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## Technical assistance to law reform

### **Compilation of comments by States on a draft guidance note on strengthening United Nations support to States to implement sound commercial law reforms**

#### **Note by the Secretariat**

## Contents

	<i>Page</i>
I. Introduction .....	2
II. Comments by States on document A/CN.9/845 received by the Secretariat in response to its note verbale LA/TL 131(9) - CU 2015/183/OLA/ITLD circulated to all States on 21 July 2015 .....	3
III. A comment by a State received by the Secretariat in response to its note verbale LA/TL 131(9) - CU 2015/245/OLA/ITLD circulated to all States on 8 October 2015 .....	15



## I. Introduction

1. At its forty-sixth session, in 2010, the Commission requested the Secretariat to consider ways of better integrating its technical cooperation and assistance activities into activities conducted on the ground by the United Nations in particular through the United Nations Development Programme or other country offices of the United Nations.<sup>1</sup> At its forty-eighth session, the Commission had before it a draft guidance note on strengthening United Nations support to States to implement sound commercial law reforms, presented by the Secretariat in response to that request (A/CN.9/845).

2. After consideration at that session, the Commission requested States to provide to its secretariat any suggestion for revision of the text. It was agreed that the compilation of all comments received from States would be circulated by the Secretariat to all States together with a revised version of the text. It was understood that, if agreement of States on the revised text could be achieved before or during the consideration of the Commission's report in the Sixth Committee of the General Assembly in 2015, the Sixth Committee itself might wish to endorse the text, so as to avoid delay in issuing the document. Otherwise, the matter might need to be brought back to the Commission for consideration at its next session. The Secretariat was requested, in revising the text, to follow closely the wording of General Assembly resolution 2205 (XXI) on the establishment of UNCITRAL and avoid embarking into areas not directly linked to the UNCITRAL mandate. The Secretariat was also requested to allocate sufficient time for consideration of the revised text at the forty-ninth session if the revised text had to be considered at that time, and to make provisions for specific time to be allotted to that item in the provisional agenda of that session.<sup>2</sup>

3. Pursuant to those decisions, the Secretariat circulated a note verbale to States on 21 July 2015 requesting them to submit suggestions for revision of document A/CN.9/845 and, in formulating such suggestions, to keep in mind, as requested by the Commission,<sup>3</sup> the intended scope and purpose of the document, which, to be usable by its expected readers, should remain short, concise and simple. It was stated in the note verbale that the intended scope and purpose of the guidance note was to be a tool to increase awareness across the United Nations about the importance of sound commercial law reforms and the use of internationally accepted commercial law standards in that context.

4. The compilation of comments by States received by the Secretariat on document A/CN.9/845 in response to that note verbale is reproduced in section II of this note. In addition to those comments, the Secretariat received on 23 October 2015 a comment by a State in response to a note verbale of the Secretariat of 8 October 2015 circulating to all States, as requested by the Commission (see para. 2 above), all comments received on document A/CN.9/845 with a version of the guidance note revised by the Secretariat pursuant to those comments (the 8 October

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<sup>1</sup> *Official Records of the General Assembly, Sixty-fifth Session, Supplement No. 17 (A/65/17)*, para. 336.

<sup>2</sup> *Ibid.*, *Seventieth Session, Supplement No. 17 (A/70/17)*, paras. 251-252.

<sup>3</sup> *Ibid.*, para. 251.

version of the guidance note). Section III of this note reproduces that comment by a State.

5. States may wish to note that a draft guidance note on strengthening United Nations support to States, upon their request, to implement sound commercial law reforms is contained in document A/CN.9/883 that will be before the Commission at its forty-ninth session. The draft was prepared on the basis of the 8 October version of the guidance note incorporating comments on that version conveyed by States to the Secretariat, including during informal consultations in the Sixth Committee. Pursuant to the request of the Commission at its forty-eighth session (see para. 2 above), the Secretariat will allocate time in the provisional agenda of the forty-ninth session of UNCITRAL (A/CN.9/859) for the discussion of the draft guidance note.

## II. Comments by States on document A/CN.9/845 received by the Secretariat in response to its note verbale LA/TL 131(9) — CU 2015/183/OLA/ITLD circulated to all States on 21 July 2015

(in the chronological order of receipt of responses by the Secretariat)

**Singapore** [30 July 2015; original in English]

- Proposed changes in the third sentence of para. 3, section B.2 (**The need for assistance with domestic commercial law reforms should be regularly assessed**):

“Mechanisms for adjudicating disputes and enforcing binding commitments in the context of trade and investment must operate on the basis of internationally recognized norms ~~human rights~~ and should be easily accessible, affordable, efficient and effective.”

[a comment accompanying the amendments read: “Adjudication of disputes and enforcing commercial commitments should properly be compliant with international norms, not just human rights.”]

- Proposed changes in para.1, section B.5 (**UNCITRAL is the core legal body in the United Nations system in the field of international commercial law and as such should be relied upon in strengthening United Nations support to States to implement sound commercial law reforms**):

“UNCITRAL is the only global and neutral international law-making body entrusted with legislating on commercial law matters on behalf of the entire international community. ~~Not only~~ States and relevant intergovernmental organizations assisted by but also relevant professional associations and other non-governmental organizations participate in the UNCITRAL legislative process. This contributes to the transparency and inclusiveness of the standard-making process. ~~and ensures scrutiny of legislative proposals by representatives of various economic and social interests, different legal traditions and societies at different levels of development.~~ The possible disconnect between the perspectives of Government delegates and those of

~~the~~ business world ~~representatives~~ is therefore minimized and adopted texts ideally reflect the optimal balance between the many competing interests. These facts together with consensus-building ensure a type of legislative due process that gives legitimacy to UNCITRAL standards as internationally accepted ones, rather than the product of any given system or country.”

[a comment accompanying the first set of amendments read: “This reflects the basic principle governing UNCITRAL which is comprised of states. UNCITRAL has decided after much debate that decisions of UNCITRAL can only be taken by states, not observers such as industry groups and other NGOs with an interest in the subject matter. (see A 65/17, paras 299-306 and Annex III). The participation of these industry groups and other NGOs serve to assist the participating states to come to the best possible outcome.”]

[a comment accompanying the second set of amendments read: “The original sentence is hard to read in the context of the discussion here. The first part of this sentence sufficiently captures the point sought to be made here.”]

- Proposed changes in para. 2.c.ii, section C.1 (**Legal framework**):

“(ii) Identifying all stakeholders relevant to the commercial law reform, including domestic reform constituencies, international experts, various rule-of-law-assistance providers working in the same or related field, etc., and ensuring proper consultations ~~and if necessary strategic partnerships~~ with them **where necessary**.”

[a comment accompanying the amendments read: “It is not clear what is meant by entering into “partnerships” with stakeholders. The reforms are to be put in place by governments and it is for the government concerned to determine who they wish to partner with. It should not be for UN officials to “ensure” that governments enter in partnerships with entities identified by these officials.”]

- Proposed changes in sub-para. (c), section C.3 (**Private sector, academia and general public**):

“(c) Maintaining regular dialogue with **non-governmental** ~~civil society~~ organizations ~~and groups~~ that represent various segments of society (e.g. consumers, local communities, end-users of public services, individual entrepreneurs, micro-, small and medium-sized enterprises and academia) as regards their views on measures required to improve the commercial law framework in the State;”

[a comment accompanying the amendments read: “For a UN instruction such as this, the proper term should be the term used in the UN Charter. (see Article 71, UN Charter).”]

- Proposed changes in para. 11 of the Annex:

~~“11. There are mechanisms to monitor and oversight actions and decisions of public authorities.”~~

[a comment accompanying the amendments read: “This is not relevant for technical assistance in commercial law reform.”]

**Argentina** [10 August 2015; original in Spanish]

“... ”

- (1) The deletion of principles 2, 3 and 4 or their modification by the Secretariat in such a way that their language is consistent with the objective of the guidance note.
- (2) The replacement of the phrase “flow of international trade” throughout the text with the phrase “extensive development of international trade”, which is consistent with the language used in General Assembly resolution 2205 (XXI)....”

**Ecuador** [21 August 2015; original in Spanish]

“...In that regard, Ecuador wishes to reiterate how important it is that the work of UNCITRAL and all documents produced by the Secretariat adhere strictly to the terms of General Assembly resolution 2205 (XXI), which clearly sets out the Commission’s mandate.

On the basis of the above, the document should have a more general focus and refer to “assistance in promoting the progressive harmonization and unification of international trade law”, or simply “assistance in the implementation of international trade law”. In the same spirit, the note should avoid terms that suggest intervention in the internal affairs of States, specifically with respect to their legal and legislative systems.

It is worth recalling that domestic reform processes lie exclusively within the competence of the State and that, with the exception of its conventions, instruments produced by UNCITRAL are not binding. In that regard, the document should establish with sufficient clarity that the objective of the Commission’s activities is not — as the draft note appears to suggest — to impose new legislation on Member States or compel internal legislative changes, but only to develop guidelines or model laws that can be drawn upon by States in developing relevant commercial regulations.

The document should be short, concise and simple, and to that end should avoid referring to issues that are not directly linked to the Commission’s mandate, such as peace, security, conflict prevention and post-conflict reconstruction. It should also avoid value judgements with respect to the activities of States.

Further proposed modifications of document A/CN.9/845 are as follows:

- References to “**domestic commercial law reforms**” and “**commercial law reforms at the country level**” (“*reforma interna del derecho mercantil*”) should be removed from **all sections and paragraphs**
- It is suggested that **paragraph 2** be deleted from **section B (“Guiding Principles”)**, **subsection 1**. It cannot be asserted that trade liberalization per se contributes to economic cooperation or the stability and well-being of peoples. Reality shows that it is precisely the economic system that has deepened differences and increased levels of poverty in certain parts of the world. International trade remains inequitable and discriminates between countries that produce raw materials and those that produce value added goods, and between States and transnational capital.

- It is suggested that **paragraph 3** be deleted from **section B, Guiding Principles, subsection 1**. The areas of activity referred to are not linked to the mandate of UNCITRAL.
- In **section B.2, paragraph 2**, it is suggested that the first part of the paragraph (up to and including the words “uniform interpretation and application”, i.e. the first three sentences) be deleted. The “legal framework” refers to topics that are addressed by other international organizations and that fall within the competence of States.
- In **section B.2, paragraph 3**, it is suggested that the first part of the paragraph (up to and including the word “accountable”, i.e. the first two sentences) be deleted. Only States and their legal systems may interpret legislative provisions and apply sanctions when a law is violated.
- In **section B.3, paragraph 1**, it is suggested that the second part of the paragraph (from the words “Ill-conceived policies”, i.e. the final sentence) be deleted, since it constitutes an unnecessary value judgement.
- In **section B.4, paragraph 1**, it is suggested that the second part of the paragraph (from the words “There should also be ...”, i.e. the final sentence) be deleted. Only States and their foreign policies may determine the coordination of their positions in international forums and the level and structure of their delegations.
- It is suggested that **paragraph 2** be deleted from **section B.4**. The reform of legal systems is not within the Commission’s remit.
- In **section B.4, paragraph 3**, it is suggested that the first part of the paragraph (up to and including the words “conflicting enforcement results”, i.e. the first sentence) be deleted, since it constitutes an unnecessary value judgement.
- In **section B.5, paragraph 1**, it is suggested that the first part of the paragraph be replaced with the following text: “UNCITRAL is the legal body of the United Nations system in the field of international commercial law. It is an intergovernmental forum comprising 60 member States elected by the General Assembly. Its membership is representative of the various geographic regions and the principal legal and economic systems. Intergovernmental organizations, professional associations and other non-governmental organizations also participate as observers.” The paragraph would then continue up to the words “levels of development.” **It is suggested that the second part of the paragraph** (from the words “The possible disconnect”) **be deleted**, since it constitutes an unnecessary value judgement.
- Under **section C, Operational Framework**, it is suggested that the first part of the opening paragraph be replaced with the following text: “It is necessary to identify the needs of countries as regards assistance in the implementation of international trade law, in coordination with their respective Governments and only at their request, and to incorporate such assistance in the appropriate context of United Nations operations”, the paragraph then continuing up to the words “United Nations system”.
- In **section C (“Operational Framework”), section 1 (“Legal framework”), paragraph 2**, subparagraph (a) should be deleted. That text goes beyond the

mandate of the United Nations and thus beyond that of UNCITRAL. In subparagraph (c) (ii) of the Spanish version of the document, the word “individualizando” should be replaced with the word “identificando”. The final part of the subparagraph, from “, and ensuring”, should be deleted. Such activities do not fall within the Commission’s remit, as they are internal matters. In subparagraph (c) (iii), the word “preparing” should be replaced with the words “supporting the preparation of”. The final part of the subparagraph, from the words “and ensuring”, should be deleted. Again, such activities fall to the State rather than to UNCITRAL.

- In the Annex, it is suggested that paragraphs 10 and 11 be deleted. They bear no relation to the topic.”

### **Belarus [24 August 2015; original in English]**

“...to replace the last sentence of paragraph 2 of section 1 of chapter B of the Draft guidance note with the following sentence “Accordingly, they may contribute to the achievement of the purposes specified in the United Nations Charter and the United Nations General Assembly resolution 2205 (XXI) of 17 December 1966 ‘Establishment of the United Nations Commission on International Trade Law’.”  
...”

### **Cyprus [24 August 2015; original in English]**

“...the competent Authorities of the Republic of Cyprus acknowledged and took note of the said Note Verbale as well as the document entitled “Technical Assistance to law reform” attached therein...”

### **Israel [24 August 2015; original in English]**

“... ”

### **General Comments**

1. One important element in facilitating commercial law reform is a structured work plan which can focus on identifying the goals and objectives of the different steps (for both providing assistance and taking reform measures), setting up a schedule, developing strategies to address weaknesses or inadequacies of the different legislative norms or practices, and allocating resources. It is suggested that the Guidance Note encourages UN bodies to propose to States to adopt such an organized work plan.
2. Coordination is a key component in the commercial law reform process. In the context of the Guidance Note it could be advisable to highlight the importance of coordination between UN bodies, as well as domestic governmental departments, engaging in reform efforts. Such coordination is sometimes essential in order to avoid duplication of efforts, and can be achieved by appointing appropriate focal points in each body or agency to coordinate a specific reform initiative.

3. The use of UNCITRAL model laws and similar instruments issued by other international organizations as a basis or inspiration for legislation as part of commercial law reform should perhaps be given more prominence in the Guidance Note. At the same time, the Guidance Note could emphasize that model laws can be adapted to domestic circumstances and that States can select which provisions are most relevant to their legal systems.

4. The Guidance Note should also briefly refer to cooperation and exchanges of good practices between States, which can be supported or encouraged by UN bodies, as an instrument which can play a significant role in promoting commercial law reform. The Guidance Note emphasizes in several places throughout the text that commercial law reform is strongly linked to international legal obligations. We see that as a very important point. However, it could be considered that there is a need to clarify that the intention is to aspire to consistency between domestic law and international obligations and not to create gaps or conflicts between the two, which the current text in the Guidance Note might be misinterpreted to construe.

### Text Proposals

5. We believe that it would be preferable to refrain as much as possible from using the term "harmonization" in the Guidance Note, as it could be interpreted as a call for complete and overbroad alignment of domestic laws with international commercial law. Accordingly, please see the following suggested amendments: (suggested additions to the text are bolded/ highlighted/underlined and deletions are crossed out).

Paragraph B — Guiding Principles (1.2, p.3) — *The modern and harmonized international commercial law framework is the basis for rule-based commercial relations and an indispensable part of international trade, **bearing in mind the relevancy of domestic law and domestic legal systems in this regard.***

Paragraph B — Guiding Principles, (2.2, p. 3) — *"Harmonization, **where appropriate,** of the local legal framework regulating commercial relations with internationally accepted commercial law standards should be promoted in this context since such ~~harmonization~~ **adaptation** facilitates fulfilling these basic requirements in the local legal framework".*

6. We suggest adding a reference to amendment of existing legislation as part of law reform as follows:

Paragraph B — Guiding Principles (2.1, p. 3), *"Often States need international assistance with building the required local capacity to enact necessary rules or **updating and modernizing existing rules** and adequately enforce, implement, apply and interpret them."*

7. We suggest, in Paragraph B — Guiding Principles (3.3, p. 4), the following rephrasing of the paragraph for the purposes of clarifying its substantive content: *Mechanisms for adjudicating disputes and enforcing binding commitments in the context of trade and investment ~~must operate on the basis of internationally recognized human rights and~~ should **in accordance with internationally recognized human rights,** be easily accessible, affordable, efficient and effective.*

8. We suggest, in Paragraph B — Guiding Principles (3.2, p. 4), to include examples of the relevant stakeholders: *"Commercial law reforms should therefore*



*involve close consultations and coordination among all relevant stakeholders including civil society (representing the general public), lawyers, legislators, judges, arbitrators and other legal practitioners such as officials responsible for drafting legislation.*”

9. Engagement of domestic officials, as well as other domestic stakeholders, in designing international commercial law can also have an important contribution to promoting and facilitating reform based on international legal instruments. Accordingly, see the following proposal for an additional brief paragraph (could possibly be added as Paragraph B - Guiding Principles 5.5 in p. 6 of the Guidance Note, or as a separate paragraph under Operational Framework):

*Active Participation of domestic governmental and non-governmental stakeholders in international legislative forums such as UNCITRAL (the Working Groups and the Commission) can significantly contribute to the understating of the benefits of using international legal instruments to facilitate commercial law reform. Such participation can allow stakeholders to gain familiarity with drafting international commercial law and the different modalities which can be later used domestically, as well as to serve as a platform for exchange of best practices with counterparts of a wide and diverse professional and geographical background.*

10. We request to add a clarification that ultimately it is for the country accepting the assistance to decide how to implement the suggested reforms. Accordingly, we suggest the following addition after Paragraph C — Operational Framework 1.2(c)(i-iii), p.7, *Notwithstanding sub-articles (i-iii), reform of the legal framework should be a process which is country led, country owned and country managed.*”

**Peru** [26 August 2015; original in Spanish]

“...In that regard, the Permanent Mission of Peru has the honour to transmit the following comments on the above-mentioned guidance note:

- As indicated in the note, its purpose is to serve as a guide for all offices, bodies, funds and programmes of the United Nations in connection with the promotion of trade law, and the note constitutes a response to the request for greater integration of the technical assistance and cooperation activities of UNCITRAL in the general activities of the United Nations, in particular through United Nations country offices and the United Nations Development Programme. Consequently, the contents of the note should be consistent with, and support the application of, the general guidelines of the United Nations in that area, in the spirit of integration of efforts and efficiency and effectiveness in the use of resources and the achievement of objectives.
- The note should take into account the post-2015 agenda and refer to the process of defining the sustainable development goals, which will serve as the future framework for action by States and international bodies.
- The document could be improved, particularly with respect to defining the relationship between development and the development of commercial law.

- All of the indicators mentioned in the note should be linked to the purpose of the document.
- The note could take into account the development of trade law, new trends in law, the present state of the international economy and the dissemination and approval of the documents produced by the Commission in relation to the information contained in document A/CN.9/843.
- Lastly, given the purpose of the note and the fact that it was submitted to the Commission for consideration and adoption after being developed and drafted solely on the basis of the views of the UNCITRAL secretariat, the note should include the views of States.

In light of the above comments, the Permanent Mission considers that the document should be considered during the forty-ninth session of the Commission ...”

### **Mexico** [27 August 2015; original in Spanish]

“Mexico believes that the document is of high quality since it summarizes the work carried out by the United Nations Commission on International Trade Law (UNCITRAL) and the tools at its disposal in supporting countries in general. It could be a little more precise as regards the tools offered and means of accessing them, as it refers to activities, databases and the possibility of providing expert assistance but does not indicate what States can request, how requests should be made and to whom they should be addressed.

The assessment system and the list of indicators in the Annex provide good food for thought and fall within the scope of such initiatives as the World Bank’s reports on the observance of standards and codes. Might it be desirable to integrate such initiatives in the joint work carried out by UNCITRAL and the World Bank? However, the following points should be made:

1. Section B.3: “Commercial law reforms should be holistic and coordinated as appropriate with other relevant initiatives.” It is suggested that the text of this subsection also point out that while the laws and regulations of States cannot accommodate purely technical issues because they set out policy preferences, they always include public policies that those States seek to promote for the benefit of their peoples.
2. Section C (“Operational Framework”) establishes that ‘The need to identify local requirements for commercial law reforms should be recognized in United Nations operations in the appropriate context, such as in peacebuilding and development assistance frameworks. To effectively address any identified local requirements for commercial law reforms, awareness about United Nations existing standards, tools and expertise related to regulation of commercial relations and recourse to them should be substantially increased across the United Nations system. An annex to this Guidance Note may serve as a checklist of indicators relevant in the assessment of the state of commercial law framework in a particular country.’

The appropriateness of this paragraph must be reviewed, as States should not be subject to compulsory schemes for the verification of new indicators for assessing

trade regulations, especially given that the work carried out within the framework of the Commission is aimed at creating tools for States on the basis of standardization across the various legal traditions, thus leaving States to adapt those tools according to their particular needs.

It is relevant to recall that the mechanisms referred to as “soft law” (model laws and legislative guides) ensure the freedom of States to decide on regulations according to their specific circumstances, and the trade regulations of a State should not be assessed on the basis of whether or not that State has adopted the relevant model laws.

It should be noted that, at present, most economies are analysed within the framework of the “Doing Business” project, which is based on various indicators that may serve as a point of reference for the Commission with regard to the ease of doing business in different economies. Furthermore, and without prejudice to the above, the guidance note indicates neither the methodology used for selection of the indicators set out in the Annex nor the assessment to be carried out with respect to each of the responses, which leaves States in a position of insecurity.

## **Annex**

### **List of indicators relevant in the assessment of the state of commercial law framework in a particular country.**

#### **1. The legal framework provides for the recognition and enforcement of property rights and legal relationships.**

Response: yes, in Mexico private property rights are respected except when expropriation or application of the Termination of Ownership Act is necessary.

#### **2. Local commercial law framework is compliant with internationally accepted commercial law standards:**

Response: yes, the Code of Commerce and the trade rules deriving from it comply with international trade-law provisions and are regularly updated.

##### **(a) Local laws regulating commercial relations are enacted on the basis of internationally accepted commercial law standards;**

Response: yes, some international standards are included in the law and others are implemented through trade agreements and treaties.

#### **3. Local capacity to implement sound commercial law reforms is continually built:**

Response: yes, Mexican trade law is amended according to emerging needs, for example, in the areas of security rights and electronic commerce.

##### **(a) Training courses on commercial law matters for government officials are held regularly [but at least twice a year];**

Response: yes, general courses are offered at the National Autonomous University of Mexico and in the Ministry of Economic Affairs.

##### **(b) Participation in such courses is improving, in particular the number of attendees, disaggregated by age, gender, specialization, affiliation (e.g. ministry**

**or other state agency) and other relevant criteria, is steadily increasing, and assessment test results are adequate;**

Response: in general, attendance is variable.

**(c) The number of rule-formulating activities of regional and international bodies on commercial law issues attended by local experts is steadily increasing;**

Response: yes, there is a group of advisers of the Ministry of Foreign Affairs comprised of trade-law experts who participate in the work of international bodies, particularly UNCITRAL.

**(d) Local expertise on commercial law issues is centralized, readily available and easily deployed when necessary (e.g. for coordinating the State's position in rule-formulating activities of regional and international bodies on commercial law issues and for identifying and following up on local needs in commercial law reforms at the local, regional and international levels);**

Response: yes, it is readily available.

**(e) Local needs in commercial law reforms are assessed on a regular basis, including within the development assistance framework.**

Response: yes, commercial legislation is updated regularly and such revisions are published officially.

**4. Capacity of local judges, arbitrators and other legal practitioners to understand internationally accepted commercial law standards, apply them in a uniform way and achieve a better quality of judgements and awards is adequate:**

Response: yes, judges and arbitrators specialize in commercial law standards and the application of those standards.

**(a) Continuous learning courses for judges are held regularly [but at least twice a year] and their curricula include courses on uniform interpretation and application of internationally accepted commercial law standards;**

Response: yes, the curricula of the National Autonomous University of Mexico and of other universities include international trade law and even carry out mock proceedings, including arbitral proceedings.

**(b) Participation in such courses is improving, in particular the number of attendees, disaggregated by age, gender, specialization, court affiliation (e.g. court of first instance, appeal court, state or federal or supreme court) and other relevant criteria, is steadily increasing, and assessment test results are adequate;**

Response: no, judicial officers study subjects individually, and only study as a group in the case of collegiate bodies, such as the collegiate circuit courts and the Supreme Court of Justice.

**(c) The number of local judges participating in the international judicial colloquiums and other international and regional judicial training is steadily increasing;**

Response: yes, they currently attend conferences, colloquiums and workshops.

**(d) A mechanism for collecting, analysing, monitoring and publicizing national case law relating to internationally accepted commercial law standards is in place;**

Response: yes, the Judicial Weekly of the Federation and the annual reports of the Supreme Court of Justice.

**(e) A number of reported cases on commercial law issues referencing as appropriate internationally accepted commercial law standards is steadily increasing.**

Response: yes, this information is made available in the publications referred to in 4 (d) above.

**5. Mechanisms for adjudicating disputes and enforcing binding commitments in the context of trade and investment are easily accessible, affordable, efficient and effective:**

Response: yes, they are accessible and affordable.

**(a) Alternative mechanisms for resolution of commercial disputes (commercial arbitration, mediation and conciliation) are available as an option to seek adjudication of commercial disputes in a neutral forum;**

Response: yes, courts have introduced mediation and conciliation.

**(b) Those mechanisms function on the basis of internationally accepted standards;**

Response: yes, they are based on international standards introduced by law or by international treaties and conventions.

**(c) Mechanisms to monitor speed and effectiveness of court decisions and their enforcement as well as enforcement of arbitral awards are in place.**

Response: yes, on the basis of the Federal Act on Transparency and Access to Public Government Information.

**6. People are educated on international commercial law issues, basic rights and obligations arising from commercial relations and employment opportunities linked thereto:**

Response: No.

**(a) Subjects of commercial law are included in curricula of technical schools, universities and vocational training courses;**

Response: yes, trade law subjects are taught at all of those levels.

**(b) Local courses for members of academia designed to facilitate developing local legal doctrine on commercial law issues in line with internationally prevailing ones are held regularly [but at least twice a year];**

Response: yes, courses and workshops on legal doctrine relating to commercial law are held.

**(c) Participation in such courses is improving, in particular the number of attendees, disaggregated by age, gender, specialization, affiliation (universities**

and other academic institutions) and other relevant criteria, is steadily increasing, and assessment test results are adequate;

Response: participation is variable.

**(d) The number of local law students, disaggregated by gender, income and other relevant criteria, participating in local, regional and international moot competitions on commercial law matters is steadily increasing.**

Response: no, unfortunately the courses are focused on human rights litigation.

**7. Effective mechanisms for legal empowerment on commercial matters are in place:**

Response: yes, through arbitration.

**(a) Internationally accepted commercial law standards are translated into local languages and the translation is made readily available to the public;**

Response: yes, some are translated into Spanish and are available to the public, but none are translated into local languages.

**(b) The use of readily available authoritative sources of information on international commercial law matters, including tools designed to facilitate understanding, implementation and uniform interpretation and application of internationally accepted commercial law standards, is widely promoted;**

Response: yes, all of the above apply to undergraduate and postgraduate studies.

**(c) There are institutions that support economic activity, such as chambers of commerce, bar associations, commercial arbitration and conciliation centres, and they are evenly distributed throughout the country.**

Response: yes, they include the National Chamber of the Processing Industry, the Mexican Academy of Comparative and Private International Law, the National Bar, the National Association of Company Lawyers, the trade-law faculties of universities and the International Chamber of Commerce.

**Some outcome and output indicators, such as those below, although not commercial law specific, influence the effectiveness of the commercial law framework:**

**8. Laws, regulations and other legal texts with any amendments thereto as well as judicial decisions and administrative rulings of general application or precedent value are:**

**(a) Easily understood;**

Response: not by persons who are new to the subject area and do not understand the legal concepts concerned.

**(b) Capable of uniform interpretation and application; and**

Response: yes, but only if case law is referred to; otherwise their interpretation is subjective.

**(c) Made promptly accessible to the public.**

Response: yes, through the Official Gazette of the Federation and the official gazettes of the federal entities.

**9. The authoritative source of legal texts and other government information is widely publicized and systematically maintained;**

Response: yes, they are widely published in the Official Gazette of the Federation and the official gazettes of the federal entities and through electronic media.

**10. Institutions and workforce therein are well-structured, financed and trained;**

Response: no, the workforce is poorly funded and, naturally, requires training courses.

**11. There are mechanisms to monitor and oversee actions and decisions of public authorities.**

Response: yes, the Office of the Federal Attorney for Consumer Protection, local attorney's offices, the Council of the Judiciary, the Ministry of the Public Service and the Supreme Audit Office."

**El Salvador** [1 September 2015; original in Spanish]

"... In that regard, the Ministry of Economic Affairs, as the competent national authority, has communicated the following considerations: *'There are no legal observations to submit; however, it is relevant to draw attention to the fact that this Ministry has promoted several trade-related legal reforms in order to harmonize the legal framework of El Salvador with that of the international community, thus creating a situation of certainty for trade. It would therefore be very important to have access to the technical assistance referred to in the above-mentioned instrument and thus to implement best practices at the international level ...'*".

**III. A comment by a State received by the Secretariat in response to its note verbale LA/TL 131(9) —  
CU 2015/245/OLA/ITLD circulated to all States on  
8 October 2015**

**Chile** [23 October 2015; original in Spanish]

"...In that regard, the Permanent Mission of Chile welcomes the 'Draft guidance note on strengthening United Nations support to States to implement sound commercial law reforms' and the comments submitted by a number of UNCITRAL member States, and considers the contents thereof to be a contribution to the substantive discussion on defining the role of UNCITRAL in the context of the United Nations, and to the orientation of the Commission's future work.

It also agrees with many of the comments submitted, particularly — and as already expressed during the Commission's discussions in July 2015 — with regard to the need for a concise and clear document, without value judgements, that will contribute to achievement of the objectives set out in the Charter of the United Nations and in resolution 2205 (XXI) of December 1966 of the United Nations General Assembly.

In view of the above, the Permanent Mission is of the view that the document should be reviewed once again at the next session of the Commission in July 2016..."

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