

THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW (UNCITRAL)

I. Origin, mandate and composition of UNCITRAL

The United Nations Commission on International Trade Law (UNCITRAL) was established by the General Assembly in 1966. In establishing the Commission, the General Assembly recognized that disparities in national laws governing international trade created obstacles to the flow of trade, and it regarded the Commission as the vehicle by which the United Nations could play a more active role in reducing or removing these obstacles. It thus gave the Commission the general mandate to further the progressive harmonization and unification of the law of international trade. The Commission has since come to be the core legal body of the United Nations system in the field of international trade law.

The Commission is composed of thirty-six member States elected by the General Assembly. Membership is structured so as to be representative of the world's various geographic regions and its principal economic and legal systems. Members of the Commission are elected for terms of six years, the terms of half the members expiring every three years. Elections for those members whose terms expired on the day before the opening of the twenty-fifth session (New York, 4-22 May 1992) took place during the forty-sixth General Assembly session in 1991. Thus, as from 4 May 1992, the members of UNCITRAL and the years when their memberships expire are:

Argentina (1998), Austria (1998), Bulgaria (1995), Cameroon (1995), Canada (1995), Chile (1998), China (1995), Costa Rica (1995), Denmark (1995), Ecuador (1998), Egypt (1995), France (1995), Germany (1995), Hungary (1998), India (1998), Iran, Islamic Republic of (1998), Italy (1998), Japan (1995), Kenya (1998), Mexico (1995), Morocco (1995), Nigeria (1995), Poland (1998), Russian Federation (1995), Saudi Arabia (1998), Singapore (1995), Slovak Republic (1998), Spain (1998), Sudan (1998), Thailand (1998), Togo (1995), Uganda (1998), United Kingdom of Great Britain and Northern Ireland (1995), United Republic of Tanzania (1998), United States of America (1998) and Uruguay (1998).

The Secretariat of UNCITRAL is the International Trade Law Branch of the United Nations Office of Legal Affairs. It is located at Vienna, and its postal address, telephone, telex and telefax numbers are as follows:

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II. UNCITRAL working groups

The Commission has established three working groups to perform the substantive preparatory work on topics within the Commission's programme of work. Each of the working groups is composed of all member States of the Commission.

III. Sessions of UNCITRAL and its working groups

The Commission carries out its work at annual sessions, which are held in alternate years at United Nations Headquarters in New York and at the Vienna International Centre at Vienna. Each working group of the Commission typically holds one or two sessions a year, depending on the subject-matter to be covered; these sessions also alternate between New York and Vienna.

In addition to member States, all States that are not members of the Commission, as well as interested international organizations, are invited to attend sessions of the Commission and of its working groups as observers. Observers are permitted to participate in discussions at sessions of the Commission and its working groups to the same extent as members.

IV. Work carried out by UNCITRAL

The areas in which the Commission has worked or is working and the major results of that work are set forth below.

A. International sale of goods

- Convention on the Limitation Period in the International Sale of Goods (New York, 1974). This Convention establishes uniform rules governing the period of time within which legal proceedings arising from an international sales contract must be commenced. It has been amended by a Protocol adopted in 1980 when the United Nations Sales Convention (see below) was adopted. Both the original Convention and the Convention as amended entered into force on 1 August 1988. There are currently 17 States parties to the Convention, of which 11 are parties to the Convention as amended.

- United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980). This Convention establishes a comprehensive code of legal rules governing the formation of contracts for the international sale of goods, the obligations of the buyer and seller, remedies for breach of contract and other aspects of the contract. The Convention entered into force on 1 January 1988. There are currently 38 States parties to the Convention.

B. International transport of goods

- United Nations Convention on the Carriage of Goods by Sea, (1978) (the "Hamburg Rules"). This Convention establishes a uniform legal regime governing the rights and obligations of shippers, carriers and consignees under a contract of carriage of goods by sea. It was prepared at the request of developing countries and its adoption by States has

been endorsed by such intergovernmental organizations as UNCTAD, Asian-African Legal Consultative Committee and the Organization of American States. The twenty ratifications and accessions needed for the Convention to enter into force have been deposited and the Convention entered into force on 1 November 1992 (present status: 22 ratifications and accessions).

- United Nations Convention on the Liability of Operators of Transport Terminals in International Trade. This Convention sets forth uniform legal rules governing the liability of a terminal operator for loss of and damage to goods involved in international transport while they are in a transport terminal, and for delay by the terminal operator in delivering the goods. The draft Convention was adopted by a diplomatic conference and opened for signature, ratification and accession on 19 April 1991. For the Convention to enter into force, five ratifications and accessions are necessary.

C. International commercial arbitration and conciliation

- UNCITRAL Arbitration Rules. Adopted in 1976, the UNCITRAL Arbitration Rules provide a comprehensive set of procedural rules upon which parties may agree for the conduct of arbitral proceedings arising out of their commercial relationship. The Rules are widely used in many contexts.

- Recommendations to assist arbitral tribunals and other interested bodies with regard to arbitrations under the UNCITRAL Arbitration Rules (1982)

- UNCITRAL Conciliation Rules (1980). When parties to a commercial dispute wish to settle their disputes amicably through conciliation, they may agree upon this set of procedural rules to govern the conciliation proceedings.

- UNCITRAL Model Law on International Commercial Arbitration. The UNCITRAL Model Law is designed to assist States in reforming and modernizing their laws on arbitral procedure so as to take into account the particular features and needs of international commercial arbitration. It was adopted by UNCITRAL in 1985 and has already been enacted into law by a considerable number of jurisdictions from both developed and developing countries.

- Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958). Although the Convention was prepared by the United Nations prior to the existence of UNCITRAL, promotion of the Convention is an integral part of the Commission's programme of work. As its name indicates, it provides for the recognition and enforcement of arbitral awards rendered in foreign countries. At present 97 States are party to it.

D. New International Economic Order

- UNCITRAL Legal Guide on Drawing Up International Contracts for the Construction of Industrial Works. The Legal Guide was published in February 1988 and is available in all six United Nations languages. It discusses the many legal issues that arise in connection with the construction of industrial works, covering the pre-contractual, construction and post-construction phases, and suggests possible ways in which the parties may deal with these issues in their contracts. It was prepared with the special problems of buyers from developing countries in mind.

- UNCITRAL Model Law on Procurement of Goods, Construction and Services. The UNCITRAL Model Law, adopted by the Commission in 1994, is designed to assist States in reforming and modernizing their laws on procurement procedures. The Model Law contains procedures aimed at achieving the objectives of competition, transparency, fairness and objectivity in the procurement process, and thereby increasing economy and efficiency in procurement. In order to assist executive branches of Governments, parliaments and legislatures using the Model Law, the Commission has produced a Guide to Enactment of the UNCITRAL Model Law on Procurement of Goods, Construction and Services.

- In 1993, the Commission had adopted the UNCITRAL Model Law on Procurement of Goods and Construction together with an accompanying Guide to Enactment. This Model Law is available for use by States who wish to enact procurement legislation with a scope limited to procurement of goods and construction.

- UNCITRAL Legal Guide on International Countertrade Transactions. The purpose of the Legal Guide, adopted in 1992, is to assist parties negotiating international countertrade transactions. It identifies legal issues involved in such transactions and discusses possible contractual solutions.

E. International Payments

- United Nations Convention on International Bills of Exchange and International Promissory Notes (New York, 1988). This Convention provides a comprehensive code of legal rules governing new international instruments for optional use by parties to international commercial transactions. It is designed to overcome the major disparities and uncertainties that currently exist in relation to instruments used for international payments. The Convention applies if the parties use a particular form of a negotiable instrument indicating that the instrument is subject to the UNCITRAL Convention. The Convention was adopted and opened for signature by the General Assembly at its 43rd session in December 1988. Ten ratifications or accessions are necessary for the Convention to come into force. The Convention has been acceded to by 2 States to date.

- UNCITRAL Legal Guide on Electronic Funds Transfers. The Legal Guide, which was published in 1987, identifies the legal issues arising from the transfer of funds by electronic means and discusses possible approaches for dealing with those issues.

- Model Law on International Credit Transfers. The Model Law, adopted in 1992, deals with operations beginning with an instruction by an originator to a bank to place at the disposal of a beneficiary a specified amount of money. It covers such matters as the obligations of a sender of the instruction and of a receiving bank, time of payment of a receiving bank and liability of a bank to its sender or to the originator when the transfer is delayed or other error occurs.

- Guarantees and stand-by letters of credit. A convention on independent guarantees and stand-by letters of credit is currently in preparation.

F. Other products of work of UNCITRAL

Other products of the work of UNCITRAL include:

- Provisions on a universal unit of account and on adjustment of the limit of liability in international transport conventions (1982);
- Uniform Rules on Contract Clauses for an Agreed Sum Due upon Failure of Performance (1983);
- Recommendations to Governments and international organizations concerning the legal value of computer records (1985).

V. Case Law on UNCITRAL Texts (CLOUT)

The UNCITRAL Secretariat has established a system for collecting and disseminating information on court decisions and arbitral awards relating to the Conventions and Model Laws that have emanated from the work of the Commission. The purpose of the system is to promote international awareness of the legal texts formulated by the Commission and to facilitate uniform interpretation and application of them. The system is explained in document A/CN.9/SER.C/GUIDE/1 available from the Secretariat. Currently, CLOUT covers the Convention on the Limitation Period in the International Sale of Goods (New York, 1974), as amended by the Protocol of 1980, United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980), UNCITRAL Model Law on International Commercial Arbitration (1985) and the Hamburg Rules.

VI. Assistance to countries considering adoption of texts

On request, the UNCITRAL Secretariat is prepared to give technical assistance and advice to States that may be considering adoption of one of the legal texts prepared by the Commission. Such assistance often involves review of proposed legislation.

VII. Training in international trade law

- National and regional seminars on international trade law

The Commission has undertaken to organize national and regional seminars and briefing missions on international trade law for the purpose of promoting knowledge about the work of the Commission, primarily in developing countries, with a view to the adoption and use of its texts by those countries.

- Seminar on international trade law for young scholars

Seminars on international trade law for young officials, scholars and practitioners are scheduled to be held in connection with the sessions of the Commission held in Vienna. Fellowships are provided for the travel expenses of participants. The next seminar is scheduled to be held in Vienna in June 1995.