

# Modern Law for Global Commerce

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## **Global and regional harmonization: the Russian perspective**

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Good morning ladies and gentlemen. Professor Lando and distinguished colleagues, let me start by expressing my gratitude for the invitation to address this highly representative forum, which is not only linked to an anniversary, but is a symbol of the tremendous accomplishments of UNCITRAL over the 40 years of its existence.

I was fortunate enough to be involved in the work of UNCITRAL from 1970 and I would like to say with great conviction that the resounding success of UNCITRAL is due to the creative efforts of experts from every corner of the globe, who attended UNCITRAL meetings from the very start and who are actively involved at present in preparing excellent legal documents on a broad range of complex issues pertaining to international trade. Credit is due to the invariable aid extended by the UNCITRAL Secretariat, its staff and its leaders to those who are involved in this work.

As mentioned before, when UNCITRAL was created, the idea was to address the objective need for developing international economic relations. In spite of the difficulties, the barriers that existed at the time, including, *inter alia*, the East-West confrontation, the process of internationalization of trade has led to what we today refer to as globalization, a process that affects all social and economic facets of life, practically the world over. This process of globalization is believed to be irreversible, even though of necessity it is unfolding in a fairly difficult context with contradictions, opposition. It is a well-known fact that consciousness often left behind real life. One Russian author said some time ago, “globalists are those who eat at MacDonald’s and anti-globalists are those who eat at MacDonald’s but also attend demonstrations against the globalists.”

Be that as it may, the globalist approach has, I think, matured in a number of regions, a number of countries and then there are other regions and other countries where this approach has run into major difficulties. International relations experts believe that today the decisive factor is the rationalization and unification of reforms of economic interaction and cooperation. What is happening is the narrowing down of the world. This is the term some experts use. And in that context, one is justified in pointing to the objective necessity of harmonizing and aligning the legal regulation of those relations that emerge among participants in international commercial activities.

I am pressed for time. Therefore, I will confine myself to a very general outline of what in actual fact, of course, requires a long in-depth look. Now, what is happening, in the context of our discussion, in the Commonwealth of Independent States, which was set up in December of 1991, when the Soviet Union ceased to exist. At that time, 12 former Soviet republics became independent States, and decided to set up this new integration organization.

The Charter of the Commonwealth of Independent States, the CIS, adopted at that time, stipulated that an important objective of the Commonwealth would be to pursue the cooperation in the legal sphere to promote the adoption of international legal instruments and other acts, particularly in the area of mutual legal assistance among these States and in other areas of legal interaction.

In 1992, an Inter-Parliamentary Assembly of the Commonwealth was set up, which comprises Parliamentary representatives of these Independent States and whose objective is to move towards a rapprochement of the domestic legislations of the countries. It is also set to develop model laws. In

that same year, 1992, an important agreement was reached on the main guidelines for bringing economic and commercial legislations of the countries closer together.

In 1994, another important body was set up, important in the context of our discussions here, the so-called Scientific and Consultative Centre on Private Law. Again, members of that Centre were representatives of the members of the Commonwealth. This is an inter-governmental body charged with developing model laws and recommendations for the improvement of legislation. The task of unification and harmonization of laws in various fields is put forward in a whole number of other treaties between the independent States.

At present, the achieved level of unification is very high. I will only mention some agreements: the Convention on mutual legal assistance among member States of the CIS (Minsk, 1993), multilateral Agreement on resolving economic disputes between enterprises of these states (Kiev, 1992), a number of bilateral treaties in this area also currently in effect. As well, there are agreements on other matters in particular about investments, property rights, migration of labor, currency regulations, etc.

I would like to particularly emphasize the event, which is almost unprecedented: the elaboration of a model of Civil Code for the States of CIS, which was approved by the Inter-Parliamentary Assembly and then enacted by most States, sometimes with certain modifications. Thus the current term that we use in our legal literature and our legal jargon: “сближение” of legislations. It refers not to the unification by means of interstate agreement, but to approximation or rapprochement of national laws on the basis of model CC, and models of acts on various other specific legal matters. When drafting these models attention was paid to universal instruments, including Vienna Convention of 1980, and to foreign laws, which was considered particularly important in connection with fundamental economic reforms.

Since I am running out of time, I would like to dwell on the following.

The model Civil Code has a section dealing with international private law. A decision was made, I do not know to what extent, it is an adequate one, stipulating that PIL norms be included in the Civil Code and not enacted as a separate statute. Although some countries, namely Azerbaijan, Georgia and Ukraine, did enact separate PIL statutes, having their own peculiarities, in other countries including Russia,<sup>1</sup> the respective rules remained in their Civil Codes. When drafting the Section on private international law, careful attention was paid to international instruments, including 1980 Roman Convention and to the laws of other countries, for instance to the provisions in Polish and Hungarian laws, making references to specific types of contracts when determining an applicable law.

And one last thing, Mr. Chairman, the matter of harmonization. Talking about ‘harmonization’ we would refer primarily to UNCITRAL model laws; for instance to law on international commercial arbitration. How should the rules of national legislation, based on model laws be interpreted? In Russian legal literature there are conflicting views on that. It is suggested that such rules, whatever their origin, even though they arise from model laws developed by international organizations or say by the CIS Inter-Parliamentary Assembly, have to be interpreted as any other rules of domestic law (in contrast to uniform rules incorporated from interstate instruments). Is that correct or not? Maybe when they are interpreted, it is nonetheless necessary to take into account their specific genesis and character? If in future, as was told here, the need for harmonization with regard to model laws would become more and more significant and expanding, it may become topical to pay more attention to the analysis, particularly in expanding doctrine, to the uneasy question as to how rules of national legislation, based on international models, be treated in their practical application in court and arbitration. The UNCITRAL decision to include the “harmonization clause” in the model law on international commercial arbitration seems very timely.

Thank you Mr. Chairman.

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<sup>1</sup> S. Lebedev, A. Muranov, R. Khodykin, E. Kabatova. New Russian Legislation on Private International Law, “Yearbook of Private International Law” v. IV 2002 (ed. P. Sarcevic and P. Volken) Kluwer, Swiss Institute of Comparative Law