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THE APPLICATION OF THE CISG IN THE WORLD OF INTERNATIONAL COMMERCIAL ARBITRATION

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INTRODUCTION:
The UN Convention on Contracts for the International Sale of Goods was passed in 1980, it has been almost 40 years since the convention was signed in Vienna. The convention as of in 2019 has been adopted by round about 3/4 of world trade countries. Therefore, governs a huge number of international sales contracts throughout the globe.

The judicial system of the member states boasts about the increasing number of case laws with regards to the discussions on this subject by the legal experts all over the world. It is significant to note that until recently the international arbitral tribunals "haven't discovered CISG as a subject of discussion"[1]. Though, the awards of the dispute with regard to this subject remain unpublished, the increasing number of published cases would show that parties of international sales contracts have started preferring arbitration as a private dispute resolution mechanism.

In this present paper CISG application by arbitral tribunals has been analysed as a subject of academic discourse. Furthermore, this paper also discusses the important issues that need to be addressed while determining the application of the convention during the arbitration. For example, the applicability of Art. 1(1)a and 1(1)(b) of CISG itself calls for a debate. A closer look at the applicability of CISG with regards to Art. 1(1) shows that, Hypothetically, if the arbitration tribunals are not bound by Art. 1(1)(a) CISG, can the same be bound under Art. 1(1)(b) CISG. This question could only be answered by reference to the domestic laws of the contracting state while applying the conflict rules. This, in turn, would also depend upon various factors such as who chose the governing law of the tribunal, whether it was the parties or the tribunal itself[2]. The next line of questions pertains to the reasons for applicability of the CISG in the arbitral tribunal, The past is a witness that the application of CISG was owing to the fact that it is represented a trade usage, or form the part of the Lex Mercatoria, or constituted a widely accepted principle of trade law, or due to implication, or alternatively, analogy[3]. This paper analyses whether such a hypothesis by the tribunals is legally correct. Lastly, this paper inquires into the controversy of applicability of the convention to the arbitration agreement. This issue becomes relevant as Art. 11 CISG has abolished the formal requirements of sales contracts which were under the ambit of CISG. Therefore, it could be concluded that by applying this provision on the arbitral agreement, the parties could forego the requirement to comply with the arbitration laws, even such as of written arbitration agreements.

Arbitration Tribunals and Applicability of CISG:
The arbitral tribunals have applied CISG quite frequently in recent years. This segment will concentrate on the anomalies that arise while the convention is being applied by the arbitral tribunals rather than by their domestic courts. It is amply clear that CISG could be applied by both. An obvious example would be Art. 61(3) CISG which restrains the court and the tribunal from awarding a period of grace to the buyer wherein the seller had resorted to a remedy for breach of contract[4]. Moreover, the UNICITRAL secretary expressed and addressed recommendations on the interpretation of CISG by domestic courts and arbitral tribunals in its informative explanatory note mentioned in the convention[5]. However, With regard to an international dispute presented in the National Court, there is a need to distinguish between situations wherein the applicable law has been chosen by the parties from the situation where it is selected by the arbitral tribunal.

I. Choice of Law By Contracting Parties:
The party autonomy is conceded by all arbitration laws and rules to the contracting parties for the betterment of the same[6]. The reason behind the same is to let the parties decide the clauses in the contract which represent their interest and restrain the application of unwanted or inappropriate laws. There are three possible scenarios which may arise in international arbitration where there is a choice of law when it comes to the application of CISG. The three scenarios briefly are when the parties themselves CISG, secondly when parties choose the contracting state which leads to the application of CISG, and lastly when the parties opt out from the application of CISG.

1. Direct Choice: With respect to the National Court, it is open for discussion as to whether EU private international law in the form of Rome I Regulation[7] permits the parties to choose non-national law or only the law of a state. The aforementioned issue has been brought up in various cases wherein the parties have directly chosen to apply CISG however, the same doesn't arise in the case of arbitration because Art. 1(2)(e) Of the Rome I Regulation[8] prohibited the application of the regulation to arbitral proceedings for the reason that the same is more flexible in general. In conclusion, this regulation provides a wider range of opportunities or choices to choose from by the parties by expressly allowing them to data mine the rule of law which is best to their interest. In conclusion, the arbitral laws and rules have great significance in the party's choice while applying CISG, provided that the same agreement that the contract is to be governed by the aforementioned[9].

2. Indirect choice and opting out: The arbitral tribunals and the national courts have taken a similar stand in the case of opt-out, therefore there are no anomalies in that regard. If the parties of the international sales contract decides to apply the law of the contracting state which in turn is the CISG itself to govern the contract then any disputes arising from the same, would be indirectly dealt by the convention of the parties belong to the contracting state to the CISG, the application would be in the form of integral state law as applied by the national courts[10]. However, the parties can also choose the otherwise and decide to opt out the application of CISG in order to apply some national laws or rules, as envisaged under Art. 6 CISG, this decision will bind the tribunal to respect the choices of the party. Thus, the arbitral tribunal escapes a major chunk of problems which generally arises when the parties decide to apply the CISG directly.

(A) The Mandate For Arbitral Tribunals To Apply Art. 1(1)(a) CISG:
It is presumed that arbitrator while adjudicating a dispute involving parties who belong to CISG contracting member states would be under the obligation to apply CISG as envisaged under Art. 1(1)(a) CISG. Notwithstanding the applicable arbitration laws and rules, However, it is pertinent to note that arbitration tribunals are not under an obligation under Art. 1(1)(a) CISG, even though if they have their seats only in a contracting state. This is because of the reason that arbitration tribunals are private institution who is powered originates from the arbitration agreement, on the contrary, the national coach gets their powers from the constitution of the state along with their procedural laws. arbitration is per se a mechanism where is the parties involved or individuals Who want to resolve the dispute privately and immediately rather than being a state dispute which calls for the state dispute settlement mechanism. Furthermore, the arbitration is based solely on party autonomy getting the parties are flexibility and choice to decide the course of the proceedings, whereas litigation restricts the parties and necessarily governed by the statutory laws. Unlike the national procedural laws, the CISG is an international convention. The Vienna Convention on the Law of Treaties[11] under Art. 26 states that it is only the members of the contracting parties to a convention or a treaty that are bound by them, which leads to a conclusion that it is only the contracting parties along with their organs that are under an obligation to adhere to the international treaty. It is because of the reason that arbitral tribunals are not a part of the formal people system and therefore not under an obligation to adhere to conflict of laws. Arbitration tribunal under the mandate to ease to follow the national arbitration laws also means that substitute these arbitration laws. Also, the arbitration tribunals may apply CISG directly under the arbitration law the rules when read in consonance with Art. 1(1)(a). However, to determine the applicability of the CISG one shall look into the provisions governing the arbitration rather than the seat in CISG member states. Therefore, it could be concluded that the arbitration tribunal is not bound by Art. 1(1)(a) CISG as they aren't bound by the state's legal system[12].

B) Arbitral Tribunal Situated In A Non-Contracting State:
The aforementioned condition is also applicable to arbitral tribunals which are seated in a non-contracting state to the CISG. It is obvious to state that the arbitral tribunals would not be under an obligation to apply Art. 1(1)(a) CISG provided that the parties preferred the application of the convention. In the present case, even the national legal system or the domestic court would not be bound by the aforementioned Art. of CISG as the forum state is not a contracting party or the

signatory of CISG, this is applicable to the arbitral tribunals as well. However, given the party autonomy and the discretionary powers of the arbitral tribunals, the ones that are seated in the non-contracting state could also apply CISG due to their arbitration laws or rules as envisaged under Art. 1(1)(a) CISG.

c) Interim result:

Irrespective of the fact whether arbitral tribunals are situated in a contracting state or not of the CISG, they are not under a mandate as an organ of the state to finalize on the applicability of law in a dispute with regard to Art. 1(1)(a) CISG. However, in the later part of this paper, we shall discuss how arbitration laws or rules may end up binding arbitral tribunals to adhere to Art. 1(1)(a) CISG. The above-mentioned situation will lead to 2 consequences, one of them would be that arbitral tribunals on one side portray difficulty and differences when comparing to the national courts of CISG member states and secondly, on the contrary, it could be argued that arbitral tribunals do end up in the same situation as a national courts of the state which is not signatories to the CISG. As neither of them is under obligation to directly apply the Art. 1(1)(a) of CISG, although each can apply private international law and Art. 1(1)(b) CISG. The point of difference lies in the fact that the domestic courts of a contracting state are bound under the principles of private international law to apply CISG by virtue of Art. 1(1)(b), whereas, arbitral tribunal just have to abide by the arbitration laws and rules and not by the private international law of the state in which they are seated.[13]

2. The Indirect Method Of Application By Arbitral Tribunals

a) On The Basis of Art. 1(1)(b) CISG

Keeping in mind the domestic courts, the convention will also be applicable while those of private international law as a lead to the application of the contracting state law which incorporates the CISG. Accordingly, Art. 1(1)(b)Would not end up becoming an applicable private international law but rather a part and parcel of the domestic law.

1. Earlier case of arbitration rules:

The circumstances are more or less the same regard to the arbitral tribunals in this case. The cases wherein the tribunal is the only means but applicable arbitration laws the rooms they are bound to adhere With private international laws and – by the contracting state law which will end up leading in the same situation as in which a domestic god is ipso facto under an obligation to apply CAG on the basis of Art. 1(1)(b) CISG. An example of this indirect application is stated under Art. 28(2) UNICITRAL model of international commercial arbitration 1985 (with amendments as adopted in 2006). This Art. states that in the Situation wherein the parties have not given their choice of law then an arbitral tribunal "shall apply the law data mined by the conflict of laws rules which it considers applicable. "

2. Arbitral Tribunals bound by reservation under Art. 95 CISG?

The arbitral tribunals could face a couple of issues is this conflict of laws leads the tribunal to what is the application of The law of OCI is the member state which in turn had declared reservation to Art. 1(1)(b), As allowed under Art. 90 5CISG, for example, the United States or China has done so[14]. In the aforementioned case, the National Court is bound to apply the CR is the only requirement of Art. 1(1)(a) are met.[15] Already been discussed in the earlier segment that arbitral tribunals are not under an obligation to apply either private international law of the seat nor the CISG its self irrespective of the fact whether this seat has signed the latter or not. However, the fundamental regulations do not offer a satisfactory argument in this particular case because the point of discussion is a little different. Here the question is not whether where the tribunal is seated but whether the tribunals recognises The application of the conflict of laws rules which consequently lead to the application of member states law, with regard to the state's reservation from Art. 1(1)(b) CISG under Art. 95 CISG. In this segment will discuss published decision on this aspect. The China International Economic And Trade Arbitration Commission (CIETAC) in 2004[16], decided a dispute among a Japanese seller and the Chinese buyer who agreed on the sales contract wherein they failed to give a choice of law to govern the contract. The contract was performed in China and was also concluded in China, which was a member state of CISG when the contract was entered into, and Japan was not[17]. The party is repeatedly referred to the law of China in their statement of claim and defense which lead tribunal to believe that the parties had agreed to choose Chinese law as the governing law of the contract. However, as envisaged under Art. 95 CISG China had entered a reservation against Art. 1(1)(b)Which excluded the CISG from being granted the status of the domestic law of China. Thus the tribunal concluded that the contract was governed by the domestic laws of China and not the CISG. The tribunal did not adequately give the reasoning of the decision, however, the same could be analyzed from its decision. In the sense that when arbitral tribunals decide of the applicable law in the case of international sales contract based on the zones of conflict of laws then such rules are to be applied with regards to the CISG member states law correctly and in its entirety. Another example to understand the same would be when there was a dispute between two parties to an international sales contract when the party belongs to the US, which is a signatory to the CISG and has also signed a reservation under Art. 95 of CISG and the other party is a non-signatory to the CISG then in the aforementioned case the rules of international law as condition the application of US law the CISG you will not be relevant will decide the dispute as it will fail to become a part of the domestic legal system of United States. The reason being that the United States has executed the convention but with reservations which gives them the flexibility of not being entirely bound by Art. 1(1)(b) CISG.

Moreover, assuming that arbitrator ignored the US reservation under Art. 95 and make them bound by Art. 1(1)(b) CISG and end up using CISC into the domestic laws of US, Then in that case the arbitrator had failed to apply US law correctly. Lastly, this line of argument is indirectly supported by arbitration practice. It is a standard practice that whenever an arbitral tribunal is about to apply the convention by virtue of Art. 1(1)(b) CISG, they usually crosscheck the fact that whether the member state of the contracting party has entered a reservation via Art. 95 CISG. If in a circumstances, the tribunal does not take into account such as a basis and end up applying CISG on the basis of Art. 1(1)(b) CISG, Then in that case then entire exercise of arbitrator looking into the applicability of CISG has gone to waste as they shouldn't have accounted for examining such a reservation.

b. On The Basis of Art. 1(1)(a) CISG As A Rule Of Private International Law:

As discussed in the earlier segment that regardless of the seat of arbitral tribunals weather in CISG member or not the tribunal is not under an obligation to apply the convention via Art. 1(1)(a) CISG.[18] The UNICITRAL model law on international commercial arbitration read with the arbitration rules mandate on the tribunals to apply conflict of laws. Consequently, it leads to the application of CISG by arbitral tribunals while the considering the conflict of law. An example of this situation would be The ICC case[19] which was decided in 1992 there is a dispute arose between an Australian seller and Yugoslavian buyer and both the countries were a signatory to CISG at that particular time. The parties had signed a sales contract for furnishing and assembling of material to construct a hotel in the absence of a choice of law. During this contract, Art. 13.3 of the ICC rules of conciliation and arbitration said that in the circumstances where the parties fail to choose the law that would be borne in the main issues, then the arbitrator was under a mandate to decide the dispute as per the norms of conflict of laws rules which he or she might deem appropriate[20]. In lieu of the above-stated statement the Tribunal applied the CISG in accordance with Art. 1(1)(a) CISG. Furthermore, it could be concluded that all the provision that is Art. 13.3 of the ICC rules of conciliation and arbitration provided an implication that the ICC tribunal was under a mandate to apply conflict of laws rules first, however, the commentators of this era believe that this provision allows the tribunal to decide on the applicable law directly as well. Although by making a mention to Art. 1(1)(a) CISG instead of the conventional, it may be the situation wherein the tribunal applies the norms as the conflict of laws – however, in the end, it still remains unclear with regards to this point. In a similar case from 1997[21] where the parties were Romanian seller and Italian buyer, In absence of choice of law clause wherein both the parties came from member states of CISG, the ICC tribunal gave a similar decision. It would be concluded from the decision of this case that it is still unclear whether the arbitrator applied CISG directly or it was a mere mention of Art. 1(1)(a) CISG to support the applicability of CISG or whether the same law was applied as a rule of private international law.

It is taken into note that to be referred as a rule of private international law, the rule must offer a certain solution as to the conflict that arises in the abstract that is by giving various options to choose from and applicable law. However, Art. 1(1)(a)CISG is very specific in nature as it determines the scope of applicability of convention indefinite terms which brings us to the conclusion that it is not a rule of private international law in a technical sense.

Notwithstanding, it is submitted that Art.1(1)(a) CISG, should be referred as a conflict rule on these grounds: firstly, this provision is one of the solutions for conflict of laws. Secondly, it is taken into note that under a particular circumstance prevent and tribunals from applying CISG in a typical CISG the case for the reasons that the indirect method of application would require the tribunals to apply conflict of laws rules while determining the governing law. It is a common situation wherein both the parties come from member states of CISG and the conflict of law consequently lead to the application of the domestic law one of the forum states CISG being applied in the dispute. However, the situation will get a little complicated if one or even both of the state where the there principal place of business is located have entered a reservation under Art. 95 of CISG[22].

Moreover, certain another point shall also be taken into account in this regard: Firstly, the tribunal, in any case, should not apply CISG directly because of the indirect method of for the application of conflict of laws rules first. Secondly, as mentioned in the above example is that Art. 1(1)(a) CISG does not become a part of the conflict of law rule. Thirdly, all relevant conflict of laws in this particular situation points towards the law of the state which has entered into a reservation under Art. 95 CISG. As stated in the previous statement that an arbitral tribunal has to give regards to the reservation which leads to the conclusion that CISG is it could not be applied by any means.

However, The result of this would be unsatisfactory for the following reasons. First, every domestic of the member states would be under a mandate to apply CISG by means of Art. 1(1)(a). Secondly, in terms of substance and status CISG would be an appropriate law. Finally, the above-mentioned confusion would end up negating the advantages of an arbitral tribunal over the domestic walls as it would lead to a better role of remedies, options and flexibility that a party usually have during arbitration. Therefore, to assure that CISG is applied in cases wherein the tribunals are under an obligation to apply private international law on in deciding the governing law and CISG as it is the suitable choice than under these, circumstances Art. 1(1)(a) CISG would have to be deemed as rule of pri-

vate international law.

3. The Direct Method Of Application By Arbitral Tribunal:
On the contrary to the aforementioned indirect method of application, the modern arbitrations laws provides freedom of choice for rules and standards without the need to consider the conflict of law first. This objective approach of deciding on the governing law by the arbitrator is called "voie directe" or "direct method of application"[23].

a. Arbitrators' autonomy:
The London Court of International Arbitration provides in its rules a direct method of application under Art. 22.3 wherein the parties refrain from giving a choice of law by stating that "the arbitral tribunals shall apply the law or rules of law which it considers appropriate." In accordance with the aforementioned provisions the arbitral tribunals is granted with utmost and the widest possible discretion to act. Similarly, the ICC Arbitration and Alternative Dispute Resolution Rules in their Art. 21(1) state that "Arbitral tribunals shall apply the rules of law which are determined to be appropriate"[24]. Arbitration rules all over the world contain similar or comparable regulations of what has been quoted in this paragraph.

Applying the laws that tribunal will find adequate "give the tribunal a broad description for this decision". Notwithstanding the fact that even if a tribunal, is capable of applying the CISG directly they should analyse to ensure as to a certain extent, however, Unfortunately, it isn't a part of the standard practice. Although, tribunals and commentators hold the same view that if a tribunal has the authority to decide by unlimited voie directe, It doesn't relieve them from their obligation to conclude upon the subject matter of dispute as per the system of law owing to the arbitration laws and rules. It is the provisions of the contract read with the appropriate trade usage that should be considered by the arbitrators. It is only the express authorisation by parties that gives the tribunal the authority to decide the case as *amiable compositeur* or *ex aequo et bono*[25].

Tribunals have two ways to select the substantive law on their own: in most of the cases the tribunal end of applying CISG as it is convenient with regards to its substantive scope, while going down this lane the tribunal satisfied itself with the fact that the requirements for the applicability of CISG has been met irrespective of the fact whether or not they are bound by CISG. On the contrary, in a couple of cases which are covered under Art. 1(1)(a) CISG, The tribunal ignores the rules on the CISG scope of application. They end up commenting that the reason behind the applicability of CISG is because either both the parties were based in contracting states or they choose to ignore the question of which law shall be applicable and simply apply CISG.

In 1999 ICC tribunal gave a decision[26] which gives us a significant insight about the factors that are considered by arbitrators while deciding on applicable law by voie directe along with their reasoning. In this particular case, the dispute was between Romanian sailor and a German Buyer, and while deciding on this case the tribunal commented that with effect of the ICC Arbitration Rules in 1998, the tribunals were no longer under an obligation to apply conflict of laws rules and was to rather adhere to the recognized international standards. The tribunal gives three reasons for applying CISG: first, that CISG was widely recognized in the practice of arbitration "as a set of rules reflecting the evolution of international law in the field of international sales of goods". Secondly, since both the parties belong to the member states who are a signatory to CISG the tribunal stressed on the applicability of Art. 1(1)(a). Finally, the applicability of the Art. 1(1)(b)CISG would go down the road of application of convention going to the route of private international law given the fact that German law had incorporated CISG.

b) Limited Arbitrator's Autonomy:
Certain National arbitration laws only provide for a "limited voie directe". The obligation of the tribunals to examine the case on the basis of the rules of law as decided by the parties. In circumstances where the parties have let go of their right to choose the law that shall be gone in the proceedings, the provision and listed in their national laws could have different levels of limitation. An example of her label provision in this aspect would be the Swiss Art. 187(1) Bundesgesetz Uber Das Internationale privaterecht (IPR, Federal Statute on International Private Law: ""*[. . .] bei Fehlen einer Rechtswahl, nach dem Recht, mit dem die Streitsache am engsten zusammenhängt*"[27].

The word "Recht" Could be loosely integrated here. Heading the arbitrator could apply the convention as an international convention or as a non-national law directly as well or as a law of the state which had incorporated CISG in their domestic laws. Although the arbitrator will have to ensure that the requirements as stated in the provision has been met *de facto*, pragmatically no difference from a limited *voie directe*[28].

III. CISG and arbitration agreements:
An arbitration tribunal should have the jurisdiction to determine the applicable law before it can address a dispute arising out of international commercial contract. An agreement providing for an arbitration clause is a sine qua non to provide jurisdiction and this forms the basis on which the arbitration proceedings and at a later stage an award could be provided. It is generally a private agreement between the parties wherein the preferred arbitration with regards to any present or future dispute that may arise, whether related to the contract or not, legally speaking[29].

1. The Clash Of Formal Requirements
The UNICITRAL model law on International Commercial Arbitration 1985(With amendments as adopted in 2006)[30] read with many arbitration laws and rules that were paid off on it along with the New York Convention[31] clearly states that the arbitration agreement should be a written agreement. This requirement is a sine qua non, irrespective of the fact that whether the contract had been conducted orally or by conduct or by any other means. However, the signature of the parties are not mandatory and also the arbitration agreement may not be in the same contract or document as the sales contract itself.

A different approach is adopted by CISG. CISG does not call for any formal requirements neither it requires the contract of sales under the convention to be concluded or provided evidence for inviting nor does it ask for any related requirement as mentioned in Art. 11 of CISG. Notwithstanding the reservation as mentioned under Art. 12 and 96 of CISG and oral agreement is also valid under the CISG. The discrepancy arises in this fact that a major chunk of the sales contract which are govern by CISG are exempt from abiding with any form requirements under Art. 11 CISG whereas the arbitration rules and laws makes it a mandate that an arbitration agreement shall be in writing. It is because of this reason that the arbitral tribunals face various issues because of these contrary rules regarding the aforementioned. To elaborate on this an example of the same would be a French seller and a German buyer had a conversation via telephone and entered into a contract for the purchase of red wine. During the telephonic conversation both the parties agreed that in case of a dispute that might arise in this transaction the same will be settled by arbitration. Hypothetically assuming that the applicable to arbitration laws mandate to write an arbitration agreement as stated in a German code of civil procedure and that CISG is also applicable, the question arises whether the agreement to refer the dispute to arbitration is valid and enforceable considering the fact it does not satisfy the requirements of a written arbitration agreement? The problem is so stated is not merely a theoretical problem and assuming that informal arbitration agreement is not valid or concluded in practice, one should read the explain a tree note by UNICITRAL secretariat on the Model Law on international commercial arbitration 1985(As amended in 2006) In which the newly introduced option two of Art. 7, which stated that informal arbitration agreement also valid. The reasoning behind the introduction of this was that "it was pointed out by practitioners that, in a number of situations, the drafting of a written document was impossible or impractical."[32]

2. How To Unravel The Formal Requirement Knot:
The application of Art. 11 CISG on the arbitration agreement has led to 3 different schools of opinions: the first school believes that CISG in general along with Art. 11 of CISG, in particular, should be the governing law of the arbitration agreement in other words[33], The explicit reference to the "settlement of dispute" in Art. 19 and 80 (1)CISG can be interpreted to mean that agreement to arbitrate are under the ambit of the convention as a whole. Though, according to this school Art. 11 CISG would be applicable on the dispute resolution clause is with regards to the arbitration agreement wherein the above-stated example would come under the category of a valid legal agreement to arbitrate.

On the contrary, the second school of opinion is that the CISG shall not be applicable to the arbitration agreement, with regards to its formation all its forms[34]. In other words, the school believes that CISG could be a subject of the sales contract, but the convention could not be applicable to the arbitration agreement. Consequently, the tribunal would be bound to declare the arbitration agreement invalid reasons due to lack of a formal written agreement. It is taken into note that the principle of separate agreement from the sales contract is the main contract falls in question. This opinion is reflected in the UNICITRAL model on international commercial arbitration 1985 and is also present in various arbitration laws of foreign jurisdictions. While applying the principle of severability, an arbitration agreement is a separate agreement from the contract and is distinct from the main contract irrespective of the fact that they may be in the same document or are part and parcel of the main agreement. Moreover, it is advocated that it is only the substance of the contract that can be governed by CISG and not the procedure aspect of the same, in a situation where there is a dispute between the contracting parties.[35] Therefore in this school, it is believed that the convention was not intended to govern the arbitration agreement at all.

The last school of thought which is recently game support has found a middle path between the two of interviews the school believes that the formation agreement can be subjected to CISG however, Art. 11 CISG loses its applicability and the same is rejected. Asked for the reasoning for their first opinion, this school of thought refers to the "settlement of dispute "in Art. 19 and 81 of CISG which allows the arbitration agreement in the international sales contract to be a subject matter of for the convention. Though Art. 11 CISG cannot be applied according to this school as the drafting and history along with this wording and systematic structure of the same does not hold good when being applied to the arbitration agreement.

In conclusion, the first school of thought which states that Art. CISG cannot be considered as a convention school as it fails to acknowledge the doctrine of severability of the international sales contract from the arbitration agreement.

Moreover, Art. 90(O) CISG states that that Art. 2 of the New York convention shall have overriding effect with regards to the formal requirements of an arbitration agreement. Therefore, at least by the time of presenting the award, an arbitration agreement would have to be provided. In practice, this view should not have the specific relaxation as desired of the form requirement. As the cases involving international sales of contract wherein the parties have entered into an oral arbitration agreement involving CISG, would face difficulties in the enforcement of the award as the parties had failed to stick to the formal requirements as mentioned under Art. 2 of the New York Convention.[36] Therefore, keeping in mind the other mention approaches, the applicability of Art. 11 CISG on the arbitration agreement shall be rejected and agreement shall mean that one should fulfil the formal requirements as stated under the arbitration laws in force and that should not be released of such basic obligations on grounds of CISG.

CONCLUSION:

The CISG along with international commercial arbitration stands for a fruitful symbiosis in the world of international trade as both originates and adhere to same methodological principles of transnationality, party autonomy, consensus and neutrality. One of the most debated topics of this symbiosis which were also the subject matter for this paper is the application of CISG. As discussed in this paper there are quite a few possible avenues which can be chosen well applying the CISG on an international commercial arbitration contract along with the discrepancies. The arbitration tribunals can either choose the law of the CISG member state or opt out from the application of such convention. Further regard has been given to the party's autonomy to apply the convention directly notwithstanding the discrepancies with regards to the litigation in question.

If the parties fail to give a choice of law then the arbitration tribunals can deviate from the approach that is to be taken by a national court as they are not under an obligation to comply with Art.1(1)(a). Although it depends on the arbitration rules, which may oblige the arbitral tribunals to apply conflict of laws rules, which end up in the application of CISG member states law, in accordance with Art.1(1)(b) CISG. In this case, the tribunal must give regards to the fact that whether the member state has entered a reservation under Art. 95 CISG. If the arbitral tribunals take the path of the indirect method of application, then the tribunals are bound to apply Art. 1(1)(a)CISG as the convention becomes a part of the conflict of laws rules in the present case.

The arbitration tribunals while examining the applicable law autonomously can choose CISG without having to take a request to conflict of laws rules and independent of an Art. 95 of CISG ultra vires its actual scope. While doing this the arbitration tribunal needs to keep in mind the limitations on *voie directe* which might become a hurdle in application of CI. The wide autonomy provided by (unlimited) voie directe, gives the tribunals the chance to apply the convention by analogy, implication or as a standard practice of arbitration. In this regard it is pertinent to note that CISG is neither a trade usage nor a part of *lex mercatoria.*

Lastly, as envisaged under Art. 11 of CISG the parties cannot be exempted from fulfilling the formal requirements that are stated by the arbitration laws and rules such as that of a written arbitration agreement. It has been excluded from CISG scope to decide on the status and substantive nature of the arbitration agreement. It can be concluded that the mandate as directed by the arbitration laws and rules cannot be done away with and the parties are under obligation to obey such provisions irrespective of the fact that the main contract is governed by the CISG.

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9. The parties can also agree to apply the CISG in arbitration proceedings to contracts not covered by the CISG ("opt in"). However, they cannot opt out of mandatory national rules (e. g. consumer protection).
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26. ICC Arbitration Case No. 9887 of August 1999.
27. "[. . .] in the absence of [the parties'] choice of law [the tribunal is entitled to decide the case] according to the rules of law with which the case has the closest connection." André Janssen & Matthias Spilker, The Application of the CISG in the World of International Commercial Arbitration, 77 Rabels Zeitschrift für ausländisches und internationales Privatrecht , 131 (2018)
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30. See option 1 Art. 7(2)–(6) UNCITRAL Model Law on International Commercial Arbitration 1985 (with amendments as adopted in 2006), which have been followed by many national legislators. Option 2 of Art. 7, which was introduced in 2006, now assumes, in contrast, the possibility of an informal arbitration agreement.
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6. However, some authors view Art. 11 CISG as a "more favourable provision" with the consequence that Art. II New York Convention is not applicable