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The Involvement of the United Nations System in Promulgation of International Arbitrations among Its Member States

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Abstract
Arbitration, as a method of pacific settlement of disputes, is mentioned in Article 33 of the Charter of the United Nations, by which parties to any dispute endeavor to find a solution to eliminate their conflict. Yet, article 33 does not include other forms of arbitrations that the United Nations System deals with. International arbitrations are generally referred to as interstate arbitration, international commercial arbitration, and international investment arbitration. Although these arbitration-based methods of international dispute settlement are different, they all observe the same goal: the settlement of disputes by peaceful means and preventing the parties from resorting to adverse behavior. Due to their common goal, it calls the role of the United Nations in promulgating international arbitrations among its member States into question: Has the UN had any bold involvement in promoting and strengthening international arbitrations in the abovementioned fields? It seems that the influence of the UN on interstate arbitration is undeniable because of its main goal and principles; however, this article depicts that the UN policy regarding international arbitrations adheres to the forming and developing international commercial arbitration and international investment arbitration rather than inter-state arbitration. The UN also plays a mediocre role in developing thematic-oriented international arbitrations.

Keywords
Thematic Arbitration, Arbitration Institutions, International Dispute Settlement, Inter-State Arbitration, International Commercial Arbitration, International Investment Arbitration, UN Specialized Agencies.

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Preamble

Arbitration is an amicable method of dispute settlement which has been exerted in the very first civilized human community, circa 445 B.C., connected with the Peloponnesian war between Athens and Sparta in which they "promised not to go to war against a party willing to submit the issues in dispute to arbitration".[1] The 1794 Anglo-American Jay Treaty and its positive outcomes is a more advanced, outstanding stage for arbitration which paved the way for peaceful settlement of international disputes, most importantly through arbitration.[2] However, when it comes to international, organized arbitration, it traces its origins to the Hague Conventions of 1899, which took the main credit for international arbitrations.[3] More precisely, to establish and develop a mechanism for settling crises peacefully, preventing wars, and codifying rules of warfare, the first International Peace Conference was held in The Hague in 1899 through which the Convention for the Pacific Settlement of International Disputes was adopted, and the Permanent Court of Arbitration (PCA) was established.[4] The 1919 Covenant of the League of Nations was the next step towards encouraging the Member States to submit their disputes to arbitration instead of war.[5] The Covenant dedicated specifically an article to international arbitration.[6]

Since the main goal of the United Nations (UN) is "to maintain international peace and security" through a variety of measures, one of which being the "effective collective measures for the prevention and removal of threats to the peace," it is crucial that the UN strengthens amicable dispute settlement methods and mechanisms such as arbitration among Member States.

Arbitration, as a method of pacific settlement of disputes, expressly mentioned in article 33 of the Charter of the United Nations, according to which "[t]he parties to any dispute, the continuance of which is likely to endanger international peace and security," endeavor to find a solution to get rid of their conflict. This article does not include all forms of arbitration the United Nations System deals with except interstate arbitration. Article 2(3) more generally provided that "[a]ll Members shall settle their international disputes by peaceful means in such a manner that international peace and

1. Sohn, Louis B, "International Arbitration in Historical Perspective: Past and Present", in A.H. A. Soons (ed.) *International Arbitration: Past and Prospects*, Martinus Nijhoff Publishers, 1990, p. 10

2. Weiss, Thomas G. and Sam Daws, *The Oxford Handbook on The United Nations*, Oxford, 2nd Edition, 2018, p. 191.

3. Convention for the Pacific Settlement of International Disputes (Hague I), 29 July 1899, CHAPTER II (On the Permanent Court of Arbitration); Convention for the Pacific Settlement of International Disputes (Hague II), October 18, 1907, Chapter II (The Permanent Court of Arbitration).

4. *Basic Facts About the United Nations*, United Nations Department of Public Information, 2004, p. 3.

5. Covenant of the League of Nations, 28 June, 1919 (entered into force 10 January 1920), art. 12.

6. *Ibid*.

security, and justice, are not endangered." The term "justice" in Article 2(3) widens the scope of peaceful means of international disputes, including international arbitrations, compared to Article 33 of the Charter, which is restrained to "international peace and security." Not only are international arbitrations of considerable importance when it comes to maintaining international peace as a method of pacific settlement of disputes but also it is not deniable that they are among reliable sources of international law as provided in the Statute of the International Court of Justice (the ICJ), they should be considered as a "subsidiary means for the determination of the rules of law," as well as an important tool for progressive development of international law.

Regarding international arbitrations and their relationship with the UN, there is an important question: Has the UN had any bold involvement in promoting and strengthening international arbitration in the abovementioned fields? UN's influence on inter-State arbitration seems undeniable owing to its main goal and principles. To provide a precise answer to this question, international arbitrations will be split into two categories: firstly, "classic-oriented international arbitrations" namely interstate arbitration, international commercial arbitration and international investment arbitration in all of which "State entities can be parties to the arbitrations";[7] and secondly, "thematic-oriented international arbitrations" dealing with specific issues and demanding extensive and profound knowledge to proceed. Based on this distinction, the roleplaying of the UN in forming and developing international arbitrations will be observed separately.

A) United Nations and Classic-oriented International Arbitrations

Based on the nature of the acts of States, arbitrable disputes of UN Member States might be divided into either "exercise of state authority (*acta iure imperii*)" or "activities relating to civil or commercial matters (*acta iure gestionis*)." While the first category proceeds through interstate arbitration, the second one is subject to international commercial and investment arbitrations.[8]

7. Tzeng, Peter, "The Annulment of Interstate Arbitral Awards", Kluwer Arbitration Blog, July 1, 2017, available at: http://arbitrationblog.kluwerarbitration.com/2017/07/01/the-annulment-of-interstate-arbitral-awards/

8. International investment arbitration deals with two aspects of disputes arising from contractual obligations under bilateral or multilateral investment treaties. Firstly, States could refer their disputes as to the implementation or interpretation of the investment treaties to arbitration, mainly based on diplomatic protection. Thus, it is an inter-State arbitration. Secondly and more importantly, foreign investors are able to start an arbitration against host States because of the violation of the contractual obligations under the investment treaties. This one is called Investor-State arbitration. Whenever the term international investment arbitration is used in this article, Investor-State arbitration is demanded.

1. Inter-State Arbitration (*acta iure imperii*)

It was mainly for the maintenance of international peace and security that the "United Nations" was established.[9] Having been established as a center for harmonizing the actions of states in the attainment of its ends,[10] the UN has performed a conspicuous role in realizing its main goal by two essential means: "Pacific Settlement of Disputes" (PSD)[11] and "Collective Measures." Contrary to "collective measures," the primary responsibility of which belongs to the UN Security Council (UNSC),[12] a vast majority of actors, either individuals or legal entities, can partake in PSD. This advantage of PSD over collective measures and is in line with the main goal of the UN[13] makes the PSD the favorite-applicable method of the UN. Therefore, the UN should have endeavored to promote and foster the method mentioned earlier for achieving ever-lasting peace.

PSD is mentioned in the Charter as "negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means"[14] and exactly reaffirmed by the UN General Assembly in the "Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States under the Charter of the United Nations"[15] as well as the "Manila Declaration on the Peaceful Settlement of Disputes"[16] which could be categorized in political and diplomatic means on the one hand and adjudicatory means such as arbitration or judicial settlement on the other hand.[17]

According to the Charter of the UN, arbitration, *inter alia*, is one of the preliminary methods and, along with the judicial settlement, one of the legal means by which parties to any dispute endangering the maintenance of international peace and security shall resort to it for the peaceful dispute settlement.[18] Speaking of threatening the maintenance of international peace

9. Charter of the United Nations, 26 June 1945, art. 1(1).

10. *Ibid*., art. 1(4).

11. Chapter VI of the Charter of the United Nations: Pacific Settlement of Disputes.

12. Charter of the United Nations, *op.cit.*, art. 24(1).

13. *Ibid.*, art.1(1): To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace.

14. *Ibid*., art.33(1).

15. UN document, General Assembly Resolution: Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, A/RES/25/2625, 24 October 1970.

16. UN document, General Assembly Resolution: Manila Declaration on the Peaceful Settlement of Disputes, A/RES/37/10, 15 November 1982.

17. Arbitral Award of 3 October 1899 (Guyana v. Venezuela), Jurisdiction of the Court, Judgment, I.C.J. Reports 2020, p. 478, para. 83.

18. Charter of the United Nations, *op.cit.*, art. 33(1).

and security, the Charter mentions the fundamental disputes between States arising from their obligations under international law; for instance, boundary disputes, delimitation disputes, and diplomatic affairs, to name a few. International law-oriented disputes observe this sort of arbitration "[i]n questions of a legal nature, and especially in the interpretation or application of International Conventions"[19] concluding between states "in such a manner that international peace and security, and justice, are not endangered".[20]

"Inter-State Arbitration" or "International Public Law Arbitration"[21] is the "settlement of differences between States by judges of their own choice, and on the basis of respect for law".[22] Nonetheless, "[i]t is generally accepted that interstate arbitrations are subject to and governed by rules of public international law".[23] Although [inter-State] arbitration is mentioned in the UN Charter, this type of arbitration is not well-received by the UN and its main and subsidiary bodies. The main reasons for ignoring inter-state arbitration in the UN could be categorized into the following four practical issues:

Firstly, since the Permeant Court of Arbitration (PCA) had successfully worked in the area of inter-State arbitration for nearly fifty years at the moment the UN Charter was drafted, it is understandable that the UN founders had had no reason for concentrating on inter-State arbitration in the Charter but only mentioned it in article 33 without providing any additional information regarding the mechanisms it would work, as it did for the International Court of Justice (the ICJ).

Secondly, the UN founders invested in judicial settlement rather than arbitration. Compared to the Covenant of the League of Nations, the Charter of the UN did not dedicate an autonomous role to arbitration. Instead, the Charter provided a separate part to the ICJ as "the principal judicial organ of the United Nations".[24] The Charter implicitly encourages Member States to submit their disputes to the ICJ by guaranteeing the enforcement of the World Court's judgments through the UNSC.[25] In line with this reasoning, it is worth mentioning that "[d] despite positive experiences with [inter-State] arbitration, it was not regarded by peace advocates as enough for several reasons",[26] more importantly because of its preliminary process, including

19. Convention (I) for The Pacific Settlement of International Disputes (Hague I), *op.cit.*, art. 16.

20. Charter of the United Nations, *op.cit.*, art. 2(3).

21. Rubino-Sammartano, Mauro, *International Arbitration Law and Practice*, 2nd Edition, Kluwer Law International, 2001, p. 145.

22. Convention (I) for The Pacific Settlement of International Disputes (Hague I), *op.cit.*, art. 15.

23. Van Haersolte-van Hof, Jacomijn J and Erik V Koppe, "International arbitration and the *lex arbitri*", *Arbitration International*, vol. 31, 2015, p. 34.

24. Charter of the United Nations, *op.cit.*, art. 92.

25. *Ibid.*, art. 94(2).

26. Weiss, Thomas G. and Sam Daws, *op.cit.*, p. 192.

negotiation as to the terms of the arbitration, find a venue, and appointment of arbitrators for each case as well as confidentiality which brought about non-contribution to the development of international law.[27] On the contrary, it could be argued that "[o]ne of the presumed strengths of a permanent court is its availability to considering disputes without the delay of arbitral proceedings to select arbitrators and negotiate the terms of the arbitration",[28] which is far more intimate to the main goal of the UN Charter. Additionally, one important point regarding the ICJ privilege for States compared with inter-State arbitration is that the Court's services are free to use, while arbitration causes extortionate expenses.

Thirdly, the previous endeavors and experiences indicated that the UN member states are not interested in inter-State arbitration. For instance, the UN's International Law Commission (ILC), in an attempt to codify and elaborate international arbitration law, submitted Draft Conventions on Arbitration Procedure to the General Assembly in 1952 and 1953.[29] When they received a negative vibe from the UN member states, they shifted from a (binding) treaty to a set of (optional) model rules for interstate arbitration. The result was The Model Rules on Arbitral Procedure (Model Rules) respectively adopted by the ILC and taken note of by the General Assembly in 1958.[30] However optional the Model Rules are, some binding rules of customary international law, including the rules relating to the validity of an arbitral award.[31]

Fourthly, UNSC has not facilitated the process of inter-state arbitration. In some cases, international commercial arbitration has interfered with arbitral processes through its resolutions under Chapter VII of the UN Charter. A bold example of the effect of UNSC's resolutions on halting an international arbitration was the dispute between the Aerospace Industries Organization (AIO) of Iran and the Ministry of Defense (MDSAF) of the Islamic Republic of Iran (claimants) against the Federal State Unitary Enterprise Rosoboronexport (FSUER) as a Russian state-owned defense contractor (respondent). In this case, the claimants have commenced arbitration against the respondent due to the refusal to deliver five potent S-300 surface-to-air missile batteries under the contract signed back in 2007. The respondent annulled the contract and refunded the USD 167 million

27. *Ibid*.

28. *Ibid*., p. 193.

29. For reading about the history of this attempt see: International Law Commission, "Summaries of the Work of the International Law Commission on Arbitral Procedure", available at: https://legal.un.org/ilc/summaries/10_1.shtml [last seen: 28 May, 2023].

30. International Law Commission, Model Rules on Arbitral Procedure with a general commentary, 1958, available at: https://legal.un.org/ilc/texts/instruments/english/commentaries/10_1_1958.pdf [last seen: 28 May, 2023].

31. Van Haersolte-van Hof, Jacomijn J and Erik V Koppe, *op.cit.*, pp. 34-35.

advance payment based on the UNSC Resolution 1929, which banned the supply, sale, or transfer of arms to Iran, which led to an order to discontinue the performance of the sale contract.[32]

As it is argued, "there are no reasons to believe that international arbitration tribunals are prevented from interpreting and applying the Security Council resolutions to commercial disputes, on a case-by-case basis, where the merits thereof so require".[33]

Security Council resolutions under Chapter VII could be considered as the "international public policy" compatible with "public policy" as reflected in Article 5(2)(b) of the New York Convention. The aforementioned provision states:

Recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement are sought finds that … [t]he recognition or enforcement of the award would be contrary to the public policy of that country.

It is worth mentioning that the UNSC "shall when it deems necessary, call upon the parties to settle their dispute"[34] by "[…] negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements […]".[35] Although the Council was supposed to invoke this option occasionally, only in the "dispute between the United Kingdom and Albania arising out of an incident on 22 October 1946 in the Straits of Corfu in which two British ships were damaged by mines, with resulting loss of life and injury to their crews",[36] the Council "[r]ecommends that the United Kingdom and Albanian Governments should immediately refer the dispute to the International Court of Justice in accordance with the provisions of the Statute of the Court".[37] It shows that the Council is reluctant to resort to judicial services provided by the World Court to maintain international peace, let alone arbitration.

Fifthly and finally, focusing on international commercial arbitration is another reason that prevents the United Nations from working on inter-state arbitration. Without an area for interstate arbitration, the UN has dedicated its related organs and programs, such as the ECOSOC and the UNCITRAL, to International Commercial Arbitration.

Notwithstanding the arguments mentioned above, the principal judicial

32. Gadelshina, Elvira R., "On the Role of UN Security Council Resolutions in International Commercial Arbitration", *Kluwer Arbitration Blog*, January 30, 2013: http://arbitrationblog.kluwerarbitration.com/2013/01/30/on-the-role-of-un-security-council-resolutions-in- international-commercial-arbitration/ [last seen: 28 may, 2023]

33. *Ibid*.

34. Charter of the United Nations, *op.cit.*, art.33(2)

35. *Ibid.*, art. 33(1)

36. UN documents, Security Council, The Corfu Channel incidents, S/RES/22 (1947), 9 April 1947.

37. *Ibid*.

organ of the UN has dealt with myriad interstate arbitrations in its cases. The ICJ, *inter alia*, went into different aspects of international law arbitration. In the view of the Court, "the word arbitration, for purposes of public international law, usually refers to 'the settlement of differences between States by judges of their own choice, and on the basis of respect for the law'",[38] exactly as it had been defined in the Convention (I) for The Pacific Settlement of International Disputes (Hague I). The Court explained how interstate arbitration works: "when States sign an arbitration agreement, they agree with a very specific object and purpose: to entrust an arbitration tribunal with the task of settling a dispute in accordance with the terms agreed by the parties, which define in the agreement the jurisdiction of the tribunal and determine its limits. In the performance of the task entrusted to it, the tribunal 'must conform to the terms by which the Parties have defined this task' ".[39] The Court also recalled that "the jurisprudence of the Court provides various examples of cases in which negotiations and recourse to judicial settlement by the Court have been pursued *pari passu*".[40]

Interestingly, the Court has been an appellate body for certain arbitration awards, including in the case concerning the "Arbitral Award of 31 July 1989 (Guinea-Bissau v. Senegal)". It seems that the merits of a permanent international court such as the ICJ outdistance the inter-state arbitration regarding a legal dispute between States from the United Nations' perspective. PCA is an exception, though.

2. International Commercial and Investment Arbitrations (*acta iure gestionis*)

International Commercial Arbitration has entered the area of UN interest in recent decades. In fact, contrary to interstate arbitration, which has not gained a prominent state in the eyes of the UNS, International Commercial Arbitration has been developed and promoted by the UNS, particularly the UN General Assembly (UNGA).

It is worth mentioning that there are different ways to settle disputes with a commercial nature, notably mediation, conciliation, neutral evaluation, expert determination,[41] and so on, among which, however, arbitration is notably accepted and repeatedly is resorted in international commercial disputes because of its expedited procedure, its binding character for the

38. Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain), Merits, Judgment, I.C.J. Reports 2001, p. 76, para. 113.

39. Arbitral Award of 31 July 1989 (Guinea-Bissau v. Senegal), Judgment, I.C.J. Reports 1991, p. 70, para. 49.

40. United States Diplomatic and Consular Staff in Tehran, Judgment, I.C.J. Reports 1980, p. 23, para. 43.

41. Moses, Margaret L., *The Principles and Practice of International Commercial Arbitration*, Second Edition, Cambridge University Press, 2012, p. 14.

parties, confidentiality,[42] and its mechanism for enforcing an award in other countries.[43]

The UNGA has no bold role in interstate arbitration, even though it has endeavored to expand the application of international commercial arbitration through its resolutions and to encourage the Member States to settle their disputes by arbitration.

The UNGA recognizes the value of arbitration in disputes arising from international commercial relations as "a method of settling disputes in international commercial relations, contributing to harmonious commercial relations, stimulating international trade and development, and promoting the rule of law at the international and national levels".[44]

UNGA also has performed a mainstream role in spreading international commercial arbitration more importantly through adopting the Convention on the Recognition and Enforcement of Foreign Arbitral Awards and establishing the UNCITRAL.

Adoption of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention) on 10 June 1958 by the UNGA's initiative, which is "one of the most successful treaties in the area of commercial law",[45] has promoted this sort of arbitration "by establishing a fundamental legal framework for the use of arbitration and its effectiveness, has strengthened respect for binding commitments, inspired confidence in the rule of law and ensured fair treatment in the resolution of disputes arising over contractual rights and obligations",[46] and also "has served as a model for subsequent multilateral and bilateral treaties and other international legislative texts on arbitration".[47] This Convention has been smoothing the way for international commercial arbitration by establishing a series of obligations as to the recognition and enforcement of foreign arbitral awards in the jurisdictional territory of other countries other than the place of arbitration by providing that "[e]ach Contracting State shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon […]".[48] The Convention, undoubtedly, leads to flourish the international commercial

42. *Ibid*.

43. United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (The New York Convention), New York, 10 June 1958 (entered into force 7 June 1959), art. I.

44. UN documents, General Assembly, the fiftieth anniversary of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York on 10 June 1958, A/RES/62/65, 8 January 2008, preamble.

45. *Ibid*.

46. *Ibid*.

47. *Ibid*.

48. United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, *op.cit*., art. III.

arbitration, even though, it has not been able to deal with all expectations which it had been supposed to meet; for instance, in contrary to what UN secretary general expected[49] in the process of the codification of the Convention in 1957, reflected in his note[50] addressed the ECOSOC, the Convention was bound to the recognition and enforcement of foreign arbitral awards *per se*. Additionally, despite the fact that the Convention was a brainchild of the UN efforts, it was not supported and observed by the UN properly. In other words, "once adopted, the Convention itself stopped being a United Nations project".[51] More importantly, the Convention, unfortunately, has not been able to strike a balance between less developed countries' arbitration facilities compared to developed-countries; arbitration institutions such as the International Chamber of Commerce (ICC) took advantage of this opportunity and made international arbitration a developed-country trade.[52]

An acronym for the "United Nations Commission on International Trade Law," UNCITRAL is the "core legal body of the United Nations system in the field of international trade law" established by the United Nations General Assembly by resolution 2205 (XXI) of 17 December 1966.[53,54] UNCITRAL, as the UN coordinator and representative in the field of international trade law, "plays an important role in developing that framework in pursuance of its mandate to further the progressive harmonization and modernization of the law of international trade by preparing and promoting the use and adoption of legislative and non-legislative instruments in several key areas of commercial law".[55] During its years of pivotal activities, "the Commission has developed texts that are viewed as landmarks in various fields of law".[56] Among activities done by

49. Professor Kidane put these expectations into four categories: "(1) the Convention would help economic development by promising a neutral and more acceptable dispute settlement process to foreign traders or investors, (2) a mechanism would be designed for the selection of impartial arbitrators and neutral forums acceptable to both sides, and (3) developing countries would modernize their laws, develop the competence, and have their own arbitral institutions within a very short period of time." See: Kidane, Won L., *The Culture of International Arbitration*, Oxford University Press, 2017, p. 121.

50. Consideration of other Measures for Increasing the Effectiveness of Arbitration in the Settlement of Private Law Disputes, Note by the UN Secretary-General, 1957.

51. Kidane, Won L., *The Culture of International Arbitration*, Oxford University Press, 2017, p. 122.

52. *Ibid*.

53. United Nations Commission on International Trade Law (UNCITRAL), available at: http://www.uncitral.org/uncitral/en/about_us.html

54. Working Group II 2000 to present: Arbitration and Conciliation / Dispute Settlement, available at: http://www.uncitral.org/uncitral/en/commission/working_groups/2Arbitration.html [last seen: May 29, 2023].

55. UNCITRAL Secretariat, A *Guide to UNCITRAL Basic facts about the United Nations Commission on International Trade Law*, United Nations, 2013, p. 1.

56. Basic Facts about the United Nations, United Nations Department of Public Information, Forty-second edition, 2017, p. 237.

UNCITRAL concerning international trade law, there are some modules of law and rules, among which UNCITRAL Arbitration Rules are designed for ad hoc and institutional arbitration.[57] It is worth mentioning that the Arbitration Rules of UNCITRAL are generally or particularly selected by many international and regional arbitration institutions as the skeleton for their arbitration rules, such as the Permanent Court of Arbitration (PCA)[58] and the Tehran Regional Arbitration Center (TRAC).[59] Also, it is chosen by the parties to be governed by the Iran-United States Claims Tribunal (IUSCT).[60] IUSCT is "dealing with both general international law issues and the growing specialized field of international trade and investment law".[61] As was foreseen correctly, IUSCT "is already keeping many international lawyers busy, and in the future many scholars will have to digest these cases, systematize them, and extract from them not only various practical lessons but also important general principles. This jurisprudence is likely, therefore, to enrich the field of international law, and to provide guidance for many future arbitral tribunals".[62] Indirectly, then, the IUSCT assists in promoting UNCITRAL and widens it at an international level.

As mentioned earlier international and regional recognition and acceptance of UNCITRAL Arbitration Rules shows the influence and spreading of these rules.

Surprisingly enough, while UNCITRAL Arbitration Rules were designed for international commercial disputes, they have been used in international investment disputes adopted by the Iran – US Claims Tribunal as a modified version.[63] UNCITRAL Arbitration Rules are recognized in many bilateral and multilateral investment treaties in favor of the investor[64] to the extent that "it appears safe to estimate that at least 25 percent of new investor-state

57. Arbitration Rules of the UNCITRAL (resolution 31/98 of 15 December 1976) have been modified and updated since 1976. At the moment, there exist different versions of the Arbitration Rules: (i) the 1976 version; (ii) the 2010 revised version; and (iii) the 2013 version which incorporates the UNCITRAL Rules on Transparency for Treaty-based Investor-State Arbitration and (iv) the 2021 version which incorporates the UNCITRAL Expedited Arbitration Rules.

58. Permanent Court of Arbitration (PCA) Arbitration Rules 2012, p. 4.

59. Tehran Regional Arbitration Center (TRAC): https://trac.ir/rules-of-arbitration/

60. For more information about the IUSCT see: Mohebi, Mohsen, *The International Law Character of the Iran-United States Claims Tribunal* (Series: Developments in International Law, Volume: 32), Brill | Nijhoff, 1999.

61. Sohn, Louis B., *op.cit.*, pp. 19-20.

62. *Ibid*., p. 20.

63. *Ibid*, p. 372.

64. For more information, see: Investment Policy Hub, International Investment Agreements Navigator, available at: https://investmentpolicy.unctad.org/international-investment-agreements [last seen: May 29, 2023].
- italaw, Investment Treaties, available at: https://www.italaw.com/resources/investment-treaties [last seen: May 29, 2023].

arbitrations are initiated pursuant to this Rules".[65] It might explain why the UNCITRAL has been observing a consultative process to consider procedural reform options for investor-State dispute settlement (ISDS) since 2017, aiming "to find reforms that can be accepted by as many States as possible while preserving some flexibility for States to make their own sovereign choices about what types of reforms will best suit their needs".[66] The UNCITRAL Working Group III concentration is on numerous issues such as "Tribunals, ad hoc and standing multilateral mechanism," "Arbitrators and adjudicators appointment methods and ethics," and "Treaty Parties' involvement and control mechanisms on treaty interpretation".[67] The Draft Code of Conduct for Arbitrators is the most tangible work of Working Group III so far.[68] What makes a distinction between the ICSID and UNCITRAL is the criterion of confidentiality, including "publicity about the commencement of the arbitration; (ii) submissions by non-disputing parties; (iii) public access to hearings; and (iv) publication of awards".[69] The ICSID regime inclines to be more open and accessible to the public.

Although UNCITRAL's footprints in international arbitration, more importantly, UNCITRAL Arbitration Rules, are bold, UNCITRAL itself does not play a role in managing and coordinating any arbitrations as an arbitration institution.[70]

In international investment arbitration, the United Nations Convention on Transparency in Treaty-based Investor-State Arbitration was adopted in 2014 by UNCITRAL, which is "a sister set of provisions to those adopted in the ICSID Rules in 2006".[71] Also, working group 3 (Investor-State Dispute Settlement Reform) of UNCITRAL has been working on international investment arbitration.

65. Brown, Chester and Kate Miles, *Evolution in Investment Treaty Law and Arbitration*, Cambridge University Press, 2011, p. 370.

66. Interview with our Editors: Shane Spelliscy, Chair of UNCITRAL Working Group III on Investor-State Dispute Settlement Reform, Esmé Shirlow and Maria José Alarcon, Kluwer Arbitration Blog, 24 August 2022, available at: http://arbitrationblog.kluwerarbitration.com/2022/08/24/interview-with-our-editors-shane-spelliscy-chair-of-uncitral-working-group-iii-on-investor-state-dispute-settlement-reform/ [last seen: May 28, 2023].

67. UNCITRAL Working Group III: Investor-State Dispute Settlement Reform, United Nations Commission on International Trade Law (UNCITRAL), available at: https://uncitral.un.org/en/working_groups/3/investor-state [last seen: May 28, 2023].

68. UNCITRAL Working Group III, Draft Code of Conduct for Adjudicators in International Investment Disputes (Version Four), July 2022, available at: https://icsid.worldbank.org/sites/default/files/CoC_V4_ENG.pdf [last seen: May 28, 2023].

69. Brown, Chester and Kate Miles, *op.cit.*, p. 378.

70. *Ibid.*, p. 371.

71. McLachlan, Campbell and Laurence Shore and Matthew Weiniger, *International Investment Arbitration - Substantive Principles*, Second Edition, Oxford University Press, 2017, p. 92.

B) United Nations and Thematic-oriented International Arbitrations

Thematic-oriented international arbitrations rely on the specific field and demand extensive and profound knowledge. The UN could have played a vital role in forming and developing thematic-oriented international arbitrations since it hosts the United Nations' Specialized Agencies. In addition, the UN's interaction with prestigious arbitration institutions working in specific fields could depict the share of the UN in developing thematic-oriented international arbitrations along with those institutions.

1. Developing International Arbitrations through the United Nations' Specialized Agencies

The UN Specialized Agencies are intergovernmental organizations established with special agendas for dealing with important special issues before or after the UN era. Since the United Nations deals with various issues under its auspices, those specialized intergovernmental organizations, recognized as the Specialized Agencies, have been integrated into the United Nations System to coordinate and unify common affairs. technically, they "are linked to the United Nations through individual agreements and report to the Economic and Social Council and/or the Assembly".[72] There are 15 UN Specialized Agencies,[73] each working in a special field, from economic and social to cultural, educational, health, and other related fields. The specialty of UN Specialized Agencies is the key element of their work so that they are authorized to ask for advisory opinions of the International Court of Justice concerning their very specific field of activity; as a consequence, arbitration within these organizations could have brought about the forming and enrichment the thematic fields to international arbitrations. With this perspective in mind, the status of international arbitrations in the most important specialized agencies will be reviewed below.

It is important to mention that arbitration has been predicted as a standard clause in almost all Specialized Agencies' Constitutions (or its equivalent documents), and more importantly, as a method of dispute settlement in case of disagreement on the application or interpretation of those documents. For

72. Basic Facts About the United Nations, *op.cit.*, 2004, p. 30.

73. FAO: Food and Agriculture Organization of the United Nations; ICAO: International Civil Aviation Organization; IFAD: International Fund for Agricultural Development; ILO: International Labour Organization; IMF: International Monetary Fund; IMO: International Maritime Organization; ITU: International Telecommunication Union; UNESCO: United Nations Educational, Scientific and Cultural Organization; UNIDO: United Nations Industrial Development Organization; UNWTO: World Tourism Organization; UPU: Universal Postal Union; WHO: World Health Organization; WIPO: World Intellectual Property Organization; WMO: World Meteorological Organization; World Bank Group. See: Dag Hammarskjöld Online Library, "What are UN Specialized Agencies, and how many are there?", available at: https://ask.un.org/faq/140935 [last seen: May 28, 2023].

example, such a clause has been mentioned in the Articles of Agreement[74] of the International Monetary Fund (IMF), the Constitution[75] of the United Nations Educational, Scientific and Cultural Organization (UNESCO), and the Constitution[76] of the Universal Postal Union (UPU). Not only had the clause brought into the Convention of The World Meteorological Organization (WMO),[77] but also it has been mentioned in the WMO Host Member Agreement Template.[78] In this category, International Civil Aviation Organization (ICAO) uses arbitration in a different and intriguing way. According to the Convention on International Civil Aviation, "[i]f any disagreement between two or more contracting States relating to the interpretation or application of [the] Convention and its Annexes cannot be settled by negotiation, it shall, on the application of any State concerned in the disagreement, be decided by the Council".[79] For appealing of the Council's decision, *inter alia*, an ad hoc arbitral tribunal agreed upon with the other parties to the dispute has been prognosticated by the Convention.[80] The decision of such an arbitral tribunal shall be final and binding.[81]

Arbitration is dragged to international conventions that have been codified under the auspices of some Specialized Agencies, including "the

74. Articles of Agreement of the International Monetary Fund, 1944, art. XXIX [19] (c): "Whenever a disagreement arises between the Fund and a member which has withdrawn, or between the Fund and any member during liquidation of the Fund, such disagreement shall be submitted to arbitration by a tribunal of three arbitrators, one appointed by the Fund, another by the member or withdrawing member, and an umpire who, unless the parties otherwise agree, shall be appointed by the President of the International Court of Justice or such other authority as may have been prescribed by regulation adopted by the Fund."

75. Constitution of the United Nations Educational, Scientific and Cultural Organization, 1945, Article. XIV [14](2): "Any question or dispute concerning the interpretation of this Constitution shall be referred for determination to the International Court of Justice or to an arbitral tribunal, as the General Conference may determine under its Rules of Procedure."

76. Constitution of the Universal Postal Union, signed at Vienna, on 10 July 1964, art.32: "In the event of a dispute between two or more Postal Administrations of Member Countries concerning the interpretation of the Acts of the Union or the responsibility imposed on a Postal Administration by the application of those Acts, the question at issue shall be settled by arbitration."

77. Art. 29 of the Convention of the World Meteorological Organization provides that: "Any question or dispute concerning the interpretation or application of the present Convention which is not settled by negotiation or by Congress shall be referred to an independent arbitrator appointed by the President of the International Court of Justice unless the parties concerned agree on another mode of settlement."

78. Art. XIII [8](1) of the WMO Host Member Agreement Template provides that: "Any dispute between WMO and the Government concerning the interpretation or application of this Agreement that is not settled by negotiation or other agreed mode of settlement shall be referred at the request of either party for final decision to a tribunal of three arbitrators, one to be appointed by the Secretary General of WMO, one to be appointed by the Government and the third, who shall be the chairman, to be chosen by the first two; if either party fails to appoint an arbitrator within 60 days of the appointment by the other party, or if these two arbitrators shall fail to agree on the third arbitrator within 60 days of their appointment, the President of the International Court of Justice may make any necessary appointments at the request of either party. Any arbitration shall take place in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL), as at present in force."

79. Convention on International Civil Aviation, 07 December 1944 (enter into force 4 April 1947), art. 84.

80. *Ibid*.

81. *Ibid*., art. 86.

1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution of the Convention" and "the 2001 Convention on the Protection of the Underwater Cultural Heritage" which both have been adopted by the initiation of the United Nations Educational, Scientific and Cultural Organization (UNESCO).

Arbitration plays a more or less similar role in other UN Specialized Agencies. However, compared to other UN Specialized Agencies, the World Intellectual Property Organization (WIPO) and the World Bank (Group) have the most elaborated, well-organized dispute settlement mechanisms, including arbitration, among other UN Specialized Agencies; these two would be probed ensuing.

Established in 1967, the WIPO is a self-funding agency of the United Nations with 193 member states.[82] The organization's main objective is "to promote the protection of intellectual property throughout the world through cooperation among States and, where appropriate, in collaboration with any other international organization".[83] The WIPO Arbitration and Mediation Center was established in 1994 to offer Alternative Dispute Resolution (ADR) options for resolving international commercial disputes, especially IP and technology disputes and domain name disputes, between private parties.[84] The WIPO Arbitration and Mediation Center has its own "WIPO Arbitration Rules"[85] and "WIPO Expedited Arbitration Rules".[86] Intellectual property disputes have several specific characteristics that may be better addressed by arbitration than court litigation. This is why arbitration, as a private and confidential procedure, is increasingly being used to resolve intellectual property rights disputes, especially involving parties from different jurisdictions.[87] WIPO caseload summary easily shows how attractive the Center has become in resolving specific disputes by dealing with 31 cases in 2012 to 263 cases in 2021 in a variety of specific categories, namely patents (29%), copyright (24%), trademarks (20%), ICT (14%), and commercial (12%), even though, 70% of disputes have been resolved by

82. World Intellectual Property Organization (WIPO), Inside WIPO, available at: https://www.wipo.int/about-wipo/en/ [last seen: May 29, 2023].

83. Convention Establishing the World Intellectual Property Organization (Signed at Stockholm on July 14, 1967 and as amended on September 28, 1979), Article 3(i).

84. World Intellectual Property Organization (WIPO), Alternative Dispute Resolution, available at: https://www.wipo.int/amc/en/ [last seen: May 29, 2023].

85. World Intellectual Property Organization (WIPO), WIPO Arbitration Rules (Effective from July 1, 2021), available at: https://www.wipo.int/amc/en/arbitration/rules/ [last seen: May 29, 2023].

86. World Intellectual Property Organization (WIPO), WIPO Expedited Arbitration Rules (Effective from July 1, 2021), available at: https://www.wipo.int/amc/en/arbitration/expedited-rules/ [last seen: May 29, 2023].

87. World Intellectual Property Organization (WIPO), Why Arbitration in Intellectual Property?, available at: https://www.wipo.int/amc/en/arbitration/why-is-arb.html [last seen: May 29, 2023].

mediation while 30% resolved by arbitration.[88]

Undoubtedly, the WIPO Arbitration and Mediation Center's services evolving around commercial aspects of intellectual property disputes is another achievement for the UNS in international commercial arbitration.

As mentioned in the first section, the UN does not play a big role in investment arbitration. Consequently, "[t]he failings of the UN in the 1970s and 1980s to come up with a final or definitive word on foreign investment law left the door open for other international organizations in an attempt to regulate foreign investments" one of those international bodies is the World Bank and its International Centre for Settlement of Investment Disputes (ICSID).[89] The ICSID "is an autonomous organization with close links to the [World] Bank, and all of its members are also members of the Bank. Its Administrative Council, chaired by the World Bank's President, consists of one representative of each country that has ratified the Convention".[90] Having established the (ICSID), the World Bank has been playing a huge role in facilitating and protecting foreign investments on the one hand and promoting international investment arbitration on the other hand. Although ICSID arbitration services once were limited to its member States under the ICSID rules, it administers arbitration proceedings under other rules, such as the UNCITRAL Arbitration Rules and ad hoc investor-State and State-State cases".[91] According to the ICSID caseload — statistics (1966-2022), as of 30 June 2022, 888 cases have been registered under the ICSID Convention and Additional Facility Rules,[92] among which 804 cases (90.6%) fall into ICSID Convention Arbitration Cases, and 71 cases (8.0%) fall into ICSID Additional Facility Arbitration Cases.[93] Only in 2021, 66 cases have been registered in the ICSID, a record in ICSID's long history.[94]

Therefore, it is plain that among the United Nations Specialized Agencies, the WIPO and World Bank Group have the most impressive role in developing and promoting international arbitrations. The WIPO Arbitration and Mediation Center and the ICSID and their achievements are good examples and role models for other UN Specialized Agencies to put international arbitrations into a specific route. Undoubtedly, this policy

88. World Intellectual Property Organization (WIPO), WIPO Caseload Summary, available at: https://www.wipo.int/amc/en/center/caseload.html [last seen: May 29, 2023].

89. Belayet Hossain, Mohammad, "International Organisations Efforts in Regulating Foreign Direct Investments in the Host States", *Sriwijaya Law Review*, Vol. 4, Issue 2, July 2020, pp. 188-189.

90. Basic Facts About the United Nations, United Nations Department of Public Information, 2004, p. 56.

91. International Centre for Settlement of Investment Disputes (ICSID), Arbitration, available at: https://icsid.worldbank.org/procedures/arbitration [last seen: May 29, 2023].

92. ICSID Caseload — Statistics (1966-2022), International Centre for Settlement of Investment Disputes – World Bank Group, Issue 2022-2, p. 7.

93. *Ibid*., p. 9.

94. *Ibid*., p. 7.

might help to promote thematic arbitration among arbitration institutions which could be considered the next step in expanding international arbitration's edges. Contrary to the World Bank and the WIPO, other United Nations' Specialized Agencies do not take advantage of their expertise and leave the field for other components; for instance, although "[t]raditionally, ICAO has focused on technical and navigation issues rather than economic aspects of international aviation"[95] since 1944, the Shanghai International Aviation Court of Arbitration (SHIAC), established in 2014, gets the better of the ICAO in the field of aviation disputes.

2. United Nations' Interaction with Arbitration Institutions in Specific Fields

Arbitration institutions have led the arbitration towards a structural and systematical framework by which the arbitration process is facilitated and promoted. There are myriad international arbitration institutions worldwide, governmental or private, covering different aspects of international arbitrations. The UN has been cooperating with them directly or indirectly. Due to their high reputations in international arbitrations, the Permanent Court of Arbitration (PCA) and the International Chamber of Commerce (ICC) will be analyzed in the ensuing.

The Permanent Court of Arbitration (PCA) and the International Chamber of Commerce (ICC) are good examples of pioneering institutions in inter-State and international commercial arbitration, respectively.

The most famous arbitration institution in the field of international law is the Permanent Court of Arbitration (PCA). Historically, it finds its roots in the Hague Conventions of 1899, in which resorting to international law-based arbitration was mentioned for the first time in an international instrument.[96] Back to The Hague Conventions of 1899, the PCA was the brainchild of diplomats participating in these two conferences. "Although the establishment of an international court had been proposed as part of the agenda for the First Hague Peace Conference, the 1899 Hague Convention on the Pacific Settlement of International Disputes only established the Permanent Court of Arbitration".[97] Having been selected as a center for resolving inter-governmental disputes in the first step, the PCA has rendered

95. Dempsey, Paul S, "The Role of the International Civil Aviation Organization on Deregulation, Discrimination, and Dispute Resolution", *Journal of Air Law and Commerce*, Vol. 52, Issue. 3, 1987, pp. 533-534.

96. Article 15 of the Convention for the Pacific Settlement of International Disputes (Hague I) provides that "International arbitration has for its object the settlement of differences between States by judges of their own choice, and on the basis of respect for law." Convention for the Pacific Settlement of International Disputes (Hague I), 29 July 1899, article 37 provides "International arbitration has for its object the settlement of disputes between States by Judges of their own choice and on the basis of respect for law."

97. Weiss, Thomas G. and Sam Daws, *op.cit.*

dispute resolution services, one of which is arbitration.[98]

The PCA, "[t]he most concrete achievement of the 1899 Hague Peace Conference",[99] consists of an Administrative Council, Members of the Court (a panel of potential independent arbitrators), and an International Bureau (Secretariat) headed by the Secretary-General.[100] The PCA "provides a list of arbitrators, appointed by states parties to the Hague Convention, from which parties submitting a dispute to arbitration can choose".[101]

Flexibilities of the PCA to follow the latest developments and be in pursuance of existing international legal standards is one of the prominent features of the PCA: Although PCA was formed for resolving disputes between States, "in 1960 the facilities of the Permanent Court of Arbitration were made available for arbitrators between States and corporations and special rules were prepared for them in 1962 by International Bureau of that Court".[102] As a result, the PCA chose the UNCITRAL Arbitration Rules as a module for this kind of arbitration.

More recently, PCA has elaborated its Optional Rules for Arbitration of Disputes Relating to Natural Resources and/or the Environment[103] and Outer Space Activities.[104] These optional rules provide parties of a conflict arising from natural resources, the environment, and outer space activities with more compatible frameworks and atmospheres to settle disputes.

Some important, international UN-oriented treaties and conventions, such as the 1982 United Nations Convention on the Law of the Sea (UNCLOS)[105] and the 1963 UN Vienna Convention on Consular Relations (Optional Protocol concerning the Compulsory Settlement of Disputes),[106] etc. have chosen the PCA, either expressly or implicitly, as one of the means of settling disputes arising from said treaties. It is worth mentioning that most cases submitted to the PCA evolve around the law of the sea disputes and are

98. Mediation / Conciliation, Fact-finding / Commissions of Inquiry

99. *Ibid*., pp. 402-403.

100. Permanent Court of Arbitration (PCA), About us, available at: https://pca-cpa.org/en/about/ [last seen: May 29, 2023].

101. Thomas G. Weiss and Sam Daws, *op.cit.*

102. Sohn, Louis B, *op.cit.*, p. 20.

103. Permanent Court of Arbitration (PCA), The PCA Optional Rules for Arbitration of Disputes Relating to Natural Resources and/or the Environment (Panels of Arbitrators and Experts for Environmental Disputes), available at: https://pca-cpa.org/en/about/structure/panels-of-arbitrators-and-experts-for-environmental-disputes/ [last seen: May 28, 2023].

104. Permanent Court of Arbitration (PCA), The PCA Optional Rules for Arbitration of Disputes Relating to Outer Space Activities (Panels of Arbitrators and Experts for Space-related Disputes), available at: https://pca-cpa.org/en/about/structure/panels-of-arbitrators-and-experts-for-space-related-disputes/ [last seen: May 28, 2023].

105. United Nations Convention on the Law of the Sea (UNCLOS), 10 December 1982 (entered into force 16 November 1994), art. 287(3).

106. Optional Protocol concerning the Compulsory Settlement of Disputes to the 1963 UN Vienna Convention on Consular Relations, 24 April 1963 (entered into force 19 March 1967), art. 1.

relevant to the UNCLOS dispute settlement mechanism. Thanks to the distinctive experience gained by the PCA in settling disputes arising from the UNCLOS by arbitration, "through an exchange of letters between the Secretary-General of the PCA and the Registrar of ITLOS, the PCA and ITLOS have agreed to cooperate concerning relevant legal and administrative matters. Under the arrangement, the PCA and ITLOS have undertaken to exchange documents, particularly those connected with disputes under Annex VII of UNCLOS, and to explore cooperation in other areas of concern".[107] This process indicates the supporting role of the UN in PCA and its activities.

PCA also was granted observer status by the United Nations[108] in 1993, which let it participate in General Assembly sessions. Also, it should be considered that the Secretary-General of the PCA is the appointing authority in the UNCITRAL Arbitration Rules in case the parties cannot agree to choose the arbitrator(s).[109]

The International Chamber of Commerce (ICC), created to "represent business everywhere" after World War I in 1919, established the International Court of Arbitration in 1923.[110] Since then, it has "been helping to resolve difficulties in international commercial and business disputes to support trade and investment"[111] by referring disputes to arbitration.

The ICC is the pioneer in international commercial arbitration by establishing its own International Court of Arbitration (unlike the UNCITRAL) and providing its own rules and regulations, including "ICC Rules of Arbitration"[112] and "Expedited Procedure Provisions".[113] Furthermore, the ICC has national offices worldwide, making it a superior arbitration body.

ICC has had a strong cooperation with the UN, especially in international

107. Permanent Court of Arbitration (PCA), United Nations Convention on the Law of the Sea, available at: https://pca-cpa.org/en/services/arbitration-services/unclos/ [last seen: May 28, 2023]

108. UN documents, General Assembly, Observer status for the Permanent Court of Arbitration in the General Assembly, A/RES/48/3, 22 October 1993.

109. UNCITRAL Arbitration Rule, 2010, art.7(2)(b): "If no such authority has been previously designated by the parties, or if the appointing authority previously designated refuses to act or fails to appoint the arbitrator within 30 days after receipt of a party's request therefore, the first party may request the Secretary-General of the Permanent Court of Arbitration at The Hague to designate the appointing authority. The first party may then request the appointing authority so designated to appoint the second arbitrator. In either case, the appointing authority may exercise its discretion in appointing the arbitrator."

110. International Chamber of Commerce (ICC), Our mission, history and values, available at: https://iccwbo.org/about-us/who-we-are/history/ [last seen: May 28, 2023].

111. International Chamber of Commerce (ICC), ICC-International Court of Arbitration, available at: https://iccwbo.org/dispute-resolution-services/icc-international-court-arbitration/ [last seen: May 28, 2023]

112. International Chamber of Commerce (ICC), Arbitration, available at: https://iccwbo.org/dispute-resolution-services/arbitration/rules-of-arbitration/ [last seen: May 28, 2023].

113. *Ibid.*

commercial arbitration, even before the establishment of the UNCITRAL. It is worth mentioning that the ECOSOC has prepared the Draft Convention on the Recognition and Enforcement of Arbitral Awards with the intervention and cooperation of the ICC.[114] The ICC has modified the Draft and paved the way for the ECOSOC to codify a standard and outstanding Convention concerning the recognition and enforcement of arbitral awards.[115]

In 2016, ICC was granted observer status by the United Nations as the first non-governmental business organization, which was an important decision taken by the UN because of the following reasons:

Firstly, it is the first time that a business organization has been admitted as an observer at the UN General Assembly, and it paves the way for other similar organizations.[116] *Secondly*, as the ICC announced, it is now the voice of business in the UN. Although it is declared that "these entities with observer status fulfill a passive role",[117] in practice, "[o]bservers often participate actively, transmitting their ideas to international organization".[118] *Thirdly*, ICC, particularly, can perform an active role in international commercial arbitration–related discussions and promote participants' insight with its technical and expert view like what it has done before related to the Convention on the Recognition and Enforcement of Arbitral Awards.

Conclusion

Having been founded to maintain international peace and security, the United Nations System has been resorting to any potential means from political and economic to cultural and humanitarian, to fulfill its main aim. Preventing diplomacy, among other things, as a measure to defuse the situation to the States concerned at times of crisis and taking procedures to

114. Sultan, Allen, "The United Nations Arbitration Convention and United States Policy", *American Journal of International Law (AJIL)*, Vol. 53, No. 4 (Oct., 1959), p. 813.

115. The New York Arbitration Convention, History 1923-1958, available at: http://www.newyorkconvention.org/travaux+preparatoires/history+1923+-+1958 [last seen: May 28, 2023].

116. In the United Nations System, non-Member States and Public international organizations may participate in General Assembly sessions. "Non-Member States may be invited to participate in General Assembly debates under article 35(2) of the Charter. National liberation movements may be specifically invited to participate: the PLO was invited in General Assembly Res. 3237 (XXIX) of 22 November 1974, SWAPO by Res. 31/152 of 20 December 1976, and automatically all African liberation movements recognized by the OAU by Res. 3280 (XXIX) of 10 December 1974. Public international organizations may also be granted observer status: e.g., the League of Arab States by Res. 477 (V) of 1 November 1950 and the Group of African, Caribbean, and Pacific States by Res. 36/4 of 15 October 1981." See: Grant, John P and J. Craig Barker, *Parry & Grant Encyclopaedic Dictionary of International Law* (Third Edition), Oxford University Press, 2009, p. 434.

117. Schermers and Blokker, *International Institutional Law* (4th rev. ed.), 130, finding (at 133), cited in: Grant, John P and J. Craig Barker, *Parry & Grant Encyclopaedic Dictionary of International Law* (Third Edition), Oxford University Press, 2009, p. 434.

118. Grant, John P and J. Craig Barker, Parry & Grant Encyclopaedic Dictionary of International Law (Third Edition), Oxford University Press, 2009, p. 434.

resolve the conflict peacefully based on a system to give early warning of international tensions that could lead to war[119] has always been the interest of the UN. This approach brings about the proliferation of international dispute settlement mechanisms, including international arbitrations. However, it seems that the United Nations has taken over two different roles in inter-State arbitration on the one hand and international commercial and investment arbitration on the other. In the field of inter-State arbitration, the UN has performed a supportive role for the PCA with two approaches: firstly, the UN has not interfered with the PCA working, and secondly, the UN has recognized the PCA as an authentic inter-State arbitration institution in a variety of treaties and rules such as the UNCLOS. Indeed, the UN uses a kind of outsourcing in interstate arbitration. Given that the PCA existed before the establishment of the UN and has performed a prominent role in inter-State arbitration, the UN Charter has concentrated on the international judicial system by establishing the ICJ as one of the main organs of the UN.

In international commercial arbitration, the UN has played a greater role by preparing the New York Convention, establishing the UNCITRAL, and maintaining its works, including the UNCITRAL Arbitration Rules. The UN has treated international commercial arbitration nicely, even though this kind of arbitration is not directly mentioned in the Charter.

However, international investment arbitration has received less attention from the UN. One of the main reasons is that this sort of arbitration is mainly under the auspices of the World Bank's ICSID. Nevertheless, increasing tendency towards the use of the UNCITRAL Arbitration Rules in international investment arbitration and UNCITRAL's endeavors to make its arbitration rules more applicable to international investment arbitration by optional documents such as the United Nations Convention on Transparency in Treaty-based Investor-State Arbitration as the first step, illustrate the indirect role of the UN in developing International investment arbitration along with international commercial arbitration.

Reviewing the Specialized Agencies' documents concerning international arbitrations indicates that they have treated arbitrations based on their capacities and needs. Therefore, in some Specialized Agencies, hardly any footprints of arbitration could be found, or arbitration is mentioned among the means of dispute settlement in case of disagreement on the application or interpretation of a certain document. In contrast, a more complicated and sophisticated role and structure is dedicated to arbitration in the others.

The UN has determined the policies governing international arbitrations by forming general frameworks and procedural rules to encourage dispute parties to use international arbitrations mechanisms either institutionally or *ad hoc*, even though it has a spiritual role.

119. ABC of Diplomacy, Swiss Federal Department of Foreign Affairs (FDFA), 2008, p. 29.

The UN's biggest achievement in international arbitrations is, without any doubt, the adoption of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, by which the UN successfully has facilitated the implementation of international commercial arbitration and has promoted its status universally as a result.

References

- Books

1. Brown, Chester and Kate Miles, *Evolution in Investment Treaty Law and Arbitration*, Cambridge University Press, 2011.
2. Grant, John P. and J. Craig Barker, *Parry & Grant Encyclopaedic Dictionary of International Law*, 3rd Edition, Oxford University Press, 2009.
3. Kidane, Won L., *The Culture of International Arbitration*, Oxford University Press, 2017.
4. McLachlan, Campbell and Laurence Shore and Matthew Weiniger, *International Investment Arbitration - Substantive Principles*, 2nd Edition, Oxford University Press, 2017.
5. Moses, Margaret L., *The Principles and Practice of International Commercial Arbitration*, 2nd Edition, Cambridge University Press, 2012.
6. Rubino-Sammartano, Mauro, *International Arbitration Law and Practice*, Kluwer Law International, 2nd Edition, 2001.
7. UNCITRAL secretariat, *A Guide to UNCITRAL Basic facts about the United Nations Commission on International Trade Law*, United Nations, 2013.
8. Weiss, Thomas G. and Sam Daws, *The Oxford Handbook on The United Nations*, Oxford, 2nd Edition, 2018.

- Article in Book

1. Sohn, Louis B., "International Arbitration in Historical Perspective: Past and Present", in A.H. A. Soons (ed.) *International Arbitration: Past and Prospects*, Martinus Nijhoff Publishers, 1990.

- Journal Articles

1. Belayet Hossain, Mohammad, "International Organisations Efforts in Regulating Foreign Direct Investments in the Host States", *Sriwijaya Law Review*, Vol. 4, Issue 2, July 2020.
2. Contini, Paolo, "International Commercial Arbitration: The United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards", *American Journal of Comparative Law*, Vol. 8, No. 3, Summer 1959.
3. Dempsey, Paul S, "The Role of the International Civil Aviation Organization on Deregulation, Discrimination, and Dispute Resolution", *Journal of Air Law and Commerce*, Vol. 52, Issue 3, 1987.
4. Sultan, Allen, "The United Nations Arbitration Convention and United States Policy", *American Journal of International Law (AJIL)*, Vol. 53, No. 4, 1959.

5. Van Haersolte-van Hof, Jacomijn and J, Erik V Koppe, "International arbitration and the *lex arbitri*", *Arbitration International*, Vol. 31, Issue 1, 2015.

- Commentaries

1. Gadelshina, Elvira R., "On the Role of UN Security Council Resolutions in International Commercial Arbitration", *Kluwer Arbitration Blog*, January 30, 2013: http://arbitrationblog.kluwerarbitration.com/2013/01/30/on-the-role-of-un-security-council-resolutions-in-international-commercial-arbitration/
2. Tzeng, Peter, "The Annulment of Interstate Arbitral Awards", *Kluwer Arbitration Blog*, July 1, 2017: http://arbitrationblog.kluwerarbitration.com/2017/07/01/the-annulment-of-interstate-arbitral-awards/

- Treaties

1. Arbitration Rules of the United Nations Commission on International Trade Law as revised in 2010 (UNCITRAL), 15 August 2010.
2. Convention for the Pacific Settlement of International Disputes (Hague I), 29 July 1899.
3. Convention for the Pacific Settlement of International Disputes (Hague II), October 18, 1907.
4. Optional Protocol concerning the Compulsory Settlement of Disputes to the 1963 UN Vienna Convention on Consular Relations, 24 April 1963 (entered into force 19 March 1967).
5. Permanent Court of Arbitration (PCA) Arbitration Rules 2012, 17 December 2012.
6. United Nations Convention on the Law of the Sea (UNCLOS), 10 December 1982 (entered into force 16 November 1994).
7. United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (The New York Convention), New York, 10 June 1958 (entered into force 7 June 1959).
8. Constitution of the Universal Postal Union, Signed at Vienna, on 10 July 1964.
9. Constitution of the United Nations Educational, Scientific and Cultural Organization, 1945.
10. Articles of Agreement of the International Monetary Fund, 1944
11. Covenant of the League of Nations, 28 June 1919 (entered into force 10 January 1920).
12. Convention on International Civil Aviation, 07 December 1944 (enter into force 4 April 1947).
13. Charter of the United Nations, 26 June 1945.

- ICJ Judgements

1. Arbitral Award of 3 October 1899 (Guyana v. Venezuela), Jurisdiction of the Court, Judgment, I.C.J. Reports 2020.
2. Arbitral Award of 31 July 1989 (Guinea-Bissau v. Senegal), Judgment, I.C.J. Reports 1991.
3. Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain), Merits, Judgment, I.C.J. Reports 2001
4. United States Diplomatic and Consular Staff in Tehran, Judgment, I.C.J. Reports 1980.

- UN Documents

1. UN document, General Assembly resolution: Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, A/RES/25/2625, 24 October 1970.
2. UN document, General Assembly resolution: Manila Declaration on the Peaceful Settlement of Disputes, A/RES/37/10, 15 November 1982.
3. UN documents, General Assembly, fiftieth anniversary of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York on 10 June 1958, A/RES/62/65, 8 January 2008.
4. UN documents, General Assembly, Observer status for the Permanent Court of Arbitration in the General Assembly, A/RES/48/3, 22 October 1993.
5. UN documents, Security Council, The Corfu Channel incidents, S/RES/22 (1947), 9 April 1947.

- Model Rules

1. International Law Commission (ILC), Model Rules on Arbitral Procedure with a general commentary, 1958.
2. UNCITRAL Working Group III, Draft Code of Conduct for Adjudicators in International Investment Disputes (Version Four), July 2022.

- Other Documents

1. ABC of Diplomacy, Swiss Federal Department of Foreign Affairs (FDFA), 2008.
2. Basic Facts About the United Nations, United Nations Department of Public Information, 2004.
3. Basic Facts about the United Nations, United Nations Department of Public Information, Forty-second edition, 2017.
4. ICSID Caseload — Statistics (1966-2022), International Centre for Settlement of Investment Disputes – World Bank Group, ISSUE 2022-2.

- Interview

1. Interview with our Editors: Shane Spelliscy, Chair of UNCITRAL Working Group III on Investor-State Dispute Settlement Reform, Esmé Shirlow and Maria José Alarcon, Kluwer Arbitration Blog, 24 August 2022, available at: http://arbitrationblog.kluwerarbitration.com/2022/08/24/interview-with-our-editors-shane-spelliscy-chair-of-uncitral-working-group-iii-on-investor-state-dispute-settlement-reform/

- Online Sources

1. Dag Hammarskjöld Online Library: https://ask.un.org/ [last seen: May 28, 2023].
2. International Centre for Settlement of Investment Disputes (ICSID): https://icsid.worldbank.org/ [Last seen: May 29, 2023].
3. International Chamber of Commerce (ICC): www.iccwbo.org [Last seen: May 28, 2023].
4. Investment Policy Hub: https://investmentpolicy.unctad.org/ [last seen: May 29, 2023].
5. Italaw, Investment Treaties: https://www.italaw.com/resources/investment-treaties [Last seen: May 29, 2023].
6. Permanent Court of Arbitration (PCA): www.pca-cpa.org/en/ [Last seen: May 28, 2023].
7. Tehran Regional Arbitration Center (TRAC): www.trac.ir/ [Last seen: May 28, 2023].
8. United Nations Commission on International Trade Law (UNCITRAL): www.uncitral.org/uncitral/ [Last seen: May 29, 2023].
9. United Nations Office of Legal Affairs (OLA): https://legal.un.org/ [Last seen: May 28, 2023].
10. World Intellectual Property Organization (WIPO): https://www.wipo.int/ [Last seen: May 29, 2023].