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Role of UNCITRAL in promoting the rule of law at the national and international levels

Note by the Secretariat

Contents

	<i>Page</i>
I. Introduction	2
II. Relevance of texts that are expected to be considered by the Commission at its fifty-eighth session, in 2025, to the promotion of the rule of law and implementation of the Sustainable Development Goals	3
A. Draft convention on negotiable cargo documents	3
B. Draft toolkit for expedited asset tracing and recovery in insolvency proceedings and background notes on asset tracing and recovery proceedings	3
III. Suggestions for consideration of the role of UNCITRAL in promoting the rule of law at the fifty-eighth session, in 2025	4
A. UNCITRAL work relevant to upcoming Sixth Committee debates on “The rule of law at the national and international levels at the eightieth anniversary of the United Nations”	4
B. Expected contribution of the programme of UNCITRAL to the promotion of the rule of law and achievement of the Sustainable Development Goals	8



I. Introduction

1. The Commission may wish to recall that the item “Role of UNCITRAL in promoting the rule of law at the national and international levels” has been on its agenda since its forty-first session, in 2008,¹ in response to the invitation by the General Assembly to the Commission to comment, in its report to the General Assembly, on the current role of the Commission in promoting the rule of law.² The Commission may further wish to recall that, at its forty-first to fifty-seventh sessions, in 2008 to 2024, respectively, the Commission transmitted comments on its role in promoting the rule of law at the national and international levels, in its annual reports to the General Assembly.³ From 2019 to present, building on the deliberations of the Commission regarding how to handle the item more efficiently, the Secretariat has prepared a note for each Commission session, addressing the role of UNCITRAL in promoting the rule of law and outlining the way in which UNCITRAL instruments and texts relate to the Sustainable Development Goals.⁴

2. The Commission may wish to note that the General Assembly, in paragraph 21 of resolution 79/126 of 4 December 2024, reiterated its invitation to the Commission to comment on its current role in promoting the rule of law. In paragraph 24 of the same resolution, the General Assembly invited Member States to focus their comments during the upcoming Sixth Committee debate on the subtopic “The rule of law at the national and international levels at the eightieth anniversary of the United Nations”.

3. Chapter II of this note outlines the relevance of the texts that are expected to be before the Commission for finalization and adoption at its fifty-eighth session, in 2025, to the promotion of the rule of law and the implementation of the Sustainable Development Goals. Chapter III suggests actions by the Commission under this agenda subitem at its fifty-eighth session.

¹ *Official Records of the General Assembly, Seventy-third Session, Supplement No. 17 (A/73/17)*, paras. 264–267.

² General Assembly resolutions 62/70, para. 3; 63/128, para. 7; 64/116, para. 9; 65/32, para. 10; 66/102, para. 12; 67/97, para. 14; 68/116, para. 14; 69/123, para. 17; 70/118, para. 20; 71/148, para. 22; 72/119, para. 25; 73/207, para. 20; 74/191, para. 20; 75/141, para. 20; 76/117, para. 20; 77/110, para. 20; 78/112, para. 21; and 79/126, para. 21.

³ *Official Records of the General Assembly, Sixty-third Session, Supplement No. 17 and corrigendum (A/63/17 and Corr.1)*, paras. 385–386; *ibid.*, *Sixty-fourth Session, Supplement No. 17 (A/64/17)*, paras. 412–420; *ibid.*, *Sixty-fifth Session, Supplement No. 17 (A/65/17)*, paras. 313–336; *ibid.*, *Sixty-sixth Session, Supplement No. 17 (A/66/17)*, paras. 299–321; *ibid.*, *Sixty-seventh Session, Supplement No. 17 (A/67/17)*, paras. 195–227; *ibid.*, *Sixty-eighth Session, Supplement No. 17 (A/68/17)*, paras. 276–291; *ibid.*, *Sixty-ninth Session, Supplement No. 17 (A/69/17)*, paras. 234–240; *ibid.*, *Seventieth Session, Supplement No. 17 (A/70/17)*, paras. 318–324; *ibid.*, *Seventy-first Session, Supplement No. 17 (A/71/17)*, paras. 318–342; *ibid.*, *Seventy-second Session, Supplement No. 17 (A/72/17)*, paras. 435–441; *ibid.*, *Seventy-third Session, Supplement No. 17 (A/73/17)*, paras. 232–233; *ibid.*, *Seventy-fourth Session, Supplement No. 17 (A/74/17)*, paras. 303–308; *ibid.*, *Seventy-fifth Session, Supplement No. 17 (A/75/17)*, part one, para. 25; *ibid.*, *Seventy-sixth Session, Supplement No. 17 (A/76/17)*, paras. 370–374; *ibid.*, *Seventy-seventh Session, Supplement No. 17 (A/77/17)*, paras. 308–315; *ibid.*, *Seventy-eighth Session, Supplement No. 17 (A/78/17)*, paras. 299–304; and *ibid.*, *Seventy-ninth Session, Supplement No. 17 (A/79/17)*, paras. 360–368.

⁴ *Ibid.*, *Seventy-third Session, Supplement No. 17 (A/73/17)* paras. 264–267.

II. Relevance of texts that are expected to be considered by the Commission at its fifty-eighth session, in 2025, to the promotion of the rule of law and implementation of the Sustainable Development Goals

A. Draft convention on negotiable cargo documents

Relevance to Sustainable Development Goals 8 and 9

4. At its fifty-eighth session, in 2025, UNCITRAL is expected to finalize and approve the draft convention on negotiable cargo documents (the draft convention). The draft convention intends to create a new type of document of title (in paper or electronic form) that could perform a similar function as a maritime bill of lading for the carriage of goods by any mode of transport in a multimodal or unimodal context. Because transport documents issued by rail, road and air carriers are typically non-negotiable and do not serve as documents of title for the goods in transit, the draft convention intends to fill a gap in multimodal and unimodal transportation not involving a maritime leg.

5. The draft convention is expected to contribute to the achievement of Sustainable Development Goals 8 (Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all) and 9 (Build resilient infrastructure, promote inclusive and sustainable industrialization and foster innovation). With respect to Sustainable Development Goal 8, negotiable cargo documents could facilitate the sale of goods in transit and function as a credit enhancement tool for trade finance. By providing legal recognition and harmonized rules for negotiable cargo documents, the draft convention aims to reduce legal uncertainties and streamline international trade. This, in turn, could encourage economic activity, attract investments and create jobs, while making it easier for micro-, small and medium-sized enterprises (MSMEs) to access trade finance and participate in global markets.

6. With respect to Sustainable Development Goal 9, the draft convention aims to make global trade operations more flexible, efficient and secure, providing benefits for both developed and developing States. By introducing an electronic format of negotiable cargo documents, the draft convention could further facilitate the digital transformation of trade and transport systems, making them more resilient and efficient.

B. Draft toolkit for expedited asset tracing and recovery in insolvency proceedings and background notes on asset tracing and recovery proceedings

Relevance to Sustainable Development Goals 1, 8 and 16

7. At its fifty-eighth session, in 2025, the Commission is expected to consider and adopt a draft toolkit for expedited asset tracing and recovery in insolvency proceedings and background notes on asset tracing and recovery proceedings (together referred to as the ATR texts). The ATR texts were prepared in response to challenges that States face across the world with identifying, collecting and recovering as many insolvency estate assets as fast and with as low costs as possible for the benefit of creditors and other parties in interest, including the debtor. Those challenges include:

(a) The lack of funding to finance asset tracing and recovery (ATR). Without such funding, fraudulent dissipation of assets and other wrongful causes for insolvency may remain unaddressed, and avoidance and other insolvency law remedies, including broad administrative and investigative powers of the court and of the insolvency representative absent outside insolvency proceedings, would not be

used. As a result, assets that should be part of the insolvency estate may not be discovered and recovered;

(b) Increasingly sophisticated fraudsters and the use of more complex asset holding structures that slow down and complicate ATR, in particular in a digital environment that enables the ease of movement of assets and the instantaneous conclusion of multiple and numerous transactions whose parties might not be immediately or easily identifiable;

(c) Unsettled matters of law, bureaucratic hurdles and inertia; and

(d) Divergence in applicable laws and practices in the cross-border ATR context.

8. ATR challenges often arise because adequate tools for tracing and recovering assets for the insolvency estate might not be available in all States, while access to existing tools, in particular by foreigners, might not be effective and efficient. The ATR texts respond to those challenges by helping policymakers, legislators, courts and insolvency practitioners to better understand ATR measures used in other States. An enhanced understanding of those measures may equip the domestic ATR framework and practices with new tools, facilitate court-to-court communication and cooperation and expedite ATR across borders.

9. While the main policy objectives underlying the ATR texts are those of insolvency law, such as protection, preservation and maximization of the value of the insolvency estate, the ATR texts recognize that ATR often supports broader objectives, such as the rule of law and good governance, and relies on other laws, including effective enforcement and sanctions regimes outside the insolvency law framework, that supplement, complement and reinforce insolvency law objectives and measures. As acknowledged by the Commission when the project commenced,⁵ the results of the work of UNCITRAL on the project might be helpful in other areas of law where ATR takes place. By enhancing creditor confidence in the rule of law and good governance, they are also expected to contribute to an enabling business environment, access to credit, investment and trade.

10. In light of the above, the ATR texts are expected to contribute to Sustainable Development Goals 1 on ending poverty in all its forms, 8 on promoting sustained, inclusive and sustainable economic growth, and 16, in particular target 16.3 on promoting the rule of law at the national and international levels and ensuring equal access to justice for all.

III. Suggestions for consideration of the role of UNCITRAL in promoting the rule of law at the fifty-eighth session, in 2025

11. In formulating and transmitting its comments to the General Assembly in response to the invitation contained in paragraph 24 of General Assembly resolution 79/126, the Commission may wish to bear in mind the General Assembly resolutions referred to in chapter I above and the focus of the upcoming debates of Sixth Committee under the rule of law agenda item on “The rule of law at the national and international levels at the eightieth anniversary of the United Nations”.

A. UNCITRAL work relevant to upcoming Sixth Committee debates on “The rule of law at the national and international levels at the eightieth anniversary of the United Nations”

12. As an initial matter, the Commission may wish to consider how UNCITRAL has been working, consistent with its mandate, to strengthen the rule of law in commercial

⁵ *Official Records of the General Assembly, Seventy-sixth Session, Supplement No. 17 (A/76/17)*, para. 217.

relations since being established by the General Assembly in resolution 2205 (XXI) of 17 December 1966, as the United Nations expert body in the field of international commercial law.⁶ The Commission may wish to highlight major historical achievements that contributed to the rule of law, such as the development of the United Nations Convention on Contracts for the International Sale of Goods (CISG) and UNCITRAL texts in the area of electronic commerce, in addition to those noted in the comments by the Commission to the General Assembly transmitted since 2008 (see para. 13 below).

13. With regard to the CISG, the contract of sale is the backbone of international trade in all States and the development of the CISG has provided a uniform legal framework for international sales contracts and inspired contract law reform at the national level. The CISG has helped reduce legal uncertainty and promote predictability in international trade and has provided benefits especially to MSMEs and traders in developing States who typically have reduced access to legal advice when negotiating a contract.

14. With regard to electronic commerce, UNCITRAL texts in this area provide a comprehensive legal framework which helps to create a stable and predictable legal environment, supporting the rule of law and helping foster international trade. The UNCITRAL Model Law on Electronic Commerce (1996) provides rules for the equal treatment of electronic and paper-based information. The UNCITRAL Model Law on Electronic Signatures (2001) enables and facilitates the use of electronic signatures by establishing criteria of technical reliability of the equivalence between electronic and hand-written signatures. The United Nations Convention on the Use of Electronic Communications in International Contracts (2005) removes formal obstacles to the wide use of electronic communications by establishing equivalence between the electronic and written form in international contracts. Together these texts ensure that electronic transactions are legally recognized and enforceable, promoting confidence and efficiency in international trade, and ultimately supporting the rule of law.

15. The Commission may also wish to consider its contributions to the promotion of the rule of law in commercial relations as highlighted in its comments transmitted to the General Assembly in this regard since 2008. As a general matter, the Commission has expressed its conviction that the promotion of the rule of law in commercial relations should be an integral part of the broader agenda of the United Nations to promote the rule of law at the national and international levels⁷ and has endorsed the dissemination of the Guidance Note on Strengthening United Nations Support to States, Upon Their Request, to Implement Sound Commercial Law Reforms.⁸ In its comments, the Commission noted the relevance to the promotion of the rule of law of:

(a) The cooperation and coordination aspect of its mandate,⁹ effective implementation of its technical assistance activities,¹⁰ building local capacity in commercial law reforms,¹¹ and its dissemination activities,¹² including that those

⁶ The Commission was established under article 13, paragraph 1(a) of the Charter of the United Nations, under which the General Assembly shall initiate studies and make recommendations for the purpose of, inter alia, promoting international cooperation in the political field and encouraging the progressive development of international law and its codification.

⁷ *Ibid.*, *Sixty-third Session, Supplement No. 17 (A/63/17)*, paras. 385–386.

⁸ Available at https://uncitral.un.org/sites/uncitral.un.org/files/englishguidance_note.pdf; see also *Official Records of the General Assembly, Seventy-first Session, Supplement No. 17 (A/71/17)* para. 262 (endorsing the text of the draft guidance note and requesting the Secretary-General to finalize and circulate it); General Assembly resolution 71/135, para. 8(e) (noting the endorsement of the Commission and requesting the Secretary-General to circulate the Guidance Note as broadly as possible to its intended users).

⁹ *Ibid.*, *Sixty-fourth Session, Supplement No. 17 (A/64/17)*, paras. 414–416.

¹⁰ *Ibid.*, *Sixty-fifth Session, Supplement No. 17 (A/65/17)*, paras. 315 and 336.

¹¹ *Ibid.*, *Sixty-seventh Session, Supplement No. 17 (A/67/17)*, paras. 199–223.

¹² *Official Records of the General Assembly, Seventy-second Session, Supplement No. 17 (A/72/17)*, paras. 435–441.

activities were key to supporting uniform interpretation and application of UNCITRAL texts;

(b) Its commercial dispute settlement standards, public procurement and other texts and work on investor-State dispute settlement (ISDS);¹³

(c) For the 2011 subtopic on transitional justice in conflict and post conflict situations, the use and impact of UNCITRAL standards in reconstruction of post-conflict societies;¹⁴

(d) For the subtopics related to access to justice in 2014, 2016 and 2023, its standards on normative protection, capacity to seek remedy and effective remedies, modernization of review procedures and more recent work on stocktaking of dispute resolution in the digital economy;¹⁵

(e) Issues arising from multilateral treaty processes at UNCITRAL¹⁶ and implementation of multilateral treaties emanating from the work of UNCITRAL;¹⁷

(f) For the 2020 subtopic on prevention and combatting corruption, its work in the area of public procurement and infrastructure development;¹⁸

(g) For the 2022 subtopic on the impacts of the global coronavirus disease (COVID-19) pandemic on the rule of law, its texts and exploratory work in the areas of electronic commerce, MSMEs, insolvency, the international sale of goods, public-private partnerships and public procurement, mediation, arbitration and secured transactions;¹⁹ and

(h) For the 2024 subtopic on full, equal and equitable participation at all levels in the international legal system, its mandate and working methods.²⁰

16. With respect to its recent and current work, the Commission may wish to consider how such work which, in light of the digital transformation and other fundamental changes in international law, promotes the rule of law and

¹³ Ibid., *Sixty-fourth Session, Supplement No. 17 (A/64/17)*, paras. 417–419. UNCITRAL commercial dispute settlement standards were also prominently featured in the rule of law discussion by UNCITRAL in 2013 in the context of the peaceful settlement of international disputes. The importance of UNCITRAL standards and technical assistance, and cooperation and coordination activities in the area of dispute settlement was highlighted on that occasion. See *ibid.*, *Sixty-eighth Session, Supplement No. 17 (A/68/17)*, paras. 276–290. For other texts, see *ibid.*, *Seventy-third Session, Supplement No. 17 (A/73/17)*, paras. 232 and 233, the United Nations Convention on International Settlement Agreements Resulting from Mediation, the UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation, the UNCITRAL Legislative Guide on Key Principles of a Business Registry, and the UNCITRAL Model Law on Recognition and Enforcement of Insolvency-Related Judgments; *ibid.*, *Seventy-fourth Session, Supplement No. 17 (A/74/17)*, paras. 299, 303–308, the Practice Guide to the UNCITRAL Model Law on Secured Transactions, the UNCITRAL Model Legislative Provisions on Public-Private Partnerships, the UNCITRAL Legislative Guide on Public-Private Partnerships, UNCITRAL Model Law on Enterprise Group Insolvency, Legislative Guide on Insolvency Law Part four: Directors' obligations in the period approaching insolvency (including in enterprise groups); *ibid.*, *Seventy-sixth Session, Supplement No. 17 (A/76/17)*, paras. 370–374, the UNCITRAL Legislative Guide on Limited Liability Enterprises, the Legislative Recommendations on Insolvency of Micro- and Small Enterprises, the UNCITRAL Mediation Rules, the UNCITRAL Notes on Mediation, the Guide to Enactment and Use of the UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation (2018), and the UNCITRAL Expedited Arbitration Rules.

¹⁴ *Official Records of the General Assembly, Sixty-sixth Session, Supplement No. 17 (A/66/17)*, paras. 300, 316–319.

¹⁵ *Ibid.*, *Sixty-ninth Session, Supplement No. 17 (A/69/17)*, paras. 218, 234–240; *ibid.*, *Seventy-first Session, Supplement No. 17 (A/71/17)*, paras. 318–342, on related matters; and *ibid.*, *Seventy-eighth Session, Supplement No. 17 (A/78/17)*, paras. 296–304 on the 2023 subtopic “Using technology to advance access to justice for all”.

¹⁶ *Ibid.*, *Seventieth Session, Supplement No. 17 (A/70/17)*, paras. 302–324.

¹⁷ *Ibid.*, *Seventy-first Session, Supplement No. 17 (A/71/17)*, para. 306.

¹⁸ *Ibid.*, *Seventy-fifth Session, Supplement No. 17 (A/75/17)*, paras. 25, 100–104.

¹⁹ *Ibid.*, *Seventy-seventh Session, Supplement No. 17 (A/77/17)*, paras. 230–233, 304–315.

²⁰ *Ibid.*, *Seventy-ninth Session, Supplement No. 17 (A/79/17)*, paras. 357–368.

implementation of the Sustainable Development Goals. Some examples include the UNCITRAL Model Law on Automated Contracting (2024), the UNCITRAL Model Law on the Use and Cross-border Recognition of Identity Management and Trust Services (2022), and the UNCITRAL/UNIDROIT Model Law on Warehouse Receipts (2024).

17. With respect to the Model Law on Automated Contracting in particular, the model law establishes a legal framework to facilitate the use of automation in the formation and performance of contracts, including through the deployment of artificial intelligence (AI) techniques. It is intended to complement and supplement other UNCITRAL texts on electronic commerce and to signal potential intersections with other laws, including an emerging body of law regulating the ethical use and governance of automated systems deploying AI techniques. It addresses several fundamental legal issues arising from AI and automation in a contractual setting, including: (a) the validity and legal effectiveness of AI and automation to form and perform contracts, as well as the use of computer code and dynamic information that power these transactions; (b) the attribution of “outputs” of AI and automated systems; and (c) the legal consequences of “unexpected” outcomes in the use of AI and automated systems (as an optional rule). It also recognizes the importance of information disclosure in the operation of AI and automated systems and acknowledges that such systems cannot be used simply to avoid or excuse non-compliance with other legal requirements.

18. Studies within the United Nations system have identified the potential for AI to support the implementation of all Sustainable Development Goals.²¹ For its part, the UNCITRAL secretariat has highlighted in its exploratory work on legal issues related to the digital economy, the role that law can play in creating certainty for business in the digital economy and predictability in commercial transactions, as well as in fostering the development and deployment of AI and other emerging technologies.²² In this context, the Model Law on Automated Contracting is expected to contribute to the achievement of Sustainable Development Goal 9 (Build resilient infrastructure, promote inclusive and sustainable industrialization and foster innovation) and 16 (Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels). The principles and concepts on which the model law is based, which draw on the work of other international fora, may offer guidance on addressing legal issues beyond the contractual setting, including in the application of other laws governing extracontractual obligations or in implementing standards on the ethical use of AI, thus potentially contributing to the achievement of other Sustainable Development Goals through AI.

19. The Commission may also wish to note that the Report to the United Nations Secretary-General by the AI Advisory Body on Governing AI for Humanity, published in September 2024, recommended the creation of a Global AI data framework and suggested UNCITRAL as a possible forum for such work.²³

20. In addition to legislative activities, non-legislative activities of UNCITRAL continue to support the rule of law by aiding States in their commercial law reform efforts, promoting awareness and understanding of international standards and ensuring their implementation and uniform interpretation. These activities include not only legal technical assistance and judicial capacity-building, but also teaching, and resources such as the Case Law on UNCITRAL Texts (CLOUT) database, the UNCITRAL website, online courses and publications. Despite resource limitations, the technical assistance and cooperation programme has been praised for fostering regional integration, preventing conflicts and advancing sustainable economic development.

²¹ See, e.g., International Telecommunication Union, *AI for Good Impact Report (2024)*, www.itu.int/pub/T-AI4G-AI4GOOD-2024-10.

²² A/CN.9/1012, para. 8.

²³ *Governing AI for Humanity* (United Nations publication, 2024), p. 67.

21. Lastly, the Commission may wish to consider how the contributions of UNCITRAL to the promotion of the rule of law have been recognized by the General Assembly, including for instance:

(a) In the context of the programme of the United Nations Decade of International Law (1990-1999) where it was observed that the programme should take account of the fact that international trade law was an important and integral part of international law and, in particular, the work of the Commission was an important element in strengthening the rule of law in international economic relations;²⁴

(b) In paragraph 8 of the Declaration of the High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels, adopted by General Assembly resolution 67/1 of 24 September 2012, States recognized the importance of fair, stable and predictable legal frameworks for generating inclusive, sustainable and equitable development, economic growth and employment, generating investment and facilitating entrepreneurship and, in this regard, commended the work of the Commission in modernizing and harmonizing international trade law;

(c) In paragraph 89 of the Addis Ababa Action Agenda of the Third International Conference on Financing for Development, adopted by General Assembly resolution 69/313 of 27 July 2015, States endorsed the efforts and initiatives of the Commission, as the core legal body within the United Nations system in the field of international trade law, aimed at increasing coordination of and cooperation on legal activities of international and regional organizations active in the field of international trade law and at promoting the rule of law at the national and international levels in this field; and

(d) At its seventy-ninth session, the General Assembly again endorsed the conviction of the Commission that the implementation and effective use of modern private law standards in international trade are essential for advancing good governance, sustained economic development and the eradication of poverty and hunger and that the promotion of the rule of law in commercial relations should be an integral part of the broader agenda of the United Nations to promote the rule of law at the national and international levels, including through the Rule of Law Coordination and Resource Group, supported by the Rule of Law Unit in the Executive Office of the Secretary-General.²⁵

B. Expected contribution of the programme of UNCITRAL to the promotion of the rule of law and achievement of the Sustainable Development Goals

22. Considering the developments highlighted in this note, the Commission may wish to consider ways to continue highlighting in its texts and decisions adopting or approving the texts, their relevance to and impact on sustainable development. In the light of the expected finalization and adoption of texts in the areas of negotiable cargo documents and asset tracing and recovery in insolvency proceedings at its fifty-eighth session, the Commission may wish to highlight in its decisions on those texts their expected input to the implementation of the Sustainable Development Goals (see paras. 5–11 above). The Commission may also wish to consider and specify the expected contribution of its ongoing work on dispute resolution in the digital economy, ISDS reform, data provision contracts and applicable law in insolvency proceedings to the achievement of the Sustainable Development Goals.

23. The Commission may wish to request States, the secretariat, organizations and institutions to continue their efforts towards increasing awareness of the role of UNCITRAL standards and activities for the promotion of the rule of law at the

²⁴ *Official Records of the General Assembly, Forty-fifth Session, Supplement No. 17 (A/45/17)*, para. 71.

²⁵ General Assembly resolution 79/117, para. 23.

national and international levels and the implementation of the Sustainable Development Goals.
