



United Nations Commission on International Trade Law (UNCITRAL)

Enforcement of International Commercial Settlement Agreements resulting from Mediation



Introduction to UNCITRAL

UNITED NATIONS CONFERENCE ON INTERNATIONAL
COMMERCIAL ARBITRATION,
NEW YORK, 20 MAY–10 JUNE 1958

*Excerpts from the Final Act of the United Nations Conference on
International Commercial Arbitration¹*

“1. The Economic and Social Council of the United Nations, by resolution 604 (XXI) adopted on 3 May 1956, decided to convene a Conference of Plenipotentiaries for the purpose of concluding a convention on the recognition and enforcement of foreign arbitral awards, and to consider other possible measures for increasing the effectiveness of arbitration in the settlement of private law disputes.

[...]



(20 May 1958)

Mr. Bjorn Alholm, representative of Finland, is exchanging views with Dr. Roedel, of the Federal Republic of Germany.



(26 May 1958)

Mr. Jacek Machowski, (left), of Poland and Dr. Dusan Spacil, of Czechoslovakia.



(26 May 1958)

Mr. Bakhtov (left), Representative of the USSR with Mr. Savchenko, representative of the Ukrainian SSR

(28 May 1958)

Tuan Syed Adam Hogan-Shaidali, an Observer from Malaya, is discussing a document with Mr. Suwardi Sujud (right), Observer from Indonesia.



(29 May 1958)

Mr. M. Kestler Farnes, of Guatemala, is discussing a document with M. Georges Holleaux (right), representative of France

(29 May 1958)

M. Carlos S. Gomes Pereira, Representative of Brazil, is discussing a document with Mr. Albert Herment (right), representative of Belgium



(29 May 1958)

Mr. Haim Cohn (left), representative of Israel, is exchanging views with Professor A. Bulow, representative of the Federal Republic of Germany.

UNITED NATIONS CONFERENCE
ON INTERNATIONAL COMMERCIAL ARBITRATION

CONVENTION
ON THE RECOGNITION AND ENFORCEMENT
OF FOREIGN ARBITRAL AWARDS



UNITED NATIONS
1958

(25 December 1958)

Mr. Guillaume Georges-Picot (left),
France's Permanent Representative to
the UN and Mr. Constantin A.
Stavropoulos



(29 December 1958)

Ambassador Sobolev,
the USSR's Permanent
Representative to the
United Nations, Mr.
Pisarev, of the USSR's
Permanent Mission and
Mr. Constantin A.
Stavropoulos (right),
UN Legal Counsel



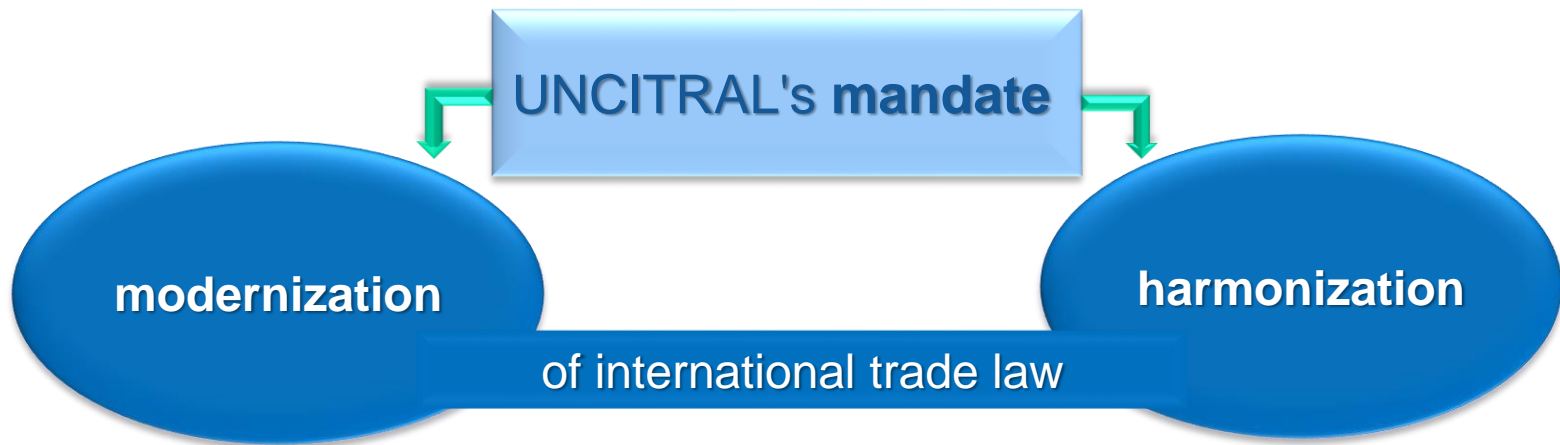
(20 September 1963, New York)

“Our conflicts, to be sure, are real. Our concepts of the world are different. No service is performed by failing to make clear our disagreements”



What is UNCITRAL?

- Inter-governmental body with universal membership
- Core legal body of the UN system in the field of private international trade law
- Established by the United Nations General Assembly in December 1966

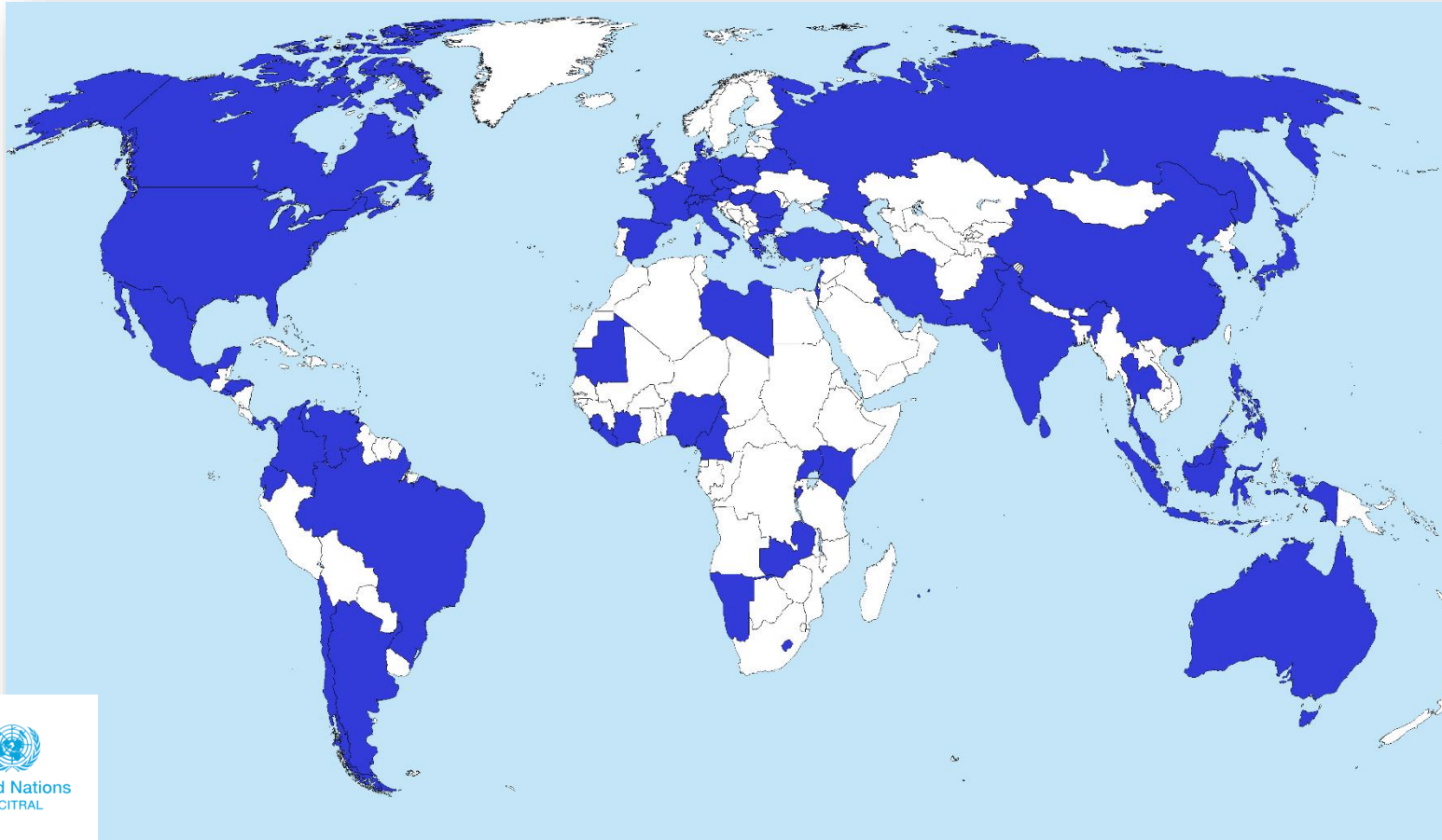




- **Established to address:**
 - **Dramatic expansion of world trade**
 - **Need for uniform rules for international trade**
 - **Divergences in the laws of different States are a barrier to development of world trade**
 - Create uncertainty and dispute
 - Add to transaction, information and negotiation costs
 - Increase need for coordination and cooperation

Membership

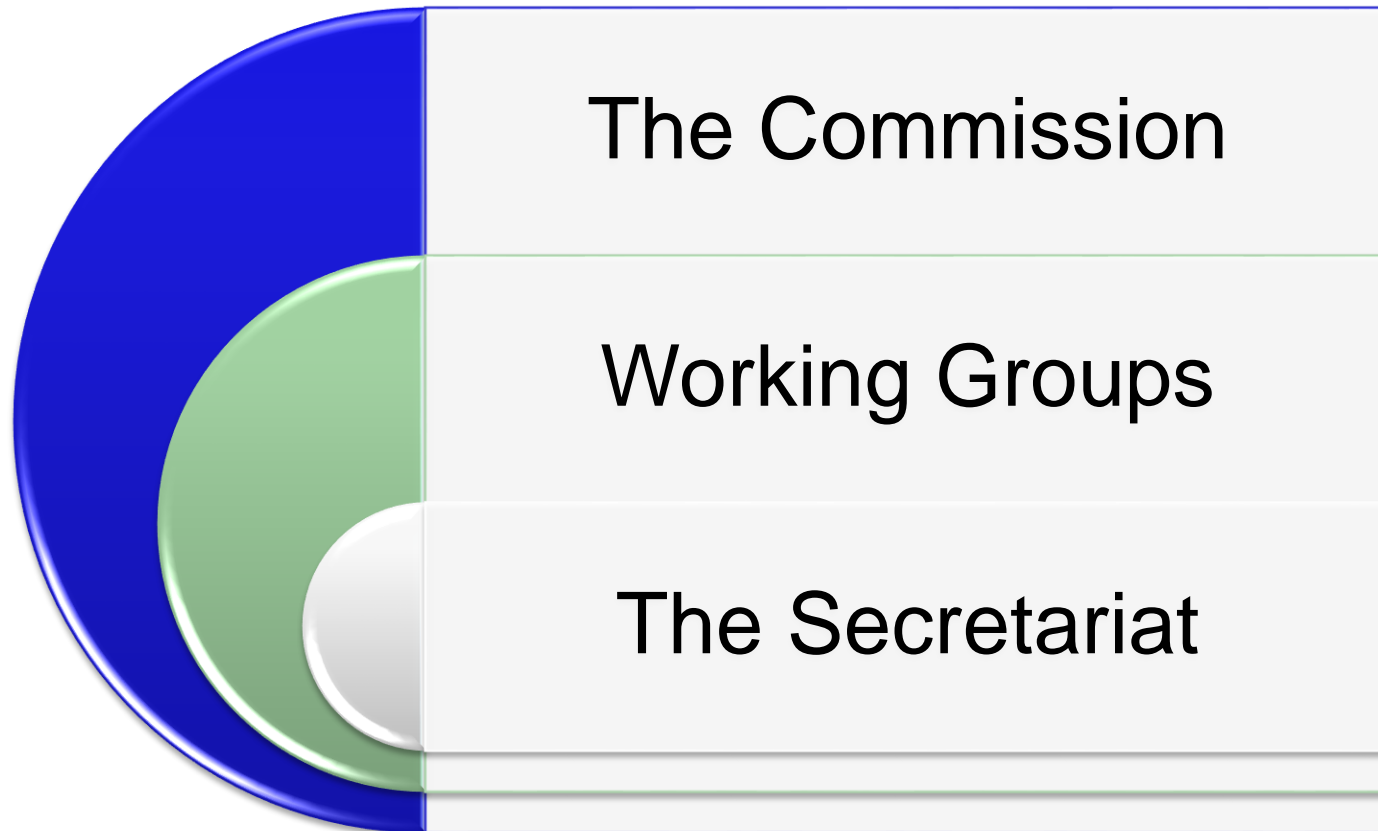
- **60 member States**
 - Elected by the UN General Assembly for a term of 6 years
 - Terms of half the members expire every 3 years
 - Ensures representation of the world's geographic regions and principal economic and legal systems
 - 14 from Africa
 - 14 from the Asia-Pacific region
 - 10 from Latin-America and the Caribbean
 - 8 from Eastern Europe
 - 14 from “Western Europe and Others”
- **Observer States and organizations**



- Argentina
- Armenia
- Australia
- Austria
- Belarus
- Brazil
- Bulgaria
- Burundi
- Cameroon
- Canada
- Chile
- China
- Colombia
- Côte d'Ivoire
- Czech Republic
- Denmark
- Ecuador
- El Salvador
- France
- Germany
- Greece
- Honduras
- Hungary
- India
- Indonesia
- Iran (Islamic Republic of)
- Israel
- Italy
- Japan
- Kenya
- Kuwait
- Lebanon
- Lesotho
- Liberia
- Libya
- Malaysia
- Mauritania
- Mauritius
- Mexico
- Namibia
- Nigeria
- Pakistan
- Panama
- Philippines
- Poland
- Republic of Korea
- Romania
- Russian Federation
- Sierra Leone
- Singapore
- Spain
- Sri Lanka
- Switzerland
- Thailand
- Turkey
- Uganda
- United Kingdom of Great Britain and Northern Ireland
- United States of America
- Venezuela (Bolivarian Republic of)
- Zambia

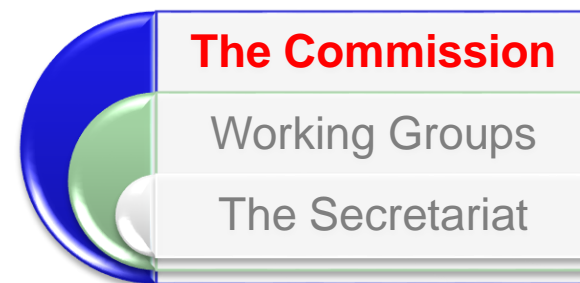


Organization of work



The Commission

- **Annual sessions held alternately in New York and Vienna** (2018 New York, 2019 Vienna)
- **Work at the sessions:**
 - Finalization and adoption of draft texts referred to the Commission by the working groups
 - Consideration of progress reports of the working groups
 - Selection of topics for future work or research
 - Reporting on technical assistance activities



The Commission and Working Groups

- Works in the 6 UN-languages
- Takes decisions on consensual basis
- Participants:
 - Members,
 - observer States,
 - non- and inter-governmental organizations



Energy Community Participation in 51st session of UNCITRAL

- Member State
- EU Participant
- Observer

B. Membership and attendance

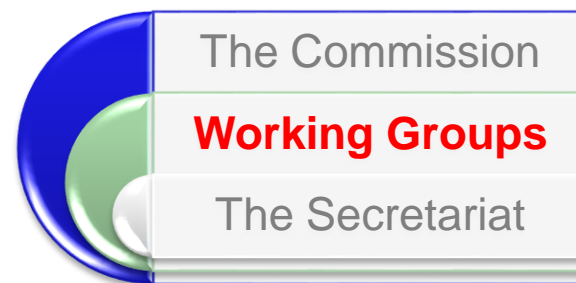
4. The General Assembly, in its resolution 2205 (XXI), established the Commission with a membership of 29 States, elected by the Assembly. By its resolution 3108 (XXVIII) of 12 December 1973, the Assembly increased the membership of the Commission from 29 to 36 States. By its resolution 57/20 of 19 November 2002, the General Assembly further increased the membership of the Commission from 36 States to 60 States. The current members of the Commission, elected on 14 November 2012, 14 December 2012, 9 November 2015, 15 April 2016 and 17 June 2016 are the following States, whose term of office expires on the last day prior to the beginning of the annual session of the Commission in the year indicated: 1 Argentina (2022), Armenia (2019), Australia (2022), Austria (2022), Belarus (2022), Brazil (2022), Bulgaria (2019), Burundi (2022), Cameroon (2019), Canada (2019), Chile (2022), China (2019), Colombia (2022), Côte d'Ivoire (2019), Czechia (2022), Denmark (2019), Ecuador (2019), El Salvador (2019), France (2019), Germany (2019), Greece (2019), Honduras (2019), Hungary (2019), India (2022), Indonesia (2019), Iran (Islamic Republic of) (2022), Israel (2022), Italy (2022), Japan (2019), Kenya (2022), Kuwait (2019), Lebanon (2022), Lesotho (2022), Liberia (2019), Libya (2022), Malaysia (2019), Mauritania (2019), Mauritius (2022), Mexico (2019), Namibia (2019), Nigeria (2022), Pakistan (2022), Panama (2019), Philippines (2022), Poland (2022), Republic of Korea (2019), Romania (2022), Russian Federation (2019), Sierra Leone (2019), Singapore (2019), Spain (2022), Sri Lanka (2022), Switzerland (2019), Thailand (2022), Turkey (2022), Uganda (2022), United Kingdom of Great Britain and Northern Ireland (2019), United States of America (2022), Venezuela (Bolivarian Republic of) (2022) and Zambia (2019).

5. With the exception of Armenia, Belarus, Cote d'Ivoire, El Salvador, Kenya, Lesotho, Liberia, Mauritania, Pakistan, Sierra Leone and Zambia, all the members of the Commission were represented at the session.

6. The session was attended by observers from the following States: Algeria, Bahrain, Belgium, Bolivia (Plurinational State of), Cambodia, Croatia, Dominican Republic, Finland, Gambia, Georgia, Iraq, Morocco, Myanmar, Nepal, Netherlands, Norway, Senegal, Sudan, Uruguay and Viet Nam.

Working Groups

- **WG I** (Micro-, Small- and Medium-sized Enterprises)
- **WG II** (Dispute Settlement)
- **WG III** (ISDS Reform)
- **WG IV** (Electronic Commerce)
- **WG V** (Insolvency Law)
- **WG VI** (Security Interests)



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Search

Working Group I

- 2014 to present: [Micro, Small and Medium-sized Enterprises](#)
- 2004-2012: [Procurement](#)
- 2001-2003: [Privately Financed Infrastructure Projects](#)
- 1969-1971: [Time-limits and Limitation \(Prescription\)](#)

Working Group II

- 2000 to present: [Arbitration and Conciliation / Dispute Settlement](#)
- 1981-2000: [International Contract Practices](#)
- 1968-1978: [International Sale of Goods](#)

Working Group III

- 2017 to present: [Investor-State Dispute Settlement Reform](#)
- 2010-2016: [Online Dispute Resolution](#)
- 2002-2008: [Transport Law](#)
- 1970-1975: [International Legislation on Shipping](#)

UNCITRAL Dispute Settlement Texts

1958

• Convention on the Recognition and Enforcement of Foreign Arbitral Awards the "New York" Convention

1976

• UNCITRAL Arbitration Rules (revised in 2010)

1980

• UNCITRAL Conciliation Rules

1985

• UNCITRAL Model Law on International Commercial Arbitration (amended in 2006)

2002

• UNCITRAL Model Law on International Commercial Conciliation

2012

• Recommendations to assist arbitral institutions and other interested bodies with regard to arbitration under the UNCITRAL Arbitration Rules (as revised in 2010)

2013

• UNCITRAL Rules on Transparency in Treaty-based investor-State Arbitration

2014

• UN Convention on Transparency in Treaty-based Investor-State Arbitration

2018

• draft UN convention on international settlement agreements resulting from mediation
• Model Law on International Commercial Mediation and International Settlement Agreements resulting from Mediation



UNCITRAL
NEW YORK
CONVENTION



Previous instruments

**UNCITRAL
Conciliation Rules**



United Nations

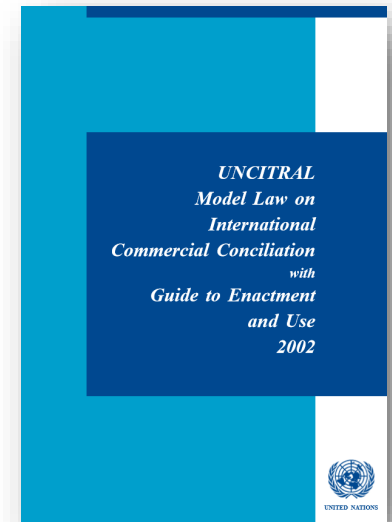
*UNCITRAL
Model Law on
International
Commercial Conciliation
with
Guide to Enactment
and Use
2002*



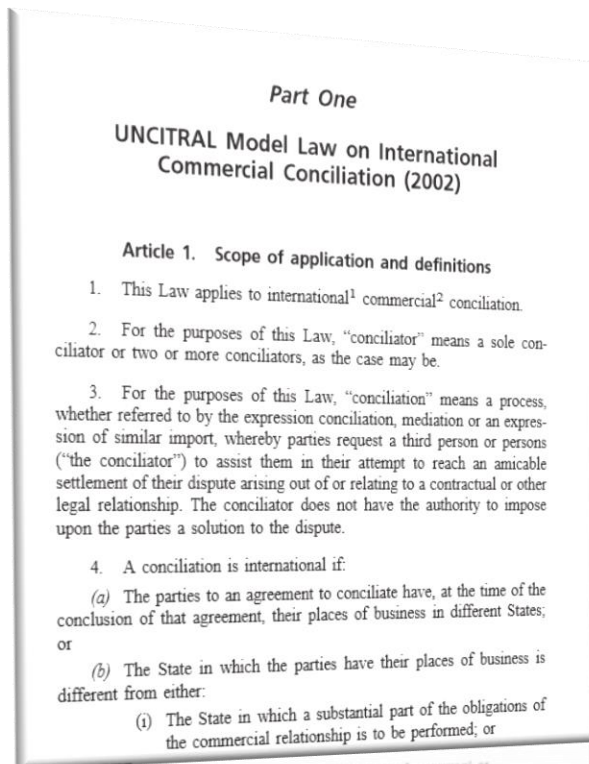
UNITED NATIONS

Model Law on International Commercial Conciliation

- ✓ **Uniform rules in respect of the conciliation process**
- ✓ **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;
 - ✓ post-conciliation issues (conciliator acting as arbitrator) and enforceability of settlement agreements.



Dispute settlement instruments: 2002 Model Law



UNCITRAL Model Law on International Commercial Conciliation (2002)

This page is updated whenever the UNCITRAL Secretariat is informed of changes in enactment of the Model Law.

The UNCITRAL Secretariat also prepares yearly a document containing the Status of Conventions and Enactments of UNCITRAL Model Laws, which is available on the web page of the corresponding [UNCITRAL Commission session](#).

Legislation based on or influenced by the Model Law has been adopted in 33 States in a total of 45 jurisdictions:

State		Notes
Albania	2011	(d)
Belgium	2005	
Benin	2017	(e)
Burkina Faso	2017	(e)
Bhutan	2013	
Cameroon	2017	(e)
Canada		

Article 14: GAP

Article 14. Enforceability of settlement agreement⁴

Text of article 14

If the parties conclude an agreement settling a dispute, that settlement agreement is binding and enforceable . . . [the enacting State may insert a description of the method of enforcing settlement agreements or refer to provisions governing such enforcement].

⁴When implementing the procedure for enforcement of settlement agreements, an enacting State may consider the possibility of such a procedure being mandatory.



Working Group II mandate

Issues with reform:

- × Difficulty to harmonise the procedure on enforcement of settlement agreements, given variance between countries
- × Conciliation is flexible in nature, so questions about the need for regulation

But:

- ✓ Mediation is more attractive if settlement agreements are enforceable, subject to a harmonised regime, rather than diverse procedures
- ✓ Many countries are currently adopting/reforming mediation laws

Ultimately, UNCITRAL decided to expand on Article 14

- Broad mandate
- Result: First time ever two texts have been issued:
 - Convention; and
 - Model Law



Working Group II - 68th session



Development process

47th session (2014) - UNCITRAL decision to undertake preliminary considerations on enforcement of settlement agreements

48th session (2015) – UNCITRAL decision to give a broad mandate to develop solutions, leaving open the form of the instrument

50th session (2017) - UNCITRAL decision on the need to accommodate different levels of experience with conciliation in different jurisdictions -> Compromise proposal to prepare a Model Law and a Convention simultaneously, confirming no preference on the instrument to be adopted

51st session (2018) - Finalization of the Convention on International Settlement Agreements resulting from Mediation and Adoption of the Model Law by UNCITRAL





General Assembly

Distr.: General
2 May 2018

Original: English

**United Nations Commission
on International Trade Law**
Fifty-first session
New York, 25 June-13 July 2018

Provisional agenda, annotations thereto and scheduling of meetings of the fifty-first session

I. Provisional agenda

1. Opening of the session.
2. Election of officers.
3. Adoption of the agenda.
4. Finalization and adoption of instruments on international commercial settlement agreements resulting from mediation.



Two new instruments

Draft United Nations **Convention** on International Settlement Agreements Resulting from Mediation

UNCITRAL **Model Law** on International Commercial Mediation and International Settlement Agreements Resulting from Mediation

- Commission finalised texts and adopted the Model law on 25 June 2018
- Submitted for adoption by UN General Assembly; then open for signature in August 2019



Singapore: August 2019



New package

UNCITRAL
Conciliation Rules



UNCITRAL
Model Law on
International
Commercial Conciliation

with
Guide to Enactment
and Use
2002

UPDATED



Convention on
international
settlements
resulting from
mediation

NEW

Draft convention on international settlement agreements resulting from mediation

A/73/17

Annex I

United Nations Convention on International Settlement Agreements Resulting from Mediation

Preamble

The Parties to this Convention,

Recognizing the value for international trade of mediation as a method for settling commercial disputes in which the parties in dispute request a third person or persons to assist them in their attempt to settle the dispute amicably,

Noting that mediation is increasingly used in international and domestic commercial practice as an alternative to litigation,

Considering that the use of mediation results in significant benefits, such as reducing the instances where a dispute leads to the termination of a commercial relationship, facilitating the administration of international transactions by commercial parties and producing savings in the administration of justice by States,

Convinced that the establishment of a framework for international settlement agreements resulting from mediation that is acceptable to States with different legal, social and economic systems would contribute to the development of harmonious international economic relations,

Have agreed as follows:

General principles

- **States parties to the Convention shall enforce a settlement agreement.**
- **If a dispute is already resolved by a settlement agreement, the party is allowed to invoke it.**

Article 3. General principles

1. Each Party to the Convention shall enforce a settlement agreement in accordance with its rules of procedure and under the conditions laid down in this Convention.
2. If a dispute arises concerning a matter that a party claims was already resolved by a settlement agreement, a Party to the Convention shall allow the party to invoke the settlement agreement in accordance with its rules of procedure and under the conditions laid down in this Convention, in order to prove that the matter has already been resolved.

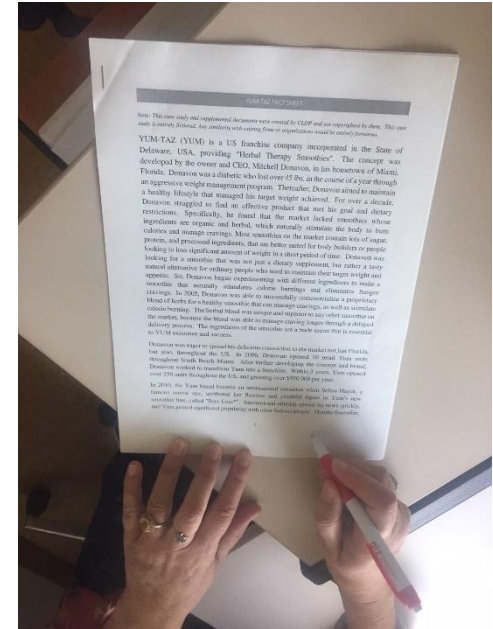
Practical requirements

For a settlement agreement to qualify under the Convention, it must be:

- 1. Mediated**
- 2. International**
- 3. Commercial**
- 4. Not excluded from the scope**

The requesting party must further prove that the agreement is:

- 5. In writing (may be in multiple documents)**
- 6. Signed by the parties**
- 7. The product of the mediation process (evidence might include minutes, recordings)**



Definitions

- **Attempt to reach a settlement with third person assistance lacking binding authority.**
- **A settlement agreement is ‘in writing’ if its content is recorded in any form (electronic communication: see other UNCITRAL instruments).**

EC Procedural Act:
“Mediation” means a form of facilitation which includes a more active involvement by the mediator, including by making concrete proposals for the settlement of a dispute by the mediator” (Art 2(5))

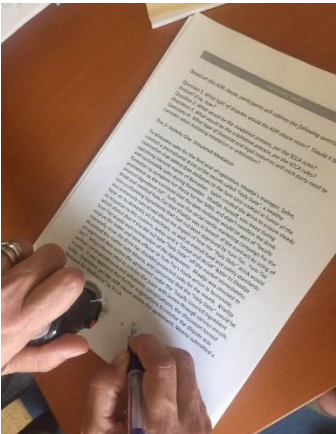
United Nations Convention
on the Use of
Electronic Communications
in International Contracts

Exclusions:

- **Personal, family, inheritance and employment matters;**
- **Settlement enforceable as a judgment or as an arbitral award**
 - **aims at avoiding possible overlap with existing and future conventions**
 - **New York Convention**
 - **Convention on Choice of Court Agreements (2005) and**
 - **2016 preliminary draft convention on judgments, under preparation by the Hague Conference on Private International Law**

Requirements for reliance on settlement agreements


- **Signature by parties**
- **Evidence that the settlement agreement resulted from mediation, such as:**
 - **The mediator's signature**
 - **Attestation by the mediation institution**
 - **Any other evidence**
- **Translations**
- **Any necessary document**



EC Procedural Act: “The determination will be binding for the Parties and for the Facilitator, and it shall be in writing, include a description of the issue referred, state the reasons on which it is based, be signed and dated.” (Art 10(6))

Grounds for refusing to grant relief

- **(a) Incapacity of parties;**
- **(b) The settlement agreement:**
 - (i) Is null and void, inoperative or incapable of being performed
 - (ii) Is not binding, or is not final
 - (iii) Has been subsequently modified;
- **(c) The obligations in the settlement agreement:**
 - Performed or not clear or comprehensible;
- **(d) Granting relief contrary to terms of agreement;**
- **(e) Serious breach by mediator of standards applicable to the mediator/ mediation**
- **(f) Mediator's impartiality**



Grounds might
overlap

Grounds for refusing to grant relief

- **The competent authority may also refuse to grant relief if :**
 - **(a) Contrary to the public policy**
 - **(b) The subject matter not amenable to mediation**

Other laws or treaties

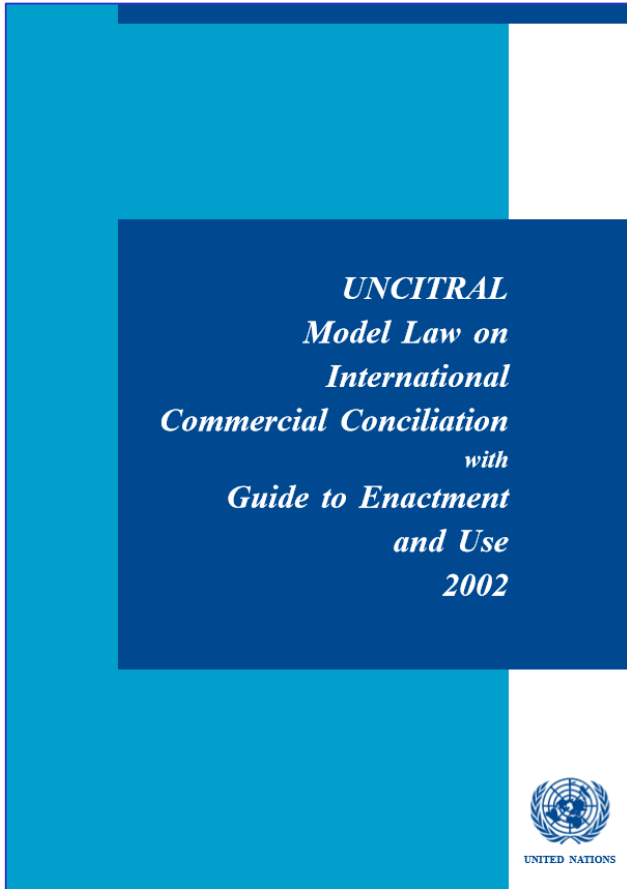
- **Mirrors Article VII of the New York Convention – More favourable national legislation or treaties**



Reservations

- **Agreements with governmental agencies**
- **Application of the Convention only to the extent that the parties to the settlement agreement have agreed to its application**

New Model Law



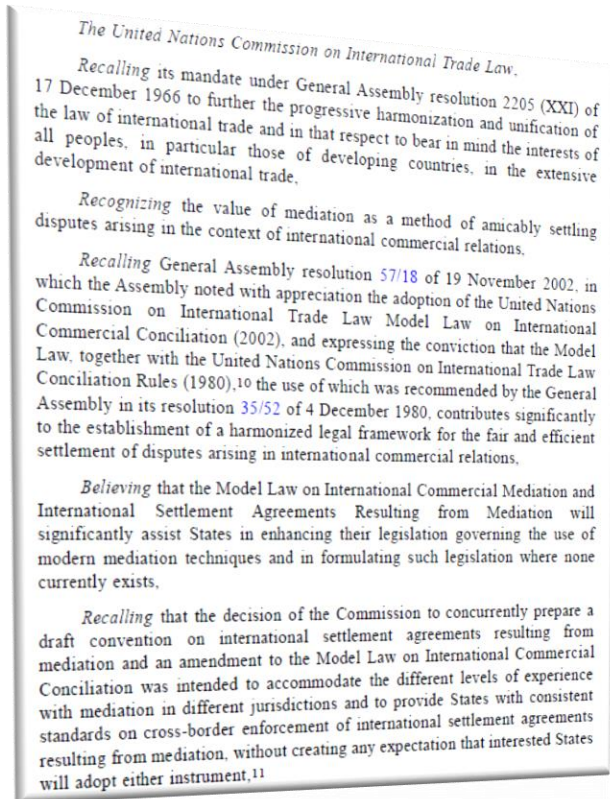
- **Basis: Model Law on International Commercial Conciliation, 2002**
- **Law applies to international commercial mediation and international settlement agreement**
- **Section 3 (Art. 16-20) new Convention**

Stand-alone
text

Supports
implementation
of Convention

New Model Law

- **Amendment to the UNCITRAL Model Law on International Commercial Conciliation (2002)**
 - Replaced ‘conciliation’ with ‘mediation’
 - Aimed for **consistency** with Convention *and* to **preserve** text of 2002 Model Law
 - UNCITRAL currently working on a guidance document for how the amended Model Law should be enacted as stand-alone legislation



MAL // Convention

- **Art. 16: Scope of application + definitions**
- **Art. 17: General principles regarding**
 - **Para. 1: enforcement of settlement agreements**
 - **Para. 2 : the right for a party to invoke a settlement agreement as a defence against a claim**
- **Art. 18: Requirements for reliance on a settlement agreement**
 - **Balance formalities ./ need for the instrument to preserve flexible nature of process**

Footnote: scope and application

- **Fn 5: Option to broaden the scope of the section to agreements not reached through mediation.**
- **Fn 6: Option to apply to agreements not international at the time of conclusion, but that result from international mediation in Art 3.**

⁵ A State may consider enacting this section to apply to agreements settling a dispute, irrespective of whether they resulted from mediation. Adjustments would then have to be made to relevant articles. Further, a State may consider enacting this section to apply only where the parties to the settlement agreement agreed to its application.

Future work

**UNCITRAL
Conciliation Rules**

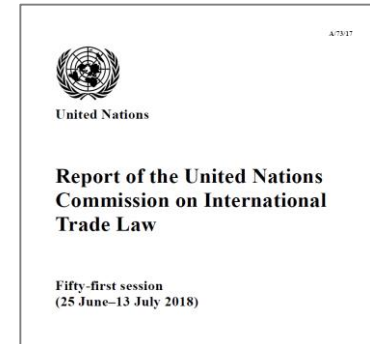


United Nations

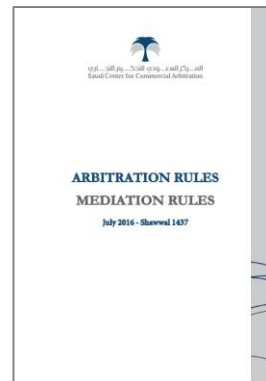


Secretariat:
Revision of the
Conciliation
Rules and
preparation of
notes on mediation

Expedited procedures



252. After discussion, the Commission agreed that priority, in the allocation of working group time, should be given to the topics of judicial sale of ships and issues relating to expedited arbitration; that judicial sale of ships should be allocated to the first available working group, possibly Working Group VI when it had completed its current work on the practice guide, and that Working Group II should be mandated to take up issues relating to expedited arbitration.

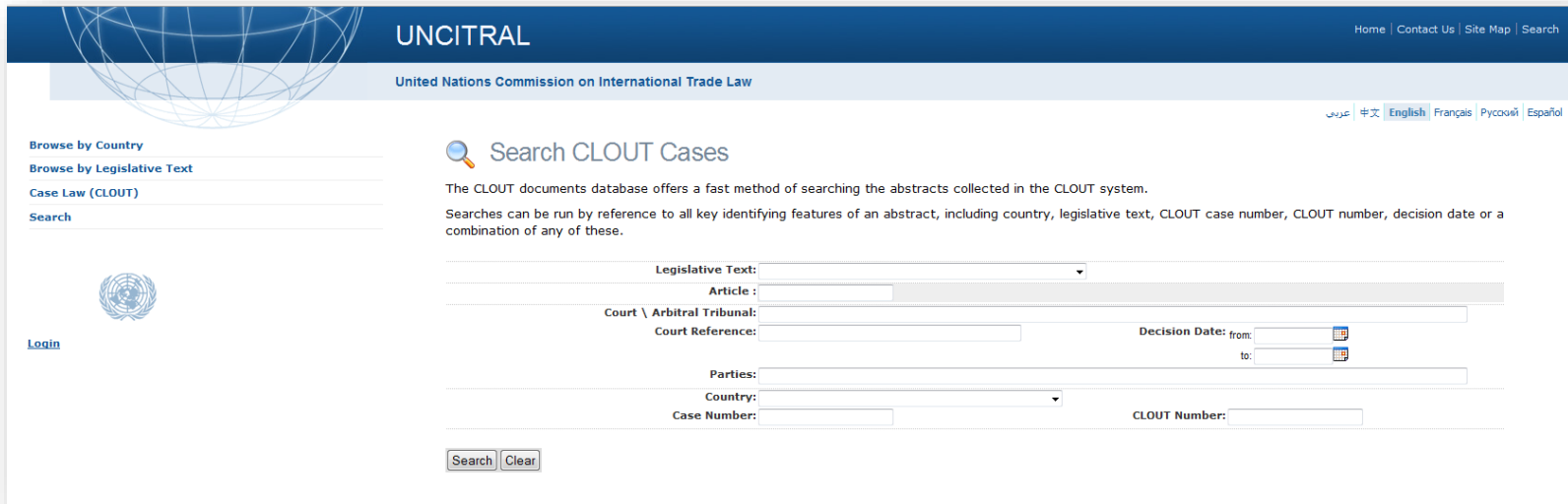


Current: Working Group III - ISDS *A/72/17*

264. The Commission entrusted Working Group III with a broad mandate to work on the possible reform of investor-State dispute settlement. In line with the UNCITRAL process, Working Group III would, in discharging that mandate, ensure that the deliberations, while benefiting from the widest possible breadth of available expertise from all stakeholders, would be Government-led, with high-level input from all Governments, consensus-based and fully transparent. The Working Group would proceed to: (a) first, identify and consider concerns regarding investor-State dispute settlement; (b) second, consider whether reform was desirable in the light of any identified concerns; and (c) third, if the Working Group were to conclude that reform was desirable, develop any relevant solutions to be recommended to the Commission.

CLOUT

- A collection of court decisions and arbitral awards interpreting UNCITRAL texts
- Case abstracts in the 6 UN official languages



The screenshot displays the UNCITRAL website's search interface. At the top, the UNCITRAL logo and name are visible, along with navigation links for Home, Contact Us, Site Map, and Search. Below this, the United Nations Commission on International Trade Law is identified. The main content area features a search bar with the text "Search CLOUT Cases" and a magnifying glass icon. A brief description states: "The CLOUT documents database offers a fast method of searching the abstracts collected in the CLOUT system. Searches can be run by reference to all key identifying features of an abstract, including country, legislative text, CLOUT case number, CLOUT number, decision date or a combination of any of these." The search form includes several input fields: "Legislative Text:" (a dropdown menu), "Article:" (a text input field), "Court \ Arbitral Tribunal:" (a text input field), "Court Reference:" (a text input field), "Decision Date: from:" (a date input field with a calendar icon), "to:" (a date input field with a calendar icon), "Parties:" (a text input field), "Country:" (a dropdown menu), "Case Number:" (a text input field), and "CLOUT Number:" (a text input field). At the bottom of the form are "Search" and "Clear" buttons. On the left side of the page, there are navigation options: "Browse by Country", "Browse by Legislative Text", "Case Law (CLOUT)", and "Search". A "Login" link is also present below the United Nations logo.



Thank you!

For more information please visit
www.uncitral.org

