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**Recent activities to support the use and adoption of UNCITRAL texts in the area of insolvency law**

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I feel very privileged and honoured to be given this opportunity to address the 55<sup>th</sup> Session of UNCITRAL on this Panel. In this address, I would like to share my views as a European civil law judge specialised in insolvency law on some of the difficulties for judicial activity and cross-border cooperation. I will go on to acknowledge the important role of UNCITRAL training programs and mechanisms as main drivers for a more international view in insolvency matters. Finally, I will express my thoughts on how UNCITRAL advocates for the judiciary in general to take a more proactive approach and some prospects for the future.

**1. Introduction**

I begin with a fundamental observation: **full harmonisation of insolvency law, unification or even approximation does not seem a real possibility**. Such unity of vision to be achieved requires significant amount of ideological and practical compromise and substantive legal convergence, difficult to obtain because national legal systems and the domestic policies are far too different.

In the context of the international evolution towards a functional jurisdiction, the essential aspects of the judicial system are the **specialisation of judges, speed and fairness of judgements, predictable application of substantive and procedural law**. These aspects are part of the general trend towards internationalisation of the judiciary. Businesses worldwide are growing rapidly and becoming globally interconnected. This present-day reality brings to judges new perspectives, major challenges, and the need for confidence in the judicial system as a fundamental element of the relationship between the judiciary and participants in the insolvency proceedings.

I do not believe there are real boundaries between the judiciary in civil law systems and common law jurisdictions in the insolvency field. Therefore, effective cooperation is not only necessary, but also possible, and judges should act creatively to develop it. In my PhD research on cooperation, communication in cross-border insolvency cases, one of the questions **was how to promote UNCITRAL soft law instruments in a practical way**, taking into consideration the specificity of national legal systems and practices.

**2. First, “UNCITRAL-World Bank Group Judicial Capacity-Building Initiative on International Best Practices in the Area of Insolvency Law”, 2021**, is a relevant project for members of the judiciary around the world. Judicial training is essential for developing expertise for complex and international cases. At the same time, judges should meet with their counterparts in other jurisdictions, whenever possible, to exchange professional experience and practical insights.

These skills are developed within the UNCITRAL judicial training programme. **The plenary session**, through the topics established for debates, focuses on solutions useful in daily judicial activity. The other two sections, **“Discussion among participating judges based on a case study”** and **“Discussion in plenary among all participants – exchange of experience”** – provides an excellent opportunity to heighten international communication and cooperation among participants.

As a civil law judge with the experience of more than forty international judicial training programs, I can say that this project is special because it brings together and enables communication **between judges from common law and civil law systems, allowing them to share experience** about national legislation, procedural acts, practical difficulties, as a basis for future collaboration. Judges can get to know each other. **In this respect the program can be a mechanism for creating an online international platform for direct judicial communication, developing a network of judges specialised in insolvency matters.**

**3. Secondly, the first edition of the Digest of Case Law on the UNCITRAL Model Law on Cross-Border Insolvency, 2021, and the Judicial Perspective updated this year promote uniformity** in the application of the MLCBI by encouraging judges to consider how the MLCBI has been applied by other courts. As such, they may be helpful in particular to judges from **civil law jurisdictions** who for various reasons might have had limited exposure to complex cross-border insolvency cases. In the absence of domestic cases and guidelines, civil law courts may look for assistance in the practice of **foreign courts**. The Digest and the Judicial Perspective are

important sources of information for their judicial activity but also for the **international promotion of national jurisprudence**.

Both publications build on the MLCBI-related case law collected in the **Case Law on UNCITRAL Texts (CLOUT)** that assist judges by **making available decisions of courts and arbitral tribunals** interpreting UNCITRAL texts. While the Digest systematizes that case law per article of MLCBI, the Judicial Perspective takes a more pragmatic and practical approach. What does pragmatism mean for the judiciary? I am thinking of a judge who considers each case on its individuality, who is flexible and creative in managing insolvency cases and judicial decisions.

On the other hand, the judiciary's role is not limited to the adjudication of pending litigations. In appropriate circumstances – such as where the meaning and effect of existing laws are unclear, or laws are in conflict – it may be open to the judiciary to act as lawmakers. In this respect, it is important that judges do not regard themselves as having a limited or parochial role as mere interpreters of the law. They may find authority in that respect in UNCITRAL model laws, the legislative guide and judicial guidance materials that reflect international best practice in the area of insolvency law.

### **5. Prospects for the future**

In practice, however, bringing the UNCITRAL texts in everyday judicial work is a difficult task, as they are **not translated into the languages of different states**. This is an area where UNCITRAL assistance is particularly needed. I believe that the **UNCITRAL Model Laws and Implementation Guides should be translated in national languages in different jurisdictions, accessible online for all interested parties, practitioners, judges**. As far as the European Union is concerned, I believe that is possible in collaboration with the European Commission to translate at least some of the UNCITRAL texts and make them available to the public in the EU Member States. In this way, they can be promoted more easily through the national authorities, as, in the case of Romanian judges, the Ministry of Justice or National Institute of Magistracy. This process may be, also, a further step for European legislators to consider **the possibility of harmonizing UNCITRAL proposals with the Regulation (EU) 2015/848 on insolvency proceedings**.

Let me conclude with the observation that UNCITRAL's activities are essential for judicial work in insolvency law worldwide, encouraging judges to engage and to actively build a culture of trust and predictability for insolvency law.

I convey my respect and best wishes to each of you.