2030 Agenda for Sustainable Development and UNCITRAL's role in the Asia Pacific Region

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Head of the UNCITRAL Regional Centre for Asia and the Pacific
OUTLINE

1. Introduction to UNCITRAL and to the Regional Centre for Asia and the Pacific
2. Political and Economic implications in the context of regional economic integration
3. Practical importance in the context of cross-border supply chains
4. 2030 Agenda: the Goals, targets and contribution of UNCITRAL
5. Sum up
1. Introduction to UNCITRAL and to the Regional Centre for Asia and the Pacific
GUESS how many contracts between businesses, every day?

- I have a smart phone, bought in Hong Kong
- I can buy an Indian app from an American company that sells books
- I can use my Korean credit card
- To buy a book from a Japanese author
- Published by an South African publisher
- Sold by the British store of that American company
- That will send it to me through mail with freight contracts to a German carrier
- Until it reaches my doorstep through a Korean delivery service.

Imagine if laws were all different with no connection…
When was UNCITRAL established? And why?

Established by United Nations General Assembly in 1966

Core legal body of the UN system in the field of private international trade/commercial law

MANDATE:
Progressive harmonization and modernization of international trade law by preparing and promoting the use of legislative instruments in key areas of commercial law.
Necessity to promote & implement the effective use of modern private law standards in international trade

<table>
<thead>
<tr>
<th>WHY?</th>
<th>HOW?</th>
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<tr>
<td>Essential for Good governance, Economic development &amp; Eradication of poverty</td>
<td>Signing, ratifying or acceding and implementing UNCITRAL's instruments Capacity Building</td>
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**MAIN CONCERNS**

- Access to justice as normative protection capacity to seek remedies
- Capacity to provide effective remedies
- Strong interrelation between the rule of law and development
- Rule-based cross-border trade
The Role of UNCITRAL

**NOT INVOLVED IN**

- Settling disputes between States
- Settling disputes between private parties
- Providing legal advice on disputes to parties

**INVOLVED IN**

- Promoting the unification & harmonization of the law of international trade and assisting in domestic law reform (*legislative work*)
- Strengthening uniform application & interpretation of the instruments adopted (*technical assistance*)
- Coordinating the work of other similar organizations (*cooperation with UN and non-UN bodies/organizations*)
• UN system
  • Main Objective
    – To promote harmonization of international trade law
    – Laws applicable to private parties (B2B) in international transactions.
  • How:
    – Legislative and non-legislative instruments (international texts)
    – Gathering and disseminating information pertaining domestic legislations and legal developments
    – Coordinating with other law reform organizations

• Intergovernmental (1995)
  • Main Function
    – To ensure trade flows as smoothly, predictably and freely as possible, deals with the global rules of trade between nations.
    – “State-to-state" regulatory issues
  • How:
    – Multilateral trade negotiations, Rounds involving all Members of the Organization
    – Dispute resolution mechanism legally binding on all Members.
UNCITRAL Texts

<table>
<thead>
<tr>
<th>Legislative</th>
<th>Contractual</th>
<th>Explanatory</th>
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<tbody>
<tr>
<td>E-Commerce</td>
<td>Cross Border Insolvency</td>
<td>Secured Transactions</td>
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<tr>
<td>International Payments</td>
<td>Procurement &amp; Infrastructure Development</td>
<td>International Transport of Goods</td>
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Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958) (the "New York Convention")

156 Parties

Legend:
- Legislation based on Model Law
- Legislation based on Model Law adopted only in certain subnational jurisdictions

84 State parties: More than 75% of world trade
UNCITRAL & Secured Transactions

- UNCITRAL Legislative Guide on Secured Transactions (2007)
- UN Assignment of Receivables Convention

Registry Guide + Secured Transactions Guide = comprehensive guidance to States with respect to legal and practical issues that need to be addressed to implement a modern security rights and registration regime
UNCITRAL & Public Procurement, Infrastructure Development

- EBRD-UNCITRAL Initiative on Enhancing Public Procurement Regulation in the CIS countries and Mongolia
- UNCITRAL Model Law on Public Procurement (2011)
- Guide to Enactment of the UNCITRAL Model Law on Public Procurement (2012)
  - Guidance on procurement regulations to be promulgated in accordance with article 4 of the UNCITRAL Model Law on Public Procurement (2013)
The first regional office of UNCITRAL, opened on 10 January 2012
Located in Incheon, Republic of Korea

Covers 56 States (+2 SAR, China) of the Asia-Pacific
Technical assistance activities

Briefing missions/seminars & participating in conferences
Undertaking law reform
Assisting with the drafting of national legislation
Assisting international development agencies
Providing advice and assistance to international and other organizations
Organizing group training activities
RCAP Technical Assistance

☑ VIET NAM
Assisting CISG accession and related capacity building

☑ Lao PDR
TA & CB on Contract Law and Arbitration Law

☑ CHINA
Parliamentary hearing and workshop on E-commerce. UNCITRAL and Beijing Normal University Joint Certificate Program

☑ MYANMAR
Arbitration bill; Workshop on the 1958 NY Convention. With JICA

☑ PACIFIC ISLANDS STATES
UNCITRAL South Pacific Seminar (CISG; NY Convention; E-commerce) with ADB PSDI and others

☑ DPRK
One week training seminar

The Convention provides a modern, uniform and fair regime for B2B sale of goods international contracts, introducing certainty in trade and decreasing transaction costs for MSME’s.
Flagship Events

The 5th Asia Pacific ADR Conference
12-13 October 2016
The Plaza Hotel, Seoul, Republic of Korea

Save the Date

TRADE LAW FORUM
INCHEON 2016
16-18 May 2016
TRADE LAW FORUM
INCHEON 2016
16-18 May 2016

Days 1 & 2
An interactive 360° approach on the UN Electronic Communications Convention (e-CC), the UN Convention on Contracts for the International Sale of Goods (CISG), the HcCH Convention on Choice of Court Agreements (HCCCA) and the Hague Principles on Choice of Law in International Commercial Contracts (HPCL) for Lawyers, Businesses, Governments, Judges, Educators & NGOs

UNCITRAL-IBA Workshop: “Drafting international commercial contracts, what’s new under the sky of the CISG and Hague Conference?”

Day 2
International Contracts with CISG, e-CC, HCCCA & HPCL
Rotterdam Rules: Should Asia Wait-and-See or Lead the Way?

Day 3
Legal regime for Secured Finance: Enabling Fintech
Rule of Law and Infrastructure Development

Confirmed speakers: Francisco Reyes (Chair, UNCITRAL), Christophe Bernasconi (Secretary General, HcCH), Robert French AC (Chief Justice, High Court of Australia), Naoyuki Yoshino (Dean, ADB Institute), João Ribeiro (Head of UNCITRAL-RCAP), Lisa Spagnolo (Curator of the Conference), Franco Ferrari (Chair of Session for Judges), Mary Keyes (Chair of Session for Educators), Lee Soeun (ICC ICA)

REGISTRATION WILL OPEN SOON!
2.

Political and Economic implications in the context of regional economic integration
Broader policy implications

Trade law reform

- Strengthening Rule of Law
- Good Governance
- Legal Education
- Relieve Judiciary
An uniform trade law divide?

Developed countries:
- High rate of adoption of treaties and uniform model laws;
- Adequate capacity in negotiating contracts and establishing efficient business practices;
- Stronger bargaining power.

Developing countries:
- Low rate of adoption of treaties and uniform model laws;
- Modest local capacity impedes effectively negotiating contracts and establishing efficient business practices;
# Commercial Law Frameworks

<table>
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<tr>
<th>Modern</th>
<th>Outdated</th>
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<tbody>
<tr>
<td>• Competitive Market</td>
<td>• Less competitive market</td>
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<tr>
<td>• Responsible Corporate Governance</td>
<td>• Favouritism, Corruption, Inequalities</td>
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<tr>
<td>• Deter conflicts</td>
<td>• Causes instability</td>
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<tr>
<td>• Reduces cross-border commercial disputes</td>
<td>• Fosters cross-border commercial disputes</td>
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<tr>
<td>• Promotes trust and mutual understanding</td>
<td>• Favours disrespect and lack of trust</td>
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 UNCITRAL United Nations Commission on International Trade Law
Benefits of harmonization

➢ Legislative-drafting benefits:
  • State of the art legislation that requires limited work for enactment
  • Availability of implementing tools (academic works, case law compilations...)

➢ Economic benefits:
  • Increased predictability of legal framework
  • Lower transaction costs both for contract management and for dispute resolution
  • Avoidance of foreign law
  • Particularly relevant for small and medium-sized enterprises
# Regional Integration and Cooperation

## APEC Members
- Australia
- Brunei Darussalam
- Canada
- Chile
- People’s Republic of China
- Hong Kong, China
- Indonesia
- Japan
- Republic of Korea
- Malaysia
- Mexico
- New Zealand
- Papua New Guinea
- Peru
- The Philippines
- Russia
- Singapore
- Chinese Taipei
- Thailand
- The United States
- Viet Nam

## ASEAN States
- Brunei Darussalam
- Malaysia
- Myanmar
- Singapore
- Philippines
- Cambodia
- Indonesia
- Lao People’s Democratic Republic
- Thailand
- Viet Nam

## MERCOSUR States
- Argentina
- Brazil
- Paraguay
- Uruguay
- Venezuela
- Chile
- Peru
- Colombia
- Ecuador

## Silk Road Initiative
- China
- Macau, China
- Hong Kong, China
- India
- Kenya
- Malaysia
- Sri Lanka
- Greece
- Indonesia
- Viet Nam

## European Union
- 24 Member States
- Ireland
- Malta
- Portugal
- United Kingdom

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**UNCITRAL** United Nations Commission on International Trade Law
<table>
<thead>
<tr>
<th>ASEAN</th>
<th>Brunei Darussalam</th>
<th>Cambodia</th>
<th>Indonesia</th>
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3. Practical importance in the context of cross-border supply chains
iPhone 6
Supply Chain
31 jurisdictions
International sale of goods:
Typical characteristics and legal problems

• International sales of goods:
  ✔ fundamental contract in cross-border transactions;
  ✔ requires a number of supporting contracts to ensure its performance;
  ✔ all these contracts may have connections with different legal systems.
Supporting contracts

- (Multimodal) transport and warehousing contracts;
- Credit and foreign exchange contracts (for payment of price);
- Financing contracts;
- Insurance;
- Arbitration clauses (in all of the above);
- Legal consequences of the use of electronic communications (in all of the above).
Importance of legal framework for international supply chain

- Each step of the [international] supply chain is covered by legal provisions
- Different applicable laws create uncertainty in cross-border trade
- Uncertainty translates in additional costs:
  - to manage contracts
  - to solve disputes, including at the enforcement stage.
Benefits arising from the harmonized laws:

1. Clarity in applicable law;
2. Controlling principles:
   - Flexibility in contractual management;
   - Duty to cooperate.
3. Levelling the playing field
4. Dispute settlement system
5. Introduces certainty in commercial exchanges and decreases transaction costs
Political Checklist: answering yes to at least one of these questions, would prompt the need to implement one or more UNCITRAL standards

1. Are you promoting import/export operations of MSMEs located in your country?

2. Do you see a prevalence of foreign law used in contracts for international sale of goods concluded in your country? Do you think this is a disadvantage?

3. Do you believe that the availability of an equitable and easily accessible uniform law for sale of goods would decrease transaction costs for business?

4. Are you promoting more market economy and party autonomy?

5. Are you interested in increasing the quality and quantity of legal services provided in your country?
4. 2030 Agenda: the Goals, targets and contribution of UNCITRAL
Goal 1. End Poverty in all its forms everywhere

Target 1.a
Ensure significant mobilization of resources from various sources

UNCITRAL standards help to put a framework in place

Enabling environment attracts potential donors & investors
Removing bottlenecks

See also target 10.b, 17.1, 17.3 and 17.5
Goal 4. Ensure inclusive, equitable quality education and promote lifelong opportunities for all

Target 4.4
Increase number of youth and adults having relevant skills for employment

UNCITRAL standards related to skills for entrepreneurship
(e.g. public procurement market, e-commerce)
Goal 5. Achieve gender equality and empower all women

Target 5.c

Adopt and strengthen sound policies and enforceable legislation for gender equality

UNCITRAL standards are gender-neutral
(Simplified formalization of MSMEs, Removal of legal obstacles and e-commerce)
Goal 8. Promote sustained, inclusive and sustainable economic growth, full and productive and decent work for all

**Target 8.10**
- Strengthen the capacity of domestic financial institutions to encourage and expand access to banking, insurance and financial services for all

*UNCITRAL works for inclusive and equitable finance in the area of security interests*  
*tries to address the problem of secured credit by creating a level playing field*
Goal 9. Build Resilient infrastructure, promote inclusive and sustainable industrialization and foster innovation

• Target 9.3
  Increase the access of small-scale industrial and other enterprises to financial services, including affordable credit, and their integration into value chains and markets

Target 9.a
  Facilitate sustainable and resilient infrastructure development in developing countries

Related to the work of UNCITRAL on MSMEs, commercial dispute resolution, security interests, insolvency law and e-commerce

UNCITRAL instruments on privately financed infrastructure projects are highly relevant to putting a legal environment

See targets 8.3 and 8.10
Goal 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

➢ **Target 16.3**
Promote the rule of law at the national and international levels and ensure equal access to justice for all

**UNCITRAL facilitates mature rule-based commerce**

**UNCITRAL’s work is relevant to all dimensions of access to justice and to legal and procedural transparency**
Goal 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

- **Target 16.5**
  Substantially reduce corruption and bribery in all their forms

*Anti-corruption and anti-bribery aspects in UNCITRAL’s work are very much present in the UNCITRAL standard in the area of public procurement, e-commerce and investor-State dispute resolution.*
7. Conclusions
A/CN.9/845 Draft guidance note on strengthening United Nations support to States to implement sound commercial law reforms

| (1) | recognition and enforcement of property rights and legal relationships |
| (2) | compliant with internationally accepted commercial law standards |
| (3) | capacity to implement sound commercial law reforms |
| (4) | capacity of local judges, arbitrators and other legal practitioners to understand internationally accepted commercial law standards |
| (5) | mechanisms for adjudicating disputes and enforcing binding commitments |
| (6) | people are educated on international commercial law issues |
| (7) | mechanisms for legal empowerment on commercial matters |
Summing up
Business or trade related reasons

a. Renewed importance of international trade
b. Simplification, reduction of costs and legal uncertainty: easy access to the law
c. Acknowledgement of party autonomy
d. Common language and checklist for international B2B negotiations
e. Acknowledgement of international trade usage and practice
f. Focus on the commercial aspect of transaction
g. Improved competition
Summing up

Legal reasons

a. Simplification, reasonableness and equity
b. Unified interpretation and application
c. One internal law to contend with
d. ITL already applicable in many cases
e. Improved laws
f. Legal certainty and availability of sources
g. Success of the CISG and Arbitration texts
h. One more option
Summing up
Policy reasons

a. The inclusive and participative legislative process of UNCITRAL
b. The extent of international acceptance
c. Leadership role in the region
d. Levels the playing field for MSME's in cross border trade
e. International standards to frame domestic contract law, e-commerce law reforms and dispute resolution
Thank you for your attention!

For more information on the work of UNCITRAL, please visit our website www.uncitral.org

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