

Virtual Panel Series

UNCITRAL Texts and COVID-19 Response and Recovery

Oral Report on the Virtual Panel Series

(delivered by the Secretariat at the 1117th meeting of the Commission on 17 July 2017)

The series of 6 virtual panels took place from 8 to 16 July and involved several of UNCITRAL's key partners as well as many global experts in the topics under discussion. The various panels were organized with a similar structure consisting of a panel or roundtable followed by a time reserved for state interventions, with any remaining time open for a question and answer session. The response by the public to the panel series was overwhelmingly positive, with over 1,000 registrations for participation received for each session.

Each session has been recorded and will be available on the UNCITRAL website, along with copies of the presentations given by the panelists.

Day 1 – Wednesday, 8 July – Identification and Authentication in the Digital Economy

Panelists acknowledged that laws recognizing the use of electronic signatures had been in place in many jurisdictions for several decades, including those based on the 1996 UNCITRAL Model Law on Electronic Commerce, the 2001 UNCITRAL Model Law on Electronic Signatures and the 2005 United Nations Convention on the Use of Electronic Communications in International Contracts. The ensuing discussion highlighted how the COVID-19 pandemic was accelerating the move to online business processes, which emphasized the need to educate users on the application of these existing laws, as well as the benefits of a technology neutral approach. It also revealed the need for two additional issues to be addressed, namely the interoperability of identity management systems and the portability of identity credentials across systems. The panel discussion highlighted the possible features of a new legal instrument on identity management, as well as the timeliness and importance of the work that is being carried out by Working Group IV in this area.

Day 2 – Thursday, 9 July – Digital Economy and Trade Finance

The second virtual panel, hosted in partnership with the International Chamber of Commerce, was focused on paperless trade facilitation and electronic payments. After a short video message from the Secretary General of the ICC which highlighted the importance of the UNCITRAL Model Law on Electronic Transferable Records, the panel explained how the COVID-19 crisis was disrupting existing supply chains, which posed challenges for businesses reaching out to new partners and relying solely on online credentials. Micro, small and medium-sized enterprises (or MSMEs) were being particularly negatively affected given their liquidity shortage and difficulties in accessing credit. Panelists also stressed the desirability of

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a broader adoption of UNCITRAL texts, referring not only to foundational texts on electronic transactions and signatures, but also to the work of UNCITRAL on the dematerialization of transport documents and on payment systems. The discussion reaffirmed the soundness of the past work of UNCITRAL in this field and the relevance of its ongoing efforts on digital trade, which could extend to matters such as digital payments and digital assets (including cryptocurrencies).

Day 3 – Monday, 13 July – Assisting Economic Recovery – Targeting Micro, Small and Medium-sized Businesses (or MSMEs)

Hosted in partnership with the World Bank Group, the third virtual panel focused on two related issues. Panel I discussed the importance of efficient, effective and simplified insolvency proceedings to resolve financial distress of micro and small enterprises (MSEs) with reference to the current work of UNCITRAL’s Working Group V and the World Bank Group. Panelists explained how MSE insolvencies differ from the insolvencies of larger enterprises, highlighting the need to ensure an insolvency regime designed for MSEs with the objective of quickly rehabilitating and reintegrating entrepreneurs into productive activities, thus benefiting the entire society as soon as possible.

Panel II addressed measures taken by both the public and private sectors to address the significant financing gap faced by MSMEs, particularly in light of the COVID-19 crisis. Panelists touched upon barriers faced by women entrepreneurs and the potential digital divide. A wide range of actions taken by the public sector to enhance access to credit for MSMEs were noted, as was the need to coordinate such actions with private sector initiatives, and to implement financial regulatory policies to achieve concrete results. It was underlined that legislative reforms based on UNCITRAL texts on secured transactions could have a positive impact on access to credit for MSMEs, as they would facilitate the use of a wide range of movable assets as collateral, including receivables.

Day 4 – Tuesday, 14 July – Public-Private Partnerships (or PPPs) and Public Procurement

The fourth panel looked at two areas of government contracting. The PPP Panel discussed the implications of the COVID-19 pandemic for PPP contracts already in force and the importance of adaptation mechanisms between the contracting authority and the private partner to address cost increase in public service provision or unexpected financial changes (such as or revenue shortfall through decline in demand or occupancy limitations imposed by regulation). The panelists noted the mechanisms for contract adaptation provided in the UNCITRAL Model Legislative Provisions on PPPs and stressed their relevance in the current context. Speakers on the public procurement panel shared their experience as to the recent trends toward convergence in legal rules witnessed in procurement and intensified by the COVID-19

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pandemic. Among those trends were the establishment of digital procurement, tools for emergency contracting and its consequences on the supply chain. There were concerns about stockpiling becoming an alternative to emergency procurement, which was indicative of a market failure but possibly also of inadequacy of applicable processes. State interventions showed that legislative initiatives related to the establishment or improvement of the public procurement and PPPs legal frameworks were ongoing all around the globe, demonstrating the strong need for services and infrastructure in order to meet the sustainable development goals, but also the necessity of establishing safeguards against corruption or mismanagement of public funds in those projects.

Day 5 – Wednesday, 15 July – COVID-19 Impact on International Dispute Resolution

Hosted in partnership with the Vienna International Arbitration Centre, the fifth session addressed the impact of COVID-19 on international dispute resolution. This panel followed a different structure than other sessions, since it was organized as two roundtables with representatives of arbitral institutions for an audience of practitioners for a discussion of practical measures rather than of legislative policy (hence no specific slot set aside for state interventions). In the first panel, which addressed the short-term consequences, five arbitral institutions shared measures they took to respond to the COVID-19 crisis, which ranged from those to ensure a safe operation of the institutions to those aimed at an effective administration of the arbitration proceedings under the circumstances. A number of measures utilizing digital technology to facilitate the different stages of the proceedings, including remote hearings, and issuance of guidelines to assist parties and the arbitral tribunal were mentioned during the presentations. In the second panel, which examined the long-term consequences, panellists provided their insights on how international dispute resolution could evolve as a result of the pandemic. Increased digitization and further use of technology, expedited procedures, the use of AI, asynchronous hearings, online platforms and a number of other innovative measures, which will likely change how disputes are resolved, were mentioned. At the same time, the need to preserve the fundamental principles of international arbitration, including party autonomy and the discretion provided to the tribunals in the conduct of the proceedings, was also highlighted. Lastly, it was mentioned that UNCITRAL texts on dispute resolution (including mediation) were flexible enough to adapt to and to accommodate these changing circumstances, but that it would also be useful to examine those texts in the context of evolving environment.

Day 6 – Thursday, 16 July – Gender, Trade and COVID-19

Hosted in partnership with UN Women, the sixth panel focused on gender and trade. Offering critical new perspectives on the work of UNCITRAL, the panel highlighted how UNCITRAL texts

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can help promote pro-women and gender-responsive policies in a post COVID-19 environment in line with the Sustainable Development Goals. The discussion was premised on the understanding that women are bearing a disproportionate burden of the economic fallout from the COVID-19 crisis, mainly because their economic activity takes place in sectors – including informal sectors – that have been hardest hit by the crisis.

The panel consisted of three parts. The first part explored how mediation can be particularly suited to women entrepreneurs by encouraging a constructive and managed dialogue in a safe environment. A common statement delivered on behalf of Bosnia and Herzegovina, Montenegro, North Macedonia and Serbia presented the COVID-19 crisis as an opportunity to reframe how access to justice can be guaranteed globally in a sustainable way. It also stressed the importance of mediation, including online mediation, as well as the importance of the Singapore Convention on Mediation. The second part dealt with the importance of fast and simple business registration procedures to support MSMEs transitioning to the formal economy. This transition is all the more important in the COVID-19 recovery phase, as access to government recovery assistance in most countries is only open to businesses that are formally recognized by the State. The panel emphasized the role of business registries in collecting gender-disaggregated data to inform policymaking. It also highlighted the importance of improving laws on business registration to assist women-run MSMEs, as well as the instrumental role played in this regard by the UNCITRAL Legislative Guide on Key Principles of a Business Registry. The third and final segment addressed the shift towards online business activity in the wake of the pandemic. Against the backdrop of UNCITRAL texts on electronic commerce, the discussion looked at how e-commerce platforms can catalyze the economic participation of women and foster women entrepreneurship. In particular, the panel drew attention to UNCTAD's eTrade for Women initiative, which seeks to raise the profile of women digital entrepreneurs and to include them in policy decision making processes.