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**SCOPE OF JURISDICTION OF UNCITRAL**  
**MODEL LAW ON INTERNATIONAL**  
**COMMERCIAL ARBITRATION (1985)**

Authored By - Soumya Gulati  
Christ( Deemed To Be University)

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## **ABSTRACT**

A Keen Interest has been taken towards for moving forward with this particular topic of International Commercial Arbitration and its relevance for Settling the disputes between international bodies and proceed to award just compensation and damages due to various disagreements or inconveniences which end up creating a body of conflicts which then hinders private or public peace and prosperity. The paper shall also illustrate how such conflicts are to be dealt under the ambit of International Commercial Arbitration in view of the UNCITRAL Model Law on International Commercial Arbitration. The Paper shall deal with the validity and the applicability of the jurisdiction of the Arbitral Tribunal. It shall take into consideration the foundational aspects as to the formation of this International Arbitral Tribunal and it shall mainly focus on the scope of the jurisdictional capacity of the forum to take disputes into its jurisdiction. Further, as there has always been a conflict between the Domestic and the International Jurisdiction of States to articulate cases under their own ambit, this paper shall also look into the aspects of how the law applies on the domestic as well as international body and how it creates a space for both of these framework to work in a certain type of Collaboration.

UNCITRAL serves as the central UN body of law. It was created by the United Nations General Assembly in response to the recognition that obstacles to the free flow of trade are being caused by variations in state laws controlling international trade. As a result, this commission was created with the intention of actively helping to lower or eliminate these obstacles. With careful regard for the unique characteristics and requirements of international commercial arbitration, the UNCITRAL Model Law has been authorized to assist the states in establishing their domestic law and updating their laws on arbitral procedure.

## **SCHEME OF STUDY**

The Model Law is intended to help States update and modernise existing laws on arbitral procedure in order to better reflect the unique characteristics and requirements of international commercial arbitration. It covers every step of the arbitration process, including the arbitration agreement, the make-up and authority of the arbitral tribunal, the scope of the court's involvement, and the enforcement and recognition of the arbitral verdict. It displays a consensus among States from all areas and from various legal or economic systems around the world regarding fundamental principles of international arbitration practise.

The Background as to the formation of this Model law is of the fact that the Model Law was created to address the wide variations in national arbitration laws. Based on observations that Domestic laws were frequently particularly unsuitable for international issues, there was a need for change and standardization. Sections that compare arbitration to court litigation are a recurring inadequacy in out-of-date national laws, as are fragmentary provisions that do not cover all pertinent substantive law concerns. Even the majority of the legislation that seem to be current and comprehensive were written primarily, if not entirely, with domestic arbitration in mind. The unfortunate result of this approach is that locally grown concepts are imposed on international arbitrations and the needs of modern practise are frequently not met, even though it is understandable given that even today the majority of cases guided by arbitration law would be of a strictly domestic nature.

The fact that national laws vary greatly makes issues resulting from insufficient arbitration laws or from the lack of particular legislation governing arbitration worse. In international arbitration, in which at least one party, and frequently both, are faced with international and foreign norms and processes, such discrepancies are a regular source of anxiety. In these situations, obtaining a complete and accurate understanding of the law that governs the arbitration is frequently expensive, inconvenient, or unattainable.

The Model Law's guiding principles and recommended solutions are aimed at easing or removing the aforementioned worries and challenges. The Model Law offers a particular legal framework customised to international business arbitration in response to the shortcomings and inequalities of national laws, without changing any pertinent treaties in effect in the State implementing the Model Law. The Model Law gives a set of fundamental guidelines that, while intended for international commercial arbitration, are not, in and of themselves, inapplicable to any other sort of arbitration.\

There are some fundamental misconceptions about international commercial arbitration, despite all of its benefits. The determination of the jurisdiction of international arbitration is based on the adage that every coin has two sides. With regard to international commercial arbitration, it was considered that the system needed to be denationalised, the national laws should be viewed individually, and *lex mercatoria* should regulate the entire regime. However, this was not possible. The national laws could not, however, be treated with complete disregard at the same time.

## **STATEMENT OF THE PROBLEM**

How the scope of Jurisdiction of the International Arbitration Tribunal comes into play? Further more, How a state reacts when such applicability of jurisdiction applies to it with either its willingness to co operate or to hold such a jurisdiction non applicable to its principles of the State?

## **RESEARCH QUESTIONS**

How does the jurisdiction of the International Arbitration Tribunal Comes into action?

1. Whether the decisions delivered by the Tribunal to the National State Parties/National Non State Parties are binding?

## **OBJECTIVES**

1. To Understand the establishment of the Jurisdiction of the International Arbitration Tribunal over a State.
2. To determine whether Domestic law of the States in dispute can be interfered over the laws prescribed by the UNCITRAL Model Law on International Commercial Arbitration.

## **RESEARCH METHODOLOGY**

The methodology used shall be descriptive in nature as it shall determine the interpretation of rules taken into consideration for deciding international disputes and the further adherence of the parties in question towards the International Forum. The method shall include various opinions given by scholars for the purpose of an extensive interpretation to establish how the applicability of jurisdiction works for determining the liability of a State and an extensive study of cases in relation to jurisdiction shall be taken into consideration to provide a better understanding of the given issue.

## **LITERATURE REVIEW**

1. **Jurisdictional Issues in International Arbitration with Special Reference to India by Dr. Mukesh Kumar Malviya.**

This Author in this paper talks about the jurisdictional problems in lieu of International

Arbitration with India being its reference. The author states how The Convention aimed to harmonise the criteria for the enforcement of arbitral rulings and the observance of arbitration agreements among the signing nations, as well as to promote the acceptance and enforcement of commercial agreements in international contracts.

## **2. UNCITRAL Model Law on International Commercial Arbitration 1985 With amendments as adopted in 2006 by United Nations Commission on International Trade Law.**

It educates us on how the Model law on international commercial arbitration works. It gives us the foundational basis for the establishment of the same and also the structural and procedural aspects of the model law as well. This gives us all the aspects through which International commercial Arbitration becomes the bigger picture to deal with issues with arbitration in an international forum.

## **3. Analyzing the law of international commercial arbitration in India w.r.t. the UNCITRAL Model Law Amendment, 2006 by Ronika Tater from the University of Petroleum and Energy Studies, School of Law**

Ronika Tater, a student at the University of Petroleum and Energy Studies' School of Law, wrote this essay. With the aid of case laws, she discusses the characteristics of the UNCITRAL Model Law and the effects of its 2006 Amendment on the Arbitration and Conciliation Act, 1996, in this paper.

## **4. Jurisdiction of Arbitral Tribunals. Author:- Dr Zia Ullah Ranjah & Editor:- Dr Andrew Willcocks**

The Author here talks about the jurisdictional aspects of the Arbitral Tribunals in an international aspect. This paper illustrates the various components which are crucial for establishing the validity of the Tribunals such as the competence of the Arbitral Tribunals, the scope of jurisdiction, the jurisdictional objections, time limit, the burden of proof and the admissibility of the cases.

## **5. Jurisdiction and admissibility in dispute resolution clauses by Andrew Tweeddale, Corbett & Co International Construction Lawyers, London**

This paper talks about when referring to jurisdiction in the context of arbitration, we mean the power an arbitral tribunal has to rule on the case's merits. An arbitrator cannot issue a merits-

based award if it determines it lacks jurisdiction. In international commercial arbitration, the term "admissibility" refers to a tribunal's ability to render a decision at a specific time while taking into account a potential short-term or long-term flaw in the claim. If a tribunal decides it has jurisdiction, it must next proceed to decide the claim's merits, which may include taking into account issues with admissibility.

#### **6. International Commercial Arbitration and Mediation in UNCITRAL Model Law Jurisdictions, Fourth Edition by *Peter Binder*.**

This book provides all the information required when thinking about arbitration or mediation in one of the nations with Model Laws is provided in International Commercial Arbitration and Mediation in UNCITRAL Model Law Jurisdictions. This updated version of a famous text has been completely rewritten and updated, making it a brand-new book. The tried-and-true article-by-article approach from the first three editions is still present, though; it provides all the details required when considering cross-border arbitration or mediation and lets practitioners know what to expect in each country.

#### **7. International Arbitration Law and Practice, Third Edition by *Gary B. Born*.**

This Book provides the fundamental rules, legal concepts, and procedure of international arbitration are all thoroughly and authoritatively covered in International Arbitration. All facets of the arbitral procedure, including international arbitration agreements, international arbitration processes, and international arbitral judgments, are comprehensively but succinctly covered in the book. The Third Edition has been completely revised to reflect current judicial rulings, legislative changes, and arbitral awards.

#### **8. An Introduction to International Arbitration by *Ilias Bantekas***

The reader is introduced to the law and practice of international arbitration in this succinct yet thorough textbook. Due of the range of disciplines involved, arbitration is a complicated field that need a method that doesn't assume anything. This book, which was written by a respected researcher and practitioner, provides clear explanations of the complex topics of civil procedure, contracts, conflicts of laws, and international law, among others. The book, which primarily focuses on international commercial arbitration, also includes discrete chapters on consumer and internet arbitration and an equally thorough chapter on international investment arbitration.

## **INTRODUCTION**

International organizations and countries collaborate to create international conventions to develop judicial cooperation in jurisdiction and arbitration agreements, with the goal of enhancing clarity and predictability, commercial efficiency, and procedural effectiveness. In contrast to jurisdiction, international collaboration and harmonization in arbitration is more effective. With the implementation of the New York Convention of 1958, cooperation in arbitration agreements have been in existence since 1959. In order to further enhance consistency and certainty, the UNCITRAL also produced model legislation and consistent norms on international arbitration. In contrast, there is no active international law governing jurisdictional agreements. The Brussels I Regulation only has a small impact on international relations and is only applicable to EU member states. Only the EU, USA, and Mexico have approved and signed the 2005 Hague Choice of Court Convention. It is hoped that the Convention will become the legal equivalent of the New York Convention once it enters into force and is ratified by a significant number of nations. In addition to the New York Convention, the UNCITRAL has authored model laws and arbitration rules in an effort to reduce ambiguity regarding the enforceability of arbitration agreements, the arbitral process, and the interactions between courts and tribunals<sup>1</sup> that is brought on by the insufficiency and disparity of domestic law. The insufficiency and discrepancy leave the parties unclear and may prevent arbitration from working as a successful dispute settlement process in global trade. The Model Law was designed expressly to meet the needs of international business arbitration. By mandating a court to allude the parties to arbitration when finding a legitimate arbitration agreement<sup>2</sup>, adopting the kompetenz-kompetenz doctrine to enable an arbitral tribunal to prevail its own jurisdiction<sup>3</sup>, and allowing an arbitral tribunal to continue jurisdiction in cases where the court is seized to make a decision, it provides a fairly flexible unified law in determining the formal validity of an arbitration agreement and emphasizes the enforceability of arbitration agreements.

The Model Law provides the identical reasons for a court's refusal to set aside arbitral awards and essentially mirrors the New York Convention's regulations for the acceptance and execution of arbitral awards. The Model Law also stipulates consistent guidelines for the

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<sup>1</sup> Paragraphs 6 and 7 of the UNCITRAL secretariat's Explanatory Note on the 2006 amendments to the 1985 Model Law on International Commercial Arbitration.

<sup>2</sup> Art. 7 UNCITRAL Model Law on Arbitration

<sup>3</sup> Art. 16 UNCITRAL Model Law on Arbitration

selection of the applicable law to the dispute's substance, the make-up of arbitral tribunals, the manner in which arbitral procedures shall be conducted, and the application of interim and preliminary measures. Many nations have adopted the Model Law or the arbitration rules into their domestic legislation, even though they are not required to do so, or have altered their domestic law to reflect the global trend in arbitration. The most contentious matter, namely the law that governs the substantive legality of an arbitration agreement, is still unaddressed by the Model Law. The Arbitration Rules were also made available by UNCITRAL (revised in 2010). The regulations also uniformize the make-up of the arbitral tribunal, how arbitral proceedings are conducted, and how awards are made. The Arbitration Rules may be accepted by the parties and then be applied to the arbitral procedures. More consistency and assurance are given. However, there are no conflict resolution procedures regarding the legality and enforceability of arbitration agreements in the arbitration rules.

## **RELEVANCE OF UNCITRAL MODEL LAW**

In the area of international trade law, the UNCITRAL plays a crucial role for the organization. In general, the laws of any country are significantly dissimilar. Arbitration, however, has an international implication because it is frequently of an international nature. As a result, it is necessary for governments to be uniform, and in that sense, domestic arbitration laws that have been adopted by various nations must be consistent. If not, obstacles to the efficient flow of trade would be made.

Therefore, it actively contributes to overcoming obstacles. It was created to help countries establish their domestic law systems and modernize their arbitration rules while taking into account the requirements of international commercial arbitration. Modern law aimed to largely overcome worries about inadequacy of national legislation and inequality between the states in question.

Recently, UNCITRAL Expedited Arbitration Rules came into being after being enacted on July 21 and taking effect on September 19 of the same year. These guidelines serve as the parties' personal preferences. Further, The Model Law is intended to help States update and modernize existing laws on arbitral procedure in order to better reflect the unique characteristics and requirements of international commercial arbitration. It covers every step of the arbitration process, including the arbitration agreement, the make-up and authority of

the arbitral tribunal, the scope of the court's involvement, and the enforcement and recognition of the arbitral verdict. It displays a consensus among States from all areas and from various legal or economic systems around the world regarding fundamental principles of international arbitration practice.

## **SCOPE AND APPLICABILITY OF THE MEANING OF ARBITRAL TRIBUNAL**

A single arbitrator or a panel of arbitrators make up a "arbitral tribunal." A panel of one or more arbitrators that is assembled and meets to arbitrate a dispute is known as an arbitral tribunal. A single arbitrator, two arbitrators, or more arbitrators—including a chairperson or an umpire—may make up the panel.

The Model Law's Article 16(3) further restricts the tribunal's authority by stating the following:

The arbitral tribunal may address a claim (concerning the tribunal's jurisdiction) in a preliminary question or in a decision on the merits. Any party may ask the court mentioned in Article 6 to decide the case if the arbitral tribunal enforces as a preliminary question that it has jurisdiction. This court's decision shall not be appealable. While the proposal is pending, the arbitral tribunal may proceed the arbitration process and issue an award.

According to others, Article 16(3) encourages the unfavorable outcome by allowing tribunals to decide their own jurisdiction as a preliminary matter and providing for quick, irrevocable judicial review of the tribunal's decision.

Some jurisdictions that have adopted the Model Law and whose respective courts have construed the negative effect into this Article have supported the aforementioned interpretation of Article 16(3).

In conclusion, Article 16(3) can be seen as a middle ground between opposing views on the issue of whether judicial review is permitted at any point during the arbitral procedure.

# **THE ARBITRAL TRIBUNAL'S JURISDICTION**

## **SOURCES OF JURISDICTION**

Until it is fully and legally formed, a tribunal lacks the authority to take any action. This is expressly stated in the Domestic Acts and is implied in the Model Law's definition of the term "arbitral tribunal."

### **Jurisdiction by Agreement – Party Autonomy**

In an arbitral tribunal, jurisdiction is not "inherent." The agreement between the parties serves as the basis for the arbitral tribunal's jurisdiction to resolve a specific issue. No piece of legislation grants jurisdiction to an arbitral tribunal. Subject only to any necessary statutory provisions governing the arbitration agreement, the arbitration agreement's scope will determine the tribunal's jurisdiction. According to the notion of party autonomy, two parties may grant jurisdiction to a third party to resolve a dispute on their behalf if they lack the legal right to do so.

*Illustration:-*

*Consider a scenario where three people are stranded on a desolate island in the South Pacific. A notices a coconut that has fallen from a tree and takes it for himself. But the coconut landed on the land that we all swore would belong to me, so it is mine, B claims. A and B decide to take their disagreement to the third resident, C, who rules that while the coconut belongs to B, A should get one-half of the coconut's milk as a finder's fee.*

This straightforward illustration indicates that C didn't require state legislation to resolve the problem or design a suitable solution. The agreement between A and B to refer the disagreement to C gave C the authority to resolve it. If the arbitration were to take place in Canada in our example, Canadian arbitral law would only have the effect of establishing procedural requirements that, if mandatory, would limit the arbitrator's otherwise unrestricted authority to resolve the issue. In our scenario, the arbitrator was given the authority to decide and to create any remedy that looked acceptable without the necessity for Canadian arbitral law. The parties have that jurisdiction.

Using the law that the parties have agreed to or, in the absence of agreement, the principles of law suited to the situation, an arbitral tribunal with full authority to consider matters not only originating in contract but also tort and equity. An arbitral tribunal has the authority, where necessary, to apply the Canadian Charter of Rights and Freedoms, to evaluate the legality of any matter in the context of the Charter, and to declare any provision of a contract to be invalid as between the parties. If the agreement to arbitrate is sufficiently broad, the tribunal may award any commercial remedy under law, in equity, or capable of being given by a court.

Thus, clearing the doubt as to how the International Tribunal can have its full jurisdiction over the state parties and how it can regulate its power in deciding the matter for both the parties in dispute.

## **JURISDICTIONAL AND ADMISIBILITY ISSUES**

Whether a claimant's inability to comply with the terms of a dispute resolution clause gives rise to an issue of admissibility or jurisdiction is a frequent issue in commercial contracts across a number of industries. Numerous recent rulings from around the world have addressed this issue, all of which have determined that the admissibility of a disputed issue should be the focus of any discussion of pre-arbitral procedural compliance rather than the jurisdiction of the arbitral tribunal.

It can be crucial to distinguish between jurisdictional and admissibility-related difficulties. An arbitral tribunal cannot issue an award on the merits of a matter for which it lacks jurisdiction. Contrarily, admissibility concerns whether the arbitral tribunal may use its authority to determine the merits of the claims that have been brought before it.

The distinction has some practical ramifications as well. For instance, unless there is a serious violation of fair procedure, decisions on admissibility are typically not subject to appeal by national courts. As a result, obstinate parties won't be able to use the national courts to reopen admissibility disputes as a strategy to postpone or thwart enforcement. It also means that arbitral tribunals can make decisions on admissibility with a lot of latitude without worrying about the courts reviewing those judgments. This encompasses the power to give instructions that will permit compliance with the necessary requirements to make the claim or issue admissible.

***BG GROUP V. REPUBLIC OF ARGENTINA***<sup>4</sup>

In *BG Group v. Republic of Argentina*, 134 S.Ct. 1198 from 2014, the US Supreme Court rejected an appeal to an arbitration ruling on the grounds that a statutory pre-condition to arbitration had not been met. This case was an arbitration under the Argentina-UK BIT initiated by BG Group in response to acts taken by Argentina in the wake of its economic collapse in late 2001. The arbitration, which had a hearing in Washington, DC, was won by BG Group. Prior to filing a claim in arbitration, the Argentina-UK BIT obliged claimants to fight their claims in Argentina for a period of 18 months. Despite the fact that the BG Group had not first sought redress from Argentine courts, the arbitral tribunal had determined that the claim was admissible.

The US Supreme Court ruled by a majority that the courts should assess if the participants are obligated by an arbitration clause in the absence of a provision in the arbitration agreement to the contrary. In contrast, the arbitral tribunal shall determine the scope and application of any specific procedural requirements for the use of arbitration. The arbitral tribunal's judgment on this issue could not be challenged by the courts on a case-by-case basis, according to the US Supreme Court, which considered the litigation requirement under the Argentina-UK BIT as a procedural condition.

***REPUBLIC OF SIERRA LEONA V. SL MINING<sup>5</sup> AND NWA V. NVF<sup>6</sup>***

According to *Republic of Sierra Leone v. SL Mining Ltd* [2021] EWHC 286 (Comm.), English courts declined to annul an arbitration judgment on the grounds that the respondent had disregarded some arbitration preconditions.

The core issue involved the revocation of a mining license. The license included a multi-tiered dispute resolution clause that required the parties to try to resolve differences amicably for three months following the delivery of a notice of dispute before initiating arbitration procedures. Just six weeks earlier, the defendant had delivered a notice of dispute and a request for arbitration.

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<sup>4</sup> *BG Group v. Republic of Argentina*, 134 S.Ct. 1198 from 2014

<sup>5</sup> *Republic of Sierra Leone v. SL Mining Ltd* [2021] EWHC 286 (Comm.)

<sup>6</sup> *NWA v. NVF* [2021] EWHC 2666 (Comm.)

On the grounds that the arbitral tribunal lacked substantive jurisdiction to settle the issue, the claimant sought to annul the ruling under section 67 of the English Arbitration Act 1996. The English court found that the preconditions to arbitration are issues of admissibility and not jurisdiction, and that the prominent opinions and authority all tilt "one way."

The second English judgement, *NWA v. NVF* [2021] EWHC 2666 (Comm.), is a recent High Court ruling concerning a dispute in which the parties stipulated in their arbitration agreement that they would first attempt to resolve any disagreement through mediation. The High Court took note of the Sierra Leone case and agreed with it, concluding that this was an issue of admissibility rather than jurisdiction. By claiming that no disputes had been brought before an arbitrator in conformity with the arbitration agreements, NWA sought to set aside the Sierra Leone lawsuit. The High Court went on to conclude that the claim had been lawfully submitted to arbitration and that the question of whether it had been made too early was one for the arbitral panel, not supervisory courts, to resolve, rejecting this as a "distinction without substance."

## **Arbitral tribunal's ability to make decisions regarding its jurisdiction**

The arbitral tribunal may make decisions regarding its own jurisdiction, including decisions regarding any challenges to the existence or legality of the arbitration agreement. To that end, A contract's arbitration clause is to be regarded as a separate agreement from the other terms of the agreement; and If the arbitral tribunal rules that the contract is void, that does not automatically mean that the arbitration clause is also void.

A claim that the arbitral tribunal lacks jurisdiction must be made before the statement of defence is submitted, but a party is not prohibited from making such a claim just because he or she appointed or assisted in the selection of an arbitrator.

As soon as the topic claimed to be outside the scope of the arbitral tribunal's authority is brought up during the arbitral proceedings, a defence that the arbitral tribunal is doing so must be raised.

## **CONCLUSION**

The decisions of the courts demonstrate a clear pattern in favor of treating the acceptance of dispute settlement and amplification clauses as admissibility issues rather than jurisdictional ones. It engages important policy issues regarding arbitration, along with a respect for honouring arbitration agreements and fostering the swift resolution of disputes, in addition to being of enormous practical value by minimising needless jurisdictional objections to arbitral rulings.

These kinds of policy concerns could indicate a global trend toward treating conformity with vague kinds of clauses as an issue of admissibility instead of jurisdiction. However, since it would still be conceivable for an arbitral tribunal to decide that a claim is not ripe for adjudication as a matter of admissibility, parties to contracts are expected to want to continue adhering to their conflict escalation clauses. The fact that national courts are increasingly treating the observance of dispute settlement agreements as involving concerns of admissibility does not imply that these clauses are not significant. Instead, it indicates that the arbitral tribunal is free to resolve the matter as it seems fit. This could result in the parties having to spend more money, wait longer, and even perhaps have to start the case over again after they have fulfilled with all applicable clauses in the dispute resolution agreement. Even if such drastic actions are not necessary, failing to follow the contract's applicable dispute resolution clauses could result in costly consequences or even a suspension of the legal process to give the party in default time to fulfil its duties.

Thus, The Model law creates a significant way of dealing cases in terms of its jurisdictional scope and admissibility.