UNCITRAL CONCILIATION RULES

Judith Knieper
I. Part: What is UNCITRAL?

II. Part: The UNCITRAL CONCILIATION RULES
When and why was UNCITRAL established?


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
- Working Groups
- The Secretariat
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

• 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 the parties reach their own mutually acceptable and voluntary agreement (no decision)
- Discussing not only the claim
- But the real interest behind
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
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
<table>
<thead>
<tr>
<th>Need for a law?</th>
<th>No</th>
<th>Yes</th>
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<tbody>
<tr>
<td>Conciliation is a private contract</td>
<td>-</td>
<td>• Right to refuse to give evidence</td>
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<tr>
<td>Conciliation is a non-formalised procedure</td>
<td>-</td>
<td>• Freedom of parties to choose whomever as conciliator</td>
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<tr>
<td>Freedom of parties to choose whomever as conciliator</td>
<td>-</td>
<td>(registration, training requirements, supervision)</td>
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**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
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