Address to the Sixth Committee of the General Assembly
by
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Chairman of the Forty-fourth session of
United Nations Commission on International Trade Law
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I. INTRODUCTION

Mister Chairman, distinguished delegates,

Each year at this time the Chair of UNCITRAL – the United Nations Commission on International Trade Law – presents to this Committee a report of the activities of that body over the past twelve months. Honoured as I am to serve as Chairman, and mindful of that role, that is something I will certainly do today, outlining for you the main actions and achievements of UNCITRAL in the past year. But I wish to begin by drawing your attention to some fundamental, and crucial, issues which are now facing that body and by extension the entirety of the efforts of the United Nations in fostering economic development through better commercial relations. We are living through a time of recession, a time of contraction in international commerce. The International Monetary Fund's review of the global economy, released in late September, shows the recovery has been derailed and risks of a new recession are increasing. World trade is now falling for the first time since the global financial crisis, with the sharpest drop occurring not in the troubled North Atlantic economies but in the emerging nations, particularly in Asia. Trade figures show a 2.2 per cent fall in the volume of imports and exports around the world in the June quarter. Emerging economies' exports were 3 per cent lower; imports by the emerging nations were 1.9 per cent lower. [Source: http://www.theaustralian.com.au/business/opinion/asia-fores-worst-in-world-trade-downturn/story-e6fg99qo-1226140364525]

In many parts of the world, investment in industry and commerce is stagnant or shrinking, and unemployment is rising. It goes without saying that poor populations in developing countries are often the most vulnerable to the devastating effects of economic contraction. And it is the economies of developing countries, and countries in transition, that have the greatest need for, and the most to gain from, international legal standards that encourage and promote the free flow of trade and commerce. Developing those standards,
and helping States to put them into practice, is at the very core of what UNCITRAL does. For forty-five years it has been actively engaged in the business of promoting international trade and commerce through the removal of legal barriers which act as impediments to private sector trade and investment. Of no less significance is the contribution that UNCITRAL’s efforts make to building and strengthening the rule of law in developing countries, where legal certainty in commercial dealings is so essential to securing the confidence of trading partners and investors.

As a representative of a small State in the African region I have had the great privilege of witnessing at first hand the importance and effectiveness of UNCITRAL’s work. My country is currently involved in the development of a world standard platform for international commercial and investment arbitration in Africa. The aim of this project is to contribute to making international arbitration gradually become truly integrated as a form of dispute resolution into the legal cultures of our region, as opposed to an imported and foreign concept perceived to be governed and run by and for others. This will in turn improve the rule of law in our region, and foster trade and development as potential trade partners and investors in our region are able to rely on greater legal stability and safety for their transactions.

This project would not have been possible without the constant help and supervision of UNCITRAL, both through its Secretariat and through its Working Group on Arbitration (Working Group II), which I currently have the great privilege to chair. It is just one of the many projects throughout the world in this field which would simply not get off the ground without UNCITRAL.

UNCITRAL does this work with great efficiency, and a remarkably small pool of resources. A small fraction of the overall UN budget, its annual budget is a mere 3 million dollars. Its global mandate is carried out by a small Secretariat, based in Vienna, consisting of some fourteen lawyers and a half dozen or so support staff. As your Committee has, quite rightly, heard in past years – and will hear from me again this year – the quality and quantity of the Secretariat’s work is consistently praised by the Commission, its member States and observers, partners in other organizations, and by the many governments which it serves and assists. I was very interested to hear the participants in a panel discussion held by the Commission on the role of UNCITRAL in the promotion of the rule of law in conflict and
post-conflict societies last July refer to UNCITRAL as a “global brand” synonymous with excellence and credibility in the field of trade law. I would respectfully commend that analogy to your distinguished Committee. UNCITRAL can indeed be seen as a ‘brand’ owned by my country, by your country, and by the UN system as a whole. It is a well-established and desirable brand, and one which carries with it great legitimacy. The investment required to maintain and develop that brand are – as we have just seen – minute in the context of the United Nations as a whole. By contrast, the returns that the United Nations and that our countries have made on that small investment are very high indeed. We should not allow the value of this brand to be diluted, especially at a time like the present one, where its work can substantially assist economic recovery. It is fair to say that at no time in recent history has the advancement of the work of this small but effective body been more important.

And yet this year - on top of cuts to its already very limited budget - UNCITRAL is faced with a pressing political and financial problem: the proposal to cancel the long-established alternating schedule of its plenary and working group meetings between Vienna and New York, requiring all meetings to be held in Vienna. If implemented, this would effectively downgrade the institution, removing the visibility, access to expertise and (most importantly) participation of developing country representatives that come with the holding of recurring meetings in New York. It would effectively downgrade UNCITRAL from a truly global institution fostering trade and development to a more regional one. In terms of representation, many African countries, in particular, have representation only in New York and cannot attend sessions in Vienna. Such a change would also put at risk the achievement of important goals set by the Commission: better integration of UNCITRAL resources in other United Nations activities, such as the joint rule of law programs, development programs and post-conflict reconstruction. Implementing those decisions requires close cooperation and coordination between the UNCITRAL secretariat and the relevant parts of the United Nations system located in New York.

The proposed elimination of meetings in New York is aimed at saving approximately $137,000 per year, a substantial proportion of an overall proposed budget reduction of around 5.2% for UNCITRAL and its secretariat. As approximately 84% of UNCITRAL’s total budget is allocated for the already few staff posts, those 5.2% would represent a 33% reduction of the Secretariat’s non-post budget.
At its forty-fourth session this past June-July, the Commission expressed its unanimous support for the continuation of the current pattern of alternate meetings held by UNCITRAL. However, mindful of the need to effect savings in the current financial crisis, the Commission proposed a solution which would allow the pattern of alternating meetings to continue, while effecting a savings essentially equivalent to cancelling it. The solution would consist of reducing its entitlement to conference services support by one week per year, from its current level of fifteen one-week meetings to fourteen. Although potentially disruptive to its work programme, the Commission was of the view that it would constitute an acceptable alternative to abolishing its alternating pattern of meetings. Mister Chairman, we will be asking today that your distinguished Committee endorse this proposal and recommend this very practical solution to the General Assembly.

I will return to these matters in more detail in my concluding remarks. I now turn to an overview of the work carried out by UNCITRAL at its forty-fourth session, held in Vienna between 21 June and 8 July 2011.

The first week of our two-week session was devoted to finalising and adopting the UNCITRAL Model Law on Public Procurement and the Judicial Material on the UNCITRAL Model Law on Cross-border Insolvency. During the second week, the Commission considered developments in other legislative areas, progress made in the implementation of technical assistance, and a range of administrative matters regarding UNCITRAL.

II. SUBSTANTIVE TEXTS ADOPTED

Finalization and adoption of the UNCITRAL Model Law on Public Procurement

Firstly, public procurement. In 2004, the Commission entrusted its Working Group on Procurement (Working Group I) with revising the 1994 UNCITRAL Model Law on Public Procurement, to reflect experience gained in its use and practices that were not current in 1994. The underlying principles of the original 1994 Model Law were to be retained. The Model Law on Public Procurement functions as a template for domestic procurement legislation. Its main objective is to enhance efficiency and effectiveness - and to avoid abuse - in national procurement processes. This objective is achieved by promoting participation and competition,
integrity and transparency, as well as an objective, fair and equitable treatment of participants in the procurement process.

The 1994 Model Law has proven to be a very successful text, having been adopted in some thirty States and inspiring many more. It has also been used by multilateral development banks as a tool for procurement reform.

This year, after detailed negotiations, the Commission adopted the final text of the revised Model Law.

The revised Model Law introduces procurement tools and techniques that have emerged in the past fifteen years. These include two notable features, namely the use of information and communications technology in the procurement process; and framework agreements which result in significant efficiency and administrative cost savings.

The revised Model Law is also presented in a more streamlined and user-friendly manner, and reflects a shift in emphasis from a compliance-driven approach to one more focused on the actual outcome of the procurement process.

The UNCITRAL Secretariat and experts in procurement reform will now work together to ensure that the revised Model Law will be as well-known and understood as its 1994 predecessor so that the role and influence of UNCITRAL’s model text in harmonizing the world’s procurement systems will continue to grow. To that end, the Model Law will be accompanied by a Guide to Enactment, which the Commission requested the Secretariat and related experts to continue work on, with a view to finalizing it by July 2012.

Finalization and adoption of the Judicial Material on the UNCITRAL Model Law on Cross-border Insolvency

The other area in which the Commission has adopted a substantive text at its last session is that of cross-border insolvency. UNCITRAL’s legal standard in this area is set out in its Model Law on Cross-Border Insolvency, adopted in 1997. That legal standard, and the legal certainty and stability that it brings, is particularly important at a time when we can unfortunately all expect large scale insolvencies with effects across several jurisdictions. It has so far been adopted in some twenty jurisdictions.

In order to foster the uniform interpretation of the Model Law, the Commission has now adopted a text entitled “The UNCITRAL Model Law on Cross-Border Insolvency: The
Judicial Perspective”. This was prepared by the Secretariat in consultation with judges and insolvency experts, and considered by the Working Group on Insolvency Law (Working Group V). This text will provide information and guidance to judges on cross-border-related insolvency issues and on the application of the Model Law. To be of continuing use and assistance to judges, the Commission decided that the text should be periodically updated by the Secretariat in consultation with judges and other insolvency experts to reflect the latest developments in the jurisprudence interpreting and applying the Model Law.

The Commission also noted the progress made by Working Group V at its last session, in December 2010, where two new topics were considered. They concern the interpretation and application of selected concepts of the UNCITRAL Model Law on Cross-Border Insolvency relating, first, to the concept of “centre of main interests” under the Model Law and, secondly, on the responsibility and liability of directors and officers of an enterprise in insolvency and pre-insolvency cases. These are areas where the Commission agreed that a greater degree of harmonization of national approaches would be beneficial.

Mr Chairman, distinguished delegates,

This concludes my presentation of the parts of the Commission’s legislative work which have been finalised this year. I now turn to the Commission’s ongoing work in this field.

III. OTHER AREAS OF LEGISLATIVE WORK

Arbitration and Conciliation

In the area of arbitration and conciliation, the Commission had entrusted Working Group II with the preparation of a legal standard on transparency in treaty-based investor-State arbitration. This year, the Commission considered the reports of the fifty-third and fifty-fourth sessions of Working Group II. At the outset, the Commission reiterated the importance of ensuring transparency in investor-State arbitration. It was further noted that providing
meaningful opportunities for the public to participate in investment arbitration would generally promote the rule of law, good governance and the right to access information.

The legal standard currently being developed by the Working Group aims at balancing the public interest inherent in treaty-based investor-State arbitration with the disputing parties’ interest in resolving disputes in a fast and efficient manner. In light of the leading role played by UNCITRAL in the field of international arbitration, the work is undertaken in close cooperation with arbitral institutions involved in administering investment arbitration so as to ensure that the standard on transparency, once adopted by UNCITRAL, would be widely applied, beyond those cases administered under the UNCITRAL Arbitration Rules.

The Commission was also informed of various projects undertaken by the UNCITRAL Secretariat in order to assist users of UNCITRAL texts in the field of arbitration. First, recommendations to assist arbitral institutions and other interested bodies with regard to arbitration under the revised 2010 UNCITRAL Arbitration Rules are being prepared. Secondly, a Digest of case law on the UNCITRAL Model Law on Arbitration will soon be completed, which will assist in the interpretation and application of the Model Law. Thirdly, a guide on the New York Convention (the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958) is also being prepared to avoid uncertainty resulting from the imperfect or partial implementation of the Convention and to limit the risk of having State practice deviate from the original spirit of the Convention.

As a final comment to this topic, I would simply note that the Working Group met again last week in Vienna and made progress in its discussion of legal standards on transparency in treaty-based investor-State arbitration. It was an honour for me to chair that session again and I can assure you that the Working Group has made significant progress.

**Online Dispute Resolution**

Mr. Chairman, distinguished delegates,

I now turn to Working Group III. That Working Group has now been seized of a new topic of significant importance in practice, that of online dispute resolution.

The issue of online dispute resolution had been on the agenda of the Commission for some time, since 2000. After much deliberation, the Commission at its forty-third session, in 2010, agreed to entrust a Working Group with work in the field of ODR relating to cross-border
electronic commerce transactions, including B2B (business to business) and B2C (business to consumer) transactions. The Commission, at this session, noted the progress made by the Working Group at its first two sessions, the focus of which was to prepare uniform legal standards, in particular, procedural rules on ODR for cross-border electronic transactions.

An important consideration in that field is that of consumer protection, and that is a subject on which the Commission has specifically requested the Working Group to report to it at its next session.

**Security Interests**

In the field of security interests, the Commission took note of the progress made by Working Group VI at its eighteenth and nineteenth sessions, which focused on the preparation of a guide on the registration of security rights in movable assets. The significance of the work undertaken by the Working Group was emphasized, particularly in view of efforts currently undertaken by several States to establish a general security rights registry. In addition, the significant beneficial impact the operation of such a registry had on the availability and the cost of credit was highlighted. In view of the urgent need for guidance, particularly by developing States, the Commission requested the Working Group to proceed expeditiously and, if possible, to submit its text to the Commission for final approval and adoption at its next session.

In the area of secured transactions, the Commission further requested the Secretariat to proceed with the preparation of a joint set of principles on effective secured transactions regimes in cooperation with the World Bank, based on the recommendations of the UNCITRAL Legislative Guide on Secured Transactions. Furthermore, the Secretariat was urged to cooperate closely with the European Commission with a view to ensuring a coordinated approach to the law applicable to third-party effects of assignments of receivables, taking into account the approach taken in the United Nations Convention on the Assignment of Receivables in International Trade (the “Receivables Convention”) and the Secured Transactions Guide.

**Electronic Commerce**

Mr. Chairman, distinguished delegates,

I am pleased to inform you that, just a few hours ago, the forty-fifth session of the Working Group on Electronic Commerce was convened in Vienna to discuss issues related to electronic transferable records. As you may be aware, UNCITRAL has been a pioneer in developing legal standards on electronic commerce, and texts adopted by UNCITRAL have influenced a great
number of jurisdictions since their adoption. Moreover, with the increased use of electronic communications in international trade, almost all Working Groups have considered related issues when deliberating their respective topics.

The Commission’s decision to mandate Working Group IV to work in the field of electronic transferable records was taken following detailed discussions as to the scope of future work in this area at a Colloquium organised by UNCITRAL this February in New York. That subject was viewed as important for many reasons, including for the implementation of the recently adopted United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea, also known as the Rotterdam Rules.

I also wish to take this opportunity to inform you that the Secretariat receives on a regular basis requests for opinions and expert comments from other organizations involved in the use of electronic means for the facilitation of cross-border trade. This has been the case, for instance, with regard to issues related to electronic single window facilities. The Commission welcomed such ongoing coordination activities, which both highlight and increase its importance as a global brand in the development of uniform legal standards in the field of trade law.

**Microfinance – Possible future work**

Mr Chairman, distinguished delegates,

In a separate development, the Commission re-affirmed the importance of microfinance as a tool for economic empowerment and the alleviation of poverty, and again stressed the need for a regulatory and legal framework aimed at protecting and developing the microfinance sector so as to allow its continuous development. In some States, microfinance represents a significant portion of the national economy, and the development of a legislative framework for this sector is clearly both desirable and necessary.

At this session, the Commission considered the outcomes and recommendations of a Colloquium held in Vienna this January to discuss various aspects of microfinance. The Colloquium highlighted the fact that, despite successful initiatives in some States, there is still no coherent set of global legal and regulatory standards reflecting international best practice in microfinance. Many States are struggling to find an appropriate regulatory framework to promote financial inclusion through microfinance institutions. UNCITRAL was seen as capable of making a substantial contribution in this field, including through the use of existing UNCITRAL texts.
To assist it in better defining the areas where work was needed, the Commission requested the Secretariat to circulate to all States a short questionnaire regarding their experience with the establishment of a legislative and regulatory framework for microfinance, including any obstacles that they may have encountered. The Commission agreed to include microfinance as an item for future work of UNCITRAL and will further consider the matter, taking into account the responses from States, at its next session.

**Status and promotion of UNCITRAL texts**

Mr. Chairman, distinguished delegates,

The adoption of an UNCITRAL text by States signifies its usefulness, and may be used as an indicator to determine the success of UNCITRAL’s efforts to harmonize international trade law, support economic integration, development and the rule of law.

At this session, the Commission took note of twenty-seven (27) actions by Member States, including signature or ratification of a treaty and adoption of relevant model laws. True to the Commission’s universal approach, these actions took place across the globe, in Africa, Asia and the Pacific, Eastern and Western Europe, and Latin and North America. UNCITRAL’s model laws in the fields of dispute resolution and electronic commerce have enjoyed particular success since the last session, accounting for twenty-three (23) of the twenty-seven (27) actions.

Yet, I would like to point out that the impact of UNCITRAL texts goes well beyond their formal adoption. For example, substantive provisions of the United Nations Convention on the Use of Electronic Communications in International Contracts have already been adopted in the laws of several jurisdictions, although these jurisdictions may not have yet acceded to that Convention. Similarly, UNCITRAL’s legislative and practice guides have influenced legislation at the national level; and our contractual texts, in particular the UNCITRAL Arbitration Rules, continue to serve as key tools for private parties and States in their contractual relationships.

**IV. TECHNICAL ASSISTANCE/COORDINATION/RULE OF LAW**

Mr Chairman, distinguished delegates,
I now turn to the areas of technical assistance, coordination and the Rule of Law.

**Technical assistance to law reform**

The importance of providing effective technical assistance to law reform, especially to developing countries, has been repeatedly affirmed by the Commission. Current financial constraints have of course had an impact on UNCITRAL’s technical assistance activities, and have resulted in the development of a different approach which more emphasis on capacity-building measures designed to foster foreign investment and cross-border trade.

The Mauritian project which I referred to at the beginning of this report is an illustration of that approach.

The Commission took note of the strategic framework for technical assistance put forward by the Secretariat and endorsed its priority lines of action. These include: first, stressing a regional and sub-regional approach in order to complement on-going regional economic integration initiatives; secondly, promoting the universal adoption of those texts already enjoying wide acceptance, namely (i) the New York Convention, now with 146 States parties and (ii) the United Nations Convention on Contracts for the International Sale of Goods (more often referred to as the CISG) which has 77 States parties; and thirdly, making special efforts to promote recently adopted texts, with a view to fostering wider adoption at an early stage.

This strategic framework aims at further improving the allocation of the very limited resources available in the Secretariat, in particular for technical assistance activities. It goes without saying that the benefit of trade law instruments can only be realised by States when those instruments are actually implemented. It is equally obvious that this in turn requires technical assistance – the active marketing, to continue my analogy, of the brand’s products.

Although the UNCITRAL Secretariat is mandated to provide such assistance, the task is enormous and the resources available for it – both human and financial – are negligible.

This, in my humble view, is UNCITRAL’s most significance challenge in the years ahead. It will only be able to meet it with this Committee’s help, and with the help of Member States. The Secretariat has been actively exploring ways to harness extra-budgetary resources to
accomplish this task, seeking partnerships and donors. The early signs are promising, and to these I now turn.

Establishment of UNCITRAL regional centres

At its forty-second session, in 2009, the Commission requested that the Secretariat explore the possibility of establishing a presence in regions or specific countries by, for example, having dedicated project staff in United Nations field offices, to facilitate delivery of technical assistance for the use and adoption of UNCITRAL texts.

The adoption of such a regional approach makes perfect sense both from a budgetary and from a policy point of view. In terms of budget, regional offices will be funded by the States in the presence is established, thus reducing the pressure on the Secretariat’s limited budget. In terms of policy, this will increase the visibility of UNCITRAL even further, and increase its legitimacy as the developer and promoter of truly international legal standards.

In compliance with the Commission’s request, the Secretariat has invited States to express their interest in establishing UNCITRAL regional centres in different parts of the world, particularly in Africa, Asia and the Pacific, Eastern Europe and Latin America and the Caribbean. The level of interest this has instantly generated is yet more proof of the value and reputation of the UNCITRAL brand.

[Argentina,] the Dominican Republic, El Salvador, Kenya, Malaysia, the Republic of Korea and Singapore have all formally expressed interest in hosting an UNCITRAL regional centre. These offers are at the early stages of development, save for that of the Government of the Republic of Korea, which included an annual financial contribution of 500,000 USD for the establishment and operation of the “UNCITRAL Regional Centre for Asia and the Pacific” in Incheon, office premises, plus other in-kind contributions including equipment and furniture as well as one legal expert to engage in technical cooperation and assistance activities. The Commission considered the proposal and approved the establishment of an "UNCITRAL Regional Centre for Asia and the Pacific" in the Republic of Korea, expressing gratitude to the Government for its generous support for this pilot project.
Promotion of ways and means of ensuring a uniform interpretation and application of UNCITRAL legal texts – CLOUT

Mr. Chairman, distinguished delegates,

You may be aware that the UNCITRAL Secretariat established and manages CLOUT (Case Law on UNCITRAL Texts), a system for collecting and disseminating information on court decisions and arbitral awards relating to UNCITRAL texts. The purpose of CLOUT is to promote international awareness of the legal texts formulated by UNCITRAL and to facilitate uniform interpretation and application of those texts. CLOUT is the only multi-lingual compilation of cases focusing on UNCITRAL texts, now including over 1072 abstracts of case law from more than 40 jurisdictions. It is a very valuable resource and one of great practical importance to the uniform application of our texts. It is unfortunately another area in which the Secretariat’s work is hampered by its limited resources. In that context, the Commission has appealed to Member States to consider making targeted extra-budgetary contributions to support its work, and discussions are ongoing with – in particular - the French Republic in that respect. It is an area where the Commission would be extremely grateful for support from your States.

Coordination and cooperation & endorsement of URDG 758

Mr Chairmain, distinguished delegates,

UNCITRAL also coordinates and cooperates with other international organizations active in the field of international trade law and at this session, the Commission was informed of the various activities that the Secretariat took part in during the past year. Among these were coordination activities undertaken with the Hague Conference on Private International Law, Unidroit, the World Bank, the United Nations Inter-Agency Cluster on Trade and Productive Capacity, OECD, the EU and the WIPO. The aim is to share information and expertise and to avoid duplication of work and as such, the Commission reiterated the importance of coordination work being undertaken by UNCITRAL.

In line with previous practice, the Commission has also acceded to a request by the International Chamber of Commerce (ICC) to recommend the use of the 2010 revision of the Uniform Rules for Demand Guarantees.
Role of UNCITRAL in promoting the rule of law at the national and international levels

Pursuant to an invitation by the General Assembly, the Commission reports on the role it plays in promoting the rule of law every year. You will find this in chapter XVII of this year’s report. This year, the Commission focused its comments on its role in the promotion of the rule of law and transitional justice in conflict and post-conflict situations.

During the session, the Commission heard reports from its partners active in post-conflict societies. They referred to real-life examples where the use of UNCITRAL standards in formulating a legal framework for commercial activities facilitated regaining the trust of the international business community and donors, mutual trust of commercial partners, and regional and international economic integration. The role of UNCITRAL, particularly in mobilizing legal resources to support economic activity and to resolve disputes, for example, through the establishment or reactivation of chambers of commerce, bar associations and arbitration and mediation centres was highlighted. The role of CLOUT as a readily available tool for promoting understanding and uniform interpretation and application of UNCITRAL texts was also highlighted.

While acknowledging the need for UNCITRAL and its Secretariat to be more actively engaged in post-conflict reconstruction, the Commission recognized that such a contribution was likely to remain insufficient, unless:

First, awareness about UNCITRAL and its work is increased in the United Nations system, among bilateral and multilateral donors and in recipient countries and affected societies. This is mainly because UNCITRAL’s work forms the basic building blocks for commercial activity, thus making a real and immediate contribution to societies emerging from conflict; and

Secondly, innovative ways are found to engage or apply UNCITRAL’s resources and texts at an early stage of post-conflict recovery operations by the United Nations and other donors (such as through the United Nations Department of Peacekeeping Operations, the Peacebuilding Commission, the United Nations Development Program, the World Bank, the European Union and the OSCE).

In other words, in that field as in all others, it is vital that UNCITRAL's achievements, and its potential to foster development, be integrated within the broader UN rule-of-law agenda in a harmonious manner. Trade law reform can and must play an important role in the modernization process and in capacity-building programmes, and it is important that other UN institutions draw on and make full use of the Commission’s expertise in that respect.
V. BUDGET PROPOSAL/ADMINISTRATION

Mr. Chairman, distinguished delegates,

I must now return to the matter which I started this report with, budget. The need to make budgetary efforts is of course a given in the current climate, and UNCITRAL is no exception. That is well understood and accepted by the Commission. But – as with all other institutions – careful consideration must be given to how and where any necessary cuts are made. This is all the more important in the context of an institution which is already having to develop and implement state of the art texts on a global basis on a very limited budget. As I will now explain, indiscriminate cuts would threaten the very legitimacy and efficiency of UNCITRAL going forward. The Commission accordingly needs this Committee’s – and the General Assembly’s – help in ensuring that the necessary reductions are carried out in a way which does not destroy the value of its brand.

Consideration of budget proposal by the SG affecting the alternating pattern of UNCITRAL meetings in New York and Vienna

As I explained earlier, the Commission was informed in July of a proposal by the Secretary-General to reduce the budget of UNCITRAL and its Secretariat by $364,700 for the biennium 2012-2013. This represents 5.2% of its budget. As approximately 84% of UNCITRAL’s total budget is allocated to its few staff posts, the proposed decrease would in fact result in a drastic 33% reduction of the Secretariat’s non-post budget.

Budget cuts were proposed to the hiring of consultants, travelling of experts, travelling of the Secretariat staff for purposes other than the servicing of sessions, furniture and equipment. However, the most troublesome aspect was a proposal to cut out – purely and simply – the entire travel budget of the Secretariat staff to service UNCITRAL meetings in New York.

As I have explained, the Commission is well aware and fully endorses the need to make cuts. Indeed, it has expressed unanimous support for the current efforts to achieve savings across the United Nations in general. But this last proposal would have the effect of discontinuing the long-established practice of holding sessions of the Commission and its Working Groups alternately in New York and Vienna. As you are aware, the Commission meets in the summer every other year in Vienna and New York, and the Working Groups generally meet twice a
year, in the spring in New York and in the fall in Vienna. If this last proposal is adopted, from 2012, that is in three months’ time, UNCITRAL will become a purely Vienna based organisation with no presence in New York.

The Commission has considered this proposal with great care. It recalled that the alternating pattern of meetings between New York and a headquarter city in Europe (Geneva from 1969 to 1977 and Vienna since 1978) has been a feature of UNCITRAL throughout its existence. There are numerous reasons for this modus operandi: in particular, it achieves a proportionate distribution of travel costs among delegations, it maximises the influence and presence of UNCITRAL globally, and it reflects the needs of developing countries, many of which do not have any representation in Vienna. These reasons are as valid today as they have been over the past forty years. The Commission accordingly unanimously agreed that the current alternating pattern should not be unravelled and if discontinued, would entail detrimental consequences for UNCITRAL’s ability to continue its work. Concerns were raised that such change would also contradict long-standing General Assembly resolutions on the establishment and the alternating pattern of UNCITRAL meetings. In view of the above, the Commission expressed its unanimous support for the continuation of the current pattern of alternating meetings.

Bearing in mind the current financial situation, the Commission also agreed that efforts should be made to identify alternatives that would achieve an equal amount of savings. The Commission was advised that the cost for conference services support for one week of meetings, whether held in New York or Vienna ($132,654) was found to be approximately the same as the annual cost for Secretariat staff to travel to New York to service the Commission and Working Group sessions there ($137,100). The Commission was generally of the view that reducing its entitlement to conference services support by one week per year, while possibly disruptive to its work programme, would constitute an acceptable alternative to abolishing its alternating pattern of meetings. In short, the necessary savings could be achieved by reducing the entitlement of 15 weeks per year to 14 weeks per year.

The problem however is that although the savings to the United Nations budget as a whole would be equivalent under the Commission’s alternative proposal, they would not necessarily be reflected in the budget of the International Trade Law Division (i.e. the secretariat of UNCITRAL) or the budget of its parent body, the Office of Legal Affairs. This is because a saving of one week of conference service support would appear not under the budget of the Office of Legal Affairs but under the budget of the Department for General Assembly and Conference Management (DGACM). And so the Commission is concerned that the link
between the two budgets be recognized both here and in the Fifth Committee, so that the benefit of the savings can be correctly applied, and UNCITRAL allowed to continue its work as it has in the past, and preserve the value of its global brand for the benefit of the United Nations system as a whole.

As Chairman of the Commission, I accordingly urge you to support this alternative proposal; to recapitulate, to eliminate one week of conference service support rather than to abolish the alternating pattern of meetings. The Commission eagerly awaits the determination of this Committee and of the General Assembly in this respect, so that it may urgently proceed with firming up the date and place for sessions of UNCITRAL and its Working Groups in 2012, the postponement of which have already had a negative influence on the progress being made at Working Group level.

I can assure you that the Commission is fully aware of the financial constraints it is facing and thus will seek to find additional ways of achieving savings on the budget of its Secretariat. One suggestion was for the Secretariat to engage in a strategic planning process based on a comprehensive review of its current and future work programmes and to develop more efficient ways to implement them. Prioritising work on the various topics, clearly defining a timeframe for a working group to complete its work and rationalizing the Commission’s work, in particular the volume and contents of documentation, were considered. In that context, the Secretariat has been asked to prepare for the next session a strategic planning note, with possible options and an assessment of their financial implications.

**Ability of UNCITRAL and its Working Groups to report on their legislative work in a meaningful way**

Mr. Chairman, Distinguished Delegates,

There is one last matter which I must bring to your attention.

This relates to a recent and most unfortunate incident, which came very close to depriving your Committee and the rest of the legal community of the benefit of any meaningful report from UNCITRAL on the work of its 2011 session. During the finalisation of the report that is now in front of you and which was circulated only this morning, the UNCITRAL secretariat was informed that the report of UNCITRAL on the work of its 44th Session, despite being
formally adopted by UNCITRAL at the close of its deliberations in July, was being drastically edited in a way that would have cut the document by over 30%. This included the deletion of the most topical paragraphs concerning the adoption of the revised Model Law on procurement. That decision, which was taken without any consultation with the secretariat of UNCITRAL, was apparently based on a strict interpretation of rules governing page limit for the report of intergovernmental bodies.

That issue has been the subject of recurring discussion in the annual reports of UNCITRAL and in the resolutions of the General Assembly since 2004. UNCITRAL has repeatedly stated its view that regulations on page limitation should not apply to its documentation for the reason that the ensuing drastic cuts would inevitably affect the quality of the presentation of its work. Our work relates to the preparation of legal texts. Much care and attention goes into the preparation of reports which explain these legal texts, and these are extensively used by the legal community in the interpretation and application of our texts.

Artificially reducing the length of documents that explain the legal reasoning and the substantive views that led to the adoption of legal standards such as those elaborated by UNCITRAL would make it very difficult for legal scholars, judges, public authorities and other end users of those standards to understand and apply them in a satisfactory way. If they are to be understood, complex legal standards require explanations. Failing to provide such background and explanatory materials would send a clear and unwelcome signal that the intergovernmental body which authored the standards in question texts has little concern for their practical impact and is unable or unwilling to provide the outside world with the guidance that it expects and deserves.

In other words, the written word, our legal texts and our reports, *is* our work product. With all due respect, if that final work product is to be cut indiscriminately, we might as well not engage in the work at all.

I would accordingly respectfully ask your Committee, when preparing its annual resolution on the work of UNCITRAL, to introduce appropriate, clear and strong language which will make it plain to all involved in the United Nations system that page limitations should not negatively affect the quality of documentation produced by UNCITRAL any more than it affects the
activity of comparable legislative bodies, for example the International Law Commission. I say this, of course, bearing in mind the need to streamline legal documentation as much as possible and I have witnessed the efforts of the Secretariat to compress the length of UNCITRAL documents as much as reasonably feasible.

Let me conclude by emphasizing the need to preserve and increase the inclusiveness of the UNCITRAL process. If UNCITRAL is to thrive, it requires the participation of all States, including those which are only represented in New York, and whom I have the great privilege of addressing today. I would also like to emphasise the crucial role that the Secretariat plays as the permanent body of UNCITRAL, through which the vitality of the institution can be measured, and where plans for future work can be developed and maintained. Finally, and most importantly, I would stress your role, the role of Member States and of the General Assembly in the UNCITRAL process. You are the owners of the UNCITRAL brand, "shareholders" who have both a say, and direct interest, in maximizing the return on their investment. And that investment is in the modernization and harmonization of international trade law, for the benefit of all States.

I thank you for your attention.