
1. UNCITRAL: the organization

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INTRODUCTION

International trade and transborder business cooperation are important factors in the promotion of friendly relations and, consequently, in the maintenance of peace and security.¹ International trade promotes economic development and contributes to raising standards of living around the world. The United Nations Commission on International Trade Law ('UNCITRAL') contributes to the broader peace, economic and social development goals of the United Nations by developing legal standards aimed at reducing legal barriers to international trade and promoting the modernization of domestic commercial laws to facilitate investment and reduce transactions costs.

This chapter presents the mandate, functions and working methods of UNICTRAL, the types of instruments it develops and its relations with other organizations involved in international legal unification and harmonization efforts.

MANDATE, FUNCTIONS AND WORKING METHODS OF UNCITRAL

Origins and Mandate of UNCITRAL

UNCITRAL is a subsidiary organ established by the United Nations General Assembly in 1966,² with the general mandate to further the progressive harmonization and unification³ of the law of international trade.⁴ In the years since its establishment, UNCITRAL has become the core legal body of the United Nations system in the field of international trade law.

¹ General Assembly Resolution ('UNGA Res') 2205 (XXI) (17 December 1966) (reproduced in I *Yearbook of the United Nations Commission on International Trade Law ('UNCITRAL YB')*, pt one, ch II, s E, preamble). For similar chapters focusing on the insitution, see, for the HCCH, Part I in Thomas John, Rishi Gulati and Ben Köhler (eds), *Elgar Companion to the Hague Conference on Private International Law* (Edward Elgar Publishing 2020), and for UNIDROIT, [ADD], in Ben Köhler, Rishi Gulati, and Thomas John (eds), *Elgar Companion to UNIDROIT* (Edward Elgar Publishing forthcoming).

² *ibid.*

³ While the terms are closely related, 'unification' may be seen as the adoption by states of a common legal standard governing particular aspects of international business transactions while 'harmonization' may conceptually be thought of as the process through which domestic laws may be made more similar. As used in this paper, the term 'harmonization' includes both concepts.

⁴ Progressive development of the law of international trade: report of the Secretary-General, *Official Records of the General Assembly, Twenty-first Session, Annexes*, agenda item 88, UN document A/6396 (reproduced in I *UNCITRAL*, pt one, ch II, s B); *Official Records of the General Assembly, Twenty-first Session, Annexes*, agenda item 88, United Nations document A/6594 (reproduced in I *UNCITRAL YB*, pt one, ch II, s D); the relevant summary records of the proceedings of the Sixth

Obviously, UNCITRAL was not the first international organization to act in the field of harmonization of commercial and private law.

Both the Hague Conference on Private International Law ('HCCH')⁵ and the International Institute for the Unification of Private Law ('UNIDROIT')⁶ had made remarkable contributions to legal harmonization long before the establishment of the United Nations, in 1945.

A second group of international organizations involved with developing rules of international commercial law before the creation of UNCITRAL included bodies of the United Nations, such as the United Nations Conference on Trade and Development ('UNCTAD'), and the United Nations Economic Commissions for Africa, Asia and the Pacific, Europe, and Latin America and the Caribbean. Still on a worldwide scale, there were also specialized agencies of the United Nations such as the International Bank for Reconstruction and Development ('the World Bank'), the United Bureaux for the Protection of Intellectual Property, which later became the World Intellectual Property Organization ('WIPO'), the Intergovernmental Maritime Consultative Organization, which later became the International Maritime Organization, and the International Civil Aviation Organization.

A third group included regional organizations and intergovernmental groupings, such as the European Economic Community, the Council of Mutual Economic Assistance, the Council of Europe, the various inter-American (such as the Organization of the American States ('OAS')) and Latin-American organizations (such as the Latin-American Association of free trade), and the Organisation of African Unity.

Finally, non-governmental organizations (NGOs), such as the International Chamber of Commerce ('ICC') and the International Maritime Committee (known by its French acronym 'CMI') had for several decades worked towards trade law harmonization, either by developing standard contract terms,⁷ or by initiating and supporting governmental negotiations to unify the law in particular areas.⁸

One might wonder why the United Nations should enter upon a field already occupied by so many players. Paradoxically, it was precisely the multitude of bodies involved, with varying membership and level of authority, that in the eyes of Member States called for the creation of a specialized body within an organization with truly universal membership.

Committee are contained in *Official Records of the General Assembly, Twenty-first Session, Sixth Committee*, 947th-955th meetings (excerpts appear in I *UNCITRAL YB*, pt one, ch II, s C).

⁵ The HCCH, which currently has 90 Member States, had been active since 1893 and received a statute in 1955. It has worked on a wide range of issues, including abolition of legalization requirements, service of process, taking of evidence abroad, access to justice, international child abduction, inter-country adoption, conflicts of laws relating to the form of testamentary dispositions, maintenance obligations and recognition of divorce, available at <<https://www.hcch.net>> accessed 20 December 2021. See John, Gulati and Köhler, HCCH (n 1).

⁶ UNIDROIT, which currently has 63 Member States, was established under the auspices of the League of Nations in 1926 and re-established in 1940 following the demise of that predecessor of the UN. UNIDROIT has worked on various areas, such as agency and sales law, security interest in mobile equipment, international leasing and factoring contracts, international wills, stolen or illegally exported cultural objects and principles of international commercial contracts, available at <<https://www.unidroit.org/>> accessed 20 December 2021.

⁷ The best known of which are the widely used 'ICC Incoterms'. See Köhler, John and Gulati, UNIDROIT (n 1).

⁸ The so-called 'Hague Rules' are an early example (see International Convention for the Unification of Certain Rules of Law relating to Bills of Lading (Brussels, 1924)). See generally Vivienne Bath, 'UNCITRAL and international carriage of goods by sea', in this volume (Chapter 29).

Indeed, as early as 1949, there was uneasiness among scholars and practitioners about what was perceived as an unsatisfactory and confusing situation. Professor Harold C. Gutteridge, for example, was one of the earlier voices calling for some form of institutional coordination:

The most urgent problem of all [...] is that of waste of effort and confusion that has, at times, been caused by the existence of competing agencies engaged in the work of unification. The remedy for this state of affairs would seem to lie in the establishment of a rallying ground for unificatory activities – a kind of international clearing house – which would co-ordinate and supervise activities of this nature and also facilitate also the collection of any information that might be required, either from governmental or other sources ... it would be possible, in this way, to avoid the overlapping of attempts to achieve uniformity, and to discourage the ill-timed, or over-ambitious, projects which are largely responsible for the paucity of success which has hitherto characterized the movement for the unification of law.⁹

At the United Nations, those calls were first heard in 1965, when the delegation of Hungary requested that the United Nations consider ‘steps to be taken for progressive development in the field of private international law with a particular view to promoting international trade’.¹⁰ As a result of that request, the United Nations Secretariat asked Professor Clive M. Schmitthoff to prepare a study on the progress accomplished, and the obstacles met by international legal harmonization up to that time. That study, which was also reviewed and approved by legal experts representing various legal systems of the world (hereafter ‘the Schmitthoff Report’), was submitted to the United Nations General Assembly at its twenty-first session, in 1966.¹¹ Its main conclusions were:

- (a) The progress made in the unification and harmonization of the law of international trade had been rather slow in relation to the amount of time and efforts expended on it. The report attributed the relatively modest results obtained until then in particular to the difficulties inherent in any attempt to bring about changes in national laws and practices and the limited membership and authority of formulating agencies;
- (b) Developing countries and newly independent states had taken part only to a small extent in the activities carried out until then in the field of unification, harmonization and modernization of the international commercial law;
- (c) None of the formulating agencies ‘commands world-wide acceptance’ and none had a ‘balanced representation of countries of free enterprise economy, countries of centrally planned economy, developed and developing countries’. This was true even for

⁹ Harold Cooke Gutteridge, *Comparative Law* (2nd edn, Cambridge University Press 1949) 183–184.

¹⁰ See Request for inclusion in the provisional agenda of the nineteenth session of the General Assembly: *note verbale* from the Permanent representative of Hungary to the United Nations (reproduced in I *UNCITRAL YB*, pt one, ch I, s A).

¹¹ Progressive development of the law of international trade: report of the Secretary-General, *Official Records of the General Assembly, Twenty-first Session, Annexes*, agenda item 88, UN document A/6396 (reproduced in I *UNCITRAL YB*, pt one, ch II, s B); *Official Records of the General Assembly, Twenty-first Session, Annexes*, agenda item 88, UN document A/6594 (reproduced in I *UNCITRAL YB*, pt one, ch II, s D). The relevant summary records of the proceedings of the Sixth Committee are contained in *Official Records of the General Assembly, Twenty-first Session, Sixth Committee*, 947th–955th meetings (excerpts appear in I *UNCITRAL YB*, pt one, ch II, s C).

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intergovernmental organizations with universal vocation, such as UNIDROIT¹² and the HCCH,¹³ whose membership at that time was primarily made up of European countries and countries in the American continent;

- (d) There had been insufficient cooperation and coordination among formulating agencies. Therefore, their activities 'have tended to be unrelated and a considerable amount of duplication has resulted'.¹⁴

The Schmitthoff Report made concrete recommendations on the role that the United Nations might play in the field of the harmonization and the unification of international commercial law. The principal points were the following:

- (a) In view of its world-wide membership, the United Nations would 'provide a most appropriate forum for convening international conferences for the adoption of conventions'. Where unification and harmonization would take the form of recommendations for the adoption of uniform laws and standardized practices, such recommendations would be addressed directly to all United Nations Member States, thus increasing the chances of broad acceptance;
- (b) Rather than reducing the usefulness of existing formulating agencies, an active United Nations interest and participation in this work would 'tend to broaden their scope and enhance their activities'. For example, some draft instruments prepared in the past by formulating agencies could be revised in the light of present requirements and could eventually be submitted to the United Nations for action; the organization could request formulating agencies specializing in different subjects to deal with specific topics and could utilize those agencies' expert advice in general.¹⁵

The Schmitthoff Report admitted the usefulness of authorizing the United Nations, 'when appropriate', to perform formulating functions as well. Nevertheless, coordination should be the organization's 'primary function' and should include 'promoting contacts and furthering collaboration between the existing formulating agencies, exercising some sort of supervision over their activities, and initiating unifying measures'. To be able to play this role, the Organization should 'exercise judgement, *inter alia*, on which projects and draft instruments should be carried to a conclusion and which should be revised and which shelved, as well as on the respective roles of existing formulating agencies'.¹⁶

¹² In 1965 the following states (43) were members of UNIDROIT: Austria, Belgium, Bolivia, Brazil, Bulgaria, Chile, Colombia, Cuba, Denmark, Ecuador, the Federal Republic of Germany, Finland, France, Greece, Holy See, Hungary, India, Iran, Ireland, Israel, Italy, Japan, Luxembourg, Mexico, the Netherlands, Nicaragua, Nigeria, Norway, Pakistan, Paraguay, Portugal, Romania, San Marino, Spain, Sweden, Switzerland, Turkey, the United Arab Republic, the United Kingdom of Great Britain and Northern Ireland, the United States of America, Uruguay, Venezuela and Yugoslavia.

¹³ In 1965, membership of the HCCH consisted of the following (24) states: Austria, Belgium, Czechoslovakia, Denmark, the Federal Republic of Germany, Finland, France, Greece, Ireland, Israel, Italy, Japan, Luxembourg, the Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, the United Arab Republic, the United Kingdom of Great Britain and Northern Ireland, the United States of America and Yugoslavia.

¹⁴ Schmitthoff Report, para 210.

¹⁵ *ibid.*, paras 217–218.

¹⁶ *ibid.*, para 221.

Such was, in synthesis, the set of priorities for the new organization. The order in which they appear in General Assembly resolution 2205 (XXI) clearly indicates the importance attached by Member States to the coordinating role of UNCITRAL.

Organization and Structure

UNCITRAL's original membership comprised 29 states (selected from amongst Member States of the United Nations), but it was expanded by the United Nations General Assembly to 36 states in 1973,¹⁷ to 60 states in 2002¹⁸ and to 70 states in 2021¹⁹ to reflect the broader participation and contribution by states beyond the existing Member States and to stimulate interest in the expanding work programme. The General Assembly elects members for terms of six years; every three years, the terms of half of the members expire. Membership of UNCITRAL is structured to ensure that the various geographic regions and the principal economic and legal systems of the world are represented. Thus, the 60 Member States²⁰ include 14 African states, 14 Asian states, eight East European states, 10 Latin American states and 14 from the group of West European and other states.²¹

UNCITRAL's work is organized and conducted at three levels.

The first level is the Commission itself, which holds annual plenary sessions alternately in New York and Vienna.²² The work at these sessions typically includes consideration of draft texts referred to the Commission for finalization and adoption by its working groups; consideration of progress reports of the working groups on their respective projects; selection of topics for future work or further research; and various other matters. The bureau of the Commission for the duration of each annual session is constituted by a chairperson, three vice-chairpersons and a rapporteur who represent each of the five regions from which the

¹⁷ UNGA Res 3108 (XXVIII) (12 December 1973) para 8 (reproduced in V *UNCITRAL YB*, pt one, ch I, s C).

¹⁸ UNGA Res 57/20 (19 November 2002) para 2 (reproduced in XXXIII *UNCITRAL YB*, pt one, s B).

¹⁹ UNGA Res 76/109 (9 December 2021) para 2.

²⁰ As of January 2022, the members of UNCITRAL and the years when their memberships expire, are: Algeria (2025), Argentina (2022), Australia (2022), Austria (2022), Belarus (2022), Belgium (2025), Brazil (2022), Burundi (2022), Cameroon (2025), Canada (2025), Chile (2022), China (2025), Colombia (2022), Côte d'Ivoire (2025), Croatia (2025), Czechia (2022), Dominican Republic (2025), Ecuador (2025), Finland (2025), France (2025), Germany (2025), Ghana (2025), Honduras (2025), Hungary (2025), India (2022), Indonesia (2025), Iran (2022), Israel (2022), Italy (2022), Japan (2025), Kenya (2022), Lebanon (2022), Lesotho (2022), Libya (2022), Malaysia (2025), Mali (2025), Mauritius (2022), Mexico (2025), Nigeria (2022), Pakistan (2022), Peru (2025), Philippines (2022), Poland (2022), Republic of Korea (2025), Romania (2022), Singapore (2025), South Africa (2025), Spain (2022), Sri Lanka (2022), Switzerland (2025), Thailand (2022), the Russian Federation (2025), Turkey (2022), Uganda (2022), Ukraine (2025), the United Kingdom (2025), the United States (2022), Venezuela (2022), Vietnam (2025) and Zimbabwe (2025).

²¹ The General Assembly has distributed the ten additional seats created in 2021 equally among the five regional groups (see UNGA Res 76/109 (9 December 2021) para 3).

²² Report of the Committee on Conferences, *Official Records of the General Assembly, Thirty-fourth Session, Supplement No. 32* (UN document A/34/32) para 32 (e) (iii). Prior to the transfer of the UNCITRAL secretariat from New York to Vienna, in 1979, sessions of the Commission alternated between New York and Geneva; see UNGA Res 2205 (XXI) (17 December 1966), s II, para 6 (reproduced in I *UNCITRAL YB*, pt one, ch II, s E); UNGA Res 31/140 (17 December 1976); s I, para 4 (c) UNGA Res 40/243 (18 December 1985), pt one, para 4 (c); UNGA Res 66/94 (9 December 2011) para 20.

members of the Commission are drawn²³ and who are elected by the Member States. The proceedings at annual sessions are set forth in a report prepared by the secretariat and formally adopted by UNCITRAL for submission to the General Assembly.

The second level comprises the working groups, which to a large extent undertake the substantive preparatory work on topics on UNCITRAL's work programme. Working groups are intergovernmental bodies in which states are represented by delegates chosen for their expertise in the topic under discussion. They usually hold one or two sessions per year and report on the progress of work to the Commission.²⁴ Each working group is generally left to complete its substantive task without intervention from the Commission, unless the working group asks for guidance or requests the Commission to make certain decisions with respect to the work.²⁵

Documentation for UNCITRAL meetings is prepared by the UNCITRAL secretariat and made available to participants in all six official languages of the United Nations.²⁶ Commission and working group sessions are facilitated by simultaneous interpretation in all six official languages.

In addition to its Member States, UNCITRAL also invites as observers other state members of the United Nations, non-member states with observer status with the United Nations, as well as international and regional organizations (both intergovernmental and non-governmental) with an interest in the topics under discussion at annual sessions and in working groups.²⁷ Observers may participate in discussions to the same extent as members. Discussion takes place in a formal manner; the chair of the meeting accords delegations the opportunity to speak in order of request. By tradition, decisions taken by UNCITRAL and its working groups reconcile the different positions represented by its members and other participants by way of consensus.²⁸ In 2010, the Commission confirmed that its decisions should be reached by consensus as far as possible; in the absence of a consensus, decisions are to be taken by

²³ Official Records of the General Assembly, Twenty-third Session, Supplement No. 16 (UN document A/7216) para 14 (reproduced in I *UNCITRAL YB*, pt two, ch I, s A).

²⁴ Official Records of the General Assembly, Thirty-third Session, Supplement No. 17 (UN document A/33/17) para 67 (reproduced in IX *UNCITRAL YB*, pt one, ch II, s A).

²⁵ Official Records of the General Assembly, Twenty-sixth Session, Supplement No. 17 (UN document A/8417) para 92(1)(c), (reproduced in II *UNCITRAL YB*, pt one, ch II, s A).

²⁶ Arabic, Chinese, English, French, Russian and Spanish.

²⁷ UNGA Res 31/99 (15 December 1976) para 10(c) (reproduced in VIII *UNCITRAL YB*, pt one, ch I, s C); UNGA Res 36/32 (13 November 1981) para 9 (reproduced in XII *UNCITRAL YB*, pt one, s D); See Note by the Secretariat: UNCITRAL rules of procedure and methods of work (UN document A/CV.9/638/Add.5), section IV. Status of observers; and *Official Records of the General Assembly, Sixty-fifth Session, Supplement No. 17* (UN document A/65/17), Annex III: UNCITRAL Rules of procedure and methods of work (reproduced in XLI *UNCITRAL YB*, pt one, Annex III).

²⁸ *Official Records of the General Assembly, Twenty-third Session, Supplement No. 16* (UN document A/7216) para 18 (reproduced in I *UNCITRAL YB*, pt two, ch I, s A). The basis of consensus is that efforts are taken to address all concerns to make the final text acceptable to all. It should not be understood as giving any state the power to veto what is otherwise the prevailing view of the meeting. See also Note by the Secretariat: *UNCITRAL rules of procedure and methods of work* (UN document A/CV.9/638/Add.4), section III, I.2 Decision-making in the Commission; and *Official Records of the General Assembly, Sixty-fifth Session, Supplement No. 17* (UN document A/65/17), Annex III: UNCITRAL Rules of procedure and methods of work (reproduced in XLI *UNCITRAL YB*, pt one, Annex III).

voting as provided in the relevant rules of procedure of the General Assembly.²⁹ However, voting remains an exceptional procedure.

The third level of UNCITRAL work is done by the Commission's secretariat, which assists the intergovernmental bodies in the preparation and conduct of their work. The International Trade Law Division of the United Nations Office of Legal Affairs provides the secretariat for UNCITRAL. The Division is located at the United Nations Office in Vienna. Its professional members include a small number of qualified lawyers from different countries and legal traditions, with the Director of the Division serving as the Secretary of UNCITRAL.

Lines of Activity and Working Methods of UNCITRAL

The various elements of UNCITRAL's mandate³⁰ can be grouped into four general lines of activity: (1) coordination of the work of other organizations and promotion of cooperation among them; (2) legislative or rule-making activities; (3) information activities (including dissemination of information aimed at promoting awareness and uniform interpretation of international instruments); and (4) support to law reform and technical assistance.

Coordinating and promoting the work of other organizations

An important part of the mandate of UNCITRAL is co-ordination of the activities of organizations active in the field of international trade law, in order to avoid duplication of efforts and to promote efficiency, consistency and coherence in the unification and harmonization of international trade law. The secretariat has prepared two types of studies to assist the Commission in monitoring activities and developments in international trade law: general surveys of the activities of other organizations related to international trade law,³¹ as well as

²⁹ *ibid.*

³⁰ Para 8 of UNGA Res 2205 (XXI) (17 December 1966) lists the following activities:

'(a) Co-ordinating the work of organizations active in this field and encouraging cooperation among them;'

'(b) Promoting wider participation in existing international conventions and wider acceptance of existing model and uniform laws;'

'(c) Preparing or promoting the adoption of new international conventions, model laws and uniform laws and promoting the codification and wider acceptance of international trade terms, provisions, customs and practices, in collaboration, where appropriate, with the organizations operating in this field;'

'(d) Promoting ways and means of ensuring a uniform interpretation and application of international conventions and uniform laws in the field of the law of international trade;'

'(e) Collecting and disseminating information on national legislation and modern legal developments, including case law, in the field of the law of international trade;'

'(g) Maintaining liaison with other United Nations organs and specialized agencies concerned with international trade;'

'(f) Taking any other action it may deem useful to fulfil its functions' (reproduced in I *UNCITRAL YB*, pt one, ch II, s E).

³¹ Pursuant to UNGA Res 34/142 (17 December 1979) (reproduced in XI *UNCITRAL YB*, pt one, ch I, s C). See, for example, 'Current activities of international organizations related to the harmonization and unification of international trade law: report of the Secretary-General' (UN document A/CN.9/380) (reproduced in XIV *UNCITRAL YB*, part two, ch V); and 'Current activities of international organizations related to the harmonization and unification of international trade law: note by the Secretariat' (UN document A/CN.9/707 and Add. 1), *Official Records of the General*

in-depth reports on the activities of organizations on particular international trade law topics.³² International organizations active in the field of international trade law have the opportunity to present reports (both formal and informal) on their activities at annual sessions of UNCITRAL.

As a further part of this function, UNCITRAL carries out studies and organizes conferences and seminars in conjunction with other international organizations. This work has included: a project with Committee D of the International Bar Association to monitor the implementation of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958) ('New York Convention') in national laws;³³ and a series of multinational judicial colloquia on cross-border insolvency law in conjunction with INSOL International and, since 2007, the World Bank.³⁴ It has also undertaken work to develop joint international standards,

Assembly, Forty-third Session, Supplement No. 17 (UN document A/65/17) para 306 (reproduced in XLI *UNCITRAL YB*, pt two, ch IX).

³² *Official Records of the General Assembly, Thirty-sixth Session, Supplement No. 17* (UN document A/36/17) para 100 (reproduced in XII *UNCITRAL YB*, pt one, s A). See, for example, 'Coordination of work: international transport documents: report of the Secretary-General' (UN document A/CN.9/225 and Corr.1 (French only)) (reproduced in XIII *UNCITRAL YB*, pt two, ch VI, s B); see also, for example, 'Legislative work of international organizations relating to public procurement: note by the Secretariat' (UN document A/CN.9/598/Add.1), *Official Records of the General Assembly, Sixty-first Session, Supplement No. 17* (UN document A/61/17) paras 192 and 232 (reproduced in XXVII *UNCITRAL YB*, pt one, ch XIII, s A); 'Current activities of international organizations related to the harmonization and unification of law relating to Security Interests: note by the Secretariat' (UN document A/CN.9/598/Add. 2), *Official Records of the General Assembly, Sixty-first Session, Supplement No. 17* (UN document A/61/17) paras 232, 235 and 236 (reproduced in XXVII *UNCITRAL YB*, pt one, ch XIII, s A); 'Current activities of international organizations related to the harmonization and unification of public procurement law: Note by the Secretariat' (UN document A/CN.9/657/Add.2), *Official Records of the General Assembly, Sixty-third Session, Supplement No. 17* (UN document A/63/17) (reproduced in XXXIX *UNCITRAL YB*, pt two, ch X); and 'Current activities of international organizations related to the harmonization and unification of international trade law: note by the Secretariat' (UN document A/CN.9/707/Add.1), *Official Records of the General Assembly, Sixty-fifth Session, Supplement No. 17* (UN document A/65/17) para 307 (reproduced in XLI *UNCITRAL YB*, pt two, ch IX).

³³ *Official Records of the General Assembly, Fiftieth Session, Supplement No. 17* (UN document A/50/17) paras 401–404 (reproduced in XXVI *UNCITRAL YB*, pt one, s A); *Official Records of the General Assembly, Fifty-First Session, Supplement No. 17* (UN document A/51/17) paras 238–243 (reproduced in XXVII *UNCITRAL YB*, pt one, s A); and *Official Records of the General Assembly, Fifty-Second Session, Supplement No. 17* (UN document A/52/17) paras 257–259 (reproduced in XXVIII *UNCITRAL YB*, pt one, s A).

³⁴ Judicial colloquia: Toronto, March 1995: *Official Records of the General Assembly, Fiftieth Session, Supplement No. 17* (UN document A/50/17) paras 382–393 (reproduced in XXVI *UNCITRAL YB*, pt one, s A), 'Cross-border insolvency Report on UNCITRAL-INSOL Judicial Colloquium on Cross-Border Insolvency: note by the Secretariat' (UN document A/CN.9/413) (reproduced in XXVI *UNCITRAL YB*, pt two, ch IV, s A); New Orleans, March 1997: *Official Records of the General Assembly, Fifty-second Session, Supplement No. 17* (UN document A/52/17) paras 17–22 (reproduced in XXVIII *UNCITRAL YB*, pt one, s A); Munich, October 1999; London July 2001: *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 17* (UN document A/57/17) paras 195–197 (reproduced in XXXII *UNCITRAL YB*, pt one, s A), 'Report of the 4th UNCITRAL-INSOL Judicial Colloquium 2001: note by the secretariat' (UN document A/CN.9/518); Las Vegas, 2003; Sydney, March 2005; Cape Town, March 2007; Vancouver, June 2009: *Official Records of the General Assembly, Sixty-fourth Session, Supplement No. 17* (UN document A/64/17) paras 306–307 (reproduced in XL *UNCITRAL YB*, pt one, ch VI, s B); Singapore, March

for example, with the World Bank in the areas of insolvency law and secured transactions law.³⁵ Recent examples of such cooperation include work with the Secretariat of the International Centre for Settlement of Investment Disputes towards the development of a code of conduct for adjudicators in international investment disputes,³⁶ and cooperation with UNIDROIT to develop a legal taxonomy of emerging technologies and their applications.³⁷

When appropriate, UNCITRAL recommends the use or adoption of international trade law related instruments developed by other organizations. For example, UNCITRAL has encouraged ratification of the European Convention on International Commercial Arbitration (Geneva, 1961).³⁸ It has recommended the use of INCOTERMS,³⁹ INCOTERMS 2000,⁴⁰

2011: *Official Records of the General Assembly, Sixty-sixth Session, Supplement No. 17* (UN document A/66/17) paras 220–221 (reproduced in XLII *UNCITRAL YB*, pt one, ch VII, s A); The Hague, May 2013: *Official Records of the General Assembly, Sixty-eighth Session, Supplement No. 17* (UN document A/68/17) paras 205–209 (reproduced in XLIV *UNCITRAL YB*, pt one, ch V, s C); San Francisco, March 2015; Sydney, March 2016; Singapore, April 2019: *Official Records of the General Assembly, Seventy-fourth Session, Supplement No. 17* (UN document A/74/17) para 232; Vienna (virtual), October 2021. International colloquia: April 1994 on cross-border insolvency: *Official Records of the General Assembly, Forty-ninth Session, Supplement No. 17* (UN document A/49/17 and Corr.1) paras 215–222 (reproduced in XXV *UNCITRAL YB 1994*, pt one, s A), ‘Cross-border insolvency; report on UNCITRAL-INSOL Colloquium on Cross-Border Insolvency: note by the secretariat’ (UN document A/CN.9/398) (reproduced in XXV *UNCITRAL YB*, pt two, ch V, s B); December 2000: *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 17* (UN document A/56/17) paras 296–308 (reproduced in XXXII *UNCITRAL YB*, pt one, s A), ‘Report on UNCITRAL-INSOL-IBA Global Insolvency Colloquium’ (Vienna, 4–6 December 2000) (UN document A/CN.9/495), (reproduced in XXXII *UNCITRAL YB*, pt two); Vienna, December 2013 on the Report of the Fourth International Insolvency Law Colloquium: note by the Secretariat (UN document A/CN.9/815).

³⁵ See the Creditor Rights and Insolvency Standard, based on the World Bank Principles for effective insolvency and creditor/debtor regimes and the UNCITRAL Legislative Guide on Insolvency Law, available at <<https://thedocs.worldbank.org/en/doc/538701606927038819-0130022020/original/ICRStandardJan2011withC1617.pdf>> accessed 10 February 2023.

³⁶ See *Possible reform of investor-state dispute settlement – Draft Code of Conduct* (UN document A/CN.9/WG.III/WP.209).

³⁷ See Legal issues related to the digital economy (including dispute resolution) – progress report (UN document A/CN.9/1064); see further *Official Records of the General Assembly, Seventy-fifth Session, Supplement No. 17* (UN document A/75/17), pt two, para 76.

³⁸ *Official Records of the General Assembly, Twenty-eighth Session, Supplement No. 17* (UN document A/9017) para 85 (reproduced in IV *UNCITRAL YB*, pt one, ch II, s A).

³⁹ *Official Records of the General Assembly, Twenty-fourth Session, Supplement No. 18* (UN document A/7618) para 60(3) (reproduced in I *UNCITRAL YB*, pt two, ch II, s A). See also *Official Records of the General Assembly, Forty-sixth Session, Supplement No. 17* (UN document A/46/17) paras 350–352 (reproduced in XXII *UNCITRAL YB*, pt one, s A). INCOTERMS 1990 are reproduced in the annex to ‘ICC INCOTERMS’ (UN document A/CN.9/348) (reproduced in XXII *UNCITRAL YB*, pt two, ch V, s B). The text is also available from the ICC in publication No. 460.

⁴⁰ *Official Records of the General Assembly, Fifty-fifth Session, Supplement No. 17* (UN document A/55/17) paras 428–434 (reproduced in XXXI *UNCITRAL YB*, pt one, s A), ‘ICC INCOTERMS 2000: Report of the Secretary-General’ (UN document A/CN.9/479) (reproduced in XXXI *UNCITRAL YB*, pt two, ch VI, s C).

Incoterms 2010⁴¹ and Incoterms 2020,⁴² the Uniform Customs and Practice for Documentary Credits,⁴³ the Uniform Rules for Forfaiting,⁴⁴ the Rules on International Standby Practices, the Uniform Rules for Contract Bonds⁴⁵ and the Uniform Rules for Demand Guarantees: 2010 Revision,⁴⁶ all of which were prepared by the ICC. UNCITRAL has also endorsed the Principles on Choice of Law in International Commercial Contracts 2015,⁴⁷ the UNIDROIT Principles of International Commercial Contracts 2010⁴⁸ and the UNIDROIT Principles of International Commercial Contracts 2016.⁴⁹ A number of those organizations have also recommended and endorsed the adoption of UNCITRAL texts.

UNCITRAL has established on-going relationships with a number of international organizations active in the field of international trade and trade law. It is represented, through its secretariat, at meetings of those organizations and actively follows and participates in their work where it relates to topics on UNCITRAL's work programme. They include both inter-governmental organizations such as the HCCH, the OAS, the Organization for Economic Cooperation and Development ('OECD'), the Permanent Court of Arbitration, UNCTAD, UNIDROIT, WIPO and the World Trade Organization, and NGOs such as the CMI, the Commercial Finance Association, the International Bar Association, the ICC and INSOL International.⁵⁰

⁴¹ *Official Records of the General Assembly, Sixty-seventh Session, Supplement No. 17* (UN document A/67/17) paras 141–144 (reproduced in XLIII *UNCITRAL YB*, pt one, ch XIV, s B). The text is available from the ICC in publication No. 715.

⁴² *Official Records of the General Assembly, Seventy-fifth Session, Supplement No. 17* (UN document A/75/17) paras 35–39. The text is available from the ICC in publication No. 723.

⁴³ Official Records of the General Assembly, Thirtieth Session, Supplement No. 17 (UN document A/10017) para 41 (reproduced in VI *UNCITRAL YB*, pt one, ch II, s A); Official Records of the General Assembly, Thirty-ninth Session, Supplement No. 17 (UN document A/39/17) para 129 (reproduced in XV *UNCITRAL YB*, pt one, s A); Official Records of the General Assembly, Forty-ninth Session, Supplement no. 17 (UN document A/49/17) paras 230–231 (reproduced in XXV *UNCITRAL YB*, pt one, s A) 'Uniform Customs and Practice for Documentary Credits: Report of the Secretary-General' (UN document A/CN.9/395) (reproduced in XXV *UNCITRAL YB*, pt two, ch VIII).

⁴⁴ Official Records of the General Assembly, Seventy-second Session, Supplement No. 17 (UN document A/72/17) paras 277–279.

⁴⁵ *Official Records of the General Assembly, Fifty-fifth Session, Supplement No. 17* (UN document A/55/17) paras 428–442 (reproduced in XXXI *UNCITRAL YB*, pt one, s A); ISP 98: 'International Standby Practices (ISP98): Report of the Secretary-General' (UN document A/CN.9/477) (reproduced in XXXI *UNCITRAL YB*, pt two, ch VI, s A). URCB: 'Uniform Rules for Contract Bonds: Report of the Secretary-General' (UN document A/CN.9/478) (reproduced in XXXI *UNCITRAL YB*, pt two, ch VI, s B).

⁴⁶ See Official Records of the General Assembly, Sixty-sixth Session, Supplement No. 17 (UN document A/66/17) paras 247–249.

⁴⁷ See Official Records of the General Assembly, Seventieth Session, Supplement No. 17 (UN document A/70/17) paras 238–240.

⁴⁸ See Official Records of the General Assembly, Sixty-seventh Session, Supplement No. 17 (UN document A/67/17) paras 137–140.

⁴⁹ See Official Records of the General Assembly, Seventy-sixth Session, Supplement No. 17 (UN document A/76/17) paras 264–268.

⁵⁰ The criteria and procedures for inviting NGOs to attend UNCITRAL meetings are: (a) conformity of the aims and purpose of the organization with the spirit, purposes and principles of the Charter of the United Nations; (b) internationality in focus and membership. The notion of 'international organizations' has been interpreted broadly as encompassing regional and subregional

Legislative and rule-making activities

The second main part of its mandate, and the one for which UNCITRAL is most widely known, comprises its legislative and rule-making activities. UNCITRAL adopted the basis for its initial work programme at its first session in 1968, after considering various suggestions by Member States. The subject areas initially chosen were the following: international sale of goods; international commercial arbitration; transportation; insurance; international payments; intellectual property; elimination of discrimination in laws affecting international trade; agency; and legalization of documents.⁵¹ The work of UNCITRAL in some of these topics was the natural continuation of previous work done within the United Nations, for instance, as regards commercial arbitration, with the adoption of the New York Convention.⁵² Priority status was accorded to international sale of goods, international commercial arbitration and international payments. Additional subject areas, including international legislation on shipping and liability for damage caused by products intended for or involved in international trade, were subsequently added to the initial work programme.

Since the first session in 1968, the Commission has often considered and revised its work programme on the basis of new developments in technology, changes in business practices, international trends and developments, economic and financial crises and other forces affecting and shaping international trade. Proposals for consideration of new topics can arise in a number of ways: they may be made directly to the Commission by states (e.g., the proposal for future work on insolvency law in 1999 etc.);⁵³ they may arise from consultation with various

organizations, as well as other organizations with demonstrated international expertise; and (c) ability of the organization to contribute meaningfully to the deliberations at the session in view of the organization's recognized competence in the subject matter under consideration at the session and its role in representing a particular sector or industry; and (d) legal or commercial experience to be reported upon by the organization, which is not represented by other organizations already participating in the session. UNCITRAL, 'Criteria', available at <<https://uncitral.un.org/en/about/faq/methods#criteria>> accessed 10 February 2023).

⁵¹ Official Records of the General Assembly, Twenty-third Session, Supplement No. 16 (UN document A/7216) paras 40 and 48 (reproduced in I UNCITRAL YB, pt two, ch I, s A).

⁵² See Official Records of the General Assembly, Twenty-fourth Session, Supplement No. 18 (UN document A/7618) para 112 (reproduced in I UNCITRAL YB, pt two, ch II, s A); Official Records of the General Assembly, Twenty-fifth Session, Supplement No. 17 (UN document A/8017) para 156 (reproduced in I UNCITRAL YB, pt two, ch III, s A). See also Official Records of the General Assembly, Twenty-eighth Session, Supplement No. 17 (UN document A/9017) para 85 (reproduced in IV UNCITRAL YB, pt one, ch II, s A); Official Records of the General Assembly, Thirty-fourth Session, Supplement No. 17 (UN document A/34/17) para 81 (reproduced in X UNCITRAL YB, pt one, ch II, s A).

⁵³ 'Possible future work in the area of insolvency law: proposal by Australia' (UN document A/CN.9/462/Add.1), *Official Records of the General Assembly, Fifth-fourth Session, Supplement No. 17* (UN document A/54/17) para 381, (reproduced in XXX UNCITRAL YB, pt two, ch VI); 'Possible future work on electronic commerce: proposal of the United States of America on online dispute resolution: note by the Secretariat' (UN document A/CN.9/681/Add.1-2), *Official Records of the General Assembly, Sixty-fourth Session, Supplement No. 17* (UN document A/64/17) para 338 (reproduced in XL UNCITRAL YB, pt two, ch 5, s B); 'Possible future work in the area of online dispute resolution: proposal by Colombia, Honduras and the United States of America: note by the Secretariat' (UN document A/CN.9/858), *Official Records of the General Assembly, Seventieth Session, Supplement No. 17* (UN document A/70/17) para 226; 'Possible future work in the area of electronic commerce – Contractual issues in the provision of cloud computing services: proposal by Canada: note by the Secretariat' (UN document A/CN.9/856), *Official Records of the General*

international organizations (e.g., with the CMI to develop a new instrument on carriage of goods by sea) or from special colloquia and seminars such as the 1992 UNCITRAL Congress on International Trade Law,⁵⁴ the 1994 UNCITRAL-INSOL Colloquium on Cross-border Insolvency⁵⁵ and the 1998 New York Convention Day⁵⁶ (problems relating to requirements of written form for arbitration agreements were identified during the New York Convention Day); or they may arise as topics that are related to, and arise from, the work being undertaken in the working groups (e.g., the need to develop a text on electronic signatures was identified during development of the Model Law on Electronic Commerce).

Assembly, Seventieth Session, Supplement No. 17 (UN document A/70/17) para 354; ‘Possible future work on security interests: proposal for a Practice Guide to the UNCITRAL Model Law on Secured Transactions Proposal of the Governments of Australia, Canada, Japan and the United Kingdom of Great Britain and Northern Ireland: note by the Secretariat’ (UN document A/CN.9/926), *Official Records of the General Assembly, Seventy-second Session, Supplement No. 17* (UN document A/72/17) para 221; ‘Possible future work by UNCITRAL on contractual networks: proposal of the Government of Italy: note by the Secretariat’ (UN document A/CN.9/925), *Official Records of the General Assembly, Seventy-second Session, Supplement No. 17* (UN document A/72/17), ch XVII; ‘Possible future work: proposal by the Government of Belgium: future work for Working Group II: note by the Secretariat’ (UN document A/CN.9/961), *Official Records of the General Assembly, Seventy-third Session, Supplement No. 17* (UN document A/73/17) paras 237 and 244; ‘Contractual networks and economic development: proposal by Italy for possible future work by UNCITRAL on alternative forms of organization to corporate-like models - advanced proposal: note by the Secretariat’ (UN document A/CN.9/954), *Official Records of the General Assembly, Seventy-third Session, Supplement No. 17* (UN document A/73/17) paras 237 and 241; ‘Possible future work on cross-border issues related to the judicial sale of ships: proposal from the Government of Switzerland: note by the Secretariat’ (UN document A/CN.9/944/Rev.1), *Official Records of the General Assembly, Seventy-third Session, Supplement No. 17* (UN document A/73/17) paras 237 and 242; ‘Possible future work regarding railway consignment notes: proposal by the Government of the People’s Republic of China: note by the Secretariat’ (UN document A/CN.9/998), *Official Records of the General Assembly, Seventy-fourth Session, Supplement No. 17* (UN document A/74/17) paras 191 and 216; ‘Possible future work in the field of dispute resolution in international high-tech related transactions: proposal by the Governments of Israel and Japan: note by the Secretariat’ (UN document A/CN.9/997), *Official Records of the General Assembly, Seventy-fourth Session, Supplement No. 17* (UN document A/74/17) paras 191 and 212.

⁵⁴ For suggestions concerning the objectives and orientation of the Congress, see *Official Records of the General Assembly, Forty-sixth Session, Supplement No. 17* (UN document A/46/17) paras 347–349 (reproduced in XXII *UNCITRAL YB*, pt one, s A); for the report of the Congress proceedings see ‘Uniform Commercial Law in the twenty-first Century: Proceedings of the Congress of the United Nations Commission on International Trade Law, New York 18–22 May 1992’, United Nations publication A/CN.9/SER.D/1.

⁵⁵ ‘Cross-border insolvency: report on the UNCITRAL-INSOL Colloquium on Cross-Border Insolvency: note by the Secretariat’ (UN document A/CN.9/398), *Official Records of the General Assembly, Forty-ninth Session, Supplement No. 17* (UN document A/49/17) paras 215–222 (reproduced in XXV *UNCITRAL YB*, pt two, ch V, s B). This Colloquium was followed by a series of multinational judicial colloquia on cross-border insolvency and a colloquium on national insolvency law: see note 40.

⁵⁶ ‘Possible future work in the area of international commercial arbitration: note by the Secretariat’ (UN document A/CN.9/460), (reproduced in XXX *UNCITRAL YB*, pt two, ch V). For the texts of the 1958 New York Convention Day speeches, see ‘Enforcing Arbitration Awards under the New York Convention: Experience and Prospects’, United Nations publication Sales No. E.99.V.2.

Some current topics had previously been considered by the Commission as not susceptible of productive work, but developments in international trade law and practices, as well as the successful conclusion by UNCITRAL of work on related topics had later created a demand for work to be done and made that work feasible (e.g., interim measures in arbitration, harmonization of national insolvency laws and secured transactions).

In considering whether any topic should be added to the programme, the Commission takes into account factors such as global significance, special interest to developing countries, developments in technology and changing trends in commercial practice.⁵⁷ Priority has been accorded to several broad subject areas including international trade and trade financing contracts; international payments; international commercial dispute resolution; transportation; electronic commerce; and insolvency.

However, the Commission takes a flexible approach to the interpretation of its mandate and is not bound by categories used in domestic legal systems. Thus, the Commission has taken up work on areas that some legal systems would regard as ‘public law’ (such as public procurement⁵⁸ or public-private partnerships⁵⁹) or that have close connections to public international law (such as transparency investment arbitration⁶⁰ or the reform of investor-state dispute settlement⁶¹), as long as the Commission is satisfied of the relevance of the topic for promoting and enhancing legal certainty for trade transactions.

In 2021, there are six UNCITRAL working groups: I (Micro, Small and Medium-sized Enterprises),⁶² II (Dispute Settlement),⁶³ III (Investor-State Dispute Settlement Reform),⁶⁴

⁵⁷ Some current topics have previously been considered by the Commission as not susceptible of productive work, but developments in international trade law and practices, as well as the successful conclusion by UNCITRAL of work on related topics have later created a demand for work to be done and made that work feasible (e.g., interim measures in arbitration; harmonization of national insolvency laws; secured transactions).

⁵⁸ Report of the UNCITRAL on the work of its nineteenth session, *Official Records of the General Assembly, Forty-first Session, Supplement No. 17* (UN document A/41/17) para 243.

⁵⁹ *ibid.*, *Seventieth Session, Supplement No. 17* (UN document A/70/17) para 363; and *ibid.*, *Seventy-first Session, Supplement No. 17* (UN document A/71/17) paras 360 and 362.

⁶⁰ *ibid.*, *Sixty-third Session, Supplement No. 17* and corrigendum (UN document A/63/17 and Corr.1) para 314; *ibid.*, *Sixty-fifth Session, Supplement No. 17* (UN document A/65/17) para 190.

⁶¹ *ibid.*, *Seventieth Session, Supplement No. 17* (UN document A/70/17) para 268; *ibid.*, *Seventy-second Session, Supplement No. 17* (UN document A/72/17) para 264.

⁶² Working Group I (‘Micro, Small and Medium-sized Enterprises’) has recently finished its work in drafting a Legislative Guide on an UNCITRAL Limited Liability Organization. See Note by the Secretariat, UNCITRAL Working Group I, Thirty-fifth Session (UN document A/CN.9/1084). In its Fifty-fourth Session UNCITRAL adopted it. See Report of the United Nations Commission on International Trade Law, *Fifty-fourth Session* (UN document A/76/17) paras 190–193.

⁶³ Working Group II (‘Dispute Settlement’) has recently finalized its work on the UNCITRAL Expedited Arbitration Rules (2021) and the Explanatory Note to the UNCITRAL Expedited Arbitration Rules (2021), UNCITRAL Mediation Rules (2021) and UNCITRAL Notes on Mediation (2021). See Report of the United Nations Commission on International Trade Law, *Fifty-fourth Session* (UN document A/76/17) paras 123–189.

⁶⁴ Working Group III (‘Investor-State Dispute Settlement Reform’) received a broad mandate to work on the possible reform of investor-state dispute settlement that entails the consideration of various reform elements, including: dispute prevention and mitigation as well as other means of alternative dispute resolution; treaty interpretation by states parties; security for costs; means to address frivolous claims; multiple proceedings including counterclaims; reflective loss and shareholder claims (based on joint work with the Organization for Economic Co-operation and Development

IV (Electronic Commerce),⁶⁵ V (Insolvency Law)⁶⁶ and VI (Judicial Sale of Ships).⁶⁷ Each working group is served by a secretary who is a professional member of the UNCITRAL secretariat.

Information and technical assistance activities

The work of UNCITRAL does not end with the finalization and adoption of a text but includes information and technical assistance activities to promote its adoption and implementation and to support its uniform application and interpretation.

In 1988, the Commission decided to establish a system for the collection and dissemination of court decisions and arbitral awards relating to UNCITRAL texts⁶⁸ to assist in achieving uniformity in the interpretation and application of those texts. The system, known as Case Law on UNCITRAL Texts ('CLOUT'), is intended to provide information for use by judges, arbitrators, lawyers, parties to commercial transactions, academics, students and other interested persons. CLOUT makes available abstracts of decisions and awards in all the official languages of the United Nations.⁶⁹ Upon request, texts of decisions and awards are available in the original language from the secretariat.

The growing awareness of UNCITRAL texts in many countries, in particular developing countries, has been accompanied by increasing requests for technical assistance in the adoption of those texts from individual governments and regional organizations. This assistance can be provided directly to the officials and legislators of individual countries through briefing missions, provision of general explanatory material on the texts under consideration, advice on the advantages of adoption of a particular text, examination and comment on reports and draft legislation. Assistance may be provided through sponsorship of, and participation in,

('OECD')); selection and appointment of investor-state dispute settlement tribunal members in a standing mechanism; and draft provisions for an appellate mechanism. See Report of the United Nations Commission on International Trade Law, Fifty-fourth Session (UN document A/76/17) paras 194–204.

⁶⁵ Working Group IV ('Electronic Commerce') is currently drafting provisions on the use and cross-border recognition of identity management and trust services and will start considering legal issues arising out of the digital economy. See Report of the United Nations Commission on International Trade Law, Fifty-fourth Session (UN document A/76/17) paras 205–208. See Luca G. Castellani, 'UNCITRAL texts on electronic commerce', in this volume (Chapter 27).

⁶⁶ Working Group V ('Insolvency Law') has recently formulated legislative recommendations on a simplified insolvency regime for micro- and small enterprises and has started work on civil asset tracing and recovery and applicable law in insolvency proceedings. See Report of the United Nations Commission on International Trade Law, Fifty-fourth Session (UN document A/76/17) paras 53–77 and 215–217. See Jodie Adams Kirshner and Yannick Chatard, 'Cross-border insolvency under the UNCITRAL Model Laws and the European Insolvency Regulation', in this volume (Chapter 22).

⁶⁷ Working Group VI ('Judicial Sale of Ships') is currently drafting an Instrument on the Judicial Sale of Ships. See Report of the United Nations Commission on International Trade Law, Fifty-fourth Session (UN document A/76/17) paras 209–211.

⁶⁸ *ibid.*, *Forty-third Session, Supplement No. 17* (UN document A/43/17) paras 98–109 (reproduced in XIX *UNCITRAL YB*, pt one, s A); 'Collection and dissemination of information on UNCITRAL legal texts: note by the Secretariat' (UN document A/CN.9/312) (*ibid.*, pt two, ch VII, s C).

⁶⁹ The CLOUT system is also available free of charge on the UNCITRAL web site <https://uncitral.un.org/en/case_law> accessed 17 December 2021.

symposia and seminars, which may be organized in conjunction with or by international or regional organizations or governments.⁷⁰

TYPES OF LEGAL INSTRUMENTS USED BY UNCITRAL

UNCITRAL has adopted a flexible and functional approach with respect to the techniques it uses to perform its mandate to modernize and harmonize the law of international trade. These techniques fall into three broad categories, which operate at different levels, involve different types of compromise, varying degrees of uniformity and are addressed to different users: legislative, contractual and explanatory. To some extent, they also show the process of modernization and harmonization occurring at different stages of business development. While in most cases the process of modernization and harmonization works to bring long-established practices closer together, there are cases that might be seen as examples of 'preventive' harmonization – establishing new principles and practices that will minimize divergence when national laws on new issues are developed. This has been typical in areas of commerce affected by new technology or new business practices, such as electronic commerce.

Legislative Instruments

UNCITRAL has produced several different types of legislative texts: conventions; model laws; legislative guides and model provisions.

Conventions

A convention is designed to unify law by establishing binding legal obligations. To become a party to a convention, states are required formally to deposit a binding instrument of ratification or accession with the depositary (for conventions prepared by UNCITRAL, this is the Secretary-General of the United Nations). The entry into force of a convention is usually dependent upon the deposit of a minimum number of instruments of ratification.

A convention is often used where the objective is to achieve a high degree of harmonization of law in the participating states, reducing the need for a party to undertake research of the law of another state party. The international obligation assumed by that state on adoption of the convention is intended to provide an assurance that the law in that state is in line with the terms of that convention. If a high degree of harmonization cannot be achieved or a greater degree of flexibility is desired and is appropriate to the subject matter under consideration, a different technique of harmonization, such as a model law or legislative guide, might be used.

Except to the extent that they permit reservations or declarations, conventions afford little flexibility to adopting states. The conventions negotiated by UNCITRAL generally do not allow reservations or declarations or allow them only to a very limited extent. In some cases, the ability to make a reservation or declaration represents a compromise that will enable some states to become a party to the convention without being obliged to comply with the provision to which the reservation or declaration relates.

Annex XXX contains a list of the conventions prepared by UNCITRAL.

⁷⁰ A summary of the training and technical assistance activities conducted each year is included in the annual report of UNCITRAL (for the latest report, see United Nations document A/CN.9/560 <<http://daccess-ods.un.org/access.nsf/Get?Open&JN=V0452913>> accessed 17 December 2021).

Model laws

A model law is a legislative text that is recommended to states for enactment as part of their national law.

A model law is an appropriate vehicle for modernization and harmonization of national laws when it is expected that states will wish or need to make adjustments to the text of the model to accommodate local requirements that vary from system to system, or where strict uniformity is not necessary or desirable. It is precisely this flexibility that makes a model law potentially easier to negotiate than a text containing obligations that cannot be altered and promotes greater acceptance of a model law than of a convention dealing with the same subject matter. Notwithstanding this flexibility, in order to increase the likelihood of achieving a satisfactory degree of unification and to provide certainty about the extent of unification, states are encouraged to make as few changes as possible when incorporating a model law into their legal system.

Model laws are generally finalized and adopted by UNCITRAL at its annual session, as opposed to adoption of a convention, which requires the convening of a diplomatic conference. This factor may make preparation of a model law less expensive than the preparation of a convention, unless the convention is adopted by the General Assembly performing the function of a diplomatic conference, as has been the case for most of the recent conventions prepared by UNCITRAL.

Recent model laws completed by UNCITRAL have been accompanied by a 'guide to enactment' setting forth background and other explanatory information to assist governments and legislators in using the text. The guides include, for example, information that would assist states in considering what, if any, provisions of the model law might have to be varied to take into account particular national circumstances.

Within the category of model laws prepared by UNCITRAL, a comparison of two texts, the UNCITRAL Model Law on International Commercial Arbitration (1985) ('MLICA')⁷¹ and the UNCITRAL Model Law on Electronic Commerce (1996) ('MLEC'),⁷² illustrates how the model law form can be adapted to the subject matter under consideration and to the degree of flexibility sought by the drafters. The MLICA, which could be described as a procedural instrument, provides a discrete set of interdependent articles. It is recommended that, in adopting this model law, very few amendments or changes are made. As a rule, relatively few deviations from this text have been made by states adopting enacting legislation, suggesting that the procedures it establishes are widely accepted and understood as forming a coherent basis for international commercial arbitration. The MLEC, on the other hand, is a more conceptual text allowing greater flexibility in its domestic enactment depending on how much legal certainty is needed in respect of each of the various issues addressed in the model law. The legislation that has been based on this model law largely reflects the principles of the

⁷¹ See UNCITRAL, *Model Law on International Commercial Arbitration* (1985), adopted by UNCITRAL at its 18th session (see *Official Records of the General Assembly, Fortieth Session, Supplement No. 17* (UN document A/40/17), annex I), with amendments as adopted by UNCITRAL at its 39th session (see *Official Records of the General Assembly, Seventy-first Session, Supplement No. 17* (UN document A/71/17); UN publication Sales No.: E.08.V.4).

⁷² UNCITRAL, *Model Law on Electronic Commerce with Guide to Enactment* (1996), with additional article 5 bis as adopted in 1998, adopted by UNCITRAL at its 29th session (see *Official Records of the General Assembly, Fifty-first Session, Supplement No. 17* (UN document A/51/17), Annex I); UN publication Sales No.: E.99.V.4).

text, although there are some departures from it in terms not only of drafting, but also in the combination of provisions adopted.

A list of the model laws prepared by UNCITRAL is contained in Annex XXX.

Legislative guides, recommendations and model provisions

For a number of reasons, it is not always possible to draft specific provisions in a suitable or discrete form, such as a convention or a model law, for incorporation into national legal systems: national legal systems often use widely disparate legislative techniques and approaches for solving a given issue, states may not yet be ready to agree on a single approach or common rule, there may not be consensus on the need to find a uniform solution to a particular issue or there may be different levels of consensus on the key issues of a particular subject and how they should be addressed. In such cases, it may be appropriate not to attempt to develop a uniform text, but to limit the action to a set of principles or legislative recommendations.

In order to advance the objective of harmonization, and offer a legislative model, the principles or recommendations need to do more than simply state general objectives. The text could provide a set of possible legislative solutions to certain issues, but not necessarily a single set of model solutions for those issues. In some cases, it may be appropriate to include variants, depending upon applicable policy considerations. By discussing the advantages and disadvantages of different policy choices, the text assists the reader to evaluate different approaches and to choose the one most suitable in a particular national context. It could also be used to provide a standard against which governments and legislative bodies could review the adequacy of existing laws, regulations, decrees and similar legislative texts in a particular field and update those laws or develop new laws. The first legislative guide was the UNCITRAL Legislative Guide on Privately Financed Infrastructure Projects,⁷³ adopted by UNCITRAL in 2000 (replaced in 2019 with the UNCITRAL Legislative Guide on Public-Private Partnerships⁷⁴), which was followed by a series of other legislative guides in other areas.

Annex XXX lists the legislative guides prepared by UNCITRAL thus far.

Legislative guides sometimes contain model legislative provisions which states may adopt to implement some of the policy choices explained in the guide. UNCITRAL has also formulated model provisions for use in future conventions and in revisions of existing ones, as was the case of the 1982 model provision establishing a universal unit of account of constant value that could be used, in particular, in international transport and liability conventions, for expressing amounts in monetary terms. Model provisions may also assist in supplementing a provision of a convention. The United Nations Convention on the Assignment of Receivables in International Trade (2001) contains an annex (of optional substantive law provisions) supplementing the conflicts of laws rules of the Convention that deal with priority issues. In 2003, UNCITRAL adopted the Model Legislative Provisions on Privately Financed Infrastructure

⁷³ See Official Records of the General Assembly, Fifty-fifth Session, Supplement No. 17 (UN document A/55/17) para 372; UN publication Sales No.: E.01.V.4).

⁷⁴ *ibid.*, *Seventy-fourth Session, Supplement No. 17* (UN document A/74/17), ch III and annex I; UN publication Sales No.: E.20.V.2).

Projects,⁷⁵ (replaced in 2019 with the UNCITRAL Model Legislative Provisions on Public-Private Partnerships⁷⁶) which complement the legislative guide on the same topic.

Uniform interpretation of legislative texts: case law on UNCITRAL texts

In 1988, the Commission decided to establish the above-mentioned 'CLOUT system' for the collection and dissemination of court decisions and arbitral awards relating to UNCITRAL legislative texts to assist in achieving uniformity in the interpretation and application of those texts. The system is intended to provide information for use by judges, arbitrators, lawyers, parties to commercial transactions, academics, students and other interested persons.

The majority of cases reported in the CLOUT system are on the United Nations Convention on the International Sale of Goods ('CISG'), the MLICA and the MLCBI. Other UNCITRAL texts will be included in the system as relevant case law develops.

The CLOUT system relies on national correspondents designated either by state parties to a convention or by states having enacted legislation based on a model law. National correspondents are requested to collect decisions and awards, prepare abstracts of them in one of the official languages of the United Nations and forward both the text and the abstract to the UNCITRAL secretariat. CLOUT abstracts are then edited, translated into the six official languages of the United Nations, and issued as part of the regular documentation of UNCITRAL. The CLOUT system is also available on the UNCITRAL website.⁷⁷ Upon request, texts of decisions and awards are available in the original language from the UNCITRAL secretariat.

In December 2004, UNCITRAL published an analytical digest of court and arbitral decisions identifying trends in the interpretation of the CISG, and it will publish a digest on the Model Law on International Commercial Arbitration.

Contractual Techniques

In the drafting of contracts, there are issues that can be resolved by reference to a standard or uniform clause or set of clauses or rules. The process of standardization of these clauses or rules has various advantages. It can identify all issues that parties should address in such clauses or rules; ensure that the clause is effective thus avoiding pathological, ineffective or invalid clauses (as sometimes occurs in the case of agreements to arbitrate); and provide internationally recognized and up-to-date solutions to specific issues. One common example is in the field of dispute resolution, where a contract can include a standard dispute resolution clause referring to the use of internationally recognized rules for the conduct of dispute resolution proceedings. The UNCITRAL Arbitration Rules (1976)⁷⁸ and the UNCITRAL Conciliation

⁷⁵ *ibid.*, *Fifty-eighth Session, Supplement No. 17* (UN document A/58/17), Annex I; UN publication Sales No.: E.01.V.4).

⁷⁶ *ibid.*, *Seventy-fourth Session, Supplement No. 17* (UN document A/74/17), ch III and annex I; UN publication Sales No.: E.20.V.2).

⁷⁷ See the UNCITRAL website, available at <<http://www.uncitral.org>> accessed 6 June 2022.

⁷⁸ UNCITRAL Arbitration Rules (1976) (*Official Records of the General Assembly, Thirty-first Session, Supplement No. 17* (UN document A/31/17) para 57 (reproduced in VII *UNCITRAL YB*, pt one, ch II, s A)) ('Arbitration Rules'). Widely used in ad hoc arbitrations as well as administered arbitrations, the Arbitration Rules were revised in 2010 and now include provisions dealing with, amongst others, multiple-party arbitration and joinder, liability and a procedure to object to experts appointed by the arbitral tribunal (*Official Records of the General Assembly, Sixty-fifth*

Rules (1980)⁷⁹ (amended and renamed UNCITRAL Mediation Rules in 2021)⁸⁰ are examples of such internationally recognized uniform rules.

Explanatory Techniques

Legal guides

When it is not feasible or necessary to develop a standard or model set of contract rules, an alternative may be a legal guide giving explanations concerning contract drafting. Parties negotiating complex international contracts, such as construction contracts, often experience difficulties in negotiating and drafting appropriate contract clauses for reasons such as lack of specific expertise, resources or reference materials. Because such contracts must be tailored to the circumstances of the case, it is normally not possible to develop a model contract text that would be usable in a sufficient number of cases to justify the expense of its preparation. Parties can be assisted, however, by a legal guide that discusses various issues underlying the drafting of a particular type of contract; considers various solutions to those issues; describes implications, advantages and disadvantages of those solutions; and recommends the use of certain solutions in particular circumstances. Such legal guides may also include sample contract clauses to illustrate particular solutions. The first legal guide was the UNCITRAL Legal Guide on Drawing up International Contracts for the Construction of Industrial Works (1987).⁸¹ That was followed by the UNCITRAL Legal Guide on International Countertrade Transactions (1992)⁸² and, in 1996, the UNCITRAL Notes on Organizing Arbitral Proceedings.⁸³

Interpretative declarations

A further example of an explanatory text is a declaration, which could be used to achieve a uniform interpretation of a particular text, or texts, where the desirability of that interpretation is dictated by widespread changes in commercial practices, developments in technology, emerging divergence in interpretation by the courts, or some other factor affecting the application of the text. Such an instrument may be particularly useful in the case of a convention, where amendment of the text might pose significant technical problems. The possibility of using this technique has been discussed in the context of the writing requirement set forth

Session, Supplement No. 17 (A/65/17), annex I (reproduced in XXXVII UNCITRAL YB, pt I, s A, annex I)). After the adoption of the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration (the 'Rules on Transparency') in 2013, a new article 1, para 4, was added to the text of the Arbitration Rules (as revised in 2010) to incorporate the Rules on Transparency for arbitration initiated pursuant to an investment treaty concluded on or after 1 April 2014.

⁷⁹ See *Official Records of the General Assembly, Thirty-fifth Session, Supplement No. 17 (UN document A/35/17), ch V, s A, para 106 (reproduced in XI UNCITRAL YB, pt three, annex II).*

⁸⁰ See *Official Records of the General Assembly, Seventy-sixth Session, Supplement No. 17 (UN document A/76/17), annex III.*

⁸¹ Adopted by UNCITRAL at its 20th session (see *Official Records of the General Assembly, Forty-second Session, Supplement No. 17 (UN document A/42/17) para 315; UN publication Sales No. E.87.V.10).*

⁸² Adopted by UNCITRAL at its 25th session (see *Official Records of the General Assembly, Forty-seventh Session, Supplement No. 17 (UN document A/47/17) paras 137 and 138; United Nations publication Sales No. E.93.V.75).*

⁸³ Finalized by UNCITRAL at its 29th session (see *Official Records of the General Assembly, Fifty-first Session, Supplement No. 17 (UN document A/51/17) paras 11–54).*

in article II, paragraph 2, of the New York Convention and more generally in the context of the interpretation of article VII, paragraph 1, of that Convention. It was also discussed in the context of electronic commerce and the desirability of interpreting a number of international trade law instruments by reference to the MLEC. That question of interpretation has now been settled by the use of a different instrument – the United Nations Convention on the Use of Electronic Communications in International Contracts (2005), in particular its article 20.

Finalization and Adoption of Legislative Texts

After a working group has prepared a draft text of a convention, model law or other instrument, it is submitted for the consideration of UNCITRAL at its annual session. If appropriate, the text may be accompanied by an explanatory commentary prepared by the secretariat in order to assist UNCITRAL, governments and international organizations in their deliberations. Generally, the draft text and the commentary (if prepared) are circulated, before the applicable annual session, to governments and interested international organizations for comment. An analysis of comments received may be prepared by the secretariat and provided to the Commission to facilitate its consideration of the draft text.

Different procedures apply to the finalization and adoption of different types of texts. If the text concerned is a draft convention, the established practice is for UNCITRAL to recommend to the General Assembly that an international conference of plenipotentiaries be convened to finalize and adopt the convention and open it for signature. Since the 1980s, the General Assembly has acted as the conference of plenipotentiaries for the adoption of conventions emanating from the work of UNCITRAL.

When a draft convention is to be considered by a conference of plenipotentiaries, the General Assembly requests the secretariat to circulate it to governments and interested international organizations for comment. As noted above, UNCITRAL may also request its secretariat to prepare a commentary to be circulated with the text. An analysis of comments received from governments and international organizations is prepared by the secretariat and, together with the text itself and any commentary, is placed before the conference of plenipotentiaries. Although this would be the usual sequence of events, variations may occur. In one instance, preparation of a commentary was requested by the conference of plenipotentiaries after the particular convention had been finalized and adopted, while in another case, UNCITRAL requested preparation of the commentary after it had finalized the text of the draft convention.

If the draft text is to be a model law or a legislative guide, UNCITRAL itself generally finalizes the text and formally adopts it, recommending that states give it due consideration when modernizing and reforming their laws. Adoption by a conference of plenipotentiaries is not required. The General Assembly generally expresses its support for the UNCITRAL process by formally endorsing the adopted text and recommending that states give it due consideration when modernizing and reforming their laws.

RELATIONS WITH OTHER ORGANIZATIONS

As mentioned above, one of the main reasons for the establishment of UNCITRAL was the belief that an active role of the United Nations in promoting commercial law harmonization would support the activities of the various organizations acting in this field and help ensure a

desirable degree of cooperation among them. As a result of the contacts that have since been established between UNCITRAL and other organizations, which I have briefly described earlier, there have been several examples of good coordination between UNCITRAL and other formulating agencies.

The most famous and ambitious product of UNCITRAL, the CISG,⁸⁴ is a prime example of cooperation, as it would not have been successfully completed had the grounds not been levelled by the extensive work done by UNIDROIT in the preparation of the Hague Uniform Laws.⁸⁵

Another example is provided by UNCTAD. In the early 1970s, UNCTAD was involved in preparing a convention on maritime transport, but later transferred the project to UNCITRAL, which concluded it with the adoption in 1978 of the United Nations Convention on the Carriage of Goods by Sea, which entered into force on 1 November 1992.⁸⁶ In a similar way, UNIDROIT, after having carried out a substantial part of the preliminary work on a convention on the liability of operators of transport terminals in international trade, handed over the project in 1984 to UNCITRAL, which carried it until its adoption in a diplomatic conference in 1991.⁸⁷ Conversely, UNCITRAL itself has on occasion given up certain lines of work or declined to take up new projects because it considered that other organizations might be better equipped to treat a particular matter. This happened, for example, with a proposal to harmonize product liability law, which UNCITRAL felt would be better left for regional initiatives.⁸⁸ UNCITRAL and UNIDROIT are currently jointly working on the formulation of a model law on the private law aspects of warehouse receipts, a draft of which, after an initial stage of development by a UNIDROIT working group, is expected to be submitted to a UNCITRAL working group for intergovernmental deliberations with a view to its adoption as a joint instrument.⁸⁹

Cooperation has also taken the form of exchange of input and expertise in the preparation of uniform law instruments. An example is the cooperation between the HCCH and UNCITRAL in the formulation of the conflict-of-laws rules contained in chapter V of the United Nations Convention on the Assignment of Receivables in International Trade (2001),⁹⁰ and in the drafting of part II, chapter I, section C of the UNCITRAL Legislative Guide on Insolvency Law.⁹¹ Another example is the UNCITRAL Legislative Guide on Secured Transactions: Supplement

⁸⁴ 1489 UN Treaty Series ('UNTS') No. 25567, 3 (reproduced in XI *UNCITRAL YB*, pt three, ch I, s B).

⁸⁵ See Convention relating to a Uniform Law on the International Sale of Goods and Convention relating to a Uniform Law on the Formation of Contracts for the International Sale of Goods, both done at The Hague on 1 July 1964 <<https://www.unidroit.org/instruments/international-sales/>> accessed 17 December 2021.

⁸⁶ 1695 UNTS No. 29215, 3 (reproduced in IX *UNCITRAL YB*, pt three, ch I, s B).

⁸⁷ United Nations Convention on the Liability of Operators of Transport terminals in International Trade (not yet in force, published in United Nations document A/CONF.152/13, reproduced in XXIII *UNCITRAL YB*, pt three, ch I).

⁸⁸ Official Records of the General Assembly, Thirty-second Session, Supplement No. 17 (UN document A/32/17) (reproduced in VIII *UNCITRAL YB*, pt one, ch II, s A).

⁸⁹ *ibid.*, *Seventy-fifth Session, Supplement No. 17* (UN document A/75/17) para 60.

⁹⁰ The 'UN Receivables Convention' was adopted and opened for signature by the UN General Assembly by its Res 56/81 (12 December 2001) (reproduced in XXXIII *UNCITRAL YB*, pt three).

⁹¹ Adopted by UNCITRAL on 25 June 2004 (see *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 17* (UN document A/59/17) para 55); UN publication Sales No. E.05.V.10.

on Security Rights in Intellectual Property, which was developed in cooperation with WIPO and the HCCH.⁹²

Recently UNCITRAL, HCCH and UNIDROIT released the Legal Guide to Uniform Instruments in the Area of International Commercial Contracts, with a Focus on Sales.⁹³

One good example of successful cooperation with other organizations is the World Bank's Insolvency and Creditor Rights Standard. In the wake of the financial crises of the late 1990s the World Bank and the International Monetary Fund ('IMF') agreed on various initiatives to strengthen the international financial architecture. One of them was to promote greater financial stability, both domestically and internationally, through the development, dissemination, adoption and implementation of international standards and codes on critical policy areas.⁹⁴ Recognizing that sound insolvency and creditor/debtor regimes are fundamental to robust and diverse modes of financial intermediation, responsible access to finance and financial stability, in 2011, the World Bank adopted its Principles for Effective Insolvency and Creditor Rights Systems ('the Principles').⁹⁵ UNCITRAL itself had worked on insolvency law for several years, having adopted in 2004 a Legislative Guide on Insolvency Law ('LGIL')⁹⁶ which contains comprehensive legislative recommendations and extensive discussion on the policy options they reflect.

Staff and experts of the World Bank, in collaboration with the IMF and UNCITRAL staff and experts, have since prepared a unified Standard for Insolvency and Creditors Rights Systems, which integrates the Principles and the more detailed Recommendations contained in the UNCITRAL Legislative Guide in a coordinated fashion. The result is the ICR Standard, which is designed as an assessment tool to assist countries to evaluate and improve insolvency

⁹² *Supplement* considered by the Commission is contained in United Nations documents A/CN.9/700 and Add.1-7. For the report of the Commission on that draft, see *Official Records of the General Assembly, Sixty-fifth Session, Supplement No. 17* (UN document A/65/17) paras 192–227.

⁹³ The UNCITRAL, HCCH and Unidroit Legal Guide to Uniform Instruments in the Area of International Commercial Contracts, with a Focus on Sales <<https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/tripartiteguide.pdf>> accessed 17 December 2021. For a general discussion of the cooperative relationship between the 'three sisters' HCCH, UNCITRAL and UNIDROIT, see William Brydie-Watson, 'The three sisters of private international law: an increasingly cooperative family rather than sibling rivals', in See John, Gulati and Köhler, HCCH (n 1) 23.

⁹⁴ Reports summarizing countries' observance of these standards (known as 'Report on the Observance of Standards and Codes' ('ROSC')) are prepared and published at the request of the member country, available at <<https://www.imf.org/external/NP/rosc/rosc.aspx>> accessed 10 February 2023.

⁹⁵ The World Bank, *Principles for Effective Insolvency and Creditor/Debtor Regimes* (2021 edn, World Bank 2021).

⁹⁶ The *Legislative Guide on Insolvency Law* was prepared by UNCITRAL following a proposal made to the Commission in 1999 that UNCITRAL should undertake further work on insolvency law, specifically corporate insolvency, to foster and encourage the adoption of effective national corporate insolvency regimes. The first draft of the legislative guide on insolvency law was considered by UNCITRAL Working Group V in July 2001 and work continued through seven one-week sessions, the final meeting taking place in late March 2004. In addition to representatives of the (then) 36 Member States of the Commission, representatives of many other states and a number of international organizations, both intergovernmental and non-governmental, participated actively in the preparatory work. The full text of the Legislative Guide is available at <<https://uncitral.un.org/en/texts/insolvency>> accessed 10 February 2023.

and creditor/debtor regimes. The ICR Standard identifies principles for effective handling of cross-border issues, drawing from the UNCITRAL Model Law on Cross Border Insolvency.⁹⁷

Sometimes, coordination of work is achieved through allocation of topics among the various organizations, which occasionally may lead to carving out certain areas from specific instruments. In the area of transnational and connected capital markets, for example, HCCH developed a Convention on the Law Applicable to Certain Rights in Respect of Securities held with an Intermediary,⁹⁸ while UNIDROIT addressed various substantive aspects in the Convention on Substantive Rules for Intermediated Securities ('the Geneva Securities Convention'),⁹⁹ followed by a Legislative Guide on Intermediated Securities implementing the principles and rules of the Geneva Securities Convention¹⁰⁰ and Principles on the Operation of Close-Out Netting Provision.¹⁰¹ UNCITRAL followed closely those developments and participated in the relevant deliberations. With a view to avoiding interference with those instruments, the UNCITRAL Model law on Secured Transactions expressly excludes security rights in intermediated securities and payment rights arising under or from financial contracts governed by netting agreements,¹⁰² whereas the LGIL recommends recognizing and protecting the finality of netting of financial contracts.¹⁰³

Needless to say, drawing the lines between respective projects is not always an easy task, as is evidenced by the time that was needed to arrive at a satisfactory interplay between the United Nations Receivables Convention and the UNIDROIT Convention on International Interest in Mobile Equipment¹⁰⁴ and the UNIDROIT Convention on International Factoring.¹⁰⁵ In order to help the user understand the respective coverage and scope of the various instruments in this complex area, the secretariats of UNCITRAL and UNIDROIT and the Permanent Bureau of the HCCH prepared jointly a paper with the assistance of outside experts, comparing and analysing the major features of international instruments relating to secured transactions.¹⁰⁶

⁹⁷ See UNCITRAL, 'Insolvency', available at <<https://uncitral.un.org/en/texts/insolvency>> accessed 10 February 2023.

⁹⁸ Done at The Hague on 5 July 2006, available at <<https://www.hcch.net/en/instruments/conventions/specialised-sections/securities>> accessed 10 February 2023.

⁹⁹ Done at Geneva on 9 October 2009, available at <<https://www.unidroit.org/instruments/capital-markets/geneva-convention/>> accessed 10 February 2023.

¹⁰⁰ Legislative Guide on Intermediated Securities implementing the principles and rules of the Geneva Securities Convention, available at <<https://www.unidroit.org/instruments/capital-markets/legislative-guide/>> accessed 10 February 2023.

¹⁰¹ Principles on the Operation of Close-Out Netting Provision, available at <<https://www.unidroit.org/instruments/capital-markets/netting/>> accessed 10 February 2023.

¹⁰² See *UNCITRAL Model Law on Secured Transactions* (adopted by UNCITRAL at its 49th session. See *Official Records of the General Assembly, Seventy-first Session, Supplement No. 17* (UN document A/71/17) paras 17–118; UN publication Sales No.: E.17.V.1), art 1, subparas (3)(c) and (3)(d).

¹⁰³ See Legislative Guide on Insolvency Law, recommendations 101–107.

¹⁰⁴ Done at Cape Town on 16 November 2001, available at <<https://www.unidroit.org/instruments/security-interests/cape-town-convention/>> accessed 10 February 2023.

¹⁰⁵ Done at Ottawa on 28 May 1988, available at <<https://www.unidroit.org/instruments/factoring/>> accessed 10 February 2023.

¹⁰⁶ 'Comparison and analysis of major features of international instruments relating to secured transactions: note by the Secretariat' (UN document A/CN.9/720); see *Official Records of the General Assembly, Sixty-sixth Session, Supplement No. 17* (UN document A/66/17) paras 280–282.

The likelihood of conflicts – at least in theory – has increased in recent years as a result of a concentration of efforts by various international organizations in the field of commercial law harmonization. This phenomenon may be explained in part by the growing need for reform in international commercial law.

Globalization has increased trade and investment and deepened economic integration. This has also meant a greater need for commercial law reform and legal harmonization. This demand cannot be met without efficient cooperation among formulating agencies, rather than by creating a web of monopolies where each organization would claim an exclusive right to handle alone entire areas of law. Indeed, certain topics may require harmonizing efforts at different levels or even at different forums simultaneously. The resources available to the organizations specially devoted to legal harmonization (HCCH, UNIDROIT, UNCITRAL) allow them to handle a limited number of initiatives. Where further harmonization cannot await the completion of work in one organization, states may agree to ask another one to take up work on a related area. This heightens the need for close coordination among them.

To some extent, the direct – almost collegial – relationship between the staff of the multi-lateral organizations more closely involved with harmonization of private law and the national experts who take part in their activities has substituted for the lack of institutional ties and has had some success in preventing conflicts between formulating agencies. After all, as an experienced observer has noted, '[the] task of formulating new law rests on a small number of people, a few tens, certainly less than one hundred, that at any given time are in charge of international negotiations of private law in the various states'.¹⁰⁷

However, in order to ensure effective legal harmonization, coordination at the rule-making stage must be followed by cooperation and coordination in the implementation of international legal standards at the domestic or regional level.

With a view to integrating uniform commercial law standards in law reform projects supported by multilateral financial institutions and bilateral development agencies, UNCITRAL seeks their active involvement as much as possible already at the development stage of new instruments. In fact, experience shows that when the representatives of those organizations and agencies take part in the conferences that lead to the adoption of a uniform text, one can usually expect that at least the general lines of the uniform instruments will be taken into account in law reform programmes in the relevant area. This was at least what happened, for example, in connection with the implementation of the UNCITRAL Model Law on Procurement of Goods, Construction and Services (1994),¹⁰⁸ which has since been actively promoted by the World Bank. Another example is the UNCITRAL Legislative Guide on Privately Financed Infrastructure Projects (2000)¹⁰⁹ and its subsequent addition,

¹⁰⁷ Jean-Paul Béraudo, 'La négociation internationale institutionnelle de droit privé (Ière partie)' (1997) 1 *Uniform Law Review* 9.

¹⁰⁸ *Official Records of the General Assembly, Forty-ninth Session, Supplement No. 17* and corrigendum (UN document A/49/17 and Corr.1), annex I (reproduced in XXV *UNCITRAL YB*, vol. XXV:1994, pt three, annex I).

¹⁰⁹ UNCITRAL Legislative Guide on Privately Financed Infrastructure Projects (UN document A/CN.9/SER.B/4), UN sales publication No. E.01.V.4. The purpose of the Guide is to assist in the establishment of a legal framework favourable to private investment in public infrastructure. The advice provided in the Guide aims at achieving a balance between the desire to facilitate and encourage private participation in infrastructure projects, on the one hand, and various public interest concerns of the host country, on the other.

the UNCITRAL Model Legislative Provisions on Privately Financed Infrastructure Projects (2003),¹¹⁰ projects in which the European Bank for Reconstruction and Development participated actively and whose implementation it actively supports.

To some extent, not all duplication can be avoided, as organizations have different geographic reach and not all global work replaces regional efforts or vice versa. The secretariats of the various organizations specialized in the unification of the private or international law have been able to assure an acceptable level of coordination through informal arrangements and consultations with interested Member States. Closer cooperation might provide an even greater opportunity to explore further the comparative advantages of various agencies (such as the specificity of mandate and the expertise on the Conference of the Hague, the academic network and the flexibility of the methods of UNIDROIT, the universal membership and political authority of UNCITRAL) in the interest of even greater coherence and efficiency in formulating and implementing uniform commercial law.

¹¹⁰ UNCITRAL Model Legislative Provisions on Privately Financed Infrastructure Projects (2003) (*Official Records of the General Assembly, Fifth-eighth Session, Supplement No. 17* (UN document A/58/17), Annex I) (reproduced in XXXIV *UNCITRAL YB*, pt three). They are intended to supplement the UNCITRAL Legislative Guide.