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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 fiftieth session of the Commission ([A/CN.9/894](#), para. 9).

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);¹
- 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).

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 or institutions who are not appointed as national correspondents are also accepted, subject to control

¹ 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 (see paras. 16-19 below and *Official Records of the General Assembly, Sixty-eighth Session, Supplement No. 17 (A/68/17)*, paras. 134-140).

and prior notification to the relevant national correspondent, if appointed. This practice is consistent with the Commission's recommendation of utilizing all available sources of information to supplement the information provided by the national correspondents.² 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.

Abstracts published and received

5. As at the date of this note, 179 issues of CLOUT had been prepared for publication, dealing with 1,661 cases from 65 jurisdictions.³ Of these, 875 cases related to CISG, 447 cases related to MAL (a number of cases dealt with both MAL and the New York Convention), 112 cases related to MLCBI, 172 cases primarily related to the New York Convention, 34 cases related to MLEC, 18 cases related to the Limitation Convention (8 of which related to the amended version of the Convention), 3 cases related to the Hamburg Rules, 2 cases each related to EEC and MLICT and 1 case each to UNLOC and MLES. A slight discrepancy can be noted with respect to the total number of cases published and the breakdown of the individual UNCITRAL texts. This is due to the fact that in a few decisions more than one UNCITRAL text is applied.

6. With reference to the five regional groups represented within the Commission, no meaningful changes can be recorded in respect of last year as to the jurisdictions providing the abstracts and the figures of this Secretariat's Note coincide almost in full with the figures referred to in [A/CN.9/873](#) (see para. 5). The majority of the abstracts published referred to Western European and other States (64 per cent, approximately), while the other regional groups were represented as follows (all figures are approximate): Asian States (16 per cent), Eastern European States (13 per cent), Latin American and Caribbean States (3 per cent) and African States (3 per cent). A few abstracts pertained to awards of the International Chamber of Commerce (ICC, 1 per cent).

7. Since the Secretariat's last Note to the Commission, 72 new abstracts were received from national correspondents and voluntary contributors. The abstracts referred to the following texts: CISG (21 abstracts), New York Convention (22), MLCBI (13), MAL (10), MLEC (4), ECC (1) and one abstract concerning both the CISG and the Limitation Convention (amended text). The court decisions and the arbitral awards to which the abstracts refer were rendered in the following 22 jurisdictions: Australia, Belarus, Brazil, Canada, China, Colombia, Denmark, Egypt, France, Germany, Hong Kong, China, India, Italy, Mexico, Norway, Poland, Russian Federation, South Africa, Spain, Sri Lanka, United Kingdom and United States. In the same period, 91 abstracts were published concerning CISG (38 abstracts); New York Convention (18), MAL (16), MLCBI (12), MLEC (6), Limitation Convention, amended text (4). For the first time abstracts from Norway and Sri Lanka were published.⁴ The slight discrepancy between the total number of abstracts published in the period under review and the breakdown of the individual

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

³ The jurisdictions include: 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, Finland, France, Georgia, Germany, Hong Kong, China, Hungary, India, Iraq, Israel, Italy, Japan, Kenya, Liechtenstein, Lithuania, Luxembourg, Mexico, Montenegro, Netherlands, New Zealand, Nigeria, Norway, 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.

⁴ Abstracts from the following jurisdictions were also published: Australia, Austria, Canada, China, Denmark, Egypt, France, India, Mexico, Netherlands, New Zealand, Norway, Poland, Republic of Korea, Russian Federation, Singapore, South Africa, Spain, Sri Lanka, United Kingdom and United States.

UNCITRAL texts referred to in the abstracts is due to some court decisions or arbitral awards applying more than one UNCITRAL text (see also para. 5 above).

The network of national correspondents

8. The composition⁵ of the current network of national correspondents remained unchanged since the Secretariat's last Note to the Commission. This network will terminate its mandate at the beginning of July 2017, and on the first day of the fiftieth Commission session the new network of correspondents will begin its term for the next five years.⁶ At the date of this Secretariat's Note, States that have appointed or reappointed their national correspondents include: Algeria, Austria, Côte d'Ivoire, Denmark, Ecuador, El Salvador, Finland, Gabon, Germany, Indonesia, Japan, Luxembourg, Montenegro, Norway, Republic of Korea, Spain, Serbia, Switzerland and Thailand for a total of 32 national correspondents.

9. As to the materials provided by the current network of national correspondents since the Secretariat's last Note to the Commission, they represented approximately 53 per cent of the abstracts published in that period.⁷ The remaining abstracts were received from voluntary contributors or prepared by the Secretariat. Although this figure represents a high contribution of the national correspondents to CLOUT, the Commission may wish to note that the cases were provided by a very small number of correspondents. A large number of correspondents were unable to contribute materials for the entire duration of their appointment.

10. Four CLOUT national correspondents were part of the small group of experts that provided inputs into the revision of the CISG Digest (see para. 15 below).

Maintenance of the system

11. The Secretariat continued making available to users the full text decisions stored in the database's archives. Due to the time-consuming nature of the task, the modest resources available for CLOUT (see also [A/CN.9/873](#)) and the non-optimal quality of several scanned full texts, which requires retrieving new copies, it is envisaged that such a task will need several additional months to be completed. The full texts of new case law received by the Secretariat are uploaded upon receipt.

12. Since the Secretariat's last Note, the CLOUT database received slightly over 27,000 visitors. According to data provided by free web analytics services, most of the users would be located in Eastern Asia, followed by South America and Europe (in the following order: Western, Southern and Eastern Europe).

13. Since June 2016, regular information on CLOUT's latest releases is posted on the UNCITRAL blog (under the "What's new at UNCITRAL?" pages) and the UNCITRAL LinkedIn account in order to provide an "alert" feature to CLOUT users and raise the visibility of the system at the same time. With regard to increasing CLOUT's visibility, the Commission may wish to note that the system was also cited in several articles and publications of international legal scholars in the last 12 months.

14. The Secretariat explored the opportunity to develop collaboration with the UNALEX project,⁸ sponsored by the European Commission, which has the same objectives as the CLOUT system and focuses on European and International

⁵ At the date of this note, the network is composed of 74 correspondents representing 35 countries, which were as follows: Australia, Austria, Belarus, Bulgaria, Canada, China, Colombia, Cuba, Czechia, Denmark, El Salvador, Finland, France, Germany, Greece, Guatemala, Ireland, Israel, Italy, Japan, Luxembourg, Montenegro, New Zealand, Poland, Republic of Korea, Republic of Moldova, Russian Federation, Singapore, Slovakia, Spain, Sweden, Thailand, Tunisia, United States and Uruguay.

⁶ See [A/CN.9/873](#), para. 7.

⁷ It can be noted that the figure is higher than the one provided in [A/CN.9/873](#).

⁸ For further information on the project, see: <https://www.unalex.eu/Project/Project.aspx?Project=ExtendUnalex>.

Uniform Law with special emphasis on international private and civil procedural law (see also [A/CN.9/908](#), para. 10).

II. The Digests

15. As reported in [A/CN.9/873](#) (see para. 11), a new round of updates of the CISG Digest was finalized in 2016. The updated Digest was published as an e-book, in English, on the UNCITRAL website at the end of last year. At the date of this Secretariat's Note, the Digest is being translated into the other official United Nations languages and it is expected that such translations be finalized by the end of 2017.

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

III. A way forward for CLOUT

17. As mentioned in paragraph 1 above, CLOUT continues to be an important tool through which the Secretariat promotes the uniform interpretation and application of UNCITRAL texts. In over 25 years, the system has developed a consolidated *modus operandi* which meets several of the standards that are said to determine the reliability of legal databases.⁹ Within the limits of the human and financial resources available to the Secretariat, the system provides information of consistent quality, with an easy to verify source, which is presented in an immediate and user-friendly way and is regularly updated. After the database upgrade in 2015 (see para. 11, [A/CN.9/840](#)), accuracy of information has been further improved by making publicly available the full texts of the case law which is reported in the database. Similarly to its former version, the upgraded database is easy to browse and can be accessed with any standard IT equipment, moreover it allows for improved interactivity with the users who can carry out more accurate searches and simultaneously obtain diverse information on the topic they are inquiring about. Further, the multilingual nature of the database, a key feature since the system was established and was mainly working on paper, greatly enhances the dissemination of information.

18. As mentioned in previous Secretariat's Notes, the system would greatly benefit from further improvements in order, *inter alia*, to increase content from jurisdictions that are relatively under-represented, as well as of legislative texts where reported cases are few; ensure currency of the materials published more consistently and further improve interaction with the users. However, under the current arrangements, achieving those goals within a predictable timespan is not feasible and the same applies to developing additional services (e.g. cross reference of abstracts published in CLOUT to the citations in the Digests, provide texts or links to national enactments of UNCITRAL Model Laws reported in CLOUT), which would enrich the quality of the system and its database even further. Other projects similar to CLOUT in nature and purpose, implemented by other United Nations agencies, have developed into comprehensive knowledge repositories, supported by quite sophisticated web portals, in which collection and sharing of case law (or legislation, according to the focus of the portal) is one component among various other knowledge products that are made available to the users. Those portals attract an extremely high number of users.

19. While developing similar sophisticated products requires resources that are not immediately available to the Secretariat, the approach on which those projects were built should encourage reflection on how to increase CLOUT's capacity to reach out

⁹ See for instance, M. Roznovschi, *Features — Update to Evaluating Foreign and International Legal Databases on the Internet*, September 2000 (available on LLRX.com) and J. Lee, *Gatekeepers of legal information: evaluating and integrating free internet legal resources into the classroom*, 2012 (available on Barry Law Review).

to higher volumes of interested users and provide them with extensive and varied information on the way UNCITRAL texts are applied across jurisdictions. These features are key to meeting the purpose of the system. In this regard, the Commission might wish to consider the context in which CLOUT was established, i.e. a time in which the desired information on the interpretation of UNCITRAL texts was available to a limited extent, and the current wealth of well-established commercial and non-commercial legal resources (whether online or on paper) on domestic and international case law, including case law that applies UNCITRAL texts, that greatly facilitate access to legal information worldwide.¹⁰ If CLOUT is to remain current with its original purpose, then a further strengthening, or perhaps reorganization, of the system should be explored in order to keep ahead of changes occurring since 1988, allowing CLOUT to evolve into an innovative tool for the promotion of harmonized interpretation of UNCITRAL texts.

20. The Commission may thus wish to consider the most appropriate way forward for CLOUT: whether the system should remain in its current setting, or whether a more contemporary approach would be preferable.

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

21. The publication of the UNCITRAL Secretariat Guide on the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958) was announced by the Commission in July 2016 (see para. 197 of [A/71/17](#)). The sixteen chapters of the Guide were made publicly accessible in the six official United Nations languages on the website www.newyorkconvention1958.org.¹¹ The website provides information gathered in the preparation of the Guide and contains freely and publicly available resources on the Convention, including case law from a growing number of jurisdictions as well as a comprehensive bibliography.

22. The website 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. At the date of this Secretariat's Note the database included concise background notes on 40 Contracting States,¹² 1,062 original-language decisions, 119 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 811 books and articles from more than 72 countries in 11 different languages; 199 of such publications are directly accessible through hyperlinks).

23. Over the past twelve months, the website continued to renovate its design and its content in order to improve its accessibility on all electronic supports, as well as the efficiency of the research tools it proposes (see also para. 18 of [A/CN.9/873](#)).

24. As in previous years, close coordination between the website and the CLOUT system continued to be maintained (see also para. 19, [A/CN.9/873](#)). 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.

¹⁰ See also H.M. Flechtner, *Globalization of Law as Documented in the Law on International Sales of Goods*, in PittLaw, Legal Studies Research paper Series Working Paper No. 2010-09, March 2010, p. 543.

¹¹ The Guide is also accessible on the UNCITRAL website at www.uncitral.org.

¹² [A/CN.9/873](#) referred to concise background notes for 45 Contracting States. Following the website revision in 2016, and in order to ensure consistency, the project coordinators decided not to include reference to Contracting States for which no court decision was available.