LEGAL REGIME OF INTERNATIONAL TRADE CONTRACTS

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Introduction

Following World War-II, many national leaders were convinced that it would be mutually advantageous, economically and otherwise, to promote international trade[1]. The National and international policies to encourage international trade are based upon the prevailing notion that free trade enhances economic growth[2]. International trade is based upon the contracts between the trading parties. The international business contracts involves complex issues, therefore, drafting of international business contracts requires a special skill, techniques and knowledge of international usages, customs and legal framework. International business transactions require a firm understanding of the substantive laws of the country in which one intends to transact business, and of any relevant international conventions[3].

The identification of various issues involved in international trade contracts enables to understand the legal regime of international trade contracts. Organizations and Institutions dealing with international trade, such as UNCITRAL, WTO, WIPO, UNIDROIT, International Chamber of Commerce (ICC) and American Law Institute (ALI) are responsible for the development of international trade law. The object of this paper is to identify the legal regime of international business contracts, what are the organisations or institutions providing services to help international business people. The paper also attempts to identify the conventions or documents relevant to international business transactions.

In order to explain the legal regime of international trade contracts, the article is divided into four parts. Part one of this paper distinguishes how international trade contracts are different from domestic contracts, what are the matters to be covered while drafting international trade contracts between private parties and common reasons for business disputes. The second part is devoted to examine what are the various sources of international business law. Part three is focussed on to identify International Conventions and other documents dealing with international trade contracts. The international trade law has been developed through the various international organizations. It has been created to facilitate the trade among the nations and parties. Therefore, part four of this article focussed on to explain in brief about the international organizations and institutions dealing with the subject of international trade contracts.

PART-I

I. International Business Contracts

International economic transactions generally consist of the transfer of goods, money, ideas or people across national boundaries or, if no boundary is crossed, between residents of, or people with interests

1. *John H. Jackson, Welliam J Davey, Alan O Sykes* Jr.: *Legal Problems of International Economic Relations, Cases and Materials and Texts of the National and International Regulations of the Trans-national Economic Relations, American Case Book Series*, 4th Edition, West Group, A Thomson Company, USA, page 5.
2. *Jerold A Friedland*: *Understanding International Business and Financial Transactions*, Lexis Nexis, page 64.
3. *Larry A. DiMatteo&Lucien J. Dhooge*: *International Business Law*- A Transactional Approach, Second Edition, Thomson West Publications, page 5.

in different States[4]. Trade or business begins with formation of contract. A contract is a promise or set of promises for the breach of which the law gives a remedy, or the performance of which the law in some way recognises as duty[5].

International business contracts are different from domestic contracts in several aspects, especially, in respect of application of choice of law and forum of law. The questions of choice of law need not to be considered in domestic contracts but in international trade matters like place of agreement, place of performance, place of payment and subject-matter of the contract are required to be taken into consideration for deciding which law has to be applied for settlement of the dispute. The substantive law, procedures, remedies and level of protection differs from country to country; it depends upon the system of country, civil, common law or social legal system. The parties can avoid many of such problems by deciding choice of law and choice of forum in their contract.

The contract may include a "Choice Forum" or "Choice of Law" clause. A choice of forum clause enables the parties to specify in advance which country's Courts shall hear disputes. "A choice of law" clause specifies which country's law is to be applied to a prospective dispute. Most nations enforce a choice of law clause if the body of law specified bears a substantial relationship to the parties and transaction[6].

What are the reasons for business disputes?

When people engage in commercial transactions, there may be business disputes. The causes for business disputes in international contracts includes, existence of differences in, national rules of contracting parties, interpretation of rules, improper drafting of contracts, sometimes the contract does not deal with issues in dispute or the parties interpret the contract indifferently. No written contract is ever complete; even if the most carefully drafted document rests on volumes of assumptions that cannot be explicitly expressed[7].

How to resolve international trade disputes

The disputes relating to international trade contracts are resolved by following the rules applicable to the International Business Law, however, the contract entered between the parties is the primary source of law. If the contract is failed to provide a solution, the Court or arbitrator look to other sources for resolving such disputes. There are different modes available for settlement of disputes, Adjudication, Alternative Dispute Resolution and also Online Dispute Resolution. The parties to the contract may also agree for online disputes" resolution for settlement of dispute, in case any dispute in respect of such contract. The "Online Disputes" Resolution (ODR), make use of the online medium as a tool to resolve disputes, whether they are online or offline[8].

PART-II

II. Sources of international business law

According to Article 38 of Statute of the International Court of Justice, the Court in deciding disputes, shall apply (a) International Conventions, whether general or particular, establishing rules expressly recognized by the contesting States; (b) International Custom, as evidence of a general

4. *Alan C. Swan & John F. Murphy*: *Cases and Materials on the Regulation of International Business and Economic Relations*, Second Edition, Mathew Bender Inc. USA, 1999, page 1.
5. Section 1 of the American Law Institute's Restatement Second of the Law of Contracts.
6. *Mark E Roszkowski*: *Business Law Principles, Cases, and Policy*, 5th Edition, Prentice Hall, New Jersey, page 1057.
7. *Arthur Rosett*: *Critical Reflection on the CISG*; 45, Ohio State Law Journal, 265, 287 (1984).
8. *Margaret Jane Radin, John A. Rothchild* and *Gregory M. Silverman*: *Cases and Materials, Internet Commerce, The Engineering Legal Framework, University Case Book Series*, Foundation Press, New York, 2002, Page 1073.

practice accepted as law; (c) the general principles of law recognized by civilized nations; and (d) judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

International business transaction risks include application and enforcement of foreign law. When a dispute arises between the parties on interpretation or enforcement of a contract relating to international trade business, the question arises which law has to be applied and where to be decided. The parties can avoid such situation by incorporating a choice of law and forum for adjudication or arbitration in international trade agreement. But in absence of such clauses, it is for the Courts to decide such issues and the general rule is that the law of the country most close to the contract as a proper law to resolve the dispute. In order to decrease the uncertainty due to the risks of foreign law, many countries enter bilateral investment treaties (BIT) with other countries to protect the mutual interest of parties belong to both the States.

The Vienna Convention on the Law of Treaties, 1969 recognises that treatise as a source of international law and as a means of developing peaceful cooperation among nations, whatever their constitutional and social system[9], every treaty in force is binding upon the parties to it and must be performed by them in good faith[10]. According to Restatement (Second) issued by American Law Institute for application of law, the factors taken to be considered are; (1) the place of contracting, (2) the place of negotiation, (3) the place of performance, (4) location of the subject-matter of the contract, and (5) the domicile, place of incorporation, and place of business of the parties.

In respect of forum, where or by which Court or Tribunal the dispute is to be settled, again the contract is the primary source to draw the inference. If the parties mentioned the arbitration clause that gives the clue to forum selection. In *Tennessee Imports, Inc. v. Pier Paulo*[11], it is held that any arbitration clause that state the place for arbitration serve as forum selection clause. In a case involving a "narrow" arbitration clause, the Court will determine if issues fall within the scope of an arbitration clause before referring them to arbitration and in case of "broad" arbitration clauses, the arbitrators will generally determine the scope of an issue.

The general rule is that Courts and arbitration Tribunals follow the choice of law clauses contained in contract, otherwise by following the internationally accepted principles. The uncertainty can be eliminated by having choice law and forum selection clause in international trade contracts.

PART III

III. International Conventions and Other Documents

Liberalisation of trade, increase in exports and imports in goods and services has resulted in enactment of several of International Conventions to deal with matters relating to international trade contracts. The International business contract involves complex issues, therefore, it is essential to know the legal framework according to which an international contract must be prepared.

UNCITRAL has produced different types of legislative texts, like; Conventions; Model Laws; Legislative Guides; and Model Provisions. The Conventions are designed to unify law by establishing binding legal obligations. The Conventions, Model Laws and Legislative Guides may be adopted by States through the enactment of domestic legislation. UNCITRAL Arbitration Rules can

9. Preamble of the Vienna Convention on the Law of Treaties, 1969.

10. Article 26 of the Vienna Convention on the Law of Treaties, 1969.

11. 745 F. Supp. 1314 (M.D. Tenn. 1990).

be used by parties to International trade contracts. The following are the brief description of some important Conventions relating to international trade:

1. International Sale of Goods (CISG)

The United Nations Convention on Contracts for the International Sale of Goods (CISG), 1980 is most successful International Conventions[12]. The countries that have not adopted this Convention includes, United Kingdom, India and UAE[13]. It applies to the transactions of sale of goods[14]. It has no application to the sales of services, sale of labour, purchase of goods for personal purpose[15] and transfers of intellectual property rights. CISG is applicable to contracts of sale of goods between parties whose places of business are in different States, when the States are contracting States and when the rules of private international law lead to the application of the law of a Contracting State. The provisions of CISG contains, sphere of application of Convention, obligations of the seller and the buyer, remedies for breach of contract by the seller and buyer, passing of risk, damages, interests, effects of avoidance of contract, preservation of goods and final provisions.

The CISG Convention has made the rights and obligations of parties to international export and import of goods remarkably transparent, easy to ascertain and easy to understand by parties from different legal systems and in step with evolving international contract practices[16]. The areas not covered in the CISG Convention includes, the legality of a contract, the capacity of the parties to enter into contract and products liability. The disputes relating to these matters are decided under a national law of contract.

The Convention on the Limitation Period in the International Sale of Goods, 1974 provides uniform rules governing the period of time within which a party may bring a claim in conjunction with an international sale of goods. It prescribes four year limitation period for filing any claim[17]. The UNCITRAL Legal Guide on International Counter Trade Transactions, 1992 seeks to assist parties negotiating international counter trade transactions by identifying the legal issues involved and suggesting solutions that the parties may wish to agree. The preparation of guide was motivated by an awareness that parties engage in counter trade may lack relevant legal knowledge and experience, and issues that may arise in counter trade transactions.

The Uniform Rules on Contract Clauses for an Agreed Sum Due upon Failure of Performance, 1983 seeks to unify the treatment, particularly as to validity and application, of clauses that provide for the payment by party of a specified sum of money as damages or as a penalty in the event of the failure of the party to perform its contractual obligations in an international commercial transactions. The rules apply to international contracts in which the parties have agreed that, upon a failure of performance by one party, the other party is entitled to an agreed sum from the obligor, whether as a penalty or as compensation[18].

2. Electronic Commerce

E-Commerce means use of internet for negotiating, entering contracts, marketing and

12. For details of countries ratified/approved/accessed/succession of CISG see www.uncitral.org.
13. Michael Bridge: *The International Sale of Goods, Law and Practice*, Second Edition, 2007, Oxford University Press, page 5.
14. Article 1 of CISG.
15. Ibid., Article 2
16. *Jernej Sekolec*: *"Digest of Case Law on the UN Sales Convention: The combined wisdom of Judges and arbitrators promoting uniform interpretation of the Convention" CILE Studies*, Vol. I, 2005, page.1 (1-20).
17. Article 8 of the Limitation Period in the International Sale of Goods, 1974.
18. Article 1 of the Uniform Rules on Contract Clauses for an Agreed Sum Due upon Failure of Performance, 1983.

other related purposes. It means there is a use of electronic contracting in place of paper transactions. The International conventions address issues of offer, acceptance and conclusion of contract in electronic transactions. The General Usage for International Digitally Ensured Commerce (GUIDEC I and II) deal with legal aspects relating to e-commerce authentication and confidentiality. The European Initiative on Electronic Commerce guides the contracting parties on various issues, including, the regulation of the processing and acknowledgment of EDI messages, security precautions, operational requirements and confidentiality.

The Recommendation on the Legal Value of Computer Records, 1985 adopted by UNICTRAL recommends to Governments and international organisations that they should review the rules relating to automatic data processing with a view to eliminate unnecessary obstacles to the use of automatic data processing in international trade. The UNCITRAL Model Law on Electronic Commerce, 1996 intends to facilitate the use of modern means of communications and storage of information. It recognises the functional equivalence of "writing", "signature" and "original" with paper based concepts. The law applies to any kind of information in the form of a data message used in the context of commercial activities[19]. Article 5 has been added to this Convention in 1998.

The UNCITRAL Model Law on Electronic Signatures with Guide to Enactment, 2001 aims to bring additional legal certainty to the use of electronic signatures, follows a technology neutral approach, guidelines for assessing possible responsibilities and liabilities for the signatory, the relying party and trusted third parties intervening in the signature process.

The United Convention on the Use of Electronic Communications in International Contracts, 2005 aims to enhance legal certainty and commercial predictability where electronic communications are used in relation to international contracts[20]. The Convention applies to the use of electronic communications in connection with the formation or performance of a contract between parties whose places of business are in different States[21]. The Convention helps to determine party's location[22], the time and place of dispatch[23] and receipt of electronic communications, the use of automated message system from contraction formation and criteria to establish equivalence between electronic communications and paper documents. The Promoting Confidence in electronic commerce; Legal Issues on International use of electronic authentication and signature methods, 2007 publication analyses the legal issues arising out of the use of electronic signatures and authentication methods in international transactions.

3. International Transport of Goods

The United Nations Convention on the Carriage of Goods by Sea, the "Hamburg Rules", 1978 applies where the contract of carriage is by sea from one port to another port located in contracting States or the bill of lading or other carriage documents issued in a contracting State[24]. If a contract involves carriage by sea and also carriage by some other means is deemed to be a contract of carriage by sea for the purposes of this Convention. The Convention defines carrier, shipper, consignee, contract of carriage by sea and Bill of Lading[25]. The Convention

19. Article 1 of the UNCITRAL Model Law on Electronic Commerce, 1996.

20. www. uncitral.org.

21. Article 1 of the United Convention on the Use of Electronic Communications in International Contracts, 2005.

22. Articles 6 and 7 of the United Convention on the Use of Electronic Communications in International Contracts, 2005.

23. Ibid., Article 10.

24. Article 2 the Hamburg Rules, 1978.

25. Ibid., of Article 1.

recognises the responsibility of carrier for the period during which the carrier is in charge of the goods at the port of loading, during the carriage and at the port of discharge[26]. It defines the basis of liability of carrier and shipper, limits of liability, under the Convention and contents of bill of lading.

The Unit of Account Provision and Provisions for the Adjustment of the Limit of Liability in International Transport and Liability Convention, 1982 designates the Special Drawing Right as the unit of account in limitations of liability provisions. The United Convention on the Liability of Operators of Transport Terminals in International Trade, 1991 deals with uniform legal rules governing the liability of a terminal operator for loss of and damage to goods involved in international transport while they are in a transport terminal, and for delay by the terminal operator in delivering the goods[27].

The United Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea, the "Rotterdam Rules", 2008 has been passed with the object to modernize the existing related Conventions[28] in view of technological and commercial developments and improve the efficiency of international carriage of goods. The Convention applies to contracts of carriage in which the place of receipt and the place of delivery are in different States and the port of loading and port of discharge are in two different States, irrespective of nationality of the vessel, the carrier, the performing parties, the shipper, the consignee or any other interested parties[29]. The Convention deals with important issues, which includes; Transport documents, Electronic transport records, obligations of the carrier, liability of the carrier, stages of carriage, obligations of the shipper to the carrier, delivery of goods, limits of liability, time available for filing a suit (two years), jurisdiction and agreement for arbitration provisions. This Convention has no effect on Conventions which are in force, governing carriage of goods by, air, road, rail and inland waterways.

4. International Commercial Arbitration and Conciliation

Arbitration is a method of settlement of disputes between two or more persons by referring the dispute to an independent and impartial person or a body. National laws of various countries enable the parties to settle their disputes through the arbitration mechanism. International Chamber of Commerce maintains a special institute, International Court of Arbitration to provide service for settlement of disputes relating to international trade. UNCITRAL also enacted several conventions for the development of arbitration mechanism, details are provided in following paragraphs.

The UNCITRAL Arbitration Rules, 1976 provides a comprehensive set of procedural rules upon which parties may agree for the conduct of arbitral proceedings arising out of their commercial relationship. The rules include, providing a model arbitration clause, procedural rules regarding the appointment of arbitration, conduct of arbitration proceedings and interpretation of the award. The 1976 Rules have been revised in 2010[30]. The revised rules include provisions dealing with, amongst others, multiple parties' arbitration and joinder, liability, and a procedure to object to experts appointed by the arbitral Tribunal. In 2012 UNCITRAL has adopted recommendations to the 2010 Revised Arbitration Rules[31]. The

26. Article 4 of the Hamburg Rules, 1978.
27. www. uncitral. Org.
28. International Convention for the Unification of Certain Rules of Law relating to Bills of Lading, 1924, its Protocols and United Nations Convention on the Carriage of Goods by Sea, the "Hamburg Rules", 1978.
29. Article 5 or Rotterdam Rules, 2008.
30. Effective from 15th August 2010.
31. These recommendations are effective from 2nd July 2012.

Recommendations purpose is to assist arbitral institutions and other interested bodies with regard to arbitrations under the UNCITRAL Arbitration Rules, 1982 and to provide information, assistance to arbitral institutions and other relevant bodies using the Arbitration Rules.

The UNCITRAL Model Law on International Commercial Arbitration (amended in 2006) is designed to assist States in forming and modernizing their laws on arbitral procedures so as to take into account the particular features and needs of international commercial arbitration. The Model Law covers different stages of arbitration starting with arbitration agreement, composition and jurisdiction of arbitral Tribunal, intervention of Court, recognition and enforcement of arbitration award.

The Convention on the Recognition and Enforcement of Foreign Arbitral Awards, the "New York Convention, 1958" requires the Courts of contracting States to give effect to an agreement to arbitrate when seized of an action in a matter covered by an arbitration agreement and also to recognize and enforce awards made in other States. The aim of this convention is that foreign and non-domestic arbitral awards will not be discriminated against and it obliges and requires the Courts to give full effect to arbitration agreements by requiring Courts to deny the parties access to Court in contravention of their agreement to refer the matter to an arbitral Tribunal.

The Recommendation regarding the interpretation of Article II(2) and Article VII of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958) were adopted by UNCITRAL on 7th July 2006 in recognition of the widening use of electronic commerce and enactments of domestic legislation as well as case law, which are more favourable than the New York Convention in respect of the form requirement governing arbitration agreements, arbitration proceedings, and the enforcement of arbitral awards.

The UNCITRAL Notes on Organizing Arbitral Proceedings, 1996 intended to assist arbitration practitioners by providing an annotated list of matters on which an arbitral Tribunal may wish to formulate decisions during the course of arbitral proceedings, set of arbitration rules, language, place of arbitration, confidentiality, conduct of hearings, taking of evidence and delivery of an arbitration award.

Conciliation

The UNCITRAL Conciliation Rules, 1980 provide comprehensive procedural rules upon which parties may agree for the conduct of conciliation proceedings arising out of their commercial relationship. The rules cover aspects like, providing a model conciliation clause, defines when conciliation deemed to have commenced and terminated, appointment and role of conciliator and conduct of conciliation proceedings.

The UNCITRAL Model Law on International Commercial Conciliation 2002 provides uniform rules in respect of the conciliation process to encourage the use of conciliation and ensure greater predictability and certainty in its use. The Model Law addresses procedural aspects of conciliation, including appoint of conciliators, commencement and termination of conciliation, conduct of the conciliation, communication between the conciliator and other parties, confidentiality and admissibility of evidence.

5. Security Interests

The UNCITRAL has prepared a Legislative Guide on Secured Transactions[32] to assist States in developing modern secured transactions laws with a view to promoting the availability of secured credit. It is also

32. UNCITRAL Legislative Guide on Secured Transactions, 2007.

useful to the States which do not currently have workable laws. In order to assist policymakers and Legislators, the three organizations[33] have prepared the publication in 2011[34], in order to: (a) summarize the scope and application of these instruments; (b) show how the instruments work together; and (c) provide a comparative understanding of the coverage and basic themes of each instrument. This publication is not intended to be a comprehensive review of each of the instruments[35].

The United Nations Convention on the Assignment of Receivables in International Trade, 2001 object is to promote the movement of goods and services across national borders by facilitating increased access to lower-cost credit. It desires to establish principles and rules relating to the assignments of receivables that would create certainty and transparency and promote the modernization of the law relating to assignments of receivables and facilitate the new practices while protecting the existing one. The Convention applicable to assignments of international receivables and to international assignments of receivables, if, at the time of conclusion of the contract of assignment, the assignor is located in a contracting State; and subsequent assignments[36].

6. Insolvency

The UNCITRAL Model Law on Cross-Border Insolvency, 1997 object is to provide effective mechanism for dealing with cases of cross-border insolvency so as to promote the objectives of cooperation between the Courts and other competent authorities of one State and foreign States involved in cases of cross-border insolvency, for greater legal certainty for trade and investment; fair and efficient administration of cross-border insolvencies that protects the interests of all creditors and other interested persons, including debtor; to protect and maximization of the value of the debtor's assets and facilitation of the rescue of financially troubled business, thereby protect investment and preserve employment[37]. The Convention also offers foreign assistance for an insolvency proceeding taking place in the enacting State; foreign representative's access to Courts of the enacting State, recognition of foreign proceedings, cross border cooperation and coordination of concurrent proceedings.

The UNCITRAL Legislative Guide on Insolvency Law, 2004 assists the National authorities and legislative bodies for the establishment of an efficient and effective legal framework to address the financial difficulty of debtors, use as a reference when preparing new laws and regulations or reviewing the adequacy of existing laws and regulations relating to insolvency. The UNCITRAL Practice Guide on Cross-Border Insolvency Cooperation (the "Practice Guide"), 2009 provides information to Lawyers and Judges on practical aspects of cooperation and communication in cross-border insolvency cases. The 2011 UNCITRAL Model Law on Cross-Border Insolvency: The Judicial Perspective text is designed to provide an introduction for Judges to the use and application of the Model Law, promoting common understanding and uniform interpretation and enhancing predictability.

33. The Hague Conference on Private International Law ("the Hague Conference"), the International Institute for the Unification of Private Law (Unidroit), and the United Nations Commission on International Trade Law (UNCITRAL).

34. 2011 - UNCITRAL, Hague Conference and Unidroit Texts on Security Interests: Comparison and analysis of major features of international instruments relating to secured transactions.

35. www.uncitral.org.

36. Article 1 of the United Nations Convention on the Assignment of Receivables in International Trade, 2001.

37. Preamble of the UNCITRAL Model Law on Cross-Border Insolvency, 1997.

7. International Payments

In international trade transactions buyer and seller have certain apprehensions, like receiving of payment to the seller and obtaining possession of goods to the buyer. In order to avoid such risks seller and buyer will take the help of financial institutions for making and receiving payments. The methods include, documentary collection and documentary credits.

The United Nations Convention on International Bills of Exchange and International Promissory Notes, 1988 is designed to overcome the disparities and uncertainties that exist in relation to instruments used for international payments. The convention applies to an international bill of exchange when it contains the heading "international bill of exchange" and also contains in its text the word "international bill of exchange". It also applies to promissory notes, when it contains the heading "international promissory note" or in matter "international promissory note". The convention has no application to Cheques[38].

The UNCITRAL Model Law on International Credit Transfers, 1992 deals with operations beginning with an instruction by an originator to a bank to place at the disposal of a beneficiary a specified amount of money and obligations of sender, receiving bank, time of payment, liability of a bank to its sender or to the originator when the transfer is delayed or for any other errors.

The United Nations Convention on Independent Guarantees and Stand by Letters of Credit, 1995 facilitates the use of independent guarantees and stand by letters of credit, in particular where only one or the other of those instruments may be traditionally in use. The convention applies to an international undertaking if the place of business of the guarantor or issuer at which undertaking is issued in a contract State or if the rules of private international law lead to the application of law of contracting State[39]. The Convention entered into force on 1st January 2000[40]. The UNCITRAL Legal Guide, 1992 was prepared by the UN's Commission on International Payments. These rules apply to international contracts in which the parties have agreed that, upon a failure of performance by one party (obligator), the other party (the obligee) is entitled to an agreed sum from the obligor, whether as a penalty or as compensation.

8. International Procurement and Infrastructure Development

The UNCITRAL Legal Guide on Drawing Up International Contracts for the Construction of Industrial Works, 1987 deals with many legal issues that arise in connection with the construction of industrial works, covering the pre-contractual, construction and post-construction phases, and suggests possible ways in which the parties may deal with these issues in their contracts.

UNCITRAL Model Law on Procurement of Goods and Construction, 1993 is designed to assist States in reforming and modernizing their laws on procurement procedures. The Model Law contains procedures aimed at achieving the objectives of competition, transparency, fairness and objectivity in the procurement process, and thereby increasing economy and efficiency in procurement.

The UNCITRAL Model Law on Procurement of Goods, Construction and Services, 1994 recognized that certain aspects of the procurement of services are governed by different considerations from those applicable to the procurement of goods and

38. Article 1 of the UN Convention on International Bills of Exchange and International Promissory Notes, 1988.

39. Article 1 of UN Convention on Independent Guarantees and Stand by Letters of Credit, 1995.

40. www. uncitral. Org.

construction. The 2011 Model Law on Public Procurement replaced the 1994 UNCITRAL Model Law on Procurement of Goods, Construction and Services. The principles and main procedures from the 1994 text have not been changed. The United Nations Commission on International Trade Law (UNCITRAL) has prepared Guide in 2012 to Enactment of the UNCITRAL Model Law on Public Procurement to provide background and explanatory information on the policy considerations reflected in the 2011 Model Law.

The UNCITRAL Legislative Guide on Privately Financed Infrastructure Projects, 2000 intended to assist in the establishment of a legal framework favourable to private investment in public infrastructure. The Model Legislative Provisions on Privately Financed Infrastructure Projects, 2003 are supplementary to UNCITRAL Legislative Guide on Privately Financed Infrastructure Projects 2000, intended to assist domestic legislative bodies in the establishment of a legislative framework favourable to privately financed infrastructure projects.

9. Other related Documents

(a) European Contract Law

In 1999 European Union's Commission on Contract Law published *Principles of European Contract Law*. The Principles of European Contract Law will apply when the parties select them as their choice of law and when the contract is to be governed by general principles of law or the *lex mercatoria*[41]. The CISG applies only to sale of goods transactions, whereas the European Principles apply to all types of contracts.

(b) Uniform Commercial Code

Uniform Commercial Code (UCC) is the law adopted by American States. The Code relates to certain Commercial Transactions in or regarding Personal Property and Contracts and other Documents concerning them, including Sales, Commercial Paper, Bank Deposits and Collections, Letters of Credit, Bulk Transfers, Warehouse Receipts, Bills of Lading, other Documents of Title, Investment Securities, and Secured Transactions, including certain Sales of Accounts, Chattel Paper, and Contract Rights (Title of Uniform Commercial Code). The United States has adopted CISG, therefore it has two laws of contracts for the sale of goods, the UCC and CISG.

(c) Restatement of the Law, Second, of Contracts

The American Law Institute was formed in 1923 as the outgrowth of a "Committee on the Establishment of a Permanent Organisation for the Improvement of the Law"[42]. The Contract was one of the subject upon which the Institute began to work. In US two groups of scholars, the American Law Institute (ALI) and the National Conference of Commissioners on Uniform State Laws (NCCUSL) began effort to draft a modern, national law of commerce[43].

PART-IV

IV. International Trade Related Organizations

1. UNCITRAL

The United Nations Commission on International Trade Law (UNCITRAL) is a specialized organ of United Nations established on 17th December 1966, in the years since its establishment, it has been recognized as the core legal body of the United Nations system in the field of international trade law. UNCITRAL maintains liaison with other United Nations organisations and specialized agencies

41. Article 1.101 (2-3) of Principles of European Contract Law.

42. *Allan Farnsworth A.* & *William F. Young*: *Selections for Contracts*, Thomson West Publications, 2003, page 173.

43. *Jeffrey F. Beatty* & *Susan S. Samuelson*: *Business Law for a New Century*, 2nd Edition, West Legal Studies in Business, Thomson Learning, page 426.

concerned with international trade. Members to this body have been selected from among the States Members of the United Nations[44]. The UNCITRAL monitors developments in the Case Law on UNCITRAL Text system, called CLOUT.

The object of UNCITRAL is to play important role in developing that framework in pursuance of its mandate, to further the progressive harmonization and modernization of the law of international trade by preparing and promoting the use and adoption of legislative and non-legislative instruments in a number of key areas of commercial law. Those areas include dispute resolution, international contract practices, transport, insolvency, electronic commerce, international payments, secured transactions, procurement and sale of goods[45].

In 1968 the Commission adopted nine subject areas as the basis of its work programme: international sale of goods; international commercial arbitration; transportation; insurance; international payments; Intellectual Property; elimination of discrimination in laws affecting international trade; agency; and legalization of documents[46].

2. UNIDROIT

UNIDROIT is a specialized agency of the United Nations Organisation which promotes the unification of law. UNIDROIT Principles of International Commercial Contracts provide neutral principles as guidance to the business people from different countries and legal systems. Some salient features of UNIDROIT Principles are stated below:

1. UNIDROIT Principles are not binding unless parties have agreed in their contracts;

2. The UNIDROIT Principles shall be applied when the parties have agreed that their contract be governed by them, when the parties have agreed that their contract be governed by general principles of law, the *lex mercatoria* or the like. They may provide a solution to an issue raised when it proves impossible to establish the relevant rule of the applicable law; they may be used to interpret or supplement international uniform law instruments and they may serve as a model for national and international Legislators[47].

3. A contract may be proved by any means, including witnesses[48].

4. A party who negotiates or breaks off negotiations in bad faith is liable for the losses caused to the other party[49]. Whereas the U.S. law does not require that negotiations be conducted in good faith.

5. Parties must maintain confidentiality about the information obtained during the course of negotiations. A party is liable to pay damages if it discloses or uses improperly confidential information which was obtained in the course of negotiations[50].

6. UNIDROIT Principles do not deal with invalidity arising from lack of capacity, lack of authority and immorality or illegality[51].

44. UNCITRAL Commission is consist of 60 Members, they include 14 African States, 14 Asian States, 8 Eastern European States, 10 Latin American and Caribbean States and 14 Western European and other States. The General Assembly elects members for term of six years; every three years the terms of half of the members expires.

45. The UNCITRAL Guide, Basic facts about the UNCITRAL, United Nations, Vienna, 2007 page 1.

46. Official Records of the General Assembly, Twenty-third Session, Supplement No.16(A/216) reproduced in UNCITRAL Year Book, Vol. I: 1968-1970, part two, Chap.I, Sect. A.

47. The Preamble of UNIDROIT.

48. Article 1.2 of UNIDROIT.

49. Article 2.15 (2) of UNIDROI.

50. Ibid., Article 2.16

51. Ibid., Article 3.1

7. Where the performance of a contract becomes more onerous for one of the parties, that party is nevertheless bound to perform its obligations subject to the provisions stated in Article 6.2.1 of UNIDROIT.

8. Defines "hardship" as "where the occurrence of events fundamentally alters the equilibrium of the contract. In case of hardship the disadvantaged party is entitled to request renegotiations[52].

9. Non-performance is failure by a party to perform any of its obligations under the contract; including defective performance or late performance[53].

10. Any non-performance gives the aggrieved party a right to damages[54].

3. International Chamber of Commerce

The International Chamber of Commerce is a Non-Governmental Paris based organisation and it was established in 1919 with a mission to promote world trade, harmonise trade practices and provide practical service to business people. The aim of ICC is to serve world business by promoting trade and investment, open markets for goods and services, and the free flow of capital. Its activities cover a broad spectrum, from arbitration and dispute resolution to making the case for open trade and the market economy system, business self-regulation, fighting corruption or combating commercial crime. It feeds business views into intergovernmental organisations on issues that directly affect business operations[55].

The ICC services includes, preparing model contracts, Arbitration through International Court of Arbitration in Paris, the Centre for Maritime Cooperation in London, the Counterfeiting Intelligence Bureau in London, and the Institute of International Business Law and Practice in Paris, INCOTERMS 2000 manual of trade terms[56], UCP 500 (Uniform Customs and Practices for Documentary Credits). UCP 500 contains the rules that banks apply to finance to world trade. A supplement to UCP 500, eUCP was added in 2002 to deal with the presentation of all electronic or part electronic documents. The International Bureau of Cambers of Commerce (IBCC) was established in 1951 to cooperate between Chambers of Commerce in developing and industrial countries. ICC created the Institute for World Business Law in 1979 to study legal issues relating to international business. ICC conducts training programme for legal Directors, corporate Counsels, lawyers and for other interested people on drafting of international business contracts and conducting of negotiations.

In order to help international business ICC maintains Commission of Experts on subjects like, banking techniques, financial services, taxation, competition law, intellectual property rights, telecommunications, information technology, air and maritime transport, international investment regimes and trade policy. The ICC developed voluntary codes on matters relating to sponsoring, advertising practice, sales promotion, marketing and social research, direct sales practice and marketing on the internet.

4. World Trade Organization and TRIPS

There has been increase of trade at Global level, the concept of Globalization revolves around international trade. It is a world wide production and marketing of goods and services by multinational enterprises[57]. In Globalisation there is a free

52. Article 6.2.3 of UNIDROIT.
53. Article 7.1.1 of UNIDROIT.
54. Article 7.4.1 of UNIDROIT.
55. http://www.iccwbo.org/id93/index.html.
56. www.iccwbo.org/Incoterms/index.
57. *Alan Rugman*: *Second Report of the National Commission on Labour*, Volume I Part One, 2002, Akalank Publications, Delhi, page 155.

movement of goods, services, people and information across national boundaries[58]. After the end of Second World War trade between the nations started with slow pace and gained momentum with the establishment of World Bank, International Monetary Fund, evolution of General Agreement on Tariff and Trade and finally establishment of World Trade Organisation.

The WTO agreements include disciplines in three areas, *viz* (1) international trade in goods, (ii) international transactions in services, and (3) protection of intellectual property rights. As on 23rd July 2008 there are 153 members in WTO[59]. The provisions relating to the protection of intellectual property rights are contained in Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS). The Intellectual Property Rights protected through this agreement are; patents, copyright, trademarks, geographical indications, industrial designs, layout-designs of integrated circuits and undisclosed information[60].

WTO as a successor of General Agreement on Tariffs and Trade (GATT) is established on 1st January 1995. It is an organization for liberalizing trade. It is a forum for Governments to negotiate trade agreements. It is a place for them to settle trade disputes. It operates system of trade rules. WTO through its policies and agreements helps the producers of goods and services, exporters and importers in conduct of their business[61].

5. Lex Mercatoria

Law of merchants or *Lex Mercatoria* a private body, provides mechanism in which day-to-day uses and practices are recognised by business people, as well as by Courts and arbitration Tribunals, as international customary law[62].

6. World Intellectual Property Organisation (WIPO)

The (WIPO) is a specialized agency of the United Nations Organisation. WIPO promotes the protection of Intellectual Property throughout the world through cooperation among the States and in collaboration with other international organisations[63].

7. International Trade Administration

International Trade Administration is an institution which provides expert assistance and information for doing business with foreign countries[64].

Conclusion

The subject of international trade contract is a complex one but the knowledge of legal framework of international trade contracts and related issues makes the subject simple in understanding. It is necessary for the parties, dealing in international trade, to know the national as well as international law relating to their trade contracts, including, conventions, trade terms, usages, and prevailing trade practices. The commendable work of International Organizations like UNCITRAL, UNIDROIT, WTO, International Chamber of Commerce (ICC) and other related organisations or bodies provide enough guidance to understand the various aspects of international trade contracts.

The legal regime of international trade contracts have been governed by number of International Conventions and documents developed by various international organizations. The contracting parties agree

58. The Human Development Report of South Asia 2001, Second Report of the National Commission on Labour, Volume I Part One, 2002, page 155 &156.

59. www.wto.org/english/the .

60. *Bhagirath Lal Das*: *The WTO and the Multilateral Trading System: Past, Present and Future*, Zed Books Limited, London and New York, page, 56.

61. www.wto.org/english/thewto.

62. lex mercatoria. net.

63. WIPO was established by WIPO Convention in 1967 its headquarters are in Geneva, Switzerland.

64. www.trade.gov.

to apply any of UNCITRAL Conventions. The parties to the international trade contracts may also choose to use certain legal terms defined in particular manual, such as INCOTERMS 2000, UCP 500 or FOB, CIF or DES type of contracts for interpretation of any word referred in their contract.

The business may be sale of goods, sale of services, licensing of technology, grant of franchise or foreign direct investment, the important aspects to be taken into consideration in international trade contracts include, the compliance of import and export regulations, payment of taxes, fluctuation in currency rate, repatriation of currency, transportation of goods, political situations in the countries of contracting parties, payment of consideration, risks like *Force Majeure* and impediments.

The study made in this article demonstrates that the legal regime in respect of international trade contracts is very vast, consist of various International Conventions passed by United Nations and its Specialized Organizations, International and Bilateral Treaties, Trade Terms, Usages, Practices and documents developed by trade related organizations. The trade related law has been growing with the growth and expansion of trade in the world. The study concludes that all the trade related organisations, bodies and institutions are working together to harmonize and unification of the law of international trade, in order to achieve peace and development.

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SUIT FOR SPECIFIC PERFORMANCE NATURE OF THE DEGREE WHETHER PRELIMINARY OR FINAL WHETHER THE APPLICATION FOR EXECUTION OF THE SALE DEED LIES UNDER SECTION 28(3) OF SPECIFIC RELIEF ACT OR BY FILING EXECUTION PETITION UNDER ORDER XXI(34) CPC – CONTROVERSY

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There appears to be some considerable controversy, regarding the nature of the decree, whether, preliminary or final covered by suit for specific performance. In other words, does the Court become *functious officio* and loose jurisdiction after grant of decree? *The scope of the study of the article spread over two stages in the teeth of the principles laid down in Section 22 Specific Relief Act 1963.* The scope of the study of the article spreads over on the conjoint reading of Sections 22 and 28 of the Specific Relief Act, 1963 which are extracted for ready reference as hereunder.

Sec.22 : Power to grant relief of possession, partition, refund of earnest money etc.—(1) Notwithstanding anything to the contrary contained in the Code of Civil Procedure Code, 1908, any person suing for the specific performance of a contract, for the transfer of immovable property may in an appropriate case ask for (a) possession or Partition of the property in addition to such performance or, (b) any other relief to which he may be entitled, including the refund of any earnest money or deposit paid or made by him in case his claim for specific performance is refused.

(2) No relief under clause (a) or clause (b) of sub-section (1) shall be granted by the