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Publications to promote a uniform interpretation and application of UNCITRAL texts (CLOUT and digests) and support their implementation and enactment

Note by the Secretariat

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I. Case Law on UNCITRAL Texts (CLOUT)

A. Background

1. The principle of autonomous interpretation of uniform law 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 judicial precedents from the various jurisdictions that have adhered to or implemented a uniform law text.
2. For this reason, at its twenty-first session, in 1988, the Commission decided 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.¹
3. Information on the decisions interpreting and applying UNCITRAL texts is also particularly useful to monitor the implementation of those texts and to formulate proposals on their review.
4. Moreover, that information is of great importance in the delivery of capacity-building activities aimed to support the effective use, implementation and uniform interpretation of UNCITRAL texts. Capacity-building activities are a fundamental component of the Secretariat’s technical assistance and cooperation programme (A/CN.9/1032, para. 5).
5. All stakeholders may benefit from capacity-building activities. For example, the information reported in CLOUT may assist practitioners and entrepreneurs in drafting contracts, including with respect to choice of applicable law. CLOUT may be particularly useful in building capacity of the judiciary, which is instrumental in facilitating the harmonious interpretation and application of UNCITRAL texts.² In that regard, in response to a request of the Commission³ the Secretariat has intensified its capacity-building activities in support of the judiciary, including by making use of the CLOUT tools (see, e.g., A/CN.9/1032, para. 15).
6. The above considerations point at the importance of CLOUT in contributing to the achievement of the Sustainable Development Goals (SDG), namely SDG 16 with respect to promoting the rule of law and access to justice and to building capacity.

B. Status of CLOUT

1. Cases by area of work and geographic origin

7. As at the date of this note, 202 issues of CLOUT had been published, dealing with 1,857 cases from 71 jurisdictions.⁴ The distribution of abstracts by texts and

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

² *Official Records of the General Assembly, Seventy-fourth Session, Supplement No. 17 (A/74/17)*, para. 251.

³ *Ibid.*

⁴ Those jurisdictions are: Albania, Argentina, Australia, Austria, **Azerbaijan**, Belarus, Belgium, Benin, Bermuda, Bosnia and Herzegovina, Brazil, Burkina Faso, Cameroon, Canada, Chile, China, Colombia, Côte d’Ivoire, Croatia, Cuba, **Cyprus**, 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. Cases from the jurisdictions in **bold** have been published in CLOUT for the first time in the reporting period.

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.

8. In the area of **alternative dispute resolution**, CLOUT features 498 cases relating to the UNCITRAL Model Law on International Commercial Arbitration, 1985, as amended in 2006 (MAL)⁵ and 242 cases relating to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958 (New York Convention).⁶ 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. The New York Convention has been adopted by 163 States and the MAL has been enacted in 116 jurisdictions in 83 States.

9. In the area of **international sale of goods**, CLOUT contains 960 cases relating to the United Nations Convention on Contracts for the International Sale of Goods, 1980 (CISG)⁷ and 24 cases relating to the Convention on the Limitation Period in the International Sale of Goods, 1974,⁸ 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).⁹ 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 93 States and the Limitation Convention has been adopted by 30 States.

10. In the area of **cross-border insolvency**, CLOUT features 127 cases on the UNCITRAL Model Law on Cross-Border Insolvency, 1997 (MLCBI).¹⁰ CLOUT cases in this field represent approximately 7 per cent of the total number of published CLOUT cases. The MLCBI has been enacted in 47 States and in 50 jurisdictions. (For additional information on UNCITRAL texts in this area, see below, part II.)

11. In the area of **electronic commerce**, 37 CLOUT cases relate to the UNCITRAL Model Law on Electronic Commerce, 1996 (MLEC),¹¹ two cases relate to the UNCITRAL Model Law on Electronic Signatures, 2001 (MLES)¹² and five cases relate to the United Nations Convention on the Use of Electronic Communications in International Contracts, 2005 (ECC).¹³ The MLEC has been enacted in 153 jurisdictions in 74 States. The MLES has been enacted in 33 States. The ECC has 13 States parties and its substantive provisions have been enacted in 28 jurisdictions in 20 States.

12. 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).¹⁴ The Hamburg Rules have 34 States parties.

⁵ United Nations publication, Sales No. E.08.V.4.

⁶ United Nations, *Treaty Series*, vol. 330, No. 4739, p. 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).

⁷ United Nations, *Treaty Series*, vol. 1489, No. 25567, p. 3.

⁸ United Nations, *Treaty Series*, vol. 1511, No. 26119, p. 3.

⁹ United Nations, *Treaty Series*, vol. 1511, No. 26121, p. 99.

¹⁰ *UNCITRAL Yearbook*, vol. XXVIII: 1997, part three, annexes I and II.

¹¹ United Nations publication, Sales No. E.99.V.4.

¹² United Nations publication, Sales No. E.02.V.8.

¹³ United Nations, *Treaty Series*, vol. 2898, No. 50525, p. 3.

¹⁴ United Nations, *Treaty Series*, vol. 1695, No. 29215, p. 3.

13. 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)¹⁵ and two cases on the UNCITRAL Model Law on International Credit Transfers, 1992 (MLICT).¹⁶ The UNLOC has eight States parties.

14. 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 account for about 5 per cent of the total. A limited number of cases originated from international courts or arbitral institutions.

2. Rejuvenation and expansion of CLOUT

15. 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. Forty-three States have appointed national correspondents, which are expected to serve until 2022. Contributions from scholars or institutions who are not appointed as national correspondents are also accepted.

16. National correspondents meet every two years to take stock of the latest developments and challenges of CLOUT maintenance and improvement. The next meeting is expected to take place in the year 2021 on the occasion of the annual Willem Vis Moot Court to encourage participation and reduce travel costs. It is envisaged that the meeting will feature a public segment to discuss how recent cases impacted the application of UNCITRAL texts.

17. Approximately 15 per cent of the national correspondents are actively contributing to CLOUT. In the past ten years, the number of cases submitted by voluntary contributors, including cases that were prepared at the initiative of the Secretariat, has been slightly higher than that of cases submitted by national correspondents.

18. To support the transition to the rejuvenated and expanded CLOUT system, the Secretariat has monitored case law developments and reported on them. Moreover, in the reporting period the Secretariat has aimed to publish CLOUT issues on a single text or topic featuring a higher number of cases than the past average. This was done to increase overall readership and consolidate CLOUT's role as the primary source of timely and relevant information on uniform international trade law in the six languages of the United Nations.

19. Since its last note to the Commission, the Secretariat received 20 new abstracts from national correspondents and voluntary contributors. The Secretariat has prepared the majority of the abstracts published in the reporting period. The implementation of the measures aimed to rejuvenate and expand CLOUT is expected to reverse this trend.

20. Electronic versions of CLOUT issues are uploaded in the CLOUT database together with the full text of the decision, when available. The Secretariat informs of CLOUT's latest releases on UNCITRAL social media outlets. While the vast majority of the abstracts are accessed in electronic form, the issuance of paper-based documents is necessary for managing their workflow, especially with respect to translations.

21. In the period under review, the CLOUT database received over 36,600 visitors. The CLOUT database has not yet been migrated to the UNCITRAL website (uncitral.un.org). The migration, which is expected to enable several new functions, including easier access from mobile devices, has been postponed due to lack of human and financial resources. The Secretariat intends to further explore the possibility of

¹⁵ United Nations, *Treaty Series*, vol. 2169, No. 38030, p. 163.

¹⁶ United Nations publication, Sales No. E.99.V.4.

developing a new interface with the assistance of other United Nations entities and in the pursuit of SDG 4, on quality education.

CLOUT Steering Committee

22. At its fifty-second session, the Commission agreed to establish a CLOUT Steering Committee comprising one representative appointed by each State and encouraged States to appoint representatives.¹⁷ During the reporting period several States have appointed new National Correspondents (e.g. Australia, Austria, Lebanon, Republic of Korea) and one of them has appointed a member of the Steering Committee (Thailand).

CLOUT Partnerships

23. At its fifty-second session, the Commission also requested the Secretariat to establish CLOUT partnerships to pursue certain activities, within available resources, in line with relevant rules and regulations and taking into account the ability of the entity to contribute to CLOUT as well as the different needs of each work area.¹⁸

24. CLOUT 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. 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.¹⁹

25. Preparatory contacts have been conducted on the establishment of CLOUT partnerships with universities and research institutes, judiciary bodies and other organizations with special interest in one or more areas of work of UNCITRAL. Discussions are carried out on the basis of predetermined requirements and taking into account different needs of the various areas of work of UNCITRAL. Requirements taken into consideration include: expertise in the intended area of work; the ability to monitor and compile case law, and to operate databases; institutional support from a research or teaching institute, ensuring financial viability and human resources sustainability; multilingualism; availability of resources at no cost to a large number of users. Special consideration was given to potential partners from developing countries and to potential partners active in multiple jurisdictions. The finalization of some partnerships has been delayed due to the impact of the coronavirus disease (COVID-19) pandemic.

26. Particular attention has been given to developing partnerships with judicial training institutes with a view to developing regional programmes (see para. 5 above). One such partnership is being discussed with the Judicial Policy Research Institute of the Republic of Korea.

27. In line with the recommendation to develop sustainable solutions, a partnership is under discussion with the operators of the CISG-online database. The CISG-online is a research platform dedicated to the law and practice of uniform texts on the international sale of goods hosted by the Faculty of Law of the University of Basel, Switzerland. Envisaged activities include regular exchange of case law, so that only the most relevant cases will be published in CLOUT, but all cases will be reported on

¹⁷ *Official Records of the General Assembly, Seventy-fourth Session, Supplement No. 17 (A/74/17)*, para. 244.

¹⁸ *Ibid.*, para. 247.

¹⁹ *Ibid.*, para. 246.

the partner's website, in a manner akin to the current arrangement with the New York Convention Guide Web Platform (see below, part III).

28. In the field of alternative dispute resolution, partnerships have been discussed with arbitration centres and with private initiatives gathering academic institutions and practitioners.

29. Further expansion of the network of CLOUT partners will take into account the specific features of each field of work of UNCITRAL. For instance, work on public procurement and public-private partnerships may be carried out with development banks and specialized government units, and work in the field of electronic commerce and the digital economy may be carried out with specialized research institutes.

C. Digests of case law

30. The Commission may also wish to recall that, 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.

31. 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 Goods²⁰ (Vienna, 1980);²¹ 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;²² 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 (see below, part II).²³

32. 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 prepared as need arises. In response to several requests, the Secretariat is planning the preparation of a new edition of the digest of case law on the UNCITRAL Model Law on International Commercial Arbitration.

II. Updates on Secretariat work preparing materials related to existing insolvency texts

A. Digest of Case Law on the Model Law on Cross-Border Insolvency

33. At its fifty-second session (8–19 July 2019), the Commission made several requests to the Secretariat to prepare materials related to existing insolvency texts, in particular: (a) the preparation of a digest of case law on the UNCITRAL Model Law on Cross-Border Insolvency (MLCBI); (b) updating of the MLCBI Judicial Perspective; and (c) the preparation of explanatory materials on the enactment of the UNCITRAL Model Laws on cross-border insolvency, on recognition and enforcement of insolvency-related judgments, and on enterprise group insolvency.²⁴

34. At the same session, the Commission noted that organizations and institutions invited to attend sessions of UNCITRAL and its Working Group V (Insolvency Law) had been invited to express their interest in contributing to the review of the draft

²⁰ United Nations, *Treaty Series*, vol. 1489, No. 25567, p. 3.

²¹ *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 17* and corrigendum (A/56/17 and Corr.3), paras. 386–395.

²² *Ibid.*, *Fifty-seventh Session, Supplement No. 17* (A/57/17), para. 243.

²³ *Ibid.*, *Sixty-seventh Session, Supplement No. 17* (A/67/17), para. 156.

²⁴ *Ibid.*, *Seventy-fourth Session, Supplement No. 17* (A/74/17), para. 222 (b). See also, *ibid.*, *Sixty-seventh Session, Supplement No. 17* (A/67/17), para. 156.

digest, and noted with appreciation that INSOL International had expressed its interest in making such a contribution.²⁵

35. Preparation of the digest of case law on the MLCBI accelerated through 2019 and early 2020, including review of the text by experts, and contributions from institutions, including INSOL International. Subject to the availability of resources in the United Nations secretariat, translation of the final text of the digest and publication on the UNCITRAL website is anticipated by the end of 2020, or as soon as practicable thereafter. The goal of uniform interpretation of the MLCBI has been assisted by CLOUT, and it is expected that publication of this first and of subsequent editions of digest of case law will further support that goal.

B. The Model Law on Cross-Border Insolvency: The Judicial Perspective

36. The UNCITRAL Model Law on Cross-Border Insolvency: The Judicial Perspective (the Judicial Perspective) was finalized and adopted by the Commission in 2011 at its forty-fourth session (27 June–8 July 2011).²⁶ The text was updated in 2013 to reflect the revisions to the Guide to Enactment of the MLCBI adopted by the Commission²⁷ as the Guide to Enactment and Interpretation of the UNCITRAL Model Law on Cross-Border Insolvency, as well as jurisprudence applying and interpreting the Model Law that had been issued between July 2011 and 15 April 2013. In its decision authorizing the Secretariat to edit, finalize and publish the text of the updated Judicial Perspective,²⁸ the Commission expressed its satisfaction that the board of experts established by the Secretariat to advise it on updating the materials was an appropriate mechanism for that purpose, and noted that jurisprudence issued after 15 April 2013 should be considered for inclusion in a subsequent update of the Judicial Perspective.

37. The Commission may wish to note that a significant amount of jurisprudence on the MLCBI has been issued since 15 April 2013 and that global mitigation efforts made necessary by the COVID-19 pandemic are expected to occasion a large number of insolvencies in the coming period. In light of that context and the finalization of the digest on case law on the MLCBI, the Commission may wish to consider whether the Secretariat should be requested to prepare, finalize and publish an update of the Judicial Perspective as soon as practicable, using a mechanism along the lines of that used for the 2013 update.

C. Secretariat guidance note on the enactment of the UNCITRAL Model Laws on Cross-Border Insolvency, Recognition and Enforcement of Insolvency-Related Judgments and Enterprise Group Insolvency

38. At its fifty-fourth session (Vienna, 10–14 December 2018), Working Group V (Insolvency Law) was unanimous in supporting the preparation by the Secretariat of materials that would explain to enacting States how the Model Law on Enterprise Group Insolvency (MLEGI), once adopted by the Commission, could be enacted alongside the Model Law on Cross-Border Insolvency (MLCBI) and the Model Law on Recognition and Enforcement of Insolvency-Related Judgments (MLIJ). The Secretariat was requested by the Working Group to prepare such materials as soon as possible in consultation with experts, where necessary.²⁹ Those views were reiterated by the Working Group at its fifty-fifth³⁰ (New York, 28–31 May 2019) and

²⁵ Ibid., *Seventy-fourth Session, Supplement No. 17 (A/74/17)*, paras. 222 (b) and 250.

²⁶ Ibid., *Sixty-sixth Session, Supplement No. 17 (A/66/17)*, para. 198.

²⁷ Ibid., *Sixty-eighth Session, Supplement No. 17 (A/68/17)*, para. 198.

²⁸ Ibid., paras. 208–209.

²⁹ See [A/CN.9/966](#), para. 109.

³⁰ See [A/CN.9/972](#), para. 66.

fifty-sixth³¹ (Vienna, 2–5 December 2019) sessions. At its fifty-second session (8–19 July 2019), the Commission adopted the MLEGI and its Guide to Enactment³². At the same session, the Commission also endorsed the Working Group’s request, and asked the Secretariat to proceed with the preparation of explanatory materials to assist States wishing to enact the UNCITRAL model laws in the area of insolvency law.³³

39. To that end, the Secretariat has engaged in expert consultations, and preparation is under way of materials that explain to enacting States wishing to enact two or more of the three UNCITRAL insolvency-related model laws how those texts are intended to work together. The materials will consist of three elements. First, an introductory section will explain in what ways the model laws are complementary and in what ways they differ. For example, in the case of the MLIJ and the MLCBI, it will be explained that the MLIJ, like the MLCBI, also sets up a framework for cross-border recognition, but in the case of the MLIJ, for the recognition and enforcement of an insolvency-related judgment. The similarities of the two model laws will be highlighted (such as the use of similar terminology and definitions, as well as reliance on a number of the same general articles), as well as important differences (for example, the narrower scope and additional terminology of the MLIJ, or the fact that the MLIJ, like the MLCBI, requires that the interests of creditors and other interested persons be protected, but in different situations). The second section of the materials will consist of a technical note mapping out specifically how the provisions of the MLIJ might be incorporated into the MLCBI for a single enactment (for example, how the preambular paragraphs and definitions could be consolidated, and how to interlay other aspects of the two model laws, such as adjusting the article 15 MLCBI application for recognition of a foreign proceeding to include the article 11 MLIJ procedure for seeking recognition and enforcement of an insolvency-related judgment). The third and final element of the materials will consist of an illustration of how the MLCBI and the MLIJ could be consolidated into a single model law for enactment by a State. This suggested single enactment consolidating the MLCBI and the MLIJ will be very clearly annotated to indicate which aspects of the text are drawn from which model law, and will be prepared to ensure that the consolidation does not result in any substantive change to either model law. These three elements will then be repeated in the context of the MLCBI and the MLEGI to illustrate the interoperability of those texts. Finally, a single text combining all three model laws will be prepared, again, with clear annotations and carefully avoiding any change in substance to any of the three model laws.

40. The Commission may wish to take note of this progress on the explanatory materials to assist States in understanding the interoperability of the MLCBI, the MLIJ and the MLEGI and, subject to the availability of resources in the United Nations Secretariat, to support publication of those materials as a Secretariat note on the UNCITRAL website as soon as practicable, and in all official United Nations languages.

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

41. 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.

³¹ See [A/CN.9/1006](#), para. 114.

³² *Official Records of the General Assembly, Seventy-fourth Session, Supplement No. 17 (A/74/17)*, para. 110.

³³ *Ibid.*, para. 222 (b).

42. Thanks to the ongoing efforts of its contributors, the website today makes publicly available information from 68 countries, including more than 3,400 decisions spanning both the civil and common law traditions. Over the past few months, new jurisdictions were added to the website, including Greece, Pakistan, Peru, Uruguay and Uzbekistan. For each jurisdiction, the website provides direct links to specific national legal databases accessible to all users.

43. More specifically, at the date of this Secretariat's Note the database included concise background notes on 56 contracting States, 3,408 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; 206 of such publications are directly accessible through hyperlinks). The bibliography is currently being updated and will soon contain more than 1,000 references.

44. 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).

45. 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.

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