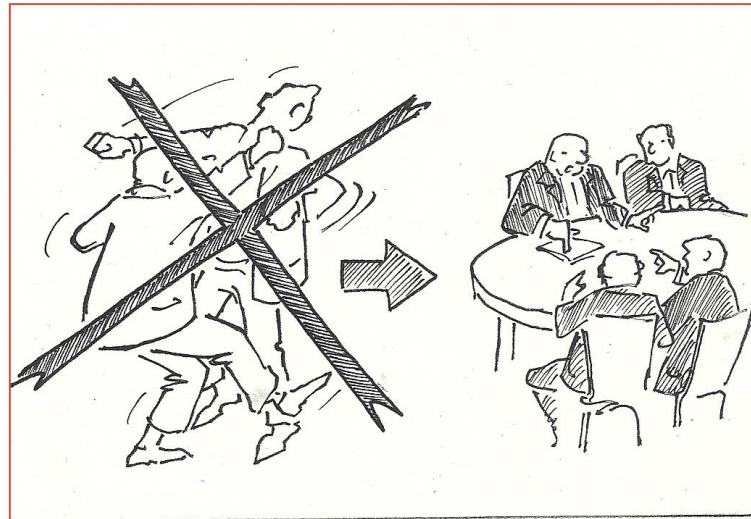


UNCITRAL CONCILIATION RULES

Judith Knieper

- I. Part: What is UNCITRAL?



- II. Part: The UNCITRAL CONCILIATION RULES

When and why was UNCITRAL established?

Established by United Nations General Assembly in 1966.

The core legal body of the UN system in the field of private international trade/commercial law.

Mandate: Progressive **harmonization** and **modernization** of international trade law by preparing and promoting the use of legislative and non-legislative instruments in key areas of commercial law.

Origin of UNCITRAL

- Reasons:
 - Dramatic expansion of world trade
 - Need for uniform rules for international trade
 - Divergences in the laws of different States constitute an obstacle to development of world trade
 - Create uncertainty and dispute
 - Add to transaction, information and negotiation costs
 - Increase need for coordination and cooperation

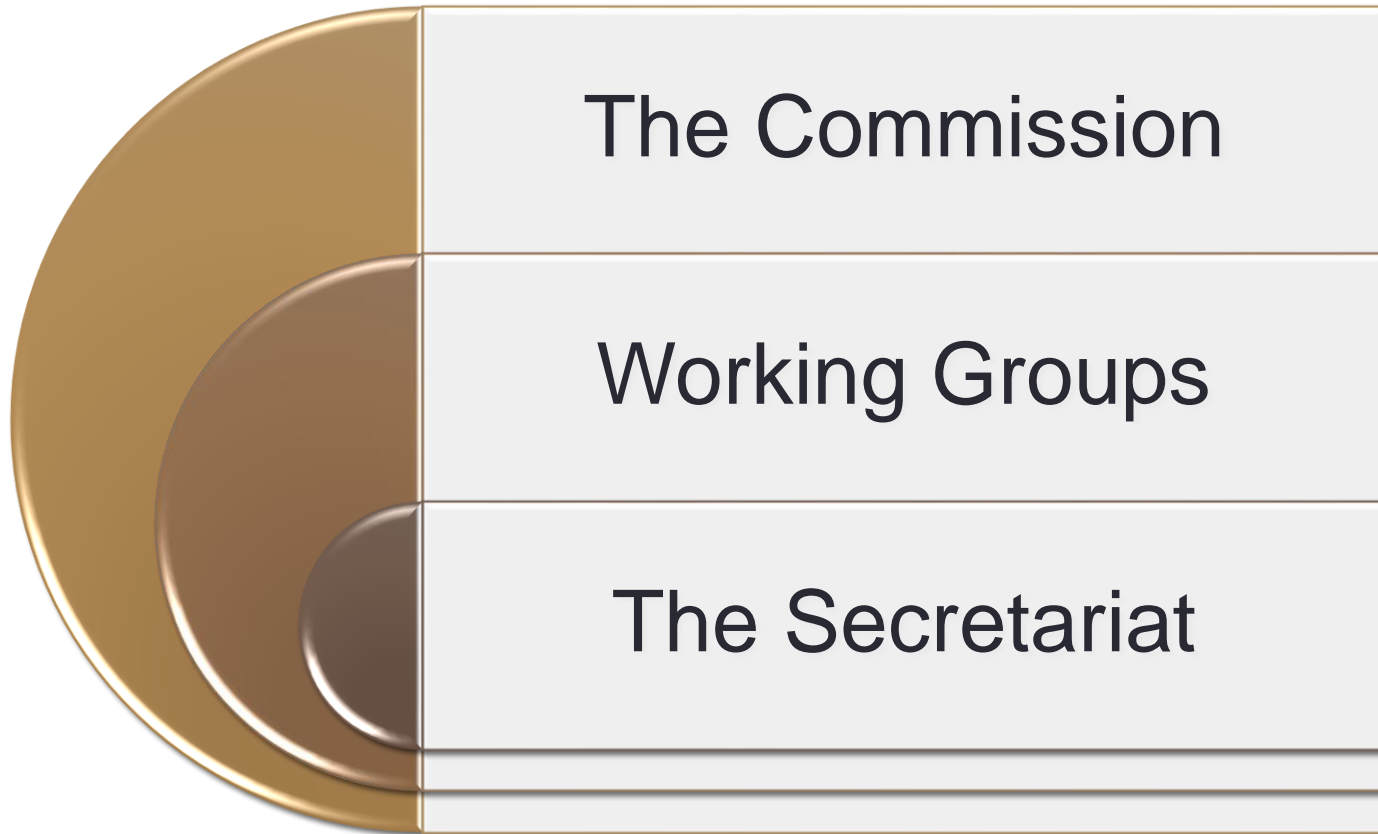
Trade law and the UN

The UN... will employ international machinery for the promotion of the economic and social advancement of all peoples (Preamble of the UN Charter, 1945)

Membership

- 60 member States
 - Elected by the UN General Assembly for a term of 6 years
 - Every 3 years terms of half the members expire
 - Ensure representation of the world's various geographic regions and its 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

Organization of work



The Commission



- Annual sessions held alternately in New York and Vienna (2015 Vienna, 2016 New York)
- 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



The Commission

Working Groups

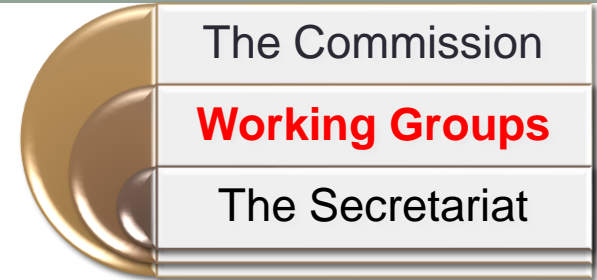
The Secretariat

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



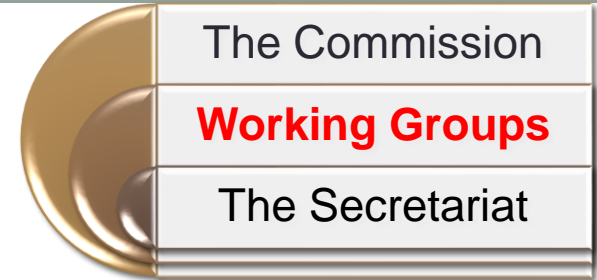


Working Groups



- Composition
- Attendance/ profile of delegates
- Meetings
- Languages
- Rules of procedure
- **Consensus principle**

Working Groups



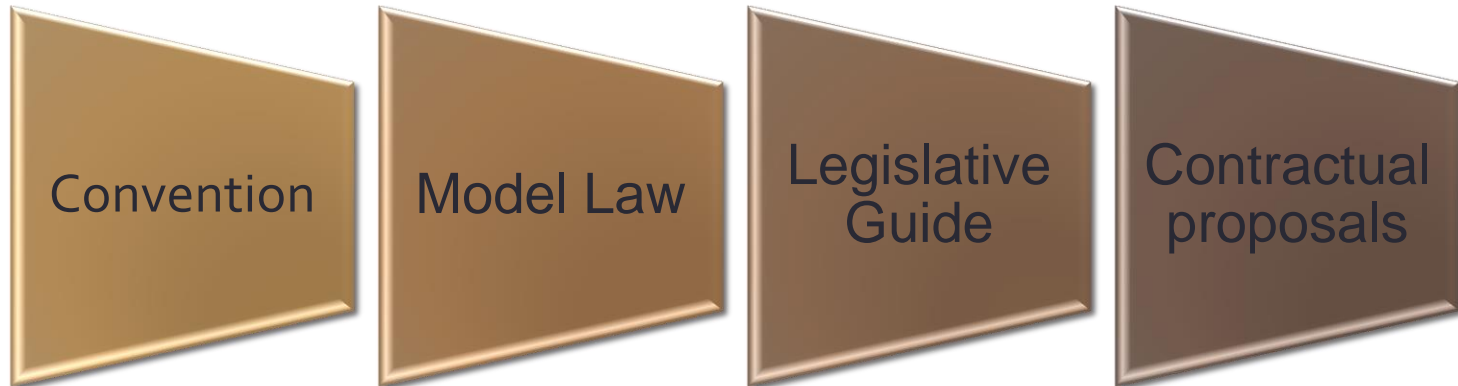
- **WG I: Up to 2013: Procurement. From 2014 on: Micro, Small and Medium Enterprises**
- **WG II: Arbitration**
- **WG III: Online dispute resolution**
- **WG IV: Electronic Commerce**
- **WG V: Insolvency Law**
- **WG VI: Security Interests**

The Secretariat



- **14** professional staff, mostly lawyers
- Main Tasks:
 - Preparation of reports and draft texts
 - Provision of technical assistance in law reform to States
 - Coordination with other relevant organizations

UNCITRAL Texts



- Negotiated with universal participation and reflect balance of national, regional, economic, legal and other interests
- Drafted with a view to ensure compatibility with the various legal traditions
- Operate at different levels and involve different types of compromise or acceptance

The UNCITRAL Regional Center for Asia and the Pacific

- Opened on 10 January 2012.
- Located in Songdo, Incheon, Rep. of Korea
- To enhance international trade and development in the Asia-Pacific region by promoting the adoption and use of UNCITRAL texts

Covers approximately 55 States of the Asia-Pacific region including Australia and New Zealand



Conciliation

- Seeking amicable settlement
- Third party helps parties reach a mutually acceptable voluntary agreement (no decision)
- Discussing not only the claim
- But the real interest behind

Wide Definition

Advantages of Conciliation

- Maintain personal autonomy / sovereignty
- Prevents institutionalization of the conflict, keep process under control
- Greater problem solving variance
- Future relationship, satisfaction, durability
- Confidentiality
- Costs of the procedure, time

Limits of Conciliation

- a basic consensus for cooperation and willingness of the parties
- parties should have an interest in the restoration of their relationship and in a future together
- No imbalance of power between parties

History

- Adopted in 1980
- Have contractual rather than legislative status
- Cover all procedural aspects of conciliation from appointment of conciliation to settlement terms
- Offer an internationally harmonised set of rules for resolving international commercial disputes

UNCITRAL Conciliation Rules



United Nations

Idea

- Alternative to arbitration
- Alternative to party negotiations

Main principle

- Willingness to seek amicable settlement

The conciliator: crucial

- Active Assistance by conciliator
 - - Independence and impartiality
 - - Procedural discretion (but costs)
 - - Number. One?

Simple, informal procedure

- Simplicity, flexibility
- Informality (and confidentiality)
- No rigid formal rules

No adversary proceeding

- Preferable: no arbitration / litigation during conciliation
- Safeguard to guarantee openness during conciliation
 - Conciliator no further role in subsequent procedure
 - Inadmissibility of using c.-statements

Principles

- Party autonomy
- equality of parties
- confidentiality of data
- Non-adversary, friendly character of procedure
- flexibility of procedure
- transparency of process for parties

Need for a law?

No

Yes

- Conciliation is a private contract
- Conciliation is formulated in a law or a code of conciliation
- Freedom of parties to choose whomever as conciliator

- Right to refuse to give evidence
- Standards of conciliator (registration, training requirements, supervision)

UNCITRAL Model Law on International Commercial Conciliation

EU Directive of 21.05.2008 on certain aspects of mediation in civil and commercial matters

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



Principal concern remain

- How can settlement agreements reached in conciliation be enforced?

Article 14 Model Law- Enforceability of settlement agreements

- Settlement agreement concluded by parties is binding and enforceable
- Method of enforcement left to national law
- Footnote to article 14 suggests that enacting state may consider possibility of procedure being mandatory

A/69/17

129. The Commission further agreed that the Working Group should also consider at its sixty-second session the issue of enforcement of international settlement agreements resulting from conciliation proceedings and should report to the Commission at its forty-eighth session, in 2015, on the feasibility and possible form of work in that area. The Commission invited delegations to provide information to the Secretariat in respect of that subject matter.

For more information about the Model Law
or other texts of UNCITRAL visit our
website at
www.uncitral.org