

Significance of UNCITRAL Deliberation

Why in news?

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India is about to participate in the deliberations at the United Nations Commission on International Trade Law (UNCITRAL).

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What is the UNCITRAL deliberations about?

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- Commercial disputes are resolved not only through courts and arbitration but also through mediation.

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- The deliberations will consider how these settlement agreements in disputes in international commercial transactions will be implemented by courts in different countries.

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- UNCITRAL has formulated principles on which countries should recognise and enforce mediation agreements arising from cross-border disputes.

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- Once formalised, countries will have a consistent framework for enforcing mediation agreements made in other countries.

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How UNCITRAL draft convention works?

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- The convention will link laws adopted by countries to recognise domestic mediation and extend them beyond their boundaries.

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- It defines mediation as a “process whereby parties attempt to reach an amicable settlement of their dispute with the assistance of a third person (the mediator).
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- Courts of a country before which a mediated settlement agreement is brought must ensure implementation of the terms of settlement.
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- The courts will allow a party to a settlement agreement to rely on this agreement as a defence in cases filed on the basis of disputes already settled by the agreement.
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- When the settlement agreement comes up before the court for implementation or enforcement, the court will review it on the basis of certain conditions.
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- Once the agreement has been reviewed, the court must enforce the agreement on the terms agreed, Courts can decline enforcement only on these conditions.
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- The importance of the draft convention is in the identification of these conditions after careful deliberation.
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- Mediated settlement agreements typically don’t need court assistance for enforcement since the terms of settlement have been chosen and determined by the parties.
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What are the existing concerns to India in dispute resolution?

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- India has lost substantial earnings as a result of international disputes being taken for resolution outside the country.
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- International transactions involve the application of different laws, by virtue of the persons from different countries being involved, or their undertaking a business in a third country.
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- Due to this there are various policy gap on outcomes from the mediation process involving cross-border disputes.
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How this draft convention will resolve India's issues?

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- Strengthening the dispute resolution policies will encourage dispute resolution in India.

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- By this definitive legal framework businesses will be encouraged to consider mediation in managing and resolving disputes that arise in their commercial transactions.

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- This convention comes the certainty that settlement agreements through mediation will be acknowledged as a resolution of the dispute, and will be respected and enforced.

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- The convention is opportune to India and will facilitate legal reform to ease dispute resolution.

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Source: The Hindu

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