

THE CZECH REPUBLIC'S PUSH FOR INNOVATIVE AGENDA IN THE UNIDROIT AND THE UNCITRAL

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The Czech Republic during last year has actively pursued topics in the field of international trade law which can be understood as innovative or pioneering. To promote issues brought up by rapidly evolving relationship between law and modern technologies in international commerce, the Czech Republic primarily demonstrates the importance of these topics in two international fora: the International Institute for the Unification of Private Law (UNIDROIT) and United Nations Commission on International Trade Law (UNCITRAL).

Possible future agenda for UNIDROIT

Regarding UNIDROIT the Czech Republic proposed in the context of discussions about the future triennial work programme of the UNIDROIT in autumn 2016 to focus on two progressive areas of law – distributed ledger or so-called blockchain technology and inheritance of digital properties as areas of the electronic commerce and relating spheres are rapidly evolving and expanding, however efforts to better understand these processes or regulate and prospectively harmonise them is not sufficient.

Ledgers are key aspect of commerce and are used to record many things, most commonly assets such as money and property. A distributed ledger based on blockchain technology is basically an asset database that can be shared across a network of multiple sites, geographies or institutions. Distributed ledger technologies have much potential. To name just a few of the potential uses, blockchains can radically change, how payments are tracked, securities and derivatives trades are processed, global agricultural supply chain become more transparent and health records are stored. The introduction of blockchain could also help the public sector decentralise services. While the blockchain originally sought a foothold in financial services, interest in using the technology in the public sector is now growing. In practice, a number of positive examples can be already observed in many places such as Sweden or Georgia. Dubai wants distributed ledgers to power its entire government by 2020 and Ukraine intends to become “one of the world’s leading blockchain nations” as a way to address “historic distrust of government.”² However, the adoption of blockchain technology faces many obstacles and particularly regulatory hurdles could significantly slow progress. Among possible risks, ungoverned blockchains are used for illegal purposes or noninteroperability in usage of

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² Governments may be big backers of the blockchain, *Economist*, 1 June 2016.

private blockchains scale down to support supply chains. Therefore, according to the Czech Republic there is an opportunity to explore a prospect of setting global or specific standards in use of this technology.

Increased international interest in this topic was subsequently confirmed at an open Colloquium on Financial Markets Law under the framework of the UNIDROIT Committee on Emerging Markets Issues in Beijing in March 2017.³ At this event, the Czech Republic actively participated to express its support for forward-looking agenda taking technological advances such as distributed ledger and blockchain technologies, and their possible application into account. It highlighted possible advantages, and likewise many obstacles and particularly regulatory hurdles in adoption of blockchain technology.

Other opportunity for future work of UNIDROIT is inheritance of digital properties. The existence and expansion of digital assets raises questions regarding the treatment of digital assets at an account holder's death. Generally, specific laws and rules governing digital property are not adequately developed on national, nor international level, but a gap regarding address digital asset inheritance is particularly significant. There is one exception in a pioneering work of the Uniform Law Commission in the US. The Uniform Fiduciary Access to Digital Assets Act, which was completed by the Commission in 2014 (and revised in 2015),⁴ updates state fiduciary law for the Digital age. The act has been already introduced in the majority of the federal states. Therefore, it is slowly recognised on national level that legislation regulating digital assets and inheritance is becoming necessary, and it is only a matter of time, when this need will elevate on international level, because legal certainty in the area of international private law relations is highly desirable as well.

Technological innovations in UNCITRAL

As to the work of UNCITRAL, the Working Group III, where the Czech Republic was from the beginning one of the leaders of the discussion and proponent of the innovative technical solutions, successfully terminated its work and adopted the UNCITRAL Technical Notes on Online Dispute Resolution.⁵ As an example of the countries where an online dispute resolution justice system is already functioning see British Columbia's Civil Resolution Tribunal.⁶ Further developments in UNCITRAL concern the Working Group IV on "Electronic commerce" that finished its work on a UNCITRAL Model Law on Electronic Transferable Records,⁷ which should be approved by UNCITRAL in July 2017. This international instrument focuses on transferable documents or instruments which can be replaced by electronic transferable records. The main principles on which the Model Law is based are the principles of non-discrimination, technology neutrality, functional equivalence and party autonomy. The Model Law establish set of basic rules according to which it is possible to use electronic transferable records based on e.g. distributed ledgers, registry token or other technology in cross-border trade. The Czech Republic considers this instrument as

³ See <<http://www.unidroit.org/work-in-progress-studies/current-studies/emerging-markets>>.

⁴ Fiduciary Access to Digital Assets Act, Revised (2015), Uniform Law Commission, see <[http://www.uniformlaws.org/Act.aspx?title=Fiduciary%20Access%20to%20Digital%20Assets%20Act,%20Revised%20\(2015\)](http://www.uniformlaws.org/Act.aspx?title=Fiduciary%20Access%20to%20Digital%20Assets%20Act,%20Revised%20(2015))>.

⁵ A/CN.9/888, see <http://www.uncitral.org/pdf/english/texts/odr/V1700382_English_Technical_Notes_on_ODR.pdf>.

⁶ Civil Resolution Tribunal Act, see <http://www.bclaws.ca/civix/document/id/complete/statreg/12025_01>.

⁷ A/CN.9/WG.IV/WR.139, see <<http://undocs.org/A/CN.9/WG.IV/WR.139>>.

a major asset in development of effective tool for removal of administrative barriers which can be related to cross-border exchange of goods, e.g. for entrepreneurs in transportation of goods. Technology of blockchain will be also a subject of activity of UNCITRAL Working Group IV in the near future. On July's 50. UNCITRAL session the mandate for future work of working group IV was approved. It focuses on identity management and trust services issues. These two topics are closely related to technologies of sharing, verifying and transferring information such as blockchain. To further promote these topics a representative of the Czech Ministry of Industry and Trade led discussion on blockchain and smart contracts in session devoted to issues of "Developments in the law of international trade and commerce: Integrated systems to support cross-border trade" in a congress hosted by the UNCITRAL to celebrate its 50th anniversary in July 2017.⁸ Also on 25th November 2017 during the 15th Cyberspace Conference in Brno a special track will be devoted to the "Distributed Ledgers and the UNCITRAL Model Law on Electronic Transferable Records (MLETR)" sponsored by the Ministry of Industry and Trade and the UNCITRAL Secretariat.⁹

Withdrawal of the Czech Republic's declarations in the field of international sale of goods

In addition, the Czech Republic has completed internal procedure this year which lead to a withdrawal of the declaration of the Czech Republic to the United Nations Convention on Contracts for the International Sale of Goods (hereinafter referred as "CISG")¹⁰ and the declaration to the Additional Protocol to Convention on the Limitation Period in the International Sale of Goods (hereinafter referred as "Limitation Convention").¹¹ According to these declarations CISG and Limitation Convention could be used only in relations between subjects from the Contracting States.

At this occasion the Ministry of Industry and Trade in cooperation with the UNCITRAL Secretariat organized an international conference with the aim to promote the use of CISG and Limitation Convention, their application and uniform interpretation. This conference took place on 24th of March 2017 in Prague at Charles University Faculty of Law with participation of experts from academic sphere, advocacy, justice and public administration and abroad.¹²

In summary, the Czech Republic plays significant role in promotion of issue of modern technologies in specialised international legal forums as it believes that development of new legal instruments and setting international standards can enhance opportunities for Czech entrepreneurs abroad.

⁸ A/CN.9/XL/INF/2, see <http://www.uncitral.org/pdf/english/congress/Draft_Programme_Congress_300517.pdf>.

⁹ See <<http://cyberspace.muni.cz/programme/panels-and-topics>>.

¹⁰ United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980), see <http://www.uncitral.org/uncitral/en/uncitral_texts/sale_goods/1980CISG.html>.

¹¹ Convention on the Limitation Period in the International Sale of Goods (New York, 1974), see <http://www.uncitral.org/uncitral/en/uncitral_texts/sale_goods/1974Convention_limitation_period.html>.

¹² See <<https://www.mpo.cz/cz/rozcestnik/pro-media/tiskove-zpravy/mpo-usporadalo-mezinarodni-konferenci-k-umluve-osn-o-smlouvach-o-mezinarodni-koupi-zbozi-a-umluve-o-promlцени-pri-mezinarodni-koupi-zbozi-----227194/>>.