Transparency lies at the very foundation of good governance. The High-Level Panel of Eminent Persons on the Post-2015 Development Agenda called for a “transparency revolution” to empower citizens to have greater scrutiny over government actions and expenditures. The newly adopted UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration (the “Transparency Rules”) precisely acknowledge that the general public is a fundamental stakeholder in investor-State disputes. Under these Rules, information on an arbitration will now be generally available to the public. This includes, in particular, the existence of the arbitration, the hearing before the arbitrators and the documents pertaining to the arbitral proceedings, including the arbitral award. The Transparency Rules constitute a robust set of rules that provide a level of transparency and accessibility to the public that is to-date unprecedented. The Rules are also innovative in their approach in balancing the public interest in an arbitration involving a State, and the interest of disputing parties in a fair and efficient resolution of their dispute.

Following this path of transparency, the forty-seventh UNCITRAL session (July 2014) finalized the text of a draft “United Nations Convention on Transparency in Treaty-based Investor-State Arbitration”. The Convention will now be presented to the General Assembly for adoption. In recognition of the offer by the Government of Mauritius that a signing ceremony take place in Port Louis, Mauritius (in March 2015), the Convention was proposed to be identified as the “Mauritius Convention on Transparency.” Several amendments to the wording of the Convention were made during the session of the Commission to improve the clarity of the text, simplify
its implementation, and better align it with existing UN treaty practice. The most favoured nation (MFN) clauses in relation to the Convention were identified to have no influence on the applicability of the Convention and the Convention does not take a stand on whether MFN clauses apply to dispute settlement under investment treaties.

Another noteworthy achievement during the session of the Commission was the approval of the publication by the secretariat of an “UNCITRAL Secretariat Guide on the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards”, which was prepared with the assistance of recognized experts and relies on a website created in support of that project (http://www.newyorkconvention1958.org), which contains to date the most comprehensive, freely accessible, database on case law and bibliography on the New York Convention.

UNCITRAL has tasked its Working Group II with the revision to the UNCITRAL Notes on Organizing Arbitral Proceedings (“Notes”); the Working Group is further assessing new topics and revisions to the Notes, such as (1) specific guidelines that might apply to investment arbitration proceedings, (2) allocation of costs at the end of hearings, (3) interim measures, (4) increased use of technology and additional precautions necessary, (5) limits of presiding arbitrators’ lex arbitri in the absence of agreement of arbitration rules, (6) eligibility of arbitration rules chosen after the dispute has arisen and arbitrators appointed, and (7) a list of “points at issue” and a party agreed list of undisputed issues.

In addition, the Working Group is also expected to discuss additional guidance on existing topics such as (1) updated role of arbitral institutions to reflect real practice, (2) greater clarity in situations of multi-party arbitration, (3) use of ad hoc or institutional rules when no arbitration rules are agreed upon, (4) matters of financial cost efficiency for translation services and other dues, (5) various factors in selecting the seat and place of arbitration as well as more specific guidance on meetings that occur outside the place of arbitration, and (6) methods for splitting arbitration costs and potential consequences of non-payment.
On a separate matter, in the context of the current discussions regarding the enforcement of settlement agreements resulting from mediation, UNCITRAL is promoting its texts on Conciliation in the Asia Pacific Region, assessing current national legislative frameworks, and co-hosting the Asia-Pacific Mediation Summit in New Delhi, on February 2015.

One must never forget that the law-making work of UNCITRAL takes place in the broader context of the United Nations. The General Assembly resolution on the work of UNCITRAL in 2013 endorsed the implementation and effective use of modern private law standards in international trade as being essential for advancing good governance, sustained economic development and the eradication of poverty and hunger. The resolution added that the promotion of the rule of law in commercial relations should be an integral part of the broader agenda of the United Nations to promote the rule of law at the national and international levels. As the States acknowledged last year in the Declaration of the High-level Meeting of the General Assembly on the Rule of Law, the rule of law and development are strongly interrelated and mutually reinforcing. Mr Serpa Soares, Legal Counsel and Under-Secretary-General for Legal Affairs during the opening of this year’s session of the Commission, in New York, reminded us that the Open Working Group on Sustainable Development Goals “considers among other goals for inclusion in the post-2015 development agenda the promotion of an open, rules-based, non-discriminatory and equitable multilateral trading system”, and he goes further underlining that “the pivotal role of trade in reducing poverty and promoting sustainable development is now widely recognized, including in the UN’s Millennium Development Goal 8”.

UNCITRAL is the core United Nations body in the field of commercial law. For almost half a century, it has been committed to providing a legal environment that supports and fosters international trade. Its impact on the harmonization and modernization of international trade law has been repeatedly acknowledged by the General Assembly. Over the years, UNCITRAL and its Working Groups have developed highly effective working methods and a negotiation culture that is both robust and inclusive.
Harmonization and modernization of the legal apparatus, for example, in the field of international commercial arbitration, poses long-term potential in realizing more widespread access to justice. This requires the development of sound international instruments, understood as legitimate and recognized as “their own” by their end users, be they States or individuals. While this goal is ambitious, it is also tenable through continued efforts in harmonization, provided such efforts are sufficiently inclusive and truly benefit from the cooperation of all interested parties.

This is a special year for UNCITRAL-RCAP because the Chair of UNCITRAL is Ambassador Hahn Choong-hee - it is the first time since the establishment of the Regional Centre, almost three years ago, that UNCITRAL is chaired by a representative of the Region, and in particular, from the Republic of Korea. The Regional Centre, with the strong support of the Ministry of Justice of the Republic of Korea and of the Incheon Metropolitan City, has been actively engaged in numerous technical assistance activities, while developing custom-tailored strategies for dissemination of UNCITRAL texts in the region. In the framework of those strategies and of the ensuing initiatives, the Regional Centre has organized and contributed to a number of national and regional meetings on various UNCITRAL topics.

We must always keep in mind that the purpose of the UN, as stated in article 1 of the Charter, is to achieve international co-operation in solving international problems being the center for harmonizing actions of nations in the attainment of that purpose.
국제중재의 경향:

UNCITRAL 및 UNCITRAL 아시아-태평양 지역사무소의 역할과 향후 과제

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시민들이 정부활동과 지출에 관해 보다 많은 감시권한을 갖게 해야 한다는 이른바 “투명성 혁명”이 요청되고 있는 시점에서, 최근 새로이 제정된 “협약상 투자자-국가 중재에서의 투명성에 관한 UNCITRAL 규칙”은 일반 국민이아마도 투자자-국가 중재의 가장 기초적인 이해관계자임을 강조하고 있다. 즉 투명성에 따르면 일반 국민이 중재사건 발생, 중재심리 및 관련서류에 대한 정보에 접근할 수 있는데, 이는 과거 어느 때보다도 높은 수준의 투명성과 접근성을 제공한다.

투명성에 관한 이러한 추세를 반영하여, 올해 7월 개최된 제47차 UNCITRAL 본회의는 “협약상 투자자-국가 중재에서의 투명성에 관한 유엔협약”의 내용을 확정하였다. 내년 3월 체결이 개최될 국가의 이름을 따서 “투명성에 관한 모리셔스 협약”이라 불리게 될 동 협약은 곧 채택을 위하여 유엔총회에 상정될 예정이다.

한편 UNCITRAL에서는 그 동안 실무작업반Ⅱ에 중재절차 구성에 관한 UNCITRAL 지침의 개정작업을 맡겨왔는데, 이와 관련하여 현재 실무작업반Ⅱ에서는 투자중재절차에 적용되는 세부 지침, 심리중료식의 중재비용 분담, 임시적 처분 등의 새로운 주제를 검토하고 있다. 또한 실무작업반Ⅱ는 중재실무를 반영하기 위한 중재기관의 역할, 다수 당사자 중재절차에서의 명료성의 향상, 합의된 중재규칙이 없는 경우의 임의중재 또는 기관중재의 이용 등 현 재 지침 상의 주제에 대한 부가적인 안내사항들도 논의할 예정이다.

UNCITRAL의 법제활동이 유엔의 가치 범위 내에서 이루어지고 있다는 점은 매우 중요하다. 2013년도 UNCITRAL 활동에 대한 유엔총회 결의는 국제거래에서 현대 사법체제의 적용

1) 요약번역, UNCITRAL 아태지역사무소 임장국 검사
및 효과적인 이용이 바람직한 통치방식(good governance)의 촉진, 지속적 경제발전, 가난과 배고픔의 근절에 필수적임을 밝히면서, 상사거래관계에서 법의 지배를 확산시키는 것은 각 국가 내 및 국가 간 관계에서 법의 지배를 확산시키고자 하는 유엔의 광범위한 의제 중에서 필수적인 사항이라고 하였다.

UNCITRAL은 상거래법 분야에 있어 핵심적인 유엔 조직이며, 약 반세기 동안 국제거래를 확산시키기 위한 법적 환경을 조성하는데 매진하였다. 국제거래법의 조화와 현대화에 대한 UNCTRAL의 역할은 유엔총회에서 지속적으로 인정받고 있으며, UNCTRAL과 실무작업반은 그 동안 매우 효과적이고, 탄탄하며, 포괄적인 작업방식과 토론문화를 발전시켜 왔다.

국제상사중재에서 법률체제의 조화와 현대화는 장기적으로 보다 광범위한 정의의 실현에 기여할 수 있는데, 이를 위해서는 원칙에 맞고, 실제 이용자들의 필요를 충족하는, 건전한 국제적 수단의 발전이 필요하다.

올해는 UNCTRAL 아시아·태평양 지역사무소의 개소 이래 처음으로 해당 아·태지역, 특히 대한민국 출신의 주유엔한국대표부 한충희 차석대사가 UNCTRAL 의장에 선출되었다는 점에서 무척 특별한 해라고 할 수 있다. UNCTRAL 아시아·태평양 지역사무소는 대한민국 법무부 및 인천광역시의 전폭적인 지원 하에, 다양한 기술적 지원 활동(technical assistance activities)을 펼치는 동시에, 아·태지역에서의 UNCTRAL 연구성과 확산을 위한 최적화된 전략의 개발에도 매진하여 왔다. 그러한 전략과 이에 따른 주도적 역할 수행을 통해 아시아·태평양 지역사무소는 다양한 UNCTRAL 관련 주제에 대하여 많은 국내 및 아·태지역 내 회의를 개최하고 후원하였다.

앞으로 펼쳐질 UNCTRAL의 다양한 활동과 관련하여, 유엔헌장 제1조에 명시되어 있는 바와 같이, 유엔의 목적이 국제적 문제를 해결함에 있어 국가간 조화의 중심으로서 국제적인 협력을 도출해내는 것이라는 점을 항상 명심할 것이다.