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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 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-third sessions, in 2008 to 2020, 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 75th 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. It further noted the role of the Commission in promoting the rule of law, respective discussions in the Commission at its fifty-third session and the comments transmitted by the Commission, pursuant to paragraph 20 of General Assembly resolution 74/191 of 18 December 2019, highlighting the relevance of its current work and of the texts finalized and adopted to the promotion of the rule of law and the implementation of the Sustainable Development Goals.

5. The Commission may wish to note that the General Assembly, in resolution 75/141 of 22 December 2020, reiterated its invitation to the Commission to comment on its current role in promoting the rule of law. Paragraph 23 of the same resolution,

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, and 74/191, para. 20.

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; and *ibid.*, *Seventy-fourth Session, Supplement No. 17* (A/74/17), paras. 303–308, and *ibid.*, *Seventy-fifth Session, Supplement No. 17* (A/75/17), para. 25.

⁴ General Assembly resolution 75/133, para. 19.

the General Assembly invited Member States to focus their comments during the upcoming Sixth Committee debate on the subtopic “The rule of law at the national and international levels”.

6. At its fifty-third session, the Commission contributed its comments on the subtopic “Measures to prevent and combat corruption”. It highlighted the contribution of its work in the area of public procurement and infrastructure development to the implementation of the international anti-corruption agenda.⁵

7. In this context, Commission may recall that it had requested the Chair of UNCITRAL, other members of the Bureau of that session, States and the UNCITRAL secretariat to take appropriate steps to ensure that the contribution of UNCITRAL to the implementation of the international anti-corruption agenda is duly acknowledged in an outcome document of that special session of the General Assembly. The special session was rescheduled because of the COVID-19 pandemic and will now take place 2–4 June 2021.

8. The Commission may wish to note that the contribution by UNCITRAL was brought to the attention of the States Parties to the United Nations Convention against Corruption and that while not referenced directly, the State Parties, in their draft Political Declaration under the section related to “Anti-corruption as an enabler for the 2030 Agenda for Sustainable Development”, “underscore that the anti-corruption work of the United Nations should be strongly linked and coordinated with measures and programmes contributing to strengthening the rule of law at the national and international levels”.

9. Chapter II of this note outlines relevance of the texts that may be before the Commission for finalization and adoption at its fifty-fourth session, in 2021, to the promotion of the rule of law and the implementation of the Sustainable Development Goals. Chapter III outlines expected contribution of UNCITRAL’s programme to the promotion of the rule of law and the achievement of the Sustainable Development Goals.

II. Relevance of texts that are expected to be considered by the Commission at its fifty-fourth session, in 2021, to the promotion of the rule of law and the implementation of the Sustainable Development Goals

10. As the Commission was informed at past sessions,⁶ 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.⁷ 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.

11. The Commission has consistently considered the impact of its work on economic development generally and in recent years has paid special attention to the interrelationship between the promotion of the rule of law in commercial relations and the Sustainable Development Goals. Such interrelationship is usually highlighted in Commission decisions adopting texts and subsequently in General Assembly resolutions on those texts. As referenced in paragraphs 2,3 and 4 above, this interrelationship 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.

⁵ *Official Records of the General Assembly, Seventy-fifth Session, Supplement No. 17 (A/75/17)*, para. 25.

⁶ *Ibid.*, *Seventy-first Session, Supplement No. 17 (A/71/17)*, paras. 254 and 309; *Seventy-second Session, Supplement No. 17 (A/72/17)*, para. 193; *Seventy-third Session, Supplement No. 17 (A/73/17)*, para. 193; and *Seventy-fourth Session, Supplement No. 17 (A/74/17)*, para. 267.

⁷ <https://uncitral.un.org/en/about/sdg>.

12. At its fifty-fourth session, in 2021, 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. Texts in the area of micro, small and medium-sized enterprises (MSMEs)

13. The Commission has undertaken work on facilitating the formalization and operation of micro, small and medium-sized enterprises (MSMEs) throughout their life cycle. This work emphasizes the relevance and importance of UNCITRAL in the promotion of the rule of law at the national and international levels and for the implementation of the Sustainable Development Goals. UNCITRAL's work specifically supports target 3 of SDG 8 which notes the encouragement of the formalization and growth of MSMEs.⁸

14. UNCITRAL has already developed the first pillar in a legal and regulatory framework supporting the formalization and operation of MSMEs with the publication of the *UNCITRAL Legislative Guide on Key Principles of a Business Registry*. This year the Commission presents not one, but two texts that will continue to build this legal and regulatory framework and will further facilitate the formalization and operation of micro, small and medium-sized enterprises (MSMEs) at different points of their lifecycle. First, a draft legislative guide on a simplified limited liability business organization for micro, small, and medium-sized enterprises. Second, a text on a simplified insolvency regime for micro and small enterprises (MSEs).

15. These texts are timely considering the COVID-19 pandemic and are expected to assist States in mitigating the effects of the measures required to control the pandemic, as well as in their economic recovery efforts. The draft legislative guide on a simplified limited liability business organization for MSMEs provides a simplified legal form that would allow an entrepreneur to protect personal assets in the event of business distress. Many businesses, especially MSMEs, have become insolvent or are expected to become insolvent in the near future due to the COVID-19 crisis. The text on a simplified insolvency regime would provide micro and small enterprises (MSEs) with a simplified, equitable, fast, flexible and cost-efficient manner of resolving insolvency issues and would help deserving MSEs restart entrepreneurial activities, thereby preserving jobs and other positive economic activity.

16. The MSME texts and the accompanying formalization and operation of MSMEs are also expected to assist micro, small and medium-sized enterprises operated by women. Women have borne a disproportionate burden of the economic fallout from the COVID-19 crisis, partly because their economic activity is often in the more informal MSME sectors – sectors that have been hardest hit by the crisis.

1. Draft legislative guide on a simplified limited liability business organization for micro, small, and medium-sized enterprises

Relevance to Sustainable Development Goals 8 and 9.

17. The draft legislative guide on a simplified limited liability business organization for micro, small, and medium-sized enterprises (MSMEs),⁹ is part of UNCITRAL's broader work programme addressing the entire life cycle of MSMEs, with a particular focus on developing countries.¹⁰ The draft legislative guide provides a simplified business form to support MSME formation and operation. Its domestic

⁸ For further discussion of the contribution of UNCITRAL's work to the implementation of the SDGs, see [A/CN.9/941](#).

⁹ The special limited liability business organization has been temporarily called UNCITRAL Limited Liability Organization (UNLLO) pending a Working Group's decision on this matter.

¹⁰ *Official Records of the General Assembly, Seventy-fourth Session, Supplement No. 17 (A/74/17)*, para. 182.

implementation would contribute to lowering barriers to entry into business, provide effective business organizational solutions and reduce transaction costs, thus increasing employment opportunities and economic growth rates.

18. Access to limited liability protection, in which the financial liability of an entrepreneur for the obligations of the business entity is limited to a fixed sum, usually the value of the entrepreneur's investment in a business entity, will encourage micro, small and medium-size entrepreneurs by offering them important advantages in doing business. Indeed, gaining access to risk-reducing limited liability protection offered by a limited liability organization will protect the personal assets of members in the event the business does not do well or becomes involved in legal disputes. At the same time, the draft legislative guide recognizes that the needs of those entrepreneurs must be balanced against the needs of the State, creditors and other third parties doing business with them. Lack of transparency about the operations could result in a lack of legal certainty that would undermine the effectiveness of this new legal form. The draft legislative guide therefore contains a number of mandatory provisions that cannot be departed from by contract. The draft also addresses concerns about risks of misuse of a simplified legal form for money-laundering, terrorist financing and corruption by including minimum information requirements that meet international standards on disclosure of beneficial ownership.

19. The legislative guide, once finalized and adopted by the Commission, is thus expected to contribute to the implementation of Sustainable Development Goals 8 and 9, in particular target 8.3 (Promote development-oriented policies that support productive activities, decent job creation, entrepreneurship, creativity and innovation, and encourage the formalization and growth of micro, small and medium-sized enterprises, including through access to financial services) and target 9.3 (Increase the access of small-scale industrial and other enterprises, in particular in developing countries, to financial services, including affordable credit, and their integration into value chains and markets).

2. Text on a simplified insolvency regime for micro and small businesses (MSEs)

Relevance to Sustainable Development Goals 8 and 9.

20. The draft text on a simplified insolvency regime aims to address the insolvency of individual entrepreneurs and micro and small businesses of an essentially individual or family nature with intermingled business and personal debts (collectively referred to as MSEs), recognizing that standard business insolvency processes may be unavailable, prohibitive or unsuitable for them. Burdened by unresolved financial difficulties and old debt, they may be discouraged from taking new risks, may become trapped in a cycle of debt or may be driven to the informal sector of the economy.

21. Insolvency of MSEs impacts job preservation, the functioning of the supply chain, entrepreneurship and the economic and social welfare of society. Solutions are sought at the national, regional and international levels tailored to the specific needs of MSEs in financial distress that would allow deserving MSEs to restart entrepreneurial activities, drawing on their know-how, skills and lessons from the past. The draft text was prepared to assist States with putting in place such solutions in the form of faster, simpler, more accessible and affordable insolvency proceedings and debt discharge procedures, along with appropriate safeguards.

22. As such, the end-product is expected to become part of UNCITRAL texts aimed at reducing the legal obstacles faced by micro, small and medium-sized enterprises (MSMEs) throughout their life cycle and contribute to the implementation of Sustainable Development Goals 8 and 9, in particular target 8.3 (Promote development-oriented policies that support productive activities, decent job creation, entrepreneurship, creativity and innovation, and encourage the formalization and growth of micro, small and medium-sized enterprises, including through access to financial services) and target 9.3 (Increase the access of small-scale industrial and

other enterprises, in particular in developing countries, to financial services, including affordable credit, and their integration into value chains and markets).

B. Texts in the area of international commercial mediation

Relevance to Sustainable Development Goal 16.

23. At its fifty-third session, in 2021, the Commission will have before it texts in the area of international commercial mediation: notes on organizing mediation proceedings; mediation rules; and a guide to enactment and use of the UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation, 2018.¹¹ Those texts are expected to facilitate the use of the Singapore Convention on Mediation¹² and the Model Law.

24. Commercial obligations may need to be enforced through dispute settlement. An essential prerequisite for an effective dispute settlement is the ability to enforce, including across borders, an award or a settlement agreement reached through a dispute settlement mechanism or procedure in a cost-effective way. Upon adoption of the Singapore Convention on Mediation, the General Assembly recognized the value of mediation as a method of amicably settling disputes arising in the context of international commercial relations.¹³ Non-adversarial settlement methods, in particularly mediation, are seen to be swifter and less expensive than adversarial dispute settlement, benefiting commercial enterprises, promoting long-term and cross-border commercial transactions, and offering States possible cost savings in the administration of justice. These methods may be particularly suitable for micro, small, and medium-sized enterprises (MSMEs), which may not have the financial resources or the time to pursue solutions through adversarial dispute settlement. Access to these methods and texts that support the use of these methods are especially important to the post pandemic recovery phase, as mediation and other dispute resolution methods may be in high demand to resolve disputes emanating from the COVID-19 crisis.

25. The texts that will complement the Singapore Convention on Mediation and the Model Law expect to contribute to the implementation of Sustainable Development Goal 16 (Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels), in particular target 16.3 (Promote the rule of law at the national and international levels and ensure equal access to justice for all) and target 16.6 (Effective, transparent and accountable institutions).

C. Text in the area of expedited arbitration

Relevance to Sustainable Development Goals 16.

26. The UNCITRAL Expedited Arbitration Rules (the Expedited Rules), which is expected to be finalized by the Commission as an appendix to the UNCITRAL Arbitration Rules, will provide a set of rules which parties may agree on for the conduct of expedited arbitration. The Expedited Rules will provide for a streamlined and simplified procedure with a shortened time frame of 6 months (with possible extension to 9 months), which will allow for a final resolution of the dispute in a cost- and time-effective manner.

27. The General Assembly recognized generally the value of arbitration as a method of settling disputes arising in international commercial relations. By providing for a simplified and cost-effective procedure that preserves the fundamental principles of

¹¹ For the text of the Model Law, see *Official Records of the General Assembly, Seventy-third Session, Supplement No. 17 (A/73/17)*, annex II. For the discussion of supplementary texts, see *ibid.*, paras. 67 and 254.

¹² See General Assembly resolution [73/198](#).

¹³ *Ibid.*, the third preambular paragraph.

arbitration, such as party autonomy and due process, the Expedited Rules will be particularly appropriate for low-value cases that are not overly complex and may further contribute to the post-pandemic recovery by dealing with an increase of disputes, particularly those involving micro, small and mediation-sized enterprises, which are to a large extent family owned or owned by women.

28. The Expedited Arbitration Rules, once adopted by the Commission, is thus expected to contribute to the implementation 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. Expected contribution of UNCITRAL's programme to the promotion of the rule of law and achievement of the Sustainable Development Goals

29. Considering the developments highlighted in this note, the Commission may wish to consider ways of closer aligning its work programme with the Sustainable Development Goals, taking into account that the Goals are time-bound (until 2030). The Commission may wish to consider whether criteria that it uses for assessing feasibility and desirability of undertaking work on a new topic, such as the promotion of international trade law, legal feasibility, economic need and relevance to specific needs of developing countries, already encompasses the expected relevance and impact of such work on the achievement of the Sustainable Development Goals.¹⁴

30. In addition, the Commission may wish 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 MSMEs, mediation and expedited arbitration at its fifty-fourth 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. 13–28 above). The Commission may also wish to consider and specify the expected contribution of its ongoing work on access to credit for MSMEs, investor-State dispute settlement (ISDS) reform, electronic commerce (identity management and trust services), and judicial sale of ships to the achievement of the Sustainable Development Goals.

31. 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. Such opportunities might in particular arise in conjunction with the High-Level Political Forum on Sustainable Development “Sustainable and resilient recovery from the COVID-19 pandemic that promotes the economic, social and environmental dimensions of sustainable development: building an inclusive and effective path for the achievement of the 2030 Agenda in the context of the decade of action and delivery for sustainable development” (New York, 6–15 July 2021), which will examine approaches to accelerate progress towards the achievement of the Sustainable Development Goals and focus on the most critical trade-offs and synergies between the Goals.

32. Finally, the Commission may wish to reiterate the view 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 United Nations Secretary-General (see para. 3 above).

¹⁴ Ibid. *Sixty-eighth Session, Supplement No. 17 (A/68/17)*, paras. 294 and 295.