

Remarks of UNCITRAL Chair Mr. Salim Moollan - AALCO meeting on “Trade Law as a Means to Promote Economic Growth” - New York: 7 Feb 2012

Good afternoon. My name is Salim Moollan. I am from Mauritius and have the honour to serve as the current Chairman of the United Nations Commission on International Trade Law (known as UNCITRAL).

I would like to start by thanking Secretary-General Dr. Rahmat Mohamad, Mr. Roy Lee and the Secretariat of the Asian-African Legal Consultative Organization for their kind invitation to address this workshop.

And I am most grateful to all of you for taking the time to participate in today's meeting.

UNCITRAL and its work

Let me begin by giving an overview of UNCITRAL and of the way in which it carries out its work. UNCITRAL was brought into being in 1966 by the U.N. General Assembly, with a mission to contribute to the modernisation and harmonisation of international commercial law. It is the core legal body of the United Nations system in the field of international trade law. The Secretariat of the Commission, known as the International Trade Law Division of the United Nations Office of Legal Affairs, is based in Vienna. UNCITRAL has been active over some 45 years in negotiating and producing texts – including conventions, model laws and legislative guides – in a range of subject areas.

There are currently six active inter-governmental working groups within UNCITRAL, negotiating texts in the following areas:

- public procurement,
- international commercial arbitration,
- online dispute resolution,
- electronic commerce,
- cross-border insolvency, and
- security interests.

UNCITRAL is also pursuing research into possible work in the area of legal standards for microfinance, now known by the wider term 'financial inclusion'.

And it is the guardian for a number of well-established conventions in the area of international trade law, notable among these being the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the 1958 "New York Convention") and the UN Convention on Contracts for the International Sale of Goods (the "CISG"). Later in this workshop you will be hearing more about UNCITRAL's texts, and the extent of their adoption in AALCO member States, from Mr. Renaud Sorieul – the Secretary of UNCITRAL.

The Commission itself has 60 members, selected from among States members of the United Nations. Members are elected for a period of 6 years, but the membership is staggered so that 30 memberships expire every 3 years. Half of the 60 memberships will expire in 2013 and the remainder in 2016.

Accordingly, there will be an election this year to replace those members whose terms expire in 2013. Membership is the result of an election in the General Assembly, but the practice is that membership is discussed and resolved before the election within the various regional groupings, each of which has a fixed number of seats in the Commission. Typically, a State would indicate to the chair of its regional grouping in New York that it was interested in becoming a member of the Commission. In the case of the Asian group, there are 14 seats, 7 of which will expire in 2013. The African group is similarly represented by 14 seats.

Decision-making in the Commission and its Working Groups is by consensus among member States. In addition to the 60 members of the Commission, all UN member States are invited to attend meetings as observers, as are inter-governmental and non-governmental bodies that have recognised competence or interest in the subject matter under consideration, or relevant legal or commercial experience which they can report on. Observers may be invited by the Chair to contribute to the deliberations. As a matter of practice, consensus is normally found between all participating States, with no real distinction being drawn between member States of the Commission and observer States.

UNCITRAL's mandate is different from that of the World Trade Organisation. UNCITRAL is not concerned with setting trade rules that apply as between states, nor in settling individual commercial disputes. It is concerned with whether national laws are getting in the way of doing business effectively or where an absence of laws is creating uncertainty. Or to put it more positively, UNCITRAL's aim is to assist in creating a harmonised and

efficient system of international trade law, as the necessary framework for the safe and stable development of trade and investment.

Meetings in New York and Vienna

UNCITRAL has been holding its Working Group and Commission sessions on a rotating basis between Vienna and New York for many years now. As many of you know, budgetary constraints have been felt throughout the United Nations this past year, and there was the distinct possibility that meetings of UNCITRAL in New York would be discontinued as a cost-saving measure. At its 44th session, held in Vienna between 21 June and 8 July 2011, the Commission unanimously decided that this would have far reaching repercussions on the work of UNCITRAL, effectively downgrading a global institution mandated with creating harmonised international trade law to a Vienna based institution inaccessible to many countries with no permanent representation in Vienna.

Following difficult negotiations, the good news recently announced is that the Fifth Committee (and the General Assembly) have agreed to maintain the alternating pattern of UNCITRAL meetings in New York and Vienna. This result was greatly assisted by the active support of representatives of the G77 States. The continued holding of meetings here is significant for many AALCO member States. A large number of smaller states and developing countries attending UNCITRAL maintain a diplomatic presence in New York but not in Vienna, and this venue offers them a wider opportunity to take part in the decision-making of this body. Needless to say, we are happy that this alternating pattern of meetings has been maintained.

Significance of international commercial law

In these past few years we have witnessed a time of economic recession, of contraction in international commerce. There has been a sharp drop in the volume of world trade, which has had a heavy impact on both the Asian and African regions. Imports and exports in emerging economies have been substantially reduced. In many parts of the world, investment in industry and commerce has been stagnant or shrinking, and unemployment rising. It goes without saying that poor populations in developing countries are often the most vulnerable to the devastating effects of economic contraction. And it is the economies of developing countries, and countries in transition, that have the greatest need for, and the most to gain from, international legal standards that encourage and promote the free flow of trade and commerce.

Developing those standards, and helping States to put them into practice, is at the very core of what UNCITRAL does. For more than four decades it has been actively engaged in the business of promoting international trade and commerce through the removal of legal barriers which act as impediments to private sector trade and investment. Of no less significance is the contribution that UNCITRAL's efforts make to building and strengthening the rule of law in developing countries.

As you can appreciate, establishing legal certainty in commercial dealings is essential to securing the confidence of trading partners and investors. A sound structure of commercial law is a key prerequisite for a

vibrant economy, one which offers employment for its citizens and facilitates trade opportunities for its businesses.

To give an example, you can imagine how the effective resolution of international commercial disputes would be aided if there were universal agreement to standards for the recognition and enforcement of arbitral awards among different jurisdictions: that is the purpose of the New York Convention, to which there are already 146 parties world-wide.

Another case in point: it seems obvious that the adoption of uniform rules governing contracts for the international sale of goods, which take into account the different social, economic and legal systems, contributes to the removal of legal barriers and promotes the development of international trade. In this case, the UN Convention on Contracts for the International Sale of Goods (which currently has 77 States parties) provides an appropriate solution.

In addition to these and several other conventions (which are of course instruments which binding the States that accede to them), there is a range of UNCITRAL model laws. A model law is a non-binding legislative text that is recommended to States for enactment as part of their national law. This is an appropriate vehicle for modernisation or harmonisation of national laws in situations where States may need to make adjustments to the text of the model to accommodate local requirements. UNCITRAL's model laws cover a wide array of subject matter – including *cross-border insolvency*, *public procurement*, *international commercial arbitration* and *electronic commerce*, to name but a few.

Finally, where there is need for guidance to legislatures on a particular issue, but no developed consensus among States on a single approach or a common rule, legislative guides and recommendations can provide a set of possible legislative solutions to certain issues, and can offer advice as to their advantages and disadvantages in different national policy contexts. UNCITRAL has produced legislative guides on various subjects, including publicly financed infrastructure projects, insolvency law and secured transactions.

The ratification of a convention, or enactment of a model law, is of course not the end of the process but rather a first step when a country is taking action in a particular area of commercial law. The provisions of the instrument must be implemented effectively. Here again, UNCITRAL through its Secretariat assists – by providing legislative drafting support, as well as workshops and seminars for legislators, judges, civil servants, legal practitioners and relevant private sector actors.

The Secretariat also gathers summaries of case law in which UNCITRAL texts have been considered from all over the world, and publishes these in the six official UN languages. This is offered as an online service known as CLOUT, for Case Law on UNCITRAL Texts, and supports the consistent interpretation and application of the texts world-wide.

An innovative step forward has recently been taken in this technical assistance aspect of UNCITRAL's work. The 10th of January 2012 saw the opening of the new UNCITRAL Regional Centre for Asia and the Pacific in Incheon, Korea. Generously hosted by Incheon Municipality and the Government of the Republic of Korea, the Regional Centre will disseminate information on international trade norms and standards and deal with requests

for technical assistance in the Asia-Pacific Region which have been increasing steeply in recent years. We anticipate that for many AALCO member States, this will prove to be a valuable resource in the development of their international commercial laws, and we urge you to work with the Centre and to benefit from its services.

The Mauritian experience

As a representative of a State in the African region I have had the great privilege of witnessing at first hand the importance and effectiveness of UNCITRAL's work. My country is currently involved in the development of a world standard platform for international commercial and investment arbitration in Africa. The aim of this project is to contribute to making international arbitration gradually become truly integrated as a form of dispute resolution into the legal cultures of our region, as opposed to an imported and foreign concept perceived to be governed and run by and for others. This will in turn improve the rule of law in our region, and foster trade and development as potential trade partners and investors are able to rely on greater legal stability and safety for their transactions.

This project would not have been possible without the constant help and supervision of UNCITRAL, both through its Secretariat and through its Working Group on Arbitration. It is just one of the many projects throughout the world in this field which would simply not get off the ground without UNCITRAL.

UNCITRAL does this work with great efficiency, and a remarkably small pool of resources. A small fraction of the overall UN budget, its annual budget is a mere 3 million dollars. Its global mandate is carried out by a small Secretariat, based in Vienna, consisting of some fourteen lawyers and a half dozen or so support staff. I was very interested to hear the participants in a panel discussion held by the Commission on the role of UNCITRAL in the promotion of the rule of law in conflict and post-conflict societies last July refer to UNCITRAL as a “global brand” synonymous with excellence and credibility in the field of trade law. I would respectfully commend that analogy to the distinguished representatives here today. UNCITRAL can indeed be seen as a ‘brand’ owned by my country, by your country, and by the UN system as a whole. It is a well-established and desirable brand, and one which carries with it great legitimacy. It is one which I would urge AALCO Member countries to make full use of.

Conclusion

To conclude, AALCO member States have a significant role to play in UNCITRAL’s work. They constitute a large and potentially influential grouping within the Commission’s 60 members and, when acting cooperatively, can serve as a crucial voice to express the concerns of developing economies and economies in transition. It is important that that voice be heard. Indeed, much of the authority of UNCITRAL’s texts rests on a process of deliberation which is as global and inclusive as possible. Therefore I would encourage you to follow closely, and participate actively, in the work of this important body.
