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Technical cooperation and assistance

Note by the Secretariat

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I. Introduction

1. Pursuant to a decision taken at its twentieth session in 1987, technical cooperation and assistance activities aimed at promoting the use and adoption of its texts represent one of the priorities of the United Nations Commission on International Trade Law (UNCITRAL).¹

2. In its resolution 65/21 of 10 January 2011, the General Assembly reaffirmed the importance, in particular for developing countries and economies in transition, of the technical cooperation and assistance work of the Commission and reiterated its appeal to bodies responsible for development assistance, as well as to Governments in their bilateral aid programmes, to support the technical cooperation and assistance programme of the Commission and to cooperate and coordinate their activities with those of the Commission.

3. The General Assembly also stressed the importance of bringing into effect the conventions emanating from the work of the Commission to further the progressive harmonization and unification of international trade law, and to this end urged States that have not yet done so to consider signing, ratifying or acceding to those conventions.

4. The status of adoption of UNCITRAL texts is regularly updated and available on the UNCITRAL website. It is also compiled annually in a note by the Secretariat entitled “Status of conventions and model laws” (for the Commission’s forty-fourth session, see A/CN.9/723).

5. This note sets out the technical cooperation and assistance activities of the Secretariat subsequent to the date of the previous note submitted to the Commission at its forty-third session in 2010 (A/CN.9/695 of 23 April 2010), and reports on the development of resources to assist technical cooperation and assistance activities.

6. A separate document (A/CN.9/725) provides information on current activities of international organizations related to the harmonization and unification of international trade law and on the role of UNCITRAL in coordinating those activities.

II. Technical cooperation and assistance activities

7. Technical cooperation and assistance activities undertaken by the Secretariat aim at promoting the adoption and uniform interpretation of UNCITRAL legislative texts. Such activities include providing advice to States considering signature, ratification or accession to UNCITRAL conventions, adoption of an UNCITRAL model law or use of an UNCITRAL legislative guide.

8. Technical cooperation and assistance may involve: undertaking briefing missions and participating in seminars and conferences, organized at both regional and national levels; assisting countries in assessing their trade law reform needs, including by reviewing existing legislation; assisting with the drafting of national

¹ *Official Records of the General Assembly, Forty-second Session, Supplement No. 17 (A/42/17)*, para. 335.

legislation to implement UNCITRAL texts; assisting multilateral and bilateral development agencies to use UNCITRAL texts in their law reform activities and projects; providing advice and assistance to international and other organizations, such as professional associations, organizations of attorneys, chambers of commerce and arbitration centres, on the use of UNCITRAL texts; and organizing training activities to facilitate the implementation and interpretation of legislation based on UNCITRAL texts by judges and legal practitioners.

9. Some of the activities undertaken in the relevant time period are described below. Activities denoted with an asterisk were funded by the UNCITRAL Trust Fund for Symposia.

A. Strategic framework for technical assistance activities

Current trade law reform environment

10. The changes in global political and economic policies in the last two decades, often referred to as the phenomenon of “globalization”, have had a significant impact on the field of trade law reform.

11. The increase in the number of sovereign entities was not always matched with adequate governance capacity-building. Moreover, the urgent need to counter global threats has attracted attention on a priority basis and demanded significant resources, to the detriment of other areas of work, including international trade law, whose role as an important development tool is often overlooked.

12. International and internal conflicts have weakened the capacity of affected States, including in their ability to engage in trade law reform. This happened in spite of the fact that trade may provide an important contribution to post-conflict recovery both by fostering economic development and by building of mutual trust. This contribution has recently been recognized, including with specific reference to the relevance in this context of trade law reform.²

13. Moreover, the decision to change economic model made by several newly independent States called for specific trade law reform assistance in a number of areas critical for the successful achievement of that transformation.

14. The last decades have seen a significant increase in international trade with clear positive consequences on economic development. Augmented trade flows led to more demand for an adequate legislative framework with a view, in particular, to assisting small and medium-sized enterprises and other economic operators without easy access to qualified legal counselling. In certain areas, the advent of consumers as direct participants in international transactions also had to be taken into account.

15. In this context, the desire to promote the adoption of UNCITRAL texts has led to a more proactive approach of the Secretariat towards stakeholders. In particular, the Secretariat has identified certain strategies that might assist in promoting texts more effectively in the broader framework of its technical assistance activities. Those strategies include favouring regional approaches, including in cooperation with regional economic integration organizations. They also include initiatives

² United Nations General Assembly, *Resolution 65/21* of 10 January 2011, para. 13.

concerning newly adopted treaties, with a view to fostering their early adoption, and the promotion of the universal adoption of fundamental texts of international trade law, in particular, by those countries having yet to develop an international trade law framework, or having an obsolete one. Initiatives to further such strategies complement technical assistance and cooperation efforts undertaken in reaction to specific requests.

Initiatives for a regional approach

16. In its resolution 64/111,³ the General Assembly noted the request by the Commission to the Secretariat to explore the possibility of establishing a regional presence with a view to facilitating the delivery of technical assistance with respect to the use and adoption of UNCITRAL texts.

17. In accordance with that request, the Secretariat has invited States to express their interest in establishing UNCITRAL regional centres in different parts of the world with a view to providing technical assistance to States on the adoption and uniform interpretation of UNCITRAL texts and to coordinating closely with international and regional organizations active in law reform projects in those regions. As the regular budget of UNCITRAL does not include funds for the establishment or operation of UNCITRAL regional centres and as extrabudgetary funds for technical assistance projects are very limited, the establishment and activities of the UNCITRAL regional centres will require substantive financial contributions from States. In that context, the UNCITRAL Secretariat is making efforts to engage more actively with possible donors in raising funds for relevant technical assistance projects.

18. Also in furtherance of that request, the Secretariat, in close cooperation with the Ministry of Justice of the Republic of Korea and the Korea University Law School, convened the first UNCITRAL Regional Workshop in Asia (the “Workshop”) on 23 and 24 November 2010 in Seoul, Republic of Korea. The objective of the Workshop was to obtain the views and draw on the expertise of experts from Governments, international organizations, the academia and the private sector on various topics in the Asian regional context. Those topics included the role of UNCITRAL and the significance of its texts, recent and future work of UNCITRAL and its implications, technical assistance and strategies for implementation of UNCITRAL texts.

19. The participants in the Workshop agreed on the desirability for the Secretariat to focus on the regional approach in Asia, in light of the common desire to harmonize laws relating to international trade. The importance of cross-border trade for the recent economic development in the region was also emphasized.

20. It was suggested that Asian States should participate more actively in the formulation of international trade principles and texts and consider becoming parties to or adopting UNCITRAL texts in a more active manner. In that context, the importance of coordination among domestic stakeholders was emphasized. It was further suggested that States should share information relating to their national laws on international trade with other States, possibly through the Secretariat, and engage

³ United Nations General Assembly, *Resolution 64/111* of 16 December 2009, para. 10 (e).

with UNCITRAL as well as with other international organizations in providing legal assistance to developing countries.

21. With respect to the role of the Secretariat, it was suggested that the Secretariat should contribute to establishing a more visible presence of UNCITRAL in the region, possibly through the establishment of a regional office, to provide urgently needed technical assistance in trade law reform in line with the needs and requests of recipient States. It was further noted that technical assistance activities should be coordinated with regional and other international organizations as well as with academic and research institutions.

22. The Secretariat's participation in the Asia-Pacific Economic Cooperation (APEC) Ease of Doing Business Project (Enforcing Contracts) offers an example of cooperation between the Secretariat, an international organization and States along the lines recommended at the Workshop. That project, carried out in cooperation with the Ministry of Justice of the Republic of Korea, aims at strengthening the legislative and institutional framework for the enforcement of contracts in Indonesia and Peru. Possible related law reform measures include the consideration of the adoption of UNCITRAL texts on arbitration and sale of goods.

23. Other regional initiatives involving the Secretariat include the Open Regional Fund for South-East Europe – Legal Reform, a project jointly carried out by the Deutsche Gesellschaft für Internationale Zusammenarbeit (“GIZ”, formerly known as “GTZ”) and the Secretariat with a view to promoting the adoption and uniform interpretation of UNCITRAL texts relating to arbitration and to international sale of goods. That project was concluded and a final report was published.⁴ In 2010, activities associated with that project included participating at a conference organized by the Belgrade University and the CISG Advisory Council to celebrate the thirtieth anniversary of the United Nations Convention on Contracts for the International Sale of Goods (CISG)⁵ (Belgrade, 12-13 November 2010).

24. In response to increasing requests, the Secretariat has also made efforts to intensify its presence in Arab countries with a view to promoting the adoption of UNCITRAL texts in those countries. Related activities under consideration include capacity-building, awareness-raising and study of the interaction between uniform trade law sources and regional laws and practice. In this framework, the ongoing cooperation with the Arab Society for Commercial and Maritime Law (ASCML) resulted in the participation in the fourth Arab Conference for Commercial and Maritime Law (ACCML) (Alexandria, Egypt, 29-30 May 2010)*. The contribution to the first Transport & Maritime Law Conference in Abu Dhabi on “The Rotterdam Rules”, organized by the Paris-Sorbonne University of Abu Dhabi (Abu Dhabi, 2-4 February 2011), and the support provided to the first Annual Willem C. Vis Middle East International Commercial Arbitration Pre-Moot, should also be noted.

⁴ F. von Schlabrendorff, Implementation of the United Nations Convention on the International Sale of Goods and the system of international commercial arbitration in Southeast Europe. A report on a GTZ project, undertaken with the support of the United Nations Commission on International Trade Law., s.l., 2010.

⁵ United Nations, *Treaty Series*, vol. 1489, No. 25567, p. 3.

Cooperation with regional economic integration organizations

25. The last decades have witnessed a multiplication of initiatives aimed at promoting global and regional economic integration. In this framework, policies and instruments relating to public international trade law (also referred to as “international economic law”) aim at removing obstacles to trade such as duties, tariffs and equivalent measures, while private international trade law standard-setting activities aim at establishing an enabling legal and regulatory framework for cross-border commercial transactions. However the complementarity between these two areas of international trade law has not yet been sufficiently highlighted. In particular, two positions could be identified at the regional level.

26. On the one hand, regional economic integration organizations with normative power in the field of private international trade law have adopted sets of rules sometimes inspired by global standards such as those prepared by UNCITRAL. However, these organizations did not necessarily focus on the need to ensure seamless interaction between global and regional standards. In countries engaged in such regional integration efforts, limited resources have often been channelled into the preparation, adoption and implementation of regional uniform texts, and therefore subtracted from global projects.

27. On the other hand, States members of regional economic integration organizations without a specific mandate to legislate in the field of private international trade law have sometimes found it possible to adopt global legal standards in order to establish a regional uniform trade law framework. The result in such cases was that the same legal standards would indeed operate both at the regional and at the global level, thus further promoting legal uniformity.

28. An example of the second approach may be found in the adoption by the States parties to the North American Free Trade Agreement (NAFTA) of UNCITRAL texts in the field of arbitration, sale of goods and electronic commerce, and by the adoption by certain member States of the Association of Southeast Asian Nations (ASEAN) of UNCITRAL texts in the field of arbitration and electronic commerce.

29. The Secretariat has made efforts to support this latter approach in response to requests expressed by concerned States and international organizations. Thus, for instance, in the last few years activities have been held on a regular basis in States parties to the Dominican Republic-Central America Free Trade Agreement (CAFTA-DR). Those activities were related, inter alia, to the adoption of UNCITRAL texts by the Dominican Republic, El Salvador and Honduras. Another example of such approach may be found in the Secretariat’s contribution to the work of the East African Community (EAC) Task Force on Cyberlaws, a joint initiatives of the EAC Secretariat and of the United Nations Conference on Trade and Development (UNCTAD) aiming at the adoption of uniform laws on electronic transactions in the member States of the EAC, and based, inter alia, on relevant UNCITRAL texts. The Secretariat interacts with the EAC Task Force on Cyberlaws on a regular basis (see also below, para. 47).

Importance of adoption of uniform legal standards for international trade law harmonization

30. The adoption of uniform legal standards, be they in the form of international conventions or model laws, is generally seen as a necessary step to achieve the

harmonization of international trade law. In addition to harmonization, formal adoption may also provide a first indicator of the commitment of a legal system to modern international trade law. However, the rate of adoption of international trade law treaties and model laws, including those prepared by UNCITRAL, is often considered below expectations, as is the uniform interpretation and widespread application of those legal standards, which are equally important to ensure their effectiveness.

31. The adoption rate may be more easily measured with respect to treaties, as becoming a party to such instruments requires a diplomatic initiative. Moreover, to date, no other commonly accepted indicator of the level of adherence to uniform trade law texts is available. In this respect, the Commission may wish to consider whether work on identifying international trade law indicators that could receive universal acceptance would be desirable and useful, in particular, with a view to preparing diagnoses for technical assistance activities.

32. A statistical survey indicates that treaties in the field of international trade law have a lower rate of formal adoption than treaties in other areas such as, for instance, environmental law, human rights or international penal matters.

33. At the level of States, trade law reform is a complex activity resulting from the interaction of a large number of political, economic, legal and other considerations. Therefore, a number of different factors may concur to explain the current status of adoption of international trade law treaties.

34. At the level of commercial operators, it should be noted that party autonomy is a fundamental principle in private international trade law. Therefore, treaties in this field may often be varied or opted out by parties in line with their assessment of contractual needs. This possibility is rare in other fields of international law, where mandatory treaty provisions are prevalent.

35. At the same time, contractual parties may also incorporate in their agreements the provisions of a treaty not yet formally enacted in the relevant jurisdictions. An accurate assessment of the actual level of application of international trade law treaties would therefore need to take into consideration these peculiarities.

36. Bearing in mind these considerations, the Secretariat has paid special attention to devising strategic approaches for the more effective promotion of UNCITRAL legislative texts.

Promotion of the universal adoption of fundamental trade law instruments

37. One approach relies on promoting primarily the adoption of fundamental trade law instruments, i.e., those treaties that are already enjoying wide adoption and the universal participation to which would therefore seem particularly desirable.

38. The treaties currently considered under that approach are the Convention on the Recognition and Enforcement of Foreign Arbitral Awards⁶ (the New York Convention, a United Nations convention adopted prior to the establishment of the

⁶ United Nations, *Treaty Series*, vol. 330, No. 4739.

Commission, but actively promoted by the Commission), whose universal adoption has already been explicitly called for by the General Assembly,⁷ and the CISG.

39. Activities related to those instruments and carried out in the relevant time period include the participation of the Secretariat in the first African Conference on International Commercial Law, co-organized by the University of Basel and the University of Buea (Douala, Cameroon, 13-14 January, 2011)*.

Promotion of recent treaties

40. Another approach relies on promoting specifically newly adopted instruments in order, in particular, to promote their signature and adoption by States with a view to facilitating their early entry into force.

41. In line with that approach, the Secretariat had coordinated a number of awareness-raising activities relating to the United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (the “Rotterdam Rules”),⁸ adopted by the General Assembly on 11 December 2008⁹ (see A/CN.9/695/Add.1).

42. The Secretariat continued its engagement in those activities, especially at the regional level, and paying special attention to those parts of the world that were less regularly and actively represented in the Working Group on Transport Law drafting the Rotterdam Rules.

43. Events to which the Secretariat took part include:

(a) The international conference “The Rotterdam Rules: The Maritime Transport Law for the 21st Century?” organized in cooperation with the University Aix-Marseille, the Mediterranean Institute of Maritime Transport and the International Maritime Committee to promote the text in the Mediterranean (Marseille, France, 19-21 May 2010);

(b) The international conference “Las Reglas de Rotterdam: El Nuevo Contrato de Transporte Internacional de Mercancías, Conveniencia o inconveniencia para Latinoamérica”, organized by the Universidad Externado de Colombia (Bogotá, 30 August-4 September 2010)*;

(c) The seminar on the Rotterdam Rules organized in the context of the annual Colloquium of the Comité Maritime International (Buenos Aires, 24-27 October 2010); and

(d) The Journée nationale de réflexion sur les Règles de Rotterdam organized by the Conseil National des Chargeurs du Cameroun (Douala, Cameroon, 15 November 2010).

44. The first ratification of the Rotterdam Rules was effected by Spain on 19 January 2011. The treaty is indefinitely open for signature. States considering signing the Rotterdam Rules may wish to note the possibility of doing so in the context of the Treaty Event 2011, to be held at United Nations Headquarters in

⁷ United Nations General Assembly, *Resolution 62/65* of 8 January 2008, para. 3.

⁸ United Nations publication, Sales No. E.09.V.93.

⁹ United Nations General Assembly, *Resolution 63/122* of 2 February 2009.

New York in September 2011 on the occasion of the general debate of the sixty-sixth session of the General Assembly.

45. The other recent treaty currently being promoted actively by the Secretariat is the United Nations Convention on the Use of Electronic Communications in International Contracts (the “Electronic Communications Convention”).¹⁰

46. In the relevant time period the Electronic Communications Convention has received the ratifications of Honduras and Singapore. The Convention needs one more treaty action for entry into force. Some States have already declared their interest in becoming a party to the Convention and are making legislative steps in that direction, in particular, by preparing and adopting the necessary implementing legislation.

47. The Secretariat has promoted the adoption of the Electronic Communications Convention in the broader context of the adoption of modern legislation on electronic transactions and with the assistance of other international organizations. One example of such cooperation is provided by the East African Community Task Force on Cyberlaws (see above, para. 29). The legislation of Rwanda on electronic commerce¹¹ was prepared in that framework. Similar cooperation with the Telecommunication Development Sector of the International Telecommunication Union (ITU-D) and, in particular, its project on Enhancing Competitiveness in the Caribbean through the Harmonization of ICT Policies, Legislation and Regulatory Procedures (HIPCAR), is being considered.

48. The Commission may wish to provide guidance on the strategic framework to technical assistance, in particular, with a view to ensuring closer involvement and cooperation between States and the Secretariat in pursuance of the Commission’s mandate.

B. Specific activities

49. As mentioned above, the Secretariat has continued to provide technical assistance in response to specific requests, and taking into consideration, as appropriate, the guidelines highlighted above. Moreover, the Secretariat has also pursued specific objectives for each area of work in light of its specificities, including the progress of related legislative-drafting work.

50. In certain instances, technical assistance activities relate to more than one specific area of work. This was the case, for example, of the Secretariat’s participation in the project on Private Sector Development Programme, where, under the leadership of the United Nations Industrial Development Organization (UNIDO), support is being provided on the preparation of new Iraqi legislation on, inter alia, public procurement and alternative dispute resolution (arbitration and conciliation). This Programme aims at creating and enabling an effective, coherent, and comprehensive framework for private sector development in Iraq. Its goals

¹⁰ New York, 23 November 2005, United Nations publication, Sales No. E.07.V.2.

¹¹ Law No. 18/2010 of 12 May 2010, “Law relating to electronic messages, electronic signatures and electronic transactions”.

include the enhancement of the legal and regulatory framework to foster economic growth.

Sale of goods

51. The Secretariat has been active in promoting the adoption of the CISG, in connection with the pursuit of the universal adoption of that convention, as mentioned above (para. 38). It should be noted that, among recent adoptions of the text, the accession by the Dominican Republic, effected on 7 June 2010, has taken place in the context of regional promotion activity (see above, para. 29).

52. With a view to supporting ongoing treaty adoption efforts, the Secretariat participated in the CISG seminar organized by the Federation of Industries of the State of Sao Paulo, (Sao Paulo, Brazil, 29-30 April 2010) and the CISG seminar hosted by the Indonesian Government (Jakarta, 8 July 2010).

53. Moreover, the Secretariat is also actively engaged in the promotion of the uniform interpretation of the CISG. In this respect, and as a response to requests from academia and practitioners, the Secretariat is supporting a process of revision of the declarations lodged by States upon becoming a party to the CISG, with a view to inviting States to reconsider them, where appropriate, in order to further harmonize the scope of application of the CISG.

54. Finally, and also as a reaction to suggestions from stakeholders, the Secretariat is making an effort to increase its activities relating to the promotion of the adoption and uniform interpretation of the Limitation Period in the International Sale of Goods (the Limitation Convention).¹² In particular, for the first time cases on the judicial application of the Limitation Convention were collected for publication in the CLOUT case collection (see also below, para. 89, for promotional activities related to new publications in the field).

55. Moreover, States have been invited to consider the adoption of the amended version of the Limitation Convention when already a party to the unamended one. The Dominican Republic has already done so by acceding to the amended version of the Limitation Convention on 30 July 2010.¹³

Dispute resolution

56. The Secretariat has been engaged in the promotion of recent texts relating to arbitration and conciliation, as well as in supporting ongoing legislative work. Given the high rate of adoption of these texts, the demand for technical assistance in this field is particularly acute.

57. In particular, the Secretariat has provided comments on various draft laws, including a draft arbitration law prepared by the Government of Malawi and a draft arbitration law prepared by the Government of Ecuador.

58. Furthermore, the Secretariat has provided comments to the International Finance Corporation (IFC), which provides technical assistance to numerous States in the field of dispute settlement, on various arbitration and mediation laws. It has

¹² United Nations, *Treaty Series*, vol. 1511, No. 26119 and No. 26121.

¹³ The Dominican Republic had acceded to the original text of the Limitation Convention on 23 December 1977.

also provided comments on laws on mediation to the GIZ as part of the latter's efforts to promote alternative dispute settlement in the Balkans (see also above, para. 23).

59. The Secretariat is currently providing technical assistance to the World Bank in an effort to promote the adoption of the New York Convention in Africa.

60. The Secretariat has also provided comments to the OECD on a draft statement on Harnessing Freedom of Investment for Green Growth, in particular transparency in treaty-based investor State arbitration, to assist the OECD-hosted Freedom of Investment Roundtable, which was at that time finalizing the draft statement for the attention of the OECD Ministerial Meeting.

61. Events that saw the participation of the Secretariat include:

(a) The conference "New Trends in International Arbitration" and the seminar "Arbitration and the not unlimited party autonomy: the impact of competition law and company law" organized by University of Oslo (Oslo, 6-7 May 2010);

(b) The third Sharm El Sheik conference "The role of State Courts in Arbitration" (Sharm El Sheik, Egypt, 1-5 June 2010) which brought together some 200 judges, arbitrators, practitioners and academics from across the Arab world and several other countries and regions to discuss the developments in arbitration;

(c) A workshop on the UNCITRAL Arbitration Law which had the purpose to train members of the judiciary (Santiago de Chile, 26 June 2010);

(d) The UNCTAD's 2010 International Investment Agreements Conference (Xiamen, China, 8 September 2010), which focused on the central development and systemic challenges facing the current regime of international investment agreements (IIAs) and its investor-State dispute settlement system. The Secretariat provided a review of the recent amendments which resulted in the UNCITRAL Arbitration Rules 2010, their possible relevance in treaty arbitration, and a discussion of the upcoming work of Working Group II on the subject of transparency in investor-State arbitrations;

(e) The IBA Annual Conference to deliver a presentation on the use of mediation in the context of investor-State arbitration (Vancouver, Canada, 6 October 2010);

(f) A conference organized by the Permanent Arbitration Court at the Croatian Chamber of Economy, the Mediation Centre of the Croatian Chamber of Economy and the Croatian Arbitration Association to explain and discuss, inter alia, the UNCITRAL Arbitration Rules as revised in 2010 (Paris, 2 December 2010);

(g) The second Symposium on International Investment Agreements and Investor-State Dispute Settlements at OECD Headquarters to take stock of current developments in international investment agreements and investor-State dispute settlement with a view to improve the system (Paris, 14 December 2010);

(h) A conference organized by the Government of Mauritius to launch the new platform created by the Government of Mauritius for international commercial and investment arbitration (Mauritius, 14-15 December 2010); and

(i) The Vienna Arbitration Days, a conference organized by major Austrian arbitration associations and institutions, to deliver a presentation on the UNCITRAL Arbitration Rules, as revised in 2010 (Vienna, 4-5 March 2011).

62. The Secretariat collaborated with a number of arbitral institutions and organizations, including by coordinating training for judges on the New York Convention) and co-organizing with the International Arbitral Centre of the Austrian Federal Economic Chamber (VIAC) the VIAC-UNCITRAL Conference 2011 (Vienna, 14-15 April 2011).

Electronic commerce

63. The Secretariat has promoted the adoption of the Electronic Communications Convention and other texts on electronic commerce, in particular, as noted above (paras. 45-47), in cooperation with other organizations and adopting preferentially a regional approach.

64. Partly also as a result of those promotional activities, several new national enactments of legislation on electronic commerce and electronic signatures were recorded (see A/CN.9/723).

65. One remarkable trend in this field relates to the adoption of substantive provision of the Electronic Communications Convention in national legislation without formal adoption of that treaty by the concerned country. In this respect, it should be noted that one of the goals of the Electronic Communications Convention is to update and complement the provisions of the UNCITRAL Model Law on Electronic Commerce,¹⁴ and of the UNCITRAL Model Law on Electronic Signatures.¹⁵ The incorporation of the provisions of the Convention at the domestic level is fully in line with that goal. However, the lack of formal treaty adoption does not allow achieving other important goals of the Convention such as the removal of obstacles to the use of electronic communications contained in other treaties. It seems therefore desirable that jurisdictions having already enacted some or all of the substantive provisions of the Electronic Communications Convention would consider formal adoption of that Convention.

Procurement

66. In accordance with requests of Working Group I (Procurement), the Secretariat has established links with other international organizations active in procurement reform to foster cooperation with regard to UNCITRAL's work on revising the UNCITRAL Model Law on Procurement of Goods, Construction and Services.¹⁶ The aims of such cooperation are to ensure that regional requirements and circumstances are understood by the Working Group when revising the Model Law, and that reforming organizations are informed of the policy considerations underlying those revisions, so as to promote a thorough understanding and appropriate use of the Model Law, once it is adopted by the Commission, at both regional and national levels.¹⁷ The Secretariat is taking a regional approach to this

¹⁴ United Nations publication, Sales No. E.99.V.4.

¹⁵ United Nations publication, Sales No. E.02.V.8.

¹⁶ United Nations publication, Sales No. E.98.V.13.

¹⁷ See documents A/CN.9/575, paras. 52 and 67, and A/CN.9/615, para. 14.

cooperation, and activities with the multilateral development banks in several regions, focusing on good governance and anti-corruption (in which procurement reform plays a pivotal role), are envisaged.

67. The Secretariat has participated, among others, in the following regional activities:

(a) The sixth Public Procurement Forum, organized in conjunction with the World Bank and the Asian Development Bank, presenting a paper on the reforms to the Model Law (Istanbul, Turkey, 26-29 April 2010);

(b) The International Conference on Public Procurement Regulation at the University of Malaya, presenting a paper on the use of electronic procurement as a way to achieve the goals of a procurement system (Kuala Lumpur, 9 August 2010);

(c) The fourth International Conference of Public Procurement (IPPC 2010), delivering a keynote speech on procurement reform and presenting a paper on electronic procurement (Seoul, 26-28 August 2010);

(d) The conference Global Revolution IV, delivering a keynote speech on the reform of the Model Law and participating in a panel on negotiated procurement (Copenhagen, 9-10 September 2010); and

(e) The International Public Procurement Forum on “Public Procurement Reform and Modernization” held at the Chinese University for Finance and Economics, and the Asian Development Bank and WTO Conference on Public Procurement (Beijing, 13-18 October 2010).

68. Other relevant activities included participation in the following events:

(a) Delivering a presentation on avoiding “Fraud and corruption in public procurement” at a dedicated event held by the Procurement Policy Office and Independent Commission against Corruption, and on the reforms to the Model Law at the Third Annual Stakeholders’ Forum (Mauritius, 19 and 21 October 2010); and

(b) Attending a Procurement Leadership Conference aimed at EU policymakers and practitioners for the promotion of the Model Law on procurement (Düsseldorf, Germany, 7-8 November 2010).

69. Among legislative drafting activities, assistance was provided to the Government of Mauritius National Review Committee with a view to reviewing the current procurement legislation and including provisions, inter alia, for framework agreements, electronic procurement and sustainable public procurement (Mauritius, 18-23 October 2010).

70. The Secretariat also works with the UNODC Secretariat on the implementation of the procurement-related aspects of the United Nations Convention against Corruption, using the UNCITRAL Model Law on Procurement as implementing legislation, and the Conference of States Parties to that Convention has requested that such cooperation should continue (CAC/COSP/WG.4/2010/7, para. 59).¹⁸

¹⁸ See also document CAC/COSP/WG.4/2010/3, “Good practices in the prevention of corruption in public procurement”.

Insolvency

71. The Secretariat has promoted the use and adoption of insolvency texts, particularly the Model Law on Cross-Border Insolvency and the Legislative Guide on Insolvency Law, through participation in various international fora. Such activities included:

(a) Participating at the annual conference of the section on Insolvency, Restructuring and Creditor Rights of the International Bar Association in order to promote UNCITRAL's work on mediation, insolvency and secured transactions (Hamburg, Germany, 16-18 May 2010);

(b) Participating in a meeting of the World Bank's Insolvency and Creditor/Debtor Regimes Task Force (Washington D.C., 10-11 January 2011). The purpose of the meeting was to discuss the updating of the Insolvency and Creditor Rights Standard ("ICR Standard") in view of part three of the UNCITRAL Legislative Guide on Insolvency Law¹⁹ as well as other matters relating to insolvency with a view to improving the capacity of insolvency regimes to address legal and policy issues. The ICR Standard belongs to the Financial Stability Board's Standards and Codes Initiative and was used by the World Bank in the ICR Reports on the Observance of Standards and Codes. The Standard, developed in coordination with the UNCITRAL Secretariat, includes (a) recommendations from the UNCITRAL Legislative Guide on Insolvency Law and (b) the World Bank Principles for Effective Insolvency and Creditor Rights Systems. Prior to the Task Force meeting, the UNCITRAL Secretariat had consultations with the World Bank in order to ensure appropriate incorporation of part three of the UNCITRAL Legislative Guide on Insolvency Law in the updated ICR Standard; and

(c) Co-organizing with INSOL International and the World Bank, a Multinational Judicial Colloquium on insolvency law (Singapore, 12-13 March 2011)*.²⁰ The purpose of the Colloquium was to assist judges, regulators and justice officials to understand developments in the handling of international insolvency cases and learn about international frameworks for judicial coordination and cooperation. The Colloquium is the ninth in a series co-organized initially with INSOL International and, since 2007, also with the World Bank. Around 80 judges and Government officials, from over 40 States, participated, representing a broad range of practical experience and perspectives, particularly with respect to cross-border insolvency, from diverse legal systems. The Colloquium provided a widely welcomed opportunity for judges to exchange experiences and to further their understanding of the various national approaches to cross-border insolvency cases. It is anticipated the tenth judicial colloquium will be organized in 2013.

Security interests

72. The approach taken by the Secretariat in providing technical assistance related to UNCITRAL texts on security interests (the United Nations Convention on the

¹⁹ *Official Records of the General Assembly, Sixty-fifth Session, Supplement No. 17 (A/65/17)*, para. 233.

²⁰ The report of the colloquium will be available from www.uncitral.org/uncitral/en/commission/colloquia.html.

Assignment of Receivables in International Trade,²¹ the UNCITRAL Legislative Guide on Secured Transactions²² and its Supplement on Security Rights in Intellectual Property²³) is twofold. The first approach focuses on disseminating information about those texts to Government officials, legislators, judges, academics and practitioners and thus, promoting their implementation. Such activities included participation at the following events:

(a) The World Bank and the Modern Law Review Conference on International Legal Standards on Secured Transactions, Facilitation of Credit and Financial Crisis organized by Newcastle University to discuss the role of UNCITRAL in the preparation of international legal standards, relevant activities of the World Bank and their impact, in particular, on the English law reform (Newcastle, United Kingdom, 14-16 May 2010);

(b) A seminar organized by the Commercial Law Development Program (CLDP) of the United States Department of Commerce and the National Center for Judicial Studies, Egyptian Ministry of Justice to provide training for Egyptian economic court judges on secured financing and insolvency law and to attract support for the current law reform projects in Egypt (Cairo, 20-22 May 2010);

(c) The annual meeting of the Advisory Committee on Private International Law (ACPIL) organized by the United States State Department, discussing various UNCITRAL texts including those on security interests (Washington, D.C., 28-29 October 2010);

(d) The International Symposium on Intellectual Property 2010 organized by the Korea Institute of Intellectual Property and Korea Intellectual Property Society on intellectual property financing (Seoul, 17 November 2010);

(e) A colloquium organized by the Centre de droit des affaires et de gestion (Université Paris - Descartes), the Centre de droit des affaires du patrimoine et de la responsabilité (Université Rennes 1) and the Centre Michel de l'Hospital (Université d'Auvergne) on the renovation of the sources of law and the recent UNCITRAL work on security interests (Paris, 18-19 November 2010);

(f) A conference organized by the Ministry of Foreign Affairs, the Athens Bar Association and the Democritus University of Thrace on current international trends and developments in private international law in the work of UNCITRAL, Unidroit and the Hague Conference on Private International Law (Athens, 25 November 2010); and

(g) A seminar organized by Istanbul Chamber of Commerce and Yeditepe University Law School on intellectual property financing (Istanbul, Turkey, 6-8 December 2010).

73. The second approach focuses on international financial institutions including the World Bank, the International Finance Corporation (IFC) and regional development banks, which provide technical assistance to States in the field of secured transactions, yet without formulating legislative standards of their own. As such law reform-related activities, including the establishment of security rights

²¹ United Nations publication, Sales No. E.04.V.14.

²² United Nations publication, Sales No. E.09.V.12.

²³ United Nations publication, Sales No. E.11.V.6.

registries, need to be based on internationally recognized legislative standards, the Secretariat coordinates with those international financial institutions to ensure that technical assistance is provided in consistency with UNCITRAL texts on secured transactions.

74. An example of such approach would be the Secretariat's review of the Secured Transactions Systems and Collateral Registries toolkit of the World Bank (January 2010), which resulted in the toolkit being consistent with the recommendations of the Guide. Another example is the Secretariat's participation in the IFC Advisory Panel on Secured Transactions hosted by the Investment Climate Advisory Services of IFC (Washington, D.C., 21-22 October 2010). Yet another example is the participation of delegates to Working Group VI in the Financial Infrastructure Conference (Secured Transactions Stream), organized by the World Bank and the International Finance Corporation (Rio de Janeiro, Brazil, 14-17 March 2011), where several references were made to the use of the Guide in secured transactions law reform around the world.

75. The Secretariat also engages in informal consultation with legislators and policymakers from various jurisdictions, in some instances as a follow-up to the aforementioned activities. Such constant interaction with relevant actors have resulted in the UNCITRAL Legislative Guide on Secured Transactions (the "Guide") being reflected in recent enactments and law revisions in Australia (Personal Property Securities Act, 2009), Malawi (draft Secured Transactions Law) and the Republic of Korea (Act on Securities in Movable Property and Receivables, 2010). Such activities have also resulted in the Principles, Definitions and Model Rules of a European Private Law, Draft Common Frame of Reference (DCFR), volume 6, book IX (Proprietary security in movable assets) prepared by the Study Group on a European Civil Code and the Research Group on EC Private Law (Acquis Group), being largely consistent with the recommendations of the Guide.

Other capacity-building activities

76. The Secretariat has also been engaged in other capacity-building activities aimed at increasing the knowledge of international trade law. Among these, the cooperation with the International Trade Center of the International Labour Organization (ITC-ILO) and the University of Turin may be noted.

77. Based on the experience of the Master Course on Public Procurement for Sustainable Development, also co-managed with ITC-ILO and the University of Turin, the Secretariat has contributed to the development and is involved in the management of a new Master of Laws course in International Trade Law.²⁴ These master courses form integral part of the broader educational programme denominated "Turin School of Development".²⁵

78. International development agencies and other institutions managing comprehensive technical assistance programmes may wish to consider sponsoring the attendance of such courses as a measure to strengthen in the longer term local capacity in partner countries.

²⁴ For more information on these master courses, see www.itcilo.org/en/standard-courses-registration/masters-postgraduates-2.

²⁵ www.itcilo.org/en/news/masters.

III. Dissemination of information

79. A number of publications and documents prepared by UNCITRAL serve as key resources for its technical cooperation and assistance activities, particularly with respect to dissemination of information on its work and texts. These resources are being constantly developed to further improve the ease of dissemination of information and ensure that it is current and up to date.

A. Website

80. The UNCITRAL website, available in the six official languages of the United Nations, provides access to full-text UNCITRAL documentation and other materials relating to the work of UNCITRAL, such as publications, treaty status information, press releases, events and news. In line with the organizational policy for document distribution, official documents are provided, when available, via linking to the United Nations Official Document System (ODS).

81. The number of visits to the UNCITRAL website has steadily increased over the last years and this trend continued in 2010. Approximately 60 per cent of the traffic is directed to pages in English, 25 per cent to pages in French and Spanish, and the remaining 15 per cent to pages in Arabic, Chinese and Russian. In this respect, it should be noted that, while the UNCITRAL website is among the most important electronic sources of information on international trade law in all languages, it may represent currently the sole available source of information in its class in some of those languages.

82. The content of the website is updated and expanded on an ongoing basis in the framework of the activities of the UNCITRAL Law Library and therefore at no additional cost to the Secretariat. In particular, UNCITRAL official documents relating to earlier Commission sessions are continuously uploaded in the ODS and made available on the website under a project on digitization of UNCITRAL archives conducted jointly with the UNOV Documents Management Unit. In 2010, about 550 additional official documents were made available on the UNCITRAL website.

B. Library

83. Since its establishment in 1979, the UNCITRAL Law Library has been serving research needs of Secretariat staff and participants in intergovernmental meetings convened by UNCITRAL. It has also provided research assistance to staff of Permanent Missions, other Vienna-based international organizations, external researchers and law students. In 2010, library staff responded to approximately 500 reference requests originating from over 26 countries.

84. The collection of the UNCITRAL Law Library focuses primarily on international trade law and currently holds over 10,000 monographs, 150 active journal titles, legal and general reference material, including non-UNCITRAL United Nations documents, and documents of other international organizations; and electronic resources (restricted to in-house use only). Particular attention is given to expanding the holdings in all of the six United Nations official languages.

85. The UNCITRAL Law Library maintains an online public access catalogue (OPAC) jointly with the other United Nations libraries in Vienna and with the technical support of the United Nations Library in Geneva. The OPAC is available via the library page of the UNCITRAL website.

86. The UNCITRAL Law Library staff prepares for the Commission an annual “Bibliography of recent writings related to the work of UNCITRAL”. The bibliography includes references to books, articles and dissertations in a variety of languages, classified according to subject (for the forty-fourth Commission session, see A/CN.9/722). Individual records of the Bibliography are entered into the OPAC, and the full-text collection of all cited materials is maintained in the Library collection. Monthly updates from the date of the latest annual Bibliography are available in the bibliography section of the UNCITRAL website.²⁶

87. An advanced version of the consolidated bibliography of writings related to the work of UNCITRAL was made available on the UNCITRAL website in 2009.²⁷ The consolidated bibliography aims to compile all entries of the bibliographical reports submitted to the Commission since 1968. It currently contains over 5,500 entries, reproduced in the English and the original language versions, verified and standardized to the extent possible. The final version of the consolidated bibliography will be made available as an official UNCITRAL publication subject to availability of financial resources.

C. Publications

88. In addition to official documents, UNCITRAL traditionally maintains two series of publications, namely the texts of all instruments developed by the Commission and the UNCITRAL *Yearbook*. Publications are regularly provided in support of technical cooperation and assistance activities undertaken by the Secretariat, as well as by other organizations where the work of UNCITRAL is discussed, and in the context of national law reform efforts.

89. The following works were published in 2010: the UNCITRAL Legislative Guide on Secured Transactions, the UNCITRAL Practice Guide on Cross-Border Insolvency Cooperation,²⁸ the collection of UNCITRAL legal texts on CD-ROM and the 2005 UNCITRAL *Yearbook*. The 2006 *Yearbook* was published in early 2011, and the text of the 2007 *Yearbook* has been finalized and submitted for publication.

90. Moreover, a new e-book containing the text and explanatory note of the CISG has been prepared²⁹ and is available on the UNCITRAL website.³⁰ The new text incorporates corrections to the text of that convention effected by the treaty depositary. It is expected that a similar publication containing the text and the explanatory note of the Limitation Convention will also be published.

²⁶ www.uncitral.org/uncitral/en/publications/bibliography_monthly.html.

²⁷ www.uncitral.org/uncitral/en/publications/bibliography_consolidated.html.

²⁸ United Nations publication, Sales No. E.10.V.6.

²⁹ United Nations publication, Sales No. E.10.V.14.

³⁰ www.uncitral.org/pdf/english/texts/sales/cisg/V1056997-CISG-e-book.pdf.

91. The proceedings of the UNCITRAL Congress “Modern Law for Global Commerce”, held on the occasion of the fortieth session of the Commission (Vienna, 9-12 July 2007), are also expected to be published as an e-book in 2011.

92. While all recent publications are available both in hard copy and electronically, efforts are being made to make greater use of electronic media in light of budget and environmental concerns and as appropriate in light of technological capacity. This has resulted, inter alia, in the preparation of event-specific CDs containing a compilation of UNCITRAL texts for distribution instead of paper documents.

D. Press releases

93. Press releases are being regularly issued when treaty actions relating to UNCITRAL texts take place or information is received on the adoption of a UNCITRAL model law or other relevant text. Press releases are also issued with respect to information of particular importance and direct relevance to UNCITRAL. Those press releases are provided to interested parties by e-mail and are posted on the UNCITRAL website, as well as on the website of the United Nations Information Service (UNIS) in Vienna or of the Department of Public Information, News and Media Division in New York, if applicable.

94. To improve the accuracy and timeliness of information received with respect to the adoption of UNCITRAL model laws, since such adoption does not require a formal action with the United Nations Secretariat, and to facilitate the dissemination of related information, the Commission may wish to request Member States to advise the Secretariat when enacting legislation implementing a UNCITRAL model law.

E. General enquiries

95. The Secretariat currently addresses approximately 2,000 general enquiries per year concerning, inter alia, technical aspects and availability of UNCITRAL texts, working papers, Commission documents and related matters. Increasingly, these enquiries are answered by reference to the UNCITRAL website.

F. Information lectures in Vienna

96. The Secretariat provides upon request information lectures in-house on the work of UNCITRAL to visiting university students and academics, members of the bar, Government officials including judges and others interested. Since the last report, lectures have been given to visitors from, inter alia, Austria, Germany, Hungary, Republic of Korea, Slovenia, Ukraine and the United States.

IV. Resources and funding

97. The costs of most technical cooperation and assistance activities are not covered by the regular budget. The ability of the Secretariat to implement the

technical cooperation and assistance component of the UNCITRAL work programme is therefore contingent upon the availability of extrabudgetary funding.

98. The Secretariat has explored a number of manners to increase resources for technical assistance activities, including through in-kind contribution. In particular, a number of missions have been funded, in full or in part, by the organizers. Additional potential sources of funding could be available if trade law reform activities could be mainstreamed more regularly in broader international development assistance programme. In this respect, the Commission may wish to provide guidance on possible future steps.

A. UNCITRAL Trust Fund for symposia

99. The UNCITRAL Trust Fund for symposia supports technical cooperation and assistance activities for the members of the legal community in developing countries, funding the participation of UNCITRAL staff or other experts at seminars where UNCITRAL texts are presented for examination and possible adoption and fact-finding missions for law reform assessments in order to review existing domestic legislation and assess country needs for law reform in the commercial field.

100. In the period under review, contributions and a new pledge were received from the Government of Indonesia, to whom the Commission may wish to express its appreciation.

101. The Commission may wish to note that, in spite of efforts by the Secretariat to solicit new donations, funds available in the Trust Fund are sufficient only for a very small number of future technical cooperation and assistance activities. Efforts to organize the requested technical cooperation and assistance activities at the lowest cost and with co-funding and cost sharing whenever possible are ongoing. However, once current funds are exhausted, requests for technical cooperation and assistance involving the expenditure of funds for travel or to meet other costs will have to be declined unless new donations to the Trust Fund are received or alternative sources of funds can be found.

102. The Commission may once again wish to appeal to all States, relevant United Nations Agencies and bodies, international organizations and other interested entities to make contributions to the Trust Fund, if possible in the form of multi-year contributions, so as to facilitate planning and to enable the Secretariat to meet the demand for technical cooperation and assistance activities and to develop a more sustained and sustainable technical assistance programme. The Commission may also wish to request Member States to assist the Secretariat in identifying sources of funding within their Governments.

B. UNCITRAL Trust Fund to grant travel assistance to developing countries that are members of UNCITRAL

103. The Commission may wish to recall that, in accordance with General Assembly resolution 48/32 of 9 December 1993, the Secretary-General was requested to establish a Trust Fund to grant travel assistance to developing countries

that are members of UNCITRAL. The Trust Fund so established is open to voluntary financial contributions from States, intergovernmental organizations, regional economic integration organizations, national institutions and non-governmental organizations, as well as to natural and juridical persons.

104. In the period under review, a contribution was received from the Government of Austria, to whom the Commission may wish to express its appreciation.

105. In order to ensure participation of all Member States in the sessions of UNCITRAL and its Working Groups, the Commission may wish to reiterate its appeal to relevant bodies in the United Nations system, organizations, institutions and individuals to make voluntary contributions to the Trust Fund established to provide travel assistance to developing countries that are members of the Commission.

106. It is recalled that in its resolution 51/161 of 16 December 1996, the General Assembly decided to include the Trust Funds for UNCITRAL symposia and travel assistance in the list of funds and programmes that are dealt with at the United Nations Pledging Conference for Development Activities.
