAL arbitration rules were adopted by the United Nations Commission on International Trade Law in April 1976 which was approved by the General Assembly Resolution no: 31/98 Dec.15/1976. The UNCITRAL was established when world trade began to expand dramatically in the 1960s. National governments realized the need of an international standard for trade to harmonize and unify national and regional regulations which governed international trade and new world trade. The UNCITRAL at the beginning of its work to be a core of legal representative of governments got some of the United Nations memberships. The UNCITRAL’s original members comprised of only 29 states but gradually it expanded its members to 36. The commission has its annual session at alternate years at its headquarters in New York and at international centre at Vienna.
The UNCITRAL Rules are well-known for its works in the field of international commercial arbitration adopted in its first session in 1968. After considering a number of suggestions by member states, the commission adopted nine subject areas as the basis of its work programme which include; international commercial arbitration, insurance, international payments, international sale of Goods, transportation, intellectual property, the elimination of discrimination in laws affecting international trade, agency and the legalization of documents. It is related to the international trade and has considered and revised its work programme on the basis of new developments in technology, change in business practices, international trends and developments, economic or financial crises and other forces affecting shipping international trade. The UNCITRAL generally includes all process as part of trade and agencies.

1.2 History of First World War

Known as the great reeling to the massacre of millions of people, was the WWI. It started in 1914 and continued till 1918. The reasons of beginning the brutality to the massacre, the WWI occurred centrally in Europe from 28 July 1914 and lasted until 1918. It traced back to the end of 19 century. The nationalism was the main cause of the breakout.\textsuperscript{40} Other cause to the start of the WWI was that canalization of countries by the powerful countries.\textsuperscript{41} The Turks Outraged the Christian, by the time of the War broke out, within Turkey, although there had existed a minority of Christian, they were the Armenians.\textsuperscript{42}

As it has been analyzed the cause of WWI that the increase in the size of armies and in growing complexity of development.\textsuperscript{43} President Woodrow Wilson enumerated for a “general association of Nations” formed under specific covenants for the purpose of affording mutual guarantees of political independence. The development of Germany in 1907, revolutionized their navy making amongst the most modern in the world, the causes were militarism-imperialism-and nationalism.\textsuperscript{44} In some of the situations, it occurred in 1917 where England responded by temporary abandoning the social welfare and spending their economic resources on military expansion. Germany

\textsuperscript{41} www.maps of world.com
\textsuperscript{42} "History of First World War: Genocide 1915." 128 Weekly Every, Thursday 75c. AUS&NZ 60c: 48.
\textsuperscript{44} “World War I Origins of the War in Europe.” Iowaflags. Honor the Colore, 22 Apr. 2015.
declared war on both Russia and France, before that German entered and invaded neutral Belgium. In 1917 the US by declaring war on Germany entered into the war, and in 1918 the new Russian Government signed an armistice treaty with Germany. Unfortunately, on September 29, 1918, allied troops through the German fortifications at the Hindenburg line, so on November 9/1918, eleventh day, and the war ended as Germany and the allies signed an armistice agreement.  

1.3 Background of League of Nations

The history of League of Nations to trace back is currently undergirding a renaissance. The League of Nations became more important to exist after (WW1) because it focused on preventing war. It looked to be necessary to bring stability to the world when many looked to the League of Nations. It was only the way to avoid a disaster and it was also created as an international body to maintain world peace. After the devastation by the WW1, it became necessary to create an international organization to maintain world peace. It was in a neutral country like US that had not fought in WW1, as it was stated in Geneva Convention in 1919. It was based on three things 1.open diplomacy, 2.international cooperation, and 3.restriction on the right to wage war, in addition, it helped governments to refine the process of international arbitration if a dispute occurred. It could do in disputing and discussing the problem in order and also in peaceful manner by League’s assembly and League’s parliament based on decision and the procedure to proceed. It could be to introduce verbal sanctions under League’s Parliament, if one nation becomes aggressive to the other nations that they should leave nation’s territory. If the state failed to pursue Assembly’s decisions, the League had to introduce economic sanctions, but it would be arranged by council of league. It could introduce physical sanctions. It did not have a military force used to put into territory of aggressor nations. In1946, the League of Nations was officially dissolved with the establishment of the United Nations.

46 www.league of nations history.org/homepage.shtml.a network to facilitate research.
48 www.history.com/this-day-in-history/League of-nations-instituted-this day is history.
1.3.1 Weakness of League of Nations

In the beginning of creating the League of Nations, America refused to join it. It was the powerful nation round the world, so, it was a serious low prestige of the League of Nations. Another weakness was that it established members did not allow Germany to join the League in 1919. Fortunately, the League of Nations found an ideal to end war for good. And territorial indignity to great and small states alike, the aim of Wilson was the League of Nations to be articulated.

1.3.2 The failure of the League of Nations

The cause of war was failure of league and the members of League of Nations broke the rules on which they agreed. The failure of the League of Nations was the inability to keep the peace and security among the countries which resulted in commencement of the WWII. The Rules had been broken by the great member of League of Nations and nothing was done. It shall be said that the League of Nations did not manage to prevent fight or invasion by its members to other territories either, they were member of the League of Nations or they were not allowed to be members of it. Therefore, it was powerlessness to prevent further world war and maintain peace and security. The Treaty of Versailles which was ended the WWI, subsequently the power of League of Nations was limited. The opinion of all countries, the absence of the US, weakened the League of Nations from the outset.

1.4 Historical background of World War II

The WWII was fought mostly throughout the European countries under the backdrop of the WW I. In WW II Civilians were involved during the war strategy bombing to destroy the cities, killed more than one million civilians. One of the serious Events occurred during the WW II was the Holocaust.

1.4.1 Causes of World War II

The Nazism, Fascism and communist shaped the events that led to the outbreak of war in September 1939. The Germany was main aggressor, but Japan and Italy also were joined to be its allies to support her. Another cause of breaking out WW II was

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imposing harsh terms on Germany. The goal of Germany under leadership of Hitler was to secure living space for the German people and to be master race in Eastern Europe.\footnote{52} It broke out in Europe when the army of Germany under leadership of Hitler invaded Poland on 1st September 1939, then WW II began.\footnote{53} The US invoked the United Nations in to the Second World War, it threaded, Europe and the Pacific.\footnote{54}

1.4.2 End of Second World War

The notorious war guilt clause, Germany was guilty of initiating the war and had to pay a massive war reparations bill. Thus, it was held that by the Paris Peace Conference, Italy was outraged and it received few conferences held in Paris and Italy was aliened.\footnote{55} China blamed Japan for initiating WWII and it was permitted to the Chinese government to keep Japan to be nationalized and militarized. The end of the WWII divided into the several parts. First of all, war ended in Europe in September 1944, where allied troops invaded Germany from the West. The major cause of the assault of Allied group was surrender of Germany. It was by bombing attack on Berlin on 30 April when Germany officially surrendered on 7 May 1945. United States dropped two Atomic bombs on the Japanese cities, Hiroshima and Nagasaki respectively. The war ended in Asia when Soviet Union invaded the Japanese the Potsdam Declaration Allies had announced for ending the WW II on August, 1945 after that war in Asia was ended.\footnote{56}

1.5 Historical Background of United Nations

The first attempt to keep peace symbolizing security for all states round the world, a League of Nations was established but unfortunately it proved ineffective. It was replaced by the United Nations on 24th October 1945 with its aim to promote international co-operation. It attempted to create several treaty or conferences and formed several treaties to regulate conflicts between nations. United Nations was established after dreaded wars broke out between the countries in WWII. Thus, there were great break test for all countries round the world. The earliest declaration for a

\footnote{52} "History of World War II."Center of Military History United States Army Washington. DC (1992): P.5.
\footnote{54} "History of European WWII."Www.sparknot.com.
\footnote{56} "History World War II."Howstuffworkers.com.
new organization began under aegis of US State Department in 1939. The world wars were catastrophic events for the countries, the outbreaks of brutality and the outrage massacre of millions of people. The United Nations had a plan to respond to the crises based on the disasters. It was recommended that at the time of establishing when the US President Roosevelt attempted to form a new international organization for discussion by the great powers. Therefore, it must be said that the United States was an architect of the United Nations. San Francisco meeting was an international Organization met to finalize the structure and argument of the United Nations charter. Therefore, the creation of the United Nations was in April 1945 by San Francisco meeting with 51 countries considered founding members. The name of United Nations was suggested by the US president Franklin D Roosevelt. It was used in 1942 the United Nations was created by 26 countries to sign the declaration. The security council of the United Nations was authorized to take action against aggressor nations. At present the United Nations with its own 300 international treaties on topics use of outer spaces and the oceans. The most important working part is the UN military forces to conduct; this part has conducted over 35 peacekeeping.

1.6 Evolution of the international trade

Trade has a long history. It has changed over the years because it was based on the relationship between ancient cities and states in relation to the international law and medieval empires, but it arose after middle ages. It has provided that the international law which was started in 17th century was lawless and intolerable. Hugo Grotius was the first writer concerning laws of war and peace, but his opinions were used by all nations and formally accepted as a basis for reaching agreement in international disputes. Documentary international trade was defined by the Adam Smith, the father of Economics, in his own book ‘The wealth of Nations’ in 1776. But in the last few centuries, international pacts between the countries moved them towards the free trade. It was officially changed around the 19th century in the western countries in order to move towards economic liberty. Subsequently, trade started in the Arabian nomads with Far East, it included silk and spices. Although, Greek dynasty was the first empire to carry out trade with India as long as before the Romans did. International trade in modern
times, Japan is first country to trade with a foreign country basically to prevent piracy and smuggling. Initially, trade was in the modern time of international Relationship, by Dutch Conveys Sails with back up since 1599 to 1602 from East India. The war between the countries influenced the course of the world trade, after the WWI and post war economic crisis arose between the west countries in 1920, when the economic recession changed the balance of world trade. Due to this, recession began and fluctuation of the currencies creating depression and economic pressures on various Governments. Notwithstanding, to reduce the pressures of economic and ease International Trade between the countries, League of Nations organized the conference in May 1927. Therefore, it was followed by GATT in 1947. The countries began to grow familiar with the fact of economic crisis, depression and economic pressures. To keep reviewing their international trade policies on continuous basis, the understanding of international trade and factors influencing global trade depend on the natural resources with comparative advantage. Economics of large of scale production of technology in terms of e-commerce as well as the financial were market structures. Notwithstanding, the new trade occurred after the World Wars took place to develop the new strategy of trade. Post war was very important because the new growing economy was at decline by barriers since 1930s. It emphasizes by all the theorists of international trade in connecting to the main objective of international trade is to understand as well realize the effects of trade on business, individual policies to new economic conditions.

1.7 Background of arbitration

Background of arbitration can be traced in Sixteenth century as in France; the arbitration rules were made by the decree of the Moulins to resolve the dispute in field of commercial in 1566. Therefore, the history of arbitration can be traced back in sixteenth century until now. On the other hand, historical examination of arbitration was in the middle age where the merchandise of England has resorted out of the Royal Court mostly by eighteenth century. Since 1900 the general provisions have been significantly progressive which show that the commercial dispute can be paced

arbitration in nature for approving the Acts which are necessary for encapsulated parties. The arbitration process was different place to place. It has been very clear in the USA that the President George Washington himself served as the private arbitrator for disputes before the revolution. In the late nineteenth and early twentieth century arbitration law enforced agreements to arbitration for all future cases of disputes. The arbitration may be traced back to recent centuries as a speedy mechanism to the dispute settlement resolution.

1.8 History of International Commercial Arbitration

It is a work in progress. The progress of international commercial arbitration started in 1923. It is roughly eighty year old and it has happened when the first negotiations were to lead to the new developments programme. At the beginning of development of international trade most societies at early centuries, settled the dispute by arbitration unless the dispute was of family nature and labour relations between two commercial enterprises. In most countries, arbitration was traditionally at attention of the system of litigation. Even law is not required to the procedure because the habits developed by the lawyer and carried in the courts into arbitration. The state-trading system was first user of arbitration mechanism for solution. State-trading system did not pay attention to the matter that the dispute happened to include a foreigner as one of the parties. It was clear that in England until 1979 arbitration act considered in London include international trade, shipping and insurance.

1.8.1 The growth of international commercial arbitration 1920-1950

The international arbitration mechanism began a major procedure to solve disputes between the parties from 1920 to 1950 but those rules which were in European continental existed in domestic arbitration agreement. The Geneva protocol 1923 eliminates many difficulties for non-domestic arbitration agreement based on arbitration clauses adopted by the League of Nations. The protocol provided that the procedure of appointing the arbitrators which were governed by intend to both the parties and law of the country in which territory the arbitration took place. Its content is incorporated with articles II and V (D) of the New York Convention 1958.

67 Supra note, 64,p.3.
The importance of arbitration mechanism and execution of its award affected Geneva Convention 1927 which was adopted by the League of Nations. The contracting States undertake and agree to recognize and enforce arbitral awards made in conformity with the Geneva protocol 1923 in the territory of another contracting State. Consequently, the ICC (International Chamber Commerce) was adopted in 1922 and the International Law Association adopted Amsterdam rules in 1938. It includes provisions concerning the constitution of the arbitral tribunal, the power of arbitrators, the role of chairman of the committee is procedure for the transmission of documentation between parties, and historically the Amsterdam Rules had no practical effect. The international institution for the Unification of Private law adopted for unification of law on arbitration, however the outbreak of the world wars constrained, were at the halt. In European countries, the arbitration was a steady development as a mechanism of dispute settlement in international commercial matters, throughout the two decades from the outbreak of the WWII.

1.8.2 The growth of arbitration from 1950 to the present

The revision of Geneva Convention 1927 was undertaken by the ICC to submit to the United Nations. It had prepared both the Geneva Protocol 1923 and the Geneva Convention 1927. Therefore, it was advantageous to combine the provisions of Geneva Protocol 1923 and Geneva Convention 1927 into a single convention. It was found that the result appeared in New York convention to the Recognition and Enforcement of foreign Arbitral awards in 1958. The Article V (1) of the Convention, provides that limited violations of the rules of a procedural nature governing and are designed to protect the parties, the article aforesaid in Para (2) provides that to protect the integrity of the law of the enforcing country. Today, international dispute resolution centers are increasing as a solution for the settlement of dispute between nations because it has been increasing since last decade irrespective of any geographical location especially after institution of Singapore established in 2004. American Arbitration Association and other international centre around the world established for solution of the international trade and commercial problems and to the settlement of disputes. In 2005 international arbitrations conducted under the ACICA Arbitration rules based on the Swiss Rules of

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69 Supra Note 66, P.19.
71 Supra Note.65,p.19
International Arbitration. In 2010 AIDC established its one of the geographical locations and Maxwell Chamber now home to the WTPO centre in Asia. Therefore, all of the international institutions were established last decades based on the arbitrability of the subject matters with arbitration agreement of parties.\textsuperscript{72}

1.8.3 European convention 1961

It was adopted three years after New York convention. It is first international instrument to have the title of international commercial Arbitration. The adoption of European convention was a signal attitude towards changing the arbitration of international commercial disputes. The enactment of ad hoc arbitration in European continent was adopted as an arbitration rules in 1966 for the United Nations Economic Commission, European countries (ECE), the United Nations Economic Commission for Asia and the Far East (ECAFE). The European Convention provided a Uniform law on Arbitration by the council of Europe in 1966. Throughout three rules aforesaid, only the ECE Rules could be said to success, other rules widely used in continental Europe for ad hoc Arbitrations. The ECAFE Rules seems to have been used rarely; the Uniform law has never come into force.\textsuperscript{73}

1.9 Development of investment Arbitration

The investment is often in the form of a company organized under the national laws where it has been recognized but it deals with the foreign company under its own rules, it will not be possible to treat differently with domestic rules. The form of protection was different; it was usually diplomatic protection in the nineteenth century and early twentieth century. The investment dispute was solved in form of host government and some of different situations in mixed arbitration. Therefore in 1965 the World Bank introduced an alternative conventions on the Settlement on Investment Disputes between state and Nations of states (hereinafter Washington Convention). Then the investors could submit under auspices of the International Centre for Settlement of Investment Dispute (ICSID). Notwithstanding, since 1950 many of countries began programs of bilateral negotiating investment treaties (BIT).\textsuperscript{74} Today investment arbitration has become one of the central features of contemporary legal practice for counsel, and arbitrators.\textsuperscript{75}

\textsuperscript{72} Supra Note, 68, p.2.
\textsuperscript{73} Www.PCA.org/show Page.asp. 2015.p.1064.
1.10 Development of the legal structure of arbitration

1.10.1 International development

Since 1920 important private institutions dealt with international arbitration have expanded with the ever increasing growth of international trade. The arbitration society of American was organized in the United States in 1921 and in 1925, the arbitration foundation came into existence, and then this organization merged into the biggest arbitration organization in the world of American Arbitration Association in 1926. The ICC, head quartered in Paris, was organized and developed jointly with the London Court of Arbitration into the leading European international organization on private arbitration in 1919. All these organizations are connected with each other as well as with other international institutions by different agreements on arbitration clauses.\(^{76}\) In 1935, international private system of arbitration like the international Chamber of Commerce has been made primarily by the institute for the unification and Harmonization of Private law and international law Association in Rome. The Rome Institute published a draft statute calling for arbitration in matters of international trade in 1935. Therefore, the draft was published in amended form two times in 1940 and 1953. The international law Association published the draft of a uniform arbitration clause in 1938. However, it recommended to be used in individual contracts. Finally ICC published a draft in international agreement for the enforcement of international awards in 1953. Under the draft, the parties to the arbitration agreement are authorized to waive by an agreement. The economic and social council of United States, at the suggestion of the International Chamber of Commerce, prepared another draft that finally led to the United Nations agreement on the recognition and enforcement of foreign arbitration awards on June 10, 1958. The Geneva Protocol 1923 and the Geneva Convention 1927 provided that “among the contracting states which participate in the new agreement as soon and as far as it becomes binding on these States. The European agreement is one of the important agreement mechanisms on international commercial arbitration. It supplements the United Nations agreement basically devoted to the problem of execution and enforcement of foreign awards.\(^{77}\)


\(^{77}\) Ibid. p.402.
1.10.2 History of arbitration in the international cartels

History of the arbitration agreement in cartels has arisen since 18 century, the commencement of international arbitration cartels was limited, and the first work on modern cartels agreement was prior to the WWI. One of the first modern international cartels provided with respect of all controversies among the parties arising out the contract, published in 1883. It shows agreements for setting controversies of the cartel by arbitration. Another lateral and valuable source illustrating the great importance of arbitration of cartel agreement is reported in 1906. The Volume I of this report contains cartel agreement from fifteen industries and seventy-five of these agreements contain arbitration clauses. The arbitration clauses were even more usual and necessary in countries where cartels prohibited or their agreements were unenforceable. The Import Automobile Industry cartel which established and it came into force to arbitration court in 1924.\textsuperscript{78} The most of international cartels in the field of ocean shipping all contain arbitration clauses. Similar provisions are also in wide use in the cartel agreement in the technical and pharmaceutical industries, the iron, steel industry, as well as the metal industries.\textsuperscript{79} The Conference of international trade established in 1927, for the resolution declared “desirable” for member of the cartels to voluntarily submit the disputes to the arbitration. The arbitrators with their understanding and familiarity with the economic situation could be best guarantee for settlement by the international association recommendation. The members of the international cartel can call as often as possible on the international courts of arbitration. These tribunals were best to lead to the unification and humanization of international cartel laws.

1.11 History of Indian Arbitration Act

The Indian Civil Code Procedure (1859) permitted arbitration mechanism without intervention of the courts. The 1996 Ordinance replaces the Arbitration Act of 1940. Finally the Act 1937 and the Foreign Awards Act 1961 which were all repealed. The Ordinance also deals with foreign arbitrations and the enforcement of foreign awards in Part II which includes both the New York Convention and Geneva Convention awards. One of the important purposes was international centers for alternative

\textsuperscript{79} Ibid. P.386.
dispute resolution, so-called ICADR arbitration, to the litigation in the dispute resolution process. In Indian arbitration the parties agree on the place of arbitration, failing such choice by the parties, the arbitral tribunal will decide on the question having regard to all the circumstances of the case. While the arbitration act has allowed all matters resort to the arbitration although some dispute to be expected, because section 2 (a) of Indian arbitration Act 1996 states: “the subject-matter of the difference is not capable of settlement by arbitration under law of that country”. Thus some kinds of dispute cannot be submitted to the arbitration.

1.12 Historical background of the UNCITRAL

In general, international trade is a very important division of the United Nations organization. The General assembly has established an especial procedure to the disputes settlement. In 1965 at the session 20th the General Assembly with its agenda has got “Consideration of Steps to be taken for Progressive Development in the Field of International Law with a Particular view to Promote International Trade. It was to reduce and remove the legal obstacles for international trade and it did by unification and harmonization of the rules. In 1966 the General Assembly established the UNCITRAL for playing important role for removing and reducing the legal obstacles and reducing conflict between the States in front of the international trade. United Nations General Assembly entitled under resolution no 2206 (XX1) made it. The UNCITRAL established for purpose to progress the harmonization and unification of the rules in international trade, it is not only in arbitrating rather it is about all parts of the UNCITRAL.

The causes for establishing the UNCITRAL were when the world trade began to expand dramatically in the 1960s. National governments realized the need for global set of international standard for trade, to harmonize and unify national and regional regulations, which governed international trade to new world trade. The UNCITRAL acts as a core of legal representative of governments which got some of memberships. Whereas UNCITRAL’s original members comprised of 29 states at the beginning of work but gradually it expanded its members to 36. These Rules are well-known for

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commercial relationship as well as at its first session in 1968, after considering a number of suggestions with member states, it adopted nine subject areas as the basis of its work programme, they include; international commercial arbitration, insurance, international payments, international sale of goods, transportation, intellectual property, the elimination of discrimination in laws affecting international trade, agency and the legalization of documents. The UNCITRAL relates to the international trade, it has considered in revising its work programme on the basis of new developments in technology, changing business practices, international trends, developments, economic and financial crises, shipping international trade and other forces affecting to do so. The UNCITRAL generally includes all process of trade and agencies related to international commercial law like international sale of goods or International Transporting of Sales. The members of UNCITRAL are elected every three year for six-year terms. The meeting of members alternatively takes place in New York and Vienna.\textsuperscript{82} The UNCITRAL keeps a close collaboration with conferences of United Nations and its organs and specialized agencies on international trade and promotion which they are working into the international trade.

1.13 Background of UNCITRAL arbitration

The UNCITRAL Arbitration Rules were adopted by the United Nations Commission on International Trade Law on April 1976 and were approved by the General Assembly Resolution no: 31/98 Dec.15/1976. It shall be said that arbitration is a mechanism to get a new procedure for dispute settlements. In establishing the arbitration, the United Nations decided to issue a legal core for this aim, the UNCITRAL as a legal core of the United Nations provided that the arbitration mechanism in field of international trade by resolution 2205 in 1976. In 2006 the recommendation of the members was to revise the UNCITRAL, it was far from the features of the revision at the 14\textsuperscript{th} session. In 1981, decision was to issue guidelines to relevant bodies in order to assist arbitral institutions. Extension deliberations and leading arbitration’s experts was recommended by General Assembly on the basis of the UNCITRAL arbitration Rules. The UNCITRAL arbitration was adopted to be revised in 2010, it intends to reflect the evolution in practice. On August 15, 2010, the

UNCITRAL arbitration pursued to apply to the arbitration agreements, the rules have changed in some parts. The parties have not permitted to appoint the arbitrators, and they should appoint a specific appointing authority with agreement. It provided that in 1976 and 2010 the UNCITRAL arbitration rules, any party may request the secretary General of the PCA to make such designation.\(^{83}\) The next revision was in 2013 where a new paragraph was added to the 2010 Rules to incorporate the new UNCITRAL Rules on Transparency in Arbitration. Investment treaties are under new paragraph added after 1st April 2014. The agreement of the parties affected on the multilateral investment treaty and Treaty-based Investor-state Arbitration, shall apply by claimant and the respondent state. However, the parties have to agree on transparency in applying of UNCITRAL Rules\(^{84}\).

1.14 Background of work the UNCITRAL about New York Convention

The UNCITRAL in its thirty ninth sessions in 2006 recommended the interpretation of article II Para 2 and article VII Para of convention on the recognition and enforcement of foreign arbitral awards done in New York in 1958. Its result of recommendation was drafted in recognition and the widening use of electronic commerce and enactments of domestic legislation as well as case law which are more favorable than the New York convention in respect of the arbitration agreements. The arbitration proceedings, the enforcement of arbitral awards, the recommendation encourages the States to apply arbitral II (2) of New York convention 1958. There is description in recognizing awards where the circumstances are not exhaustive. In addition, the recommendation encourages states to adopt the revised article 7 of the UNCITRAL Model law on International Commercial Arbitration with the form of an arbitration agreement “in writing”.

1.15 International Conference of Sale of Goods

The fast track of the CISG was in 1929 when the idea of international Sale of Goods exploited in Rome. Unfortunately, it started after long time as well as after two world wars until 1964 by then diplomatic conference formed for international sale of


\(^{84}\) "Permanent Court of Arbitration." WWW.PCA.org. Show Page.
The UNCITRAL established to harmonize and unify the international trade and international commercial law notably within international transporting, international sale of goods as it is so-called CISG. The international Sale of Goods established with the 1980 Vienna Sales Convention known as CISG as predominant. The two earlier conventions sponsored by the international institute for unification of private law. They were developed over the course for three decades and finalized in 1964 by a diplomatic conference at The Hague. The 1964 Hague conference entered in to force among nine states, but in spite of their fundamental importance, failed to receive substantial acceptance outside Western Europe. The process of making the CISG was of three stages; at first the UNCITRAL working group produced two draft conventions. The first draft of convention was on sale as it includes the obligations of buyer and seller as to the sales contract, from 1970 to 1977.

The second stage of establishment was from 1970 to 1978 to draft to the Working Group’s Sales and Formation. It was reviewed by the full commission in 1978, the commission combined into one contract of International Sale of Goods and it was a draft which was finalized by the General Assembly. Third stage was combined with the first and second stage. The last stage was diplomatic conference stage as the two precede stages reported in nine UNCITRAL year book. Thus, the commission’s work was addressed to the articles of the Hague Sales Conventions. To complete the third stage of draft in 1978, the working document was presented to delegate to the attendance to the 1980 Vienna diplomatic Conference.

**1.16 History of the UNCITRAL Model Law**

The UNCITRAL was prepared by the General Assembly in 1966 through the resolution 2205(XXI) to establish the recommended UNCITRAL commission. However, the model law was prepared in international commercial arbitration based on the UNCITRAL and adopted by the UN commission on international trade law on 21 June 1985. In 2006, the model law established in relating to international commercial arbitration amended and it included more details on interim measures. It is not binding to the States, it might add to their domestic law to subsidiary act to

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solve international trade disputes settlement. The model law on electronic commerce was adopted by the UNCITRAL in 1996, in furtherance to promote and harmonize the international trade over the past quarter of a century of all member States of UNCITRAL from all regions and level of economic development. It has been mandated by formulating of international conventions which include the United Nations conventions on international contract for Sale of Goods. It is for limited period in international Sale of Goods, the carriage of Goods by the Sea Act 1978, the liability of Operators of transport terminals in international process, international bill of change, international promissory notes, independent Guarantees and stand by letter of credit. Model law includes several types of rules; model law of international commercial arbitration, international credit procurements of Goods, construction and services.

It identified other legal aspects and issues related to the legal value of computer records. The requirements of writing are; A) general conditions, B) authentication, C) liability and D) bill of loading. The UNCITRAL recommendation was endorsed by the General Assembly in resolution no 40/71 of 11 December 1985. At twenty-first session of the UNCITRAL, the commission considered a proposal to examine the need to provide legal principles in 1988. The principles would apply to the formation of international contract by electronic means. At twenty-third session the commission reported to the preliminary study of legal issues related to the formation of contracts by the electronic means in 1990. Under twenty fourth session the commission had to report to the secretary general entitled electronic data interchange in 1991. It describes the current activities in various organizations. The working group endorsed by the commission at twenty fifth sessions in 1992. The session entrusted the preparation of legal rules on electronic commerce, it includes working group on international payments, and it renamed the working group of electronic data interchange. The draft of model law adopted the commission by twenty eight sessions and recommended for lack of sufficient time in 1995. After considering of the text draft of model law, the commission decided to adopt the drafting group at its twenty ninth sessions on 12 jun1996.\(^87\)

1.17 Model law on international credit transfer

The UNCITRAL model law binds the States to pay on time based on the obligations agreed. Thus, if delayed or other errors occur in international transaction adopted to make obligations related to sender of funds and money to the operations from different places in 1992. This law covers the fundamental rules, obligations of instruction, a receiving bank, time of payment of a receiving bank and liability of a bank, whenever the obligator delayed to transfer to other state. It provides that the law applied to credit transfer where sending bank or any receiving bank is in different places or States. The meaning of credit transfer will be different and payment order issued by the originator’s bank, it is made for the purpose of place which funds available to it.

1.18 Model law on procurement of Goods and construction with Guide to Enactment

The model law decided to adopt Guide of aspects related to procurement of Goods and service in June 1994. It recognizes that certain aspects of services are governed with different considerations from those applicable to the procurement of goods and construction. The Model law would change the aspect guide to explain all objectives of provisions which are designed to enhance the effectiveness of model law’s tool for modernizing and reforming procurement systems. The model law has prepared these aspects to the enactment of its 2001 model law on public procurement to provide background information on its policy considerations. The last UNCITRAL model law guide to assist user of the earlier UNCITRAL model law on procurement of Goods, construction and services in updating their legislation to reflect recent developments in public procurement.88

1.19 UNCITRAL model law on Electronic commerce 1996

The model law will be affected on the domestic law in different states which they would apply, it to be a part of their national law. In 1996 model law adopted Electronic commerce to explain and promote the harmonization and unification of international trade law, it explained that its aim to promote aspects and regards was to remove unnecessary obstacles to international trade caused by inadequacies and

divergences the rules and law effect on trade. The model law also was prepared in changing the means by communication, it made a way between parties using computerized and modern means and it also considered other modern techniques in doing business. Its aim was preparation of modern means, computerized or other modern communication techniques for the evolution and modernization of certain aspects of their laws in the field of commercial relationship.

1.20 The UNCITRAL model Legislative Provisions on Privately Financed Infrastructure projects 2003

First of all the commission considered work to be undertaken in the field of privately financed infrastructures small project in 1996, then the commission reviewed the drafts chapters from its sessions. Ultimately, this process, the commission adopted the legislative Guide held in New York from 12 June to 7 July 2000. It already mentioned in 2001 with the task of preparing model legislative provision on the basis of the recommendations consisted in the field of legislative Guide afterword the working group devoted the sessions held from 24 to 28 September 2001, and also from 9 to 13 September 2002 of preparing to draft model legislative provisions. Finally, the commission adopted the model legislative provisions at its Thirty Sixth sessions which was held in Vienna from 30 June to 11 July 2003. The present model legislative provisions on privately financed infrastructure project prepared by the UNCITRAL Model law to Guide on privately financed infrastructure projects in field of privately financed infrastructure projects working group adopted of the legislative Guide on 9 December 2003. The General Assembly adopted resolution no; 58/76, entitled model legislative provisions on privates financed infrastructure projects of the UNCITRAL. The aim was establishing the model provision and legislative recommendation to assist domestic legislative bodies in the establishment work favorable to privately financed infrastructure project. The model provision are supported to be implemented and supplemented to issue of regulations and privately financed infrastructure projects require to establish an appropriate legislative framework. Both are designed on specific legislative recommendations which are made in the commission (UNCITRAL) model on legislative Guide privately financed.
