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### Promotion of ways and means of ensuring a uniform interpretation and application of UNCITRAL legal texts

Note by the Secretariat

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## I. Case Law on UNCITRAL Texts (CLOUT)

### *Background*

1. CLOUT continues to be an important tool to promote the uniform interpretation and application of UNCITRAL texts, as it facilitates access to decisions and awards from many different jurisdictions. Furthermore, it contributes to the promotion of UNCITRAL legal texts since it demonstrates that the texts are being used and applied in many different countries and that judges and arbitrators at different latitudes are contributing to their interpretation. CLOUT also provides the basis for the analysis of interpretation trends that is a key part of the case law Digests. Background information on CLOUT and the Digests, is provided in the Provisional Agenda of the forty-ninth session of the Commission (A/CN.9/859, paras. 53-57).

2. At present, case law on the following texts is reported in the system:

- United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958 (New York Convention);<sup>1</sup>
- Convention on the Limitation Period in the International Sale of Goods, 1974 and Convention on the Limitation Period in the International Sale of Goods as amended by the Protocol amending the Convention on the Limitation Period in the International Sale Of Goods, 1980 (Limitation Convention);
- United Nations Convention on the Carriage of Goods by Sea, 1978 (Hamburg Rules);
- United Nations Convention on Contracts for the International Sale of Goods, 1980 (CISG);
- UNCITRAL Model Law on International Credit Transfers, 1992 (MLICT);
- United Nations Convention on Independent Guarantees and Stand-by Letters of Credit, 1995 (UNLOC);
- UNCITRAL Model Law on International Commercial Arbitration, 1985, as amended in 2006 (MAL);
- UNCITRAL Model Law on Electronic Commerce, 1996 (MLEC);
- UNCITRAL Model Law on Cross-Border Insolvency, 1997 (MLCBI);
- UNCITRAL Model Law on Electronic Signatures, 2001 (MLES); and
- United Nations Convention on the Use of Electronic Communications in International Contracts, 2005 (ECC).

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<sup>1</sup> The Commission may recall that at its forty-first session, in 2008, it agreed that, resources permitting, the Secretariat could collect and disseminate information on the judicial interpretation of the New York Convention. For this reason, the CLOUT system includes only recent case law concerning the Convention. See *Official Records of the General Assembly, Sixty-third Session, Supplement No. 17 (A/63/17)*, para. 360. A comprehensive database of case law on the New York Convention complementing CLOUT can be found at [www.newyorkconvention1958.org](http://www.newyorkconvention1958.org) (see paras. 16-19 below and *Official Records of the General Assembly, Sixty-eighth Session, Supplement No. 17 (A/68/17)*, paras. 134-140).

3. Case law to be reported in CLOUT is provided by the network of national correspondents that, either as individuals or a specific organ or body, monitor and collect court decisions and arbitral awards and prepare abstracts of those considered relevant in one of the six official languages of the United Nations. The Secretariat collects the full texts of the decisions and awards in their original language and publishes them (see para. 13 below). The abstracts are edited and translated by the Secretariat into the official United Nations languages and published in all such languages as part of the regular documentation of UNCITRAL (under the identifying symbol: A/CN.9/SER.C/ABSTRACTS/...).

4. While the national correspondents are the principal support of the system, in agreement with the correspondents, contributions from scholars who are not appointed as national correspondents are also accepted, subject to control and prior notification to the relevant national correspondent, if appointed. This practice is consistent with the Commission's recommendation of utilising all available sources of information to supplement the information provided by the national correspondents.<sup>2</sup> National correspondents meet every two years, when the Commission is in session in Vienna, to take stock of the latest developments and challenges of CLOUT maintenance and improvement.

#### *Maintenance of the system*

5. As at the date of this note, 166 issues of CLOUT had been prepared for publication, dealing with 1,551 cases from 64 jurisdictions.<sup>3</sup> Of these, 830 cases related to CISG, 429 cases related to MAL (a number of cases dealt with both MAL and the New York Convention), 100 cases related to MLCBI, 144 cases primarily related to the New York Convention, 25 cases related to MLEC, 13 cases related to the Limitation Convention (4 of which related to the amended version of the Convention), 3 cases related to the Hamburg Rules, 2 cases related to EEC and 1 case each to UNLOC, MLES and MLICT. In addition, one case related to both CISG and MAL and one case to both CISG and the Limitation Convention. With reference to the five regional groups represented within the Commission, the figures coincide almost in full with the figures provided in A/CN.9/840 submitted to the forty-eighth session of the Commission, in 2015, with the majority of the abstracts referring to Western European and other States (65 per cent, approximately). The other regional groups were represented as follows: Asian States (16 per cent, approximately), Eastern European States (13 per cent, approximately), Latin American and Caribbean States (3 per cent, approximately) and African States (3 per cent, approximately). A few abstracts pertained to the awards of the International Chamber of Commerce (ICC). When compared with the figures

<sup>2</sup> *Official Records of the General Assembly, Sixty-fourth Session, Supplement No. 17 (A/64/17)*, para. 371.

<sup>3</sup> The jurisdictions include: Albania, Argentina, Australia, Austria, Belarus, Belgium, Benin, Bermuda, Bosnia and Herzegovina, Brazil, Burkina Faso, Cameroon, Canada, Chile, China, Colombia, Croatia, Cuba, Czech Republic, Côte d'Ivoire, Denmark, Egypt, El Salvador, Finland, France, Georgia, Germany, Hong Kong (China), Hungary, India, Iraq, Israel, Italy, Japan, Kenya, Liechtenstein, Lithuania, Luxembourg, Mexico, Montenegro, the Netherlands, New Zealand, Nigeria, Philippines, Poland, Portugal, Republic of Korea, Russian Federation, Serbia, Singapore, Slovakia, South Africa, Spain, Sweden, Switzerland, Thailand, Tunisia, Uganda, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America, Zimbabwe.

provided in A/CN.9/840, a small increase in the figures concerning Eastern European States and a small decrease in those relating to African States can be noted.

6. Over the last twelve months, 87 new abstracts were received from national correspondents and voluntary contributors. The abstracts refer to the following texts: CISG (44 abstracts), New York Convention (19), MLCBI (11), MAL (8), MLEC (2) and Limitation Convention (amended text, 1 abstract). Two cases refer to both CISG and the Limitation Convention (amended text). The court decisions and the arbitral awards to which the abstracts refer were rendered in the following 17 countries: Albania, Australia, Belarus, Brazil, France, Japan, Lithuania, the Netherlands, New Zealand, Poland, Portugal, Republic of Korea, Singapore, Spain, Thailand, United Kingdom, United States. In the same period, 97 abstracts were published concerning CISG (45 abstracts); New York Convention (27), MAL (11), MLCBI (11), MLEC (1), EEC (1) and one case concerning both CISG and MAL. For the first time abstracts from Albania, Bosnia and Herzegovina, Portugal and Thailand were published.<sup>4</sup>

*The network of national correspondents*

7. Eleven new national correspondents were appointed in the period under review, two of whom replaced previous correspondents. The current composition of the network is thus of 74 correspondents representing 35 countries.<sup>5</sup> The Commission may wish to note that pursuant to a decision taken at its forty-second session, in 2009,<sup>6</sup> it was agreed that States should be requested to reconfirm the appointment of national correspondents every five years as of 2012. It was said that this arrangement would enable those correspondents who wished to remain actively involved to continue their work and provide an opportunity for new correspondents to join the network. The mandate of the current network of national correspondents will thus expire the day immediately before the day on which the fiftieth Commission session will commence in 2017. The Commission may wish to note that, approaching the fiftieth Commission session, the Secretariat will officially request UNCITRAL member and observer States to appoint and/or reappoint their national correspondents.

8. Over the last twelve months, national correspondents provided approximately 47 per cent of the abstracts published.<sup>7</sup> The remaining abstracts were received from voluntary contributors or prepared by the Secretariat.

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<sup>4</sup> Abstracts from the following jurisdictions were also published: Australia, Austria, Belarus, Brazil, China, France, India, Japan, Lithuania, New Zealand, Poland, Portugal, Republic of Korea, Singapore, Spain, United Kingdom and United States.

<sup>5</sup> The following countries have appointed national correspondents: Australia, Austria, Belarus, Bulgaria, Canada, China, Colombia, Cuba, Czech Republic, Denmark, El Salvador, Finland, France, Germany, Greece, Guatemala, Ireland, Israel, Italy, Japan, Luxembourg, Moldova, Montenegro, New Zealand, Poland, Republic of Korea, Russian Federation, Singapore, Slovakia, Spain, Sweden, Thailand, Tunisia, United States and Uruguay.

<sup>6</sup> *Official Records of the General Assembly, Sixty-fourth Session, Supplement No. 17 (A/64/17)*, para. 370.

<sup>7</sup> The figure is similar to the one provided in A/CN.9/840.

*Meeting of the national correspondents*

9. The last meeting of the national correspondents took place on 7 July 2015; 18 countries were represented, in some cases national delegates attending the Commission and representatives of the Permanent Missions to the United Nations Organizations in Vienna participated on behalf of the national correspondent(s). At the meeting, progress and challenges of the CLOUT system in the previous biennium were reviewed, and information on the promotion of CISG and MAL Digests and their updating, on the preparation of MLCBI Digest and on the UNCITRAL Secretariat Guide to the New York Convention (“New York Convention Guide”) was provided. A short demonstration of the upgraded CLOUT website was also conducted to familiarize participants with the new features of the database.

10. There was agreement among the participants on the importance of the national correspondents meeting, which was said to be an opportunity for sharing views among the correspondents as well as with the UNCITRAL secretariat. In this regard it was suggested that use of remote connection facilities (e.g. videoconference) could be tested in future as a way to allow participation of those correspondents who could not travel to Vienna. There was further agreement that other UNCITRAL texts, in addition to those already included, should be added in CLOUT and it was noted that cooperation with other organizations and institutions dealing with topics pertaining to those texts could be helpful to identify case law relating to such texts.

## II. The Digests

11. A new round of updates of the CISG Digest was finalized. At the date of this Secretariat’s Note the draft Digest is being formatted. It will then be published in the six official United Nations languages as an e-book and made available on the UNCITRAL website. Since the 2012 revision of the Digest resulted in the inclusion of a high volume of cases and several edits in the content of the publication,<sup>8</sup> the current round of updates has mainly focused on the inclusion of landmark cases in the text. The Commission may wish to note that the current revision of the Digest cites courts’ decisions recognizing the significance of the Digest in assisting in the interpretation of the CISG.

12. Work to update the current edition of the MAL Digest is ongoing and finalization of the MLCBI Digest is progressing.

## III. Enhancing CLOUT

13. With the upgraded CLOUT database in place,<sup>9</sup> the Secretariat commenced work to make accessible to the general users the full text decisions stored in the database archives. Due to the very time-consuming nature of the task and the modest resources available for CLOUT, the Secretariat joined the online volunteering programme, managed by the United Nations Volunteers (UNV),<sup>10</sup>

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<sup>8</sup> See A/CN.9/748, para. 12.

<sup>9</sup> See A/CN.9/840, para. 11.

<sup>10</sup> United Nations Volunteers (UNV) is the United Nations agency that works to integrate volunteerism into development cooperation and mobilize volunteers, including UN Volunteers,

which connects development organizations and volunteers over the Internet and facilitates their online collaboration.<sup>11</sup> A volunteer was thus identified and selected who is currently assisting the Secretariat (working from a remote connection) in making the full texts of decisions available online.

14. The Commission may wish to note that, since the new database was launched, in the first quarter of 2015, it had over 30,000 users.

15. As in previous Secretariat Notes to the Commission, (see, for instance, A/CN.9/810 and A/CN.9/840), the Commission may wish to note that the Secretariat responds to the resource intensive demands of CLOUT by stretching its available resources in order to ensure the coordination of the system. While this allows for routine maintenance of CLOUT, the system would greatly benefit from additional support in order to be further expanded through the provision of additional services and publication of an increased volume of abstracts. The Secretariat thus reaffirms the need for assistance in kind (e.g. non-reimbursable loans of personnel) or through budget contributions from States and other donors. The Commission might wish to reiterate its appeal to Member States to provide active support to the Secretariat's search for appropriate funding sources at the national level so as to ensure enhanced performance of the system.

#### **IV. Promotion of uniform interpretation of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958 (New York Convention)**

16. Since the Secretariat's last note to the Commission (A/CN.9/840), the website [www.newyorkconvention1958.org](http://www.newyorkconvention1958.org)<sup>12</sup> continued to expand, not only by way of increasing the volume of case law published on the application of the Convention, but also by way of adding information about the jurisdictions which have adopted the Convention. The database currently includes concise background notes concerning 45 States parties. With regard to 33 of those States, 1,138 summaries of cases, 1,052 original-language decisions and 119 English-language translations were also made available.

17. Pending publication of the final version of the New York Convention Guide, the website publishes a detailed analysis of specific provisions of the Convention, including the relevant case law (as mentioned in para. 16 above), finalized under the supervision of the Secretariat. The travaux préparatoires of the Convention are also available as well as a bibliography on the Convention, that is the most comprehensive directory of publications relating to the application

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throughout the world. UNV is based in Bonn, Germany, and is active in around 130 countries every year, it is represented worldwide through the offices of the United Nations Development Programme (UNDP) and reports to the UNDP Executive Board.

<sup>11</sup> See [www.unv.org/how-to-volunteer/online-volunteers.html](http://www.unv.org/how-to-volunteer/online-volunteers.html).

<sup>12</sup> The website was launched in July 2012 to support the preparation of the Guide on the New York Convention, with which the Secretariat was entrusted by the Commission in 2008. The website intends to make the information gathered in the preparation of such a Guide publicly available, including details on the judicial interpretation of the Convention by States Parties. See A/CN.9/777, paras. 15-16 and *Official Records of the General Assembly, Sixty-eighth Session, Supplement No. 17 (A/68/17)*, paras. 134-140.

and interpretation of such text. Updated in September 2015, the bibliography lists 741 books and articles from more than 71 countries in 11 different languages; 187 of such publications are directly accessible through hyperlinks.

18. Finally, over the past twelve months, the site has technically evolved, offering a new format compatible with all mobile devices and new features. In particular, the site offers a new interactivity between contents and an indexing that enables the various elements of the site to link to one another, in a unique canvas. The search engine of the website, which already allowed a thorough search among the decisions, has now been extended to enable searching the Guide, the travaux préparatoires and the bibliography.

19. As in previous years, close coordination between the website and the CLOUT system continues to be maintained (see also A/CN.9/840, para. 14). Several cases on the application of the New York Convention were published in both systems, which allowed for such cases to be available in the six official languages of the United Nations.

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