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Coordination activities

Note by the Secretariat

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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 report, prepared in response to resolution 34/142 and in accordance with UNCITRAL's mandate,³ provides information on the activities of other international organizations active in the field of international trade law in which the UNCITRAL Secretariat has participated, principally working groups, expert groups and plenary meetings. The purpose of that participation has been to ensure coordination of the related activities of the different organizations, share information and expertise and avoid duplication of work and the resultant work products.

II. Coordination activities

A. The International Institute for the Unification of Private Law (Unidroit) and the Hague Conference on Private International Law

1. International Institute for the Unification of Private Law (Unidroit)

4. The Secretariat participated in the following meetings of Unidroit:

(a) The 4th session of the Unidroit Committee of government experts for the preparation of the draft Protocol to the Convention in International Interests in Mobile equipment on matters specific to Space Assets (Rome, 3-7 May 2010). The session was attended by Government representatives, representatives of intergovernmental organizations and non-governmental organizations, as well as representatives of the international commercial space, financial and insurance communities;

(b) The 89th Session of the Unidroit Governing Council (Rome, 10-12 May 2010). Items on the agenda included, among others, the progress report on the work on the new edition the Principles of International Commercial Contracts; the follow-up and promotion of the Model Law on Leasing (2008);

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

² *Ibid.*, para. 100.

³ See General Assembly Resolution 2205 (XXI), sect. II, para. 8.

the implementation and status of the Cape Town Convention (2001) and its protocols; the Triennial Work Programme of the Organisation (2011-2013);

(c) The 5th session of the Unidroit Working Group on the preparation of Principles of International Commercial Contracts (Rome, 24-28 May 2010). This third edition of the Principles includes new chapters on the unwinding of failed contracts, illegality, plurality of obligors and/or obligees, conditional obligations and termination of long-term contracts for just cause.⁴ The new edition is expected to be formally approved by the Unidroit Governing Council at its next session in May 2011; and

(d) The 1st meeting of the Unidroit Committee on Emerging Markets Issues, Follow-Up and Implementation which was preceded by a colloquium on “The Law of Securities Trading in Emerging Markets: Lessons Learned from the Financial Crisis and Long-term Trends” (Rome, 6-9 September 2010).⁵ The purpose of the meeting of the inter-governmental Committee was to discuss reception by States of the Unidroit Convention on Substantive Rules for Intermediated Securities (Geneva, 2009) (“Geneva Securities Convention”) and proposals for its promotion. It also reviewed the Accession Kit to the Geneva Securities Convention, which addresses the relationship between the Geneva Securities Convention and the UNCITRAL Legislative Guide on Secured Transactions. In addition, the Committee considered proposals for future work by Unidroit including (a) a model law on the netting of financial instruments; and (b) a legislative guide on securities trading in emerging markets. Coordination with the UNCITRAL Secretariat was emphasized so as to ensure consistency of these projects with the UNCITRAL Legislative Guide on Secured Transactions, in particular, with respect to issues relating to security rights in non-intermediated securities.

2. Hague Conference on Private International Law

5. The Secretariat participated in the following meetings of the Hague Conference on Private International Law (Hague Conference):

(a) The Council on General Affairs and Policy (The Hague, The Netherlands, 7-9 April, 2010),⁶ at which, among others, the current work of the Conference was discussed. The Council took note of a proposal to examine the topic of the law applicable to the property aspects of moveable assets, with a view to further elaborating it. The Council also invited the Permanent Bureau of the Conference to continue following developments on issues relevant to private international law in electronic commerce, e-justice and data protection. Assessment and analysis of transnational legal issues relating to security interests, taking into account in particular the work undertaken by other international organizations, was indicated as another topic on which the Permanent Bureau should ensure monitoring;

⁴ See *Current activities of international organizations related to the harmonization and unification of international trade law* (A/CN.9/707), Note by the Secretariat, 23 April 2010, p. 4.

⁵ The programme of the colloquium is available at www.unidroit.org/english/cem1/programme.pdf.

⁶ The Secretariat attended the Council as an observer.

(b) A judges' expert group meeting to discuss guidelines on cross-border judicial communication (The Hague, The Netherlands, 28 June 2010). The purpose of the meeting was to consider the latest draft of guidelines for cross-border judicial communication in the context of the Hague Conference conventions on child protection and the judges' network established in that context. The draft (dating from 2006) was accompanied by a policy paper suggesting various revisions, emanating from judges part of the expert group; and

(c) The 2nd meeting of the Working Group on Choice of Law in International Contracts (The Hague, The Netherlands, 15-17 November 2010).⁷ At the meeting, a tentative agreement was reached by the participating experts on the text of fundamental issues of the instrument⁸ such as the existence and material validity of the agreement on choice of law and the consent of the parties, the implicit choice of law, change of the choice of law and severability, formal conditions, and the range of the selected law (including the choice non-State rules).

3. Joint activities with Unidroit and the Hague Conference

6. The Secretariat attended the annual coordination meeting with Unidroit and the Hague Conference at which current work of the three organizations and potential areas for cooperation were discussed (The Hague, The Netherlands, 9 June 2010).

7. Further to meetings held among the secretariats of the three organizations,⁹ a publication introducing and illustrating the interrelationship among their texts on security interests is being prepared. The publication will assist States considering the implementation of those texts by summarizing ways in which these texts may be adopted to establish a modern comprehensive legislative regime on secured transactions.

B. Other organizations

8. The Secretariat has undertaken other coordination activities with various international organizations. These have included provisions by the Secretariat of comments on documents drafted by those organizations, as well as participation in and, in some cases, conducting presentations of the work of UNCITRAL at various meetings and conferences.

1. General

9. The Secretariat attended, and gave a paper at, the IDLO Conference on Legal and Judicial Development Assistance: Realising the Paris Declaration and Accra Agendas for Rule of Law and Human Rights (Rome, 21 October 2010). The Secretariat set out the relevance of UNCITRAL's work in a presentation on "Ensuring compatibility of commercial law reform relating to international treaty obligations with national development strategies". The Conference discussed the extent to which developing countries are devising national strategies for justice and

⁷ The Secretariat attended this meeting as an observer.

⁸ Available at www.hcch.net/upload/wop/contracts_rpt_nov2010e.pdf.

⁹ Current activities of international organizations related to the harmonization and unification of international trade law, Note by the Secretariat (A/CN.9/657/Add.1), paras. 1-2.

the rule of law; the donor experience and support for such strategies; and their actual impact on legal reform and empowerment of the poor. Interventions also explored the challenges of involving civil society in the planning and implementation of national strategies, the progress in their monitoring and evaluation, and experiences of implementing sectoral strategies in post-conflict and fragile States.

10. Since December 2010 the Secretariat has joined the Inter Agency Cluster of the Chief Executives Board for Coordination (CEB), an inter-agency mechanism dedicated to the coordination of trade and development operations at the national and regional levels within the United Nations system. The Cluster is led by UNCTAD and includes UNIDO, UNDP, ITC, FAO, WTO, UNEP, ILO, UNCITRAL, UNOPS and the five United Nations Regional Commissions. One of the objectives of the Cluster is to ensure that the issues related to trade and productive sectors and their interface with the Millennium Development Goals are adequately taken into account in the “Delivering as One” and United Nations-wide coherence process. The Cluster intends to raise awareness at national levels, in particular in developing countries, with regard to the development potential of trade policies and activities and the opportunities offered by the international trading system.

11. The Secretariat participated in the United Nations (UN) Interagency meeting on inclusive finance for development, hosted by UNDP and the United Nations Secretary-General’s Special Advocate for Inclusive Finance of Development (New York, 22 March 2011). The meeting aimed at developing a shared understanding of the importance of financial inclusion as a key element of the work of the United Nations system, and reaching consensus on a shared agenda that would help various agencies of the system to achieve their mandates more effectively and quickly, and use United Nations resources and know-how to maximum impact.

2. Procurement

12. The multilateral banks and other international governmental organizations involved in public procurement negotiations have been participating in expert consultations at the request of Working Group I with a view to enhancing the understanding and the use of the Model Law as well as its use as a tool in capacity development.

3. Dispute settlement

13. The Secretariat carried out the following activities:

(a) Contributing to the World Bank Group initiative on Investing Across Borders, in particular its arbitration component. The initiative compares regulation of foreign direct investment around the world and presents quantitative indicators on economies’ laws, regulations, and practices affecting how foreign companies invest across sectors, start businesses, access industrial land, and arbitrate commercial disputes (since 2010);¹⁰

¹⁰ Information on the initiative can be found at <http://iab.worldbank.org>.

(b) Participating in the round table organized by the Organisation for Economic Co-operation and Development (OECD), “Expert Dialogue on International Investment Agreements and Investor-State Dispute Settlement”, in order to present the existing UNCITRAL instruments in the field of arbitration, and the current work of Working Group II (Arbitration and Conciliation) on transparency in treaty-based investor-State arbitration (21 March 2011); and

(c) Participating in a subcommittee of the International Bar Association (IBA) devoted to mediation with States, whose primary objective is to examine the current use of mediation in relation to investor-State disputes (since February 2011).¹¹

14. The UNCITRAL Arbitration Rules, as revised in 2010, have been adopted by the following arbitration centres:

(a) The Kuala Lumpur Regional Centre for Arbitration (KLRCA) (15 August 2010), which was established under the auspices of the Asian-African Legal Consultative Organization (AALCO) an inter-governmental organization comprising 47 governments of the Asian and African region, in cooperation with the Government of Malaysia;¹² and

(b) The Cairo Regional Centre for International Commercial Arbitration (CRCICA) (1 March 2011), which was established by AALCO, in cooperation with the Government of Egypt.¹³

4. Electronic commerce

15. The Secretariat carried out the following activities:

(a) Providing comments on United Nations/CEFACT draft recommendation 37 on Digital Evidence Certification; and

(b) Consultations on the International Single Window in the context of the collaboration with the World Customs Organization (WCO) and the United Nations Centre for Trade Facilitation and Electronic Business (UNCEFACT). As part of this effort, collaboration was also established with the Advisory Group on Legal Framework for National and Regional Single Window of the United Nations Network of Experts for Paperless Trade in Asia and the Pacific (UNNExT).

5. Security interests

16. Coordination with relevant organizations has been pursued to ensure that States are offered comprehensive and consistent guidance in the area of secured transactions law.

17. Specific activities of the Secretariat included:

(a) Participating in the International Finance Corporation (IFC) Advisory Panel on Secured Transactions (Washington D.C., 21-22 October 2010) hosted by

¹¹ Information on the initiative can be found at www.ibanet.org/LPD/Dispute_Resolution_Section/Mediation/State_Mediation/Default.aspx.

¹² Information on the KLRCA can be found at www.klrca.org.my.

¹³ Information on the CRCICA can be found at www.crcica.org.eg.

the IFC Investment Climate Advisory Services. The purpose of the meeting was to share information on various IFC secured transactions law reform projects (including establishment of registries) all over the world and to seek the feedback of Advisory Panel members. The discussion exemplified that the UNCITRAL Legislative Guide on Secured Transactions and the Supplement on Security Rights in Intellectual Property, as well as current work on security rights registries had attracted a lot of interest from relevant actors. The importance of receivables financing at a time of financial crisis and the interest in the United Nations Convention on the Assignment of Receivables in International Trade were also highlighted; and

(b) Participating in a meeting of the European Max-Planck-Group for Conflict of Laws in Intellectual Property (CLIP)¹⁴ (Hamburg, Germany, 4 June 2010) to exchange information on the law applicable to security rights in intellectual property, an issue which had not been resolved at Working Group VI prior to the deliberation at the forty-third session of the Commission.¹⁵

18. At its forty-third session, in 2010, the Commission considered that intellectual property licensing is a topic at the intersection of intellectual property and commercial law.¹⁶ It was agreed that such a topic fell within the mandate of the Commission.¹⁷ The Secretariat was thus requested to prepare a study that would identify specific issues and discuss the desirability and feasibility of the Commission preparing a legal text on removing obstacles to international trade with regard to intellectual property licensing practices.¹⁸ In that context, the Secretariat was requested to consult with relevant international organizations, including the World Intellectual Property Organization (WIPO), as well as experts with significant experience in that field, both from the public and the private sector.¹⁹

19. The Seventh Inter-American Specialized Conference on Private International Law, organized by the Organization of American States²⁰ (CIDIP-VII, Washington D.C., 7-9 October 2009) approved the Model Registry Regulations under the Model Inter-American Law on Secured Transactions.²¹ As the current work of Working Group VI on a text on registration of security rights in movable assets is highly relevant, the UNCITRAL Secretariat, in cooperation with the OAS Secretariat, is closely monitoring the implementation of the OAS Model Registry Regulations, particularly in the Latin American region.

¹⁴ Established in 2004, the European Max-Planck-Group for Conflict of Laws in Intellectual Property (CLIP) is a group of scholars in the fields of intellectual property and private international law that meets regularly to discuss issues of intellectual property, private international law and jurisdiction. The goal of CLIP is to draft a set of principles for conflict of laws in intellectual property and to provide independent advice to European and national law makers. Information is available at www.ip.mpg.de/ww/de/pub/mikroseiten/cl_ip_eu/.

¹⁵ *Official Records of the General Assembly, Sixty-fifth Session, Supplement No. 17 (A/65/17)*, paras. 210-223.

¹⁶ *Official Records of the General Assembly, Sixty-fifth Session, Supplement No. 17 (A/65/17)*, paras. 269-273.

¹⁷ *Ibid.*, paras. 269-270.

¹⁸ *Ibid.*, para. 273.

¹⁹ *Ibid.*

²⁰ www.oas.org.

²¹ See www.oas.org/dil/CIDIP-VII_secured_transactions.htm. Model regulations are available at www.oas.org/dil/CIDIP-VII_doc_3-09_rev3_model_regulations.pdf.

6. Insolvency

20. The Secretariat 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 forums. Activities included:

(a) Attending, as an observer, the second meeting of the European Commission Insolvency Law Expert Group on cross-border crisis management in the banking sector (Brussels, 15 October 2010). The meeting discussed the preparation of the Crisis Management Directive and possible harmonization of substantive insolvency law. The possible contours of the Directive as well as targeted issues such as asset transfers within group entities in stressed situations and write down of debts were also discussed. The participation of the Secretariat aimed at promoting greater awareness and knowledge of the UNCITRAL Model Law on Cross-Border Insolvency and recent developments, including the Practice Guide on Cross-Border Insolvency Cooperation; and ensuring coordination of the UNCITRAL work on groups with work being undertaken by the EU;

(b) Participating in a meeting of the World Bank's Insolvency and Creditor/Debtor Regimes Task Force (Washington D.C., 10-11 January 2011) to discuss the updating of the Insolvency and Creditor Rights Standard ("ICR Standard") in light of the 2010 Part three of the UNCITRAL Legislative Guide on Insolvency Law and other matters relating to insolvency, with a view to improving the capacity of insolvency regimes to address legal and policy issues. The ICR Standard is part of 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; and

(c) Co-organizing with INSOL International and the World Bank, a Multinational Judicial Colloquium on insolvency law (Singapore, 12-13 March 2011). Aimed at assisting 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 9th in a series co-organized initially with INSOL International and, since 2007, also with the World Bank. As such, this activity is an important element of UNCITRAL'S ongoing coordination efforts with international organizations involved in the field of insolvency law assessment and reform, notably INSOL International, the World Bank and the IMF. In addition to the colloquium, these activities include the regional forums established for insolvency law reform and dialogue in Asia, the Middle East and North Africa and, most recently, Africa. It is anticipated the 10th judicial colloquium will be organized in 2013.