



**Asia-Pacific  
Economic Cooperation**

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**2016/SOM1/EC/WKSP1/009**

Session 8


## **Work of UNCITRAL in the Field of Mediation and Conciliation**

Submitted by: UNCITRAL Secretariat



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

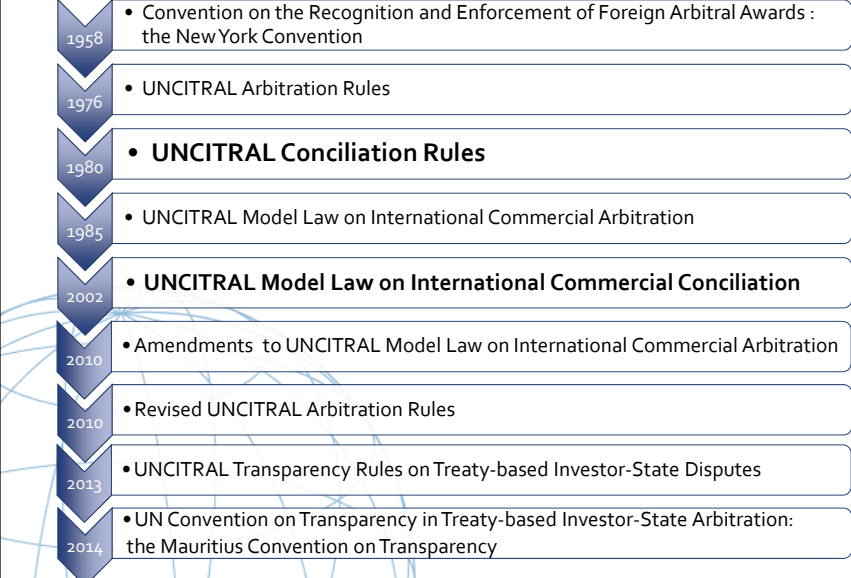
**UNCITRAL** United Nations Commission on International Trade Law



## Work of UNCITRAL in the field of mediation and conciliation

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### 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

## UNCITRAL Conciliation Rules

- Adopted on 23 July 1980.
- Provide a comprehensive set of procedural rules upon which parties may agree for the conduct of conciliation proceedings.
- Cover all aspects of the conciliation process, providing a model conciliation clause, defining when conciliation is deemed to have commenced and terminated and addressing procedural aspects including appointment and role of conciliators.
- Address issues such as confidentiality, admissibility of evidence in other proceedings and limits to the right of parties to undertake judicial or arbitral proceedings.

## UNCITRAL Model Law on International Commercial Conciliation

- Adopted on 24 June 2002.
- Provides uniform rules in respect of conciliation to encourage its use and ensure greater predictability and certainty.
- Addresses procedural aspects including appointment of conciliators, commencement and termination of conciliation, general conduct, communication between the conciliator and other parties, confidentiality and admissibility of evidence in other proceedings as well as post-conciliation issues.

## Notion of conciliation

- “Conciliation” means a process, whether referred to by the expression *conciliation, mediation or an expression of similar import*, whereby parties request a third person or persons (“the conciliator”) to assist them in their attempt to reach an amicable settlement of their dispute arising out of or relating to a contractual or other legal relationship.
- The conciliator does not have the authority to impose upon the parties a solution to the dispute.

## UNCITRAL Model Law on International Commercial Conciliation

- Scope of application (1), Interpretation (2), Variation by agreement (3)
- Commencement of conciliation (4)
- Number and appointment of conciliators (5)
- Conduct of conciliation (6)
- Communication between conciliator and parties (7)
- Disclosure of information (8)
- Confidentiality (9)

## UNCITRAL Model Law on International Commercial Conciliation

- Admissibility of certain evidence arising from conciliation in other proceedings (10)
- Termination of conciliation proceedings (11)
- Conciliator acting as an arbitrator (12)
- Resort to arbitral or judicial proceeding (13)
- Enforceability of settlement agreements (14): If the parties conclude an agreement ..., that settlement agreement is binding and enforceable . . . [*the enacting State may insert a description of the method of enforcing such agreements or refer to provisions governing such enforcement*].

## Enforceability of settlement agreements

- Proposal to undertake work on the preparation of a convention on the enforceability of international commercial settlement agreements possibly modelled on the New York Convention.
- To promote conciliation as a time and cost efficient ADR method.
- Lack of harmonized enforcement mechanism seen as a disincentive for proceeding with conciliation.
- Possible negative impact on the flexible nature of the process.
- Variance in domestic approaches.

## Issues being considered by WG II

- Scope of application of a possible instrument:  
*International commercial settlement agreements*  
resulting from *conciliation*
- Possible exclusions
  - (1) consumer, family and employment matters;
  - (2) settlement agreements involving government and public entities; &
  - (3) settlement agreements reached during judicial or arbitral proceedings.

## Issues being considered by WG II

- Form and other requirements: A written agreement concluded by the parties & some indication of the involvement of a "conciliator", agreement "resulting from" conciliation and parties being informed of or opting into the enforcement mechanism
- Validity of the settlement agreement and the competent authority for assessing its validity
- Content of the settlement agreement (finality, conditional provisions, dispute resolution clause)

## Issues being considered by WG II

- Direct enforcement: a mechanism where a party to the settlement agreement seeks enforcement directly at the State of enforcement
- Possible defences to enforcement
  - (1) Incapacity, mistake, duress ...
  - (2) Enforcement contrary to the terms and conditions
  - (3) Null and void, inoperative or incapable of being enforced
  - (4) Not binding, not final, subsequently modified, obligation performed in full or in part
  - (5) Subject matter not capable of settlement by conciliation
  - (6) Contrary to public policy

**Thank You!**

For more information on the work of  
**UNCITRAL**, please visit our web site  
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