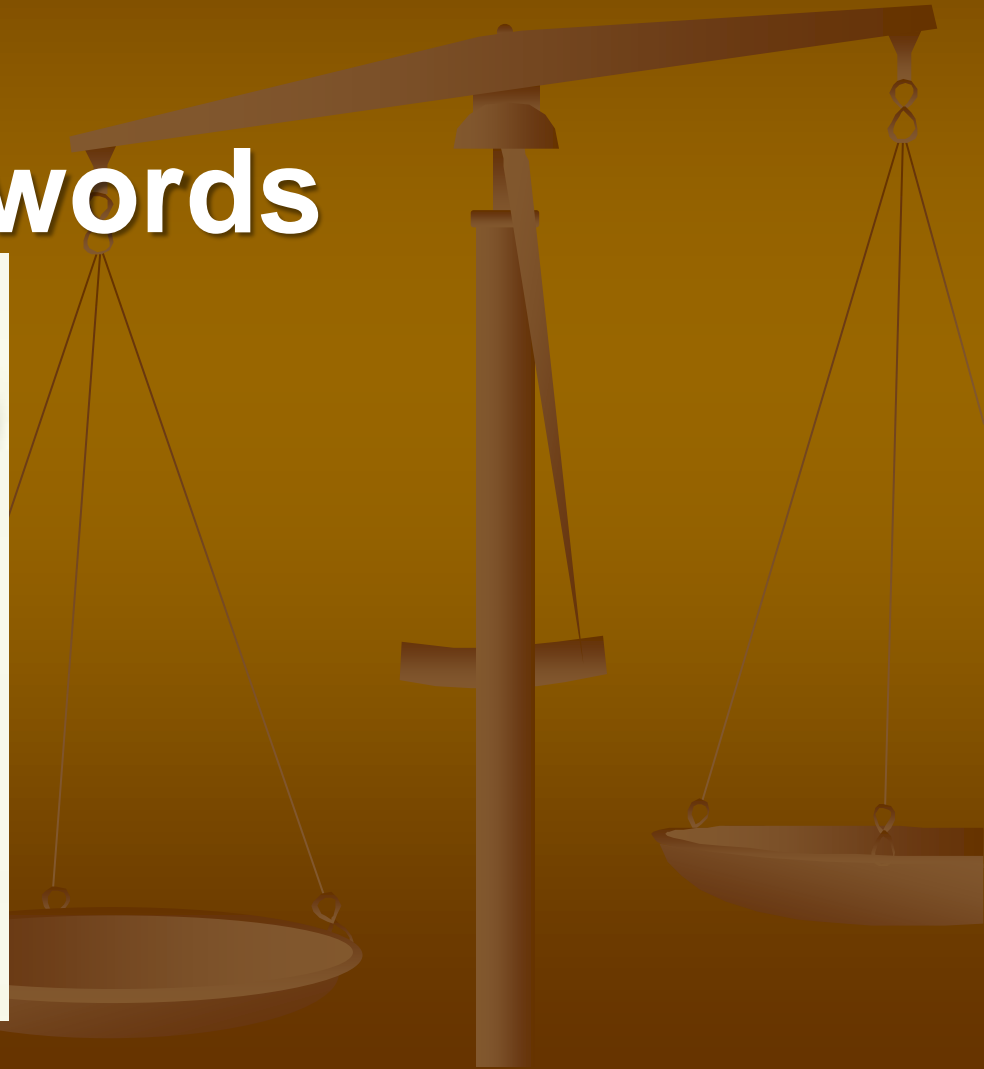


Chapter Two


Sources of International Trade Law

Key words



**import-export, foreign
currency , statutes, usages ,
international cases, dispute
settlement, commerce .**





An international trade or an international business transaction, although involved in by states, traders or any other actors, could be governed concurrently by several legal sources, such as domestic law, and, international mercantile customs and usages, international treaties and other means.

1. Domestic Law

Domestic law is very important in international legal practice. Domestic law as separate from international law, includes laws of foreign countries.

In reality, the understanding and application of laws of other countries are always a 'nightmare' for both international traders and lawyers.

The sources of domestic law are various and it could focus on:


- Legislation

Ancient international trade and business rules were created in order to protect foreign merchants and govern international transport in goods.

The first written rules existed in the Hammurabic Code (2,500 BC), in which were stipulated the protections for foreign merchants and the breach of contract issue.

In general, domestic rules applying to domestic business transactions would concurrently apply to international business transactions.

Besides, since states need to protect its national interests in international trade and business transactions, it should regulate policy such as on trade in goods, and on trading partners.



An important source of domestic law concerning the international trade and business law consists in the key areas covered are the so-called:

- **‘Trade remedies’ and Customs law.**

Regulations on ‘trade remedies’ (mainly consisting of countervailing duty and safeguard measures are truly ‘legal’ trade barriers to both fair trade and unfair competition.

Also important are customs regulations, under which governments collect import-export duties and regulate import-export trade law statutes.

2. International Law

A. International Mercantile Customs and Usages

International mercantile customs and usages are a very significant legal source of International Business Law.

Traders, driven by economic goals, have always spoken in a common language, that of international mercantile customs and usages.

International mercantile customs and usages could be understood as a **whole of unwritten rules generated from the acts/behaviours of merchants** and were considered as 'the law' by them. For example, International Commercial Terms ('INCOTERMS') or International Standard Banking Practice.

- Lex mercatoria ('Merchant Law')

The true development of international trade and business law begun since Middle Ages, when international mercantile customs appeared and developed in fairs in Europe on the late seventeenth century.

During the Middle Ages, merchants would travel with their goods to fairs and markets across Europe and use their mercantile customs. Over time, emperors allowed merchants from different countries and regions to use their mercantile customs for dispute settlement, therefore these customs came into effect.

From beginning, lex mercatoria ('merchant law') was an international' law of commerce, since it existed independently of emperors law. It was based on the general customs and practices of merchants, who were common throughout Europe, and was applied almost uniformly by the merchant courts in different countries

Lex mercatoria included the whole of international mercantile customs and usages, which stipulate the rights and obligations of merchants.

The scope of lex mercatoria was very broad, governing many commercial issues, such as the value and legal force of contract, breach of contract.

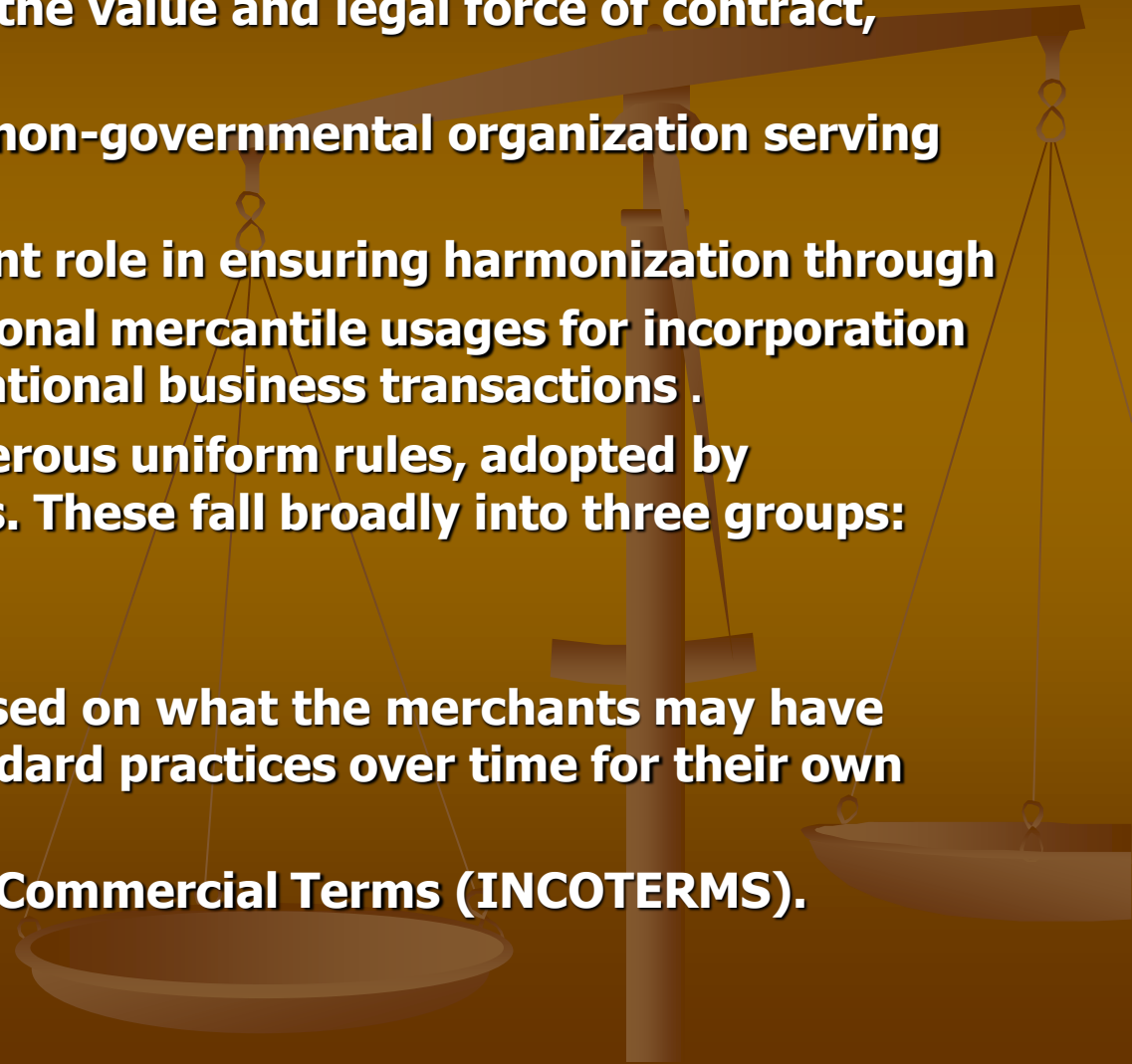
The ICC is an international non-governmental organization serving world

business. It plays a dominant role in ensuring harmonization through the compilation of international mercantile usages for incorporation by those engaged in international business transactions .

The ICC has produced numerous uniform rules, adopted by incorporation into contracts. These fall broadly into three groups: banking , insurance, and international trade.

Many of these rules are based on what the merchants may have adopted as customs or standard practices over time for their own convenience.

For example, International Commercial Terms (INCOTERMS).



B. Treaties

- **Treaties are dominant source of international trade and business law.**
- **International trade and business treaties would be bilateral agreements or multilateral agreements, including global and regional levels.**
- **At the global level, good examples of international trade and business treaties include WTO agreements United Nations Convention on Contracts for the International Sales of Goods 1980 ('CISG') United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (hereinafter the 'New York Convention').**

Within the framework of the WTO agreements, there are bilateral trade agreements.

C. International Cases

WTO cases and decisions/judgments passed by international jurisdictions, such as international courts, international arbitrations, are very important in the legal source system. For example, the WTO's case Japan-Alcoholic Beverage [1996] clarified the concept 'like product' in litigation concerning the application of the principle of national treatment, a cornerstone principle of international trade law.

WTO agreements cannot do this alone, there are decisions by the Permanent Court of International Justice 'PCIJ' the expropriation, nationalization and compensation standards were clearly explained

D. Other Sources

General principles of international law are significant for issues such as those relating to state responsibility, or to fair and just compensation within the FDI's field.

One of these is the principle of good faith, which controls the exercise of rights by states. General principles of international law are, in principle, binding on all states.

