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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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* The submission of this document was delayed due to need to finalize consultations.



III. Harmonization and unification of international trade law

G. Commercial arbitration and conciliation

American Arbitration Association¹

1. The American Arbitration Association (AAA) administers cases and provides administrative services in the United States and abroad through its International Centre for Dispute Resolution (ICDR), including assisting in the appointment of mediators and arbitrators. Additional services include the design and development of alternative dispute resolution systems for corporations, unions, government agencies, law firms and courts. The AAA also offers education, training, and publications providing a deeper understanding of alternative dispute resolution.

2. Effective 1 October 2009, the AAA announced revised Construction Industry Arbitration Rules and Mediation Procedures.² In May 2009, changes were made to the Supplementary Procedures for the Arbitration of Anti-Doping Rules Violations to ensure greater consistency and application of the procedural framework for these cases.³ In April 2009, the AAA Non-Binding Arbitration Rules were developed for use with business and consumer disputes, as well as for employee and employer disputes. The AAA's Non-Binding Arbitration Rules offer parties a means of resolving their cases using the procedural process of arbitration, with an informal hearing on the merits of the dispute, but without the finality of a binding decision. In February 2008, new rules and procedures to assist in resolving disputes related to insurance took effect.⁴

American Bar Association⁵

3. The American Bar Association (ABA) carries out a Rule of Law Initiative, a public service project which is dedicated to promoting the rule of law around the world. The project seeks to enhance, among others, the competence and expertise of legal practitioners by providing technical assistance. The project includes substantive legal training on alternative dispute resolution and mediation.⁶

Asian-African Legal Consultative Organization⁷

4. At the Doha Session, in 1978, the Asian-African Legal Consultative Organization (AALCO) decided to establish Regional Centres for International Commercial Arbitration under their auspices in different parts of Asia and Africa so that the flow of arbitration cases to arbitral institutions outside the Afro-Asian region could be minimized. AALCO maintains the following objectives: (a) Promoting international commercial arbitration in Asian and African regions; (b) Coordinating and assisting the activities of existing arbitral institutions, particularly among those within the two regions; (c) Rendering assistance in the

¹ <http://www.adr.org>.

² <http://www.adr.org/sp.asp?id=36626>.

³ <http://www.adr.org/sp.asp?id=36206>.

⁴ <http://www.adr.org/sp.asp?id=33856>.

⁵ <http://www.abanet.org>.

⁶ http://www.abanet.org/rol/programs/resource_legal_profession_reform.html.

⁷ <http://www.aalco.int>.

conduct of ad hoc arbitrations, particularly those held under the UNCITRAL Arbitration Rules; (d) Assisting in the enforcement of arbitral awards; and (e) Providing for arbitration under the auspices of the two centres where appropriate.⁸

5. A report on the development of these centres was presented to the AALCO's forty-eighth annual session in August, 2009.⁹

Asia Pacific Regional Arbitration Group¹⁰

6. The Asia Pacific Regional Arbitration Group (APRAG) is a regional federation of arbitration associations which aims to improve standards and knowledge of international arbitration and will make submissions on behalf of the region to national and international organizations. A new member, the Arbitration Association of Chinese Taipei, joined APRAG in March 2009. The Beijing Arbitration Commission (BAC) brought new Construction Dispute Board Rules into effect in March 2009.¹¹ In May 2009, the China International Economic and Trade Arbitration Commission (CIETAC) implemented its Online Arbitration Rules.

Association of the Bar of the State of New York¹²

7. The Association of the Bar of the State of New York (the NYSBA) maintains a NYSBA Dispute Resolution Section, which is a forum for improving these processes and the understanding of dispute resolution alternatives, for enhancing the proficiency of practitioners and increasing the knowledge and availability of party-selected solutions.¹³ In April 2009, the NYSBA Executive Committee and House of Delegates unanimously approved the Report by the Arbitration Committee of Dispute Resolution Section on Arbitration Discovery in Domestic Commercial Cases. The Report is to serve as a guide for Arbitrators on effectively handling discovery in domestic commercial cases in a way that is both cost-effective and fair.¹⁴ In November 2009, the NYSBA will host a session on Securities Arbitration and Mediation that will present a detailed review of the major issues facing counsel in securities arbitration and will share step-by-step advice on the most effective ways to conduct hearings.¹⁵

Commonwealth Telecommunications Organization¹⁶

8. The primary function of the Commonwealth Telecommunications Organization (CTO) ADR Centre is to provide for the settlement of disputes in the field of

⁸ <http://www.aalco.int/Regional%20Arbitration%20Centre.htm>.

⁹ The report on AALCO Regional Centres for Arbitration was adopted as a resolution (RES/48/ORG 3), see <http://www.aalco.int/Report%202009/Summary%20Report-09-final.pdf>.

¹⁰ <http://www.aprag.org>.

¹¹ <http://www.aprag.org/downloads/Newsletter/APRAG%20Newsletter%20200906.pdf>.

¹² <http://www.nysba.org>.

¹³ http://www.nysba.org/AM/Template.cfm?Section=Dispute_Resolution_Home&Template=/CustomSource/SectionHome.cfm&Sec=DRS.

¹⁴ <http://www.nysba.org/AM/Template.cfm?Section=Home&TEMPLATE=/CM/ContentDisplay.cfm&CONTENTID=%2028055>.

¹⁵ <http://www.nysba.org/AM/Template.cfm?Section=Events1&Template=/Conference/ConferenceDescByRegClass.cfm&ConferenceID=3726>.

¹⁶ <http://www.cto.int>.

Information and Communication Technologies (ICT). It maintains partnership relationships with the Chartered Institute of Arbitrators, the Centre for Effective Dispute Resolution and the ADR Group. The CTO ADR Centre and the Claims Room.com Ltd jointly operate an online dispute resolution platform.¹⁷ Recognizing the need to build capacity within developing countries and in the industry sector itself, the CTO ADR Centre conducts training programmes.

European Company Lawyers Association¹⁸

9. European Company Lawyers Association (ECLA) is forming a working group on mediation for the purpose of monitoring: (1) the implementation of the EU Directive 2008/52/EC on cross-border mediation in civil and commercial matters; and (2) the legal situation in the member associations' countries on mediation in civil and commercial matters, including the preparation of national legislation on mediation and/or mediators.¹⁹

International Chamber of Commerce²⁰

10. The International Chamber of Commerce (ICC) Commission on Arbitration has constituted six task forces covering amiable composition and *ex aequo et bono*, guidelines for ICC expertise proceedings, trusts and arbitration, national rules of procedure for recognition and enforcement of foreign arbitral awards pursuant to the New York Convention of 1958, Electronic Documents in Arbitration and "Arbitration involving states or state entities".

11. The information gathered as a result of the studies of the task force on amiable composition and *ex aequo et bono*²¹ provided the basis for the draft report on Amiable Composition and *ex equo et bono* which was presented to Commission members for discussion in April 2008. The task force will revise the report on the basis of all comments submitted by the members in that discussion.

12. The task force on Guidelines for Expertise Proceedings is preparing explanatory notes for the use of experts covering issues that include: the use of experts in ICC Arbitration; the use of experts under the ICC Rules for Expertise as fact-finders; and the use of neutral experts as facilitators under the ICC ADR and Dispute Board Rules.²²

13. The ICC published a guide to national rules of procedure for enforcing awards to mark the 50th anniversary of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention) in September 2009.²³ The report is the product of the work of the ICC task force on national rules of procedure for recognition and enforcement of foreign arbitral awards pursuant to the New York Convention has been set-up in view of the

¹⁷ <http://www.ctomediation.com>.

¹⁸ <http://www.ecla.org>.

¹⁹ <http://www.ecla.org/documents/March.2009.pdf>.

²⁰ <http://www.iccwbo.org>.

²¹ Further information is available at <http://www.iccwbo.org/policy/arbitration/id6566/index.html>. See also A/CN.9/657, para. 31.

²² Information on the task force on guidelines for ICC expertise proceedings is available at <http://www.iccwbo.org/policy/arbitration/id1785/index.html>.

²³ Information on the report is available at <http://www.iccwbo.org/index.html?id=32917>.

50th anniversary of that Convention in 2008.²⁴ The task force on Arbitration involving States or State entities was created in March 2009 with the mandate to study and identify the essential and distinctive features of arbitrations involving States or State entities and determine whether there are special procedural considerations that should apply to such proceedings, including investment disputes pursuant to bilateral and multilateral treaties or state investment laws.²⁵ It has the further mandate to look at the ICC arbitration procedures and the Court's practices and determine whether there should be any specific requirements for ICC arbitrations involving states or state entities. Specifically, it should determine whether and how the presence of a State or State entity may or should affect the conduct of the arbitration and the role of the institution administering the proceeding. Finally, it should make any proposals for enhancing the role of the ICC International Court of Arbitration in the settlement of disputes involving States and State entities, including investment disputes pursuant to bilateral and multilateral treaties or state investment laws.

14. The task force on Electronic Documents in Arbitration was created in August 2008 with the mandate to study and identify the essential features and effects of the disclosure of electronic documents in international arbitration and prepare a report, possibly in the form of notes or recommendations for the production of electronic documents in international arbitration.²⁶

15. The task force on Trusts and Arbitration has the mission to study and identify specific issues related to trusts and arbitration and, if deemed appropriate, prepare a report; and to study the possibility of suggesting the inclusion of a draft ICC model arbitration clause in the trust deed, and, if appropriate, to develop a clause and to prepare an explanatory note. The draft document produced by the task force was approved by the members of the Commission subject to redrafting by a small committee whose task is to take into account the various comments made by the members and the National Committees.

International Finance Corporation²⁷

16. The International Finance Corporation (IFC), the private sector arm of the World Bank Group, through the IFC Advisory Services in Middle East and North Africa (MENA), provides technical assistance and advisory services aimed at private sector development. As part of its interventions, IFC promotes alternative dispute resolution (ADR) to mitigate expensive and lengthy court procedures and to expand access to justice. In 2005, the IFC launched an ADR project that led to the establishment of the *Karachi Center for Dispute Resolution* (KCDR) in Pakistan. Currently, the IFC is working on expanding recourse to ADR in Pakistan. UNCITRAL and the IFC are exploring possibilities for future collaboration in that area.

²⁴ 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/id15588/index.html>.

²⁵ Information on the task force on Arbitration involving states or state entities is available at <http://www.iccwbo.org/policy/arbitration/id8222/index.html>.

²⁶ Information on the task force on Trusts and Arbitration is available at <http://www.iccwbo.org/policy/arbitration/id8222/index.html>.

²⁷ <http://www.ifc.org>.

International Bar Association²⁸

17. On 15 June 2009, the Arbitration Committee submitted a paper to the European Commission commenting on key aspects of the Commission's Report and accompanying Green Paper concerning possible changes to the operation of Council Regulation (EC) No. 44/2001 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters (the Regulation). The paper addresses those aspects of the Report and Green Paper regarding the interface between the Regulation and arbitration and in particular the proposed deletion of the arbitration exclusion from the Regulation.²⁹

International Council for Commercial Arbitration³⁰

18. The International Council for Commercial Arbitration (ICCA) is a worldwide organization devoted to promoting the use and improving the processes of arbitration, conciliation and other forms of resolving international commercial disputes. Its activities include convening international arbitration congresses and conferences, sponsoring authoritative dispute resolution publications, and promoting the harmonization of arbitration and conciliation rules, laws, procedures and standards.

19. The ICCA publishes a Yearbook which provides an annual update on key developments in the Arbitration world, including: institutional and ad hoc arbitral awards, court decisions on arbitration from around the world, court decisions on major multilateral arbitration conventions, commentary on the court decisions on the New York Convention, updates on developments in arbitration law and practice, an investment treaty awards and decisions digest and a bibliography of the latest texts. It also publishes an International Handbook on Commercial Arbitration which covers arbitral law and practice in over 70 countries (last supplemented in March of 2009).³¹

Organisation for Economic Cooperation and Development³²

20. In 2007, the OECD has agreed to modify the Organisation for Economic Cooperation and Development (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.³³

21. In July 2008, the OECD Council approved the contents of the 2008 Update to the OECD Model Tax Convention, with the aforementioned possibility of arbitration in cross-border dispute over taxation if they remain unresolved for more than two years.³⁴

²⁸ <http://www.ibanet.org>.

²⁹ http://www.ibanet.org/LPD/Dispute_Resolution_Section/Arbitration/Default.aspx.

³⁰ <http://www.arbitration-icca.org>.

³¹ <http://www.arbitration-icca.org/publications.html>.

³² <http://www.oecd.org>.

³³ <http://www.oecd.org/dataoecd/17/59/38055311.pdf>. See also A/CN.9/657, paras. 37-38.

³⁴ The 2008 Update to the OECD Model Tax Convention can be found at <http://www.oecd.org/dataoecd/20/34/41032078.pdf>.

Organization for the Harmonization of Business Law in Africa³⁵

22. The Organization for the Harmonization of Business Law in Africa (OHADA) with the support of FIAS³⁶ is currently in the process of systematically analysing its eight Uniform Acts with a view to their possible revision, in order to assess their application and ensure their contribution to the development of the private sector in the African region. The UNCITRAL Secretariat is involved in the analysis of the OHADA's Uniform Arbitration act,³⁷ which is based on the UNCITRAL Model Law on International Commercial Arbitration. The Act is completed by the Rules of Arbitration of the Common Court of Justice and Arbitration which sets out the functions of the Court with regard to arbitration and other jurisdictional matters.

Permanent Court of Arbitration³⁸

23. In 2008, the Permanent Court of Arbitration (PCA) received thirty-four new requests for designation of an appointing authority or services as appointing authority under the UNCITRAL Arbitration Rules. The PCA co-sponsored the symposium "Multiple Parties, Multiple Problems" at The Hague in May 2007. The symposium has given rise to the compilation volume "Multiple Party Actions in International Arbitration", which presents a collection of articles examining international multiparty arbitration from both a conceptual and a practical perspective.³⁹

UNCTAD⁴⁰

24. UNCTAD continues to implement its project on "Building capacity through training in dispute settlement in International Trade, Investment and Intellectual Property".⁴¹ 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 of international organizations, such as 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, and UNCITRAL.

25. Capacity-building workshops are being held to train officials, academics, legal practitioners and business from developing countries, including LDCs, and countries in transition. Since it started in May 2002, the project has successfully cooperated with United Nations bodies and international organizations, such as the

³⁵ <http://www.ohada.org>.

³⁶ FIAS is the World Bank Group's Investment Climate Advisory Service, see <http://www.fias.net>.

³⁷ <http://www.ohada.org/actes-uniformes/actes/publish.html>.

³⁸ <http://www.pca-cpa.org>.

³⁹ The 2008 PCA Annual Report can be found at <http://www.pca-cpa.org/upload/files/03%20Report%201-17.pdf>.

⁴⁰ <http://www.unctad.org>.

⁴¹ See A/CN.9/657, paras. 37-38. Further information can be found at <http://www.unctad.org/Templates/WebFlyer.asp?intItemID=4403&lang=1>.

WTO, the WIPO, ICC, the ICSID, 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. Recent developments included the conclusion of a memorandum of understanding between UNCTAD and the City University of Hong Kong⁴² on capacity-building in international dispute settlement on 10 March 2008 and a workshop on Dispute Settlement workshop in Riyadh, 1-4 June 2008.⁴³

World Intellectual Property Organization⁴⁴

26. World Intellectual Property Organization (WIPO) maintains a WIPO Arbitration and Mediation Center (the Center), which provides services in the area of arbitration, mediation and domain name dispute resolution. The WIPO Center provides various information on its website, including WIPO caseload, case examples, publications about the Center and its services.⁴⁵ It holds workshops and conferences on dispute resolution, including a workshop on Alternative Dispute Resolution in Research and Development Collaborations held in Belgium on 13 November 2009 and a conference commemorating the tenth anniversary of the Uniform Domain Name Dispute Resolution Policy (UDRP) on 12 October 2009. The conference sought to take stock of the UDRP experience and draw lessons with a view to informing other processes relating to the future of the Domain Name System in the broader context of intellectual property. In December 2008, the WIPO Center sent a proposal to the Corporation for Assigned Names and Numbers (ICANN) to remove the requirement to submit and distribute paper copies of pleadings relating to the URRP process, which is currently under consideration by ICANN. The purpose of that proposal is to benefit all parties by eliminating the use of paper and improving the timelines of UDRP proceeding without prejudicing either complainants or respondents.

H. Procurement

1. Background and relevance to the work of the UNCITRAL Working Group

27. Public procurement is regulated through a hierarchy of international, regional and national instruments. The UNCITRAL Model Law on Procurement of Goods, Construction and Services is a national instrument, and its provisions are expressly subject to any treaty or other agreement between an enacting State and one or more states or international organizations, so that where any law conflicts with obligations under these treaties or agreements, the latter prevail (article 3 of the text).

28. At the international level, the United Nations Convention Against Corruption (A/Res/58/4, UNCAC) includes mandatory provisions addressing public procurement. At the regional level, the OECD Convention on Combating Bribery in International Business Transactions (1997) may apply to international procurement

⁴² <http://www.unctad.org/Templates/Page.asp?intItemID=4492&lang=1>.

⁴³ <http://www.unctad.org/Templates/Meeting.asp?intItemID=2068&lang=1&m=15358&year=2008&month=6>.

⁴⁴ <http://www.wipo.int>.

⁴⁵ <http://www.wipo.int/amc/en>.

in States parties to that Convention. Enacting States parties may also be members of regional trade organizations or other international or regional groupings,⁴⁶ which have regulatory texts or agreements that address public procurement, both expressly and through the prohibition of discrimination against foreign suppliers within the grouping or organization.

29. The Working Group has therefore recognized that the Model Law should be consistent with the requirements of these other texts and agreements, so that it can be enacted by all States that are parties to them, in addition to the general aim coordination and cooperation in procurement-related activities so as to facilitate the harmonization of procurement legislation and practice.

30. A number of international and regional organizations are regularly represented at the Working Group's sessions, and provide information to the Working Group at its sessions on their activities in policymaking and legislative work in general and electronic procurement. In addition, the UNCITRAL Secretariat is actively engaged in the work of the Multilateral Development Banks (MDBs), the OECD, and UNODC as set out in this note, and is in regular communication with other relevant organizations. The UNCITRAL Secretariat has also cooperated with the WTO secretariat on various issues related to legislative and technical assistance work.

2. Current activities of international organizations

Africa

African Development Bank

31. The AfDB and the Korea Public Procurement Service (PPS) signed a memorandum of understanding (MOU) in September 2009, to enhance collaboration on public procurement reforms. The PPS is the Korean government's central procurement agency, and established the Korea Online E-Procurement System (KONEPS) in 2002. KONEPS has been noted as an example of good practice by the international community and PPS has, in this regard, begun sharing its knowledge and experience with other developing countries. Under the MOU, the two institutions will collaborate on policymaking, institutional development and capacity-building, support multinational and other special initiatives and networks on public procurement reforms in Africa, will provide technical assistance and feasibility studies on potential projects involving public procurement reforms and in particular, e-procurement; and develop and exchange human resources through training programmes, secondment of experts, and seminars in the region.

⁴⁶ Such as the APEC, COMESA, the European Commission, the draft Free Trade Area of the Americas Agreement (FTAAA), the North American Free Trade Agreement (NAFTA), the Organization of American States (OAS) and the World Trade Organization (WTO)'s Agreement on Government Procurement (GPA). The scope and content of the Model Law differs from those from international procurement rules designed to promote cross-border trade, both in terms of level of detail for procedures, and to some extent in objectives — the latter focus on cross-border trade and not on achieving the objectives of a national procurement system (such as value for money and avoidance of corruption). The multilateral development banks have also issued procurement guidelines for procurement they fund.

Common Market for Eastern and Southern Africa

32. Earlier reports to the Commission have advised of the work of COMESA on the Enhancing Procurement Reforms and Capacity Project (EPRCP) under the Public Procurement Reform Project (PPRP).⁴⁷

33. COMESA has continued its work in consolidating the reforms under the EPRCP and PPRP in COMESA states, with the support of the AfDB, to publicize and inform about the principles and workings of the national and regional public procurement systems, the publication of national procurement laws and regulations that are consistent with the COMESA procurement directive passed under the PPRP, and the issue of procurement training materials and case studies.

34. COMESA issued draft public procurement regulations in support of the directive in June 2009. These regulations address the integration of public procurement in COMESA, financial thresholds, preferences and rules of origin for trade within and procurement within COMESA, the procurement process, record-keeping and challenge mechanisms, standards of conduct and ethics, and also discuss procurement reform in member States and supporting regional instructions including technical committees, dispute settlement mechanisms and cooperation among member States.

Asia*Asia Pacific Economic Cooperation*

35. During the period under review, the APEC Government Procurement Expert Group (GPEG)⁴⁸ has continued its work the APEC Transparency Standards on Government Procurement (the Transparency Standards) as earlier reported; has continued its capacity-building projects, including progressing SME initiatives, providing information on the Transparency Standards and encouraging member economies to share information on their procurement frameworks, including e-procurement initiatives, on multilateral and bilateral trade arrangements negotiated by member economies. It has also developed a framework for e-Procurement Guidelines, and assessed member economies' procurement systems and policies in an effort to facilitate the entry by private businesses/enterprises into the government procurement markets of APEC economies.

Europe*European Commission*

36. During the period under review, the EC issued Directive 2009/81/EC on defence and security procurement, which entered into force on 21 August 2009. The Directive seeks to create a European defence market, supporting the development of the European defence-related supplier base. Previously, the vast majority of defence

⁴⁷ Developed by the COMESA secretariat pursuant to the decision taken at the seventeenth meeting of the COMESA Council of Ministers (Kampala, 4-5 June 2004). COMESA member states are Angola, Burundi, Comoros, Democratic Republic of Congo, Djibouti, Egypt, Eritrea, Ethiopia, Kenya, Libya, Madagascar, Malawi, Mauritius, Rwanda, Seychelles, Sudan, Swaziland, Uganda, Zambia and Zimbabwe.

⁴⁸ The Group was established in 1995 as a sub-forum of the APEC Committee on Trade and Investment.

and sensitive security procurement contracts were exempted from the EU internal market rules. One of the reasons for the exemption was that the existing EU procurement rules were considered to be ill-suited for most defence- and security-related purchases. The defence procurement Directive provides special procurement rules for defence and security contracts, which are normally complex and sensitive and raise security interests. They apply to the procurement of arms, munitions and war material and also to sensitive non-military contracts in areas such as protection against terrorism, which are considered to have similar features to defence contracts.

EBRD

37. Although modified and updated several times since their adoption in 1992, the EBRD's Procurement Policies and Rules (PP&R) had not been subjected to a comprehensive review, so in 2008 the EBRD launched a process to overhaul them, to address increased efforts in fighting fraud and corruption, the incorporation within the PP&R of provisions reflecting the Bank's policies in other areas (private-public-partnerships, socio-environment), adjustments to reflect local conditions (local laws, local language, currency, taxes) to enable the Bank to continue to work in a sub-Sovereign environment within the framework of the Bank's PP&R, and adjustments to modernize and update to reflect current practices and acknowledgement of web-based technology. The review included a public consultation during 2008, inviting comment on the proposed revisions. Revised PP&R were presented to the EBRD's Board of Directors in May 2009. The main changes were: new provisions to reflect best practice in environmental and social matters, enhanced drafting of principles, considerations and guidance and the review or challenge mechanism, direct links to anti-corruption mechanisms within the EBRD, amendments to financial thresholds, relaxation of some English-language and currency requirements, permission to take account of import duties and taxes in evaluation, and reference to selection of private parties to concessions.

Multilateral development banks (MDBs)

38. A joint working group on Harmonization of Electronic Government Procurement (e-GP) (the "Joint Working Group"),⁴⁹ was set up at the beginning of 2003 by the ADB, the IADB, and the World Bank, and was subsequently joined by the AfDB, and EBRD.⁵⁰

39. The Joint Working Group's preparation of documents to support electronic procurement under MDB financed projects is ongoing, and includes an e-GP toolkit, containing a strategic planning guide and a strategic overview, a roadmap, a standards framework, a discussion of authentication issues, a buyer and supplier activation guide, and a readiness assessment. These documents will support the E-Tendering Requirements published in October 2005 and the E-reverse Auction

⁴⁹ A/CN.9/598/Add.1, para. 10, and see also "Current activities of international organizations related to the harmonization and unification of international trade law" that was before the Commission at its thirty-eighth session (the "2005 Secretariat Note"), A/CN.9/584, para. 50.

⁵⁰ The UNCITRAL Secretariat participates in meetings of the Joint Working Group as an observer.

Guidelines published in December 2005,⁵¹ and will supplement and not replace existing requirements in procurement processes for MDB funded activities.

40. The World Bank has continued its consultations regarding the use of country systems for procurement. The aim is to build national institutions that have effective systems and sound capacity, to support. The Bank is conducting pilot programmes in 10 countries with procurement systems that meet its standards, in accordance with international best practices, to strengthen capacity for quality procurement and institutional development. It also seeks to enhance international competitive bidding, to allow international companies to compete for both World Bank-financed projects and local projects and procurement. Consultations have taken place with businesses and governments from 78 countries, with organizations, and with the country governments that would be the ultimate beneficiaries of the piloting programme.

OECD

41. During the period under review, the OECD has continued its efforts to support the “Draft Checklist for Enhancing Integrity in Public Procurement”, previously reported, by consulting with an expert network on procurement (including the UNCITRAL Secretariat) on a draft Toolbox on Enhancing Integrity in Public Procurement. The OECD stresses that this draft document is an essential part of a package supporting the OECD strategy for building a stronger, cleaner and fairer world economy, reflecting countries’ calls for guidelines, practical tools and analysis addressing vulnerabilities linked to the financial and economic crisis.

42. The OECD’s Public Governance Committee has endorsed continuing work and the anticipated launch of consultations on the Toolbox in order to turn the tools into a web-based live document, which will operate at both international and regional levels on public procurement reform from the perspective of public governance, development aid and the prevention of corruption in public procurement.

United Nations and UNODC

43. The UN has decided to establish two independent mechanisms, an Acquisition Review Board (ARB), a body to consider challenges to procurement decisions, and a Senior Review Committee (SVRC), on a pilot basis, at the United Nations Headquarters. Although these measures are designed to address procurement carried out by an international organization, rather than in a State, the reform is a clear signal that challenge mechanisms, which are required by the UNCAC, and by the UNCITRAL Model Law in its draft revised text, are now a common feature of procurement systems.

44. The Conference of States Parties to the UNCAC held its third and final session in Doha, Qatar, from 9-13 November 2009. The session, coordinated by the UNODC as custodian of the UNCAC, and at which the UNCITRAL Secretariat was represented, concentrated on two key issues regarding review of the implementation of the Convention: asset recovery and technical assistance, which includes procurement reform. An open-ended Intergovernmental Working Group on Technical Assistance is continuing its work, with the UNCITRAL Secretariat

⁵¹ Discussed in A/CN.9/598/Add.1, paras. 14-20.

participating in the provision of technical assistance that will be required for implementing the Convention's provisions, initially regarding short- and medium-term activities such as legislative assistance and advisory services regarding the Convention and its implementation, but also including the development of a strategic plan for longer-term activities.

45. The Technical Assistance Working Group held an Intersessional Meeting in the period under review (Vienna, 18-19 December 2008) and a series of informal meetings, at which the UNCITRAL Secretariat was also represented, and at which the importance of procurement reform as an aspect of Preventive Measures under the Convention was stressed.
