Adoptions of the UNCITRAL Model Arbitration Law:

A Continuing Success Story*

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A. Introductory conclusion

To start with the conclusion: The UNCITRAL Model Law on International Commercial Arbitration has clearly been a very successful product of the United Nations Commission on International Trade Law – probably even more successful than many of its drafters had expected [1]. For this reason, its is a great pleasure and honour to be asked to report on the "experiences of major countries in adopting the Model Law: past and present". To be asked to do so in a country embarking on arbitration law reform adds to the pleasure. Yet another cause for delight is the welcome opportunity of coming back to this important country only a year after its becoming a member of OECD and after the memorable ICCA Conference so ably organised by our Korean friends.

The success of the Model Law may be stated (or quantified) in a few words: already today, about one quarter of the world's territory is covered by enactments based on the UNCITRAL Model ... and more countries are to follow. As will be shown later (see Part D), those enactments very rarely deviate from the Model, while adding quite a number of provisions on issues not regulated in the Model Law (see Part E).

Looking at individual countries or jurisdictions, the success may be measured by the increase in arbitration cases and by the stated satisfaction of leading experts on a given enactment. To take as an example a Far Eastern jurisdiction, probably of particular interest to Korean observers, Hong Kong increased its caseload from 54 to 185 within two years after adopting the Model Law; [2] and the most frequent judicial interpreter of the Model Law, then Justice Neil Kaplan Q.C., chairman of the Hong Kong International Arbitration Centre, concluded that, "apart from two specific cases [3], the Model Law has been in most part a great success and, from a day-to-day perspective, achieves its

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[1] For background information see, e.g., Herrmann, The UNCITRAL Model Law on International Commercial Arbitration: Introduction and General Provisions, in: Essays on International Commercial Arbitration, ed. by Sarcevi , London, 1989, pp. 3-26.

[2] Lim, Remodelling the Model Law (Singapore Arbitration), ASIA Law Jan/Feb 1995, 28.

[3] The two cases are the writing requirement and court assistance under article 11, dealt with below. pp. 12 and 17.

stated purposes". [4] According to his earlier review of Hong Kong's experience, previously expressed fears that the Courts would be beset with applications involving the construction of the Model Law have proved groundless because (of special transitional provisions and) "the Model Law itself is fairly straightforward in language and may not at any time give rise to any serious problems". [5]

Thus, we know today that the prediction of an eminent rapporteur at the ICCA Congress about the Model Law (Lausanne 1984) has come true, namely that "the new Model Law, when it is completed by UNCITRAL and enacted by States, will stand along with the New York Convention and the UNCITRAL Arbitration Rules as a principal pillar in the worldwide system of arbitral justice" [6].

Not surprisingly, the Commission has always attached great importance to the two existing "pillars" and, for example, decided that due account be taken of them in the preparation of the Model Law. As regards the successful 1958 New York Convention, it was earlier decided that there was no need for a revision or amendment, as had been suggested by the Asian-African Legal Consultative Committee (AALCC) [7]. It was felt that certain concerns underlying the AALCC-recommendation, together with many other difficulties encountered in practice - sometimes labelled "pitfalls" or "defects" of international commercial arbitration - could and should be met by a model law.

B. Reasons for the project are reasons for adoption

Generally speaking, the following defects or shortcomings that led to UNCITRAL's initiative constitute also the main reasons for a country's adoption of the Model Law. However, what turned out to be crucial in most cases witnessed by the present writer was a clear realisation of its unique advantages to be described below (Part C).

In many countries, there had been little recognition of the special

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[4] Kaplan, A model for arbitration (Hong Kong Arbitration), ASIA Law Jan/Feb 1995, 23.

[5] Kaplan, The Model Law in Hong Kong - Two Years On, 8 Arbitration International 1992, 223.

[6] Holtzmann, The Conduct of Arbitral Proceedings, in: UNCITRAL's Project for a Model Law on International Commercial Arbitration, ICCA-Congress Series No. 2 (1984), p. 159.

[7] Decision of AALCC (1977) reproduced in UN-document A/CN.9/127.

needs and features of international arbitration. Equal treatment with domestic arbitration tends to neglect the fact that in an international case at least one party is, and often both parties are, from a foreign country and may thus not be familiar with the local law and traditional particularities. Expectations as usually laid down in the arbitration agreement including any agreed arbitration rules may therefore be frustrated by conflicting mandatory provisions of law. Even provisions from which parties may derogate could provide a trap to unwary parties. Inappropriate provisions of this kind were often established with purely domestic arbitration in mind and in some cases directly taken from local court procedures.

For international arbitration and its users, the law of the place must not only be good but it should also be known or at least easily ascertainable. For example, when parties are trying to agree on a suitable place of arbitration, their counsel yearn for ready access to the local law. If that information is not easily available, it may well be a reason for preferring another venue.

This knowledge factor (or "high fidelity" factor) should be taken into account by any State desirous of hosting arbitrations. Such desire would not be limited to arbitrations in which one of the parties is from that State; it should extend to other international arbitrations with exclusively foreign parties. Conversely, it would help parties from that State if an arbitration in which they might be involved in another State would be governed by the same or similar law familiar to them. This is but one example of the eminent practical value of harmonisation of national laws.

The above considerations suggest certain major conditions that an acceptable law for international commercial arbitration should meet: It should be of good quality with solutions that are sound and suitable to the specific needs of international arbitration; it should be easily recognizable and understandable for foreign users; and, building on these two conditions, it should be similar to the law of many other States embodying generally recognised principles.

All three conditions are best met by legislation that follows, as closely as possible, the UNCITRAL Model Law on International Commercial Arbitration. This Model Law has various unique features and advantages that no national law can offer, however advanced it may be. Above all, it is the only law that is truly universal in its origin, design and acceptability and, as described in the Explanatory Note of the Secretariat, that reflects a worldwide consensus on most of the

crucial issues in international arbitration procedure.

C. Unique features and advantages of the Model Law

I. Universal origin of the Model Law

The UNCITRAL Model Law on International Commercial Arbitration was prepared by a Working Group during five sessions[8] and adopted by the United Nations Commission on International Trade Law (UNCITRAL) on 21 June 1985.[9] As is characteristic of any text emanating from the work of that Commission, it is truly universal in origin.

Representatives of more than 50 States from all regions and different legal and economic systems as well as 15 international organizations participated in the preparatory work. The delegations included many internationally known arbitration experts.

In view of the wealth of expertise assembled in the conference rooms, it is small wonder that the discussions, as reflected in the travaux préparatoires and acknowledged by commentators, [10] were of remarkably high quality. As an important additional asset, there was a considerable input of expertise and views from outside the conference rooms by many other experts and practitioners commenting on the draft text at various conferences and seminars in all parts of the world.

As a result, the draft text was seen and critically reviewed by many more eyes than any national bill ever was or would. The many different views, ideas and interests, combined with a wealth of experience gained in different countries and legal systems, were brought together and to bear on the emerging text, in a process and spirit which was praised by an observer as one of the best examples of constructive cooperation between North, South, East and West"[11]. This

[8] The reports on the five sessions are contained in A/CN.9/216, 232, 233, 245 and 246; these reports as well as the relevant working papers are reproduced in UNCITRAL Yearbooks 1982, 1983 and 1984.

[9] UN document A/40/17, paras. 14-333 and Annex I; the text of the Model Law and the Explanatory Note are made available at the seminar.

[10] E.g. Broches, The 1985 UNCITRAL Model Law on International Commercial Arbitration: An Exercise in International Legislation, XVIII Neth. Yb. Int. L. (1987) 45; Holtzmann/Neuhaus, A Guide To The UNCITRAL Model Law on International Commentary (Deventer 1989) 15- *

commendable spirit of cooperation and compromise helped, for example, to bridge the gap between Common Law and Civil Law in procedural matters and to reconcile positions, on which even countries of the same legal system differed, especially concerning the nature of the arbitral process and the role of the national courts.

The Model Law's international formulation with universal participation is certainly conducive to wide acceptability. What counts is not merely the psychological point of having participated but also the experience of having joined in a search for practical and acceptable solutions in a spirit of mutual understanding and compromise. I think one can add here the widespread sense or pride of achievement for not having fallen into the trap of settling on the lowest common denominator. As the final text proves, a high standard of quality was attained by adopting the best existing features or working out novel solutions.

While it is often said that the international origin of the text will contribute to its wide adherence and thus enhance the extent of harmonisation, it is rarely seen or said that the international origin is of considerable value also in respect of an individual country, irrespective of the prevailing idea of harmonisation. The reason lies in the unique character of a national law governing international arbitrations. Such a law, unlike ordinary laws of that State, is primarily made for foreign readers and users, whether they be parties or their counsel or arbitrators. It is thus of advantage to have a model which was made primarily by foreigners reflecting the various interests and expectations (similar to those of potential "customers").

II. Universal design and global attention

Well suited to this special nature of an appropriate law for international arbitration is the universal design of the Model Law. Unlike any nationally formulated law, it was not designed for one particular State and thus it was not written against the background of one domestic legal system and its traditional concepts. Instead, it was conceived as a true model for potentially all States of the world. To mention only one ensuing advantage for all users not familiar with the domestic legal scene, legislation following the Model Law would rarely, if ever, refer to provisions of other laws of that State or to domestic

[11] Hunter, "The UNCITRAL Model Law" Int. Bus. Law. (1985) 402.

procedures known only to the initiated.

The design as a model for potentially all States was affirmed by the General Assembly of the United Nations when it recommended, in its resolution 40/172 of 11 December 1985, that "all States give due consideration to the UNCITRAL Model Law on International Commercial Arbitration, in view of the desirability of uniformity of the law of arbitral procedures and the specific needs of international commercial arbitration practice".

Harmonisation and improvement of national laws are clearly expressed here as the twin goals of the United Nations appeal. Their respective attractiveness as reasons for adopting the Model Law vary from country to country and, to a large extent, depend on the state of development of the existing national law.

The need for improvement by legislation based on the Model Law will be particularly felt in those States which have no developed and comprehensive arbitration law, and it will also be felt by other States whose arbitration law is not fully suitable to international cases.

Potential recipients are offered a model text which provides a number of advantages, in addition to those already mentioned. To start with a seemingly mundane point, fully appreciated only by over-burdened legislators or time-pressed founders of arbitration centres, the text is ready and in easily adoptable form. It requires minimal adjustments to the individual State (e.g. replacement of terms like "this State" and designation of the competent court under article 6). Many States will also benefit from the fact that the Model Law was established in the six official languages of the United Nations (i.e. Arabic, Chinese, English, French, Russian and Spanish).

Another advantage of the Model Law is its comprehensive nature, including its natural structure following the normal phases of an arbitration. The actual application and interpretation in a given State is aided by the earlier mentioned extensive travaux préparatoires and will increasingly be aided by the growing body of case law of all States adopting the Model Law. With the help of national correspondents, the Secretariat is collecting the pertinent decisions and publishing the abstracts thereof, with a view to making this emerging treasure available and to fostering uniform interpretation. This collection of "Case Law on UNCITRAL Texts" (CLOUT) contains already more than 74 decisions on the Model Law.[12]

Yet another advantage will be appreciated by those who view

[12] A/CN.9/SER.C/ABSTRACTS/1-12.

commercial arbitration as a competitive service which is helped by arbitration commercials. Prompt adoption of the Model Law would have a welcome public relations effect, as, for example, expressed by a Canadian arbitration expert: "Embracing the Model Law is part of a clear signal that Canada not only welcomes, but is anxious to obtain and to facilitate international commercial arbitration".[13] Another guiding consideration, based on the universal design, is to realize that adoption of the Model Law contributes to harmonisation and may stimulate other countries likewise.

The latter advantages and considerations apply and appeal even to those States which already have a developed law broadly meeting the needs of international commercial arbitration. The fact that their law contains the same basic concepts as the Model Law does not necessarily militate against adoption but makes it even easier. A careful comparison will often reveal a number of considerable differences in the individual provisions which, in the national law, tend to be spread over various acts and amendments. Even where a State wishes to maintain certain different solutions, adoption of the Model Law with some modifications would help foreign readers and users by facilitating comparison and providing transparency. After all, the Model Law presents a well-structured international standard against which the various national laws are best measured and thereby any differences discerned. This standardizing effect (as a template or a true "comparative law") would obviously be best achieved if all States were to mould their laws in the shape of the Model Law. Any modifications would this way be easily ascertainable by users yearning for ready access and knowledge. Of course, modifications should be kept to a minimum if one wants to achieve the other main objective of the Model Law, i.e. harmonisation of national laws.

III. Worldwide acceptability in rather different countries

These motives have already guided various legislatures and law reform commissions in jurisdictions with advanced legislation. Apart from Germany which decided to enact legislation closely following the Model Law, a good example in point is Australia which enacted the Model Law in its original form (with optional rules added on issues not regulated in the Model Law), after having brought up-to-date its laws

[13] Chiasson, "Canada: No Man's Land No More" 3J. INT. Arb. (1986) 71.

on commercial arbitration only a few years earlier. Hong Kong provides a similar example in that its Law Reform Commission recommended the adoption of the Model Law only a few years after the promulgation of its advanced arbitration law that apparently had not led to any serious criticism.[14]

Similar sentiments and wisdom prevailed also in many other jurisdictions which show that the conclusion of universal acceptability is not hypothetical or wishful thinking but corroborated in reality. Within its first twelve years, the Model Law has been accepted, with limited deviations, in the following States and jurisdictions, representing all regions of the world as well as all legal and economic systems, at diverse levels of development: Australia, Bahrain, Bermuda, Bulgaria, Canada, Cyprus, Egypt, Guatemala, Hong Kong Special Administrative Region, Hungary, India, Kenya, Malta, Mexico, New Zealand, Nigeria, Peru, Russian Federation, Scotland, Singapore, Sri Lanka, Tunisia, Ukraine and, within the United States of America, California, Connecticut, Oregon and Texas, and Zimbabwe.[15] Enactments are expected soon in a number of other countries, e.g., Germany, Greece, Kyrgyzstan, South Africa, Thailand.

It is apparent that the Republic of Korea, if it were to follow closely the Model Law in drafting its new arbitration law, would be in very good company, would benefit from that company, and would give another, and probably the clearest, signal of having joined the global league of nations with a hospitable legal climate and infrastructure for international commercial arbitration, in line with its emerging role in the global marketplace. The UNCITRAL Secretariat would certainly be pleased if it could be of assistance in this important and exciting endeavour.

In considering whether to adopt the Model Law, special regard should be had to the specific goal and orientation of that Law, namely that it is designed to be of particular benefit in international cases, in which one party is, and often both parties are, from a foreign State. As Lord Justice Kerr put it in his important Alexander Lecture 1984: "Arbitration rests on confidence in the arbitration laws of the venue, and both parties to an international contract primarily only have confidence

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[14] The Law Reform Commission of Hong Kong, Report on the adoption of the UNCITRAL Model Law of Arbitration [Topic 17] 13.

[15] For up-to-date information on Model Law enactments as well as adherences to Conventions see Status of Conventions at the UNCITRAL homepage on the Internet: http://www.un.or.at/uncitral.

in their own laws and misgivings about those of the other. The present result is, therefore, a tussle which is often resolved in favour of some neutral venue in a country with whose laws neither party is really familiar;... The concept underlying the Model Law is to put an end to this state of affairs by widening the parties' choice of venue, and thus their choice of arbitration clauses for incorporation into their contracts. In so far as a country will have enacted legislation based on the Model Law, both parties will be able to find it easier to accept arbitration in that country, because they will know basically where they stand".[16]

This idea of a "service" to the international business community and its arbitrators and counsel has been pronounced by an experienced arbitrator and arbitration lawyer as follows: "We must not forget that when we are working abroad – whether as arbitrators, expert witnesses or representing a party – we normally operate within the ambit of the local law and there must surely be an enormous practical advantage for us if that law is not only familiar but known to be effective. There will be a tremendous benefit both to practitioners and to businessmen if we know what we are working under the UNCITRAL system when we are overseas".[17]

Of course, the best way would be to adopt the Model Law in its entirety as deemed acceptable by such globally representative and competent body as UNCITRAL. While expressing this hope may sound overly optimistic and even partial adoption would constitute a useful step towards greater harmony in the procedural framework of the international arbitral process, one may dare inviting any legislator or adviser to think twice before proposing serious departures fro the final UNCITRAL text. The recommended second thoughts should include consideration of the general advantages of unification, here by parallel unilateral actions. While on a number of crucial issues there are valid reasons for and against the rule adopted, the establishment of an agreed-upon final text, made possible by mutual concessions often concerning dear and deep-rooted positions, should militate in favour of accepting the package (unless deemed to contain ultrahazardous materials). This is not in order to please the proud model draftsmen but to make life easier for the ultimate addressees and customers, namely the parties involved in international trade who would wish to see the

[16] Kerr, Arbitration and the Courts: The UNCITRAL Model Law, 34 I.C.L.Q. (1985), p.6.

[17] Hunter, UNCITRAL Model Law – which road should London take? 11 Arbitration 1984. 295.

same legal framework for their dispute settlement at whatever convenient place they may wish to have their dispute settled. It is satisfying to see that until now those responsible for preparing legislation based on the Model Law have generally followed that maxim "don't deviate".

D. Rare deviations from the consensual Model

As concluded by a most eminent arbitration expert in his highly commendable 1994 survey of 22 enactments of the Model Law, "the success of the Model Law as a whole may be seen in the fact that there is no one particular article which generally has been deviated from".[18] In fact, no one article has been deviated from by a considerable number, let alone the majority of enacting jurisdictions.

Interestingly enough, four deviations found in more than two enactments accord with a particularly strong minority view during the deliberations. The first relates to article 28(2) which envisages the "indirect" route for the arbitral tribunal's determination of the "law" applicable to the substance of the dispute. A somewhat more progressive position, which the Commission at the time felt not to be acceptable to many States, has been taken in some jurisdictions (e.g. Canada, India, Mexico, Tunisia) by providing for the direct approach towards the law or the rules of law deemed appropriate under the circumstances. Another deviation concerning article 28 has been made by Bulgaria and the Russian Federation which left out the provision on amiable composition (paragraph (3)).

The second relates to the number of arbitrators which some States require to be uneven (e.g. Egypt, India, Tunisia). Failing agreement by the parties on the number, the Model Law envisages a panel of three, while some States favour a single arbitrator (e.g. India, Mexico, Scotland and some States in the USA), often probably motivated by the – even more interesting – fact that their law applies not only to international cases (where three is the appropriate norm) but also to domestic, i.e. non-international arbitrations (thus also, e.g. Egypt and Zimbabwe).

The third (and in recent enactments increasingly made)

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[18] Sanders, Unity and Diversity in the adoption of the Model Law, 11 Arbitration International 1995, 1-37.

modification relates to the requirement of written form in article 7(2). While the Model Law contains a flexible formula, clearly more embracing than the one of the 1958 New York Convention, certain situations are arguably[19] not covered, certainly not beyond doubt, and have led to modified formula, either referring to such situations as bills of lading (e.g. Singapore) and other instances of "half form" (e.g. Germany) or providing a list of criteria with a general catch-all formula (e.g. Hong Kong, inspired by England). In my view, this question deserves in-depth study and possibly a uniform answer in any future Convention or sequel to the UNCITRAL Model Law (if the slightly atavistic writing requirement is to be retained at all[20]).

The fourth deviation relates to articles 35 and 36 on recognition and enforcement of awards which have been left out in a number of enactments, typically by Member States of the 1958 New York Convention (e.g. Australia) and especially jurisdictions that had made use of the reciprocity reservation (e.g. Bermuda, Hong Kong). It appears that the Model Law here was too much ahead of its time by treating all arbitral awards rendered in international commercial cases alike, irrespective of where the arbitration happened to take place. As submitted elsewhere[21], such disregard of territorial borders - a true "globalisation" - is conducive to furthering the international, mobile and independent nature of arbitration, with which the traditional requirement of reciprocity is hardly compatible.

Another deviation is in my view somewhat saddening since it rejects the most innovative and hard-fought-for compromise, embodied in article 13(3) and 16(3). The pre-Model-Law world was evenly divided on the question whether court control over the challenge of an arbitrator or over the jurisdiction of the arbitral tribunal should be exercised immediately (in order to avoid possible waste of money and time) or only in setting aside proceedings (in order to prevent dilatory tactics). Clinging to this latter position, Bulgaria and India forego the

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[19] See, e.g., Kaplan(npte 4) pp. 23-25; Van den Berg, some Practical questions concerning the 195\85 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, in: "Uniform Commercial Law in the Twenty-First Century", Proceedings of the UNCITRAL Congress on International Trade Law, New York, 18-22 May 1992, United Nations, New York, 1995, pp. 216-219.

[20] Herrmann, The Arbitration Agreement as the Foundation of Arbitration and its Recognition by the Courts, in: International Arbitration in a Changing World, ICCA Congress Series No. 6 (Kluwer, Deventer, The Netherlands, 1994) pp. 44-47.

[21] Herrmann, Introductory Note on the UNCITRAL Model Law on International Commercial Arbitration, Uniform Law Review 1985, 295.

benefits of the ingenious Model Law formula which minimizes the dilatory potential and effect of immediate court control by providing for one-instance court review and by allowing continuation of the arbitral proceedings despite pending court review. The beauty of this latter device is that it refers the matter, impossible to be solved at the abstract level, to the very concrete stage of particular arbitration proceedings with arbitrators who can assess the sincerity of applications and the financial implications of continuing the proceedings.

Finally there are a number of deviations, made by one or two States, that all relate to the important article 34 on setting aside the award. Following the example of Switzerland, Tunisia allows non-Tunisian parties to exclude recourse under article 34, while New Zealand - at the other side of the scales - enables parties to opt for appeal on questions of law (probably motivated by the fact that its law extends to domestic arbitrations). Singapore adds to the reasons for setting aside those of fraud, corruption and breach of natural justice, while the correct approach of others (e.g. Australia, New Zealand) is to merely clarify that these reasons are covered by the Model Law ground of "public policy". Bulgaria did not retain the useful provision (paragraph (4)) of remission of the award to the arbitral tribunal. India empowers the court to extend the three-month-period of paragraph (3) by two months, while some other jurisdictions (e.g. Hong Kong) provide for that power of extending time limits in more general terms.

Apart from these relatively few deviations, a number of other modifications are found in national enactments which are not to be regarded as real deviations. Rather, they are either adjustments of the scope of application, for example, dropping the factor "commercial", or allowing parties to opt out (e.g. Australia) or to opt in (which is more in the nature of a clarification in view of article 1(3)(c), unless that very provision is excluded, e.g., by Russian Federation and Ukraine); or they are stylistic variations with no or little interpretative effect. Clearly no deviations are those various provisions that address issues not covered by the 36 articles of the Model Law. Those provisions dealing with additional issues shall be briefly presented now.

E. Additional issues not covered by Model Law

During the preparation of the Model Law, quite a number of topics had been discussed which, for one reason or another, were ultimately not addressed in the Model Law. Not surprisingly, almost all of those topics have later been included in at least one of the national enactments.

The most popular such addition is the rediscovered field of conciliation[22] or, in more American jargon, mediation. The provisions range from a simple mention of that dispute settlement method and an express authorization or encouragement of the arbitrator to employ conciliation to an elaborate scheme of conciliation rules (usually copying the UNCITRAL Conciliation Rules).

Another such area is consolidation and multi-party arbitration. While court-imposed consolidation has - in my view: correctly - not been favoured (except in some US-States), court assistance is often provided for implementing the procedural details of a consolidation agreed-upon in principle, at times accompanied by elaborate schemes for appointing more than three arbitrators.

Yet another set of such topics relates to pecuniary or financial aspects, namely costs, fees and interest. As regards costs and fees, the solutions range from a simple empowerment of the arbitral tribunal to decide on costs and fees to elaborate schemes of criteria to be taken into account. As regards interest, the range again spans from a simple empowerment (deemed necessary because of uncertainty surrounding traditional English law) to elaborate rules on compound interest, on the time-period during which interest accrues and on the applicable rate of interest (in some laws unfortunately fixed to the local judgment rate, irrespective of the currency of the award).

A number of enactments address (and, in fact, limit) the liability of arbitrators, sometimes also of the arbitration administrators, at times adding rules on privileges and immunities of counsel and witnesses.

One enactment expressly empowers arbitrators to fill gaps and adapt contracts, while others provide long lists of individual powers of arbitrators, thereby illustrating (and hopefully not limiting) the "general

[22] Herrmann, Conciliation as a new method of dispute settlement in: New trends in the development of International Commercial Arbitration and the role of arbitral and other institutions, ICCA Congress series no. 1 (ed. Sanders), Kluwer 1983, p. 145-165.

conductor's licence" of the arbitrator provided for in article 19(2). [23]

Similarly detailed lists are found in some enactments (of common law tradition which favours such lists) concerning the possible interim measures of protection an arbitral tribunal may order under article 17 (some enactments even list possible court measures under article 9). A number of enactments accord the measures of article 17 enforceability, either by treating them as arbitral awards or by equating them to interim measures ordered by courts.

Many enactments contain the (especially in common law countries) useful provision that in the application and interpretation of the Model Law regard may or shall be had to the legislative history, referring generally to the travaux préparatoires

of the Working Group and the Commission or specifying two documents which for all practical purposes should suffice (the analytical commentary in A/CN.9/264 and the Commission report A/40/17).

Some enactments include detailed procedural rules of the type found in the UNCITRAL Arbitration Rules, for example, on the effects of replacing an arbitrator on the previous hearings and decisions, on the question of representation of a party or on the arrangement of administrative assistance.

Finally, a number of other topics, addressed in one or more enactments, can only be listed here: arbitrability; capacity of public entity to conclude arbitration agreement; confidentiality and disclosure; dismissal of claim for want of prosecution; challenge of expert for lack of impartiality; declaratory court ruling on validity of arbitration agreement before establishment of arbitral tribunal; effects of death of party on arbitration agreement and proceedings.

F. Towards uniformity embracing variety

As stated in the beginning, the Model Law has proven to be an attractive model. It has been followed by most recent enactments, and it has been followed very closely (in the final enactments that is; almost all law reform commissions started with hundreds of deviation ideas which, as the present writer has personally experienced in at least 25

[23] Herrmann, Power of Arbitrators to Determine Procedures under the UNCITRAL Model Law, in A.J. Van den berg, gen. Ed., in: Planning Efficient Arbitration Proceedings – The Law Applicable in International Arbitration, ICCA Congress Series No. 7 (Kluwer Law International 1996) pp. 42–44.

jurisdictions and as confirmed by a Hungarian expert,[24] gradually vanish in the light of detailed explanations of the wisdom behind the Model Law provisions).

The UNCITRAL Secretariat has, within its extremely scarce resources, assisted legislators to the extent possible, by reviewing draft texts, explaining the Model Law and referring to experiences in other jurisdictions. But one example of that assistance is the advice to Singapore and others to avoid the problems encountered in Hong Kong in the context of appointments of arbitrators by the court which has to follow formal rules of serving process abroad.[25] The easy way out, envisaged by the Model Law, is to entrust with this task not a court but the leading arbitration centre.

With this kind of assistance and the rapidly growing treasure trove of actual experience and knowledge by a large number of persons, the Model Law is certain to help the world get even closer to the desired uniformity of arbitration laws. Uniformity in no way impedes refinement, as the many individual additions have shown, nor does it prevent diversity in arbitration culture, as was amply discussed a year ago here at Seoul.

[24] Szasz, Useful additions to the UNCITRAL Model Law on International Commercial Arbitration, in: "Uniform Commercial Law in the Twenty-First Century", Proceedings of the UNCITRAL Congress on International Trade Law, New York, 18-22 May 1992, United Nations, 1995, p.223.

[25] see Herrmann, (note 23) p. 51.