

# The UNCITRAL Guide

Basic facts about  
the United Nations Commission  
on International Trade Law





UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW

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## Note

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Mention of such a symbol indicates a reference to a United Nations document.

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# Contents

	<i>Page</i>
<b>I. Origin, mandate and membership of UNCITRAL</b>	1
A. Origin	1
B. Mandate	2
C. Membership	2
<b>II. Organization and methods of work</b>	3
A. UNCITRAL (the Commission)	3
B. Working groups	4
C. Participation at sessions of UNCITRAL and its working groups	6
D. Secretariat	6
1. Work programme	6
2. Technical assistance to law reform	7
3. Other activities	7
4. Interns and visiting scholars	7
<b>III. Work of UNCITRAL</b>	8
A. Selection of the work programme	8
B. Coordinating and promoting the work of other organizations	10
C. Techniques of modernization and harmonization	13
1. Legislative techniques	13
(a) Conventions	13
(b) Model laws	14
(c) Legislative guides and recommendations	16
(d) Model provisions	17
(e) Uniform interpretation of legislative texts: Case law on UNCITRAL texts	17
2. Contractual techniques	18
3. Explanatory techniques	19
(a) Legal guides	19
(b) Interpretative declarations	19
D. Finalization and adoption of legislative texts	20
E. Technical assistance to law reform	22
F. Other activities of the Commission	23
1. Publications programme	23
2. Special events	25

	<i>Page</i>
G. Numbering of UNCITRAL documents	26
H. General Assembly resolutions relating to UNCITRAL	27

***Annexes***

I. General Assembly resolution 2205 (XXI)	29
II. UNCITRAL member States	33
III. Chairpersons of UNCITRAL	37
IV. UNCITRAL working groups and chairpersons	39
V. Secretaries of UNCITRAL and further information	43
VI. UNCITRAL texts	45



# I. Origin, mandate and membership of UNCITRAL

## A. Origin

1. In an increasingly economically interdependent world, the importance of an improved legal framework for the facilitation of international trade and investment is widely acknowledged. The United Nations Commission on International Trade Law (UNCITRAL), established by the United Nations General Assembly by its resolution 2205 (XXI) of 17 December 1966 (see annex I), plays an important role in developing that framework in pursuance of its mandate to further the progressive harmonization and modernization of the law of international trade<sup>1</sup> by preparing and promoting the use and adoption of legislative and non-legislative instruments in a number of key areas of commercial law. Those areas include dispute resolution, international contract practices, transport, insolvency, electronic commerce, international payments, secured transactions, procurement and sale of goods. These instruments are negotiated through an international process involving a variety of participants, including member States of UNCITRAL, which represent different legal traditions and levels of economic development; non-member States; intergovernmental organizations; and non-governmental organizations. Thus, these texts are widely acceptable as offering solutions appropriate to different legal traditions and to countries at different stages of economic development. In the years since its establishment, UNCITRAL has been recognized as the core legal body of the United Nations system in the field of international trade law.

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<sup>1</sup>For details concerning the mandate for the progressive development of the law of international trade, see the report of the Secretary-General contained in document A/6396 (*Official Records of the General Assembly, Twenty-first Session, Annexes*, agenda item 88, document A/6396, reproduced in *UNCITRAL Yearbook*, vol. I: 1968-1970, part one, chap. II, sect. B); the report of the Fifth Committee of the General Assembly at its twenty-first session on the relevant agenda item (*Official Records of the General Assembly, Twenty-first Session, Annexes*, agenda item 88, document A/6594, reproduced in *UNCITRAL Yearbook*, vol. I: 1968-1970, part one, chap. II, sect. D); and the relevant summary records of the proceedings of the Sixth Committee, which are contained in the *Official Records of the General Assembly, Twenty-first Session, Sixth Committee*, 947th-955th meetings and of which excerpts are reproduced in the *UNCITRAL Yearbook*, vol. I: 1968-1970, part one, chap. II, sect. C.

## B. Mandate

2. UNCITRAL gives effect to its mandate by:<sup>2</sup>

“(a) Coordinating the work of organizations active in this field and encouraging cooperation among them;

“(b) Promoting wider participation in existing international conventions and wider acceptance of existing model and uniform laws;

“(c) Preparing or promoting the adoption of new international conventions, model laws and uniform laws and promoting the codification and wider acceptance of international trade terms, provisions, customs and practices, in collaboration, where appropriate, with the organizations operating in this field;

“(d) Promoting ways and means of ensuring a uniform interpretation and application of international conventions and uniform laws in the field of the law of international trade;

“(e) Collecting and disseminating information on national legislation and modern legal developments, including case law, in the field of the law of international trade;

“(f) Establishing and maintaining a close collaboration with the United Nations Conference on Trade and Development;

“(g) Maintaining liaison with other United Nations organs and specialized agencies concerned with international trade; and

“(h) Taking any other action it may deem useful to fulfil its functions.”

## C. Membership

3. Members are selected from among States Members of the United Nations. UNCITRAL's original membership comprised 29 States<sup>3</sup> and was expanded by the General Assembly of the United Nations in 1973<sup>4</sup> to 36 States and again in 2002<sup>5</sup> to 60 States. The expansion reflected the broader participation and contribution by States beyond the then existing member States and stimulated

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<sup>2</sup>See General Assembly resolution 2205 (XXI), sect. II, para. 8.

<sup>3</sup>Ibid., para. 1.

<sup>4</sup>See General Assembly resolution 3108 (XXVIII), para. 8, reproduced in *UNCITRAL Yearbook*, vol. V: 1974, part one, chap. I, sect. C.

<sup>5</sup>See General Assembly resolution 57/20, para. 2, reproduced in *UNCITRAL Yearbook*, vol. XXXIII: 2002, part one, sect. D. The expansion was effective from the opening day of the thirty-seventh annual session of UNCITRAL, in 2004. See also annex II to the present publication.



interest in UNCITRAL's expanding work programme. For detailed information concerning the membership of UNCITRAL, see annex II.

4. Structured to ensure that the various geographic regions and the principal economic and legal systems of the world are represented, the 60 member States include 14 African States, 14 Asian States, 8 Eastern European States, 10 Latin American and Caribbean States and 14 Western European and other States.<sup>5</sup> The General Assembly elects members for terms of six years; every three years the terms of half of the members expire.<sup>6</sup>

## II. Organization and methods of work

5. UNCITRAL's work is organized and conducted at three levels. The first level is UNCITRAL itself, often referred to as the Commission, which holds an annual plenary session. The second level is the intergovernmental working groups, which to a large extent undertake the development of the topics on UNCITRAL's work programme, while the third is the secretariat, which assists the Commission and its working groups in the preparation and conduct of their work.

### A. UNCITRAL (the Commission)

6. UNCITRAL carries out its work at annual sessions held alternately in New York and Vienna.<sup>7</sup> The work at these sessions typically includes finalization and adoption of draft texts referred to the Commission by the working groups; consideration of progress reports of the working groups on their respective projects; selection of topics for future work or further research; reporting on technical assistance activities and coordination of work with other international organizations; monitoring of developments in the Case Law on

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<sup>6</sup>See annex II to the present publication, footnotes *a* and *c*. In accordance with paragraph 3 (*b*) of General Assembly resolution 57/20, 13 of the 24 additional members elected in 2003 will serve a term of only three years.

<sup>7</sup>See the report of the Committee on Conferences (*Official Records of the General Assembly, Thirty-fourth Session, Supplement No. 32 (A/34/32)*, para. 32 (*e*) (iii)). Prior to the relocation of the UNCITRAL secretariat from New York to Vienna, sessions of the Commission alternated between New York and Geneva (see General Assembly resolution 2205 (XXI), sect. II, para. 6, reproduced in *UNCITRAL Yearbook*, vol. I: 1968-1970, part one, chap. II, sect. E; General Assembly resolution 31/140, sect. I, para. 4 (*c*); and General Assembly resolution 40/243, part one, para. 4 (*c*).

UNCITRAL Texts system (known as CLOUT) and the status and promotion of UNCITRAL legal texts; consideration of General Assembly resolutions on the work of UNCITRAL; and administrative matters.

7. Comprising a chairperson, three vice-chairpersons and a rapporteur, the bureau of the Commission for the duration of each annual session represents each of the five regions from which the members of the Commission are drawn<sup>8</sup> and is elected by the member States. For a list of the chairpersons of UNCITRAL, see annex III.

8. In addition to States members of UNCITRAL, United Nations Member States that are not members of UNCITRAL, as well as international and regional organizations (both intergovernmental and non-governmental) with an interest in the topics under discussion are invited to attend both UNCITRAL annual sessions and working group sessions as observers.<sup>9</sup>

9. The secretariat of UNCITRAL prepares a report of the proceedings at annual sessions, which is formally adopted by UNCITRAL for submission to the General Assembly.<sup>10</sup> In accordance with the resolution establishing UNCITRAL,<sup>11</sup> the annual report is also provided to the Trade and Development Board of the United Nations Conference on Trade and Development (UNCTAD) for comment.

## B. Working groups

10. The substantive preparatory work on topics on UNCITRAL's work programme is usually assigned to working groups, which generally hold one or two sessions per year and report on the progress of their work to

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<sup>8</sup>See *Official Records of the General Assembly, Twenty-third Session, Supplement No. 16 (A/7216)*, para. 14, reproduced in *UNCITRAL Yearbook*, vol. I: 1968-1970, part two, chap. I, sect. A.

<sup>9</sup>General Assembly resolution 31/99, para. 10 (c), reproduced in *UNCITRAL Yearbook*, vol. VIII: 1977, part one, chap. I, sect. C; see also Assembly resolution 36/32, para. 9, reproduced in *UNCITRAL Yearbook*, vol. XII: 1981, part one, sect. D.

<sup>10</sup>The reports of UNCITRAL are issued as Supplement Number 17 to the Official Records of the General Assembly at each session.

<sup>11</sup>See General Assembly resolution 2205 (XXI).

the Commission.<sup>12</sup> The membership of the working groups currently includes all member States of UNCITRAL. Once a topic has been assigned to a working group, the working group is generally left to complete its substantive task without intervention from the Commission, unless it asks for guidance or requests the Commission to make certain decisions with respect to its work.<sup>13</sup> At each working group session, member delegations select a chairperson and rapporteur from among member delegations to preside over the work.<sup>14</sup> For a list of the working groups and their chairpersons, see annex IV.

11. The secretariat of each working group comprises staff members of the UNCITRAL secretariat. The secretariat is responsible for preparing working papers for working group meetings, providing administrative services to that working group and reporting on working group sessions. Reports are considered and formally adopted at the end of each working group session for submission to the annual session of UNCITRAL.

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<sup>12</sup>See *Official Records of the General Assembly, Thirty-third Session, Supplement No. 17 (A/33/17)*, para. 67, reproduced in *UNCITRAL Yearbook*, vol. IX: 1978, part one, chap. II, sect. A. In 2005, there were six UNCITRAL working groups: I (Procurement); II (Arbitration); III (Transport Law); IV (Electronic Commerce); V (Insolvency Law); and VI (Security Interests). The working group titles reflect broad subject areas and may encompass the development of different texts in a particular subject area. For example, the subject area of the Working Group on Electronic Commerce includes electronic commerce generally, electronic signatures and electronic contracting. On several occasions, substantive preparation of a text has not been undertaken by a Working Group. For example, a preliminary draft of the arbitration rules, with commentaries, was prepared by the secretariat in consultation with experts in the field (see A/CN.9/97, reproduced in *UNCITRAL Yearbook*, vol. VI:1975, part two, chap. III, sect. 1), and then presented to the Commission and subsequently revised by the secretariat in light of the Commission's deliberations. The preparation of the *Legal Guide on Electronic Funds Transfers* (1986) was undertaken by the secretariat in cooperation with the Study Group on International Payments comprising experts from international organizations and banking and trade institutions. Draft chapters of the *Legislative Guide on Privately Financed Infrastructure Projects* were prepared by the secretariat and reviewed and adopted by the Commission.

<sup>13</sup>See paragraph 1 (c) of the decision taken by UNCITRAL at its fourth session (*Official Records of the General Assembly, Twenty-sixth Session, Supplement No. 17 (A/8417)*), para. 92, reproduced in *UNCITRAL Yearbook*, vol. II: 1971, part one, chap. II, sect. A). In 2002, for example, Working Group V requested the Commission to, inter alia, approve in principle the draft text of the *Legislative Guide on Insolvency Law* (see *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 17 (A/58/17)*, paras. 172-197, reproduced in *UNCITRAL Yearbook*, vol. XXXIII: 2002, part one, sect. A).

<sup>14</sup>On a limited number of occasions, the chair of a working group has been appointed in a personal capacity on the basis of expertise and experience in the topic under consideration (see annex IV to the present publication).

## C. Participation at sessions of UNCITRAL and its working groups

12. Both annual UNCITRAL sessions and working group sessions are conducted on the basis of documentation prepared by the secretariat and distributed to United Nations Member States before each session to allow time for consideration. The documentation is available in the six official languages of the United Nations (Arabic, Chinese, English, French, Russian and Spanish). Sessions are facilitated by simultaneous interpretation in all six official languages.

13. Discussion takes place in a formal manner, with the chairperson of the meeting according delegations the opportunity to speak. By tradition, decisions are taken by UNCITRAL and its working groups by way of consensus, not by vote. The basis of consensus is that efforts are made to address all of the concerns raised by participants so that the final text is acceptable to all. It should not be understood as giving any State the power to veto what is otherwise the prevailing view of the meeting.

14. The size and composition of delegations to annual sessions and working groups is a matter for member States and may vary according to the subject matter under consideration. Delegations typically include Government officials, academics, experts or private sector lawyers. The membership of some delegations remains relatively constant throughout a single project, while others may change from meeting to meeting.

15. To facilitate the development of texts, and in particular to identify and resolve issues of terminology and translation in order to achieve uniformity between the different language versions, drafting group meetings are often held in conjunction with the annual session of UNCITRAL and with working group sessions. Delegates and observers from the six official language groups are invited to participate in these meetings with relevant officers of the secretariat and the United Nations editors and translators responsible for the instrument under discussion.

## D. Secretariat

### 1. *Work programme*

16. The International Trade Law Division of the Office of Legal Affairs of the Secretariat provides the secretariat for UNCITRAL. Originally located at United Nations Headquarters in New York, the Division was relocated to the United

Nations Office at Vienna in September 1979, while formally remaining a part of the Office of Legal Affairs in New York. Professional staff members of the Division include a small number of qualified lawyers from different countries and legal traditions,<sup>15</sup> with the Director of the Division serving as the Secretary of UNCITRAL (see annex V).

17. To assist the work of UNCITRAL, the secretariat undertakes a variety of different tasks, which include preparation of studies, reports and draft texts on matters that are being considered for possible future inclusion in the work programme; legal research; drafting and revision of working papers and legislative texts on matters already included in the work programme; reporting on Commission and working group meetings; and the provision of a range of administrative services to UNCITRAL and its working groups. In order to assist it with the preparation of its work, the secretariat frequently seeks the assistance of outside experts from different legal traditions, conducting ad hoc consultations with individuals or convening meetings of groups of experts in a particular field, as required. Such groups have included academics, practising lawyers, judges, bankers, arbitrators and members of various international, regional and professional organizations.

## *2. Technical assistance to law reform*

18. The work of UNCITRAL does not end with the finalization and adoption of a text but, as noted above, includes promotion of the work of UNCITRAL and the use and adoption of its legislative and non-legislative texts. This work is organized through the secretariat and is discussed in detail below (see paras. 56-60).

## *3. Other activities*

19. The secretariat also assists the Commission in its functions of coordinating and promoting the work of other organizations; promoting the uniform interpretation of legal standards through the CLOUT system; preparing and promoting UNCITRAL publications; and organizing special events. These functions are discussed in more detail in the following paragraphs.

## *4. Interns and visiting scholars*

20. Each year a limited number of persons who have recently obtained a law degree are given the opportunity to work as interns in the International Trade

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<sup>15</sup>In January 2006, the UNCITRAL secretariat comprised 14 posts for legal officers.

Law Division. Interns are assigned specific tasks in connection with UNCITRAL's work programme and projects being undertaken by the secretariat. Individuals participating in this programme are able to familiarize themselves with the work of UNCITRAL and to increase their knowledge of specific areas of international trade law. Legal scholars and practitioners may also make use of the UNCITRAL law library to work on projects related to international trade law.

### III. Work of UNCITRAL

#### A. Selection of the work programme

21. At its first session, in 1968, after considering a number of suggestions by member States, the Commission adopted nine subject areas as the basis of its work programme: international sale of goods; international commercial arbitration; transportation; insurance; international payments; intellectual property; elimination of discrimination in laws affecting international trade; agency; and legalization of documents.<sup>16</sup> Some of these subjects have not been taken up by the Commission, for example, intellectual property, insurance, elimination of discrimination in laws affecting international trade, agency and legalization of documents. Priority status initially was accorded to international sale of goods, international commercial arbitration and international payments, with trade financing contracts, transportation, electronic commerce, government contracts and insolvency subsequently being added.

22. On a number of occasions since its first session, the Commission has considered and revised its work programme on the basis of new developments in technology, changes in business practices, international trends and developments, economic and financial crises and other forces affecting and shaping international trade. Proposals for consideration of new topics can arise in a number of ways: they may be made directly to the Commission by Governments (for example the proposal for future work on insolvency law in 1999);<sup>17</sup> they may arise from consultation with various international organizations (for

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<sup>16</sup>*Official Records of the General Assembly, Twenty-third Session, Supplement No. 16 (A/7216)*, paras. 40 and 48, reproduced in *UNCITRAL Yearbook*, vol. I: 1968-1970, part two, chap. I, sect. A.

<sup>17</sup>See document A/CN.9/462/Add.1 containing a proposal by Australia on "Possible future work in the area of insolvency law". See also *Official Records of the General Assembly, Fifty-fourth Session, Supplement No. 17 (A/54/17)*, para. 381, reproduced in *UNCITRAL Yearbook*, vol. XXX: 1999, part two, chap VI.

example with the International Maritime Committee to develop a new instrument on carriage of goods by sea); from special colloquiums and seminars (such as the 1992 Congress on International Trade Law,<sup>18</sup> the 1994 Colloquium on Cross-Border Insolvency,<sup>19</sup> organized jointly by UNCITRAL and the International Association of Restructuring, Insolvency and Bankruptcy Professionals, and the 1998 New York Convention Day, when problems relating to requirements of written form for arbitration agreements were identified);<sup>20</sup> or they may arise as topics that are related to subjects already under discussion in the working groups (for example the need for a text on electronic signatures was identified during development of the Model Law on Electronic Commerce and the possibility of developing model provisions on privately financed infrastructure projects was identified during the development of the legislative guide on that topic). In considering whether particular topics should be added to the programme, factors such as global significance, special interest to developing countries, developments in technology and changing trends in commercial practice are taken into account.

23. The Commission initially considered some of the topics currently on the programme as not likely to produce an agreed, harmonized legal text. Developments in international trade law and practices, as well as the successful conclusion by UNCITRAL of work on related topics, have since created a demand for reconsideration of those topics and made the development of legal texts feasible (for example harmonization of national insolvency and secured transaction law). Other topics have been left to specialized international organizations to take the initiative, such as intellectual property by the World Intellectual Property Organization (WIPO).

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<sup>18</sup>For suggestions made concerning the objectives and orientation of the Congress, see *Official Records of the General Assembly, Forty-sixth Session, Supplement No. 17 (A/46/17)*, paras. 347-349, reproduced in *UNCITRAL Yearbook*, vol. XXII: 1991, part one, sect. A. For the report of the Congress proceedings, see *Uniform Commercial Law in the Twenty-first Century: Proceedings of the Congress of the United Nations Commission on International Trade Law, New York, 18-22 May 1992*, United Nations publication, Sales No. E.94.V.14 (A/CN.9/SER.D/1).

<sup>19</sup>See the report on the UNCITRAL-INSOL Colloquium on Cross-Border Insolvency, contained in document A/CN.9/398, the *Official Records of the General Assembly, Forty-ninth Session, Supplement No. 17 (A/49/17)*, paras. 215-222, and *UNCITRAL Yearbook*, vol. XXV: 1994, part two, chap. V, sect. B. The Colloquium was followed by a series of multinational judicial colloquiums on cross-border insolvency and a colloquium on national insolvency law (see also note 24, below).

<sup>20</sup>See "Possible future work in the area of international commercial arbitration", contained in document A/CN.9/460 and *UNCITRAL Yearbook*, vol. XXX: 1999, part two, chap. V. For the texts of the 1958 New York Convention Day speeches, see *Enforcing Arbitration Awards under the New York Convention: Experience and Prospects*, United Nations publication, Sales No. E.99.V.2.

## B. Coordinating and promoting the work of other organizations

24. An important part of the mandate of UNCITRAL is to coordinate the work of organizations active in the field of international trade law, both within and outside the United Nations system, in order to encourage cooperation between them, avoid duplication of effort and promote efficiency, consistency and coherence in the modernization and harmonization of international trade law. In recent years there has been a growing number of rule-making bodies developing texts in areas of law that affect international trade, making UNCITRAL's coordination function increasingly important. To implement its mandate, UNCITRAL maintains close links with international and regional organizations, both intergovernmental and non-governmental, that are active participants in the work of UNCITRAL and in the field of international trade law in order to facilitate the exchange of ideas and information. It is represented, through its secretariat, at meetings of those organizations and actively follows and participates in their work where it relates to topics on UNCITRAL's work programme. Those organizations include the International Maritime Committee; the Commercial Finance Association; the Hague Conference on Private International Law; the International Association of Restructuring, Insolvency and Bankruptcy Professionals; the International Bar Association; the International Chamber of Commerce; the International Institute for the Unification of Private Law (Unidroit); the Organization of American States; the Organization for Economic Cooperation and Development; UNCTAD; the United Nations regional commissions; the World Bank; WIPO; and the World Trade Organization.

25. To assist the Commission in its task of monitoring activities and developments in international trade law, the secretariat prepares general surveys of the legislative and technical assistance activities of other organizations related to international trade law,<sup>21</sup> as well as in-depth reports on the activities of organizations on individual international trade law topics.<sup>22</sup> International organizations active in the field of international trade law have the opportunity, at annual sessions of UNCITRAL, to present reports (both formal and informal) on their activities.

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<sup>21</sup>Reports are prepared pursuant to General Assembly resolution 34/142 (reproduced in *UNCITRAL Yearbook*, vol. XI: 1980, part one, chap. I, sect. C). See, for example, "Current activities of international organizations related to the harmonization and unification of international trade law", a report prepared for the Commission at its thirty-eighth session, in 2005, contained in document A/CN.9/584 and available at <http://www.uncitral.org>.

<sup>22</sup>See *Official Records of the General Assembly, Thirty-sixth Session, Supplement No. 17 (A/36/17)*, para. 100, reproduced in *UNCITRAL Yearbook*, vol. XII: 1981, part one, sect. A. See also, for example, "Current work by other international organizations in the area of electronic commerce" (contained in document A/CN.9/579) and "Current activities of international organizations related to insolvency law" (contained in document A/CN.9/580/Add.1), prepared for the Commission at its thirty-eighth session, in 2005 (available at <http://www.uncitral.org>).



26. As a further part of this coordination function, UNCITRAL undertakes work, such as studies and seminars, in conjunction with other international organizations. Examples include a survey developed in cooperation with Committee D (now known as the Arbitration Committee) of the International Bar Association to monitor the implementation, in national laws, of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958),<sup>23</sup> and a series of colloquiums on insolvency law, including judicial colloquiums on cross-border insolvency, in conjunction with the International Association of Restructuring, Insolvency and Bankruptcy Professionals.<sup>24</sup>

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<sup>23</sup>United Nations, Treaty Series, vol. 330, No. 4739. See *Official Records of the General Assembly, Fiftieth Session, Supplement No. 17 (A/50/17)*, paras. 401-404, reproduced in *UNCITRAL Yearbook*, vol. XXVI: 1995, part one, sect. A; *Official Records of the General Assembly, Fifty-first Session, Supplement No. 17 (A/51/17)*, paras. 238-243, reproduced in *UNCITRAL Yearbook*, vol. XXVII: 1996, part one, sect. A; and *Official Records of the General Assembly, Fifty-second Session, Supplement No. 17 (A/52/17)*, paras. 257-259, reproduced in *UNCITRAL Yearbook*, vol. XXVIII: 1997, part one, sect. A.

<sup>24</sup>**Judicial colloquiums:**

(a) Toronto, March 1995: see *Official Records of the General Assembly, Fiftieth Session, Supplement No. 17 (A/50/17)*, paras. 382-393, reproduced in *UNCITRAL Yearbook*, vol. XXVI: 1995, part one, sect. A; and the report on the UNCITRAL-INSOL Judicial Colloquium on Cross-Border Insolvency (contained in document A/CN.9/413), reproduced in *UNCITRAL Yearbook*, vol. XXVI: 1995, part two, chap. IV, sect. A;

(b) New Orleans, March 1997: see *Official Records of the General Assembly, Fifty-second Session, Supplement No. 17 (A/52/17)*, paras. 17-22, reproduced in *UNCITRAL Yearbook*, vol. XXVIII: 1997, part one, sect. A;

(c) Munich, October 1999: see <http://www.uncitral.org/uncitral/en/commission/colloquia.html> for the evaluation of this colloquium;

(d) London, July 2001: see *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 17 (A/57/17)*, paras. 195-97, reproduced in *UNCITRAL Yearbook*, vol. XXXII: 2001, part one, sect. A; and the report of the fourth UNCITRAL-INSOL Judicial Colloquium, 2001 (contained in document A/CN.9/518);

(e) Las Vegas, September 2003: see <http://www.uncitral.org/uncitral/en/commission/colloquia.html> for the evaluation of this colloquium;

(f) Sydney, March 2005: see <http://www.uncitral.org/uncitral/en/commission/colloquia.html> for the evaluation of this colloquium.

**International colloquiums:**

(a) Vienna, April 1994: see *Official Records of the General Assembly, Forty-ninth Session, Supplement No. 17* and corrigendum (A/49/17 and Corr.1), paras. 215-222, reproduced in *UNCITRAL Yearbook*, vol. XXV: 1994, part one, sect. A; and the report on the UNCITRAL-INSOL Colloquium on Cross-Border Insolvency (contained in document A/CN.9/398), reproduced in *UNCITRAL Yearbook*, vol. XXV: 1994, part two, chap. V, sect. B;

(b) Vienna, December 2000: see *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 17 (A/56/17)*, paras. 296-308, reproduced in *UNCITRAL Yearbook*, vol. XXXII: 2001, part one, sect. A; and the report on the UNCITRAL-INSOL-IBA Global Insolvency Colloquium, Vienna, 4-6 December 2000 (contained in A/CN.9/495), reproduced in *UNCITRAL Yearbook*, vol. XXXII: 2001, part two, chap. IV;

(c) Vienna, November 2005: see the report on the third UNCITRAL-INSOL International Insolvency Colloquium, 14-16 November 2005 (contained in document A/CN.9/603).

27. When appropriate, UNCITRAL recommends the use or adoption of instruments related to international trade law developed by other organizations. For example, UNCITRAL has encouraged the widest possible adherence to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards,<sup>25</sup> as well as ratification of the European Convention on International Commercial Arbitration (Geneva, 1961).<sup>26</sup> It has recommended the use of a number of texts prepared by the International Chamber of Commerce, including the International Rules for the Interpretation of Trade Terms (Incoterms)<sup>27</sup> and Incoterms 2000;<sup>28</sup> the Uniform Customs and Practice for Documentary Credits (UCP 400 and UCP 500);<sup>29</sup> the Rules on International Standby Practices (ISP98) and the Uniform Rules for Contract Bonds.<sup>30</sup> A number of other organizations have recommended and endorsed the adoption of UNCITRAL texts.

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<sup>25</sup>United Nations, *Treaty Series*, vol. 330, No. 4739. See *Official Records of the General Assembly, Twenty-fourth Session, Supplement No. 18 (A/7618)*, para. 112, reproduced in *UNCITRAL Yearbook*, vol. I: 1968-1970, part two, chap. II, sect. A; and *Official Records of the General Assembly, Twenty-fifth Session, Supplement No. 17 (A/8017)*, para. 156, reproduced in *UNCITRAL Yearbook*, vol. I: 1968-1970, part two, chap. III, sect. A. See also *Official Records of the General Assembly, Twenty-eighth Session, Supplement No. 17 (A/9017)*, para. 85, reproduced in *UNCITRAL Yearbook*, vol. IV: 1973, part one, chap. II, sect. A; and *Official Records of the General Assembly, Thirty-fourth Session, Supplement No. 17 (A/34/17)*, para. 81, reproduced in *UNCITRAL Yearbook*, vol. X: 1979, part one, chap. II, sect. A.

<sup>26</sup>United Nations, *Treaty Series*, vol. 484, No. 7041. See also *Official Records of the General Assembly, Twenty-eighth Session, Supplement No. 17 (A/9017)*, para. 85, reproduced in *UNCITRAL Yearbook*, vol. IV: 1973, part one, chap. II, sect. A.

<sup>27</sup>*Official Records of the General Assembly, Twenty-fourth Session, Supplement No. 18 (A/7618)*, para. 60 (para. 3), reproduced in *UNCITRAL Yearbook*, vol. I: 1968-1970, part two, chap. II, sect. A. See also *Official Records of the General Assembly, Forty-sixth Session, Supplement No. 17 (A/46/17)*, paras. 350-352, reproduced in *UNCITRAL Yearbook*, vol. XXII: 1991, part one, sect. A. The INCOTERMS 1990 are reproduced in the annex to document A/CN.9/348, entitled "International Chamber of Commerce (ICC) INCOTERMS", reproduced in *UNCITRAL Yearbook*, vol. XXII: 1991, part two, chap. V, sect. B.

<sup>28</sup>See *Official Records of the General Assembly, Fifty-fifth Session, Supplement No. 17 (A/55/17)*, paras. 428-434, reproduced in *UNCITRAL Yearbook*, vol. XXXI: 2000, part one, sect. A. The INCOTERMS 2000 are reproduced in annex II to the report of the Secretary-General on ICC INCOTERMS 2000 (A/CN.9/479), reproduced in *UNCITRAL Yearbook*, vol. XXXI: 2000, part two, chap. VI, sect. C. The text is also available from the International Chamber of Commerce in its publication No. 560.

<sup>29</sup>See *Official Records of the General Assembly, Thirtieth Session, Supplement No. 17 (A/10017)*, para. 41, reproduced in *UNCITRAL Yearbook*, vol. VI: 1975, part one, chap. II, sect. A; *Official Records of the General Assembly, Thirty-ninth Session, Supplement No. 17 (A/39/17)*, para. 129, reproduced in *UNCITRAL Yearbook*, vol. XV: 1984, part one, sect. A; *Official Records of the General Assembly, Forty-ninth Session, Supplement No. 17 (A/49/17)*, paras. 230 and 231, reproduced in *UNCITRAL Yearbook*, vol. XXV: 1994, part one, sect. A; report of the Secretary-General on uniform customs and practice for documentary credits (A/CN.9/395), reproduced in *UNCITRAL Yearbook*, vol. XXV: 1994, part two, chap. VIII.

<sup>30</sup>See *Official Records of the General Assembly, Fifty-fifth Session, Supplement No. 17 (A/55/17)*, paras. 428-434, reproduced in *UNCITRAL Yearbook*, vol. XXXI: 2000, part one, sect. A; report of the Secretary-General on International Standby Practices (ISP98) (A/CN.9/477), reproduced in *UNCITRAL Yearbook*, vol. XXXI: 2000, part two, chap. VI, sect. A; report of the Secretary-General on Uniform Rules for Contract Bonds (URCB) (A/CN.9/478), reproduced in *UNCITRAL Yearbook*, vol. XXXI: 2000, part two, chap. VI, sect. B.

## C. Techniques of modernization and harmonization

28. UNCITRAL has adopted a flexible and functional approach with respect to the techniques it uses to perform its mandate to modernize and harmonize the law of international trade.<sup>31</sup> These techniques fall into three broad categories, which operate at different levels and involve different types of compromise or acceptance of difference: legislative, contractual and explanatory. To some extent, they also show the process of modernization and harmonization occurring at different stages of business development. While in most cases the process of modernization and harmonization works to bring long-established practices closer together, there are cases that might be seen as examples of “preventive” harmonization—establishing new principles and practices that will minimize divergence when national laws on new issues are developed. This has been typical in areas of commerce affected by new technology or new business practices, such as electronic commerce.

### 1. Legislative techniques

29. UNCITRAL has produced several different types of legislative texts: conventions; model laws; legislative guides; and model provisions (for a comprehensive list of UNCITRAL texts, see annex VI).

#### (a) Conventions

30. A convention is designed to unify law by establishing binding legal obligations. To become a party to a convention, States are required formally to deposit a binding instrument of ratification or accession with the depositary (for conventions prepared by UNCITRAL, the Secretary-General of the United Nations). The entry into force of a convention is usually dependent upon the deposit of a minimum number of instruments of ratification.<sup>32</sup>

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<sup>31</sup>In this connection, see also the report of the Secretary-General entitled “Question of coordination: direction of the work of the Commission” (A/CN.9/203), paras. 99-122, reproduced in *UNCITRAL Yearbook*, vol. XII: 1981, part two, chap. V, sect. B; and the note by the Secretariat entitled “Alternative methods for the final adoption of conventions emanating from the work of the Commission” (A/CN.9/204), reproduced in *UNCITRAL Yearbook*, vol. XII: 1981, part two, chap. VIII.

<sup>32</sup>For the United Nations Convention on Contracts for the International Sale of Goods, 10 instruments of ratification, acceptance, approval or accession, pursuant to art. 99, para. 1; for the United Nations Convention on the Carriage of Goods by Sea, 20 instruments, pursuant to art. 30, para. 1; for the United Nations Convention on Independent Guarantees and Stand-by Letters of Credit, 5 instruments, pursuant to art. 28, para. 1; for the United Nations Convention on the Assignment of Receivables in International Trade, 5 instruments, pursuant to art. 45, para. 1; and for the United Nations Convention on the Use of Electronic Communications in International Trade, 3 instruments, pursuant to art. 23, para. 1.

31. A convention is often used where the objective is to achieve a high degree of harmonization of law in the participating States, reducing the need for a party to undertake research of the law of another State party. The international obligation assumed by that State on adoption of the convention is intended to provide an assurance that the law in that State is in line with the terms of that convention.<sup>33</sup> If a high degree of harmonization cannot be achieved or a greater degree of flexibility is desired and is appropriate to the subject matter under consideration, a different technique of harmonization, such as a model law or legislative guide, might be used.

32. Except to the extent that they permit reservations or declarations, conventions afford little flexibility to adopting States. The conventions negotiated by UNCITRAL generally do not allow reservations or declarations or allow them only to a very limited extent.<sup>34</sup> In some cases, the ability to make a reservation or declaration represents a compromise that will enable some States to become a party to the convention without being obliged to comply with the provision to which the reservation or declaration relates.

33. UNCITRAL has prepared the following conventions: the Convention on the Limitation Period in the International Sale of Goods (1974); the United Nations Convention on the Carriage of Goods by Sea (1978); the United Nations Convention on Contracts for the International Sale of Goods (1980); the United Nations Convention on International Bills of Exchange and International Promissory Notes (1988); the United Nations Convention on the Liability of Operators of Transport Terminals in International Trade (1991); the United Nations Convention on Independent Guarantees and Stand-by Letters of Credit (1995); the United Nations Convention on the Assignment of Receivables in International Trade (2001); and the United Nations Convention on the Use of Electronic Communications in International Contracts (2005) (see annex VI).

### **(b) Model laws**

34. A model law is a legislative text that is recommended to States for enactment as part of their national law.

35. A model law is an appropriate vehicle for modernization and harmonization of national laws when it is expected that States will wish or need to

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<sup>33</sup>See, for example, the joint survey developed in cooperation with Committee D (now known as the Arbitration Committee) of the International Bar Association to monitor legislation giving effect to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (*Official Records of the General Assembly, Fiftieth Session, Supplement No. 17 (A/50/17)*, paras. 401-404, reproduced in *UNCITRAL Yearbook*, vol. XXVI: 1995, part one, sect. A).

<sup>34</sup>See, for example, the United Nations Convention on Contracts for the International Sale of Goods, articles 92-96.

make adjustments to the text of the model to accommodate local requirements that vary from system to system, or where strict uniformity is not necessary or desirable. It is precisely this flexibility that makes a model law potentially easier to negotiate than a text containing obligations that cannot be altered, and promotes greater acceptance of a model law than of a convention dealing with the same subject matter. Notwithstanding this flexibility, in order to increase the likelihood of achieving a satisfactory degree of unification and to provide certainty about the extent of unification, States are encouraged to make as few changes as possible when incorporating a model law into their legal system.

36. Model laws are generally finalized and adopted by UNCITRAL at its annual session, as opposed to adoption of a convention, which requires the convening of a diplomatic conference. This factor may make preparation of a model law less expensive than the preparation of a convention, unless the convention is adopted by the General Assembly performing the function of a diplomatic conference, as has been the case for most of the recent conventions prepared by UNCITRAL (see paras. 53 and 54, below).

37. Recent model laws completed by UNCITRAL have been accompanied by a “guide to enactment” setting forth background and other explanatory information to assist Governments and legislators in using the text.<sup>35</sup> The guides include, for example, information that would assist States in considering what, if any, provisions of the model law might have to be varied to take into account particular national circumstances, information relating to discussions in the working group on policy options and considerations, and matters not addressed in the text of the model law that may nevertheless be relevant to the subject matter of the model law.

38. Within the category of model laws prepared by UNCITRAL, a comparison of two texts, the UNCITRAL Model Law on International Commercial Arbitration (1985) and the UNCITRAL Model Law on Electronic Commerce (1996), illustrates how the model law form can be adapted to the subject matter under consideration and to the degree of flexibility sought by the drafters. The Model Law on International Commercial Arbitration, which could be described as a procedural instrument, provides a discrete set of interdependent articles. It is recommended that, in adopting this Model Law, very few amendments or changes are made. As a rule, relatively few deviations from this text have been made by States adopting enacting legislation, suggesting

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<sup>35</sup>The Model Laws on International Credit Transfers and International Commercial Arbitration include short explanatory notes prepared by the secretariat of UNCITRAL for information purposes. The Model Laws on Procurement of Goods, Construction and Services; Electronic Commerce; Electronic Signatures; Cross-Border Insolvency; and International Commercial Conciliation include more extensive, official guides to enactment. These guides were considered by the Commission and generally adopted together with the text of each model law.

that the procedures it establishes are widely accepted and understood as forming a coherent basis for international commercial arbitration. The Model Law on Electronic Commerce, on the other hand, is a more conceptual text. The legislation that has been based on this Model Law largely reflects the principles of the text, although there are some departures from it in terms not only of drafting, but also in the combination of provisions adopted.<sup>36</sup>

39. The UNCITRAL Model Law on International Commercial Arbitration (1985) was the first model law adopted by UNCITRAL and was followed by the UNCITRAL Model Law on International Credit Transfers (1992); the UNCITRAL Model Law on Procurement of Goods, Construction and Services with Guide to Enactment (1994); the UNCITRAL Model Law on Electronic Commerce with Guide to Enactment (1996); the UNCITRAL Model Law on Cross-Border Insolvency with Guide to Enactment (1997); the UNCITRAL Model Law on Electronic Signatures with Guide to Enactment (2001); and the UNCITRAL Model Law on International Commercial Conciliation with Guide to Enactment (2002) (see annex VI).

### **(c) *Legislative guides and recommendations***

40. For a number of reasons, it is not always possible to draft specific provisions in a suitable or discrete form, such as a convention or a model law, for incorporation into national legal systems: national legal systems often use widely disparate legislative techniques and approaches for solving a given issue, States may not yet be ready to agree on a single approach or common rule, there may not be consensus on the need to find a uniform solution to a particular issue, or there may be different levels of consensus on the key issues of a particular subject and how they should be addressed. In such cases, it may be appropriate not to attempt to develop a uniform text, but to limit the action to a set of principles or legislative recommendations.

41. In order to advance the objective of harmonization, and offer a legislative model, the principles or recommendations would need to do more than simply state general objectives. The text would provide a set of possible legislative solutions to certain issues, but not necessarily a single set of model solutions for those issues. In some cases, it may be appropriate to include variants, depending upon applicable policy considerations. By discussing the advantages and disadvantages of different policy choices, the text would assist the reader to evaluate different approaches and to choose the one most suitable in a particular national context. It could also be used to provide a standard against which Governments and legislative bodies could review the adequacy of

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<sup>36</sup>For a list of the States that have enacted the Model Laws, see the UNCITRAL website at <http://www.uncitral.org>.

existing laws, regulations, decrees and similar legislative texts in a particular field and update those laws or develop new laws.

42. UNCITRAL's first legislative recommendation was adopted in 1985, to stimulate review of legislative provisions on the legal value of computer records.<sup>37</sup> In 2000, UNCITRAL adopted the *Legislative Guide on Privately Financed Infrastructure Projects* and, in 2004, it adopted the *Legislative Guide on Insolvency Law*. A legislative guide on secured transactions is currently being prepared.

#### **(d) Model provisions**

43. When a number of conventions deal with a particular question in a way that may require unification and modernization, model provisions can be developed and recommended for use in future conventions and in revisions of existing ones. In 1982, for example, UNCITRAL formulated a model provision establishing a universal unit of account of constant value that could be used, in particular, in international transport and liability conventions, for expressing amounts in monetary terms.<sup>38</sup> In conjunction with that model provision, UNCITRAL adopted two alternative model provisions for the adjustment of an amount set forth in an international convention: a sample price index clause and a sample amendment procedure for a limit of liability. Model provisions may also assist in supplementing a provision of a convention. The United Nations Convention on the Assignment of Receivables in International Trade (2001) contains an annex (of optional substantive law provisions) supplementing the conflicts of laws rules of the Convention that deal with priority issues. In 2003, UNCITRAL adopted the Model Legislative Provisions on Privately Financed Infrastructure Projects, which complements the legislative guide on the same topic.<sup>39</sup>

#### **(e) Uniform interpretation of legislative texts: Case law on UNCITRAL texts**

44. In 1988, the Commission decided to establish a system for the collection and dissemination of court decisions and arbitral awards relating to UNCITRAL

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<sup>37</sup>Recommendations to Governments and international organizations concerning the legal value of computer records (1985) (United Nations publication, Sales No. E.87.V.4).

<sup>38</sup>Provisions on a universal unit of account and on adjustment of the limit of liability in international transport conventions (1982) (United Nations publication, Sales No. E.84.V.5). See the report of the Working Group on International Negotiable Instruments on the work of its twelfth session (A/CN.9/215), para. 97, reproduced in *UNCITRAL Yearbook*, vol. XIII: 1982, part two, chap. II, sect. B.1; and *Official Records of the General Assembly, Thirty-seventh Session, Supplement No. 17 (A/37/17)*, para. 63, reproduced in *UNCITRAL Yearbook*, vol. XIII: 1982, part one, sect. A.

<sup>39</sup>*Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 17 (A/58/17)*, annex I, to be reproduced in *UNCITRAL Yearbook*, vol. XXXIV: 2003, part one, sect. A (forthcoming).

legislative texts<sup>40</sup> to assist in achieving uniformity in the interpretation and application of those texts. The system is intended to provide information for use by judges, arbitrators, lawyers, parties to commercial transactions, academics, students and other interested persons.

45. The system is known as Case Law on UNCITRAL Texts or CLOUT and the majority of cases reported are on the United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980) and the UNCITRAL Model Law on International Commercial Arbitration (1985). Other UNCITRAL texts will be included in the system as relevant case law develops.<sup>41</sup>

46. The CLOUT system relies on national correspondents designated either by States parties to a convention or by States having enacted legislation based on a model law.<sup>42</sup> National correspondents are requested to collect decisions and awards, prepare abstracts of them in one of the official languages of the United Nations and forward both the text and the abstract to the UNCITRAL secretariat. CLOUT abstracts are then edited, translated into the six official languages of the United Nations and issued as part of the regular documentation of UNCITRAL. The CLOUT system is also available on the UNCITRAL website (<http://www.uncitral.org>). Upon request, texts of decisions and awards are available in the original language from the UNCITRAL secretariat.

47. In December 2004, UNCITRAL published an analytical digest of court and arbitral decisions identifying trends in the interpretation of the United Nations Convention on Contracts for the International Sale of Goods and it will publish a digest on the Model Law on International Commercial Arbitration.

## 2. Contractual techniques

48. In the drafting of contracts, there are issues that can be resolved by reference to a standard or uniform clause or set of clauses or rules. The process of standardization of these clauses or rules has a number of advantages. It can identify all of the issues that parties should address in such clauses or

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<sup>40</sup>See *Official Records of the General Assembly, Forty-third Session, Supplement No. 17 (A/43/17)*, paras. 98-109, reproduced in *UNCITRAL Yearbook*, vol. XIX: 1988, part one, sect. A; and the note by the Secretariat entitled "Collection and dissemination of information on UNCITRAL legal texts" (A/CN.9/312), reproduced in *UNCITRAL Yearbook*, vol. XIX: 1988, part two, chap. VII, sect. C.

<sup>41</sup>It should be noted that the system does not cover the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, which was concluded before the establishment of the Commission. Cases on that Convention are collected and reported in the yearbooks of the International Council for Commercial Arbitration (see <http://www.arbitration-icca.org>).

<sup>42</sup>See *Official Records of the General Assembly, Forty-third Session, Supplement No. 17 (A/43/17)*, para. 100, reproduced in *UNCITRAL Yearbook*, vol. XIX: 1988, part one, sect. A. Since the twenty-second session of the Commission (1989), meetings of national correspondents are usually held in Vienna in conjunction with alternate annual sessions of the Commission.



rules; ensure that the clause is effective and not (as sometimes occurs in the case of agreements to arbitrate), pathological and therefore ineffective or invalid; and provide internationally recognized and up-to-date solutions to specific issues. One common example is in the field of dispute resolution, where a contract can include a standard dispute resolution clause referring to the use of internationally recognized rules for conduct of dispute resolution proceedings. The UNCITRAL Arbitration Rules (1976) and the UNCITRAL Conciliation Rules (1980) are examples of such internationally recognized uniform rules.

### 3. *Explanatory techniques*

#### **(a) Legal guides**

49. When it is not feasible or necessary to develop a standard or model set of contract rules, an alternative may be a legal guide giving explanations concerning contract drafting. Parties negotiating complex international contracts, such as construction contracts, often experience difficulties in negotiating and drafting appropriate contract clauses for reasons such as lack of specific expertise, resources or reference materials. Because such contracts must be tailored to the circumstances of the case, it is normally not possible to develop a model contract text that would be usable in a sufficient number of cases to justify the expense of its preparation. Parties can be assisted, however, by a legal guide that discusses various issues underlying the drafting of a particular type of contract; considers various solutions to those issues; describes implications, advantages and disadvantages of those solutions; and recommends the use of certain solutions in particular circumstances. Such legal guides may also include sample contract clauses to illustrate particular solutions. The first legal guide was the *UNCITRAL Legal Guide on Drawing up International Contracts for the Construction of Industrial Works* (1987). That was followed by the *UNCITRAL Legal Guide on International Countertrade Transactions* (1992) and, in 1996, the *UNCITRAL Notes on Organizing Arbitral Proceedings*.

50. The focus of a legal guide may not be exclusively on contract drafting, but may have a broader purpose of discussing issues that would also be of interest to legislators and regulators. One example is the *UNCITRAL Legal Guide on Electronic Funds Transfers* (1986), which discusses issues relating to the use of electronic means of communication in making international payments.

#### **(b) Interpretative declarations**

51. A further example of an explanatory text is a declaration, which could be used to achieve a uniform interpretation of a particular text, or texts, where

the desirability of that interpretation is dictated by widespread changes in commercial practices, developments in technology, emerging divergence in interpretation by the courts, or some other factor affecting the application of the text. Such an instrument may be particularly useful in the case of a convention, where amendment of the text might pose significant technical problems. The possibility of using this technique has been discussed in the context of the writing requirement set forth in article II, paragraph 2, of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958) and more generally in the context of the interpretation of article VII, paragraph 1, of that Convention.<sup>43</sup> It was also discussed in the context of electronic commerce and the desirability of interpreting a number of international trade law instruments by reference to the UNCITRAL Model Law on Electronic Commerce. That question of interpretation has now been settled by the use of a different instrument—the United Nations Convention on the Use of Electronic Communications in International Contracts (2005), article 20.

## D. Finalization and adoption of legislative texts

52. After a working group has prepared a draft text of a convention, model law or other instrument, it is submitted for the consideration of UNCITRAL at its annual session. If appropriate, the text may be accompanied by an explanatory commentary prepared by the secretariat in order to assist UNCITRAL, Governments and international organizations in their deliberations. Generally, the draft text and the commentary (if prepared) are circulated, before the applicable annual session, to Governments and interested international organizations for comment. An analysis of comments received

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<sup>43</sup>For a discussion on the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, see *Official Records of the General Assembly, Fifty-fifth Session, Supplement No. 17 (A/55/17)*, paras. 410-412, reproduced in *UNCITRAL Yearbook*, vol. XXXI: 2000, part one, sect. A; the report of the Working Group on Arbitration on the work of its thirty-second session (A/CN.9/468), paras. 88-106, reproduced in *UNCITRAL Yearbook*, vol. XXXI: 2000, part two, chap. IV, sect. A; the report of the Working Group on Arbitration on the work of its thirty-third session (A/CN.9/485), paras. 60-77, and the report of the Working Group on Arbitration on the work of its thirty-fourth session (A/CN.9/487), paras. 42-63, reproduced in *UNCITRAL Yearbook*, vol. XXXII: 2001, part two, chap. III, sects. A and D; the report of the Working Group on Arbitration on the work of its thirty-sixth session (A/CN.9/508), paras. 40-50, reproduced in *UNCITRAL Yearbook*, vol. XXXIII: 2002, part two, chap. I, sect. D; and the report of the Working Group on Arbitration on the work of its forty-fourth session (A/CN.9/592), paras. 82-88.

may be prepared by the secretariat and provided to the Commission to facilitate its consideration of the draft text.<sup>44</sup>

53. Different procedures apply to the finalization and adoption of different types of texts. If the text concerned is a draft convention, the established practice is for UNCITRAL to recommend to the General Assembly that an international conference of plenipotentiaries be convened to finalize and adopt the convention and open it for signature. In the case of a number of draft conventions, including the United Nations Convention on International Bills of Exchange and International Promissory Notes, the United Nations Convention on Independent Guarantees and Stand-by Letters of Credit, the United Nations Convention on the Assignment of Receivables in International Trade and the United Nations Convention on the Use of Electronic Communications in International Contracts, the General Assembly acted as the conference of plenipotentiaries.

54. When a draft convention is to be considered by a conference of plenipotentiaries, the General Assembly requests the secretariat to circulate it to Governments and interested international organizations for comment. As noted above, UNCITRAL may also request its secretariat to prepare a commentary to be circulated with the text. An analysis of comments received from Governments and international organizations is prepared by the secretariat and, together with the text itself and any commentary, is placed before the conference of plenipotentiaries. Although this would be the usual sequence of events, variations may occur. In one instance, preparation of a commentary was requested by the conference of plenipotentiaries after the particular convention had been finalized and adopted,<sup>45</sup> while in another case, UNCITRAL requested preparation of the commentary after it had finalized the text of the draft convention.<sup>46</sup>

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<sup>44</sup>This procedure was first followed in respect of the draft model law on legal aspects of electronic data interchange and related means of communication (later adopted as the Model Law on Electronic Commerce). See the compilation of comments by Governments and international organizations on the draft model law on legal aspects of electronic data interchange and related means of communication contained in document A/CN.9/409 and Add.1-4, reproduced in *UNCITRAL Yearbook*, vol. XXVI: 1995, part two, chap. II, sect. E. For comments on other UNCITRAL texts see, for example, the compilation of comments by Governments and international organizations on the draft convention on assignment [in receivables financing] [of receivables in international trade], contained in document A/CN.9/472 and Add.1-4, reproduced in *UNCITRAL Yearbook*, vol. XXXI: 2000, part two, chap. II, sect. F; on the draft model law on electronic signatures, contained in document A/CN.9/492 and Add.1-3, reproduced in *UNCITRAL Yearbook*, vol. XXXII: 2001, part two, chap. II, sect. I; on the draft model law on international commercial conciliation, contained in document A/CN.9/513 and Add.1 and 2, reproduced in *UNCITRAL Yearbook*, vol. XXXIII: 2002, part two, chap. I, sect. G; and on the draft addendum to the UNCITRAL Legislative Guide on Privately Financed Infrastructure Projects, contained in document A/CN.9/533 and Add.1-7, to be reproduced in *UNCITRAL Yearbook*, vol. XXXIV: 2003 (forthcoming).

<sup>45</sup>The Convention on the Limitation Period in the International Sale of Goods (New York, 1974).

<sup>46</sup>The United Nations Convention on the Assignment of Receivables in International Trade (2001).

55. If the draft text is to be a model law or a legislative guide, UNCITRAL itself generally finalizes the text and formally adopts it, recommending that States give it due consideration when modernizing and reforming their laws. Adoption by a conference of plenipotentiaries is not required. The General Assembly generally expresses its support for the UNCITRAL process by formally endorsing the adopted text and recommending that States give it due consideration when modernizing and reforming their laws.<sup>47</sup>

## E. Technical assistance to law reform

56. UNCITRAL undertakes a range of technical assistance activities to promote its work and the use and adoption of the legislative and non-legislative texts it has developed to further the progressive harmonization and unification of international trade law. These activities include organizing briefing missions and seminars and participating in conferences to familiarize participants with UNCITRAL texts and their use; undertaking law reform assessments to assist Governments, legislative organs and other authorities to review existing legislation and assess their need for law reform in the commercial field; assisting with the drafting of national legislation to implement UNCITRAL texts; assisting international development agencies, such as the World Bank, to use UNCITRAL texts in their law reform activities and projects; providing advice and assistance to international and other organizations, such as professional associations, organizations of attorneys, chambers of commerce and arbitration centres, on the use of UNCITRAL non-legislative texts; and organizing group training activities to facilitate the implementation and interpretation of modern commercial legislation based on UNCITRAL texts by judiciaries and legal practitioners.

57. UNCITRAL also prepares teaching and other technical materials, such as the CLOUT system, and analytical digests of case law on specific texts, which facilitate interpretation of the texts and are useful in technical assistance activities, as well as to practitioners, academics and other users of the texts.

58. Technical assistance has been provided by UNCITRAL to officials and legislators of individual States, as well as through regional and international organizations and initiatives. Requests for technical assistance traditionally have been received from Governments, permanent missions to the United Nations, chambers of commerce and arbitration centres and through regional and international organizations.

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<sup>47</sup>See, for example, General Assembly resolution 59/40 on the UNCITRAL Legislative Guide on Insolvency Law; Assembly resolution 58/76 on the UNCITRAL Model Legislative Provisions on Privately Financed Infrastructure Projects; and Assembly resolution 57/18 on the UNCITRAL Model Law on International Commercial Conciliation.

59. A report on technical assistance activities is provided to UNCITRAL each year.<sup>48</sup>

60. The demand for UNCITRAL technical assistance has grown dramatically in recent years. Because the regular budget does not include funds for such activities, these activities can only be conducted if funds can be obtained from other sources. UNCITRAL has established a trust fund to enable it to respond to these requests and the Commission and the General Assembly have made repeated appeals for contributions. The Commission welcomes the financial support of States, organizations and individuals. Contributions may be made for general technical assistance activities or for specific projects.<sup>49</sup>

## F. Other activities of the Commission

### 1. *Publications programme*

61. The secretariat undertakes the production (in both paper and electronic versions) of a number of publications relating to the work of UNCITRAL. The first of these is a *Yearbook of the United Nations Commission on International Trade Law* (referred to elsewhere in this publication as the *UNCITRAL Yearbook*), which reproduces all substantive documents prepared by the secretariat each year relating to the work of UNCITRAL and its working groups (including reports of annual sessions of UNCITRAL and of working group sessions, which are also available as separate documents), as well as other information, including reports of the Sixth Committee of the General Assembly;<sup>50</sup> General Assembly resolutions relating to the work of UNCITRAL; a bibliography of scholarly writings on UNCITRAL texts; a list of UNCITRAL texts; and the summary records of meetings of UNCITRAL.<sup>51</sup> The *UNCITRAL Yearbook* is published

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<sup>48</sup>See, for example, document A/CN.9/586.

<sup>49</sup>Contributions, making specific reference to the “Trust Fund for UNCITRAL Symposia”, may be made to:

United Nations General Trust Fund  
JP Morgan Chase Bank  
International Agencies Banking  
1166 Avenue of the Americas, 17th floor  
New York, NY 10036-2708  
Account no. 485001969.

<sup>50</sup>The Sixth Committee is one of the main committees of the General Assembly and considers legal matters, including the annual report of UNCITRAL.

<sup>51</sup>Summary records are prepared only for sessions relating to UNCITRAL’s legislative function in connection with a specific legislative text, not for working group sessions.

in English, French, Russian and Spanish and is available in libraries around the world that function as United Nations depository libraries, as well as from the UNCITRAL website (<http://www.uncitral.org>) (see annex V for further information).

62. Other publications of UNCITRAL include:

- (a) Booklets reproducing UNCITRAL texts;
- (b) Explanatory notes prepared by the secretariat of UNCITRAL on the various UNCITRAL texts;<sup>52</sup>
- (c) The “Status of conventions and model laws”, a list indicating the current status of adoption and implementation of conventions and model laws;
- (d) Official records of diplomatic conferences at which conventions were adopted;
- (e) Proceedings of the various congresses and colloquiums held by UNCITRAL, such as the 1992 Congress on Uniform Commercial Law in the Twenty-first Century<sup>53</sup> and the 1998 colloquium celebrating the fortieth anniversary of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958);<sup>54</sup>
- (f) CD-ROMs containing UNCITRAL texts and other official documents.

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<sup>52</sup>To date, explanatory notes have been prepared for the following texts: (a) United Nations Convention on the Carriage of Goods by Sea, 1978 (Hamburg) (A/CN.9/306), reproduced in *UNCITRAL Yearbook*, vol. XIX: 1988, part two, chap. IV; (b) United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980) (A/CN.9/307), reproduced in *UNCITRAL Yearbook*, vol. XIX: 1988, part two, chap. V, sect. A; (c) Convention on the Limitation Period in the International Sale of Goods (New York, 1974) (A/CN.9/308), reproduced in *UNCITRAL Yearbook*, vol. XIX: 1988, part two, chap. V, sect. B; (d) UNCITRAL Model Law on International Commercial Arbitration, 1985 (A/CN.9/309), reproduced in *UNCITRAL Yearbook*, vol. XIX: 1988, part two, chap. VI; (e) United Nations Convention on International Bills of Exchange and International Promissory Notes (New York, 1988) (A/CN.9/386), reproduced in *UNCITRAL Yearbook*, vol. XXV: 1994, part two, chap. VI, sect. B; (f) United Nations Convention on the Liability of Operators of Transport Terminals in International Trade (Vienna, 1991) (A/CN.9/385), reproduced in *UNCITRAL Yearbook*, vol. XXV: 1994, part two, chap. VII; (g) UNCITRAL Model Law on International Credit Transfers, 1992 (A/CN.9/384), reproduced in *UNCITRAL Yearbook*, vol. XXV: 1994, part two, chap. VI, sect. A; (h) United Nations Convention on Independent Guarantees and Stand-by Letters of Credit (New York, 1995) (A/CN.9/431), reproduced in *UNCITRAL Yearbook*, vol. XXVIII: 1997, part two, chap. V; and (i) United Nations Convention on the Assignment of Receivables in International Trade (A/CN.9/557), reproduced in *UNCITRAL Yearbook*, vol. XXXV: 2004 (forthcoming).

<sup>53</sup>For the report of the Congress proceedings, see *Uniform Commercial Law in the Twenty-first Century: Proceedings of the Congress of the United Nations Commission on International Trade Law*, New York, 18-22 May 1992, United Nations publication, Sales No. E.94.V.14 (A/CN.9/SER.D/1).

<sup>54</sup>For the texts of the 1958 New York Convention Day speeches, see *Enforcing Arbitration Awards under the New York Convention: Experience and Prospects*, United Nations publication, Sales No. E.99.V.2.

63. UNCITRAL has also prepared publications in conjunction with other organizations, such as the Commonwealth Secretariat, to explain substantive provisions and various technical aspects of incorporating an UNCITRAL text into domestic legal systems (known as “accession kits”).<sup>55</sup>

64. UNCITRAL’s website, which is available in all six of the official languages of the United Nations, is frequently updated and includes all recent UNCITRAL documents, information relating to meetings and other activities of UNCITRAL, its working groups and the UNCITRAL secretariat, and consolidated bibliographies and documents submitted to previous UNCITRAL sessions. Archival material is added on an ongoing basis.

## 2. *Special events*

65. UNCITRAL has organized a number of special events relating to different aspects of international trade law. In the context of the United Nations Decade of International Law, for example, a congress on international trade law was held in May 1992 during the twenty-fifth session of UNCITRAL. The Congress considered the accomplishments achieved in the progressive unification and harmonization of international trade law during the previous 25 years and the needs that could be foreseen for the subsequent 25 years.<sup>53</sup> In 1998, at its thirtieth session, UNCITRAL celebrated the fortieth anniversary of the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards with a symposium devoted to arbitration issues.<sup>54</sup> A Uniform Commercial Law Colloquium on current and potential topics of work in the areas of electronic commerce, privately financed infrastructure projects, receivables financing and cross-border insolvency followed the symposium.

66. Subject-specific colloquiums have also been convened to discuss future work in specific areas. In July 2000, a transport colloquium was organized jointly by UNCITRAL and the International Maritime Committee to gather ideas and expert opinions on problems that arise in the international carriage of goods, in particular carriage by sea, identifying issues in transport on which the Commission might consider undertaking future work.<sup>56</sup> In December 2000, UNCITRAL, in conjunction with the International Association of Restructuring, Insolvency and Bankruptcy Professionals and Committee J (now known as the Section on Insolvency, Restructuring and Creditors’ Rights) of

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<sup>55</sup>Accession kits have been published for the United Nations Convention on the Carriage of Goods by Sea, 1978 (Hamburg), the United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980) and the UNCITRAL Model Law on International Commercial Arbitration (1985).

<sup>56</sup>*Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 17 (A/56/17)*, paras. 319-344, reproduced in *UNCITRAL Yearbook*, vol. XXXII: 2001, part one, sect. A.

the International Bar Association, convened a global colloquium on insolvency law to discuss the work being undertaken by other international organizations on insolvency law and the feasibility, scope and form of future work that might be undertaken by UNCITRAL on that topic.<sup>57</sup> A similar colloquium was held in November 2005.<sup>58</sup> In March 2002, a colloquium on secured transactions was organized in cooperation with the Commercial Finance Association<sup>59</sup> and, in April 2004, a colloquium on commercial fraud was organized with the Institute of International Banking Law and Practice and George Mason University, the International Institute for the Unification of Private Law (Unidroit), the Organization of American States and the Hague Conference on Private International Law.<sup>60</sup>

## G. Numbering of UNCITRAL documents

67. Individual documents prepared for consideration by UNCITRAL and its working groups bear the symbol “A/CN.9/[ . . . ]” (“A” symbolizes that the document is a General Assembly document and “CN.9” indicates that the document is for UNCITRAL, as the ninth permanent commission to report to the General Assembly).

68. This symbol is followed by a consecutive number (e.g. A/CN.9/421). This type of numbering generally applies to documents prepared for the annual session, including the reports of working group sessions.

69. In the case of a working group, the basic document symbol is followed by “WG” and the number assigned to the particular working group (e.g. in the case of Working Group II (Arbitration) the number WG.II is added, while for Working Group IV (Electronic Commerce), the number WG.IV is added). Then “WP” (meaning “working paper”) and the number assigned to the specific working paper completes the symbol (e.g. A/CN.9/WG.II/WP.23).

70. Annual reports of UNCITRAL are published as Supplement Number 17 to the Official Records of the General Assembly and bear the symbol

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<sup>57</sup>See the report on the UNCITRAL-INSOL-IBA Global Insolvency Colloquium, (Vienna, 4-6 December 2000) (A/CN.9/495), reproduced in *UNCITRAL Yearbook*, vol. XXXII: 2001, part two, chap IV.

<sup>58</sup>See the note by the Secretariat on “Insolvency law: possible future work” (A/CN.9/596), to be reproduced in *UNCITRAL Yearbook*, vol. XXXVII: 2006 (forthcoming).

<sup>59</sup>See the report of the Secretary-General on the UNCITRAL-CFA international colloquium on secured transactions (A/CN.9/WG.VI/WP.3), reproduced in *UNCITRAL Yearbook*, vol. XXXIII: 2002, part two, chap. V, sect. C.

<sup>60</sup>See the note by the Secretariat on the UNCITRAL Colloquium on International Commercial Fraud (A/CN.9/555), to be reproduced in *UNCITRAL Yearbook*, vol. XXXV: 2004 (forthcoming).



“A/[ . . . ]/17” (the number in the middle of the symbol indicates the number of the applicable annual session of the General Assembly).

71. Conference room papers are informal papers issued during meetings of UNCITRAL or of working groups and are limited in circulation to participants at a meeting. They might include proposals by working group members and observers and in-process drafts and carry no authoritative value for research purposes. These documents bear the suffix “/CRP”.

## H. General Assembly resolutions relating to UNCITRAL

72. The General Assembly generally adopts one or more resolutions regarding UNCITRAL’s annual work. These resolutions are first issued in a provisional form and then reissued at the end of the year as the last numbered supplement of the official records of the General Assembly. So, for example, A/RES/54/103 is the document containing a provisional form of Assembly resolution 54/103 adopted during the fifty-fourth session of the General Assembly.<sup>61</sup>

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<sup>61</sup>Resolutions adopted by the General Assembly prior to 1976 followed a different format and were sequentially numbered, the session at which they were adopted being indicated by roman numerals (e.g. 2205 (XXI)).



# Annex I

## General Assembly resolution 2205 (XXI)

### Establishment of the United Nations Commission on International Trade Law

*The General Assembly,*

*Recalling* its resolution 2102 (XX) of 20 December 1965, by which it requested the Secretary-General to submit to the General Assembly at its twenty-first session a comprehensive report on the progressive development of the law of international trade,

*Having considered with appreciation* the report of the Secretary-General on that subject,<sup>a</sup>

*Considering* that international trade cooperation among States is an important factor in the promotion of friendly relations and, consequently, in the maintenance of peace and security,

*Recalling its belief* that the interest of all peoples, and particularly those of developing countries, demand the betterment of conditions favouring the extensive development of international trade,

*Reaffirming its conviction* that divergences arising from the laws of different States in matters relating to international trade constitute one of the obstacles to development of world trade,

*Having noted with appreciation* the efforts made by intergovernmental and non-governmental organizations towards the progressive harmonization and unification of the law of international trade by promoting the adoption of international conventions, uniform laws, standard contract provisions, general conditions of sale, standard trade terms and other measures,

*Noting at the same time* that progress in this area has not been commensurate with the importance and urgency of the problem, owing to a number of factors, in particular insufficient coordination and cooperation between the organizations concerned, their limited membership or authority and the small degree of participation in this field on the part of many developing countries,

*Considering it desirable* that the process of harmonization and unification of the law of international trade should be substantially coordinated, systematized and accelerated and a broader participation should be secured in furthering progress in this area,

*Convinced* that it would therefore be desirable for the United Nations to play a more active role towards reducing or removing legal obstacles to the flow of international trade,

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<sup>a</sup>Official Records of the General Assembly, Twenty-first Session, Annexes, agenda item 88, documents A/6396 and Add.1 and 2.

*Noting* that such action would be properly within the scope and competence of the Organization under the terms of Article 1, paragraph 3, and Article 13, and of Chapters IX and X of the Charter of the United Nations,

*Having in mind* the responsibilities of the United Nations Conference on Trade and Development in the field of international trade,

*Recalling* that the Conference, in accordance with its General Principle Six,<sup>b</sup> has a particular interest in promoting the establishment of rules furthering international trade as one of the most important factors in economic development,

*Recognizing* that there is no existing United Nations organ which is both familiar with this technical legal subject and able to devote sufficient time to work in this field.

## I

*Decides* to establish a United Nations Commission on International Trade Law (hereinafter referred to as the Commission), which shall have for its object the promotion of the progressive harmonization and unification of the law of international trade, in accordance with the provisions set forth in section II below.

## II

### ORGANIZATION AND FUNCTIONS OF THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW

1. The Commission shall consist of twenty-nine States, elected by the General Assembly for a term of six years, except as provided in paragraph 2 of the present resolution. In electing the members of the Commission, the Assembly shall observe the following distribution of seats:

- (a) Seven from African States;
- (b) Five from Asian States;
- (c) Four from Eastern European States;
- (d) Five from Latin American States;
- (e) Eight from Western European and other States.

The General Assembly shall also have due regard to the adequate representation of the principal economic and legal systems of the world, and of developed and developing countries.

2. Of the members elected at the first election, to be held at the twenty-second session of the General Assembly, the terms of fourteen members shall expire at the end of three years. The President of the General Assembly shall select these members within each of the five groups of States referred to in paragraph 1 above, by drawing lots.

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<sup>b</sup>See *Proceedings of the United Nations Conference on Trade and Development*, vol. I, *Final Act and Report* (United Nations publication, Sales No. 64.II.B.11), annex A.I.1, p. 18.

3. The members elected at the first election shall take office on 1 January 1968. Subsequently, the members shall take office on 1 January of the year following each election.

4. The representatives of members on the Commission shall be appointed by Member States insofar as possible from among persons of eminence in the field of the law of international trade.

5. Retiring members shall be eligible for re-election.

6. The Commission shall normally hold one regular session a year. It shall, if there are no technical difficulties, meet alternately at United Nations Headquarters and at the United Nations Office at Geneva.

7. The Secretary-General shall make available to the Commission the appropriate staff and facilities required by the Commission to fulfil its task.

8. The Commission shall further the progressive harmonization and unification of the law of international trade by:

(a) Coordinating the work of organizations active in this field and encouraging cooperation among them;

(b) Promoting wider participation in existing international conventions and wider acceptance of existing model and uniform laws;

(c) Preparing or promoting the adoption of new international conventions, model laws and uniform laws and promoting the codification and wider acceptance of international trade terms, provisions, customs and practices, in collaboration, where appropriate, with the organizations operating in this field;

(d) Promoting ways and means of ensuring a uniform interpretation and application of international conventions and uniform laws in the field of the law of international trade;

(e) Collecting and disseminating information on national legislation and modern legal developments, including case law, in the field of the law of international trade;

(f) Establishing and maintaining a close collaboration with the United Nations Conference on Trade and Development;

(g) Maintaining liaison with other United Nations organs and specialized agencies concerned with international trade;

(h) Taking any other action it may deem useful to fulfil its functions.

9. The Commission shall bear in mind the interests of all peoples, and particularly those of the developing countries, in the extensive development of international trade.

10. The Commission shall submit an annual report, including its recommendations, to the General Assembly, and the report shall be submitted simultaneously to the United Nations Conference on Trade and Development for comments. Any such comments or recommendations which the Conference or the Trade and Development Board may wish to make, including suggestions on topics for inclusion in the work of the Commission, shall be transmitted to the General Assembly in accordance with the

relevant provisions of Assembly resolution 1995 (XIX) of 30 December 1964. Any other recommendations relevant to the work of the Commission which the Conference or the Board may wish to make shall be similarly transmitted to the General Assembly.

11. The Commission may consult with or request the services of any international or national organization, scientific institution and individual expert, on any subject entrusted to it, if it considers such consultation or services might assist it in the performance of its functions.

12. The Commission may establish appropriate working relationships with inter-governmental organizations and international non-governmental organizations concerned with the progressive harmonization and unification of the law of international trade.

### III

1. *Requests* the Secretary-General, pending the election of the Commission, to carry out the preparatory work necessary for the organization of the work of the Commission and, in particular:

(a) To invite Member States to submit in writing before 1 July 1967, taking into account in particular the report of the Secretary-General,<sup>c</sup> comments on a programme of work to be undertaken by the Commission in discharging its functions under paragraph 8 of section II above;

(b) To request similar comments from the organs and organizations referred to in paragraph 8 (f) and (g) and in paragraph 12 of section II above.

2. Decides to include an item entitled "Election of the members of the United Nations Commission on International Trade Law" in the provisional agenda of its twenty-second session.

*1497th plenary meeting,*

*17 December 1966.*

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<sup>c</sup>*Official Records of the General Assembly, Twenty-first Session, Annexes, agenda item 88, documents A/6396 and Add.1 and 2.*

## Annex II

### UNCITRAL member States<sup>a</sup>

Algeria*	1983-1989; 1995-2001; 2004-2010
Argentina*	1968-1980; 1986-2004; <sup>b</sup> 2004-2007 <sup>c</sup>
Australia*	1968-1989; 1995-2001; 2004-2010
Austria*	1971-1989; 1992-1997; 1998-2010
Barbados	1974-1980
Belarus*	2004-2010
Belgium*	1968-1980; 2004-2007 <sup>c</sup>
Benin*	2001-2007
Botswana	1995-2001
Brazil	1968-1989; 1995-2007
Bulgaria	1974-1980; 1989-2001
Burkina Faso	1998-2004
Burundi	1977-1983
Cameroon*	1989-2007
Canada*	1989-1995; 2001-2007
Central African Republic	1983-1989
Chile*	1968-1983; 1986-1998; 2004-2007 <sup>c</sup>

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\*Denotes membership of UNCITRAL in 2006.

<sup>a</sup>Pursuant to General Assembly resolution 2205 (XXI) of 17 December 1966, members of the Commission are elected by the General Assembly for a term of six years, the term of half of the members expiring every three years. By its resolution 3108 (XXVIII) of 12 December 1973, the Assembly increased the membership of the Commission from 29 to 36 States. The term of those members elected at the forty-ninth session of the General Assembly became effective on the opening day of the twenty-ninth regular annual session of the Commission, in 1996, and expired on the day preceding the opening of the thirty-fourth regular annual session, in 2001. The term of those members elected at the fifty-second session of the Assembly became effective on the opening day of the thirty-first regular annual session of the Commission, in 1998, and expired on the day preceding the opening of the thirty-sixth regular annual session, in 2004. By its resolution 57/20 of 19 November 2002, the Assembly further increased the membership of the Commission from 36 States to 60 States. Members were elected at the fifty-eighth session of the General Assembly, in 2003, and their term became effective on the opening day of the thirty-seventh regular annual session of the Commission, in 2004. In order to maintain the system of electing half of the membership every three years, of those 24 additional members, 13 have a three-year term expiring on the day preceding the opening of the fortieth regular annual session, in 2007, and 11 have a six-year term expiring on the day preceding the opening of the forty-third regular annual session, in 2010, with the result that of the 60 members of the Commission, the membership of 30 States expires in 2007 and the remaining 30 States expires in 2010.

<sup>b</sup>Between 1998 and 2004, alternating annually with Uruguay starting in 1998.

<sup>c</sup>Members elected at the fifty-eighth session of the General Assembly, in 2003, with a three-year term expiring on the day preceding the opening of the fortieth regular annual session, in 2007.

China*	1983-2007
Colombia*	1968-1971; 1977-1983; 1998-2010
Congo	1968-1974
Costa Rica	1989-2001
Cuba	1980-1992
Cyprus	1974-1992
Croatia*	2004-2007 <sup>c</sup>
Czech Republic*	1968-1971; 1974-2010 <sup>d</sup>
Denmark	1989-2001
Ecuador*	1992-1998; 2004-2010
Egypt	1974-2001
Fiji*	1998-2010
Finland	1977-1983; 1995-2001
France*	1968-2007
Gabon*	1974-1980; 2004-2010
German Democratic Republic	1977-1989 <sup>b</sup>
Germany (Federal Republic of)*	1974-1986; 1989-2007 <sup>e</sup>
Ghana	1968-1983
Greece	1974-1980
Guatemala*	1980-1986; 2004-2010
Guyana	1971-1977
Honduras	1998-2004
Hungary	1968-2004
India*	1968-2010
Indonesia	1977-1983
Iran (Islamic Republic of)*	1968-1974; 1986-2010 <sup>f</sup>
Iraq	1980-1992
Israel*	2004-2010
Italy*	1968-1971; 1980-2010
Japan*	1968-2007
Jordan*	2004-2007 <sup>c</sup>
Kenya*	1968-2010
Lebanon*	2004-2010
Lesotho	1986-1992

<sup>d</sup>By the twenty-sixth session of the Commission (1993), the Czech and Slovak Federal Republic had been dissolved to become, respectively, the Czech Republic and the Slovak Republic.

<sup>e</sup>By the twenty-third session of the Commission (1990), the two German States had united to form one sovereign State, Germany.

<sup>f</sup>By the nineteenth session of the Commission (1986), Iran had changed its name to the Islamic Republic of Iran.



Libyan Arab Jamahiriya	1986-1992
Lithuania*	1998-2007 <sup>c</sup>
Madagascar*	2004-2010
Mexico*	1968-1980; 1983-2007
Mongolia*	2004-2010
Morocco*	1989-2007
Netherlands	1986-1992
Nepal	1974-1977
Nigeria*	1968-2010
Norway	1968-1977
Pakistan*	2004-2010
Paraguay*	1998-2010
Peru	1980-1986
Philippines	1974-1986
Poland*	1971-1977; 1992-1998; 2004-2010
Qatar*	2004-2007 <sup>c</sup>
Republic of Korea*	2004-2007 <sup>c</sup>
Romania	1968-1974; 1998-2004
Russian Federation*	1968-2007 <sup>g</sup>
Rwanda*	2004-2007
Saudi Arabia	1992-1998
Serbia and Montenegro*	2004-2010 <sup>h</sup>
Senegal	1980-1986
Sierra Leone*	1974-1992; 2004-2007
Singapore*	1971-2007
Somalia	1974-1977
South Africa*	2004-2007 <sup>c</sup>
Spain*	1968-1974; 1980-2010
Sri Lanka*	2004-2007 <sup>c</sup>
Sudan	1992-2004
Sweden*	1983-1989; 2001-2007
Switzerland*	2004-2010
Syrian Arab Republic	1968-1980 <sup>i</sup>
Thailand*	1968-1971; 1992-2010

<sup>g</sup>By the twenty-fifth session of the Commission (1992), the Russian Federation continued the membership of the Union of Soviet Socialist Republics.

<sup>h</sup>Effective 3 June 2006, the membership of Serbia and Montenegro in the United Nations was continued by Serbia.

<sup>i</sup>By the seventh session of the Commission (1974), Syria had changed its name to the Syrian Arab Republic.

The former Yugoslav Republic of Macedonia*	2001-2007
Trinidad and Tobago	1980-1986
Togo	1989-1995
Tunisia*	1968-1974; 2004-2007 <sup>c</sup>
Turkey*	2004-2007 <sup>c</sup>
Uganda*	1980-1986; 1992-2010
United Arab Emirates	1968-1977
United Kingdom of Great Britain and Northern Ireland*	1968-2007
United Republic of Tanzania	1968-1989; 1992-1998
United States of America*	1968-2010
Uruguay*	1986-2004, <sup>j</sup> 2004-2007 <sup>c</sup>
Venezuela (Bolivarian Republic of)*	2004-2010
Yugoslavia	1980-1992 <sup>k</sup>
Zaire	1974-1980
Zimbabwe*	2004-2010

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<sup>j</sup>Between 1998 and 2004, alternating annually with Argentina starting in 1999.

<sup>k</sup>By the twenty-fifth session of the Commission (1992), the Socialist Federal Republic of Yugoslavia had been dissolved. The Republic of Bosnia and Herzegovina, the Republic of Croatia and the Republic of Slovenia were admitted as members of the United Nations on 22 May 1992. The Federal Republic of Yugoslavia was admitted as a member of the United Nations on 1 November 2000.

# Annex III

## Chairpersons of UNCITRAL

<i>Number of session (Year)</i>	<i>Name (State)</i>
First (1968)	Emmanual Kodjoe Dadzie (Ghana)
Second (1969)	Lászlo Réczei (Hungary)
Third (1970)	Albert Lilar (Belgium)
Fourth (1971)	Nagendra Singh (India)
Fifth (1972)	Jorge Barrera-Graf (Mexico)
Sixth (1973)	Mohsen Chafik (Egypt)
Seventh (1974)	Jerzy Jakubowski (Poland)
Eighth (1975)	Roland Loewe (Austria)
Ninth (1976)	Warren L. H. Khoo (Singapore)
Tenth (1977)	Nehemias Da Silva Gueiros (Brazil)
Eleventh (1978)	Samuel K. Date-Bah (Ghana)
Twelfth (1979)	Ludvik Kopac (Czechoslovakia)
Thirteenth (1980)	Rolf Herber (Federal Republic of Germany)
Fourteenth (1981)	Warren L. H. Khoo (Singapore)
Fifteenth (1982)	Rafael Eyzaguirre (Chile)
Sixteenth (1983)	Mohsen Chafik (Egypt)
Seventeenth (1984)	Iván Szász (Hungary)
Eighteenth (1985)	Roland Loewe (Austria)
Nineteenth (1986)	P. K. Kartha (India)
Twentieth (1987)	Ana Isabel Piaggi de Vanossi (Argentina)
Twenty-first (1988)	Henry M. Joko-Smart (Sierra Leone)
Twenty-second (1989)	Jaromir Ruzicka (Czechoslovakia)
Twenty-third (1990)	Michael Joachim Bonell (Italy)
Twenty-fourth (1991)	Kazuaki Sono (Japan)
Twenty-fifth (1992)	José Maria Abascal Zamora (Mexico)
Twenty-sixth (1993)	Sani L. Mohammed (Nigeria)
Twenty-seventh (1994)	David Morán Bovio (Spain)
Twenty-eighth (1995)	Goh Phai Cheng (Singapore)
Twenty-ninth (1996)	Ana Isabel Piaggi de Vanossi (Argentina)
Thirtieth (1997)	Joseph Fred Bossa (Uganda)
Thirty-first (1998)	Dumitru Mazilu (Romania)
Thirty-second (1999)	Reinhard G. Renger (Germany)
Thirty-third (2000)	Jeffrey Chan Wah Tek (Singapore)
Thirty-fourth (2001)	Alejandro Ogarrio Reyes-España (Mexico)

*Number of session (Year)*

Thirty-fifth (2002)

Thirty-sixth (2003)

Thirty-seventh (2004)

Thirty-eighth (2005)

Thirty-ninth (2006)

*Name (State)*

Henry M. Joko-Smart (Sierra Leone)

Tore Wiwen-Nilsson (Sweden)

Wisit Wisitsora-At (Thailand)

Jorge Pinzón Sánchez (Colombia)

Stephen Karangizi (Uganda)

# *Annex IV*

## **UNCITRAL working groups and chairpersons**

### **Working Group on the International Sale of Goods**

First session (1970)-Fifth session (1974)	Jorge Barrera-Graf (Mexico)
Sixth session (1975)	Gyula Eörsi (Hungary)
Seventh session (1976)-Ninth session (1977)	Jorge Barrera-Graf (Mexico)

### **Working Group on Time-limits and Limitation (Prescription)**

First session (1969)-Third session (1971)	Stein Rognlien (Norway)
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### **Working Group I (Privately financed infrastructure projects) (renamed 2001)**

Fourth session (2001)-Fifth session (2002)	Tore Wiwen-Nilsson (Sweden)
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### **Working Group I (Procurement)**

Sixth session (2004)-Ninth session (2006)	Stephen Karangizi (Uganda)
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### **Working Group on International Contract Practices**

First session (1979)	Jorge Barrera-Graf (Mexico)
Second session (1981)	Ihor Tarko (Austria)
Third session (1982)-Seventh session (1984)	Iván Szász (Hungary)
Eighth session (1984)-Eleventh session (1988)	Michael Joachim Bonell (Italy)
Twelfth session (1988)	Arthur S. Hartkamp (Netherlands)
Thirteenth session (1990)	Rafael Illescas Ortiz (Spain)
Fourteenth session (1990)- Twenty-third session (1995)	Jacques Gauthier (Canada)
Twenty-fourth session (1995)- Thirty-first session (1999)	David Morán Bovio (Spain)

### **Working Group on Arbitration (renamed following thirty-first session)**

Thirty-second session(2000)- Thirty-fourth session (2001)	José María Abascal Zamora (Mexico)
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### **Working Group II (Arbitration) (renamed 2001)**

Thirty-fifth session (2001)- Forty-fourth session (2006)	José María Abascal Zamora (Mexico)
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### **Working Group on International Legislation on Shipping**

First session (1971)	Nagendra Singh (India)
Second session (1971)	Rafael Lasalvia (Chile)

Third session (1972)	Nagendra Singh (India)
Fourth session (1972)-Fifth session (1973)	José Domingo Ray (Argentina)
Sixth session (1974)-Eighth session (1975)	Mohsen Chafik (Egypt)

**Working Group III (Transport Law)** (renamed 2001)

Ninth session (2002)- Seventeenth session (2006)	Rafael Illescas Ortiz (Spain)
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**Working Group on International Negotiable Instruments**

First session (1973)	Mohsen Chafik (Egypt)
Second session (1974)-Eleventh session (1981)	René Roblot (France)
Twelfth session (1982)	Joë Galby (France)
Thirteenth session (1985)- Fourteenth session (1985)	Willem Vis (elected in his personal capacity)
Fifteenth session (1987)	Willem Vis (Netherlands)

**Working Group on International Payments** (renamed after the fifteenth session)

Sixteenth session (1987)- Twenty-second session (1990)	José María Abascal Zamora (Mexico)
Twenty-third session (1991)	Michael Joachim Bonell (Italy)
Twenty-fourth session (1992)	José María Abascal Zamora (Mexico)

**Working Group on Electronic Data Interchange** (renamed after the twenty-fourth session)

Twenty-fifth session (1993)- Thirtieth session (1996)	José María Abascal Zamora (Mexico)
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**Working Group on Electronic Commerce** (renamed after the thirtieth session)

Thirty-first session (1997)- Thirty-third session (1998)	Mads Bryde Andersen (elected in his personal capacity)
Thirty-fourth session (1999)- Thirty-eighth session (1999)	Jacques Gauthier (elected in his personal capacity)

**Working Group IV (Electronic Commerce)** (renamed 2001)

Thirty-ninth session (2002)- Forty-fourth session (2004)	Jeffrey Chan Wah Tek (Singapore)
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**Working Group on the New International Economic Order**

First session (1980)	Kazuaki Sono (Japan)
Second session (1981)-Fourth session (1983)	Leif Sevón (Finland)
Fifth session (1984)-Ninth session (1987)	Leif Sevón (elected in his personal capacity)
Tenth session (1988)-Thirteenth session (1991)	Robert Hunja (Kenya)

Fourteenth session (1991)	Leonel Perezniето (Mexico)
Fifteenth session (1992)	Robert Hunja (Kenya)
Sixteenth session (1993)- Seventeenth session (1994)	David Morán Bovio (Spain)

**Working Group on Insolvency** (renamed after the seventeenth session)

Eighteenth session (1995)- Twenty-first session (1997)	Kathryn Sabo (elected in her personal capacity)
Twenty-second session (1999)	Wisit Wisitsora-At (Thailand)
*Twenty-fourth session (2001)	Wisit Wisitsora-At (Thailand)

**Working Group V (Insolvency Law)** (renamed 2001)

Twenty-fifth session (2001)- Thirtieth session (2004)	Wisit Wisitsora-At (Thailand)
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**Working Group VI (Security Interests)**

First session (2002)-Tenth session (2006)	Kathryn Sabo (Canada)
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\*The twenty-third session of the Working Group on Insolvency Law was convened as an additional session of the Working Group on International Contract Practices in December 2000 (chaired by David Morán Bovio of Spain), because of the need for an additional session to finalize the draft text of the United Nations Convention on the Assignment of Receivables in International Trade.





# Annex V

## Secretaries of UNCITRAL and further information

### Secretaries of UNCITRAL

Paolo Contini	1968-1969
John Honnold	1969-1974
Willem Vis	1974-1980
Kazuaki Sono	1980-1985
Eric Bergsten	1985-1991
Gerold Herrmann	1991-2001
Jernej Sekolec	2001-

### Further information

A. Further information about UNCITRAL may be obtained from:

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United Nations Office at Vienna	E-mail:	uncitral@uncitral.org
P.O. Box 500	Internet:	<a href="http://www.uncitral.org">http://www.uncitral.org</a>
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<i>Volume</i>	<i>Sales number</i>
<i>UNCITRAL Yearbook</i> , vol. I: 1968-1970	E.71.V.1
<i>UNCITRAL Yearbook</i> , vol. II: 1971	E.72.V.4
<i>UNCITRAL Yearbook</i> , vol. III: 1972	E.73.V.6
<i>UNCITRAL Yearbook</i> , vol. IV: 1973	E.74.V.3
<i>UNCITRAL Yearbook</i> , vol. V: 1974	E.75.V.2
<i>UNCITRAL Yearbook</i> , vol. VI: 1975	E.76.V.5
<i>UNCITRAL Yearbook</i> , vol. VII: 1976	E.77.V.1
<i>UNCITRAL Yearbook</i> , vol. VIII: 1977	E.78.V.7
<i>UNCITRAL Yearbook</i> , vol. IX: 1978	E.80.V.8
<i>UNCITRAL Yearbook</i> , vol. X: 1979	E.81.V.2
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<i>UNCITRAL Yearbook</i> , vol. XII: 1981	E.82.V.6
<i>UNCITRAL Yearbook</i> , vol. XIII: 1982	E.84.V.5
<i>UNCITRAL Yearbook</i> , vol. XIV: 1983	E.85.V.3
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<i>UNCITRAL Yearbook</i> , vol. XXI: 1990	E.91.V.6
<i>UNCITRAL Yearbook</i> , vol. XXII: 1991	E.93.V.2
<i>UNCITRAL Yearbook</i> , vol. XXIII: 1992	E.94.V.7
<i>UNCITRAL Yearbook</i> , vol. XXIV: 1993	E.94.V.16
<i>UNCITRAL Yearbook</i> , vol. XXV: 1994	E.95.V.20
<i>UNCITRAL Yearbook</i> , vol. XXVI: 1995	E.96.V.8
<i>UNCITRAL Yearbook</i> , vol. XXVII: 1996	E.98.V.7
<i>UNCITRAL Yearbook</i> , vol. XXVIII: 1997	E.99.V.6
<i>UNCITRAL Yearbook</i> , vol. XXIX: 1998	E.99.V.12
<i>UNCITRAL Yearbook</i> , vol. XXX: 1999	E.00.V.9
<i>UNCITRAL Yearbook</i> , vol. XXXI: 2000	E.02.V.3
<i>UNCITRAL Yearbook</i> , vol. XXXII: 2001	E.04.V.4
<i>UNCITRAL Yearbook</i> , vol. XXXIII: 2002	E.05.V.13

# Annex VI

## UNCITRAL texts<sup>a</sup>

### **Convention on the Limitation Period in the International Sale of Goods, 1974 (New York)**

United Nations, *Treaty Series*, vol. 1511, No. 26119

*Official Records of the United Nations Conference on Prescription (Limitation) in the International Sale of Goods, New York, 20 May-14 June 1974* (United Nations publication, Sales No. E.74.V.8), part I

*UNCITRAL Yearbook*, vol. V: 1974, part three, annex I, sect. B

### **As amended by the Protocol of 11 April 1980**

United Nations, *Treaty Series*, vol. 1511, No. 26121

*UNCITRAL Yearbook*, vol. XI: 1980, part three, annex I, sect. C

### **UNCITRAL Arbitration Rules (1976)**

*Official Records of the General Assembly, Thirty-first Session, Supplement No. 17 (A/31/17)*, para. 57

*UNCITRAL Yearbook*, vol. VII: 1976, part one, chap. II, sect. A

### **United Nations Convention on the Carriage of Goods by Sea, 1978 (Hamburg)**

United Nations, *Treaty Series*, vol. 1695, No. 29215

United Nations publication, Sales No. E.95.V.14

*UNCITRAL Yearbook*, vol. IX: 1978, part three, annex I, sect. B

### **United Nations Convention on Contracts for the International Sale of Goods, 1980 (Vienna)**

United Nations, *Treaty Series*, vol. 1489, No. 25567

United Nations publication, Sales No. E.95.V.12

*UNCITRAL Yearbook*, vol. XI: 1980, part three, annex I, sect. B

### **UNCITRAL Conciliation Rules**

United Nations publication, Sales No. E.81.V.6

*Official Records of the General Assembly, Thirty-fifth Session, Supplement No. 17 (A/35/17)*, chap. V, sect. A, para. 106

*UNCITRAL Yearbook*, vol. XI: 1980, part three, annex II

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<sup>a</sup>Available on the UNCITRAL website (<http://www.uncitral.org>).

**Recommendations to assist arbitral tribunals and other interested bodies with regard to arbitrations under the UNCITRAL Arbitration Rules**

*Official Records of the General Assembly, Thirty-seventh Session, Supplement No. 17 (A/37/17), annex I*

*UNCITRAL Yearbook*, vol. XIII: 1982, part three, annex II

**Provisions on a universal unit of account and on adjustment of the limit of liability in international transport conventions**

General Assembly resolution 37/107

*UNCITRAL Yearbook*, vol. XIII: 1982, part one, sect. D, and part three, annex I

**Uniform Rules on Contract Clauses for an Agreed Sum Due upon Failure of Performance**

*Official Records of the General Assembly, Thirty-eighth Session, Supplement No. 17 (A/38/17), annex I*

*UNCITRAL Yearbook*, vol. XIV: 1983, part three, annex II, sect. A

**Recommendations to Governments and international organizations concerning the legal value of computer records**

*Official Records of the General Assembly, Fortieth Session, Supplement No. 17 (A/40/17), para. 360*

*UNCITRAL Yearbook*, vol. XVI: 1985, part one, sect. A

**UNCITRAL Model Law on International Commercial Arbitration (1985)**

United Nations publication, Sales No. E.95.V.18

*Official Records of the General Assembly, Fortieth Session, Supplement No. 17 (A/40/17), annex I*

*UNCITRAL Yearbook*, vol. XVI: 1985, part three, annex I

**UNCITRAL *Legal Guide on Electronic Funds Transfers***

United Nations publication, Sales No. E.87.V.9 (A/CN.9/SER.B/1)

**UNCITRAL *Legal Guide on Drawing Up International Contracts for the Construction of Industrial Works***

United Nations publication, Sales No. E.87.V.10 (A/CN.9/SER.B/2)

**United Nations Convention on International Bills of Exchange and International Promissory Notes (1988)**

General Assembly resolution 43/165, annex

United Nations publication, Sales No. E.95.V.16

*UNCITRAL Yearbook*, vol. XIX: 1988, part three, annex I

**United Nations Convention on the Liability of Operators of Transport Terminals in International Trade (1991)**

United Nations publication, Sales No. E.95.V.15

*Official Records of the United Nations Conference on the Liability of Operators of Transport Terminals in International Trade, Vienna, 2-19 April 1991* (United Nations publication, Sales No. E.93.XI.3), part I, document A/CONF.152/13, annex

*UNCITRAL Yearbook*, vol. XXIII: 1992, part three, annex I

**UNCITRAL Model Law on International Credit Transfers (1992)**

United Nations publication, Sales No. E.99.V.11

*Official Records of the General Assembly, Forty-seventh Session, Supplement No. 17 (A/47/17)*, annex I

*UNCITRAL Yearbook*, vol. XXIII: 1992, part three, annex II

**UNCITRAL Legal Guide on International Countertrade Transactions (1992)**

United Nations publication, Sales No. E. 93.V.7 (A/CN.9/SER.B/3)

**UNCITRAL Model Law on Procurement of Goods, Construction and Services with Guide to Enactment (1994)**

United Nations publication, Sales No. E.98.V.13

*Official Records of the General Assembly, Forty-ninth Session, Supplement No. 17 and corrigendum (A/49/17 and Corr. 1)*, annex I (model law only)

*UNCITRAL Yearbook*, vol. XXV: 1994, part three, annexes I and II

**United Nations Convention on Independent Guarantees and Stand-by Letters of Credit, 1995**

General Assembly resolution 50/48, annex

United Nations, *Treaty Series*, vol. 2169, No. 38030

United Nations publication, Sales No. E.97.V.12

**UNCITRAL Model Law on Electronic Commerce with Guide to Enactment (1996)**

United Nations publication, Sales No. E.99.V.4<sup>b</sup>

*Official Records of the General Assembly, Fifty-first Session, Supplement No. 17 (A/51/17)*, annex I (model law only)

*UNCITRAL Yearbook*, vol. XXVII: 1996, part three, annex I

**UNCITRAL Notes on Organizing Arbitral Proceedings**

*UNCITRAL Yearbook*, vol. XXVII: 1996, part three, annex II

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<sup>b</sup>The United Nations publication includes an additional article 5 bis, adopted in 1998.

**UNCITRAL Model Law on Cross-Border Insolvency with Guide to Enactment (1997)**

United Nations publication, Sales No. E.99.V.3

*Official Records of the General Assembly, Fifty-second Session, Supplement No. 17 (A/52/17)*, annex I (model law only)

*UNCITRAL Yearbook*, vol. XXVIII: 1997, part three, annex I

***UNCITRAL Legislative Guide on Privately Financed Infrastructure Projects (2000)***

United Nations publication, Sales No. E.01.V.4 (A/CN.9/SER.B/4)

**UNCITRAL Model Law on Electronic Signatures with Guide to Enactment (2001)**

General Assembly resolution 56/80, annex (model law only)

United Nations publication, Sales No. E.02.V.8

*Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 17 and corrigendum (A/56/17 and Corr. 3)*, annex II (model law only)

*UNCITRAL Yearbook*, vol. XXXII: 2001, part three, annex II (model law only)

**United Nations Convention on the Assignment of Receivables in International Trade (2001)**

General Assembly resolution 56/81, annex

United Nations publication, Sales No. E.04.V.14

**UNCITRAL Model Law on International Commercial Conciliation with Guide to Enactment (2002)**

General Assembly resolution 57/18, annex (model law only)

United Nations publication, Sales No. E.05.V.4

*Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 17 (A/57/17)*, annex I (model law only)

*UNCITRAL Yearbook*, vol. XXXIII: 2002, part three, annexes I and II

**UNCITRAL Model Legislative Provisions on Privately Financed Infrastructure Projects (2003)**

United Nations publication, Sales No. E.04.V.11

*Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 17 (A/58/17)*, annex I

*UNCITRAL Yearbook*, vol. XXXIV: 2003 (forthcoming)

***UNCITRAL Legislative Guide on Insolvency Law (2004)***

United Nations publication, Sales No. E.05.V.10

**United Nations Convention on the Use of Electronic Communications in International Contracts (2005)**

General Assembly resolution 60/21, annex

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