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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)

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. The UNCITRAL Secretariat has thus decided to prepare a distinct note to inform the Commission of the developments of the system. Background information on CLOUT, its establishment and the Digests is provided in the Provisional Agenda of the forty-third session of the Commission (A/CN.9/683, paras. 37-41).

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)
- 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)
- 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).

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 recent case law only concerning the Convention.

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, 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.

5. 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. The last meeting took place in July 2009,

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

during the forty-second session of the Commission. Eighteen countries were represented.

6. In 2008, a CLOUT information brochure was published and distributed to inform a wide audience about the CLOUT system and, at the same time, to promote voluntary contributions to the system to complement the abstracts received from the national correspondents. As of February 2008, a CLOUT Bulletin is published approximately every quarter. The Bulletin is aimed at strengthening the links between the Secretariat, its National Correspondents, its institutional partners and the international legal community.

7. At its forty-second session, in 2009, 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. The Secretariat was requested to update the existing guidelines for national correspondents (see A/CN.9/SER.C/GUIDE/1/Rev.1) to reflect those changes. At that session, the Commission further noted the need to enhance the completeness of the collection of case law both from countries that already participate in the CLOUT system and from countries that are currently underrepresented. The Commission mandated the Secretariat to utilize all available sources of information that might supplement the information provided by the national correspondents. The Secretariat was requested to carry out that task in collaboration with national correspondents, where appointed.

#### *Maintenance of the system*

8. The system is regularly updated with new abstracts. As at the date of this note, 92 issues of CLOUT had been prepared for publication, dealing with 925 cases. Of these, 564 cases related to the CISG, 315 cases related to the MAL, 34 cases related to the MLCBI, 5 cases related to the New York Convention, 4 cases related to the MLEC and 3 cases related to the Hamburg Rules. With reference to the five regional groups represented within the Commission, the majority of the abstracts published refer to Western European and other States (75 per cent, approximately). The other regional groups are represented as follows: Asian States (15 per cent, approximately), Eastern European States (5 per cent, approximately), African States (3 per cent, approximately) and Latin American and Caribbean States (1.3 per cent, approximately). A few abstracts (0.7 per cent, approximately) refer to the awards of the International Chamber of Commerce (ICC).

9. Since the last note to the Commission (A/CN.9/676/Add.1, 6 May 2009), 76 new abstracts have been received by the Secretariat: 43 abstracts concern the CISG, 13 the MLCBI, 12 the New York Convention and 8 the MAL. With reference to the five regional groups represented in the Commission, the majority of abstracts received are from Western European and other States (56 per cent, approximately), followed by Eastern European States (33 per cent, approximately), Asian States

(7 per cent, approximately) and Latin American and Caribbean States (4 per cent, approximately).

10. Submission of abstracts from the national correspondents is subject to the availability of suitable case law in that country. However, the Commission may wish to encourage further efforts to ensure that an increasing number of abstracts on texts other than the CISG and an increasing number of abstracts from underrepresented regions are reported in the system.

11. CLOUT web pages on the UNCITRAL website have now become the main vehicle to disseminate information on the abstracts published and on other components of the system. For this reason, in the first quarter of 2010, the new interface design of the CLOUT “abstracts” page and the UNCITRAL Digest of case law on the United Nations Convention on the International Sales of Goods, 2008 revision (CISG Digest), have been implemented with a view to accommodating and enhancing visibility, efficiency and usability of the system.

#### *The network of National Correspondents*

12. Currently, there are 91 national correspondents, representing 70 countries. With reference to the regional groups represented in the Commission, 35 correspondents are from Western European and other States; 16 are from Latin American and Caribbean States; Asian States and African States have 14 correspondents each, and 12 correspondents come from Eastern European States. Since the last note to the Commission (A/CN.9/676/Add.1, 6 May 2009), 5 new correspondents have been appointed. One correspondent is from a country belonging to the African Group, two correspondents are from countries of the Asian Group and two correspondents are from countries of the Western European and other States Group. In some instances they have replaced previous national correspondents or joined the current correspondents of the country as additional correspondents, in other cases they are new appointments.

13. Pursuant to the Commission’s decision at its forty-second session (see para. 7 above),<sup>2</sup> the Secretariat has finalized the draft revision of the existing guidelines for CLOUT users (A/CN.9/SER.C/GUIDE/1/Rev.1) to reflect the agreed changes. After circulation to the national correspondents for comment, the guidelines will be published in the third quarter of 2010.

14. With respect to the decision to utilize all available resources of information that might supplement the information provided by the national correspondents, the Secretariat has strengthened its partnership with the MOOT Alumni Association and will further increase efforts to identify a wider range of sources in the countries that are participating or can participate in the CLOUT system. It may be noted that approximately 39 per cent of all the abstracts received since the last note to the Commission (A/CN.9/676/Add.1, 6 May 2009) come from sources other than the national correspondents.

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<sup>2</sup> *Official Records of the General Assembly, Sixty-fourth session, Supplement No. 17 (A/64/17)*, para. 370.

## II. The Digests

15. The Secretariat had informed the Commission at its forty-second session, in 2009, that the translation into Spanish of the revised CISG Digest (2008), was outstanding. The Digest had been published in all the other five United Nations languages on the UNCITRAL website. Translation into Spanish was finalized in the course of 2009 and the revised Digest is now available on the UNCITRAL website in all six United Nations languages. CD-ROMs including the six versions of the Digest are currently being printed for use in training activities and conferences, as promotional material and for distribution upon request to the general public.

16. Updating of the CISG Digest is under way and is carried out by a group of international CISG experts who represent various geographic regions and different legal traditions. The approach, suggested by a national correspondent, was discussed at the last correspondents' meeting in July 2009 and was found feasible. Several of the experts involved in the project are CLOUT national correspondents. It is expected that the final draft of this third edition of the Digest will be ready in the fourth quarter of 2010. In accordance with previous practice, the third edition will make reference to case law reported in the CLOUT system, as well as to case law available from other sources.

17. The Digest on the UNCITRAL Model Law on International Commercial Arbitration is also under preparation. A similar approach to the CISG Digest has been adopted. A small group of experts in international arbitration, who are also national correspondents, has been selected to analyse the CLOUT abstracts to be included in the Digest and to identify new cases, not yet reported in CLOUT, for the same purpose. This assignment is expected to continue until the fourth quarter of 2010.

## III. Enhancing CLOUT and the Digests

18. CLOUT plays an important role in the current global legal-economic context. It provides information in six languages on worldwide case law applying UNCITRAL texts, thus assisting legal practitioners, judges and law professors. It also provides the basis for the analysis of interpretation trends that is a key part of the case law Digests. Furthermore, the system 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.

19. At its forty-second session, in 2009,<sup>3</sup> the Commission noted that the continued ability of CLOUT to provide meaningful information was dependent on the regular maintenance and development of the system. The Commission further noted that those activities were resource intensive and the Secretariat was currently stretching its available resources to ensure coordination of the system. The Secretariat wishes

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<sup>3</sup> *Official Records of the General Assembly, Sixty-fourth session, Supplement No. 17 (A/64/17)*, para. 372.

to inform the Commission that since that report no increase in the resources available for the maintenance and improvement of the system has occurred.

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