



## **The revised WTO GPA: an emerging pillar of twenty-first century trade and development**

**Policy coherence - The 2011 UNCITRAL Model Law on Public Procurement: synergies and complementarities with the revised GPA**

**Symposium, WTO, Geneva, 17-18 Sept. 2015**

Caroline Nicholas

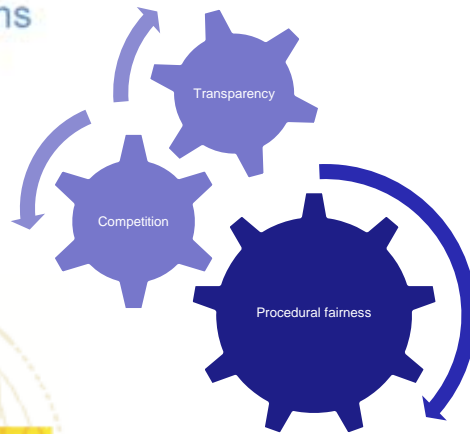
UNCITRAL Secretariat

September 2015

# The 2011 UNCITRAL Model Law on Public Procurement: synergies and complementarities with the revised GPA



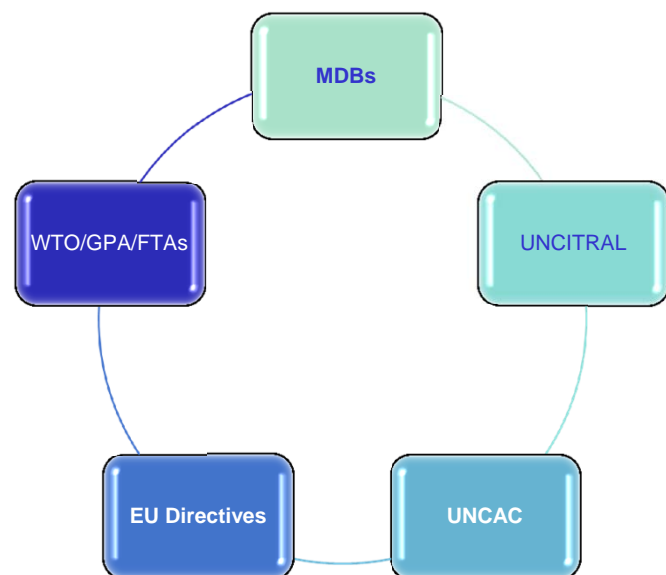
## UNCITRAL & the WTO



- Promoting international trade
  - Non-discrimination
- State-to-State relations
- Private law transactions
  
- Active in public procurement since 1980s
  
- Harmonisation of public procurement law at the national level
- Minimum standards of transparency, competition and objectivity/procedural fairness



# The 2011 UNCITRAL Model Law on Public Procurement: synergies and complementarities with the revised GPA



National systems are generally based on one or more of these texts

## International legal framework for PP

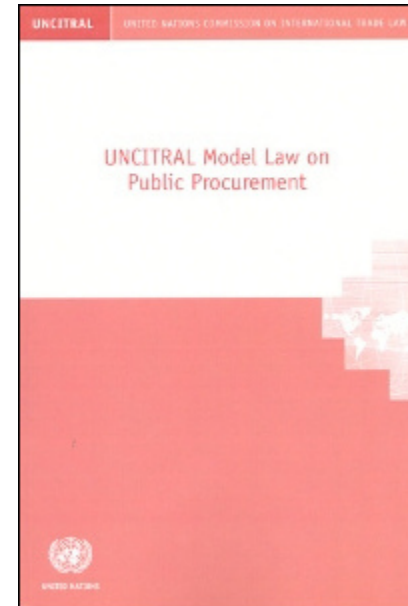
- UN Convention Against Corruption
- WTO GPA (& regional FTAs)
- UNCITRAL Model Law on Public Procurement
- EU Directives
- MDBs Policies/Rules



# The 2011 UNCITRAL Model Law on Public Procurement: synergies and complementarities with the revised GPA

## The UNCITRAL Model Law

- UNCITRAL mandate: to further the progressive harmonization and unification of the law of international trade
- Purpose of Model Law: a model for *national* procurement legislation



- Universal application
  - Main consumers: economies in transition/developing countries
- Covers all “public procurement”

# The 2011 UNCITRAL Model Law on Public Procurement: synergies and complementarities with the revised GPA

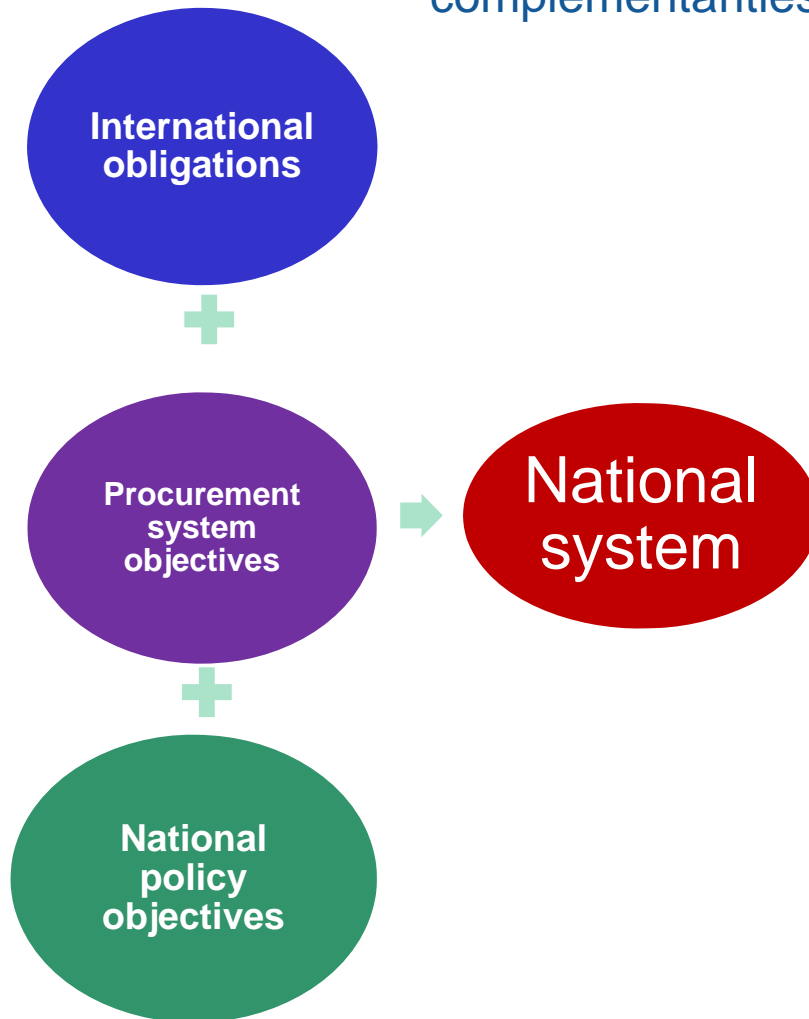
## The GPA

- Objective: multilateral framework for government procurement ... [to achieve] greater liberalization and expansion of world trade



- Minimum procedural standards for member countries' national systems
- Agreement on “covered procurement”
- Plurilateral text

## The 2011 UNCITRAL Model Law on Public Procurement: synergies and complementarities with the revised GPA



### Why both GPA and UNCITRAL?

- UNCITRAL designed Model Law to be compatible with GPA
- UNCITRAL main focus
  - Appropriate procedures at the national level
  - Default rule – open procurement
  - No thresholds
- GPA main focus
  - Non-discrimination through binding State-to-State agreements
  - Larger procurements
  - Implementation through procedures

# The 2011 UNCITRAL Model Law on Public Procurement: synergies and complementarities with the revised GPA

## Objectives

- UNCITRAL: economy and efficiency, participation and competition, fair and equitable treatment, integrity, public confidence, transparency
- GPA “cornerstone principles”: non-discrimination, transparency
- Openness

Implemented through norms at the national level



# The 2011 UNCITRAL Model Law on Public Procurement: synergies and complementarities with the revised GPA

## Scope and nature of national (Model) Law

- A framework law: all essential principles, rules and procedures
- For a *national* system
- Flexible, non-prescriptive

Law = skeleton of system, which also needs

- Procurement regulations, additional rules
- Supporting infrastructure and institutions
- Guidance on implementation and use
- Rules and guidance on planning and contract management

*All these are discussed in detail in the Guide to Enactment and other UNCITRAL documents*





## The 2011 UNCITRAL Model Law on Public Procurement: synergies and complementarities with the revised GPA

- Both GPA and UNCITRAL focus on transparency, competition and objective criteria in decision-making/procedural fairness



For example

- Full prior disclosure of terms of procurement
  - Needs description
  - Who can participate
  - How winner will be determined
  - Main contract terms
- Mandated procedures
- Public award notice
- Public challenge/review mechanism

## The 2011 UNCITRAL Model Law on Public Procurement: synergies and complementarities with the revised GPA

### Government socio-economic or horizontal policies



- Conflict with national treatment, non-discrimination and special and differential treatment?
  - UNCITRAL permits eg price preferences, only for declared national policies
  - GPA: available for below-threshold procurement/non-covered procurement
  - Under both texts, requirement for transparency in application
  - Concept of temporary measures

# The 2011 UNCITRAL Model Law on Public Procurement: synergies and complementarities with the revised GPA



## Relationship between UNCITRAL ML and GPA

- Consistent policy objectives
- Consistent procedures
- Hence UNCITRAL Model Law can be used as one way to fulfil GPA legal requirements
- and as a template for the more detailed needs of a national system
  
- Secretariats and other donors working together in partnership

[Home](#)

[About UNCITRAL](#)

[Commission Documents](#)

[Working Group Documents](#)

[Colloquia Materials](#)

[General Assembly Resolutions & Related Documents](#)

[UNCITRAL Texts & Status](#)

[International Commercial Arbitration & Conciliation](#)

[International Sale of Goods \(CISG\)](#)

[Security Interests](#)

[Insolvency](#)

[International Payments](#)

[International Transport of Goods](#)

[Electronic Commerce](#)

**[Procurement & Infrastructure Development](#)**

## Procurement & Infrastructure Development

### Model laws

- [UNCITRAL Model Law on Public Procurement \(2011\)](#)
  - [Guide to Enactment \(2012\)](#)
  - [Guidance on Procurement Regulations \(2013\)](#)
  - [Glossary \(2013\)](#)
- [UNCITRAL Model Law on Procurement of Goods, Construction and Services \(1994\)](#)
- [UNCITRAL Model Law on Procurement of Goods and Construction \(1993\)](#)

### Legislative guides and recommendations

- [UNCITRAL Legislative Guide on Privately Financed Infrastructure Projects \(2000\)](#)

### Model provisions

- [UNCITRAL Model Legislative Provisions on Privately Financed Infrastructure Projects \(2003\)](#)

### Explanatory texts

- [UNCITRAL Legal Guide on Drawing Up International Contracts for the Construction of Industrial Works \(1987\)](#)

The 2011 UNCITRAL Model Law on Public Procurement: synergies and complementarities with the revised GPA

For more information

[http://www.uncitral.org/uncitral/uncitral\\_t\\_exts/procurement\\_infrastructure.html](http://www.uncitral.org/uncitral/uncitral_t_exts/procurement_infrastructure.html)

[caroline.nicholas@uncitral.org](mailto:caroline.nicholas@uncitral.org)



THANK YOU