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Current activities of international organizations related to the harmonization and unification of international trade law

Note by the Secretariat

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I. Introduction

1. In resolution 34/142 of 17 December 1979, the General Assembly requested the Secretary-General to place before the United Nations Commission on International Trade Law a report on the legal activities of international organizations in the field of international trade law, together with recommendations as to the steps to be taken by the Commission to fulfil its mandate of coordinating the activities of other organizations in the field.

2. In resolution 36/32 of 13 November 1981, the General Assembly endorsed various suggestions by the Commission to implement further its coordinating role in the field of international trade law.¹ Those suggestions included presenting, in addition to a general report of activities of international organizations, reports on specific areas of activity focusing on work already under way and areas where unification work was not under way but could appropriately be undertaken.²

3. This general report, prepared in response to resolution 34/142, is the fourth in a series which the Secretariat proposes to update and revise on an annual basis for the information of the Commission. The first paper (A/CN.9/584, May 2005) and related papers on electronic commerce (A/CN.9/579) and insolvency (A/CN.9/580/Add.1) were prepared for the thirty-eighth session of the Commission. The second paper (A/CN.9/598, April 2006) and related papers on procurement (A/CN.9/598/Add.1) and security interests (A/CN.9/598/Add.2) were prepared for the thirty-ninth session of the Commission. The third paper (A/CN.9/628 and A/CN.9/828/Add.1, May 2007) focused on activities of international organizations primarily undertaken since preparation of the second paper. This fourth paper in the series is again based upon publicly available material and consultations sought with the listed organizations. The present paper and A/CN.9/657/Add.1 focuses on the activities of international organizations primarily undertaken since preparation of the third paper, while A/CN.9/657/Add.2 relates solely to current activities of international organizations related to the harmonization and unification of public procurement law. This paper does not repeat information contained in the previous papers unless necessary to facilitate understanding of a particular issue.

4. The work of the following organizations is described in this report:

(a) United Nations bodies and specialized agencies

ITU	International Telecommunications Union
UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations Development Programme
UNECE	United Nations Economic Commission for Europe
UNESCAP	United Nations Economic and Social Commission for Western Asia

¹ *Official Records of the General Assembly, Thirty-sixth Session, Supplement No. 17 (A/36/17)*, paras. 93-101.

² *Ibid.*, para. 100.

UNICRI	United Nations Interregional Crime and Justice Research Institute
UNODC	United Nations Office on Drugs and Crime
WIPO	World Intellectual Property Organization
(b)	Other intergovernmental organizations
AfDB	African Development Bank
ADB	Asian Development Bank
APEC	Asia Pacific Economic Cooperation Commonwealth Secretariat
Arab League	League of Arab States
COMESA	Common Market for Eastern and Southern Africa
EBRD	European Bank for Reconstruction and Development
EC	European Commission
Hague Conference	Hague Conference on Private International Law
IFC	International Finance Corporation
OAS	Organization of American States
OTIF	Intergovernmental Organization for International Carriage by Rail
OECD	Organization for Economic Cooperation and Development
Unidroit	International Institute for the Unification of Private Law
World Bank	International Bank for Reconstruction and Development
WCO	World Customs Organization
WTO	World Trade Organization
(c)	International non-governmental organizations
ALI	American Law Institute
CTO	Commonwealth Telecommunications Organization
IATA	International Air Transport Association
IBA	International Bar Association
ICC	International Chamber of Commerce
III	International Insolvency Institute
INSOL	International Association of Restructuring, Insolvency and Bankruptcy Professionals

II. General coordination in the United Nations

5. In general, the United Nations has in recent years taken greater steps aimed at improved and more effective coordination among its various bodies and in conjunction with other intergovernmental organizations. One example of such efforts, the Policy Committee Working Group (WG) on Public Administration, Local Governance, Financial Transparency and Accountability in a Peace-Building Context, established by the Secretary-General in 2006, is working towards the creation of policy options for the engagement of the United Nations, in the context of peacebuilding efforts, in supporting public administration institution- and capacity-building, local governance, financial transparency and accountability. Membership of the WG included not only various internal UN bodies, including the Office of Legal Affairs, but also other agencies active in the various elements of peacebuilding, such as the OECD, the IMF, the World Bank, various Regional Development Banks (including the ADB, the AfDB, and the EBRD), as well as UN Regional Commissions (including UNECE and ESCWA).

6. In this case, as in other contexts, the Secretariat actively participated in the WG. The responses and recommendations of all participants in the WG were compiled and will be used in the creation of concrete policy recommendations that are provided to the Secretary-General with respect to the establishment of a UN system-wide guidance or policy on peacebuilding in the areas of public administration, local governance and financial management.

7. In addition, pursuant to general Assembly Resolution 61/39, the Secretary-General submitted an interim report to the General Assembly on 15 August 2007 (A/62/261) containing preliminary information regarding the inventory of current activities of the organs, offices, departments, funds and programmes within the United Nations system devoted to the promotion of the rule of law at the national and international levels that is to be submitted to the General Assembly at its sixty-third session in 2008.

8. Section III of that interim report contains a preliminary list of current rule of law activities which includes, under the Office of Legal Affairs, a number of activities undertaken by the UNCITRAL Secretariat with respect to promotion of treaties and other international instruments and international standards, activities relating, among other things, to capacity-building and dissemination of information, provision of technical assistance in the preparation of national legal instruments to implement international law and facilitation of dispute resolution. A Joint Rule of Law Workplan is being prepared to provide an overview of the extent and nature of the United Nations' global rule of law activities and to assist in coordination and coherence efforts, in particular to identify gaps, areas of overlap or duplication and areas of synergy and complementarity in United Nations rule of law assistance. The UNCITRAL Secretariat has contributed to the development of the workplan.

III. Harmonization and unification of international trade law

A. International investment contracts

IFC³ and UN⁴

9. In March of 2008, a study⁵ entitled “Stabilization Clauses and Human Rights” that had been prepared for the International Finance Corporation and the United Nations Representative to the Secretary-General on Business and Human Rights was released. The study was intended to raise awareness of the relationship between the protection of investor rights and the host State’s human rights obligations. In particular, it examined whether stabilization clauses, a widely used risk-management device in investment contracts, and similar risk allocation provisions in state contracts with foreign investors could affect a host state’s ability to adopt and implement human rights laws and regulations in areas such as labour, non-discrimination and protection of health and the environment. Stabilization clauses are clauses in private contracts between investors and host states that address changes in law in the host state during the life of an investment project, for example, a “freezing clause”, which freezes the law of the host state during that period.

10. The study made a number of findings, including the general conclusions that the various types of stabilization clauses currently in use may be drafted so as to insulate investors from having to implement new environmental and social laws, or to provide investors with an opportunity to be compensated for compliance with such laws. The sample of investment contracts obtained for the study, which were gathered principally from private international law firms, indicated that such an influence was more likely to be the case in contracts from countries outside the OECD than in OECD country contracts. Further, the study makes a number of recommendations, including: that appropriately high standards should be benchmarked at the outset of a project; that good practice from a human rights perspective in the use of stabilization clauses should be identified; that there should be further analysis of how the host state’s capacity and the skills of the negotiators have an impact on the design of stabilization clauses; and that the transparency of investment contracts should be improved.

11. The next steps taken with regard to the study include broad dissemination of the study and consultations on it with various stakeholders. The Secretariat will continue to track this issue with a view to keeping the Commission informed.

B. International commercial contracts

Hague Conference⁶

12. At its meeting on 1-3 April 2008, the Council on General Affairs and Policy of the Hague Conference invited the Permanent Bureau to continue its exploration of

³ www.ifc.org.

⁴ www.un.org.

⁵ <http://www.ifc.org/enviropublications>.

⁶ www.hcch.net.

the development of an instrument concerning choice of law in international business-to-business contracts with a view to promoting party autonomy. Building on preparatory work already completed in this area, the Permanent Bureau was asked to explore, in cooperation with the relevant international organizations and interested experts, the feasibility of drafting a non-binding instrument, including the specific form that such an instrument might take, and, if possible, to report and make a recommendation to the Council regarding future action in 2009.

Unidroit⁷

13. Pursuant to the recommendation of the Governing Council of Unidroit, the Principles of International Commercial Contracts (PICC), first published in 1994, are included as an ongoing project in the work programme of the Institute. Subsequent to the adoption of the second enlarged edition of the PICC in 2004, in 2005 the Governing Council set up a new Working Group with the task of preparing a third edition of the PICC including new chapters on unwinding of failed contracts, plurality of obligors and of obligees, and termination of long-term contracts for just cause. The Working Group, composed of eminent experts representing the major legal systems and/or regions of the world as well as observers from international organizations and arbitration centres, including the UNCITRAL secretariat, held its first session in Rome from 29 May to 1 June 2006, and its second session in Rome from 4 to 8 June 2007. On the basis of a preliminary study prepared by the Unidroit Secretariat, and in-depth discussion by the Group, rapporteurs for each of the five topics suggested for inclusion in the new edition of the Principles (unwinding of failed contracts; illegality; plurality of obligors and of obligees; conditions; and termination of long-term contracts for just cause) were requested to prepare preliminary draft rules together with explanatory notes on their respective topics for discussion at the Group's next session in May 2008.

C. International carriage of goods

General

14. The UNCITRAL draft convention on contracts for the international carriage of goods wholly or partly by sea, which aims at providing for a harmonized legal framework that accommodates modern container transport is, of course, before the Commission for its consideration at the current session. Although the draft convention is not a true multimodal convention, it has been characterized as a "maritime plus" convention in light of its application to door-to-door contracts of carriage, and thus could include inland transport ancillary to the international maritime leg.

15. A number of different organizations have as a mandate the pursuit of various objectives relating to the unimodal transport of goods, including a legislative mandate, while others are considering or actively pursuing intermodal or multimodal transport instruments or arrangements. In light of the "maritime plus" nature of the draft convention, the Commission may wish to take note of the summary of the current work and activities of those organizations, which appears

⁷ www.unidroit.org.

below. In its efforts to assist States in the negotiation of the text of the draft convention, the Secretariat has closely monitored the activities of such other organizations, with a view to ensuring the integrity of the draft convention and its inter-operability with other international initiatives.

16. The Commission may also wish to note that the draft convention provides the legal basis for electronic bills of lading, called “electronic transport records” in the text of the instrument. As such, the Commission may wish to note the evolution of the paperless transport environment with respect to other electronic initiatives as outlined in the paragraphs below. Again, the Secretariat has carefully monitored such developments and, in some cases, has participated in discussions relating to those initiatives.

1. Transport by sea

UNCTAD⁸

17. UNCTAD continued its participation at sessions of the UNCITRAL Working Group III (Transport Law), providing technical information on the issues under consideration and highlighting implications for developing countries, with respect to the development of a new international convention to govern contracts for the international carriage of goods wholly or partly by sea.

18. UNCTAD released in February 2008 its Review of Maritime Transport 2007, which provides a detailed account of main developments affecting world seaborne trade, freight markets and rates, ports, surface transport, logistics services as well as world fleet-related issues, including ownership, control, age, tonnage and productivity. Several key developments set out in the 2007 edition are worthy of note in light of the Commission’s work on the draft convention on contracts for the international carriage of goods wholly or partly by sea: in 2006, world seaborne trade in loaded goods increased by 4.3 per cent, to reach 7.4 billion tons; at the beginning of 2007, the world fleet expanded by 8.6 per cent, reaching 1.04 billion deadweight tons. Further, containerships represented the youngest fleet with an average of 9.1 years of age, and in 2006, world container port throughput increased by 13.4 per cent to reach 440 million twenty-foot equivalent units (TEUs).

2. Transport by land

UNECE⁹

19. At the 99th session of the UNECE Working Party on Road Transport (SC.1) in October 2005, an editorial committee, comprising both Unidroit and UNCITRAL, was established to finalize the drafting of the text of an additional Protocol to the Convention on the Contract for the International Carriage of Goods by Road¹⁰ (Geneva, 19 May, 1956) (CMR) with a view to facilitating the possible use of electronic consignment notes. At its 102nd session in May 2008, the 53 current Contracting Parties to the CMR were invited to sign the Additional Protocol to the CMR as adopted by the Inland Transport Committee in February 2008. Following a

⁸ www.unctad.org.

⁹ www.unece.org.

¹⁰ Entry into force: 2 July 1961, United Nations, *Treaty Series*, vol. 399, p. 189. Source: <http://www.untreaty.org>.

signing ceremony on 27 May 2008, the Protocol was open for signature from 27 to 30 May 2008 in Geneva, and thereafter, at UN Headquarters in New York until 30 June 2009. Twelve countries have reportedly declared their intention to sign the Protocol, which will enter into force ninety days after five States have deposited their instruments of ratification or accession.

20. The Protocol will allow for the first time the use of electronic consignment notes in international road transport by setting out the legal framework and standard for using electronic means of recording and storing consignment notes data. The reduction in paperwork is anticipated to save time and reduce errors in the transport of goods by road, dealing with problems such as the arrival of the goods at destination in advance of the arrival of the documentation. Further, the Protocol is intended to allow for road transport to join the ranks of other modes of transport in which electronic transport records are already operational, or their use is anticipated.

OTIF¹¹

21. Following the entry into force on 1 July 2006 of The Uniform Rules concerning the Contract for International Carriage of Goods by Rail, Appendix to the Convention concerning International Carriage by Rail (CIM-COTIF),¹² as amended by the Protocol of Modification of 1999 (the Vilnius Protocol), Member States continue to ratify and accede to the Protocol.

3. Inland waterway transport

UNECE¹³

22. The Budapest Convention on the Contract for the Carriage of Goods by Inland Waterway (CMNI Convention), adopted at a Diplomatic Conference organized jointly by CCNR, Danube Commission and UNECE (Budapest, 25 September-3 October 2000), entered into force on 1 April 2005. It currently has 12 Contracting Parties, an increase of 50 per cent above the number reported to the Commission in last year's current activities paper. The CMNI Convention governs the contractual liability of parties to the contract for the carriage of goods by inland waterway and provides for the limitation of the carrier's liability.

4. Transport by air

IATA¹⁴

23. IATA has created an industry-wide "e-freight" programme aimed at reducing the use of paper documents in the air freight supply chain by moving to a simpler, paper-free, electronic environment. The project began in 2005 as an industry action group including six top global cargo carriers, the WCO and Freight Forward International, and is aligned with the WCO's and United Nations' global e-customs initiatives. In November 2007, the e-freight programme was implemented on key trade routes linking six countries, and by the end of 2008, it is hoped that the programme will be implemented in eight additional locations, with full industry

¹¹ www.otif.org.

¹² Budapest, 22 June, 2001. Entered into force 1 April 2005.

¹³ www.unece.org.

¹⁴ www.iata.org.

implementation expected by the end of 2010, where feasible. It is expected that up to 38 paper documents per shipment, costing an estimated US \$30, will be eliminated, representing greatly improved savings and efficiency.

5. Intermodal or multimodal transport

UNCTAD¹⁵

24. In light of the consideration by the Commission of the UNCITRAL draft convention on contracts for the international carriage of goods wholly or partly by sea, of interest in the most recent UNCTAD transport newsletter,¹⁶ is an UNCTAD article on “The modal split of international goods transport”, based on the mode of transport by which the goods arrived at the country’s border, seaport or airport. According to the report, based on data not including intra-European Union trade, in 2006, seaborne trade accounted for 89.6 per cent of global trade in terms of volume (tons) and 70.1 per cent in terms of value. In the same year, airborne cargo had only a share of 0.27 per cent of trade volume and 14.1 per cent of trade value, while inland transport and other modes (including pipelines) accounted for 10.2 per cent of trade volume and 15.8 per cent of trade value.

25. The UNCTAD report goes on to note that since 2000, the shares of the different modes of transport have remained fairly stable in terms of volume, while they have fluctuated more dramatically in terms of value. Airborne transport amounted to an average of \$56,624 US per ton in 2000, while in 2006, the average value increased to \$63,184 US per ton. In the case of seaborne transport, the average value per ton was \$625 US in 2000, rising to \$943 per ton in 2006. Finally, the average value per ton of overland and other modes of transport was \$1,482 US in 2000, increasing to \$1,878 US in 2006. Again, all figures were calculated by UNCTAD based on data excluding intra-European Union trade.

UNECE¹⁷ and EC¹⁸

26. At its forty-ninth session (Geneva, 17-18 March 2008), the UNECE Working Party on Intermodal Transport and Logistics was informed that the EC had adopted in October 2007 a Freight Logistics Action Plan as part of a larger freight transport package that included other issues, such as freight-oriented rail networks, new port policies, motorways of the sea and a European maritime space without borders.

27. The Action Plan was based on extensive consultation with stakeholders and covers four broad themes: innovation, quality, simplification and green transport. Further, within the framework, the EC reported that it is developing a road map for the implementation of e-freight that anticipates a paper-free, electronic flow of information accompanying the physical transport of goods.

¹⁵ www.unctad.org.

¹⁶ UNCTAD Transport Newsletter, No. 38, Fourth quarter 2007/First quarter 2008, soon to be available on www.unctad.org.

¹⁷ www.unece.org.

¹⁸ ec.europa.eu.

Regional multimodal initiatives – UNESCWA¹⁹ and the Arab League²⁰

28. The Secretariat was requested in February 2008 to provide comments on a regional multimodal convention that had been drafted under the auspices of the United Nations Economic and Social Commission for Western Asia (UNESCWA). The UNESCWA draft convention, called “the Convention on International Multimodal Transport of Goods in the Arab Mashreq” had been prepared by the UNESCWA secretariat from 2006 forward, and relied heavily on portions of the text from the UNCITRAL draft convention. Although the text of the UNESCWA draft convention had been prepared with a view to approving it and opening it for signature at the 25th Ministerial session of UNESCWA in May 2008, it was ultimately decided by the UNESCWA Ministerial session in May 2008 to postpone discussion of the approval of the draft convention and its opening for signature until October 2008. It appears that the decision has been made in light of both the global UNCITRAL text and of a reportedly similar text being negotiated by the League of Arab States. The Secretariat has not received any information concerning the Arab League text, and is pursuing information in that regard.

D. Commercial arbitration and conciliation**CTO²¹**

29. The Commonwealth Telecommunications Organization (CTO) ADR Centre has established partnership relationships with the Chartered Institute of Arbitrators, the Centre for Effective Dispute Resolution and the Singapore Mediation Center. The CTO ADR Centre and the Claims Room.com Ltd jointly operate an online dispute resolution platform in partnership.²² Recognizing the need to build capacity within developing countries and in the industry sector itself, the CTO ADR Centre conducts training programmes.

ICC²³

30. The ICC Commission on Arbitration has constituted five task forces covering amiable composition and *ex aequo et bono*,²⁴ guidelines for ICC expertise proceedings, trusts and arbitration, and national rules of procedure for recognition and enforcement of foreign arbitral awards pursuant to the New York Convention of 1958.

31. The task force on amiable composition and *ex aequo et bono*²⁵ was mandated to identify the essential features of “*amiable composition*” and of “*ex aequo et bono*” and study the role of the arbitrators when acting as “*amiable compositeurs*” or when deciding “*ex aequo et bono*” (e.g. jurisdictional, procedural or substantive problems that may arise). The task force is currently preparing a report based on a synthesis of the survey answers. It will also begin drafting guidelines to assist

¹⁹ www.escwa.un.org.

²⁰ www.arableagueonline.org.

²¹ www.cto.int.

²² www.ctomediation.com.

²³ www.iccwbo.org.

²⁴ <http://www.iccwbo.org/policy/arbitration/id6566/index.html>.

²⁵ Further information is available at <http://www.iccwbo.org/policy/arbitration/id6566/index.html>.

arbitrators who have been empowered to decide “*ex aequo et bono*” or to act as “*amiable compositeurs*”.

32. Following the adoption by the ICC Commission on Arbitration of the revised ICC Rules for Expertise in 2003, another task force prepared a set of guidelines for ICC expertise proceedings.²⁶ The task force is now preparing explanatory notes for the use of experts covering issues including: the use of experts in ICC Arbitration; using experts under the ICC Rules for Expertise as fact-finders; and neutral experts as facilitators under the ICC ADR and Dispute Board Rules.

33. The task force on national rules of procedure for recognition and enforcement of foreign arbitral awards pursuant to the New York Convention of 1958 has been set-up in view of the 50th anniversary of the New York Convention in 2008.²⁷ The objectives of the task force are: (i) to identify the countries to be covered by the work of the task force; (ii) to determine, for each country so identified, the national rules of procedure for recognition and enforcement of foreign arbitral awards, with reference to articles III and IV of the New York Convention; (iii) to compile all such national rules of procedure for recognition and enforcement of foreign arbitral awards on a country-by-country basis; and (iv) to draft an introduction to and a summary of such compilation. It will be recalled that the Commission, at its twenty-eighth session, in 1995, had approved a project, undertaken jointly with the Arbitration Committee of the International Bar Association, aimed at monitoring the legislative implementation of the New York Convention.²⁸ At its fortieth session, in 2007, the Commission encouraged the Secretariat to seek possible cooperation with the International Chamber of Commerce in order to avoid duplication of work in that respect.²⁹ The members of that task force and the Secretariat of UNCITRAL met in January 2008, and agreed to cooperate and exchange information collected during the implementation of both projects.

OECD³⁰

34. In a report adopted on 30 January 2007 by the OECD Committee on Fiscal Affairs entitled “Improving the Resolution of Tax Treaty Disputes”,³¹ the OECD has agreed to modify the OECD Model Tax Convention, which serves as a basis for most negotiations between countries on tax matters, by including the possibility of arbitration in cross-border disputes over taxation if they remain unresolved for more than two years.

35. The decision was based on the recognition that with the growth of cross-border trade and investment and the accompanying increase in the number of people working abroad, cross-border tax disputes arising when two states assert conflicting

²⁶ Information on the task force on guidelines for ICC expertise proceedings is available at <http://www.iccwbo.org/policy/arbitration/id1785/index.html>.

²⁷ Information on the task force on national rules of procedure for recognition and enforcement of foreign arbitral awards is available at: <http://www.iccwbo.org/policy/arbitration/id2882/index.html>.

²⁸ *Official Records of the General Assembly, Fiftieth Session, Supplement No. 17 (A/50/17)*, paras. 401-404.

²⁹ *Ibid.*, *Sixty-second Session, Supplement No. 17 (A/62/17, Part I)*, para. 207.

³⁰ www.oecd.org.

³¹ <http://www.oecd.org/dataoecd/17/59/38055311.pdf>.

rights to tax an individual living and working in more than one country or companies that invest outside their home country, have also increased.

36. The report addresses a number of issues relating to what is known as the “mutual agreement procedure”, or MAP, the mechanism provided by tax treaties to resolve disputes between the countries that sign these treaties. At the same time, the Committee has published a web-based manual setting forth 25 best practices to help countries to improve the existing mechanisms for resolving tax disputes.³²

UNCTAD³³

37. UNCTAD has developed and is implementing a project on “Building capacity through training in dispute settlement in International Trade, Investment and Intellectual Property”. The objective of the project is to promote the integration of developing countries and countries in transition into the multilateral trading system through capacity-building on dispute settlement in International Trade, Investment and Intellectual Property. It aims to achieve this by improving the knowledge and level of critical awareness of the legal framework governing dispute settlement in international economic and trade relations.

38. The project focuses on the dispute settlement rules and mechanisms of international organizations such as ICC, ICSID, UNCITRAL, WIPO and WTO under six headings: (1) General Dispute Settlement Topics; (2) Settlement of International Investment Disputes and ICSID; (3) Settlement of International Trade Law Disputes and WTO; (4) Settlement of International Intellectual Property Disputes and WIPO; (5) International Commercial Arbitration; and (6) Regional Approaches. The comprehensive course on dispute settlement consists of forty chapters or modules, each dealing with one specialized topic as an essential building block of international dispute settlement.³⁴ The pedagogical methodology on which the format of the modules is based allows for self-study for beginners and includes a tool to test what has been learned. The modules also provide a quick introduction for specialists, who find guidance to further specialized sources and materials. The course was developed in English, with partial translation in Spanish, French and Portuguese.

39. Capacity-building workshops are being held to train officials, academics, legal practitioners and business from developing countries, including LDCs, and countries in transition.

³² http://www.oecd.org/document/26/0,2340,en_2649_37427_36197402_1_1_1_37427,00.html.

³³ www.unctad.org.

³⁴ General topics: International Court of Justice; Permanent Court of Arbitration. Investment Disputes: Overview; Selecting the Appropriate Forum; Consent to Arbitration; Requirements Ratione Personae; Requirements Ratione Materiae; Applicable Law; Procedural Issues; Post-Award Remedies; Binding Force and Enforcement. Trade Disputes: Overview; Panels; Appellate Review; Implementation and Enforcement; GATT 1994; Anti-dumping Measures; Subsidies and Countervailing Measures; Safeguard Measures; Sanitary and Phytosanitary Measures; Technical Barriers to Trade; Textiles and Clothing; Government Procurement; GATS; TRIPS; Agriculture. Intellectual property: (WIPO) Arbitration and Mediation Centre; Internet Domain Name Dispute Resolution. International Arbitration: Overview; Submission Agreement/Clause; Arbitral Tribunal; Arbitral Proceedings; Applicable Law; Making the Award; Recognition and Enforcement of the Award; Court Measures; Electronic Arbitration; Regional mechanisms: NAFTA; MERCOSUR; ASEAN.

40. Since it started in May 2002, the project has successfully cooperated with United Nations bodies and international organizations, such as the World Trade Organization (WTO), the World Intellectual Property Organization (WIPO), the International Chamber of Commerce (ICC), the International Centre for Settlement of Investment Disputes (ICSID) of the World Bank Group, the United Nations Commission on International Trade Law (UNCITRAL), the World Bank, and the Advisory Centre on WTO Law. There is also cooperation with national and regional institutions, especially in the organization and delivery of workshops.

WIPO³⁵

41. WIPO has released a number of publications providing an overview of the resources and services offered by the WIPO Mediation and Arbitration Center (“the Center”) and encouraging parties to seek alternative dispute resolution mechanisms. These publications include: WIPO Services under the UNCITRAL Arbitration Rules, WIPO Arbitration and Mediation Rules, Dispute Resolution for the 21st century, Guide to WIPO Arbitration, Guide to WIPO Domain Name Dispute Resolution and the Guide to WIPO Mediation.

E. Insolvency

American Law Institute (ALI)³⁶

42. The project on Transnational Insolvency: Principles of Cooperation, a joint effort with the International Insolvency Institute (III), aims to extend and disseminate the work from ALI’s Transnational Insolvency: Principles of Cooperation Among the NAFTA Countries, published in 2003. The objective of this project is for ALI and III to encourage consideration of the Principles in jurisdictions across the world, subject to appropriate local modifications, and to obtain the endorsement of influential domestic associations, courts and other groups in those jurisdictions. The Council approved the start of the project in 2005. Thus far, no part of the work has been considered or approved by the Council, by ALI membership, or by III. The project is likely to last a few more years before completion. As no drafts have been produced to date, it is not possible to determine how these principles relate to or include elements of the Model Law on Cross-Border Insolvency or might be relevant to the current work being undertaken by UNCITRAL on cross-border cooperation agreements.

Asian Development Bank (ADB)³⁷

43. In 2008, the ADB published the Report of the Regional Technical Assistance RETA 5975 “Promoting Regional Cooperation in the Development of Insolvency Law Reforms”. Following an earlier technical assistance project (RETA 5795) which had developed principles and guidelines for insolvency law reform, the project invited attention to the wider goals of regional cooperation, focusing on three areas: (i) development of sound insolvency frameworks for handling cross-border insolvencies; (ii) regional cooperation, especially in formal and informal

³⁵ <http://www.wipo.int>.

³⁶ www.ali.org.

³⁷ www.adb.org.

workouts and restructurings; and (iii) the intersection of laws relating to secured transactions and insolvency. The UNCITRAL Secretariat participated in several aspects of the project, discussing the Model Law on Cross-Border Insolvency and the solutions it offers for handling cross-border insolvency as well as the work being undertaken at that time with respect to development of legislative guides on insolvency and on secured transactions. The proposals for a regional treaty or non-treaty arrangement to address issues of cross-border insolvency are based upon the articles of the UNCITRAL Model Law.

EBRD³⁸

44. Recognizing that a solid law is not enough for an effective insolvency system, the EBRD has endeavoured to build on its core principles for an insolvency law regime and focus on the effectiveness of insolvency system by identifying a set of principles to guide countries in setting standards for the qualifications, appointment conduct, supervision, and regulation of office holders (“Office holders” are the trustees, administrators, liquidators, insolvency representatives, or similar functionaries who make many insolvency systems work) in insolvency cases. The EBRD Insolvency Office Holder Principles were finalized in June 2007. In Autumn 2007, the EBRD devoted an issue of its publication “Law in transition” to issues related to making an insolvency system work, which included UNCITRAL’s work on cross-border and domestic insolvency law.

International Bar Association (IBA)³⁹

45. Previous reports (see para. 55, A/CN.9/598) have noted the subcommittees established by the Section on Insolvency, Restructuring and Creditors Rights (“SIRC”) of the IBA, their mandates and the work they undertake. With respect to UNCITRAL work, the subcommittee on Insolvency Legislation and Legislative Reform and Harmonisation is active in monitoring and organizing the IBA’s participation in sessions of UNCITRAL’s Working Group V (Insolvency Law), while the subcommittee on Enforcement of Creditors’ Rights organizes the IBA’s participation in sessions of UNCITRAL’s Working Group VI (Secured Interests). The subcommittee on Reorganizations and Workouts is currently undertaking a study of cash management in the reorganization process, the results of which will be published. SIRC is also preparing the insolvency chapter of the forthcoming report of the *IBA’s Task Force on Extraterritorial Jurisdiction*.

46. Through its various publications, the SIRC makes available information and articles on recent developments in insolvency, including cross-border insolvency, that are of particular relevance to the adoption and implementation of UNCITRAL’s Model Law on Cross-Border Insolvency and its current work on cross-border agreements. Topics discussed at SIRC conferences are often of key relevance to work completed by UNCITRAL (e.g., cross-border insolvency) or being undertaken or considered by UNCITRAL (e.g., recent discussion of cash pooling in enterprise groups and intellectual property and insolvency).

³⁸ www.ebrd.com.

³⁹ www.ibanet.org.

INSOL⁴⁰

47. As foreshadowed in the previous report, in 2007 INSOL published:

(a) A publication on treatment of secured claims in insolvency and pre-insolvency proceedings in 12 countries;

(b) The third and fourth in a series of technical papers, entitled respectively “Formalities for the transfer of insolvent businesses: the obligatory transfer of employees in South Africa and the United Kingdom” and “Inter-Company Debts and Set-Off”.

48. Publications being prepared for completion in 2008 address the following topics: claims presentation and resolution in insolvency proceedings; and in the technical papers series: strategic considerations for creditors facing a debtor in chapter 15 under the United States Bankruptcy Code, modelling financial distress in changing economic environments, distressed debt trading and a comparative study of voidable dispositions. INSOL is also considering launching a new series of case studies of cross-border collapses. A number of these publications provide comparative studies of issues directly relevant to both the UNCITRAL Legislative Guide on Insolvency Law and the UNCITRAL Legislative Guide on Secured Transactions. The work on chapter 15 of the United States Bankruptcy Code and the studies of cross-border collapses contribute directly to the discussion of the implementation of the UNCITRAL Model Law on Cross-Border Insolvency.

49. Through its various publications, INSOL contributes to making information and articles on recent developments in insolvency and insolvency law, including cross-border insolvency, widely available. These are of particular relevance, for example, to furthering the discussion of the adoption and implementation of the UNCITRAL Model Law on Cross-Border Insolvency and UNCITRAL’s current work on cross-border cooperation agreements.

OECD⁴¹

50. The next Forum on Asian Insolvency Reform (FAIR), organized by OECD in conjunction with governments and other organizations, is scheduled to be held in November 2008 to discuss the corporate perspective on recent insolvency reforms in Asia (venue to be determined). The UNCITRAL Secretariat participated in a number of the previous FAIR.

51. As noted in the previous report, the inaugural conference of the Hawkamah Institute for Corporate Governance in the Middle East and North Africa (MENA), co-hosted by the OECD, adopted the so-called Dubai Declaration, which includes agreement that MENA countries should act to establish effective insolvency systems and provide a framework for efficient reallocation of resources to productive uses. A preparatory meeting took place on 21 May 2008 in Cairo, Egypt, following which Hawkamah and the World Bank launched the preparation of a Survey of insolvency systems in the region, with the support of INSOL International and the OECD. The Secretariat anticipates that the UNCITRAL Legislative Guide on Insolvency Law will provide a reference for insolvency law reform in the region.

⁴⁰ www.insol.org.

⁴¹ www.oecd.org.

World Bank⁴²

52. In 2007 and 2008, the World Bank continued to provide requesting countries in the developing world with diagnostic analysis of their insolvency systems. The vehicle for this analysis is the joint World Bank-IMF ROSC (Report on the Observance of Standards and Codes) programme which is part of the broader Bank-Fund Financial Sector Assessment Program which is, itself, part of the International Financial Architecture initiative. In 2007 and 2008, the World Bank conducted the Insolvency and Creditor Rights (ICR) ROSC in countries in Latin America, Europe, Asia and Africa. Each ROSC resulted in legislative, regulatory and institutional recommendations for the recipient country. These included, inter alia, reference to the UNCITRAL Legislative Guide on Insolvency, which forms part of the methodology for assessments carried out under the ROSC.

53. In May 2008, the World Bank hosted, along with UNCITRAL and the EBRD, in Washington, D.C., a joint conference on secured transactions and insolvency. The conference examined the areas of contention at the intersection of secured transactions and insolvency reform. The conference included participants from the World Bank, IMF, IFC, UNCITRAL, EBRD, OAS, IADB, ADB, OECD and Insol International.

International Insolvency Institute (III)⁴³

54. The III has a number of committees working on topics potentially of direct relevance to the work of UNCITRAL, particularly in the area of cross-border communications in insolvency cases, the ALI Principles of Cooperation in International Cases, intellectual property, and cross-border insolvency financing. The Secretariat has no information on the relationship or relevance of the work of those committees to the work of UNCITRAL.

Unidroit⁴⁴

55. The Secretariat has provided comments to Unidroit on the draft convention on substantive rules regarding intermediated securities on the insolvency provisions of that draft convention, drawing attention to the manner in which they interact with the UNCITRAL Legislative Guide on Insolvency Law and the potential need for explanatory notes to clarify the application of several draft articles.

⁴² www.worldbank.org.

⁴³ www.iiiglobal.org.

⁴⁴ www.unidroit.org.