



**Work of UNCITRAL in the field of
mediation and conciliation
- Enforceability of settlement agreements-**

**Jae Sung LEE
Legal Officer
UNCITRAL Secretariat**

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

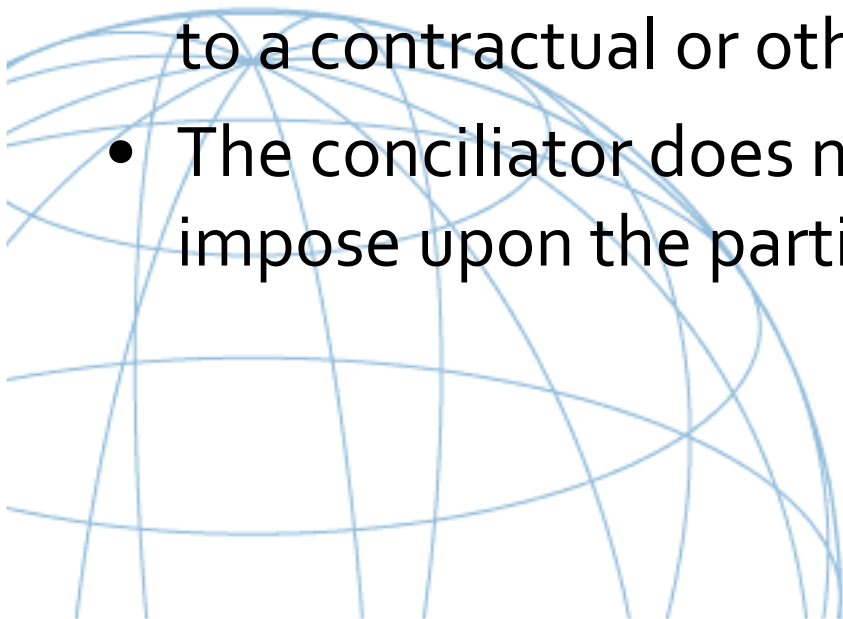
- UNCITRAL Transparency Rules on Treaty-based Investor-State Arbitration

2014

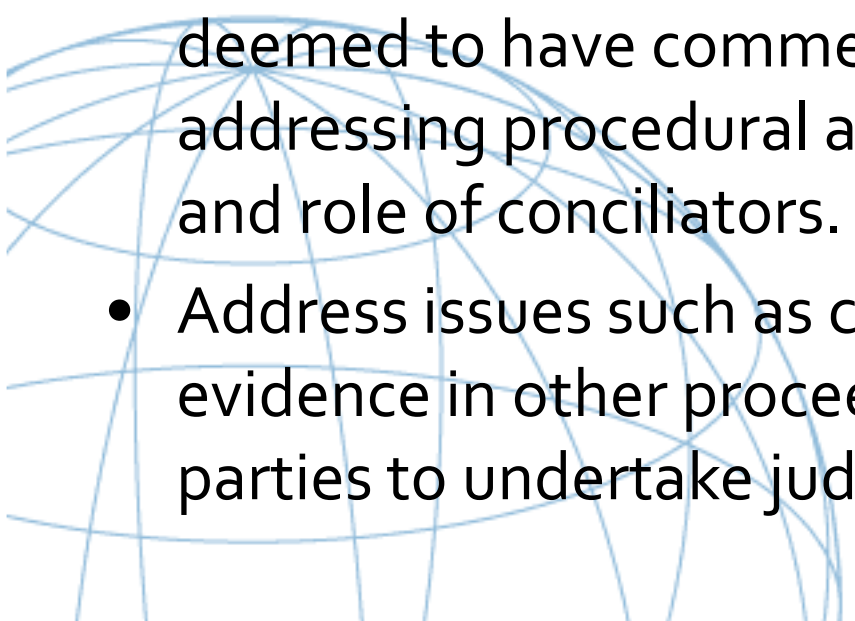
- UN Convention on Transparency in Treaty-based Investor-State Arbitration: the Mauritius Convention on Transparency

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.

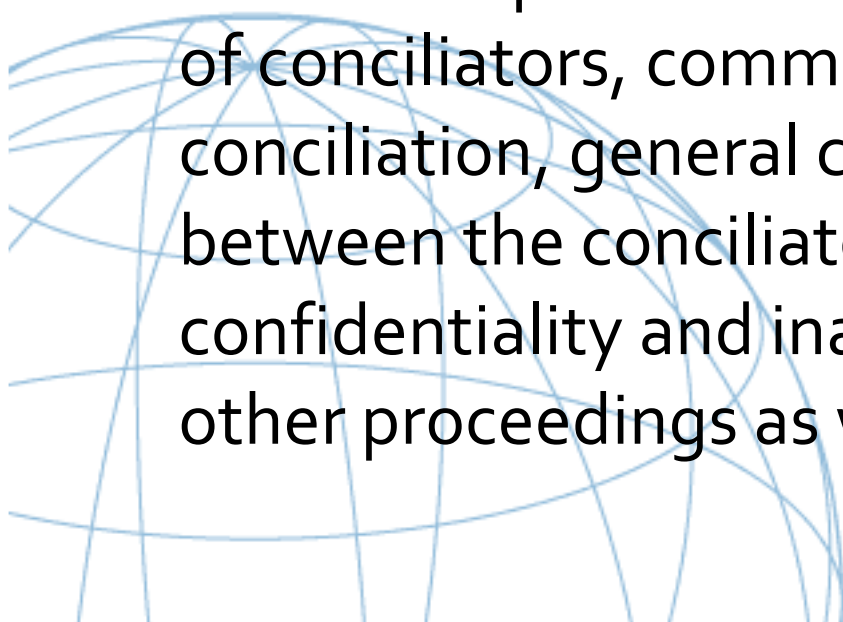


UNCITRAL Conciliation Rules

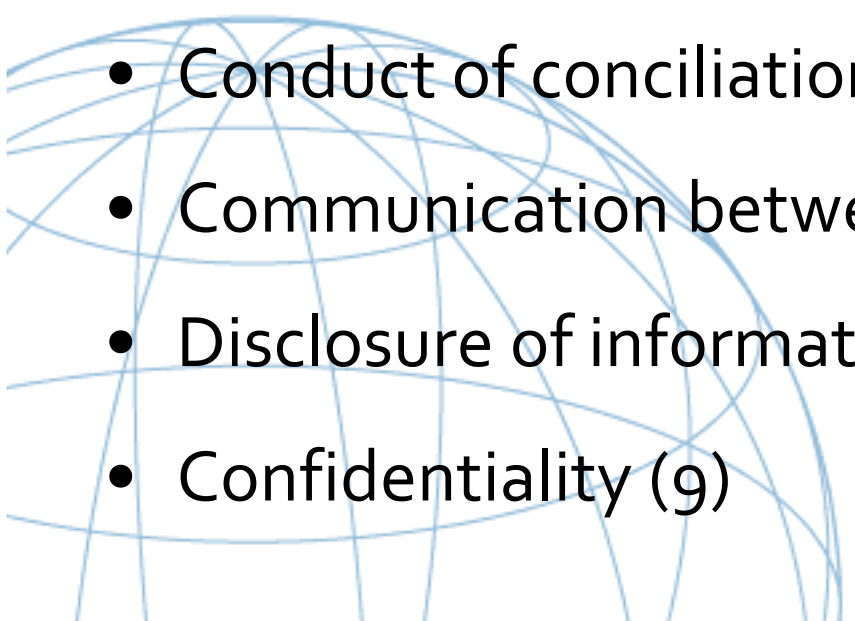
- Adopted on 23 July 1980.
 - Provide a comprehensive set of procedural rules upon which parties may agree for the conduct of conciliation proceedings.
 - Cover all aspects of the conciliation process, providing a model conciliation clause, defining when conciliation is deemed to have commenced and terminated, 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.
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UNCITRAL Model Law on International Commercial Conciliation

- Adopted on 24 June 2002.
- Provides uniform rules (14 articles) 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 inadmissibility of evidence in other proceedings as well as post-conciliation issues.



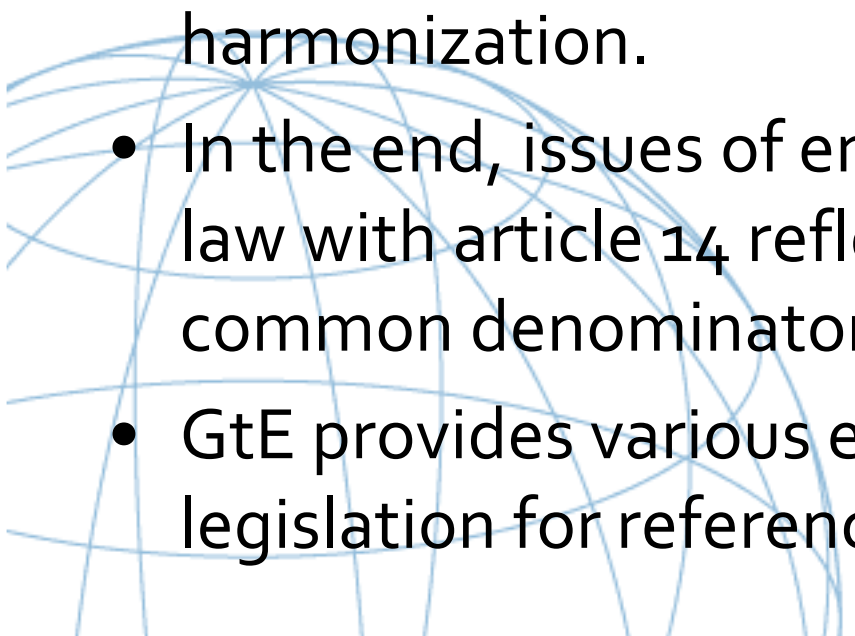
UNCITRAL Model Law on International Commercial Conciliation

- 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)
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UNCITRAL Model Law on International Commercial Conciliation

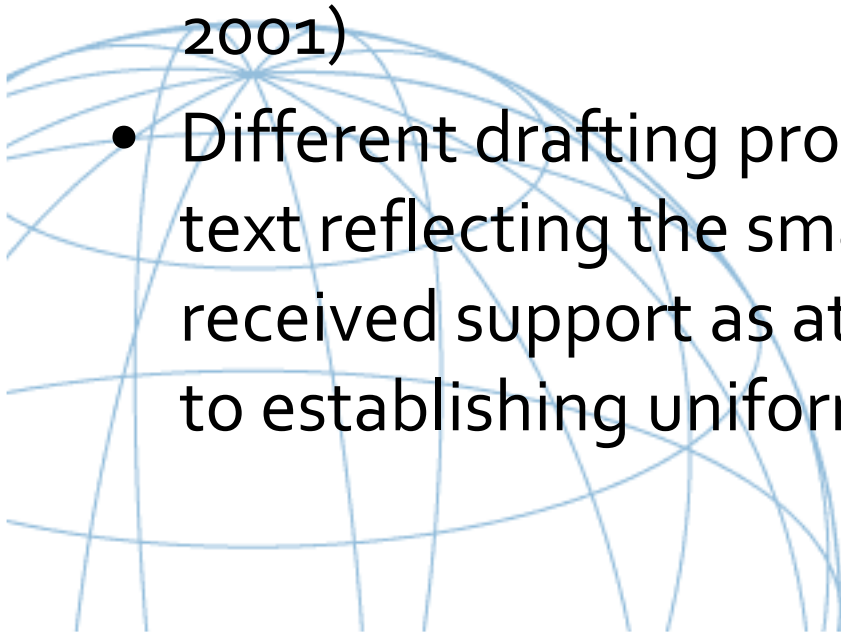
- Admissibility of certain evidence arising from conciliation in other proceedings (10)
- Termination of conciliation proceedings (11)
- Conciliator acting as an arbitrator (12)
- Resort to arbitral or judicial proceeding (13)
- Enforceability of settlement agreements (14): If the parties conclude an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

Guide to Enactment (2002)

- Yes! Attractiveness of conciliation would increase if it enjoyed an expedited enforcement regime.
 - Yet! Methods of expedited enforcement vary and largely depend on technicalities of domestic procedural law, which do not easily lend to harmonization.
 - In the end, issues of enforcement left to domestic law with article 14 reflecting only the smallest common denominator.
 - GtE provides various examples in domestic legislation for reference.
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Travaux préparatoires (Working Group session)

- Whether SA should be treated as an enforceable title, similarly to arbitral awards (32nd session, 2000)
- Recognition that diverse legislative solutions are being developed (as simple contracts or through an expedited enforcement mechanism) (34th session, 2001)
- Different drafting proposals were considered and a text reflecting the smallest common denominator received support as at least providing a step forward to establishing uniformity (35th session, 2001).



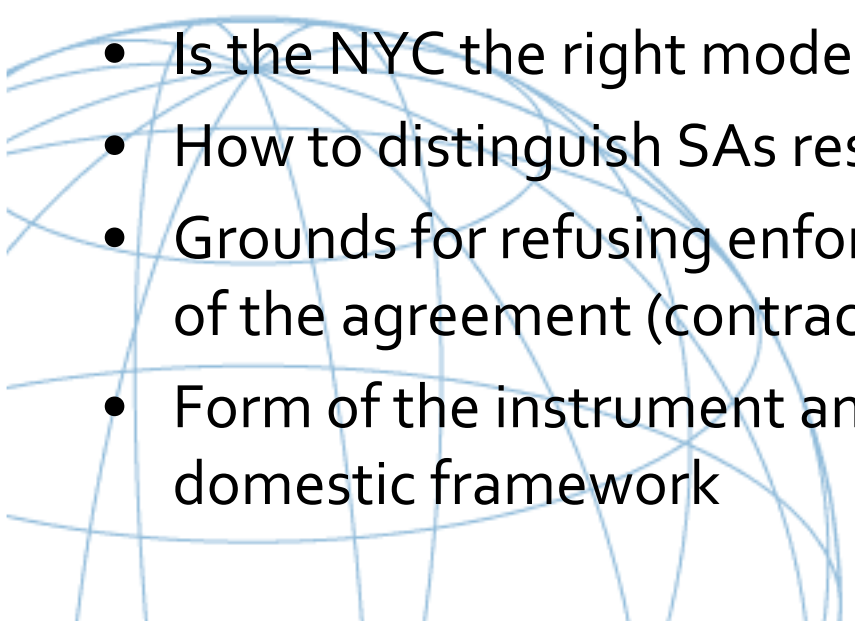
Conclusions by the Commission (2002)

- Common understanding that SAs were contractual in nature → “binding”
- Nature of the obligation in the SAs as being susceptible to enforcement, without specifying the nature of enforcement → “enforceable”
- Formation of settlement agreement, issues of enforcement, defences to enforcement & designation of courts or other authority where enforcement is to be sought → all left to domestic law with the addition of the words in *italics* to highlight this deference.

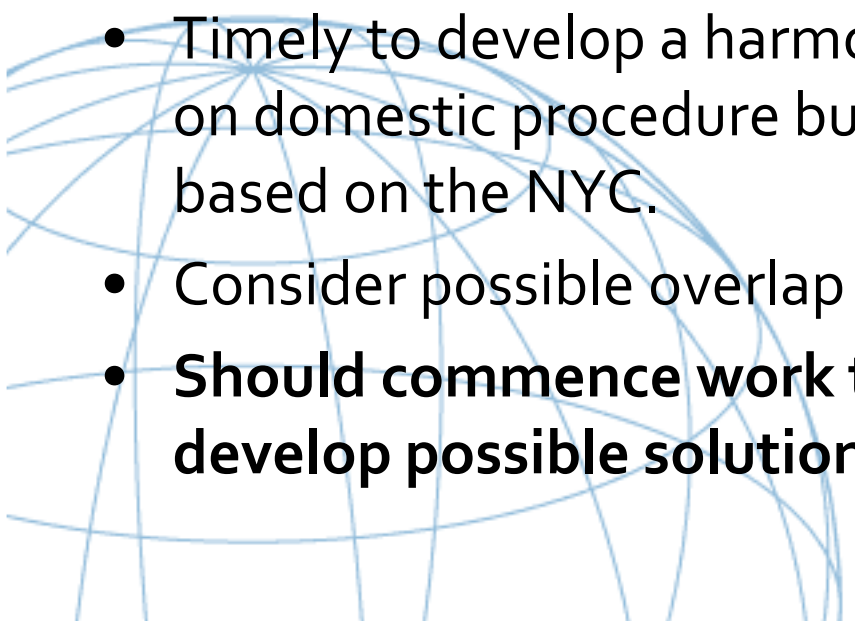
Enforceability of settlement agreements

- Proposal by the US in 2014 (A/CN.9/822) 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.
- Since the Model Law, increase in the number of legislation and in the use of conciliation/mediation.

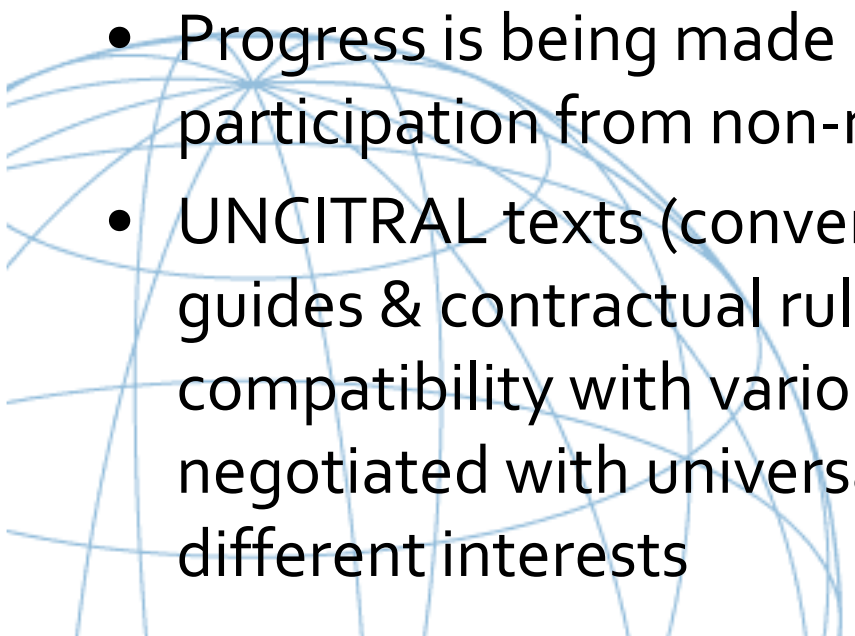
Preliminary discussions at the WG (Feb. 2015)

- Is there really a need?
 - Any negative impact on the flexible nature of the conciliation?
 - SAs suitable for enforcement (for example, conditional or complex agreements)?
 - What kind of an enforcement mechanism? Mechanism optional for the parties or mandatory?
 - Is the NYC the right model to follow?
 - How to distinguish SAs resulting from conciliation?
 - Grounds for refusing enforcement and challenging the validity of the agreement (contractual remedies)
 - Form of the instrument and interaction with the existing domestic framework
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Commission's mandate (July 2015, A/70/17)

- General support to resume work to promote conciliation as a time- and cost-efficient ADR method
 - Lack of harmonized framework was recognized as a disincentive for businesses to pursue conciliation
 - Doubts on the possible impact on the flexibility of the process and feasibility of work (domestic procedural law aspects)
 - Timely to develop a harmonized solution – should not dwell on domestic procedure but rather focus on the mechanism based on the NYC.
 - Consider possible overlap with work by other organizations
 - **Should commence work to identify relevant issues and develop possible solutions**
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Why UNCITRAL? What to expect?

- An inter-governmental commission established by the United Nations General Assembly in 1966 to harmonize and modernize international trade law
 - The aim of the project is to make settlement agreements enforceable irrespective of the parties involved and of the place where it was concluded → “international”
 - Progress is being made by Working Group II with participation from non-member States, IGOs and NGOs
 - UNCITRAL texts (conventions, model laws, legislative guides & contractual rules) are drafted to ensure compatibility with various legal traditions and negotiated with universal participation balancing different interests
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Thank You!

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E-mail: jaesung.lee@uncitral.org

