

**Address to the Sixth Committee
of the General Assembly
by Mr. Wisit WISITSORA-AT (Thailand)
Chairperson of the fifty-second session of
the United Nations Commission on International Trade Law
(UNCITRAL)
21 October 2019**

[I. INTRODUCTION]

Mr. Chairperson, distinguished delegates of the Sixth Committee,

It gives me great pleasure to present the work carried out by the United Nations Commission on International Trade Law at its fifty-second session, which took place in Vienna from 8 to 19 July.

This is the second time that I have had the honour to present the report of the Commission to the Sixth Committee. The first time was some 15 years ago, when I chaired the thirty-seventh session of UNCITRAL. I will try to make my presentation shorter this time around by highlighting only the key achievements.

One such achievement was the finalization of seven texts within the space of two weeks, as opposed to the usual three weeks allocated to UNCITRAL sessions. This was possible due to adjustments by the Secretariat in the organization of the session, for which the Commission expressed its appreciation. It was widely considered in the Commission that the 52nd session would serve as a model for organizing future sessions.

The seven texts finalized were:

- the UNCITRAL Model Legislative Provisions and Legislative Guide on Public-Private Partnerships;
- the UNCITRAL Model Law on Enterprise Group Insolvency with its Guide to Enactment;
- an additional section to part four of the UNCITRAL Legislative Guide on Insolvency Law addressing the obligations of directors of enterprise group companies in the period approaching insolvency;
- the Practice Guide to the UNCITRAL Model Law on Secured Transactions; and
- the UNCITRAL secretariat Notes on the Main Issues of Cloud Computing Contracts.

When adopting or approving those texts, the Commission highlighted their expected contribution to the achievement of the Sustainable Development Goals.

In addition, in adopting the texts on public-private partnerships, the Commission noted the plans of the European Bank on Reconstruction and Development and the Economic Commission for Europe to prepare a model law on public-private partnerships. The Commission highlighted the need to avoid unnecessary duplication of efforts and the risk of inconsistent work products.

In adopting the texts in the area of insolvency law and assessing the ongoing work in that area, the Commission underscored the importance of close coordination with the World Bank Group. In that regard, the Commission recalled the Insolvency and Creditor Rights Standard (known as the ICR Standard), which comprises the World Bank Principles and the recommendations made in the UNCITRAL Legislative Guide on Insolvency Law. Recognizing the role of the ICR Standard as an assessment tool in evaluating and improving countries' insolvency regimes, the Commission considered it important to ensure that the ICR Standard comprise all UNCITRAL insolvency texts, including those adopted this year.

Other highlights of the session include the updated work programme of the Commission, about which I will say a few words later, and the proposal of Israel and Japan to enlarge the membership of UNCITRAL. While broad support was expressed for the idea of enlarging the membership, the Commission noted that many issues remained open. It was considered premature to submit the proposal for consideration by this Committee this year. In the meantime, the Commission encouraged States' consultations on the proposal and requested the Secretariat to facilitate them.

Please allow me now to highlight the main aspects of the texts finalized at the fifty-second session.

[II. TEXTS ADOPTED BY THE COMMISSION]

Texts on public-private partnerships

The new UNCITRAL texts on public-private partnerships - the Model Legislative Provisions and the Legislative Guide - update and consolidate UNCITRAL's existing texts on privately financed infrastructure projects, which were adopted by the Commission and endorsed by the General Assembly in the early 2000s. The need to update these texts arose in response to the rapid evolution in the types of public-private partnerships being undertaken and the practices involved in their conclusion and implementation. In addition, new provisions and guidance were needed to strengthen anti-corruption safeguards in the light of the United Nations Convention against Corruption, and to address in more detail sustainable development

issues, in particular climate change concerns. Finally, the texts needed to be aligned with more recent UNCITRAL texts in the area of public procurement.

Key takeaways from the new UNCITRAL texts on public-private partnerships are: first, better preparation and planning of projects; second, improved procedures for contract award and transparency in the selection of the private partners; third, greater attention to addressing environmental risks and climate change through new mechanisms at project inception and through the lifecycle of the project; and finally, better appraisal of long-term sustainability of public-private partnerships.

The new UNCITRAL texts are most relevant to the achievement of Sustainable Development Goal 9 and its target A that addresses resilient infrastructure, as well as Sustainable Development Goal 12 and its target 7 that addresses sustainable procurement practices. But the texts are also relevant to the achievement of several other SDGs.

Enterprise group insolvency texts

In the area of insolvency law, the Commission adopted the UNCITRAL Model Law on Enterprise Group Insolvency together with its guide to enactment.

These texts focus on the insolvency of multiple debtors that are members of the same enterprise group, which may be located in one or more jurisdictions. The Model Law allows for insolvency proceedings relating to such debtors to be centralized to a certain degree, in particular through: (a) the planning proceeding; (b) the group insolvency solution reached in the planning proceeding; (c) domestic and cross-border recognition or approval of the planning proceeding and the group solution; and (d) other measures to facilitate resolution of enterprise group insolvency issues, including the possibility to treat foreign creditor claims in accordance with the law applicable to those claims (often referred to as “synthetic” measures).

The Commission also adopted an additional section of part four of the UNCITRAL Legislative Guide on Insolvency Law. That part addresses directors’ obligations in the period approaching insolvency. The additional section covers the situation where a director is appointed to, or holds a managerial or executive position in, more than one enterprise group member and a conflict arises in discharging the obligations owed to the different members.

The texts are expected to contribute to the achievement of Sustainable Development Goal 8 aimed at promoting sustained and inclusive economic growth.

Practice Guide to the UNCITRAL Model Law on Secured Transactions

In the area of security interests, the Commission adopted a Practice Guide to the UNCITRAL Model Law on Secured Transactions.

The Practice Guide is a non-legislative text. It describes the types of secured transactions that creditors and other businesses can undertake under the Model Law, and provides step-by-step explanations on how to engage in them. Parties involved in secured transactions should find the Practice Guide particularly useful in reducing the risk of loss arising from default of payment.

The Practice Guide is expected to contribute to the achievement of Sustainable Development Goals 8 and 9 that address access to financial services, including by micro, small and medium-sized enterprises.

Notes on the Main Issues of Cloud Computing Contracts

Finally, the Commission approved for publication the UNCITRAL secretariat Notes on cloud computing contracts. The Notes are a non-exhaustive source of information on drafting cloud computing contracts. They build on current contractual practices, relevant technical standards and, where available, existing legislation, but are not themselves legislative in nature.

The preparation of such descriptive document was considered by UNCITRAL particularly useful for start-ups and micro, small and medium-sized enterprises. Those enterprises may find these services attractive insofar as they eliminate or significantly reduce the need for the capital investment in information technology infrastructure. At the same time, micro, small and medium-sized enterprises may lack the expertise to assess the risks associated with entering into cloud computing contracts. The Notes alert the reader about these risks and suggest strategies to mitigate them at the pre-contractual stage and in the drafting of the contract.

Given the nature and subject matter of the Notes, the Commission agreed that their publication as an online tool, in addition to the usual form of publication, would ensure that they reach their intended audience in a more effective and accessible way.

The Notes are relevant to the achievement of Sustainable Development Goal 9, in particular its target C that addresses access to information and communications technology.

[III. PROGRESS MADE BY WORKING GROUPS]

In addition to finalizing texts, the Commission also took note of the progress made by its six working groups in developing new texts. It confirmed that:

- Working Group I should continue preparing a legislative guide on a limited liability organization that addresses the particular needs of micro, small and medium-sized enterprises;
- that Working Group II should continue its work on expedited arbitration;
- that Working Group III should continue work on reform of investor-State dispute settlement system. The Commission expressed its appreciation for the inclusiveness and transparency in that work and for financial and other support provided by France, Germany, Switzerland and the European Union that allowed the Secretariat to organize intersessional meetings of Working Group III in different regions.

As regards other working groups, the Commission confirmed:

- that Working Group IV should proceed with the preparation of an international instrument on legal issues related to identity management and trust services in the online environment;
- that Working Group V should continue work towards a text on a simplified insolvency regime; and
- that Working Group VI should continue preparing an international instrument on the judicial sale of ships.

[IV. FUTURE WORK]

As regards future work, the Commission noted that the next topic for Working Group I, in its work on legal issues faced by micro, small and medium-sized enterprises throughout their business lifecycle, would be access to credit based on the comprehensive framework for secured transactions.

Noting its central and coordinating role within the United Nations system for legal issues related to the digital economy and digital trade, the Commission requested the Secretariat to continue its exploratory work on those issues and to expand the scope of this work to include high-tech-related disputes.

The Commission also requested the Secretariat to continue its preparatory work on warehouse receipts.

Several States submitted proposals for possible future work at the session. In response, the Commission agreed to convene two international colloquiums (one on civil asset tracing

and recovery and the other on applicable law in insolvency proceedings) and requested the Secretariat to commence exploratory work on railway consignment notes.

[V. NON-LEGISLATIVE ACTIVITIES]

Mr. Chairperson, distinguished delegates,

As you know, UNCITRAL's work programme consists not only of legislative activities, but also a wide range of non-legislative activities. While a complete status of these activities was reported to the Commission by the Secretariat, I would like to highlight two: (1) the system for the collection and dissemination of information on case law on UNCITRAL texts (known as CLOUT) and (2) technical assistance activities, including those of the UNCITRAL Regional Centre in Asia and the Pacific. The consideration of those matters led to important Commission decisions, which are expected to have a beneficial impact on the promotion of UNCITRAL texts and their uniform interpretation and application.

On CLOUT, the Commission noted that, although the UNCITRAL website had been hosted on a mobile device friendly platform since last October, the Secretariat was facing a number of difficulties in migrating the CLOUT database to that platform and in overcoming technical limitations with respect to CLOUT search functionality. The Commission requested the Secretariat to implement measures for rejuvenating and expanding CLOUT while preserving its fundamental features of multilingualism and free access. One such measure is the establishment of a steering committee that will ensure a closer connection between States and CLOUT. The Commission encouraged States to appoint representatives to that committee. Another measure is to establish CLOUT partnerships, in which partner organizations would be expected to monitor and report on developments related to UNCITRAL texts, undertake UNCITRAL-related promotional activities, and disseminate materials online and in local languages.

As for technical assistance activities, the Commission, as in previous years, encouraged the Secretariat to take a strategic approach to the delivery of these activities. This year it requested the Secretariat to intensify capacity-building activities with a particular focus on the judiciary, in cooperation with relevant international organizations where necessary. The Commission noted that the World Bank Group is in particular interested to implement jointly with UNCITRAL training for judges from developing countries on the ICR Standard.

Acknowledging that the ability of the Secretariat to carry out technical assistance and capacity-building activities depended on the support of all stakeholders, the Commission

expressed its gratitude to States and organizations that made voluntary contributions to the UNCITRAL trust funds:

- Indonesia, the Republic of Korea and the Commercial Finance Association Education Foundation for contributing to the Trust Fund for UNCITRAL Symposia, and
- to Austria, the European Union, the Swiss Development Cooperation and the German Agency for International Cooperation (GIZ) for contributing to the Trust Fund for Granting Travel Assistance to Developing States Members of UNCITRAL.

While encouraging the Secretariat to explore sources of extrabudgetary funding for the delivery of non-legislative activities, the Commission emphasized the need for the Secretariat to remain neutral and independent.

As with the session in 2018, the fifty-second session featured a technical assistance roundtable, during which States and international organizations discussed their practical experience with the use and implementation of UNCITRAL texts.

As has been the practice since 2008, the Commission, in response to the General Assembly's invitation, transmits to the Assembly comments on the Commission's current role in promoting the rule of law. They draw on a note by the Secretariat on the subject and the deliberations at the session on the UNCITRAL legislative and non-legislative programmes. Those materials explain the contribution of UNCITRAL texts and its ongoing work to the promotion of the rule of law and the implementation of the Sustainable Development Goals.

[VI. CONCLUDING REMARKS]

Mr. Chairperson, distinguished delegates,

It gives me great pride to report on the achievements of the Commission at its fifty-second session. These achievements would not have been possible without the hard work and dedication of delegates, observers and the Secretariat. As my predecessors have done, I appeal to all concerned for their continued support of UNCITRAL.

The objectives that motivated the General Assembly to establish UNCITRAL 53 years ago are as relevant today as they were at that time, and even more so in the light of evolving business practices, the digital revolution and the potentially disruptive effects of new technologies. These developments call for sustained attention to the harmonization and

modernization of international trade law. When such modernization does not occur or it occurs in a disharmonized way, international trade suffers.

International trade is often referred to as an engine for development. Indeed, as the Secretary-General noted earlier this year, the contribution of international trade to economic growth and sustainable development is undeniable.¹ The engine of international trade needs proper care. UNCITRAL makes an important contribution to this end but it also needs good care to be able to continue carrying out its mandate.

With that, I would like to conclude my address to you on the work carried by UNCITRAL during its fifty-second session.

I thank you for your attention!

¹ <https://www.un.org/sg/en/content/sg/statement/2019-05-10/secretary-generals-remarks-special-general-council-of-the-world-trade-organization-delivered>