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Coordination activities

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 report, prepared in response to resolution 34/142 and in accordance with UNCITRAL's mandate,³ provides information on the activities of other international organizations active in the field of international trade law in which the UNCITRAL Secretariat has participated, principally working groups, expert groups and plenary meetings. The purpose of that participation has been to ensure coordination of the related activities of the different organizations, share information and expertise and avoid duplication of work and the resultant work products.

4. The Commission may wish to note the increasing involvement of the Secretariat in initiatives of other organizations. This is a recurrent pattern in recent years, consistent with the increase in the Secretariat's technical assistance activities,⁴ and which is expected to continue and even increase in future.

II. Coordination activities

A. The International Institute for the Unification of Private Law and the Hague Conference on Private International Law

International Institute for the Unification of Private Law (Unidroit)

5. The Secretariat participated in the ninety-first session of the Unidroit Governing Council (Rome, 7-9 May 2012). At the meeting, the Governing Council expressed satisfaction for the inclusion of Unidroit's request for formal endorsement of the Unidroit Principles 2010 in the agenda of the forty-fifth UNCITRAL session.

6. The Secretariat attended the first and second sessions of the Committee of governmental experts on the enforceability of close-out netting provisions (Rome, 1-5 October 2012 and 4-9 March 2013) in order to monitor developments to ensure consistency with UNCITRAL texts concerning insolvency and secured transactions.

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

² *Ibid.*, para. 100.

³ See General Assembly Resolution 2205 (XXI), sect. II, para. 8.

⁴ See A/CN.9/775.

The draft text was completed at the second session and will be referred to the Unidroit Governing Council for adoption in May 2013. The final text is broadly consistent with the relevant UNCITRAL texts.

7. The Secretariat provided comments on a position paper in the area of contract law, titled “Model Clauses for Use of the Unidroit Principles of International Commercial Contracts in Transnational Contract and Dispute Resolution Practice”, to the Unidroit Working Group for the preparation of Model Clauses (Rome, 11-12 February 2013).

Hague Conference on Private International Law (HCCH)

8. The Secretariat attended the Special Commission meeting of HCCH on Choice of Law in International Contracts. The outcome of the meeting was a non-binding instrument, i.e. a draft set of principles, for consideration by the Council on General Affairs and Policy in April 2013, prior to further work on the commentary by the Special Commission (The Hague, the Netherlands, 12-16 November 2012).

9. The Secretariat participated in the meeting of the HCCH Council on General Affairs and Policy (The Hague, the Netherlands, 9-11 April 2013). Among other matters, this was an opportunity for the Secretariat to congratulate the outgoing Secretary General of HCCH, Mr. Hans van Loon on his successful years in office, thanking him for the HCCH’s cooperation with UNCITRAL, and to welcome his successor, Mr. Christophe Bernasconi. At the meeting, participants were briefed on HCCH ongoing matters, including the opening of its regional office in Hong Kong in December 2012, and considered the text prepared by the working group on Choice of Law in International Contracts (see paragraph 7 above). UNCITRAL will continue to participate as an observer to such working group, which is due to submit its final text with commentary to the next meeting of the Council in April 2014.

Joint activities with Unidroit and HCCH

10. Unidroit hosted the annual coordination meeting with the UNCITRAL Secretariat and HCCH at which, current work of the three organizations and potential areas for cooperation were discussed (Rome, 5 June 2012). On this occasion both the Secretary of Unidroit and the Secretary of HCCH thanked the UNCITRAL Secretariat for having coordinated and sponsored the publication on the work of the three organizations in the area of secured transactions law.⁵

B. Other organizations

11. The Secretariat has undertaken other coordination activities with various international organizations. These have included provision of comments by the Secretariat on documents drafted by those organizations, as well as participation in various meetings and conferences with the purpose of briefing about the work of UNCITRAL or to provide an UNCITRAL perspective on the matters at stake.

⁵ See UNCITRAL, Hague Conference and Unidroit Texts on Security Interests: Comparison and analysis of major features of international instruments relating to secured transactions at www.uncitral.org/uncitral/en/uncitral_texts/security/2011UNCITRAL_HCCH_Unidroit_texts.html; see also A/CN.9/720 and A/CN.9/749.

1. General

12. The Secretariat remains actively involved in the Inter-Agency Cluster on Trade and Productive Capacity.⁶ In this context, the Secretariat was involved in the negotiation of the United Nations Development Assistance Framework (UNDAF) for Nepal. The UNDAF articulates the collective response of the United Nations system to national development priorities by coordinating the common contribution of the United Nations agencies to the needs and priorities of countries.

13. The Secretariat delivered a lecture on global and regional contract law harmonization at the conference on European Private Law at the University of Rome (Rome, 10 May 2012).

14. The Secretariat attended the General Assembly High-Level Meeting on the Rule of Law at which the chairperson of UNCITRAL delivered an official statement to Member States, non-governmental organizations and civil society representatives participating in the event (New York, United States of America, 23-24 September 2012). The Declaration adopted at the Meeting recognizes the importance of fair, stable and predictable legal frameworks for generating inclusive, sustainable and equitable development and economic growth and commends the work of UNCITRAL in modernizing and harmonizing international trade law.

15. As last year, the Secretariat attended the Annual meeting of the United States State Department Advisory Council on private international law (Washington D.C., 11-12 October 2012).

16. The Secretariat participated in the European Microfinance Week 2012 organized by the European Microfinance Platform and attended by worldwide representatives from governmental and non-governmental organizations, academia and private sector active in the domain of microfinance (Luxembourg, 14-16 November 2012).

17. The Secretariat attended the Law, Justice and Development Week 2012, an annual event designed to address how law and justice contribute to better development outcomes through opportunity, inclusion and equity. The event brought together World Bank Group staff, senior officials from other international financial institutions, international development practitioners, government officials, lawyers, judges, scholars and representatives from civil society and was co-organized by the World Bank's Legal Vice Presidency, the International Finance Corporation and Multilateral Investment Guarantee Agency Legal Departments, and the International Center for the Settlement of Investment Disputes. The formal launch of the "Global Forum on Law, Justice and Development" also took place during the week. The Global Forum is stated to be "a permanent forum ... for the exchange of knowledge, connecting developing countries, think-tanks, regional and international organizations, international financial institutions, governments, judiciaries, the private sector and civil society organizations with relevant research and practice"⁷ (Washington D.C., 10-14 December 2012).

⁶ See A/CN.9/725.

⁷ Law, Justice and Development Week 2012, Concept Note, available at: http://siteresources.worldbank.org/INTLAWJUSTICE/214576-1340728175970/23321647/LJDWEEK_2012_Concept_Note.docx.

2. Procurement

18. In accordance with requests of the Commission and Working Group I (Procurement), the Secretariat has established links with other international organizations active in procurement reform to foster cooperation with regard to the UNCITRAL Model Law on Public Procurement (2011) and its accompanying Guide to Enactment (2012). The aims of such cooperation are to ensure that reforming Governments and organizations are informed of the policy considerations underlying those texts, so as to promote a thorough understanding and appropriate use of the Model Law, at both regional and national levels. The Secretariat is taking a regional approach to this cooperation, and activities with the multilateral development banks in several regions, focusing on good governance and anti-corruption (in which procurement reform plays a pivotal role), are envisaged.

19. To this end, the Secretariat has participated, among others, in the following activities:

(a) The World Bank's International Advisory Group on Procurement, which is advising the World Bank on a wholesale Procurement Policy review, its new Program-for-Results (PforR) financing instrument, the Bank's procurement function in the context of public financial accountability, and the need to strengthen contract management (Washington, D.C., 4-5 June 2012 and 12-13 November 2012);

(b) The Second Annual EU Public Procurement Reform Conference, organized by IBC Legal Conferences, addressing the UNCITRAL reforms in public procurement and areas of harmony and discord between them and EU proposals. The Secretariat delivered a presentation at this event (Brussels, 20 September 2012);

(c) The seminar on Procurement and Trade, organized by the International Chamber of Commerce (ICC), addressing the EU proposals for a regulation on the access of third party suppliers and contractors to the EU public procurement market, which concern the principles of international participation in public procurement under the UNCITRAL Model Law on that topic (Paris, 7 November 2012). The Secretariat delivered a presentation at this event;

(d) The 5th session of the UNECE Team of Specialists, at which the Secretariat presented possible future work of UNCITRAL in public-private partnerships, with a view to ensuring appropriate coordination among the donor community in this regard (Geneva, Switzerland, 5-6 February 2013);

(e) The OECD's Meeting of Leading Practitioners on Public Procurement and ongoing work on key issues in updating the OECD Recommendation on Enhancing integrity in public procurement, the aim of which is to provide guidance to decision makers on how to use procurement as a strategic function of governments (Paris, 11-12 February 2013). The Secretariat delivered a presentation at this event; and

(f) The meeting of the heads of procurement of the multilateral development banks,⁸ at which the Secretariat presented possible future work of UNCITRAL in

⁸ The following Banks were represented: the World Bank, the African Development Bank, the Asian Development Bank, the European Bank for Reconstruction and Development, the European Investment Bank, the InterAmerican Development Bank and the Islamic Development Bank.

public-private partnerships, with a view to ensuring appropriate coordination among the donor community in this regard (Paris, 14 March 2013).

3. Dispute settlement

20. The Secretariat participated in the following activities:

(a) Consultative work in relation to the UNCTAD Pink Series publication on transparency in international investment agreements, entitled “Transparency 2012”, in order to ensure that a consistent approach is promoted by UNCTAD and UNCITRAL in the field of transparency in treaty-based investor-State arbitration; and

(b) Consultative and coordination work with the Unidroit Working Group on the use of Unidroit Principles in arbitration clauses.

21. The Secretariat also organized a meeting with representatives of arbitral institutions in relation to the establishment of a registry on transparency under the draft UNCITRAL rules on transparency in treaty-based investor-State arbitration (Vienna, 3 December 2012).⁹

4. Electronic commerce

22. The Secretariat has been particularly active in coordinating with international and regional organizations involved in the formulation of legal standards in the field of electronic commerce to ensure their compatibility with UNCITRAL texts and principles.

23. Activities¹⁰ included the following:

(a) Coordination with the European Commission on its draft regulation on electronic identification and trust services for electronic transactions in the internal market (Brussels, 5 September 2012);

(b) Coordination with the United Nations Centre for Trade Facilitation and Electronic Business (UN/CEFACT) on the revision of recommendation 14 on authentication of trade documents and preparation of recommendation 36 on single windows interoperability (Vienna, 17-21 September 2012);

(c) Participation in the 13th plenary meeting of the Asia Pacific Council for Trade Facilitation and Electronic Business (AFACT) (Teheran, 21-22 November 2012);

(d) Participation in the meeting organized by the American Bar Association (ABA) Identity Management Legal Task Force (London, 10-11 December 2012); and

(e) Participation in the United Nations Office on Drugs and Crime (UNODC) core group of experts on identity-related crime (Vienna, 16-18 January 2013).

⁹ See A/CN.9/WG.II/WP.177.

¹⁰ Coordination activities in the area of electronic commerce carried out by the UNCITRAL Regional Centre for Asia and the Pacific are listed in A/CN.9/775.

5. Security interests

24. Coordination with relevant organizations has been pursued to ensure that States are offered comprehensive and consistent guidance in the area of secured transactions law.

25. Specific activities of the Secretariat included:

(a) Coordination with Unidroit to ensure that the text on netting being prepared by Unidroit does not overlap or conflict with the security interests texts prepared by UNCITRAL (see also para. 6 above);

(b) Coordination with the European Commission to ensure that a coordinated approach is followed with respect to the law applicable to third-party effects of assignments of receivables; and

(c) Coordination with the World Bank to prepare joint UNCITRAL-World Bank Principles on Secured Transactions.

6. Insolvency

26. The Secretariat participated in the third session of the World Bank's Working Group for the Treatment of the Insolvency of natural persons (Washington D.C., 13-14 December 2012). The Working Group was established under the auspices of the World Bank's Insolvency Law Task Force to identify the policies and general principles that underlie the diverse legal systems that have evolved for effectively managing the risks of consumer insolvency and individual over-indebtedness in the modern context and prepare a report to provide guidance on the characteristics of an effective insolvency regime for natural persons and the opportunities and challenges encountered in the development of such a regime. The report was finalized and adopted at this session.

7. Commercial fraud

27. Further to the request of the Commission (A/63/17, para. 347 and A/64/17, para. 354) in relation to work on commercial fraud, the Secretariat has continued to participate in the work of UNODC on economic crime and identity fraud. In particular, the Secretariat has participated in UNODC's core group of experts on identity-related crime, which was formed to bring together on a regular basis representatives from Governments, private sector entities, international and regional organizations and academia to pool experience, develop strategies, facilitate further research and agree on practical action against identity-related crime. The most recent meeting of the core group of experts, the sixth such meeting, took place in Vienna from 16-18 January 2013 (see also para. 23, lett. e), above).