

CLOUT Bulletin

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CLOUT and UNCITRAL

The official calendar of UNCITRAL meetings in the first semester of 2009 has opened up with the sessions in New York of two Working Groups. Working Group I (Procurement) met from 2 to 6 February, and Working Group II (Arbitration and Conciliation) is meeting from 9 to 13 February. Working Group I is continuing its discussions on revisions to the UNCITRAL Model Law on Procurement of Goods, Construction and Services, which was adopted in 1994. At the session, the Working Group discussed the opportunity to meet again on 26-29 May 2009. This has not yet been confirmed. Working Group II will proceed with the revision of the UNCITRAL Arbitration Rules, adopted in 1976. At the February session, Working Group II is expected to complete its second reading of the draft revised version of the Rules. Working Group VI will meet at the end of April (27 April -1 May) in New York to continue its work on security interests in intellectual property. This work, which builds on the UNCITRAL Legislative Guide on Secured Transactions, adopted by the Commission in 2007, is intended to provide guidance to States with respect to any adjustments that they might need to make to their laws to avoid inconsistencies between secured financing and intellectual property law. Finally, before the Commission session in July, Working Group V (Insolvency) will meet (18-22 May 2009, New York) to further discuss the treatment of enterprise groups in insolvency in the domestic and international context. Working Group V will also consider a revised version of the UNCITRAL Notes on cooperation, communication and coordination in cross-border insolvency proceedings.

The Text in Focus

The Model Law on International Commercial Conciliation

When in 1999 the Commission decided to initiate work on conciliation, it noted that this method of dispute resolution was being increasingly practiced in various parts of the world. Furthermore, its use was becoming a preferred option promoted by courts, government agencies, and in commercial spheres. Different regions of the world were also actively promoting conciliation as a method of dispute settlement. This increased emphasis on conciliation suggested the need for internationally harmonized legal solutions to facilitate the process. Accordingly, the Model Law was drafted to assist States in designing dispute resolution processes. The Model Law was prepared with the contribution of some 90 States, 12 intergovernmental organizations and 22 non-governmental international organizations representing different legal traditions and different levels of economic development. It was adopted by UNCITRAL on 24 June 2002. In its resolution 57/18, the United Nations General Assembly recommended that “all States give due consideration to the enactment of the Model Law, in view of the desirability of uniformity of the law of dispute settlement procedures and the specific needs of international commercial conciliation practice.”

The Model Law provides uniform rules for the conciliation process to encourage the use of conciliation and ensure greater predictability and certainty in its use. The Model Law addresses procedural aspects of conciliation, including appointment of conciliators, commencement and termination of conciliation, conduct of the conciliation, communication between the conciliator and other parties, confidentiality and admissibility of evidence in other proceedings as well as post-conciliation issues, such as the conciliator acting as arbitrator and enforceability of settlement agreements.

Conciliation differs from arbitration, as in conciliation the parties retain full control over the process and the outcome, and the process is non-adjudicatory. In arbitration, the parties entrust the dispute resolution process and the outcome

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of the dispute to an arbitral tribunal that renders a binding decision on the parties. Conciliation has proved particularly successful where it is part of a broader national policy to promote alternative dispute settlement methods as a complement to court and arbitral proceedings. In this way, the Model Law operates in conjunction with the UNCITRAL Model Law on International Commercial Arbitration to provide an effective framework for the expeditious resolution of commercial disputes. By adopting the Model Law, and by educating parties engaged in international commerce about its purposes, States encourage parties to seek non-adjudicative dispute settlement methods that will increase cost-effectiveness in the marketplace.

Legislation based on the UNCITRAL Model Law on International Commercial Conciliation has been enacted in Canada (2005), Croatia (2003), Hungary (2002), Nicaragua (2005) and Slovenia (2008). Uniform legislation influenced by the Model Law and the principles on which it is based has been prepared in the: United States of America (Uniform Mediation Act, adopted in 2001 by the National Conference of Commissioners on Uniform State Law) and enacted by the States of: Illinois, Iowa, Nebraska, New Jersey, Ohio and Washington.

Snapshot

- **Adoption of the United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea** - The United Nations General Assembly adopted the Convention on 11 December 2008. On that occasion, the General Assembly authorized the opening for signature of the Convention at a ceremony to be held on 23 September 2009 in Rotterdam, the Netherlands, and recommended that the rules embodied in the Convention be known as "The Rotterdam Rules."
- **New York Convention: new party** - The Cook Islands have acceded to the Convention and have become the 144th party. The Convention will enter into force in the Islands on 12 April 2009.
- **New York Convention: abstracts sought** – At its 41st session, in July 2008, UNCITRAL encouraged its Secretariat to disseminate information on the judicial interpretation of the New York Convention. The Secretariat would thus appreciate if the CLOUT National Correspondents as well as the voluntary contributors of the States parties to the Convention could provide abstracts on the application of the Convention in their country.
- **CLOUT abstracts in 2008** – 72 abstracts were published last year: 39 on CISG, 16 each on MAL and MLCBI and 1 on MLEC. 87 new abstracts were received by the UNCITRAL Secretariat in the same period of time. Not all of the abstracts received have yet been published.
- **New CLOUT National Correspondent** - Mr. Carlos Sánchez-Mejorada y Velasco, lawyer and delegate of Mexico to Working Group V (Insolvency Law), is the newly appointed National Correspondent for Mexico. Mr. Velasco will devote particular attention to national case law related to the UNCITRAL Model Law on Cross-Border Insolvency. Mr. Velasco joins Mr. José María Abascal Zamora, the first National Correspondent for Mexico.
- **6th Annual Willem C. Vis (East) International Commercial Arbitration Moot Court** – The Vis East will take place in Hong Kong SAR from 23-to 29 March 2009. The Vis East was launched in Hong Kong to accommodate the growing number of Universities wishing to participate in the Moot Court. The Chartered Institute of Arbitrators East Asia Branch is the principal sponsor, and the School of Law of City University of Hong Kong is this year's host. UNCITRAL is among the supporters of the Vis East. The 6th edition of the Vis East will welcome over 500 students, coaches and arbitrators from around the world. More information is available at the following web-site: <http://www.cisgmoot.org/>
- **Belgrade Open Pre-moot competition** – The second Belgrade Pre-moot will be held on 28-29 March 2009 at the Faculty of Law, University of Belgrade as a preparation for the Willem C. Vis International Commercial Arbitration Moot Court in Vienna. Currently 16 teams from 14 European and non-European countries have confirmed their participation. Since it is still possible to register, e-mails can be sent to the attention of Ms. Milena Djordjevic at the following e-mail address: bgmoot@ius.bg.ac.yu. More information is also available at the following web-site: <http://www.ius.bg.ac.yu/moot/premoot.htm#locati0n1>
- **Belgrade Arbitration Conference, 27 March 2009** – With the occasion of the Pre-Moot the Faculty of Law of the University of Belgrade, in cooperation with the GTZ (Deutsche Gesellschaft für Technische Zusammenarbeit) will host a one day conference to discuss key issues of arbitration practice. 16 renowned lecturers will present three panels: foundations, arbitration agreement and arbitrability; selected procedural issues; and arbitration perspectives. More information on the program can be found at: <http://www.ius.bg.ac.yu/informacije/ARBITRATION%20CONFERENCE%20PROGRAM.pdf>. Registration is still possible by contacting Ms. Milena Djordjevic at the following e-mail address: bgmoot@ius.bg.ac.yu

- **XVI Willem C. Vis International Commercial Arbitration Moot Court (the “Vis”)** – This year the Vis will be held in Vienna from 3 to 9 April. 233 teams from 54 countries have confirmed their participation, an increase by 30 teams from last year. The Moot is organized by the Association for the Organization and Promotion of the William C. Vis of which the UNCITRAL secretary is a member. More information on the Moot is available under the web-site <http://www.cisg.law.pace.edu/vis.html> .
- **Conference “Issues on the CISG Horizon”** – On 2 April 2009, the MOOT Alumni Association (MAA) will organise a conference in honour of Professor Peter Schlechtriem to discuss CISG related issues with renowned scholars of the Convention. More information is available at <http://www.maa.net/>
- **2009 United Nations International Law Fellowship Programme** – This edition of the fellowship programme will take place from 6 July to 14 August 2009 in The Hague/Netherlands. The fellowships are intended to enable qualified professionals, in particular mid-level government officials and young university teachers of international law, from least developed and developing countries, and from countries with economies in transition to acquire additional knowledge of international law and of the legal work of the United Nations and its associated bodies. More information is available at the following web-site: http://www2.unitar.org/diplomacy/fell_international_law_E2.htm

Brochures “Facts about CLOUT” are still available in hard copies and in the six UN official languages. All those who would like to obtain them for distribution to students and resource centres can send a request to clout@uncitral.org. It is also possible to obtain the brochures in e-format.

Contributions

Universities, training centres, arbitration centres, law professors, judges and other interested law practitioners can contribute to the CLOUT collection even if they are not National Correspondents. They are strongly encouraged to contact UNCITRAL at clout@uncitral.org for information.



Technical Assistance Activities in a Nutshell

<p>Conference on "50th Anniversary of the New York Convention: Challenges to the Judiciary", Beijing, China (10-13 December 2008)</p> <p>The UNCITRAL Secretariat participated in the conference organised by the National Judges College of China and Cheung Kong Centre for Negotiation and Dispute Resolution, in association with the Chartered Institute of Arbitration, to discuss the main issues on the implementation of the Convention.</p>	<p>6th Annual Review of Insolvency Law Conference, 12-14 February 2009, Banff Canada</p> <p>The 6th Annual Review of Insolvency Law Conference is organized by the National Centre for Business Law, University of British Columbia. A staff member of the UNCITRAL Secretariat will participate in a panel discussion on UNCITRAL work on Cross-Border Treatment of Business Enterprise Groups.</p>
<p>World Bank Finance and Private Sector Development Forum 2009 February 24-26 2009, Washington DC, USA</p> <p>The World Bank Forum will take stock of the unfolding financial and economic crises and what they mean for emerging markets, for policymakers, and for World Bank Group strategy. The UNCITRAL Secretariat has been invited to participate to discuss insolvency law reform and the UNCITRAL standards.</p>	

Acronyms

New York Convention – Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958

CISG – United Nations Convention on Contracts for the International Sale of Goods, 1980

MAL – UNCITRAL Model Law on International Commercial Arbitration, with amendments as adopted in 2006, 1985

MLEC – UNCITRAL Model Law on Electronic Commerce, 1996

MLCBI – UNCITRAL Model Law on Cross-Border Insolvency, 1997

Selection of Recent Publications on UNCITRAL and its work

Reminder: All UNCITRAL booklets can be requested at uncitral@uncitral.org.

The UNCITRAL Secretariat prepares a yearly Bibliography of recent writings related to the work of UNCITRAL. The updates relating to materials collected in the yearly Bibliography since the last edition of the Bibliography are compiled on a monthly basis.

Some of the most recent publications include:

- Benedick G. Die Informationspflichten im UN-Kaufrecht (CISG) und ihre Verletzung: unter Berücksichtigung des Zusammenspiels mit dem nationalen schweizerischen Recht. München, Sellier — Bern, Stämpfli Verlag AG, 2008. xliii, 366 p. (Beiträge zum internationalen Wirtschaftsrecht, Bd. 9 / Contributions on international commercial law, Vol. 9)
- Favre-Bulle X. 50 years of the New York Convention on Enforcement of Awards: conventional wisdom and recent developments. *In* New developments in international commercial arbitration 2008. Basel—Geneva, Schulthess, 2008. p. 61-79.
- Ferrari F., ed. The CISG and its impact on national legal systems. Munich, Sellier, 2008. vii, 489 p.
- Heilbron Hilary Q.C. A practical guide to international arbitration in London. London, Informal, 2008. xxiv, 356 p.
- Heutger V. Ein gemeineuropäisches Kaufrecht: Vision oder nahe Zukunft? Frankfurt am Main, P. Lang, 2007. 258 p. (Salzburger Studien zum europäischen Privatrecht, Bd. 22)
- Klotz J.M. International sales agreements: an annotated drafting and negotiating guide. 2nd ed. Alphen Ann Den Rijn, Kluwer, 2008. xxvi, 434 p.
- Krätzschar T. Öffentlichrechtliche Beschaffenheitsvorgaben und Vertragsmässigkeit der Ware in UN-Kaufrecht (CISG). München, Sellier, 2008. xxi, 202 p. (Beiträge zum internationalen Wirtschaftsrecht, Bd. 10 / Contributions on international commercial law, Vol. 10)

The complete list is available on our web site at:

http://www.uncitral.org/uncitral/en/publications/bibliography_monthly.html