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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, its establishment and the Digests is provided in the Provisional Agenda of the forty-fifth session of the Commission (A/CN.9/735, paras. 36-40).

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, New York Convention);
- ☐ 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;
- ☐ United Nations Convention on the Carriage of Goods by Sea, 1978 (Hamburg, Hamburg Rules);
- ☐ United Nations Convention on Contracts for the International Sale of Goods, 1980 (Vienna, CISG);
- ☐ 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); and
- ☐ UNCITRAL Model Law on Cross-Border Insolvency, 1997 (MLCBI).

3. The Commission will 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.<sup>1</sup> For this reason, the CLOUT system includes only recent case law concerning the Convention.

4. Case law to be reported in CLOUT is provided by the network of national correspondents that, either as individuals or as 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, but does not at present publish them. The abstracts are edited and translated by the

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<sup>1</sup> See *Official Records of the General Assembly, Sixty-third session, Supplement No. 17 (A/63/17)*, para. 360.

Secretariat into the other five United Nations languages and published in all six languages as part of the regular documentation of UNCITRAL (under the identifying symbol: A/CN.9/SER.C/ABSTRACTS/...).

5. 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 also consistent with the Commission's recommendation of utilizing all available sources of information to supplement the information provided by the national correspondents. 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*

6. As at the date of this note, 116 issues of CLOUT had been prepared for publication, dealing with 1,134 cases. Of these, 688 cases related to the CISG, 351 cases related to the MAL (a number of cases deal with both MAL and the New York Convention), 43 cases related to the MLCBI, 31 cases primarily related to the New York Convention, 9 cases related to the MLEC, 8 cases related to the Limitation Convention (4 of which relate to the amended version of the Convention), and 3 cases related to the Hamburg Rules. For the first time an abstract related to the United Nations Convention on Independent Guarantees and Stand-by Letters of Credit was published. With reference to the five regional groups represented within the Commission, the majority of the abstracts published refer to Western European and other States (69 per cent). The other regional groups are represented as follows: Asian States (16 per cent), Eastern European States (10 per cent), African States (2 per cent) and Latin American and Caribbean States (2 per cent). A few abstracts (1 per cent) refer to the awards of the International Chamber of Commerce (ICC). Compared to the figures indicated in the last note to the Commission, a small decrease of the abstracts attributable to the Western European and other States and a parallel modest increase in the abstracts from Asian States and Eastern European States can be recorded.

7. Since the last note to the Commission (A/CN.9/726, 6 May 2011), 47 new abstracts had been received by the Secretariat: 25 concerning CISG, 7 MAL, 2 Limitation Convention (1 of which refers to the amended version of the text), 1 on the Model Law on Cross-Border Insolvency, 2 relating to the UNCITRAL Legislative Guide on Insolvency, 2 MLEC and 8 New York Convention. With reference to the five regional groups represented in the Commission, the majority of abstracts received are from Eastern European States (58 per cent), followed by Western European and other States (31 per cent), Latin American and Caribbean States (9 per cent), and Africa (2 per cent). In the same period, 80 abstracts were published: 50 CISG abstracts, 21 MAL, 6 New York Convention, 2 cases on the Limitation Convention (1 of which relates to the amended version of the Convention) and 1 case of the United Nations Convention on Independent Guarantee and Stand-by Letters of Credit.

*The network of national correspondents*

8. The current network of national correspondents, composed of 95 appointees, will terminate its mandate in 2012 pursuant to a decision of the Commission at its forty-second session, in 2009. At that session, the Commission, noting the need for a collection system that would be sustainable over time and could respond to changing circumstances, agreed that States that had appointed national correspondents should be requested to reconfirm that appointment every five years. This 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. In order to facilitate implementation of that provision, the Commission further agreed that the term of current national correspondents would expire in 2012 and States would be asked to reconfirm the appointment of their national correspondents at that time and every five years thereafter. At the date of this note, the Secretariat has already asked member States to appoint or reappoint their national correspondents: the new appointments would be effective as at the first day of the forty-fifth Commission session, i.e. 25 June 2012. It is recommended that any appointment coming after the deadline indicated to States (i.e. 27 April 2012) will nevertheless be effective as at 2012 and will expire five years starting from 2012. In light of the increasing volume of case law now available on several UNCITRAL texts, the Secretariat has encouraged member States to appoint more than one national correspondent and entrust each of them with the responsibility of a specific UNCITRAL text.

9. Since the last note to the Commission, approximately 45 per cent of the abstracts published were provided by the national correspondents. The rest were received from sources other than the network. The MOOT Alumni Association (MAA), with which the Secretariat has established a partnership for a few years now, provided 15 per cent of the abstracts coming from the voluntary contributors.

*Meeting of the national correspondents*

10. The last meeting of national correspondents took place on 7 July 2011, during the forty-fourth session of the Commission. Seventeen countries were represented. A large part of the meeting was devoted to the presentation of the final drafts of the CISG and MAL Digests both to be published in 2012 (see paras. 12-14 below). Several issues were raised in this regard, in particular: addressing feedback from Digests' users; facilitating the use of Digests by judges who do not speak any United Nations official language and encouraging translations of the Digests in those languages; preparing Digests of other UNCITRAL texts.

11. On a broader perspective, it was noted that since the network of national correspondents includes many experts on UNCITRAL work and texts, fully supportive of the efforts to create a harmonized legislative framework in international trade, national correspondents could assist the Secretariat in promoting the work of UNCITRAL beyond their CLOUT related tasks. The next meeting of the correspondents is scheduled during the forty-sixth session of the Commission, in 2013.

## II. The Digests

12. The 3rd revision<sup>2</sup> of the CISG Digest has been issued and is now available, in English, on the UNCITRAL website. The Secretariat will now proceed with translating the updated Digest in the other five official languages of the United Nations. The revised Digest includes about one thousand new cases, from over thirty countries, dealing with critically important issues that have arisen after the previous editions were released. Pursuant to the suggestions of the national correspondents at their meeting in July 2011, the Secretariat will now work to effectively promote the Digest and bring it to attention of a large segment of the legal and judicial community.

13. The MAL Digest has also been finalized and, at the date of this note, is being formatted for publication. The Digest includes references to more than 700 cases from 37 States. The main features of the Digest were introduced to audiences comprising academia, practitioners and judges at the occasion of two conferences on international arbitration, one hosted by the McGill University (Montreal, Canada, 24-25 November 2011) and the second jointly organized by UNCITRAL and the Vienna International Arbitration Centre (VIAC) (Vienna, 29 March 2012).<sup>3</sup> The MAL Digest will be officially launched in Singapore on 9 June 2012 and, as in the case of the CISG Digest, the Secretariat will then undertake its promotion.

14. Pursuant to discussions in Working Group V (Insolvency Law) the preparation of a digest of case law on the UNCITRAL Model Law on Cross-Border Insolvency is also being considered. At its forty-fifth session, the Commission may wish to consider the desirability of such a project, which would complement not only The Judicial Perspective<sup>4</sup> but also the text currently being prepared on “centre of main interests”,<sup>5</sup> providing wider and more ready access to the case law referred to in those texts and indicating emerging trends in interpretation of the Model Law.

## III. Enhancing CLOUT

15. At its 42nd session, in 2009, the Commission noted that the continued ability of CLOUT to provide meaningful information was dependent on the regular maintenance and development of the system, that those activities were resource intensive and the Secretariat was stretching its available resources to ensure their

<sup>2</sup> The Digest is the result of the cooperation between the Secretariat, the national correspondents and international experts. The 3rd edition has particularly benefitted from the contribution of Professor Sieg Eiselen (University of South Africa School of Law); Professor Franco Ferrari (New York University School of Law and Università degli Studi di Verona, Facoltà di Giurisprudenza); Professor Harry Flechtner (University of Pittsburgh School of Law); Professor Alejandro Garro (Columbia University Law School); Professor Ulrich Magnus (Universität Hamburg, Fakultät für Rechtswissenschaft); Vikki Rogers (Pace Law School, Institute of International Commercial Law); Professor Hiroo Sono (Hokkaido University School of Law); Professor Pilar Perales Viscasillas (Universidad Carlos III de Madrid, Facultad de Derecho); Professor Claude Witz (Saarland University and University of Strasbourg, Faculties of Law).

<sup>3</sup> See also A/CN.9/753.

<sup>4</sup> *Official Records of the General Assembly, Sixty-fifth Session, Supplement No. 17*, para. 198.

<sup>5</sup> See reports of the Working Group V on the work of its fortieth and forty-first sessions (A/CN.9/738 and A/CN.9/742).

coordination. The Commission appealed to all States to assist the Secretariat in the search for available funding at the national level to ensure coordination and expansion of CLOUT.<sup>6</sup> Since that appeal, no increase in the resources available for the maintenance and improvement of the system has occurred.

16. The Secretariat has thus refined a project proposal aiming at supporting the system with enhanced resources. The project is structured around three objectives: increased collection of abstracts and their enhanced quality control; regular updating of CISG and MAL Digests, initiatives to promote knowledge thereof and identification of other UNCITRAL texts where a Digest might be prepared; enhancement of the CLOUT website in order to improve current features and provide new ones (e.g. full text of decisions). Furthermore, the project would pilot an online “community of practice”, founded on the national correspondents but open to other legal practitioners as well, which could contribute to identifying meaningful case law, create new knowledge and foster knowledge of uniform law among those members of the legal community who are less aware of the UNCITRAL texts and of their application. This would be particularly valuable for developing countries and economies in transition.

17. The Secretariat is seeking assistance from States and other donors either in kind (e.g. non-reimbursable loans of personnel) or through budget contributions, and has already discussed it with one UNCITRAL member State. Pooling of resources from various donors is also sought.

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<sup>6</sup> *Official Records of the General Assembly, Sixty-fourth session, Supplement No. 17 (A/64/17)*, para. 372.