

**Address to the Sixth Committee  
of the General Assembly  
by H.E. Philbert Abaka Johnson (Ghana)  
Chairperson of the fifty-fourth session of  
the United Nations Commission on International  
Trade Law  
(UNCITRAL)  
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## **[I. INTRODUCTION]**

Mr. Chairperson, distinguished delegates of the Sixth Committee,

I am pleased to appear before you and your Committee to present the work carried out by the United Nations Commission on International Trade Law (UNCITRAL) at its 54<sup>th</sup> session, from 28 June to 16 July.

Ghana has been an active member of UNCITRAL for many years and it was a great honour for me personally and for my country to have been elected Chair of the Commission at the past session. Notably, the Chair of the very first session of UNCITRAL in 1968 was also from Ghana [([A/7216](#), para. 14)].

Please allow me at the outset to emphasize that like the previous session of the Commission, the 54<sup>th</sup> session had to take place in a hybrid format, with most delegations attending online and that we had again to rely on the flexibility and cooperation of delegations to ensure that

we could deliberate and decide in spite of the difficult conditions that continued to prevail throughout the year.

Let me in this regard thank the members of the Bureau for their cooperation and support, and please also allow me to thank my predecessor, Ambassador Eric Anderson, from Peru, who has prepared the ground and the conditions that have allowed us to hold our 54<sup>th</sup> session.

You will find at the beginning of the report the decisions taken by States members of UNCITRAL regarding the procedure for taking decisions of UNCITRAL pertaining to its 54<sup>th</sup> session, and the organization and agenda of the session.

But as every cloud has a silver lining, the 54<sup>th</sup> Commission session was attended by a high number of participants never achieved before, with over 1,000 participating delegations, and several very well attended virtual side events held.

Last year, the Commission had not undertaken any legislative deliberations but had encouraged its working groups to continue and, when possible, finalize their work. Consequently, we had a number of legislative texts before us during this session to be adopted, several new legislative projects to be discussed, the results of consultations on the enlargement of UNCITRAL membership to be considered, and additional resources to be provided to one of the working groups to be able to advance and conclude an important project on reforming the investor-State dispute settlement system in a reasonable time.

Since you have before you the full report of the session, I would like to focus my remarks on some of the key achievements and issues for your kind attention.

Mr. Chairperson, distinguished delegates,

As the core legal body of the United Nations in the field of international trade law, UNCITRAL finalized six legislative texts:

- the UNCITRAL Legislative Guide on Limited Liability Enterprises;
- the UNCITRAL Legislative Recommendations on Insolvency of Micro- and Small Enterprises;
- the UNCITRAL Mediation Rules;
- the UNCITRAL Notes on Mediation;
- the Guide to Enactment and Use of the UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation (2018); and
- the UNCITRAL Expedited Arbitration Rules.

When adopting or approving those texts, the Commission highlighted their expected contribution to the achievement of the Sustainable Development Goals, an endeavour that is high on the Commission's agenda as you can see from chapter XVIII, section B of the report.

Please allow me to give you an overview of the texts finalized at the 54<sup>th</sup> session.

## [II. TEXTS ADOPTED BY THE COMMISSION]

### **Texts for MSMEs**

Two new UNCITRAL texts were adopted this year for micro, small and medium sized enterprises (MSMEs) and will be published as part of the UNCITRAL MSME texts series that focus on facilitating procedures and transactions along the life cycle of MSMEs. These texts are (1) the *Legislative Guide on Limited Liability Enterprises* and (2) the *Legislative Recommendations on Insolvency of Micro- and Small Enterprises*. You will agree with me that these texts are timely considering the impact of the coronavirus disease 2019 (COVID-19) pandemic and as it had been highlighted during the last session in 2020. These texts are expected to assist States in mitigating the effects of the pandemic and to assist in their economic recovery efforts.

The new text on limited liability enterprises aims at assisting States at offering a simplified legal form for MSMEs that can best encourage their formation in the formal economy and facilitate operation, thus, enhancing

their sustainability and chances of success and growth. It is based on the principle “think small first” that commercial law reform should start with a focus on the actual needs of the smallest businesses and avoid placing unnecessary legal burdens on them.

The new text on insolvency of micro and small enterprises (MSEs) recommends to States to put in place expeditious, simple, flexible and low-cost insolvency proceedings and to make them available and easily accessible to MSEs. While promoting an MSE debtor’s fresh start, the new text also recommends implementing an effective sanctions regime to prevent abuse or improper use of the simplified insolvency regime.

In adopting the texts in the area of insolvency law, the Commission underscored the importance of close coordination with the World Bank Group towards facilitating the development of a unified international standard in the area of insolvency law, encompassing provisions on insolvency of MSEs.

## **Mediation texts**

In the area of mediation, the Commission adopted three new texts: (1) *Mediation Rules*, which provide comprehensive procedural rules for the conduct of mediation, as well as model provisions; (2) *Notes on Mediation*, which seek to assist mediation practitioners and parties in dispute to better understand mediation; and (3) *Guide to Enactment and Use of the UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation (2018)*, which provides background and explanatory information to assist States in incorporating the Model Law into national law. These texts will complement the Singapore Convention on Mediation and the Model Law, thereby providing a comprehensive legal framework for mediation.

### **Expedited arbitration rules**

In the area of arbitration, the Commission adopted the *Expedited Arbitration Rules*, which provide a set of rules that parties can agree on if they want a more streamlined and simplified procedure with a shortened time frame,

thus, achieving better cost and time effectiveness. The Rules balance on the one hand, the efficiency of the arbitral proceedings and on the other hand, the rights of the parties to due process and fair treatment.

### **[III. FUTURE WORK BY WORKING GROUPS]**

In addition to finalizing texts, the Commission also took note of the progress made by its working groups during the last cycle, always working under the difficult hybrid conditions. It confirmed the work programme of six working groups:

- Working Group I will start working on access to credit for MSMEs;
- Working Group II will start working on issues concerning early dismissal in international arbitration;
- Working Group III will continue its work on the reform of investor-State dispute settlement system;
- Working Group IV will continue its work towards a text on legal issues related to identity

management and trust services with a view to bringing it to you for adoption next year, and begin its new work on the use of artificial intelligence and automation in contracting by conceptualizing and refining the scope and nature of the work to be conducted;

- Working Group V will embark on civil asset tracing and recovery as well as applicable law in insolvency proceedings after a final reading of the commentary to the Legislative Recommendations on Insolvency of MSEs; and
- Working Group VI will continue preparing an international instrument on the judicial sale of ships, most likely an international convention, that will hopefully be brought to your attention at next year's session for adoption.

#### **[IV. OTHER FUTURE WORK]**

As regards future work not assigned to any working group, the Commission requested the secretariat to

continue its preparatory work towards the development of a model law on the private law aspects of warehouse receipts, noting the coordination between the UNCITRAL secretariat and the International Institute for the Unification of Private Law (Unidroit) on this matter.

The Commission also requested the secretariat to continue its preparatory work on negotiable multimodal transport documents, including the preparation of a preliminary draft of a new instrument on this topic. The primary purpose of such a new instrument should be to ensure legal recognition of a medium neutral negotiable transport document in different modes of transport.

Noting its central and coordinating role within the United Nations system for legal issues related to digital economy and digital trade, the Commission requested the secretariat to continue to explore and prepare work on those issues, particularly as regards the legal taxonomy that will now be published, and exploration of the legal regime governing data transactions. It will also expand

this work to include dispute resolution in the digital economy.

The Commission further requested the secretariat to continue its exploratory work on legal issues related to the impact of COVID-19 on international trade law, and also to continue exploring the options for establishing an online platform for information exchange by States.

A proposal was submitted during the 54<sup>th</sup> session to examine (a) how existing UNCITRAL texts could be aligned with climate change mitigation, adaptation and resilience goals, and (b) whether further work could be done by UNCITRAL to facilitate those goals in the implementation of those texts or through the development of new texts. The Commission requested the secretariat to consult with interested States with a view to developing a more detailed proposal on the topic.

#### **[V. REQUEST FOR ADDITIONAL RESOURCES]**

Another highlight of this session was a decision of the Commission to request from the General Assembly, additional conference and supporting resources to implement the work programme with respect to investor-State dispute settlement reform that has been developed and agreed upon by Working Group III and that would allow for a comprehensive reform package to be adopted by the Commission and then by the General Assembly in 2026 at the latest, with some reform elements coming for adoption before that time when they are ready.

At its fiftieth session in 2017, the Commission entrusted its Working Group III with a broad mandate to work on the possible reform of investor-State dispute settlement. In discharging the mandate, the Working Group was requested to ensure that the deliberations, while benefiting from the widest possible breadth of available expertise from all stakeholders, should be government-led with high-level input from all governments, consensus-based and be fully transparent. The Working Group has entered into the third phase of its

work, which is to develop relevant solutions to reform the investor-State dispute settlement mechanism.

During its 54<sup>th</sup> session, the Commission decided to recommend to the General Assembly that additional conference and supporting resources be allocated to the secretariat for a single period of four years, from 2022 to 2025, so as to allow Working Group III to maintain its momentum and advance on its work, which foresees the completion of the reform project in 2026. This project is both ambitious and complex, and it is particularly important in this regard to ensure inclusiveness and transparency of this work.

In this context, the Commission expressed its appreciation for financial and other support provided by France, Germany and the European Union that allowed the secretariat to organize intersessional meetings of Working Group III in different regions in order to ensure that the work on reform of investor-State dispute settlement could be conducted leaving no country behind.

## **[VI. ENLARGEMENT OF UNCITRAL MEMBERSHIP]**

Let me turn now, Mr. Chairperson, distinguished delegates, to the conclusion of the deliberations on the enlargement of UNCITRAL membership.

At its 52<sup>nd</sup> session, in 2019, the Commission heard a proposal for enlarging the membership of UNCITRAL. Thanks to the efforts by the coordinator of the informal consultations from the Government of Japan, the Commission, at its 54<sup>th</sup> session, decided to recommend the enlargement of UNCITRAL membership from 60 to 70 States. It was noted that wider participation of States in the work of the Commission would further the progress of its work and that an increase in the membership of the Commission would stimulate interest in its work. Furthermore, the Commission also agreed on the text of a draft resolution for consideration by the General Assembly, which is presented to the Committee and on which, I understand, you had preliminary deliberations.

## **[VII. 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 a few key achievements: (1) the secretariat's adaptation to an online format facilitated that the numbers of participants in technical cooperation and assistance activities tripled to exceed 24,000 in 2020, and the proportion of participants from Africa, Asia and Latin America and the Caribbean also increased; (2) the expansion of engagement with partners from the academic sphere, including the UNCITRAL Asia-Pacific Day and the inaugural UNCITRAL Latin America and the Caribbean Day; (3) the expanded online and social media presence and the greater use of videoconferences and webinars which met an emerging interest in UNCITRAL from a broader audience; and (4) the release of an online training course

entitled “Introduction to the United Nations Commission on International Trade Law” (also called “online modules”), that I would like to encourage you to look at when preparing for the UNCITRAL-related topics in your Committee.

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:

- China, France, Germany, Indonesia, Republic of Korea and Saudi Arabia, for contributing to the UNCITRAL trust fund for symposiums, and
- Austria, France and the European Union for contributing to the trust fund for granting travel assistance to developing States members of UNCITRAL.

With respect to the transparency repository established under the Rules on Transparency in Treaty-based Investor-State Arbitration, the Commission also expressed its gratitude to the European Union, Germany and the OPEC Fund for International Development for their contributions.

During the 54<sup>th</sup> session, virtual panel discussions on technical assistance activities were also organized, focusing on the recovery of MSMEs from the COVID-19 economic shock and celebrating the UNCITRAL Asia-Pacific Day and the UNCITRAL Latin America and the Caribbean Day series of awareness-raising events in these regions. On this occasion, in my capacity as the Chair, I called upon States to host an inaugural series of UNCITRAL Africa Day in 2022.

Emphasizing the benefits of the Case Law on UNCITRAL Texts (CLOUT) system as a tool to support continued and sustained capacity-building in the use and implementation of UNCITRAL texts, the Commission welcomed the secretariat's ongoing efforts in

implementing measures to rejuvenate CLOUT, and expressed its gratitude for the compilation of cases and the establishment of CLOUT partnerships. The Commission expressed appreciation to the secretariat for its continued efforts to update the existing digests of case law on UNCITRAL texts and ensure their wide dissemination.

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, as I mentioned at the outset of my report to you.

Last but not least, an African forum was organized as one of the side events to the 54<sup>th</sup> session, during which 50 representatives from African States and beyond came

together to share their thoughts on areas of commercial law with particular resonance in the region. Those areas included digitization of the economy and the establishment of a harmonized legal framework for a fair and efficient settlement of international investment disputes. The discussion also highlighted the critical importance of transparency, accountability and good governance in the commercial law framework. Among others, participants agreed on the critical need to enhance participation of African countries in the work of UNCITRAL, and to ensure that the work could take account of regional interests.

## **[VIII. CONCLUDING REMARKS]**

Mr. Chairperson, distinguished delegates,

It gives me great pride to report on the achievements of the Commission at its 54<sup>th</sup> session. These achievements would not have been possible without the hard work and dedication of delegates, observers and the secretariat. I would also like to commend Madam Secretary under

whose able leadership, the secretariat of UNCITRAL has once again discharged its duties professionally and efficiently to the Commission. 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 55 years ago are as relevant today as they were at that time, and even more so in the light of COVID-19 pandemic, 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.

With that, I would like to conclude my address to you on the work carried by UNCITRAL during its 54<sup>th</sup> session.

I thank you for your attention!

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