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Address to the Sixth Committee of the General Assembly

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Chairperson of the Forty-fifth session of

United Nations Commission on International Trade Law (UNCITRAL)

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I. INTRODUCTION

Mr. Chairperson and distinguished delegates of the Sixth Committee,

It gives me great pleasure to appear before you and the Sixth Committee to present the work carried out at the forty-fifth session of UNCITRAL, the United Nations Commission on International Trade Law, which took place in New York from June 25th to July 6th. It was a great honour for me to have been elected to chair the Commission.

Mr. Chairperson and distinguished delegates,

The first week of the two-week session was devoted to the finalization and adoption of a Guide to Enactment of the UNCITRAL Model Law on Public Procurement. The second week's discussion started with the finalization and adoption of the Recommendations to assist arbitral institutions and other interested bodies with regard to arbitration under the revised 2010 UNCITRAL Arbitration Rules. Thereafter, the Commission considered progress of work in other legislative areas, progress made in the implementation of technical assistance and other administrative aspects of UNCITRAL.

This year's report of the Commission, as has been in the past, is quite comprehensive and illustrates how it is performing the mandate given to it by the General Assembly. Allow me, Mr. Chairperson, to introduce the report of the Commission to the General Assembly in more detail.

II. SUBSTANTIVE TEXTS ADOPTED

Finalization and adoption of a Guide to Enactment of the UNCITRAL Model Law on Public Procurement

One of the major achievements at this year's Commission was the adoption of the Guide to Enactment of the 2011 UNCITRAL Model Law on Public Procurement. The Guide was prepared to assist States in developing modern public procurement laws using the Model Law as a template for their domestic legislation. The work was undertaken by UNCITRAL Working Group I in tandem with its work on the Model Law, starting at its sixth session in 2004.

The Guide explains how the Model Law implements the key aspects of good governance, integrity and achieving value for money in public procurement. Moreover, it provides an illustration of how it fits into the international regulatory system on public procurement which includes the United Nations Convention Against Corruption and the WTO's Agreement on Government Procurement.

The Guide provides detailed recommendations to States on how to enact and implement the Model Law, and discusses the policy options and solutions available. The aim is to enable government purchasers to take advantage of modern commercial techniques, such as e-procurement and framework agreements, and to provide updates on procurement methods designed for complex technical goods and services, simple and low-value items and in situations of emergency. The Guide is an indispensable tool for the implementation of the Model Law and has been prepared to for readers with different interests.

Finalization and adoption of the Recommendations to assist arbitral institutions and other interested bodies with regard to arbitration under the UNCITRAL Arbitration Rules as revised in 2010

The second substantive text adopted at this year's Commission session was the Recommendations to assist arbitral institutions and other interested bodies with regard to arbitration under the 2010 UNCITRAL Arbitration Rules.

The Recommendations were originally adopted in 1982 to assist arbitral institutions administering arbitrations under the 1976 UNCITRAL Arbitration Rules. When the UNCITRAL Arbitration Rules were revised in 2010, it contained several changes, in particular with regard to the role granted to appointing authorities. Accordingly, it was necessary to update the accompanying Recommendations.

In 2010, the Secretariat was entrusted with the updating of the 1982 Recommendations and after two years of work, the revised Recommendations were presented to the Commission. The objective of the revised Recommendations is to promote the use of the 2010 Arbitration Rules,

and to ensure that arbitral institutions will be more inclined to accept the role of acting as appointing authorities. Recognising the potential of the Recommendations to significantly enhance the efficiency of arbitrations conducted under the 2010 Arbitration Rules, the Commission adopted the revised Recommendations.

III. OTHER AREAS OF LEGISLATIVE WORK

Distinguished delegates,

The Commission is annually updated of the progress made by the Working Groups and possible future work in other areas of work. Allow me now to provide you a short summary of the developments in these areas of work.

PROGRESS MADE BY WORKING GROUPS

Arbitration and Conciliation

In the area of arbitration and conciliation, Working Group II has continued its work on the preparation of a legal standard on transparency in treaty-based investor-State arbitration: a topic of great practical importance, particularly in light of the high number of investment treaties already in existence.

The Working Group had previously agreed that the legal standard on transparency should be drafted in the form of Rules and the Commission, at this session, considered the reports of the Working Group, containing deliberations on the content and scope of the draft Rules.

The aim is to balance the public interest inherent in treaty-based investor-State arbitration with the parties' interest in resolving disputes in a fair and efficient manner. In light of the leading role played by UNCITRAL in the field of international arbitration, the work is undertaken in close cooperation with arbitral institutions involved in administering investment arbitration so as to ensure that the standard on transparency, once adopted, could be widely applied, possibly beyond those cases administered under the UNCITRAL Arbitration Rules. The Commission urged the Working Group to continue to pursue its efforts and to complete its work on the Rules on transparency expeditiously.

In the field of arbitration, the Secretariat had also undertaken various projects in order to assist users of UNCITRAL texts. Among others, I would like to simply highlight the following two publications. First is the comprehensive Digest of case law on the UNCITRAL Model Law on Arbitration, which was published early this year to assist in the interpretation and application

of the Model Law. Second is the Guide on the New York Convention (1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards), which aims at promoting the uniform application of the Convention and limiting the risk of State practice deviating from the original spirit of the Convention. In July, a web platform was launched as part of this Guide, providing access to case law regarding the application of the New York Convention in multiple jurisdictions.

Online Dispute Resolution

I now turn to Working Group III, which has continued its work in the field of online dispute resolution (ODR), a subject of great practical importance to businesses and consumers in all parts of the world.

The Commission noted the progress made by the Working Group currently preparing a legal standard for the resolution of cross-border, low-value online disputes, including those arising from B2B and B2C transactions. Having agreed that the standard should take the form of procedural rules, progress had been made in the development of such rules.

In this vein, the Commission took note of the Working Group's mindfulness of consumer protection issues throughout its deliberations, as well as the perceived benefits of ODR in promoting interaction and economic growth within and between regions, including in developing countries and countries in post-conflict situations. Reaffirming the mandate of the Working Group, the Commission urged the Working Group to continue to explore a range of means of ensuring that ODR outcomes are effectively implemented.

Electronic Commerce

Mr. Chairperson, distinguished delegates,

As you may be aware, UNCITRAL has been a pioneer in developing legal standards on electronic commerce, and texts adopted by UNCITRAL have influenced a great number of jurisdictions. Moreover, with the increased use of electronic communications in international trade, almost all Working Groups have considered related issues when deliberating their respective topics.

One significant development in this area is the imminent entry into force, in March 2013, of the United Nations Convention on the Use of Electronic Communications in International Contracts (the "Electronic Communications Convention"), which aims at facilitating the use of electronic communications in international trade.

Going back to the deliberation at this year's Commission, the Commission took note of the progress made by Working Group IV, which had commenced work on issues related to electronic transferable records. There was general support for the Working Group to continue its work on electronic transferable records, and the Commission emphasized the need for an international regime to facilitate the cross-border use of electronic transferable records.

The Commission also took note of other developments in the field of electronic commerce. It also welcomed the ongoing cooperation between the Secretariat and other organizations, for example, the United Nations Network of Experts for Paperless Trade in Asia and the Pacific, the Economic Commission for Europe as well as the World Customs Organization on legal issues relating to electronic single window facilities and requested the Secretariat to continue reporting on relevant developments relating to electronic commerce.

Insolvency Law

Mr. Chairperson, distinguished delegates,

The Commission also noted the progress made by Working Group V where work on two topics continued.

The first topic concerns the interpretation and application of selected concepts of the UNCITRAL Model Law on Cross-Border Insolvency relating to the concept of "centre of main interests", an issue which is key to the efficient functioning of not only the Model Law, but also of the European Regulation on insolvency proceedings. That work aims at providing much needed guidance on the interpretation of this concept, noting that the commonality of the concept to these two instruments makes it highly desirable that it be interpreted consistently in States that use these two instruments.

The second topic concerns the responsibilities of directors of an enterprise in the period approaching insolvency. The focus is to encourage the early use of appropriate resolution procedures in situations of financial difficulty by highlighting the steps that directors should take in such situation, and to provide appropriate remedies where those steps are not taken.

In addition, the Commission approved the preparation of a digest of case law on the Model Law on Cross-Border Insolvency, which would provide wider and more ready access to relevant case law and draw attention to emerging trends in the interpretation of the Model Law. It was noted that such a digest would be a useful supplement to the Model Law, assisting in the dissemination of information particularly to judges and other practitioners.

Security Interests

In the field of security interests, the Commission took note of the progress made by Working Group VI, which continued its work on the preparation of a text on the registration of security rights in movable assets (the draft "Registry Guide"). In view of the urgent need for guidance in this area, the Commission requested the Working Group to proceed with its work expeditiously so that the draft Registry Guide would be submitted to the Commission at its next session for final approval and adoption.

As to future work, the Commission agreed that, upon its completion of the draft Registry Guide, the Working Group should undertake work to prepare a simple model law on secured transactions based on the general recommendations of the UNCITRAL Legislative Guide on Secured Transactions (the "Secured Transactions Guide"), and consistent with all other UNCITRAL texts.

Furthermore, the Commission welcomed the joint publication entitled "UNCITRAL, Hague Conference and Unidroit texts on security interests", which provided a comparison and analysis of major features of international instruments relating to secured transactions prepared by the three organizations. It was felt that the joint publication was a good example of the kind of coordination and cooperation that the Commission had been supporting for years and that such work could pave the way for possible future collaboration among the three organizations.

Furthermore, the Commission requested the Secretariat to continue proceeding with the preparation of a joint set of principles on effective secured transactions regimes in cooperation with the World Bank. In addition, the Secretariat was urged to continue cooperating closely with the European Commission with a view to ensuring a coordinated approach to the law applicable to third-party effects of assignments of receivables.

POSSIBLE FUTURE WORK

Mr. Chairperson and distinguished delegates,

Having given you a general illustration of the current progress being made at the Working Group level, I would now turn to discussions at this year's Commission about future work.

Public procurement and public-private partnerships

To accommodate interest of States in obtaining guidance on issues not addressed or not sufficiently addressed in the Model Law and the Guide, such as procurement planning and

sustainability and environmental issues in public procurement, the Commission instructed the Secretariat to undertake a study of such topics, which will allow the Commission to make a decision on future work in the area of public procurement.

As regards possible future work in the area of public-private partnerships, the Commission considered the need for updating its instruments on privately financed infrastructure projects in the light of developments that have occurred since 2003, when the Commission had completed its work on that subject. The Commission noted the conclusions of Rio+20 that encouraged the use of public-private partnerships as a tool for economic development, and the interest of developing countries in a model law on public-private partnerships to be elaborated at the international level. The Secretariat was requested to organize a colloquium to identify the scope of possible work and primary issues to be addressed, which will be the basis of the Commission's consideration when making a decision on the future work in this area.

Microfinance

Mr. Chairperson and distinguished delegates,

Another area of possible future work is in the field of microfinance. At this session, the Commission considered a note by the Secretariat containing a short summary of the four topics identified by the Commission in 2011, one of them being facilitating transparent secured lending to micro-enterprises and small and medium-sized enterprises (SMEs).

Pursuant to a suggestion to further explore particular issues relevant to facilitating access to credit for micro and small businesses, particularly in developing economies, the Commission unanimously agreed that one or more colloquiums on microfinance and related matters should be held, possibly in different regions. Topics to be discussed were 1) facilitating simplified business incorporation and registration; 2) access to credit for micro-businesses and SMEs; 3) dispute resolution applicable to microfinance transactions; and 4) other topics related to creating an enabling legal environment for micro-businesses and SMEs. The Commission further agreed that the holding of such a colloquium should rank as a first priority for UNCITRAL in the coming year.

International Contract Law

Mr. Chairperson and distinguished delegates,

A particularly interesting element of this year's Commission session was when the Commission considered a proposal by Switzerland for UNCITRAL to undertake work in the

area of international contract law. As you may know, UNCITRAL's prior work in this field produced one of its most successful and influential texts, the United Nations Convention on Contracts for the International Sale of Goods, often referred to as the CISG. Adopted in 1980, the CISG currently has 78 States parties from every geographical region, every stage of economic development and every major legal, social and economic system.

Despite its success, the CISG only covers specific areas of contract law dealing with the international sale of goods and leaves many matters to be determined by domestic law. The Swiss proposal argues for the need to build on the CISG's accomplishments and to further harmonize international contract law. While regional organizations are already considering actions in this direction, regionalization adds an additional layer of rules which can be said to be dis-harmonizing, ultimately impeding cross-border trade. The Swiss proposal recommends that UNCITRAL be given a mandate for further work on contract law in order to foster universal harmonization.

After discussion, in which various views were expressed, it was determined that there was a prevailing view in support of requesting the Secretariat to organize a colloquium or other meetings on the topic, resources permitting, with a view to compile further information to assist the Commission in assessing the desirability and feasibility of future work in the field of general contract law.

IV. TECHNICAL ASSISTANCE AND COORDINATION

Mr. Chairperson, distinguished delegates,

Technical assistance to law reform

While the importance of the legislative work undertaken by UNCITRAL continues to be the highlight of the discussions at the Commission, the Commission, this year, once again stressed the importance of technical cooperation and assistance.

As recognized at this year’s High-Level Meeting of the General Assembly on the Rule of Law at the National and International Levels, the advancement of the rule of law is essential for sustained and inclusive economic growth as well as sustainable development. And such advancement of rule of law does not stop at merely preparing texts to be adopted by States. That is only the beginning: those texts then have to be promoted, and carefully implemented,

sometimes taking into consideration various domestic factors. Thus technical assistance to law reform becomes an essential element of UNCITRAL's work.

In this context, the Commission expressed its appreciation for the activities undertaken by the Secretariat during the preceding year. The Commission further noted that, despite efforts by the Secretariat to solicit new contributions, funds available in the UNCITRAL Trust Fund for such activities were quite limited. Accordingly, requests for technical cooperation and assistance activities continued to be very carefully considered, and the number of such activities, which of late had mostly been carried out on a cost-share or no-cost basis, was limited.

The Commission requested the Secretariat to continue exploring alternative sources of extra-budgetary funding, in particular by extensively engaging permanent missions, as well as other possible partners in the public and private sectors.

Mr. Chairperson and distinguished delegates, the ability of the UNCITRAL Secretariat to respond to technical assistance requests is largely dependent on the availability of extra-budgetary funds. Therefore, I would like to use this opportunity to appeal through you to all States, international organizations and other interested entities to consider making contributions to the UNCITRAL Trust Fund, and to assist the Secretariat in the identification of other sources of available funding for such activities.

UNCITRAL Regional Presence

So as to reach out and to provide technical assistance to developing countries as well as to coordinate existing initiatives in the field of international trade law reform, the idea of establishing UNCITRAL regional centres has been developed in the past few years. As a result, the first UNCITRAL Regional Centre for Asia and the Pacific was established in January this year in Incheon, Republic of Korea. Due to the budgetary restraints just mentioned, the Regional Centre is currently being funded by the Government of the Republic of Korea, including in-kind contributions such as a non-reimbursable loan legal expert.

In this first phase of its operations, the activities of the Regional Centre focus on assessing needs and mapping existing projects relating to trade law reform, with a view to increasing coordination among them. Particular importance is given to coordination with other regional entities, especially ESCAP, and to the establishment of effective contacts with States already engaged in trade law reform. In light of requests received to date, as well as of existing initiatives, the Regional Centre has identified alternative dispute resolution, sale of goods and electronic commerce as its main areas of work.

Other States have also expressed interest in hosting UNCITRAL regional centres. In particular, pursuant to the mandate received from the Commission, the UNCITRAL Secretariat is exploring the possibility of establishing such centres in Kenya and Singapore.

Promotion of ways and means of ensuring a uniform interpretation and application of UNCITRAL legal texts – CLOUT

Mr Chairperson, distinguished delegates,

As in previous years, the Commission expressed appreciation for the continued work of the Secretariat on the CLOUT (Case law on UNCITRAL Texts) system and the increasing volume of abstracts published. The Commission noted that the CLOUT system and the digests were important for promoting awareness, harmonization and uniform interpretation of the law relating to UNCITRAL texts.

In particular, the Commission welcomed the third revision of the *Digest of Case Law on the United Nations Convention on Contracts for the International Sale of Goods* and the first edition of the *UNCITRAL 2012 Digest of Case Law on the Model Law on International Commercial Arbitration.* As noted earlier, the Commission also supported the preparation of a digest of case law on the Model Law on Cross-Border Insolvency, which would provide wider and more ready access to the relevant case law and draw attention to emerging trends in the interpretation of that Model Law.

Aware of the resource intensive nature of CLOUT, the Commission took note that the Secretariat had refined a project proposal aimed at finding resources for the system and that such a proposal had already been discussed with one UNCITRAL member State. The Commission fully endorsed a call for increased resources to maintain and enlarge the work of the Secretariat in this area.

Status and promotion of UNCITRAL texts

Mr Chairperson, distinguished delegates,

I am pleased to inform you that the texts prepared by UNCITRAL continue to serve as useful tools for States across the globe. At this session, the Commission took note of thirty-three (33) actions on UNCITRAL texts by States, including signature or ratification of treaties and adoption of model laws. As in years past, and in line with the Commission's universal approach, these actions took place in every geographic region: in Africa, Asia and the Pacific, Eastern and Western Europe, and Latin and North America.

Given the importance of universal participation and implementation of trade law treaties for economic integration, development and the rule of law, I am particularly pleased to inform you of the following developments. First, that there has been a promising new trend for States parties to withdraw their limiting declarations on UNCITRAL conventions, thus expanding the reach of those conventions. Second, as briefly mentioned earlier, with the accession by Dominican Republic, the United Nations Convention on the Use of Electronic Communications in International Contracts will enter into force early next year. And finally, that the New York Convention continues to move toward universal participation with 147 States parties.

Coordination and cooperation

Mr Chairperson, distinguished delegates,

At this session, the Commission was also informed of activities of other international organizations active in the field of international trade law and the Secretariat's coordination activities with organizations both within and outside the United Nations system, ESCAP, the European Union, the Hague Conference on Private International Law, the OECD, Unidroit, UNCTAD, the World Bank, just to name a few. The Secretariat had participated in expert groups, working groups and plenary meetings with the purpose of sharing information and expertise, as well as avoiding duplication of work in the relevant fields. The Commission reiterated the importance of the coordination work being undertaken by UNCITRAL and expressed support for the use of travel funds for that purpose.

V. ROLE OF UNCITRAL IN PROMOTING THE RULE OF LAW AT THE NATIONAL AND INTERNATIONAL LEVELS

Mr. Chairperson, distinguished delegates,

From my own perspective, one of the most interesting debates during this year's session was when the Commission discussed the role of UNCITRAL in promoting the rule of law at the national and international levels.

Pursuant to an invitation by the General Assembly, the Commission, every year, provides its comments on the role it plays in promoting the rule of law at the national and international levels. During the session, a rule of law briefing was organized involving various stakeholders

and particularly in the context of the High-Level Meeting of the General Assembly on the Rule of Law at the National and International Levels, which was scheduled for September 24th.

The Commission took a number of actions under this agenda item. Notably, the Commission expressed concern that [in paragraph 15 (b) of General Assembly resolution 66/102,] the Chairperson of UNCITRAL was not listed among the speakers at the high-level meeting. This omission was considered inconsistent not only with paragraph 12 of resolution 66/102, by which the Assembly had requested the Commission to continue to comment on its current role in promoting the rule of law, but also with the message of the Commission, continuously endorsed by the Assembly, that the promotion of the rule of law in commercial relations should be an integral part of the broader agenda of the United Nations. The Commission agreed that the only expert body in the United Nations system in the field of international commercial law should not be excluded from what was intended to be inclusive and comprehensive rule of law discussion in the Assembly. Indeed, the High-Level meeting was viewed as a unique opportunity for the international community to look at rule of law issues from a commercial law point of view and to increase the knowledge of all concerned about the impact of commercial law reforms and UNCITRAL on the promotion of the rule of law. Therefore, the Commission requested that I, as the Chair of its forty-fifth session, transmit its views to the Office of the President of the General Assembly so that arrangements could be made for me to address the high-level meeting.

The Commission also formulated its message to the high-level meeting, consisting of a message addressed to States and a message addressed to the United Nations system, stating that an outcome document of the high-level meeting should refer to UNCITRAL work and recognize the contribution made by UNCITRAL to the promotion of the rule of law in the economic field, which was vital to the promotion of the rule of law in the broader context.

I am sure that the Commission will be happy to learn that its views were shared by Member States and the Office of the President of the General Assembly. As a result, I was given the opportunity to address the High-Level meeting on September 24th, which allowed me promote a perspective not commonly associated with the rule of law, from a commercial and trade law perspective. Furthermore, the outcome document, recognizing the importance of fair, stable and predictable legal frameworks for generating inclusive, sustainable and equitable development, economic growth and employment, generating investment and facilitating entrepreneurship, duly acknowledged the contribution made by UNCITRAL in harmonizing and modernizing international trade law. I hope that, in the implementation of that outcome

document, Member States, the UN system and other stakeholders will duly consider the UNCITRAL message to the high-level meeting contained in this year's report.

VI. CONCLUDING REMARKS

Mr. Chairperson, distinguished delegates,

I would simply emphasize that UNCITRAL is the core United Nations entity in the field of commercial law, working to provide a legal environment supporting trade and commerce. On numerous occasions, the General Assembly has reaffirmed the multi-faceted impact of UNCITRAL's work on development, peace, stability, and the well-being of all peoples and, more recently on promotion of rule of law. I can assure you that UNCITRAL shall remain at the service of the international community and faithfully to the mandate entrusted to it: "to promote progressive harmonization and unification of the international trade law".

Let me conclude by stating that UNCITRAL and its Secretariat have been a good example of what the Secretary-General Ban Ki-moon calls for: "Doing more with less". UNCITRAL has been pursuing its mandate with great efficiency supported by a remarkably small Secretariat consisting of some fourteen lawyers and a half dozen support staff. However, we have clearly reached the limit of what such a small secretariat can do if UNCITRAL is to meet the challenges of globalization. A strategic planning exercise based on a comprehensive review of current and future work programmes and their implementation will be undertaken next year.

As noted by the chairperson of last year's UNCITRAL session, it is the Member States that are the true shareholders of the UNCITRAL and thus should be more directly involved in this process. The enhancing globalization of the economy requests UNCITRAL to continue its work on commonly agreed and understandable rules of international trade and to improve its technical assistance to law reforms. In that context, I would conclude by asking for your continued participation in and support of UNCITRAL and its activities. UNCITRAL's achievements so far justify this call.

Thank you for your attention.