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Role of UNCITRAL in promoting the rule of law at the
national and international levels

Note by the Secretariat

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I. Introduction

1. The Commission may wish to recall that the item on rule of law has been on its agenda since its forty-first session, in 2008,¹ in response to the General Assembly's invitation to the Commission to comment, in its report to the General Assembly, on the Commission's current role in promoting the rule of law.² The Commission may further wish to recall that, at its forty-first to fifty-sixth sessions, in 2008 to 2023, respectively, the Commission transmitted comments on its role in promoting the rule of law at the national and international levels, in its annual reports to the General Assembly.³

2. At its fifty-first session, in 2018, the Commission considered the proposal to generate discussion within the Commission on agenda item "Role of UNCITRAL in promoting the rule of law at the national and international levels" and to improve the way the Commission handled that agenda item. The Commission considered the possibility of broadening the discussion of its role in promoting the rule of law at the national and international levels to a discussion of the way its work relates to the 2030 Agenda for Sustainable Development and 17 Sustainable Development Goals, both with regard to the instruments it has developed and with regard to assistance to States in their achievement of the Goals. It was suggested that, in order for the Commission to achieve a more meaningful consideration of that agenda item, the secretariat could prepare a paper outlining the way that the UNCITRAL instruments and texts relate to the Sustainable Development Goals and identifying concrete issues to be discussed by the Commission on that basis.

3. At its seventy-eighth session, the General Assembly again endorsed the conviction of the Commission that the implementation and effective use of modern private law standards in international trade are essential for advancing good governance, sustained economic development and the eradication of poverty and hunger and that the promotion of the rule of law in commercial relations should be an integral part of the broader agenda of the United Nations to promote the rule of law at the national and international levels, including through the Rule of Law Coordination and Resource Group, supported by the Rule of Law Unit in the Executive Office of the Secretary-General.⁴

4. The Commission may wish to note that the General Assembly, in resolution 78/112 of 7 December 2023, reiterated its invitation to the Commission to comment on its current role in promoting the rule of law. In paragraph 24 of the same resolution, the General Assembly invited Member States to focus their comments

¹ For the decision of the Commission to include the item on its agenda, see *Official Records of the General Assembly, Sixty-second Session, Supplement No. 17 (A/62/17)*, part two, paras. 111–113.

² General Assembly resolutions 62/70, para. 3; 63/128, para. 7; 64/116, para. 9; 65/32, para. 10; 66/102, para. 12; 67/97, para. 14; 68/116, para. 14; 69/123, para. 17; 70/118, para. 20; 71/148, para. 22; 72/119, para. 25; 73/207, para. 20; 74/191, para. 20; 75/141, para. 20; 76/117, para. 20; 77/110, para. 20; and 78/112, para. 21.

³ *Official Records of the General Assembly, Sixty-third Session, Supplement No. 17* and corrigendum (A/63/17 and Corr.1), para. 386; *ibid.*, *Sixty-fourth Session, Supplement No. 17 (A/64/17)*, paras. 413–419; *ibid.*, *Sixty-fifth Session, Supplement No. 17 (A/65/17)*, paras. 313–336; *ibid.*, *Sixty-sixth Session, Supplement No. 17 (A/66/17)*, paras. 299–321; *ibid.*, *Sixty-seventh Session, Supplement No. 17 (A/67/17)*, paras. 195–227; *ibid.*, *Sixty-eighth Session, Supplement No. 17 (A/68/17)*, paras. 267–291; *ibid.*, *Sixty-ninth Session, Supplement No. 17 (A/69/17)*, paras. 215–240; *ibid.*, *Seventieth Session, Supplement No. 17 (A/70/17)*, paras. 318–324; *ibid.*, *Seventy-first Session, Supplement No. 17 (A/71/17)*, paras. 317–342; *ibid.*, *Seventy-second Session, Supplement No. 17 (A/72/17)*, paras. 435–441; *ibid.*, *Seventy-third Session, Supplement No. 17 (A/73/17)*, paras. 232–233; *ibid.*, *Seventy-fourth Session, Supplement No. 17 (A/74/17)*, paras. 303–308; *ibid.*, *Seventy-fifth Session, Supplement No. 17 (A/75/17)*, para. 25; *ibid.*, *Seventy-sixth Session, Supplement No. 17 (A/76/17)*, paras. 370–374; *ibid.*, *Seventy-seventh Session, Supplement No. 17 (A/77/17)*, paras. 308–315; and *ibid.*, *Seventy-eighth Session, Supplement No. 17 (A/78/17)*, paras. 209–304.

⁴ General Assembly resolution 78/103, para. 15.

during the upcoming Sixth Committee debate on the subtopic “The full, equal, and equitable participation at all levels in the international legal system”.

5. Chapter II of this note outlines the relevance of the texts that may be before the Commission for finalization and adoption at its fifty-seventh session, in 2024, to the promotion of the rule of law and the implementation of the Sustainable Development Goals. Chapter III suggests actions by the Commission under this agenda item at its fifty-seventh session.

II. Relevance of texts that are expected to be considered by the Commission at its fifty-seventh session, in 2024, to the promotion of the rule of law and the implementation of the Sustainable Development Goals

6. As the Commission was informed at past sessions,⁵ the UNCITRAL website contains a web page that explains the role of UNCITRAL in the implementation of the Sustainable Development Goals, including its rule-of-law-related target.⁶ The web page focuses on nine Goals most relevant to the work of UNCITRAL: Sustainable Development Goals 1, 4, 5, 8, 9, 10, 12, 16 and 17. The Introduction to the United Nations Commission on International Trade Law online course also outlines how the work of UNCITRAL contributes to the achievement of the sustainable development goals.⁷

7. As indicated in paragraphs 2, 3 and 4 above, the relationship between UNCITRAL instruments and the implementation of the Sustainable Development Goals, was highlighted by the Commission, by the General Assembly and by the declaration of the high-level meeting of the General Assembly on the rule of law at the national and international levels.

8. At its fifty-seventh session, in 2024, the Commission is expected to have before it for finalization and adoption a number of texts that further demonstrate that interrelationship as explained below.

A. Draft UNCITRAL–UNIDROIT model law on warehouse receipts

Relevance to Sustainable Development Goals 2, 5, 8 and 12.

9. At its fifty-seventh session, in 2024, the Commission is expected to consider and adopt a draft UNCITRAL–UNIDROIT model law on warehouse receipts (the “model law”) with guide to enactment. The model law is intended to assist States in developing a modern legal framework for warehouse receipts supporting their issuance and transfer in both electronic and paper form. The model law may be useful both to States that do not have warehouse receipts laws, as well as to States wishing to modernize existing laws, for instance, to support the use of electronic warehouse receipts.

10. The primary objective of the model law is to facilitate commercial transactions that involve stored goods. As documents of title, warehouse receipts allow trading in goods stored in warehouses, as well as their use as collateral. Thus, the model law may support short-term financing in the agricultural sector. By assisting States to develop well-designed warehouse receipts laws, the model law will facilitate access to credit, enhance legal certainty for lenders and thereby contribute to reducing financing costs for farmers by providing a secure form of collateral to obtain loans.

⁵ *Official Records of the General Assembly, Seventy-first Session, Supplement No. 17 (A/71/17)*, paras. 254 and 309; *ibid.*, *Seventy-second Session, Supplement No. 17 (A/72/17)*, para. 193; *Seventy-third Session, Supplement No. 17 (A/73/17)*, para. 193; and *ibid.*, *Seventy-fourth Session, Supplement No. 17 (A/74/17)*, para. 267.

⁶ Available at <https://uncitral.un.org/en/about/sdg>.

⁷ Available at <https://uncitral.un.org/en/onlinecourses>.

The standardization of rules relating to the issuance and transfer of warehouse receipts will improve confidence in warehouse receipt systems, which will in turn attract private sector investments to the agricultural sector.

11. The legal framework may be particularly useful to developing countries. By improving the ability of farmers in these countries to grow and store crops and other agricultural products, the model law has the potential to increase global food production and assist in overcoming the food security challenge.

12. In light of the above, the model law is expected to contribute to Sustainable Development Goal (SDG) 2, on ending hunger and achieving food security and food nutrition, namely its target 2.3, on doubling the agricultural productivity and incomes of small-scale food producers, including through secure and equal access to financial services; to SDG 5, on achieving gender equality, namely its target 5.a, on undertaking reforms to give women equal rights to financial services in accordance with national laws; to SDG 8, on promoting sustained, inclusive and sustainable economic growth, namely its target 8.3, on encouraging the formalization and growth of micro-, small and medium-sized enterprises, including through access to financial services; and to SDG 12, on ensuring sustainable consumption and production patterns, namely its target 12.3, on reducing food losses along production and supply chains.

B. Draft statute of an advisory centre on international investment dispute resolution

Relevance to Sustainable Development Goals 8, 9, 10, 16 and 17.

13. The draft statute of an advisory centre on international investment dispute resolution provides the legal basis for establishment of an advisory centre which addresses the urgent needs of developing States in obtaining assistance with regard to investment disputes. The advisory centre aims to provide training, support and assistance with regard to international investment dispute resolution. Furthermore, the advisory centre aims to enhance the capacity of States in handling international investment disputes, in particular, least-developed countries and developing countries.

14. The establishment and operation of an advisory centre contributes to Sustainable Development Goals (SDGs) 8, 9, 10, 16 and 17. By providing support with regard to potential and existing investment disputes, the advisory centre will enhance the capacity of States to foster a more stable and predictable investment environment, leading to decent work and economic growth (SDG 8) and industry, innovation and infrastructure development (SDG 9). By specifically targeting least-developed countries and developing countries, it would contribute to reducing inequalities caused by investment disputes (SDG 10). By providing support and assistance in international investment dispute resolution, the advisory centre contributes to the promotion of peaceful and inclusive societies, ensuring access to justice and building effective, accountable, and inclusive institutions (SDG 16). In so doing, the advisory centre is expected to promote international cooperation and partnerships, also based on collaboration with other agencies that provide similar services (SDG 17). In summary, the establishment of an advisory centre contributes to the SDGs by addressing the urgent needs of developing States, promoting economic growth, fostering international cooperation, and reducing inequalities.

C. Draft guidelines on the prevention and mitigation of international investment disputes

Relevance to Sustainable Development Goals 8, 9 and 16.

15. The draft guidelines on the prevention and mitigation of international investment disputes set out various strategies and measures adopted by States to prevent and mitigate international investment disputes involving foreign investors.

The guidelines are intended to guide States that wish to set up and implement a coherent and effective dispute prevention and mitigation system. An effective dispute prevention and mitigation would also help encourage the retention of foreign investments, as it would demonstrate the commitment of the State to risk management, stability and maintaining a healthy relationship with investors. Overall, the guidelines would serve as a valuable tool for States to create a conducive investment environment that fosters sustainable and inclusive development.

16. As such, the guidelines contribute to creating a stable and predictable environment for economic growth and foreign investment (SDGs 8 and 9). Furthermore, by providing strategies and measures for preventing and mitigating international investment disputes, the guidelines contribute to the goal of promoting peaceful and inclusive societies. The establishment of an effective dispute prevention and mitigation systems enhances the functioning of legal institutions, ensuring access to justice and strengthening the rule of law (SDG 16). In summary, the guidelines contribute to the SDGs by providing timely advice with regard to handling of international investment disputes.

D. Draft model clauses and guidance texts on technology-related dispute resolution and adjudication

Relevance to Sustainable Development Goals 9 and 16.

17. The draft model clauses and guidance texts on technology-related dispute resolution and adjudication include four model clauses and two guidance texts. The four model clauses are the Model Clause on Highly Expedited Arbitration, the Model Clause on Adjudication, the Model Clause on Technical Advisors and the Model Clause on Confidentiality. The two guidance texts are the Guidance on Confidentiality within the Proceedings and the Guidance on Evidence. These clauses and guidance texts are intended to further accelerate the resolution of disputes by building on the UNCITRAL Arbitration Rules and Expedited Arbitration Rules and provide tools to allow parties to further tailor the proceedings to their needs in the areas of the appointment of technical advisors, confidentiality and evidence, while ensuring that the basic principles of dispute resolution are not undermined. These texts are expected to provide greater flexibility to parties, leading to the more effective and efficient resolution of disputes.

18. The draft model clauses and guidance texts, once adopted by the Commission, are expected to support innovation, including in developing countries, by providing tools for efficiently and effectively resolving technology-related disputes which supports the achievement of SDG 9, in particular, target 9.b. More generally, by providing for a more flexible, effective and robust framework of rules for the settlement of disputes, the draft model clauses and guidance are expected to contribute to the achievement of Sustainable Development Goal 16, in particular target 16.3 (Promote the rule of law at the national and international levels and ensure equal access to justice for all).

III. Suggestions for consideration of the rule of law agenda item at the fifty-seventh session of the Commission, in 2024

A. UNCITRAL work relevant to upcoming Sixth Committee debates on “The full, equal, and equitable participation at all levels in the international legal system”

19. The Commission may wish to take note of the General Assembly resolutions referred to in chapter II above. In formulating and transmitting its comments to the General Assembly in response to the invitation contained in paragraph 24 of General Assembly resolution [78/112](#), the Commission may wish to bear in mind that the

upcoming debates of the Sixth Committee under the rule of law agenda item will focus on the subtopic “The full, equal, and equitable participation at all levels in the international legal system”.

20. The Commission may wish to recall its consideration of issues relevant to that sub-topic at its sessions in 2012,⁸ 2015,⁹ 2016¹⁰ and 2017.¹¹ At its forty-fifth session in 2012, in its messages to the high-level meeting on the rule of law, the Commission noted that local needs in commercial law reforms needed to be made known to the international community and that the international community needed to understand the importance of addressing those needs and in the long run building local capacity of States to be able to engage in law reforms was necessary through steps recommended by the Commission.¹² At its forty-eighth session in 2015, in its comments by the Commission on the role of its multilateral treaty processes in promoting and advancing the rule of law it brought to the attention of the General Assembly issues relating to its treaty process that required attention, including the need to increase participation of all countries in the rule-formulating work of UNCITRAL and enhancing the local capacity of States from various regions, legal system and different levels of development, including least-developed and small-island developing countries.¹³ At its forty-ninth session in 2016, in its comments by the Commission on practices of States in the implementation of UNCITRAL treaties, that the quality of implementation of treaties emanating from the work of UNCITRAL often depended on the quality of treaty-making processes, including the level and quality of participation by States and other interested stakeholders in the rule-formulating work of UNCITRAL.¹⁴ At its fiftieth session in 2017, in the comments by the Commission on its current role in promoting the rule of law at the national and international levels it recommended the further dissemination of the Guidance Note on Strengthening United Nations Support to States, Upon Their Request, to Implement Sound Commercial Law Reforms¹⁵ which provides guiding principles and a framework for strengthening United Nations support to States, upon their request, to implement commercial law reforms on the basis of internationally accepted standards.¹⁶

21. With regard to the subtopic identified by the General Assembly for discussion by the Sixth Committee, “The full, equal, and equitable participation at all levels in the international legal system”, the Commission may wish to highlight its mandate and its work methods. It may wish to highlight how its ongoing work on the reform of investor-State dispute settlement (ISDS), continuing development of the CLOUT database, the study on the aspects of international trade law related to voluntary carbon credits, as well as the broader methods of work of UNCITRAL and its composition contribute to the full, equal, and equitable participation at all levels in the international legal system.

22. With regard to its work on the reform of ISDS, the Commission may wish to highlight the efforts made to provide for the full, equal, and equitable participation both in regard to the expected outcomes of the reform of the investor-State dispute settlement system and the reform process itself. In terms of substantive outcomes, Working Group III is expected to finalize two texts at the upcoming session, a draft

⁸ *Official Records of the General Assembly, Sixty-seventh Session, Supplement No. 17 (A/67/17)* paras. 218–223.

⁹ *Ibid.*, *Seventieth Session, Supplement No. 17 (A/70/17)*, paras. 318–324.

¹⁰ *Ibid.*, *Seventy-first Session, Supplement No. 17 (A/71/17)*, paras. 332–342.

¹¹ *Ibid.*, *Seventy-second Session, Supplement No. 17 (A/72/17)*, paras. 435–441.

¹² *Ibid.*, *Sixty-seventh Session, Supplement No. 17 (A/67/17)*, para. 223.

¹³ *Ibid.*, *Seventieth Session, Supplement No. 17 (A/70/17)*, para. 324(a).

¹⁴ *Ibid.*, *Seventy-first Session, Supplement No. 17 (A/71/17)*, para. 341.

¹⁵ United Nations, United Nations Commission on International Trade Law, “Guidance Note on Strengthening United Nations Support to States, Upon Their Request, to Implement Sound Commercial Law Reforms”. Available at https://uncitral.un.org/sites/uncitral.un.org/files/englishguidance_note.pdf.

¹⁶ *Official Records of the General Assembly, Seventy-second Session, Supplement No. 17 (A/72/17)*, para. 441.

statute for an advisory centre on international investment dispute resolution and draft guidelines on the prevention and mitigation of international investment disputes. Both texts focus on inclusivity in the international legal system, by ensuring that the current system of investor-State dispute settlement regains legitimacy and there are mechanisms for States, especially least developed and developing countries, to prevent, mitigate and defend themselves against foreign investors in international investment disputes. The advisory centre on international investment dispute resolution will aim to provide training support and assistance in the area of international investment dispute resolution and to enhance the capacity of States in preventing and handling international investment disputes, in particular, least developed countries and developing countries. It will also provide representation and advice services in international investment disputes. The draft guidelines on prevention and mitigation of international investment disputes will provide strategies and measures that states can adopt to prevent and mitigate international investment disputes.

23. With regard to process, the initial mandate of the ISDS reform project stated that, in discharging the mandate, Working Group III would ensure that the deliberations would be from the widest possible breadth of available expertise from all Stakeholders, would be Government-led, with high-level input from all Governments and be consensus-based and fully transparent.¹⁷ Participation in the work on ISDS reform has been increased through financial support by donors for travel and simultaneous interpretation of informal meetings.¹⁸

24. The Commission may wish to highlight the inclusive nature of the Case Law on UNCITRAL Texts (CLOUT) system and the related database, which provide access to case law in the six official languages and analysis of cases from relevant regions and serve as a foundation for the promotion of uniform interpretation and application of international commercial law standards. The Commission calls for contributions from all legal traditions to the CLOUT database, which supports inclusive participation in the international legal system.¹⁹ The ongoing rejuvenation process of the CLOUT system is also addressing the need to broaden the pool of contributors from all regions.

25. The Commission may also wish to highlight the inclusive character of their request to the secretariat to develop a detailed study on the aspects of international trade law related to voluntary carbon credits.²⁰ In its request, the Commission requested the secretariat to consult with all Member States, to invite all Member States to nominate experts to provide inputs to the work of the secretariat in this area and to aim for as wide representation as possible, in particular representation from developing countries.²¹ To support these requests, a questionnaire on voluntary carbon credits was circulated to all Members States of the United Nations, affording them an opportunity to provide their inputs and nominate experts.

26. Finally, the Commission may wish to highlight how its methods of work support inclusivity in the international legal system, especially by broadening participation to delegates through remote participation in meetings. The COVID-19 pandemic required Working Groups and the Commission to remotely participate in meetings.²² Though the pandemic has concluded, Member States expressed their desire to continue to have the possibility to participate remotely.²³ When agreeing to arrange

¹⁷ *Official Records of the General Assembly, Seventy-second Session, Supplement No. 17 (A/72/17)* para. 264.

¹⁸ *Ibid.*, *Seventy-eighth Session, Supplement No. 17 (A/78/17)*, paras. 154, 258.

¹⁹ *Ibid.*, *Seventy-eighth Session, Supplement No. 17 (A/78/17)*, para. 271.

²⁰ *Ibid.*, *Seventy-eighth Session, Supplement No. 17 (A/78/17)*, para. 199.

²¹ *Ibid.*, *Seventy-eighth Session, Supplement No. 17 (A/78/17)*, para. 199.

²² *Ibid.*, *Seventy-fifth Session, Supplement No. 17 (A/75/17)*, part one, para. 40; *ibid.*, part two, paras. 1, 11; *ibid.*, *Seventy-sixth Session, Supplement No. 17 (A/76/17)*, para. 25(i); *ibid.* *Seventy-seventh Session, Supplement No. 17 (A/77/17)*, para. 237.

²³ *Ibid.*, *Seventy-seventh Session, Supplement No. 17 (A/77/17)*, para. 237; *ibid.*, *Seventy-eighth Session, Supplement No. 17 (A/78/17)*, para. 217.

for continued remote participation, the Commission stressed that the arrangement should promote inclusivity and should seek to be effective in relation to costs and budgets.²⁴ However, the provision of a streaming or videoconferencing platform for remote participation in meetings comes at an added cost not included in the current budget and is being discontinued due to the current liquidity crisis at the United Nations.

B. Expected contribution of UNCITRAL's programme to the promotion of the rule of law and achievement of the Sustainable Development Goals

27. Considering the developments highlighted in this note, the Commission may wish to consider ways to continue highlighting in its texts and decisions adopting or approving the texts, their relevance to and impact on sustainable development. In the light of the expected finalization and adoption of texts in the areas of warehouse receipts and investor-State dispute settlement reform at its fifty-seventh session, the Commission may wish to highlight in its decisions on those texts their expected input to the implementation of the Sustainable Development Goals (see paras. 9–16 above). The Commission may also wish to consider and specify the expected contribution of its ongoing work on investor-State dispute settlement (ISDS) reform, civil asset tracing in insolvency proceedings, applicable law in insolvency proceedings, dispute resolution in the digital economy, and negotiable cargo documents to the achievement of the Sustainable Development Goals.

28. The Commission may wish to request States, the secretariat, organizations and institutions to continue their efforts towards increasing awareness of the role of UNCITRAL standards and activities for the promotion of the rule of law at the national and international levels and the implementation of the Sustainable Development Goals.

²⁴ Ibid., *Seventy-seventh Session, Supplement No. 17* (A/77/17), para. 237; *ibid.*, *Seventy-eighth Session, Supplement No. 17* (A/78/17), para. 217.