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| <p style="text-align: center;">UNCITRAL - Third International Colloquium on Secured Transactions Presentation by Vijay Srinivas Tata</p> |
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INTRODUCTORY REMARKS: Panel on Implementation of UNCITRAL Texts on Secured Transactions Law
Vijay Srinivas Tata
World Bank

The title of this panel: “Implementation of UNCITRAL Texts on Secured Transactions Law” should probably be more accurately rephrased as “the Importance of UNCITRAL Texts on Secured Transactions Law.” That is because we would be missing the true value and the influence of UNCITRAL’s text in secured transactions law if we were to focus too narrowly on the question of how many jurisdictions had faithfully adopted the texts or the recommendations of the conventions, model laws and legislative guides.

The true value of the UNCITRAL texts is in their use as an anchor in the reform dialogue of policy makers across the world as they seek to create, through law, efficient channels for the flow of credit in business and commerce. To do so in a globalized world requires that there be a workable convergence between laws of different jurisdictions, and short of detailed examination of the laws of over 180 countries, the UNCITRAL Texts offer, in one place, a commonly understood set of best practices.

Indeed, it is important to note that it is not harmonization or uniformity that should be the goal of UNCITRAL’s work, but rather, supporting modernization and workable convergence of laws affecting international commerce. Law is first and foremost an exercise in public policy, and only incidentally a technical, drafting exercise. As such, law is bound to differ with different policy preferences from jurisdiction to jurisdiction; moreover, the configuration of incentives is bound to differ because of existing laws and business practices vary from jurisdiction to jurisdiction, and the law may well have to balance competing interests differently in order to achieve the same ends.

We at the World Bank and in other International Financial Institutions have, over the last 20 years, supported policy makers in their efforts to promote legal modernization to help create channels for sustainable development through the growth of commerce. One critical lesson that we have learned is that, the variation in laws is often a testament to the vibrancy – and ultimately the legitimacy – of the legislative process. Indeed the hallmark of legislative deliberation is compromise; thus a vigorous legislative process is bound to balance interests differently from one jurisdiction to another.

The work of the World Bank has greatly benefitted from the work of UNCITRAL over the years – the work of commercial arbitration, public private partnerships, electronic commerce, cross border insolvency, and commercial insolvency law have been critical to our work in those areas, and UNCITRAL’s work in the area of secured transactions law has been and continues to be of fundamental importance. Indeed, the World Bank has worked closely with UNCITRAL in supporting the Financial Stability Forum’s (now the Financial Stability Board) effort to define a “standard” in the area of insolvency and debtor/creditor regimes; and UNCITRAL’s texts have been an integral of that exercise. Being an integral and important part of those standards is already assurance of an important and lasting influence on the course of modern creditor/debtor regimes.