



# General Assembly

Distr.: General  
7 April 2021

Original: English

## United Nations Commission on International Trade Law

### Fifty-fourth session

Vienna, 28 June–16 July 2021

## Provisional agenda, annotations thereto and scheduling of meetings of the fifty-fourth session

### I. Provisional agenda, scheduling of meetings and documentation

<i>Agenda item</i>	<i>Proposed date(s)/time for consideration</i>	<i>Pre-session documentation</i>
1. Opening of the session.	Monday, 28 June, 11–11.30 a.m.	Provisional agenda, annotations thereto and scheduling of meetings of the fifty-fourth session: A/CN.9/1041
2. Election of officers.		
3. Adoption of the agenda.		
4. Consideration of a text on an UNCITRAL limited liability organization	Monday, 28 June– Wednesday, 30 June, a.m.	Draft legislative guide on an UNCITRAL limited liability organization: A/CN.9/1062
5. Consideration of a text on a simplified insolvency regime	Wednesday, 30 June, p.m. – Friday, 2 July	Report of Working Group V (Insolvency Law) on the work of its fifty-eighth session: A/CN.9/1052
6. Consideration of texts in the area of mediation:	Monday, 5 July – Wednesday, 7 July, a.m.	Draft guide to enactment and use of the UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation: A/CN.9/1073
(a) a Guide to Enactment and Use of the UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation;		Draft UNCITRAL mediation rules: A/CN.9/1074
(b) UNCITRAL mediation rules; and		Draft UNCITRAL notes on mediation: A/CN.9/1075
(c) UNCITRAL notes on mediation.		
7. Consideration of draft UNCITRAL Expedited Arbitration Rules and the accompanying explanatory note	Wednesday, 7 July, p.m. – Friday, 9 July	Draft UNCITRAL Expedited Arbitration Rules: A/CN.9/1082



Agenda item	Proposed date(s)/time for consideration	Pre-session documentation
8. Progress report of working groups	Monday, 12 July	<p>Draft UNCITRAL Expedited Arbitration Rules – Explanatory Note: A/CN.9/1082/Add.1</p> <p>Compilation of comments: A/CN.9/1078</p> <p>Report of Working Group I (MSMEs) and summary of the chairperson and the rapporteur on the work of its thirty-fourth and thirty-fifth sessions, respectively: <a href="#">A/CN.9/1042</a> and A/CN.9/1048</p> <p>Reports of Working Group II (Dispute Settlement) on the work of its seventy-second and seventy-third sessions: <a href="#">A/CN.9/1043</a> and A/CN.9/1049</p> <p>Reports of Working Group III (ISDS Reform) on the work of its thirty-ninth, fortieth, and resumed fortieth sessions: A/CN.9/1044, A/CN.9/1050 and A/CN.9/1054</p> <p>Reports of Working Group IV (Electronic Commerce) on the work of its sixtieth and sixty-first sessions: <a href="#">A/CN.9/1045</a> and A/CN.9/1051</p> <p>Reports of Working Group V (Insolvency Law) on the work of its fifty-seventh and fifty-eighth sessions: <a href="#">A/CN.9/1046</a> and A/CN.9/1052</p> <p>Reports of Working Group VI (Judicial Sale of Ships) on the work of its thirty-seventh and thirty-eighth sessions: <a href="#">A/CN.9/1047/Rev.1</a> and A/CN.9/1053</p>
9. Coordination and cooperation	Id.	<p>A note by the Secretariat on coordination activities: A/CN.9/1069</p> <p>A note by the Secretariat on invited organizations: A/CN.9/1072</p> <p>[Oral reports by invited international organizations may be expected at the session under this item]</p>
<p>10. Secretariat reports on non-legislative activities:</p> <p>(a) Technical assistance, cooperation and activities to support the use of UNCITRAL texts;</p> <p>(b) Status and promotion of UNCITRAL legal texts and the New York Convention;</p> <p>(c) Relevant General Assembly resolutions;</p>	Id.	<p>A note by the Secretariat on technical cooperation and assistance: A/CN.9/1058</p> <p>A note by the Secretariat on dissemination of information and related activities to support UNCITRAL's work and the use of its texts, including report on CLOUT and digests: A/CN.9/1059</p> <p>Report of the Regional Centre for Asia and the Pacific: A/CN.9/1057</p> <p>A note by the Secretariat on the status of conventions, model laws and the</p>

Agenda item	Proposed date(s)/time for consideration	Pre-session documentation
<p>(d) Current role of UNCITRAL in promoting the rule of law;</p> <p>(e) Bibliography of recent writings related to the work of UNCITRAL.</p>		<p>operation of the Transparency Registry: A/CN.9/1056</p> <p>A note by the Secretariat on relevant General Assembly resolutions: <a href="#">A/CN.9/1070</a></p> <p>A note by the Secretariat on the current role of UNCITRAL in promoting the rule of law and the implementation of Sustainable Development Goals: A/CN.9/1071</p> <p>Bibliography of recent writings related to the work of UNCITRAL: A/CN.9/1055</p>
<p>11. Work programme of the Commission:</p> <ul style="list-style-type: none"> <li>- Consideration of the report of the colloquium on applicable law in insolvency proceedings (Vienna, 11 December 2020) and further consideration of the proposals arising out of the colloquium on civil asset tracing and recovery (Vienna, 6 December 2019);</li> <li>- Consideration of the results of the Secretariat preparatory work on warehouse receipts; and</li> <li>- Consideration of the results of the Secretariat preparatory work on legal issues of negotiable multimodal transport documents.</li> </ul>	<p>Tuesday, 13 July</p>	<p>A note by the Secretariat giving a general overview of the work programme of the Commission and of its working groups and secretariat and of resources required to implement it: A/CN.9/1068</p> <p>Report of the colloquium on applicable law in insolvency proceedings: A/CN.9/1060</p> <p>Report of the colloquium on civil asset tracing and recovery: <a href="#">A/CN.9/1008</a></p> <p>Note by the Secretariat on preparatory work on legal issues of warehouse receipts: A/CN.9/1066</p> <p>Note by the Secretariat on preparatory work on legal issues of negotiable multimodal transport documents: A/CN.9/1061</p>
<p>11. Work programme of the Commission (cont.):</p> <ul style="list-style-type: none"> <li>- Consideration of the results of the Secretariat exploratory and preparatory work on legal issues arising from digital economy, including dispute resolution;</li> <li>- Consideration of the results of the Secretariat exploratory work on the impact of COVID-19 on international trade law;</li> <li>- Consideration of any additional topics for possible future work by UNCITRAL; and</li> <li>- Consideration of resource requirements for the implementation of the Commission work programme.</li> </ul>	<p>Wednesday, 14 July</p>	<p>Note by the Secretariat on exploratory work on legal issues related to the digital economy (including dispute resolution): A/CN.9/1064 and addenda</p> <p>Note by the Secretariat on a proposal for legislative work on electronic transactions and the use of artificial intelligence and automation A/CN.9/1065</p> <p>Notes by the Secretariat on exploratory work on the impact of COVID-19 on international trade law: A/CN.9/1080 and A/CN.9/1081</p> <p>Work and resourcing plan to implement investor-State dispute settlement reform and resource requirements: A/CN.9/1063</p>

<i>Agenda item</i>	<i>Proposed date(s)/time for consideration</i>	<i>Pre-session documentation</i>
		[Proposals by States and international organizations for future work may be expected].
11. Work programme of the Commission (cont.): - Consideration of resource requirements for the implementation of the Commission work programme (cont.).	Thursday, 15 July	
12. Other business (a) Enlargement of UNCITRAL membership; (b) Evaluation of the role of the UNCITRAL secretariat in facilitating the work of the Commission; (c) Other matters.	Id.	A note on the enlargement of UNCITRAL membership submitted by Japan: A/CN.9/1067
13. Date and place of future meetings	Id.	Provisional agenda, annotations thereto and scheduling of meetings of the fifty-fourth session: A/CN.9/1041 (see paras. 60-64 below)
14. Virtual panel discussion on technical assistance activities	Friday, 16 July, a.m.	–

## II. Annotations to agenda items provisionally scheduled for the fifty-fourth session

### 1. Opening of the session

1. The fifty-fourth session of the Commission will be held virtually and at the Vienna International Centre in Vienna, from 28 June to 16 July 2021.<sup>1</sup> The session will be opened on Monday, 28 June 2021, at 11 a.m.

2. As at 28 June 2021, the United Nations Commission on International Trade Law will be composed of the following member States: Algeria (2025), Argentina (2022), Australia (2022), Austria (2022), Belarus (2022), Belgium (2025), Brazil (2022), Burundi (2022), Cameroon (2025), Canada (2025), Chile (2022), China (2025), Colombia (2022), Côte d'Ivoire (2025), Croatia (2025), Czechia (2022), Dominican Republic (2025), Ecuador (2025), Finland (2025), France (2025), Germany (2025), Ghana (2025), Honduras (2025), Hungary (2025), India (2022), Indonesia (2025), Iran (Islamic Republic of) (2022), Israel (2022), Italy (2022), Japan (2025), Kenya (2022), Lebanon (2022), Lesotho (2022), Libya (2022), Malaysia (2025), Mali (2025), Mauritius (2022), Mexico (2025), Nigeria (2022), Pakistan (2022), Peru (2025), Philippines (2022), Poland (2022), Republic of Korea (2025), Romania (2022), Russian Federation (2025), Singapore (2025), South Africa (2025), Spain (2022), Sri Lanka (2022), Switzerland (2025), Thailand (2022), Turkey (2022), Uganda (2022), Ukraine (2025), United Kingdom of Great Britain and Northern Ireland (2025), United States of America (2022), Venezuela (Bolivarian Republic of) (2022), Viet Nam (2025) and Zimbabwe (2025).

<sup>1</sup> *Official Records of the General Assembly, Seventy-fifth Session, Supplement No. 17 (A/75/17)*, part two, para. 94.

3. Member States not members of the Commission, non-Member States having received a standing invitation to participate as observers in the sessions and the work of the General Assembly, and international governmental organizations may attend the session as observers and participate in the deliberations. In addition, invited international non-governmental organizations may attend the session as observers and represent the views of their organizations on matters where the organization concerned has expertise or international experience so as to facilitate the deliberations at the session.

## 2. Election of officers

4. Pursuant to a decision taken by the Commission at its first session, the Commission elects, for each session, a Chairperson, three Vice-Chairpersons and a Rapporteur.

## 4. Consideration of a text on an UNCITRAL limited liability organization

5. At its forty-sixth session, in 2013, the Commission requested that a working group should commence work aimed at reducing the legal obstacles encountered by micro, small and medium-sized enterprises (MSMEs) throughout their life cycle, and, in particular, in developing economies.<sup>2</sup> At that session, the Commission also agreed that such work should start with a focus on the legal questions surrounding the simplification of incorporation,<sup>3</sup> and that the work should be allocated to Working Group I.<sup>4</sup> That mandate was reaffirmed by the Commission at its forty-seventh to fifty-second sessions, in 2014 to 2019, respectively.<sup>5</sup>

6. In accordance with that mandate, the Working Group proceeded to consider the legal issues surrounding the simplification of incorporation as well as good practices in business registration, both of which aimed at reducing the legal obstacles encountered by MSMEs throughout their life cycle. At its forty-ninth session, in 2016, the Commission noted the decision of the Working Group to proceed with the preparation of a legislative guide in respect of each of those two topics.<sup>6</sup> Following the adoption of the *UNCITRAL Legislative Guide on Key Principles of a Business Registry*, in 2018,<sup>7</sup> the Working Group continued its deliberations on the draft legislative guide on an UNCITRAL Limited Liability Organization (UNLLO).

7. The thirty-fourth session of the Working Group, originally scheduled in New York from 23 to 27 March 2020, was postponed due to the spread of the coronavirus disease (COVID-19) and was held in Vienna from 28 September to 2 October 2020 (allowing for in-person and remote participation of delegations). At that session, the Working Group further progressed in its revision of the draft legislative guide mainly focusing on the recommendations in part II of the text.

8. At its thirty-fifth session (Vienna, 25–29 January 2021), which was originally scheduled to take place in New York from 22 to 26 March 2021 and was rescheduled due to the spread of the COVID-19, the Working Group completed a final reading of the draft guide focusing in particular on its commentary and requested the Secretariat to prepare the text for its transmission to the Commission for consideration at its fifty-fourth session.

<sup>2</sup> Ibid., *Sixty-eighth Session, Supplement No. 17 (A/68/17)*, para. 321.

<sup>3</sup> Ibid.

<sup>4</sup> Ibid., para. 322.

<sup>5</sup> Ibid., *Sixty-ninth Session, Supplement No. 17 (A/69/17)*, para. 134; *ibid.*, *Seventieth Session, Supplement No. 17 (A/70/17)*, paras. 225 and 340; *ibid.*, *Seventy-first Session, Supplement No. 17 (A/71/17)*, para. 347; *ibid.*, *Seventy-second Session, Supplement No. 17 (A/72/17)*, para. 235; *ibid.*, *Seventy-third session, Supplement No. 17 (A/73/17)*, para. 238 (a); and *ibid.*, *Seventy-fourth session, Supplement No. 17 (A/74/17)*, para. 192 (a).

<sup>6</sup> Ibid., *Seventy-first Session, Supplement No. 17 (A/71/17)*, paras. 220–221.

<sup>7</sup> Ibid., *Seventy-third Session, Supplement No. 17 (A/73/17)*, para. 111.

9. At its fifty-fourth session, the Commission will have thus before it the draft legislative guide on an UNCITRAL Limited Liability Organization (A/CN.9/1062) for finalization and adoption.

## 5. Consideration of a text on a simplified insolvency regime

10. At its forty-ninth session, in 2016, the Commission agreed that Working Group V (Insolvency Law) should develop appropriate mechanisms and solutions, focusing on both natural and legal persons engaged in commercial activity, to resolve the insolvency of MSMEs. The Commission was of the view that, while the key insolvency principles and the guidance provided by the UNCITRAL Legislative Guide on Insolvency Law should be the starting point for discussions, the Working Group should aim to tailor the mechanisms already provided in the Legislative Guide to specifically address MSMEs and develop new and simplified mechanisms as required, taking into account the need for those mechanisms to be equitable, fast, flexible and cost efficient. It was noted at that time that the form the work might take should be decided at a later time based on the nature of the various solutions that were being developed.<sup>8</sup>

11. After a preliminary discussion of the topic,<sup>9</sup> the Working Group, having completed its work on enterprise group insolvency, had commenced detailed deliberations of features of a simplified insolvency regime, deciding to focus on the needs of micro and small entities (MSEs) in the first instance and deferring the definition of such entities to States.<sup>10</sup> At its fifty-third session, in 2020, the Commission confirmed that the work on a simplified insolvency regime should continue in Working Group V with a view to adopting a text on that topic by the Commission, if possible, already at its fifty-fourth session, in 2021, also in the light of the relevance of the topic to COVID-19 response and recovery measures.<sup>11</sup> The Commission acknowledged the importance of coordinating the work with Working Group I and with that of the World Bank while the World Bank was updating its Principles for Effective Insolvency and Creditor/Debtor Regimes in order to deal with specific aspects of the insolvency of MSEs.<sup>12</sup>

12. The detailed consideration of the topic proceeded at the Working Group's fifty-seventh session (Vienna, 7–10 December 2020), postponed from May 2020 due to the COVID-19 pandemic. The deliberations at that session took place on the basis of a note by the Secretariat (A/CN.9/WG.V/WP.170/Rev.1) that reflected the results of the informal consultations held on 16, 23, 30 and 31 January and 6 February 2020 in preparation for the May 2020 session and the results of the informal consultations held by the Working Group from 11 to 15 May 2020 and 3 and 4 September 2020 on document A/CN.9/WG.V/WP.170 prepared for the May 2020 session. At its fifty-seventh session, the Working Group considered the draft glossary and draft recommendations 1 to 64 but did not have time to consider the remaining draft recommendations (draft recommendations 65-88) and the draft commentary. At its fifty-eighth session (New York, 4–7 May 2021), the Working Group continued detailed consideration of the topic on the basis of a revised text contained in document A/CN.9/WG.V/WP.172 and Add.1.

13. At its fifty-fourth session, the Commission will have before it the report of the Working Group on the work of its fifty-eighth session (A/CN.9/1052) with an annex

<sup>8</sup> Ibid., *Seventy-first Session, Supplement No. 17 (A/71/17)*, para. 246.

<sup>9</sup> See reports of the fifty-first (New York, 10–19 May 2017), fifty-third (New York, 7–11 May 2018) and fifty-fourth (Vienna, 10–14 December 2018) sessions of the Working Group (A/CN.9/903, paras. 13–14; A/CN.9/937, chapter VI; and A/CN.9/966, paras. 114–143).

<sup>10</sup> See the report of the fifty-fifth session of the Working Group (New York, 28–31 May 2019) (A/CN.9/972).

<sup>11</sup> *Official Records of the General Assembly, Seventy-fifth Session, Supplement No. 17 (A/75/17)*, part two, para. 45.

<sup>12</sup> Ibid., part one, para. 42.

containing draft recommendations on a simplified insolvency regime for consideration by the Commission.

## **6. Consideration of texts in the area of mediation**

### **(a) Guide to Enactment and Use of the UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation (2018)**

14. At its fifty-first session, in 2018, the Commission agreed that the Secretariat should be tasked with the preparation of a text to supplement the “Guide to enactment and use of the UNCITRAL Model Law on International Commercial Conciliation”<sup>13</sup> in light of the UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation adopted by the Commission at that session.<sup>14</sup>

15. At its fifty-third session, the Commission had before it a draft guide to enactment and use of the UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation (2018) (A/CN.9/1025). Due to a significantly reduced agenda because of the COVID-19 pandemic, the Commission requested Working Group II to review the draft guide so as to facilitate the adoption at the Commission session.<sup>15</sup>

16. At its fifty-fourth session, the Commission will have before it for finalization and adoption the revised draft guide (A/CN.9/1073), incorporating comments received and as reviewed by the Working Group.

### **(b) UNCITRAL mediation rules and UNCITRAL notes on mediation**

17. At its fifty-first session, in 2018, the Commission noted that, in the area of dispute settlement, the Secretariat would prepare notes on organizing mediation proceedings and update the UNCITRAL Conciliation Rules<sup>16</sup> in light of the two texts finalized by the Commission at that session (the United Nations Convention on International Settlement Agreements Resulting from Mediation, adopted by the General Assembly in December 2018<sup>17</sup> and the UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation).<sup>18</sup>

18. At its fifty-second session, in 2019, the Commission had before it the draft UNCITRAL mediation rules (A/CN.9/986) and the draft UNCITRAL notes on mediation (A/CN.9/987) prepared by the Secretariat in broad consultation with experts. At that session, acknowledging that the Commission would not be in a position to adopt the draft mediation texts at the session, it was agreed that the Commission would consider both texts at its next session, in 2020. In order to ensure that comments from States and other interested organizations would be further reflected in the drafts to be presented to the Commission at its next session, States and other interested organizations were invited to submit comments on the draft mediation texts.<sup>19</sup>

19. At its fifty-third session, the Commission had before it a revised draft of UNCITRAL mediation rules (A/CN.9/1026), a revised draft of UNCITRAL notes on mediation (A/CN.9/1027), as well as a compilation of comments that the Secretariat

<sup>13</sup> *UNCITRAL Yearbook*, vol. XXXIII: 2002, part three, annex II.

<sup>14</sup> *Official Records of the General Assembly, Seventy-third Session, Supplement No. 17 (A/73/17)*, paras. 67–68 and annex II.

<sup>15</sup> *Ibid.*, *Seventy-fifth Session, Supplement No. 17 (A/75/17)*, part two, paras. 15(d) and 30.

<sup>16</sup> *Ibid.*, *Thirty-fifth Session, Supplement No. 17 (A/35/17)*, chap. V, sect. A, para. 106. See also *UNCITRAL Yearbook*, vol. XI: 1980, part three, annex II.

<sup>17</sup> General Assembly resolution 73/198. See also *Official Records of the General Assembly, Seventy-third Session, Supplement No. 17 (A/73/17)*, para. 49 and annex I.

<sup>18</sup> *Official Records of the General Assembly, Seventy-third Session, Supplement No. 17 (A/73/17)*, para. 254.

<sup>19</sup> *Ibid.*, *Seventy-fourth session, Supplement No. 17 (A/74/17)*, para. 118–123.

received on those texts (A/CN.9/1031 and addenda). As the agenda was significantly reduced due to the COVID-19 pandemic, the Commission requested Working Group II to review both texts so as to facilitate the adoption at the next Commission session.<sup>20</sup>

20. At its fifty-fourth session, the Commission will have before it for finalization and adoption the revised draft UNCITRAL mediation rules (A/CN.9/1074) and the draft UNCITRAL notes on mediation (A/CN.9/1075), including comments received and as reviewed by the Working Group.

## 7. Consideration of the draft UNCITRAL Expedited Arbitration Rules

21. The Commission, at its fifty-first session in 2018, agreed that Working Group II should be mandated to take up issues relating to expedited arbitration.<sup>21</sup> Accordingly, the Working Group commenced its consideration of issues relating to expedited arbitration at its sixty-ninth session (New York, 4–8 February 2019) and continued its deliberation of the expedited arbitration provisions until the seventy-third session (New York, 22–26 March 2021).

22. At its seventy-third session, the Working Group considered the draft text of the UNCITRAL Expedited Arbitration Rules. At the close of its deliberation, the Secretariat was requested to prepare a revised version of the UNCITRAL Expedited Arbitration Rules including its annexes, as approved by the Working Group and based on the deliberations at the session, and to present them to the Commission.

23. With regard to the explanatory note to the UNCITRAL Expedited Arbitration Rules, the Secretariat was requested to prepare a revised version based on all the comments received and present it to the Commission. The Working Group further suggested that should the Commission not be in a position to finalize and adopt the explanatory note, that the Working Group be mandated to finalize the explanatory note at its session in the second half of 2021.

24. At its fifty-fourth session, the Commission will have before it for finalization and adoption the draft UNCITRAL Expedited Arbitration Rules (A/CN.9/1082), the accompanying explanatory note (A/CN.9/1082/Add.1) and the compilation of comments received by the Secretariat on these texts (A/CN.9/1078).

## 8. Progress report of working groups

### (a) Working Group I (Micro, small and medium-sized enterprises (MSMEs))

25. At its thirty-fourth session (Vienna, 28 September to 2 October 2020) and thirty-fifth session (Vienna, 25–29 January 2021), in addition to the draft legislative guide on an UNCITRAL Limited Liability Organization (see paras. 5–9 above), the Working Group reviewed the draft model organization rules (A/CN.9/WG.I/WP.118, appendix II and A/CN.9/WG.I/WP.122, appendix) prepared by the Secretariat upon request of the Working Group at its thirty-third session. At the end of the thirty-fifth session, the Working Group agreed to request the Commission to mandate the Secretariat to draft guidance, with the assistance of experts, to assist States in the preparation of model organization rules. The Commission may thus wish to consider such request.

26. At its fifty-second session, the Commission agreed to request the Secretariat to start preparing draft materials on MSME access to credit for consideration by the Working Group. The Working Group has not yet reviewed those materials (A/CN.9/WG.I/119 and Add.1) as the priority was to finalize the work on the draft legislative guide on an UNCITRAL Limited Liability Organization.

27. At its fifty-fourth session, the Commission will have before it the report of the thirty-fourth session of the Working Group (A/CN.9/1042) and the summary of the

<sup>20</sup> Ibid., *Seventy-fifth Session, Supplement No. 17 (A/75/17)*, part two, paras. 15(d) and 30.

<sup>21</sup> Ibid., *Seventy-third Session, Supplement No. 17 (A/73/17)*, para. 252.



chairperson and the rapporteur on the work at the thirty-fifth session of the Working Group (A/CN.9/1048).

**(b) Working Group II (Dispute Settlement)**

28. At its seventy-second session (Vienna, 21–25 September 2020), the Working Group considered the draft provisions on expedited arbitration as prepared by the Secretariat (A/CN.9/WG.II/WP.214 and its addendum). At the end of that session, the Secretariat was requested to update the draft provisions based on the deliberations (A/CN.9/1043, para. 110). In addition, the Secretariat was requested to prepare draft texts that could be included in a guidance document and to prepare a model arbitration clause for expedited arbitration.

29. At its seventy-third session (New York, 22–26 March 2021), the Working Group continued its deliberation of the draft provisions on expedited arbitration as prepared by the Secretariat (A/CN.9/WG.II/WP.216) and approved the UNCITRAL Expedited Arbitration Rules. The Working Group also conducted a brief review of the draft texts on international mediation.<sup>22</sup>

30. At the end of that session, the Secretariat was requested to prepare a revised version of the UNCITRAL Expedited Arbitration Rules and its annexes based on the deliberations at the session and to present them to the Commission (A/CN.9/1049, para. 65). With regard to the explanatory note to the UNCITRAL Expedited Arbitration Rules, the Secretariat was requested to prepare a revised version based on all the comments received and present it to the Commission (A/CN.9/1049, para. 66). The Secretariat was also requested to prepare a revised version of the three instruments on mediation based on the comments received and to present them to the Commission (A/CN.9/1049, para. 71).

31. Considering the request by the Commission to consider how the UNCITRAL Expedited Arbitration Rules could be presented in connection with the UNCITRAL Arbitration Rules,<sup>23</sup> the Working Group also suggested that it be mandated to consider and develop draft provision 17 as contained in document A/CN.9/WG.II/WP.216 further for possible inclusion in the UNCITRAL Arbitration Rules (A/CN.9/1049, para. \*\*). The suggestion was based on the support that had been expressed in the Working Group for providing arbitral tribunals with tools to dismiss non-meritorious claims and defences as well as to make preliminary determinations.

32. At its fifty-fourth session, the Commission will have before it the reports of the seventy-second and seventy-third sessions of the Working Group (respectively A/CN.9/1043 and A/CN.9/1049).

**(c) Working Group III (ISDS Reform)**

33. At its fiftieth session, in 2017, the Commission entrusted Working Group III with a broad mandate to work on the possible reform of investor-State dispute settlement (ISDS), and in particular: (a) to identify and consider concerns regarding ISDS; (b) to consider whether reform was desirable in light of any identified concerns; and (c) if the Working Group were to conclude that reform was desirable, to develop any relevant solutions to be recommended to the Commission.<sup>24</sup>

34. At its thirty-sixth session (Vienna, 29 October–2 November 2018), the Working Group concluded that development of reforms by UNCITRAL was desirable to address concerns relating to cost and duration of ISDS, the appointment mechanism and related issues regarding arbitrators and decision makers, as well as the lack of

<sup>22</sup> Draft UNCITRAL Mediation Rules (A/CN.9/1026); draft UNCITRAL Notes on Mediation (A/CN.9/1027); and draft Guide to Enactment and Use of the UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation (2018) (A/CN.9/1025).

<sup>23</sup> *Official Records of the General Assembly, Seventy-fifth Session, Supplement No. 17 (A/75/17)*, part two, para. 29.

<sup>24</sup> *Ibid.*, *Seventy-second Session, Supplement No. 17 (A/72/17)*, para. 264.

consistency, coherence, predictability and correctness of decisions by ISDS tribunals (A/CN.9/964, paras. 43, 53, 63, 83, 90, 98, 108, 123 and 133). At its thirty-seventh session (New York, 1–5 April 2019), the Working Group concluded that development of reforms by UNCITRAL was desirable to address concerns relating to third-party funding and also concluded that there was no additional concern that could be identified with regard to ISDS at the current stage of its deliberations (A/CN.9/970, paras. 25, 39 and 40).

35. At its thirty-eighth session (Vienna, 14–18 October 2019), the Working Group commenced work on phase three of its mandate, the development of relevant solutions, by agreeing on a project schedule aimed at considering multiple potential reform options simultaneously and at furthering the elaboration and development of potential solutions to be recommended to the Commission (A/CN.9/1004, paras. 25, 27 and 104). Accordingly, the Working Group considered at its thirty-eighth and resumed thirty-eighth (Vienna, 20–24 January 2020) sessions the following reform options: (a) establishment of an advisory centre (A/CN.9/1004, paras. 28–50); (b) code of conduct (A/CN.9/1004, paras. 51–78); (c) third-party funding (A/CN.9/1004, paras. 79–98); (d) appellate mechanisms (A/CN.9/1004/Add.1, paras. 16–61); (e) enforcement issues (A/CN.9/1004/Add.1, paras. 62–81); (f) financing of a permanent body (A/CN.9/1004/Add.1, paras. 82–94); (g) selection and appointment of ISDS tribunal members (A/CN.9/1004/Add.1, paras. 95–133). The Working Group concluded that preparatory work should be undertaken on each of these options, including further research and draft provisions for relevant instruments.

36. At its thirty-ninth (Vienna, 5–9 October 2020) session, the Working Group considered the following reform options: (a) dispute prevention and mitigation as well as other means of alternative dispute resolution (A/CN.9/1044, paras. 17–40); (b) multiple proceedings and counterclaims, including shareholder claims and reflective loss (A/CN.9/1044, paras. 41–63); (c) security for costs and frivolous claims (A/CN.9/1044, paras. 64–89); (d) treaty interpretation by States parties (A/CN.9/1044, paras. 90–101); and (e) multilateral instrument on ISDS reform (A/CN.9/1044, paras. 102–111). At its fortieth session (Vienna, 8–12 February 2021), the Working Group considered the question of selection and appointment of ISDS tribunal members in a standing mechanism (A/CN.9/1050, paras. 17–56) as well as draft text on appellate mechanism (A/CN.9/1050, paras. 57–113). Its resumed fortieth session (Vienna, 4–5 May 2021) was devoted to the consideration of the work and resourcing plan to implement ISDS reform and resource requirements (see below, para. 53) (A/CN.9/1054).

37. At its fifty-fourth session, the Commission will have before it the reports of the thirty-ninth, fortieth and resumed fortieth sessions of the Working Group (A/CN.9/1044, A/CN.9/1050 and A/CN.9/1054).

**(d) Working Group IV (Electronic Commerce)**

38. At its sixtieth session (Vienna, 19–23 October 2020), the Working Group had before it a set of draft provisions on the use and cross-border recognition of identity management and trust services (A/CN.9/WG.IV/WP.162), which incorporated the deliberations of the Working Group at its fifty-ninth session. The Working Group conducted a complete second reading of the draft provisions (A/CN.9/1045, paras. 16–138), which it approved for its further consideration subject to agreed modifications. The Working Group also agreed to the possibility of holding informal consultations to discuss outstanding topics.

39. At the request of the Working Group, the Secretariat hosted informal consultations on 15–17 March 2021 to discuss pending issues related to the text, including liability, consistency of the text with electronic signature provisions in existing UNCITRAL texts. The outcome of these information consultations was reported to the Working Group at its sixty-first session.

40. At its sixty-first session (New York, 5–9 April 2021), the Working Group had before it the revised draft provisions on the use and cross-border recognition of

identity management and trust services (A/CN.9/WG.IV/WP.167), which incorporated the modifications agreed by the Working Group at its sixtieth session. The Working Group focused its deliberations on the following issues: liability, the relationship of the draft provisions with existing UNCITRAL texts, cross-border recognition, and definitions and other terminological issues (A/CN.9/1051, \*\*).

41. At its fifty-fourth session, the Commission will have before it the reports of the Working Group on the work of its sixtieth session (A/CN.9/1045) and sixty-first session (A/CN.9/1051).

**(e) Working Group V (Insolvency Law)**

42. Under provisional agenda item 5 (see paras. 10-13 above), the Commission is expected to consider at its fifty-fourth session a draft text on a simplified insolvency regime.

43. At its fifty-fourth session, the Commission will have before it the reports of the Working Group on the work of its fifty-seventh (A/CN.9/1046) and fifty-eighth sessions (A/CN.9/1052).

**(f) Working Group VI (Judicial Sale of Ships)**

44. At its fifty-third session, the Commission confirmed that the Working Group should continue its work to prepare an international instrument of the judicial sale of ships.<sup>25</sup> Support was expressed for the instrument taking the form of a convention, with the observation being made that only a convention was capable of ensuring the level of uniformity needed to affirm the international effects of judicial sales of ships.<sup>26</sup>

45. At its fifty-fourth session, the Commission will have before it the report of the Working Group on the work of its thirty-seventh session (A/CN.9/1047/Rev.1) and thirty-eighth session (A/CN.9/1053).

**9. Coordination and cooperation**

46. The Commission will be informed by a note of the Secretariat about activities undertaken by the Secretariat since the Commission's previous session to ensure coordination with the work of other organizations active in the field of international trade law (A/CN.9/1069).

47. Representatives of international organizations will be given an opportunity to apprise the Commission of their current activities and possible means of strengthening cooperation with UNCITRAL.

48. The Commission may wish to recall that from its forty-fourth to fiftieth session, in 2011 to 2017, it heard oral reports by the Secretariat about intergovernmental and non-governmental organizations invited to sessions of UNCITRAL.<sup>27</sup> At its forty-eighth session, in 2015, the Commission requested the Secretariat, when presenting its oral report on the topic of organizations invited to sessions of UNCITRAL, to provide comments on the manner in which invited organizations fulfilled the criteria applied by the Secretariat in making its decision to invite non-governmental organizations.<sup>28</sup> At its forty-ninth session, in 2016, the Commission welcomed the detailed and informative report presented by the Secretariat pursuant to that request.<sup>29</sup> At its fiftieth session, in

<sup>25</sup> Ibid., *Seventy-fifth Session, Supplement No. 17 (A/75/17)*, part two, para. 51(f).

<sup>26</sup> Ibid., part two, para. 47.

<sup>27</sup> Ibid., *Sixty-sixth Session, Supplement No. 17 (A/66/17)*, paras. 288–298; *ibid.*, *Sixty-seventh Session, Supplement No. 17 (A/67/17)*, paras. 174–178; *ibid.*, *Sixty-eighth Session, Supplement No. 17 (A/68/17)*, paras. 257–261; *ibid.*, *Sixty-ninth Session, Supplement No. 17 (A/69/17)*, paras. 205–207; *ibid.*, *Seventieth Session, Supplement No. 17 (A/70/17)*, paras. 279–281; *ibid.*, *Seventy-first Session, Supplement No. 17 (A/71/17)*, paras. 286–290; and *ibid.*, *Seventy-second Session, Supplement No. 17 (A/72/17)*, paras. 360–364.

<sup>28</sup> Ibid., *Seventieth Session, Supplement No. 17 (A/70/17)*, para. 280.

<sup>29</sup> Ibid., *Seventy-first Session, Supplement No. 17 (A/71/17)*, para. 290.

2017, the Commission requested the Secretariat to provide information about intergovernmental and non-governmental organizations invited to sessions of UNCITRAL in writing for future sessions.<sup>30</sup> Pursuant to that request, the Commission had before it at its fifty-first, fifty-second and fifty-third sessions, in 2018, 2019 and 2020, respectively, notes by the Secretariat on international governmental and non-governmental organizations invited to sessions of UNCITRAL and its working groups (A/CN.9/951, A/CN.9/984 and A/CN.9/1023).<sup>31</sup> A similar note will be before the Commission at its fifty-fourth session (A/CN.9/1069).

## 10. Secretariat reports on non-legislative activities

49. As requested by the Commission at its fifty-first session, in 2018,<sup>32</sup> the Commission will have before it for information notes by the Secretariat on: (a) technical assistance and cooperation activities (A/CN.9/1058); (b) dissemination of information and related activities to support UNCITRAL's work and the use of its texts, including report on CLOUT and digests (A/CN.9/1059); (c) the report of the Regional Centre for Asia and the Pacific (A/CN.9/1057); (d) status of conventions, model laws, and the operation of the Transparency Registry (A/CN.9/1056); (e) relevant General Assembly resolutions (A/CN.9/1070); (f) the current role of UNCITRAL in promoting the rule of law and the implementation of Sustainable Development Goals (A/CN.9/1071); and (g) bibliography of recent writings related to the work of UNCITRAL (A/CN.9/1055).

50. The Secretariat is planning to organize a panel discussion with participation of States using UNCITRAL texts and partner organizations in UNCITRAL technical assistance and cooperation activities. That panel would aim at informing the Commission about practices and tools available to support the use and implementation of the UNCITRAL texts, and lessons learned, best practices and challenges in the activities undertaken. The objective is to allow the Commission to explore possible ways of enhancing technical assistance and cooperation activities.

51. Pursuant to the requests of the Commission,<sup>33</sup> the Secretariat will keep the Commission informed of developments regarding the establishment of UNCITRAL regional centres, in particular their funding and budgetary situation.

## 11. Work programme of the Commission

52. At its forty-sixth session, in 2013, the Commission agreed that it should reserve time for discussion of future work as a separate topic at each Commission session.<sup>34</sup> Under this agenda item, the Commission will have before it: (a) a note by the Secretariat giving a general overview of the work programme of the Commission and of its working groups and secretariat (A/CN.9/1068); (b) a report of the UNCITRAL Colloquium on Applicable Law in Insolvency Proceedings (A/CN.9/1060), held on 11 December 2020 further to a decision of the Commission at its fifty-third session, in 2020,<sup>35</sup> and a report of the UNCITRAL Colloquium on Civil Asset Tracing and Recovery (A/CN.9/1008), held on 6 December 2019 further to a decision of the Commission at its fifty-second session, in 2019;<sup>36</sup> (c) a note by the Secretariat on preparatory work on legal issues of warehouse receipts (A/CN.9/1066);<sup>37</sup> (d) a note by the Secretariat on preparatory work on legal issues of negotiable multimodal

<sup>30</sup> Ibid., *Seventy-second Session, Supplement No. 17 (A/72/17)*, para. 364.

<sup>31</sup> Ibid., *Seventy-third Session, Supplement No. 17 (A/73/17)*, paras. 185–186, *ibid.*, *Seventy-fourth Session, Supplement No. 17 (A/74/17)*, paras. 236–238, and *ibid.*, *Seventy-fifth Session, Supplement No. 17 (A/75/17)*, part one, paras. 51–53.

<sup>32</sup> Ibid., *Seventy-third Session, Supplement No. 17 (A/73/17)*, paras. 258–267.

<sup>33</sup> Most recently, *ibid.*, *Seventy-second Session, Supplement No. 17 (A/72/17)*, paras. 293 and 296.

<sup>34</sup> Ibid., *Sixty-eighth Session, Supplement No. 17 (A/68/17)*, para. 310.

<sup>35</sup> Ibid., *Seventy-fifth Session, Supplement No. 17 (A/75/17)*, part two, para. 66.

<sup>36</sup> Ibid., *Seventy-fourth Session, Supplement No. 17 (A/74/17)*, paras. 203 and 221 (a) and chapter XXIII, section B, table 1.

<sup>37</sup> Ibid., *Seventy-fifth Session, Supplement No. 17 (A/75/17)*, part two, paras. 60–61.

transport documents (A/CN.9/1061);<sup>38</sup> (e) a note by the Secretariat on the progress made in its exploratory work on legal issues of digital economy (A/CN.9/1064 and addenda), including with regard to dispute resolution, and a note by the Secretariat on a proposal for legislative work on electronic transactions and the use of artificial intelligence and automation (A/CN.9/1065);<sup>39</sup> and (f) a note by the Secretariat on exploratory work on the impact of COVID-19 on international trade law (A/CN.9/1080 and A/CN.9/1081).<sup>40</sup>

53. The Commission will also have before it a note by the Secretariat outlining the work and resourcing plan to implement investor-State dispute settlement reform and resource requirements (A/CN.9/1063). At the time of submission of this provisional agenda, that note is scheduled to present the work and resourcing plan as approved by Working Group III during its resumed fortieth session (Vienna, 4–5 May 2021) and include any recommendation by the Working Group that additional conference and supporting resources be allocated to the Secretariat for advancing and completing the ISDS Project.

## 12. Other business

### (a) Enlargement of UNCITRAL membership

54. At its fifty-second session, in 2019, the Commission received a proposal by the Governments of Israel and Japan for enlarging the membership of UNCITRAL. At that session, the Commission noted many issues that remained open in relation to the proposal, encouraged its member States to consult with each other and other interested States on the proposal during the intersessional period and requested the Secretariat to facilitate those intersessional consultations.<sup>41</sup>

55. At its fifty-third session, the Commission took note of the progress made during the intersessional consultations, stressed that the decision on the enlargement should be adopted by consensus, encouraged the member States to continue to consult with each other and other interested States, requested the secretariat to continue to facilitate that process, welcomed the willingness of Japan to continue to organize and lead that process, and agreed to consider the matter at its next session.<sup>42</sup>

56. At its fifty-fourth session, in 2021, the Commission will have before it a proposal submitted by the government[s] of Japan [and possibly other States] on possible approaches to enlarging the membership of UNCITRAL.

### (b) Evaluation of the role of the UNCITRAL secretariat in facilitating the work of the Commission

57. At its fifty-second session, the Commission recalled that “facilitating the work of UNCITRAL” had been listed among the expected accomplishments of the UNCITRAL secretariat in the old budgetary framework and the performance metric for that expected accomplishment had been the level of satisfaction of UNCITRAL with the services provided by its secretariat, as evidenced by a rating on a scale ranging from 1 to 5 (5 being the highest rating).<sup>43</sup> At that session, the Commission also recalled that the Secretariat had in the past circulated an evaluation questionnaire to elicit evaluation from States. The Commission was further informed at the session that, although continuing that practice was no longer necessary as a result of changes introduced in the budgetary framework, the UNCITRAL secretariat intended to continue circulating a questionnaire during the sessions of UNCITRAL for self-evaluation.<sup>44</sup>

<sup>38</sup> Ibid., para. 82.

<sup>39</sup> Ibid., paras. 76 and 85.

<sup>40</sup> Ibid., para. 89.

<sup>41</sup> Ibid., *Seventy-fourth Session, Supplement No. 17 (A/74/17)*, paras. 311–315.

<sup>42</sup> Ibid., *Seventy-fifth Session, Supplement No. 17 (A/75/17)*, part two, para. 18(b).

<sup>43</sup> Ibid., para. 319.

<sup>44</sup> Ibid., para. 320.

58. At the fifty-fourth session of the Commission, States will be requested to fill in an online evaluation questionnaire that will be circulated during the session, and the Commission may expect to hear an oral report from the Secretariat on the number of responses received and the level of satisfaction with the services provided to UNCITRAL by the UNCITRAL secretariat indicated in those responses.

**(c) Other matters**

59. The Commission may wish to consider possible other matters under this agenda item.

**13. Date and place of future meetings**

*Fifty-fifth session of the Commission*

60. The Commission may wish to note that its fifty-fifth session will be held in New York. Tentative arrangements have been made for the session to be held from 27 June to 15 July 2022. The Commission may wish to recall that, at its fifty-second session, it confirmed its understanding that two-week sessions would generally be sufficient and that the duration of each annual session was to be determined on a case-by-case basis depending on the expected workload.<sup>45</sup>

*Sessions of working groups*

61. At its thirty-sixth session, in 2003, the Commission agreed that: (a) working groups should normally meet for a one-week session twice a year; (b) extra time, if required, could be allocated from the unused entitlement of another working group provided that such arrangement would not result in the increase of the total number of 12 weeks of conference services per year currently allotted to sessions of all six working groups of the Commission; and (c) if any request by a working group for extra time would result in the increase of the 12-week allotment, it should be reviewed by the Commission, with proper justification being given by that working group regarding the reasons for which a change in the meeting pattern was needed.<sup>46</sup>

62. At its fifty-second session, in 2019, the Commission decided that extra time for conference services, if required, could also be allocated to working groups from the unused time of the Commission session.<sup>47</sup> It confirmed that requests by working groups for additional time for conference services would be considered by the Commission on a case-by-case basis, taking into account the needs of the requesting working group, the needs of other working groups and the other needs of the Commission at the given time, and taking into account the views of all member States of UNCITRAL. The Commission also confirmed that the request from a working group should not by itself be treated as a sufficient ground for granting the request; in each case, the request had to be properly substantiated.<sup>48</sup>

63. At its fiftieth session, in 2017, the Commission took note of General Assembly resolutions on the pattern of conferences promulgating policies as regards significant holidays, on which the United Nations Headquarters and the Vienna International Centre remained open but United Nations bodies were invited to avoid holding meetings. The Commission agreed to take into account those policies as far as possible when considering the dates of its future meetings.<sup>49</sup>

64. The Commission is expected to consider conference service requirements in the light of its work programme, reports of its working groups and a note by the Secretariat (A/CN.9/1063, see para. 53 above), taking into account that dates proposed below include the following significant holidays of the United Nations:

<sup>45</sup> Ibid., *Seventy-fourth Session, Supplement No. 17 (A/74/17)*, para. 331.

<sup>46</sup> Ibid., *Fifty-eighth Session, Supplement No. 17 (A/58/17)*, para. 275.

<sup>47</sup> Ibid., *Seventy-fourth Session, Supplement No. 17 (A/74/17)*, para. 323.

<sup>48</sup> Ibid., para. 325.

<sup>49</sup> Ibid., *Seventy-second Session, Supplement No. 17 (A/72/17)*, para. 485.

19 November 2021 – Gurpurab (would fall on the last day of the tentative dates of the forty-first session of Working Group III).

	<i>Second half of 2021 (Vienna)</i>	<i>First half of 2022 (New York)</i>	<i>Second half of 2022 (Vienna) (to be confirmed by the Commission at its fifty-fifth session, in 2022)</i>
Working Group I (MSMEs)	36th session 4–8 October 2021	37th session 28 March–1 April 2022	38th session 10–14 October 2022
Working Group II (Dispute Settlement)	74th session 27 September– 1 October 2021	75th session 7–11 February 2022	76th session 19–23 September 2022
Working Group III (ISDS Reform)	41st session 15–19 November 2021 (falls on Gurpurab)	42nd session 14–18 February 2022	43rd session 26–30 September 2022
Working Group IV (Electronic Commerce)	62nd session 18–22 October 2021	63rd session 4–8 April 2022	64th session 31 October– 4 November 2022
Working Group V (Insolvency Law)	59th session 13–17 December 2021	60th session 18–22 April 2022	61st session 28 November– 2 December 2022
Working Group VI (Judicial Sale of Ships)	39th session 22–26 November 2021	40th session 9–13 May 2022	41st session 12–16 December 2022

#### 14. Virtual panel discussion on technical assistance activities

65. The UNCITRAL secretariat will organize a [two-hour] virtual panel event to discuss the critical role of MSMEs in recovering from the COVID-19 economic shock, and the vital contribution of a high-quality enabling commercial law framework. The Commission may expect to hear a brief overview of UNCITRAL’s legislative texts and ongoing work to support MSMEs (e.g., starting and registering a business, access to credit, access to markets, settling commercial disputes and eventual exit from the market), followed by country presentations to share different approaches to supporting the recovery from the COVID-19 induced economic shock as requested by the Commission<sup>50</sup>. The Commission may also expect to hear discussion on the use of UNCITRAL’s tools for supporting economic recovery in countries at all levels of economic development as well as the current projects of other agencies and their anticipated impact.

### III. Scheduling of meetings and documentation

66. Meetings will be held from 11 a.m. to 1 p.m. and from 3 p.m. to 5 p.m.

67. UNCITRAL documents are posted on the UNCITRAL website ([uncitral.un.org](http://uncitral.un.org)) upon their issuance in all the official languages of the United Nations. Delegates may wish to check the availability of the documents for the fifty-fourth session by accessing the page of the Commission in the “Working Documents” section of the UNCITRAL website ([uncitral.un.org](http://uncitral.un.org)).

68. The recommendations on the scheduling of meetings under each agenda item in chapter I above are intended to assist States and invited organizations in planning the

<sup>50</sup> Ibid., *Seventy-fifth Session, Supplement No. 17 (A/75/17)*, part two, para. 89.

attendance of their pertinent representatives; the actual scheduling will be determined by the Commission itself.

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