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The Development Of International Commercial Arbitration In Recent Decades: The International Scenario

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Abstract:Aim: The main purpose of this study seeks to discuss the worldwide developments in international arbitration by the use of a wide general review of the related data right up to the present date as well as understanding of this important and growing field.

Research Questions: This study seeks to answer to two main questions; 1) how did the arbitration grow in the universe? And, 2) what is the global position of International Commercial Arbitration?

Methodology: The methods which used in this study contain Descriptive and Historical research method which carried out in International Commercial Arbitration. This study is based on the most recent commentary, research articles, books, international institutional yearbooks and court decisions referenced and reported in selected national, regional and international journals.

Conclusion: Although the International Commercial Arbitration in the world is not a new concept, but recently it has been organized on more scientific line, expressed in more crystal clear terms and employed more widely in dispute's resolution in the previous years than before. It has become so popular but it is far from an ideal and universal method. The most important reasons of the mentioned points are:

1.The present international convention and legal institution are not adequate for dealing with the problem of international commercial arbitration.

2.The global scenarios existed in international commercial arbitration are not certainly encouraging.

3.The Model law has not met the purpose which was determined for it.

Key words: International Commercial Arbitration, Arbitration, International Conventions, the New York Convention, the Model Law.

INTRODUCTION:

International Commercial Arbitration in world is no means a recent phenomenon, though it has been organized on more scientific line, expressed in more crystal clear terms and employed more comprehensively in dispute resolution in recent years than before. But, a better and complete understanding of the present is possible only when we have some idea of the past because the roots of the present lie buried in the past by studying the history and development of arbitration laws in world.

Therefore, in this study, the issue of development of international commercial arbitration is considered. For this purpose, first, this study traces the development of International Commercial Arbitration from its early foundations to the well –established dispute resolution mechanism that it has become today.

2.1) Ancient History to the Birth of Modern International Law

International Commercial Arbitration (ICA) has seen gigantic growth in the late 19th and early 20th century and has indubitably become the preferred method for resolving international commercial disputes in worldwide. However, the concept of parties referring to a neutral third party of their choice for the resolution of disputes between them is very much older and dates back to beginning of recorded human society. Arbitration is said to have existed 'long before law was established, or courts were organized, or judges had formulated principles of law'.

Resort to arbitration indeed seems natural: when two persons want to resolve a disagreement between them, an instinctive reaction is to turn to a mutually respected third person, such as a tribal elder. It is therefore not surprising that arbitration was practiced in ancient periods in all corners of the world.

The ancient Sumerians, Persians, Egyptians, Indians, Greeks, and Romans all had a tradition of arbitration. Archaeological research reports that Clay tablets from contemporary Iraq recite a dispute between one Tulpunnaya and her neighbor, Killi over water rights in village near Kirkuk which was resolved by arbitration (with Tulpunnaya being awarded ten silver shekels and an ox) , but as matter of fact, arbitration owed its beginnings to commercial disputes as it started with trade disputes being

resolved by peers as early as the Babylonian days. The Sumerian Code of Hammurabi (c. 2100 BC) was promulgated in Babylon, and under the Code it was the duty of the sovereign to administer justice through arbitration. Arbitration was also popular in ancient Egypt; it has been said that until about the mid-20th century, most of disputes would be settled out of court by recourse to a respected and popular elder chosen for his wisdom, integrity and standing in the community. Eastwards, in India also has an ancient history of resolving disputes in a three-tiered structure that is comparable to modern-day arbitration. In ancient times, long before the courts of law were established, people often voluntarily submitted their disputes to a group of wise men of a community— closely related to modern-day arbitration called the Panchayat—for a binding resolution. This system continued through until the British arrived in India and made significant changes to the legal system with the first Bengal Regulations, enacted in 1772 during the British rule, followed by the Arbitration Act 1940, which was later modernized by the Arbitration and Conciliation Act 1996.

Arbitration was no less common in West. Early matters of arbitration from the West include ancient Greek, in certain for the resolution of maritime disputes with trading partners such as the Phoenicians and between Greek city states(The Greeks were subsequently influenced by their Egyptian ancestry and continued the use of arbitration.), and ancient Rome. After an apparent decline in usage under late Roman practice, ICA between state-like entities in Europe experienced a revival during the middle ages. Arbitration was the preferred method for resolving civil matters and wide variety of regional and local forms of arbitration were used to resolve private law dispute throughout during the middle ages in Europe. It was also used to resolve colonial power struggles between states, such as to define the areas of influence among colonial empires particularly American and British colonies in the 15th and 16th centuries.

Western countries would often turn to the Pope (head of the Roman Catholic Church) to arbitrate such matters, giving the arbitral award an almost divine authority. Indeed ,one of the famous examples of the age 's division of the discoveries of the new world include the arbitral decision rendered in 1493, in the wake of Christopher Columbus' epochal discoveries, by Pope Alexander VI which clarified borders between Spanish and Portuguese colonies in the Pacific Ocean and paved the way for the linguistic division of Latin America between Spanish and Portuguese in the Treaty of Tordesillas in 1494.It also clarified land ownership division in India. International disputes were also frequently referred to other sovereigns who acted as arbitrators in the resolution of those disputes.

The first ICA of the modern era is often said to be the Alabama Claims Arbitration which took place in the consequence of the American Civil War. The United States (U.S) claimed that Britain had violated neutrality obligations under international law by allowing the battle ship CSS Alabama to be constructed in Britain in full knowledge that it would enter into service with the Confederacy. As a result, the U.S asserted that Union merchant marine and naval forces had suffered heavy direct and collateral damages. After years of unsuccessful US diplomatic initiatives to obtain compensation, In 1871, President Grant's appointed Secretary of State Hamilton Fish, worked out an arbitration agreement with Sir John Rose (British representative) in Washington to create a commission consisting of six members from the British Empire and six members from the United States(totally 12 members) to resolve the Alabama claims. On 8 March 1871, the Washington Treaty was signed at the State Department and after 16 days on 24 May 1871 the U.S. Senate ratified the treaty. According to parties' agreement, an arbitral tribunal met in Geneva. The arbitral tribunal issued its decision in September 1872, ordering Britain Government to pay the U.S some $15.5 million (This would correspond to about $ 200 million in 2013) in compensation for direct damages suffered. The arbitral tribunal was rejected indirect damages.

The following inferences may drive from the Alabama Claims result:

1.The universal recognition of international commercial arbitration.

2.A number of significant improvements of certain principles of international arbitration.

3.Codifying international law to facilitate peaceful solutions to international commercial disputes.

4. A precursor to the Hague Conventions of 1899 and 1907 (which instituted the Permanent Court of Arbitration), and perhaps even part of the inspiration for aspects of the League of Nations, the United Nations(UN) and the International Court of Justice(ICJ).

2.2) Early 20th Century: The Growth of International Commercial Arbitration (1880 to 1920)

In the late 19th century, international arbitration began to gather significant momentum but its governance remained the preserve of national law. Without any international regulation of arbitration, the enforcement of awards was handled differently in different states.The seeds of ICA saw know it today were sewn in the late 19th and early 20th centuries as a response to growing international business, mainly in Europe continental, and the desire for an internationally enforceable, commercially sensible mechanism to resolve disputes.

Arbitral institutions contributed substantially to the growth of international arbitration during this period. A large number of institutions with arbitration rules for merchants had developed already during the 19th century. In London, for example, the well-known Grain and Feed Trade Association (GAFTA), was established in 1878 and The London Court of International Arbitration ('LCIA'). The LCIA celebrated its centenary in September 1993. The LCIA goes back to 'the London Chamber of Arbitration', that was set up in 1892 and that altered its name to 'The London Court of Arbitration' in 1903 and then, after 92 years in 1995, to 'LCIA'.

The amicable settlement of disputes between States is the subject of the Hague Conventions of 29 July 1899 and 18 October 1907. As a result of the Hague Convention 1899, the Permanent Court of Arbitration (PCA) was set up at The Hague, in the Peace Palace (offered by Mr. Carnegie). It became the first worldwide institution for the resolution of

international disputes between states or between states and private individuals (cf. Article 20 of the Hague Convention 1899 and Article 41 of the Hague Convention1907). The PCA provides for mediation, good offices, inquiry/fact-finding commissions, and conciliation and arbitration services. However, the PCA does not have any authority to intervene in a dispute in any way on its own initiative; its sole objective is to enable or facilitate the amicable resolution of disputes.

Over the decades that followed, a group of international businessmen who called themselves 'Merchants of Peace' set up the International Chamber of Commerce(ICC) with the inception of the former occurring in 1919 and the later in 1923. It quite rightly claims to be the most important private international organization in the world's economy and quickly realized that an effective mechanism for resolving international business disputes would foster growth in international trade and commerce and assist in achieving world peace. It covers approximately 5,000 large firms and 1,500 industrial organizations, is established in over 50 states through its own national groups and provides a worldwide operating and discussion forum for the main concerns of economic activity throughout the world. Its many expert committees, made up of representatives from all over the world, compile commentaries and reports on central topics in the law of finance, international payment transactions, credit insurance, insurance law, tax harmonization, environmental protection law, energy law, privatization, merger controls, marketing, international transportation (including maritime law and air traffic law), telecommunications, commercial practices (to name just a few of the committees).

The vital part played by the ICC in international arbitration, particularly through two institutions: the ICC's Institute of International Business Law and Practice as a scientific institution (presided over by Professor Pierre Lalive, Geneva) and, even more importantly, the International Court of Arbitration of the ICC, the world's foremost arbitral institution. Recently, the ICC registered its 10,000th cases.The ICC began administering international disputes in 1921 and had dealt with 15 such cases before the ICC International Court of Arbitration ('ICC Court') was set up in the year 1923 which become a truly universal institution headquartered in Paris. The ICC Court's mission was to foster international trade and commerce by providing a framework for the resolution of international commercial disputes. Various ICC congresses in the early 1920s called strongly for better legal recognition of arbitration, which was rapidly gaining popularity among international businessmen. The following resolution was adopted at an ICC Congress in Rome in March 1923:

The International Chamber of Commerce considers that for the purpose indicated in the preceding resolutions it is desirable that one or more international conventions should be negotiated with the least possible delay, to embrace the largest possible number of States, particularly those of commercial importance. Such conventions should pledge the contracting States to recognize and make effective arbitration clauses in international commercial contracts, and to provide that if two parties of different nationalities agree to refer disputes that may arise between them to arbitration, an action brought by either party in any country shall be stayed by the Court, provided that the Court is satisfied that the other party is, and has been, willing to carry out the arbitration.

During the first decades of the twentieth century, businesses community and legal fraternity in developed states called for legislation to facilitate the use of arbitration in resolving domestic and, particularly, international commercial disputes. In 24 September 1923, initially under the auspices of the newly founded ICC, major trading nations negotiated the Geneva Protocol on Arbitration Clauses (GP) in Commercial Matters. The GP was ultimately ratified by the Brazil, France, Germany, India, Japan, United Kingdom, and about 24 other nations. Although the United States of America did not ratify the GP, the nations that did so represented a very significant portion of the international trading community at the time. The GP was the first genuine international convention especially concerned with commercial arbitration to be adopted internationally.

The GP played a vital and critical—if often underappreciated—role in the development of the legal framework for ICA. Among other things, provisions I, III, and IV of the GP planted the seeds for a number of principles of enormous future importance to international arbitral process.

Afterwards, the next step forward was the Geneva Convention on the Execution of Foreign Arbitral Awards of 1927 (GC) , which did not replace, but complemented the GP. The Convention's focus was enforcement of foreign awards, and, unlike the GP, did not limit itself to enforcement of domestic arbitral awards. The Convention set requirements for recognition and enforcement of awards, as well as conditions for refusing enforcement of such awards, and listed the documents necessary for requesting enforcement of an award. With the growth of international commerce in the post-War era, it became more and more clear that the GC, too, did not meet the requirements of ever expanding international arbitration. Under the Convention, for recognition and enforcement of an award, not only must it have been made in the territory of a signatory state, but also the parties to the dispute must have been subject to the jurisdiction of a High Contracting Party. On many occasions, however, both these conditions cannot be met, as arbitration is usually conducted in a country to whose jurisdiction none of the parties were subject. The parties prefer a third neutral country as the seat of arbitration. Hence, enforcement of foreign arbitral awards needed a more pro-enforcement and comprehensive regulatory regime.

The outbreak of Second World War halted international business. Thought the two decades from 1927 the outbreak of Second World War there was a steady development in Europe continental of arbitration as recognized means of dispute settlement in international commercial matters. However, its immediate aftermath saw huge economic growth and trade, particularly from the 1950s onwards when global commerce between private parties began to flourish.

2.3) The Gigantic Growth of ICA1950 to the Present

It turned out that the language of these protocol and convention was far from ideal, with various shortcomings and ambiguous provisions. Neither of these convention has much practical effect today because they have been superseded by New York convention. Perhaps the most important milestone in the entire history of ICA was the adoption of the New York Convention. Clearly, the impressive upturn of international arbitration and the success of arbitral institutions such as the ICC and others are closely linked to the significance of the New York Convention of 1958 on the Recognition and Enforcement of Foreign Arbitral Awards (NYC). It placed the GP and the GC on a new basis .The NYC is one step beyond the Geneva Convention, in the sense that it applies to arbitral awards irrespective of where they are made.

The Convention was adopted—like many national arbitration statutes— specifically to address the needs of the international business community, and in particular to improve the legal regime provided by the Geneva Protocol and Geneva Convention for the international arbitral process. The first draft of what became the Convention was prepared by the ICC in 1953.The ICC introduced the draft with the observation that "the Geneva Convention1927 was a considerable step forward, but it no longer entirely meets modern economic requirements", and with the fairly radical objective of "obtaining the adoption of a new international system of enforcement of arbitral awards."

Preliminary drafts of a revised convention were prepared by the ICC and the United Nations' Economic and Social Council ("ECOSOC"), which then provided the basis for a three-weeks conference in New York(USA)—the United Nations Conference on Commercial Arbitration—attended by 45 states in the Spring of 1958.

The New York Conference resulted in a document—the New York Convention—that was in many respects a radically innovative instrument, which created for the first time a comprehensive and an universal legal regime for the international arbitral process. The original drafts of the NYC were focused entirely on the recognition and enforcement of arbitral awards, with no serious attention to the enforcement of international arbitration agreements. This drafting approach paralleled that of the Geneva treaties (where the GP dealt with arbitration agreements and the GC addressed awards). It was only late in the Conference that the delegates recognized the limitations of this approach and considered a proposal from the Dutch delegation to extend the treaty from the recognition of awards to international arbitration agreements. That approach, which was eventually adopted, and the resulting provisions regarding the recognition and enforcement of international arbitration agreements form one of the central elements of the Convention.

The text of the Convention was approved on 10 June 1958, by 35 votes to none with 4 abstentions of the Conference (with only the United States and three other countries abstaining).The Convention is set forth in English, Chinese French, Russian, and Spanish, texts, all of which are equally authentic. The text of the Convention is only a few pages long, with the instrument's essential substance being contained in five concisely drafted provisions (Articles I through V). Despite its brevity, the Convention is now widely regarded as "the cornerstone of current international commercial arbitration." In the suitable words of Judge Stephen Schwebel, earlier President of the ICJ, "It works." Or, as the late Sir Michael Kerr put it, the NYC "is the foundation on which the whole of the edifice of international arbitration rests."

The NYC made a number of significant improvements in the regime of the Geneva Protocol and Geneva Convention for the enforcement of international arbitration agreements and arbitral awards. Particularly important were the NYC's to establish a single uniform set of international legal standards for the enforcement of arbitration agreements and arbitral awards. And also, it has been applied in over 700 state court decisions in which the national courts have generally supported the Convention to a significant extent. Nevertheless, it was still felt that ICA practice needed more back-up in the form of specialist as well as regional multilateral treaties. Specialist conventions may address particular requirements of trade relationships in a specific area of commerce, while regional conventions provide more incentive and confidence for encouraging countries to join.

The essential merits of the NYC are (i) the recognition of arbitration agreements (as per Article II NYC) and (ii) the setting of the yardsticks and criteria for the recognition and enforcement of international arbitral awards (as per Articles IV and V). It is according to these principles and criteria that national legislators have successfully been guided in international arbitration matters ever since 1958. The UNCITRAL Model Law (see below) also reflects these criteria.

In 1961, three years after the adoption of the NYC, a great deal of importance is also attached, with regard to the development of international arbitration, to the European Convention (EC) on ICA of 21 April 1961 (sometimes also called "Geneva Convention of 1961") drawn up under the aegis of the UN Economic Commission for Europe and ratified by 22 countries (but not by Switzerland).The EC as the first regional convention was adopted to facilitate arbitration in commercial relations within Europe and particularly between the Western and Eastern European states.

The Convention is noteworthy as being the first international instrument to have the words "International Commercial Arbitration" in its title. This was more than a curiosity. It signaled a change in the attitude towards arbitration of international commercial disputes. The nation-State would be in charge of the rules, but those rules should recognize the special requirements of an arbitration which involves international economic matters and in which one or both parties may be foreign.

The Convention addresses the three principal phases of the international arbitral process—1)Arbitration Agreements: in this regard, the Convention provides for a limited, specified number of bases for the invalidity of such agreements in proceedings concerning recognition of arbitral awards, but instead does not expressly provide for their presumptive validity. 2) Arbitral Procedure: in this

regard, the Convention restirictly limits the role of state courts and confirms the maximum autonomy of the parties and the arbiters (or arbitral institution) to link the arbitration proceedings. And 3) Arbitral Awards: in this regard, the Convention is designed to supplement the NYC, substantially dealing solely with the effects of a judicial decision annulling an arbitral award in the arbitral seat in other jurisdictions (and not with other recognition obligations).

There was also progress in regard to the rules of procedure that governed the arbitration. In 1966 the Arbitration Rules for ad hoc arbitrations were adopted by both the United Nations Economic Commission for Europe (ECE) and the United Nations Economic Commission for Asia and the Far East (ECAFE). The same year the EC Providing a Uniform Law on Arbitration was adopted by the Council of Europe.

Afterwards, the World Bank Convention on the Settlement of Investment Disputes between States and Nationals of other States of 28 March 1965, known as the ICSID Convention or the Washington Convention (WC), must be mentioned. The Convention provides for arbitration when disputes arise between a state on the one hand and a national of another state. More than 144 states from all geographical regions of the world have joined the Convention.

The WC provides for international methods of settlement and, particularly, international conciliation or arbitration. The Convention is designed to facilitate the settlement of "investment disputes" that the parties have agreed to submit to WC. As to such disputes, the Convention provides both conciliation and arbitration procedures. Arbitration is governed by the ICSID Arbitration Rules and the ICSID Convention. These facilities are made available through the WC to which Contracting States and nationals of Contracting States may submit their investment disputes if they so desire.

It is, however, the task of Conciliation Commissions and Arbitral Tribunals constituted under the Convention to conduct conciliation and arbitration. It is a main feature of the WC that it considers only disputes to which a State or State entity is a party. Under the Preamble of the Convention, "Mutual consent by the parties to submit such disputes to conciliation or to arbitration through such facilities constitutes a binding agreement which requires in particular that due consideration be given to any recommendation of conciliators, and that any arbitral award be complied with". More importantly, Contracting States must recognize and enforce arbitral awards made by the ICSID, as if they were final judgments of their national courts.

The WC contains a number of comparatively unusual provisions relating to international arbitration. For example, the WC final awards are directly enforceable in signatory states, without any method of judicial review in state courts. This is a fundamental and substantial difference from the NYC model, where arbitral awards are subject to annulment (in the arbitral seat) and non-recognition (elsewhere). The WC's caseload has very significantly increased in the past two decades, particularly as a consequence of arbitrations brought pursuant to bilateral investment treaties (BITs) or investment protection legislation .

Except aforementioned conventions, there are many regional conventions as well as bilateral or multilateral treaties between countries for the arbitration especially in the recognition and enforcement of arbitral award. As an example, The Moscow Convention of 26 May 1972 provided for a referral to arbitration of all disputes which arise between economic organizations of the former CMEA countries. The arbitration rules were unified in 1974 under the "Uniform Arbitration Rules of the Arbitration Courts attached to the Chambers of Foreign Trade of the Council for Mutual Economic Assistance Countries (CMEA)". They were slightly amended in 1987. Arbitration was thus the compulsory dispute resolution mechanism within the COMECON, and the system became widely harmonized throughout the member states. Awards were final and binding and enforceable in the same manner as court judgments; grounds for refusal of enforcement were strictly limited.

For instance in Latin America, the Inter-American Convention on ICA-that so called "Panama Convention" (PC) - was adopted by the Organization of Latin American States in 30 January 1975. Fifteen countries, including the USA, have joined the Convention. The NYC served as a model and was largely followed. The PC marks a very significant improvement regarding the recognition of an arbitration clause or arbitration agreement, by doing away with the requirement, in some of the Latin American states, according to which an arbitration clause was nothing more than a kind of natural obligation which had to be corroborated by a fresh submission agreement once a dispute had actually arisen. According to its Article 3, parties were free to determine the arbitral procedure; absent such agreement, the procedure would be conducted under the Rules of the Inter-American Commercial Arbitration Commission (the "IACAC Rules"). And also, under Article 4 of the Convention, "An arbitral decision or award that is not appealable under the applicable law or procedural rules shall have the force of a final judicial judgment. Its execution or recognition may be ordered in the same manner as that of decisions handed down by national or foreign ordinary courts, in accordance with the procedural laws of the country where it is to be executed and the provisions of international treaties." Although the PC Convention follows the regime of enforcement set by the NYC, unlike the latter, it does not distinguish between foreign and domestic arbitral awards.

The Amman Convention on Commercial Arbitration of 1987 was agreed by the Arab Ministers of Justice, and signed by 13 Arab league in 1987 (it should be remarked that Saudi Arabia has not yet ratified this Convention). After its ratification by eight states, namely Iraq, Jordan, Lebanon, Libya, Palestine, Sudan, Tunisia and Yemen, the Convention came into force in 25 June 1993. Since today, however, no other State ratified or acceded to the Convention. The preamble of the Convention refers to "the need to conceive unified Arab rules on commercial arbitrations which would find their place amongst the international and regional arbitration rules." Under Article 4

of the above Convention, the Arab Centre for Commercial Arbitration (with headquarters in Rabat, Morocco) will be established for the settlement of commercial disputes particularly between Arab entities. Nevertheless, the Centre has not been established yet, and the Convention has not yet become operative. Consequently, no commercial dispute has been referred to arbitration under the Convention.

Alongside multilateral conventions and bilateral treaties, national statutes play an indispensable essential role in regulating arbitration .Divergence among national laws of various states has appeared as an impediment to facilitation of international arbitration. Thus, the law on ICA first emerged as a patchwork of diverse national laws on arbitration. The increasing complexity of international transactions, the growth of international trade and the disappointment with the regulation of international trade by these various state laws fostered a climate conductive to harmonization and unification of these laws under the auspices of various international organizations, including the UN. Thus, there have been some attempts at harmonizing such laws. Chief among such attempts was the adoption of the United Nations Commission on International Trade Law Arbitration Rules (UNCITRAL AR) which were shaped in the mid- 1970s out of the need to create an instrument for the settlement of disputes arising in international trade in the form of internationally accepted rules for ad hoc arbitration. The UNCITRAL AR provide a real and attractive option for ad hoc arbitration: first, as an option or alternative to institutional arbitration under the aegis of an arbitral institution (such as that of the International Chamber of Commerce (Paris), the Zürich Chamber of Commerce(Switzerland), the London Court of International Arbitration(London), the Vienna Arbitral Centre(Austria) & etc.) and, second, as an alternative to " pure " ad hoc arbitration (i.e. arbitration which is solely governed by the national arbitration Act – for instance, in Switzerland, by Chapter Twelve of the Private International Law). Moreover, the UNCITRAL AR have been designed to serve as a model for arbitral institutions as their single or optional rules.

The UNCITRAL AR acquired particular importance after 1981 because they were chosen as the arbitration rules applicable to the Iran-US Claims Tribunal (IUSCT), based on the 1981 Algers Agreement between the USA and Iran. In the past 32 years, therefore, thousands of arbitration cases have been decided on the basis of the UNCITRAL AR, and a substantial arbitration practice in the IUSCT has been developed in relation to the individual provisions of the UNCITRAL AR.

The UNCITRAL AR was also the starting point so to speak for the very extensive work done for creating the UNCITRAL Model Law (see below). Their close contacts can be seen from a comparison of numerous provisions.

Shortly after adopting the UNCITRAL AR, in effort to break down the remaining barriers to international trade as a resolute the disparities in national trade law, the United Nations Commission on International Trade Law (UNCITRAL) and the UN General Assembly in 1985, also approved UNCITRAL Model Law (the ML) .This proposed the ML was to be based on the provisions of the NYC of 1958 and the provisions of the aforementioned UNCITRAL AR.

The UNCITRAL is a body of world experts which has as its chief purpose the progressive harmonization and unification of the national laws governing international trade. Its approach to harmonization has been to rely on Model Laws rather than on international conventions. The ML was adopted in 1985. It was drafted by a Working Group of UNCITRAL for extensive consultation and debates consisting of states, the business and international arbitration community (between representatives of the UNCITRAL Secretariat, International Council For Arbitration; ICC International Court of Arbitration and the ICC), and regional organization (Asian –African Legal Consultative Committee "AALCC"). The main policy objectives of the ML are as follows:

"[a] the liberalization of International Commercial Arbitration by limiting the role of national courts, and by giving effect to the doctrine of the 'autonomy of the will', allowing the parties freedom to choose how their disputes should be determined;

[b] The establishment of a certain defined core of mandatory provisions to ensure fairness and due process;

[c] The provision of a framework for the conduct of international commercial arbitration, so that in the event of the parties being unable to agree on procedural matters, the arbitration 'would nevertheless be capable of being completed; and

[d] The establishment of other provisions to aid the enforceability of awards and to clarify certain controversial practical issues."

On purpose, the goal was not to draft an international convention, which then would have to be ratified by the states; rather, the goal was a more modest one, i.e. to simply work out a model for a piece of legislation to be adapted by the national legislators, thus allowing states more flexibility to incorporate it in their own national legislation. This approach was certainly wise, as demonstrated by the impressive acceptance which the ML has had to date.

The United Nations General Assembly was approved in the same year that legal uniformity governing arbitral procedures was desirable and recommended that "all States give due consideration to the UNCITRAL Model Law on International Commercial Arbitration".

The ML was designed to be implemented by national legislators, with the purpose of further harmonizing the treatment of ICA in different states. The ML consists of 36 Articles, which deal widely with the issues that arise in state courts in connection with ICA. Among other things, the ML comprises provisions as follows;

Articles 7-9	Enforcement of arbitration agreements
Articles 10-15	Appointment of and challenges to arbiters
Article 16	Jurisdiction of arbiters
Article 17	Provisional measures
Articles 18-26	Arbitral proceedings, including language, seat (or place) of arbitration, and procedures
Article 27	Evidence-taking and discovery
Article 28	Applicable substantive law
Articles 29-33	Arbitral awards
Article 34	Setting aside or vacating awards
Articles 35-36	Recognition and enforcement of foreign arbitral awards, including bases for non-recognition

Under the ML, written international arbitration agreements are presumptively valid and enforceable, subject to limited, specified exceptions. Article 8 of the Law provides for the enforcement of valid arbitration agreements, regardless of the arbitral seat, by way of a dismissal or stay of national court litigation. The ML also adopts the Separability Doctrine and expressly grants arbitrators the authority (Competence-Competence) to consider their own jurisdiction.

The ML prescribes a principle of judicial non-intervention in the arbitral proceeding. It also affirms the parties' autonomy (subject to specified due process limits) with regard to the arbitral procedures and, absent agreement between the parties, the tribunal's authority to prescribe such procedures. The basic approach of the ML to the arbitral proceedings is to define a basic set of procedural rules which—subject to a very limited number of fundamental, nonderogable principles of fairness, due process, and equality of treatment —the parties are free to alter by agreement. The ML also provides for judicial assistance to the arbitral process in prescribed respects, including provisional measures, constitution of a tribunal, and evidence-taking.

The ML mandates the presumptive validity of international arbitral awards, subject to a limited, exclusive list of grounds for annulment of arbitral awards in the arbitral seat; these grounds precisely parallel those available under the NYC for non-recognition of an award (i.e., lack or excess of jurisdiction, non-compliance with arbitration agreement, due process violations, public policy, and non-arbitrability). The ML also requires the recognition and enforcement of foreign arbitral awards (made in arbitral seats located outside the recognizing state), again on terms identical to those prescribed in the NYC.

During the 28 years since the ML's adoption (in 1985), significant developments have occurred in the field of international commercial arbitration. In 2006, UNCITRAL adopted a limited number of amendments to the ML. The principal revisions were made as follows:

Article 2	The addition of general interpretative principles
Article 7	The definition and written form of an arbitration agreement
Article 17	The availability of and standards for provisional measures from international arbitral tribunals and national courts
Article 35	Procedures for recognition of awards

The 2006 revisions of the ML make useful improvements (for the most part). Nonetheless, the most important accomplishment of the revisions is their tangible evidence of the ongoing process by which states and business representatives seek to improve the international legal regime for the arbitral process.

The ML and its revisions represent a significant further step, beyond the NYC, towards the development of a predictable "pro-arbitration" legal framework for commercial arbitration. But the ML goes beyond the Convention by prescribing in significantly greater detail the legal framework for international arbitration, by clarifying points of ambiguity or disagreement under the Convention, and by establishing directly applicable national legislation.

4.) CONCLUSION

The modern law governing ICA began only in the decade of the 1920s with the organization of the ICC Court of International Arbitration, the adoption of the Geneva Protocol on Arbitration Clauses 1923 and the Geneva Convention for the Execution of Foreign Arbitral Awards,1927. There was no substantial further development until the adoption of the NYC in 1958. The subsequent years have been ones of rapid progress. Approximately all States have become party to the New York Convention. The convention played a vital and critical role in the development of the legal framework for international commercial arbitration and it especially made a number of significant improvements in the regime of Geneva protocol and Geneva convention for enforcement of international arbitration agreements and recognition and enforcement of arbitral award.

The increasing complexity of international transactions, the growth of international trade and the disappointment with the regulation of international trade by these various state laws fostered a climate conductive to harmonization and unification of these laws under the auspices of various international organizations, including the United Nations. The UNCITRAL Arbitration Rules of 1976 have been widely used and have become the model on which many institutional arbitration rules are based. The Model Law of 1985 has been the basis of most arbitration statutes adopted since then.

Indeed, this study shows that International Commercial Arbitration has become so popular but it is far from an ideal and universal method. The most important reasons of the mentioned points are:

1.The present international convention and legal institution are not adequate for dealing with the problem of international commercial arbitration.

2.The global scenarios existed in international commercial

arbitration are not certainly encouraging.
3.The Model law has not met the purpose which was determined for it.

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[11]Alexander VI, original Spanish name in full Rodrigo de Borja y Doms, Italian Rodrigo Borgia (born 1431, Játiva, near Valencia—died Aug. 18, 1503, Rome), corrupt, worldly, and ambitious pope (1492–1503), whose neglect of the spiritual inheritance of the church contributed to the development of the Protestant Reformation. For more detail see:
http://www.britannica.com/EBchecked/topic/14138/Alexander-VI.

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[13]This is the name given to the claims in the Treaty of Washington 1871.

[14]The CSS Alabama's story, beginning with the manner in which it was commissioned and armed through to its naval battles and its ultimate demise, is extraordinary. It involves many acts of subterfuge and culminates in a sea battle witnessed by thousands of people standing on the French coastline. See, e.g. T. Bingham, 'The Alabama Claims Arbitration', 54 International & Comparative Law Quarterly 1,(2005).

[15]Charles Sumner, then Chairman of the Senate Foreign Relations Committee, argued that British aid to the Confederacy had prolonged the Civil War by two years and indirectly cost the US hundreds of millions or even billions of dollars (Sumner suggested US$2.125 billion). Some Americans adopted this argument and suggested that Britain should offer Canada to the US as compensation.

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[29]Each of the Contracting States recognizes the validity of an agreement whether relating to existing or future differences between parties subject respectively to the jurisdiction of different contracting states by which the parties to a contract agree to submit to arbitration all or any differences that may arise in connection with such contract relating to commercial matters or to any other matter capable of settlement by arbitration, whether or not the arbitration is to take place in a country to whose jurisdiction none of the parties is subject.

[30] The tribunals of the Contracting Parties, on being seized of a dispute regarding a contract made between persons to whom Article 1 applies and including an arbitration agreement whether referring to present or future differences which is valid by virtue of the said article and capable of being carried into effect, shall refer the parties on the application of either of them to the decision of the arbitrators.

[31]Each Contracting State undertakes to ensure the execution by its authorities and in accordance with the provisions of its national laws of arbitral awards made in its own territory.

[32] 26 June 1927.

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[53]At present, 155 States have signed the ICSID Convention. However, 144 States have deposited their instruments of ratification, acceptance or approval of the Convention to become ICSID Contracting States. See "List of Contracting

States", http://www.worldbank.org/icsid/constate/c-states-en.htm, (available on 10/07/2013).

[54]Investment disputes are defined as controversies that arise out of an "investment" and are between a Contracting State or designated state entity (but not merely a private entity headquartered or based in a Contracting State) and a national of another signatory state.

[55] The Preamble of the Washington Convention.

[56]International Chamber of Commerce Arbitration Yearbook 1976, 147–156.

[57]The Council for Mutual Economic Assistance (Russian: C???? ?????? ??????? ???? ??????? ?, Sovet ekonomicheskoy vzaimopomoshchi, ???, SEV, English abbreviation COMECON, CMEA, or CAME), 1949–1991, was an economic organization under the leadership of the Soviet Union that comprised the countries of the Eastern Bloc along with a number of socialist states elsewhere in the world. The Comecon was the Eastern Bloc's reply to the formation of the Organization for European Economic Co-operation in non-communist Europe.

The descriptive term was often applied to all multilateral activities involving members of the organization, rather than being restricted to the direct functions of Comecon and its organs. This usage was sometimes extended as well to bilateral relations among members, because in the system of socialist international economic relations, multilateral accords—typically of a general nature—tended to be implemented through a set of more detailed, bilateral agreements.

[58]Blessing, Marc. Introduction to Arbitration: Swiss and International Perspectives. Helbing und Lichtenhahn, 1999,125

[59] Article 4, the Panama Convention 1975.

[60] Blessing, Marc, 1999,op.cit. p.128

'The Iran-United States Claims Tribunal came into existence as one of the measures taken to resolve the crisis in relations between the Islamic Republic of Iran and the United States of America arising out of the November 1979 hostage crisis at the United States Embassy in Tehran, and the subsequent freezing of Iranian assets by the United States of America.

The Government of the Democratic and Popular Republic of Algeria served as intermediary in the search for a mutually acceptable solution. Having consulted extensively with the two Governments as to the commitments each was willing to undertake in order to resolve the crisis, the Government of Algeria recorded those commitments in two Declarations made on 19 January 1981. The "General Declaration" and the "Claims Settlement Declaration", collectively "Algiers Declarations", were then adhered to by Iran and the United States'.

[61]Blessing, Marc, 1999,op.cit. pp.129 -130.

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[64]Resolution 40/72(11 December 1985).

[65]UNCITRAL Model Law, Arts. 7-8; infra pp. 159-73, 322-421. The original 1985 Model Law's "writing" requirement for arbitration agreements is broadly similar to, but somewhat less demanding than, Article II of the New York Convention. See UNCITRAL Model Law, Art. 7(2).

[66]UNCITRAL Model Law, Art. 8(1); infra pp. 261-80.

[67]UNCITRAL Model Law, Art. 16; infra pp. 173-201.

[68]UNCITRAL Model Law, Art. 16; infra pp. 201-34.

[69]UNCITRAL Model Law, Art. 5; infra pp. 745-46.

[70]UNCITRAL Model Law, Art. 19(1); infra pp. 727-28.

[71]UNCITRAL Model Law, Arts. 19(2), 24(1); infra p. 730.

[72]UNCITRAL Model Law, Arts. 18 ("The parties shall be treated with equality and each party shall be given a full opportunity of presenting his case."), 24(2) ("The parties shall be given sufficient advance notice of any hearing and of any meeting of the arbitral tribunal for the purposes of inspection of goods, other property or documents."); infra pp. 731-33.

[73]UNCITRAL Model Law, Arts. 9, 11-13, 27; infra pp. 642, 705-06, 772-74, 865.

[74]UNCITRAL Model Law, Art. 34; supra pp. 32-33 and infra pp. 1095-99.

[75]UNCITRAL Model Law, Arts. 35, 36; infra pp. 1132, 1131-37.

[76]UNCITRAL Model Law, 2006 Revision, available on www.uncitral.org.

[77]In particular, the Model Law makes clear the grounds for annulling international arbitral awards, defines the (limited) scope of national court interference in the arbitral process, and prescribes the types and extent of judicial support for international arbitrations.

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