

Kluwer Arbitration Blog

Tel Aviv Arbitration Week: UNCITRAL and Israel – Past Accomplishments and Future Partnerships and Opportunities

Myriam Feinberg (Gornitzky & Co) · Friday, July 14th, 2023

For almost two decades, the State of Israel has been an active member of the UN Commission on International Trade Law (“UNCITRAL”), with participation from both state officials as well as private actors. In keeping with a now-established tradition, [Tel Aviv Arbitration Week](#) (“TLAW”) opened on 26 February 2023 with an event hosted by the Israeli Ministry of Justice (“MOJ”), highlighting its support for the development of international arbitration in Israel. Dr. Gilad Noam, Deputy Attorney General for International Law, conducted this year’s session, which focused on the relationship between UNCITRAL and Israel.

The afternoon event started with a fireside chat with [Mr. Andrés Jana](#), Chair of UNCITRAL Working Group II and [Ms. Anna Joubin-Bret](#), UNCITRAL Secretary. The event also featured several panels where UNCITRAL officials, Israeli government representatives, institutional and academic representatives, and members of the private sector discussed the role of UNCITRAL and its different working groups. The panels focused on how these groups could cooperate and work together, with participation from various notable individuals, such as Mr. Itai Apter, Director of International Civil Affairs from Working Group II and the UNCITRAL Model Law on International Commercial Arbitration; Ms. Hila Echerman, Senior Director of the MOJ Office of the Deputy Attorney General (International Economic Law) from Working Group III; Mr. Noam Herzog from Working Group V; Ms. Efrat Sznaj from the MOJ Office of the Deputy Attorney General (International Law); and Ms. Yael Weiner, Senior Director of the MOJ Office of the Deputy Attorney General (International Law). The event ended with a final panel that included academics, representatives of institutions, and members of the private sector: [Mr. Eli Cohen](#), Head of International Arbitration at Gornitzky & Co; [Mr. Alexander Fessas](#), Secretary General of the ICC International Court of Arbitration; and [Professor Arie Reich](#), Vice Rector of Bar-Ilan University.

The Functioning of UNCITRAL – Working Groups and Working Relationships

Ms. Joubin-Bret and Mr. Jana introduced the functioning of UNCITRAL through the Commission itself and its working groups, taking the audience on a “behind-the-scenes” tour of the organization.

As one of the two bodies of the UN General Assembly to work on international law, UNCITRAL’s

role is to harmonize and modernize the rule of trade at an infrastructure level.

UNCITRAL adopts a range of legal texts, including conventions (for instance, the UN Convention on International Settlement Agreements Resulting from Mediation, and the UN Convention on Contracts for the International Sale of Goods), prepares legislative guides, publishes rules for arbitration and mediation, and is currently working on two model laws.

UNCITRAL also recently completed the development of its expedited arbitration rules and is working on new projects to address the needs of its members on insolvency, trade finance, digital trade, and digital identity management and trust services.

In addition to the Commission itself, UNCITRAL has six working groups, which draft proposals for the Commission. While UNCITRAL is an inter-governmental organization, its working groups are uniquely composed of government officials, industry experts, representatives of institutions and members of the private sector. The working groups act by consensus and no member has a veto power, which means that their product reflects the broad view of the international community on legal issues.

The practitioners attending this session indicated the importance of the collaborative nature and dynamic of the working groups, including the opportunity to provide user feedback, which plays an essential role in ensuring that the proposals of the groups are workable.

UNCITRAL and Israel – A Strong Relationship

After participating in UNCITRAL meetings from time to time since the establishment of the Commission in 1966, Israel became a formal member in 2004. Since then, Israel has increased its involvement with UNCITRAL. Two particular examples were highlighted, both in the fireside chat and by the members of the MOJ. First, while Israel is not a member of the UN Convention on Transparency in Treaty-based Investor-State Arbitration (the Mauritius Convention on Transparency), it contributed to the drafting of that document. Additionally, Israel's joint proposal with Japan to promote dispute resolution in international tech disputes as future work of the UNCITRAL was accepted by the Commission, which entrusted that task to Working Group II. The "tech disputes" initiative, prepared in collaboration between the MOJ, the Israeli Ministry of Foreign Affairs and the Ministry of Finance, is a priority for the country.

Israel and the UNCITRAL Model Law

Mr. Jana noted the value of the normative architecture of international arbitration through the New York Convention and the UNCITRAL Model Law and reminded that these two instruments are invaluable as they set a minimum standard that is acceptable globally.

Mr. Jana further explained that the adoption of the Model Law in different countries has contributed to the development of a uniform standard for arbitration, especially in countries that did not have a history of utilizing and promoting arbitration as a dispute resolution mechanism. According to Mr. Jana, while it would be acceptable for places such as London or Paris to function without the Model Law due to the strength of their legal systems and well-established arbitration

practices, it would make strategic sense for other jurisdictions to adopt the Model Law, to follow best international practices. Mr. Jana concluded by suggesting that it was likewise important for Israel to adopt the Model Law.

This view was also endorsed by Professor Reich, who explained that adopting the Model Law would promote Israel as a seat of international arbitration. This was the case in particular as the current [Israeli Arbitration Law 1968](#) does not contain certain rudimentary and important concepts of the modern arbitration practice, such as *Kompetenz-Kompetenz* and clear guidance on interim (or provisional) measures.

Mr. Cohen shared his insight on the view of the private sector on this issue, indicating that practitioners were strongly in favor of the adoption of the Model Law to bring the Israeli arbitration regime on par with other jurisdictions.

Representatives of the MOJ indicated that the Model Law had been approved by the Ministerial Legislative Committee of the previous Government, and would need new approval from the same Committee before going through the parliamentary legislative process. The representatives expressed hope that the Model Law would be adopted in the next year. The Ministry's optimism is understandable since the Government has previously adopted legislation conforming with UNCITRAL model laws, such as the cross-border insolvency law, incorporated in Israel through its 2019 Insolvency Law.

Since the event took place, the Ministerial Legislative Committee approved the draft Model Law again.

Two Developments at UNCITRAL

Two UNCITRAL working groups in particular were discussed at the event with developments in investment law and tech disputes.

Developments in Investment Law

UNCITRAL Working Group III is tasked with working on reforms related to investor-state disputes. Before Working Group III began its current project, UNCITRAL had already produced the 2014 Rules on Transparency in Treaty-based Investor-State Arbitration and drafted the Mauritius Convention, which allows States to add the 2014 transparency rules to their existing investment treaties.

However, Working Group III is now developing a package of reforms that could be applied to 3,000 existing treaties and that would function as a model for future relationships. The reform would maintain existing frameworks but would create new institutions dealing with investment disputes, such as a court of first instance and an appellate court, with the overarching aim of ensuring procedural and substantive consistency in decisions and providing judicial oversight for decisions of ISDS tribunals. The proposal for such courts has proven to be quite controversial between Member States: the EU has supported the creation of such institutions, while a number of other states sought to preserve the current autonomy proffered to States in investor-state dispute resolution.

Working Group III has also conducted close consultations with institutions and Member States, and will present a number of further proposed reforms to be adopted by the Commission this year: a code of conduct for arbitrators and judges, two texts on mediation rules, and new procedural rules next year (which are likely to deal with security for costs, treaty interpretation, third-party funding, and other important procedural matters).

Technology-related Disputes

When it started its mandate in 2021, UNCITRAL Working Group II's work on technology-related disputes faced criticism due to the generic nature of UNCITRAL rules, which allow parties to make a number of adjustments without having to resort to specific rules. However, more recently, the topic has been recognised to be highly relevant due to the new forms of trade and commodities that have emerged as a result of the advancements in the tech industry.

Working Group II is now developing model clauses for tech disputes, with focus on the need to provide flexibility, by developing them as “opt-in” instruments and to “take into account the interests of the users”.

Whilst there is a broad spectrum of disputes that might qualify as “tech disputes”, which in turn would make it difficult to produce a prescribed definition for that term, they would tend to have similarities, such as requiring robust and quick resolution; expert intervention, particularly on technical matters; and strict confidentiality, all of which are issues to be addressed in the special rules.

Conclusion

The event itself was a striking example of the nature of UNCITRAL's work. It showed the special relationship between Israel and UNCITRAL and provided some hope for the future work of the Commission and for Israeli implementation of the Model Law.

The event certainly provided inspiration for Israel to develop itself as a seat of arbitration and left the audience excited for more updates. To be continued, at TLAW 2024...

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