



**UNITED NATIONS
OFFICE OF LEGAL AFFAIRS**

**Opening remarks at the International Conference of the Judicial Summit
(18 October 2017, 09:00-09:20)**

**How UNCITRAL dispute settlement standards enable judicial
collaboration**

by

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Honourable Chief Justices

Justices

Distinguished guests and delegates

Ladies and Gentlemen

It is an honour for me to open this historical Summit. We, at the UN, are very grateful for the prescient support of the Secretary for Justice of Hong Kong, for the unyielding engagement by the Department of Justice and for the impeccable professionalism of the Hong Kong International Arbitration Centre.

That foresight, that pledge and that knowhow is making this summit an unforgettable success.

I should like to say a special word of gratitude to the representatives from over 20 judiciaries in the region. Your attendance today, and the lively discussions you provided us, now and also during the judicial round table last Monday, are important contributions to further promote the New York Convention.

Introduction

1. This year is a very special year. Last July, just 3 months ago, UNCITRAL held its 50th session. I hear from my Chinese colleagues that the age of 50 is referred to as "zhi ("je") tian ming" in the Analects of Confucius, which would



suggest that a 50-year old person can be expected to know the true calling from heaven. A rather tall order. However, I come before you today to address a rather mundane topic, on how UNCITRAL arbitration standards enable judicial collaboration.

2. For the Copenhagen Consensus Centre, the single development target with potentially the larger impact on global prosperity, is the removal of trade barriers. Clearly, divergences arising from trade laws of different States, create obstacles to cross-border commerce and raise commercial risks. Disparity in legal frameworks, put simply, lends to unbearable transactional costs, preventing SME's from sharing the benefits they stand to gain from increased cross-border trade.
3. There are many things that can be considered non-tariff barriers. But there are some that are both less obvious, and more damaging. Legal incompatibilities affect the capacity of developing countries to use trade as an engine to grow their economy and reduce poverty rates. A consensual harmonisation of business legal language not only reduces risks of conflict, but also builds trust among traders from the most diverse legal and cultural backgrounds.
4. By adopting the United Nations commercial law standards, developing countries stand to enhance their legal frameworks, improve their domestic legal service capacities, and equip their economies with legal tools needed by their companies. And this provides SME's with better access to the vast possibilities of global value chains.
5. Harmonization is a powerful tool for contractual risk management and market efficiency. It is a powerful tool to ensure rule-based negotiations and equitable bargaining in contractual positions. Harmonizing business legal language denies the rule of the strongest and is one of the best equalising tools we have at our disposal.
6. Apart from the field of enforcement of arbitral awards, to which I will come back later, we still face significant divergence of laws on contracts for the international sale of goods, on the use of electronic communications in international contracts, on public procurement, on secured transactions and on cross-border insolvency, all of which are key areas for any project of economic cooperation and integration, be that APEC or the Belt and Road Initiative.



7. As you know, UNCITRAL is the core legal body of the United Nations system in the field of international trade law. As an inter-governmental body established by the United Nations General Assembly, UNCITRAL is the only truly global international law-making body entrusted with legislating on commercial law matters. And its mandate is simple: to reduce and remove legal obstacles to the flow of international trade and commerce by progressively harmonizing and modernizing the law of international trade.

UNCITRAL texts

8. A key component of UNCITRAL work involves the preparation of instruments, both legislative and non-legislative, in the wide field that is commercial law. These instruments may take the form of conventions, model laws, legislative guides, or even contractual guides on key areas. They are negotiated through an international process involving a variety of participants, including 60 rotating Member States, but also non-member States, as well as inter-governmental and non-governmental organizations.

9. Its standard-making process is transparent and inclusive. This process provides legitimacy to UNCITRAL texts, and allows them to become internationally recognised standards. As such, we have seen UNCITRAL texts widely accepted and considered appropriate to different legal traditions, regardless of the country's region or stage of economic development.

10. The New York Convention, which resulted from a Diplomatic Conference convened by the United Nations, the UNCITRAL Model Law on International Commercial Arbitration and the United Nations Convention on Contracts for the International Sale of Goods are just some examples of instruments that have enjoyed widespread acceptance.

Technical Assistance and Coordination

11. Another important pillar of UNCITRAL's work is in support activities to ensure the effective implementation and use of UNCITRAL texts. This includes not only promoting greater participation and wider acceptance of existing UNCITRAL texts, but also promoting ways and means of ensuring a uniform interpretation and application of such texts, which is equally important.

12. Moreover, to facilitate the provision of technical assistance, in particular to developing countries, UNCITRAL has established its Regional Centre for Asia and the Pacific, with the generous support and contributions by the



Republic of Korea, through its Ministry of Justice, and by the People's Republic of China, through the Department of Justice of Hong Kong, China.

13. Such a comprehensive approach has highlighted 7 key outcomes to which the adoption of UNCITRAL standards may directly or indirectly contribute:

- (1) Enhancement of legal predictability, which helps in efficient contract management, namely in the context of cross-border supply chains, introducing certainty in commercial exchanges and thus decreasing transactional costs;
- (2) Promotion of trust among international commercial partners;
- (3) Optimization of a value for money in cross-border transactions, since risk incorporation in transaction prices is lowered;
- (4) Levelling of contractual bargaining positions, especially for SME's from developing countries (90-95% of all businesses) by reducing their entry costs in global markets;
- (5) Enhancement of redistribution of market access and wealth;
- (6) Offer a modern, uniform, and fair regime for the settlement of commercial and investment disputes, while at the same time,
- (7) potentially reducing the risk of disputes.

14. One of the enablers of those outcomes is, of course, the UNCITRAL Model Law on International Commercial Arbitration ('Model Law'). Legislation based on the Model Law has been enacted in 76 States in a total of 107 jurisdictions, including jurisdictions with legal and economic systems as diverse as Hong Kong, China; Armenia, Australia, Jordan, Chile, India, Japan or Rwanda. And the regional legislative dynamism has been paramount to a steady pace of harmonization. In 2012, 15 out of 56 States in the region had arbitration legislation based on the UNCITRAL Model Law on International Commercial Arbitration. Today, 24 States have enacted the Model Law, which represents a 60% increase, in less than 5 years. Also, since 2012, we witnessed 4 new ratifications of the New York Convention, doubling the pace of regional ratifications of the previous 5 years.

15. Such progress has been achieved in the face of many challenges, even obstacles. The continuous efforts put into providing technical assistance and



capacity building in this field, and of which this Summit is a prime example, has helped:

- (1) to enhance the comprehension of arbitral proceedings as distinct from judicial power and to explain the complementarity between State courts and the arbitration system;
- (2) to improve the understanding of the procedural character of the legislation on arbitration;
- (3) to raise support for the idea that foreign arbitral awards must be enforceable by State bodies following favourable conditions; and
- (4) to address in positive ways the fear of partial loss of State sovereignty over international trade and foreign investment.

16. The New York Convention, as a global enforcement mechanism, and other UNCITRAL texts promote the cohesiveness of the international arbitration system; arbitral awards rendered by any tribunal seated in New York Convention Member States are treated alike, irrespective of the administering institution, arbitrators, procedural rules or other features that might otherwise distinguish them.

17. Indeed, what strengthens the finality of arbitration awards and the autonomy of the arbitration process, is the well-balanced role of the judiciary as defined by the New York Convention and by the Model Law. That is the source of the key advantage of international commercial arbitration: the enforceability of arbitral awards.

18. Judicial collaboration is also very important before the enforceability stage. Enforceability and the cooperation of courts in enforcing awards is necessarily linked to the role and importance of the judiciary, under the Model Law, assigned with crucial functions regarding arbitral proceedings. Courts, under the Model Law, have a role of supervision and assistance to arbitration, namely over process of the appointment as well as the challenge or termination of the mandate of an arbitrator, the power of referral to arbitration, and the power to order interim measures of protection.

19. To a significant extent, such collaboration between State courts and arbitral tribunals is only possible because of the balanced approach adopted in the Model Law and the inherent legitimacy of the work of UNCITRAL.



20. Another aspect of judicial collaboration, which is yet again provided through UNCITRAL, is the international duty of uniform interpretation of the New York Convention and the Model Law. The UN General Assembly in its resolution 61/33 made clear the importance of promoting the uniform interpretation of the New York Convention.

So does Article 2 A of the Model Law. Courts are bound by the obligation of uniform interpretation under these instruments and relevant enactments. At the same time, judicial interpretation from Model Law jurisdictions enriches the global jurisprudence on the implementation of the Model Law.

It is my firm belief that the battle for the success of the system will be fought and won, or lost, in the interpretation and application of the Convention and the Model Law.

The power of such interpretation, with its potential for conformity and uniformity, is given by the international legal order, by the international legitimacy resulting from a treaty and from the law-making process of UNCITRAL.

That source is necessary and crucial to empower any judicial interpretation and application. The efforts put into the drafting of the New York Convention and the Model Law can enable the prosperity of a growing international dispute settlement system, only if they are interpreted in a consistent manner across all legal systems adopting them.

Such an interpretation must occur in an autonomous manner, in light of the Convention's and Model Law's own respective systems and objectives, rather than on the basis of any particular system of national law, or system of law. Indeed, reliance solely on a certain system would create differences in interpretation, leading to "burial of the system".

21. To facilitate this, for instance, yet again, UNCITRAL has prepared

(1) a guide on the Convention which is online
(www.newyorkconvention1958.org),

(2) a case-law database and

(3) digests, in all 6 official languages of the UN. These tools provide updated information on a wide range of case law relating to the New York Convention from various jurisdictions around the world, which



serves as a useful reference for legislators, judges, arbitrators, practitioners, parties and academics. Nowadays, the interpretation and application of the Convention benefits from a wealth of commentaries and case law developed over nearly 60 years.

Concluding remarks

22. Notwithstanding the above achievements, trade law reforms face continuous challenges such as

- (1) the continuing need to raise the level of regional awareness of the work of international organizations such as the UN, through UNCITRAL;
- (2) the necessity for higher political priority to be given by governments in the region to harmonizing and modernizing their business laws; and
- (3) the need (which is imperative) for a comprehensive long-term approach for meaningful legal reforms in this field. It is our strong commitment, and our enthusiasm, to tackle these challenges, so as to further the cause of harmonization and modernization of international business law.

23. Regional cooperation and integration, such as the ones sought by APEC or the Belt and Road Initiative, are beneficial and lend to the promotion of cross-border trade. It is imperative to bear in mind the importance of cooperation and coordination at the international level.

24. At the United Nations, we remain determined to build and participate in such regionally-based international trade law partnerships and alliances, aimed at furthering the rule of law in commerce at the national and international levels.

25. While I cannot determine for sure that we've lived up to the Analects of Confucius in knowing the true calling from heaven, I think it is safe to say we've made a tangible contribution to international law.

26. And we did so, never forgetting that UNCITRAL law-making work takes place in the broader context of the United Nations. We are not just simply concerned with the technicalities of commercial law. As a political organization, the United Nations would have no interest in the harmonization and modernization of international trade law and practices, if it were not convinced



that such technical work is conducted in pursuance of greater goals: the rule-of-law, access to justice, and ultimately, peace.

Thank you for your attention.