Issues of Harmonisation of Laws on International Trade from the Perspective of UNCITRAL: The Past and The Current Work

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ISSUES OF HARMONISATION OF LAWS ON INTERNATIONAL TRADE FROM THE PERSPECTIVE OF UNCITRAL: THE PAST AND THE CURRENT WORK

A Review by

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ISSUES OF HARMONISATION OF LAWS ON INTERNATIONAL TRADE FROM THE PERSPECTIVE OF UNCITRAL: THE PAST AND THE CURRENT WORK

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1. Introduction

The last decade of the twentieth century has been a period of great significance in the history of international trade and commerce. Various developments in the political and economic arena led to the onset of globalization¹ and foreign corporations started pervading across all States and widened their commercial activities. This scenario paved the way for a booming economy worldwide and also evolution of the need for a well-trenched international legal framework regulating the behavior of transnational corporations. Amidst these circumstances the work of the United Nations Commission on International Trade Law (Herein after called UNCITRAL) assumes importance. UNCITRAL is the core body of the United Nations working in the field of International Trade Law for regulating activities of private corporations while conducting their businesses across States. The purpose is to reduce the obstacles to the exchange of goods, capital, and services in order to favor international investment amongst the major part of the modern international community.²

Instruments of harmonisation prepared by international organisations, opposed to the States traditional laws, are an example of a new way to intend the creation of uniform law and in this direction UNCITRAL’s rules are intended to serve the interests of international trade. For this reason, the UNCITRAL’s working methods differs to the national States lawmakers because

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its aim is to prepare a text that can be accepted by a large number of countries, should they belong to the civil or the common law tradition.\textsuperscript{3} International institutions like UNCITRAL, International Institute for the Unification of Private Law (UNIDROIT) are the new legislators and this has to be considered as a big change from the legal scholar point of view, even though the idea of a “new deal” in international commercial relations has to be considered carefully.\textsuperscript{4}

The aim of this paper is to give a brief overview about UNCITRAL, its role in the field of the law of international trade and also to appraise the process and purpose of harmonization. Also the experiences of the European Union and India are discussed in this context. An attempt is also made to evaluate future challenges of UNCITRAL.

2. The Work of UNCITRAL

2.1 Background of UNCITRAL

UNCITRAL aims to create a more secure legal environment that could provide a basis for States to develop their national laws with greater consistency and for an interface in a global economy. The starting point of this idea is to have modernized and harmonised commercial laws, for an enhanced commercial activity in order to promote economic and social growth\textsuperscript{5} by reducing transaction costs. The precursor to the establishment of UNICTRAL was the belief that international trade cooperation among States is an important factor in the promotion of friendly relations among States and consequently in the maintenance of peace and security. Furthermore the interests of developing countries were considered to be of paramount importance for the betterment of conditions for development of international trade.\textsuperscript{6} This view was in conjunction with the fact that developing countries have to have an opportunity to participate in the activities carried out in the field of international trade law with adequate and modern laws in place and thereby to attain equality in international trade. In

\textsuperscript{5} The Charter on Economic Rights and Duties (CERD) adopted by the United Nations General Assembly affirms the need for creation of conditions, which permit further expansion of trade and intensification of economic cooperation amongst all nations. See UNGA Res 3281(XXIX)), UNGAOR, 29th Sess, Supp No 31 (1974) 50.
this direction UNCITRAL is considered to be an effective apparatus to establish international trade relations through progressive development, unification and harmonisation of international trade law based on the principles of sovereignty, equality and interdependence of interests of both developed and developing countries. The idea of establishing a new Commission for the harmonisation of international trade law was launched by the United Nations General Assembly in furtherance of its Resolution 2205(XXI) in 1966. Pursuant to this Resolution, a ‘Report of the Secretary General’ (Herein after called Report) of the United Nations on ‘Progressive Development of the Law of International Trade’ was prepared and submitted to the General Assembly. In the process of drafting this Report, a preliminary study was conducted on this subject under the leadership of Professor Clive M. Schmitthoff, a well-known authority on international trade law. This Report dealt extensively with aspects of concept of law of international trade, legal techniques necessary for reducing conflicts and divergences supplemented with a comprehensive survey of the work of intergovernmental organizations and non-governmental organizations in the field of harmonisation and unification of the law of international trade. Further, this Report called for the establishment of an international organization of highest order as a formulating agency in the field of international trade law in order to overcome the shortcomings of work in the harmonisation and unification of international trade law. UNCITRAL is a result of this Report. Till the moment UNCITRAL was established, there was no existing United Nations agency which is technically competent and also which could devote sufficient time to a complex and long term endeavor of harmonisation and unification of international trade law and also to work as a coordinating and liasoning agency with other United Nations organs and specialized agencies in the field of international trade.

7 Some of the intergovernmental organizations (IGOs) whose work was considered for the Report were International Institute for Unification of Private Law UNIDROIT), Hague Conference on Private International Law, United Nations Conference on Trade and Development (UNCTAD) etc. Also regional IGOs like the European Economic Community (EEC), European Free Trade Area (EFTA), Asian –African Legal Consultative Organisation (AALCO) contributed in drafting of the Report.
8 International Chamber of Commerce (ICC), International Maritime Committee (IMC), International Law Association (ILA), Institute of International Law.
UNCITRAL has become the core legal body of the United Nations system in the field of international trade law ever since its establishment. The significant inclusion in the UNCITRAL was “various geographic regions and its principal economic and legal systems”. This exercise was carried out in response to the survey results published in the Report. At present the UNCITRAL is composed of sixty member States, elected for a term of six years and the terms of half the members expire every three years.\(^{10}\) However it is important to note that UNICTRAL is not involved in setting trade rules between States and it does not even settle disputes involving issues of private international law.

### 2.2 Object and Mandate of UNCITRAL

From the preceding discussion it is now clear why there is a need for institutionalization of an environment that facilitates smooth flow of trade with uniformity of substantive law rules. In common parlance it can be said that the primary purpose of the UNCITRAL is to have a uniform, predictable and transparent system of law for encouraging foreign investment and international trade amongst nations. Hence, the object of UNCITRAL is to make possible interface of laws and for establishment of universal rule of law in the field of international trade law. Identifying problems that hamper smooth flow of international trade and thereby framing solutions by considering interests of all principal legal systems has been the principal object of UNCITRAL. This process has been termed as ‘Progressive Harmonisation and Unification of International Trade’, which is the mandate of UNCITRAL. According to Resolution 2205 (XXI) of 1966, the mandate accorded to UNCITRAL is:

- a) Coordinating the work of the organizations active in this field and encouraging cooperation among them.
- b) Promoting wider participation in existing international conventions and wider acceptance of existing model and uniform laws.

\(^{10}\) As is the case with most subsidiary bodies of the General Assembly, which is composed of all States members of the United Nations, membership in UNCITRAL is limited to a smaller number of States, in order to facilitate the deliberations. UNCITRAL was originally composed of 29 States, its membership was expanded to 36 States in 1973 and again in 2004 to 60 States. Available at http://www.uncitral.org/uncitral/en/about/origin.html. Visited on April 12, 2006.
c) Preparing or the adoption of new international conventions, model laws and uniform laws and promoting the codification and wider acceptance of international trade terms, provisions, customs and practices, in collaboration, where appropriate, with the organizations operating in this field.

d) Promoting ways and means of ensuring a uniform interpretation and application of international conventions and uniform laws in the field of law of international trade.

e) Collecting and disseminating information on national legislation and modern legal developments, including case law, in the field of law of international trade.

f) Establishing and maintaining a close collaboration with the United Nations on Conference of Trade and Development.

g) Maintaining liaison with other United Nations organs and specialized with international trade.

h) Taking any other action it may deem useful to fulfill its functions.\textsuperscript{11}

In accordance with its mandate, UNCITRAL takes into consideration the interests of all nations, particularly those of developing countries, which require overall development of international trade. Developing countries in fact also play a crucial role in the drafting and adoption of UNCITRAL texts.\textsuperscript{12} UNCITRAL also provides continuous assistance, technical support and briefing missions on aspects of international trade law to those countries requiring such assistance. While discussing the mandate of UNCITRAL, it would be pertinent to note the modalities or issues associated with the mandate of UNCITRAL. It only deals with the laws applicable to private parties in international transactions and is otherwise not involved with public law or trade policy issues \textit{viz} trade liberalization, abolition of trade barriers, unfair trade practices or relevant issues of such a nature. As a result, UNCITRAL

\textsuperscript{12} \url{http://www.uncitral.org/uncitral/en/about/origin.html}. Visited on April 10, 2006.

does not deal with inter-state issues like anti dumping, countervailing duties etc. According to the mandate of the UNCITRAL, annual sessions are held alternately at New York and Vienna for carrying out its work and Reports are submitted to the General Assembly. Substantive preparatory work on topics within UNCITRAL’s programme of work is carried through Working Groups. Each Working Group is composed of all member States of UNCITRAL. The secretariat of UNICTRAL is comprised of thirteen lawyers from common law and civil law countries as well (P. Machoka 2006, per. comm., 10 April). It is imperative for the secretariat unit to be familiar with different legal systems of the world and also with the problems of countries at various stages of economic development. Furthermore the secretariat plays a vital role in preparing studies and recommendations on problems concerning the unification and harmonisation of international trade law, which also includes studies and comparative research of national legislations on particular areas for UNCITRAL and also when requested by the United Nations and its organs.

2.3 Sessions of UNCITRAL

UNCITRAL holds its plenary sessions annually to deliberate and negotiate upon the substantive topics. After the establishment of UNCITRAL till now thirty-eight sessions were held in Vienna and New York. The thirty-ninth session of UNCITRAL for the year 2006 is scheduled from 19th June to 7th July 2006 at New York. Due to the limited scope of this paper, it may be expedient to discuss briefly the work of UNCITRAL at its thirty-eighth...

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13 As we are aware WTO is the only intergovernmental organization dealing with the rules of trade between nations. The WTO Agreements are negotiated and signed by world’s trading nations, in order to help producers of goods and services, exporters and importers conduct their business.


15 In addition to member States, all States that are not members of UNCITRAL, as well as interested international organizations, are invited to attend sessions of UNCITRAL and its working groups as observers. Interestingly observers are permitted to participate in discussions at sessions of UNCITRAL and its working groups to the same extent as members.


17 See for Provisional Agenda, Annotations thereto and Scheduling of Meetings of the Thirty-Ninth Session and for Reports of Working Groups, A/CN.9/587-593.
session with reference to some of the significant current developments in the areas of electronic commerce, arbitration and security interests.

The UNCITRAL had on its agenda, *inter alia*, the following topics for consideration:

(i) Finalization and adoption of the UNCITRAL Convention on the Use of Electronic Communications in International Contracts;
(ii) Public Procurement;
(iii) Arbitration;
(iv) Transport Law;
(v) Security Interests.

The UNCITRAL, at its thirtieth session (1997), entrusted the Working Group on Electronic Commerce with the preparation of uniform rules on the legal issues of digital signatures and certification authorities. Since then UNCITRAL at its successive sessions had monitored the progress on this work within the Working Group. At the thirty-fourth session (2001), UNCITRAL Model Law on Electronic Signatures was adopted, together with a Guide to Enactment of the Model Law. In this session, UNCITRAL entrusted Working Group IV (Electronic Commerce) with the task of preparing an international instrument dealing with issues on electronic contracting and a survey of possible legal barriers to the development of electronic commerce in international instruments. In this direction the Working Group at the thirty-fifth session (2002) began its deliberations on the preliminary draft Convention on the use of Electronic Communications in International Contracts. As a consequence of these deliberations UNCITRAL adopted the draft Convention on the use of Electronic Communications in International Contracts.

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21 A/CN.9/492/Add 1-3 and A/CN.9/493
In the area of arbitration with regard to the future work of UNCITRAL, the Working Group II at its forty-fourth session (New York, 23-27 January 2006) had suggested the following issues for possible future work: i) arbitrability of intra-corporate disputes and other issues relating to arbitrability, for example arbitrability in the fields of immovable property, insolvency or unfair competition,

ii) issues arising from online dispute resolution,


In the area of security interests, UNCITRAL at its thirty-third session in 2000 had considered a report of the secretariat on possible future work in the area of secured credit law. It was felt that modern secured credit laws could have significant impact on the availability and the cost of credit and thus on international trade. It was also widely felt that modern secured credit laws could alleviate the inequalities in the access to lower-cost credit between parties of the developed countries and developing countries and in the share such parties had in the benefits of international trade. This work is taken up by the UNCITRAL keeping in view of some States not having secured transactions law and at the same time for States to harmonise their secured transaction laws with laws of other States. The Working Group developed a draft legislative guide on secured transactions with a consolidated set of legislative recommendations on inventory, equipment and trade receivables, recommendations on negotiable instruments, negotiable documents, bank accounts and proceeds from independent undertakings. The Working Group has been requested by the

25 Annotated Provisional Agenda, A/CN.9/WG. II/WP.140, para 5
26 Under article 20 of the Statute of the International Law Commission (ILC), the Commission is required to prepare drafts in the form of articles and submit them to the General Assembly together with commentary containing adequate presentation of precedents and other relevant data, including treaties, judicial decisions and doctrines. Since its establishment, the ILC has prepared and submitted a number of final reports, in some cases together with draft texts, some of which were adopted as international Conventions or other instruments. For more details, see Texts, instruments and final reports of the International Law Commission available at http://www.un.org/law/ilc. Visited on April 15, 2006.
27 A/CN.9/475
UNCITRAL to expedite its work so as to submit the draft legislative guide to the UNCITRAL for final adoption as soon as possible in 2007.  

3. Process and Purpose of Harmonisation of International Trade Law

3.1 Harmonisation of International Trade Laws: Concept and Norm

The necessity to eliminate barriers in trade and investment requires developing effective legal systems with uniform rules so as to boost economic activities. This process can be harnessed only by way of harmonisation of national laws for a transnational approach to trade and business activities. This situation calls for a practice of convergence of international legal principles, in order to show that a number of legal systems have converged on the same solution to a particular problem. When there are no uniform rules or alternatives as to which law is applicable for transnational business activities, such a situation is likely to frustrate the parties to the business. So it is imminent to have a relevant transnational law to fill such gaps and thus boost trade and investment with a favorable legal and policy structure. In common parlance the rationale for harmonisation is to have a comprehensive legal basis for free movement of trade and investment across territorial boundaries of nations and to deal with all sorts of possible disputes that could arise out of such business interface. The course of harmonisation involves making the regulatory, substantive requirements for Government policies of identical or of more similar nature and adopting common principles of law thereby reducing difference between national laws. Conceptually ‘Harmonisation’ is a process through which domestic laws may be modified to enhance predictability in cross-border commercial transactions. There is likelihood that international commerce may be hindered by factors like lack of predictable governing law or out of date laws unsuited for commercial

\[ A/CN.9/WG.VI/WP.25, \text{para 17.} \]
practice.\(^{31}\) The justification to harmonise laws arises from the need to overcome jurisdiction barriers and externalities to foster economies of scale and to promote transparency and the process is preceded by assessing the feasibility of the project by undertaking a cost benefit analysis for an active harmonization. (P. Machoka 2006, per. comm., 10 April).

On the other hand ‘Unification’ may be seen as the adoption by States of common legal standard governing particular aspects of international business transactions.

The tools for harmonisation of international trade law are through legislative texts like model laws, conventions and legislative guides, which may be adopted by States through domestic legislation and non-legislative texts, such as UNCITRAL Arbitration Rules, which can be used by parties in international trade contracts. A model law is a suggested pattern recommended for adoption as part of national law. The flexibility with the model law is that States can tailor the text to suit their domestic requirements. A legislative guide\(^ {32}\) contains guidance for legislators and includes substantial commentary discussing and analyzing outlines of the core issues. Some recommendations provide specific guidance on how legislative provisions should be drafted. It is not a single set of model solutions but helps in evaluating different approaches in dealing with harmonisation of international trade laws.

### 3.2 Regional Approaches to Harmonisation

The aim of this unit is to have a brief overview of experiences of the European Union and India by emphasizing some of the key developments in the European and Indian legal system in the context of harmonisation and unification of international trade law.

#### 3.2.1 Case of the European Union

The harmonisation of trade law within the European Union has to be considered separately, because of the particular rules included in the treaties.\(^ {33}\) Harmonisation of EU law causes

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\(^{32}\) For example UNCITRAL Legislative Guide on Insolvency Law, Draft Legislative Guide on Secured Credit Transactions.

\(^{33}\) See Articles 94-97 of the EC Treaty
both advantages and disadvantages. On one hand, harmonisation leads to more homogeneous law in the member States. On the other hand, it leads to new disparities, linked with the issues relating to the subsidiarity principle\textsuperscript{34} and the limits involved by the directive. In fact, the instrument used for harmonising European law is usually the directive, which, unlike the regulation, is only binding for the result to be achieved by the member States, leaving the national authorities the choice of form and method.\textsuperscript{35} For this reason, a group of scholars have proposed to follow another road, leading to unification, which would use the regulation, rather than harmonisation.\textsuperscript{36} The problem is to find a legal basis for this unification. Some authors suggest (Basedow, 1998, p.7) that the basis for the unification of an important part of commercial law could be found in Article 95 of the EC Treaty, which permits the use of the regulation, following the procedure described by Article 251. Although this is an interesting point of view, it remains controversial whether this interpretation is practicable or not. The Harmonisation of European law is being carried out also in different ways. The Principles of European contract law are a good example of the debate taking place in the EU.

**The Lando Commission**

Ole Lando, a Danish scholar was the first to think about a number of principles on the formation of contracts, establishing the Commission on European Contract Law in 1976. The Commission’s aim was to formulate a set of contract principles for Europe; it started working in 1982, in the same moment as the UNIDROIT. There was a certain degree of common membership in the two groups and a high degree of similarity in their works, both of

\textsuperscript{34} See Article 5, para 2, of the EC Treaty
\textsuperscript{35} See Article 249 of the EC Treaty.
\textsuperscript{36} The Project, directed by Professor Delmas-Marty, concerns the protection of the EC’s financial interests.
which have attracted much interest and support and have been applied in numerous arbitrations. Both the UNIDROIT and the Lando Commission’s Principles are similar to a US restatement, with no normative strength. Nevertheless, UNIDROIT principles have a universal value, whilst the Lando Commission’s principles are addressed to the member states and to the EU judicial system.

The Principles of European contract law refer to every contract, not only to international commercial contracts. They include 159 articles followed by a commentary and a comparative note. The first part was published in 1995, and republished with Part II in 2000\(^\text{37}\), while Part III was completed in 2003, ending the work of the Commission\(^\text{38}\). These principles will become part of a wider project. In fact, a study group on a European civil code has been set up and has started working. The basic idea is that a common market needs a common set of rules, especially on contracts. The European Parliament, wishing to harmonise European private law, called for the preparation of a European civil code in 1989\(^\text{39}\) and again in 1994\(^\text{40}\). It passed a resolution in November 2001\(^\text{41}\) underlining what it described as ‘the need to pursue a targeted harmonisation of contract law where mutual recognition of national rules cannot be applied and where divergence of these rules leads to obstacles to the functioning of the internal market as defined by the Court of Justice’.

The European Commission produced an Action Plan\(^\text{42}\), suggesting a mix of non-regulatory and regulatory measures, including measures to increase the coherence of the EC acquis in


\(^{40}\) Resolution A3-0329/94, OJC 205, 25/7/94, p. 518.


the area of contract law, to promote the elaboration of European-wide general contract terms and to examine further whether problems in the European contract law area may require non-sector-specific solutions such as an optional instrument. The target is to create a common framework of reference, establishing common principles and terminology in the area of European contract law. There is no reference to the Principles of European Contract Law (PECL) in this context, nor are we told why the PECL do not already provide the required statement of common principles and terminology. In fact, either the PECL, or the UNIDROIT Principles would be both good starting points for a European contract law. This would not represent the work of the legislator, but, on the contrary, it would be a doctrine’s product.

3.2.2 Case of Asia: The Indian Experience

The economic reforms of 1991 have brought dramatic changes in international investment in India. So the national purpose is to adopt a domestic legal structure to be able to keep pace with globalisation in terms of uniformity and substantive rules.

To contribute effectively to the development of harmonious international economic relations, the rules formulated by the UNCITRAL must be acceptable to the States with different legal, social and economic systems. India being a key economic player in Asia and beyond, it has always recognized the valuable contribution of UNCITRAL’s work in the area of harmonisation and unification of international trade law in various ways like organizing seminars or briefing missions[^43] for wider acceptance of the model laws and conventions. It was considered that the collection and dissemination of Case Law on UNCITRAL Texts (CLOUT) is of immense value in providing interpretation and application of UNCITRAL text in various countries. In conjunction with UNCITRAL’s mandate and India’s objective, a legislation namely the Information Technology Act (Act 21 of 2000) has been adopted by India, which is based on the UNCITRAL Model Law on Electronic Commerce, adopted by

[^43]: UNGA Res 55/151 of 12 December 2000 reaffirms the importance, in particular for developing countries with training and technical assistance in the field of international trade law.
General Assembly Resolution 51/162, in order to encourage alternatives to paper based methods of storage and communication of information. This is a timely effort by India in formulating a law on information technology considering its leadership in the field of information technology and also as a global player in trade and commerce. The Information Technology Act would provide a set of complete and comprehensive legal rules to enable and support electronic commerce. Also as an important destination for foreign direct investment, India welcomed the adoption of UNCITRAL’s Legislative Guide on Privately Financed Infrastructure Projects, which is a useful instrument for domestic legislators and policy makers to establish appropriate legislation to attract investments.

In the area of international commercial arbitration and conciliation, India enacted the Arbitration and Conciliation Act, 1996 (Hereinafter Act of 1996) which is based on the UNCITRAL Model Law on International Commercial Arbitration. The idea is to harmonise Indian arbitration law with the Model Law and thereby to establish an internationally recognized legal framework for arbitration and conciliation and enforcement of foreign arbitral awards. The Act of 1996 applies to both domestic arbitration and international arbitration as well. But in India, there is however 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. The enforcement of interim measures of protection under arbitration proceedings becomes difficult, as they are different from final awards. Another noteworthy development is in the area of corporate fraud by now which is a major concern to international trade and a threat to the world economy particularly in the wake of spread of technology and internet. The Government of India has set up a Serious Frauds Investigation Office (SIFO) for investigating major corporate frauds including cheating shareholders,


depositors and investors. This situation also calls for improvement in systems, laws and procedures.

It is therefore evident that careful consideration has been given by India to the work and contribution of UNCITRAL and thereby to approach harmonisation for the promulgation of uniform substantive rules to integrate different advantages of harmonisation for an accelerated growth in the world market and reflecting the overall transformation of the country.

4. **UNCITRAL: The Road Ahead**

**Future Challenges of Harmonisation of International Trade Law**

UNCITRAL is a key organization working for unification and harmonization of international trade law. However sanguine might be the task and objective of the organization, there exists pitfalls and complex array of international challenges which affect the work of the organization. It is important to remember the process of harmonisation does not end with the completion of the texts. The same has to be incorporated into the domestic laws, which is the work of the national legislatures and which is a sovereign act. In this process it is important for UNCITRAL to examine the legal position of States within the system of global governance and evaluate the notion of sovereign States with respect to their national interests vis a vis international interests which is of important relevance to the work of the organization.

As the core legal body of the United Nations in the field of international trade law and in pursuance of its mandate, UNCITRAL has to coordinate and cooperate with other international organizations working in the field of international trade law. Experts consider that the efforts of maintaining cooperation have not been consistently successful. There is an amount of overlapping that is taking place between various global and regional organizations, which are affecting traditional areas like arbitration, transport laws as well as modern areas like electronic commerce. This is one of the core challenges for the UNCITRAL to overcome.

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47 Some of the other international organizations working in the field of international trade law are: United Nations Conference on Trade and Development (UNCTAD), Hague Conference on Private International Law, International Institute for Unification of Private International Law (UNIDROIT) and the World Trade Organisation (WTO)
in the process of servicing the international community with progressive harmonization and unification of international trade law. The General Assembly in its resolution 37/106 of 16th December 1982 expressed its concern about this problem and stated that such overlapping will only result in unnecessary duplication of efforts of UNCITRAL thereby affecting the efficiency, consistency and coherence in the unification and harmonization of international trade law. Thus this situation demands that UNCITRAL should adopt a viable solution to overcome this challenge.

The other issue of concern *inter alia* is States becoming parties to international conventions and legal reforms. As discussed in the preceding paragraphs, States have the right to exercise their sovereignty while ratifying international treaties. They may or may not choose to become parties to a convention. In most of the situations States may ratify a convention with some declarations or reservations, if the text of the convention provides for such clauses. Therefore however useful or relevant an international instrument or a convention might be, States do not immediately become parties to conventions. This is a reality even with instruments prepared by the UNCITRAL. On this depends the success of the organization as well because the purpose of having such an organization should be fulfilled. This is definitely an important challenge for UNCITRAL. In situations where States are not able to ratify such international instruments or enact legislations based on Model Laws due to lack of expertise or resources based on Model Laws, the Secretary-General of the United Nations requested the United Nations to provide technical assistance. The aim is to help States to become parties to these instruments and to implement them at the national level. The other major challenge is legal reform. In tune with the reality of changing times and emergence of market economy, it is imperative for States to involve in the process of legal reform so as to be responsive to the efforts of UNCITRAL in the process of harmonisation and unification of international trade law. The process of legal reform at the national level should be a reflection of current trends in liberalization, privatization and globalisation. Also taking developing and emerging economies into UNCITRAL’s fold of work is a huge challenge in order to develop and prepare laws for achieving homogeneity amidst

48 Reservations to international treaties is in principle permissible if the convention provided for them or the drafting conference discussed and agreed to them. See Fitzmaurice, G.G, 1953 ‘Reservations to Multilateral Conventions’, *International and Comparative Law Quarterly*, vol.2, pp1-26.
heterogenous circumstances. This means an increased workload for the organization amidst resource crunch and yet to give due regard to the ongoing social, political and economic changes across States. From time to time these changes should reflect in the key areas of international trade and commercial laws for an internationally agreed standards and solutions acceptable to different legal systems. All these attributes and challenges have to be borne by UNICTRAL successfully for achieving far greater success and uniformity of international trade laws.

5. Conclusion

The purpose of the UNCITRAL is to form the basis for a uniform, predictable and transparent system of law in order to encourage foreign investment and actual international trade amongst nations. It is imperative as well to study the practice of harmonisation of international trade law in a cross-cultural perspective. Hence the approach of European Union and India to harmonisation of international trade law assumes importance. India and Europe are very distant realities, facing different kind of issues in the field of harmonization of laws on international trade. Despite the challenges being faced by the UNCITRAL in the field of harmonisation, it is still a necessity for the purpose of removing legal barriers in the growth of transnational economic activities by enhancing trade and investment.

It may be apt to quote the great French poet Guillaume Apollinaire: “Art will only cease being national the day the whole universe, living in the same climate, in houses built in the same style, speaks the same language with the same accent, which means never”. If we replace the word “art” with “law”, we have a synthesis of the limits of harmonisation: we know that a universal law, applicable in every single country, could never exist, and has no reason to be. But still the process of having harmonised and uniform international trade laws is a


worthwhile experience, which requires continuous efforts to remain responsive to changing needs and circumstances in the globalized world.

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