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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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* The submission of this document was delayed due to need to finalize consultations.



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. 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 from different legal systems 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-fourth session of the Commission (A/CN.9/711, 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)
- 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).

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.¹ 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 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/...).

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.

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

6. 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, during the forty-second session of the Commission. Eighteen countries were represented. The next meeting is scheduled during the forty-fourth session of the Commission.

7. 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 complement the abstracts received from the National Correspondents.

8. 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 countries 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 countries 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. The draft revision, circulated to the National Correspondents for comments at the time when the Secretariat note to the forty-third session of the Commission (2010) was being prepared, was later published. The document is now available on the UNCITRAL website (A/CN.9/SER.C/GUIDE/1/Rev.2, 2 June 2010).

9. At its forty-second session, in 2009, 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

10. As at the date of this note, 107 issues of CLOUT had been prepared for publication, dealing with 1055 cases. Of these, 639 cases related to the CISG, 341 cases related to the MAL (a small number of cases deal with both MAL and the New York Convention), 43 cases related to the MLCBI, 14 cases primarily related to the New York Convention, 8 cases related to the MLEC, 7 cases related to the Limitation Convention 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 (72 per cent). The other regional groups are represented as follows: Asian States (15 per cent), Eastern European States (8 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).

11. Since the last note to the Commission (A/CN.9/696, 14 April 2010), 150 new abstracts had been received by the Secretariat: 67 concerning the CISG (45 per cent), 66 the MAL (44 per cent), 7 the Limitation Convention (5 per cent), 6 the MLEC (3 per cent) and 4 the New York Convention (3 per cent). It is to be noted that 13 cases, of those considered under MAL, deal with both the Model Law and the New York Convention. With reference to the five regional groups represented in the Commission, the majority of abstracts received are from Western European and other States (35 per cent), followed by Latin American and Caribbean States (18 per cent) Eastern European States (17 per cent), African (16 per cent) and Asian States (14 per cent). In the same period, 130 abstracts were published: 75 CISG abstracts (58 per cent), 26 MAL (20 per cent), 9 MLCBI (7 per cent), 9 New York Convention (7 per cent), 7 Limitation Convention (5 per cent) and 4 MLEC (3 per cent).

The network of National Correspondents

12. Currently, there are 92 National Correspondents, representing 71 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; African States and Asian States have 14 correspondents each, and 13 correspondents come from Eastern European States. Since the last note to the Commission (A/CN.9/696, 14 April 2010), 2 new correspondents have been appointed: one for Poland, replacing the previous national correspondent; and one for Montenegro.

13. In order to implement the Commission's recommendation of utilizing all available sources of information to supplement the information provided by the National Correspondents (see paragraph 9 above), last year's note to the Commission had already given account of the partnership with the MOOT Alumni Association (MAA). This partnership has produced satisfactory results: of all the abstracts submitted by the voluntary contributors since the last note about 32 per cent were prepared by the MAA. Other contributors have assisted the Secretariat providing abstracts and/or full text decisions to be abstracted. Since the last note to the Commission, about 64 per cent of all the abstracts received have come from sources other than the National Correspondents; however, about 64 per cent of all the abstracts published were authored by National Correspondents.

II. The Digests

14. Updating of the CISG Digest is considerably advanced at the date of this report. The aim is to present the draft revision at the meeting of the National Correspondents scheduled in July 2011 (during the Commission session) so as to receive comments. Subject to the outcome of the meeting, the draft, in English, will be translated into the other official UN languages and released for general use.

15. The Digest on the UNCITRAL Model Law on International Commercial Arbitration (MAL Digest) is also under preparation. It is noted in the MAL Digest that, being a Model Law, the instrument has been enacted by States with variations and that should be taken into account in the analysis of the case law. Otherwise, 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. It is planned to finalized the Digest during the fourth quarter of 2011.

16. The revision of the two Digests has provided the opportunity to collect a wide number of decisions concerning the CISG and the MAL, not included in the CLOUT system as yet. The Secretariat will ensure that those decisions included in the Digests will also be abstracted and published in CLOUT so as to ensure the highest level of consistency between the two.

III. Enhancing CLOUT

17. An informal survey was launched among CLOUT National Correspondents and general CLOUT users in October-December 2010 aiming at collecting information on the functioning of the system and suggestions for its improvement. The 226 responses collected have provided useful insights on how the system is considered and have contributed ideas on its enhancement. The CISG, MAL and New York Convention are the most searched texts, followed by the MLEC and MLCBI. Searches are mostly directed to obtain abstracts (67 per cent) and full-text decisions (68 per cent, although currently this feature is not available), as well as information on the CISG Digest (43 per cent). Information collected through CLOUT is used in various ways, from articles and research to presentations, academic papers, teaching and research citations and also as background material for lawyers.

18. The website was generally deemed user-friendly, it was however suggested to further refine its features with the view to facilitating access to potential users. Increased number of abstracts, more frequent updating, e-links to the CISG Digest, and better text searchability were indicated as areas for improvement.

19. CLOUT is particularly useful both directly (accessed through the UNCITRAL website) and indirectly (as it provides information and abstracts to other websites). It was suggested that one particular area for improvement could be increasing the publication of those abstracts relating to UNCITRAL texts that are not easily retrievable on publicly available websites. Improvement and enhanced maintenance of the system is, however, dependent on the human and financial resources the Secretariat can allocate to the system. This also includes refining current features of the website and offering new services. As already noted by the Commission at its forty-second session, in 2009,² the Secretariat is stretching its available resources to ensure coordination of CLOUT. Since that report no increase in available resources has occurred. As the possible options to respond to this need would require funding outside the regular budget of the Secretariat, the Commission might wish to reiterate its appeal to Member States to provide active support to the Secretariat's search for appropriate funding sources at the national level so as to ensure enhanced maintenance of CLOUT.

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