ONE WORLD OF COMMERCE:  towards ONE COMMERCIAL LAW

The legal response to the globalization of international trade: progressive harmonization of the law of international trade

- Conventions, model laws and rules which are acceptable worldwide
- Legal and legislative guides and recommendations of great practical value
- Updated information on case law and enactments of uniform commercial law
- Technical assistance in law reform projects
- Regional and national seminars on uniform commercial law


GENERAL INFORMATION

I. Origin, mandate and composition of UNCITRAL

A. Origin

The United Nations Commission on International Trade Law (UNCITRAL) was established by the General Assembly in 1966 (Resolution 2205(XXI) of 17 December 1966). In establishing the Commission, the General Assembly recognized that disparities in national laws governing international trade created obstacles to the flow of trade, and it regarded the Commission as the vehicle by which the United Nations could play a more active role in reducing or removing these obstacles.

B. Mandate

The General Assembly gave the Commission the general mandate to further the progressive harmonization and unification of the law of international trade. The Commission has since come to be the core legal body of the United Nations system in the field of international trade law.
C. **Composition**

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.

As from 1 June 1998, the members of UNCITRAL, and the years when their memberships expire, are:


D. **Secretariat**

The Secretariat of UNCITRAL is the International Trade Law Branch of the United Nations Office of Legal Affairs. It is located at Vienna, and its postal address, telephone, and telefax numbers are as follows:

<table>
<thead>
<tr>
<th>UNCITRAL Secretariat</th>
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</thead>
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<td></td>
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<tr>
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<td>E-mail address: <a href="mailto:uncitral@uncitral.org">uncitral@uncitral.org</a></td>
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II. **Methods of work**

The Commission has established three working groups to perform the substantive preparatory work on topics within the Commission's programme of work. Each of the working groups is composed of all member States of the Commission.

The Commission carries out its work at annual sessions, which are held in alternate years at United Nations Headquarters in New York and at the Vienna International Centre at Vienna. Each working group of the Commission typically holds one or two sessions a year, depending on the subject-matter to be covered; these sessions also alternate between New York and Vienna.

In addition to member States, all States that are not members of the Commission, as well as interested international organizations, are invited to attend sessions of the Commission and of its working groups as observers. Observers are permitted to participate in discussions at sessions of the Commission and its working groups to the same extent as members.

III. **Work carried out by UNCITRAL**

The areas in which the Commission has worked or is working and the major results of that work are set forth below.
A. International sale of goods and related transactions

1. Convention on the Limitation Period in the International Sale of Goods (New York, 1974). This Convention establishes uniform rules governing the period of time within which legal proceedings arising from an international sales contract must be commenced. It has been amended by a Protocol adopted in 1980 when the United Nations Sales Convention (see below) was adopted. Both the original Convention and the Convention as amended entered into force on 1 August 1988.


B. International transport of goods

1. United Nations Convention on the Carriage of Goods by Sea, 1978 (the "Hamburg Rules"). This Convention establishes a uniform legal regime governing the rights and obligations of shippers, carriers and consignees under a contract of carriage of goods by sea. It was prepared at the request of developing countries and its adoption by States has been endorsed by such intergovernmental organizations as UNCTAD, Asian-African Legal Consultative Committee and the Organization of American States. The Convention entered into force on 1 November 1992.

2. United Nations Convention on the Liability of Operators of Transport Terminals in International Trade. This Convention sets forth uniform legal rules governing the liability of a terminal operator for loss of and damage to goods involved in international transport while they are in a transport terminal, and for delay by the terminal operator in delivering the goods. The draft Convention was adopted by a diplomatic conference and opened for signature, ratification and accession on 19 April 1991. The Convention will enter into force upon the deposit of 5 instruments of ratification, acceptance, approval or accession.

C. International commercial arbitration and conciliation

1. UNCITRAL Arbitration Rules. Adopted in 1976, the UNCITRAL Arbitration Rules provide a comprehensive set of procedural rules upon which parties may agree for the conduct of arbitral proceedings arising out of their commercial relationship. The Rules are widely used in ad hoc arbitrations as well as administered arbitrations.

2. Recommendations to assist arbitral tribunals and other interested bodies with regard to arbitrations under the UNCITRAL Arbitration Rules (1982)

3. UNCITRAL Conciliation Rules (1980). When parties to a commercial dispute wish to settle their disputes amicably through conciliation, they may agree upon this set of procedural rules to govern the conciliation proceedings.

4. UNCITRAL Model Law on International Commercial Arbitration (1985). The UNCITRAL Model Law is designed to assist States in reforming and modernizing their laws on arbitral procedure so as to take into account the particular features and needs of international commercial arbitration. It was adopted by UNCITRAL in 1985 and has been enacted into law by a large number of jurisdictions from both developed and developing countries.
1. **UNCITRAL Notes on Organizing Arbitral Proceedings (1996).** The Notes are designed to assist arbitration practitioners by providing an annotated list of matters on which the arbitral tribunal may wish to formulate decisions during the course of arbitral proceedings. The text, which is in no way binding, may be used whether or not the arbitration is administered by an arbitral institution.

2. **Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958).** Although the Convention was prepared by the United Nations prior to the existence of UNCITRAL, promotion of the Convention is an integral part of the Commission’s programme of work. As its name indicates, it provides for the recognition and enforcement of arbitral awards rendered in foreign countries.

### D. Public Procurement


2. In 1993, the Commission had adopted the UNCITRAL Model Law on Procurement of Goods and Construction together with an accompanying Guide to Enactment. This Model Law is available for use by States who wish to enact procurement legislation with a scope limited to procurement of goods and construction.

### E. Construction Contracts

1. **UNCITRAL Legal Guide on Drawing Up International Contracts for the Construction of Industrial Works.** The Legal Guide was published in February 1988 and is available in all six United Nations official languages. It discusses the many legal issues that arise in connection with the construction of industrial works, covering the pre-contractual, construction and post-construction phases, and suggests possible ways in which the parties may deal with these issues in their contracts. It was prepared with the special problems of buyers from developing countries in mind.

### F. International Payments

1. **United Nations Convention on International Bills of Exchange and International Promissory Notes (New York, 1988).** This Convention provides a comprehensive code of legal rules governing new international instruments for optional use by parties to international commercial transactions. It is designed to overcome the major disparities and uncertainties that currently exist in relation to instruments used for international payments. The Convention applies if the parties use a particular form of a negotiable instrument indicating that the instrument is subject to the UNCITRAL Convention. The Convention was adopted and opened for signature by the General Assembly at its 43rd session in December 1988. 10 ratifications or accessions are necessary for the Convention to come into force.

2. **UNCITRAL Legal Guide on Electronic Funds Transfers.** The Legal Guide, which was published in 1987, identifies the legal issues arising from the transfer of funds by electronic means and discusses possible approaches for dealing with those issues.

3. **UNCITRAL Model Law on International Credit Transfers (1992).** The Model Law, adopted in 1992, deals with operations beginning with an instruction by an originator to a bank to place at
the disposal of a beneficiary a specified amount of money. It covers such matters as the obligations of a sender of the instruction and of a receiving bank, time of payment of a receiving bank and liability of a bank to its sender or to the originator when the transfer is delayed or other error occurs.

1 United Nations Convention on Independent Guarantees and Stand-by Letters of Credit (New York, 1995). The Convention was adopted by the General Assembly on 11 December 1995. It is designed to facilitate the use of independent guarantees and stand-by letters of credit, in particular where only one or the other of those instruments may be traditionally in use. The Convention also solidifies recognition of common basic principles and characteristics shared by the independent guarantee and the stand-by letter of credit. The Convention will enter into force upon the deposit of 5 instruments of ratification, acceptance, approval or accession.

G. Electronic commerce


1 UNCITRAL Model Law on Electronic Commerce. The Model Law, adopted in 1996, is intended to facilitate the use of modern means of communications and storage of information, such as electronic data interchange (EDI), electronic mail and telecopy, with or without the use of such support as the Internet. It is based on the establishment of a functional equivalent for paper-based concepts such as “writing”, “signature” and “original”. By providing standards by which the legal value of electronic messages can be assessed, the Model Law should play a significant role in enhancing the use of paperless communication. In addition to general norms, the Model Law also contains rules for electronic commerce in specific areas, such as carriage of goods. With a view to assisting executive branches of Governments, legislative bodies and courts in enacting and interpreting the Model Law, the Commission has produced a Guide to Enactment of the UNCITRAL Model Law on Electronic Commerce.

H. Cross-Border Insolvency

1 UNCITRAL Model Law on Cross-Border Insolvency. The purpose of the Model Law, adopted in 1997, is to promote modern and fair legislation for cases where the insolvent debtor has assets in more than one State. The text deals with conditions under which the person administering a foreign insolvency proceeding has access to the courts of the State that has enacted the Model Law, determines conditions for recognition of a foreign insolvency proceeding and for granting relief to the representative of such foreign proceeding, permits courts and insolvency administrators from different countries to cooperate more effectively, and contains provisions on coordination of insolvency proceedings that take place concurrently in different States. A Guide to Enactment (A/CN.9/442) was published with a view to assisting Governments in preparing legislation based on the Model Law.

I. Other products of work of UNCITRAL

Other products of the work of UNCITRAL include:

1 Provisions on a universal unit of account and on adjustment of the limit of liability in international transport conventions (1982).

1 Uniform Rules on Contract Clauses for an Agreed Sum Due upon Failure of Performance (1983);

IV. Case Law on UNCITRAL Texts (CLOUT)

The UNCITRAL Secretariat has established a system for collecting and disseminating information on court decisions and arbitral awards relating to the Conventions and Model Laws that have emanated from the work of the Commission. The purpose of the system is to promote

V. Assistance to countries considering adoption of texts

On request, the UNCITRAL Secretariat is prepared to give technical assistance and advice to States that may be considering adoption of one of the legal texts prepared by the Commission. Such assistance often involves review of proposed legislation.

VI. Training in international trade law

A. National and regional seminars on international trade law

The Commission has undertaken to organize national and regional seminars and briefing missions on international trade law for the purpose of promoting knowledge about the work of the Commission, primarily in developing countries, with a view to the adoption and use of its texts by those countries.

B. Symposia on international trade law for young scholars

Symposia on international trade law for young officials, scholars and practitioners are scheduled to be held in connection with the sessions of the Commission held in Vienna. Fellowships are provided for the travel expenses of participants. Due to a lack of financial and human resources, no symposia were held since 1995.

C. Internships

The UNCITRAL Secretariat has an internship programme, designed to give young lawyers the opportunity to become familiar with the work of UNCITRAL and to increase their knowledge of specific areas in the field of international trade law. No funds are available to the UNCITRAL Secretariat to assist interns to cover their travel or other expenses.

VII. Publications

A. UNCITRAL documents

Documents submitted to the Commission and its working groups are published in the six official languages of the United Nations (Arabic, Chinese, English, French, Russian and Spanish). They bear the symbol A/CN.9/... The more recent documents, which have not yet been reproduced in a Yearbook, are available on request from the UNCITRAL Secretariat at Vienna. The Yearbook is published with a delay of one or two years; in some languages other than English the delay can be longer.

B. UNCITRAL Yearbook

The UNCITRAL Yearbook is a compilation of all substantive documents related to the work of the Commission and its Working Groups. It also reproduces the annual Report of the Commission which is published as Supplement No. 17 of the "Official Records of the General Assembly". The Yearbook is published in English, French, Russian and Spanish and is available in the libraries that function as the United Nations Depository Libraries. Such libraries exist in national capitals and in a number of other major or university cities.
C. Legal Guides

3. UNCITRAL Legal Guide on Electronic Funds Transfers (A/CN.9/SER.B/1, Sales No. E.87.V.9)

D. Brochures

8. UNCITRAL Model Law on International Credit Transfers (1992)
12. UNCITRAL Arbitration Rules (1976)

E. Other

1. Enforcing Arbitration Awards under the New York Convention (Sales No. E.99.V.2)

The Yearbook and Legal Guides are sales publications and can be ordered from the United Nations Sales Offices in either New York or Geneva:

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