

Address to the Sixth Committee of the General Assembly

by Mr. János MARTONYI (Hungary)

Chairperson of the Fiftieth session of

United Nations Commission on International Trade Law

(UNCITRAL)

9 October 2017

I. INTRODUCTION

Mr. Chairperson and distinguished delegates of the Sixth Committee,

It gives me great pleasure to appear before you and the Sixth Committee to present the work carried out during the fiftieth session of UNCITRAL, the United Nations Commission on International Trade Law, which took place in Vienna from July 3rd to July 21st. It was a privilege for me to have been elected as the chair of the fiftieth session, which marked the completion of half a century of work by UNCITRAL. I feel it is also an appreciation for Hungary, a state which had a significant role in establishing UNCITRAL by initiating works on international trade law in the United Nations in 1966.

Mr. Chairperson and distinguished delegates,

The Commission, as the core legal body of the United Nations in the field of international trade law, finalized and adopted two legislative texts in key commercial areas: electronic commerce and secured transactions. In addition, the Commission heard progress reports from Working Groups, considered planned and possible future work, and deliberated on the technical assistance and coordination activities carried out by its Secretariat. It also held a three-day Congress to commemorate the 50 years of work by the Commission in the field of international trade law.

Ladies and gentlemen,

As always, this year's report of the Commission (document A/72/17) is quite comprehensive and touches upon a wide-range of issues that the Commission is engaged in. I

can assure you that the Commission is continuing to fulfil the mandate given to it by the General Assembly in 1966.

Please allow me, Mr. Chairperson, to introduce the report of the Commission in more detail.

II. Texts adopted by the Commission

As just mentioned, the Commission finalized and adopted two legislative texts in the areas of electronic commerce and secured transactions.

Finalization and adoption of the UNCITRAL Model Law on Electronic Transferable Records and Explanatory Notes

The first text was the UNCITRAL Model Law on Electronic Transferable Records (the “Model Law”). The Commission decided to undertake work in that area recognizing that the use of electronic transferable records - the electronic versions of bills of lading, promissory notes, bills of exchange and warehouse receipts - may bring a number of benefits to commerce due to speed and security of transmission, the possibility of reusing data and of automating certain transactions through “smart contracts.” Such features may be of particular interest to the finance and transport sectors. Particularly relevant for developing countries is the possibility of establishing a market for electronic warehouse receipts, which, in turn, may facilitate farmers’ access to credit.

Building on existing UNCITRAL texts on electronic commerce, and on the principles of functional equivalence and technology neutrality, the Model Law aims at legally enabling dematerialization of transferable documents and instruments. It does so by setting forth the requirements for establishing equivalence between paper-based transferable documents and instruments, on the one hand, and electronic transferable records, on the other. For example, the Model Law allows the notion of “possession” to be transposed into an electronic environment. The Model Law further provides guidance on assessing the reliability of the method used to manage the electronic transferable record, on change of medium (from electronic to paper and vice versa), and on cross-border issues. Being technology-neutral, the Model Law accommodates the use of emerging technologies such as those based on distributed

ledgers or blockchain technology. The Model Law is accompanied by an Explanatory Note to assist States in enacting its provisions and to offer guidance to other potential users.

Work on the preparation of the Model Law and the Explanatory Note was undertaken by UNCITRAL Working Group IV (Electronic Commerce) and the final version will soon be made available on the UNCITRAL website.

Finalization and adoption of the Guide to Enactment of the UNCITRAL Model Law on Secured Transactions

Last year, in 2016, the Commission had adopted the UNCITRAL Model Law on Secured Transactions (the "Secured Transactions Model Law"), providing a transparent, comprehensive and rational legislative framework for secured financing of movable assets. The Secured Transactions Model Law is expected to have a beneficial impact on the availability and the cost of credit, in particular to small and medium-size enterprises in developing countries.

As this session, the Commission adopted the Guide to Enactment of the Secured Transactions Model Law. As the Secured Transactions Model Law leaves a number of matters to the discretion of each enacting State, the Guide to Enactment provides useful assistance to legislators with respect to such matters. The Guide to Enactment provides a general introduction to, and a brief explanation of, each provision of the Model Law and illustrates how the provisions in the Model Law interrelate with other UNCITRAL texts on secured transactions (for example, the United Nations Convention on the Assignment of Receivables in International Trade and the UNCITRAL Legislative Guide on Secured Transactions).

Work on the preparation of the Guide to Enactment was undertaken by UNCITRAL Working Group VI (Security Interests) and the final version of the Guide to Enactment will soon be made available on the UNCITRAL website.

III. CONGRESS TO CELEBRATE UNCITRAL'S FIFTIETH ANNIVERSARY

As part of its fiftieth annual session, UNCITRAL hosted a three-day Congress, entitled "Modernizing International Trade Law to Support Innovation and Sustainable Development." A key objective of the event was to examine how trade law reform based on UNCITRAL's modern, fair and harmonized texts could contribute to the 2030 Agenda for Sustainable

Development. More than 400 participants attended the Congress, which was opened by the Legal Counsel of the United Nations. High-level speakers from Austria (where the UNCITRAL Secretariat is located), as well as from other parts of the world, congratulated UNCITRAL on its many achievements. Such achievements had allowed developing countries, in particular, to benefit from the significant economic and social advantages of international trade, to harness technological innovation and to build sound institutions. The highly positive contribution of UNCITRAL to strengthening the rule of law in commercial activity was a recurring theme, as was the comparative advantage of UNCITRAL in the process of law reform in terms of its multilingualism and inclusiveness.

The Congress benefitted from a geographically diverse group of participants, which included former and current UNCITRAL chairpersons and Secretaries, delegates, practitioners, judges and academics, representing both individuals with many decades of experience, as well as young researchers. Innovative proposals for modernizing international trade law in a sustainable manner were discussed. Topics included UNCITRAL's more "traditional" subject-areas such as dispute settlement, insolvency, secured transactions, and procurement and infrastructure development, as well as emerging subject areas such as digital contracts, blockchain technology, integrated transport and trade facilitation. The need to consider small- and medium-sized enterprises throughout UNCITRAL's work was constantly emphasized.

Recognizing the need for activities to support the effective implementation and use of UNCITRAL texts, and the contributions of such activities to identifying issues for future legislative development, the Congress concluded that mechanisms to disseminate and preserve UNCITRAL's work should be strengthened.

I take the opportunity to express my pleasure that Hungary, in collaboration with the Secretariat General, organised a conference on the margin of the Congress which highlighted the long standing relationship between my home country and the organization. Our experts presented their ideas about certain aspects of international unification of private law from a Hungarian point of view, the impact of the Convention on the International Sale of Goods to the new Hungarian Civil Code and the cooperation between Hungary and the UNCITRAL.

IV. PROGRESS MADE BY OTHER WORKING GROUPS AND FUTURE WORK

Mr. Chairperson and distinguished delegates, the Commission is annually updated as to the progress made by its Working Groups and on their planned and possible future work. Allow me now to provide you a brief summary of those developments.

Working Group I: Micro, Small and Medium-sized Enterprises (MSMEs)

Working Group I on Micro, Small and Medium-sized Enterprises (MSMEs) has made progress in addressing its mandate to reduce the legal obstacles encountered by such businesses throughout their life cycle. That work is, of course, being performed in light of the importance of MSMEs in the global economy generally, but with particular attention given to their role in developing economies and in encouraging entrepreneurship and fostering innovation in economies throughout the world.

As requested by the Commission, efforts in the Working Group have focused on the first stage of the life cycle of MSMEs, that is, on measures to facilitate the establishment of such businesses and to support their viability once they are in existence. These efforts have crystalized into two distinct legislative projects currently being undertaken by the Working Group. The first is the preparation of a legislative guide to assist States in crafting appropriate legislation for the fast and inexpensive creation of simplified businesses, ensuring that those legal forms are sufficiently flexible to respond to the diverse needs of MSMEs. The second project, which is nearing completion and may be considered for adoption by the Commission in 2018, is a separate legislative guide that analyses and provides specific legislative recommendations on best practices in the establishment and operation of business registries. The aim is to encourage and support the operation of businesses of all sizes in the formal economy and to foster their sustainability.

Working Group II: Dispute Settlement

Distinguished delegates,

Since 2015, Working Group II on dispute settlement has been preparing an instrument to deal with the enforcement of international commercial settlement agreements resulting from conciliation. The Commission noted the progress made by the Working Group, in particular the compromise reached at its sixty-sixth session regarding five key aspects, relating to (i) the legal effect of settlement agreements, (ii) the treatment of settlement agreements concluded in the

course of judicial or arbitral proceeding, (iii) possible opt-in declaration by the parties, (iv) the impact of the conciliation process, and of the conduct of conciliators, on the enforcement procedure and (v) the form of the instrument to be prepared. The Commission expressed support for that compromise and requested the Working Group to complete the work expeditiously.

Working Group IV: Electronic Commerce

With regard to Working IV on electronic commerce, the Commission reaffirmed the mandate given to it last year to conduct in parallel preparatory work on two topics, which are quite different in scope and content. One relates to legal aspects of identity management (“IdM”) and trust services and the other relates to contractual issues relating to cloud computing. The Working Group has already begun its preparation of a checklist of contractual issues of cloud computing by identifying the content and the structure of that checklist. Work in the area of IdM and trust services will require some more brainstorming to crystallize the issues to be addressed.

Working Group V: Insolvency Law

Working Group V on insolvency continues to make progress with its current work on, firstly, a model law on the recognition and enforcement of insolvency-related judgments; secondly, legislative provisions on facilitating the cross-border insolvency of multinational enterprise groups; and thirdly, a legislative guide on the obligations of directors of enterprise groups companies in the period approaching insolvency. The first project, the model law on insolvency-related judgments, is nearing completion and a draft text, together with a guide to enactment, is likely to be submitted for consideration by the Commission next year. The second and third texts, which are closely related, will be discussed during the forthcoming session in December and may also be ready for finalization by the Commission in 2018. Once these texts have been finalised, the Working Group will consider the treatment of micro, small and medium-sized enterprises in insolvency, with regard to which preliminary work has already begun.

Planned and possible future work

Mr. Chairperson and distinguished delegates, to this point, I have given you an overview of the progress being made at the Working Group level. Now, I draw your attention to possible future work, which the Commission has considered.

Work in the area of investor-State dispute settlement

After a preliminary discussion on possible future work in the area of international dispute settlement, the Commission decided to give its Working Group III a mandate to work on the possible reform of investor-State dispute settlement (ISDS). The Working Group will identify concerns regarding ISDS and consider whether reform is desirable. If reforms are considered desirable, the Working Group will develop relevant solutions that will be recommended to the Commission. In giving this mandate, the Commission agreed that broad discretion should be left to the Working Group. It was further agreed that any recommended solutions should be designed taking into account the ongoing work of relevant international organizations and should allow each State the choice of whether and to what extent it wishes to adopt the relevant solutions. In line with the UNCITRAL process, Working Group III is expected to ensure that its deliberations, while benefiting from the widest possible breadth of available expertise from all stakeholders, will be government-led with high-level input from all governments. The need for the process to be consensus-based and fully transparent was also emphasized. The first session on the topic of ISDS is scheduled to take place in late November in Vienna.

Work in the area of security interests

Upon finalization of the Guide to Enactment of the Secured Transactions Model Law, the Commission discussed possible future work in the area of security interests. Deliberations were based on conclusions reached at the Fourth International Colloquium on Secured Transactions held in Vienna in March 2017 and a proposal put forward by States to prepare a practice guide on secured transactions. After deliberations, the Commission mandated its Working Group VI to prepare a practice guide for potential users of the Model Law with respect to contractual, transactional, and regulatory issues relating to secured transactions, as well as financing of micro-businesses.

Public procurement and public-private partnerships

The Commission also recognized the importance of the areas of public procurement and infrastructure development in the context of sustainable development. With regard to public-private partnerships, the Secretariat was asked to continue the process of updating, where necessary, all or part of the UNCITRAL Legislative Guide on Privately Financed Infrastructure Projects, involving experts. As regards the monitoring of developments in sanction procedures often referred to as suspension and debarment in public procurement, the Commission decided that the matter should no longer be included on its agenda, pending further convergence of systems in practice.

UNCITRAL Transparency Registry

The Commission also heard a report on the operation of the UNCITRAL Transparency Registry, a key element of the UNCITRAL Transparency Rules and the Mauritius Convention on Transparency. Thanks to the contributions received in 2016 from the European Commission and the OPEC Fund for International Development (OFID), the Registry is fully operational with the Secretariat having recruited a legal officer responsible for its administration. In December 2016, the European Commission made a further commitment totalling 300,000 Euros, which will allow the operation of the Registry for additional three years until the end of 2020.

As it had done for the past few years, the Commission reiterated its strong and unanimous opinion that the Secretariat should operate the Transparency Registry and to that end, the Commission recommended to you, the General Assembly, that the Secretariat of the Commission be “requested to continue operating the Transparency Repository, in accordance with article 8 of the Rules, as a pilot project until the end of 2020, to be funded entirely by voluntary contributions”. I would strongly ask for your support on this point.

V. TECHNICAL ASSISTANCE AND COORDINATION

Technical assistance to law reform

Mr. Chairperson, distinguished delegates,

You will certainly agree with me that the Commission and the Secretariat deserve to be congratulated for the progress made since last year in carrying out the various legislative

projects on its agenda. Yet, the Commission itself was keenly aware of the fact that development of those legislative texts is only the first step in the process of trade law harmonization. Dissemination of information, and the conduct of promotion activities as well as technical cooperation and assistance projects are vital to the further use, adoption and interpretation of UNCITRAL texts. In that respect, the Commission commended the efforts by the Secretariat to provide information, to actively support domestic law reform through drafting assistance, and to share practical experience in the enactment of UNCITRAL texts, as well as advice on interpretation and implementation of those texts. The UNCITRAL website (www.uncitral.org) and the UNCITRAL Law Library play a central role in the dissemination of information and the Commission encouraged the Secretariat to continue to explore the development of new social media features on the UNCITRAL website.

The ability of the Secretariat to respond to requests from States and regional organizations depends however on the availability of funds to meet associated costs, mainly in the form of voluntary contributions made to the UNCITRAL Trust Fund for Symposia. Despite some highly appreciated contribution, such as the one by the Republic of Korea to support participation in the Asia Pacific Economic Cooperation (APEC) Ease of Doing Business project, those funds remain regrettably insufficient to meet the requests. The Commission therefore welcomed steps taken by the Secretariat to explore alternative sources of extra budgetary funding, in particular by extensively engaging permanent missions, as well as other possible partners in the public and private sectors, and seeking cooperation and partnership with international organizations and bilateral assistance agencies in the provision of technical assistance. The Commission also reiterated its appeal to all States, international organizations and other interested entities to consider making contributions to the UNCITRAL Trust Fund for Symposia, if possible in the form of multi-year contributions or as specific-purpose contributions, in order to facilitate planning and enable the Secretariat to meet the increasing number of requests for technical cooperation and assistance activities.

UNCITRAL Regional Presence

Mr. Chairperson, distinguished delegates,

The UNCITRAL Regional Centre for Asia and the Pacific based in Incheon, Korea, has continued to carry out its mandate, namely by providing capacity building and technical assistance to States as well as international and regional organizations. The Centre has

enhanced international trade and development, by promoting certainty in international commercial transactions through the dissemination of international trade norms and standards, in particular those elaborated by UNCITRAL. This has resulted in a tangible increase of accessions, ratifications and enactments of UNCITRAL texts in the Asia Pacific region. The Regional Centre has achieved this result by building and actively participating in regionally-based international trade law partnerships and alliances, including with other appropriate United Nations funds, programmes and specialized agencies. Noteworthy are its participation in the effort for the UN to “Deliver as One”, by becoming a non-resident agency in the Lao PDR-United Nations Partnership Framework 2017-2021, and in the United Nations Development Assistance Framework (UNDAF) Papua New Guinea (2018-2022).

The positive experience with the Regional Centre for Asia and the Pacific is having spill-over effects in other parts of the world. At this year’s session, the Commission was advised that Cameroon has proposed to host an UNCITRAL African Regional Centre in Cameroon, to foster the interest of Africa in the work of the Commission and to promote the adoption, use and understanding of UNCITRAL texts in Africa. The Bahrain Chamber for Dispute Resolution also informed the Commission that the Government of Bahrain was actively pursuing the establishment of an UNCITRAL Regional Centre for the Middle East and North Africa in the Kingdom to increase familiarity with UNCITRAL texts and their level of adoption and use in the region. The proposed Regional Centres would provide technical assistance to States on the adoption, use and understanding of UNCITRAL texts; coordinate with international and regional organizations on trade law reform projects in the region; coordinate communication between States in the region and UNCITRAL and its Secretariat; and participate in appropriate regionally-based partnerships and alliances, including with other United Nations bodies. The establishment and operation of the Regional Centres would rely entirely on extra-budgetary resources provided by leading stakeholders, in cooperation with interested government authorities. Both are currently being envisaged as pilot projects following the example of the UNCITRAL Regional Centre for Asia and the Pacific. The Commission expressed its gratitude to the Governments of Cameroon and Bahrain and approved the establishment of the Centres, subject to the relevant rules and regulations of the United Nations as well as the necessary internal approval process. The Secretariat was requested to take the necessary steps to carry out that decision, and to keep the Commission informed of developments, including its funding and budget situations. I would expect the

General Assembly to express its strong support to such decisive steps being taken towards increasing the outreach of UNCITRAL.

Promotion of ways and means of ensuring a uniform interpretation and application of UNCITRAL legal texts – CLOUT

Mr. Chairperson, distinguished delegates,

It is of utmost importance for the Commission to promote the uniform interpretation and application of its texts. One of ways this goal is pursued is through the Case Law on UNCITRAL Texts system (the “CLOUT”). As a result of collaboration between the UNCITRAL Secretariat and a network of national correspondents appointed by member States, information on court decisions and arbitral awards interpreting UNCITRAL legislative texts are published in the CLOUT database. This database is accessible online, free of charge and in the six official languages of the United Nations. The Commission noted with satisfaction the continuing increase in the volume of case law made available through that database. It also expressed its appreciation for the publication of the updated Digest of Case Law on the United Nations Convention on Contracts for the International Sale of Goods in English and in Arabic and further noted that translation into other official languages was underway. The Commission was also informed of appointments of national correspondents for the period 2017-2022. Lastly, the Commission requested the Secretariat, in consultation with CLOUT national correspondents, to present a way forward for CLOUT, considering that the system had been implemented for over twenty-five years with no significant changes in its structure.

Status of UNCITRAL texts

Ladies and gentlemen,

With regard to the status of UNCITRAL texts, I am happy to report that States around the world are increasingly looking to UNCITRAL texts when reforming or modernizing their international trade law regimes. During this year’s session, the Commission took note of the actions on UNCITRAL texts taken by States, which included signature or ratification of treaties and adoption of model laws. While a number of these actions were based entirely on the States’ own initiatives, many were facilitated through the dedicated assistance provided by the UNCITRAL Secretariat.

Coordination and cooperation

Mr. Chairperson, distinguished delegates,

In the last few years, there has been a gradual increase in coordination activities undertaken by the UNCITRAL Secretariat and such trend continued this year. At this year's session, the Commission took note of such coordination activities with other organizations active in the field of international trade law. Such activities concerned topics both currently being considered by the Working Groups and related to texts already adopted by the Commission. In order to avoid duplication of work and to facilitate well-coordinated work products, the UNCITRAL Secretariat participated in various working groups, expert groups and plenary meetings organized by United Nations agencies or other entities. By way of example, those organizations included the Hague Conference on Private International Law (the "Hague Conference"), the International Institute for the Unification of Private Law (Unidroit), the European Commission, the United Nations Commission on Trade and Development (UNCTAD), the United Nations Office on Drugs and Crime (UNODC) and the World Bank. Reiterating the importance of such work, the Commission supported the use of travel funds for attending meetings of the different organizations.

Joint project on contract law

The Commission was informed that the preparation of a guidance document in the area of international commercial contract law, with a focus on sales, is currently ongoing in cooperation with The Hague Conference and Unidroit. The goal of the document, tentatively in the form of a legal guide, is to assist in identifying, understanding and applying relevant uniform instruments, including with respect to the manner in which they may interact. Thus, the work aims to provide information on existing instruments and include illustrations for the benefit of different legal actors, such as judges, arbitrators, legislators and legal counsels.

Endorsement of URF 800

In the context of its collaborative efforts with other organizations and in line with past practice, the Commission commended the use of the ICC Uniform Rules for Forfeiting (URF 800) at the request of the International Chamber of Commerce (ICC). The URF 800 is a set of

standardized terms and conditions applicable to a forfeiting transaction when the parties indicate that their forfeiting agreement is subject to these rules.

VI. ROLE OF UNCITRAL IN PROMOTING THE RULE OF LAW AT THE NATIONAL AND INTERNATIONAL LEVELS

In response to the General Assembly's invitation, the Commission has been transmitting comments on its role in promoting the rule of law. This year, its comments focused on ways and means to further disseminate international commercial law to strengthen the rule of law, in accordance with the sub-topic identified for this Committee debate under the rule of law agenda item.

In its comments, the Commission referred to its traditional and innovative dissemination activities and their importance for strengthening the rule of law. It identified new dissemination challenges, in particular the rise of IT-based tools aimed at assisting States with commercial law reform but not necessarily reflecting internationally accepted commercial law standards. The Commission emphasized the need for better integration of UNCITRAL work in the broader agenda of the United Nation, recognizing that achieving that result would in itself contribute to further dissemination of international commercial law to strengthen the rule of law. In that context, the Commission recalled the endorsement, at its last session, of the "Guidance Note on Strengthening United Nations Support to States, Upon Their Request, to Implement Sound Commercial Law Reforms", and the request by the General Assembly to the Secretary-General, made upon recommendation of this Committee, to circulate that Guidance Note broadly to all intended users. The Commission encouraged the Secretariat to take additional steps to that end, in particular by bringing the Guidance Note to the attention of legal advisors across the UN system.

VII. CONCLUDING REMARKS

Mr. Chairperson, distinguished delegates,

I was proud to be the chairperson of a Commission that was celebrating fifty years of fulfilling its mandate to progressively harmonize and modernize international law: eventually to provide a legal environment fostering international trade and commerce. With a small Secretariat of only fourteen lawyers and half a dozen support staff, which is essentially the

same size as it was in the 1970s, UNCITRAL has met the increasing challenges of its current work programmes to the best of its ability. As always, the Commission this year was unanimous in its profound appreciation for the significant volume of high quality work that its Secretariat consistently produces. The General Assembly, too, has repeatedly acknowledged and reaffirmed UNCITRAL's impact on development, peace, and stability in the world through harmonization and modernization of international trade law. As the chair of the Commission, I would like to echo what has been expressed by the Commission and the General Assembly. My sincere appreciation goes to the Secretariat and its staff for all the hard work. And, of course, my special thanks go to the Secretary of UNCITRAL, Mr. Renaud Sorieul, who is with me here today.

At this juncture, I would like to call on your strong support, within this Committee as well as in the Fifth, for providing the resources necessary for UNCITRAL to thrive and to do more. As mentioned earlier, a number of UNCITRAL's projects including the Regional Centre for Asia and the Pacific, the Transparency Registry, the CLOUT system and proposed regional centres in Africa and in the Middle East, rely heavily or entirely on extra-budgetary resources. Thus, I would reiterate the appeal of the Commission to the States, through you, to provide funding for such activities and to assist the Secretariat in identifying additional resources.

Mr. Chairperson and distinguished delegates,

Distinguished delegates of the Sixth Committee,

As has been stated numerous times, it is the member States who are the true "shareholders" of UNCITRAL. It is thus you who have both a say and direct interest in maximizing the return on your investment in modernization and harmonization of international trade law. Thus, I ask for your continued participation and support of UNCITRAL and its activities. The ever-increasing importance of international trade and accelerating globalization of economies require UNCITRAL to continue its work for the benefit all States.

[Any comments to be included by the Chairperson]

With that, I would like to conclude my address to you on the work carried by UNCITRAL during its fiftieth session. I thank you for your attention.