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Current activities of international organizations related to the harmonization and unification of international trade law

Note by the Secretariat*

Contents

	<i>Paragraphs</i>	<i>Page</i>
I. Introduction	1-4	2
II. Harmonization and unification of international trade law	5-63	3
A. International commercial contracts	5-10	3
B. International transport of goods	11-17	5
1. Transport by sea	11	5
2. Transport by land	12-13	5
3. Inland waterway transport	14	6
4. Transport by air	15	6
5. Intermodal transport	16-17	6
C. Electronic commerce and new technologies	18-34	7
D. Commercial arbitration and conciliation	35-50	11
E. International payments	51-52	14
F. Competition law	53	15
G. Trade facilitation	54	15
H. Insolvency	55-63	16

* This document was submitted late because of the need to undertake consultations on the content with relevant organizations.



I. Introduction

1. In resolution 34/142 of 17 December 1979, the General Assembly requested the Secretary-General to place before the United Nations Commission on International Trade Law a report on the legal activities of international organizations in the field of international trade law, together with recommendations as to the steps to be taken by the Commission to fulfil its mandate of coordinating the activities of other organizations in the field.

2. In resolution 36/32 of 13 November 1981, the General Assembly endorsed various suggestions by the Commission to implement further its coordinating role in the field of international trade law.¹ Those suggestions included presenting, in addition to a general report of activities of international organizations, reports on specific areas of activity focusing on work already under way and areas where unification work was not under way but could appropriately be undertaken.²

3. This general report, prepared in response to resolution 34/142, is the third in a series which the Secretariat proposes to update and revise on an annual basis for the information of the Commission. The first paper (A/CN.9/584, May 2005) and related papers on electronic commerce (A/CN.9/579) and insolvency (A/CN.9/580/Add.1) were prepared for the thirty-eighth session of the Commission. The second paper (A/CN.9/598, April 2006) and related papers on procurement (A/CN.9/598/Add.1) and security interests (A/CN.9/598/Add.2) were prepared for the thirty-ninth session of the Commission. The present paper focuses on activities of international organizations primarily undertaken since preparation of the second paper. It is based upon publicly available material and consultations sought with the listed organizations. This paper does not repeat information contained in the previous papers unless necessary to facilitate understanding of a particular issue.

4. The work of the following organizations is described in this report:

(a) United Nations bodies and specialized agencies

ITU	International Telecommunications Union
UNECE	United Nations Economic Commission for Europe
UNESCAP	United Nations Economic and Social Commission for Asia and the Pacific
UNCTAD	United Nations Conference on Trade and Development
UNODC	United Nations Office on Drugs and Crime
WIPO	World Intellectual Property Organization

(b) Other intergovernmental organizations

ADB	Asian Development Bank
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¹ *Official Records of the General Assembly, Thirty-sixth Session, Supplement No. 17 (A/36/17)*, paras. 93-101.

² *Ibid.*, para. 100.

APEC	Asia Pacific Economic Cooperation Commonwealth Secretariat
EBRD	European Bank for Reconstruction and Development
EC	European Commission
Hague Conference	Hague Conference on Private International Law
OAS	Organization of American States
OTIF	Intergovernmental Organization for International Carriage by Rail
OECD	Organization for Economic Cooperation and Development
Unidroit	International Institute for the Unification of Private Law
World Bank	International Bank for Reconstruction and Development
WCO	World Customs Organization
WTO	World Trade Organization
(c)	International non-governmental organizations
CTO	Commonwealth Telecommunications Organization
INSOL	International Association of Restructuring, Insolvency and Bankruptcy Professionals
IBA	International Bar Association
ICC	International Chamber of Commerce
III	International Insolvency Institute

II. Harmonization and unification of international trade law

A. International commercial contracts

Hague Conference³

5. The Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (Hague Service Convention) provides for the channels of transmission to be used when a judicial or extrajudicial document is to be transmitted from one State Party to the Convention to another State Party for service in the latter. The Convention provides

³ www.hcch.net/.

for one main channel of transmission (via a Central Authority of the requested State), and several alternative channels of transmission.

6. The Practical Handbook on the Operation of the Hague Service Convention was officially presented during the meeting of the Special Commission on General Affairs and Policy of the Hague Conference (3-5 April 2006). This fully revised and expanded edition of the Handbook offers detailed explanations on the general operation of the Convention as well as authoritative commentaries on the major issues raised by practice over the past forty years. The Handbook analyses or otherwise refers to approximately 250 court decisions rendered in a great number of jurisdictions in application of the Convention.

7. The Handbook also contains a FAQ section with succinct and practical replies that offer a quick overview of the Convention's main provisions and basic features. This section is usefully complemented by four Explanatory Charts on various aspects of the Convention's operation. This paper edition of the Handbook comes with a fully searchable and easy-to-use e-book (in PDF format).⁴

8. At its meeting on 3-5 April 2006, the Special Commission on General Affairs and Policy of the Hague Conference invited the Permanent Bureau to prepare a feasibility study on the development of an instrument concerning choice of law in international contracts. In preparation of the study, which should consider in particular whether there is a practical need for the development of such an instrument, the Permanent Bureau has sent a Questionnaire to Member States, national and international arbitration institutions and – through the ICC secretariat – to the international business community. Moreover, a comparative law overview on the issue of choice of law in international contracts, both in court proceedings and arbitration, was drawn up.

Unidroit⁵

9. Pursuant to the recommendation of the Governing Council of Unidroit, the Principles of International Commercial Contracts (PICC), first published in 1994, are included as an on going project in the work programme of the Institute. Subsequent to the adoption of the second enlarged edition of the PICC in 2004, in 2005 the Governing Council decided to set up a new Working Group with the task of preparing a third edition of the PICC including new chapters on unwinding of failed contracts, plurality of obligors and of obligees, termination of long-term contracts for just cause. The Working Group, composed of eminent experts representing the major legal systems and/or regions of the world as well as observers from international organizations and arbitration centres, including UNCITRAL, held its first session in Rome from 29 May to 1 June 2006. On the basis of a preliminary study prepared by the Unidroit Secretariat, the Group proceeded to an in-depth discussion of the five topics suggested for inclusion in the new edition of the Principles and appointed several rapporteurs to deal with the topics of: unwinding of failed contracts; illegality; plurality of obligors and of obligees; conditions; and termination of long-term contracts for just cause. The

⁴ The Handbook is sold on a commercial basis by two distributors: Wilson & Lafleur (Montreal) and Bruylant (Brussels).

⁵ www.unidroit.org.

Rapporteurs were invited to prepare position papers on their respective topics for discussion at the Group's next session in June 2007.

10. UNCITRAL, at its 40th session in July 2007, will be invited to give its endorsement to the 2004 version of the PICC.

B. International transport of goods

1. Transport by sea

UNCTAD⁶

11. UNCTAD continued its participation at sessions of the UNCITRAL Working Group III (Transport Law), submitting comments providing technical analysis on the issues under consideration and highlighting implications for developing countries, with respect to the development of a new international convention to govern the carriage of goods by sea as well as multimodal transport including a sea leg.

2. Transport by land

UNECE⁷

12. At the 99th session of the Working Party on Road Transport (SC.1) in October 2005, an editorial committee, comprising both Unidroit and UNCITRAL, was established to finalize the drafting of the text of an additional Protocol to the Convention on the Contract for the International Carriage of Goods by Road⁸ (Geneva, 19 May, 1956) (CMR) with a view to facilitating the possible use of electronic consignment notes. At its 100th session, two versions were considered, the first version prepared by Unidroit and amended to take account of comments by various delegations, and another prepared by the International Road Transport Union based largely on the ICAO Montreal Protocol. SC.1 opted for the first version and adopted the technical provisions of Protocol (ECE/TRANS/SC.1/379, Annex 3).⁹ Following comments by one delegation, the text was slightly amended with the consent of Unidroit, UNCITRAL and the International Road Transport Union (IRU). Regarding the final provisions of the Protocol, the Committee noted that, in the light of observations by the Treaty Section of the Office of Legal Affairs at United Nations Headquarters in New York, it was necessary to amend or supplement certain points, for example the introduction of a clause amending the Protocol. Since the secretariat cannot amend the text on its own authority without the prior agreement of members of SC.1, the Committee endorsed the secretariat's proposal to make written representations to the Contracting Parties to the CMR as soon as possible. The procedure for opening the Protocol for signature may be set in motion once there has been agreement by the Contracting Parties.

⁶ www.unctad.org.

⁷ www.unece.org.

⁸ Entry into force: 2 July 1961, United Nations, *Treaty Series*, vol. 399, p. 189. Source: <http://www.untreaty.org>.

⁹ For documentation see: <http://www.unece.org/trans/main/sc1/sc1.html>.

OTIF¹⁰

13. The Uniform Rules concerning the Contract for International Carriage of Goods by Rail, Appendix to the Convention concerning International Carriage by Rail (CIM-COTIF),¹¹ as amended by the Protocol of Modification of 1999 (Vilnius Protocol) entered into force on 1 July 2006.

3. Inland waterway transport**UNECE**

14. The Budapest Convention on the Contract for the Carriage of Goods by Inland Waterway (CMNI Convention), adopted at a Diplomatic Conference organized jointly by CCNR, Danube Commission and UNECE (Budapest, 25 September-3 October 2000), entered into force on 1 April 2005. It currently has eight Contracting Parties: Bulgaria, Croatia, the Czech Republic, Hungary, Luxembourg, Netherlands, Romania and Switzerland. The CMNI Convention governs the contractual liability of parties to the contract for the carriage of goods by inland waterway and provides for the limitation of the carrier's liability.

4. Transport by air**UNCTAD**

15. UNCTAD has prepared a guide on aspects of air law, designed to assist developing countries in their understanding of the complex international framework of air law conventions, including in respect of effective uniform implementation of conventions at the national level. The document, entitled "*Carriage of Goods by Air: A Guide to the International Legal Framework*" is available electronically at <http://www.unctad.org/ttl/legal>.

5. Intermodal transport**UNECE**

16. At its forty-seventh session (Geneva, 5-6 March 2007), the Working Party on Intermodal Transport and Logistics was informed that the EC was preparing an action plan on logistics to be issued in November 2007. The action plan would address requirements for logistical infrastructures, including financing, urban freight transport, information technologies, dimensions of intermodal transport units (ITU), and working conditions in logistics. More detailed information on the action plan and the envisaged activities of the EC is to be made available at the October 2007 session of the Working Party.

17. The Working Party recalled in this context that, at its last session, it was considered premature to initiate work on a pan-European civil liability regime for transport covering road, rail, inland water and short sea shipping. The action plan prepared by the European Commission and the ensuing discussions possibly would

¹⁰ www.otif.org.

¹¹ Budapest, 22 June, 2001. Entered into force 1 April 2005.

provide additional elements to decide on this matter (ECE/TRANS/WP.24/113, paragraphs 17-21).¹²

C. Electronic commerce and new technologies

APEC¹³

18. Project outcomes for a project entitled, “Development of APEC Guidance for Electronic Commerce Using the Best Practices of E-Government Procurement Systems” were included in the final report presented to the Electronic Commerce Steering Group (ECSG) during a meeting held in Canberra, Australia in January 2007.¹⁴

19. Building on the first training course conducted in Beijing in October, 2006, APEC also conducted a second training program on e-trade and supply chain management aimed at reducing the digital divide between SMEs in developing economies and those in developed APEC economies by applying E-business and supply chain management. The second training course was held in Sanya, Hainan province, China on 27-30 March, 2007.

20. Work continued on the implementation of APEC’s Strategies and Actions Toward a Cross-Border Paperless Trading Environment to enable the electronic transmission of trade-related information across the region by 2020. Sixteen economies have prepared Paperless Trading Individual Action Plans. These plans outline the steps members should take to meet APEC’s target to reduce or eliminate customs, cross-border trade administration and other documents relevant to international sea, air and land transport. The ECSG is also collaborating with the United Nation Centre for Trade Facilitation and Electronic Business to undertake work to enhance trade facilitation through technical cooperation and knowledge sharing, specifically in electronic standards for paperless trade.

EC¹⁵

21. In May 2007 political agreement on the implementation of pan-European electronic customs was reached by the European Council of Ministers. The electronic customs project initiated by the European Commission aims to replace paper format customs procedures with EU wide electronic ones in order to enhance security at the external borders of the European Union and to facilitate trade. The compromise agreement now needs to be confirmed by the European Parliament in a second reading which is expected to occur shortly.¹⁶

Hague Conference

22. During the Special Commission on General Affairs and Policy of the Hague Conference on Private International Law (HCCH) held in April 2006, the HCCH

¹² <http://www.unece.org/trans/wp24/wp24-reports/documents/113-e.pdf>.

¹³ <http://www.apec.org>.

¹⁴ http://aimp.apec.org/Documents/2007/ECSG/ECSG1/07_ecsg1_010.doc.

¹⁵ ec.europa.eu.

¹⁶ http://ec.europa.eu/taxation_customs/customs/policy_issues/electronic_customs_initiative/index_en.htm.

and the National Notary Association (NNA) officially launched the electronic Apostille Pilot Program (e-APP). Under this Program, the two Organizations are, together with any interested State, developing, promoting and assisting in the implementation of low-cost, operational and secure software models for (i) the issuance of and use of electronic Apostilles (e-Apostilles), and (ii) the operation of electronic Registers of Apostilles (e-Registers). The e-APP is designed to illustrate how the Conclusions and Recommendations of the 2003 Special Commission meeting on the practical operation of the Hague Apostille Convention and the 2005 International Forum on e-Notarization and e-Apostilles can be implemented in practice by relying on existing and widely used technology.

23. In February 2006 the state of Kansas issued the first test e-Apostille in accordance with the model suggested under the e-APP, and Colombia, the receiving State, officially indicated its acceptance of this test e-Apostille. As a result, the two jurisdictions are now ready to complete authentications of public documents entirely electronically. Furthermore, the state of Rhode Island joined the e-APP by adopting and implementing the Program's free, open-source electronic Register software. Any interested person can now conduct a secure, online search for an Apostille issued by Rhode Island officials (currently in paper form, soon also in electronic form) by entering its number and date and the register will show automatically if a matching entry can be found, thus allowing receiving parties to verify the origin of the Apostille much more quickly and efficiently than can be accomplished currently.

24. In the context of the development of a Convention on the international recovery of child support and other forms of family maintenance, the Hague Conference on Private International Law, with the assistance of UNCITRAL, has been preparing proposals for medium-neutral and technology-neutral provisions to ensure that Central Authorities can employ the most rapid means of communication under the future instrument to transmit applications and relevant information and documents under the Convention to recover maintenance swiftly and at a low cost. The new Hague Convention takes account of future needs, the developments occurring in national and international systems of maintenance recovery and the opportunities provided by advances in information technology.

ITU¹⁷

25. In the framework of its "Countering Spam" activities, the International Telecommunication Union has created a platform to gather anti-spam legislation worldwide, and provide a list of the competent enforcement authorities and their contact details. Links to news and other sources is also provided. Information is regularly updated. Over 30 countries have provided information for the survey which is updated regularly.¹⁸

OECD¹⁹

26. On April 20, 2006, the OECD launched an anti-spam toolkit to help governments and industry work together to combat spam. The toolkit also includes

¹⁷ www.itu.int.

¹⁸ <http://www.itu.int/osg/spu/spam/law.html>.

¹⁹ www.oecd.org.

an OECD recommendation on enforcement cooperation. The anti-spam toolkit, its annexes and background papers are available online.²⁰

27. As well, the OECD E-Government Project which was launched in 2001, explores how governments can best exploit information and communication technologies (ICTs) to embed good governance principles and achieve public policy goals. The Project produces reports on best practices and develops frameworks for addressing issues such as cost/benefit analysis, e-services and take-up. It also carries out country peer reviews on e-government. These reviews place e-government in a national context, and help identify the strengths and weaknesses of national e-government programmes. The OECD Network of Senior E-Government Officials met in Paris on 6-7 February 2006 to address issues regarding cost and benefit analysis of e-government.²¹

UNCTAD

28. The eventual adaptation of laws and regulations related to the use of ICT constitutes a key step towards the development of an information society in developing countries. In this sense, UNCTAD provides advisory services to developing countries on the legal aspects of e-commerce, and carries out related training and capacity-building. These activities enable legal professionals, policy makers, and private sector representatives to achieve a common understanding of e-commerce legal and regulatory issues for trade facilitation and harmonization of regional and national legal frameworks. Beneficiaries of capacity-building become more acquainted with key concepts such as intellectual property, content regulation, securing e-commerce, as well as with the United Nations Convention on the use of electronic communications in international contracts (2005). For example, UNCTAD training in the course of 2006 helped Cambodia and Lao PDR move forward in passing electronic commerce legislation before 2008 (the deadline specified by the e-ASEAN initiative) and customize such legislation to their own business environment. UNCTAD also helped the East-African Community (EAC) secretariat to formulate a roadmap for a harmonized framework for cyber laws in the region, and a series of actions was recommended as a follow-up to an UNCTAD workshop in December 2006. UNCTAD also trained African law-makers and government officials to understand the basic legal implications of e-commerce, and to identify the main policy issues involved, as well as the priority areas for law reform, improving their ability to draft e-commerce legislation. Finally, UNCTAD's Information Economy Report 2006 included a chapter on "Laws and Contracts in an E-commerce Environment" that examined the legal nature of communications and data messages in electronic commerce, including policy recommendations consisting of a checklist of issues for developing countries to consider when embarking on law reform designed to facilitate electronic commerce.²²

UNECE

29. The United Nations Centre for Trade Facilitation and Electronic Business (UN/CEFACT) has a global remit to develop a wide range of electronic business

²⁰ www.oecd-antispam.org.

²¹ Further information available at <http://webdomino1.oecd.org/COMNET/PUM/egovproweb.nsf>.

²² Available at <http://www.unctad.org/Templates/WebFlyer.asp?intItemID=3991&lang=1>.

standards in support of trade and of government to business communications. Recent developments following the October 2006 UN/CEFACT Forum in New Delhi²³ and the March 2007 Forum in Dublin²⁴, include: publication of candidate release standards for the Cross Industry Invoice schema and eTendering schemas; approval of the United Nations Electronic Trade Documents (UNeDocs) Business Requirement Specification; and commencement of work on a new project on Cross Domain eProcurement.²⁵

30. The UN/CEFACT's new intellectual property rights (IPR) policy²⁶ was adopted at its annual plenary session in May of 2006.²⁷

31. Currently, UN/CEFACT is in the process of setting up a joint project with the World Customs Organization to develop an international Cross Border Reference Data Model (CBRDM). The CBRDM will allow better information exchange and coordination between Customs and other border agencies such as ministries of agriculture, health, finance and transport and will support the implementation of Single Windows for export and import.²⁸

32. UN/CEFACT's Legal Group has begun work on a Recommendation on the Legal Framework for Single Windows. This recommendation will seek to identify the legal issues involved in creating and operating a Single Window for international trade and suggest possible solutions. The Legal Group will soon circulate a draft version of this Recommendation for an internal review. The Legal Group is also working on a Unified Business Agreements and Contracts (UBAC) Project, which seeks to align the concepts defined within the ISO Open-EDI lifecycle stages of an e-business relationship with the legal processes of contract formation, performance and arbitration.

33. In addition, the Legal Group is focusing its attention on renewing and strengthening its working relationship with UNCITRAL. Representatives of the UNCITRAL secretariat and the Legal Group met in Vienna in 2006 to discuss common areas of work. As well Legal Group members participated in an UNCITRAL high-level Experts Group Meeting in February 2007 on the cross-border recognition of electronic signatures and authentication methods, where they made a presentation. The Legal Group will also present a paper focusing on the legal issues of the International Trade Single Window at UNCITRAL's Congress in July 2007.

UNESCAP²⁹

34. UNESCAP convened a conference from 27-29 November 2006 in Manila, the Philippines aimed at identifying the gaps between planning and implementing e-government in countries in the Asian and Pacific region, particularly in the areas of e-customs and e-procurement and to devise the ways for closing such gaps. The

²³ (http://www.unece.org/cefact/prs/pr_india_oct06.doc).

²⁴ (http://www.unece.org/press/pr2007/07trade_p03e.htm).

²⁵ For more information refer to the following site: <http://www.uncefactforum.org/>.

²⁶ http://www.unece.org/cefact/cf_plenary/plenary06/trd_cf_06_11e.pdf.

²⁷ http://www.unece.org/cefact/cf_plenary/plenary06/list_doc_06.htm.

²⁸ See UN/CEFACT Recommendation 33 at http://www.unece.org/cefact/recommendations/rec_index.htm.

²⁹ www.unescap.org.

Conference was attended by fourteen participants from nine countries. It was organized as part of the activities of the ESCAP project entitled “Closing the gap between planning and implementation of e-government”, which is funded by the Korea Information Society Development Institute (KISDI) and has been implemented by Information, Communication and Space Technology Division (ICSTD).

D. Commercial arbitration and conciliation

APEC

35. In 2006 APEC published the paper “The Role of ADR (Alternative Dispute Resolution) / ODR (Online Dispute Resolution) in Implementing the APEC Privacy Framework”.³⁰ ADR / ODR was considered relevant to the work of APEC by: leveraging limited resources of enforcement; allowing companies to resolve disputes before “case filing”; and providing means of online resolution to consumers with recognized neutral third parties or transparent system while allowing for possible recourse to an arbitral authority.

CTO³¹

36. The CTO ADR Centre has established partnership relationships with the Chartered Institute of Arbitrators, the Centre for Effective Dispute Resolution and the Singapore Mediation Center. The CTO ADR Centre and the Claims Room.com Ltd jointly operate an on-line dispute resolution platform in partnership.³² Recognizing the need to build capacity within developing countries and in the industry sector itself the CTO ADR Centre conducts training programmes. One event has already been held in Cameroon and others are planned in Caribbean, Pacific and Asian regions.

ICC³³

37. The ICC Commission on Arbitration has constituted five task forces covering amiable composition and ex aequo et bono,³⁴ criminal law and arbitration, guidelines for ICC expertise proceedings, reducing time and costs in arbitration and trusts and arbitration.³⁵

³⁰ http://www.apec.org/apec/documents_reports/electronic_commerce_steering_group/2006_MedialibDownload.v1.html?url=/etc/medialib/apec_media_library/downloads/taskforce/ecsg/mtg/2006/pdf.Par.0091.File.v1.1.

³¹ www.cto.int/.

³² <http://www.ctomediation.com/>.

³³ www.iccwbo.org/.

³⁴ <http://www.iccwbo.org/policy/arbitration/id6566/index.html>.

³⁵ This Task Force has the following mission: to study and identify specific issues related to “Trusts and Arbitration” and, if deemed appropriate, prepare a report with respect thereto; to study the possibility of suggesting a draft ICC model arbitration clause to be included in the trust deed, and, if deemed appropriate, to propose such a clause and to prepare an explanatory note with respect thereto. The Task Force met on 5 February 2007 at the ICC Headquarters to start working on the adaptation of a model arbitration clause to the particularities of Trusts.

38. The task force on amiable composition and *ex aequo et bono*³⁶ was mandated to identify the essential features of “*amiable composition*” and of “*ex aequo et bono*” and study the role of the arbitrators when acting as “*amiable compositeurs*” or when deciding “*ex aequo et bono*” (e.g. jurisdictional, procedural or substantive problems that may arise). The task force met on 22 May 2006, to analyse answers to the first task force survey and is currently preparing a report based on a synthesis of the survey answers. It will also begin drafting guidelines to assist arbitrators who have been empowered to decide “*ex aequo et bono*” or to act as “*amiable compositeurs*”.

39. The task force on criminal law and arbitration³⁷ was mandated to study the impact of criminal law in the framework of arbitrations (e.g. jurisdictional, procedural and substantive problems that may arise) and also study the role of arbitral tribunals when facing situations in which problems related to criminal law arise. The task force has, by circulating a questionnaire, obtained information on the topic from ICC arbitrators, National Committees and Members of the Task Force and compiled the information into a synopsis, which covers various legal traditions. It has decided to limit its study and final report to the arbitrators’ duty to report a criminal offence; the arbitrators’ duty to appear as a witness if summoned by the authorities; the arbitrators’ ability to invoke professional privilege to the questions that he/she is asked; and the definition of professional privilege.

40. Following the adoption by the ICC Commission in Arbitration of the revised ICC Rules for Expertise in 2003, another task force prepared a set of guidelines for ICC expertise proceedings.³⁸ The task force is now preparing explanatory notes for the use of experts covering issues including: the use of experts in ICC Arbitration; using experts under the ICC Rules for Expertise as fact finders; and neutral experts as facilitators under the ICC ADR and Dispute Board Rules.

41. A task force on reducing time and costs in international arbitration³⁹ is currently preparing a synthesis of a survey circulated on that topic and will analyse the problems raised therein grouped into parties’ responsibilities, arbitral tribunal responsibilities and institution responsibilities.

OECD

42. In a report adopted on 30 January 2007 by the OECD Committee on Fiscal Affairs entitled “Improving the Resolution of Tax Treaty Disputes”,⁴⁰ the OECD has agreed to modify the OECD Model Tax Convention, which serves as a basis for most negotiations between countries on tax matters, by including the possibility of arbitration in cross-border disputes over taxation if they remain unresolved for more than two years.

43. The decision was based on the recognition that with the growth of cross-border trade and investment and the accompanying increase in the number of people working abroad, cross-border tax disputes arising when two states assert conflicting

³⁶ Further information is available at <http://www.iccwbo.org/policy/arbitration/id6566/index.html>.

³⁷ Further information is available at: <http://www.iccwbo.org/policy/arbitration/id1783/index.html>.

³⁸ Information on the task force on guidelines for ICC expertise proceedings is available at <http://www.iccwbo.org/policy/arbitration/id1785/index.html>.

³⁹ <http://www.iccwbo.org/policy/arbitration/id3874/index.html>.

⁴⁰ <http://www.oecd.org/dataoecd/17/59/38055311.pdf>.

rights to tax an individual living and working in more than one country or companies that invest outside their home country, have also increased.

44. The report addresses a number of issues relating to what is known as the “mutual agreement procedure”, or MAP, the mechanism provided by tax treaties to resolve disputes between the countries that sign these treaties. At the same time, the Committee has published a web-based manual setting forth 25 best practices to help countries to improve the existing mechanisms for resolving tax disputes.⁴¹

UNCTAD

45. UNCTAD has developed and is implementing a project on “Building capacity through training in dispute settlement in International Trade, Investment and Intellectual Property”. The objective of the project is to promote the integration of developing countries and countries in transition into the multilateral trading system through capacity-building on dispute settlement in International Trade, Investment and Intellectual Property. It aims to achieve this by improving the knowledge and level of critical awareness of the legal framework governing dispute settlement in international economic and trade relations.

46. The project focuses on the dispute settlement rules and mechanisms of international organizations such as ICC, ICSID, UNCITRAL, WIPO and WTO under five headings: (1) General Dispute Settlement Topics; (2) Settlement of International Investment Disputes and ICSID; (3) Settlement of International Trade Law Disputes and WTO; (4) Settlement of International Intellectual Property Disputes and WIPO; (5) International Commercial Arbitration; and (6) Regional Approaches. The comprehensive course on dispute settlement consists of forty chapters or modules, each dealing with one specialized topic as an essential building block of international dispute settlement.⁴² The pedagogical methodology, on which the format of the modules is based, allows for self-study for beginners and includes a tool to test what has been learned. At the same, the modules provide a quick introduction to specialists, who find guidance to further specialized sources and materials. The course was developed in English, with partial translation in Spanish and French and Portuguese. Over one million copies of the modules have been downloaded to date (February 2007).

47. Capacity-building workshops are being held to train officials, academics, legal practitioners and business from developing countries, including LDCs, and countries in transition.

⁴¹ http://www.oecd.org/document/26/0,2340,en_2649_37427_36197402_1_1_1_37427,00.html.

⁴² General topics: International Court of Justice; Permanent Court of Arbitration. Investment disputes: Overview; Selecting the Appropriate Forum; Consent to Arbitration; Requirements Ratione Personae; Requirements Ratione Materiae; Applicable Law; Procedural Issues; Post-Award Remedies; Binding Force and Enforcement; Trade Disputes: Overview; Panels; Appellate Review; Implementation and Enforcement; GATT 1994; Anti-dumping Measures; Subsidies and Countervailing Measures; Safeguard Measures; Sanitary and Phytosanitary Measures; Technical Barriers to Trade; Textiles and Clothing; Government Procurement; GATS; TRIPS; Agriculture. Intellectual property: (WIPO) Arbitration and Mediation Centre; Internet Domain Name Dispute Resolution. International Arbitration: Overview; Submission Agreement/Clause; Arbitral Tribunal; Arbitral Proceedings; Applicable Law; Making the Award; Recognition and Enforcement of the Award; Court Measures; Electronic Arbitration; Regional mechanisms: NAFTA; MERCOSUR; ASEAN.

48. Since its start in May 2002, the project has successfully cooperated with United Nations bodies and international organizations, such as the World Trade Organization (WTO), the World Intellectual Property Organization (WIPO), the International Chamber of Commerce (ICC), the International Centre for Settlement of Investment Disputes (ICSID) of the World Bank Group, the United Nations Commission on International Trade Law (UNCITRAL), the World Bank, and the Advisory Centre on WTO Law. There is also cooperation with national and regional institutions, especially in the organization and delivery of workshops.

WIPO⁴³

49. WIPO has released a number of publications providing an overview of the resources and services offered by the WIPO Mediation and Arbitration Center ('the Center') and encouraging parties to seek alternative dispute resolution mechanisms. These publications include: WIPO Services under the UNCITRAL Arbitration Rules, WIPO Arbitration and Mediation Rules, Dispute Resolution for the 21st century, Guide to WIPO Arbitration, Guide to WIPO Domain Name Dispute Resolution and the Guide to WIPO Mediation.

LCIA⁴⁴

50. On 5 May 2006, a joint meeting of the LCIA Court and Board voted to publish the LCIA Court's decisions on challenges to arbitrators. The Court based its decision on a report that studied the LCIA challenge decisions since 1995. The report also reviewed the practice and procedure in dealing with conflicts and challenges in other institutions such as the ICC and the AAA. The Court decided that publication will be in the form of abstracts and that all of its decisions will be published. Work is now under way to prepare an introductory text and the abstracts, for review by the full LCIA Court, which will then decide whether the abstracts should be published on the LCIA website, or in paper form, or both.

E. International payments

Hague Conference

51. In the context of the development of a convention on the international recovery of child support and other forms of family maintenance, the Hague Conference on Private International Law, hopes that UNCITRAL could undertake work in relation to financial mechanisms of protection against foreign exchange fluctuations. Such mechanisms as used everyday for commercial transactions could be beneficial to the international recovery of child support by providing mechanisms to reduce arrears build-up over time caused by foreign exchange fluctuations.

ICC

52. The 2007 Revision of Uniform Customs and Practice for Documentary Credits, UCP 600, (ICC Publication No. 600) were approved by the

⁴³ <http://www.wipo.int>.

⁴⁴ www.lcia-arbitration.com.

ICC Commission on Banking Technique and Practice⁴⁵ on 25 October 2006. The UCP were first published by ICC in 1933. Revised versions were issued by the ICC in 1951, 1962, 1974, 1983 and 1993. Written into virtually every letter of credit, the UCP are accepted worldwide. UCP 600 is expected to be implemented from 1 July 2007 and contains significant changes to the existing rules, including: a reduction in the number of articles from 49 to 39; new articles on “Definitions” and “Interpretations” providing more clarity and precision in the rules; a definitive description of negotiation as “purchase” of drafts of documents; the replacement of the phrase “reasonable time” for acceptance or refusal of documents by a maximum period of five banking days. UCP 600 also includes the 12 Articles of the eUCP, ICC’s supplement to the UCP governing presentation of documents in electronic or part-electronic form.

F. Competition law

UNCTAD

53. As a follow up to the Fifth Review Conference, the eighth session of the Intergovernmental Group of Experts (IGE) on Competition Law and Policy was held in Geneva from 31 October until 2 November 2006 and considered four specific competition policy issues for better implementation of the “Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices” (the Set), adopted by the General Assembly in 2005, as they relate to: (i) interface between competition and sectoral regulators; (ii) hard-core cartels; (iii) cooperation and dispute settlement mechanisms; and (iv) subsidies. In addition, the IGE also organized a voluntary Peer review of the competition policy and law of Tunisia. Over the period under review, UNCTAD continued to assist interested member states in adopting and implementing competition law and policy in line with the principles and rules multilaterally agreed in the UN Set of Principles on Competition Policy.

G. Trade facilitation

UNCTAD

Harmonizing organic agricultural standards at regional level

54. Laws and regulations dealing with technical standards are an important determinant of trade flows at regional and multilateral level. Harmonization of such trade-related technical standards would therefore provide additional export opportunities for developing country producers. One such harmonization initiative carried out by UNCTAD in 2006 was the promotion of a common East African Organic Standard. The EAOS will become the second regional organic standard in the world after the European Union’s and the first ever to have been developed in cooperation between the organic movements and the National Standards Bodies. The EAOS is expected to boost organic trade and market development in the region, raise awareness about organic agriculture among farmers and consumers, and create a unified negotiating position that should help East African organic farmers win

⁴⁵ For more information, see <http://www.iccwbo.org/home/banking/commission.asp>.

access to export markets and influence international organic standard setting processes.⁴⁶

H. Insolvency

EBRD

55. Recognizing that a solid law is not enough for an effective insolvency system, the EBRD has endeavoured to build on its core principles for an insolvency law regime and focus on the effectiveness of insolvency system by identifying a set of principles to guide countries in setting standards for the qualifications, appointment conduct, supervision, and regulation of office holders (“Office holders” are the trustees, administrators, liquidators, insolvency representatives, or similar functionaries who make many insolvency systems work) in insolvency cases. The draft EBRD Insolvency Office Holder Principles are available on the EBRD’s website.⁴⁷

International Insolvency Institute (III)/American Law Institute (ALI)

56. As noted in the previous report, the III and the ALI have embarked upon a joint project to develop a statement of “Principles of Cooperation in International Insolvency Cases”. A first meeting was held in June 2006 and a second meeting is planned for June 2007. Approval of the Principles will be sought from professional and judicial associations.

INSOL

57. As foreshadowed in the previous report, in 2006 INSOL published:

(a) “Financing in Insolvency Proceedings”, covering the different insolvency procedures that are available, the extent to which lenders get involved in providing finance to insolvent companies and related issues such as getting security, priority given to new lenders, and the role of the judicial process in 12 countries; and

(b) “Credit Derivatives in Restructurings”, a guidance booklet for insolvency practitioners and others on matters relating to the impact of credit derivatives in restructurings. The book covers an overview of the credit derivatives market, basic elements of credit default swaps, settlement following a credit event, and a comparison with other types of credit products and techniques.

58. A further publication on treatment of secured claims in insolvency as well as pre-insolvency proceedings, as well as the second in a series of technical papers, entitled “Formalities for the transfer of businesses in insolvency” will be published in 2007.

59. In 2006, INSOL International and the American Bankruptcy Institute launched GLOBAL INSOLvency to provide a comprehensive source of information both on current issues in international insolvency and restructuring law and on the legal framework for insolvency and restructuring around the world.

⁴⁶ For more information see <http://www.unctad.org/Templates/Page.asp?intItemID=4070&lang=1>.

⁴⁷ See <http://www.ebrd.org/country/sector/law/insolve/Princip/principles.pdf>.

OECD

60. The fifth meeting of the Forum on Asian Insolvency Reform (FAIR), organized by OECD in cooperation with APEC, the Australian Agency for International Development (AusAID), the Asian Development Bank, the World Bank and the Government of Japan, took place in Beijing, PRC from 27 to 28 April 2006. Participants examined the lessons from ten years of institutional and legal reforms of Asian insolvency systems and discussed the relevance of international guidance to improving insolvency systems, focussing in particular on the UNCITRAL Legislative Guide on Insolvency, the World Bank Principles on Insolvency and Creditor Right Systems and the UNCITRAL Model Law on Cross-Border Insolvency.

61. The inaugural conference on corporate governance hosted by the Hawkamah Institute for Corporate Governance and the OECD for countries the Middle East and North Africa (MENA) adopted the Dubai Declaration on Corporate Governance, which includes agreement that MENA countries should act to establish effective insolvency systems and provide a framework for value maximization and more efficient allocation of capital to productive uses. It has been agreed that a module on corporate restructuring and insolvency should be included in the work programme and will involve establishing partnerships with interested organizations, including in the private sector.

World Bank

62. In June 2006, The World Bank organized the 2006 Working Group Session of the Global Judges Forum, in cooperation with the International Association of Judges, the Latin American Federation of the Judiciary, the European Association of Judges, the Argentine Federation of Magistrates, and the Argentine Association of Federal Judges in Buenos Aires. Topics included: mediation and arbitration in commercial/insolvency cases, streamlining commercial proceedings using non-judicial entities and processes; delegation/substitution in enforcement proceedings and judicial cooperation and court-to-court-communication in cross-border insolvency proceedings

63. In 2007, the World Bank joined UNCITRAL and INSOL to co-sponsor the seventh in the series of multinational judicial colloquium focussing on coordination and cooperation in cross-border insolvency organized by UNCITRAL and INSOL since 1995.