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On the International Unification of Rules on International Commercial Contracts

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Abstract: The globalization of trade is influencing the development of commercial legislation by unifying the rules of international commercial contracts internationally, and the ascent of China is imperative for the global community and an inevitable consequence of ongoing advancements in international business. In terms of practical achievements, it has effectively promoted and safeguarded the progress of the worldwide economy. In an effort to facilitate the advancement of worldwide standardization in regulations pertaining to global matters and fully utilize its potential, It is crucial to possess a comprehensive comprehension of the notions and attributes associated with it, and to analyse the problems that exist in the process of its implementation. In addition, by combining the actual situation of specific countries, we can also better understand the current situation of the unification of international commercial contract rules in practice, which is more conducive to its implementation and improvement. Accordingly, this paper will make full use of the research methods of literature study and comparative analysis to discuss the above issues by analyzing the theoretical studies and legislative overviews of different countries.

Keywords: International commercial contracts, internationalization of law, change of law, application and interpretation of law, trade globalization

1. Introduction

Globalization is a topic of constant interest in this century, the core concept of which is the commitment to break down long-standing barriers between nations in order to achieve undifferentiated international unity [1]. In today's context, the impact of globalization covers almost all aspects of international society, in other words, international social relations have taken on the characteristics of globalization. Therefore, law, as a tool for adjusting social relations, naturally and inevitably joins the trend of globalization and shows signs of convergence on a global scale. The most representative of this is the international unification of the rules of contracts for global business transactions relating to international trade. It should be mentioned here that the rules of agreements pertaining to international commercial dealings in this paper mainly refer to the legal rules with the nature of international law. Accordingly, from the viewpoint of globalization and focusing mainly on trade-related areas, this article aims to discuss the causes, achievements and existing problems of the global unification of the rules on international commercial contracts, as well as to provide specific analyses and future outlooks with regard to the current status of unification in China and other countries and regions.

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2. Overview of the Rules of International Commercial Contracts and their International Unification

Before proceeding with the discussion that follows, it is important to clarify, for the first time, some of the basic concepts referred to in this paper. That is, what is an international commercial contract and its legal rules, and what does the international harmonization of regulations for global business agreements entail. In the author's view, the elaboration of these ideas will contribute to the analysis of the reasons for the international unification of contracts for global business transactions and the current situation in the following chapters.

2.1. Concept and Characteristics of International Commercial Contracts

2.1.1. The Concept of International Commercial Contracts

The concept of agreements concerning global business transactions in the General Principles of International Commercial Contracts (hereinafter referred to as "the General Principles") is not clearly stipulated, combined with the International Institute for the Unification of Private Law (hereinafter referred to as "UNIDROIT") in the General Principles of the commentary, some scholars believe that the General Principles are not explicitly stipulated in order to provide as broad an interpretation of the concept as possible [1]. Nevertheless, the concept can still be analyzed from the perspective of the doctrine. In the author's view, based on the basic principles of contract and the purpose and spirit of the General Principles, combined with the practical requirements of international agreements that relate to commercial contracts on a global scale, such as good faith, autonomy of meaning, and other requirements., the concept of international commercial contract can be broadly expressed as follows: international commercial contract is an international commercial subject, based on the purpose of business operations and the establishment, change, termination of the legal relationship arising from the transnational commercial trade agreement [2].

2.1.2. Characteristics of International Commercial Contracts

As a product of economic and trade globalization, international commercial contracts have obvious special characteristics compared with ordinary domestic contracts, which can be expressed as follows.

(1) Internationality. The so-called internationality refers to the elements of international commercial contracts have certain international attributes. Specifically, from the main body of the contract, behavior, content and so on. First of all, from the subject point of view, the main body involved in international commercial contracts include companies engaged in cross-border trade. Secondly, from the behavior, this type of contract involves the behavior between different countries and regions. Finally, from the perspective of content, the subject matter of an international commercial contract generally needs to be transferred through transnational and cross-border means to finally realize the purpose of the contract.

(2) For profit. the finalization of a global business agreement is in the final analysis a commercial legal act, and commercial legal act is the commercial subject of business behavior, and this behavior is with the purpose of profit. Therefore, the international commercial contract is also has the corresponding profit attributes.

(3) It is a double contract. An international commercial contract is a contract in which the contracting parties are under an obligation to pay each other.

(4) Others. In addition to the above, global business agreements are characterized by the complexity of the relationships involved and the diversity of the applicable law.

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2.2. Rules for International Commercial Contracts and their International Harmonization

The regulations governing agreements related to form the foundational framework for global business conduct and serve as the principles for adjusting the legal relationships of contracts for global business transactions [1]. The global harmonization of rules of contracts for global business transactions refers specifically to the formation and development of a kind of legal rules brought about by the rapid development of international commercial transaction activities in the context of globalization. This situation is due to a number of factors including economy, trade and the law itself. It is characterized by the diversity of ways of unification and the plurality of methods of application. On the whole, the unification of the rules of deals related to international commerce is not only the inevitable result of trade globalization, but also the inevitable need to enable the development of trade globalization. Its international convergence and unification will inevitably lead to better prospects for the development of trade globalization.

3. Reasons for the International Unification of Rules on International Commercial Contracts

As mentioned above, the international unification of rules on international commercial contracts is a legal phenomenon resulting from a combination of factors. Therefore, in the following, I would like to analyze the reasons for this phenomenon from the perspective of the underlying commercial law itself and from other perspectives, including ESC.

3.1. Commercial Law Perspective

The author here points out that the perspective of commercial law itself mainly refers to the reasons that constitute the basis for the global integration of the rules of deals related to international commerce, which is inherent in the nature of the rules themselves. Academics have the view that, although the historical development of different countries, and their respective physical environment has obvious geographical differences, so that a variety of legal systems have obvious differences, but there is a common basis between them, so that the international unification of the law has the possibility of [3]. In this regard, the author concurs with. the above point of view, that is, the world's commercial laws and regulations related to international trade is the same pursuit. By comparing the international commercial law principles and specific rules of most countries, combined with the academic research, it is not difficult to come to a conclusion that the international commercial law, including the rules of agreements pertaining to international commercial dealings, the main protection of private rights, the pursuit of the value of the goal is freedom and fairness. It is precisely this commonality that constitutes the basis for the global integration of agreements pertaining to international commercial dealings rules in the future.

3.2. Other Perspectives such as ESC

First, in terms of the history and purpose of the rules on international commercial contracts. The original rules on international commercial contracts can be traced back to a part of the Mediterranean merchant law, which was created, among other things, to minimize conflicts in commercial trade between the countries of the Mediterranean region and to facilitate the development of trade. The law that governs international trade diversified from the 17th century onwards, causing the original hegemony of merchant law to suffer. However, this phenomenon did not bring good results for international trade itself, but rather increased barriers to international trade. The harmonization of international commercial law is a method for addressing this problem [4]. Therefore, the international community for the international commercial contract rules of course, including the requirements of

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its ability to reduce the world's countries and peoples in the trade differences and differences, to ease the international commercial conflict. It is for this reason that the historical and intrinsic purpose of the rules of international commercial contracts has been the driving force and reason for their development and Unification [1].

Secondly, in terms of world economic development. The international unification of laws is in fact, the inevitable result of social and economic transformation. First, with the continuous development of the world economy, including transnational corporations engaged in international trade, the number of subjects and scale of international trade continues to expand, and in the international trade in a growing share. It is because of the rise of these subjects, increasing the need to regulate the international commercial behavior of the law, which requires international commercial contract rules must be further developed to provide a stable and reliable legal assistance, therefore, its international unification will become inevitable. Secondly, as the market economy system is widely established throughout the world, it creates an institutional basis for the international unification of international commercial contracts and provides the same background worldwide. Thirdly, it is also an inevitable need for the economic development of some countries and regions in the world. After the reform and opening up of China in the last century, there was an urgent need for China to join the world economic and trade system, but the problem was that China's domestic law at that time could not be perfectly aligned with the world's prevailing commercial rules, which made China's accession to the WTO hampered to a certain extent. However, through the study and continuous exploration of the CISG and the General Principles and other international conventions, China continued to improve its own commercial legal system, and finally joined the WTO in 2001, since then, for its own economic development to create more powerful conditions. In addition, the international unification of commercial contract rules also has a positive impact on the economic development of African countries. African countries' economic development has been hindered by the diversity of laws, as pointed out by some scholars, and other countries trading with African countries have also caused a negative impact [5].

Finally, with the international cultural exchanges and dissemination, the commercial habits of various countries can be understood by other countries and even integrated into local customs, coupled with the rise of comparative jurisprudence and the efforts of international organizations, making it easier to unify the regulations governing global business agreements.

4. Application of Internationally Harmonized Rules on International Commercial Contracts

The establishment of internationally harmonized rules on commercial dealing is of great importance. The rules on international commercial contracts have developed considerably through the continuous efforts of States and relevant international organizations, and the author will discuss in the following paragraphs the main principles to be followed and the main forms to be adopted in the establishment and application of internationally harmonized commercial contracts.

4.1. Principles of Internationally Harmonized Rules on Commercial Contracts

The principles underlying the internationally harmonized rules on commercial contracts mainly include the principle of autonomy, the principle of honesty and fairness, and the principle of public order. The formulation of uniform global business agreement rules is influenced by these principles, and they also have a significant impact on the interpretation of the rules.

(1) Principle of autonomy. In international commercial affairs, the principle of autonomy is a fundamental principle and plays a crucial role. The essence of autonomy is that individuals can rely on their own will to make choices and create rights and obligations. In other words, human will is not

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only the source of rights and obligations, but also the basis for the occurrence of rights and obligations [6]. In the realm of international commercial matters, the principle of autonomy is a principle recognized by almost all countries.

(2) Principles of good faith and fairness. Article 7 of the United Nations Convention on Contracts for the International Sale of Goods (hereinafter referred to as CISG) clearly stipulates that the need for good faith shall be taken into account in the interpretation of the Convention. The principle of good faith and fairness is not only a standard inherent in international trade, but also a necessary requirement and guarantee for the further development of trade.

(3) Principle of force majeure. The so-called force majeure refers to objective circumstances that are irresistible, unavoidable and insurmountable in the performance of a contract. In the field of international commercial affairs, for the definition of force majeure, in addition to its general characteristics of the necessary generalization of the resulting definition, but also by the parties based on the autonomy of the specific force majeure matters for agreement. Force majeure in the world's commercial law are exemptions [7].

(4) The principle of change of circumstances. It is not a business risk, but a significant change that could undermine the basis on which the contract is formed. Its concept can be traced as far back as the relevant content in the Udi's Commentary on the Steps of Jurisprudence, written by the exegetical school of law. The principle is clearly stated in Article 79 of the CISG. From a different point of view, the principle of changing circumstances is also a reflection of the principle of fairness in commercial transactions.

4.2. Forms of International Unification of Rules on International Commercial Contracts

The forms of international unification of the rules governing international commercial contracts are characterized by diversity, and their main forms include the following:

(1) International conventions. International conventions are binding on their contracting States and, according to some States, have precedence over their national laws. Therefore, an international convention is the most effective way to ensure that international commercial contracts are uniform [1]. However, there is a problem in that contracting states may have reservations to the terms of the convention, and the interpretation of the terms of the convention by the contracting states may vary due to differences in culture and legal traditions of the states, which may significantly detract from the effectiveness of the convention.

(2) International practice. The international practice here mainly refers to the international commercial practice, the so-called international commercial practice refers to the international community recognized, in the course of conducting international commercial transactions over an extended period, certain rules and principles that are legally binding on both parties emerge to govern their rights and obligations in relation to the transaction. International commercial practice because of its arbitrariness and flexibility of the characteristics of the international commercial contract rules of international unity has played an important role [1].

(3) International Standard Contracts and Model Laws. The above-mentioned international commercial practices are connected to this type of rules, and it is believed that the development of international standard contracts will eventually result in the formation of international commercial practices [8]. With the continuous development of international standard contract and model law, effectively filling gaps in international commercial contract rules can be achieved in certain areas.

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5. Analysis of the Current Status of International Unification of Rules on International Commercial Contracts

To provide a comprehensive account of global harmonization regarding regulations for business agreements, the following paper will examine two key aspects: the accomplishments and challenges encountered in this domain. Regarding the achievements, the author would like to elaborate on the relevant documents formulated by the international community and the international organizations established. With regard to the existing problems, the author will look to the future and, in the second part of this section, elaborate on and analyze some of the shortcomings in the field of international unification of rules on international commercial contracts and try to put forward his thoughts on the solution of certain problems.

5.1. Achievements in the International Unification of Rules on International Commercial Contracts

5.1.1. Relevant Normative Documents

The earliest international uniform legal documents were the Paris Convention on Industrial Property of 1883 and the Berne Convention on Copyright of 1896, which were aimed at protecting intellectual property rights [9]. Ever since, significant endeavors have been undertaken by the global community to consolidate international commercial legislation, encompassing pertaining to governing international business agreements. The CISG, the General Principles, the Standard Distribution Contract, the Convention on the Contract for the International Carriage of Goods by Road, and other important ones are the primary ones. In the following, the author will analyse and elaborate on the achievements of the unification of international commercial contract rules by focusing on two of the more important norms, namely the CISG and the General Conditions.

Ever since its 1980, the CISG has emerged as a crucial instrument for harmonizing private international law and has significantly contributed to fostering global commerce while mitigating legal disputes arising from cross-border trade. In theory, the CISG is an international convention that falls under the category of international contract law established through international legislation. It encompasses numerous commercial contract regulations and holds significant sway in global trade while also impacting the development of domestic contract laws across various nations. Moreover, with the accession of more developing countries, the CISG's purpose of removing legal barriers to economic development has become more and more likely to be realized [10,11]. However, it should be noted that, due to the nature of the CISG itself, in the face of the complexity and diversity of the realities of the countries around the world, "There will consistently exist a range of challenges in the implementation and understanding of the CISG, necessitating all sectors within the global community to address these issues in order to fully leverage the effectiveness of CISG.

Commonly encountered are issues regarding the nature and efficacy of supranational legislation such as the CISG, international conventions, or model laws. Some scholars propose contracts on a global scale. [12]. Accordingly, the UNIDROIT has set its sights on the formulation of such a document, the General Principles, which sets out the internationally harmonized legal principles. The nature of the Principles has been widely discussed in the academic community, and in the light of the nature of international conventions, international commercial practice and other types of documents, the nature of the Principles should be expressed as "a non-legal document drawn up by an international organization" [10]. In drafting the Principles, the Association aimed to elaborate the general principles of international commercial contract law, taking into account the main knowledge and characteristics of the world's legal systems, in order to establish a body of contract law of general applicability throughout the world. Because of this, this non-legal document, which maximizes the

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combination of different cultural traditions, legal characteristics and economic systems in the world, has the ability to regulate the conflict of contract law between countries. It also makes up for the shortcomings of CISG to a large extent. For example, in the interpretation of the principle of good faith, combined with the General Provisions and CISG to understand this issue together, can form a more perfect and comprehensive understanding of the principle of international commercial contracts [13]. It can be said that the emergence of the General Principles has been welcomed by the international community, but due to its nature, its strength and future performance still depends on the degree of recognition and reliance on it by the international community [14].

5.1.2. Relevant International Organizations

In addition to the adoption of international norms to mitigate conflicts and contradictions in international commercial practices, some international institutions themselves have made considerable efforts to that end. The main types of organizations include the following. Firstly, examples include the United Nations and its affiliated entities like UNCITRAL. Secondly, there are intergovernmental global organizations such as UNIDROIT and the Hague Conference on Private International Law. Lastly, there are also non-state international organizations like the International Chamber of Commerce and the International Law Association. In addition, regional political and economic organizations represented by the European Union have also made great achievements and contributions in the field of bringing together rules for international commercial contracts. [1].

5.2. Issues of International Unification of Rules on International Commercial Contracts

In view of the aforementioned, significant endeavors have been undertaken by the global community to establish uniform regulations pertaining to international contracts, resulting in noteworthy accomplishments. Due to certain natural geopolitical factors and changing international relations, the road to unifying the rules of contracts for global business transactions is still a challenge. While recognizing the achievements in the field of international commercial contracts, it is also necessary to take a serious view of the problems that have existed or potentially hindered international commercial exchanges [15]. Here, the author will mainly focus on the interpretation and application of the rules on this issue.

5.2.1. Issues of Interpretation of the Internationally Harmonized Rules on Commercial Contracts

The role of legal interpretation is indispensable for any law to move from the contingent level to the actual level. However, due to the nature of the act of legal interpretation itself, it is inevitable that problems will arise in the process of interpretation. In the following, the author will mainly analyze from two perspectives: the limitation of the object of interpretation and the difference between the interpretation method and the background.

The limitations of the object of interpretation mentioned by the author here are mainly two. The first refers to the legal norms as the object of legal interpretation, because it has some characteristics inherent in the text, such as stereotypes, ambiguity, etc., will of course lead to different results in the interpretation, or unclear interpretation and other problems. Secondly, the legal norms themselves are not always correct; there may be logical or theoretical loopholes when they are drafted, or the situation in the international community may have changed after they are adopted, so that they may be incorrect. Therefore, the rules of international commercial contracts, which are part of the international legal system, are also subject to this rule.

Regarding the issue of interpretation methods, the author would like to take the CISG as an example. As a universally accepted and recognized international treaty relating to international

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commercial contracts, although the rules on how to interpret the CISG are stipulated in its text, there are still different views in the relevant practice areas when interpreting it by applying the legal principles and methods of different legal systems. Fortunately, with he General Principles are extensively used in the interpretation of CISG, the field of legal interpretation relating to the rules on international commercial contracts is developing in a good direction [16].

5.2.2. Problems in the Application of Internationally Harmonized Rules on Commercial Contracts - the Example of Unilateral Sanctions

Although the international community was currently working hard to establish and apply uniform rules on international commercial matters, and although considerable results had been achieved, their implementation was hampered by various real-life obstacles. As far as the uniform rules on international commercial contracts are concerned, one of the most serious problems encountered in the application of these rules is the problem of unilateral sanctions. In the following article, after a brief introduction to sanctions, the author will analyze this issue in a comprehensive manner, taking into account the background of unilateral sanctions.

The so-called sanctions in international law, refers to when a country in trade by the wrongful infringement of the rights of the infringed party to the aggrieved party to counterattack and retaliation, and from the current situation of the international community, the sanctions have been from the purely defensive nature of the behavior to the initiative of the offensive [17]. Sanctions against trade between countries is an effective response to the wrongful infringement of other countries, is an effective means of protecting the interests of the state and citizens. But the sanctioning behavior if it develops into unilateral sanctions based on unilateralism, it will form trade barriers and undermine the development of economic globalization. As a result, it significantly influences the implementation of international commercial contract laws. Common areas of unilateral sanctions include finance, trade and travel.

In the author's view, when analyzing the factors and solutions to the act of unilateral sanctions, comprehensive consideration should be given to the factors of the international context in which they are embodied. Unilateral sanctions will not only have an impact on the economy of the country subject to sanctions, but also on the economy of the country that implements unilateral sanctions. Generally speaking, however, countries that impose unilateral sanctions tend to have greater economic strength and international status, and in some cases even an absolutely dominant market share in the trade of certain goods. Therefore, even in the case of counterattacks by the sanctioned country, its trade balance with the unilateral sanction-implementing country is still not necessarily better or advantageous. On the other hand, the implementing country can use its comprehensive strength in the international community to continuously consume the sanctioned country to ultimately achieve the purpose of safeguarding its own interests. Therefore, unilateral sanctions is not only a purely legal issue, the author believes that it is a political and economic issues. The solution to this problem should be to narrow the gap in international status between countries by upgrading their comprehensive national strength, including economic strength, so as to promote better and equal exchanges and communication among countries.

6. Analysis of the International Unification of Chinese Commercial Contract Rules

The construction of commercial contracts in China itself has a strong international flavor, which is evident from the promulgation of the Contract Law of the People's Republic of China in 1999 to the contents of the Contracts Section of the Civil Code of the People's Republic of China later on. In the following, the author will focus on the internationalization factor in the development and construction of Chinese commercial contracts and the problems of further international harmonization.

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6.1. The International Unification Factor in the Construction of China's Domestic Commercial Contract Rules

6.1.1. Impact of CISG on China's Domestic Contract Rules

The legal development of commercial contracts in China has greatly benefited from the significant contribution made by the CISG. After the CISG came into effect in China on January 1, 1988, it put an end to China's internal and external contract legislation and gradually played an important role in China's judicial practice of cross-border commercial dealings [18,19]. The influence of the CISG can be observed in the Contract Law of the People's Republic of China, which was implemented in March 1999 [18]. Furthermore, due to the significant influence of the former Contract Law on the Contract Part of the Civil Code of the People's Republic of China, there exists substantial similarity between the CISG and relevant within this section. For example, there is still a close relationship between the CISG and the Contract Part in terms of how to determine whether a contract is an international commercial contract and some basic principles of contract law [20].

6.1.2. Impact of the General Principles on China's Domestic Contract Rules

During the drafting stage of the Principles, the Chinese Government, like other countries, sent representatives to participate in the drafting of the Principles and made useful comments [21]. One of the main features of the Principles is that, while being as compatible as possible with different legal traditions and cultural backgrounds, the Principles also summarize a number of practices and rules in international commercial activities. This is precisely why the General Principles have helped the subsequent internationalization of China's commercial contract rules by making them more universal. The General Principles, like the CISG, have had a positive impact on the development of contract law in China, and it is now widely recognized in the Chinese contract law community that the General Principles have not only influenced the development of China's Contract Law, but also the areas of interpretation and application of this legal document [22].

6.1.3. Impact of International Commercial Contract Practices on China's Domestic Contract Law

Considering the significant impact of global conventions on international trade, our researchers have diligently focused on analyzing and examining revisions made to essential documents. In addition, Chinese scholars have conducted in-depth research and analysis on some basic theories about international practices, such as definition, nature, status, interpretation and application. This has created strong doctrinal support for the application and interpretation of international practice in China [18].

6.2. International Unification of Rules for Chinese Commercial Contracts

Although China's commercial law has developed rapidly since the reform and opening up of China and the market economic system, the research and application of law in the field of international commercial contract rules are faced with certain challenges due to their relatively short period of development, which cannot be denied. In following, the author will examine the difficulties encountered by China in researching and applying regulations for international commercial contracts, taking into account the current situation observed in academic and judicial practices.

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6.2.1. Theoretical Problems in the Field of China's International Commercial Contract Rules

Although after more than 40 years of development, China's basic research on international commercial law is still relatively weak compared with other legal disciplines [18]. One of the main reasons for this is that the boundaries between this discipline and related disciplines are not clear enough, and the contents of research overlap with each other to a certain extent. It is difficult for scholars to limit their theoretical research to the field of international commercial law, which is usually highly overlapped with domestic civil and commercial law, and the research results can hardly constitute the unique achievements in the field of international commercial law. However, with the increasing trend of globalization, international exchanges are becoming more and more frequent, and the problems that arise need to be solved by the comprehensive application of a variety of legal knowledge. In addition, interdisciplinary research in jurisprudence has become more and more frequent, and cross-disciplines such as legal ethics have also emerged. Therefore, in the author's view, as long as the aim is to promote international exchanges and national development against the background of globalization, it is possible to conduct in-depth theoretical research by breaking down the boundaries between disciplines, so that the discipline can enjoy the theoretical results of the research.

6.2.2. Problems of Application in the Field of China's International Commercial Contract Rules

In addition to the above-mentioned problems of the weaker research base of the discipline, some parts to be explored can also be found in judicial practice. The first is the application of contractual rules. For example, the question of whether international commercial practice can be prioritized in the judicial field. This is a certain international nature of the problem, in the academic community has triggered a wide discussion [23]. In the author's view, this should fundamentally depend on the attitude of the sovereign state's legislation, i.e., international commercial practice can be given the status of supra-national law only if it is expressly provided for in the domestic law or the international conventions signed. Furthermore, there is a need for Chinese legal extensive research on interpretation of relevant international conventions with enhancing the safeguard contractual.

7. Conclusion

So far, this paper has completed the research on the global harmonization of commercial contract rules. In the above, the author through the basic concepts of the problem and then introduced to the international commercial contract rules of international unification of the reasons and the application of the thinking, and finally combined with the reality of the situation, respectively, in the world and China's domestic scope of the international unification of commercial contract rules of the status quo to start the analysis and discussion. In conclusion, the international unification of the rules of international commercial contracts has a positive impact on the development of international trade, and the international community should make continuous efforts to carry out legal changes in the field of international commercial law. Nevertheless, it is crucial to remain mindful of the variances in legal traditions and ideologies among nations during the ensure successful unification. [24]. Also insist on keeping abreast of the times, so that the rules of international commercial contracts can better reflect the ever-changing state of commercial reality, reflecting the rules of international commercial contracts pursued by the values of appropriateness and fairness, in order to continue to enhance people's confidence in engaging in international trade, and The continuous advancement of the global economy [25].

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