

UNCITRAL generally - its mandate, composition, working methods, forms of UNCITRAL texts, employment at UNCITRAL

What is the general mandate of UNCITRAL?

The United Nations Commission on International Trade Law (UNCITRAL) is a subsidiary body of the General Assembly of the United Nations which was established in 1966 with the general mandate to further the progressive harmonization and unification of the law of international trade. UNCITRAL has since prepared a wide range of conventions, model laws and other instruments dealing with the substantive law that governs trade transactions or other aspects of business law which have an impact on international trade.

What does UNCITRAL mean by the "harmonization" and "unification" of the law of international trade?

"Harmonization" and "unification" of the law of international trade refers to the process through which the law facilitating international commerce is created and adopted. The United Nations Commission on International Trade Law identifies areas in which international commerce is hindered due to factors such as lack of a predictable governing law, out-of-date laws not easily applicable to contemporary commercial practice, *inter alia*, and then carefully crafts solutions which are acceptable to States having different legal systems and levels of economic and social development.

While the terms are closely interrelated, "harmonization" may conceptually be thought of as the process through which domestic laws may be modified to enhance predictability in cross-border commercial transactions; and "unification" may be seen as the adoption by States of a common legal standard governing particular aspects of international business transactions. A model law or a legislative guide is an example of a text which is drafted to harmonize domestic law, while a convention is an international instrument which is adopted by States for the unification of the law at an international level. Texts resulting from the work of UNCITRAL include conventions, model laws, legal guides, legislative guides, rules, and practice notes.

Regardless of the term used, the essential element of the work of UNCITRAL is the modernization of laws to adapt to the needs of international commerce and economic development.

Who participates in the drafting of UNCITRAL texts?

UNCITRAL texts are initiated, drafted, and adopted by the United Nations Commission on International Trade Law, a body made up of elected member States representing different geographic regions. Participants in the drafting process include member States of the Commission and other States (referred to as "observer States"). Observer States may participate actively in the drafting process. In addition, interested international inter-

governmental organizations ("IGO's") and non-governmental organizations ("NGO's") may participate.

What is the difference in an UNCITRAL legislative text and an UNCITRAL non-legislative text?

UNCITRAL legislative texts, such as conventions, model laws, and legislative guides, result in the voluntary enactment of law by domestic legislators. UNCITRAL non-legislative texts, such as the UNCITRAL Arbitration Rules, are intended for the voluntary use of private persons in their contractual relationships.

Legislative texts include the following: United Nations Convention on Contracts for the International Sale of Goods; Convention on the Limitation Period in the International Sale of Goods; UNCITRAL Model Law on International Commercial Arbitration; UNCITRAL Model Law on Procurement of Goods, Construction and Services; United Nations Convention on Independent Guarantees and Stand-by Letters of Credit; UNCITRAL Model Law on International Credit Transfers; United Nations Convention on International Bills of Exchange and International Promissory Notes; United Nations Convention on the Carriage of Goods by Sea, 1978 (Hamburg); United Nations Convention on the Liability of Operators of Transport Terminals in International Trade; UNCITRAL Model Law on Electronic Commerce; UNCITRAL Legislative Guide on Privately Financed Infrastructure Projects; UNCITRAL Model Law on Electronic Signatures; UNCITRAL Model Law on International Commercial Conciliation; and the United Nations Convention on the Assignment of Receivables in International Trade.

Non-legislative texts include the following: UNCITRAL Arbitration Rules; UNCITRAL Conciliation Rules; UNCITRAL Notes on Organizing Arbitral Proceedings; UNCITRAL Legal Guide on Drawing Up International Contracts for the Construction of Industrial Works; and UNCITRAL Legal Guide on International Countertrade Transactions.

What are the regional groups represented within the Commission and who are the member States within each region?

There are five regional groups represented within the Commission. Their names, and the States elected to the Commission are as follows: *African States* - Benin, Burkina Faso, Cameroon, Kenya, Morocco, Rwanda, Sierra Leone, Sudan and Uganda; *Asian States* - China, Fiji, India, Iran (Islamic Rep. of), Japan, Singapore, and Thailand; *Eastern European States* - Hungary, Lithuania, Romania, Russian Federation, The former Yugoslav Republic of Macedonia; *Latin American and Caribbean States* - Argentina, Brazil, Colombia, Honduras, Mexico, Paraguay and Uruguay; *Western European and Other States* - Austria, Canada, France, Germany, Italy, Spain, Sweden, United States of America and United Kingdom.

What is a "Working Group"?

A "Working Group" is a subset of the Commission that, as the name implies, works on a particular topic such as arbitration or transport law. Working Groups, with the assistance of the Secretariat, draft UNCITRAL texts for the consideration of the Commission.

How are decisions taken at UNCITRAL?

UNCITRAL typically takes decisions by consensus, rather than by voting.

Are the interests of developing countries taken into consideration by UNCITRAL?

Yes. General Assembly resolution 2205 (XXI) of 17 December 1966, which established the Commission on International Trade Law and set forth its mandate, provides that "The Commission shall bear in mind the interests of all peoples, and particularly those of developing countries, in the extensive development of international trade." *Id.* para. 9. Furthermore, members of the Commission represent different geographic areas, and are elected by the General Assembly "having due regard to the adequate representation of the principal economic and legal systems of the world, and of developed and developing countries." *Id.* para. 1.

Developing countries participate in the drafting and adoption of UNCITRAL texts. The UNCITRAL Secretariat includes staff and interns from developing countries and newly-independent States. The commitment of the Commission and the Secretariat to the provision of training and technical assistance is long-standing and constant. Similarly, the General Assembly has expressed strong support for this work. For example, General Assembly resolution 55/151 of 12 December 2000 entitled "Report of the United Nations Commission on International Trade Law" states, in part, that the General Assembly: "Also reaffirms the importance, in particular for developing countries, of the work of the Commission concerned with training and technical assistance in the field of international trade law, such as assistance in the preparation of national legislation based on legal texts of the Commission"

Is UNCITRAL part of the World Trade Organization (WTO)?

No. UNCITRAL is the acronym for the United Nations Commission on International Trade Law, a body made up of member States representing various regions. The Secretariat of UNCITRAL is the International Trade Law Branch of the Office of Legal Affairs of the United Nations.

The issues dealt with by the WTO and UNCITRAL are quite a bit different. The WTO deals with trade policy issues, such as trade liberalization, abolition of trade barriers, unfair trade practices or other similar issues, whereas UNCITRAL deals with the laws applicable to private parties in international transactions. As a consequence, UNCITRAL is not involved with "state-to-state" issues such as anti-dumping, countervailing duties, or import quotas. Unlike UNCITRAL, the WTO is an intergovernmental organization independent from the United Nations.

One big difference is that the WTO has a staff of 500 people, while the UNCITRAL Secretariat presently consists a total of 19 people -- eleven professional staff and eight administrative support staff. (*see*

http://www.wto.org/english/thewto_e/whatis_e/whatis_e.htm)

I am a recent law graduate. What are the substantive requirements for employment with UNCITRAL?

For employment as an entry level (P-3) legal officer, in addition to an advanced university degree in law with particular emphasis on commercial, economic and comparative private law, six years of professional experience in international trade law with a sound background in the experience of a particular legal system are the minimum requirements for employment. A higher level degree (Ph.D. or equivalent) may be substituted for two years of professional experience.

The role of UNCITRAL - what it is, what it does, and what it does not do

What is UNCITRAL and what is its mandate?

The United Nations Commission on International Trade Law (UNCITRAL), a subsidiary body of the General Assembly of the United Nations, was established in 1966 with the general mandate to further the progressive harmonization and unification of the law of international trade. UNCITRAL has since prepared a wide range of conventions, model laws and other instruments dealing with the substantive law that governs trade transactions or other aspects of business law which have an impact on international trade.

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How many States are members of the Commission?

As is the case with most subsidiary bodies of the General Assembly, which is composed of all States members of the United Nations, membership in UNCITRAL is limited to a smaller number of States, so as to facilitate the deliberations. UNCITRAL was originally composed of 29 States; its membership was expanded in 1973 to 36 States by General Assembly resolution 3108 (XXVIII), paragraph 8. Membership is structured so as to be representative of the various geographic regions and the principal economic and legal

systems of the world. Thus, nine members are African States, seven are Asian States, five are East European States, six are Latin American States and nine are West European and other States. In order to allow for rotation in membership, members of the Commission are elected for terms of six years, the terms of half the members expiring every three years.

What are the geographic regions represented on the Commission?

Members of the Commission are elected as representatives of the African States; the Asian States; the Eastern European States; the Latin American and Caribbean States; and the Western European and Other States.

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What is the difference in a member State and an observer State?

Member States of the Commission are elected, however all other States that are not members of the Commission as well as interested international organizations are invited to attend sessions of the Commission and its working groups as observers. Observers are invited to participate in discussions in the Commission and its working groups to the same extent as members.

What rights and obligations does a State undertake by participation in UNCITRAL?

Participation in UNCITRAL, as a either a member or observer State entails no further obligations other than those already assumed by the State by being a member State of the United Nations.

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Does UNCITRAL administer arbitrations?

No. UNCITRAL's mandate by the General Assembly does not extend to participation in either public or private disputes. Consequently, UNCITRAL does not nominate arbitrators, administer arbitrations, certify arbitral authorities, or offer legal advice in specific disputes.

What does "arbitration under the UNCITRAL rules" mean?

A reference in a dispute settlement clause to the UNCITRAL Arbitration Rules or (in a frequent, but inaccurate formulation) to "UNCITRAL arbitration" or any other provision to the same effect means that the parties agree that an existing or a future dispute should be settled in arbitral proceedings conducted in accordance with the UNCITRAL Arbitration Rules.

Although UNCITRAL and its Secretariat have prepared legislative and contractual provisions and rules relating to international commercial arbitration and conciliation, it is not within our mandate set out by the General Assembly to become involved in individual cases. We do not act as an arbitral tribunal, administer arbitration proceedings, or otherwise perform any function related to individual arbitration proceedings, or any other system of public or private dispute settlement.

I am involved in a dispute with a company and our contract provides for arbitration pursuant to the UNCITRAL Arbitration Rules. Is an e.mail message sufficient notice to the other party?

Although UNCITRAL prepared the UNCITRAL Arbitration Rules as well as other texts on the subject of arbitration, it is beyond our mandate, and is indeed inappropriate for

UNCITRAL, the Secretariat, or individual legal officers to offer advice regarding the interpretation of provisions of UNCITRAL texts or to otherwise offer legal advice.

Can UNCITRAL provide an authoritative interpretation of domestic law?

No. Neither UNCITRAL nor its Secretariat can assist individuals or outside entities in the interpretation of provisions of national law, nor can it provide legal advice to individuals or outside entities in connection with particular cases or disputes.

Does UNCITRAL offer scholarships or other financial assistance to students and scholars?

No. UNCITRAL does not have an endowment for scholarships or other forms of academic financial assistance.

UNCITRAL and private disputes / litigation

Does UNCITRAL administer arbitrations?

No. UNCITRAL's mandate by the General Assembly does not extend to participation in either public or private disputes. Consequently, it is beyond our mandate, and is indeed inappropriate for UNCITRAL, the Secretariat, or individual legal officers to nominate arbitrators, administer arbitrations, certify arbitral authorities, or offer legal advice in specific disputes.

While UNCITRAL and its Secretariat have prepared provisions and rules relating to the settlement of international commercial disputes, it is not within our mandate to become involved in individual cases. UNCITRAL does not administrate arbitration or conciliations proceedings, nor does it provide services to public entities or private parties in connection with dispute settlement proceedings. Furthermore, we do not keep any list of potential arbitrators or conciliators, nor do we act as appointing authority under the UNCITRAL arbitration and conciliation rules.

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Although UNCITRAL prepared the UNCITRAL Arbitration Rules as well as other texts on the subject of arbitration, it is beyond our mandate, and is indeed inappropriate for UNCITRAL, the Secretariat, or individual legal officers to offer advice regarding the interpretation of provisions of UNCITRAL texts or to otherwise offer legal advice.

UNCITRAL texts - differences in Model Laws and Conventions, final versions, whether a text has been ratified or adopted by a particular state, copyright

What is the difference between a model law and a convention?

A model law is created as a suggested pattern for law-makers in national governments to consider adopting as part of their domestic legislation. A convention is a treaty, an international obligation that sovereign nations choose to undertake in their relations with one another. In general, departures from a Convention are only permitted if the Convention permits reservations to be taken to its provisions.

Are there "signatories" to Model Laws?

No. Given that a Model Law is a pattern for a law that is intended to be enacted by governments as domestic legislation, such a law is effectively the same as any other bill passed by the parliament, consequently there are no lists of "signatories" such as you would find concerning treaties.

State "*" is listed under the "Status of Conventions and Enactments of UNCITRAL Model Laws" as having signed a particular UNCITRAL Convention. Does that mean that the Convention applies to that State?***

No. Under general principles of treaty law, the act of signing a treaty does not automatically make the signatory State a party to that treaty. A further act such as ratification or accession is required for the State to be bound by the treaty at international law. Domestic legislation may also be required in order for the terms of the treaty to be implemented within the territory of the State. **Note that signature, per se, may not be adequate for an entity to become a party to a treaty.**

For an authoritative statement regarding state/international organization participation in treaties, including signature, see *Summary of Practice of the Secretary-General as Depositary of Multilateral Treaties*, <http://untreaty.un.org/ENGLISH/Summary.asp> Also see the [Vienna Convention on the Law of Treaties](#).

How do I determine if a State is a party to a Convention? How do I determine if a State has enacted an UNCITRAL Model Law?

UNCITRAL monitors ratifications of Conventions and enactments of UNCITRAL Model Laws. This information is compiled and provided free of charge on the UNCITRAL Web site, <http://www.uncitral.org/english/status/status-e.htm> This list is updated when the Secretariat is informed of changes in status or new enactments. Readers are also advised to consult the United Nations Treaty Collection <http://untreaty.un.org/> for authoritative status information. (note that the latter requires a the payment of a fee to access the information contained in the Treaty Collection).

What is the difference between the UNCITRAL Model Law on International Commercial Arbitration (1985) and the UNCITRAL Arbitration Rules (1976)?

The UNCITRAL Model Law is a suggested pattern for law-makers in national governments to consider adopting as part of their domestic legislation on arbitration. The UNCITRAL Arbitration Rules, on the other hand, are selected by parties either as part of their contract, or after a dispute arises, to govern the conduct of an arbitration intended to resolve a dispute or disputes between themselves. Put simply, the Model Law is directed at States, while the Arbitration Rules are directed at potential (or actual) parties to a dispute.

Who may use the UNCITRAL Arbitration Rules?

The UNCITRAL Arbitration Rules are intended to be used by any public entities or private parties in the conduct of dispute settlement proceedings if they so wish. Nothing in the Rules limits their use to nationals of States which are Member States of the Commission.

Has the UNCITRAL Arbitration Rules been updated? Have there been amendments to the CISG? etc.

The final versions of UNCITRAL texts are posted in the "Adopted Texts" section of the UNCITRAL Web site. To the extent there has been any change to a text since its initial adoption by the Commission, such change will be apparent from the revised title of the text, such as the UNCITRAL Model Law on Electronic Commerce with Guide to Enactment (1996), with additional article 5 bis as adopted in 1998.

What is copyright policy of UNCITRAL concerning the reproduction and distribution of UNCITRAL texts?

UNCITRAL welcomes the dissemination of its copyrighted texts, and extends the right to reproduce and distribute UNCITRAL texts subject to the following terms and conditions:

1. the text is reproduced verbatim; and
2. UNCITRAL is acknowledged as the source.

In addition, we suggest that authors send a complimentary copy of the materials to UNCITRAL for inclusion in the UNCITRAL Law Library.

[UNCITRAL and public law issues - environmental law, state sovereignty, transparency etc.](#)

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Does participation in UNCITRAL diminish state sovereignty?

No. State participation in UNCITRAL, either as an elected member State of the Commission or as an observer State is entirely voluntary. By customary practice, all decisions of the Commission, including its work programme, the progress of designated projects, and the adoption of texts, are made by consensus. The choice of whether to use an UNCITRAL legislative text is a matter for the lawmakers of individual States.

Are the interests of developing countries taken into consideration by UNCITRAL?

Yes. General Assembly resolution 2205 (XXI) of 17 December 1966, which established the Commission on International Trade Law and set forth its mandate, provides that "The Commission shall bear in mind the interests of all peoples, and particularly those of developing countries, in the extensive development of international trade." *Id.* para. 9. Furthermore, members of the Commission represent different geographic areas, and are elected by the General Assembly "having due regard to the adequate representation of the principal economic and legal systems of the world, and of developed and developing countries." *Id.* para. 1.

Developing countries participate in the drafting and adoption of UNCITRAL texts. The UNCITRAL Secretariat includes staff and interns from developing countries and newly-independent States. The commitment of the Commission and the Secretariat to the provision of training and technical assistance is long-standing and constant. Similarly, the General Assembly has expressed strong support for this work. For example, General Assembly resolution 55/151 of 12 December 2000 entitled "Report of the United Nations Commission on International Trade Law" states, in part, that the General Assembly: "Also reaffirms the importance, in particular for developing countries, of the work of the Commission concerned with training and technical assistance in the field of international

trade law, such as assistance in the preparation of national legislation based on legal texts of the Commission"

Does the work of UNCITRAL undermine existing consumer protection legislation?

No. UNCITRAL texts apply to commercial transactions between businesses, rather than between businesses and consumers. For example, the United Nations Convention for the International Sale of Goods ("CISG") does not apply to transactions in goods that the seller knows are bought for "personal, family or household use" and is also inapplicable to personal injuries caused by the goods. CISG arts. 2(a); 5. Similarly, the UNCITRAL Model Law on Electronic Commerce is drafted so that it will "not override any rule of law intended for the protection of consumers". MLEC art. 1, fn. **. In any event, States that chose to enact UNCITRAL legislative texts as domestic law may make them subject to the level of consumer protection that they consider appropriate.

Does the work of UNCITRAL take environmental issues into account?

Yes, however most UNCITRAL texts are not directly relevant to environmental concerns. The *UNCITRAL Legislative Guide to Privately Financed Infrastructure Projects*, a legislative text intended to acquaint domestic legislators with issues to be considered when drafting laws governing private infrastructure investment, makes plain that "It is widely recognized that environmental protection legislation is a critical prerequisite to sustainable development." PFIP chap. VII, para. 42.

The *Legislative Guide* discusses the practice recognized in some States of public participation in environmental licensing, and states:

"Adhering to treaties relating to the protection of the environment may help to strengthen the international regime of environmental protection. A large number of international instruments have been developed in the past decades to establish common international standards. These include the following: Agenda 21 and the Rio Declaration on Environment and Development, adopted by the United Nations Conference on Environment and Development in 1992; the World Charter for Nature (General Assembly resolution 37/7, annex); the Basel Convention on the Control of Transboundary Movement of Hazardous Wastes and Their Disposal of 1989; the Convention on Environmental Impact Assessment in a Transboundary Context of 1991; and the Convention on the Protection and Use of Transboundary Watercourses and International Lakes of 1992." *Id.* para. 44.

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governmental organizations ("IGO's") and non-governmental organizations ("NGO's") may participate.

How many States are members of the Commission?

At present the Commission is composed of thirty-six member States elected by the General Assembly. Membership is structured so as to be representative of the world's various geographic regions and its principal economic and legal systems. Members of the Commission are elected for terms of six years, the terms of half the members expiring every three years.

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The UNCITRAL Web site - <http://www.uncitral.org> - technical issues, document availability

My computer will not display some of the documents contained on the UNCITRAL Web site. What's wrong?

Assuming that your computer and Internet connections are otherwise working properly, you may need to ensure that you have a copy of the Adobe Acrobat program installed

correctly on your computer. Many of the documents contained on the UNCITRAL Web site are posted in the Adobe Acrobat ".pdf" format. You should be able to click on a document such as a [Commission Report](#) and have the document open in an Adobe Acrobat frame within your main browser window. On occasion, you may need to click the "Reload" button for the page to display.

Adobe Acrobat Reader is available as a free download from the Adobe Web site <http://www.adobe.com>. "Adobe", "the Adobe logo" and "Adobe Acrobat" marks are either registered trademarks or trademarks of Adobe Systems Incorporated in the United States and/or other countries."

Are all UNCITRAL texts available on the UNCITRAL Web site?

Not yet. The UNCITRAL Web site contains all UNCITRAL adopted texts and current documents in the six official languages of the United Nations that are available in an electronic format. Archival and research material is being scanned into Adobe Acrobat ".pdf" format and posted on an ongoing basis.