



**Asia-Pacific
Economic Cooperation**

2018/SOM1/EC/WKSP2/010

**International Instrument for Dispute Resolution and
Prevention - Relevance of United Nations
Commission on International Trade Law Texts**

Submitted by: UNCITRAL




**Workshop on the Use of Modern
Technology for Dispute Resolution and
Electronic Agreement Management
Particularly Online Dispute Resolution
Port Moresby, Papua New Guinea
3-4 March 2018**



International instrument for dispute resolution and prevention <Relevance of UNCITRAL texts>

Jae Sung Lee
Legal Officer, UNCITRAL

The ultimate aim is 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
- 

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

2006

- Amendments to UNCITRAL Model Law on International Commercial Arbitration

2010

- Revised UNCITRAL Arbitration Rules

2013

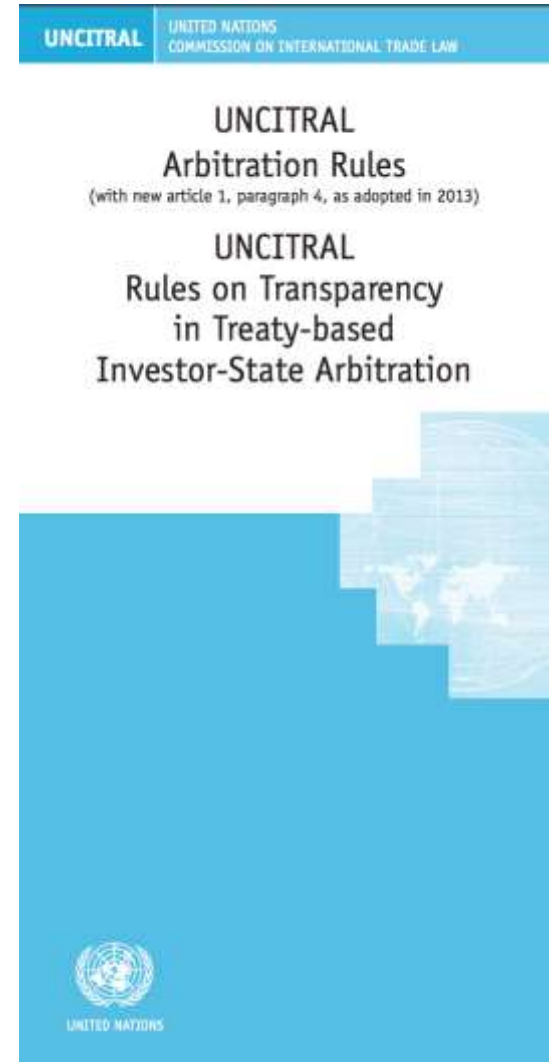
- UNCITRAL Transparency Rules on Treaty-based Investor-State Disputes

2014

- UN Convention on Transparency in Treaty-based Investor-State Arbitration: the Mauritius Convention on Transparency

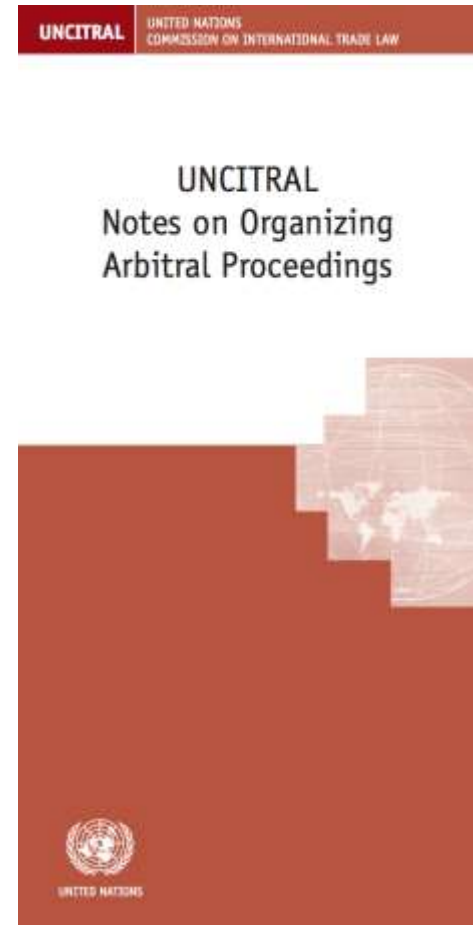
UNCITRAL Arbitration Rules (2010, 2013)

- Adopted by UNCITRAL in 1976, revised in 2010
- Designed for worldwide use
 - Neutral and universal;
 - Comprehensive coverage of procedural issues;
 - Flexible to allow parties to modify any provision.
- Contractual rules that apply only when the parties have so agreed
- Cover procedural issues
- Widely used in both ad-hoc and institutional arbitrations



UNCITRAL Notes on Organizing Arbitral Proceedings (2016)

- Lists and briefly describe matters relating to arbitral proceedings
- Emphasizes the flexibility of arbitration
- Party autonomy + discretion of the tribunal to make certain decisions and conduct proceedings as it considers appropriate

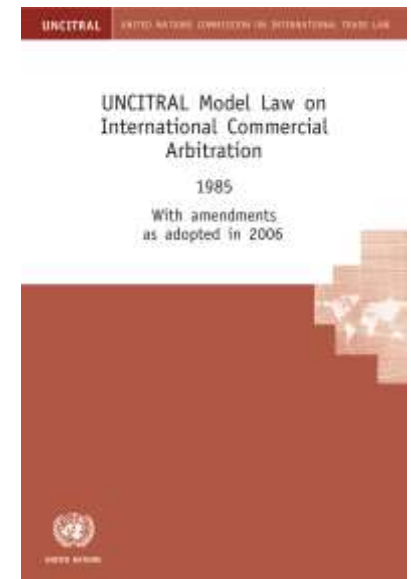


List of matters for possible consideration

1. Consultation regarding organization/ procedural meetings
2. Language(s)
3. Place of arbitration
4. Administrative support
5. Costs
6. Confidentiality/transparency
7. Means of communication
8. *Interim measures*
9. Written submissions
10. Practical details regarding submissions
11. Points of issue / relief and remedy
12. Amicable settlement
13. Documentary evidence
14. Witnesses of fact
15. Experts
16. Inspection of a site, property or goods
17. Hearings
18. *Multiparty arbitration*
19. Joinder and consolidation
20. Possible requirements of an award

UNCITRAL Model Law on International Commercial Arbitration (2006)

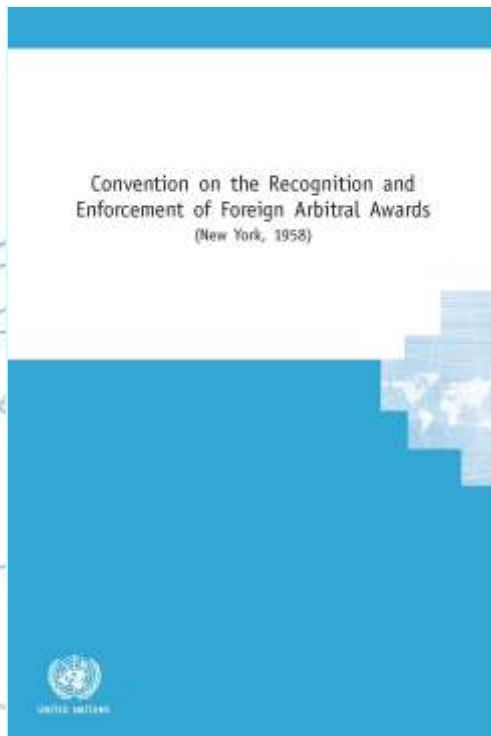
- Adopted in 1985, amendments adopted in 2006
- Establishes a unified legal framework for the fair and efficient settlement of international commercial disputes
- Covers all stages of the arbitral process
- Conforms to current practice in international trade and modern means of contracting with regard 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 jurisdictions
- Prepared as a freestanding arbitration statute



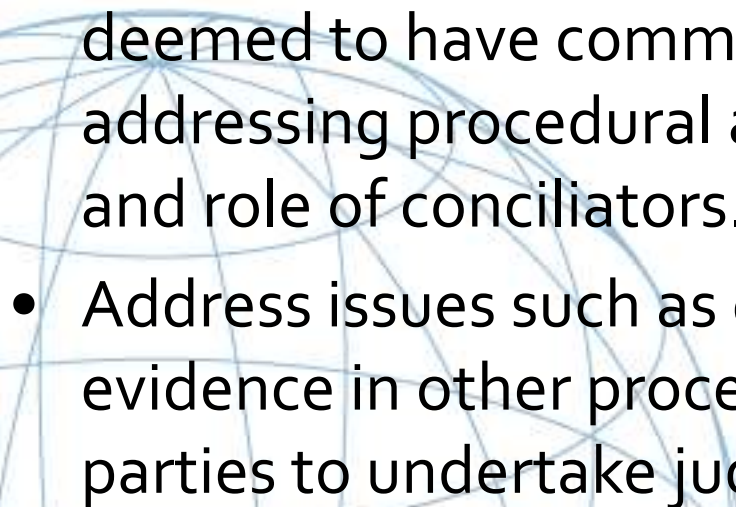
Convention on the Recognition and Enforcement of Foreign Arbitral Awards – the New York Convention



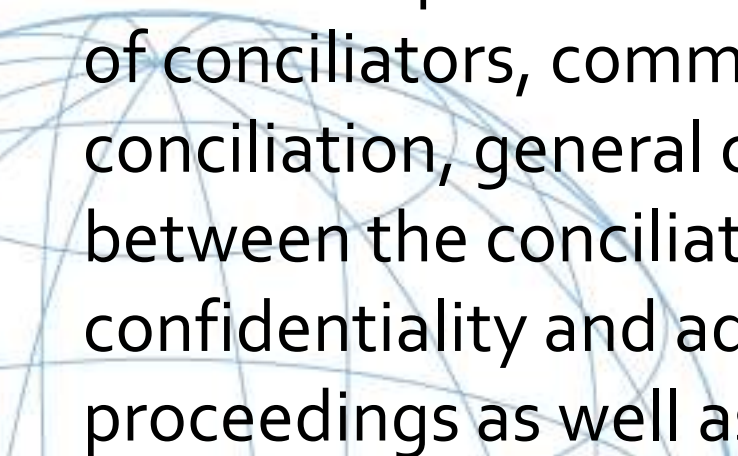
157 Parties: almost universal



UNCITRAL Conciliation Rules (1980)

- 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 (2002)

- 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.
- 

Upcoming instruments on enforcement of mediated settlement agreement (2018)

- United Nations Convention on International Settlement Agreements Resulting from Mediation
- UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation, 2018 (amending the UNCITRAL Model Law on International Commercial Conciliation, 2002)

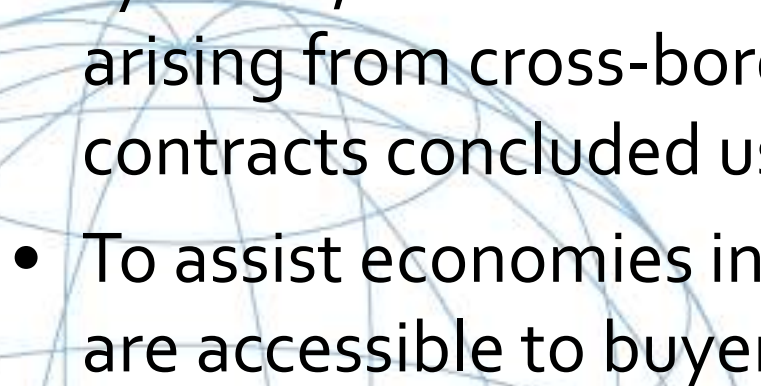
Both will address the cross-border enforceability of agreements resulting from mediation and concluded in writing .

Upcoming instruments on enforcement of mediated settlement agreement (2018)

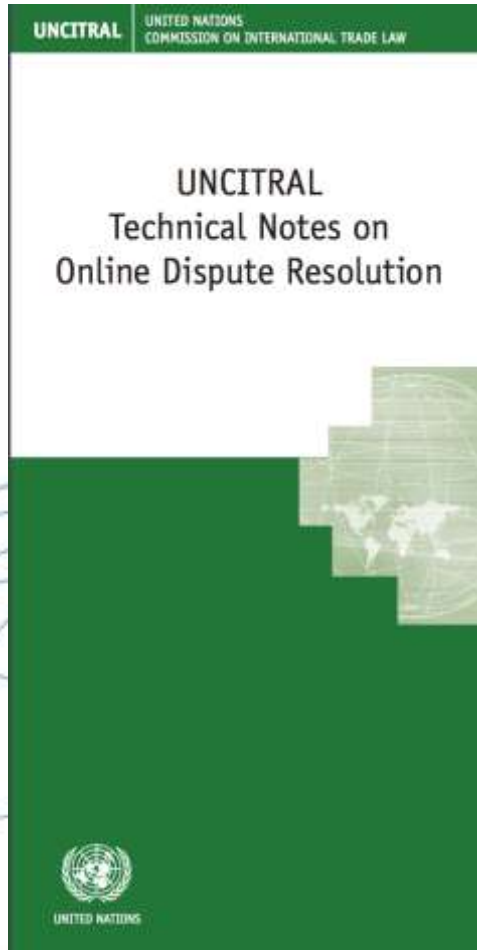
- Scope of application
- Allows a party to a settlement agreement to seek enforcement and to invoke a settlement agreement
- Minimum requirements (in writing, signed by the parties, evidence that it resulted from mediation)
- Limited grounds for refusing to grant relief.



UNCITRAL Technical Notes on Online Dispute Resolution (2016)

- Descriptive and non-binding text
 - Reflect the main elements of an online dispute resolution process
 - Designed to contribute to the development of ODR systems, so as to enable the settlement of disputes arising from cross-border low-value sales or services contracts concluded using e-communications
 - To assist economies in developing ODR systems that are accessible to buyers and sellers
- 

UNCITRAL Technical Notes on Online Dispute Resolution (2016)



- Principles (fairness, transparency, due process and accountability)
- Stages of ODR proceedings
- Commencement
- Negotiation
- Facilitated settlement
- Final stage
- Appointment, powers and functions of neutral
- Languages

Thank You!

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

E-mail: jaesung.lee@un.org

