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Non-legislative activities

Ways and means of ensuring a uniform interpretation and  
application of international conventions and uniform laws in the  
field of the law of international trade: CLOUT, digests and other  
materials

Note by the Secretariat

Addendum

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# I. Introduction

1. As explained in the introductory document [A/CN.9/1174](#), as of 2024 the secretariat will report to the Commission on its non-legislative activities following a calendar year cycle. Since document [A/CN.9/1139](#) submitted to the fifty-sixth session of the Commission covered the period from May 2022 until April 2023, the reporting period of this note is from May through December 2023 (the “reporting period”).

2. During the reporting period, because of limited human and financial resources, in particular due to the freeze of hiring in the United Nations Secretariat, the UNCITRAL secretariat prioritized preparation of case abstracts for the Case Law on UNCITRAL Texts (CLOUT) system<sup>1</sup> to meet its planned targets and resolving flaws of the CLOUT database over advancing the CLOUT rejuvenation process and engaging with the network of CLOUT contributors. There are thus no relevant updates on the latter matters to the previous reporting period ([A/CN.9/1139](#), paras. 32–40). Although it is expected that the limited resources will continue affecting the work on CLOUT throughout 2024, the secretariat will make efforts towards further CLOUT rejuvenation.

# II. CLOUT

## A. Cases reported

3. Since 1998, the secretariat has published 230 CLOUT issues, comprising 2,123 cases originating in 86 jurisdictions relevant to 14 UNCITRAL instruments.<sup>2</sup>

4. The texts most covered in CLOUT remain:

(a) The United Nations Convention on Contracts for the International Sale of Goods, 1980 (CISG, 1,001 cases);

(b) The UNCITRAL Model Law on International Commercial Arbitration, 1985 with amendments as adopted in 2006 (MAL, 550 cases);

(c) The United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958 (NYC, 308 cases); and

(d) The UNCITRAL Model Law on Cross-Border Insolvency, 1997 (MLCBI, 176 cases).

5. Eight CLOUT issues were published in the reporting period, comprising a total of 69 cases from 27 jurisdictions with the distribution shown in the table below. For the first time, abstracts from the Marshall Islands and Romania were published. Abstracts on the MLCBI from Serbia were also published for the first time. National correspondents prepared (approx.) 38 per cent of the cases published while the secretariat and voluntary contributors prepared the rest.

<i>Region</i>	<i>No. of cases</i>	<i>Per cent</i>
African States	9	15
Asian and the Pacific States	32	35
Eastern European States	10	11
Latin America and Caribbean States	1	4
Western European and Other States	17	35
<b>Total</b>	<b>69</b>	<b>100</b>

<sup>1</sup> For background information on CLOUT, see document [A/CN.9/1017](#), paras. 1–6.

<sup>2</sup> A full list of these instruments is available on the website of the CLOUT database at [www.uncitral.org/clout/index.aspx](http://www.uncitral.org/clout/index.aspx).

6. The abstracts published in the reporting period covered the following texts:

<i>Texts</i>	<i>No. of cases</i>
MAL	27
CISG	16
NYC	11
MLCBI	8
MLEC <sup>a</sup>	4
HR <sup>b</sup>	2
CISG and Lim. Conv. <sup>c</sup>	1

<sup>a</sup> MLEC is the acronym for the UNCITRAL Model Law on Electronic Commerce, 1996.

<sup>b</sup> HR is the acronym for the United Nations Convention on the Carriage of Goods by Sea, 1978 (The Hamburg Rules).

<sup>c</sup> Lim. Conv. (or the Limitation Convention) refers to the Convention on the Limitation Period in the International Sale of Goods, 1974 (date of adoption of amending protocol: 11 April 1980).

## B. The network of contributors

7. There were no changes in the composition of the network of national correspondents and in the Steering Committee (see [A/CN.9/1139](#), para. 35). During the reporting period, the secretariat signed three new partnership agreements with the following institutions: the Beijing Normal University (May 2023); the Faculty of Law at Ain Shams University (September 2023) and the Master's programme in International Business Law at Rome University "La Sapienza" (December 2023). Currently, the group of national partners comprises five institutions.

## C. The CLOUT database

8. In the reporting period, the CLOUT database had approximately 29,000 users, according to data provided by free web analytics services. Most of the users were located in China, India, Saudi Arabia, United States of America and United Kingdom of Great Britain and Northern Ireland (the countries are listed according to the number of CLOUT users).

## D. CLOUT outreach

9. The secretariat released the third issue of the CLOUT newsletter that is currently addressed to national correspondents and members of the Steering Committee. The secretariat is considering sharing future issues of the newsletter also with CLOUT users and voluntary contributors in order to increase CLOUT visibility and encourage potential voluntary contributors to submit abstracts.

10. Typically, the secretariat raises awareness of CLOUT in its activities as a matter of course. For example, the CLOUT abstracts on the MLCBI inform all technical assistance activities in the area of insolvency law, and the online module on insolvency (in preparation) refers to CLOUT. Further examples include that, during the reporting period, the secretariat shared information on CLOUT at: (a) the 2023 UNCITRAL Africa Days' events;<sup>3</sup> (b) the UNCITRAL-related briefing for Panama's

<sup>3</sup> UNCITRAL Days are a flagship event of the UNCITRAL secretariat. They are held annually as series of regional events with partner institutions of higher learning. They were first launched in 2014 by the UNCITRAL Regional Centre for Asia and the Pacific (RCAP) under the name of UNCITRAL Asia-Pacific Days – AP Days. In 2020, the secretariat launched the series for Latin America and the Caribbean (the LAC Days) and in 2022, it launched the series for Africa. Information on the 2023 UNCITRAL Days are available in unofficial reports on the web page of the fifty-seventh session of the Commission.

officials in October 2023 (online); and (c) the 2023 flagship events of the UNCITRAL Regional Centre for Asia and the Pacific (RCAP) (e.g. the UNCITRAL South Asia Conference (September 2023, New Delhi), the fifth UNCITRAL Asia-Pacific Judicial Summit (November 2023, Hong Kong SAR, China) and several events of the UNCITRAL Asia-Pacific Days 2023).<sup>4</sup> UNCITRAL Days permit the secretariat also to identify and publish additional CLOUT cases, for example, during the reporting period, two cases on MAL from Zimbabwe were identified through the UNCITRAL Africa Days and at the date of this document the abstracts are under revisions for publication.

## **E. CLOUT internal evaluation: the importance of good quality abstracts**

11. As part of the self-evaluation function of the Office of Legal Affairs,<sup>5</sup> the UNCITRAL secretariat carried out an internal self-evaluation of CLOUT performance and management from 2019 to 2023. Among others, the self-evaluation results highlighted that good quality abstracts were key to keep CLOUT relevant and fit for purpose. Good quality abstracts: (a) contain specific information presented in the order recommended by the CLOUT guidelines; and (b) clearly identify and describe the main legal issues relating to the application of an UNCITRAL text. The self-evaluation results also highlighted the actions taken by the UNCITRAL secretariat to mitigate the risk of low-quality abstracts, which require considerable time to edit (e.g. multiple exchanges with a drafter, in particular when the full text of a judgment is in a language unfamiliar to the UNCITRAL secretariat's staff). For example, the secretariat shared an abridged version (in English, French and Spanish) of the official CLOUT guidelines on the CLOUT web page of the UNCITRAL website. Such abridged version, with the official guidelines and examples of well drafted abstracts, was also e-mailed to individual CLOUT contributors, as needed. In some instances, the secretariat engaged with national correspondents (and voluntary contributors, when feasible) at the early stages of abstract drafting in order to: (a) immediately identify cases that were not worthy of inclusion in CLOUT (thus avoiding abstract turndown); (b) address unclear or irrelevant points during the abstract preparation and not after submission; and (c) train contributors "on the job".

12. The evaluation also highlighted actions that the secretariat could implement to further enhance the quality of the abstracts, for example: (a) improving the current CLOUT guidelines; (b) regularly providing tutorials to national correspondents (and when feasible to other potential contributors); and (c) making available templates for drafting abstracts with detailed description of what each section of an abstract should contain.

## **F. Possible Commission actions**

13. In line with the outcomes of its fifty-sixth session in 2023, the Commission may wish to:

(a) Call for those States that have not yet designated a national correspondent or a member of the Steering Committee for the CLOUT system to do so at the earliest opportunity;

(b) Call on all States that have designated national correspondents to facilitate their role and to continue to encourage their regular submissions of cases to the Secretariat for CLOUT;

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<sup>4</sup> See [A/CN.9/1174/Add.2](#).

<sup>5</sup> In response to recommendations of the United Nations Office for Internal Oversight (OIOS) in 2019 ([E/AC.51/2019/9](#)), the Office of Legal Affairs (OLA) has strengthened its monitoring and evaluation practices. As part of that effort, OLA organizational units, including the UNCITRAL secretariat, carry out regular self-evaluation of different aspects of their mandate.

(c) Appeal to States, organizations, institutions and individuals to consider making contributions to the Trust Fund for UNCITRAL Symposia for the purpose of upgrading the CLOUT database, noting that at the date of this note the secretariat has been unable to mobilize additional resources for such purpose.

### III. Digests of case law and additional materials

14. The secretariat made arrangements for the preparation of the new edition of the Digest of Case Law on the UNCITRAL Model Law on International Commercial Arbitration (the MAL Digest).<sup>6</sup> It identified the experts who would contribute to the drafting of the new text and in joint consultation with them finalized a workplan for the next phases of the project. The experts set up a network of contributors from the MAL-compliant jurisdictions that would help them to collect relevant case law and information about the enactment of the MAL in those jurisdictions. The secretariat will report on the progress of the project to the Commission at its fifty-eighth session, in 2025.

15. In the light of the fiftieth anniversary of the Limitation Convention in 2024, the secretariat started preparing a compilation of the related case law reported in CLOUT with a view to submitting a draft to the Steering Committee and national correspondents for review and comments at the earliest opportunity. National correspondents and the Steering Committee may wish to recommend the broader dissemination of the compilation, including as an annex to a new edition of the UNCITRAL Digest of Case Law on the United Nations Convention on Contracts for the International Sale of Goods.

16. The UNCITRAL Model Law on Cross-Border Insolvency: The Judicial Perspective is now available in all six official United Nations languages (see [A/CN.9/1139](#), para. 42) on the UNCITRAL website.<sup>7</sup> Together with the Digest on the Model Law on Cross-Border Insolvency,<sup>8</sup> the Judicial Perspective is an essential reference material in any judicial capacity-building activity on cross-border insolvency. Policy makers and legislators may find these reference materials also useful when they assess the need for, or implement, insolvency law reform. The content of these two publications, which reflects primarily but not only the case law related to the MLCBI collected from different jurisdictions for inclusion in CLOUT, can be used also for building capacity of insolvency representatives and other insolvency practitioners to handle cross-border insolvencies of varying complexity.

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

17. The number of the NYC-related case law published at the New York Convention website<sup>9</sup> continued to increase thanks to the ongoing efforts of its contributors. The

<sup>6</sup> The 2012 MAL Digest is available at <https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/mal-digest-2012-e.pdf>. For additional information about digests of case law, see [A/CN.9/1017](#), paras. 30–32 and the dedicated page on the website of the Commission at [https://uncitral.un.org/en/case\\_law/digests](https://uncitral.un.org/en/case_law/digests).

<sup>7</sup> See [https://uncitral.un.org/en/texts/insolvency/explanatorytexts/cross-border\\_insolvency/judicial\\_perspective](https://uncitral.un.org/en/texts/insolvency/explanatorytexts/cross-border_insolvency/judicial_perspective).

<sup>8</sup> The MLCBI Digest is available at [https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/20-06293\\_uncitral\\_mlcbi\\_digest\\_e.pdf](https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/20-06293_uncitral_mlcbi_digest_e.pdf).

<sup>9</sup> [www.newyorkconvention1958.org](http://www.newyorkconvention1958.org). That website was established with the support of UNCITRAL, in order to make the information gathered in preparation of the Guide publicly available (see the Preface to the UNCITRAL Secretariat Guide on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958), available at [https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/2016\\_guide\\_on\\_the\\_convention.pdf](https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/2016_guide_on_the_convention.pdf)).

website makes publicly available information from 70 countries, and for each jurisdiction it provides direct links to specific national legal databases accessible to all users.<sup>10</sup>

18. As at the date of this note, the website included concise background notes on 60 contracting States, close to 4,000 original-language decisions, spanning both the civil and common law traditions, 132 English-language translations, 1,148 summaries of cases, the *travaux préparatoires* and a NYC-related bibliography that consists of the most comprehensive directory of publications relating to the application and interpretation of the text (listing around 1,100 books and articles from more than 83 countries in 12 different languages). More than 230 of such publications are directly accessible through hyperlinks.<sup>11</sup>

19. Close coordination between the website and CLOUT was maintained and the website coordinators supported the CLOUT team in the preparation of abstracts that were made available on the CLOUT website.

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<sup>10</sup> For more information about the scope and content of the website, see document [A/CN.9/1017](#), paras 41–46.

<sup>11</sup> See also [A/CN.9/1139](#), para. 46.