Model Laws as Tools for Legal Harmonization: The Experience of UNCITRAL

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Introduction to UNCITRAL: Origin And Composition

- Subcommittee of the U.N. General Assembly created in 1966
  - Promotes the unification and harmonization of the law of international trade and assists in domestic law reform
  - Coordinates the work of other organizations
- 60 Member States elected for 6 years:
  - 14 from Africa
  - 14 from the Asia-Pacific region
  - 10 Latin-America and the Caribbean
  - 8 from Eastern Europe
  - 14 from “Western Europe and Others” (includes USA and Canada)
Introduction to UNCITRAL: Legal Harmonization and International Trade

- **Legal disparity and trade barriers**
  - Concerns over foreign law may keep business away from new markets

- **Legal disparity and added transactions costs**
  - Need for expert legal advice and enhanced security increase transactions costs

- **Law reform and promotion of trade and investment**
  - Domestic legal environment should be attractive to foreign investment
Introduction to UNCITRAL: Legal Harmonization and International Trade

• Efforts for the unification and harmonization of private law
  – As early as 19th century

• Mandate and activities of other organizations: UNDROIT, Hague Conference, ICC
  – Several successful initiatives

• Why a UN organ?
  – Other organizations had limited membership or could not produce binding instruments
Introduction to UNCITRAL: Structure and Working Methods

• **Commission and Working Groups**
  – Composed of government representatives
  – Takes political decisions
  – Operates by consensus

• **Secretariat**
  – UN staff
  – Conducts preparatory work, liaises with other organizations
  – Provides input in law reform projects
Introduction to UNCITRAL: Main Areas of Work

- “Classical” areas of commercial law
  - Sales law
  - Transport of goods by sea
  - Bank guarantees, payments, negotiable instruments
  - Insolvency Law
  - Dispute settlement

- “Unconventional” or “new” areas of commercial law
  - Government procurement
  - Privately financed infrastructure projects
  - Electronic commerce
Introduction to UNCITRAL: Choice of Instrument for Legal Harmonization

• **Convention**
  – **Advantage**: ensures greater uniformity, often ranks higher than ordinary statutes
  – **Disadvantages**: takes longer to negotiate and implement; more difficult to amend and update

• **Model Laws**
  – **Advantage**: flexible, allows local adaptation
  – **Disadvantages**: lower degree of uniformity, can be easily revoked, more difficult to control
Introduction to UNCITRAL: Choice of Instrument for Legal Harmonization

- **Recommendations, legislative guides**
  - Advantage: flexible, allows local adaptation
  - Disadvantages: very low degree of uniformity, very difficult to control adherence and effectiveness

- **Contractual instruments**
  - Advantage: flexible, respects party autonomy
  - Disadvantages: no mandatory force, for private parties’ use only; insufficient to remove legislated obstacles
Examples of Experience with Model Laws: UNCITRAL Model on International Commercial Arbitration

  - Widely recognized as best international standard for international commercial arbitration
  - Implementation in all continents by countries with various legal traditions and at various levels of economic development
  - Covers more than 1/3 of world territory
Examples of Experience with Model Laws: UNCITRAL Model on International Commercial Arbitration

- Adopted by UNCITRAL in 1996 and already transformed into law in several countries:

Examples of Experience with Model Laws: UNCITRAL Model on International Commercial Arbitration

• Also enacted in various non-sovereign jurisdictions:

  – Within the United Kingdom, by Scotland (1990) and by the overseas territory of Bermuda (1993),

  – Within the United States, by California, Connecticut, Illinois, Oregon and Texts

  – Within China, by the Hong Kong (1996) and Macau (1998) Special Administrative Regions
Examples of Experience with Model Laws: UNCITRAL Model Law on Electronic Commerce

• UNCITRAL Model Law on Electronic Commerce (1996)
  – Successful case of “preventive” harmonization
  – More than 20 enactment laws in since 1998, including uniform acts in Canada and USA
  – Widely recommended standard for legal recognition of electronic records in business transactions
Examples of Experience with Model Laws: UNCITRAL Model Law on Electronic Commerce

- Adopted by UNCITRAL in 1996 and already transformed into law in several countries:

  * Except for provisions on electronic signatures
Examples of Experience with Model Laws: UNCITRAL Model Law on Electronic Commerce

Examples of Experience with Model Laws: UNCITRAL Model Law on Electronic Commerce

• Uniform legislation influenced by the Model Law and the principles on which it is based has also been prepared in Canada (Uniform Electronic Commerce Act 1999) and enacted in nearly all Provinces and Territories, including British Columbia (2001), Manitoba (2000), New Brunswick (2001), Newfoundland and Labrador (2001), Nova Scotia (2000), Ontario (2001), Prince Edward Island (2001), Saskatchewan (2000), and Yukon (2000). Legislation influenced by the Model Law and the principles on which it is based has also been adopted in the Province of Quebec (2001).
Examples of Experience with Model Laws: UNCITRAL Model Law on Electronic Commerce

- Also enacted in various non-sovereign jurisdictions:
  - Bailiwicks of Guernsey (2000), and Jersey (2000), and the Isle of Man (2000) (UK Crown Dependencies)
  - Bermuda (1999), Cayman Islands (2000), and the Turks and Caicos Islands (2000) (UK overseas territories)
  - Hong Kong Special Administrative Region of China (2000)
Experience with other UNCITRAL Model Laws

- UNCITRAL Model Law on International Credit Transfers (1992)
  - Inspired by U.S. Uniform Commercial Code
  - Basis for harmonization within the EU
  - Adopted in Albania, Azerbaijan, Croatia, Estonia, Gambia, Kazakhstan, Kenya, Kyrgyzstan, Malawi, Mauritius, Mongolia, Poland, Republic of Moldova, Romania, Slovakia, Tanzania, Uganda, and Uzbekistan
  - Currently being revised
- UNCITRAL Model Law on Cross-Border Insolvency (1997)
  - Inspired by EU harmonization efforts
  - Eritrea, Japan, Mexico, Poland, Romania, South Africa, and within Serbia and Montenegro, Montenegro
Experience with other UNCITRAL Model Laws

- UNCITRAL Model Law on Electronic Signatures (2001)
  - Difficult subject
  - Changing domestic policies
  - Thus far Mexico and Thailand

  - Too soon to assess
  - Positively received by practitioners
Examples of Experience with Model Laws: Assessment and Lessons

• Model Law seem to become preferred method of harmonization
  – Flexible, leaves room for adaptation
  – States not bound to every single provision

• Common problems
  – International texts look “foreign”
  – Translation problems
  – Difficulty of assessing level of adherence
Examples of Experience with Model Laws: Assessment and Lessons

• **Criteria for success**
  
  – For all parties: choice of right topic
  – For secretariat: importance of feasibility studies
  – For Governments: importance of internal consultations
  – For organizations in general: importance of business participation
Model Laws as Tools for Legal Harmonization: the Experience of UNCITRAL

For more information on the work of UNCITRAL, please visit our web site:

http://www.uncitral.org/

Thank you for your attention!