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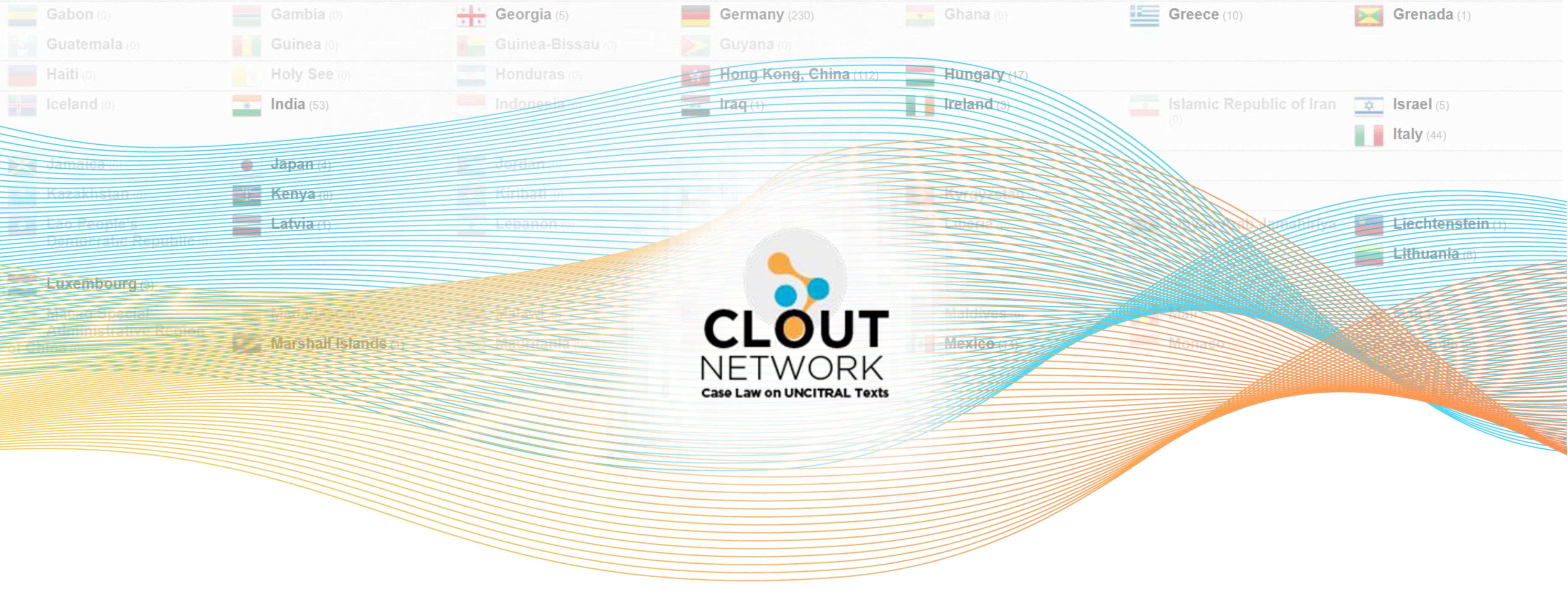
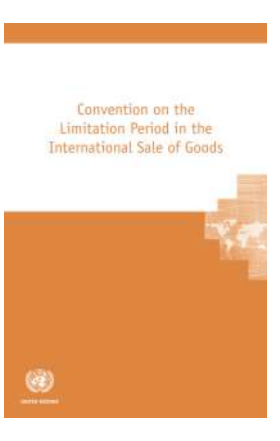


CLOUT NETWORK
Case Law on UNCITRAL Texts

In the past few months, the UNCITRAL Secretariat has prepared a total of **23** CLOUT cases (2261-2283) from **Argentina**, **Brazil**, **China**, **Egypt**, **Germany**, **Hong Kong SAR, China**, **India**, **Malaysia**, **Morocco**, the **Netherlands**, **Qatar**, **Saudi Arabia**, the **Russian Federation**, **Singapore**, **Ukraine**, the **United Arab Emirates**, the **United Kingdom of Great Britain and Northern Ireland**, the **United States of America** and **Viet Nam**. The new cases relate to the **CISG**, **ECC**, **Limitation Convention**, **MAL**, **MLCBI**, **MLEC** and **NYC**.

Many thanks to Ajay Thomas, Arjun Krishnan, George Pothan Poothicote, Gourab Banerji, Jan Smits, Manisha Singh, Sriharsha Peechara, Stacie I. Strong (National Correspondents), Eva Camiña Giral, Chen Yanzhong, Steven Debie (Voluntary Contributors) and the Legal Clinic of Ain Shams University (Institutional Partner) for their contributions.

CASES IN FOCUS



Case 2267: CISG [1]; 74; Limitation Convention 8; [10]; [15] | Russian Federation: Арбитражный суд Ульяновской области | Case No. A72-4451/2012 | 21 November 2014 | Original in Russian

A buyer, with place of business in the Russian Federation, and a seller, with place of business in Czechia, had entered into a contract for the supply of goods in 2008. Interim insolvency proceedings were instituted against the buyer in 2013 under the laws of the Russian Federation. In 2014 the buyer was declared insolvent, and insolvency proceedings were opened against it. As the buyer had failed to pay for some goods supplied under the contract, the seller applied to the Arbitration Court of the Ulyanovsk Region in 20131 with a petition to be included in the list of creditor claims of the buyer. At that instance, the seller's claims were partially satisfied. Arguing that some of the claims had already been submitted to the court in 2013,[1] but had not been considered by it, the seller made a second application in 2014 for inclusion in the list of creditor claims of those and additional claims, namely, claims relating to costs of the supplied equipment and to losses caused in connection with the non-performance of the contract.

The court accepted the inclusion in the list of creditor claims of the claims concerning the costs of the supplied equipment, but not of the claims relating to losses incurred by the seller. In particular, the court, noting the application of the CISG to the contract for the international sale of goods in question,[2] cited article 74 of the CISG, and came to the conclusion that the seller had not submitted relevant, admissible and sufficient evidence confirming that the losses were actually incurred by it in connection with the buyer's failure to perform its obligations under the contract. The court stated that there was no causal link between the losses incurred by the seller and the buyer's failure in causing these losses.

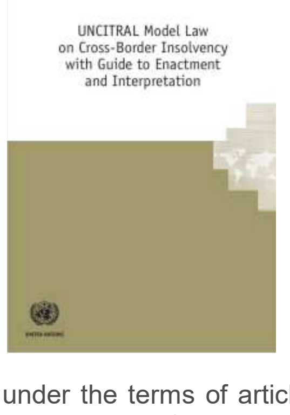
During the proceedings, a creditor objected to the inclusion of the seller's claims arguing the expiration of the limitation period for filing the relevant claims, which was set to three years pursuant to the laws of the Russian Federation. The court recalled that in its decision of 2013[3] it had concluded that the law of the seller's place, i.e. the law of Czechia, should apply to the contract at hand. [4] In this light, the court applied the four-year limitation period under article 8 of the Limitation Convention, and held that the limitation period for inclusion of the seller's claims regarding the costs of the supplied equipment to the list of creditor claims had not expired (the limitation period for these claims had apparently commenced in 2010).

[1] Arbitration Court of the Ulyanovsk Region, Russian Federation, 9 December 2013, case No. A72-4451/2012.

[2] Czechia and the Russian Federation are State Parties to the CISG: https://uncitral.un.org/en/texts/salegoods/conventions/sale_of_goods/cisg/status.

[3] See footnote 1 above.

[4] Czechia is a State Party to the Limitation Convention (amended).



Case 2271: MLCBI preamble; 2(a); (b); 15; 16(3); 17; 23; 24 | Morocco: Commercial Court of Appeal | Miscellaneous Case No. 2024/8301/3397 | *Española de Montajes Metalicos* | 30 April 2025 | Original in Arabic (pending translation in the other five languages of the United Nations)

Española de Montajes Metalicos ("EMMSA"), a company incorporated in Spain, was undergoing a voluntary insolvency proceeding in Spain. In 2023, EMMSA applied to the Moroccan Commercial Court of Casablanca for recognition of that proceeding as a foreign main proceeding under articles 781 and 782 of the Moroccan Commercial Code, as amended by Law 73.17 (enacting articles 15 and 17 of the MLCBI, respectively).

The Commercial Court of Casablanca refused recognition, stating that, under the terms of article 781, recognition of any foreign insolvency proceeding is conditioned on equivalence of that proceeding, in both form and substance, to a domestic insolvency proceeding, classified as a "business difficulties proceeding" under Book V of the Moroccan Commercial Code. The Commercial Court of Casablanca held that the proceeding in Spain lacked features of Moroccan collective proceedings and thus did not substantively correspond to any of Morocco's domestic proceedings under Book V of the Moroccan Commercial Code.

EMMSA appealed to the Commercial Court of Appeal (the "Court") contending that the insolvency proceeding in Spain met the legal definition of a foreign proceeding under the first sub-item of article 769 of the Moroccan Commercial Code (enacting article 2(a) MLCBI). EMMSA argued that the insolvency proceeding in Spain was a court-supervised proceeding with key features of a collective proceeding, such as the appointment of a liquidator, the notification of creditors – including the Moroccan creditors – about the opening of the proceeding, the equal treatment of claims, and the protection of the interests and rights of all creditors, Moroccan and foreign alike. EMMSA also argued that the insolvency proceeding in Spain met the statutory requirements of articles 781 and 782.

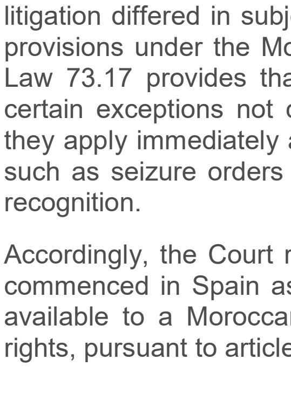
The Court found that the recognition application was properly submitted by EMMSA's officially appointed representative and was accompanied by the necessary documentation under article 781. It confirmed that the centre of EMMSA's main interests was in Spain and found no public policy concerns.

Accordingly, the Court found that the proceeding commenced in Spain fell within the definition of both a "foreign proceeding" and a "foreign main proceeding" under the first and second sub-items of article 769 of the Moroccan Commercial Code (enacting article 2(a) and (b) MLCBI, respectively).

The Court held that Moroccan law broadly recognizes foreign insolvency proceedings, whether administrative or judicial, without requiring equivalence of foreign insolvency proceedings to domestic insolvency proceedings. It stated that such a reading of the first sub-item of article 769 of the Moroccan Commercial Code was consistent with the legislator's intent to strengthen international cooperation and facilitate cooperation between Moroccan and foreign courts in managing cross-border insolvency cases, as reflected in article 768 (enacting the preamble of the MLCBI).

Moroccan creditors objected to recognition on the grounds of the existence of domestic seizure orders, res judicata and non-retroactivity of Law 73.17, that enacted the MLCBI in 2018, before the recognition application was made. The Court rejected the res judicata claim, finding that the earlier litigation differed in subject and cause from the recognition request. It further held that recognition provisions under the Moroccan Commercial Code are procedural in nature and, since article 2 of Law 73.17 provides that the law enters into force upon publication in the Official Gazette with certain exceptions not covering the provisions on recognition of foreign insolvency proceedings, they apply immediately and are not barred by non-retroactivity. The Court also clarified that issues such as seizure orders should be addressed through separate legal channels without preventing recognition.

Accordingly, the Court reversed the lower court's decision, recognized the insolvency proceeding commenced in Spain as a foreign main proceeding, and granted the foreign representative relief available to a Moroccan insolvency representative to protect the debtor's assets and creditors' rights, pursuant to article 788 of the Moroccan Commercial Code (enacting articles 23–24 MLCBI).



Case 2283: CISG 1(a); 4; 6; 8(3); 9; 11; 14; 18; 19(3); 23; 45; 74; 75; 78; ECC 9(1); 9(2) | United States of America: U.S. District Court for the Middle District of Florida | Case No. 8:21-cv-2884-VMC-JSS | *Fertilizantes Tocantins S.A. v. TGO Agriculture (USA), Inc.* | 4 March 2024 | Original in English (*pending translation in the other five languages of the United Nations*)

An American company (the "seller") and a Brazilian company (the "buyer") concluded several contracts for the purchase of ammonium sulphate fertiliser from 2017 to 2020. In September 2020, negotiations for a new contract started. The parties agreed via WhatsApp for the seller to supply to the buyer 45,000 metric tons of ammonium sulfate at 145 United States dollars per metric ton. In May 2021, when the buyer solicited the contract from the seller, the seller argued that no contract was formed because it did not send to the buyer an e-mail confirmation accepting the buyer's offer. Upon the seller's non-delivery of the goods, the buyer filed a claim with the U.S. District Court for the Middle District of Florida (the "Court") against the seller for breach of contract arguing the existence of a contract between the parties and seeking damages.

Citing articles 1(a), 4 and 6 of the CISG, the Court stated that the CISG applied to the contract at issue. To determine the formation of the contract, the Court held that the buyer's offer to the seller sufficiently determined the goods, quantity and price, and that acceptance of that offer by the seller was effected, pursuant to articles 14, 18 and 23 of the CISG.

As regards the existence of an offer, the Court stated that the CISG does not require that the buyer identify all specifications relating to the goods for the formation of the contract. The Court further noted that the variations in the permissible - under Brazilian regulations - nitrogen levels in the goods (i.e., 21 per cent in the invoices, 20.5 per cent in the buyer's purchase confirmation, and 20.8 per cent upon delivery of the goods) were immaterial as to whether the goods were sufficiently defined or not in the offer given that, from the parties' prior practices and mutual understanding (arts. 8(3) and 9 CISG), the nitrogen content was to be in any case between 20.5 and 21 per cent (i.e., the permissible levels under Brazilian regulations).

As regards the acceptance of the offer, the Court did not accept the seller's arguments that: (a) the buyer's subsequent modification of its own offer was considered to alter the terms of that offer materially according to article 19(3) so that the contract could not be considered formed; (b) additional elements were required for the formation of the contract; and (c) a formal, signed writing was required for the contract to be binding. With respect to (a), the Court observed that the parties had initially formed a contract considering the goods, the quantity and the price and that disagreements about any additional terms arose after the formation of that contract. Concerning (b), the Court held that quantity, price and product were the only material terms to be included in a binding contract pursuant to the parties' practice and that the seller failed to demonstrate that that practice required additional material terms before a contract was binding. Concerning (c), the Court held that the parties did not require any formal agreement to form the contract and that article 11 CISG dispenses with any form requirement, so that the WhatsApp messages the parties exchanged in September 2020 sufficed. In that context, the Court stated the complementarity of the ECC with the CISG citing article 9(1) and (2), and that the notions of "communication" and "writing" under the CISG also include electronic communications.

The Court held that the seller's failure to deliver the goods constituted a breach and awarded damages to the buyer based on articles 45, 74 and 75 CISG. In particular, it noted that the buyer, due to the seller's non-delivery of the goods, had concluded substitute contracts with other companies with prices that were found by the Court reasonable. The damages were calculated under articles 74 and 75 CISG as the difference between the September 2020 contract and the substitute contracts prices. The Court awarded $US 6,803,000 in damages, together with pre-judgment interest of $US 959,155.27 under article 78 CISG, whose rate was calculated pursuant to Florida law, and post-judgment interest under federal law of the United States of America.

EVENTS

UNCITRAL Colloquium on Digital Payments and Paperless Trade, 19-22 January 2026

At its 58th session the Commission requested the UNCITRAL secretariat to undertake exploratory and preparatory work on **digital payments** and **paperless trade respectively**, including by holding colloquiums on these topics. In line with that request, the secretariat is organizing a Colloquium in two parts:

- Part I on digital payments (19-20 January 2026);
- Part II on paperless trade (21-22 January 2026).

The Colloquium is intended to advance the exploratory and preparatory work, consistent with UNCITRAL's efforts to provide an enabling legal framework and guidance supportive of **end-to-end trade digitalization**, of which digital payments and paperless trade are two key components. The outcomes of the Colloquium will be presented to the Commission for consideration at its fifty-ninth session (New York, 22 June – 10 July 2026).

For further information, please follow this link.

UNCITRAL Days 2026: Expression of interest

The 2025 edition of UNCITRAL Days in Africa, Asia-Pacific, Arab States, and LAC was well received across the world. Join the 2026 edition of the UNCITRAL Days that will expand beyond regions, including UNCITRAL Days in Eastern European and Transdanubian, and will contribute to the celebration of the 60th anniversary of the establishment of UNCITRAL!

Universities interested in joining can express interest here.

For further information on UNCITRAL Events and News all year round check out our official website and our social media pages (links available below).

A NEW WAY TO ACCESS CLOUT

The UNCITRAL secretariat wishes to inform all CLOUT database users of the database's planned decommissioning exercise that will take place in 2026 due to budgetary constraints. This will involve a transition from the current database to a new way to access CLOUT abstracts. The database in its current form will remain usable until further notice by the secretariat regarding the new alternative tool.

NEW CLOUT VIDEOS FOR CONTRIBUTORS

The secretariat is in the process of preparing audiovisual materials to further **promote CLOUT globally** and **facilitate the preparation of CLOUT abstracts**. The new explanatory videos on the objectives of CLOUT and on instructions and tips to prepare abstracts, **"What is CLOUT ?"** and **"How to prepare a CLOUT abstract"**, **will be made available** on **UNCITRAL's YouTube channel** early in 2026! Monitor our social media channels and official website for updates!

LATEST CLOUT NEWS

The CLOUT Team is excited to announce the **first-ever publication of a case from** 🇻🇳 **Viet Nam** (CLOUT case 2261) in CLOUT. The case refers to the interpretation and application of Article V (2)(b) of the NYC.

The database has been updated with the **first-ever cases from** 🇲🇾 **Malaysia** (CLOUT case 2262) and 🇶🇦 **Qatar** (CLOUT case 2276) **on the MLEC**, as well as the first **case from** 🇲🇦 **Morocco** (CLOUT case 2271) **on the MLCBI**. The cases are already accessible, or will be made available pending translation in the six official languages, *here*.

CLOUT continues to showcase cases interpreting and applying UNCITRAL texts from **underrepresented jurisdictions in its system**. In the period August – October 2025, abstracts from 🇦🇷 **Argentina**, 🇸🇦 **Saudi Arabia**, and the 🇦🇪 **United Arab Emirates** have been prepared (*the CLOUT cases are pending translation in the six languages of the United Nations; they will be made available here in due course*).

The CLOUT Team celebrates the **20th anniversary of the ECC** by featuring in this Newsletter issue CLOUT case 2283 interpreting and applying the CISG and the ECC. Adopted on 23 November 2005, to date, the Convention has 21 States parties across four regional groups.

UNCITRAL NEWS

The **2025 KMOJ-UNCITRAL ADR Special Session**, themed "Implementation of UNCITRAL Dispute Settlement Instruments in Civil Law Jurisdictions", is a flagship activity that UNCITRAL co-organized with the Korean Ministry of Justice, the ADB, the ADBI Institute and KCAB International. Government officials from the Asia-Pacific region gathered to discuss their jurisdictions' enactments of UNCITRAL arbitration and mediation instruments. See full video here:

The 3rd session of the **UNCITRAL-WBG Judicial Capacity-Building Initiative on International Best Practices in the Area of Insolvency Law** took place on 5 November 2025 (online) and covered the topic of safeguards against improper commencement of insolvency proceedings. The session welcomed more than 200 judges from a wide range of jurisdictions and economic development systems, featuring a comparative overview of domestic approaches and an exchange of views on the solutions recommended in the UNCITRAL Legislative Guide on Insolvency Law and the World Bank Principles for Effective Insolvency and Creditor/Debtor Regimes. See video on the first part of the session here:

LATEST PRESS RELEASES

17/12/2025 General Assembly adopts breakthrough Convention on cargo documents to facilitate global trade

02/12/2025 Kyrgyzstan becomes 20th State party to the Singapore Convention on Mediation

13/10/2025 Iran ratifies the United Nations Convention on the Use of Electronic Communications in International Contracts

29/09/2025 The European Union approves the United Nations Convention on Transparency in Treaty-based Investor-State Arbitration

25/08/2025 Spain ratifies the Beijing Convention on the Judicial Sale of Ships

FOLLOW-UP ACTIONS AFTER THE CLOUT NETWORK MEETING OF 16 JULY 2025

The CLOUT Team welcomes any CLOUT Network contributor who would like to make ***short contributions to the Newsletter with articles, commentaries and information*** *on the interpretation and application of UNCITRAL texts in their own countries. Send your contributions at monica.canafoglia@un.org and maria.giannakou@un.org*

The secretariat encourages CLOUT contributors to comply with the CLOUT guidelines and user guide available at https://uncitral.un.org/en/case_law.

In the context of CLOUT dissemination and digital partnerships, ***CLOUT Network members may wish to suggest*** *(a)* ***legal online platforms*** *that could host CLOUT abstracts and (b)* ***universities and other education and training centres*** *that could help disseminate CLOUT abstracts with a view to potential partnerships with the UNCITRAL secretariat.*

CLOUT contributors are encouraged to transmit ***to the secretariat abstracts from jurisdictions in which decisions are issued in local language*** *other than the six languages of the United Nations.*

CLOUT Network members may also ***consider involving university students and young professionals*** *in abstract preparation.*

Universities, training centres, arbitration centres, law professors, judges and other interested law practitioners can contribute to the CLOUT collection *even if they are not National Correspondents. They are strongly encouraged to contact UNCITRAL at monica.canafoglia@un.org and maria.giannakou@un.org for information.*

CLOUT contributors may wish to ***propose building partnerships with CLOUT-like local initiatives*** *that support activities, programmes and trainings for students and young professionals aimed at enhancing the CLOUT system and increasing its visibility. Such initiatives may be also proposed* ***in the context of UNCITRAL Days***.

The CLOUT Network is invited to ***propose ideas for CLOUT-related events*** *that could contribute to the celebration of* ***UNCITRAL@60 in 2026-2027***.

Season's greetings and warm wishes for a healthy and happy 2026!

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