



Statement by Hon'ble Mr. R. Shunmugasundaram, Member of Parliament and Member of the Indian Delegation on Agenda Item 143: Report of the UN Commission on International Trade Law (UNCITRAL) on the work of its 37th session at the Sixth Committee of the UNGA on October 04, 2004 in New York

Mr. Chairman,

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

We are pleased to note that the 37th session of the UN Commission on International Trade Law [UNCITRAL] has been a productive one. We welcome the adoption of Legislative Guide on Insolvency Law by the Commission. The legislative Guide includes a comprehensive statement of key objectives and core features for a strong insolvency regime, including out-of-court restructuring. The main task in designing a general insolvency law is to balance the priorities of various interests in the process of liquidation. The recommendations in the guide have sought to achieve this delicate balance.

The process of adjudication regarding performance of respective obligations and conflicting interests requires to be completed expeditiously. The liquidation process should not get bogged down in procedural formalities and thereby affect the interests of the stakeholders. The essence of the procedure recommended by UNCITRAL is the 'speed' – be it for insolvency or for reorganisation. We expect this Guide to serve as an important reference text for all countries engaged in evolving an effective legislative framework for insolvency proceedings and to fulfil its objective of contributing to socio-economic development, promoting investments and expanding employment.

Mr. Chairman,

The Working Group on Arbitration has not been able to arrive at a consensus on the issue of *ex parte* interim measures. In our view, all efforts should be made to reconcile differing positions. However, any disagreement on this issue should not hamper the progress of work of the Group. As regards the possible areas of future work, we would advise caution in undertaking revision of the UNCITRAL Arbitration Rules of 1976 which enjoy widespread recognition and have served as a model for many dispute settlement mechanisms under various bilateral agreements. We welcome the proposal to celebrate the twentieth anniversary of adoption of these Rules in 2005 by organising conferences and commemorative events in different regions for Member States to share their experiences.

The current work on electronic commerce in the Commission is nearing completion. My delegation would like to express its appreciation for the Working Group on electronic commerce for its efficient handling of the subject aimed at removing the legal obstacles to e-commerce in existing trade-related multilateral Conventions. We

believe that the work on e-contracting would prove to be useful for all countries in providing a readily accessible model for on-line contracts dealing with sale of goods.

Mr. Chairman,

We are pleased to note that the Working Group on Transport law has made progress on a number of difficult issues such as those regarding the scope of application of the instrument and key liability provisions. Given the fact that various difficult issues still remain open for discussion, it may be premature to force acceleration of the work of this Group and propose deadlines for completion of the text.

We note with satisfaction on the progress made by the Working Group on Secured Transactions. We appreciate the coordination of its work on conflict of laws with the Hague Conference on Private International Law, and in particular, the plans for a joint meeting of experts. We commend its efforts to coordinate with the International Institute on the Unification of Private International Law (UNIDROIT), involved in preparing a text on security interests in securities, as well as with the World Bank, engaged in preparing Principles and Guidelines for Effective Insolvency and Creditor Rights Systems, and, in particular, the agreement that the World Bank text, along with the draft legislative guide on secured transactions, would form a single international standard.

We welcome the Commission's decision to hold a colloquium on commercial fraud to address various aspects of the problem from the point of private law. In our view, such a colloquium would not only permit an exchange of views among various interested parties but also would act as a useful forum for defining the parameters of the proposed study. As recommended, this could possibly be conducted by the Commission on Crime Prevention and Criminal Justice.

We consider the efforts of the UNCITRAL Secretariat in organising seminars and briefing missions as important avenues 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,

We would like to share our concerns on the application on uniform page limits rule for Commission's documents. The Commission's work is different from other bodies. The length of the documents of the Commission depends on a number of variable factors, such as the nature of the topic and the extent of relevant legal practice, doctrine and precedent. Therefore, it may not be appropriate to propose uniform page limits for documentation of all the UN bodies without having regard to the particular characteristics and nature of work of each body. In this regard, we also agree with the Commission's view that preparatory documents [*travaux préparatoires*] of this body are indispensable to legislative deliberations and judicial interpretation and that they differ fundamentally from summaries of meetings devoted to other types of deliberations.

Thank you, Mr. Chairman.

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