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**COMPLEXITY OF
TRANSNATIONAL SOURCES**

**LA COMPLEXITÉ DES SOURCES
TRANSNATIONALES**

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**COMPLEXITY OF TRANSNATIONAL SOURCES:
REPLY FROM THE SECRETARIAT OF THE
UNITED NATIONS COMMISSION ON
INTERNATIONAL TRADE LAW**

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Question 1. – Question 4.- Question 5. – Question 6. – Question 7. – Question 8. -
Question 9.

The United Nations Commission on International Trade Law (UNCITRAL, or the Commission) was established by the United Nations General Assembly in 1966 (Resolution 2205,XXI, of 17 December 1966) and is the core legal body of the United Nations system in the field of international trade law. The General Assembly entrusted the Commission with the mandate to further the progressive harmonization and unification of the law of international trade at the global level. Therefore, the mandate of UNCITRAL requires reducing the level of fragmentation of the sources of international trade law.

However, since UNCITRAL is an inter-governmental body, not all of the questions formulated in the questionnaire may be answered fully. Rather, the purpose of the reply prepared by the UNCITRAL secretariat is to share information useful for framing in a supranational context replies received from national jurisdictions.

Question 1. Is the concern about the fragmentation of international sources (regional v. universal conventions) expressed in your country? By whom (literature, case-law, executive branch of the State, professional association of the Bar)?

The Commission's mandate includes coordinating global and regional activities relating to the unification and harmonization of

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international trade law¹ so as to prevent the multiplication of legal sources in that area. However, this goal is achieved only partially for various reasons, such as limited ability to monitor on-going activity of other organizations due to insufficient exchange of information and scarcity of resources. Moreover, it may be particularly challenging to ensure coordination with bodies promoting other initiatives in light of the importance of the goals of those initiatives for their promoters.

Question 4. Has the judiciary in your country for instance provided a special training for judges to increase their ease and proficiency in dealing with sources of law which were not originated in their legal system?

A report on coordination of work is prepared yearly by the secretariat and submitted to the Commission for its consideration.² Moreover, activities of promotion of UNCITRAL texts and of dissemination of related information are offered regularly to all stakeholders (lawyers, government officials, academics etc.) and may raise awareness of the disadvantages arising from the fragmentation of sources of international trade law. Furthermore, special training activities for the judiciary are carried out in certain fields, such as cross-border insolvency, where this group has been identified as particularly relevant. Specific tools have been developed for these targeted trainings.

Question 5. Does the fact that in some countries a specialized judicial institution deals with international commercial cases affect the functioning of justice under this profile? Would you assess the records of these judicial institutions as an improvement?

Alternative Dispute Resolution methods are prevalent in international trade law. Arbitrators are often chosen among specialists in transnational matters; thus, they may be more familiar

¹ United Nations General Assembly, Resolution 2205 (XXI), para. 8, line a .

² The latest report is UN Doc. A/CN.9/707, *Current activities of international organizations related to the harmonization and unification of international trade law*, available at <http://www.uncitral.org/uncitral/commission/sessions/43rd.html>.

with international trade law sources than the average judge in a national court, especially when located in a developing country.

Question 6. Is there a difference in attitude towards transnational sources among administrative courts (where they exist), courts dealing with civil law matters, criminal law and commercial courts in your country?

We are not in a position to answer to this question.

Question 7 Do you think that the efficiency of judges in dealing with cases raising complex interaction of sources may be affected by the fact that the judge himself/herself has to find the applicable law (iura novit curia) in opposition to the situation in which the parties themselves have to plead and prove the law to the court?

We are not in a position to answer to this question.

Question 8 Are there detectable common strategies that the judges seem to use to elude the complexity (e.g. by the presumption that the foreign law is the same as the local law/by a presumed waiver of foreign sources if the party has not pleaded immediately their applicability)?

The drafters of UNCITRAL texts have been concerned with the possibility that judges would continue to apply legal notions already familiar to them when interpreting uniform texts. Such application could perpetuate the application of pre-existing local rules to the detriment of the uniform interpretation of supranational texts. Therefore, not only explicit provisions on the uniform interpretation of the legislative text in light of its nature and purpose were inserted in the relevant instruments,³ but also a specific legal terminology was developed to distinguish the uniform approach from pre-existing legal concepts.

Moreover, UNCITRAL has established CLOUT (Case Law on UNCITRAL Texts), a system for collecting and disseminating information on court decisions and arbitral awards applying the provisions of UNCITRAL texts and model laws. The purpose of the CLOUT system is to foster the uniform interpretation and application of those texts by providing information on existing

³ See, for instance, art. 7, para. 1 of the United Nations Convention on Contracts for the International Sale of Goods, 1980 (CISG).

decisions. Digests of case law, summarizing existing judicial and arbitral cases but abstaining from any comment, are also prepared. The first Digest available deals with case law on the United Nations Convention on Contracts for the International Sale of Goods, 1980 (CISG).

A different approach was adopted by a private group of scholars, called the CISG Advisory Council, which prepares legal opinions discussing the interpretation of certain provisions of the CISG and offers interpretations based on the intellectual ability of those involved in the exercise.

Question 9. Is it possible to measure the efficiency of courts in dealing with such issues?

We are not in a position to answer to this question. However, as mentioned above, it should be noted that arbitration is often the dispute resolution method of choice in international trade law and that indicators comparing the efficiency of arbitral and State courts may be available.