

## UNCITRAL: CATALYSING GLOBALISATION

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### INTRODUCTION

In an increasingly economically inter-reliant world, the importance of an improved legal framework for the facilitation of international trade and investment cannot be overemphasized. That is why the existence of various disparities in international trade laws all over the world drew the attention of the UN. In seeking a solution to these disparities that were affecting the smooth flow of international trade, the United Nations decided to put in place a body with the specific task of harmonizing and unifying the existing laws relating to international trade. This body is UNCITRAL.

The commission has done this by coordinating the work of organizations active in international trade; promoting. The United Nations Commission on International Trade Law (UNCITRAL) is a subsidiary body of the General Assembly of the United Nations which was established in 1966 (Resolution 2205(XXI) of 17 December 1966).<sup>1</sup> In establishing the Commission, the General Assembly recognized that disparities in national laws governing international trade created obstacles to the flow of trade, and it regarded the Commission as the vehicle by which the United Nations could play a more active role in reducing or removing these obstacles.<sup>2</sup> Participation in existing international conventions, model laws, and uniform laws; promoting the codification and wider acceptance of international trade terms, customs, and provisions; promoting ways of ensuring uniform interpretation and application of international conventions and collecting and disseminating information on national legislation and modern legal developments, including case law.

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<sup>1</sup> ryan.harrington, ORIGIN, MANDATE AND COMPOSITION OF UNCITRAL, <http://www.uncitral.org/uncitral/en/about/origin.html> (last visited Feb 7, 2018).

<sup>2</sup> See: ryan.harrington, ORIGIN, MANDATE AND COMPOSITION OF UNCITRAL, <http://www.uncitral.org/uncitral/en/about/origin.html> (last visited Feb 7, 2018).

payments, electronic commerce, and insolvency. International arbitration, transport law, electronic commerce, insolvency law, security interests and public procurement are the focus of its current work.<sup>3</sup> UNCITRAL also coordinates and cooperates with other law reform bodies (notably other international organizations) to facilitate the harmonization of international trade law and law reform efforts, and provides assistance with respect to the adoption and uniform implementation of its texts.

In an increasingly economically interdependent world, the importance of an improved legal framework for the facilitation of international trade and investment is widely acknowledged. For more than 40 years, UNCITRAL has produced relevant international texts on the sale of goods, transport, dispute resolution, procurement, infrastructure development, international payments, electronic commerce, and insolvency. International arbitration, transport law, electronic commerce, insolvency law, security interests and public procurement are the focus of its current work.

A United Nations-sponsored commission that seeks to create a forum for countries to come together and set international trade law standards. The United Nations Commission on International Trade Law (UNCITRAL) meets annually to discuss matters of international trade, with meetings alternating between Austria and the United States. Working groups meet outside the annual conference.

UNCITRAL was established by the UN General Assembly in 1966. The rise of international trade during the 20th century necessitated that countries cooperate in order to increase trade efficiencies and reduce the possibility of a trade way. While the commission has a set membership, non-member countries and organizations are able to contribute during the work sessions but are not allowed to vote.

The International Trade Law Division of the United Nations Secretariat Office of Legal Affairs discharges the functions of the UNCITRAL Secretariat. It is located in Vienna, Austria. The UNCITRAL Secretariat, originally located at the United Nations Headquarters in New York,

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<sup>3</sup> mdp2user, THE UNITED NATIONS COMMISSION FOR INTERNATIONAL TRADE LAW (UNCITRAL)ITCILO(2016), <http://www.itcilo.org/masters-programmes/ll-m-in-international-trade-law/partners-and-faculty/the-united-nations-commission-for-international-trade-law-uncitral> (last visited Feb 7, 2018).

was transferred to Vienna in September 1979. UNCITRAL carries out its work at annual sessions held alternately in New York City and Vienna.

### **MANDATE AND MEMBERSHIP**

In the years since its establishment, UNCITRAL has been recognized as the core legal body of the United Nations system in the field of international trade law. A legal body with universal membership specializing in commercial law reform worldwide for over 50 years, UNCITRAL's business is the modernization and harmonization of rules on international business. The General Assembly gave the Commission the general mandate to further the progressive harmonization and unification of the law of international trade. The Commission has since come to be the core legal body of the United Nations system in the field of international trade law.

The Commission is composed of sixty member States elected by the General Assembly. Membership is structured so as to be representative of the world's various geographic regions and its principal economic and legal systems. Members of the Commission are elected for terms of six years, the terms of half the members expiring every three years.

### **INDIA AND UNCITRAL**

India is only one of eight countries which have been a member of UNCITRAL since its inception. In celebration of the 50th anniversary of United Nations Commission on International Trade Law (UNCITRAL), the conference “Global Standards for Rule-based Commerce” was held in New Delhi, India, on 28-29 November 2016. India is a founding member of UNCITRAL. It has a membership of 60 States selected from among States Members of the UN. In 2015, India was re-elected for a term of six years (2016-2022).

The Information Technology Act, 2000 And Arbitration and conciliation act, 1996 has its roots in the United Nations Model Law on Electronic Commerce 1996 (UNCITRAL Model) recommended by the General Assembly of United Nations by a resolution dated 30 January 1997.

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Despite the tremendous progress made by the UNCITRAL secretariat and instruments, a lot remains to be done if the desired harmonization and uniformity is to materialize. A more systematic approach or regime when it comes to the enforcement of international conciliation settlement agreements in the mold of the New York Convention for arbitral awards should be considered by UNCITRAL. Currently, nations have been left to set the standard and procedure for the enforcement of the settlement agreements reached by parties to a dispute hence, the culmination of various standards and procedures. This trend does no favors to the UNCITRAL quest of achieving uniformity and harmonization in the field of ADR and thus requires urgent attention.

Ideally, preparation of legal texts such as model laws is strongly complemented by training, dissemination of information and technical assistance. Such developments benefit developing countries and other countries whose economic systems are in transition.

It is submitted, therefore, that the aforesaid be increased to raise awareness both in states where the model laws have been or are not yet adopted with the sole purpose of provoking curiosity as regards the good that lies in the adoption of the model laws and using ADR methods under them. States that have already adhered to UNCITRAL Conventions and Model Laws should consider joining efforts to promote their acceptance and implementation by other states with which they maintain close business and trade relations. By so doing, states will enhance the

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<sup>4</sup> "Celebrating UNCITRAL's 50 Years – Global Standards For Rule-Based Commerce" To Be Held In New Delhi, LIVE LAW(2016), <http://www.livelaw.in/celebrating-uncitrals-50-years-global-standards-rule-based-commerce-held-new-delhi/> (last visited Feb 8, 2018).

benefits of legal certainty and predictability that the trading parties already derive from their countries' participation in those instruments.

## **FUNCTIONING MECHANISM AND STRUCTURE**

The methods of work are organized into three levels. The first level is UNCITRAL itself (The Commission), which holds an annual plenary session. The second level is the intergovernmental working groups which are developing the topics on UNCITRAL's work program. Texts designed to simplify trade transactions and reduce associated costs are developed by working groups comprising all member States of UNCITRAL, which meet once or twice per year. The Non-member States and interested international and regional organizations are also invited and can actively contribute to the work since decisions are taken by consensus, not by vote. Draft texts completed by these working groups are submitted to UNCITRAL for finalization and adoption at its annual session. The International Trade Law Division of the United Nations Office of Legal Affairs provides substantive secretariat services to UNCITRAL, such as conducting research and preparing studies and drafts. This is the third level, which assists the other two in the preparation and conduct of their work.

Realising that as a commission it would be difficult to accomplish these objectives, it adopted a mechanism by which it appointed special bodies referred to as "working groups" to address concerns in various sectors in light of the principle formation statement of modernization of international commercial law. Six working groups were formed and these included the working group on privately financed infrastructure projects; working group on transport law; electronic commerce; insolvency law; security interests; and the international arbitration and conciliation working group.<sup>5</sup>

### *The Commission*

The Commission carries out its work at annual sessions, which are held in alternate years at United Nations Headquarters in New York and at the Vienna International Centre at Vienna. Each working group of the Commission typically holds one or two sessions a year, depending on the subject-matter to be covered; these sessions also alternate between New York and Vienna.

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<sup>5</sup> cyril.emery, WELCOME, <http://www.uncitral.org/uncitral/en/index.html> (last visited Feb 8, 2018).

In addition to member States, all States that are not members of the Commission, as well as interested international organizations, are invited to attend sessions of the Commission and of its working groups as observers. Observers are permitted to participate in discussions at sessions of the Commission and its working groups to the same extent as members.

### *Working Groups*

The Commission has established six working groups to perform the substantive preparatory work on topics within the Commission's programme of work. Each of the working groups is composed of all member States of the Commission.

The six working groups and their current topics are as follows: Working Group I - Micro, Small and Medium-sized Enterprises; Working Group II - Dispute Settlement; Working Group III - Investor-State Dispute Settlement Reform; Working Group IV - Electronic Commerce; Working Group V - Insolvency Law; Working Group VI - Security Interests.<sup>6</sup>

UNCITRAL texts are initiated, drafted, and adopted by the United Nations Commission on International Trade Law, a body made up of elected member States representing different geographic regions. Participants in the drafting process include member States of the Commission and other States (referred to as "observer States"). Observer States may participate actively in the drafting process. In addition, interested international intergovernmental organizations ("IGO's") and non-governmental organizations ("NGO's") may participate.

## **FUNCTIONS AND ROLE OF UNCITRAL**

Trade means faster growth, higher living standards, and new opportunities through commerce. In order to increase these opportunities worldwide, UNCITRAL is formulating modern, fair, and harmonized rules on commercial transactions. These include Conventions, model laws, and rules which are acceptable worldwide; legal and legislative guides and recommendations of great practical value; updated information on case law and enactments of uniform commercial law; technical assistance in law reform projects; regional and national seminars on the uniform commercial law.

The law reform work of UNCITRAL is manifested mainly in conventions, model laws, and rules. It also drafts legal and legislative guides and updates information on case law and

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<sup>6</sup> <http://ljournal.ru/wp-content/uploads/2017/03/a-2017-023.pdf>, (2017).

uniform commercial law enactments. Its major law reform projects in the area of international commercial arbitration and conciliation have been the UNCITRAL Arbitration and conciliation Rules adopted in 1976 and 1980 respectively, the UNCITRAL Model Law on international commercial conciliation, 2002 and the UNCITRAL Model Law on International Commercial Arbitration adopted by the General Assembly and recommended to member States in 1985. The Commission has also assumed law reform responsibility for matters relating to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 (New York Convention).<sup>7</sup>

Effective commercial law plays a supportive role in addressing the roots of economic tensions and problems. These include poverty and inequality, or disputes over access to shared resources. It also promotes regional and international integration, which can deter cross-border tensions from escalating into conflicts. UNCITRAL's work on arbitration and conciliation, public procurement, privately financed infrastructure projects and microfinance are particularly relevant to the challenges of transitional justice and post-conflict reconstruction. This includes the creation of jobs for ex-combatants and internally displaced persons.

UNCITRAL promotes the rule of law in both national and cross-border contexts: by developing a modern commercial law framework; by assisting States to implement it; and by helping them to fulfill their international commitments, under the auspices of other international and regional organizations. Beyond its contribution to the United Nations internal coordination, and to our work with other actors in the field, UNCITRAL also has less visible but no less important impacts on economic and social development. UNCITRAL's work is also crucial to the achievement of the Millennium Development Goals. It is directly relevant to Goal 8 — the promotion of an open, rule-based, predictable, non-discriminatory trading and financial system. And it contributes to the Millennium Development Goals in many other ways, direct and indirect. The creation of legal frameworks to mobilize resources is just one example.

## **TECHNIQUES OF MODERNIZATION AND HARMONIZATION**

UNCITRAL has adopted a flexible and functional approach with respect to the techniques it uses to perform its mandate to modernize and harmonize the law of international trade. These

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<sup>7</sup> Briefing: Most GPs are also employers. The Advisory, Conciliation, and Arbitration ..., 314 BMJ(1997).

techniques fall into three broad categories, which operate at different levels and involve different types of compromise or acceptance of difference: legislative, contractual and explanatory. To some extent, these techniques also show the process of modernization and harmonization occurring at different stages of business development. While the process typically works to bring long-established practices closer together, there are cases that might be seen as examples of “preventive” harmonization—establishing new principles and practices that will minimize divergence when national laws on new issues are developed. This has been typical in areas affected by new technology or new business practices, such as electronic commerce, arbitration, and procurement.

Legislative techniques: UNCITRAL has produced several different types of legislative texts: conventions; model laws; legislative guides; and model provisions. A convention is designed to unify law by establishing binding legal obligations. To become a party to a convention, States are required formally to deposit a binding instrument of ratification or accession with the depositary (for conventions prepared by UNCITRAL, the Secretary-General of the United Nations). The entry into force of a convention is usually dependent upon the deposit of a minimum number of instruments of ratification. If a high degree of harmonization cannot be achieved or a greater degree of flexibility is desired and is appropriate to the subject matter under consideration, a different technique of harmonization, such as a model law or legislative guide, might be used. Model laws: a model law is a legislative text that is recommended to States for enactment as part of their national law. A model law is an appropriate vehicle for modernization and harmonization of national laws when it is expected that States will wish or need to make adjustments to the text of the model to accommodate local requirements that vary from system to system, or where strict uniformity is not necessary or desirable. Within the category of model laws prepared by UNCITRAL, a comparison of two texts, the UNCITRAL Model Law on International Commercial Arbitration (1985) and the UNCITRAL Model Law on Electronic Commerce (1996) reveals the very essence of its utility.

However, for a number of reasons, it is not always possible to draft specific provisions in a suitable or discrete form, such as a convention or a model law, for incorporation into national legal systems: national legal systems often use widely disparate legislative techniques and approaches for solving a given issue, States may not yet be ready to agree on a single approach or common rule, there may not be consensus on the need to find a uniform solution to a



particular issue, or there may be different levels of consensus on the key issues of a particular subject and how they should be addressed. In such cases, it may be appropriate not to attempt to develop a uniform text but to limit the work to a set of principles or legislative recommendations.

While UNCITRAL and its Secretariat have prepared provisions and rules relating to the settlement of international commercial disputes, it is not within our mandate to become involved in individual cases. UNCITRAL does not administrate arbitration or conciliations proceedings, nor does it provide services to public entities or private parties in connection with dispute settlement proceedings.

UNCITRAL texts apply to commercial transactions between businesses, rather than between businesses and consumers. For example, the United Nations Convention for the International Sale of Goods ("CISG") does not apply to transactions in goods that the seller knows are bought for "personal, family or household use" and is also inapplicable to personal injuries caused by the goods.

In the field of dispute resolution, where a contract can include a standard dispute resolution clause referring to the use of internationally recognized rules for the conduct of dispute resolution proceedings. In the drafting of contracts, there are issues that can be resolved by reference to a standard or uniform clause or set of clauses or rules. The process of standardization of these clauses or rules has a number of advantages. It can identify all of the issues that parties should address in such clauses or rules; ensure that the clause is effective and not (as sometimes occurs in the case of agreements to arbitrate), ineffective or invalid (pathological); and provide internationally recognized and up-to-date solutions to specific issues.

Developing countries participate in the drafting and adoption of UNCITRAL texts. The UNCITRAL Secretariat includes staff and interns from developing countries and newly independent States. The commitment of the Commission and the Secretariat to the provision of training and technical assistance is long-standing and constant. While UNCITRAL and its Secretariat have prepared provisions and rules relating to the settlement of international commercial disputes, it is not within our mandate to become involved in individual cases. UNCITRAL does not administrate arbitration or conciliations proceedings, nor does it provide services to public entities or private parties in connection with dispute settlement proceedings.

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### **COORDINATING THE WORK OF OTHER ORGANIZATIONS**

An important part of the mandate of UNCITRAL is to coordinate the work of organizations active in the field of international trade law, both within and outside the United Nations system, in order to encourage cooperation between them, avoid duplication of effort and promote efficiency, consistency and coherence in the modernization and harmonization of international trade law. To implement its mandate, UNCITRAL maintains close links with international and regional organizations, both intergovernmental and non-governmental, that are active participants in the work of UNCITRAL and in the field of international trade law in order to facilitate the exchange of ideas and information.

Technical cooperation and assistance activities focus on regional approaches, including in cooperation with regional economic integration organizations, to promote newly adopted treaties, with a view to fostering their early adoption and the universal adoption of texts considered fundamental to the development of a framework for international trade. The CLOUT system and digests of case law, as well as teaching and other technical materials prepared by UNCITRAL, are useful in technical assistance activities, as well as to practitioners, academics and other users of the texts.

By taking up the New York Convention, UNCITRAL signaled its unified move towards globalization on the business front and hence played a pivotal role in laying down a uniform enforcement procedure. UNCITRAL through the international commercial arbitration and the conciliation-working group has played its role in liberalizing and strengthening international trade by beginning the journey to slither the dispute resolution mechanisms towards uniformity.

## **CREATING STRONG AND SECURE GLOBAL SUPPLY CHAINS: TRANSPORT AND E-COMMERCE LAWS IN PERSPECTIVE<sup>8</sup>**

Present-day international trade relies heavily on global supply chains in which companies divide the production of goods and services among many countries in order to reduce overall costs. During the recent financial crisis, the global financial community realized that there exists a two-trillion-dollar credit gap for micro, small, and medium-sized enterprises (MSMEs) in the developing world, a majority of which feed into global supply chains.<sup>9</sup> This revelation has been a concern to policymakers and businesses worldwide as the financial profile of the weakest link in the supply chain impacts the overall nature, robustness, and sustainability of the entire supply chain.

The most compelling reason for the international trading community to embrace electronic means of doing business and promote electronic transport records is the possibility of adopting new business models. As a result of using e-commerce, the industries can participate in the evolving area of supply chain finance (SCF). This will allow them to facilitate the transactions of their customers through better financial risk evaluation techniques, brought about by the availability of more information that is fed through a centralized system.

The current initiative of UNCITRAL to create new e-commerce law for the promotion of electronic communications in international trade will further aid and simplify trade transactions. Additionally, the national legislators have to implement domestically the existing international rules and participate proactively in the preparation of rules that are currently under development.

### **UNICTRAL AND SUSTAINABLE DEVELOPMENT**

UNCITRAL supports the Sustainable Development Goals In the Addis Ababa Action Agenda<sup>10</sup>, States endorsed "the efforts and initiatives of the United Nations Commission on International Trade Law, as the core legal body within the United Nations system in the field of international trade law, aimed at increasing coordination of and cooperation on legal

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<sup>8</sup> Victoria University of Wellington, VICTORIA UNIVERSITY OF WELLINGTON VICTORIA UNIVERSITY OF WELLINGTON(2017), <https://www.victoria.ac.nz/> (last visited Feb 9, 2018).

<sup>9</sup> HUG 1, ff. 150v-151r, inc. 3b --- 2c, CODICES HUGENIANI ONLINE.

<sup>10</sup> Addis Ababa Action Agenda ∴ Sustainable Development Knowledge Platform, UNITED NATIONS, <https://sustainabledevelopment.un.org/index.php?page=view&type=400&nr=2051&menu=35> (last visited Feb 10, 2018).

activities of international and regional organizations active in the field of international trade law and at promoting the rule of law at the national and international levels in this field."

## **CONCLUSION**

In the business world today, uniformity has become of the essence. The business world has thrived on communication through all avenues such as televisions, telephones, radio, telex, and jet-propelled travel that has contributed to the business interests meeting, corresponding and sharing. Arbitration will not be exempt from such developments. With such a trend prevailing, international arbitration and all other modern business administrative institutions will have to accommodate the increasing demand for uniformity. The driving force behind the harmonization has been UNCITRAL through its international commercial arbitration and conciliation-working group, which has drafted and introduced numerous instruments intended for cross-cultural dispute resolution around the world. Through the particular working group, UNCITRAL has graced the business world with more acceptable and yet neutral instruments to ensure that a customer gains confidence in the process and also to engineer the law reform in many countries which have sought to identify with a model yet widely accepted trend of world trade and business dispute resolution at large.

UNCITRAL has a special role to play here — as shown by your specific mandate to encourage cooperation and to coordinate the work of organizations active in the field of international commercial law. But even initiatives by the United Nations alone are not sufficient. The United Nations is just one actor in the field; our policies and approaches must cohere with those of others. Here again, UNCITRAL's role as the core United Nations legal body in the field of international commercial law gives it special relevance.

With its mandate to work in the interests of all peoples, and particularly those of developing countries, UNCITRAL has continuously sought more effective ways to deliver, to build local capacities and to respond to needs "on the ground". But no one entity, including UNCITRAL, can hope to achieve progress single-handedly on the range of issues that relate to the rule of law. They can only be addressed collectively — by the whole United Nations system.

With more than 40 years of experience and resources and access to a unique network of expertise, UNCITRAL has a distinct contribution to make. I hope and believe we can find

ways to integrate your highly specialized and relevant work into the United Nations joint rule of law programmes and to deploy UNCITRAL resources rapidly and effectively.

