

Agenda Item 76:
Report of the United Nations Commission on
International Trade Law

14 October 2016

INDIA STATEMENT

Counsellor Mr. Koteswara Rao, Legal Adviser at the
Sixth Committee of the
71st Session of the
United Nations General Assembly

Mr. Chairman,

We thank the Chairman of the United Nations Commission on International Trade Law (UNCITRAL/the Commission) for his detailed presentation of the report A/71/17 on the work of the UNCITRAL at its 49th Session in New York during June/July, 2016.

Mr. Chairman,

The Commission is mandated to furthering 'the progressive harmonisation and unification of the private law of international trade' in the interest of all people, in particular those of developing countries. We attach great importance to the work of the Commission. The legal texts and model laws developed by the Commission are directly relevant to commercial transactions of the individuals, corporations and States and thus have practical value for all.

At the outset we take this opportunity to commend the Commission for the finalization and adoption at its June/July session of: (a) the UNCITRAL Model Law on Secured Transactions; (b) the Technical Notes on Online Dispute Resolution; and (c) the 2016 UNCITRAL Notes on Organizing Arbitral Proceedings.

Mr. Chairman,

The UNCITRAL Model Law on Secured Transactions prepared by the Working Group-VI is based on the 2007 UNCITRAL Legislative Guide on Secured Transactions; it adds to and consistent with the 2001 UN Convention on the Assignment of Receivables in International Trade; and the Supplement on Security Rights in Intellectual Property. If the States harmonise their national laws based on the Model Law, it is expected to increase the availability of secured credit across national borders and in turn contribute to the development of international trade and which, if achieved on the basis of equality and mutual benefit to all States, is an important element in promoting friendly relations among States.

We appreciate the mandate by the Commission to the Working Group-VI to work on and submit by next year a draft Guide to Enactment of this draft Model Law for the benefit of States. We believe such a Guide would encourage the States to consider incorporating the Model law provisions into their laws on secured transactions.

Mr. Chairman,

We consider that the Technical Notes on Online Dispute Resolution is yet another important instrument adopted by the Commission this year. The focus of the ODR (online dispute resolution) Notes intended to contribute to the development of systems to enable the settlement of disputes arising out of cross-border low-value sales or service contracts concluded using electronic communications. The Notes seek to provide for simple, fast and flexible ODR without the need for physical presence of the parties at a meeting or hearing. The Notes also seek to ensure impartiality, independence, due process and neutrality of the ODR administrators/ platforms. We welcome these non-binding and descriptive Notes.

Mr. Chairman,

The third important document adopted by the Commission at its 49th Session was 'the 2016 UNCITRAL Notes on Organizing Arbitral Proceedings'. These Notes are the revision of the 1996 UNCITRAL Notes taking into account the practices during the past two decades. These are intended to be used in a general and universal manner, regardless whether the arbitration is administered by an arbitral institution.

We commend the work of the Working Group-II in preparation of an instrument dealing with enforcement of international commercial settlement agreements resulting from conciliation taking into account the responses/contributions made by the States, including India.

Mr. Chairman,

We appreciate the Commission for retaining the three topics on agenda for future consideration, namely, concurrent proceedings; code of conduct/ethics for arbitrators; and reform of investor-State dispute settlement system. We attach importance to these topics particularly the last topic.

I would like to inform you, Mr. Chairman that during the present session of the Sixth Committee India is coordinating the 27th Meeting of the Legal Advisers of the Ministries of Foreign Affairs of the UN member States.

One of the topics of discussion among the legal advisers is the last topic, viz., "Reforming Investor-State Dispute Settlement system: The Way Forward". The two scenarios presented in that study, namely, a permanent investment tribunal/court with an appeal mechanism will be considered. Also the issue of 'opt in' method modeled on the 2014 Mauritius Convention on Transparency will be discussed on 24th October 2016.

As delegates are aware that the lack of consistency and transparency in the investment arbitral proceedings, and also allegations of lack of impartiality, accountability and the

individuals interchangeably acting as arbitrators and counsels simultaneously/parallelly in the investment arbitration cases have called for reforms in the process.

Mr. Chairman,

We thank the Commission for taking note of the summary of the deliberations taken place in Working Group I (Micro-small and medium sized enterprises); Working Group II (on Arbitration and conciliation); Working Group III (Online dispute resolution); Working Group IV (Electronic commerce); Working Group V (Insolvency law) and; the Working Group VI (Security Interests).

Mr. Chairman,

We appreciate the Commission for extending the pilot project of the UNCITRAL Secretariat continue to fulfil the role of the transparency repository until the end of 2017 (para 173).

We also appreciate the efforts of the Commission towards promoting the uniform interpretation and application of its legal instruments, including the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. We consider that CLOUT and the digests were an important tool in this regard.

We reiterate the importance of technical cooperation and assistance to the developing countries, specifically in matters relating to the adaptation and use of texts, adopted by the Commission, at the national level. We encourage the Secretariat to continue to provide such assistance to the broadest extent possible and to improve its outreach, in particular to the developing countries.

Finally, Mr. Chairman,

We note with appreciation that the Commission has instructed its Secretariat to commence preparations for a Congress to commemorate the Commission's fiftieth anniversary during its fiftieth session in 2017, with the objectives to discuss technical issues, and to raise awareness of UNCITRAL and its potential to support cross-border commerce. The Congress would be an excellent opportunity to bring together UNCITRAL members, lawyers and scholars from different regions and legal systems to discuss the role of UNCITRAL in strengthening the law on international trade.

In this regard, I am glad to inform that the UNCITRAL National Coordination Committee India was approached by the UNCITRAL for hosting the 50th year commemoration, which the Committee has accepted the proposal and is accordingly hosting two-day commemoration conference on 28 - 29 November 2016.

Thank you.

