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The UNCITRAL Model Law on Public Procurement: Potential Next Steps

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By Christopher Yukins & Caroline Nicholas[1]

1. Introduction

The current version of the Model Law on Public Procurement was approved by the United Nations Commission on International Trade Law (UNCITRAL) in 2011, after a drafting process which spanned nearly a decade.[2] This version of the Model Law reflects best practices which were emerging in procurement systems across the world during the first decade of this century. There have been calls for an update of the Model Law, and this chapter, after reviewing the history of the Model Law and the reforms which led to the current version,[3] discusses various reforms which might be made to the text and accompanying guidance, based on newly emerging best practices. Those possible next steps include reforms to address environmental sustainability (sometimes known as 'green procurement'), expanding the Model Law to address issues of contract administration, updated provisions on exclusion and debarment of corrupt and incompetent contractors, and pivoting to embrace 'open contracting', which treats public procurement data as presumptively publicly accessible. Should the Commission take up reform of the Model Law or decide to update the accompanying guidance, these measures could bring significant advances in reducing global warming, fighting corruption, enhancing transparency and improving outcomes in public contracting.

2. Brief History of the UNCITRAL Model Law on Public Procurement

At its nineteenth session, in 1986, UNCITRAL decided to undertake work regarding a model code for public procurement.[4] The UNCITRAL Model Law on Procurement of Goods

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[2] General Assembly resolution 66/95 (9 Dec. 2011). The *UNCITRAL Model Law on Public Procurement* (2011) is available online at <https://uncitral.un.org/en/texts/procurement/modellaw/public_procurement> accessed 27 Nov. 2022.

[3] See Caroline Nicholas, *Work of UNCITRAL on government procurement: Purpose, objectives and complementarity with the work of the WTO,* in S Arrowsmith & R Anderson, eds, *The WTO Regime on Government Procurement: Challenge and Reform*, pp.746-72 (Cambridge University Press 2011).

[4] See UN Doc. A/CN.9/291, *International procurement: note by the secretariat* (1987).

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and Construction, and its accompanying Guide to Enactment, were adopted by the Commission in July 1993. Thereafter, with work completed on model statutory provisions on procurement of goods and construction, the Commission decided to proceed with developing model statutory provisions on procurement of services. Accordingly, in 1994, the Commission discussed additions and changes to the Model Law on goods and construction that would be needed to encompass procurement of services, and adopted the UNCITRAL Model Law on Procurement of Goods, Construction and Services.[5] The 1993 edition of the UNCITRAL Model Law on Procurement of Goods and Construction was thus effectively superseded by the 1994 Model Law, which added provisions on services, and which as Professor Arrowsmith has noted, was 'one of the most successful of UNCITRAL's instruments, . . . and has been used in numerous states worldwide as the basis for legal reform'.[6] In 2003, and against the backdrop of important developments internationally in the regulation of procurement, the UNCITRAL Secretariat proposed a review (and possible update) of the 1994 text.[7] The update proposed in 2003 was to draw upon other advances in the field, including notably 'the preparation of an international convention against corruption [the UN Convention Against Corruption (UNCAC)] . . . and the negotiations under the auspices of the World Trade Organisation and other international and regional organisations' which led to, among other things, the WTO Agreement on Government Procurement (GPA).[8]

There were two important elements of the 2003 proposal: to allow for the then-emerging use of electronic procurement ('e-procurement'), and to take account of practical experience gained in the use of the Model Law. The Commission endorsed the proposal, suggested that UNCITRAL could formulate 'best practices, model contractual clauses and other forms of practical advice, in addition or as an alternative to legislative guidance', and underscored the importance of collaboration with other organisations engaged in public procurement law reform.[9]

The UNCITRAL Model Law was not, of course, written or revised in a vacuum. In addition to the adoption of the UNCAC and the GPA, the American Bar Association (ABA) had produced a Model Procurement Code for use by state and local governments across the United States in 1978, which was updated in 2000.[10] The European Union had issued a succession of directives governing public procurement, which defined minimum requirements for Member States' procurement laws and served as a model for procurement

[5] UNCITRAL, *Guide to Enactment of UNCITRAL Model Law on Procurement of Goods, Construction and Services*, paras. 1-2 (1994); see *United Nations Commission on International Trade Law: Model Law on Procurement of Goods and Construction,* 33 Int'l Leg. Materials 445, 445-46 (1994) (history and purpose of the Model Law); Christopher R. Yukins, *A Case Study in Comparative Procurement Law: Assessing UNCITRAL's Lessons for U.S. Procurement*, 35 Pub. Cont. L.J. 457, 457–58 (2006).

[6] Sue Arrowsmith, *Preface*, in S Arrowsmith, ed, *Public Procurement Regulation in the 21st Century: Reform of the UNCITRAL Model Law on Procurement* (West 2009).

[7] UN Doc. A/CN.9/539, *Note by the Secretariat: Current activities of international organisations in the area of public procurement: possible future work* (30 Apr. 2003); UN Doc. A/CN.9/539 Add. 1.

[8] UN Doc. A/58/17, *Report of the United Nations Commission on International Trade Law on its thirty-sixth session*, 30 June-11 July 2003, ¶ 30 (2003).

[9] UN Doc. A/59/17, *Report of the United Nations Commission on International Trade Law on its thirty-seventh session*, 14-25 June-11 July 2004, ¶ 81 (2004).

[10] American Bar Association, *The Model Procurement Code for State and Local Governments* (2000).

systems outside the European Union, as well.[11] Finally, the World Bank's procurement guidelines, while not binding or a 'model' in the strictest sense, also helped define what were considered best practices in public procurement internationally.[12]

3. Revision of the UNCITRAL Model Procurement Law, 2003-2012

To set the stage for the revision of the 1994 Model Law, Professor Sue Arrowsmith, one of the world's leading academics in public procurement law, prepared a set of recommendations for reform which were ultimately published in the *International and Comparative Law Quarterly*.[13] Her recommendations drew on a number of international examples, including ongoing advances in the European Union and proposed revisions to the World Trade Organisation's GPA, the leading international trade instrument on public procurement.

Professor Arrowsmith's article, and the reforms of the UNCITRAL Model Law it helped trigger, in many ways marked a turning point in public procurement law. Before the UNCITRAL Model Law's reforms, there was serious discussion of creating more rigid structures for public procurement laws worldwide, in part to reduce trade barriers caused by differences in procurement laws between nations.[14] The changes to the 1994 UNCITRAL Model Law, which drew on best practices emerging in parallel in procurement systems around the world, helped open a new approach to procurement law reform, one that relied not on uniformity of laws but rather on shared best practices. Thus, though harmonisation through model laws can be approached more narrowly – as 'the process through which domestic laws may be modified to enhance predictability in cross-border commercial transactions'[15] – the 2003-2012 reforms helped transform the UNCITRAL Model Law into a 'toolbox' of best practices gathered from a rapidly evolving, global public procurement community.

As part of this global approach to procurement, Professor Arrowsmith and others urged that the UNCITRAL Model Law be written in accord with key international instruments such as the WTO Agreement on Government Procurement and the World Bank's procurement guidelines. By suggesting that global legal instruments in procurement should complement the Model Law – in essence, that the Model Law, conventions and trade agreements should fit together in a sensible latticework of rules and guidance – those working on the UNCITRAL review helped reshape a broader understanding of the other instruments as well. Traditionally, it was possible to look at each instrument in isolation, as a tool to accomplish a particular goal such as liberalising trade or fighting corruption. By insisting that the instruments be made to work together to accomplish a common goal – improved public

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[11] Eg European Commission, *EU Public Procurement Directives* <https://ec.europa.eu/environment/gpp/eu_public_directives_en.htm> accessed 6 November 2022.

[12] See Christopher R. Yukins & Sope Williams-Elegbe, *The World Bank's Procurement Framework: An Assessment of Aid Effectiveness* in A La Chimia & P Trepte, eds, *Public Procurement and Aid Effectiveness* (Hart 2019).

[13] Sue Arrowsmith, *Public Procurement: An Appraisal of the UNCITRAL Model Law as a Global Standard*, 53 Int'l & Comp. L.Q. 17 (2004).

[14] Eg Attila Kovacs, *The Global Procurement Harmonisation Initiative,* 2005 Pub. Proc. L. Rev. 1.

[15] UNCITRAL, *Frequently Asked Questions: Mandate and History* <https://uncitral.un.org/en/about/faq/mandate_composition/history> accessed 27 Nov. 2022.

procurement – those working on reform of the UNCITRAL Model Law helped put these instruments into a new light, not as mere legal requirements, but rather as vital foundation stones in an evolving legal order designed to support public goals.[16]

The reformers' shared understanding that procurement laws were advancing along a common front with parallel functions[17] and purposes[18], and thus could draw lessons from one another, made it clear that the UNCITRAL Model Law could reflect best practices from around the world. Indeed, the process through which UNCITRAL develops its texts was designed to operate precisely in this way.[19] The UNCITRAL Model Law, in other words, could become a 'toolkit' of gathered global best practices in procurement, and thus could serve as a tool for development as well as for harmonisation. As a result, though Professor Arrowsmith modestly stated in her ground-breaking article that she was suggesting only 'limited reforms'[20], in fact her recommendations, and the sweeping reforms which were advancing in the world of public procurement, helped open the door to a broad rewriting of the Model Law.

In part because the members of the UNCITRAL Working Group and experts brought with them extensive practical experience in procurement, many of the reforms went to the heart of the Model Law -- the competitive mechanics of procurement.

Traditionally, public procurement systems relied heavily on 'open tendering' (known as 'sealed bidding' in the US federal system).[21] Although open tendering remains the preferred competitive method in the European Union's Member States in the vast majority

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[16] See Sue Arrowsmith, *Legitimate Expectations and Judicial Review in Contract Award Procedures: A Note on R v The Lord Chancellor, ex parte Hibbitt & Sanders*, 1993 Pub. Proc. L. Rev. CS104 (discussing possible remedies in private law if no remedies are available to vendors in public law); Sue Arrowsmith, *Enforcing the EC Public Procurement Rules: The Remedies System in England and Wales,* 1992 Pub. Proc. L. Rev. 92.

[17] See Ralf Michaels, *The Functional Method of Comparative Law* (discussing 'functionalist' approach to comparative law study, which looks to common functions in different legal regimes and does not necessarily assume that any one approach is superior), in M Reimann & R Zimmerman, eds, *The Oxford Handbook of Comparative Law* 347-48 (2d ed. 2019).

[18] *See* Arrowsmith (n 13) at 18 (citing, *inter alia,* Steven L. Schooner, *Desiderata: Objectives for a System of Government Contract Law*, 2002 Pub. Proc. L. Rev. 103).

[19] *See*, for more detail, the discussion of UNCITRAL's working methods available at https://uncitral.un.org/en/about/methods/officialdocs, and a discussion of their application in *Remarks of John Honnold, Uniform Commercial Law in the Twenty-first Century: Proceedings of the Congress of the United Nations Commission on International Trade Law,* New York, 18-22 May 1992, available from <http://www.uncitral.org/uncitral/en/commission/colloquia_general.html> accessed 1 Dec. 2022.

[20] Arrowsmith (n 13) at 18. Professor Arrowsmith suggested that these reforms 'could not only increase the Model Law's value in developing and transition economies, which have been its main area of influence so far, but also make it more relevant for developed countries, thus securing its status as a truly global model.' *Ibid.*

[21] The Model Law is accompanied by a *Glossary of procurement terms used in the Model Law*, also setting out equivalent terms used in relevant international instruments and national laws, available at <https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/glossary-e.pdf> accessed 1 Dec. 2022.

of larger procurements,[22] open tendering is used relatively rarely in the U.S. federal system which (as is discussed below) relies much more on multilateral negotiations (called 'competitive negotiations'[23] in the U.S. government's procurement system). Under the open tendering method, bidders typically offer competing prices against a carefully defined set of government specifications, and the lowest bid wins.[24] Though the 2011 Model Law still mandates open tendering as the default procurement method, the law permits procuring entities to use other procurement methods where justified and under certain circumstances, such as for procurement of complex items or services, or for repeated or indefinite procurement.[25]

Unlike procurement in the Member States of the European Union, and in part because of the complex weapons systems and services purchased by the U.S. government, the U.S. government at the federal level uses multilateral competitive negotiations (analogous to 'requests for proposals with dialogue' under Article 49 of the UNCITRAL Model Law)[26] in the majority of procurements.[27] The U.S. experience, coupled with a small but growing acceptance of a similar procedure ('competitive dialogue') in the European Union, were cited in the discussions which led to inclusion of multilateral negotiations ('requests for proposals with dialogue') in the 2011 UNCITRAL Model Law. While some were concerned that multilateral negotiations could increase the risks of corruption in procurement (because, for example, direct negotiations can open opportunities for bribery), the UNCITRAL Model Law ultimately was amended to accommodate 'requests for proposals with dialogue' because of a recognition that multilateral negotiations, an emerging sound practice globally, are an effective way for a public purchaser to probe the range of technical solutions and prices available in the market for more complex goods and services. A few years after the 2011 Model Law incorporated 'requests for proposals with dialogue', the World Bank also made competitive dialogue (the World Bank's term for multilateral negotiations) part of the Bank's 2016 Procurement Framework.[28]

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[22] Eg European Commission, *Study on the measurement of cross-border penetration in the EU public procurement market* 68 (Mar. 2021).

[23] Federal Acquisition Regulation Part 15, 48 U.S. Code Fed. Reg. Part 15.

[24] A typical formulation of the basis for award under open tendering is set forth in the Organisation of American States' standard bidding document for open tendering for goods, at clause 31.1: '[T]he Purchaser will award the contract to the successful Bidder whose Bid has been determined to be substantially responsive and has been determined to be the lowest evaluated Bid, provided further that the Bidder is determined to be qualified to perform the contract satisfactorily'. This means in substance that award will be made to bidder whose bid commits to meet the material technical requirements ('substantially responsive') and who offers the lowest price ('lowest evaluated Bid'), and who is 'qualified', ie meets the procuring entity's stated requirements as to business integrity and capacity.

[25] UNCITRAL, *Guide to Enactment of the UNCITRAL Model Law on Public Procurement* 36-37 (2014).

[26] The Model Law also has a procurement method called 'competitive negotiations', which is different from that used by the U.S. government, and under the Model Law is available in limited circumstances similar to those justifying single-source procurement.

[27] Christopher R. Yukins, *The U.S. Federal Procurement System: An Introduction*, 2017 Upphandlingsrattslif Tidskrift 69, 82.

[28] See eg World Bank, *Competitive Dialogue: How to undertake a Competitive Dialogue Procurement Process* (Oct. 2017).

The 2011 UNCITRAL Model Law also newly addressed 'framework agreements' -- catalogue-type contracts used by public purchasers to make repetitive purchases of goods and services from selected vendors.[29] Framework agreements (sometimes called 'indefinite-delivery/indefinite-quantity' contracts in the United States) came of age in the U.S. in the 1990s and subsequently in European Union Member States' procurement systems.[30] In a common form of framework arrangement, once a public purchaser has entered into a master framework agreement with a vendor, the purchaser (or other designated public purchasers) can order directly from the agreement or can, in a second stage of competition (potentially among several vendors holding framework agreements), negotiate more favourable prices or terms. The 2011 UNCITRAL Model Law, drawing on emerging best practices internationally, helped formalise different approaches to framework contracting (such as 'closed' agreements which are limited to accepted vendors, and 'open' framework agreements which will accommodate additional vendors). The 2011 Model Law's treatment of framework agreements was an example of gathering best practices from around the world, and distilling those into a Model Law for national governments to implement into their national systems. The *Guide to Enactment* was also significantly expanded and updated to facilitate the effective use and implementation of the Model Law – and was therefore particularly relevant for novel techniques, such as framework agreements.

The 2011 Model Law and its accompanying *Guide to Enactment* reflected a comprehensive effort and covered reforms in a wide range of topics, from electronic reverse auctions and abnormally low tenders to socioeconomic preferences and anti-corruption measures.[31] These texts have made it easier to transfer emerging best practices to a wider world, to allow countries at all stages of development to benefit from the globe's evolving approaches to procurement.[32] Best practices have continued to advance since 2011, and the next section assesses possible next steps if the UNCITRAL Model Law were to be updated.

4. Potential Next Steps for the UNCITRAL Model Procurement Law

As the revisions that led to the current version of the UNCITRAL Model Law showed, future reforms to the Model Law are likely to build upon emerging best practices. Since 2011, there have been important advances that go beyond the current Model Law, for example in sustainability (especially environmental sustainability, sometimes called 'green' procurement), contract administration (a topic which was raised but not taken up in the 2011 version), contractor exclusion and debarment, and open contracting. Each of these is addressed in turn below.

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[29] Eg Gian Luigi Albano & Caroline Nicholas, *The Law and Economics of Framework Agreements: Designing Flexible Solutions for Public Procurement* (Cambridge Univ. Press 2016).

[30] See Christopher R. Yukins, *Are IDIQs Inefficient? Sharing Lessons with European Framework Contracting*, 37 Pub. Cont. L.J. 545 (2008).

[31] See eg Arrowsmith (n 6). For a compendium of UN reports from the 2004-2012 reforms, see UNCITRAL, *2004-2012: Procurement* <https://uncitral.un.org/en/working_groups/1/procurement> accessed 27 Nov. 2022.

[32] See eg S de la Harpe, *Procurement Under the UNCITRAL Model Law: A Southern Africa Perspective,* 2015 Potchefstroom Elec. L.J. 1571; Alejandro Sarria, *The Future of Public Procurement Law in Cuba: Why the UNCITRAL Model Law Is Havana's Best Option,* 37 Pub. Cont. L.J. 89 (2007).

4.1 Environmental Sustainability for Public Procurement

The *Guide to Enactment* which accompanied the 2011 Model Law noted that the term 'sustainable procurement' can be used 'as an umbrella term for pursuit of social, economic and environmental policies through procurement'.[33] While the 2011 Model Law addressed socio-economic requirements generally in Article 30, since then there have been significant advances internationally in addressing *environmental* issues -- primarily issues of global warming -- through procurement. The Organisation for Economic Cooperation and Development (OECD) reports that almost all OECD countries have developed strategies or policies to support green public procurement (GPP), and that 69% of OECD countries are measuring results of GPP policies and strategies.[34] Because of global warming's pressing importance, and the role that public procurement can play in reshaping markets to improve environmental outcomes, future reforms of national laws based on the UNCITRAL model procurement law might address this issue of 'green public procurement' in a more holistic and targeted way than the Model Law and *Guide to Enactment* currently envisage.

Over the past few decades a number of strategies have emerged worldwide for using public procurement as a tool in reducing environmental impacts,[35] including:

- **Incorporating environmental considerations into acquisition planning:** This approach relies on careful attention to environmental impacts during the acquisition planning process. In one example of this approach, the Austrian government and cooperating organisations developed strategies to incentivise private firms to recommend approaches that would reduce the environmental impacts of public road-building.[36] In another example, Brazil revised its procurement laws to require that environmental considerations play a more prominent role in the procurement planning process.[37]

- **Taking into account vendors' efforts to assess and report the environmental impacts of their products and services as part of vendor qualification:** Another approach is to focus on vendor qualification for award ('responsibility' in the U.S. vernacular) in order to encourage environmental sustainability in procurement, and to favour finding qualified those firms that measure (for example) the greenhouse gas emissions attributable to their goods and services. This approach in practice may lend an advantage to larger firms,

[33] *Guide to Enactment* (n 25) p. 5.

[34] OECD, *Green Public Procurement* <www.oecd.org/gov/public-procurement/green/> accessed 11 Nov. 2022.

[35] See eg Steven L. Schooner, *No Time to Waste: Embracing Sustainable Procurement to Mitigate the Accelerating Climate Crisis*, 61 Contract Management, Issue 12, page 24 (December 2021). For a discussion of how to assess sustainable procurement strategies embedded in procurement systems, see Methodology for Assessing Procurement Systems (MAPS), *Sustainable Public Procurement,* Supp. Mod. Vers. 2 (Mar. 2021).

[36] OECD, *Going Green: Best Practices for Sustainable Procurement* 33-35 (2015).

[37] See eg Gabriel Cozendey & Joana Chiavari, *The New Bidding Law Offers Opportunities to Improve Infrastructure Projects and Prevent Socio-Environmental Impacts* (Rio de Janeiro, Climate Policy Initiative, 2021) <https://www.climatepolicyinitiative.org/wp-content/uploads/2021/05/NT-The-New-Bidding-Law.pdf> accessed 20 Nov. 2022.

which are (at least in theory) better able to absorb the costs of assessing the environmental impacts of their goods and services.[38] In November 2022, the U.S. government proposed a rule which would apply this strategy in a way that focused on greenhouse gas emissions by contractors which receive substantial revenue streams from the U.S. government. Under the proposed 'Federal Supplier Climate Risks and Resilience Rule', federal contractors with more than USD$7.5 million in annual contracts would be required to disclose certain greenhouse gas emissions and climate-related financial risks publicly, and to set scientifically based emissions reduction targets. Under the proposed rule, a covered vendor would be considered presumptively 'non-responsible' (ie, excluded as unqualified for award by a contracting officer) unless the vendor inventoried and disclosed its annual greenhouse gas (GHG) emissions. A core goal of this approach is to gather open and verifiable data on the environmental impacts of vendors' goods and services, so that those impacts can be assessed and evaluated in public contract planning, awards and administration. As the prefatory comments to the proposed rule noted, the 'foundation to properly analyse and mitigate climate risks is public and standardised disclosure, which will enable the Federal Government to conduct prudent fiscal management of all major Federal suppliers'.[39]

- **Assessing environmental impacts as part of life-cycle costs in evaluating for contract award**: Another approach attempts to predict the costs of environmental impacts over the life of a project, so that those prospective costs can be evaluated as part of a best-value award decision. As the European Commission has noted, life-cycle costing (LCC) 'means considering all the costs that will be incurred during the lifetime of the product, work or service,' including purchase, operating and end-of-life costs. Life-cycle costs, 'may also include the cost of externalities (such as greenhouse gas emissions).' The European Union's 2014 procurement directives 'require that where LCC is used, the calculation method and the data to be provided by tenderers are set out in the procurement documents,' and specific rules apply 'regarding methods for assigning costs to environmental externalities, which aim to ensure that these methods are fair and transparent'.[40]

- **Requiring that products or services include a certification or other confirmation (an 'eco-label', for example) reflecting environmental attributes:** A number of procurement regimes already use 'eco-labels', which

[38] See eg Working Group 3C of the 10YFP Sustainable Public Procurement Programme, *Promoting the Participation of Small and Medium Size Enterprises (SMEs) in Green Public Procurement*, at 27 (Sylvia Aguilar, coordinator, Dec. 2016).

[39] 87 Fed. Reg. 68312, 68312 (14 Nov. 2022). The prefatory comments to the proposed rule note that thirty-one percent of 'major' contractors (those receiving with more than USD$50 million in annual contracts) already report disclosing their greenhouse gas (GHG) emissions through the U.S. government's System for Award Management (SAM), an online repository of contractor qualification data. *Ibid.*

[40] European Commission, *Life-Cycle Costing* <https://ec.europa.eu/environment/gpp/lcc.htm> accessed 11 Nov. 2022.

are typically market sector-based certifications confirming that, for example, a particular good meets common environmental or energy-use standards.[41] Both the European Union's procurement directives and the US Federal Acquisition Regulation, for example, endorse the use of distinctive 'eco-labels' in awarding contracts; the US regulation technically makes those 'eco-labels' mandatory for ninety-five percent of procurements, though in fact that requirement is seldom fulfilled.[42] A common first step in environmental sustainability, eco-labels have gained broader use in countries across the world, according to a 2017 survey by the United Nations.[43] Although environmental preferences can in practice raise trade barriers, in the European Union extensive caselaw in the Court of Justice for the European Union and provisions in the European procurement directives allow for the use of eco-labels.[44] A related strategy is for the procuring entity's technical requirements to call for recycled products, for example, or for certain types of papers or inks which are more environmentally sound.[45]

- **Weighing environmental impacts, such as greenhouse gas emissions, in technical evaluations for award:** A potentially very powerful strategy is to make greenhouse gases an evaluation factor in award.[46] Japan, for example, undertook successful efforts to build environmental evaluation factors into the

[41] Eg Center for American Progress, *It's Easy Being Green: The Meaning of Eco-Labels* (12 Aug. 2009), <https://www.americanprogress.org/article/its-easy-being-green-the-meaning-of-eco-labels/> accessed 12 Nov. 2022.

[42] Eg Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement, Recital (75), OJ L 94, 28.3.2014, p. 65–242; Federal Acquisition Regulation 23.103, 48 Code Fed. Reg. § 23.103 (2022).

[43] See UN Environment, *Factsheets on Sustainable Public Procurement in National Governments - Supplement to the Global Review of Sustainable Public Procurement*, at IX (2017); UN Environment Programme, *Comparative Analysis of Green Public Procurement and Ecolabelling Programmes in China, Japan, Thailand and the Republic of Korea: Lessons Learned and Common Success Factors* (2017), <https://www.oneplanetnetwork.org/sites/default/files/from-crm/comparative_analysis_gpp_180917_web.pdf> accessed 20 Nov. 2022.

[44] See eg Vilhelmiina Ihamäki, Eva van Ooij & Stefan van der Panne, *Green Public Procurement in the European Union and the Use of Eco-Labels*, <https://www.maastrichtuniversity.nl/sites/default/files/2014/Green_Public_Procurement_in_the_European_Union_and_the_Use_of_Eco-Labels.pdf> accessed 20 Nov. 2022; Bogdana Neamtu & Dacian Dragos, *Sustainable Public Procurement: The Use of Eco-Labels*, 2015 EPPPL 92.

[45] Eg National Association of State Procurement Officials, *NASPO Green Purchasing Guide* <www.naspo.org/green-purchasing-guide> accessed 11 Nov. 2022.

[46] See eg Schooner (n. 35) 27 (calling for solicitations to 'require at least some consideration of the social cost of greenhouse gas emissions and, where appropriate and feasible, give preference to offerors projecting a lower social cost' in greenhouse gas emissions); U.S. General Services Administration, *Executive Order 13514 Section 13: Recommendations for Vendor and Contractor Emissions* 35 (April 2010) ('It is feasible to use purchasing preferences or other incentives based on either corporate-level or product-level GHG emissions data. However, implementing any preference program based on GHG emissions data cannot be accomplished until a sufficient number of suppliers are reporting data and there is a reliable process for incorporating that data into the acquisition system.').

purchase of fire extinguishers, within the framework of national laws and policies calling for 'green' procurement.[47]

- **Excluding contractors that have failed to honour environmental requirements:** Another approach is to exclude or debar those vendors that fail to meet environmental requirements. In the U.S. system, for example, violators of the Clean Air Act or the Clean Water Act face debarment.[48] This approach is complicated by the dual goals at play: the offending vendor may be excluded to encourage compliance with the environmental statute, or more broadly to rid the public procurement system of vendors which lack sufficient management controls.

As the discussion above reflects, environmentally sustainable ('green') public procurement is advancing around the world, under a common imperative to address global warming and other environmental issues. But the law regarding environmentally sustainable procurement is not progressing at a uniform pace globally, in part because of differences in resources and also because of a lack of broadly accepted legal models for green procurement. While these approaches are enabled by the provisions of the 2011 Model Law, those provisions reflect that the 'green' procurement measures were exceptional in the early 2000s. More articulate guidance in the *Guide to Enactment*, emphasising that the approaches reflect both the mainstream in procurement practice and key government policy goals, could facilitate future 'green' procurement efforts. Updating the *Guide* to this effect, by drawing on best practices from around the world (and conceivably including additional provisions in the Model Law), would provide a common and well-defined legal framework for environmentally sustainable procurement.

4.2 Contract Administration

Although UNCITRAL had in the 1980s considered publishing model clauses for administration of major construction contracts[49], the 1994 and 2011 UNCITRAL Model Laws instead focused on issues of public contract *formation* and not *administration.* Professor Arrowsmith suggested in her 2004 article that the Model Law might be extended to issues of contract administration as well[50], but, as the *Guide to Enactment* explained, the 2011 Model Law ultimately did 'not purport to address the procurement planning, or contract performance or implementation phase.' Accordingly, the *Guide* explained, 'issues such as . . .

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[47] See Green Purchasing Center Malaysia, *A Sampling of Successes in Green Public Procurement -- Case Studies of Green Public Procurement Implementation in Asia-Pacific Countries* 20-26 (2017) <https://www.oneplanetnetwork.org/sites/default/files/from-crm/case_studies_140317_web.pdf> accessed 20 Nov. 2022; see also Organisation for Economic Cooperation & Development, S*mart Procurement: Going Green -- Best Practice for Green Procurement* 24-34 (2015) (lessons learned from Estonia, Netherlands, Austria and Denmark in using environmental sustainability as an evaluation factor for award).

[48] Congressional Research Service, *Procurement Debarment and Suspension of Government Contractors: Legal Overview* 2-3 (2015).

[49] Eg UN Doc. A/CN.9/198, *Report of the Working Group on the New International Economic Order on the work of its second session held at Vienna, 9-18 June 1981: clauses related to contracts for the supply and construction of large industrial works.*

[50] Arrowsmith (n 13) pp. 44-45.

contract administration, resolution of performance disputes or contract termination are not addressed' in the 2011 Model Law. The *Guide* noted, though, that 'UNCITRAL recognises the importance of these phases of the procurement process for the overall effective functioning of the procurement system,' and suggested that the 'enacting State will need to ensure that adequate laws and structures are available to deal with these phases of the procurement process'. If measures addressing other phases of procurement such as administration are not in place, the *Guide* cautioned, 'the objectives of the Model Law may be frustrated'.[51]

There are several ways to shape public contract administration around a common set of rules. One approach is to have baseline principles of public contract administration -- for example, how specific risks (such as an epidemic) will be allocated between the government and its contractors -- set forth in statute or regulation, or in judicial decisions, and to leave it to the contracting parties to draft contract terms that align with those principles. Where there are gaps in the parties' agreement and disputes arise, the courts or other adjudicative bodies can apply those baseline principles through an adjudicative process. This was an approach commonly taken in U.S. government procurement before the Federal Acquisition Regulation (which built on earlier procurement regulations, such as in the armed forces) was published in 1984.

The Federal Acquisition Regulation (FAR), which is set forth at Title 48 of the Code of Federal Regulations, provides legally binding guidance to contracting officials in Parts 1-51 of the FAR, and sets forth model contract clauses and provisions in Part 52. Standard forms are set forth FAR Part 53. The guidance in Parts 1-51 tells contracting officials which clauses from Part 52 to include in specific types of contracts, and under what circumstances, using the forms from Part 53. By applying the guidance and forms (which can be done automatically through a computer program), a contracting official can generate a standard contract in minutes, with contract clauses (and drawing on principles of law) that in some cases may be over a century old.[52]

The World Bank has taken a similar approach with its Standard Procurement Documents. These standardised contracting documents are to be used in accordance with the guidance and regulations set forth in the World Bank's procurement framework.[53] The Standard Procurement Documents are based in part on standard form contracts developed by the International Federation of Consulting Engineers (FIDIC), which are used by the Bank under license with FIDIC.[54] The Standard Procurement Documents serve as an integrated tool

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[51] *Guide to Enactment* (n 25) pp. 24-25.

[52] See eg FAR 49.502, *Termination for convenience of the Government* (procedures for terminating a contract for convenience after, for example, a cessation in hostilities); FAR 52.249-2, *Termination for Convenience of the Government (Fixed-Price)* (standard clause); L. Malone, *Recovery When the Government Terminates for Convenience* (2018) (termination for convenience principles can be traced back to U.S. Civil War in 1860s) <www.oles.com/blog/recovery-when-the-government-terminates-for-convenience/> accessed 27 Nov. 2022; see also James Nagle, *A History of Government Contracting* (2d ed. 2005) (comprehensive history of U.S. government contracting).

[53] World Bank, *Standard Procurement Documents: An overview for practitioners* (Nov. 2016).

[54] FIDIC, *World Bank signs five-year agreement to use FIDIC standard contracts* <https://fidic.org/world-bank-signs-five-year-agreement-use-fidic-standard-contracts> accessed 27 Nov. 2022.

for use in particular types of World Bank-financed projects. The Bank's *Request for Proposals - Information Systems*, for example, provides a standard format for requests for proposals, with instructions for a structured competitive process, categories of information to be provided by the user agency and bidders, and standard risk-allocation clauses (such as a *Termination for Supplier's Default* clause).[55]

Applying these lessons to the UNCITRAL Model Law, one way forward would be to develop a guiding statutory framework -- an explicit extension of the Model Law -- and then a series of model clauses to implement the principles and rules reflected in the statutory provisions. The model clauses might be specific to the type of contract at issue -- goods or services, for example, or information technology or construction -- because the allocation of risks and responsibilities between the parties can vary widely by circumstances, and from industry to industry. UNCITRAL has also recently re-issued its *Legislative Guide* and *Model Legislative Provisions on Public-Private Partnerships (PPPs)*,[56] Chapters IV of which contain detailed discussion and model clauses for contract administration. While some of the provisions are specific to PPPs, many would be applicable to the more complex public procurement contracts for which the need is the greatest.

The model clauses probably would be suggestive rather than mandatory because of the inevitable variance in local laws (a reality that also underpins UNCITRAL's issue of a more flexible legislative guide with model legislative provisions rather than a model law for PPPs). The United Kingdom's Ministry of Defence, for example, has developed a standard set of terms and conditions for less complex goods, but specifically allows for variance when those terms and conditions are used for contracts governed by Scots law.[57]

The application of standardised clauses would be critical, as the decisions issued in disputes under those clauses would highlight strengths and weaknesses of the model clauses. Threshold issues would need to be resolved in order to structure effective dispute systems. Should contracting officials serve as the (mandatory or optional) first line of review, and should the contracting officials' decisions be reviewable by a court or independent administrative agency (as is the case with bid remedies under Chapter VIII of the UNCITRAL Model Law), and if so what should the nature of that review be -- *de novo* or deferential? And should the decisions regarding UNCITRAL's contract administration provisions be published so that the clauses can be adjusted to reflect changing market conditions and legal norms -- and if so, how should the clauses be updated? This last point returns us to a recurring issue regarding the best means to update the UNCITRAL model procurement law, which is addressed in more detail below.

Offering model provisions on contract administration could provide a wide range of benefits and potentially improve development outcomes. Standardised contract administration provisions, by making it easier for vendors to compete in new markets under

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[55] See World Bank, *Standard Procurement Documents* <www.worldbank.org/en/projects-operations/products-and-services/brief/procurement-new-framework#SPD> accessed 27 Nov. 2022.

[56] Available at <https://uncitral.un.org/en/texts/procurement> accessed 1 Dec. 2022.

[57] UK Ministry of Defence, *Terms and Conditions for Less Complex Requirements* (Dec. 2018) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/403716/T1_terms_1214.pdf> accessed 27 Nov. 2022.

parallel terms, would meet the first goal of UNCITRAL Model Laws: to reduce barriers to trade across borders.[58] By publishing standardised terms subject to public comment and criticism, governments would also be less likely to stick with contract terms which depart from commercial practices and shift too many costs and risks to private firms -- which may abandon public procurement markets as a result.[59] At the same time, standardised contract clauses would reduce transaction costs and negotiating delays, and would help mitigate negotiating advantages that might otherwise be held by more sophisticated, better-resourced vendors. Standardised terms would also reduce risks of corruption, because contracting officials would have far less discretion to alter terms to favour a bidder which (for example) offered a bribe. Finally, standardised terms which could be updated as new best practices emerge would provide a means of updating the Model Law, a topic which is discussed below.

4.3 Exclusion and Debarment[60]

Another area of potential reform goes to the issue of exclusion and debarment. The 2011 UNCITRAL Model Law left it largely to implementing states to put in place systems for exclusion (typically on a procurement-by-procurement basis) or more permanent debarment of vendors which have engaged in corruption, shoddy performance or other bad acts. As the *Guide to Enactment* which accompanied the 2011 Model Law explained:

> Enacting States . . . may wish to introduce a system of sanctions, which may involve temporary or permanent exclusion from future procurements (and which may be called an administrative debarment or suspension process in some systems). Coordination of the procedures, including due process safeguards and transparency mechanisms, should be ensured among bodies that can invoke a debarment or suspension, and information on any suppliers or contractors that have been debarred or suspended should be available to all such bodies. . . . Enacting States may also wish to consider whether enforcement authority in competition-related and procurement-related matters is more effectively provided at a centralised rather than a decentralised level.[61]

The 2011 UNCITRAL Model Law thus incorporated approaches from at least three different systems for exclusion and debarment:

- The European Union's procurement directives, which allow procuring entities to exclude vendors for prior bad acts or poor performance on a procurement-by-

[58] See Arrowsmith (n 13) at 20.

[59] Eg IT Alliance for Public Sector, *ITAPS State IT Terms and Conditions Best Practices* ('ITAPS . . . believes it is in the mutual interest of the public sector purchaser and the IT vendor community to narrow the differences between commercial contracting practices and a state's required terms and conditions. Reforming standard IT terms and conditions and building smarter IT procurement processes enables states to fully recognise the benefits of innovation and products offered by the IT sector.'), <www.itic.org/dotAsset/b7413841-3467-4017-baf8-bc4f4755687d.pdf> accessed 27 Nov. 2022.

[60] This section draws in part on a new comparative chapter in the forthcoming revision of John Cibinic, Jr., Ralph C. Nash, Jr. & Christopher R. Yukins, *Formation of Government Contracts* (Wolter Kluwers), scheduled to be published in 2023.

[61] *Guide to Enactment* (n 25) pp. 19-20.

procurement basis, but leave more extensive exclusion or debarment systems to the EU Member States to implement themselves.[62]

- The U.S. government's highly discretionary debarment system, which allows agency debarring officials to exclude contractors for a term of years, whether for specific bad acts or ultimately for 'any other cause of so serious or compelling a nature that it affects the present responsibility of the contractor or subcontractor'.[63] The U.S. debarment regime is arguably an organic extension of procurement-specific contractor qualification. Although the U.S. standards for contractor qualification (called 'responsibility' in the U.S. system)[64] closely parallel the standards for contractor qualification under Article 9 of the UNCITRAL model law, in application U.S. contracting officers have substantial discretion in making responsibility determinations. Similarly, U.S. debarring officials have great discretion when they decide more broadly that vendors are not 'presently responsible' and so should be barred from federal procurement in general.[65]

- The World Bank has a more structured administrative system for debarment which, for specific types of bad acts by vendors (collusion, corruption, fraud etc), imposes specific 'sanctions' (typically exclusion from projects which are financed by the World Bank) for a term of years.[66]

The 2011 Model Law does not provide any procedural rules for suspension and debarment, largely reflecting this fragmentation among international and national systems.[67]

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[62] See eg Directive 2014/24/EU (n 42) art 57 & recital (101) ('[I]t should be left to Member States to determine the exact procedural and substantive conditions applicable in such cases. They should, in particular, be free to decide whether to allow the individual contracting authorities to carry out the relevant assessments or to entrust other authorities on a central or decentralised level with that task'); Christopher Yukins & Michal Kania, *Suspension and Debarment in the U.S. Government: Comparative Lessons for the EU's Next Steps in Procurement*, 19-2 UrT 47 (2019); Albert Sanchez Graells, *Public Procurement and Competition: Some Challenges Arising from Recent Developments in EU Public Procurement Law* ('Given the optional terms in which [the EU Directive] is drafted, such open regulation at [the] EU level can give rise to different regimes across different Member States and, consequently, might facilitate strategic behaviour by infringing undertakings – thereby reducing deterrence. A stricter and uniform system of suspension and debarment . . . would contribute to . . . limiting privately-created distortions of competition.'), in C Bovis, ed, *Research Handbook on EU Public Procurement Law*, at 434 (Edward Elgar Publishing 2016).

[63] FAR 9.406-2(c), 48 Code Fed. Reg. § 9.406-2(c).

[64] FAR Subpart 9.1, 48 Code Fed. Reg. Subpart 9.1.

[65] See FAR Subpart 9.4, 48 Code Fed. Reg. Subpart 9.4; John Pachter, Christopher Yukins & Jessica Tillipman, *U.S. Debarment: An Introduction*, in B van Rooij & D Sokol, eds, *The Cambridge Handbook of Compliance* 288 (2021).

[66] See eg World Bank, *Sanctions System* <www.worldbank.org/en/about/unit/sanctions-system> accessed 27 Nov. 2022; Pascale Hélène Dubois, J. David Fielder, Robert Delonis, Frank Fariello & Kathleen Peters, *The World Bank's Sanctions System: Using Debarment to Combat Fraud and Corruption in International Development*, in P Quayle & X Gao, eds, *Good Governance and Modern International Financial Institutions* (Brill 2018).

[67] See, further, Caroline Nicholas, *Enforcing the Requirements of the 2011 UNCITRAL Model Law On Public Procurement: Model Rules on Suspension and Debarment?,* 2016 Pub. Proc. L. Rev. NA81-85.

However, the differences between the three approaches to exclusion and debarment may be less important than their similarities, and there may be substantial common ground which could be assimilated into the Model Law. For example, although the UNCITRAL *Guide to Enactment*'s reference to exclusion as a form of 'sanction' seemed to align the UNCITRAL Model Law more closely with the World Bank's system (which 'sanctions' vendors) than the U.S. system (which is explicitly *not* a system for vendor punishment[68]), in practice U.S. agencies which exercise their discretion *not* to debar vendors that have engaged in bad acts may face sharp criticism from Congress and other stakeholders -- which brings the U.S. system closer to one based on punishment for bad acts. Similarly, while the three exclusion regimes (U.S., EU and World Bank) are ostensibly quite different, ultimately all three regimes rely heavily on vendors' own remedial measures (called corporate 'compliance' efforts in the U.S.[69] and World Bank[70] systems, and 'self-cleaning' under Article 57 of EU directive 2014/24/EU) as a means of mitigating future risk.

One related area of potential reform for the Model Law could be to improve cross-border exchanges of exclusion information, perhaps as a first step to more regular exchanges of contractor qualification information between nations (discussed below). In this regard, the multilateral development banks' agreement on cross-debarment may prove a useful model for transnational efforts to address contractor qualification. Under the banks' cross-debarment agreement, many of the leading multilateral development banks (such as the World Bank and the African Development Bank) agreed that, when one of the banks debars a contractor for sanctionable conduct, presumptively all of the other agreeing banks would similarly debar the contractor.[71] The banks employ broadly similar standards and procedures

[68] FAR 9.402(b), 48 Code Fed. Reg. § 9.402(b) ('The serious nature of debarment and suspension requires that these sanctions be imposed only in the public interest for the Government's protection and not for purposes of punishment'.).

[69] Under FAR 9.406-3, 48 Code Fed. Reg. § 9.406-3, a debarring official and the accused vendor may enter into an administrative agreement which is to be publicly available, and which may explain, for example, what remedial measures the contractor must take in order to avoid debarment. Because the U.S. debarment system is explicitly focused on addressing risks to the government's interests, U.S. debarring officials can (and do) engage directly with accused contractors to demand assurance that the contractors are undertaking appropriate remedial measures. See American Bar Association, *The Practitioner's Guide to Suspension and Debarment* (4th ed. 2018, eds. F M Levy & M T Wagner).

[70] See World Bank, *World Bank Sanctioning Guidelines* 1 (Jan. 2011) ('[T]he [World Bank Group's] experience over the last 10 years in anti-corruption and sanctioning, reflecting international consensus, has shown that rehabilitation, through the imposition of conditions designed to improve the integrity culture of sanctioned parties and reduce recidivism, is a key means to reduce integrity risks'.).

[71] See <www.crossdebarment.org> (information on the 2010 Agreement for Mutual Enforcement of Debarment Decisions Among Multilateral Development Banks) accessed 27 Nov. 2022; Pascale H. Dubois, *Domestic and International Administrative Tools to Combat Fraud & Corruption: A Comparison of US Suspension and Debarment with the World Bank's Sanctions System*, 2012 U. Chi. Legal F. 195 (2012); Frank A. Fariello, Jr. & Conrad C. Daly, *Coordinating the Fight Against Corruption Among MDBs: The Past, Present, and Future of Sanctions*, 45 Geo. Wash. Int'l L. Rev. 253 (2013); Christopher R. Yukins, *Cross-Debarment: A Stakeholder Analysis*, 45 Geo. Wash. Int'l L. Rev. 219 (2013); William A. Roberts, III, Tracye Winfrey Howard & Samantha S. Lee, *Two Systems, Two Types of Risk: How the*

for debarment, and their bases for debarment are largely (though not completely) transparent.[72]

The multilateral development banks' cross-debarment initiative may offer an important formula for sharing qualification information across borders: (1) transparent standards and procedures which allow authorities in other systems to understand *how* vendors were excluded, (2) published lists which explain *who* (which vendors) were debarred, and (3) at least some explanation as to *why* the vendors were excluded.[73] If the UNCITRAL Model Law could be revised to bring together these three elements so that governments can better share information on vendors, the UNCITRAL Model Law could make it easier for governments to pool their informational resources to reduce the reputational and performance risks posed by corrupt and shoddy contractors.

4.4 Open Contracting

Because the UNCITRAL Model Law and *Guide to Enactment* offer an important means of identifying and sharing best practices in procurement internationally, incorporating principles of 'open contracting' -- an extension of emerging principles of 'open government' to the contracting realm -- could offer significant opportunities to enhance meaningful transparency and accountability, key objectives of the Model Law itself. While the 2011 Model Law and its *Guide to Enactment* called for transparency in many different aspects of public procurement[74], open contracting -- broadly speaking, the assumption that public contracting data should, if possible, be accessible and machine-readable[75] -- could therefore be an important point of focus in future reforms.

Addressing open contracting (a concept not broadly recognised when the current UNCITRAL Model Law was finalised in 2011) would mean bringing the Model Law and *Guide to Enactment* into line with recently emerged best practices internationally.[76] Open contracting is a transformative concept, for it up-ends traditional assumptions of *focused* transparency with an assumption that *all* procurement data should, if reasonably possible, be readily accessible and machine readable. This has implications for fiscal responsibility and accountability, procurement planning, contract awards and administration, efforts to stem corruption, and the public's understanding of government procurement.

World Bank Sanctions Regime Differs from US Suspension and Debarment, Proc. Law. (ABA), Fall 2015, at 6.

[72] See Hans-Joachim Priess, *Questionable Assumptions: The Case for Updating the Suspension and Debarment Regimes at the Multilateral Development Banks*, 45 Geo. Wash. Int'l L. Rev. 271 (2013) (arguing that multilateral development banks do not fairly afford equal treatment in sanctions systems).

[73] See Sati Harutyunyan, *Risk and Expectation in Exclusion from Public Procurement: Understanding Market Access and Harmonisation Between the European Union and the United States*, 45 Pub. Cont. L.J. 449 (2016) (discussing cross-border challenges in meeting EU's requirement for equal treatment of vendors).

[74] *Guide to Enactment* (n 25) pp. 43-45.

[75] See Open Contracting Partnership, *Open Contracting Global Principles* <www.open-contracting.org/what-is-open-contracting/global-principles/> accessed 27 Nov. 2022.

[76] The Open Contracting Partnership publishes country studies in open contracting at <www.open-contracting.org/worldwide/#/> accessed 27 Nov. 2022.

In addressing open contracting, the UNCITRAL Model Law and *Guide to Enactment* might address a range of potential issues, including whether:

- The public should have unbounded access to information during all stages of public procurement.

- The publicly available information should be sufficient to allow the public (including media and civil society) to understand and monitor contracts as they unfold.

- The publicly available data on procurement should be published in an open and structured format, possibly using the freely available Open Contracting Data Standards published by the Open Contracting Partnership.

- Governments and other interested parties should, where possible, limit confidentiality in public contracting.[77]

Addressing these issues could involve reforms to articles 24 and 25 of the UNCITRAL Model Law, which exempt some information from disclosure and protect confidentiality of parts of the procurement record. The policy objectives, which are to protect future competition and enable appropriate law and competition enforcement, would need to be carefully considered. In addition, reforms to the rules would probably be only a first step, as the literature suggests that even where there is legal reform to implement open contracting 'there is a clear lag between progress in reforming the legal framework and progress in its implementation -- de jure and de facto reform. In other words, legal reform is only the first step towards change'.[78] Because the law and technology needed to facilitate open contracting are rapidly advancing, it could be useful to update the UNCITRAL Model Law to reflect commonly recognised best practices of open contracting in public procurement.

5. Conclusion

As the discussion above reflects, there have been substantial advances in public procurement in the decade since the UNCITRAL Model Law and *Guide to Enactment* were issued. The potential points of reform outlined above -- environmental sustainability, enhanced contract administration, improved exclusion and debarment to stem corruption and incompetence, and open contracting -- generally align with the procurement community's common views on the past decade's most important developments.[79] *What* are likely points of change to the Model Law and *Guide to Enactment* can therefore be readily defined. *How* that reform would be effected is also well defined, as UNCITRAL has

[77] These issues can be traced to the *Open Contracting Global Principles* (n 75).

[78] Isabelle Adam, Elizabeth Dávid Barrett & Mihaly Fazekas, *Modelling Reform Strategies for Open Contracting in Low and Middle Income Countries* 5 (2020).

[79] Eg Gustavo Piga & Steven Schooner, *Transformational Procurement—The Past and Future of Global and Local Public Purchasing—Views from the Expert Community on What Public Money Did and Will Still Need to Buy*, 64 Gov. Contractor ¶ 266 (Sept. 2022).

longstanding practices for preparing and revising its texts.[80] Should the Commission decide to return to public procurement as an area of work, therefore, there is a discernible pathway to potential updating of the UNCITRAL Model Law on Public Procurement and *Guide to Enactment*.

[80] See UN Doc. A/CN.9/3 (22 Dec. 1967) (adoption of UNCITRAL rules of procedure); UN Doc. A/65/17, Annex III, *UNCITRAL rules of procedure and methods of work* (2010); UN Doc. A/CN.9/635, pp. 3-4 (24 May 2007) (informal description by France of UNCITRAL drafting process).