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Promotion of awareness, understanding and use of UNCITRAL texts

Note by the Secretariat

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I. Case Law on UNCITRAL Texts (CLOUT)

A. Background

1. Easy access to decisions interpreting and applying UNCITRAL texts is particularly important in light of the principle of autonomous interpretation of uniform law texts contained in several UNCITRAL texts (e.g., art. 7 of the Convention on the Limitation Period in the International Sale of Goods, 1974; art. 7, para. 1, of the United Nations Convention on Contracts for the International Sale of Goods, 1980; art. 2A of the UNCITRAL Model Law on International Commercial Arbitration, 1985, as amended in 2006). That principle aims at ensuring uniformity of interpretation by suggesting that, in interpreting and applying uniform law texts, judges and arbitrators should consider the international origin of the law and the need to promote uniformity in its application. The implementation of that principle presupposes access to relevant decisions.
2. For those reasons, the Commission decided, at its twenty-first session, in 1988, to establish a system for collecting and disseminating information on court decisions and arbitral awards relating to UNCITRAL texts, known as the “Case Law on UNCITRAL Texts (CLOUT)”, for use by judges, arbitrators, lawyers and parties to business transactions and with the intention to further the desired uniformity of UNCITRAL texts.¹
3. Information on the decisions interpreting and applying UNCITRAL texts is not only essential to promote their uniform interpretation but is also of great importance to monitor the implementation of those texts as well as to formulate proposals on their review. Last but not least, wide availability of those decisions may assist practitioners and entrepreneurs in drafting contracts, including with respect to choice of applicable law. Those considerations point at the importance of CLOUT to contribute to the achievement of the Sustainable Development Goals (SDGs), namely SDG 16 with respect to promoting the rule of law and access to justice and to building capacity.

B. Status of CLOUT

1. Existing cases by area of work and geographic origin

4. As at the date of this note, 198 issues of CLOUT had been prepared for publication, dealing with 1,812 cases from 69 jurisdictions.² Since its last note to the Commission ([A/CN.9/946](#)), the Secretariat received 39 new abstracts from national correspondents and voluntary contributors. The distribution of abstracts by texts and jurisdictions follows an established pattern. As a result, some areas of the work of UNCITRAL benefit from a significant amount of decisions, as do some jurisdictions and regions.
5. In the area of **alternative dispute resolution**, CLOUT features 475 cases relating to the UNCITRAL Model Law on International Commercial Arbitration, 1985, as amended in 2006 (MAL) and 226 cases relating to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958

¹ *Official Records of the General Assembly, Forty-third Session, Supplement No. 17 (A/43/17)*, paras. 98–109.

² Those jurisdictions are: Albania, Argentina, Australia, Austria, Belarus, Belgium, Benin, Bermuda, Bosnia and Herzegovina, Brazil, Burkina Faso, Cameroon, Canada, Chile, China, Colombia, Côte d'Ivoire, Croatia, Cuba, Czechia, Denmark, Egypt, El Salvador, European Union, Finland, France, Georgia, Germany, Greece, Hong Kong, China, Hungary, India, Iraq, Ireland, Israel, Italy, Japan, Kenya, Liechtenstein, Lithuania, Luxembourg, Mexico, Montenegro, Netherlands, New Zealand, Nigeria, Norway, Paraguay, Philippines, Poland, Portugal, Republic of Korea, Russian Federation, Serbia, Singapore, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Thailand, Tunisia, Uganda, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America and Zimbabwe.

(New York Convention).³ CLOUT cases in this field represent approximately 39 per cent of the total number of published CLOUT cases. Moreover, the *UNCITRAL Digest of Case Law on the Model Law on International Commercial Arbitration* was published in 2012. Additional information on the New York Convention, including cases, is available on the website newyorkconvention1958.org (see below, Part III). The New York Convention has been adopted by 159 States and the MAL has been enacted in 111 jurisdictions in 80 States.

6. In the area of **international sale of goods**, CLOUT contains 942 cases relating to the United Nations Convention on Contracts for the International Sale of Goods, 1980 (CISG) and 23 cases relating to the Convention on the Limitation Period in the International Sale of Goods, 1974 and the 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). CLOUT cases in this field represent approximately 53 per cent of the total number of published CLOUT cases. Editions of the *UNCITRAL Digest of Case Law on the United Nations Convention on Contracts for the International Sale of Goods* were published in 2004, 2008, 2012 and 2016. The CISG has been adopted by 91 States and the Limitation Convention has been adopted by 30 States.

7. In the area of **cross-border insolvency**, CLOUT features 118 cases on the UNCITRAL Model Law on Cross-Border Insolvency, 1997 (MLCBI). CLOUT cases in this field represent 6.5 per cent of the total number of published CLOUT cases. A digest on the UNCITRAL Model Law on Cross-Border Insolvency is being prepared. Additional information may be found in the publication *UNCITRAL Model Law on Cross-Border Insolvency: The Judicial Perspective*. The MLCBI has been enacted in 48 jurisdictions in 46 States.

8. In the area of **electronic commerce**, 36 CLOUT cases relate to the UNCITRAL Model Law on Electronic Commerce, 1996 (MLEC),⁴ one case relates to the UNCITRAL Model Law on Electronic Signatures, 2001 (MLES)⁵ and four cases relate to the United Nations Convention on the Use of Electronic Communications in International Contracts, 2005 (ECC).⁶ The MLEC has been enacted in 151 jurisdictions in 72 States. The MLES has been enacted in 33 States. The ECC has 11 States parties and its substantive provisions have been enacted in 25 jurisdictions in 17 States.

9. In the area of **international transport of goods**, CLOUT contains three cases relating to the United Nations Convention on the Carriage of Goods by Sea, 1978 (Hamburg Rules). The Hamburg Rules have 34 States parties.

10. In the area of **international payments**, CLOUT features one case on the United Nations Convention on Independent Guarantees and Stand-by Letters of Credit, 1995 (UNLOC) and two cases on the UNCITRAL Model Law on International Credit Transfers, 1992 (MLICT). The UNLOC has eight States parties.

11. With respect to geographic origin of reported cases, it should be noted that most abstracts published originated from jurisdictions located in the Western European and other States Group. Cases originating from jurisdictions located in Asia and the Pacific and in Eastern Europe account together for approximately one third of total cases. Cases originating from Latin America and the Caribbean and from Africa

³ 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 (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 (see part III below and *Official Records of the General Assembly, Sixty-eighth Session, Supplement No. 17 (A/68/17)*, paras. 134–140).

⁴ United Nations publication, Sales No. E.99.V.4.

⁵ United Nations publication, Sales No. E.02.V.8.

⁶ United Nations, *Treaty Series*, vol. 2898, No. 50525, p. 3.

account for about 5 per cent of the total. A few abstracts originate from international courts or arbitral institutions.

2. Case law reporting mechanisms

12. Under the collection and reporting mechanism envisaged at the time of establishment of CLOUT, decisions are provided by a network of national correspondents appointed by States. Those correspondents, who may be individuals or entities, should monitor and collect court decisions and arbitral awards relating to UNCITRAL texts and prepare abstracts of those considered relevant in any of the six official languages of the United Nations.

13. Pursuant to a decision taken by the Commission at its forty-second session, in 2009, States are requested to appoint national correspondents for a period of five years as of 2012.⁷ Currently-appointed national correspondents are expected to serve until 2022. Thirty-six States, representing approximately 18.5 per cent of the United Nations membership, have appointed national correspondents.

14. National correspondents meet every two years to take stock of the latest developments and challenges of CLOUT maintenance and improvement. An oral report of the national correspondents meeting is presented to the Commission.

15. Contributions from scholars or institutions who are not appointed as national correspondents are also accepted, subject to control and prior notification to the relevant national correspondent, when appointed. This practice is consistent with the Commission's recommendation of using all available sources of information to supplement the information provided by the national correspondents.⁸

16. The recently-revised CLOUT User Guide, available in the six official languages of the United Nations on the UNCITRAL website, provides guidance for the preparation of the abstracts to both national correspondents and voluntary contributors.

17. Since its last note to the Commission, the Secretariat received 39 new abstracts from national correspondents and voluntary contributors.

18. In the past ten years, the number of cases submitted by voluntary contributors, including cases that were prepared at the initiative of the Secretariat, is slightly higher than that of cases submitted by national correspondents. Only approximately 15 per cent of the national correspondents are active.

3. Case law publishing

19. The Secretariat collects the full texts of the decisions and awards in their original language and publishes them. The abstracts are edited, translated and published in the official United Nations languages as part of the regular documentation of UNCITRAL. Paper-based documents are issued under the symbol: A/CN.9/SER.C/ABSTRACTS/.

20. Electronic versions of CLOUT issues are uploaded in the CLOUT database as soon as available together with the full text of the decision, when available. The Secretariat informs of CLOUT's latest releases on UNCITRAL social media outlets.

21. In the period under review, the CLOUT database received over 34,000 visitors. According to data provided by free web analytics services, most of the users are located in China, India, the United States of America, Egypt, the United Kingdom of Great Britain and Northern Ireland, Mexico, Australia, France, Spain and Colombia.

22. The CLOUT database has not yet been migrated to the new UNCITRAL website (uncitral.un.org). Moreover, several suggestions have been made on improvements of the CLOUT database, especially with respect to user-friendliness (see, e.g., [A/72/17](#),

⁷ *Official Records of the General Assembly, Sixty-fourth Session, Supplement No. 17 (A/64/17)*, para. 370.

⁸ *Ibid.*, para. 371.

para. 304). In planning for that migration, the Secretariat is considering also solutions that could improve the database, including with respect to human and financial resources required.

C. Digests of case law

23. The Commission may also wish to recall that subsequently, in light of the large number of cases collected in CLOUT on certain UNCITRAL texts, the Commission requested the preparation of tools designed to present information on the interpretation of those texts in a clear, concise and objective manner.

24. In particular, at its thirty-fourth session, in 2001, the Commission requested the Secretariat to prepare a digest of case law on the United Nations Convention on Contracts for the International Sale of Goods⁹ (Vienna, 1980);¹⁰ at its thirty-fifth session, in 2002, the Commission requested the Secretariat to prepare a similar digest of case law on the UNCITRAL Model Law on International Commercial Arbitration;¹¹ and at its forty-fifth session, in 2012, the Commission agreed that a digest on the UNCITRAL Model Law on Cross-Border Insolvency should be prepared.¹²

25. The first draft of a digest on the UNCITRAL Model Law on Cross-Border Insolvency has been prepared by the UNCITRAL secretariat. It will be finalized in cooperation with interested organizations and academic institutions. Some organizations, such as INSOL International, have already expressed interest in collaborating with the UNCITRAL secretariat in the finalization of that project. Any interested organization and institution that is invited to attend the sessions of UNCITRAL and its Working Group V (Insolvency Law) may wish to express interest to the Commission or its secretariat to contribute to the review of the digest before it is published.

26. Digests of case law are published both electronically and on paper and in all official languages of the United Nations, subject to availability of resources. New editions of digests are currently prepared on an irregular basis.

II. A way forward for CLOUT

27. The importance of providing access to decisions interpreting and applying UNCITRAL texts has been evident from the establishment of UNCITRAL. The mandate of UNCITRAL explicitly refers to “promoting 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” and to “collecting and disseminating information on national legislation and modern legal developments, including case law, in the field of the law of international trade” as two of its core components.¹³

28. UNCITRAL texts are increasingly adopted by States and used by stakeholders. Some of them have become the global legislative standard in their field. A key challenge in promoting their implementation lies in ensuring adequate information about their interpretation and application. That challenge needs to be addressed in the framework of the activities directed at promoting awareness and understanding of those texts.

29. States have demonstrated significant support for technical assistance and cooperation activities, which are instrumental to the wide use of UNCITRAL texts, thus delivering expected benefits. CLOUT has an evident relevance for those

⁹ United Nations, *Treaty Series*, vol. 1489, No. 25567, p. 3.

¹⁰ *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 17* and corrigendum (A/56/17 and Corr.3), paras. 386–395.

¹¹ *Ibid.*, *Fifty-seventh Session, Supplement No. 17* (A/57/17), para. 243.

¹² *Ibid.*, *Sixty-seventh Session, Supplement No. 17* (A/67/17), para. 156.

¹³ General Assembly resolution 2205 (XXI), para. 8.

activities, namely to promote uniform application and interpretation of UNCITRAL texts.

30. UNCITRAL is already widely regarded as the principal body with universal participation for producing uniform trade law texts. In light of the above needs, it should also be widely regarded as the principal source of information on the interpretation and application of those texts.

31. However, the above analysis indicates that the total number of cases reported in CLOUT, though increasing, does not provide sufficient guidance on the interpretation and application of UNCITRAL texts, in particular with respect to certain areas of work and certain regions. Opportunities may exist also with respect to dissemination of information on CLOUT.

32. Hence, the Secretariat submits to the consideration of the Commission proposals aimed at increasing the relevance of the CLOUT system in promoting awareness, understanding and use, including uniform interpretation and application of UNCITRAL texts. Those suggestions pertain to: (a) mobilizing national correspondents; (b) establishing a CLOUT steering committee with advisory functions; and (c) expanding partnerships to promote collecting and compiling cases as well as disseminating related information.

A. A new governance for CLOUT

1. Mobilizing national correspondents

33. The Secretariat intends to contact each national correspondent to have individual feedback on their expectations and possible contribution to CLOUT. This exercise aims at promoting engagement as well as clarifying the nature and scope of CLOUT.

34. As noted above (para. 13), more than 80 per cent of States have yet to appoint national correspondents. This has an impact not only on the availability of case law, but also on the perception of the uniform application of UNCITRAL texts in those jurisdictions. In light of these considerations, **the Commission may wish to invite those States that have not yet done so to appoint CLOUT national correspondents.** The Secretariat will follow up as appropriate, including at the individual country level.

2. Establishing a steering committee

35. The existence of an advisory body for CLOUT was contemplated already at the outset. Such a body may contribute to manage CLOUT more dynamically by providing advice on specific matters. Establishing a steering committee or similar body could ensure that a link is established between an official country representative and the CLOUT system without necessarily burdening that representative with the preparation of cases, which is an activity that, as seen above, most national correspondents do not carry out. States wishing to do so may continue to appoint multiple national correspondents tasked with case law monitoring and reporting.

36. Functions attributed to the steering committee could include: informing on databases of case law and other qualified sources of information, and facilitating access to those sources; suggesting and facilitating contact with local partners, including potential donors, and overall coordinating CLOUT-related activities in the country; suggesting, planning and carrying out activities at the national and regional level; providing users' feedback and suggesting improvements for the dissemination of CLOUT information, including editorial and technical solutions; and any other activity useful to carry out CLOUT's mandate.

37. The steering committee could be comprised of one State-appointed representative for each State. The members of the steering committee could meet in person on the occasion of the meeting of national correspondents, and therefore at

no additional cost. Further suggestions on the possible composition and functions of such a body will be elicited at the meeting of CLOUT national correspondents and will be reported to the Commission.

38. Based on the above suggestions and the comments to be compiled at the CLOUT national correspondents meeting, **the Commission may wish to consider whether a CLOUT steering committee should be established.**

3. Expanding partnerships

39. As noted above, it is desirable to give new impulse to the compilation of case law and preparation of abstracts as well as to the dissemination of related information. Besides further mobilizing national correspondents, including through the steering committee, it may therefore be desirable to expand the network of contributors by involving new partners. Individual contributors will continue to be welcome. However, institutional partners may better ensure that adequate capacity is available in a sustainable manner.

40. Entities such as universities and research institutes, judiciary bodies and other organizations with special interest in one or more areas of work of UNCITRAL may become CLOUT partners. Certain possible partners have already been identified. Networks will be established for each area of work to facilitate interaction and cooperation among partners.

41. Partners will be selected through a transparent process and on the basis of predetermined requirements, including the ability to access sources of case law, and taking into account different needs of the various areas of work of UNCITRAL. Partnerships will be managed in accordance with applicable rules and regulations of the United Nations.

42. Partners are generally in charge of monitoring and reporting on case law and of undertaking promotional activities related to promoting broader awareness and use of UNCITRAL texts as well as their uniform application and interpretation.

43. Partners' activities include: organizing conferences, workshops and similar events on UNCITRAL texts; making materials such as explanatory reports and *travaux préparatoires* available, especially in local languages; contributing to the Bibliography of writings related to the work of UNCITRAL; reporting on legislation and administrative decisions relevant for the application and interpretation of UNCITRAL texts; creating and maintaining databases complementary to CLOUT; publishing books and articles in journals; maintaining a presence on the web and on social media.

44. Partners should be invited to attend national correspondents' meetings and interact with them on developing CLOUT. A segment of those meetings will be open to the public to further disseminate awareness on UNCITRAL texts and CLOUT. To do so effectively, it is suggested that those meetings could take place in Vienna on the occasion of the Willem Vis Moot Court Competition.

45. As noted above (para. 11), most CLOUT cases originate from jurisdictions with easily accessible commercial or non-commercial case reporting systems. In other words, that case law may be retrieved from sources other than CLOUT, though possibly only in the original language or, at best, in an English language translation.

46. On the other hand, jurisdictions that do not have case reporting systems are often underrepresented or not yet represented in CLOUT. These jurisdictions may also not yet have appointed a CLOUT national correspondent. It is suggested that those jurisdictions should have priority in establishing partnerships.

47. **The Commission may wish to confirm that the suggested approach to establishing CLOUT partnerships is acceptable.**

B. Improving dissemination of case law

1. Limited publication of certain cases

48. Since the establishment of UNCITRAL and, more recently, of CLOUT, the use of electronic communications and information management has greatly changed compiling and disseminating case law.

49. In that line, at the Commission's fiftieth session, in 2017, the Secretariat drew the Commission's attention to impact on the CLOUT system of well-established online resources that greatly facilitate access to case law, including on UNCITRAL texts, at least originating from certain jurisdictions ([A/72/17](#), para. 303).

50. In particular, certain cases that are readily available online merely confirm well-settled interpretations in the jurisdiction of origin. Those cases could be made available in the CLOUT database with reference to the relevant legislative provisions but without an abstract. This would introduce a "limited publication" category of case reporting. **The Commission may wish to confirm that the suggested approach is acceptable.**

2. Electronic database

51. As already noted ([A/CN.9/906](#), paras. 17–20), the current electronic database has several limitations that make it less user-friendly. For instance, cases may be retrieved only by CLOUT issues and not individually. Moreover, full-text search may benefit from further enhancement.

52. Lack of human and financial resources has often prevented the improvement of CLOUT's electronic database. Requests for dedicated contributions have not been successful. The Secretariat will renew its efforts to seek additional funding, including by highlighting the importance of CLOUT for promoting the rule of law and the achievement of SDG 16. Technical solutions will be coordinated with the upgrade of the UNCITRAL Transparency Registry, which currently shares the same software with CLOUT.

53. Another way of expanding the dissemination of information on CLOUT is by developing sustainable solutions with partners (see above, paras. 39–47). The New York Convention Guide Web Platform (see below, part III), which complements the New York Convention Guide with an interactive and regularly updated electronic repository of information, offers an example of such cooperation.

C. CLOUT, case law digests and other UNCITRAL capacity-building tools

54. Digests of case law, when available, should be considered as the main entry point for readers who wish to become familiar with the application and uniform interpretation of UNCITRAL texts. For that reason, digests should be updated regularly.

55. In order to facilitate readability, the Secretariat should set criteria for selecting cases to be referenced in digests on the understanding that additional cases are easily retrievable from CLOUT. This would not affect the quantity and quality of case abstracts, but rather facilitate placing those abstracts in the appropriate context. **The Commission may wish to confirm that this approach is acceptable.**

56. The evolution of CLOUT should be closely coordinated with the development and deployment of other UNCITRAL tools related to raising awareness and promoting the understanding and use of UNCITRAL texts. CLOUT and other UNCITRAL capacity-building tools should be used in a coordinated manner in training and similar activities. This integrated approach is in line with the relevance of CLOUT and other UNCITRAL tools for the achievement of SDG 16, as noted above (para. 3).

57. The Commission may wish to consider whether additional capacity-building tools should be prepared bearing in mind the specific needs of certain user groups (judges and arbitrators, legal counsels, instructors and researchers). In that respect, the Commission may wish to consider the relationship between the digest on the UNCITRAL Model Law on Cross-Border Insolvency, on the one hand, and the publication *UNCITRAL Model Law on Cross-Border Insolvency: The Judicial Perspective*, on the other hand, as an example of possible interaction between different tools.

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

58. The New York Convention Guide Web Platform (available at newyorkconvention1958.org) 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.

59. Thanks to the ongoing efforts of its contributors, the website today makes publicly available information from 63 countries, including more than 2,800 decisions spanning both the civil and common law traditions. Over the past few months, new jurisdictions were added to the website, including Albania, Belarus, Denmark, Hungary and Malta. For each jurisdiction, the website provides direct links to specific national legal databases accessible to all users.

60. More specifically, at the date of this Secretariat's Note the database included concise background notes on 52 contracting States, 2,786 original-language decisions, 132 English-language translations, 1,148 summaries of cases, the *travaux préparatoires* and a bibliography on the New York Convention which consists of the most comprehensive directory of publications relating to the application and interpretation of such text (listing more than 900 books and articles from more than 76 countries in 11 different languages; 269 of such publications are directly accessible through hyperlinks). The bibliography is currently being updated and will soon contain more than 1,000 references.

61. The website has a page dedicated to the events on the UNCITRAL Secretariat Guide on the New York Convention which have taken place over the past months/years (including in Hong Kong, China, New York, Nigeria and Paris, of which videos are accessible online).

62. As in previous years, close coordination between the website and the CLOUT system continued to be maintained. 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.

63. Finally, hardback special editions of the UNCITRAL Secretariat Guide on the New York Convention are available in French and in English.