



United Nations
UNCITRAL

Guide on the Convention on the Recognition and Enforcement of Foreign Arbitral Awards

New York, 1958

UNCITRAL Secretariat

Emmanuel Gaillard and George A. Bermann, Editors



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United Nations UNCITRAL

UNCITRAL Secretary Foreword

The New York Convention is rightly celebrated as the most significant international instrument for the recognition and enforcement of arbitral awards. For the past fifty years, UNCITRAL, whose origin and mandate partly result from the diplomatic process that culminated in the adoption of the New York Convention, has adopted several important legal standards that offer a comprehensive substantive-law framework for out-of-court settlement of business and investment disputes. UNCITRAL has also crafted a number of tools to facilitate a thorough understanding of the legal standards it develops and promotes, and to assist with their uniform interpretation and application. The project of preparing such a tool in relation to the New York Convention has been on the agenda of UNCITRAL since 2007, when the General Assembly requested the Secretary-General to increase efforts to promote wider adherence to the Convention, its uniform interpretation and effective implementation. The UNCITRAL Secretariat Guide on the New York Convention has been prepared to fulfil that request.

I would like to express my deep gratitude to the experts, Professors Emmanuel Gaillard and George Bermann for their essential contributions to the UNCITRAL Secretariat Guide on the New York Convention, and to their research teams, who assembled and reviewed a wealth of materials, including the vast bibliography and numerous court decisions available on the Convention. A special word of thanks is also well deserved by Ms. Yas Banifatemi for developing an online platform in support of the Guide.

This ambitious project would not have been brought to fruition without the participation of large numbers of contributors in many parts of the world, who keep us abreast of developments in their region. Our Secretariat is grateful for their continued support to the work of UNCITRAL, and to that project in particular. It is anticipated that the online platform associated with the Guide will be regularly updated through the addition of new materials, and the coverage of new jurisdictions in the project.

May the launch of this edition of the Guide at a time when UNCITRAL celebrates its 50th anniversary contribute to increased awareness of the New York Convention, and better understanding of the benefits which modern trade law, including means for the peaceful settlement of disputes,

may yield as tools for development, peace and security, in line with the sustainable development agenda pursued by the United Nations.

Renaud Sorieul, The Secretary of UNCITRAL



NEW YORK CONVENTION GUIDE

Experts' Foreword

We are delighted to see the publication of the UNCITRAL Secretariat Guide on the New York Convention, which is the culmination of years of dedicated research on the Convention's interpretation and application in its Contracting States. The New York Convention has served as the cornerstone of the international arbitration system from its signature in 1958 until the present day and continues to structure international arbitration on a worldwide basis.

This Guide was conceived with no particular views on how courts of the Contracting States should apply the New York Convention. The goal of the Guide was instead to canvass the richness of national case law on the Convention in an objective manner. To lay the groundwork for the Guide, research teams at Shearman & Sterling and Columbia University gathered, analyzed and translated Convention case law in order to identify the key trends in how each of its articles has been interpreted and applied in practice. The materials gathered from an initial 15 civil law and common law jurisdictions grew as contributors to the project provided case law and information on the implementation of the Convention from a further 30 jurisdictions.

The final version of the Guide provides a detailed analysis of the judicial interpretation and application of the New York Convention by reference to case law from 45 Contracting States. The Guide, and the newyorkconvention1958.org website which supplements it, will become an essential tool that benefits all those involved in the interpretation and application of the New York Convention, including judges, arbitrators, practitioners, academics and Government officials.

The following pages of the Guide give clear expression to the principal finding of our research, namely, that the Contracting States have interpreted and applied the New York Convention in an overwhelmingly consistent manner and that courts have diverged from the general trends in the case law in only isolated instances. As such, the Convention continues to fulfill its

purpose of facilitating the worldwide recognition and enforcement of arbitral awards to the greatest extent possible.

**Emmanuel Gaillard, Head of International Arbitration,
Shearman & Sterling;
Visiting Professor of Law, Yale Law School**

George Bermann, Professor of Law, Columbia Law School

The NewYorkConvention1958.org website

In 2012, Shearman & Sterling and Columbia Law School launched, in cooperation with UNCITRAL, the newyorkconvention1958.org website. It is the product of a coordinated effort to create an interactive online platform that makes information gathered during the preparation of the Guide on the New York Convention publicly available.

The new version of the website, launched on 8 July 2016, complements the Guide through its sophisticated global legal database. Today, this website goes beyond its initial objective and endeavors to collect and share new data published worldwide on the application and interpretation of the New York Convention.

Thanks to our numerous and dedicated contributors, the website makes accessible more than 1200 cases from a wide number of common law and civil law jurisdictions. It offers free access to those decisions in their original language, as well as more than a hundred English translations.

The 23 chapters of the Guide are available in all official languages of the United Nations and include direct links from the Guide to the original case law and *travaux préparatoires* discussed therein.

The website also offers access to the largest bibliography ever consolidated on the New York Convention. The bibliography has more than 800 references, over 200 of which have links to publicly accessible online versions.

Additionally, the website includes jurisdiction briefs providing essential information relating to the implementation of the New York Convention in its Contracting States. It also provides an interactive signatories' map and the latest news on the New York Convention.

The website's design has been upgraded into an intuitive user-friendly interface. It allows better compatibility with search engines and devices, including tablets and smartphones.

The newyorkconvention1958.org website is a unique tool that puts technology at the service of scientific research and legal analysis to the benefit of its users. The search engine allows users to tailor their research to any parameters they wish. By making all of the above material fully searchable by key words run through the entirety of the platform's data, users can conduct a variety of searches by jurisdiction(s) and by New York Convention article(s) through its case law, *travaux préparatoires*, bibliography and chapters of the Guide.

In the months to come, the website will offer information on the application of the New York Convention in additional jurisdictions in order to offer users as wide and representative a view of judicial practice in this field as possible and increase opportunities to perform personal tailored research on that basis.

The newyorkconvention1958.org website strives to become an essential efficient tool to every judge, arbitrator, practitioner, academic, student and Government official interested in the interpretation and application of the New York Convention.

We encourage each and every one to participate in this universal Project. Documents, decisions, or any other relevant information on signatory States to the New York Convention can be shared with our research assistants' team through the "Contribute" page of the website, for the benefit of all.

**Dr. Yas Banifatemi, Executive Director and Coordinator
Head of Public International Law, Shearman & Sterling**

Preface

**From the Final Act of the United Nations
Conference on International Commercial
Arbitration of 10 June 1958
to General Assembly resolution 62/65
of 6 December 2007**

1. The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the “New York Convention” or the “Convention”) is one of the most important and successful United Nations treaties in the area of international trade law. Although the Convention, adopted by diplomatic conference on 10 June 1958, was prepared by the United Nations prior to the establishment of the United Nations Commission on International Trade Law (UNCITRAL), promotion of the Convention is an integral part of the work programme of UNCITRAL. The Convention is widely recognized as a foundational instrument of international arbitration and requires courts of Contracting States to give effect to an agreement to arbitrate when seized of an action in a matter covered by an arbitration agreement and also to recognize and enforce awards made in other States, subject to specific limited exceptions. The Convention entered into force on 7 June 1959, and there are to date 156 States parties to the Convention.

2. The General Assembly adopted on 6 December 2007 resolution 62/65 in which it recognized the value of arbitration as a method of settling disputes in international commercial relations in a manner that contributes to harmonious commercial relations, stimulates international trade and development, and promotes the rule of law at the international and national levels. The General Assembly expressed its conviction that the New York Convention strengthens respect for binding commitments, inspires confidence in the rule of law and ensures fair treatment in the resolution of disputes arising over contractual rights and obligations. It emphasized the necessity for further national efforts to achieve universal adherence to the Convention, together with its uniform interpretation and effective implementation. The General Assembly expressed its hope that States that are not yet parties to the Convention would soon become parties to it, which would ensure that the legal certainty afforded by the Convention is universally enjoyed, and would decrease the level of risk and transactional costs associated with doing business, thus promoting international trade.

3. The General Assembly requested the Secretary-General to increase efforts to promote wider adherence to the Convention and its uniform interpretation and effective implementation. The UNCITRAL Secretariat Guide on the New York Convention (the “Guide on the New York

Convention” or the “Guide”) has been prepared with the aim to fulfil that request.

Promoting uniform interpretation of UNCITRAL instruments

4. UNCITRAL, in accordance with its mandate, has undertaken the preparation of the tools necessary for a thorough understanding of the instruments it develops and for their uniform interpretation.

5. One of these instruments, the website www.newyorkconvention1958.org, has been established by Shearman & Sterling LLP, The Columbia Law School and UNCITRAL in order to make the information gathered in preparation of the Guide on the New York Convention publicly available. The site contains an electronic version of the Guide in all official languages of the United Nations, a significant corpus of judicial interpretation of the New York Convention by States Parties, information on the ratification of the Convention, the *travaux préparatoires*, as well as a bibliography, that is a comprehensive directory of publications relating to the application and interpretation of the Convention. This website provides legislators, judges, practitioners, parties and academics with a wealth of information that is dynamic and ever-growing. It offers an interactivity between contents and an indexing that enables the various elements of the site to link to one another, in a unique canvas. The search engine of the website allows a thorough search among the decisions, and enables searching the Guide, the *travaux préparatoires*, the case law and the bibliography. In relation to each case, it contains the full text of the decision, a translation of the decision in English where relevant, as well as a summary of the cases. It supplements the cases collected in the CLOUT (Case Law on UNCITRAL Texts) database and serves as a primary reference tool underlying the Guide on the New York Convention.

6. The Guide on the New York Convention presents the information on the Convention by article. Each section contains a synopsis of the relevant case law for the relevant article, highlighting common views and reporting any divergent approach. The Guide was prepared using the decisions cited in the website www.newyorkconvention1958.org as well as other decisions, fully cited in the footnotes.

7. The Guide on the New York Convention does not constitute an independent authority indicating the interpretation to be given to individual provisions but rather serves as a reference tool collating a wide range of decisions from a number of jurisdictions. The purpose of the Guide is to assist in the dissemination of information on the New York Convention and further promote its adoption as well as its uniform interpretation and

effective implementation. In addition, the Guide is meant to help judges, arbitrators, practitioners, academics and Government officials use more efficiently the case law relating to the Convention.

Introduction

1. The Convention on the Recognition and Enforcement of Foreign Arbitral Awards was adopted by the United Nations following a diplomatic conference held in May and June 1958 at the United Nations Headquarters in New York.¹ The New York Convention entered into force on 7 June 1959.² At the date of this Guide, the Convention has 156 Contracting States.³

2. UNCITRAL considers the New York Convention to be one of the most important United Nations treaties in the area of international trade law and the cornerstone of the international arbitration system.⁴ Since its inception, the Convention's regime for recognition and enforcement has become deeply rooted in the legal systems of its Contracting States and has contributed to the status of international arbitration as today's normal means of resolving commercial disputes.

3. States adhering to the New York Convention undertake to give effect to an agreement to arbitrate when seized of an action in a matter covered by an arbitration agreement, and to recognize and enforce awards made in other States, subject to specific limited exceptions.

4. By imposing stricter rules on recognition and enforcement of foreign arbitral awards, a Contracting State will breach its obligations under the Convention. This principle is reflected in article III, which grants Contracting States the discretion to determine the applicable rules for recognition and enforcement so long as, in doing so, they do not impose "substantially more onerous conditions or higher fees or charges on the recognition or enforcement of arbitral awards [...] than are imposed on the recognition or enforcement of domestic arbitral awards."

The New York Convention sets a maximum level of control at the recognition and enforcement stage

5. The conditions for recognition and enforcement in the Convention establish a "ceiling", or maximum level of control, which Contracting States may exert over arbitral awards and arbitration agreements. On the other hand, Contracting States are free to apply more liberal rules than those set

¹ United Nations, Treaty Series, vol. 330, No. 4739; UN DOC E/CONF.26/SR. 1-25, Summary Records of the United Nations Conference on International Commercial Arbitration, New York, 20 May - 10 June 1958.

² New York Convention, article XII.

³ The current status of the New York Convention is available on the UNCITRAL website.

⁴ See Renaud Sorieul, The Secretary of UNCITRAL, on the 1958 New York Convention Guide website [available at <http://newyorkconvention1958.org>].

forth in the Convention. The Convention's aim is not to limit the pre-existing freedom of the Contracting States to treat foreign arbitral awards or arbitration agreements as favourably as they please, but rather to facilitate their recognition and enforcement to the greatest extent possible.

6. The New York Convention's pro-enforcement policy is enshrined at article VII (1), which is considered to be one of its cornerstones.⁵ Known as the "more-favourable-right" provision, article VII (1) provides that, in addition to the Convention, a party seeking recognition and enforcement shall not be deprived of the right to rely on a more favourable domestic law or treaty. In accordance with article VII (1), a Contracting State will not be in breach of the Convention by enforcing arbitral awards and arbitration agreements pursuant to more liberal regimes than the Convention itself.

7. The New York Convention therefore exists as a safeguard which guarantees a minimum standard of liberalism in its Contracting States, but which does not need to be applied. Today, in some of the most pro-arbitration jurisdictions, the number of cases referring to Convention is scarce precisely because the ordinary rules governing the recognition and enforcement of awards are more liberal and, in accordance with article VII (1), routinely applied without any need to refer to the Convention.⁶

The New York Convention contains its own mechanism for adapting to the development of international arbitration

8. While the New York Convention is undoubtedly the most significant international instrument for the recognition and enforcement of arbitral awards, it does not operate in isolation. In some circumstances, other international treaties, or the domestic law of the country where enforcement is sought, will also apply to the question of whether a foreign arbitral award should be recognized and enforced.

9. The genius of the New York Convention is to have foreseen, and made provision for, the progressive liberalization of the law of international arbitration. Article VII (1), which governs the relationship between the Convention and other applicable treaties and laws, derogates from the rules that normally govern the application of conflicting provisions of treaties, and provides that in the event that more than one regime might apply, the rule

⁵ One commentator has described this provision as the "treasure, the ingenious idea" of the New York Convention. See Philippe Fouchard, *Suggestions pour accroître l'efficacité internationale des sentences arbitrales*, 1998 REV. ARB. 653, 663.

⁶ See Dominique Hascher, *Les perspectives françaises sur le contrôle de la sentence internationale ou étrangère*, 1 (2) MCGILL JOURNAL OF DISPUTE RESOLUTION 1 (2015).

which shall prevail is neither the more recent nor the more specific, but instead that which is more favourable to the recognition and enforcement.⁷

10. While in recent years, some important scholars have suggested that the time has come to initiate a revision of the New York Convention,⁸ there is no danger in leaving the Convention in its current form.⁹ Article VII (1), which will grow in importance with the continued modernization of national arbitration laws, ensures that the Convention cannot freeze the development of international arbitration. It is this provision which has allowed courts in the Contracting States to advance many of the most important innovations underpinning the modern system of international arbitration. The Convention therefore possesses the necessary tools to ensure its durability while permitting the courts of Contracting States to continually improve upon it.

The New York Convention has been applied in a consistent manner

11. This Guide serves as a reference tool that collates a wide range of decisions on the New York Convention and analyses extensively how courts of Contracting States interpret and apply its provisions.

12. The practices highlighted in the following chapters demonstrate that, despite the diversity of the Contracting States' legal systems, the interpretation and application of the Convention has been rather consistent and in conformity with the Convention's policy of favouring recognition and enforcement. Many Contracting States which first adhered to a more interventionist approach to international arbitration have, in accordance with obligations undertaken under the Convention, moved towards a liberal regime that limits court control over the arbitral process.

13. Almost 60 years after its creation, the New York Convention continues to fulfil its objective of facilitating the recognition and enforcement of foreign arbitral awards, and in the years to come, will

⁷ See the comments of the Swiss Federal Supreme Court in *Denysiana S.A. v. Jassica S.A.*, March 14, 1984, Arrêts du Tribunal Fédéral 110 Ib 191, 194, describing that article VII (1) enshrines the principle of maximum effectiveness (“*règle d’efficacité maximale*”).

⁸ See, in particular, Pieter Sanders, *A Twenty Years’ Review of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards*, 13 INT’L LAW 269 (1979); Jan Paulsson, *Towards Minimum Standards of Enforcement: Feasibility of a Model Law*, in IMPROVING THE EFFICIENCY OF ARBITRATION AGREEMENTS AND AWARDS: 40 YEARS OF APPLICATION OF THE NEW YORK CONVENTION 574 (A.J. van den Berg ed., 1998); Albert Jan van den Berg, *Hypothetical Draft Convention on the International Enforcement of Arbitration Agreements and Awards*, AJB Rev 06 (May 2008).

⁹ See Emmanuel Gaillard, *The Urgency of Not Revising the New York Convention*, in 50 YEARS OF THE NEW YORK CONVENTION: ICCA INTERNATIONAL ARBITRATION CONFERENCE 689 (A.J. van den Berg ed., 2009); see also V.V. Veeder, *Is There a Need to Revise the New York Convention?*, in THE REVIEW OF INTERNATIONAL ARBITRAL AWARDS, IAI SERIES ON INTERNATIONAL ARBITRATION No. 6, 183 (2010).

guarantee the continued growth of international arbitration and create conditions in which cross-border economic exchanges can flourish.

ANNEX II

External Resources

(Interactive Guide, Bibliography, Case Law, Jurisdiction Briefs,
Travaux Préparatoires, General Index)



Interactive Guide

<http://nyc1958.org/guide>

Bibliography

<http://nyc1958.org/library>

Case Law

<http://nyc1958.org/cases>

Jurisdiction Briefs

<http://nyc1958.org/jurisdictions>

Travaux Préparatoires

<http://nyc1958.org/travaux>

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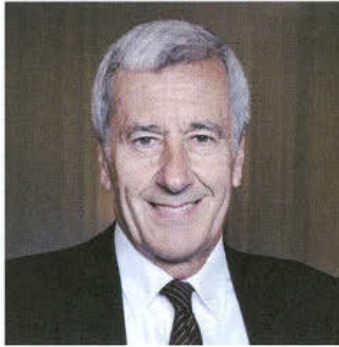


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Editorial Board

Experts:

Professor Emmanuel Gaillard and Professor George A. Bermann



Emmanuel Gaillard founded and heads Shearman & Sterling's 100-lawyers International Arbitration practice.

Professor Gaillard is universally regarded as a leading authority and a star practitioner in the fields of commercial and investment treaty arbitration. Through his practice, extensive writing and teaching, he has contributed to the shaping of contemporary international arbitration law.

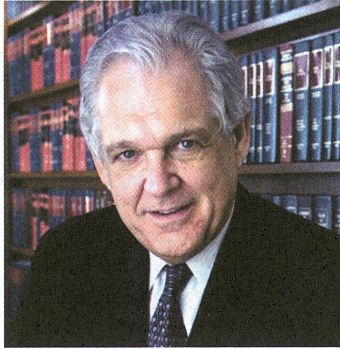
He has advised and represented States, State-owned entities and companies in hundreds of international arbitration proceedings. He also regularly acts as arbitrator and expert witness. He has been appointed by France on the ICSID Panel of Arbitrators. In 2010, he was appointed as an expert by UNCITRAL for the drafting of the UNCITRAL Secretariat Guide on the New York Convention.

He is a Member of the Governing Board of the International Council for Commercial Arbitration (ICCA) and the SIAC Court of Arbitration. He is also a former Member of the LCIA Court of Arbitration (2002-2007).

As a Professor of Law, he has taught, in particular, in France (University of Paris XII, Sciences Po School of Law), Switzerland (MIDS) and the United States (Harvard Law School, Yale School of Law).

Professor Gaillard has written extensively on all aspects of arbitration law, in French and in English. He is the main author of *Fouchard Gaillard Goldman On International Commercial Arbitration*, a leading treatise in the field. He also has authored the first published essay on the legal theory of international arbitration. The volume, originally published in French (*Aspects Philosophiques du droit de l'arbitrage international*), was subsequently published in English (*Legal Theory of International Arbitration*), with translations in Arabic, Chinese, Spanish, Hungarian, Lithuanian, Portuguese, Italian and Russian.

He chairs the International Arbitration Institute (IAI) and was the first President and a co-founder of the International Academy for Arbitration Law.



George A. Bermann is the Jean Monnet Professor of EU Law, Walter Gellhorn Professor of Law, and the director for the Center for International Commercial and Investment Arbitration (CICIA) at Columbia Law School.

A Columbia Law School faculty member since 1975, Bermann teaches courses in transnational dispute resolution (international arbitration and litigation), European Union law, administrative law, and WTO law.

He is an affiliated faculty member of the School of Law of Sciences Po in Paris and the MIDS Masters Program in International Dispute Settlement in Geneva. He is also a visiting professor at the Georgetown Law Center. At the Law School, he founded both the European Legal Studies Center and the *Columbia Journal of European Law*.

Bermann is an active international arbitrator in commercial and investment disputes; chief reporter of the ALI's Restatement of the U.S. Law of International Commercial Arbitration; co-author of the *UNCITRAL Guide to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards*; chair of the Global Advisory Board of the New York International Arbitration Center (NYIAC); co-editor-in-chief of the *American Review of International Arbitration*; and founding member of the governing body of the ICC Court of Arbitration and a member of its standing committee.

He has been a visiting scholar at the European Commission Legal Service in Brussels; the French Conseil d'Etat; the Max Planck Institute for Foreign Public Law and International Law in Heidelberg, Germany; and Princeton University's Center for International Studies.

His published works include: "International Arbitration and Private International Law", Hague Academy of International Law; *Interpretation and Application of the New York Convention by National Courts*; "Mandatory Rules in International Arbitration"; *Transnational Litigation*:

Cases & Materials on European Union Law; and Introduction to French Law. Among his most recent articles are “*Yukos v. Russia: Unanswered Questions*” and “*International Standards as a Choice of Law Option.*”

Bermann has a J.D. and a B.A. from Yale University and an LL.M. from Columbia Law School. He holds honorary degrees from the Universities of Fribourg in Switzerland and Versailles-St. Quentin in France.

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Executive Director and Coordinator: Dr. Yas Banifatemi



Yas Banifatemi is a partner in Shearman & Sterling's International Arbitration Group and leads the firm's Public International Law Practice.

She advises and represents States, State-owned entities and companies on public international law and international arbitration matters. She has acted as counsel and arbitrator in arbitration cases under the ICSID, UNCITRAL, ICC, LCIA, SCC, CRCICA and Swiss Arbitration Rules, with particular focus on investment protection, oil & gas and general commercial matters.

She is a Vice-President of the ICC International Court of Arbitration, and a Member of the LCIA Court of Arbitration.

She was the Chair of the Georgian International Arbitration Center (GIAC) Commission for Final Revision of the GIAC Arbitration Rules, as well as a Member of the SCC Rules Revision Committee.

She has contributed to a number of task forces and working groups, including World Bank's Investment Across Borders (IAB), the ILA Study Group on the Soft Law Instruments in Foreign Investment Law, the ILA Study Group on the Use of Private Law Principles for the Development of International Law, the IBA Investment Treaty Sub-Committee, and the IBA Recognition and Enforcement of Arbitral Awards Sub-Committee. She is also a Member of the Advisory Board of Africa International Legal Awareness (AILA).

Banifatemi has written extensively on all aspects of commercial and investment arbitration. She was a Member of the Editorial Board of ICSID

Review and the Editorial Board of the Yearbook on International Investment Law and Policy.

She teaches international arbitration at Panthéon-Sorbonne (University of Paris I) and Yale Law School. A former Director of Studies at The Hague Academy of International Law in 2004, she was invited to teach a Course at the 2019 session of the Academy, focussing on the powers of the arbitrators.

She was a co-founder and former co-Secretary-General of the International Academy for Arbitration Law.

UNCITRAL Secretariat



Renaud Sorieul is the Director of the International Trade Law Division (ITLD) of the United Nations Office of Legal Affairs, which functions as the substantive secretariat for the United Nations Commission on International Trade Law (UNCITRAL). He is the eighth Secretary of UNCITRAL since the Commission was established by the General Assembly in 1966. He took up his duties on 1 October 2008.



Corinne Montineri is a Legal Officer at the International Trade Law Division (ITLD) of the United Nations Office of Legal Affairs, which functions as the substantive secretariat for the United Nations Commission on International Trade Law (UNCITRAL). She has been the Secretary of the UNCITRAL Working Group II (Arbitration and Conciliation) since January 2009.



Monica Canafoglia is a Legal Officer at the International Trade Law Division (ITLD) of the United Nations Office of Legal Affairs, which functions as the substantive secretariat for the United Nations Commission on International Trade Law (UNCITRAL). Her responsibilities include the management of the Case Law on UNCITRAL Texts (CLOUT) system.



Cyril Emery is a Legal Officer at the International Trade Law Division (ITLD) of the United Nations Office of Legal Affairs, which functions as the substantive secretariat for the United Nations Commission on International Trade Law (UNCITRAL). He was the Librarian in charge of the UNCITRAL Law Library between May 2010 and July 2016.

Research Assistants

Team Leaders



Benjamin Siino



Margaret Clare Ryan

Research Assistants



Chloé Vialard



Julie Esquenazi



Emmanuel Jacomy



Paschalis Paschalidis



Ilija Mitrev Penusliski



Lara Kroop



Rachel Laut

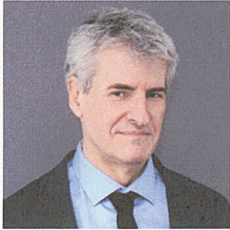


Dimitris Katsikis



Marija Sobat

Knowledge Management & Website Team



Jean-Marc Elsholz



Bénédicte Soubrane



Maximilien Lemaire

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The Guide is the result of the cooperation between Professor Emmanuel Gaillard and Professor George Bermann, their research teams, and the UNCITRAL Secretariat.

In addition to the research assistants, the Experts' research teams have included the following contributors:

Mary Arutyunyan, Tasiana Auguste, Gueorgui Babitchev, Leyla Bahmany, Ketevan Betaneli, Ana Boksay, Michael Bode, Simon Cassell, Jessica Crow, Youssef Daoud, Elise Edson, Ross Galvin, Claudia Gross (UNCITRAL), Becky Hurt, Jasmine Jin, Umaer Khalil, Paavana Kumar, Anne Leleu (logo design), Jo En Low, André Marini, Marina Matousekova, Olivia McNee, Carter Nelson, Gustavo Moser, Jenna Narayan, Diana Nielsen, Shannon O'Neill, Wesley Pang, Arianna Rosato, Benjamin Ross, Julia Salasky (UNCITRAL), Jaber Esfandi Sarafraz, Rudolf Simone-Pont, Karen Siwek, Anna Tevini, Pierre Viguier, Zuzana Vysudilova, Elizabeth Zorrilla.

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(Jeanne) Huang, S.J.D., Associate Professor of Law, Director of Foreign Affairs Department at the Shanghai Institute of Foreign Trade School of Law; Professor Liza Chen, Dean of Law School, Shanghai Institute of Foreign Trade School of Law; Sophie Tkemaladze (MCI Arb, ADR Advisor for the Judicial Independence and Legal Empowerment Project (JILEP) implemented by the East-West Management Institute, Georgia); Christoph Liebscher (Wolf Theiss, Vienna, Austria); Charles Poncet (ZPG Avocats); Deyan Draguiev (CMS Cameron McKenna LLP-Bulgaria Branch); Grant Herholdt (ENS (Edward Nathan Sonnenbergs) South Africa); Duarte Gorjao Henriques (BCH Advogados).