

**Address to the Sixth Committee  
of the General Assembly  
by Ms. Kathryn Sabo (Canada)  
Chairperson of the fifty-sixth 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 56<sup>th</sup> session, from 3 to 21 July and give you an introduction to its report. Canada has actively participated in the work of UNCITRAL for many years and to have been elected Chair of the Commission for this session is a great honour for me personally and for my country.

At the outset, and before turning to the report, let me thank the members of the Bureau of the 56<sup>th</sup> session for their cooperation and support. The Vice-Chair Ms. Deborah Aba Aikins, from Ghana, kindly handled the opening matters for the session in my absence. The Vice-Chair Mr. Siniša Petrović, from Croatia, chaired the deliberations on the draft guide on access to credit for

micro, small and medium-sized enterprises. The Vice-Chair Mr. Andrés Jana, from Chile, chaired the deliberations concerning draft guidance text on early dismissal and preliminary determination. A Committee of the Whole was established in accordance with the rules and procedures of UNCITRAL to consider the draft texts prepared in the context of investor-State dispute settlement reform. Mr. Shane Spelliscy, from Canada, and Ms. Natalie Yu-Lin Morris-Sharma, from Singapore, were elected as the chairperson and the rapporteur of the Committee of the Whole, respectively and I am grateful to them for their work. Let me also thank the session's rapporteur Mr. Mohammad Hossein Ghaniei, from Iran, for his support to the adoption of the report.

A word of thanks also goes to my predecessor, Ambassador Ivan Šimonović, from Croatia, who prepared the ground and the conditions that allowed us to hold our productive 56<sup>th</sup> session.

Mr. Chairperson, distinguished delegates,

We had six legislative texts before us to be adopted, several future legislative projects to be discussed, and a number of non-legislative activities to be reported upon. Since you have before you the full report of the session, I will focus my remarks on some of the key achievements and issues for your kind attention.

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

- UNCITRAL Model Provisions on Mediation for International Investment Disputes;
- UNCITRAL Guidelines on Mediation for International Investment Disputes;
- UNCITRAL Code of Conduct for Arbitrators in International Investment Dispute Resolution;
- UNCITRAL Code of Conduct for Judges in International Investment Dispute Resolution;
- UNCITRAL Guide on Access to Credit for Micro, Small and Medium-sized Enterprises; and

- Guidance text on early dismissal and preliminary determination for inclusion in the UNCITRAL Notes on Organizing Arbitral Proceedings.

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 XVII, section B of the report.

Please allow me to give you an overview of the texts finalized at the 56<sup>th</sup> session.

### **[III. TEXTS ADOPTED BY THE COMMISSION]**

#### **Investor-State dispute settlement reform**

The Commission adopted four texts in the context of investor-State dispute settlement reform, two of which concern the use of mediation for resolving investment disputes. The UNCITRAL Model Provisions on Mediation for International Investment Disputes contain a set of treaty provisions on mediation for inclusion in past and future investment agreements, which provide States

and investors a firm legal basis to use mediation as an appropriate alternative. The UNCITRAL Guidelines on Mediation for International Investment Disputes explain the benefits of mediation and how it can be used to resolve investment disputes. Considering that mediation is being underutilized for investor-State dispute settlement, both texts aim to promote its use and to eventually facilitate the amicable settlement of investment disputes.

Another two texts adopted in the context of investor-State dispute settlement reform are the Code of Conduct for Arbitrators in International Investment Dispute Resolution and the Code of Conduct for Judges in International Investment Dispute Resolution, each with a commentary. The codes contain key obligations of adjudicators involved in investor-State dispute settlement (including candidates and former adjudicators), reinforcing their duty of independence and impartiality, expanding disclosure requirements, and introducing rules on so-called “double-hatting” (where an adjudicator functions as a counsel in another proceeding involving

similar legal issues). The code for judges will eventually apply to those appointed to serve in a standing mechanism for resolving investment disputes, which is another reform element still being developed.

### **Accès des micro-, petites et moyennes entreprises au crédit**

La Commission a aussi adopté le *Guide sur l'accès des micro-, petites et moyennes entreprises (MPME) au crédit*, qui traite du cadre juridique sous lequel les entreprises peuvent obtenir du financement pour leurs activités, et de ce que les États peuvent faire pour améliorer leur propre cadre juridique pour faciliter ces moyens de financement. Ce guide s'appuie sur les travaux antérieurs de la Commission dans le domaine des opérations garanties, en particulier la *Loi type de la CNUDCI sur les sûretés mobilières*. Le guide porte aussi sur les mesures de réglementation et de politique générale qui peuvent contribuer à réduire les obstacles en matière d'accès au crédit, par exemple l'apport de garanties personnelles, les systèmes de garantie du crédit,

l'infrastructure facilitant l'évaluation de la solvabilité des entreprises, les règles et orientations sur les pratiques de prêt équitables, et la promotion de l'éducation financière. Il est important de noter que ce guide souligne que les micro- et petites entreprises détenues par des femmes se heurtent souvent à plus d'obstacles que celles détenues par des hommes, et il recommande donc que les exigences relatives à l'accès au crédit n'entraînent pas de discrimination fondée sur le genre de la personne souhaitant emprunter.

### **Règlement des différends**

Dans le domaine du règlement des différends, la Commission a adopté le texte d'orientation sur le rejet rapide et la prise de décision préalable qui sera inclut dans *l'Aide-mémoire de la CNUDCI sur l'organisation des procédures arbitrales*. Cette note d'orientation vise à aider les praticiens et les utilisateurs de l'arbitrage à comprendre le pouvoir discrétionnaire conféré au tribunal arbitral par le Règlement d'arbitrage de la CNUDCI et d'autres règlements d'arbitrage; la note réfère à la



capacité du tribunal arbitral de rejeter un chef de demande ou un moyen de défense au motif que celui-ci est manifestement dénué de fondement ou que le tribunal arbitral est manifestement incompétent, ou de prendre une décision préalable à cet effet.

### **[III. TRAVAUX FUTURS DES GROUPES DE TRAVAIL]**

En plus d'achever ces textes, la Commission a pris note des progrès réalisés par ses groupes de travail au cours du dernier cycle. Elle a confirmé le programme de travail de ces six groupes :

- Le Groupe de travail I entamera les travaux visant à élaborer un projet de loi type sur les récépissés d'entrepôt;
- Le Groupe de travail II poursuivra ses travaux sur le règlement des différends liés aux technologies, et sur la décision d'urgence rendue par un tiers;
- Le Groupe de travail III continuera de s'occuper de la réforme du règlement des différends entre

investisseurs et États. Au cours de la prochaine année, il se chargera de l'établissement d'un centre consultatif sur le droit international des investissements, et de l'élaboration d'un guide sur la prévention et l'atténuation des différends. Il poursuivra en outre ses progrès en ce qui concerne les réformes procédurales, notamment sur les questions transversales, et la mise en place d'un mécanisme permanent applicable aux différends en matière d'investissement, y compris un mécanisme d'appel;

- Le Groupe de travail IV avancera en parallèle la formulation des règles supplétives concernant les contrats de fourniture de données, et des principes relatifs aux contrats automatisés;
- Le Groupe de travail V poursuivra ses travaux sur la localisation et le recouvrement civils d'actifs, et sur la loi applicable dans les procédures d'insolvabilité;

- Le Groupe de travail VI continuera de s'intéresser à l'élaboration d'un nouvel instrument international sur les documents de transport multimodal négociables.

#### **[IV. AUTRES TRAVAUX FUTURS]**

En ce qui concerne les travaux futurs qui ne relèvent pas des groupes de travail, la Commission a pris note des activités du secrétariat pour faire avancer les travaux concernant les incidences de la COVID-19 sur le droit commercial international. La Commission a salué le travail réalisé par les États ayant contribué et le secrétariat, et elle a autorisé le secrétariat à achever et à publier le document « COVID-19 et instruments de droit commercial international : boîte à outils juridiques ».

In respect of the topic on climate change mitigation, adaptation and resilience, the Commission commended the secretariat for having organized the Colloquium on Climate Change and International Trade Law to consider areas in which international trade law could effectively

support the achievement of climate action goals set by the international community, the scope and value of legal harmonization in those areas and the need for international guidance for legislators, policymakers, courts and dispute resolution bodies. As regards next steps, the Commission requested the secretariat, within UNCITRAL's mandate and in cooperation and collaboration with the secretariat of UNFCCC, UNIDROIT, the HCCH and other organizations with relevant expertise, to consult with all Member States of the United Nations (particularly developing countries) with a view to developing a more detailed study on the aspects of international trade law related to voluntary carbon credits.

The Commission requested the secretariat to continue and finalize its work on the preparation of a guidance document on legal issues relating to the use of distributed ledger systems in trade, within existing resources, and in cooperation with other concerned organizations, as appropriate. The purpose of such a guidance document is

mainly to provide explanations useful to commercial operators, especially MSMEs and operators located in developing countries, in assessing whether distributed ledger technology-enabled services address their needs, and the impact of the use of such services on their business.

The Commission further requested the secretariat to continue to implement the stocktaking project with regard to developments in dispute resolution in the digital economy and to put forward proposals for possible legislative work with a focus on the topics of the recognition and enforcement of electronic awards and electronic notices of arbitration and their service, as well as to report on further progress made overall.

#### **[V. COORDINATION AND COOPERATION]**

In a general context, the Commission reiterated the importance of coordinating the activities of organizations active in the field of international trade law, which is a core element of the mandate that UNCITRAL has received from the General Assembly, as a means of

avoiding duplication of efforts and promoting efficiency, consistency and coherence in the unification and harmonization of international trade law.

When formulating or considering proposals for future work and when taking up new projects, the Commission emphasized the importance of closer coordination among the organizations concerned, in order not only to prevent inconsistency but also to avoid unduly burdening their respective secretariats with commitments to participate in and follow up on concurrent projects carried out simultaneously by other organizations. This issue, central to UNCITRAL's mandate, was extensively discussed during the session.

## **[VI. NON-LEGISLATIVE ACTIVITIES]**

Mr. Chairperson, distinguished delegates,

UNCITRAL's work programme consists not only of legislative activities, but also a wide range of non-legislative activities aiming at raising awareness and promoting the effective understanding of UNCITRAL

texts; providing legislative advice and assistance to States on the adoption and use of those texts; and building capacity to support their effective use, implementation and uniform interpretation.

While a complete status of these activities was reported to the Commission by the secretariat, I would like to highlight a few key achievements:

- the secretariat's continued efforts to meet the increasing demand for non-legislative activities, including the focus on beneficiary countries at lower levels of development;
- several milestones reached in the implementation of formal agreements with governments (namely with the Government of Singapore; the Ministry of Commerce of China; the Department of Justice of the Government of Hong Kong Special Administrative Region, China; and the Ministry of Commerce and the National Competitiveness Center of Saudi Arabia);

- continued expansion of the secretariat's engagement with academic partners, geared towards students, young researchers and practitioners in international trade law, through the UNCITRAL Days series in Asia and the Pacific (since 2014), in Latin America and the Caribbean region (since 2020), and, for the first time, in Africa, in 2022.
- the expanded online and social media presence and the greater use of videoconferences and webinars which increased the interest in UNCITRAL for a broader audience; and
- the issuance of three new e-learning modules on mediation, public procurement and public-private partnerships, and commercial arbitration. These modules are made available to government officials, UNCITRAL delegates and prospective delegates and users of UNCITRAL texts generally.

Acknowledging that the ability of the secretariat to carry out technical assistance and capacity-building



activities depends on the support of all stakeholders, the Commission expressed its gratitude to States and organizations that made voluntary contributions to the UN trust funds for UNCITRAL activities:

- China, France, Japan and Saudi Arabia for contributing to the trust fund for UNCITRAL symposia, and
- Austria for contributing to the trust fund for granting travel assistance to developing States members of UNCITRAL.

With respect to the work on investor-State dispute settlement reform being carried out by Working Group III, the Commission expressed its appreciation to the European Union and the Swiss Agency for Development and Cooperation for their contributions to facilitate the participation of delegates and observers of developing countries in sessions related to the work of Working Group III. The Commission also expressed its gratitude to the European Union, the OPEC Fund for International Development and Germany for their contributions

towards the operation of the transparency registry and the promotion of the transparency standards.

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 noted with interest the progress made in the effort towards a rejuvenation of the CLOUT system, 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. Particularly relevant with regard to the topic identified for the upcoming debates of the Sixth Committee (i.e., using technology to advance access to justice for all), these

comments 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.

## **[VII. WORKING METHODS]**

Compte tenu de l'expérience acquise lors des sessions tenues pendant la pandémie de COVID-19, la Commission s'est penchée en 2022, à sa 55<sup>e</sup> session, sur des ajustements possibles à ses méthodes de travail, y inclut la diffusion en direct de ses sessions, afin que des délégués puissent écouter les délibérations à distance sans faire d'interventions actives.

À sa 56<sup>e</sup> session, en juillet, le secrétariat a informé la Commission des coûts encourus liés à la diffusion en

direct, qui n'étaient pas inclus dans le budget régulier de la CNUDCI et de son secrétariat. Dans ce contexte, un fort soutien s'est manifesté pour la poursuite de la diffusion en direct, aux fins d'inclusion et de transparence, et pour permettre une plus vaste participation en temps réel des experts en la matière. La Commission a demandé au secrétariat de chercher les moyens, à même ses ressources actuelles, continuer de diffuser les sessions en direct.

Au sujet de l'utilisation des dernières séances des sessions des groupes de travail, la Commission a confirmé que le Groupe de travail III (ou tout autre groupe de travail au besoin) peut utiliser les dernières séances de réunion pendant la session pour poursuivre des délibérations de fond et adopter le rapport de la session par procédure écrite.

À l'égard des réunions informelles des groupes de travail, la Commission a convenu que c'est à chaque groupe de travail de décider quand et comment le secrétariat organiserait de telles réunions informelles entre les sessions. La Commission a aussi convenu que

l'ordre du jour de ces réunions doit être approuvé par le groupe de travail et annoncé d'avance de façon à faciliter la participation des délégués.

## **[VIII. AMÉLIORATION DES RÉOLUTIONS OMNIBUS FUTURES]**

La Commission a entendu une proposition visant à améliorer la rédaction des résolutions omnibus et a demandé au secrétariat de mener un processus de consultation ouvert et souple auprès des États membres des Nations Unies entre les sessions dans le but d'élaborer des lignes directrices sur l'amélioration et la simplification du texte des futures résolutions omnibus de la CNUDCI, puis de lui en faire un compte rendu à sa prochaine session, en 2024.

## **[IX. CONCLUDING REMARKS]**

Mr. Chairperson, distinguished delegates,

I am greatly honoured to have been able to chair the 56<sup>th</sup> session of the Commission and to preside over a very productive session, which would not have been possible

without the hard work and dedication of delegates, observers and the secretariat. The secretariat of UNCITRAL has once again discharged its duties to the Commission professionally and efficiently.

We in UNCITRAL are grateful to this Committee for its continued support for our activities and for its repeated expressions of satisfaction with the work carried out by UNCITRAL. It is indeed an honour for us to serve this body, where all our governments are assembled. We hope that the efforts of the Commission to streamline future UNCITRAL omnibus resolutions will be supported by this Committee in due course.

With that, I conclude my report to you on the work carried out by UNCITRAL during its 56<sup>th</sup> session.

Je vous remercie de votre attention.

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