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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 attended a Colloquium on "Promoting investment in agricultural production: private law aspects", hosted by Unidroit (Rome, 8-10 November 2011). The Colloquium focused on three main areas: investment in agricultural land, commercial agriculture for small farmers and capital mobilization and equipment finance for agricultural production. Over 30 high-level experts from different backgrounds, in particular representing multilateral Organizations presented reports and participated in the discussions, with an audience made up of representatives of Unidroit member States and independent experts. The aim of the Secretariat's participation was to explore with Unidroit possible future activities regarding foreign investment in agricultural land and production, identifying legal issues particularly as regards norms and standards for concessions over land, drawing on the provisions of the UNCITRAL Legislative Guide on Privately Financed Infrastructure Projects (2000).

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.

2. Hague Conference on Private International Law (HCCH)

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

(a) The Conference “Access to Foreign Law in civil and commercial matters” (Brussels, 15-17 February 2012) organized by the Hague Conference jointly with the European Commission. The Conference gathered legal practitioners, judges, academics, officials from governments, international and inter-governmental organizations dealing with the challenges associated with accessing foreign law in civil and commercial matters. The aim of the Conference was to discuss how to facilitate in the future access to foreign law in civil and commercial matters at a global level.

(b) The meeting of the Hague Conference Council on General Affairs and Policy (The Hague, Netherlands, 17-20 April 2012), which the Secretariat attended as an observer.

3. Joint activities with Unidroit and the Hague Conference

6. The Secretariat hosted 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 (Vienna, 4 May 2011). As the meeting was held in Vienna, staff of the Secretariat had the opportunity to attend and provide a thorough briefing of their current activities to the representatives of Unidroit and the Hague Conference.

7. At its forty-fourth session in 2011, the Commission considered and approved a note by the Secretariat entitled “Comparison and analysis of major features of international instruments relating to secured transactions” (A/CN.9/720) to which a paper, jointly prepared by the three organizations and discussing the interrelationship of their security interests texts, was annexed. At that session, the Commission requested that the paper be given the widest possible dissemination, including by way of a United Nations sales publication with proper recognition of the contribution of the Permanent Bureau of the Hague Conference and the secretariat of Unidroit.⁴ The publication is now expected to be published by the summer of 2012.

B. Other organizations

8. The Secretariat has undertaken other coordination activities with various international organizations. These have included provisions of comments by the Secretariat on documents drafted by those organizations, as well as participation in various meetings and conferences with the purpose of briefing about the work of UNCITRAL or to provide UNCITRAL perspective on the matters at stake.

⁴ See: *Official Records of the General Assembly, Forty-fourth Session, Supplement No. 17* (A/66/17), para. 283.

1. General

9. The Secretariat remains actively involved in the activities of the Inter-Agency Cluster on Trade and Productive Capacity.⁵ Since the submission of the last “Note by the Secretariat”, various meetings of the Cluster were held at which ways and means to raise awareness of the Cluster and of the importance of trade and productivity in the development process were discussed. The Secretariat was actively involved in the preparation of the Special Event “Development of productive capacities and trade: the key to inclusive and sustainable growth of the UN Cluster on Trade and Productive Capacity” (Istanbul, Turkey, 9 May 2011) that the Cluster organized in the context of the Fourth United Nations Conference on the Least Developed Countries (LDC-IV, Istanbul, Turkey, 9-13 May 2011). The special event featured addresses by the United Nations Secretary-General and high-level representatives of seven United Nations agencies and/or Offices, including the Secretariat. The Cluster members presented a joint concept note describing the aims of the Cluster and calling for more attention on and support to issues of trade and productivity in development cooperation programmes and projects. The Secretariat also took part into another special event (Doha, 21 April 2012), organized by the Cluster in the context of UNCTAD XIII. At this event, chaired by the Deputy Secretary-General of the United Nations, the Secretariat delivered a speech addressing the theme of the Conference (“Development-led globalization: Towards sustainable and inclusive development paths”) from an UNCITRAL perspective.

10. As part of the Cluster, the Secretariat was involved in the negotiation of the United Nations Development Assistance Framework (UNDAF) for Moldova. The UNDAF articulates the collective response of the United Nations system to national development priorities, by coordinating the common contribution of the United Nations system to the needs and priorities of countries. Finally, the Secretariat delivered a short address, via podcast, to the information session “Delivering Aid for Trade: the way forward” organized by UNCTAD (Geneva, Switzerland, 22 February 2012). The session, opened to new UNCTAD delegates, all the Geneva Permanent missions, NGOs, press, and staff members, was intended to provide information on the Cluster, its objectives and its activities.

11. The Secretariat participated in the Annual meeting of the United States State Department Advisory Council on private international law (Washington D.C., 22-23 September 2011), which gave an opportunity to provide participants with an update on the work of UNCITRAL.

2. Procurement

12. The Secretariat is a member of a Working Group of the multilateral development banks (MDBs) on e-procurement, which has worked on the production of an updated Handbook on e-Government Procurement, to be published in April 2012, which follows the approach set out in the UNCITRAL Model Law on Public Procurement (2011). Participation in the Working Group also entails attendance at quarterly meetings of the Working Group by videoconference, at which strategic, operational and technical issues are discussed. The group holds a biannual conference on e-government procurement, the hosts rotating among the

⁵ See A/CN.9/725.

MDB members, the aim of which is to provide a forum to share experiences and discuss common standards for developing and implementing e-government procurement. The Secretariat was among the speakers at the last conference (Jimabaran, Indonesia, 22-24 November 2011) at which over 100 participants representing senior government officials, multilateral and bilateral development institutions, civil society organizations and private sector took part.⁶

13. The Secretariat participated in consultations held by UNECE on public-private partnerships, including attendance at the third session of the team of specialists on public-private partnerships (TOS PPP), considering a UNECE PPP Toolkit and proposals for a UNECE International PPP Centre of Excellence and regional Specialist Centres (Geneva, Switzerland, 18-19 April 2011).

14. The Secretariat coordinates with UNODC to support States' implementation of article 9 of the United Nations Convention against Corruption (UNCAC), which sets standards for public procurement systems. This collaboration also includes a survey into the effectiveness of current approaches, identification of best practices and provision of UNCITRAL texts (Model Law on Public Procurement (2011) and accompanying Guide to Enactment) to support legislative implementation. Meetings of a UNODC Working Group on this topic are expected to commence in September 2012.

15. Participation in consultations on Progress made in Implementing the 2008 OECD Recommendation on Enhancing Integrity in Public Procurement, for presentation of report and findings to the OECD Council.

3. Dispute settlement

16. The Secretariat participated in the following activities:

(a) An OECD Expert Group Dialogue on International Investment agreements and Investor-State Dispute Settlement (Paris, 20-21 March 2011) to consider consistency of OECD possible future work in the field of investment arbitration with UNCITRAL work on the same topic;

(b) A conference of the International Council for Commercial Arbitration (ICCA) on the occasion of the 50th anniversary of this organization, at which possible future developments in international arbitration were discussed (Geneva, Switzerland, 20 May 2011);

(c) The World Bank's Expert Consultative Group for the preparation of a second annual report on Investing Across Borders. The Secretariat provided comments and feedback on the alternative dispute resolution indicators which include questions on the implementation of the UNCITRAL Model Law on International Commercial Arbitration and the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "New York Convention");⁷

(d) A working group session on the use of mediation for the settlement of investment disputes jointly organized by the UNCTAD and the International Bar

⁶ See <http://beta.adb.org/news/events/asia-and-pacific-conference-electronic-government-procurement-e-gp>.

⁷ Information on the initiative can be found at <http://iab.worldbank.org>.

Association (IBA) (Geneva, Switzerland, 19 May 2011). The purpose of the meeting was to discuss the preparation of rules (or guidelines) on mediation, a matter that could also be considered by UNCITRAL for inclusion in its future work programme. The information exchanged at the meeting provided the basis for the submission of a paper by UNCTAD on that topic at the forty-fourth session of the Commission, in 2011;⁸ and

(e) A meeting hosted by the International Arbitration Institute (IAI) (Paris, 20-21 April 2012) in order to assess the preparation of international instruments on matters identified by UNCITRAL as possible items for future work in the field of arbitration.

4. Electronic commerce

17. The Secretariat has been particularly active in contributing to regional legislative activities, in particular in Central America and in Africa, with a view to ensuring the compatibility of resulting texts with UNCITRAL legislative standards and their underlying principles.

18. Moreover the Secretariat carried out the following activities:

(a) Providing comments on United Nations/CEFACT draft recommendation 37 on Signed Digital Document Interoperability (United Nations Doc. ECE/TRADE/C/CEFACT/2010/14/Rev.1);⁹

(b) Providing substantive input in the draft Legal Guide to the Implementation of Electronic Single Window Facilities, a publication promoted by the United Nations Network of Experts for Paperless Trade in Asia and the Pacific (UN NExT); and

(c) Contributing to the ongoing process led by the European Commission, Directorate-General for Information Society and Media, on a future European Union electronic identification, authentication and signature policy (Action 8 of the “Digital Agenda for Europe”).

5. Security interests

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

20. Specific activities of the Secretariat included:

(a) Coordination with the American Bar Association (ABA), resulting in a resolution adopted at the annual meeting of the House of Delegates of the ABA¹⁰ supporting the efforts of national and international bodies, including UNCITRAL, to promote the development and harmonization of international trade and commerce and the establishment of predictable systems of secured lending in developing countries through the reform of commercial laws, including secured transactions

⁸ See A/CN.9/734.

⁹ See A/CN.9/725, para. 15 (a).

¹⁰ The meeting of the ABA representatives took place on 9 August 2011 in Toronto, Canada (the Secretariat was not represented).

law.¹¹ In that resolution, ABA also supported the efforts of international and multinational bodies, including UNCITRAL, development banks, and multilateral and bilateral aid agencies to encourage developing countries to adopt legislation that facilitates secured lending and to provide them with technical assistance;

(b) Continued participation in the International Finance Corporation (IFC) Secured Transactions and Collateral Registries online Community of Practice, for consolidating and discussing valuable information on secured transactions and collateral registries, sharing updates on international reforms, along with cross-organizational projects and events, and exploring opportunities for cross-institutional collaboration across institutions;

(c) Coordination with the World Bank regarding secured transactions law reform in Moldova in the broader context of the United Nations Development Assistance Framework (UNDAF) in that country;

(d) Submission of comments on the new draft secured transactions law of Haiti, prepared with the assistance of the IFC;

(e) Coordination with the IFC with regard to the draft secured transactions law of Ghana;

(f) Coordination with the National Law Center on Inter-American Free Trade with regard to the possible consideration of the United Nations Convention on the Assignment of Receivables in International Trade by States that have already enacted or are about to enact a modern secured transactions law;

(g) Submission of comments on the draft provisions on pledge of the Russian Civil Code, prepared for the Russian Ministry of Economic Development in cooperation with the European Bank for Reconstruction and Development (EBRD), as well as on the Russian draft law on pledge registries, prepared by the Russian Ministry of Finance and the Central Bank;¹²

(h) Efforts to coordinate with the EU Commission for a coordinated approach on the law applicable to proprietary effects of assignments, with regard to which the British Institute of International and Comparative Law (BIICL) is preparing a study for the EU Commission;

(i) Coordination with the Licensing Executive Society International (LESI) on aspects related to intellectual property financing including possible participation in the Global Technology Impact Forum (GTIF) hosted by LESI;

(j) Participation in a meeting of the European Max-Planck-Group for Conflict of Laws in Intellectual Property (CLIP)¹³ (Berlin, 3-5 November 2011) to exchange information on the law applicable to security rights in intellectual

¹¹ The ABA resolution is available at www.abanow.org/2011/07/2011am301.

¹² See also A/CN.9/753.

¹³ 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.

property, an issue which had not been resolved at Working Group VI prior to the deliberation at the forty-third session of the Commission;¹⁴ and

(k) Coordination with the International Bar Association, Section on Insolvency, Restructuring and Creditor Rights, with regard to the treatment of licence rights in insolvency and possible legislative regulation in line with the UNCITRAL Legislative Guide on Secured Transactions: Supplement on Security Interests in Intellectual Property (Helsinki, 20-22 May 2012).

6. Insolvency

21. The Secretariat participated in the World Bank's Working Group for the Treatment of the Insolvency of natural persons (Washington D.C., 17-18 November 2011). The Working Group was established under the auspices of the World Bank's Insolvency Law Task Force to begin work on identifying the policies and general principles that underlie the diverse legal systems that have evolved for effectively managing the risks of consumer insolvency and individual over-indebtedness in the modern context.

¹⁴ *Official Records of the General Assembly, Sixty-fifth Session, Supplement No. 17 (A/65/17)*, paras. 210-223.