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UNCITRAL Model Law on International Commercial Conciliation

When your multicultural dinner party conversation becomes an international mediation

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Editor's note: This is an extract from an interview by Nadja Alexander with Mr Jernej Sekolec, Secretary of UNCITRAL, soon to be published in Nadja Alexander's forthcoming book, International Governance: ADR, UNCITRAL and the Model Law, *Juris Publications, New York, 2004.*

Alexander: Throughout the world when people talk about conciliation and mediation in a global context there is a tension between diversity and consistency. On one hand, there is the desire to experiment, to develop mediation as a flexible process with a diversity of styles; on the other hand, there is the aim to ensure consistent quality by regulating mediation. How has UNCITRAL (the United Nations Commission on International Trade Law) approached this tension?

Sekolec: UNCITRAL treads lightly on this issue. The general philosophy of UNCITRAL is to avoid over-regulation and rigid procedural recommendations. We are dealing with international mediation. It is referred to by various terms, including conciliation, but there is no difference in the essential concept, at least from the legislative point of view.

The Intergovernmental Working Group (Working Group) that prepared the UNCITRAL Model Law on International Commercial Conciliation 2002 (the Model Law) was conscious that it would need to be grafted onto an existing legal system in any given country. There will, in fact, be a number of legislative rules in existing legal systems that will complement the body of the Model Law. So we were aware that we did not have to regulate everything. We just regulated the primary pillars of mediation.

The reasons for this were, first, that the Model Law is part of a larger picture of international dispute resolution and, second, we believed that, at this stage in the development of mediation, procedural regulation would not be beneficial. I believe that the development of quality in mediation should come from education and promotion, rather than through procedural safeguards.

A: You are suggesting that at 'this stage of the development of mediation' too much regulation is inappropriate. At what stage do you think we now find ourselves?

S: One cannot give a uniform answer that covers all countries. I think we are at the stage where mediation is very fashionable. This may result in people tending to expect too much from it. But there are core aspects of this fashion which I think are very useful and here to stay. We do not want to create controversy or stifle development by hasty regulation.

A: So you are trying to encourage experimentation within a particular framework?

S: Yes. For example, consider where the initiatives for mediation come from: the courts, arbitrators and even the parties themselves. Who acts as the mediator? Will it be the senior personalities in the trade concerned, village chiefs, the community

mediation centres, the big law firms or arbitration centres? All these aspects of international ADR are still developing. If one regulates the process too early then one restricts the options available – and one may be left with commercial mediations between sophisticated parties only. The huge spectrum of mediation needs to be left alone to enable it to expand and thrive.

A: You mention mediation by village chiefs and arbitration centres. One current theme in the literature focuses on the difference between western mediation and some of the traditional forms of mediation-like processes in first nation cultures such as indigenous Australians and Americans where, for example, notions of neutrality and confidentiality have very different meanings, if they exist at all.

S: Yes, the world of dispute resolution comprises much more than western notions of mediation. The Model Law is drafted in such a way as to accommodate as many cultural concepts of mediation as possible with the ability to operate within the legal system of a given country.

A: Under the Model Law, are processes such as neutral evaluation or mini-trial also included in the definition of conciliation?

S: Yes they are. Article 1 defines 'conciliation'. It provides that conciliation is a process where two parties in a dispute engage a third person to help them settle it. Article 1 provides that conciliation can also be referred to as 'mediation' and other terms with a similar meaning. Therefore mini-trial and neutral evaluation are also covered by Article 1.

The Working Group was conscious of the fact that in practice there may be some real differences between conciliation, mediation and mini-trial in terms of techniques and approaches. For example, there may be variations regarding the role of the mediator, whether the mediator has a more active or passive role, whether the mediator proposes solutions to a settlement, and variations in the type of persons representing the parties – for example, a mini-trial typically involves the most senior management unlike other forms of ADR. From a legislative point of view, however, these differences do not matter because the legislative rule must be flexible enough to incorporate all non-determinative ADR processes.

Another point is that in practice one will find elements of mediation, conciliation, neutral evaluation and even mini-trial in one single case. Pure cases where the mediator does not offer his or her opinion in a direct or indirect manner are rare in international commercial dispute resolution.

So the short answer to your question is yes. All these processes fit into the broad definition of 'conciliation' whereby parties engage a third person to assist them in resolving their differences.

A: So in essence it comes back to the tension between flexibility and regulation. If the Working Group had been clearer about definitions, would it have lost some of the flexibility of conciliation?

S: Yes. Flexibility is one of the core features of mediation that makes it a very attractive process for disputants because they can adjust the process to suit their needs.

A: You earlier spoke about the need for quality processes, saying that in your view quality comes from education. If we link that idea to the different sorts of processes that might arise under the definition of conciliation – mini-trial, neutral evaluation, conciliation and mediation – it seems that a need emerges to educate clients and lawyers about the distinctions between these processes. Clients need to be in a position to give informed consent to the process in which they participate.

S: My reaction to your question is that the environment itself would define the need for process differentiation. In a particular country, a party may well be familiar with the kind of processes that would work well for it in that jurisdiction and would select from that range. In commercial disputes one would require a particular type of process and in village disputes between neighbours a very different one. The issues related to quality are diverse across cultures and environments.

Continuing education should be a requirement so that one does not attend a one week course and become a mediator for life. A mediator needs

to develop and always learn new things and evaluate their own experience. Only in this way will mediators be able to keep abreast of current techniques and continually improve their skills.

A: The Model Law provides a broad definition of conciliation which includes interest-based facilitative processes, on one hand, and directive, more evaluative processes, on the other. Do you think there is a danger in the international commercial field that mediation practice will become more directive and evaluative because many lawyers and arbitrators trained in directive and determinative processes are moving into international commercial conciliation roles?

S: I think this danger exists. However, the danger does not come from the Model Law or from the legislature of the enacting state. Rather, it comes from the procedural rules that the lawyers draft in contracts. If the lawyers shoot themselves in the foot by making the process more complex and expensive, then one cannot protect them from it. In some cases a highly structured mediation is not appropriate, while in other cases it is. If the parties and their representatives organise the ADR process poorly, then they have to live with the consequences. They will learn from these lessons and do it differently next time.

A: So in other words, there is a responsibility on the parties themselves and also on ADR service providers to take responsibility for the management of the dispute.

In your opinion what is likely to happen in sophisticated international business to business (B2B) transactions in terms of the use of this law? Do you think that international business will embrace mediation or will they take a tiered approach and engage in conciliation followed by arbitration or some other ADR process?

S: We are seeing again and again that the best thing to do is to leave the practice to the parties. The parties can adopt iron-clad, structured sets of procedural obligations if they so choose. One sees this in some construction contracts and it suits the industry. No doubt in five years they will have invented new process solutions.

Then there are hybrids or blended processes that contain elements of arbitration and mediation within the one procedure. For example, in some forms of neutral evaluation, the ADR provider proposes a settlement to the parties. If they do not object to it within 30 days, the settlement becomes binding and enforceable as a judgment. So there are elements of advisory and determinative processes.

A: Would this situation fall within the Model Law, after all there is a potentially binding outcome proposed by the ADR provider?

S: That is an interesting question. The Model Law specifically states that the conciliator has no power to impose a binding decision on the parties. It is really a matter of interpretation. Has the third party imposed a decision indirectly and by default; or has s/he made a suggestion that the parties have, after 30 days reflection, chosen to adopt in a binding and enforceable form? My own sense is that the process aims at formulating a recommendation to which the parties are invited to agree. The process will be conducted as a conciliation. After all, the parties are free to reject the proposal within 30 days of it being made. Therefore it should fall within the Model Law.

A: Earlier you mentioned the pillars of the Model Law. What are the main pillars of the Model Law?

S: The pillars of the Model Law are confidentiality, party autonomy and fair treatment. The single most important pillar, which I think requires legislative action, is the issue of confidentiality or the evidentiary privilege of admissions, proposals and views expressed during the mediation process.

The first aspect of confidentiality relates to the admissibility of evidence in subsequent proceedings. In order to succeed, parties in a mediation must be able to show their cards and have open and frank discussions. The parties will not want to make admissions if these admissions are likely to come back to haunt them. This may occur if, in the event of an unsuccessful mediation, the case then goes to arbitration or other determinative proceedings.

If, for example, during the mediation one party admits that its engineer made a technical error with the expectation of a similar admission from the other party, it is crucial that a legislative guarantee exists to the effect that such a statement is inadmissible as evidence in court or other subsequent proceedings.

Even where the parties commit themselves contractually not to offer what is said during a mediation as evidence in subsequent proceedings, there are many legal systems in which such an agreement may not be binding on the court or an arbitral tribunal. This would be the case in a number of central European states. In these and other jurisdictions, a judge may insist on hearing the evidence where it is considered crucial to the case. Accordingly, rules of conciliation procedure agreed upon by the parties, such as the UNCITRAL conciliation rules and other institutional rules of conciliation institutions, cannot guarantee the inadmissibility of admissions, proposals and statements made during the mediation as evidence in subsequent proceedings. This is the reason why legislative regulation of mediation is necessary.

The second aspect of confidentiality is the prohibition of the mediator from acting as an arbitrator or advisor in subsequent proceedings. It is good to enshrine this point in legislation and make the prohibition clear so as to give the parties security on this matter.

A further aspect of confidentiality arises in the context of information received by the mediator from one party on the condition that it is kept confidential. In the circumstances, the conciliator has a duty to keep the information confidential.

The final aspect of confidentiality is that the parties are bound by a general duty of confidentiality not to disclose to anyone what happened during the mediation. They are not at liberty to publish or, for example, have a press conference about what happened during the mediation.

The statutory duty of confidentiality is a useful disciplinary measure. But it would not be recommended to have a law of mediation about confidentiality alone. That is why the Working Group began with a definition of mediation (conciliation) as the subject of

regulation. We then considered it useful to offer something like a 'starter kit' for mediation proceedings. So, for example, the Model Law regulates the appointment of mediators and expresses a few general and universally acceptable procedural principles. While not essential, it was valuable to include some general procedural regulation in the form of default provisions to give more context to the Model Law. Parties can always regulate these aspects differently by contract. This allows mediation to maintain its flexibility.

A: What would you say to people who criticise the confidentiality provisions as having so many exceptions as to render the concept of mediation facilitating a full and frank discussion meaningless?

S: I would regard this criticism as unfounded. It is perhaps even dangerous from the viewpoint of public policy. If I am in a mediation and I make an admission or a proposal, of course I want this to be confidential. But if I have an invoice in my hand, before I even become aware of the mediation, and I show it to the other party in an effort to convince him/her to pay, then I should not lose the opportunity to use this piece of evidence in subsequent court proceedings. If the law provided that I would lose this piece of evidence, I would be in a quandary. I would want to use the invoice in the mediation, but would scarcely be able to do so because, if the mediation failed, I would need the invoice as evidence to prove my case in court.

Perfectly admissible evidence that existed before mediation takes place does not become inadmissible solely by virtue of the fact that it was used in mediation. Admissions, proposals, statements and views, the fact that one party indicated its willingness to accept the proposal – all these matters that actually arise during the mediation process are inadmissible. Everything else is potentially admissible.

In addition, for reasons of public policy, the duty of confidentiality must be subject to further overriding exceptions. For example, if a mediation reveals a threat to public health, an intent to harm the environment, a terrorist threat or similar, the duty of confidentiality must yield to other principles of law.

There is, of course, the additional general duty of confidentiality in Article 9. Certain information, which does not fall under Article 10, may be caught by Article 9. For example, while certain information may be admissible in evidence in other proceedings, the conciliator and other participants are forbidden to pass on that information to other persons or the public.

I think we drafted the articles on confidentiality very carefully and have provided a balanced solution. Such an approach manages potential misuse of the mediation process. For example, it does not attach inadmissibility to something which should be admissible for reasons of public policy. At the same time it provides a commercially reasonable solution to safeguard the legitimate interests of parties.

A: A related issue is the enforceability of agreements to mediate and the enforceability of settlements. Could you make some comments about these issues?

S: First let us discuss the enforceability of settlements. Everybody agrees that the settlement agreement is a contract and therefore enforceable as a contract. If parties participating in the mediation are properly advised, they will draft a settlement agreement that is legally binding as a contract and will be able to obtain a judgment to enforce it. So my first observation is that the problem is not as severe as it seems. There is no compelling need to change the nature of an instrument which is, in essence, a contract. Why do we want to give the settlement agreement the force of a judgment?

A: Or an award?

S: Indeed. Settlement agreements are the result of the parties taking control of the management of their own dispute with the help of a mediator. They often contain elements that are unique to the parties and not easily enforceable as judgments or awards. Settlement agreements may include revisions of existing contracts, promises to negotiate contractual obligations in the future, or 'best efforts' clauses. There may also be clear cut obligations in settlement agreements: for example, to pay an amount of money.

It is a potential source of problems to give a settlement agreement the force of a judgment or an award because it was not formulated by a judge or an arbitrator as the result of an adversarial process. By declaring the settlement agreement an award or a judgment, one may lose the opportunity of addressing potential issues of fraud and duress that may have occurred during the mediation process. Addressing those issues for the purposes of converting a settlement agreement into an award or judgment is complicated and, in the view of many, not worth the trouble.

Therefore, if a settlement were to be regarded as a judgment or an award, there would also be a need for a system of setting aside a settlement obtained as a result of duress or mistake. A court judgment typically cannot be challenged on such grounds because the parties are not responsible for the terms of the judgment. Such additions would introduce technical difficulties into the mediation system.

But these are not the only reasons. If one goes to court with a settlement agreement, the amount one has to prove is very limited. It is limited to the existence of the settlement agreement. One does not have to prove liability or fault stemming from the underlying conflict. Everything is crystallised in the settlement agreement. So the process of getting a judgment or an award is much more straightforward than going to court to prove a case.

A: Where there is a settlement agreement and one party is trying to prove that misleading and deceptive conduct or even fraud occurred during the mediation, that party will need to refer to events that occurred during the mediation and may want to subpoena the mediator. Doesn't this sort of situation open up a Pandora's box of conflicting domestic laws?

S: Yes, it would open up a Pandora's box indeed. There have been a small percentage of cases in which duress, cheating or other illegal activity occurs in the negotiating phase. I doubt that any legislature would want to forgo the tools that exist in the various domestic

legal systems to control and manage these rare instances in the context of mediation.

Giving a settlement agreement the strength of an arbitral award or a court judgment, in my opinion, means bowing to fashion. Mediation is now a big deal and people are so eager to promote it that they feel it should be institutionalised in order to give it more legal effect. But in my view we should not go overboard.

It is a different matter if one allows the parties to appoint an arbitrator with the specific purpose of incorporating the settlement agreement into an arbitral award or to approach a judge to confer expedited enforceability on the settlement in a standardised process. This may work in a number of jurisdictions and may add a welcome new quality to the mediation. The flexibility of the Model Law allows the parties to make a conscious decision to incorporate processes which involve transforming a settlement agreement into an award or court order. However, the parties will need to ensure they select a jurisdiction, the laws of which will facilitate their dispute processing needs.

A: So to summarise this point, would it be fair to say there are two views on the enforceability of settlements?

First, giving settlement agreements the strength of a judgment or an award would encourage parties to mediate transnational disputes. In particular, there would be more certainty and finality about the enforceability of a mediated agreement. Second, the alternate view (and your view) is that a contract is a very different beast to an award or a judgment. One cannot always include in an award matters which one would include in a settlement agreement. Items such as apologies, acknowledgments of past behaviour or acts, statements of intention of future behaviour and agreements to negotiate in the future are not typically enforceable and therefore would not be suitable for the terms of an award or judgment in most jurisdictions. Moreover, institutionalising settlement agreements by turning them into awards or judgments goes against the principles of voluntariness, party autonomy and responsibility in mediation.

The idea that parties take responsibility for their dispute, agree on a way forward and remain responsible for the implementation of what they have agreed is abandoned the moment settlement agreements are institutionalised. At this point the parties are relying on the private international justice system to guarantee an end to their dispute.

S: Yes, that is a fair summary. However, having said that, it is perhaps useful to provide expedited enforceability to certain settlements. Here we come across different domestic procedural traditions and these traditions do not lend themselves to a uniform rule. I would encourage states which adopt the Model Law to use procedures for the enforceability of settlement agreements with which they are familiar and comfortable in their particular legal tradition. For example, in a number of countries, if a notary co-signs a settlement agreement then it becomes enforceable in the same way as an award or a judgment. In other countries a similar effect may be achieved if the parties' lawyers co-sign the settlement. These solutions, which are known, for example, in Germany and Austria, work well in some systems, but may not work as well in others.

A: Would the German model have been an option that might have worked well in the Model Law?

S: We did not include it in the Model Law, *not* because we did not believe in this form of notarised settlement, but because we wanted countries to consider the law from their own perspective and include it if they so chose. For example, considering the function of US notaries, I doubt that the US legislature would be ready to permit notarised settlements in the United States of America to have such far reaching legal consequences.

The Model Law only offers limited harmonised rules upon which the UNCITRAL Working Group could agree on a global level. The enforceability issue is left to each country to deal with in the context of the enacting state. If the parties really want enforceability, they can appoint an arbitrator; they can even appoint a mediator as an arbitrator if it is done with the agreement of both parties. There is, of course, a prohibition in the Model Law on mediators also acting as arbitrators. However, as it is a default provision, both parties can agree to override it.

A: This last point of yours takes us back to one of the pillars of the Model Law: party autonomy.

S: Exactly. Consider the possibility that the parties, after they have reached a settlement agreement, appoint the mediator to be an arbitrator for five minutes. During those five minutes the mediator/arbitrator could issue an arbitral award on the agreed terms, which is recognised by Article 31 of the UNCITRAL Model Law on Arbitration.

When we discussed this possibility in the inter-governmental Working Group, some people said that it would work well on the basis of the experience in their countries. Others from legal systems such as the United States indicated that while it was an attractive idea, technically it would not work because in order to have an arbitration one needs to have a dispute. By definition once a settlement has been reached there is no longer a dispute. So from their perspective it would not work. I would venture to suggest that common law legal systems are particularly susceptible to this argumentation. While some may dispute the validity of this argument, it was considered important enough to exclude this form of med/arb from the Model Law.

A: Why would the idea of the mediator being appointed as an arbitrator to transform the settlement agreement into an award be less of a problem in civil law jurisdictions?

S: In civil law jurisdictions, the notion of dispute as a condition precedent to arbitration is broader than in common law jurisdictions. Where debtors agree that they are liable but maintain that they do not have the money to pay, then there is no dispute in common law jurisdictions. However, in civil law jurisdictions there may still be a dispute. But this does not apply to all civil law countries. So one may need more than a clearly drafted settlement clause in order to convert it into an

arbitral award or make it otherwise directly enforceable.

A: So from what you are saying, the process for enforceability of mediated settlements needs to be developed with practice. I imagine it would be very important at the preliminary meetings of a mediation to look at the level of enforceability desired by the parties and to be very clear about this.

S: Yes. This leads to the related issues about the applicable law, negotiating the process of enforceability upfront and committing it all to writing.

A: Some people would say that this sort of system would encourage forum shopping. Where one party decides it no longer wishes to abide by the terms of a settlement agreement, that party may forum shop to find the domestic law least likely to enforce the settlement. What are your thoughts on this point?

S: In a voluntary process in which each party can pull the plug at any moment, there is no harm in forum shopping. People can choose the mediator, the place and the applicable law. If they cannot agree on these views then the mediation will terminate anyway. In most cases theses issues will be sorted out before a settlement is reached.

A: Article 5 deals with the appointment of conciliators. Under the provision it is quite possible that the parties may not be able to agree on the conciliator(s). There is no fallback or default provision if the parties cannot agree. If this provision was a contractual clause in Australia, there is a good chance that a court would hold it to be unenforceable due to lack of certainty of terms. What was UNCITRAL's reasoning for providing such an open-ended appointment process?

S: The idea was that the parties should be able to successfully negotiate the appointment of conciliators themselves if they are serious about participating in the conciliation. There is therefore no compelling need for a complete fall-back procedure.

Of course the parties will often agree to refer to standard rules of an institution or procedural traditions in order to appoint a mediator. In court-annexed mediation the court may appoint a mediator. The Model Law will yield to these specific situations because of the default nature of Article 5. Again, UNCITRAL's texts aim to be workable in all countries of the world, so a non-intrusive default provision is more likely to be acceptable across the board.

A: We have spoken about the enforceability of settlements. What about the enforceability of agreements to conciliate? What happens when one party initiates conciliation on the basis of an agreement to conciliate in a commercial contract and the other party argues that this clause is not enforceable?

S: Well, in that case it will depend on how the clause was drafted. There may be contractual liability, liability for costs if a party does not live up to what it has agreed. If the case was referred to mediation by a court, whether or not there was an agreement to mediate, then there may be further consequences – even contempt of court depending on what the local law provides. The Working Group elected not to legislate on such matters because it would interfere to an unnecessary extent with well-established principles of domestic contract law and procedural law.

It is left to the national laws to determine whether an agreement to conciliate is enforceable and to determine the consequences of the violation of such agreements. Whether an agreement to conciliate is enforceable pursuant to the national law depends on the origin of the mediation process – whether it be an existing clause in a commercial contract or an ad hoc agreement by the parties.

The enforceability of such an agreement also depends on the drafting of the clause. If, for example, one has an elaborate clause saying that the parties commit themselves not to commence arbitration proceedings until they have had five meetings with mediators and explored all options, it would be reasonable to have some contractual consequences for violating this clause. On the other hand, one could have a more generally worded clause saying that the parties will try to settle their dispute amicably, and, if not, go to arbitration.

What does this clause mean? Must the parties engage (and pay) a third neutral mediator before they can go to arbitration? The answer depends on the interpretation of the clause. One cannot determine whether an agreement to conciliate is enforceable, without considering the law of the applicable jurisdiction. Professor Alexander, you mentioned that under your law certain conciliation agreements are not enforceable because their terms are not sufficiently clear and certain. Hence the enforceability of a duty to mediate or conciliate is left to a contractual agreement and the applicable contract law of national jurisdictions.

It may be that at some time in the future harmonised rules on the enforceability of agreements to mediate will be prepared, but at this stage I think the international community is not ready for them. Where conciliation is specified as a precondition to arbitration, such an agreement would then be enforced either by a court under international private law or an international arbitral tribunal.

A: Article 13 deals with the possibility of staying arbitral and judicial proceedings as a way to enforce agreements to conciliate, in which the commitment to refrain from arbitrating or litigating until certain pre-conditions are met is clearly set out. The proviso 'except to the extent necessary for a party, in its opinion, to preserve its rights' has been criticised for being so wide as to strip the provision of its effectiveness. What are your views on this?

S: It is true that the provision opens a wide door to instituting arbitral or court proceedings. At the same time, it gives comfort to parties. They will be more likely to agree to mediate because they will not be subject to restrictions regarding their process options.

A: You have spoken about the voluntary nature of mediation and the fact that the parties may 'pull the plug' or withdraw from the mediation at any time. In fact, under the terms of the Model Law, the parties are not compelled to attend a first mediation session. Many institutionalised rules of courts or chambers of commerce such as the International Chamber of

Commerce (ICC) require disputing parties to attend the first meeting. Beyond this point, the parties are free to withdraw at any time. The theory is that, in the context of a global disputing culture in rapid change, such mandatory attendance rules establish a minimum certainty of participation and, importantly, may enable parties from cultures where negotiating is a sign of weakness to save face. Where parties have engaged a skilled conciliator, they may see an opportunity in the first meeting to settle. If they don't, they have lost nothing. Why did UNCITRAL *not* go down this path?

S: There were indeed suggestions that UNCITRAL should draft a rule stipulating that the parties must have at least one meeting. There were several reasons why we did not go down this path. One reason was that, unlike the ICC, which is operating with a specific ADR clause and a set of rules providing a certain predictability of procedure, UNCITRAL is dealing with the broadest spectrum of international situations including 'dinner party mediations'.

A: What is a 'dinner party mediation'?

S: When two people have a dispute and they call a third person that they trust and say 'Let's go for a beer. Can you help us solve our dispute?' No one may have uttered the word 'mediation'. These people do what comes naturally and makes common sense. They ask a business 'elder' to help them solve their problem. Now, according to the Model Law, this is a mediation. These parties and the mediator may therefore be covered by the Model Law. What does it mean 'to meet'? Would this count as a first meeting or would it be classified as a preliminary pre-mediation meeting?

Let's use electronic commerce as another example. What does it mean 'to meet'? If you are in Australia and I am in Austria, we can meet in cyberspace; we could exchange emails. But where are we technically meeting and are we meeting at all in the first place?

Take a very simple dispute resolution clause: 'The parties will try to settle the dispute amicably, and if they do not settle, they will refer the matter to arbitration.' Must the parties on the basis of this clause fly from Australia to London to have one meeting with the mediator? No. It would be going too far to demand this in all cases. This is why we left any obligation to meet to the agreed procedural rules. It is true that requiring the parties to meet can be very useful in many cases. However, if one applies it to cover the whole spectrum of mediation situations, it is too rigid. UNCITRAL wants to encourage as many countries as possible to enact the Model Law and not to discourage them by being overly prescriptive about procedural elements of mediation. ●

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