

Contribution by the United Nations Commission on International Trade Law to the draft Political Declaration of the Special Session of the United Nations General Assembly against corruption

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On 17 December 2018, the General Assembly adopted a resolution entitled “Special session of the General Assembly against corruption” (A/Res/73/191), in which it decided to convene, in the first half of 2021, a special session of the Assembly on challenges and measures to prevent and combat corruption and strengthen international cooperation, and to adopt a concise and action-oriented political declaration, agreed upon in advance by consensus through intergovernmental negotiations under the auspices of the Conference of the States Parties (COSP) to the United Nations Convention against Corruption.

A resolution adopted by the COSP, at its eighth session (2019, Abu Dhabi), invited all relevant United Nations system entities to participate in the special session, and reiterated the importance of an inclusive preparatory process including contributions by (among others) those entities.

The United Nations Commission on International Trade Law (“UNCITRAL”) welcomes the opportunity to participate in this process, and submits the following contribution.

Goal 16, Target 5 of the Sustainable Development Goals (SDGs), sets out a specific objective of substantially reducing corruption and bribery in all their forms. It is widely acknowledged, for example, that where corruption distorts the provision of public services, it has a disproportionate impact on vulnerable groups and the poorest in society. It is also well-recognized that corruption is a cross-cutting issue that can severely limit progress towards all 17 SDGs, i.e. towards economic, social and environmental sustainability, by 2030 and indeed beyond.

UNCITRAL has ensured, since its inception, that its legal standards, which cover a broad range of commercial transactions, promote good governance, and include anti-corruption and anti-bribery measures. By ensuring integrity in public procurement (which may reflect up to 30% of a country’s GDP and half of government spending), a major contribution to infrastructure development and the provision of key public services – such as health and education – is enabled. Facilitating the digital economy and access to credit based on transparency, traceability of actions and the elimination or reduction of human interaction/personal contacts, allows entrepreneurs, especially small and medium-sized enterprises, to establish business and then to scale up. Facilitating transparent and fair dispute settlement encourages businesses – whether in commercial transactions or investment – to trade across borders. Corruption, particularly where it becomes systemic, will interrupt this virtuous circle, but excessively onerous procedural or administrative requirements may stifle commercial development. UNCITRAL instruments are developed through an inclusive, multilingual process that allows anti-corruption measures to be integrated fully and appropriately into the commercial environment.

The objective of UNCITRAL’s work is to facilitate international trade, whose contribution to sustainable development needs little articulation. Fair, harmonized and modern legal standards, implementing good governance, provide legal certainty and predictability, pre-requisites for international trade and investment, and promote the rule of law in international commerce. UNCITRAL’s contributions to these international imperatives through issue of its legal standards and its coordination of international and regional organizations active in this field, were recognised both

in the Addis Ababa Action Agenda of the Third International Conference on Financing for Development, adopted by the General Assembly by consensus as resolution 69/313 of 27 July 2015 (at para. 89), and in the declaration of the high-level meeting of the General Assembly on the rule of law at the national and international levels, adopted by consensus as resolution 67/1 of 24 September 2012 (at para. 8).

UNCITRAL's member States, which adopt its texts, have committed to ensure that UNCITRAL texts fully reflect United Nations Convention against Corruption (UNCAC's) requirements, notably in the UNCITRAL Model Law on Public Procurement (2011), which implements the requirements of article 9(1) of UNCAC in its provisions, and the UNCITRAL Legislative Guide on Public-Private Partnerships and supporting Model Legislative Provisions (2019), which follow the same approach (as more fully explained in "Role of UNCITRAL in promoting the rule of law at the national and international levels, Note by the Secretariat, A/CN.9/1022, forthcoming at <https://uncitral.un.org/en/commission>). Moreover, UNCITRAL texts embed the principle of transparency as a cross-cutting principle in international commercial law, notably in international commercial dispute settlement (the United Nations Convention on Transparency in Treaty-based Investor-State Arbitration (New York, 2014, the "Mauritius Convention on Transparency", and accompanying UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration); in its UNCITRAL Legislative Guide on Key Principles of a Business Registry (2019) on beneficial ownership in particular, and in texts on insolvency (in particular, the UNCITRAL Legislative Guide on Insolvency Law (2004) and supporting guidance documents).

UNODC participates in the elaboration of relevant UNCITRAL instruments. At the implementation level, cooperation between UNCITRAL and UNODC includes the use of UNCITRAL texts to provide technical assistance in UNCAC implementation, for example in the following UNCAC-related publications:

- Guidebook on anti-corruption in public procurement and the management of public finances/Good practices in ensuring compliance with article 9 of the United Nations Convention against Corruption
- The United Nations Convention against Corruption: A Strategy for Safeguarding against Corruption in Major Public Events
- The Legislative Guide for the Implementation of UNCAC and the Technical Guide to the United Nations Convention against Corruption (among the Documents, publications and tools for the Prevention and fight against corruption, available at <https://www.unodc.org/unodc/en/corruption/publications.html>)

The Stolen Asset Recovery (StAR) Initiative of UNODC and the World Bank refers to the use of UNCITRAL's insolvency texts as tools for asset tracing and recovery under UNCAC (see, for example, Going for Broke: Insolvency Tools to Support Cross-Border Asset Recovery in Corruption Cases, available at <https://star.worldbank.org/publication/going-for-broke>). Generally, tools available under UNCITRAL's insolvency texts and mechanisms available under UNCAC could be used interchangeably and be instrumental in tracing and recovery of assets.

UNCITRAL coordinates and cooperates actively with other international and regional organizations such as UNODC, to harmonize international standards in commercial law reform, and to deliver technical assistance programmes that are based on the needs of an implementing country, thus ensuring the sustainability of the reform. In this regard, UNCITRAL reaffirms its commitment to implementing all aspects of UNCAC that its activities enable it to do.

UNCITRAL therefore proposes that the following elements be reflected in the political declaration:

- That existing global and regional instruments, in particular UNCAC with its 187 parties, demonstrate the commitment of the international community to fight corruption in international trade and investment. In this regard, UNCAC provides a framework for the prevention and detection of corruption in commercial activity connected to international trade
- The powerful role between such activity and development, highlighting the critical role of combatting corruption for progress in the 2030 Agenda for Sustainable Development (A/Res/70/1)
- Effective technical assistance and capacity building are essential to translate commitments in UNCAC into effective and well-understood rules and standards governing commercial activity and international trade in practice, as UNCITRAL has ensured them in its instruments in, inter alia, public procurement, public-private partnerships, insolvency and asset-tracing, business establishment, in particular regarding beneficial ownership, and commercial dispute settlement
- The importance of coordination of and cooperation among States, international and regional organizations to embed UNCAC's requirements and good governance in legal standards for international commercial activity, and to ensure their successful adoption and implementation
- Recognizing the cooperation between UNCITRAL and UNODC as a successful example in this regard.