



Snapshots of IO Practices

Case Law on UNCITRAL Texts (CLOUT) Database

Organisation(s): The United Nations Commission On International Trade Law (UNCITRAL)

The Snapshots of IO Practices present examples of specific efforts undertaken by an international organisation to work towards more effective international instruments. They aim to highlight examples of practices within the five focus areas of the Partnership of International Organisations for Effective International Rulemaking (IO Partnership), namely the variety and development of international instruments, their implementation, evaluation, ensuring stakeholder engagement, and co-ordination among IOs. The snapshots are submitted by the secretariats of the relevant international organisations implementing the relevant practice. The practices were compiled by the OECD Secretariat and focal points of the IO Partnership (UNCITRAL, OIE, WHO, ISO, WCO, BIPM, and SIECA), with a brief review to ensure consistency and comparability of the information provided within the snapshots. The inclusion of a practice in these snapshots implies no endorsement or assessment of that practice on the part of the OECD Secretariat or the focal points of the IO Partnership.

1	Overview of the Practice	Answers	Comments and Intersections
1.1	Organisation	The United Nations Commission On International Trade Law (UNCITRAL)	
1.2	Area of relevance among the IO partnership focus themes (variety of instruments, implementation, stakeholder engagement, evaluation, co-ordination)	Implementation/ Assistance Mechanisms	In both collecting information and facilitating its dissemination, the CLOUT database itself represents an intersection between the development of international instruments (WG1), their practical implementation (WG2), and the involvement of stakeholders (WG3).
1.3	Name of the Practice	Case Law on UNCITRAL Texts (CLOUT) Database	
1.4	Name of person(s) completing the template	Caroline Nicholas, Head Technical Assistance	

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2	Description of the Practice	Answers	Comments and Intersections
2.1	Please describe the practice shortly, providing information on its core features.	<p>The UNCITRAL Secretariat has established a system for collecting and disseminating information – generally, case law abstracts and full-text judgments - on court decisions and arbitral awards relating to UNCITRAL’s legal texts - including Conventions and Model Laws. The system encourages that, in interpreting and applying UNCITRAL texts, judges and arbitrators should consider the international origin of the law and the need to promote uniformity in its application, and access to judicial precedents from the various jurisdictions that have adhered to or implemented an UNCITRAL text is a useful tool. The database is freely available in all 6 official United Nations languages at https://uncitral.un.org/en/case_law. A network of National Correspondents, who are experts designated by States that are parties to UNCITRAL conventions or have enacted legislation based on UNCITRAL model laws. They are the backbone of the CLOUT system. They research national case law and prepare abstracts for publication on CLOUT. Forty-three States have appointed national correspondents.</p>	
2.2	What are the objectives of the practice?	<p>The primary purpose of the system is to promote international awareness of UNCITRAL legal and to facilitate uniform interpretation and application of those texts; other objectives include raising awareness of such UNCITRAL texts, to enable judges, arbitrators, lawyers, parties to commercial transactions and other interested persons to take decisions and awards relating to those texts into account in interpreting them, supporting the idea of UNCITRAL texts being interpreted taking account of their international character.</p>	

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2.3	What have been the key results of the practice?	<p>CLOUT is used by judges, arbitrators, lawyers and parties to business transactions. As at June 2020, 202 issues of CLOUT have been published, dealing with 1,857 cases from 71 jurisdictions. Details are available in <i>Publications to promote a uniform interpretation and application of UNCITRAL texts (CLOUT and digests) and support their implementation and enactment</i> United Nations document A/CN.9/1017, available at https://uncitral.un.org/en/commission. From July 2019 to June 2020, the CLOUT database received over 36,600 visitors.</p>	
2.4	In what year was the practice introduced?	<p>1988 – see <i>Official Records of the General Assembly, Forty-third Session, Supplement No. 17</i> (https://undocs.org/en/A/43/17) , paras. 98–109)</p>	
2.5	Has the practice been updated/reformed since then? If yes, when and how has it evolved over time?	<p>Yes. UNCITRAL agreed to rejuvenate and expand the CLOUT system in 2019 (explained at https://undocs.org/A/CN.9/1017, paras. 15–29), including through establishing a CLOUT Steering Committee comprising one representative appointed by each State and encouraging States to appoint representatives; to establish CLOUT partnerships to support provision of case law abstracts and to promote broader awareness and use of UNCITRAL texts.</p>	
2.6	What do you consider to be the primary strengths of the practice?	<p>The CLOUT database offers a user-friendly way to search for case law on UNCITRAL texts, and users have fast, easy access to information on decisions made in various jurisdictions, abstracts, i.e. short summaries, that highlight key issues in the application and interpretation of UNCITRAL texts in the United Nations official languages, and full text decisions in their original language.</p>	

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2.7	What do you consider to be the main challenges faced during the implementation of the practice?	Resources required of National Correspondents, who are unremunerated and largely unrecognised; lack of coverage beyond western countries. Cases originating from jurisdictions located in Asia and the Pacific and in Eastern Europe account together for approximately one third of total cases. Cases originating from Latin America and the Caribbean and from Africa account for about 5 per cent of the total.	
2.8	Does the practice have a formal/normative basis within the organisation or is it conducted informally? Does this basis make the practice mandatory or voluntary?	UNCITRAL decided formally to establish CLOUT in 1988 – see <i>Official Records of the General Assembly, Forty-third Session, Supplement No. 17</i> (United Nations document A/43/17), paras. 98–109, available at undocs.org. Continuing with CLOUT is subject to routine annual confirmation by UNCITRAL. As noted above, in 2019, UNCITRAL decided to rejuvenate CLOUT to ensure that it remains effective and fit for purpose, and the work towards that end is ongoing (it was interrupted by the COVID-19 pandemic)	
2.9	At what frequency is the practice applied? i.e. is it conducted once or on an iterative basis?	Ongoing	
2.10	Is this practice applied systematically, (e.g. with respect to every normative instrument, according to specific criteria or on an ad hoc basis)?	<p>CLOUT covers those UNCITRAL texts that are implemented without significant amendments, and notably:</p> <p>Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958) (the “New York Convention”)</p> <ul style="list-style-type: none"> • Convention on the Limitation Period in the International Sale of Goods (New York, 1974), and as amended (Vienna, 1980), (the “Limitation Convention”) 	

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		<ul style="list-style-type: none"> • United Nations Convention on the Carriage of Goods by Sea (Hamburg, 1978) (the “Hamburg Rules”) • United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980) (the “CISG”) • UNCITRAL Model Law on International Commercial Arbitration (1985) • UNCITRAL Model Law on International Credit Transfers (1992) • United Nations Convention on Independent Guarantees and Stand-by Letters of Credit (New York, 1995) • UNCITRAL Model Law on Electronic Commerce (1996) • UNCITRAL Model Law on Cross-Border Insolvency (1997) • United Nations Convention on the Use of Electronic Communications in International Contracts (New York, 2005) 	
2.11	Please provide specific details or examples to illustrate the practice (including supporting links and documents).	See database and descriptions at https://uncitral.un.org/en/case_law .	
3	Design of the Practice	Answers	Comments and Intersections
3.1	Who designed the practice (e.g. Was it developed internally, in collaboration with other organisations, etc?)	United Nations member States and international governmental and non-governmental organisations	
3.2	Which stakeholders were engaged with in the design of the practice?	Experts from the above, and judges, arbitrators and lawyers.	

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3.3	How long did it take to design the practice?	Unknown	
3.4	What resources were needed to design the practice initially (i.e., staff, budget etc.)?	Unknown	
3.5	What challenges were encountered during the design of the practice and how were they overcome?	Securing database funding. Initial funding to host the database was secured from within the United Nations regular budget as an ad hoc expense. Discussions are ongoing on possibilities to meet the costs required for the rejuvenation exercise.	
3.6	Has the practice been tested before implementation (i.e. pilot phase)? If yes, please describe.	No	
4	Implementation of the Practice		Comments and Intersections
4.1	Which units are responsible for implementing the practice within your IO?	The International Trade Law Division of the United Nations Office of Legal Affairs, which is the Secretariat of UNCITRAL.	
4.2	Are IO members involved in implementing the practice? If so, how?	Yes, through designating National Correspondents and representatives to the CLOUT Steering Committee.	
4.3	Are external actors beyond the organisation or its membership involved in implementing the practice? If so, how?	Yes: National Correspondents research national case law and prepare abstracts for publication on CLOUT and representatives to the CLOUT Steering Committee coordinate development of CLOUT	
4.4	Which resources are needed to implement the practice (e.g., staff and budget)?	Subsumed within United Nations budget	

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5	Outputs and Evaluation of the Practice	Answers	Comments and Intersections
5.1	Has the practice been evaluated or reviewed?	No	
5.2	If yes, who carried out the evaluation (please specify whether it was done internally or externally)	N/A	
5.3	If yes, please describe the evaluation methodology? (e.g. were any quantitative or qualitative indicators/criteria used to measure/assess the outcomes of the practice?).	N/A	
5.4	If yes, what were the conclusions of the evaluation, and has the practice evolved subsequently? If possible, please attach related documents or provide a link.	N/A	
6	Additional comments and information	Answers	Comments and Intersections
6.1	Is there any more information or documentation that would be valuable to share in relation to the practice (e.g. links, reports, meeting minutes, supporting documents)?	See information at https://uncitral.un.org/en/case_law	
Sources			