INTERNATIONAL COMMERCIAL ARBITRATION

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THE EFFECTIVENESS OF INTERNATIONAL COMMERCIAL ARBITRATION SYSTEM AND A CRITICAL ANALYSIS?

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ABSTRACT

To resolve conflicts the alternative dispute resolution (ADR) has derived several procedures. In last few decades the ADR process becomes more important that it becomes more prevalent in international and domestic commercial contracts. The basic reason for this is the high cost of litigation, thus the parties are considering alternative methods to resolve disputes with the process which is cheaper and quicker. By using ADR the working relationship between parties will not lead to a break down. Therefore this report is based on a detailed examination of arbitration in International Commercial scenario. The report is given to define the effectiveness of the International Commercial Arbitration, the international system covering states and corporate with advantages and disadvantages of the international arbitration. The commentary also discusses the International Chamber of Commerce (ICC) alternative dispute resolution rules and the United Nations Commission on International Trade Law (UNCITRAL) rules. Furthermore, “ADR techniques fall into two discrete types. Those which seek to persuade the
parties to settle and those that provide a decision. Where a decision is given then that decision may be binding on the parties, it may have an interim binding effect or may simply be a recommendation that the parties can accept or ignore".  

Arbitration is one of the techniques of ADR and it is very important in the international commercial sector. However to define arbitration there is no universal definition of arbitration. In different legal rules arbitration has been used differently. It has been defined in different ways by the different commentators but there are core principles that can be found in all definition. The arbitration is a private system of adjudication. The arbitration method has been used differently in different countries. Though there are distinctions between domestic and international arbitration but there are also similarities found in this method. We could find factors which could affect the international arbitration but not the domestic arbitration. The laws are likely to be different in international and domestic law e.g. international arbitration relies upon conventions for the enforcement of arbitral award. Moreover the similarities are that the parties to a dispute have option to go for mediation before choosing arbitration. Basically the arbitration agreement provides authority to the arbitral tribunal to hear and determine the dispute. It is choice of the parties to choose between the arbitration and mediation. The selection regarding arbitral tribunal could be found in arbitration agreement. The main purpose of arbitral process is to resolve disputes or differences between parties before the relationship gets end up. It is a judicial process but not as a mirror judicial proceedings by which the procedure is to meet the demands of the case. Thereafter the arbitral tribunal makes or delivers an award to settle dispute between the parties and the award is final and binding as to the matter which it decides.  

The international institutions are very important regarding the proceedings of the arbitration and the treaties or conventions plays role for the enforcement and recognition of the arbitral award. to discuss the structure of the international commercial arbitration could lead to understand the effectiveness of the informal system as well as the critical view is a key factor to define whether the future of the system is secure and does it provide sufficient security to the parties around the world.

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1 Andrew Tweeddale and Keren Tweeddale, Arbitration of Commercial Disputes (Oxford University Press), p 3 to 4  
2 Alan Redfern and Hunter, Law and Practice of International Commercial Arbitration, 4th Edition (Sweet & Maxwell Limited), para 1-01 to 1-18
INTRODUCTION

The purpose of ADR is to resolve disputes or conflicts that exist between parties. Whereas the parties must use this process, if they really want to resolve their disputes. Disputes arise where the lack of compromise between parties took place. A point where parties do not agree, can appoint an expert with mutual understanding if required to decide the issue, e.g.; valuation of shares. Hence there are some benefits and problems with ADR techniques. Significantly, the ADR techniques are cheaper and quicker. But this actually depends upon parties upon ADR techniques which are adopted. However among all those techniques arbitration is one of the most efficient though there are view that it is expensive even it can be expensive than litigation. “There is a creeping tendency to carry out complex international commercial arbitrations as if they were litigation”. 3 “Both parties often appoint distinguished lawyers and eminent and expensive arbitrators. A further criticism of ADR and arbitration in particular, is that because strict rules of evidence do not apply irrelevant and inflammatory material may be presented in the ADR and arbitration proceedings. This requires time and money to be spend on issue that are unnecessary”.4

Moreover the arbitration on international level holds the characteristics and attraction to become one of the most important forums. Specially the business communities usually prefer to go to arbitrator to settle their disputes. Flexibility and confidentiality are one of the key factors to inspire the corporate to use this mechanism. The arbitrators are normally appointed by the consent of the parties. In commercial transactions the parties express their consent having arbitration clause in the commercial agreement between the parties. International commercial arbitration has now become the norm for dispute resolution in most international business transactions. 5 Although there are difficulties regarding the enforcement and recognition of the arbitral award but the rules made through the treaties and conventions bound the states and the parties to recognize and enforce the award. The process of resolving disputes by international commercial arbitration only facilitate because of the multifarious system of national laws and international treaties. There are conflict between procedural law and international commercial

4 Ibid 1 at p 4 to 6
5 Introduction to international commercial arbitration by Cambridge university press
arbitration, which is still in question. 6 Furthermore the subject need to be discussed properly by highlighting the issues regarding its effectiveness with a critical view and the enforcement of arbitral awards in foreign states in relation to international commercial institutions to conduct the proceedings under the different set of rules.

AIMS

The arbitration is a dynamic dispute resolving mechanism and it suits in both domestic and international arbitration. There is no doubt that the arbitration method in commercial sphere is highly recognized but there are hypothesis that needs to be answered. The arbitration is not free from critical evaluation and this is not an absolute variety of resolving disputes. The final report aims to describe the problems and effectiveness in the international commercial arbitration system. How the different institutions approaches these problems and making it more effective. The aim is to also explore the legislative and judicial framework for international commercial arbitration in Barbados under the International Commercial Arbitration Act 2007 which is based on the UNCITRAL Model law for International Commercial Arbitration 1985. 7

OBJECTIVES

There are a lot of debates on international commercial arbitration system. The system is introduced but still there are a lot of questions on the credibility of the international commercial arbitration. The objectives are to make a clear statement and provide a result as the international commercial arbitration is effective or not.

Explores the fundamental principles of natural justice and considers how they are applied to arbitration as well as litigation. Discusses the UK and Hong Kong domestic legislation, international conventions and rules of international arbitral institutions which set out the concepts of natural justice applicable to arbitration. Examines case law considering the rules of natural justice as applied to arbitration.

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6 Choice of law problems in international commercial arbitration by Horacio A. Grigera Naon
7 http://www.mondaq.com/article.asp?articleid=123428
METHODOLOGY

This study provides an opportunity to seek a greater understanding of complex nature of international commercial arbitration. The report contains the case study of how different problems are affecting the system to international commercial arbitration and what are the major factors assisting these problems to damage the aims and objectives of international commercial arbitration? And secondly what reasonable measures could help to protect and support the commercial arbitration system? In order to gain a deeper research in the subject area I also have to understand what efforts are making by the international institutions regarding the problems and their solutions. The subject area requires a lot of study to be done in understanding of complex issues and to make a final report and for this I have to read up to date articles and journals which can support my area of subject and help me to lead to an ideal approach. This can also strengthen the knowledge discovered through previous research. The case study is designed to get the details and the participant’s views by investigating using different sources.

HISTORY

As a method of resolving disputes the concept of arbitration is very simple and old one:

“The practice of arbitration therefore, comes, so to speak, naturally to primitive bodies of law; and after courts have been established by the state and a re-course to them has become the natural method of settling disputes, the practice continues because the parties to a dispute want to settle it with less formality and expense than is involved in a recourse to the courts”.  

In old days the arbitration was mainly considered as institution of peace and the purpose behind the process of dispute resolution was not rule of law rather to maintain harmony between parties. It was considered that the formal laws in some ways are too right. To settle disputes between parties the law was willing to intervene to give effect an arbitration agreement. Arbitrator was supposed to be a relative, mutual friend or a man of wisdom on which it was expected that he could resolve their dispute or to give a good solution. “The Italian Code of Procedure of 1865 significantly treated arbitration in a preliminary chapter ‘On Conciliation and Arbitration’.”

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8 Ibid 4 at para 1-03
In Roman law adopt private arbitration. Arbitration agreement was not supposed to be illegal and was not unknown but there was no legal effects regarding in arbitration agreement and arbitral award. In this way the parties had to make two promises, the first regarding arbitration agreement and second about the penalty to pay if a party fails. That is how arbitrator would not award penalty but to enforce the promise.

Though it was difficult for states to allow private justice, which is actually dependant on participant’s goodwill. However to standardize commercial activities it was getting necessary for states to intervene at some level to regulate matters. But by the passage of time commercial arbitration did not stay within national boundaries, it spread across borders i.e. a corporation in UK signed a contract with another corporation in Spain and the dispute across in France and the matter was dissolved there as well. How an arbitration agreement could be enforced where one party refuses to arbitrate. And how to enforce the arbitration award of damages in another state. Therefore the national law could not cope with these issues, what were needed were treaties conventions between states to provide solution of the problem.10

Geneva Protocol 1923 provided solution to the problem to some extent to enforce arbitration agreement and arbitration award which was later reformed in 1927 to enhance the scope of Geneva Protocol as Geneva Convention. In 1958 a very important convention took place named as New York Convention which tells us about the Recognition and Enforcement of Foreign Arbitral Awards. So far there are 144 countries signatory of this convention. By signing this convention the states are bound to enforce the arbitral award in their state as being the party of the New York Convention. After this convention many institutions began to be created. Each institution has its own rules, procedure under which they work. The court of Common Council of the City of London arranged a committee in 1883 to consider the matter relating to establishment of arbitration tribunal. As the business transactions were increasing the world business community established the International Chamber of Commerce which supports the international commercial arbitration and the ICC (International Chamber of Commerce) has promoted the arbitration as a dispute resolution of international commercial dispute. However one of the oldest arbitration institutions was established in 1892 as London court of International Arbitration (LCIA). In Sweden Chamber of Commerce Committee was formed in 1917 to settle the

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10 Ibid 4 at para 1-03, 1-06
commercial disputes regarding industry and shipping. The French Revolution considered arbitration as a droit netual and the Constitution of 1791 proclaimed the constitutional right of citizens to way out to arbitration. The beginning of this concept in France is very old that it was set up by the boroughs to settle disputes between merchants on market days.\textsuperscript{11}

The main institutions are London Court of International Arbitration, Stockholm Chamber of Commerce, American Arbitration Association, Hong Kong international Arbitration Commission and many more. As the arbitration rules were needed, the United Nation Commission on International Trade Law (UNICTRAL) forms a set of rules which covers all aspects of arbitral process.\textsuperscript{12}

\textsuperscript{11} Where has international arbitration come from by Hefin Rees
\textsuperscript{12} Dispute settlement: international commercial arbitration (UN conference)
Effectiveness of Arbitration

Arbitration is an alternative process to traditional courts to provide solution of the conflicts in a very flexible, economic, speedy and informal way. “There was a duty of implied confidentiality, in that the arbitration documents, whether spoken or written, presented, discussed, or produced were to be protected from disclosure to outsiders to the dispute and the proceedings were generally to take place in private”.¹³

**Hasneh Insurance Co. of Israel V. Mew**¹⁴

“If it be correct that there is at least an implied term in every agreement to arbitrate that the hearing shall be held in private, the requirement of privacy must in principle extend to documents which are created for the purpose of that hearing. The most obvious example is a note or transcript of the evidence. The disclosure to a third party of such documents would be almost equivalent to opening the door of the arbitration room to that third party. Similarly witness statements, being so closely related to the hearing, must be within the obligation of confidentiality. So also must outline submissions tendered to the arbitrator. If outline submissions, then so must pleadings be included.”¹⁵

In process of arbitration the parties can choose their own arbitrator, times and location which is totally different than the court system. As the parties agree earlier the decisions made by the arbitrator are final and binding on the parties.¹⁶ The arbitration process attracted communities/societies at large scale that most of the people want to settle their disputes by using alternative dispute process as the judicial process is very slow and the laws are too rigid that they cannot lead to a settlement. It becomes so effective that every state around the globe in whole or in parts adopted the arbitration system on domestic and international level. Arbitration is also a best method for international commercial disputes. The industries in many areas prefer to go for arbitration. A general belief about arbitral process is its neutrality to the parties.

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¹³ V. Bhatia, C. N. Candlin, R. Sharma, ‘Confidentiality and Integrity in International Commercial Arbitration Practice’( Arbitration 2009), Arbitration 2
¹⁴ Hassneh Insurance Co. of Israel V Mew [1993], 2 Lloyd’s Rep 243
¹⁵ Per colman J. at p 247
Arbitration and its objectives

“While there are many good reasons for choosing arbitration over other forms of dispute resolution, one frequently quoted reason is that it allows the parties a higher degree of control to shape proceedings as they deem appropriate. In that regard, arbitration was initially heralded as a break from the rigidity and standardization associated with court litigation. Arbitration promised to be different; it promised “to have all the virtues the law lacks … to be expedient when the law is slow, cheap where the law is costly, simple where the law is technical”. It promised to be bespoke within the confines of the applicable law”.17

There are many reasons of arbitration to act as a dispute resolution process in international commercial arbitration. The business community itself feels that this is an impressive way to resolve the issues as neutral, speedy and process of dispute resolution.18

Forms of Arbitration

International arbitration relates to different forms as the arbitration arises between the states and arbitration between individuals. The parties in a dispute may be individuals, government, companies or it can be combination of these all. The process of arbitration is based on a set of rules which are formed by the international body. Not necessary but it can be ad hoc arbitration if any rules have been set down. However most of the international disputes are governed by the rules. Today the most acknowledged form of international arbitration is commercial arbitration between corporations, individuals, companies. When an arbitration agreement is made there is a presumption in favour of arbitration. However most of the industries have laid down their own set of arbitration rules to govern arbitration procedure. The arbitrator has to conduct the arbitral tribunal with certain powers as laid down in the rules drafted by the industries. These rules are related, in the conduct of arbitration and do not support in the enforcement of an arbitral award.

In recent years new forms of international disputes have been seen in companies in conflict with individuals and states having their disputes with the state entities and in these conditions the enforcement of the award becomes difficult to some extent. These disputes generally arise out of

17 Devika Khanna, “Early, Active and effective case management in arbitration: a call to reject procedural order no.1” (IALR 2010), Int. A.L.R. 237
the bilateral and multilateral treaties between the states and are determined under the International Centre for Settlement of Investment disputes (ICSID). A number of disputes arise between state and individuals where the state takes state immunity to avoid the recognition and enforcement of arbitration award. Cases where state entities by claiming that the state entity did not take prior permission from the state. However the nature of arbitration between states is different from commercial disputes. In commercial disputes the arbitration agreement tells us about the arbitral process to be used, the consensus of the parties is written into the agreement. However to resolve the disputes between states in an international context is by way of Treaty obligations of the state.

Procedural law and international arbitration

The societies developed in stages and reformed their systems according to the requirement of the society. Therefore domestic system specially of a family, labor and commercial grounds has been reformed with the system of arbitration for the settlement of the disputes. In some states, the arbitration was working traditionally as an extension of the formal judicial system. Most of the Islamic countries like Pakistan, Iran and in European countries for example; Latin America and England are using arbitration in connection with the litigation. Hence, the ingredients of domestic arbitration and international arbitration are different with each other. In domestic arbitration, both parties to the arbitration agreement are the residents of the same country and none of them is residing abroad. The matter related to these parties will be considered in the national arbitral tribunal to deal with dispute and the merits of the disputes will be governed by the same state. The agreement provides for arbitration in the country of the parties to the arbitration agreement. However the arbitration agreement where one party resides in a foreign state will be considered as international arbitration agreement. The matter between the parties is to take place in a particular place, where the parties are agreed in the agreement. The New York Convention will apply to those agreements which has foreign element like international trade and commerce. But one of the key factors is whether arbitration is domestic or international it

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19 Agneskv, “Domestic and International arbitration” (2001)
depends on relevant law and that is the seat of the arbitration.\(^{20}\) Therefore Model Law clarifies certain things required for an international commercial arbitration in its Article 1(3);

Arbitration is international if:

(a) The parties to an arbitration agreement have, at the time of the conclusion of that agreement, their places of business in different States; or

(b) one of the following places is situated outside the State in which the parties have their places of business: (i) the place of arbitration if determined in, or pursuant to, the arbitration agreement; (ii) any place where a substantial part of the obligations of the commercial relationship is to be performed or the place with which the subject-matter of the dispute is most closely connected; or

(c) The parties have expressly agreed that the subject-matter of the arbitration agreement relates to more than one country.\(^{21}\)

**Advantages of arbitration**

There are many strong benefits of international commercial arbitration and the reasons of the parties to choose this process are; the forum is neutral and the enforcement of the arbitral award is easy by virtue of the New York Convention. This treaty plays a vital role as more than 140 countries are parties of the convention. The enforcement of an arbitral award in all of the countries is compulsory being signatory of the treaty. Confidentiality is one of the important advantage and parties often desire to settle their dispute in a personal way. “Most valued feature of international commercial arbitration is confidentiality. For reasons easy to imagine, businessmen do not want their secrets, business plans, strategies, contracts, financial results or any other types of business information to be publicly accessible, as would commonly happen in court proceedings. Yet the law of arbitration shows that in practical terms confidentiality is not to be taken for granted – in fact, it has become one of the most undermined matters in undetermined

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\(^{21}\) UNCITRAL Model Law on International Commercial Arbitration, Article 1(3)
matters in international arbitration.”  

There are other top reasons of parties choosing international arbitration to settle their commercial disputes. (1). The parties are free to determine the arbitral procedures or they can choose set of rules to which they like to have followed. The parties have to choose a procedure which meets the requirement of equal treatment of the parties.  

(2). The enforceability of the awards are hardly refused or the enforcement of arbitral award is easy and this is due to the New York Convention 1958 which reduces the formalities or draw such limits of grounds on which a court may refuse to enforce the arbitral award. (3). The parties can select the arbitrators of their own choice and this is the most important characteristic of international arbitration. Moreover the other advantages of international arbitration include cost, speed, and effectiveness of arbitration for international disputes and neutrality of arbitral place.

Disadvantages of arbitration

There are disadvantages as advantages of arbitration at the same time. Where the arbitration take place without any reference to the arbitration institution it called ad hoc arbitration and this ad hoc base arbitration is somewhere an advantage but also a disadvantage because during that time the parties may be intending to settle their dispute in a friendly manner. During arbitration procedure any particular rule might favour any party of these two and the parties do not want settlement on the rules of procedure for their arbitration. The parties might feel that the commencement of arbitration will be difficult for them. If we see with a different perspective i.e. fewer discoveries may be generally viewed as an advantage. Nonetheless, certain kinds of disputes, which typically involve extensive discovery, such as antitrust disputes, are increasingly arbitrated. These kinds of disputes often require the aggrieved party to prove a violation that it can only prove if it has sufficient access to documents under the control of the offending party. Less discoveries in this kind of case mean less of a chance for a claimant to meet its burden of proof”.  

Another disadvantage of arbitration is where a decision is made by the tribunal but in context of law it is wrong the party against whom the decision is made cannot go for appeal. It

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23 New York Convention Art V(1)(b)
24 Ibid 19, p 4
could be considered a benefit in terms of ending dispute but it is also frustrating for the parties when they are not able to bring their matter for an appeal. However there are some examples found in the United States that the party can go for a judicial appeal on the basis of the arbitration award.

Arbitrator cannot impose the penalties as national courts, the court may impose penalties or fine to the person who did not comply with the order of court. Though the arbitrator does not have the coercive powers. Thus the parties or tribunal, if seems necessary have to go to courts for the implementation of the arbitral award. Moreover, the arbitration lack the power to join all the relevant parties whether all of them are involve in the same dispute because among those parties any one might not want to arbitrate or do not want to join the arbitration.

The other more disadvantages or drawbacks of the international arbitration are; (1). That it is an expensive procedure and that is the main concern of the users of arbitration. The cost of the arbitration is somehow higher than litigation. New trend which has been used these days is; the arbitration process has adopted many other ways which are actually embodied into the litigation to increase the cost and worth of process. However still companies believe that it is the best process and got worth due to other advantages it provides.\(^\text{25}\) (2) The arbitral proceedings generally takes long time to settle the dispute even parties usually play with delaying tactics and sometimes the arbitrators are inactive or unprepared\(^\text{26}\), (3) The court can intervene during or after the arbitration proceedings and there is not much to do for tribunal to control the intervention but UNCITRAL Model Law, is an example which sets out limits of court intervention.\(^\text{27}\)

**Is arbitration a less expensive procedure?**

The process of arbitration was supposed to be a low cost solution for international commercial dispute. But now it is more likely a problem as process is in a long run a costly proceedings. The adoption of legal proceedings in arbitration has upset many companies as they depend on arbitration as a problem solver across-border business disputes. Though it is not necessary for arbitration to be a cheapest way of resolving conflicts, since the rules of litigation are edited in


\(^{26}\) Sec 33 of English Arbitration Act 1996 (Arbitrators to resolve the disputes speedily).

arbitration. The parties have to pay the charges in the arbitral process and the arbitrator charges them administration fee, arranging hearings and meetings in the private room, using of public facilities of the court of law. These all things are necessary provided by the arbitrator and the parties in the disputes have to pay these necessary expenses. Thus it shows that the arbitration is not a cheaper way of settling disputes in international commercial arbitration at least a attentive effort made to do it so. As it is said by Richard W. Naimark, senior Vice President of the American Arbitration Association’s International Center for Dispute Resolution, “there’s been an increasing chorus of voices that international arbitration is getting too expensive, mostly because it is taking too long.”

However it would be improper to say because arbitration is not dead. There are still many companies, who prefer method of resolving international commercial disputes. There are several good reasons, as said by Mark W. Frieman, a partner in the New York City office of Debevoise & Plimpton, “Unlike the situation in many courts, in a typical commercial arbitration outsiders has no access to the case docket, written submissions or oral hearing. This allows parties to address matters outside the spotlight, which probably helps facilitate the resolution of commercial disputes.”

Moreover that arbitration does not have appeal procedure and there is no need to go for appeals from inferior court to superior court, so the cost of arbitration may be equal to the litigation. Moreover, arbitration seems cheaper but it might be expensive in some ways and the litigation seems to be cheaper than arbitration but in a long run from inferior courts to superior court it could be costly. However people still believe that international commercial arbitration is a suitable manner of resolving disputes as it provides opportunity to the parties to choose their own arbitrator or arbitral tribunal to whom they trust. Arbitration is also a neutral forum even both sides do not have procedural or home court advantage and you do not have to learn any rule to arbitrate any dispute. Furthermore it is easy to enforce around the world as more than 75% of the world has signed the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

28 Ibid 4 at ch: 4
29 Richard Naimark, “International Arbitration loses its Grip,“(2010)
30 Ibid 23 by Edward Mullins, (http://www.abajournal.com/magazine/article/international_arbitration_loses_its_grip/)
countries have signed the New York Convention 1958. The courts of these signatories are bound to enforce the arbitral award to give effect to an arbitration agreement.\footnote{Ibid 24}

**How arbitration is most effective than traditional courts**

Risk always exists in business activities or transactions but all business partners’ attempts to minimize the risk and to close the doors of possible future disputes. However, when economic twist is on peak and corporate are being defaulted, the more disputes come about during this period. Ultimately when a dispute arise the parties seeks for the settlement.\footnote{Markian M. Malskyy, “Commercial Law Vs. Arbitration in Ukraine”, 2009} However litigation is strict and strain having no means of settlement. But in arbitration if parties agree on any settlement the contract or activity carried out may be continued. Laary Fenelon, remarked that“… litigation, by its very nature, is adversarial and generally damaging to commercial relationships. Once it commences that relationship has irreversibly changed. Arbitration whilst an alternative to litigation, is founded on the adversarial mode. And imposes a legally binding outcome on the parties. He observes that the role of the arbitrator, like that of a judge, is to apportion responsibility for the dispute, rather than assist the parties to reach a resolution of their own.”\footnote{Roderick Murphy, “The Courts and Alternative Dispute Resolution”, (Arbitration 2010), Arbitratioin 604}

The step towards arbitration was also welcomed due to number of injustices and mistakes made by the traditional courts, which in response affected the business community at large scale thus they switch to arbitration from litigation.

In *Bouygues, Dyson L.J.* confirmed that;

“It is inherent in the scheme that injustices will occur, because from time to time adjudicators will make mistakes. Sometimes those mistakes will be glaringly obvious and disastrous in their consequences for the losing party. The victims of mistakes will usually be able to recoup their losses by subsequent arbitration or litigation …”\footnote{Peter Sheridan, “ Construction Act review”, (Construction Law Journal), Const. L.J. 35}
**Future of arbitration**

As the international commercial arbitration system is growing rapidly but there are many questions to answer because the system is much effective and demanding but not absolute. Therefore arbitration comes with many advantages and disadvantages. The solutions proposed must reflect the most typical approaches that promote the continued effectiveness of international commercial arbitration practice. The process is becoming more secure and efficient and laws are being reformed on international basis to provide a speedy procedure to resolve the conflicts. We must realize that this process is frequently used as in the history to provide a peaceful solution. Even some domestic arbitration institutions plays very important role for domestic and international conflicts. American Arbitration Association (AAA), Hong Kong International Arbitration Center (HKIAC), Singapore International Arbitration Center (SIAC) is examples of domestic level institutions. Moreover, in this modern age the disputes are being resolved on internet called as online dispute resolution process. The major submissions of conflicts to the tribunal and decisions are made on internet, even hearings are open to the public though Skype or other software.\(^\text{36}\) There is no doubt that most of the parties in international commercial disputes have access of technical facilities and can take part in online dispute process. The UNCITRAL has completed its Model Law in 1996 and it is anticipated to encourage the expansion of electronic commerce. However it is now been used wholly or in partly in most of the states and many countries have formed their institutions and enacted laws approved by the state. For example, Electronic Transactions Act 1998 by Singapore and Uniform Electronic Transactions Act 1999 are laws providing a legal framework for e-commerce as well as online arbitration.\(^\text{37}\)

As the arbitration was in past it bring changes in present international contract practice and replaced the traditional system into technology. The new type of contracts is made such as telecommunication, electronic commerce and many other have introduced their specific requirements for dispute settlement. Furthermore while considering the globalize economy the World Intellectual Property Organization (WIPO) has created a setup to resolve the international disputes and provided ideas to settle conflicts for other fields of business. Therefore the future of

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\(^\text{37}\) Chambers Yang, Marshal Chen & Morries Lin, “International Commercial Arbitration in net era”,  (http://lawyer.20m.com/English/articles/arbitration.htm)
international commercial arbitration seems to be very effective and the institutions are aiming to find more reliable ways of setting dispute to facilitate the parties with speedy effective and lost cost proceedings.38

Conclusion

Although the positive facts and effects of the international arbitration on commercial transactions between state and states cannot be ignored and it cannot be neglected too that it has a much bigger influence and trend of corporate users to use international arbitration. However there is a lot of criticism made on international arbitration but these criticisms relates to the aims and objectives of the arbitration mechanism. The cost and efficiency of arbitration are key factors of arbitration process. There are a lot of debates that the international arbitration is one of the forum which “takes too long” (strongly agreed by 56% of the surveyors) and the cost of arbitration is higher than the litigation (69% of the surveyors agreed).39 Above those all the new criticism or most negative experience is that the arbitrators are too slow, unprepared, and incompetent. The Corporate Counsel International Arbitration Group (CCIAG) surveyed in which they draw the factors which are causing inefficiency of international arbitration. In this report it was identified that the arbitrators are unavailable most of the time from the tribunals or they are overscheduled and they often do not distribute their documents. Moreover the arbitration institutions are also to blame that they must create a system that reins in everyone. Where as it has been identified and then suggestion have been given to implemented rules as Center for Effective Dispute Resolution (CEDR) and International Chamber of Commerce (ICC) have published rules and techniques for controlling time and costs. Therefore there are loopholes which can be covered by the passage of time, as examples could direct the thoughts through its effectiveness and importance. The advantages or positivity of international arbitration is the main reason why parties see the arbitration to resolve their business disputes. The international arbitration is better than litigation in many ways discussed above and the future of arbitration is pretty secure because new reforms have been made and techniques are adopted to resolve the issues rapidly with effectiveness.

38 Ibid 30 at p 300,301
Enforcement of international commercial Arbitral Awards

Award is a piece of paper which one party gains against the enforcement of their rights and it does not guarantee the enforcement of the award. A resolution has been passed and rules and conventions has been set forth by International Chamber of Commerce (ICC) on Recognition and Enforcement of Foreign Awards 1958, to announce the award and the enforcement of award in a time period and the tribunal must focus these rules. The party who obtains the award have to enforce it through national courts in the place where the other party has asserts. The award thereby seize those asserts to value the award. “The ability to obtain security for foreign awards is essential in order for arbitration to operate as an effective alternative to litigation. Considerations such as where assets are located and the degree of connection to the jurisdiction in which the relief is being sought will be highly relevant to the likelihood of success of the application”. However it is the final stage of the arbitral procedure. The party against whom the order is made can seek to challenge it by making an application to the court of the seat of the arbitration to set aside the award. But for this the party has to provide those requirement as a prove in accordance with Article II of New York Convention (NYC) that award should not be enforce. Though things are not easy as it looks but the enforcement of award is compulsory in all NYC signatory states.

The recognition and enforcement of are two different forms of an award. An award can be recognized but needs not to enforce but an award cannot be enforced without recognition. Recognition means that the award made by the tribunal is accepted by the national courts of the place where enforcement is sought. Enforcement is thereby an action taken by the courts to recover or claim in accordance with the arbitral award.

The role of arbitral tribunal is secondary regarding the enforcement of award. The tribunal is involved indirectly and after the award has been announced the arbitral tribunal is *functus officio*. The ICC recognizes that situation vary in many counties so that the arbitral tribunal

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40 Omar Al-otean, “Announcement and enforcement of arbitral awards related to international commercial courts”, Bus, L.R. 2011, 32(6), 153-154
41 Ibid 1 at p 407,409
must made the award in a way that it supports the enforcement of award. The party must produce the original copy of the award to the court if required or if the language of the state is different where the award is sought, the court may also acquire the arbitration agreement as well. However it differs as in England it is set out that the party must provide the evidence for the recognition and enforcement of New York Convention award.43

**Determination of jurisdiction**

The arbitrator may be appointed according to the arbitration agreement set out by the parties. When the arbitrator is appointed he must satisfy himself that the agreement between parties was valid and the dispute exactly related to terms. If arbitral tribunal come across that the arbitration agreement is not subject to arbitrate, it will not proceed further. In this situation the position can be more doubtful.44 However before arbitral tribunal starts its procedure, it must determine that whether the tribunal has jurisdiction over the issue or not. To settle any dispute there must be any relationship between the arbitral tribunal and the parties and that can be found in the contract made between the parties that actually help the tribunal to determine its jurisdiction. “As stated in *Ashville Investments V Elmer Contractors*:45 ‘A non-statutory arbitrator derives his jurisdiction from the agreement of the parties at whose instance he is appointed. He has such jurisdiction as they agree to give him and none that they do no”.’46 The landmark decision was made by the French court (Cour de Cassation), regarding the validity of the arbitration clauses and after the doctrine was acknowledged by most of the courts.47 The doctrine of separability was actually formed by French courts in the *Gosset* judgment,48 which defines that the arbitration clause in the contract is considered separate from the main contract. Whether the main contract is void, the arbitration agreement being independent remains valid and the parties are bound to perform according to the arbitration agreement. However the jurisdiction can be determined in another way as there are actually two different contract, first with the commercial obligation of

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4343 Ibid 1 at Ch 13, para 13.03, 13.04


45 (1998) 37 BLR 55, 78 per Bingham LJ

46 Ibid 1 at p 139, para 5.01

47 Henri Batiffol, “Arbitration clauses concluded between French Government-Owned Enterprises and Foreign Private Parties” (1968),

48 Cour de Cassation, 1st chamber, May 7, 1963, Dalloz, at p 545
the parties, secondly where parties agree to resolve the disputes through arbitration which actually arises during their commercial transaction.49

The UNCITRAL Model Law also provides in its Article 16(1);

“The arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement. For the purpose, an arbitral clause which forms the part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is null and void shall not entail ipso jure the validity of the arbitration clause.”50

The arbitral tribunal has power to determine its jurisdiction out of the agreement made by the parties. It helps to determine the absence of jurisdiction, where the arbitral clause is challenged. However there are arguments that the doctrine must consider the doctrine of Kompetenz-Kompetenz and without it the doctrine shall be incomplete. The doctrine of Kompetenz-Kompetenz says that the tribunal has jurisdiction to find out its own jurisdiction.51 The doctrine is accepted universally of international commercial arbitration. This doctrine authorizes arbitrators and the courts to decide matters to arbitral jurisdiction. This doctrine permits or grants an exclusive authority to arbitrators to judge and decide challenges to their jurisdiction.52 However the court prohibited to consider challenges but can review the decision of arbitrator at the seat of the arbitration.53 The approach has been taken in French law that where the arbitration agreement exists and the jurisdiction of tribunal is challenged, the jurisdiction must be rule on by the tribunal without courts. Later on the principle has been used in two cases, first in American Bureau of Shipping V Tencara Shipyard SPA and secondly in Editions du Seuil V Editions Phidal Inc and Quarto Childer’s Book Ltd.54 Therefore the doctrine of Separability and Kompetenz-Kompetenz are used together by most of the rules even in international arbitration rules and foreign arbitration statues. “In Article 16 of UNCITRAL Model Law, Article 21 of

50 UNCITRAL Model Law Art: 16(1)
51 Ibid 41 Arbitration 204
53 Ibid 41 Arbitration 205
54 Ibid 1 at p 156 to 177, 5.63 to 5.87
UNCITRAL rules and Article 6(4) of the ICC rules, the doctrine of separability is tangled in the company of the doctrine of Kompetenz-Kompetenz in the similar provisions.\textsuperscript{55}

England, Switzerland and India have recognized the principle even though the tribunal of these countries are exclusively authorized. Even though the principle of Kompetenz-Kompetenz has been adopted by the English Arbitration Act 1996 and the arbitral tribunals provided powers to rule on its own competence.\textsuperscript{56}

\textbf{Recognition and enforcement of foreign awards}

Recognition and enforcement are two main factors of an award and a final process in the arbitration procedure. after the award is made by the tribunal the party has to submit the award to the court of jurisdiction where the enforcement is sought. The court is bound to enforce the arbitral award within a time frame after it has received. The enforcement will be sought where the losing party has asserts and if the party has asserts in more than one jurisdiction the enforcement will be sought in different jurisdictions. For enforcement of the award there must be a relationship between the country where enforcement is sought and the seat of the arbitration. To make the award effective the successful party must consider that is there any treaty or convention between the country where enforcement is going to held and the seat of arbitration. Because if there is no treaty or convention the enforcement might be difficult to that place. Another thing which must be considered by the party is whether the party is a signatory of the New York Convention 1958 as it basically subject to the recognition and enforcement of the award. One more noticeable thing is “if the successful party is a State or State entity the laws of that country in relation to State immunity”.\textsuperscript{57} Therefore the enforcement of the award must be in the limited time frame which varies from one place to another. But the England courts recognize and enforce the award whether it is time barred. The English courts argue that it is an implied promise to enforce the award and that would be honoured. If the award is not enforced it would count breach of contract.\textsuperscript{58} In \textit{Good Challenger Navegante V Metalex-portimport}\textsuperscript{59}, case an

\textsuperscript{55} See UNCITRAL Model Law Art.16, UNCITRAL Rules Art 21, ICC Rules Art 6(4)

\textsuperscript{56} Arbitration Act 1996, section 30

\textsuperscript{57} Ibid 1 at p 409

\textsuperscript{58} Agromet Motoimport Ltd. V Mulden Engineering Co (Beds) Ltd [1985] 2 All ER 436
award was time barred in Romania but it was deemed to be enforced still in England. As to the basic rule discussed above in this paragraph.

To recognize and enforce the award in any foreign state the successful party ought to obtain a specific procedure. The party must supply the duly authenticated original award or a certified copy and original or copy of the arbitration agreement to the national court where the enforcement of award is sought by the arbitral tribunal. In case where the language of the award is different than the language of the foreign state subject to enforcement the party needs to provide a translated copy of the documents into such language. The translated copy should be attested or certified by the diplomatic or consular agent. However the law of the court or forum will determine the copy of award or agreement is certified or attested. Some of the countries require proving the award or arbitration agreement but some of them does not require as much formality of proving such necessary documents. However the English courts does not require so much formality of proving the award or agreement whereas an award annexed to the witness testimonial from the petitioner’s lawyer would be sufficient. Moreover after all of these requirements there are several grounds for refusing the enforcement of the award. Therefore the party alleging that the award is unenforceable should have a burden of proving his case. If the enforcing party fail to prove that the award is enforceable and it met with the formalities for enforcing, the award cannot be enforced.

**Grounds of refusal of enforcement and recognition:**

There are grounds mentioned in the New York Convention for refusing the enforcement of an award. These grounds are set out limited grounds in Article V of the convention. Similar grounds are mentioned in different frame of laws; like section 103 of the English Arbitration Act 1996,
Article 36 of the United Nations Commission on International Trade Law (UNCITRAL) Model Law.63 Hence the grounds under NYC are as follows;

Article V(1)(a) contains two conflicted rules which enables the party to challenge the enforcement of an award. The first rule is one where the party is under any incapacity and the second is where the agreement is invalid and it is an subsidiary rule according to which the agreement is subjected to a law or under the law or where the parties fail to choice the law, which is actually governed by the state where enforcement is sought.64 “Among the grounds for refusal of enforcement, is art. V(1)(a): “The […] agreement referred to in article II […] is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made”. Article II makes reference to the arbitration agreement”.65 However the party must raise the issue of capacity and validity at the beginning while enforcement is in process. The issue of incapacity is more likely to arise in international commercial arbitration.66

Article V(1)(b) contains violation to due process. The violation of due process also falls in the ambit of public policy. Thus the court may refuse enforcement on this ground. The notion of this provision is that where the issue is related to fairness, independence and impartiality of the arbitral tribunal. This is a fundamental rule that the arbitral tribunal must act with fairness, independent and impartiality. If question is raised on these grounds it will count as the refusal of the enforcement of award. in addition the party against whom the award is made must be notified about the appointment of the arbitrator and its proceedings.67

Article V(1)(c) is divided into two parts. First is where the arbitral tribunal is in access of its power and second is where the decision is made within the tribunal’s authority or outside the tribunal’s authority.68 If the award is not falling within the specified terms or where the decision

66 Ibid 1 at p 414, para 13.15
67 Ibid 56 at p 14
68 Ibid 56 at p 15
by the tribunal is made beyond the jurisdiction the enforcement of such award would amount unenforceable.

Unless the matter falls outside the deference of the arbitration the award dealing with the issues outside of the parties, the pleaded case does not offer a position of challenge under this Article. “In Ministry of defense of Iran v Cubic Defense Systems\textsuperscript{69} Cubic claimed that an award should not be enforced under Article V(1)(c) because the award dealt with arguments not advanced in the legal submissions of the parties. The court stated that the question was whether the award exceeded the scope of the arbitration agreement, not whether the award exceeded the scope of the arbitration agreement, not whether the award exceeds the scope of parties, claims arising from these Contracts and the fact that the Award is not based on the same legal theories as stated in the pleadings cannot be a basis for refusing to confirm it”.\textsuperscript{70}

Where the arbitration procedure is not according to the agreement of the parties the award will not be enforceable under Article V(1)(d). the tribunal must act under the law of the country where the seat of the arbitration takes place and if not so the award may be refused by the enforceable country. The New York Convention and Geneva Convention 1927 also provide that if there is irregularity and the process is not in respect with the agreement of the parties and the law of the seat of the arbitration the award will be refused.\textsuperscript{71} However very few awards led to this provision so far.

When the award is not binding on the parties or set aside, it cannot be enforced in any way. Where the award has been applied for setting aside, it may lead to adjournment of enforcement by the court. It is not clear what the New York Convention means when the award is suspended. However the English commercial court considered this provision that the competent authority of the state where the enforcement is sought may suspend the award and therefore the award would have no effect.\textsuperscript{72} The court of the country in which award is made has to consider whether the award is binding or not. The method to figure out whether the agreement is binding or not is different in different countries.

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\textsuperscript{70} Ibid 1 at p 417, 13.22

\textsuperscript{71} Julian D.M. Lew, L. A. Mistelis, S. Kroll, ”Comparative international commercial arbitration”, (Kluwer Law 2003), p 715

\textsuperscript{72} Apis AS v. Fantazia kereskedelmi KFT [2001] All ER (Comm) 348, 352
There are many issues which are arbitrable or not and this definition is accepted internationally and interpreted in Article V (2)(a). For example, family cases and criminal cases are not generally arbitrable, however some cases in international commercial law are also not arbitrable and these are related to patent rights and anti-trust law intellectual property law. Moreover the court of the country is bound to consider by applying its own law that whether the dispute is arbitrable or not. This issue was actually considered by the Supreme Court of British Columbia. For example where an individual is not a party to any arbitration agreement the award cannot be arbitrate against him and the court therefore cannot enforce the award.

In every jurisdiction if the award is against the public policy it cannot be enforced and this defense normally leads to the rejection of enforcing the award. however because most of the countries takes plea that the award is against public policy and cannot be enforced. Therefore a distinction has been drowning in international and domestic level to refuse the award in a limited range. If there is something which is seriously against the public policy or there is a wrong in the arbitration procedure by which the award was made then the national court may refuse to enforce the award. New York Convention discusses the vast issue of public policy in Article V (2)(b). However several cases stated that the scope of public policy as a ground of refusal of enforcement of award should be narrower under New York Convention. But the most commonly interpretation of public policy is where the award breaches the State’s basic philosophy of morality and justice. Moreover there are arguments that the New York Convention must bring some distinction between domestic and international public policy. Some courts anyhow doubted that Art. V, paragraph 2 under b, defines that where an award is differing to public policy of the country where enforcement is sought.

International Law Association Committee issued a report regarding the cases of international commercial arbitrations giving the concepts of public policy. There are four recommendations made in this final report which took 6 years to complete.

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73 Ibid 1 at p 424  
74 Eddie Javor v. Francoeur and Fusion Crete Inc.(2003) BCSC 350  
75 Laminioirs-Trefileries-Cableries de Lens v Southwire Co. 484 F Supp 1063 (ND Ga 1980)  
76 Peter Megens & Derek Finch, “Setting Aside an award on public policy grounds: AJT v AJU”, (Arbitration 157), 2011  
In the first recommendation defines few cases where the State’s court could refuse to enforce an award contrary to international public policy, therefore the award which does not oppose the international public policy will be enforceable.

“(i) Fundamental principles, pertaining to justice or morality, that the State wished to protect even when it is not directly concerned’ (ii) rules designed to serve the essential political, social or economic interests of the State, these being known as ‘Lois de police’ or ‘public policy rules’; and (iii) the duty of the State to respect its obligations towards other States or international organizations.”

Secondly, where the award is contrary to the law of the State where the award is to be enforced. The law does not mean the law applicable in the contract but it means the law of the State where performance of contract is sought. Therefore while making opinion the court must consider the consensus of the other courts in different States.

Thirdly, where the tribunal is failing to observe a binding rule of law. To ascertain the breach of States international public policy rules the court of that State must give a look not only to the award made by the tribunal but also to the basis of the award like evidence and facts of the case on which the award is based. Where failure to observe a binding rule of law is found the award should not be recognized and enforced in the State.

Fourthly, the award may be subject to refusal, where the result of enforcing the award would amount to manifest infringement of one State in relation towards other States. For example where the enforcement of the award would result in breach of international obligation or Treaty the award should not be enforced in that context.

**The role of sovereign governments.**

The role of sovereign government is very complicated and the governments are creating problems as regard to enforcement issues in international commercial arbitration. How the

79 Ibid 69, p 261
sovereign government involvement change the impact of the award and how we can cope with these problems is a big issue.  

In this global market era it is common to see state and their organs taking part in various commercial transactions. It is unusual to see where a corporation insisted that their disputes to be heard by the courts and not the arbitration. However state and state entities are generally not allowed to submit their issues to any private party to arbitration. Moreover to an extant certain industrial and commercial public entities are submitted to arbitration agreement and their disputes related to companies and industries are generally handled by international arbitration. There was a time when public law entities were prohibited to submit their conflicts to the arbitration but in this age they are not prohibited but certain restrictions are still imposed. The state or state entities are not entitled to get prior permission from their relevant authorities if they are looking forward to enter into an international commercial agreement. Therefore it is compulsory for the next party to check whether the state or state entities, who want to enter into an arbitration agreement has taken prior permission from the authorities. Most of the time when the state or state entities enter into an arbitration agreement by relying on its own law to get benefit of their own state law and authorities. Different attempts were made to deal with this problem specially the progressive States had made their attempt as well, for example; Swiss Law provides that;

“If a party to the arbitration agreement is a state or enterprise or organization controlled by it, it cannot rely on its own law in order to contest its capacity to be a party to an arbitration or a arbitrability of a dispute covered by the arbitration agreement.”

“Legal persons which, according to the law applicable to them are, “legal persons of public law” have the capacity to sign valid arbitration agreements

Each state may, at signing, rectification or accession limit that capacity by means of a declaration.”

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80 Global trends in international arbitration by Gary Born and Wendy Miles
82 Swiss Federal Statute on Private International Law, Article 177
83 Geneva Convention, Article II
The contract was signed between the State of Belgium and two other German companies named as Benteler. When the dispute arose between parties the tribunal of Switzerland initiated ad hoc arbitration, which was later objected by the Belgium that the tribunal has no jurisdiction over the issue, relying that the public law entities incompetent of finalizing arbitration agreement. However Benteler argued that the state should not act under their own law to compete the validity of the assent to arbitrate. Therefore different concepts were developed that the state should deal with international commercial contracts by the proper law of the contract and not by the State’s internal law. Where violation is made with respect to international public order the State’s law will be considered as incompatible to arbitrate. The final approach is important that the arbitrator can ignore state internal prohibition if, under these circumstances, state would be acting estoppels.85

Moreover most of the State and State-entities act under any commercial agreement. But the problem is different when the State and State entities makes an agreement to refer their dispute for arbitration and later refuses to participate in the arbitration proceedings. For example, most of the State takes plea of State Immunity to avoid the enforcement of award.86 However a general presumption has been made that the party when accepts the arbitration clause, it actually commit not to obstruct the arbitral proceedings and the consequences resulted from the proceedings.

Arguments are made regarding the restrictions imposed on State or State entities to enter into the arbitration agreement beyond their capacity. The State or State organs must consider the restrictions made as to their capacity to enter into the arbitration agreement. However it is argued that the arbitration agreement is not a matter of capacity and it must not be qualified so, but it should be considered that whether the issue is arbitrable. A counter argument was made that the

84 1 J. Int. Arb. 184, (1985)
85 Baier Bohm & Engarde, “Arbitrability in international commercial disputes with states and state entities”, (2010), p 9 to 12
restriction on capacity can be waived at any time by the relevant authorities. Therefore the issues
should be treated as arbitrability but not as a matter of capacity.  

Moreover there are question as to the existence of arbitration agreement. The problems can be
raised regarding the existence of arbitration agreement where state entity is involved in any
contract. Where a state entity is involved the other party must know that whether the state organ
can bind the state to the agreement. Most of the time the state entity requires approval from the
State before entering into the arbitration agreement but parties normally include the state into the
proceedings though they have not signed the agreement. The state entity has no separate
personality but acting under the administration of government,  

therefore the parties include state in the proceedings. However the state entity should be the party in the proceedings not the
state because the state entity has its own legal personality. The state can be involved in case
where it has not signed the arbitration agreement but cannot rely on the separate personality of
the entity.  

There is a landmark decision made in pyramids case, where the legally independent state-
owned entity has signed the arbitration agreement (Supplementary agreement) and that
agreement was extended to the state. In this case a company which was actually incorporated in
Hong Kong has signed an agreement with the Egyptian State-owned entity as regards to the
tourism. Regarding the construction of two tourist places a pre-existing framework has been
referred to the same states and the government of Egypt. The one place of these two was actually
located near the Pyramids. Moreover there was an arbitration agreement clause in the contract
under ICC and the seat of arbitration was held in Paris. At the last page of the agreement
following the signature of the Egyptian Minister the agreement enclosed three words “approved,
agreed and rectified”. However later on the Egyptian Government cancelled the project and
ultimately the company of Hong Kong (SPP) had to initiate the arbitration proceedings against
the state-owned entity (EGOTH) and the Egyptian government. The Egyptian government
argued that it was not personally bound to the arbitration agreement and the tribunal has no

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87 Ibid 4 at p 148d
88 Dallah Real Estate and Tourism Holding Company v The Ministry of Religious Affairs, Government of Pakistan,
89 Ibid 63, p 737, 739
90 Southern Pacific Properties (Middle East) Ltd. V Arab Republic of Egypt, 1974
91 Ripinsky & K. Williams, “Damages in International Investment Law”, (Case Summary, BIICL, 2008)
jurisdiction. On which the tribunal ruled that it has jurisdiction and as the government became
party to the agreement, therefore it is bound to act under the arbitration clause contained in the
agreement. Furthermore the Egyptian government set aside the award relying that there is
absence of the arbitration agreement. 92 The court of appeal allowed the government’s claim and
stated that the agreement was a supplementary agreement and that agreement needs approval
from the relevant State authorities. 93 The last word approved, agreed and ratified empowered the
ministers to approve the construction of the tourism places and it is assumed that the
supplemental agreement was subject to approval from the relevant government authorities. 94
Thus the Cour de Cassation declared that:

“The ambiguity of the terms preceding the signature of the Minister called for an interpretation
[which the Cour de cassation understandably considered as being which in the discretion of the
Court of Appeals], which the court of appeals gave in ruling that it only involved the intervention
of the supervisory authority.” 95

However the case clears that the word “agreed” could be used in different conditions as it can be
used as indicating that a party or state has not signed the arbitration agreement but it is bound by
that agreement. therefore where a contract is made between the state-owned entity and a foreign
compány and the agreement is followed by the signatures on behalf of the state, did not mean
that the State is bound by the contract and arbitration clause. Hence it is suggested that the matter
of States and State entities are not different then the group of companies in which a mere
existence of a group is not satisfactory therefore, to determine the existence of arbitration
agreement the intention of the parties is about to consider. 96

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92 Philippe Leboulanger, “The Arbitration agreement: Still Autonomous?”, in Albert Jan van den Berg (ed),
2007), p 3-31
1999), p 292,293
94 A.F.M Maniruzzaman, "State contracts in contemporary international law: Monist versus dualist controversies,
2001), EJIL p 309,328
95 Ibid 84, p 293
96 Ibid p 294-297
Sovereign Immunity and States:

While we talk about the sovereign immunity there is a distinction between immunity from jurisdiction and immunity from execution.\(^97\) If we find out that in what cases the State immunity can seek sovereign immunity, the courts investigate that “whether the enterprise is a public entity or a company formed under private law; the enterprise capacity to sue or be sued; the extent of government control over the enterprise; and the enterprise’s ability to incorporate and hold property. A strict structuralism approach will lead to absolute immunity if the entity is established as a public entity that is inseparable from the State. Then, everything the entity does will be entitled to immunity.”\(^98\) But the restrictive theory approach defines that when the State organ perform acts of any private or commercial transactions (\textit{acta gestionis}), it cannot seek immunity. Therefore the functionalist theory (restrictive theory) is affected in most of the States. Few more exceptions to the sovereign immunity are where state waive its immunity itself in anyway. According to Article 12(1) of European Convention on State immunity of 1972, where a dispute arisen between the parties related to civil or commercial issues and the contracting state where submit to arbitration in implied or contracted, in this respect the State may not claim immunity from the jurisdiction of the court.\(^99\) Where the State initiated the proceedings itself or take place in proceedings regarding the validity or interpretation of arbitration agreement, arbitration procedure and to set aside the award, the State cannot seek for the sovereign immunity.\(^100\)

Under State Immunity Act 1978 of the United Kingdom, section 9 of the Act provides that the State is not immune where it agreed in writing to submit their disputes to arbitration whether these disputes are existed or could arise in future.\(^101\)

Thus the courts of United States have denied a waiver of immunity over and over again. Under section 1605 (a)(6) of the US Foreign Sovereign Immunities Act 1976:

\(^97\) Frank-Bernd Weigand, “Practitioner’s Handbook on International Commercial Arbitration”, 2\(^{nd}\) edition (Oxford University), p 757
\(^98\) [Link to source](http://port.academia.edu/MunirManiruzzaman/Papers/590837/STATE_ENTERPRISE_ARBITRATION_AND_SOVEREIGN_IMMUNITY_ISSUES_A_Look_at_Recent_Trends)
\(^101\) Ifueko Uwaifo, “What is the effect of the defence of state immunity on the enforcement of arbitral awards? (“The Argentine Perspective”), p 8
a). "A foreign state shall not be immune from the jurisdiction of courts of the United States or of the States in any case

…

6). In which the action is brought, either to enforce an agreement made by the foreign state with or for the benefit of a private party to submit to arbitration all or any differences which have arisen or which may arise between the parties with respect to a defined legal relationship, whether contractual or not concerning a subject matter capable of settlement by arbitration under the law of the United States, or to confirm an award made pursuant to such an agreement to arbitrate, if (A) the arbitration takes place in United States (B) the agreement or award is or may be governed by a treaty or other international agreement in force for the United States calling for the recognition and enforcement of arbitral awards, (C) the underlying claim, save for the agreement to arbitrate, could have been brought in a United States court under this section or section 1607, or (D) paragraph (1) of this subsection is otherwise applicable [waiver of immunity]…"\textsuperscript{102}

However the State may waive its sovereign immunity to enforce and execute any arbitral award which was constituted due to the arbitration agreement in respect of its property. The United States Foreign Sovereign Immunity Act (FSIA) limits the executions of arbitral awards which relates to property used for commercial purposes. Section 1609 FSIA provide that foreign state property used for commercial activity in the United States is immune from execution of the award. Hence a State could resist the execution of the award as to the property is held for commercial purposes, even where the State had waived its immunity. The issues related to property may be considered under the plea of immunity, at least the property is not used or for the purpose of diplomatic mission.

**Conclusion**

Therefore the role of government regarding the arbitral award is complicated as most of the states creates problem where the award is subject to recognition and enforcement. Specially where the arbitration agreement is made between the parties and one of the party is a State-

\textsuperscript{102} Ibid 63, p 748
owned entity and the other is foreign corporation. The State usually seek for sovereign immunity though there are laws to regulate the international arbitration process in a more efficient way. However in international commercial arbitration a lot of developments has been made by the international arbitration institutions. As per demand of the global commercial activities and parties demand to arbitrate their dispute, it was necessary to make the system more effective to provide parties security and assurance to avail justice. Hence the international arbitration institutional approach provide a lot of facilities and security to the parties through the enacted laws. The New York Convention regarding the issue plays a vital role regarding the enforcement and recognition of the awards, however it bounds the states to enforce the arbitral award if it does not meet the grounds of refusal mentioned in the Convention 1958.
The institutions approach to resolve these problems

International Chamber of Commerce and Rules of International Commercial Arbitration

The International Chamber of Commerce is highly known as international institution for settling international commercial disputes. It was formed in 1923 and its first institution was established as International Court of Arbitration in Paris the capital city of France and certain powers were given to the tribunal.\textsuperscript{103} However the private association of International Chamber of Commerce (ICC) was formed in 1919 just after the First World War. It was actually established with the effort of well known business communities of France, United Kingdom, United States, Belgium and Italy.\textsuperscript{104} Thereafter the institution of International Commercial Arbitration expanded throughout the world and very rapidly it became the world-wide brand for resolving the disputes under the auspices of international business affairs. When the businessmen or corporations sign the contract with their foreign partners including arbitration clauses of ICC in the agreement then their disputes would be referred to the arbitration under the rules of Arbitration of the International Chamber of Commerce. Arbitration holds very important place in the modern world and ICC played a very important role in the international scenario by helping to formulate relevant legislation and arbitration treaties between states. The rules of ICC were published in 1922 and later on it was amended in different times but firstly it was amended in 1998. After the establishment of ICC there was unpredictable growth to resolve the international commercial disputes by using the method of arbitration. The Rules of ICC holds a great importance that it supervises the other international arbitration institutions and any country can use these rules under any law by using its procedure.\textsuperscript{105} Moreover the International Court of Arbitration and its Secretariat basically run an autonomous body and the features confirms the confidentiality to the parties. The security in shape of confidentiality is mentioned in the ICC International Court of Arbitration Statutes: “As an autonomous body, it carries out these

\textsuperscript{103} Erik Schafer, H. Verbist, C. Imhoos, “ICC Arbitration in Practice”, (Kluwar law, 2005), p 13
\textsuperscript{104} Y. Derains, E. A. Schwartz, “A guide to the ICC rules of Arbitration”, (Kluwar Law, 2005), p 1,2
\textsuperscript{105} Ibid 88, at para 15.01-15.93
functions in complete independence from the ICC and its organs, its members are independent from the ICC National Committees.”

However Article 1 of the ICC Rules of Arbitration defines the ICC International Court of Arbitration and its Secretariat and the statues and internal rules has been mentioned in Appendix I and II of the Rules. The Rules in Appendix II and III define powers of the ICC International Court of Arbitration to perform its functions. However its scope in ICC Rules is limited in the matters related to international business affairs. As it is defined in Article 1(1) that; “….The function of the court is to provide for the settlement by arbitration of business disputes of an international character in accordance with the Rules of Arbitration of the International Chamber of Commerce (the “Rules”).” The ICC offers its services to all kind of parties whether they relate to trade or industry and it performs regardless to the nationality of the parties.

The role of ICC International Court of Arbitration starts when a dispute arisen between the parties and they had an agreement to refer their dispute to the arbitration under the rules of ICC, which entrust the International Court of Arbitration with certain powers under Article 1(2). The Court then makes decisions under the signed agreement of the parties. The parties are thereby bound to follow the Rules of Arbitration. However the ICC Court will not allow or accept any modification in its Rules. The party wishing to arbitrate its dispute will submit its application by giving name and particular of the parties, nature of dispute, indication how to settle down the dispute by mentioning any amount(s) claimed, the arbitration agreement, particulars of the arbitrators of choice or in case any appointment required, the place of arbitration, rules applicable and the language of the arbitration to the Secretariat, which shall notify them for the commencement of the proceedings. After the submission of the dispute the party is required to make payment under Arbitration Costs and Fees, if not so the time limit will be fixed, though failing will amount the file closed. Thereafter the respondent has to file an answer to the Secretariat. Where the parties agree to submit their dispute to arbitration under the Rules, it actually initiate the arbitration proceedings. Under Article 7 of the Rules the arbitrator

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106 Article 1, Para 2,3 of App I to the ICC Rules of Arbitration
108 Article 1(1) of the ICC Rules of the Arbitration
109 Article 1(2) of the ICC Rules of the Arbitration
110 Article 8,9 and 10 of the ICC Rules of the Arbitration
on his appointment must remain independent to the parties. The matter will be decided by the sole arbitrator or not more than three arbitrators. In case where three arbitrators are required, each party will recommend its arbitrator and the third arbitrator will be chosen by the parties or by the Court. After the appointment of arbitrators the ICC is supported by the national committees in eighty different countries. However the sole arbitrator ought to be of nationality different than those of the parties. “National committees are able to identify potential arbitrators with appropriate qualifications all over the world. Unlike certain other institutions, ICC does not require that arbitrators be selected from pre-established lists, thus ensuring the greatest possible freedom of choice and flexibility in the constitution of the Arbitral Tribunal”. 

Moreover the place of the arbitration is decided by the International Court of Arbitration, if not agreed upon the parties. The arbitration proceedings will start as soon as possible to establish the case in a short time by hearing the parties together. Article 14 of the Rules of Arbitration defines process of the arbitral proceedings. Whereas Article 15 says that, if the one of the party is summons but it did not turn up and remains absent from the proceedings without any valid excuse, the proceedings will remain continue. Where parties reach a settlement that shall be recorded in the form of an arbitral award. that award shall be made by the consent of the parties. Moreover the ICC Courts monitors the arbitral process from the initial request to the final award made by the tribunal. The tribunal is bound to submit its Terms and Reference within two month to the Court to bring the parties at a point where all useful details will be acquire to identify the issue. There is possibility where the parties comes to a point to settle their issues during defining the Terms and References. However it is fact which is generally not noticed by the users that a number of ICC arbitration cases are settled at the period of Terms and References.

The International Court of Arbitration provides a one most important function, which is scrutiny of arbitral awards. “In ICC arbitration, scrutiny is a key element ensuring that arbitral awards are of the highest possible standards and thus less susceptible to annulment in the national courts

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113 Article 12 of Rules of Arbitration
115 Ibid 103
116 Article 21 of Rules of the Arbitration
than they might otherwise be. The scrutiny process provides the parties with an additional layer of protection that would not otherwise be available, since arbitral awards are generally not subject to appeal. This unique quality-control mechanism makes ICC arbitration the world’s most reliable arbitration system.”

**Nat’l Oil Corp. v. Libyan Sun Oil Co.**

An agreement was signed between the above said parties and the purpose behind the agreement was to find out more petroleum resources on the territory of Libya. The contract which was signed by the parties was named as Exploration and Production Sharing Agreement (EPSA). The Sun Oil Co. agreed to bear the expenditures related to exploration and development of the program. The dispute actually arose when the US prohibits in 11, Dec 1981 using US passports to or through Libya for almost 1 year. Thereafter the Sun Oil Co. noticed that the former did not perform its responsibilities under EPSA, and claimed the prohibition order amounted to a force majeure. Later on the Sun Oil requested for the NOC’s authorization to assign contract with the other contractor for the period of one year. Therefore the NOC was refused and Sun Oil Co. was asking to make payment for withdrawing unilaterally from EPSA. Moreover the arbitration proceeding was initiated at International Chamber of Commerce in Paris. Terms and References were signed by the parties and hearing soon after took place. The first award constituted that the order of US government did not amount to force majeure but the use of this by the Sun Oil Co. does not mean withdraw from EPSA. However the final award held that the Sun Oil Co. did not withdraw but breached its obligations to EPSA by stopping the exploration in 1982. Hence it was held that Sun Oil Co. is bound to pay USD 20 million and the cost of arbitration expenses.

Therefore the rules of ICC are very effective and strengthen the arbitration process throughout the world. Thus the ICC International Court of Arbitration played a leading role in the movement that it formulated a most important multilateral treaty New York Convention 1958, as to the Recognition and Enforcement of the Foreign Awards on international arbitration. The function of the convention is to recognize the arbitration agreement and to recognize and enforce the foreign arbitral awards. The party before entering into international arbitration agreement can check that

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117 Ibid 103
whether the contracting party have ratified the New York Convention in any context. Moreover
the effectiveness of the ICC International Court of Arbitration can be determined by its rules and
its distinctive features that it is representing over 130 countries and thousands of companies all
over the world.\textsuperscript{120}

**London Court of International Arbitration**

The London Court of International Arbitration is one of the oldest arbitration institution. It is one
of the biggest international arbitration institution today. The institution has its own rules and
procedures and the rules of LCIA are adopted in ad hoc arbitrations. In a precise history it was
basically founded in 1883, and the basic purpose behind the foundation of this institution was to
provide a forum or tribunal for the arbitration to settle down the disputes related to commercial
transactions within the city of London. The Court of Common Council of the city shaped a
committee to provide suggestions to settle down the commercial disputes with the help of arbitral
tribunal. The institution was firstly named as “The City of London Chamber of Arbitration”, and
in April 1903 it was re-named as “London Court of Arbitration”, therefore in 1981 the name was
changed to “The London Court of International Arbitration (LCIA)” and fresh arbitration rules
were enacted that year.\textsuperscript{121} Now the services of LCIA are worldwide in all fields of dispute
resolution process. The LCIA is based on arbitration practitioners and a non-profit company
limited by guarantee. The Court is based on thirty five members and these members of the LCIA
court provide practitioners in commercial arbitration and these practitioners belong to major
trading areas around the world.\textsuperscript{122} The key function of LCIA if to appoint the tribunals, control
the costs and determine challenges to arbitrators.

Same like other institutions if the parties agree to refer their dispute under the rules of the LCIA.
The parties willing to commence arbitral proceedings under LCIA rules, shall send its request to
the registrar with the required particulars under Article 1 of the LCIA Rules.\textsuperscript{123} The rest of the

\textsuperscript{120}http://www.iccwbo.org/uploadedFiles/ICC/policy/customs/pages/The_Business_Perspective_on_Capacity_Building%281%29.pdf
\textsuperscript{121}The LCIA Arbitration Rules, effective 1 January 1998, are applicable to arbitrations commencing on or after 1
January 1998
\textsuperscript{122}www.lcia.org
\textsuperscript{123}Article 1 of LCIA Rules.
provisions defines the arbitral proceedings almost same as provided in other institutions. The LCIA provides wide-ranging dispute resolution services. “The subject matter of contracts in disputes referred to LCIA includes all aspects of international commerce, including, in particular, telecommunications, insurance, oil and gas exploration, construction, shipping, aviation, pharmaceuticals, IT, finance and banking.” The Secretariat of the LCIA is based in London and it holds the responsibility of administration of all arbitrations. The Secretariat supervises and support the proceedings of the arbitration and advice the parties, tribunals and its members.

The LCIA is very efficient and effective institution and due to its demand and capabilities the DIFC LCIA Arbitration is founded on a partnership between two institutions. The cause of this partnership was to establish more effective resolution of international commercial disputes through arbitration around the world. The Dubai International Financial Center was established in 2004 to provide a dispute resolution process in the region of Western Europe and East Asia. “with its envious location at the crossroads of the major international capital markets of New York and London in the West and Hong Kong in the East, Dubai is an onshore hub that connects the countries of this region through a 24x7 global network.”

DIFC is one of the fastest growing international financial center and most of the countries are attracted towards it. Therefore the LCIA is a longest established international arbitration institution to resolve business disputes and played a significant part in the development of arbitration practice.

**UNCITRAL Model Law on International Commercial Arbitration**

The United Nations Commission on International Trade Law (UNCITRAL) is one of the different institution among all others which provide arbitration process world-wide. UNCITRAL does not administer arbitration and even does not appoint any arbitrators. The Secretariat of the UNCITRAL is based in Vienna and Austria and the Commission has a small number of professional lawyers to support the process of UNCITRAL and they hold an experienced grip in aspects of commercial law. “Commission’s work has nothing to do with individual arbitrations; rather, its objective is to harmonize national laws and international commercial legal practices on

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125 http://www.lcia-arbitration.com
126 http://www.difc-lcia.org/
a wide range of trade related issues. Those issues include ‘dispute resolution, international contract practices, transport, insolvency, electronic commerce, international payments, secured transactions, procurement and sale of goods.’ the parties were facing many difficulties during their international commercial transactions because of the multiplicity and discrepancies in notional laws. Due to these difficulties a report was prepared in 1965 highlighting the issues for Sixth Committee of the United Nations General Assembly. However the report showed that promoting unification and harmonization comprises practically all the states around the world by introducing economic and social systems and steps of economic developments. In late 1966 the General Assembly established UNCITRAL and twenty nine states was members around the world but later it spread all over and recently as from 27 June 2011, 67 member’s states are members of UNCITRAL having their membership which will expire in different times.

Article 1 of the UNCITRAL Model Law defines the scope of application that “This Law applies to international commercial arbitration, subject to any agreement in force between this State and any other State or States.” Therefore the word commercial covers means to cover matters arising for all kind of commercial nature, whether they are contractual or not. However recently on June 25, 2010 the UNCITRAL Model Law has adopted the revised Arbitration Rules. The UNCITRAL concern in arbitration and its efforts are promoting the international commercial arbitration around the world.

Article 2 of the Rules defines that a notice must be delivered to the addresses and after receiving the notice the time period will be calculated on the day when it is received. According to Article 4 of the Rules the time limit is of 30 days of the receipt of the notice of arbitration. The party shall respond to the notice of arbitration. The parties to the agreement may propose the names of institution and persons as choice of the appointing authority. According to Article 6 (1) “Unless the parties have already agreed on the choice of an appointing authority, a party may at any time propose the name or names of one or more institutions or persons, including the

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127 Ibid 88 at para 16.01
129 Article 1 on UNCITRAL Model Law on international Commercial Arbitration
132 Article 2 (6) of the UNCITRAL Model Law on International Commercial Arbitration
Secretary-General of the Permanent Court of Arbitration at the Hague (hereinafter called the “PCA”), one of whom would serve as appointing authority.\(^{133}\) That appointing authority will secure the appointment of an independent arbitrator other then the nationality of the parties. The criteria of the appointment and number of arbitrator are same like other institutions. Section III of the Rules defines the Arbitral proceedings by which the arbitrator can run the proceedings as it thinks appropriate but considering that parties are treated with equality. The place of arbitration, languages used in proceedings, communication of statement of claim, statement of defense, amendments to the claim or defense, rule on its own jurisdiction, grant of interim measures, taking evidences and conducting and closure of hearings are the responsibilities of the arbitral tribunal.\(^{134}\) Hence the decisions made by the arbitrators are final and binding on the parties and they should carry out without delay. The UNCITRAL gives choice to the parties to choose the rules of law that have been elaborated by an international forum but are not used in any national legal system. To decide the dispute may be authorized by the parties.\(^{135}\) No other institution use that kind of arbitration. The party must attach the award within the limited period to set aside the award.\(^ {136}\) however there are grounds mentioned to set aside the award and these grounds are taken from New York Convention 1958 and these grounds are almost significant to the ground of refusing the enforcement and recognition of the award. Therefore the arbitral award would be enforcing in another state and those rules should follow the New York Convention 1958. The convention is treating awards in international commercial arbitration irrespective of where they were made and shall be recognized and enforced in the foreign state. The UNCITRAL Model Law draws a line between foreign and domestic awards. Hence the Model Law has adopted some of the provisions of the New York Convention 1958 just for the improvement but it was desirable to adopt the Model Law for the sake of harmony and unification.\(^{137}\)

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\(^{133}\) Article 6(1) of the UNCITRAL Model Law Rules of Arbitration  
\(^{134}\) Section III (Art 17 to 32) of the UNCITRAL Model Law of Rules of Arbitration  
\(^{135}\) Article 35 (2) of the UNCITRAL Model Law of Rules of Arbitration.  
\(^{136}\) UNCITRAL Arbitration Rules revised in 2010  
\(^{137}\) Report prepared by the secretariat of UNCITRAL, (International Commercial Arbitration, UNCITRAL Secretariat Explanation of Model Law)
International Commercial Arbitration in Barbados

The international commercial arbitration in Barbados is an ideal place to resolve the disputes of international commercial arbitration and the Statute is somehow based on UNCITRAL Model Law. The Parliament of Barbados enacted the International Commercial Arbitration Act in 2007 and came into force on January 19, 2009. The Act applies to the arbitration agreements between Barbados and any other State or States. The main objective of the Act was to establish a modern and internationally recognized forum to resolve the disputes subject to international commercial disputes. The Act actually covers all stages of the arbitral process as mentioned in the UNCITRAL Model Law version 2006 but as to the revised version of UNCITRAL, Barbados has not only adopted Article 7 and 35(2), whereas they stick to the original 1985 version to this extent. The High Court of Barbados is the functioning authority to exercise the arbitration proceedings. One of the interesting features of the Act is that it allows other foreign lawyers to participate in the issues related to international commercial arbitration. As in Lawler, Matusky & Skeller V Attorney General of Barbados the High Court held that the party can represent a lawyer in arbitration proceedings, who is not a practicing lawyer in Barbados.

However the Barbados has established an excellent and modern international institution subject to international commercial arbitration, “thus substantially meeting the objectives of the International Commercial Arbitration Act 2007. That, and the legislative and judicial framework in which the Act sits, as well as the non-legal attributes identified above, make Barbados an excellent venue for international commercial arbitration in the second decade of the twenty-first century.”

Conclusion

As international arbitration increased and the influence and benefits of the New York Convention became apparent new arbitration institutions began to be created as a supplement to ad hoc arbitrations. Each institution has its own arbitration rules and procedures and offers arbitration services that were initially influenced considerably by its own national environment.

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138 Article 3(1) of International Commercial Arbitration Act of Barbados 2007
139 Ibid 129 Article 4(a)
Whilst there are a large number of arbitral institutions and the decisions made by the international arbitration institutions and tribunals are key factors to understand their approach to international commercial sphere. However these institutions are very important and play a key role in the commercial disputes between the state and States.

143 Christophe Seraglini, Delphine Rooz, Antonio Musella, “International arbitration and alternative dispute resolution”
CONCLUSION

In nut shell almost all arbitral rules and practices are becoming similar by the passage of time. The rules which are different are not transcendental but very flexible, and that is why the parties do not get hesitant or confuse to choose the set of rules which felt necessary to their requirement. As to the all discussion done above it might be accurate to say that there were no rules of arbitration couple of decades ago but in the present scenario and the business and trade development the rules have been made and by the passage of time the institutions played a vital role by implementing those rules under the shadow of the treaties and conventions. However if the issue is related to the effectiveness of the international arbitration, it may not be wrong to say that the international arbitration is a much effective forum to resolve the international commercial disputes. However there are many international institutions even every state is about to install arbitration institution to resolve international commercial disputes but this could bring a positive impact by working in a co-relationship rather than creating hindrances in term of recognition and enforcement of an arbitral award. Whereas the challenging atmosphere between these international institutions, to provide justice will attract parties to choose the arbitral process to conduct on the best place of their own choice. This is how it could be easy to differentiate between institutions according to their performance. Though the main concept, which covers the judicial and quasi-judicial proceedings are to guarantee the equality. The litigation and arbitration must follow the concept of natural justice. the fundamental rules of natural justice are, that “no man can be a judge on his own case” and “hear the other party”. Both of the principles are well followed in international commercial arbitration. The other more benefits are the reason for attracting the parties whether there are few negative points which are discussed above but these issues may be timely resolved. Hence, arbitration is the most effective mechanism to resolve for commercial disputes.

REVIEW OF THE LITERATURE

During the last couple of decades, where the commercial arbitration system is growing swiftly, it comes with many questions to be answered. The international business sector is focusing to reduce these issues as it becomes the mounting consensus globally. The problems shows that the system still requires more confidence, fair treatment and a guide line. during my research I will consult several books, articles and journals but few of them are written as above;

1. Redfern and Hunter on international arbitration (fifth edition)

Published by Oxford University Press (2009)

The book is a guideline towards enforcement under New York convention, Washington Convention, Regional Convention, the defenses of state immunity and Practical Consideration.

2. The international effectiveness of the annulment of arbitral award by Hamid G. Gharavi

Published by Kluwer Law International (2002)

The book will help me to discuss the jurisdictional and enforcement issues as well as jurisdiction over annulment of the award and enforcement actions. A guideline to the international framework of control of the validity of the award.

3. International commercial arbitration: important contemporary question

by A.J. Van den Berg

Published by Kluwer Law International (2003)

The book is going to support me to discuss the enforcement issues of an international commercial arbitration award and gives me an approach to the questions of jurisdictional limitations. The book will be helpful to produce a result that there is not yet a uniform approach to the enforcement of interim measures under the New York Conventions.
4. **Comparative international commercial arbitration** by Julian D.M. Lew, Loukas A. Mistelis, Stefan Kroll  

*Published by Kluwer Law International (2003)*

The book is handy to define a good approach to the effectiveness, importance and advantages and disadvantages of the international commercial arbitration system. It is going to help me in many areas of my subject specially it discusses the issues related to the determination of applicable law, recognition and enforcement of foreign awards, arbitration with government and state owned entities and the sovereign immunity issues.

5. **Dispute Processes** by Simon Roberts and Michael Palmer (Second Edition)  

*Published by Cambridge University Press (2005)*

It tells the precise history of international commercial arbitration and International Chamber of Commerce into an international private justice.
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Article 8, 9 and 10 of the ICC Rules of the Arbitration

Article 35 (2) of the UNCITRAL Model Law of Rules of Arbitration.

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UNCITRAL Model Law Art: 16(1)

See UNCITRAL Model Law Art.16, UNCITRAL Rules Art 21, ICC Rules Art 6(4)

Arbitration Act 1996, section 30

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