



# Pursuing law reform: the working methods and experience of UNCITRAL

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# Outline

1. Introductory conclusions
2. UNCITRAL: mandate, composition and working methods
3. How is a legislative project initiated, developed and completed in UNCITRAL?
4. The UNCITRAL technical assistance programme
5. Coordination between IFAs in particular
6. Coordination between IFAs and IFIs: progress
7. Coordination between IFAs and IFIs: problems
8. Final conclusions

# 1. Introductory conclusions

- While UNCITRAL is mostly known for the int'l legal standards it has prepared, coordination both in the preparation and the promotion of int'l legal standards is at the heart of the mandate of UNCITRAL
- Coordination between int'l formulating agencies (IFAs) on secured transactions (ST) goes well
- Of course, like every human endeavour, it could be improved and expanded (see suggestions)
- Coordination between IFAs and int'l (or regional) financial institutions (IFIs) on ST goes better than in the past but it still does not go as well as it could and should (see problems and suggested solutions)

## 2. UNCITRAL: mandate, composition and working methods

- UNCITRAL as subsidiary body of the U.N. G.A.
  - The core body in the UN system mandated to promote the harmonization and unification of the law governing international trade (**includes preparation and promotion of int'l standards**)
  - Composition: 60 member States, all UN member States, IGOs and NGOs
  - The Commission: meets annually, alternating between Vienna and New York to include as many States as possible
  - The six Working Groups meet twice a year, alternating between Vienna and New York
  - Keys to the success of UNCITRAL: **catholic participation, orthodox consensus and protestant reality (!)**
- The Secretariat: a small group of experts who are members of the International Trade Law Division of the UN O.L.A.

### 3. How is a legislative project initiated, developed and completed in UNCITRAL?

- **Proposals** by States, IGOs, NGOs or the Secretariat
- Commission considers proposals and, if convinced about **the desirability and feasibility of a project**, it refers it to a WG
- The WG considers draft texts prepared by the Secretariat and, once the WG completes its work, it submits it to the Commission for final consideration and approval
- The Commission considers and adopts draft texts submitted to it by a Working Group and submits them to the UN G.A.
- **The UN G.A. adopts a text and recommends it to States** without a substantive discussion

## 4. UNCITRAL technical assistance programme

- The mandate of UNCITRAL is **the harmonization and unification of the law governing international trade**, not the preparation of legal texts!
- This means that UNCITRAL texts need first to be brought to the attention of States
- Then, States may need **technical assistance** to adopt an UNCITRAL text
  - Members of the UNCITRAL secretariat or outside experts draft legislation, provide comments to legislation or assist in building local capacity through various conferences
  - Coordinating with other institutions (e.g. WBG, EBRD and OAS)
- Promoting the uniform interpretation and application of UNCITRAL texts: **CLOUT**

## 5. Coordination between IFAs in particular

- **Coordination between IFAs** in the preparation of int'l legal standards **goes well**:
  - Attendance of each other's meetings
  - Annual coordination meetings
  - The joint publication on the UNCITRAL, Hague Conference and Unidroit Texts on Security Interests
- **Benefits: avoidance of duplication of efforts, overlaps and conflicts**
- Of course, like every human endeavour, it **could be improved and expanded**, for example by:
  - Ensuring that the MAC Protocol does not deal with low-value assets that do not cross national borders in their normal use and are uniquely identifiable for registration in an asset-based registry
  - Expanding coordination to the stage of technical assistance to law reform (e.g. the complementarity of the Geneva and Hague Conventions on securities and the UNCITRAL Model Law on Secured Transactions)
  - Updating the joint publication on security interests

## 6. Coordination between IFAs and IFIs: progress

- **Positive steps** have been made in past years:
  - IFC publication “Secured Transactions Systems and Collateral Registries (2010) was prepared with the cooperation of the UNCITRAL secretariat
  - The Insolvency and Creditor Rights Standard (the “ICR Standard”), developed by the World Bank and UNCITRAL, contains the key recommendations of the UNCITRAL Legislative Guide on Secured Transactions
  - Often, World Bank Group consultants recommend laws that are in line with int’l standards
  - On very few occasions, IFIs coordinate their law reform activities with IFAs (mainly by hiring consultants familiar with those texts)
- **Benefits: Better use of funds and better service to Member States**



## 7. Coordination between IFAs and IFIs: problems

- **But problems still remain:**
  - The ICR Standard makes no reference to the UNCITRAL texts on ST, although a draft was prepared
  - At times, World Bank consultants recommend laws that are inconsistent with int'l standards
  - In principle, IFIs do not coordinate their law reform activities with IFAs and they do not even mention int'l standards
- **Example of a problem**
  - The WBG provided technical assistance on ST to 3 countries in a certain region
  - The result was laws that fall short of best practices
  - These laws are now used as models in that region and creating obstacles to the adoption of the UNCITRAL Model Law by another country in that region
- **Suggested solution: coordinate more closely, both in the preparation and in the promotion of int'l standards**

## 8. Conclusions

- UNCITRAL is mostly known for its legislative work, but it does have a significant technical assistance programme
- Positive steps have been made in the coordination of efforts between IFAs, and between IFAs and IFIs
- But problems still remain
- Suggested solution: coordinate more closely, both in the preparation and in the promotion of int'l legal standards
- Objective: Better use of funds and better service to Member States

THANK YOU!

ANY QUESTIONS?

- For information on the work of UNCITRAL, see <http://www.uncitral.org>

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