



**Asia-Pacific
Economic Cooperation**

2016/SOM1/EC/WKSP1/004

Session 3


UNCITRAL and Its Texts on International Commercial Arbitration

Submitted by: UNCITRAL Secretariat



**Workshop on Dispute Resolution
Lima, Peru
26 February 2016**

UNCITRAL United Nations Commission on International Trade Law



UNCITRAL and its texts on International Commercial Arbitration

Jae Sung LEE
Legal Officer
UNCITRAL Secretariat

When was UNCITRAL established? And why?

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.

UNCITRAL Texts

Convention

Model Law

Legislative Guide

- Negotiated with universal participation and reflect balance of national, regional, economic, legal and other interest
- Drafted with a view to ensuring compatibility with the various legal traditions
- Not necessarily international , texts implemented domestically

UNCITRAL creating a favourable environment for dispute settlement

1958	• Convention on the Recognition and Enforcement of Foreign Arbitral Awards : the New York Convention
1976	• UNCITRAL Arbitration Rules
1980	• UNCITRAL Conciliation Rules
1985	• UNCITRAL Model Law on International Commercial Arbitration
2002	• UNCITRAL Model Law on International Commercial Conciliation
2010	• Amendments to UNCITRAL Model Law on International Commercial Arbitration
2010	• Revised UNCITRAL Arbitration Rules
2013	• UNCITRAL Transparency Rules on Treaty-based Investor-State Disputes
2014	• UN Convention on Transparency in Treaty-based Investor-State Arbitration: the Mauritius Convention on Transparency

Relevance of UNCITRAL and APEC EoDB

- UNCITRAL texts provide the basic legal framework for doing business, including enforcing contracts, getting credit, trading across borders and starting a business.
- The Commission expressed support for closer cooperation with APEC and expanding the project further building up on the enforcing contract experience.
- APEC Joint Ministerial Statement (Nov. 2014): "welcomes the joint efforts of the Economic Committee and ... UNCITRAL to build awareness of private international law instruments to facilitate cross-border trade and investment, enhance ease of doing business, and foster effective enforcement of contracts and efficient settlement of business disputes."

The ultimate aim: To resolve commercial disputes *efficiently*

- Increasing need for businesses to resolve disputes **quickly, efficiently** and **constructively**
- Sometimes **privately** and **informally** to maintain their business relationship
- **Unpredictability** leads to increase in short-term costs
- **Backlogs** and **delays** in court proceedings leading to excessive costs
- **Uncertainty** about local law and disparities in domestic legislation
- Domestic courts not always perceived as **impartial** when **foreign parties** are involved

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



Recommendations on NYC

- All APEC economies are parties to the NYC except Papua New Guinea.
- Respective courts need to ensure that
 - ✓ arbitral agreements are recognized;
 - ✓ foreign arbitral awards are recognized and enforced *in a time and cost effective manner*; and
 - ✓ reasons for refusing recognition and enforcement are limited.
- Contribution of case law to the newyorkconvention1958.org database
- UNCITRAL Secretariat Guide on the New York Convention is available as a tool for implementation

UNCITRAL Model Law on International Commercial Arbitration

- Adopted in 1985, amendments adopted in 2006
- Establishes a unified legal framework for the fair and efficient settlement of international commercial disputes
- Covers all stages of the arbitral process
- Conforms to current practice in international trade and modern means of contracting with regard to the form of arbitration agreement and the granting of interim measures
- Takes the form of a "model law" which provides more flexibility for enacting states
- Prepared as a freestanding arbitration statute



Chapter I. Scope of Application & Definitions

Chapter I. Role of Court or other authorities

Chapter II. Arbitration Agreement

Chapter III. Composition of Arbitral Tribunal

Chapter IV. Jurisdiction of Arbitral Tribunal

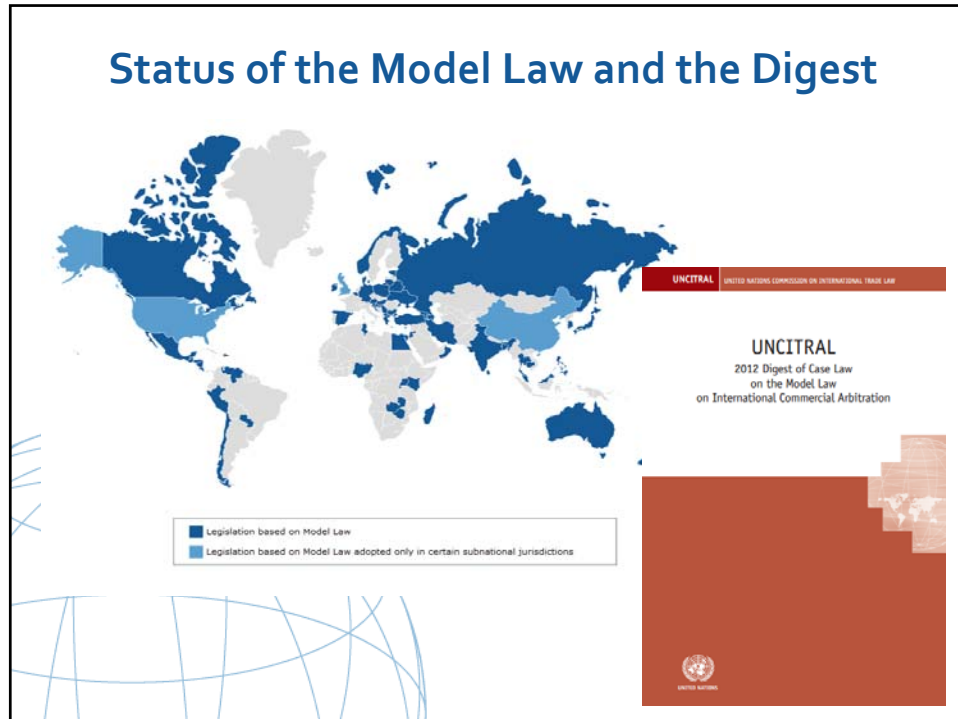
Chapter IV A. Interim Measures and Preliminary Orders

Chapter V. Conduct of Arbitral Proceedings

Chapter VI. Arbitral award and termination of proceedings

Chapter VII. Recourse against award

Chapter VIII. Recognition and enforcement of awards



Summary of key findings

- ✓ Enthusiasm in the region about arbitration reflected in recent law reforms, particularly since 2000
- ✓ Most economies have enacted laws based on the Model Law except Vietnam, Indonesia and PNG: legislative framework in place to provide a basis for fostering arbitration and other ADR mechanisms
- ✓ Methods for adopting the Model Law and the 2006 revisions vary, but a key reference point
- ✓ Not many arbitration cases reported but positive signs in certain jurisdictions
- ✓ Increasing number of local arbitration institutions, yet lack of qualified arbitrators and experts

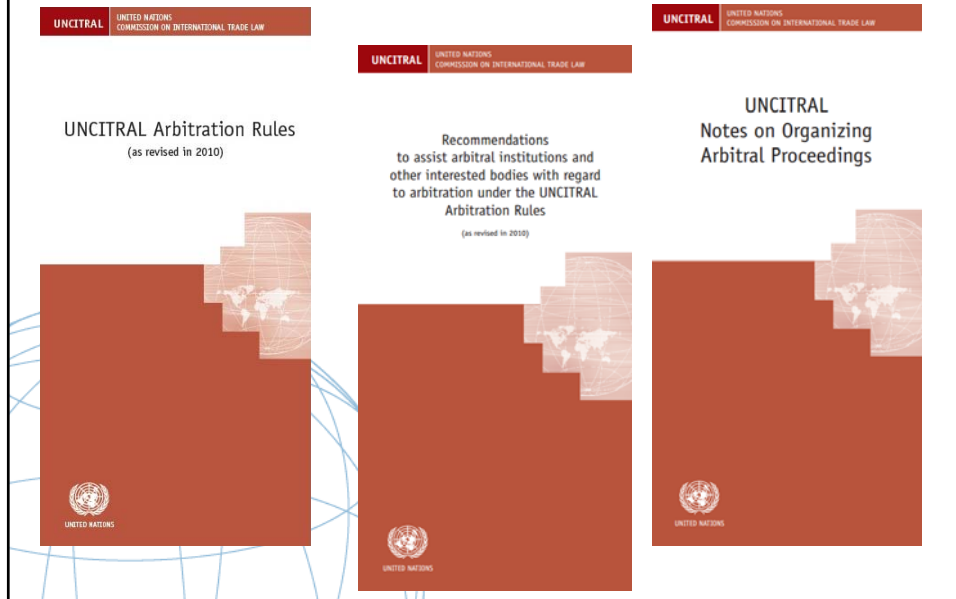
Towards a more arbitration friendly environment – general recommendations

- ✓ Establishment of relevant practice to build trust and confidence in the arbitration/ADR mechanism
- ✓ Foster a more arbitration-friendly environment, particularly in the judiciary and among the users
- ✓ Clarification on the role of courts
- ✓ Ensuring the advantages of arbitration, as a time and cost efficient mechanism to resolve disputes
- ✓ Streamlining of the recognition and enforcement process
- ✓ Building up of the arbitration infrastructure (arbitration institutions, relevant arbitration rules, training of arbitrators, practitioners and judges)

Key challenges

- ✓ Need for comprehensive reform involving various actors
 - Legislative, executive & judiciary
 - Private & public sector
 - Legal and non-legal profession
- ✓ The need to identify a leading entity for such reforms and the right audience for respective reforms
- ✓ Adequate support of international organizations including arbitration institutions
- ✓ Human and financial resources to support reforms
- ✓ Raising public awareness about arbitration and other ADR methods

Other relevant UNCITRAL texts



Thank You!

For more information on the work of
UNCITRAL, please visit our web site
<http://www.uncitral.org>

E-mail: jaesung.lee@uncitral.org