

Address to the Sixth Committee of the General Assembly

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Chairperson of the Forty-seventh 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 during the forty-seventh session of UNCITRAL, the United Nations Commission on International Trade Law, which took place here in New York from July 7th to the 18th. It was a privilege for me to have been elected to chair this year's session.

Mr. Chairperson and distinguished delegates,

Undoubtedly, the highlight of the two-week session was when the Commission finalized and approved, for your consideration, a draft Convention on Transparency in Treaty-based Investor-State Arbitration, a topic on which I will expand a little later. Upon completion of that work, the Commission heard progress reports from the Working Groups, considered planned and possible future work, deliberated on the technical assistance and coordination activities carried out by its Secretariat and had almost a full-day of discussion with respect to the role of the Commission in promoting the rule of law at the national and international levels.

Ladies and gentlemen,

As always, this year's report of the Commission is quite comprehensive and touches upon a wide-range of issues that the Commission is engaged in. This is clear evidence that the Commission is continuing to make efforts to fulfil the mandate given to it by the General Assembly.

Please allow me, Mr. Chairperson, to introduce the report of the Commission in more detail.

II. SUBSTANTIVE TEXTS ADOPTED

Finalization and approval of a draft Convention on Transparency in Treaty-based Investor-State Arbitration

As I just mentioned, the Commission, this year, finalized and approved a draft Convention on Transparency in Treaty-based Investor-State Arbitration (“Convention on Transparency”). The draft of that Convention is being submitted to you, the General Assembly, for formal adoption.

Allow me to briefly give you some background on the Convention. As you are aware, last year, the Commission adopted the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration (“Rules on Transparency”). Those Rules provide for a level of transparency in treaty-based investor-State arbitrations reflecting the important public interest in such disputes. The Rules on Transparency are innovative in balancing the public interest in an arbitration involving a State, and the interest of disputing parties for a fair and efficient resolution of their dispute.

However, the Rules on Transparency apply, in principle, to the settlement of disputes arising under investment treaties concluded after April 1st of this year. This is why the Commission decided last year to prepare a convention that would allow the Rules to apply to arbitrations arising under almost three thousand investment treaties concluded before that date. The underlying assumption was that such a convention would give those States that wished to make the Rules on Transparency applicable to their treaties, an efficient and flexible mechanism to do so, without creating any expectation that other States would necessarily have to use the mechanism offered by the convention. In short, the Convention on Transparency provides States that so wish with a powerful instrument to enhance transparency in investor-State dispute settlement. Therefore, I think that the conclusion of the Convention would be a momentous occasion.

During the session in July, the Commission noted with appreciation an offer from the Government of Mauritius to host a signing ceremony for the Convention next year. Accordingly and subject to your approval, the Convention foresees a signing ceremony being held in Port Louis, Mauritius on March 17th, 2015.

Ladies and gentlemen,

Ensuring transparency in investor-State arbitration does not exist in vacuum. Its importance stems from the significance of investment as a tool for sustainable development, particularly

for developing countries. Yet, it is also true that investor-State arbitrations are increasingly the subject of much public-interest attention, particularly in those countries where significant foreign investments are common. In that context, I would strongly urge those States to consider signing and becoming parties to the Convention, which would support informed decision-making, meaningful public participation and fair outcomes in investor-State arbitrations.

Transparency repository

The key element of the Rules on Transparency is to make relevant information available to the public. In order to do so, the Rules on Transparency provide for the establishment of a Transparency Repository. As it had done last year, the Commission expressed its strong and unanimous will that the UNCITRAL Secretariat should function as the Transparency Repository. This would allow for a neutral guardianship, which is the first step in the promotion of transparency. I am pleased to report that the UNCITRAL Secretariat has, on behalf of the UN Secretary General, already taken steps to establish the Transparency Repository. The dedicated webpage on the UNCITRAL website is one example. It has been operational since April 1st, the date on which the Rules on Transparency came into effect. Yet, in line with the request by some States that this additional mandate bestowed on the Secretariat should be fulfilled on a cost-neutral budgetary basis, the Repository has been established as a pilot project funded entirely by voluntary contributions and is thus subject to the continued availability of resources.

I am pleased to report that the European Union has committed to provide funding that would allow for the recruitment of the necessary project staff. In that regard, the Commission recalled its own mandate to further the progressive harmonization and unification of international trade by taking any action it may deem useful to fulfil its functions and thus, requested its Secretariat to continue to operate the Transparency Registry, initially as a pilot project, and to seek the necessary funding.

Developments in the area of arbitration

Another important achievement that deserves to be mentioned in the field of international arbitration is the Commission's decision to publish the UNCITRAL Secretariat Guide on the New York Convention (Convention on the Recognition and Enforcement of Foreign Arbitral Awards). The Guide is an online data base, which is freely accessible and which contains the most comprehensive resources existing to date, including case law and bibliography references.

With regard to the future work of Working Group II (Arbitration), which completed its work on the Convention on Transparency, the Commission agreed that work should commence to revise and update the Notes on Organizing Arbitral Proceedings, which had been adopted in 1996.

Since the Commission session, the Working Group met last month in Vienna, and the work on the Notes was received with a great deal of interest from arbitral institutions, States and practitioners alike. It is expected that a revised version would be submitted to the Commission for adoption next year. The Working Group is also planning to consider whether work should be undertaken to address the question of cross-border enforcement of mediated settlement agreements.

III. Progress made by other Working Groups

Mr. Chairperson and distinguished delegates,

The Commission is annually updated as to the progress made by the Working Groups and on their planned and possible future work. Allow me now to provide you a brief summary of the developments.

Working Group I: Micro, Small and Medium-sized Enterprises (MSMEs)

Mr. Chairperson, distinguished delegates,

Working Group I on Micro, Small and Medium-sized Enterprises (MSMEs) met for the first time this February with the aim of reducing legal obstacles encountered by MSMEs throughout the course of their life cycle. This work is particularly relevant in developing countries, where such enterprises play a key role in the economy. When the Commission decided to establish the Working Group in 2013, it identified four main areas where the Working Group could concentrate its work. First, guidance on simplified business start-up and operation procedures; second, effective access to financial services, including mobile payment systems; third, access to credit and alternative dispute resolution; and fourth, the development of workable alternatives to formal insolvency processes. During the session in February, preliminary discussions took place with respect to the legal issues surrounding the simplification of incorporation and the identification of the best practices for business registration, both of which are expected to provide the basis for further development of this work.

Working Group III: Online Dispute Resolution

Distinguished delegates,

In the field of online dispute resolution, Working Group III is currently preparing draft procedural rules in relation to low-value, cross-border disputes arising out of electronic commerce transactions. Two different views have been expressed in the Working Group regarding the final stage of the process. To reconcile those views, a two-track system has been proposed, with one track culminating in arbitration and another in a non-binding recommendation.

Reaffirming the mandate of the Working Group, the Commission asked the Working Group to continue to include in its deliberations the effects of online dispute resolution on consumer protection in developing and developed countries as well as countries in post-conflict situations.

Working Group IV: Electronic Commerce

In the field of electronic commerce, Working Group IV has continued preparing draft provisions to enable the use of electronic transferable records. Those draft provisions aim at facilitating the dematerialisation of key commercial documents, such as bills of lading, promissory notes, cheques and warehouse receipts.

Forming the skeleton of global electronic commerce, existing UNCITRAL texts on electronic commerce continue to attract regular interest of States and have been adopted at a regular pace. The relevance of those texts for facilitating the use of new technologies across all fields of trade requires significant coordination work, carried out, among others, with the United Nations Economic and Social Commission for Asia and the Pacific (UN/ESCAP) and the European Commission.

You may wish to note that the Commission requested the Secretariat to compile further information about possible future topics in this area, which include identity management and cloud computing.

Working Group V: Insolvency Law

Mr. Chairperson, distinguished delegates,

The Commission noted the continuing work on insolvency law carried out by Working Group V to address cross-border insolvency of multinational enterprise groups, an issue of increasing importance and occurrence in the post-economic crisis world. Part of that work will focus on mechanisms to facilitate the conduct of multiple insolvency proceedings concerning enterprise

groups and their members. The Working Group will also focus on extending the obligations established for directors of companies under part four of the Legislative Guide on Insolvency Law to directors that hold a similar position in an enterprise group. The complexity of group operations and structures can sometimes have a significant impact on the behaviour of directors in periods of financial difficulty.

The Working Group was also asked to consider developing a model law or legislative provisions on the recognition and enforcement of insolvency-derived judgements.

Working Group VI: Security Interests

With respect to security interests, the Commission took note of the progress achieved by Working Group VI in preparing a draft model law on secured transactions. It was agreed that the draft model law should also address security rights in non-intermediated securities, for example, shares of subsidiaries held directly by the parent company. Acknowledging the importance of modern secured transactions law for the availability and cost of credit and the need for urgent guidance to States, the Commission requested the Working Group to expedite its work.

The Commission also noted the Secretariat's efforts to coordinate its work in this area with other relevant organizations, for example, with the World Bank in preparing a revised version of the World Bank Insolvency and Creditor Rights Standard, with the European Commission on the law applicable to third-party effects of assignments of receivables, and possibly with Unidroit on the new protocol to the Cape Town Convention on mining, agricultural and construction equipment.

Planned and Possible future work

Mr. Chairperson and distinguished delegates,

Till now, I have given you a general illustration of the current progress being made at the Working Group level. Now, I draw your attention to future work.

With regard to legislative work, the Commission recalled the resource constraints discussed at earlier sessions, both within the Secretariat and in many member States. As a consequence, the Commission reaffirmed the existing mandates and plans for future work for all six Working Groups and decided not to undertake legislative activity in addition to those in the coming year.

As regards proposed activities outside the existing Working Groups, the Commission decided to hold colloquia to recognise the thirty-fifth anniversary of the United Nations Convention on

Contracts for the International Sale of Goods in 2015 and to explore possible future work in electronic commerce. The Commission, however, decided not to undertake legislative development in the area of public-private partnerships, while that possibility would be further discussed at the next year's session.

IV. TECHNICAL ASSISTANCE AND COORDINATION

Technical assistance to law reform

Mr. Chairperson, distinguished delegates,

Support activities to ensure the effective implementation and use of UNCITRAL texts constitute an important pillar of the Commission's work. The Commission unanimously reaffirmed the existence of a general mandate for the Commission to undertake technical assistance activities, stemming from numerous resolutions of the General Assembly. It was widely felt that the sustained ability to fulfil that mandate through its Secretariat was essential to facilitate the adoption of UNCITRAL texts, in particular in developing countries and in countries that were less familiar with the work of the Commission.

While there is no doubt about the importance of technical assistance and cooperation in the promotion of UNCITRAL's texts, financial resources available in the Trust Fund for these activities are limited and not sufficient to meet the increased number of demands from States for such assistance.

Mr. Chairman, ladies and gentlemen, distinguished delegates,

The ability of the UNCITRAL Secretariat to respond to requests for technical assistance depends largely on your contribution. The Commission encouraged the Secretariat to explore alternative financial resources to allow for more activities and to undertake joint activities, possibly through partnerships, given both the need for those activities and the lack of regular budget resources. On the same note, I would like to appeal through you to all States, international organizations and other stakeholders to consider making contributions to the Trust Fund for this purpose and to assist the Secretariat in identifying other sources of funding.

UNCITRAL Regional Presence

Mr. Chairperson, distinguished delegates,

UNCITRAL's only regional centre is located in my home country, in the city of Incheon. And I take great pride in that the UNCITRAL Regional Centre for Asia and the Pacific has expanded its activities. The Regional Centre has advanced trade law reforms in the region and contributed at the policy-making level to the discussion on the nexus between trade law reforms based on uniform texts, regional integration economic development as a catalyst for social stability and conflict prevention, and the rule of law.

The growing presence of the Regional Centre in the Asia-Pacific region has been possible because of the generous financial and in-kind contributions from the Government of the Republic of Korea as well as those from regional private and public stakeholders for specific activities. Yet, I would call on you, particularly those in the region, to join in this endeavour which is entirely based on voluntary contributions.

In light of the importance of a regional presence for raising awareness of UNCITRAL's work and, in particular, for promoting the adoption and uniform interpretation of UNCITRAL texts, other States have also expressed their will to emulate in other regions, following the example of the Regional Centre for Asia and the Pacific. The Secretariat remains active pursuing consultations regarding the possibilities.

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 took note of the continued work on the Case Law On UNCITRAL Texts system, often referred to as CLOUT, and the increasing volume of abstracts published. The Commission noted that the CLOUT system and the digests of case law compiled from it were important for promoting awareness, harmonization and uniform interpretation and application of UNCITRAL texts. It is no wonder that CLOUT is considered to be the third pillar of UNCITRAL's work, complementing its legislative functions and technical assistance activity.

At present, CLOUT includes over fourteen hundred abstracts of cases and comprises a network of sixty-four national correspondents appointed by thirty-one States, assisting the Secretariat in identifying case law to be reported and in preparing the abstracts. The abstracts are made available to the general public in the six official United Nations languages and are accessible on the UNCITRAL website. In order to provide improved service to the users, the Secretariat is working on a major upgrade of the website.

By facilitating access to decisions and arbitral awards from many jurisdictions, CLOUT is particularly useful for those with limited opportunities to develop knowledge and expertise on UNCITRAL texts. Furthermore, it contributes to the promotion of such texts since it demonstrates that the texts are being used and applied in different jurisdictions and that judges and arbitrators at different latitudes are contributing to their interpretation.

Acknowledging the importance of the CLOUT system and the need for sustained resources to enhance its performance, the Commission has continuously appealed to member States for additional resources and to assist the Secretariat in identifying appropriate sources of funding.

Status and promotion of UNCITRAL texts

Mr Chairperson, distinguished delegates,

I am happy to report that States around the world are increasingly looking to UNCITRAL texts when reforming or modernizing their international trade law regimes. During this year's session, the Commission took note of the actions on UNCITRAL texts taken by States, which include signature or ratification of treaties and adoption of model laws. While many of these actions were based entirely on the States' own initiatives, many were also facilitated through the dedicated assistance provided by the UNCITRAL Secretariat.

Coordination and cooperation

Mr Chairperson, distinguished delegates,

The steadily growing number of initiatives in areas affecting international trade law makes the coordination function, one of the key mandates of UNCITRAL, increasingly important. Like previous years, the Secretariat had maintained a sustained involvement in initiatives of other organizations active in the field of international trade law, both within and outside the United Nations system. With the aim of sharing information and expertise and avoiding duplication of work, the Secretariat had participated in the activities of Unidroit, the Hague Conference, UN/CEFACT, UNCTAD, the United Nations Environment Programme, the OECD, the World Bank, and the World Trade Organization, just to name a few. The Secretariat had also participated in the United Nations Inter-Agency Cluster on Trade and Productive Capacity, which brings together entities of the United Nations system with a mandate in the field of trade and/or productive capacity.

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

Mr. Chairperson, distinguished delegates,

Since 2008, the Commission, upon invitation of the General Assembly, continued to include in its reports comments on its current role in promoting the rule of law. Taking into account issues expected to be discussed this year in the General Assembly, the Commission focused its discussion on its contribution to such dimensions of access to justice as normative protection, capacity to seek remedies and capacity to provide effective remedies. The comments were informed by the rule of law panel, which included experts from States, UNDP and multilateral development banks. The panel discussed current reforms of civil justice and administrative review procedures related to enforcing contracts, review of procurement decisions, addressing grievances arising out of insolvency or protection of security rights proceedings and specific needs of MSMEs in access to justice.

In addition, there was a rule of law briefing, which allowed the Commission to keep abreast of progress made in the integration of UNCITRAL's work into the United Nations joint rule of law activities. Particular attention was paid to the process leading to the formulation of the post-2015 development agenda. The Commission benefited from statements by Ms. Amina Mohammed, the Special Representative of the Secretary-General of the United Nations on Post-2015 Development Planning; Ms. Irene Khan, Director-General of the International Development Law Organization; Mr. Edric Selous, Director of the Rule of Law Unit in the Executive Office of the Secretary-General; and Ms. Ursula Wynhoven, the General Counsel of the Global Compact Office.

It was clear from the briefing that a sound regulatory framework for businesses, investment and trade is a powerful driving force in addressing many sustainable development challenges. The existence of such a framework largely conditions the contribution of the private sector to sustainable development. One of the messages that should come clear in any post-2015 development agenda is that States need to pay more attention to the area of commercial law. In that context, equipping the United Nations with knowledge and tools to assist States in building capacity to put in place sound commercial law frameworks was considered essential. The Commission therefore encouraged efforts towards better integration of UNCITRAL's work in relevant United Nations programs. In that respect, the Commission took note of a draft guidance note of the Secretary-General on UN approaches to the promotion of rule-based

commercial relations, intended to become an advocacy tool for the promotion of the work of UNCITRAL across the United Nations, particularly in United Nations country offices.

VI. CONCLUDING REMARKS

Mr. Chairperson, distinguished delegates,

UNCITRAL is the core United Nations body in the field of commercial law. For almost five decades, it has been committed to providing a legal environment that fosters international trade and commerce. The General Assembly has repeatedly acknowledged and reaffirmed UNCITRAL's impact on development, peace, and stability in the world through harmonization and modernization of international trade law. Over the years, UNCITRAL and its Working Groups have developed highly effective working methods and a negotiation culture that is both efficient and inclusive. The Convention on Transparency is just one great example of UNCITRAL's ability to shape the global policy agenda into legal norms that makes international commercial law efficient while simultaneously balancing concerns affecting public interest.

In this way, UNCITRAL has been faithfully pursuing the mandate of progressively harmonizing and modernizing international trade law. With a small Secretariat of only fourteen lawyers and half a dozen support staff, which is essentially the same size as it was in the 1970s, UNCITRAL is undertaking the challenge of current work programmes to the best of its ability. As always, the Commission this year was unanimous in its profound appreciation for the vast amount of high quality work that its Secretariat consistently produces. As the chair of the Commission, I would like to echo what has been expressed by the Commission and my sincere appreciation goes to the Secretariat and its staff for all the hard work. And, of course, my special thanks go to the Secretary of UNCITRAL, Mr. Renaud Sorieul, who is with me here today.

At this juncture, I would like to call on your strong support, within this Committee as well as in the Fifth, to provide the necessary resources for UNCITRAL to thrive and to do more. As mentioned earlier, a number of UNCITRAL's projects including the Transparency Repository, its technical assistance activities and the CLOUT system rely heavily or entirely on extra-budgetary resources. Thus, I would reiterate the appeal of the Commission to the States, through you, to provide funding for such activities and to assist the Secretariat in identifying additional resources.

Mr. Chairperson and distinguished delegates,

In 2015, the world leaders will agree on a new development agenda and take a decisive action to set the world on a sustainable course. This is evident from the theme of the 69th session, “Delivering on and implementing a transformative post-2015 development agenda”, which underscores the need to focus on its effective implementation.

The promotion of sustained and inclusive economic growth is one of the overarching objectives of this transformative agenda. In that context, the pivotal role of trade has been widely recognized. Here is where I believe UNCITRAL may contribute, for example, in promoting an open, rules-based, non-discriminatory and equitable multilateral trading system. Just as UNCITRAL has been providing comments on its role in the rule of law context, I believe UNCITRAL must also readily answer how its work constructively supports the post-2015 agenda objectives. Its Working Groups also need to pay attention to the discussion underway in the General Assembly so that their work further supplements the overarching objectives. As the chair of UNCITRAL this year, my utmost priority is to raise awareness about UNCITRAL and its work, particularly with regard to the post-2015 development agenda discussion.

Distinguished delegates of the Sixth Committee,

As has been stated numerous times, it is the member States who are the true “shareholders” of UNCITRAL. It is the member States who have both a say and direct interest in maximizing the return on your investment in modernization and harmonization of international law. Thus, I ask for your continued participation and support of UNCITRAL and its activities. The ever-increasing importance of international trade and accelerating globalization of the economy require UNCITRAL to continue its work, which benefits all States.

With that, I would like to conclude my address to you on the work carried by UNCITRAL during its forty-seventh session. I thank you for your attention.