

Address to the Sixth Committee of the General Assembly
by Ms. Beate CZERWENKA (Germany)
Chairperson of the Fifty-first session of
the United Nations Commission on International Trade Law
(UNCITRAL)
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[I. INTRODUCTION]

Mr. Chairperson, distinguished delegates,

It gives me great pleasure to present the work carried out during the fifty-first session of the United Nations Commission on International Trade Law, which took place in New York from June 25th to July 13th. Since you have before you the report of that session, I will focus on outlining the key achievements and issues to be noted.

Mr. Chairperson, distinguished delegates,

As the core legal body of the United Nations in the field of international trade law, UNCITRAL finalized four legislative texts in key commercial areas: dispute resolution; micro, small and medium-sized enterprises; and insolvency. In addition, as detailed in the report, UNCITRAL heard progress reports from its Working Groups, decided on future work, and deliberated on the technical assistance and coordination activities carried out by its Secretariat. It also held an event to celebrate the 60th anniversary of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards and a roundtable to discuss technical assistance.

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

[II. TEXTS ADOPTED BY THE COMMISSION]

[Finalization and adoption of a convention and model law on international commercial mediation]

In the field of *dispute resolution*, UNCITRAL finalized the draft UN Convention on International Settlement Agreements Resulting from Mediation. The purpose of this convention is to allow parties to rely on a mediated settlement agreement and enforce it in a cross-border context according to simplified procedures. It contains reservations which will allow States to tailor its application in a flexible manner, including in the context of investor-State dispute settlement. During the debate, the Government of Singapore offered to organize a ceremony for the signing of the convention, once adopted. The Commission gratefully acknowledged this offer and adopted the suggestion that the convention be referred to as the “Singapore Convention on Mediation” by unanimous support. The Commission transmitted the draft Convention to the General Assembly for consideration and adoption as a United Nations Convention. The text of the draft Convention is in annex I of the report for your consideration.

In addition, UNCITRAL adopted the Model Law on International Commercial Mediation and International Settlement Agreements resulting from Mediation, which amends the UNCITRAL Model Law on International Commercial Conciliation of 2002. The new adopted Model Law supports the implementation of the above mentioned new mediation convention, as well as the provision of a stand-alone, streamlined procedure for international mediation.

It is expected that both instruments – the Convention as well as the Model Law – will foster the use of international mediation for solving cross-border disputes in a cost effective and efficient manner.

[Micro, small and medium-sized enterprises (MSMEs)]

In the field of *micro, small and medium-sized enterprises*, the Commission finalised and adopted the Legislative Guide on Key Principles of a Business Registry. This Legislative Guide is the first chapter of a larger and more ambitious project aimed at developing texts to promote an enabling legal environment for the operation of MSMEs. The Legislative Guide aims to assist policy makers, practitioners and those involved in the design and implementation of business registries to streamline business registration systems.

Drawing on best practices of States worldwide, the Legislative Guide recommends a registration system that is accessible through a single-entry point; possibly allowing for

simultaneous registration with the business registry and other relevant public authorities (for example, taxation and social security) and delivering services in the shortest time possible with user procedures easy to follow. In keeping with this approach, the Guide supports, inter alia, the use of electronic registries and of unique business identifiers, as well as the establishment of one-stop shops, i.e. physical or virtual offices that permit simultaneous registration with all authorities involved in business start-up.

[Insolvency Law]

In the area of *insolvency law*, the Commission finalized and adopted the Model Law on Recognition and Enforcement of Insolvency-Related Judgments and the Guide to Enactment of the Model Law. The Model Law expands upon and complements the 1997 UNCITRAL Model Law on Cross-Border Insolvency, which has now been enacted by some 45 jurisdictions. It acknowledges that in a world in which it is increasingly easy for enterprises and individuals to have assets in more than one State and to move them across borders, there is a need for an international regime specifically addressing recognition and enforcement of insolvency-related judgments. Existing international instruments on recognition and enforcement of judgments in civil and commercial matters typically exclude this type of judgments.

The new Model Law adds to the international instruments available to facilitate the coordination of cross-border insolvency proceedings, allowing more efficient and effective administration of those proceedings to support the rescue of financially viable businesses for the benefit of all stakeholders.

[III. EVENT TO CELEBRATE THE 60TH ANNIVERSARY OF THE NEW YORK CONVENTION]

Mr. Chairperson, distinguished delegates,

During its session, the Commission also held an event to celebrate the sixtieth anniversary of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Opened by the UN Legal Counsel, the event provided an opportunity to consider how UNCITRAL has contributed to the successful development of the international arbitration framework. In this context the UNCITRAL Secretariat Guide on the New York Convention as well as the web platform created to host the Guide - called www.newyorkconvention1958.org - were welcomed as providing the most comprehensive and freely accessible tools supporting legislative implementation and judicial application of the New York Convention. Delegates and

over 300 invited guests participated in fruitful discussions on the success of the New York Convention, which, to date, has been ratified by 159 States.

[IV. INFRASTRUCTURE DEVELOPMENT AND PUBLIC-PRIVATE PARTNERSHIPS]

Another topic dealt with by the Commission was the Legislative Guide on Privately Financed Infrastructure Projects.

At its fiftieth session in 2017, UNCITRAL had confirmed that the Secretariat should update, as necessary, the 2000 UNCITRAL Legislative Guide on Privately Financed Infrastructure Projects, involving experts, in order to reflect not only lessons learned in the last decades, but also to take into account other developments, such as the entry into force of the United Nations Convention against Corruption, and the adoption of the 2011 UNCITRAL Model Law on Public Procurement.

The Commission took note of and endorsed general policy proposals by the Secretariat for amending the Legislative Guide, as well as the specific amendments proposed by the Secretariat.

[V. PROGRESS MADE BY WORKING GROUPS]

Mr. Chairperson and distinguished delegates,

A key element of the Commission's agenda is the annual report by its Working Groups on progress made with respect to their current work agendas. As noted in the report, the Working Groups are continuing with a full agenda of legislative work. Several texts in the areas of insolvency, secured transactions and dispute resolution are likely to be submitted for finalization at the Commission session in 2019.

Of particular note is the work of Working Group III on investor-State dispute settlement (ISDS) reform. This Working Group continued with its mandate (i) to identify and consider concerns regarding ISDS; (ii) to consider whether reform is desirable in light of any identified concerns; and (iii) where necessary, to develop any relevant solutions to be recommended to the Commission.

Working Group III dealt with the topic of ISDS during its sessions in November 2017 and April 2018. While welcoming the broad contribution of expertise from various stakeholders,

including intergovernmental and non-governmental organizations, an academic forum and a group of practitioners, the Commission recalled that the process should be government-led with high-level input from all governments. In that regard, the Commission expressed its appreciation for the contributions to the UNCITRAL Trust Fund from the European Union and the Swiss Agency for Development and Cooperation to support participation of representatives of developing States in the deliberations of the Working Group.

[VI. FUTURE WORK]

Mr. Chairperson and distinguished delegates,

I will now turn to the Commission's decisions with respect to future work.

Several new proposals were considered and it was agreed that in terms of allocation of working group time, priority should be given to two topics. The first, *judicial sale of ships*, was allocated to the first available working group, possibly Working Group VI. The second, *issues related to expedited arbitration*, was allocated to Working Group II, which will hold its first session on this topic in February 2019.

On other topics discussed, including *warehouse receipts*, *legal issues related to the digital economy*, *contractual networks*, and *civil law aspects of assets tracing and recovery in the context of insolvency*, the Commission took the view that more preparatory work was required before it could decide on further steps to be taken. In undertaking that preparation, priority should be given to the digital economy. With respect to dispute resolution, the Commission also agreed that the Secretariat would prepare notes on organizing mediation proceedings and update the UNCITRAL Conciliation Rules.

Finally, the Commission asked the Secretariat to proceed with work on updating the Legislative Guide on Privately Financed Infrastructure Projects, with a view to submitting the complete set of all draft revised chapters, to be renamed the UNCITRAL Legislative Guide on Public-Private Partnerships, for consideration and adoption by the Commission its fifty-second session, in 2019.

[VII. TECHNICAL ASSISTANCE AND COORDINATION]

[1. Technical assistance to law reform]

Mr. Chairperson, distinguished delegates,

You will agree with me that the Commission and the Secretariat deserve to be congratulated for the progress made since last year in developing various legislative texts. However, development of legislative texts is only the first step in the process of trade law harmonization. Dissemination of information as well as technical cooperation and assistance projects are vital to the further use, adoption and interpretation of UNCITRAL texts. In this spirit, the Secretariat pursued its efforts to provide information, to actively support domestic law reform through drafting assistance, and to share practical experience in the enactment of UNCITRAL texts, as well as to advise on interpretation and implementation of those texts.

The ability of the Secretariat to respond to requests from States and regional organizations depends on the availability of funds to meet associated costs, mainly in the form of voluntary contributions made to the UNCITRAL Trust Fund for Symposia. Despite some highly appreciated contributions, such as by the Republic of Korea to support participation in the Asia Pacific Economic Cooperation (APEC) Ease of Doing Business project, those funds remain regrettably insufficient to meet the requests. The Commission therefore welcomed the Secretariat's efforts to explore 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, and seeking cooperation and partnership with international organizations and bilateral assistance agencies in the provision of technical assistance.

[2. UNCITRAL Regional Presence]

Mr. Chairperson, distinguished delegates,

The UNCITRAL Regional Centre for Asia and the Pacific based in Incheon, Republic of Korea, has continued to carry out its mandate, namely by providing capacity building and technical assistance to States, as well as to international and regional organizations. The Centre has enhanced international trade and development, by promoting certainty in international commercial transactions through the dissemination of international trade norms and standards, in particular those elaborated by UNCITRAL. This has resulted in a tangible increase of accessions, ratifications and enactments of UNCITRAL texts in the Asia Pacific region.

The Commission encouraged the Secretariat to continue its consultations on possible additional UNCITRAL regional centres and consider carefully the level of human resources that would be needed for the efficient management of such centres and for ensuring adequate supervision by, and coordination with, Vienna-based UNCITRAL secretariat staff.

[3. Promotion of ways and means of ensuring a uniform interpretation and application of UNCITRAL legal texts – CLOUT]

Mr Chairperson, distinguished delegates,

Emphasizing the importance of uniform interpretation to the application and interpretation of its texts, the Commission expressed its appreciation for the Case Law on UNCITRAL texts, the so-called CLOUT, managed by the Secretariat. Case law on twelve UNCITRAL legislative texts, conventions and model laws, is currently reported, covering court decisions and arbitral awards rendered in all geographic regions of the world. The Commission encouraged States to actively participate in the system in order to facilitate collection and dissemination of case law, especially in view of the increasing volume of users of the CLOUT database.

[VIII. CONCLUDING REMARKS]

Mr. Chairperson, distinguished delegates,

It will not come as a surprise to you when I say that I am very pleased to have been able to chair the fifty-first session of the Commission and to preside over a very productive session. As always, the Commission was unanimous in its profound appreciation for the significant volume of high quality work that its secretariat produces to meet the increasing challenges of its current work programmes. The General Assembly, too, has repeatedly acknowledged and reaffirmed UNCITRAL's impact on development, peace, and stability in the world through harmonization and modernization of international trade law. As the chair of the Commission, I would like to echo those sentiments. My sincere appreciation goes to the staff of the Secretariat for their hard work. And, of course, my special thanks to the new Secretary of UNCITRAL, Ms. Anna Joubin-Bret, who is here with me today.

At this juncture, I would like to call on your strong support, within this Committee as well as in the Fifth Committee, to provide the resources necessary for UNCITRAL to thrive and expand its activities to meet increasing demands. As mentioned earlier, a number of UNCITRAL's projects, including the Regional Centre for Asia and the Pacific, the Transparency Registry for the publication of information and documents in treaty-based investor-state arbitration, and – last but not least – 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,

As has been stated numerous times, it is the Member States who are the true “shareholders” of UNCITRAL. It is thus you that have both a say and direct interest in maximizing the return on your investment in modernization and harmonization of international trade 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 economies require UNCITRAL to continue its work for the benefit of all States.

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