

THE INTERNATIONAL OBLIGATIONS OF SMALL ISLAND DEVELOPING STATES AND THEIR WIDER PARTICIPATION IN UNCITRAL LEGAL TEXTS AND INSTRUMENTS

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Assessment of the distinct legal standards established by individual UNCITRAL instruments and mapping them with the needs of potential state parties is essential for the successful promotion of wider adoption of UNCITRAL instruments. It is also important for the effective persuasion of individual states regarding the pertinence of the different standards for their own economic development. With this in mind this paper explores the relevance of UNCITRAL works in the light of the specific group of economies consisting of the Small Island Developing States (SIDS). After an assessment of four fundamental characteristics that define SIDS, this paper investigates how those characteristics affect the motivation to enter into international legal obligations. The paper further explores the scope and limitations of the international obligations of the SIDS economies in different fields of UNCITRAL works. The paper concludes with a call for an increased integration of SIDS members in the deliberations of UNCITRAL legal harmonisation process and the provision of necessary legal training and technical assistance to SIDS members to support their wider adoption of UNCITRAL legal instruments.

Dans cette contribution, l'auteur s'attache à démontrer que le succès des instruments proposés par la CNUDCI présuppose avant toute mise en œuvre, que soit opérée une évaluation de leur adéquation avec les besoins réels des futurs États signataires. Par ailleurs l'auteur souligne qu'il est également important de convaincre ces États de la pertinence de ces différentes normes pour leur développement économique respectif. A l'appui de sa démonstration, l'auteur procède à une analyse des différents travaux de la CNUDCI susceptibles de concerner le développement économique particulier des petits États insulaires en développement (PEID). Après une évaluation de quatre caractéristiques fondamentales qui définissent les petits États insulaires en développement (PIED), cet article démontre dans quelle mesure

ces caractéristiques sont de nature à affecter les motivations de chaque État concerné d'accepter d'être lié par les obligations juridiques internationales découlant des textes de la CNUDCI. En conclusion, l'auteur propose pour encourager l'adoption le plus large possible des divers instruments juridiques de la CNUDCI, d'intégrer systématiquement les membres des petits États insulaires en développement (PIED) dans le processus d'élaboration des textes et de leur proposer une assistance technique et juridique.

I INTRODUCTION

With its mandate for formulating international trade and investment facilitation framework, the United Nations Commission on International Trade Law (UNCITRAL) has always been in the forefront of progressive harmonisation across various legal fields involving cross-border commercial transactions. Spanning more than six decades, the legal instruments produced under the auspices of UNCITRAL govern a range of legal issues crucial for international trade, commerce, and investments. The UNCITRAL legal instruments address various substantive and dispute settlement issues including arbitration, mediation and conciliation, enforcement of awards, investor-state dispute settlement, procurement, sale of goods, bills of exchange and promissory notes, standby letters of credit, secured transactions, independent guarantees and assignment of receivables, shipping and judicial sale of ships, transport terminal operators liability, electronic commerce, electronic contracts, electronic signature, electronic transferable records, and cross-border insolvency. Despite the harmonised legal instruments achieved in diverse fields, tangible differences exist not only in the number of state parties to specific instruments but also in the nature of the economies and motivations of individual state parties. Although the former differences are conspicuous from a cursory review of the status of UNCITRAL conventions and model laws,¹ establishing a correlation with the latter warrants scrutiny of the economic policies and priorities of the state parties to different UNCITRAL legal instruments and the underlying needs that prompted their adoption.

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1 See United Nations "Overview of the Status of UNCITRAL Conventions and Model Laws", 7 April 2024, available online at <https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/overview-status-table.pdf> (accessed on 8 April 2024).

II ESSENTIAL CHARACTERISTICS AND NEEDS OF SIDS AND THEIR POTENTIAL INFLUENCE ON THE UNDERTAKING OF INTERNATIONAL OBLIGATIONS

To explore the significance of UNCITRAL legal instruments for the development of SIDS economies it is essential to assess the nature and typical characteristic of SIDS. It is arguable that the scope and extent of current undertaking of binding obligations by SIDS under the UNCITRAL instruments, as well the need for SIDS to widely adopt other UNCITRAL legal standards in the future, are explicable in the light of the typical characteristics of the economies of SIDS. Therefore, the key characteristics of SIDS should be scrutinised in order to assess the scope of the present and future participation of SIDS in UNCITRAL instruments.

The classification of different economies under the category of SIDS is not itself free from challenges. The term SIDS does not denote a common understanding among key international organisations like the UN, so it is necessary to recognise the prevalence of some underlying challenges. From a total of around 58 economies that are typically classified under the SIDS grouping, questions pertaining to specific characteristics forming the abbreviation namely 'small', 'island', 'developing' and 'states' are bound to arise. Such questions need to be examined closely and the related findings must be reflected in any assessment of the scope of participation of SIDS economies in UNCITRAL texts.

Firstly, questions arising in this context include whether all the economies under the SIDS could be considered as small? This question mainly arises because the determining character based on the size using the parameters of territorial area and population differs greatly among the 58 economies. For example, a substantial difference in the geographical size of the territory of SIDS members could be noticed as in the cases of Papua New Guinea and of Nauru the former extending more than 460 thousand square kilometres² while the latter is limited to 21 square kilometres.³

2 The size of the land area of Papua New Guinea is estimated at 462,840 square kilometres, see the statistics provided by Papua New Guinea High Commission London available online at <https://www.pnghighcomm.org.uk/about/about-papua-new-guinea/index.html> (accessed on 9 January 2024).

3 See International Monetary Fund "Republic of Nauru: 2021 Article IV Consultation", available online at <https://www.elibrary.imf.org/view/journals/002/2022/028/article-A001-en.xml> (accessed on 9 January 2024).

Similarly, in terms of population a large difference can be seen between SIDS members like Haiti with a population of 11.7 million⁴ and Niue with 1,564 residents.⁵

Secondly, even questions whether all SIDS could be considered 'islands' are raised. In this regard, the status of some SIDS members as islands is doubted due to some topographical characteristics like the land mass not being fully surrounded by water or being connected to continental mainland. Based on such concerns, the island status of SIDS like Belize, Guinea-Bissau, Guyana, Singapore, and Suriname is subject to doubt.⁶

Thirdly, whether all SIDS could be considered as 'developing' is another relevant issue to note. In this regard, even though in the case of most SIDS, the categorisation of their economies as 'developing' does not raise much concern, the question may be daunting to some economies of SIDS. Despite such economies being considered as developing for the purpose of SIDS classification, some are ranked very high in the UN Human Development Index (HDI). For example, under the ranking of HDI trends for more than three decades, namely 1990-2022, SIDS that are ranked as countries with 'a very high human development' include Singapore, St Kitts and Nevis, Antigua and Barbuda, Bahamas, Barbados, and Seychelles.⁷ In addition, certain SIDS like Palau, Mauritius, Grenada, St Vincent and the Grenadines, the Dominican Republic, Maldives, Guyana, Dominica, Tonga, the Marshall Islands, Fiji, St Lucia, Jamaica, Samoa, and Belize are ranked by the UN HDI under the category of countries achieving 'a high human development'.⁸ The level of development however could be distinctively determined based on the parameters used to assess individual economies. Consequently, the level of development or ranking of the above SIDS could change if their economies are assessed by other

4 See United Nations Population Fund "World Population Dashboard-Haiti Total Population in millions 2023", available online at <https://www.unfpa.org/data/world-population/HT> (accessed on 9 January 2024).

5 See Niue Statistics Office *Niue Census of Population and Household Report 2022* (Statistics New Zealand Wellington) November 2022, 14.

6 Guy Gavriel Kay Tigana "What makes a SIDS a SIDS" in United Nations Conference on Trade and Development (UNCTAD), *Development and Globalization: Facts and Figures 2021- Small Island Developing States*, (United Nations Geneva 2021) at 17.

7 The SIDS members listed here are presented in the descending order of their ranking in the UN HDI list under the category of countries with 'a very high human development'. See United Nations Development Program (UNDP), "Human Development Reports-Trends in the Human Development Index, 1990-2022" available online at <https://hdr.undp.org/data-center/documentation-and-downloads> (accessed on 6 March 2024).

8 The order in which the SIDS members are listed follows the descending order in which they were ranked in the UN HDI list under the category of countries with 'high human development'. Above n 8.

economic criteria. Nevertheless, the conclusion regarding the level of development of some of the SIDS economies may not change even if most of the other parameters like the Gross Domestic Product (GDP) are used for the assessment of their development. For example, particularly the SIDS members that are ranked as having a very high human development may convincingly be classified as developed albeit with potential disagreement of the member concerned.⁹

Fourthly, the last characteristic relating to the SIDS arises from the question whether all the member economies are states? This is also a very pertinent question for the purpose of assessing the scope of the SIDS obligations under the UNCITRAL regime, because economies listed as SIDS consist of independent states that are members of the UN as well as a set of self-governing and non-self-governing territories that do not have membership of the UN as separate states but are primarily associate members of regional commissions of the UN.¹⁰ The statehood or the nature of autonomy of governance of the individual SIDS economies will determine their respective freedom to undertake international obligations under UNCITRAL consonant with their respective economic needs, policies, and goals. It is arguable that this is one of the important factors that needs to be considered in any promotion initiative aimed at enhancing the wider adoption of UNCITRAL instruments by SIDS economies.

Finally, it is arguable that, beyond the set of four typical characteristics analysed above, any efforts for the prospects of future adoption of UNCITRAL instruments by SIDS should be seen in the light of the distinctive position of the individual economies of SIDS. It is crucial to note that beyond the four characteristics that typically define SIDS, no substantial homogeneity can be expected in determining the course of action to promote UNCITRAL instruments among member economies. Therefore, it is necessary to identify distinctive economic factors which dictate the potential development path of every member of SIDS and map it with the appropriate

9 For example, related debates have surfaced in recent years in Singapore parliamentary exchanges, when the question relating to development classification of Singapore in the context of the international climate change regime was discussed. A categorical assertion of a developing status of Singapore was made by the Minister of Sustainability and the Environment when replying to the suggestions of a member of the parliament about the potential contribution of Singapore to the Biodiversity Fund under the COP27. See the parliamentary debate titled "Grace Fu reiterates that Singapore does not belong to the developed countries" available online at <https://www.youtube.com/watch?v=7N0kl0G9BWo> (accessed on 12 March 2024).

10 The associate members of the UN regional commissions include American Samoa, Anguilla, Aruba, Bermuda, British Virgin Islands, Cayman Islands, Commonwealth of Northern Marianas, Curacao, French Polynesia, Guadeloupe, Guam, Martinique, Montserrat, New Caledonia, Puerto Rico, Sint Maarten, Turks and Caicos Islands, and US Virgin Islands. See UNCTAD, *Development and Globalization: Facts and Figures 2021 - Small Island Developing States*, (United Nations; Geneva, 2021) at 6.

legal standards in relevant UNCITRAL texts to design a more pragmatic promotional drive among SIDS economies. A specific way forward in this regard will be examined later in the context of working in conjunction with other pertinent international organisations and programmes focused on SIDS, like the International Telecommunication Union (ITU). In the light of the SIDS focused projects and programmes of different international organisation, designing the possible promotion of UNCITRAL legal standards will be explored.

III THE SCOPE OF CURRENT OBLIGATIONS OF SIDS IN UNCITRAL TEXTS AND INSTRUMENTS

An assessment of the present participation of SIDS in UNCITRAL instruments is essential to determine whether there is any common pattern in the undertaking of obligations and also how individual SIDS differ in their choice of participation. At the very outset, it is important to note that SIDS do have current obligations under the UNCITRAL regime. Out of the 39 states listed as SIDS,¹¹ only the Federated States of Micronesia, Solomon Islands, Nauru, and Niue¹² have no obligations under UNCITRAL instruments. This evidence of large participation of SIDS should be seen as an important factor establishing the relevance of works of UNCITRAL for SIDS economies despite any inherent limitations of size and scope of economic activities that individual member states of SIDS may have. Even in case of the non-participating states like Niue, it is arguable that the prospects of its future interest in UNCITRAL texts should not be disregarded.

Possible concerns of the utility of the present paper exploring the pertinence of UNCITRAL works for SIDS or promoting their interest in subscribing to the relevant UNCITRAL obligations, can be answered with reference to the past responses of SIDS members. Firstly, the overwhelming majority of SIDS participation in UNCITRAL works removes any doubts on the importance of UNCITRAL as a promising legal harmonisation institution for the development of SIDS economies. Secondly, any concerns of potential lack of interest of SIDS in specific UNCITRAL instruments in the light of their limited types of economic activities or the limited scale in which are carried out, can also be addressed with reference to the example

11 The United Nations Office of the High Representative focused on SIDS and others disadvantaged nations consisting of least developed and landlocked developing countries referred as OHRLLS. Its list includes 39 states and 18 dependant or non-self-governing territories (which are associate members of UN regional commissions) See United Nations OHRLLS, "List of SIDS" available online at <https://www.un.org/ohrrls/content/list-sids> (accessed online at 9 January 2024).

12 Niue is an internally self-governing territory in free association with the state of New Zealand. However, Niue is recognised as a sovereign state and is a state member of several international organisations including UNESCO, FAO, the WHO, WIPO. See the recognition of Niue by USA in 2023 as reported in CIA, "Niue-The World Fact Book" available online at <https://www.cia.gov/the-world-factbook/countries/niue/> (accessed on 10 March 2024).

of Niue. Despite the very small size of the population and the lack of UNCITRAL participation by Niue, its potential interest in specialised international obligations pertinent to international economic exchange is noticeable from the recent undertaking of obligations by Niue in WIPO as Niue became a party to the WIPO Convention and the Berne Convention.¹³ The example of Niue and its participation in various international organisations and particularly WIPO, should serve as an example to quell any concerns of relevance and significance of SIDS membership and participation in UNCITRAL and its legal texts.

After ascertaining the general role and interests of SIDS economies in UNCITRAL works, it is crucial to enquire into the scope of their specific undertakings in UNCITRAL texts. From a comprehensive review and comparison of all the SIDS obligations in UNCITRAL legal instruments as of 7 April 2024,¹⁴ distinct patterns are discernible. Among several UNCITRAL instruments, the most subscribed by SIDS is the New York Convention on Recognition and Enforcement of Foreign Arbitral Awards 1958. Twenty-seven out of thirty-nine SIDS states are parties to the New York Convention. However, twelve of the SIDS, namely Federated States of Micronesia, Grenada, Guinea-Bissau, Kiribati, Nauru, Niue, Samoa, Saint Kitts and Nevis, Saint Lucia, Solomon Islands, Tuvalu, and Vanuatu are not parties to the New York Convention.

The second most subscribed UNCITRAL instrument is the UNCITRAL Model Law on Electronic Commerce 1996, which includes 26 SIDS. This leaves 13 SIDS as non-parties to the E-commerce Model Law: the Federated States of Micronesia, Comoros, the Cook Islands, Cuba, Guinea-Bissau, Marshall Islands, Nauru, Niue, Palau, Sao Tome and Principe, Solomon Islands, Tonga, and Tuvalu. Other instruments that have commanded a sizable acceptance include the UNCITRAL Model Law on Electronic Signature 2001 with twelve SIDS state parties, and the UNCITRAL Model Law on International Commercial Arbitration 1985 with ten SIDS state parties.

From the above it is evident that the two distinct fields in which the SIDS have been keen to undertake UNCITRAL obligations relate to electronic transactions and dispute settlement. In this regard, however, it is equally relevant to note that SIDS' response to some of the related UNCITRAL instruments in these two fields has been

13 Niue acceded to the WIPO Convention on 8 October 2014, which entered into force on 8 January 2015. The accession to the Berne Convention by Niue was done on 24 June 2016, (in force on 24 September 2016). See WIPO, "WIPO-Administered Treaties-Contracting Parties-Niue" available online at <https://www.wipo.int/wipolex/en/treaties/ShowResults?code=NU> (accessed on 14 February 2024).

14 See United Nations, above n 1.

minimal. For example, in some of the other key UNCITRAL instruments relating to electronic transactions, namely the Electronic Communications Convention 2005 and the UNCITRAL Model Law on Electronic Transferable Records 2017 only six and four SIDS states have become parties respectively. Similarly, the interest of SIDS states in some of the UNCITRAL instruments relating to dispute settlement has only started to emerge. For example, one of the prominent UNCITRAL instruments in recent years, the Singapore Convention on Mediation 2018, attracted two SIDS state parties but nine SIDS states that are signatories are yet to ratify the convention.¹⁵

In addition to the above two fields, the SIDS interest in UNCITRAL works is also visible in one of the core areas significant for international commercial transactions, namely cross-border insolvency. Interestingly, nine SIDS members have become parties to the UNCITRAL Model Law on Cross-border Insolvency 1997. However, in another core area of commercial significance, namely the international sale of goods, the subscription of SIDS member states has been limited. Only five SIDS members are parties to the UNCITRAL Convention relating to the International Sale of Goods 1980 (CISG). Similarly, SIDS participation is limited in other key areas of legal harmonisation achieved by UNCITRAL like international transportation and shipping, bills of exchange, secured transactions, letters of credit, independent guarantees, assignment of receivables, promissory notes, and procurement matters.

IV SOME DIRECTIONS AND POTENTIAL MEASURES FOR PROMOTING WIDER SIDS PARTICIPATION IN UNCITRAL WORKS

The review of SIDS participation in UNCITRAL regimes reveals a mixed picture. However, the comparison of the patterns of participation in certain instruments indicates that SIDS' participation is like that of other countries. For example, the highest SIDS' participation (for the New York Convention 1958) is comparable to the participation of other countries that have widely accepted the New York Convention. Although this may indicate an overwhelming interest of SIDS members in international commercial arbitration, the response to other related arbitration instrument namely the Model Law on International Commercial Arbitration 1985 is

¹⁵ Although the 2018 Singapore Convention on Mediation has proved to be of increasing interest among SIDS, it is relevant that none of them, including Singapore itself, has yet subscribed to the related UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation 2018. Similarly, the older UNCITRAL Model Law on International Commercial Conciliation 2002 has attracted only two SIDS signatories, namely Comoros and Guinea-Bissau. Here it is relevant to note that the investor-state dispute settlement related instrument (the United Nations Convention on Transparency in Treaty-based Investor-State Arbitration) has attracted only one SIDS member, namely Mauritius.

limited. It is intriguing to note the emerging interest of SIDS members in the more recent Singapore Convention on Mediation 2018 while the lack of interest of SIDS in the related Model Law on International Commercial Mediation and International Settlement agreements resulting from mediation 2018 is visible. The limited response of SIDS to the UNCITRAL Model Law on International Commercial Conciliation 2002 is also relevant in this context.

The position of SIDS regarding the above four UNCITRAL instruments reveals a clear pattern. Firstly, it is evident that there is a clear interest in the field of dispute settlement. However, the interest is more focused on undertaking obligations under the conventions than on the related model laws. This demonstrates that the interest in undertaking obligations relating to arbitration and mediation under the respective conventions is not reflected in embracing the Model Laws to modernise the domestic arbitration and mediation laws of the SIDS. Nevertheless, the legal commitments made to the related conventions should be a clear indicator of the potential willingness of SIDS to consider adoption of the model laws in the future, provided appropriate promotional and assistance strategies are adopted by UNCITRAL.

Another interesting revelation that results from the analysis pertains to the distinct enthusiasm and interest shown by the SIDS in subscribing to international obligations relating to electronic transactions. However, the pattern of SIDS subscription in the field of electronic transactions seems to be the reverse of the pattern revealed in the field of dispute settlement. As evident from the discussion earlier, the number of SIDS subscriptions to the UNCITRAL Model Law on Electronic Commerce 1996 and the Model Law on Electronic Signature 2001 respectively are more than the total SIDS parties to the Electronic Communication Convention 2005. Regarding the third model law relevant to electronic transactions namely the Model Law on Electronic Transferable Records 2017 even though the total number of subscriptions of SIDS is low the SIDS subscription amounts to fifty percent of the total number of all states that have become parties to that Model Law.¹⁶

The fact that half of the total partaking in the relatively new 2017 Model Law is constituted by the SIDS economies, should quell the concerns regarding the low SIDS participation in this instrument relating to field of electronic transactions. Moreover, the pioneering participation of the SIDS in a newly introduced UNCITRAL instrument constituting half of the total subscription should be taken as a clear indicator of the potential role SIDS could play as first movers or early

16 So far, there are eight parties to the UNCITRAL Model Law on Electronic Transferable Records 2017. The four SIDS economies subscribing are Kiribati, Papua New Guinea, Singapore, and Timor-Leste. The other four states are Bahrain, Paraguay, the United Arab Emirates and the United Kingdom.

adopters of future UNCITRAL instruments who consequently set the stage for others to follow. In addition, any such participation of SIDS can help achieve the critical mass needed for certain types of UNCITRAL instruments to enter into force.

Despite the encouraging trends seen regarding the SIDS adoption of model laws relating to the field of electronic transactions, their relatively low response to the Electronic Communication Convention 2005 remains a mystery. Similarly, the low subscription of SIDS economies to the Convention on Contracts for the International Sale of Goods 1980 could also raise doubts of SIDS' interest in seeking harmonisation of legal standards governing the trade in goods. Among the concerns relating to the above two conventions, the former is less explicable than the latter. However, having witnessed an enthusiastic SIDS response to the model laws prepared to modernise the domestic electronic transactions environment, the utility of the Electronic Communication Convention 2005 in enhancing the fruits of such modernisation beyond the borders is undeniable. Even though the SIDS' economies could be aware of this significance, the factors limiting the efforts to subscribe to the 2005 Convention should be studied by UNCITRAL and the necessary follow-up plan to provide essential support to overcome related hurdles should be implemented. On the concern pertaining to CISG, as the interest of the SIDS in this regime will be correlated to the individual SIDS economies' level of international trade in goods, any measure to promote the future interest of SIDS should be based on the continuous monitoring and assessment of trade trends and policies of individual SIDS economies. UNCITRAL should consider the characteristics and sensitivities of the individual SIDS economies in existing and potential global trade to determine any promotional plan to increase total adherence to CISG.

Finally, any promotional measures aimed at achieving an enhanced participation of SIDS in UNCITRAL regimes could be designed and implemented more effectively by harnessing the efforts of other pertinent international organisations focused on SIDS. A concerted approach along with relevant international organisations will be more effective and provide a pragmatic way forward in the light of the special circumstances facing SIDS individually or as a group. In this regard, the role of specialised agencies of the UN as well as the specific SIDS related entities is indispensable. Pertinent in this context are two recent projects of UNCTAD and ITU.

The UNCTAD TrainForTrade Blended Learning Strategy Project which aimed at enhancing the digital economy in SIDS in Africa, the Caribbean, and Asia and the

Pacific is a good example.¹⁷ Although UNCITRAL collaborated in providing training in this project, its contribution should not be limited to education about the essential features of the related UNCITRAL legal standards on digital economy. Projects like this, which are training SIDS, should be taken as an opportunity to inculcate a strategic understanding of the potential role UNCITRAL instruments could play in enhancing trade and commerce in SIDS. Therefore, UNCITRAL should endeavour to design the content of its contribution to training based on mapping the characteristics and sensitivities of SIDS identified in this paper. In addition to this specific project, UNCITRAL should explore other collaborative avenues with UNCTAD based on its series of activities that are exclusively aimed at supporting SIDS.¹⁸ In addition to UNCTAD, seeking opportunities to enhance the legal environment and trade of SIDS' economies in conjunction with the World Trade Organization (WTO) programmes like trade facilitation will provide strong impetus for the promotion of UNCITRAL instruments.¹⁹

The other notable recent project in this regard emanates from the International Telecommunications Union (ITU). The project focused on measuring the digital development in SIDS. Its findings in 2024 reveal the systematic work of ITU in several pertinent fields relating to the development of a digital economy in SIDS including E-commerce and regulatory and policy issues facing ICT. Working in conjunction with ITU in those fields and mapping the role of relevant UNCITRAL regimes and identifying the existing gaps in SIDS' undertaking of related obligations will bring a synergy benefitting the agenda of both ITU and UNCITRAL.²⁰ In particular, some of the relevant findings of the ITU project revealing the disparities

17 See UNCTAD "TrainforTrade-Digital Economy in Small Island Developing States, 2023" available online at <https://tft.unctad.org/projects/current-projects/digital-economy-in-small-island-developing-states/> (accessed on 20 March 2024).

18 For a detailed account of various regular activities of UNCTAD in support of SIDS see, United Nations, "UNCTAD Activities in Support of Small Island Developing States-Note by the UNCTAD Secretariat" (2017) available online at https://unctad.org/system/files/official-document/tdb64d9_en.pdf (accessed on 7 March 2024).

19 The lack of distinct recognition of SIDS as a special group in the WTO, its 'Work Program on Small Economies' is bound to be relevant. See WTO, "Work Program on Small Economies" available online at https://www.wto.org/english/tratop_e/devel_e/dev_wkprog_smallco_e.htm (accessed online on 18 March 2024). For a more detailed study on the WTO and Small Economies see Sivaramen Palayathan, "Small States and the World Trade Organization" in Lino Briguglio and E J Kisanga (eds), *Economic Vulnerability and Resilience of Small States*, (Commonwealth Secretariat, London 2004), at 315-326 and Barbara von Tigerstrom "Small Island Developing States and International Trade: Special Challenges in the Global Partnership for Development" *Melbourne Journal of International Law* 6(2) 2005, pp.402-436.

20 See International Telecommunications Union *Measuring Digital Development-Facts and Figures: Focus on Small Island Developing States*, (ITU Telecommunication Development Bureau, Geneva) March 2024, pp.34.

in the ICT environment in SIDS should be incorporated in any promotional initiative of UNCITRAL among SIDS.²¹

In addition the above specialised agencies, tracking the works and projects of other international organisations that are exclusively SIDS focused to explore common grounds with the fields of UNCITRAL, legal harmonisation could give additional impetus to the motion of UNCITRAL instruments that are not or least embraced by SIDS. Such a work merits consideration.²² The 2016 collaborative work produced by the United Nations Office on Drugs and Crime. It exclusively assessed the question of 'procurement' in SIDS in the light of corruption and reveals a key distinguishing features in SIDS and the required procurement reforms.²³ Although such works are not developed in the specific context of international trade or commerce, their utility for identifying unique SIDS' procurement characteristics and reform needs could inform the pitching and promotion of related UNCITRAL instruments on procurement. This is particularly relevant in the light of the low SIDS' participation in procurement related UNCITRAL instruments as revealed by the fact that among the pertinent UNCITRAL model laws of 1994 and 2011, SIDS' participation is limited to one and two states respectively.²⁴

Beyond the various specialised international organisations discussed above, the need to work closely with organisations and divisions that are exclusively created for SIDS cannot be over emphasised. Although they are focused on a wide range of interests and not specifically on trade and commerce, given their primary mandate of promoting SIDS interests in general, the development dimension of UNCITRAL works should be of great relevance in exploring mutual benefits. The two principal bodies which UNCITRAL should seek to work in conjunction with are the UN Office of the High Representative focused on SIDS (OHRLS)²⁵ and the Alliance

21 See above n 21.

22 In addition, works and projects of other UN agencies focused on SIDS could also provide collaborative opportunities for UNCITRAL. The SIDS focused works of the World Tourism Organization and the World Health Organization are examples in this regard. See UN Tourism, "Small Island Developing States" available online at <https://www.unwto.org/sustainable-development/small-islands-developing-states> (accessed online on 11 March 2024) and WHO *Small Island Developing States Health and WHO*, (WHO, Geneva, 2017) at 12.

23 UNODC *Procurement and Corruption in Small Island Developing States: Challenges and Emerging Practices* (UNODC, Vienna, 2016) at 37.

24 Kiribati is the only SIDS member subscribing to the UNCITRAL Model Law on Procurement of Goods, Construction and Services 1994; the more recent UNCITRAL Model Law on Public Procurement 2011 has attracted the subscription of two SIDS economies namely Jamaica, and Trinidad and Tobago. See United Nations above n 1.

25 See United Nations OHRLS, above n 11.

of Small Island States (AOSIS), which is mandated to promote the wider interests of SIDS in matters of international climate change and sustainable development.²⁶

V CONCLUDING REMARKS

SIDS' economies, despite being small and facing formidable challenges, play a significant role in undertaking harmonised legal standards governing international trade and commerce. However, this paper makes clear the need to attach enhanced significance to the future role of SIDS in promoting the work of UNCITRAL for the mutual benefit of both. An enhanced participation of SIDS in the UNCITRAL regime will benefit not only the development of trade and commerce of SIDS' economies but also provide the necessary impetus to UNCITRAL in gaining a critical mass for bringing its legal instruments into force or gaining wider adoption. To achieve such a goal, various specific measures and approaches have been proposed in this paper. The relevant proposals were made, firstly in reflection of the characteristics that define SIDS and the related challenges, and secondly by reviewing the contemporary undertaking of the international obligations by SIDS in UNCITRAL legal regimes. Based on the findings, the proposal to collaborate with two international organisations, in conjunction with their work relating to SIDS, should provide a pragmatic and more effective approach to the successful promotion of UNCITRAL works.

It is equally crucial to introduce measures to attain an enhanced participation of SIDS' economies in the deliberations and development of UNCITRAL works. With the more recent training programmes offered to SIDS by UNCTAD along with the contribution of UNCITRAL, the interest to follow and possibly partake in future UNCITRAL works should increase. Moreover, UNCITRAL might consider inviting pertinent SIDS organisations like the AOSIS, to observe the annual deliberations of the Commission and the working group meetings in order to keep both sides well informed of contemporary developments. To supplement these efforts, regional offices like the UNCITRAL RCAP should consider focusing, during the planning and designing of its efforts to promote UNCITRAL instruments, on any unique issues that SIDS in the Asia-Pacific region have. Finally, the visibility of the technical assistance programme of UNCITRAL should be enhanced among SIDS, preceded by a clear mapping of the unique needs of individual SIDS economies with the potential contributions specific UNCITRAL instruments could make. A comprehensive promotional approach with the concerted and customised efforts

²⁶ See the scope of the mandate, works and programmes of the Alliance of Small Island States (AOSIS) available online at <https://www.aosis.org> (accessed on 18 March 2024).

proposed in this paper will achieve the wider distribution of the fruits of the works of UNCITRAL to SIDS and beyond.