

**STATEMENT BY DR. M. GANDHI, COUNSELLOR & LEGAL ADVISER ON
AGENDA ITEM 151: REPORT OF THE UNITED NATIONS COMMISSION
ON INTERNATIONAL TRADE LAW ON THE WORK OF ITS THIRTY-SIXTH
SESSION AT SIXTH COMMITTEE OF 58TH UNGA ON OCTOBER 6, 2003**

Mr. Chairman,

As this is the first time my delegation is taking the floor at this session, I take this opportunity to congratulate you on your election as a Chairman of the Sixth Committee and assure you of our full co-operation and support. I also congratulate other members of the Bureau on their election.

We are pleased to note that the 36th session of the UN Commission on International Trade Law [UNCITRAL] has been a very productive one. The Commission adopted the Model Legislative Provisions on Privately Financed Infrastructure Projects, an addition to the UNCITRAL Legislative Guide on the same subject which was adopted in 2000. The new model provisions offer concrete legislative guidance on essential elements of a favorable framework for private investment in public infrastructure, such as authority and procedures for awarding infrastructure concessions, financial and contractual arrangements for infrastructure development and operation, termination of contracts and dispute settlement. We hope that the model provisions will fulfill their objective of assisting member states in enhancing legal clarity and accountability to curb legislative grey areas that give room for arbitrariness or corruption in the relationship between private investors and public authorities.

Yet another important contribution by the Commission in the 36th session has been its review of, and the preliminary approval given to, the framework of another legislative text, the draft UNCITRAL Legislative Guide on Insolvency Law, comprising comprehensive statement of key objectives and core features for a strong insolvency, debtor-creditor regime, including consideration of out-of-court restructuring, and a legislative guide containing flexible approaches to the implementation of such objectives and features. We trust that the draft Legislative Guide will be ready for finalisation and adoption for the 2004 session of the Commission. We understand that the Commission especially called for the draft guide to be closely coordinated with the relevant principles on insolvency

adhered to by the World Bank. While we appreciate the desirability of harmonised, consistent and uniform standards in this area, it should be remembered that UNCITRAL's work may not always be in total conformity with recommended practices of financial bodies as it reflects the consensus achieved after intensive negotiations by states and, therefore, enjoys greater acceptability even though recommendatory in nature.

Mr. Chairman,

New communication systems and digital technology have made dramatic changes in the way we live. Business and consumers are increasingly using computers to create, transmit and store information in the electronic form instead of traditional paper documents. In this regard we welcome the work of the Commission on Electronic Commerce which is attempting to streamline the legal framework for facilitating electronic commerce and electronic governance. We are happy to inform the Committee that based on the Commission's work on Model Law on Electronic Commerce; the Government of India has already enacted the Information Technology Act. We are confident that the Commission's recent work on e-contracting would prove to be equally useful for all countries in providing a readily accessible model for on-line contracts dealing with sale of goods. We understand the Working Group has been facing a number of problems concerning the treatment of 'data messages' in an internet web transaction. In our view, the Working Group needs to give careful consideration to the time of conclusion of the contract and its effect.

Mr. Chairman,

The Working Group on Arbitration is currently dealing with two important topics, namely, (a) preparation of harmonised texts on interim measures of protection; and (b) the issue of recognition and enforcement of interim measures. The issue of interim measures of protection has been the subject matter of prolonged discussion. The enforcement of an interim measure of protection under arbitration proceedings becomes difficult as they are different from the final awards. In case of enforcement of final awards, the courts would look into various factors such as public policy and the 'defined' existence of a 'commercial relationship'. In many countries including India, there is no established practice of allowing the arbitral tribunals to award interim measures. Even if they wish to do so, it would be difficult to enforce the interim measures of protection.

Mr. Chairman,

In the Working Group on Transport Law, the idea of door-to-door application of the draft instrument appears to enjoy wide support. In our view,

the draft instrument reflects the realities of the containerised transportation of the contemporary age, and so is in the interest of safe delivery of the goods at their final destination. We hope that the Working Group will resolve the differences on the extent of the door-to-door concept envisaged in the draft instrument, i.e. whether it should cover small legs of land transportation preceding and subsequent to the sea carriage or it should cover international transportation by different modes including sea, from one corner of the world to any other.

Mr. Chairman,

We welcome the Commission's approval for the future work on public procurement and commercial fraud. The 1994 UNCITRAL Model Law on Procurement of Goods, Construction and Services, no doubt, continues to be a useful guide, but new issues and practices which have arisen since its adoption fully justify its review and possible adjustment of the text.

Mr. Chairman,

The issue of commercial fraud is of growing concern to international trade and is a serious threat to the world economy, particularly owing to the spread of technology and use of the internet. The Government of India has set up a serious fraud Investigation office for investigating major corporate frauds including cheating of shareholders, depositors and investors. For this purpose, it is proposed to set up a multi-disciplinary team consisting of experts in the fields such as accountancy, forensic auditing, taxation, law, information technology and capital markets. It is expected that such investigations may lead to or contribute towards improvement in systems, laws and procedures.

In this connection we welcome the Commission's decision to hold a colloquium to address the various aspects of the problem from the point of private law. We believe that such a colloquium would not only provide an opportunity for an exchange of views among various interested parties but also act as a useful forum for defining the parameters of the proposed study which could possibly be conducted by the Commission on Crime Prevention and Criminal Justice.

Mr. Chairman,

The collection and dissemination of case law on UNCITRAL texts (CLOUT) is of immense value in providing information regarding interpretation and

application of UNCITRAL texts in various countries. It is also an important means of promoting their uniform interpretation and application by enabling interested persons such as judges and arbitrators, to take into account decisions and awards rendered in other countries.

The UNCITRAL Secretariat deserves our appreciation for organising seminars and briefing missions which we find to be particularly important for promoting awareness of the work done by UNCITRAL in the field of development and harmonisation of international trade law as well as encouraging wider acceptance of conventions and model laws adopted by it.

Mr. Chairman,

Some concerns were expressed during the last session of UNCITRAL about the duplication of work within the UN system. We recognise that while some overlapping may be inevitable and sometimes even desirable, there should be increased coordination between the different forums to avoid duplication of work.

We understand that the Legal Office has managed to save some funds by introducing various measures of rationalisation. We also understand that it is proposed to allocate those additional funds for strengthening the secretariat of UNCITRAL, as well as for setting up a resource centre for providing technical assistance to the developing countries. We fully support the proposal for utilisation of these additional funds of the Legal Office for strengthening the UNCITRAL secretariat and for the resource centre.

Mr. Chairman,

The membership of the UNCITRAL has been increased from 36 to 60 States. My delegation welcomes the enlargement of the membership of the Commission, which will allow more States to participate in and contribute to its work, besides making it a more representative body reflective of all legal traditions and economic systems, and enhancing its effectiveness.

Thank you, Mr. Chairman.

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