

2023 UNCITRAL SOUTH ASIA CONFERENCE

NEW DELHI, INDIA

14 – 16 September 2023

Co-hosts: UNCITRAL, Ministry of External Affairs, and UNCCI

Inaugural Session: 6:00 PM, 14 September 2023

Anna Joubin-Bret, the Secretary of UNCITRAL

Hon'ble Dr. Justice D.Y. Chandrachud, Chief Justice of India;

Dr. Rajkumar Ranjan Singh, Minister of State for External Affairs of India;

Mr. R. Venkataramani, Attorney General for India;

Mr. Fali S. Nariman, Senior Advocate, Supreme Court of India and Chair of the UNCITRAL National Coordination Committee of India;

Justices of the Supreme Court and High Courts of India;

Distinguished speakers and participants:

[Introduction]

It is my great honor to deliver co-opening remarks for the 2023 UNCITRAL South Asia Conference, jointly hosted with the Ministry of External Affairs of India and the UNCITRAL National Coordination Committee of India (UNCCI). Conceptualized during my 2019 visit to Delhi with our good friends at the Ministry, I am delighted that after a 3-year hiatus we are finally able to continue face-to-face the important dialogue on “Global Standards for Rule-based

Commerce” convened in India in 2016 to celebrate 50 years of UNCITRAL. This iteration is especially meaningful as it is the first flagship event organized by the UNCITRAL Regional Centre for Asia and the Pacific (RCAP) in South Asia since the pandemic.

My special thanks to our partners, the organizing team at the Ministry of External Affairs of India and UNCCI, for the excellent arrangements bringing together my distinguished co-speakers and [over 250] senior members of the judiciary, government, academia and legal practitioners from India and the international community. UNCITRAL highly appreciates its long-standing ties and close cooperation with the Indian government, and is grateful for India’s active contributions to the work of UNCITRAL and its working groups. UNCITRAL is also grateful to UNCCI, India’s national CLOUT correspondents, and the expert speakers who have travelled from all corners of India, the region, and beyond to share valuable insights. We continue to count on your support at this crucial juncture for international trade.

For our part the secretariat is present in full force – perhaps the largest grouping outside of Vienna headquarters or Incheon, Republic of Korea, where UNCITRAL RCAP is located – and we are eager to engage with and learn from all of you. Over the next three days you will be hearing from my colleagues Senior Legal Officer Samira Musayeva on ADR and insolvency matters; Senior Legal Officer Jae Sung Lee on access to credit for micro, small and medium-sized enterprises (MSMEs) and Investor-State dispute settlement reforms; Legal Officer Luca Castellani on the digital economy; head of RCAP Athita Komindr on commercial arbitration; and RCAP legal expert Tracy Choi on commercial mediation. And I look forward to joining the high-level Roundtable.

Before we delve into these discussions, allow me to provide updates on the newest UNCITRAL Convention and from the Commission session this July on dispute settlement, ISDS reforms, MSMEs, and developments on other topics.

[Judicial Sale of Ships]

The United Nations Convention on the International Effects of Judicial Sales of Ships (the "Beijing Convention on the Judicial Sale of Ships") opened for signing last week on 5 September in Beijing. Fifteen States [Burkina Faso, China, Comoros, El Salvador, Grenada, Honduras, Kiribati, Liberia, Sao Tome and Principe, Saudi Arabia, Senegal, Sierra Leone, Singapore, Switzerland and Syria] signed the Convention at the ceremony, which was attended by senior officials and representatives of more than 30 States. It will remain open for signature thereafter at the United Nations Headquarters in New York, and will enter into force 180 days after the date of the deposit of the third instrument of ratification, acceptance, approval or accession.

Adopted by the General Assembly on 7 December 2022, the Convention establishes a harmonized regime for giving international effect to judicial sales, while preserving domestic law governing the procedure of judicial sales and the circumstances in which judicial sales confer clean title. By ensuring legal certainty as to the title that the purchaser acquires in the ship as it navigates internationally, the Convention is designed to maximize the price that the ship is able to attract in the market and the proceeds available for distribution among creditors, and to promote international trade. The General Assembly has called on all States wishing to strengthen the international legal framework for shipping and navigation to consider becoming a party to the Convention.

[Dispute settlement]

Turning now to the Commission, as a result of the work undertaken by Working Group II on dispute settlement, UNCITRAL adopted a guidance text on early dismissal and preliminary determination at its latest session in July. This text will be included in a revised version of the UNCITRAL Notes on Organizing Arbitral Proceedings (2016). This text illustrates the discretionary power of an

arbitral tribunal operating under the UNCITRAL Arbitration Rules or other arbitration rules to dismiss a claim or defence or make a preliminary determination to that effect based on the “manifestly without merit” standard. It is hoped that this addition will make it easier for arbitral tribunals and arbitration practitioners to utilize this tool and will help discourage frivolous claims.

[ISDS reforms]

On Investor-State Dispute Settlement Reform, you may recall that Working Group III was entrusted in 2017 with a broad mandate to work on the possible reform of ISDS. Following several years of extensive preparation and deliberation, UNCITRAL adopted the first batch of texts – namely, the UNCITRAL Model Provisions on Mediation, the UNCITRAL Guidelines on Mediation for International Investment Disputes, the UNCITRAL Code of Conduct for Arbitrators, and the UNCITRAL Code of Conduct for Judges – at the same Commission session in July. This year marks an important milestone as Working Group III is in its third phase of work to develop relevant reform solutions and present them to the Commission.

As another significant work underway, I should also take this opportunity to highlight UNCITRAL’s dispute resolution in the digital economy – DRDE – project. Through the project, the secretariat is in the process of exploring the impact of digital technologies and technology-enabled services on dispute resolution. The technologies and technology-enabled services being explored range from email, online platforms, to artificial intelligence and blockchain. As UNCITRAL is a legislative body, we are doing this with a view to updating existing UNCITRAL texts or developing new ones. Having considered the secretariat’s notes on preliminary findings of the mapping exercise to identify the legal issues, at its recent session, the Commission expressed its strong support for the secretariat to continue its activities and put forward concrete work proposals for the Commission’s consideration in 2024 to develop norms fit for the digital

age. We are committed to further implementing this important project and count on the support of contributors, including India.

[MSMEs]

But UNCITRAL's mandate goes beyond dispute resolution and covers a number of other topics of international commercial law.

Since 2013, UNCITRAL has been working on an enabling legal framework for MSMEs by addressing the legal obstacles they face throughout their life cycle, particularly in developing economies. After working on business registration and a simplified form of Limited Liability Enterprise for MSMEs, in July the Commission adopted the UNCITRAL Guide on Access to Credit for Micro, Small and Medium-sized Enterprises (MSMEs), completing the work initiated in 2013. The text recommends State reforms in certain areas of private or commercial law that may help to ease issues MSMEs, (in particular micro and small enterprises) face in accessing credit, refers to policy and regulatory measures that can enhance the effectiveness of the legal framework, and in recognition that poverty of women is directly related to inequal access to economic opportunities and that women-owned MSMEs often face higher barriers than those owned by men, encourages States to adopt the necessary measures to ensure equal access to credit for women entrepreneurs.

[Insolvency]

Another recent text for small businesses is the UNCITRAL Legislative Guide on Insolvency Law for Micro- and Small Enterprises (MSEs). Adopted in 2021, the Legislative Guide takes the unique characteristics of MSEs into account – such as intermingled business and personal debts and a centralized governance model in which ownership, control and management overlap – to respond to the specific needs and circumstances of their financial distress.

In addition, I would urge India to consider for enactment the UNCITRAL Model Law on Cross-Border Insolvency, which in a recent case appeared to have been read into the insolvency code framework by the National Company Law Appellate Tribunal, and which we understand is part of India's package of measures for insolvency law reform. Two other recent UNCITRAL texts complementing that framework are the Model Law on Recognition and Enforcement of Insolvency-Related Judgments (2018) that assists States with modernizing their domestic legal framework with regard to the recognition and enforcement of insolvency-related judgements; and the Model Law on Enterprise Group Insolvency (2019) that States can enact to build a modern legislation for addressing the domestic and cross-border insolvencies of enterprise groups, supplementing the MLCBI that focuses on cross-border insolvency proceedings concerning a single debtor. I would also urge India to actively participate in the current work of Working Group V on applicable law in insolvency proceedings and civil asset tracing and recovery of assets for the insolvency estate. Texts on those subjects are expected to enhance the UNCITRAL cross-border insolvency framework.

[Digital Economy]

Turning to the digital economy, I arrive in Delhi on the heels of the 3rd Incheon Law and Business Forum, a flagship conference organized by UNCITRAL RCAP every 2 years. Themed "From Documents to Data: Legal and Commercial Solutions for Digital Trade," the conference focused on both the legal and business implications of paperless trade facilitation, including pilot projects and business solutions for its implementation, and the adoption of the UNCITRAL Model Law on Electronic Transferable Records.

A common thread links the discussions on digital trade law in Incheon and in Delhi: the "high-level principles on digitalisation of trade documents" recently adopted by the G20 Trade and Investment Ministers during the Indian presidency.

Those principles clearly support the consideration of UNCITRAL texts. In doing so, they contribute to the trend that actively promotes the adoption of UNCITRAL texts to establish legal predictability on crucial aspects of the digital economy, both domestically and across borders.

In that regard, please allow me to recall that UNCITRAL texts on electronic commerce – as they are traditionally referred to – have already been adopted in more than 100 States, including virtually all South Asian States. Building on this significant legacy, UNCITRAL has recently prepared legislative texts that are considered by stakeholders particularly timely and relevant. The effects of the COVID-19 pandemic on trade have highlighted the need to build resilient and robust supply chain accompanied by the full digitisation of all commercial documents, and the assurance of data quality of the messages exchanged, for instance with regard to their integrity and origin. The UNCITRAL Model Law on Electronic Transferable Records and the UNCITRAL Model Law on the Use and Cross-border Recognition of Identity Management and Trust Services provide the legal building blocks to achieve that goal.

UNCITRAL Working Group IV is continuing its exploration of the frontiers of innovation and law by working on contracts automation, including AI, and on transactions in data. These two closely-related topics get to the heart of digital transformation.

[Future work]

I would like to close with future work.

As the legislative body of the General Assembly of Nations, UNCITRAL cannot ignore the general mobilization of States and the entire United Nations system to fight against global warming and its disastrous consequences for our planet and for our children. To reflect and work on the best way of how UNCITRAL could make its contribution to this commitment of the international

community, the Commission requested the secretariat to organize at its recent session a Colloquium on Climate Change and the Law of International Trade.

The Colloquium considered areas in which international trade law can effectively support the achievement of climate action goals set by the international community, the scope and value of legal harmonization in those areas and the need for international guidance for legislators, policymakers, courts and dispute resolution bodies. In particular, the colloquium considered the contribution that UNCITRAL, as an inclusive forum to devise global solutions, could make in the light of its mandate to promote the harmonization and modernization of the law of international trade in the form of possible future work and how existing UNCITRAL instruments in areas such as contract law, electronic commerce, insolvency, secured transactions, public procurement, public-private partnerships and dispute resolution can be applied to support climate action.

[Concluding remarks]

As the G20 Trade and Investment Ministerial Meeting recently concluded in Jaipur attests, India's leadership on international commercial matters is critical, and its importance as a current and future contributor to the development of legal standards, both within the Asia Pacific and globally, cannot be overstated.

I very much look forward to our invigorating discussions over the course of the Conference on how we could work together to strengthen a legally enabling environment for international trade in India and beyond, with gratitude again to our co-hosts the Ministry of External Affairs of India and UNCCI. Thank you once more for this honour and best wishes for a most successful Conference.
