

Asian-African Legal Consultative Organization



**VERBATIM RECORD OF THE PUBLIC LECTURE
BY H.E. MS. ANNA JOUBIN-BRET, SECRETARY,
UNCITRAL**

Wednesday, 20 March 2019

Venue: AALCO Headquarters, 29-C Rizal Marg, Chanakyapuri,

New Delhi – 110 021



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Speakers:

Secretary-General of AALCO, H.E. Prof. (Dr.) Kennedy Gastorn

Additional Secretary and Legal Adviser, Ministry of External Affairs, Government of India, H.E. Dr. V.D. Sharma

Secretary, UNCITRAL, H.E. Ms. Anna Joubin-Bret

Wednesday 20 March, 2019

Inaugural Session

Mrs. Anuradha Bakshi, Deputy Director, AALCO: Excellencies, Ladies and Gentlemen, I, on behalf of the AALCO Secretariat, warmly welcome you to the Headquarters for a Public Lecture by the Secretary of UNCITRAL, H.E. Ms. Anna Joubin-Bret. I welcome the most distinguished H.E. Ms. Anna Joubin-Bret who has agreed to spare her valuable time to come visit us and deliver a lecture. I hope that we will have fruitful deliberations. Now I give the floor to Prof. (Dr.) Kennedy Gastorn, the Secretary-General for his opening remarks.

Prof. (Dr.) Kennedy Gastorn, the Secretary-General of AALCO:

Excellency, Ms. Anna Joubin-Bret, Secretary, UNCITRAL,

Excellency Dr. V.D. Sharma, Additional Secretary and Legal Adviser, Ministry of External Affairs, Government of India,

Excellencies, High Commissioners and Ambassadors,

Distinguished Experts, Distinguished Participants and Guests, Ladies and Gentlemen;

On the occasion of the visit to India of Her Excellency Ms. Anna Joubin-Bret, the Secretary of UNCITRAL, it is an honor and privilege for me, on behalf of AALCO, to be hosting and delivering the welcome address at this “Public Lecture”.

In the circumstances, I firstly take great pride and at the same time express my appreciation and gratitude towards the Republic of India for being one of the founding members of this Organization, hosting the Headquarters, and as well as the Ministry of External Affairs, Government of India, for continuing to wholeheartedly support and take an active part in all affairs of the Organization. In this year alone, this is the third event we are hosting under the able support and cooperation with the Ministry of External Affairs of the Government of India. The first was the seminar on “Operational Functioning of the International Criminal Court (ICC) and International Judicial Education: Emerging Paradigms”, and the second one was another seminar on “Autonomous Weapon Systems, Artificial Intelligence and Armed Conflict”.

Excellencies, Ladies and Gentlemen, let me also say a word about my organization, AALCO. From its humble beginning with just 7 Member States in 1956, the membership of AALCO has grown to include 47 States from Asia and Africa. It now occupies an important position in the international legal community, both as an advisory body to its Member States and as an essential mechanism for interregional co-operation and the exchange of information and views on matters with an international legal dimension. As a forum that has immense significance for African-Asian solidarity and interests, AALCO has played a phenomenal role towards the emergence and concretization of a number of alternative ideas and practices in the work of the UNCITRAL and other International Organizations in the field of international trade law and international law, reflecting the particular concerns of the developing world.

UNCITRAL today has broadened its horizons in codification of laws in various spheres and aspects of international trade and commercial laws, including the UNCITRAL Model Law on International Commercial Mediation 2018, as well as the UNCITRAL Rules on Transparency in Treaty-based investor-State Arbitration. Finally, recalling the long-standing relation and fruitful partnership that AALCO has shared with UNCITRAL since the early years of its operation, as well as the more recently concluded Seminar conducted by AALCO in partnership with the UNCITRAL on “Reviewing International Reforms to the Investment Regime and to the Investor-State Dispute Settlement Mechanism: Perspectives from the Asian-African Regions” from 19 – 21 November 2018 at the Arusha International Conference Centre in Arusha, United Republic of Tanzania, the AALCO Secretariat welcomes UNCITRAL for a talk, and cherishes the opportunity for learning more about UNCITRAL’s activities, and finally also hopes for a continuing fruitful collaboration between the two organizations in the future.

Dr. V.D. Sharma, Additional Secretary and Legal Advisor, Ministry of External Affairs, Government of India:

Her Excellency, Ms. Anna Joubin-Bret, Secretary of the United Nations Commission on International Trade Law (UNCITRAL);

His Excellency, Professor Kennedy Gastorn, Secretary-General of the Asian African Legal Consultative Organization (AALCO);

High representatives of esteemed Diplomatic Missions;

Present Legal experts, Ladies and Gentlemen,

It gives me great pleasure to stand to this occasion in welcoming once again Ms. Bret in India in her capacity as the Secretary of the UN Commission on International Trade Law. Given the valued association of India with the Commission, makes me feel pride in having this opportunity of interaction with Ms. Bret not only on matters of interest between India and the Commission, but of common interest to the international community at large.

To remind ourselves, India is a member State of the Commission from its inception in the group of sixty. Having been a member throughout for more than five decades, we have thus witnessed the activities of the Commission from taking its baby steps to what it is today. The importance of this association got recognized in November 2016, in India having been chosen as the venue for the golden jubilee celebrations of the Commission on completion of 50 years of its existence here in New Delhi. India had accepted the offer delightfully as part of its commitment towards the evolution of an important UN body like the Commission on International Trade Law.

Ladies and Gentlemen,

In this long association since 1966, I acknowledge that like other member States, we have been benefited by participation in the work of Commission in terms of acquaintance with the diversities of different legal systems worldwide regulating the trade, and in developing expertise to humanize them to erase the barriers in the international trade.

I have personal experience of participating in the work of the Commission. That was an occasion to pursue with the development of a convention on the carriage of goods by sea, by improving upon the existing legal regime in this field. Commenced in the year 2000 in New York, the task got accomplished in 2008 in Vienna with the adoption of a multimodal convention covering both the land and sea leg of international transportation of goods. In those negotiations spread-over in nine years, I could experience the magnitude of the hard work of the Commission's Secretariat.

The interaction with and viewing functioning of then Secretary of the Commission Mr. Jernej Sekolec and later Mr. Renaud Sorieul, reminds me the meaning of being Secretary shouldering the responsibility of managing affairs of a UN body mandated to difficult but highly important task of developing international instruments to regulate international trade by conducting in-depth study in variety of subjects through multiple Working Groups, and also organizing symposia and colloquium.

The range of subjects undertaken and presently under consideration of the Commission, which I suppose everybody present is aware of, to mention a few in broad headings include: commercial arbitration, sale of goods, security interests, insolvency, transport of goods wholly or partly by sea, procurement, mediation, continuing task on reformation of dispute settlement system, and the new area of judicial sale of ships. The texts emerged so far from

the Commission's work have been adopted in the form of conventions, model laws, legal guides, legislative guides, rules, and practice notes.

Ladies and Gentlemen,

It would not be a misnomer to say that through its model laws, conventions, legislative guides and robust debates in working groups, the Commission has provided a valuable platform for countries to compare, examine, debate and adopt principles of international commercial and trade law appropriate for their circumstances and suitable to their conditions.

Ladies and gentlemen, recognizing the importance of this Commission's work takes me back to remember an event in 2016 in New York, wherein India being the Chair of the 27th Meeting of Legal Advisers of the Ministries of Foreign Affairs of the UN member States, had included the topic relating to investor-state dispute settlement system, for deliberation by the Legal Advisers, which is presently under deliberations of one of the Commission's Working Groups.

The Commission's conventions and its model legal texts have formed the basis of new enactments and amendments to a wide array of commercial legislations in countries throughout the world. India has, in this context, wherever possible blended the work of this Commission in its national legislations. Some of the examples of this can be drawn from the Arbitration and Conciliation Act of 1996 which is broadly based on the Commission's Model Law on arbitration. Elements of Transparency Convention and Model law on E-commerce have been appropriately incorporated in India's Model Bilateral Investment Treaty and the Information Technology Act.

I personally realize that the Commission's success is predominantly due to the non-political nature of its objectives, i.e., the promotion and development of laws and regulations that would have the potential of being accepted by countries with little resistance. The vision, with which the Commission conducts its functions, is to take the world along with it. The work of the Commission has direct relevance for individual people, in addition of course, to the States themselves and the industrial establishments.

Ladies and Gentlemen, with this without standing for long between you and today's distinguished guest, I take the pride of inviting now Ms. Bret to grace this occasion with her speech. I thank you all.

Mrs. Anuradha Bakshi, Deputy Director, AALCO: Thank you Sir for your speech, and for enlightening us with India and your personal experiences with UNCITRAL. I now invite H.E. Ms. Anna Joubin-Bret, the Secretary of UNCITRAL, to give her lecture on UNCITRAL. Before Madam comes to the podium I would briefly like to introduce her to you. Ms. Anna Joubin-Bret specializes in international investment law and investment dispute resolution. Previously, she was a partner in Foley Hoag International Litigation and Arbitration practices. For 15 years, Ms. Joubin-Bret was a senior legal advisor at the Division on Investment and Enterprise at the United Nations Conference on Trade and Development. In this capacity she managed the research and advisory work on investment law issues, as well as the technical assistance program on international investment

agreements. During her tenure, Ms. Bret assisted the countries and governments in the formulation of investment policies and frameworks, and in the management of investment-State disputes.

She has authored and researched seminal research and publications on international investment law, notably the sequels to UNCTAD 2A Series. She also lectures on international investment law in various universities all over the world. Ms. Bret holds a post-graduate degree in private international law from Paris, and a Masters degree in international economic law and political science from the same university. Now I would like to invite Ms. Bret to kindly present her lecture.

Ms. Anna Joubin-Bret, Secretary, UNCITRAL:

Excellencies, Ladies and Gentlemen;

It gives me particular pleasure to be here today and share what I hope will be an interactive session with you. I'm very grateful to H.E. Prof. Kennedy Gastorn and to Additional Secretary Dr. V.D. Sharma for their kind words of introduction, and also for giving me this opportunity of addressing you here today, on UNCITRAL's ongoing work, about recent developments, and about the future work in our organization.

As our MC mentioned, I come from one very specialized area of international law, which is in between private and public international law. I'm humbled to have taken up the leadership of an organization so well established, and multi-dimensional as UNCITRAL. What I'd like to do in my lecture today is to give you an overview of what we are, what we are doing, and where we are going, with our Member States and with all those who take part in the work of UNCITRAL. Therefore, as our MC mentioned that I've taken up office pretty recently, and I'm only the 6th Secretary of UNCITRAL, since the beginning of its operation in 1966. I've taken office in the December of 2017, and so it's been barely a year and a half that I've been here, and as you can imagine, I'm only beginning to discover the legal intricacies of the work of the organization that I lead. What I'd like to do is briefly introduce UNCITRAL, as Additional Secretary Dr. Sharma already did for you.

So what is important for you to know is that our organization is a legislative body of the United Nations. So, we are not a place for policy debates or research, neither are we a place for political discussions. We are a legislative body that works towards developing harmonized and unified international law in the field of international commerce. In order to do that, we build on our Commission that has a membership of 60 countries. This membership has increased over the years, and chances are that we with the growth of the organization and increasing interest taken by many countries in various regions in the work of UNCITRAL, we may also consider enlarging it further. We had elections for the membership very recently, in December of last year, in the General Assembly. So, we are going to greet new members at the onset of our commission that meets in Vienna this year. Our Commission meetings alter between New York and Vienna, so one year we are in New York and the next year we are in Vienna – with a view to ensuring that countries in the western hemisphere, notably all the Latin-American and Caribbean countries have an opportunity to be represented and have an opportunity to take part in our work, once in every second year.

The same happens for the Working Groups. So the Working Groups are the entities where the Commission's mandates are developed, and these Working Groups also meet alternatively in New York in the Spring Session, and in Vienna in the Autumn Session. Our Working Groups are populated by essentially two types of participants – all our Member States send their delegates, and so do the Observer States. Generally in UNCITRAL matters the countries are represented by experts, in specific matters that are being discussed. So when it comes to insolvency law, for example, we will have insolvency judges or personnel from the ministries of justice that focuses on insolvency. In other areas, for example arbitration, we would typically have the government officials in-charge of arbitration law in the Ministry of Law, for example, in India – but we would also have arbitration practitioners that practice in the Working Groups, on the delegation of our Member States. We also would have our non-governmental organizations that would also have an equal say in UNCITRAL. So everybody in UNCITRAL can contribute and participate, and there is no limit to the involvement of NGOs representing business, practitioners, arbitration centres, NGOs on trade and investment or sustainable development. We also have international organizations represented in the Commission and Working Groups. So from that point of view we try, and that is one of my challenges to extend UNCITRAL's outreach, and also receive more active cooperation from numerous countries to enhance participation of all countries in UNCITRAL Working Groups – to ensure that it is not limited to harmonizing common law with civil law – and so that it goes much further, taking into account the legal development of many legal systems, that are now increasingly coming to the fore-front in international trade relations.

So let me briefly inform you of the ongoing work of UNCITRAL. We currently have 6 Working Groups that are active. Of course it doesn't mean that we are only working through Working Groups. That is to say there is certain work being carried out by the Secretariat, which is mandated by the Commission, but which does not necessarily involve Working Groups.

Of the 6 Working Groups (WG), we have the first WG that will be meeting next week in New York. This WG is focused on developing an adapted, conducive, and protective framework for Micro, Small and Medium Enterprises (MSMEs). It is a clear understatement that MSMEs form the fabric of international economy worldwide. Some recent statistics by the Organization for Economic Co-operation and Development (OECD) shows that 90% of the jobs are created and maintained by the MSMEs across the world. MSMEs are the creators of wealth, development and new technologies, and from that point of view there are very few countries in the world that focus their development and economic strategies on supporting and furthering MSMEs. Therefore, with that in mind the UNCITRAL Secretariat has embarked on quite an ambitious program for MSMEs with a view to addressing what we call the various stages of the life-cycle of an MSME – from the time of its creation to the time of its death, or the time ceases to operate; and to look into specific framework for MSMEs not from the point of view of simplifying existing commercial law, but rather on designing specific framework that would address this six small firsts. So we are looking at what are the needs of MSMEs and from that point of view see whether the existing commercial framework is adapted or whether it requires some specific regulation, legislation, through model laws etc. So from this point of view the Working Group has already successfully concluded last year, and it was adopted by the

Commission in July, and a legislative guide on company registry with a view to facilitating the registration of MSMEs, and of establishing themselves legally within the countries that will take on board this legislative guide. Here again the purpose is not to simplify the registration procedure for all companies, but rather identifying what is it that would make it rather easier for the MSMEs to register, and to basically make the migration from the informal sector of the economy, where actually most of these MSMEs are currently based, to the formal sector of the economy, where they can contribute efficiently to economic growth and development. So the registry has been adopted, and we are in a phase of outreach and so any country that would be in any capacity-building or technical assistance in adopting special registry functions for MSMEs, are most welcome to reach out to the Secretariat. We are currently working on a specific corporate structure - the United Nations Limited Liability Organization or UNLLO. Rest assured this acronym won't stand for long as it is untranslatable in other languages. So from that standpoint it will certainly be called something else. It will remain as such a very simple corporate structure, where only the default provisions that are necessary will be established as a part of the corporate structure. All the rest will be very contractual and will be left to the negotiations and needs of the partners, in these very small companies, bearing in mind also that for these very small companies the end in mind is not that they will remain in that form forever, and that there has to be a possibility for growing into another corporate structure, and this has to be talked through at the very beginning at the time of the establishment of the very first contractual link between the partners in such small companies. We are also working in this context in adapting or re-visiting our other areas of work, for instance, the work on insolvency, or the work on secured transactions, which is particularly adapted for MSMEs. We are also looking into bringing this under the broader project for MSME specific legislation, and we will probably do that next year – having chapter for specific insolvency laws for MSMEs, as well as for secure transactions for MSMEs. Of course, all the work we do throughout our work program take into account this dimension of very small companies, as I had said that these companies are the basis of the economy worldwide.

We have a second Working Group – which is our Working Group on Dispute Resolution. Here I would like to take advantage of this forum that is given to me to do a bit of publicity and a bit of advertising. The Commission and the General Assembly have adopted last year 2018, the Commission in July and the General Assembly in December – a new United Nations Convention – which being so characterized is a very important instrument. This Convention focuses on Mediation and on providing the same basic cornerstone for the mediation, as the New York Convention is for arbitration. You all are familiar with the New York Convention, and the way it has supported and built the arbitration framework, and also that the success of arbitration lies largely due to the fact that the arbitration award is recognized and enforced in almost 160 countries in the world. So what we just did with the mediation convention, we want to provide the same framework for mediation. And why we did that is because we at UNCITRAL are convinced that mediation is a very credible and useful alternative method of resolving disputes. This is particularly true in the commercial area where basically traders and business people, enter into business relations with a view to having a long-term relationship. They don't want to end up severing their business relations owing to having to go to courts, or because of going into arbitration which will invariably result in severing the ties between them. So what we at the Secretariat, as well as what I can assure you of the Member States considered is that

mediation is a very credible means of ensuring that the commercial relations can go on. There is a very beautiful picture that is being used in plagiarizing the AALCO Regional Arbitration Centre of Kuala Lumpur, where they are using a paraphrase, “kintsukuroi”, which is a technique of repairing broken ceramics. It is a way of repairing broken ceramics with gold threads, through pouring gold in the broken pieces to make it whole again. Making it whole again makes it even more beautiful and strong again. So it is with that approach that we are approaching mediation. That is, not merely as a procedural step that is sort of mandatory before you go to arbitration, spending 3 months in mediation wasting time, money, and good-will, talking or even not talking together. What we are trying to do with this convention is to strengthen the mediation framework and as the arbitration framework many years before. So this mediation convention is going to open for signature in Singapore on 7 of August 2019. The Government of Singapore is of course organizing a side-event, putting in a lot of efforts, make it a very meaningful and important ceremony, which will be hosted by the Prime Minister of Singapore, and it will be followed by a conference on mediation (mediation not only as a tool in commercial disputes, but also in investment or even other more political disputes). So what I’d like to do is to really take advantage of my presence here and that of the various Ambassadors of so many AALCO Member States, and also of the UNCITRAL Member States for that matter, to advertise the convention, to encourage you to reach out to your authorities back home and get the message through that this is an important instrument, and is likely to have the same effect on your doing business, as ranked by the World Bank, as the New York Convention does already for arbitration. The World Bank measures the investment-friendliness of the various economies of the world by looking at the instruments that these economies have in place; and the World Bank has very strongly supported our work on mediation, and therefore, I’m quite convinced that this will become the next indicator. So here again take advantage of the signing-ceremony of an opportunity for making your participation known. It will be known if you’re there for the signing. It might take of course one or two press releases if you join at a later stage, but the major impact will be achieved if you’re there at the signing ceremony.

The second element of the Working Group II’s current work is on expedited arbitration. I’m sure that some of you dignitaries are well-versed in dispute-resolution and arbitration – but you all must have heard of this common complaint of arbitration becoming more and more quasi-judicial in terms of its duration and its costs. So the incentive of entering into arbitration, which was swiftness and cheaper ways of resolving disputes is currently only marginal and becoming only more and more challenged. Therefore, all this shows that arbitration has run into some problems because of its mere success. Therefore, we have embarked on expedited arbitration and that’s the new topic for our Working Group 2. My colleague Mr. Jaison Lee, sitting in the audience is the Secretary of the Working Group, and will be available hereinafter to discuss the topic further with anyone who has an interest in the same. The only message I have to give is that we have tackled expedited arbitration, and with this we are working on the UNCITRAL arbitration framework. However, it goes way beyond UNCITRAL, because all of AALCO’s regional arbitration centres and even the national centres that operating in so many countries (like Secretary-General of AALCO, H.E. Dr. Gastorn was mentioning that there are over 70 of these national arbitration centres active in Africa) – and who are all using or basing their arbitration rules on UNCITRAL’s arbitration framework – so what we are doing is also for all those regional and national

arbitration centres that are using UNCITRAL's rules – in order to provide them with a framework for expedited arbitration. Bearing in mind here that there is a coherence in the thinking because, once again we are talking about MSMEs, we're talking about arbitration for very small companies that streamline procedures that allow them to embark on arbitration, without incurring long durations and important costs.

I'm moving now to Working Group III, which is where we have received most of our recognition, and our under the focus and radar screen of many countries, NGOs, IGOs worldwide – as this Working Group has been tasked, as Additional Secretary Dr. V.D. Sharma was saying, with reforming the Investor-State Dispute Settlement system. As our MC mentioned that this is an area I'm particularly familiar with, having worked on it for about 15 years, and that is an area where I'm in fact extremely proud that the present problems and challenges faced by this investor-State dispute system have been entrusted to UNCITRAL. Why this particular problem has been entrusted to UNCITRAL is because we are a legislative body used to developing legal instruments to find solutions to legal issues, gaps or problems, and also because we are also not a place for important policy debates. Policy debates at UNCITRAL has taken place for the last 15 years, and we are now at the stage of reforming it very concretely.

So from that point of view I would like to quickly brief you on the way we have approached our work. We received a mandate from the Commission in July 2017, which was a few stages mandate. The first step of the mandate was to take stock – that is, to make an inventory of all the concerns that the investor-State disputes are raising everywhere, not only among the end users be it the States or the investors, but also reaching further out to the civil society that has increasingly been involved and has taken action against ISDS. We, therefore, had to take stock of this discontentment as well as the increasing recognition of a system that has been in existence for the last 60 years – a system that might have responded to the needs of the system that was being built at the time, but which no longer responded to the needs either of the economy or the State seeking investment, or the investors themselves, increasingly all parties discontent over the duration or costs of this system and at the end of the day also, as I said, politicians and legislatives, executives and civil society. So as we started to take stock we ended up identifying a number of core issues. These core issues are: a) lack of consistency, coherence and even correctness of the outcome of arbitral awards – and this is merely linked to the ad hoc nature of the current system; b) the way the adjudicators or arbitrators are designated, the way they are operating, the lack of uniform etiquettes, the way they are sometimes wearing two hats (the so-called double hatting), and of course the concerns about the independence and impartiality that results from these initial defects; c) cost and duration of these procedures; and d) third-party funding, which is increasingly becoming popular amongst claimants that either seek to receive funding because they are themselves impecunious, or because they prefer to use their good money for other purposes – as you can imagine the States do not use any third-party funding because there is no business model behind it – if a State wins an arbitration it has nothing to pay and so there is nothing in there for a third-party funder, but if a claimant wins an arbitration, the claimant of course has something for the funder in terms of certain percentage of the damages received.

So as all of you are familiar with the investor-State arbitration, with the amount at stake, and this will give you why you should look very importantly at third-party funding in such arbitrations, where at the end of the day the funds that are going as damages are public money. So it is the tax-payer's money that is going into the pockets of a financial venture that is supporting the arbitration proceeding, but on the other hand which is contributing very little to the development of the economy. I'm trying to be neutral on all matters but here is a matter where the funding has to be looked at very carefully.

Now as far as the second step of amendments is concerned, we've looked into whether out of all these concerns there is something for the UNCITRAL to work on, and what is it that needs to be reformed. Surprisingly what we found, and am sure that my colleague shares my view on this that there was a very strong consensus in the Working Group that reform is needed. Now we are reaching the crux of the matter- that is, what reform – and with this we come to the next step of our action, that is what the reform that is needed is. There was once a time when it was thought that the Working Group would work on a code of ethics, an appellate mechanism, or a regulation for third-party funding – finding technical solutions to these problems – but what is important now to prioritize on what type of reform do we want, what is it exactly that UNCITRAL is going to be doing – and this is going to be debated the week after next in New York, and then again in October at UNCITRAL meeting in Vienna. So again from this point of view, it is now important that UNCITRAL has the participation of as many countries as possible. There are several options and proposals on the table right now, for example, we have the received a proposal by the European Union, which advocates the creation of an international multilateral investment court, which is a two-level standing body, which would look at first-instance arbitration, and also an appellate mechanism, with standing professional judges – and so moving away quite radically from the currently established arbitration system. Other countries are suggesting incremental changes based on the existing system – for example, we very recently received contributions from Morocco, Indonesia, Thailand, Israel, Chile and Japan – all of them asking us to improve the existing system. So it is very important for UNCITRAL and for all the Member States to hear from India, Sri Lanka, Kenya, Nigeria, Algeria, you name it, the countries Member States of AALCO – to come to this meeting and say this is what we want to do about investor-State dispute reform.

So having said that and having preached, let me end by briefly describing what we are doing in Working Group IV – which is our Working Group on electronic commerce. I'm taking a keen interest in this Working Group because it has been in UNCITRAL for a very long time and is a very forward-looking topic. As you may see that the electronic signature convention is an instrument that was developed in the nineties, and is today one of the most important means of ensuring all commercial transactions, as today everything is digital, as you don't sign a letter anymore, you just sign and send it through email, and have that signature recognized by law. So in this area UNCITRAL has been at the forefront.

Technology is racing – we are talking nowadays about block-chain arbitration – to give you an idea on how quickly things have been developing. But as the technology is clearly running ahead, there is a need for work on digital economy. Our Working Group IV has embarked on mutual recognition instrument for identity-management services, and trust-services, which is meant to ensure that a trader who is located somewhere say in China,

and a buyer located in say Nigeria can actually trade together without ever actually being directly in contact with each other, because the government or a platform actually guarantees the identity of them respectively. So this is the first step of entering into the digital economy. We are currently exploring a topic (something that we would like to take up with AALCO as well), which is the need of States and businesses with regards to the data economy. Data flows today are very carefully protected from the point of view of privacy. The European Union, for example, very recently has set up a very protective framework in its GDPR which ensures data privacy, that is, data cannot be used outside without the permission of the owner of the data. This on the hand raises the question of the use of data as a fundamental raw material for artificial intelligence (AI). AI feeds on data. AI in order to develop needs access to data. So the question now is how would one reconcile the data privacy requirements which protects the human rights aspect of the data belonging to a person or entity, and on the other hand the billions and zillions of AI technology existing today. So this is what the Working Group IV is doing.

Working Group V, which deals with insolvency law, is currently finalizing the framework for company group insolvency. If you think in the current economy existing in a globalized world, big companies as well as the smaller ones operate through subsidiaries as well as company networks around the world. Insolvency in one quarter of the globe has of course an impact on the assets and operations of another company of this same group of companies. So we are right now framing an enactment of the model law on enterprise group insolvency. This will come up for discussion at the Commission, in July in Vienna.

Working Group VI is changing topics. So we had up till now the very longstanding and thoroughly productive work on secure transactions, and allowing means for funding those who need it the most, that is, those who do not have a collateral to offer – and from that point of view this Working Group has developed a very comprehensive framework, which is now being finalized in a user's guide, which makes the entire secure transactions more user-friendly. So having completed this the Working Group is now moving to a completely different topic – and it gives me immense pleasure to hear Additional Secretary, Dr. V.D. Sharma mentioning it – we are looking into the judicial sale of ships, ensuring that judgement in one country relating to a ship can be enforced in another country. We are also finalizing a legislative guide on public-private partnership. You have no doubt heard about the explosion of projects that are funded by public and private entities, in the context, for example, of the Belt and Road initiatives. Other examples include various countries in Africa that use PPPs very successfully. Many countries have domestic PPP frameworks, others don't. For many of these the frameworks were developed 15-20 years ago, following the development of the BOT funding. I know India had used this earlier in its infrastructure, particularly energy infrastructure. However, there has been much more development on this, and therefore, we are updating our legislative guide on PPPs.

Last but not the least, we are preparing for the very important and matching celebration for the CISG, on its flagship international instrument – Convention on the International Sale of Goods – which is turning forty. Forty is very young, it is age when you should bloom, and so we are looking forward to next year's celebrations. This brings us to another important area of that is related to the importance of the work we do. The more the UNCITRAL Conventions and Model Laws are put into use world-wide, the more the

uniform interpretation, which is part of our mandate, becomes relevant. So when I say uniform application and interpretation, it means we have to take stock how the various courts and practices develop in countries that are using these instruments. This collection of data is called the clout, which has been in existence for many years, and gives us the material for building our capacity-building as well as the digests of court decisions in various areas of our work. Due the increasing use of UNCITRAL Conventions and Model Laws we are today very much interested in strengthening our clout database and digests. This platform gives me the opportunity to call upon those who are in the position to do so to help us strengthen our clout database. With that let me simply end by stating what are current challenges: a) to involve in our work more and more countries on this planet, in some Working Groups we have up to 90-100 countries participating, whereas in other only 30-60 countries participating, which is not enough to put together really universally applicable legal instruments. As Secretary General Prof. Gastorn was mentioning earlier the value in UNCITRAL's instruments lie in their universal application, which can be used by countries from very different legal systems, and are a product of the harmonization work carried out by the various Working Groups – hence the need for more and more participation in the Working Groups today.

So it is this call that I'm making to you today to reach out to your capitals to let them know that we are willing as much as we can to get new countries on board. Regarding Working Group III, for example, which is highly technical as well as highly sensitive – we have found financial support from various donors, for example, the German GIZ, Swiss Multilateral Cooperation Agency and the European Union who are giving us financial support so that we can bring in new countries into the Working Group III. Therefore, I appeal to you to take advantage. We are organizing training events in advance of the Working Groups so that those who are not familiar with not only about the subject matter, but also about the working aspects within UNCITRAL or the UN – so that they may be able to participate affectively. So we are at your service, we are here to work with and for you, it gives us great pleasure to work with AALCO, as well as to make sure that those who wish to participate in our work can do so effectively.

With that I thank you very much, and it was indeed a pleasure to unroll all of UNCITRAL. We're now open for any queries or comments.

Mrs. Anuradha Bakshi, Deputy Director, AALCO: Thank you Secretary of UNCITRAL on your very informative lecture on the ongoing projects of UNCITRAL, and what you expect AALCO's Member States to do in furtherance of this work. Now we have a short interactive session with Her Excellency. I would request any participant wishing to raise a question to first identify themselves for her convenience.

Dr. V.D. Sharma, Additional Secretary and Legal Advisor, Ministry of External Affairs, Government of India:

Let me mention about participation of countries in the Working Groups of UNCITRAL – as mentioned by H.E. Ms. Joubin-Bret, that is, some Working Groups have up to 90-100 countries participating, whereas in other only 30-60 countries participate. That, in fact, does happen. I do remember in the case of Maritime Convention, when we started in 2000, participation started with very number of delegations. In Asia, as is the case India and

China were as usual on board; however, in the entire African community no one came to know of the negotiations that went into such an important convention. Towards the end of the work however, the African States started coming, and the hall became full in several sessions. So we started with the idea of having a maritime convention, but ended up with having maritime plus convention. It is of course a different matter that it has yet not received the required number of ratifications and come into force.

Thereafter coming to the functionality of UNCITRAL that Madam Secretary elaborated on, the Secretariat of course plays a very important role. They have an in-depth knowledge of each of the subject-matters. Madam Secretary has of course done a very good job of dispersing that knowledge to us today.

Lastly, I would like to say that the professionalism of the UNCITRAL Secretariat. They identify the nodal points in each of their Member States, and do a very good job of contacting directly the focal points in the nodal ministries, and then they do the needful. We expect such professionalism and cooperation from their side in the future also, thank you.

Prof. V.G. Hedge, Professor, Centre for International Legal Studies, JNU:

I'm an old hand at AALCO and also at the Ministry. I followed UNCITRAL quite closely, as Dr. Sharma mentioned. I have two questions today, now that I'm in academics. The issue is that UNCITRAL is now looking at investor-State disputes. So how does it reconcile with the substantive interpretation given by tribunals. There are so many problems of interpretation faced by particularly the countries of Asia and Africa. This is also getting a lot of attention. So UNCITRAL being the official author of the United Nations I'm sure priority will be given to the interpretation given by UNCITRAL.

The other issue is regarding e-commerce, which as has been mentioned is a long standing subject on the work program of UNCITRAL – which is that WTO is also going to be discussed by WTO in a few years, and also by other regional trade organizations. So how do you think these substantive issues are going to be incorporated into the debates in the United Nations? So there is a conflict that exists on this issue at the international level. So the question is how these two issues are going to reconcile.

The last point is more of a comment. Earlier at AALCO there used to be a trade law sub-committee. This was a specialized committee where a lot of publications were done. UNCITRAL too used to come regularly and brief the Member States. This was a session that used to take place parallel with the plenary session. Countries used to send their experts in this committee – which clarified the positions of many States, and thus, provided useful inputs to UNCITRAL. It was also a great learning experience for Member States as well as the legal officers. For some reason this was discontinued by AALCO, but if this reconciled, it can provide beneficial inputs to UNCITRAL. Lastly, what is important to note is that the relevance of UNCITRAL's instruments lie in the fact that adaptable easily by States. I think that's where the challenge for investor-State dispute work of the UNCITRAL lies – that is, whether or not that will be adopted by Member States in their investor agreements in the future. Thank you.

H.E. Mrs. Judith K.K. Kan'goma- Kapijimpanga, Zambian High Commissioner to India:

I just wish to commend you for the job you're doing, especially for some of us who have very little knowledge about this subject, and have had the opportunity to learn a lot today. I would like to know more about what UNCITRAL is doing, and especially about the African States. Thank you.

Ms. Anna Joubin-Bret, Secretary, UNCITRAL:

I would like to start from the last. I first of all thank Her Excellency for her kind words of encouragement. I'm really happy that this opportunity that was granted to me has found an echo so immediately. I also thank the Secretary General of AALCO Dr. Gastorn and Additional Secretary Dr. V.D. Sharma for this opportunity given to me for reaching out to you.

Also, thank you for the issues raised. The first issue is that why is the mandate extended to UNCITRAL limited to procedural aspects, and why it is not tackling substantive issues relating to investment protection, promotion and liberalization. Two factors are responsible. The first one is realism. It has been the underlying policy of almost all countries, for the last 60 years, as to how to protect, promote and get more investment into countries – with a lot of enthusiasm in the beginning – and a lot of disgruntlement in recent years. It has resulted in several efforts over the years. World Bank tried to tackle it very early on. World Bank ICSID was a part of a three set of institutions. One was MIGA for investment guarantee, second was ICSID for investment dispute settlement, as well as a set of rules for a multilateral investment court, that ended up in beautifully drafted guidelines, that are nothing more than guidelines, and will never become anything else. We spoke about the OECD and its efforts to develop a multilateral framework. Talking about WTO, I think India played a crucial role in ensuring that it did not swallow yet another topic.

The substantive issues surrounding investment policy are by no means an easy subject matter to work on. And tackling it at the outset would be a recipe for disaster in my view. The area that is the most contentious is the dispute settlement system that was devised to handle this substantive rules is in my view a realistic approach. By addressing the procedural issues you are addressing a lot of substantive issues. For example, if our deliberations result in joint interpretation by States – this is automatically going to lead to joint interpretation of most favored nation treatment. This is giving the States tools to regain the ownership of their treaties. They are the masters of their treaties. They have given away too much already in terms of interpretation. So if through this procedural means they can regain this authority, in my view it is the most promising and realistic way of tackling this problem.

Regarding the simultaneous work going on in other for a, you are completely right. For example, UNCTAD, OECD, as well as some regional organizations such as AALCO in its efforts in Arusha Seminar are coming up with solutions and analysis that are feeding the discussions in UNCITRAL. Everyone has a standing at UNCITRAL, and we are a transparent organization and are open to all such civil organizations, NGOs. Etc.

In case of e-commerce you're again right that efforts are being taken to ensure that there are less and less trade barriers to e-commerce. But the job of UNCITRAL is not that. We do a much more down-to-earth work. Our job is to find out what are the technical legal instruments and ways to ensure that there is unified law at the domestic level – which will then ensure that there are no protectionist approaches to e-commerce as we are experiencing currently.

There was also a comment about reviving AALCO's subcommittee on trade and the cooperation with UCITRAL on that. Well, it's not really for me to comment upon, but if such efforts are in fact taken we are all up for it.

Mrs. Anuradha Bakshi, Deputy Director, AALCO:

With that we have come to an end of this very informative lecture and interactive session. Thank you ma'am for your elucidating speech on all aspects of UNCITRAL and we have all learned a lot. So before we come to an end of this I request you to kindly gather outside for a group photo, followed by refreshments.

The Meeting was thereafter adjourned.