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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-sixth session of the Commission (A/CN.9/759, paras. 37 and 39-40).

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 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); and
- United Nations Convention on the Use of Electronic Communications in International Contracts, 2005 (ECC).

3. Case law to be reported in CLOUT is primarily 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.

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.

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 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/...).

4. 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.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.

Maintenance of the system

5. As at the date of this note, 128 issues of CLOUT had been prepared for publication, dealing with 1,234 cases. Of these, 725 cases related to the CISG, 364 cases related to the MAL (a number of cases dealt with both MAL and the New York Convention), 61 cases related to the MLCBI, 50 cases primarily related to the New York Convention, 16 cases related to the MLEC, 12 cases related to the Limitation Convention (3 of which relate to the amended version of the Convention), 3 cases related to the Hamburg Rules and 1 case to UNLOC. For the first time 1 abstract related to the ECC and 1 related to the MLICT were published. As to the reference to the five regional groups represented within the Commission, the majority of the abstracts published refer to Western European and other States (68 per cent). The other regional groups are represented as follows: Asian States (16 per cent), Eastern European States (10 per cent), Latin American and Caribbean States (3 per cent) and African States (2 per cent). A few abstracts (1 per cent) pertain to the awards of the International Chamber of Commerce (ICC). There is a minimum decrease in the abstracts attributable to Western European and other States, compared to last year's figures, and a modest increase in the abstracts from Latin America and the Caribbean. The volume of abstracts from the other regional groups has not changed.

6. Since the last note to the Commission (A/CN.9/748), 68 new abstracts had been received by the Secretariat from national or voluntary contributors, and other 19 had been prepared by the Secretariat with no external input. The breakdown of these abstracts is as follows: 24 abstracts concern the New York Convention, 19 the CISG, 18 the MLCBI, 15 the MAL, 8 the MLEC and 1 each the Limitation Convention (amended text), the ECC and the MLICT. The decisions and the arbitral awards to which the abstracts refer were issued in the following countries: Australia, Austria, Canada, Colombia, Israel, Republic of Korea, New Zealand, Singapore, Slovenia, Ukraine, United Kingdom of Great Britain and Northern Ireland and United States of America. As is apparent, the majority of the cases are from Western European and other States (66 per cent) followed by Asia (28 per cent), Eastern

² *Official Records of the General Assembly, Sixty-fourth Session, Supplement No. 17 (A/64/17)*, para. 372.

European States (5 per cent) and Latin American and Caribbean States (1 per cent). In the same period, 99 abstracts had been published: 38 CISG, 19 New York Convention, 18 MLCBI, 13 MAL, 7 MLEC, 2 Limitation Convention, amended text, and 1 each ECC and MLICT.

The network of national correspondents

7. The current network of national correspondents initiated its mandate on the first day of the forty-fifth session of the Commission, in 2012. The network is currently composed of 63 correspondents representing 30 countries, i.e.: Australia, Austria, Bulgaria, Canada, China, Colombia, Cuba, Czech Republic, El Salvador, Finland, France, Germany, Greece, Guatemala, Ireland, Israel, Italy, Luxembourg, Moldova, Montenegro, New Zealand, Poland, Republic of Korea, Russian Federation, Singapore, Spain, Sweden, Tunisia, United States and Uruguay. The Commission may wish to inform States that appointments can still be made: they will be effective as at 25 June 2012 and will expire five years thereafter.

8. Since the last note to the Commission (A/CN.9/748), national correspondents have provided approximately 36 per cent of the abstracts published. The remaining abstracts were received from voluntary contributors or prepared by the Secretariat. The MOOT Alumni Association, with which the Secretariat has established a partnership for a few years now, assisted the Secretariat in preparing some of the abstracts.

II. The Digests

9. The third revision of the CISG Digest, available in English on the UNCITRAL website and on CD-ROM, is currently being translated into the other five official languages of the United Nations. It is expected that the translations will be completed by the end of 2013. Resource constraints in the United Nations Secretariat make a more timely completion of the task difficult.

10. The Journal of Law and Commerce, University of Pittsburgh, the Faculty of Law and the Center for International Legal Education, University Pittsburgh, and the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ), have supported the printing of a special issue of the Journal of Law and Commerce incorporating the English version of the Digest. The Journal was widely distributed, at no cost, at the 2013 Twentieth Annual Willem C. Vis International Commercial Arbitration Moot (Vienna, 22-28 March 2013) and at the VI Belgrade Open Pre-Moot (Belgrade, 16-17 March 2013). At the occasion of the V Belgrade arbitration conference (Belgrade, 15 March 2013), which precedes the Pre-Moot, the CISG and the MAL Digests were presented to the audience by two of the experts who contributed to their preparation.³

11. Since its official launch on 9 June 2012 in Singapore, at the occasion of an event jointly organized by the UNCITRAL Secretariat and the Government of Singapore, the MAL Digest was presented at several other conferences comprising academia, practitioners and judges. These events have included, among others: a

³ Dr. Stefan Kröll, national correspondent for Germany, presented the MAL Digest and Professor Harry Flechtner, national correspondent for the United States, introduced the CISG Digest.

conference organized by the Arbitrators and Mediators Institute of New Zealand (Wellington, 3 August 2012), a seminar organized by the Institute for Legal Studies of Dong-A University (Busan, Republic of Korea, 8 November 2012) a conference jointly organized by the Korean Ministry of Justice and the Korean Commercial Arbitration Board (Seoul, 22-23 November 2012), a conference organized by the Cairo Regional Centre for International Commercial Arbitration (Sharm El Sheikh, Egypt, 27-28 November 2012), a conference organized by the German Institution for Arbitration (Berlin, 1 March 2013).⁴ The Commission may also wish to note that the Digest has been cited by a State court in one of its decisions.⁵ The Secretariat is currently working on a revised and more comprehensive edition of the MAL Digest.

12. Further to the Commission's agreement at its forty-fifth session, in 2012 (A/67/17, para. 156), the Secretariat has commenced preparation of the Digest on the Model Law on Cross-Border Insolvency. The Secretariat is planning for it to be available in 2014.

III. Enhancing CLOUT

13. Since the last note to the Commission (A/CN.9/748) no major developments have occurred in the search for means to improve the maintenance and performance of the CLOUT system. The Secretariat has identified some internal financial resources to enhance current features of the CLOUT web pages⁶ and develop new applications. This major overhaul should respond to some of the suggestions provided in the informal survey circulated in October-December 2010 among the national correspondents and other CLOUT users (see A/CN.9/726). Due to the current heavy workload of the IT services of the United Nations Secretariat in Vienna, however, it does not seem possible to commence the upgrading of the web pages before autumn 2013 (which, most likely, would imply completion of work in 2014).

14. Other than these internal resources, no external contribution has been made available and the Secretariat is still seeking assistance from States and other donors either in kind (e.g. non-reimbursable loans of personnel) or through budget contributions. As has happened in previous sessions of the Commission, the Commission might thus wish to reiterate its appeal to States to provide active support to the Secretariat's search for appropriate funding sources at the national level so as to ensure enhanced performance of the system.

⁴ Additional details on the events mentioned in the paragraph as well as other events at which the MAL Digest was presented can be found in A/CN.9/775.

⁵ See Singapore, High Court, *Astro Nusantara International BV and others v. PT Ayunda Prima Mitra and others* [2012] SGHC 212. The Digest was quoted in relation to article 16 (3) UNCITRAL MAL.

⁶ CLOUT is available at www.uncitral.org/uncitral/en/case_law.html?lf=899&lng=en.

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

15. In addition to reporting case law on the New York Convention in CLOUT, a dedicated database on the Convention⁷ was launched in July 2012. The database was set up in cooperation with Professors G. Bermann and E. Gaillard and their respective teams and includes material which is used in the preparation of the Guide on the New York Convention that will be submitted to the Commission at its forthcoming forty-sixth session (see A/CN.9/786).

16. The Commission may wish to recall that at its forty-first session, in 2008, it entrusted the Secretariat with the preparation of such a Guide in order to promote a more uniform interpretation and application of the Convention. The purpose of the database is to make the information gathered in the preparation of the Guide on the New York Convention publicly available, including details on the judicial interpretation of the Convention by States Parties. To date, the database assembles summaries of 782 cases on the implementation of the Convention from 18 jurisdictions, and includes over 900 original-language decisions and 90 English-language translations. Case law and summaries will be added to the database on an ongoing basis. In that respect, at the fifty-eighth session of Working Group II (Arbitration) delegates were invited to contribute case law from their jurisdiction (see A/CN.9/765 para. 97).

⁷ See www.newyorkconvention1958.org.