



UNCITRAL

United Nations Commission on International Trade Law

Resumed 53rd session
Vienna (online), 14-18 September 2020

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- Additional resources for UNCITRAL
- Enlargement of UNCITRAL membership
- Evaluation of the role of the Secretariat
- Other

I - Timetable

Monday, 14 September 2020

9 a.m.-11 a.m.	<ol style="list-style-type: none">1. Opening of the resumed fifty-third session2. Decisions adopted by States members of UNCITRAL in August 2020 in accordance with the procedure for taking decisions of UNCITRAL during the coronavirus disease 2019 (COVID-19) pandemic adopted by States members of UNCITRAL on 8 June 20203. Progress report of working groups (including a proposal by Belgium as regards Working Group II (A/CN.9/1035))
1 p.m.-3 p.m.	<ol style="list-style-type: none">3. Progress report of working groups (including a proposal by Belgium as regards Working Group II (A/CN.9/1035)) (<i>continued</i>)

Tuesday, 15 September 2020

9 a.m.-11 a.m.	<ol style="list-style-type: none">4. Work programme of the Commission:<ul style="list-style-type: none">- A note by the Secretariat on the work programme of the Commission (A/CN.9/1016)- Consideration of the progress made in exploratory work by the Secretariat on legal issues of railway consignment notes (A/CN.9/1034)
1 p.m.-3 p.m.	<ul style="list-style-type: none">- Consideration of the progress made in exploratory work by the Secretariat on legal issues arising from digital economy, including high-tech dispute resolution (A/CN.9/1012 and addenda)

Wednesday, 16 September 2020

12 p.m.-2 p.m.	<ol style="list-style-type: none">4. Work programme of the Commission (<i>continued</i>):<ul style="list-style-type: none">- Consideration of additional topics for possible future work: proposal by Japan on Stocktaking of Dispute Resolution in the Modern Context (A/CN.9/1037) and proposal by the Russian Federation to Update the UNCITRAL's Agenda due to the Coronavirus Infection (COVID-19) (A/CN.9/1039);- Consideration of the progress made in exploratory work by the Secretariat on warehouse receipts (A/CN.9/1014)
4 p.m.-6 p.m.	<ul style="list-style-type: none">- Report of the Colloquium on Civil Assets Tracing and Recovery (A/CN.9/1008)- A new date in 2020 for the colloquium on applicable law in insolvency proceedings5. Dates and place of future meetings in 2021

I - Timetable (*continued*)

Thursday, 17 September 2020

12 p.m.-2 p.m.	6. Other business - Consideration of resource requirements for the implementation of the work programme of the Commission (A/CN.9/1011, A/CN.9/1036 and A/CN.9/1040)
4 p.m.-6 p.m.	- Id.

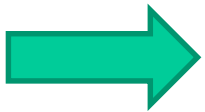
Friday, 18 September 2020

9 a.m.-11 a.m.	6. Other business (<i>continued</i>) - Enlargement of UNCITRAL membership - Evaluation of the role of the UNCITRAL secretariat in facilitating the work of the Commission (to be circulated and compiled online) - Other matters
1 p.m.-3 p.m.	- Consideration of resource requirements for the implementation of the work programme of the Commission (A/CN.9/1011, A/CN.9/1036 and A/CN.9/1040) 7. Adoption of the report, including the narrative part of the report of the first part of the session

II - Decisions adopted by UNCITRAL member States - Agenda item 2 (A/CN.9/1038)

- Decision of 19 August 2020 on the format, officers and methods of work of UNCITRAL Working Groups during the pandemic; and**
- Decision of 28 August 2020 on the organization and agenda of the resumed fifty-third session**

No statements in explanation of position were received



Expected action by the Commission: taking note of the decisions adopted in August 2020 by the UNCITRAL member States through a silence procedure.

III - Progress reports of Working Groups – Agenda item 3

WG	Report references
WG I (MSMEs)	A/CN.9/1002
WG II (Dispute Settlement) • + proposal for future work by Belgium	A/CN.9/1003 and A/CN.9/1010 A/CN.9/1035
WG III (ISDS Reform)	A/CN.9/1004 and A/CN.9/1004/Add.1
WG IV (Electronic Commerce)	A/CN.9/1005
WG V (Insolvency Law)	A/CN.9/1006
WG VI (Judicial Sale of Ships)	A/CN.9/1007

WG I – Status and expected way forward

Draft legislative guide on an UNCITRAL Limited Liability Organization (A/CN.9/WG.I/WP.118)

Status: First reading completed.

During the lockdown: Two informal consultations. Consolidated draft based on consultations, submitted by Italy.

Expected deliberations and action:

- **Examine proposal by Italy**
- **Exchange views on open issues:**
 - Name of the UNLLO;
 - Clarification of the term “equal rights”;
 - Equal distributions to members vs. distributions linked to the member’s share of the UNLLO;
 - Transfer of rights in the UNLLO: i.e. transfer of a part of rights vs. transfer of the whole membership;
 - Mandatory provisions; and
 - Model organization rules (i.e. how many models should be drafted?).

Expected output: Revised version for final review at the 35th session (spring 2021).

Next step: Consideration of Access to credit for MSMEs (A/CN.9/WG.I/WP.119).

WG II – Status and expected way forward

Draft provisions on expedited arbitration (A/CN.9/WG.II/WP.214 and Add.1)

Status: First reading completed and approval of certain provisions.

During the lockdown: Circulation of revised draft for comments. Virtual expert group meeting on 8 June 2020 for the preparation of A/CN.9/WG.II/WP.214 and Add.1. Proposal to the Commission by Belgium on the WG mandate (received in June 2020).

Expected deliberations and actions:

- Examine and discuss A/CN.9/WG.II/WP.214 and Add.1 for second reading of the provisions on expedited arbitration
- Review and exchange views on following pending issues:
 - Time frames within expedited arbitration;
 - Operation of the expedited arbitration provisions and their interaction with the UNCITRAL Arbitration Rules; and
 - Presentation of the expedited arbitration provisions.

Expected output: Secretariat will prepare a revised version of the expedited arbitration provisions reflecting views and preferences expressed at the 72nd session (September 2020) with the aim of facilitating a final reading at the 73rd session (first half of 2021).

WG III – Status and expected way forward

Investor-State Dispute Settlement Reform

Status – Phase 3: Preliminary consideration of possible ISDS reform options, based on written submissions received from Governments and other interested stakeholders.

Preliminary consideration of reform options has been undertaken at thirty-eighth (October 2019) and resumed thirty-eighth (January 2020) sessions: Establishment of an advisory centre; a code of conduct for adjudicators; the regulation of third-party funding; Appellate and multilateral court mechanisms and related issues; and the selection and appointment of ISDS tribunal members.

The Secretariat has been tasked to prepare and has produced draft papers on the above.

During the lockdown: Delegations have been invited to make comments on draft working papers prepared by the Secretariat and posted on the WG III webpage.

Webinars on the following topics: advisory centre; multilateral instrument on ISDS reform (2 webinars); treaty interpretation; role of mediation in ISDS, shareholder claims and reflective loss (with OECD); and code of conduct (with ICSID) – more information and recordings available on the WG III webpage.

WG III – Status and expected way forward (*cont'd*)

Expected deliberations and actions:

Examine and discuss outstanding reform options:

- A/CN.9/WG.III/WP.170 – Shareholder claims and reflective loss
- A/CN.9/WG.III/WP.190 – Dispute prevention and mitigation
- A/CN.9/WG.III/WP.191 – Interpretation of investment treaties by treaty Parties
- A/CN.9/WG.III/WP.192 – Security for costs and frivolous claims
- A/CN.9/WG.III/WP.193 – Multiple proceedings and counterclaims
- A/CN.9/WG.III/WP.194 – Multilateral instrument on ISDS reform

Expected output: Task the Secretariat to develop draft working papers, including with draft provisions where relevant.

Tools available to move the work in-between the Working Group sessions has been discussed at the April 2019 session and there are plans and proposals for more intersessional meetings.

WG IV – Status and expected way forward

Draft provisions on identity management and trust services (A/CN.9/WG.IV/WP.162)

Status: First reading completed.

Intersessionally: In response to a questionnaire by the Secretariat, 24 States and one IGO (Argentina, a group of seven EU States – Austria, Belgium, Czechia, France, Germany, Italy, Poland – plus the European Union, Canada, China, Colombia, Denmark, Dominican Republic, El Salvador, Lebanon, Madagascar, Niger, Russian Federation, Senegal, Singapore, Switzerland, Ukraine, United Kingdom, and the United States), and two NGOs have submitted written comments on the draft provisions.

Expected deliberations and actions:

- Examine and discuss draft provisions in light of comments received (compiled in A/CN.9/WG.IV/WP.164 and Add.1) and of other comments (A/CN.9/WG.IV/WP.163, submitted by the World Bank, and any other)
- Open issues: definitions, legal recognition (including cross-border recognition) of IdM and trust services, obligations and liability of service providers.

Expected output: Secretariat will refine the draft provisions towards their finalization.

WG V – Status and expected way forward

Draft text on a simplified insolvency regime for MSEs

Status: First reading completed (A/CN.9/WG.V/WP.168). The WG did not examine the commentary.

Intersessionally: Informal consultations on:

- 16, 23, 30 and 31 January and 6 February 2020 in preparation for the May session at which open issues remained from the 56th session were considered (competent authority/independent professional; zero-asset proceedings; deemed approval; application, commencement and disclosure obligations; debt reaffirmation);
- 11-15 May 2020 in lieu of the postponed session at which draft recommendations 1 to 51, 55 and 83-88, glossary and interaction of the text with the UNCITRAL LG on Insolvency Law and with the work of WG I on MSMEs access to credit were considered;
- 3-4 September 2020 at which the remaining draft recommendations 52- 82 were considered.

WG V agreed through written consultations that the Secretariat should issue A/CN.9/WG.V/WP.170/Rev.1 reflecting points raised during the informal consultations.

WG V – Status and expected way forward (*cont'd*)

Expected deliberations and actions:

The WG is expected to complete the second reading of the entire set of draft recommendations and provide comments on the draft commentary.

Main outstanding issues:

- Institutional framework (any separate recommendation(s) or reference(s) to independent professional(s) in the text);
- Effect of the commenced proceeding on unnotified creditors (draft rec. 23);
- Preparation, disclosure and approval of a liquidation schedule/plan/programme (draft rec. 41 et seq);
- Viability test and conversion of reorganization to liquidation (draft rec. 51);
- Approval of a reorganization plan (concerns regarding the notion of “deemed approval” and “sufficient opposition” - draft rec. 57 et seq);
- Law-imposed discharge, plans, etc.; and
- Interaction of the text with the Guide (there are still divergent views on whether the text should be part five of the Guide or a stand-alone document).

Expected output: Secretariat will prepare a finalized version of recommendations and commentary for the next session (Fall 2021).

WG VI – Status and expected way forward

Preparation of a presumptive treaty on the judicial sale of ships - The current draft is in the form of the “Second Revision of the Beijing Draft” (A/CN.9/WG.VI/WP.87)

Status: The WG completed the revision of the Beijing Draft and tasked the Secretariat to prepare a Second Revision.

During the lockdown: the Secretariat invited States and organizations to submit written comments on the Second Revision by 30 September 2020. The Secretariat has also been holding discussions with other international organizations (CMI, IMO and UNECE) to progress some aspects of the work.

Expected deliberations and actions:

Discussion of Second Revision of the Beijing Draft and a synthesis of comments submitted by States.

- Some of the key issues that were due to be considered by the Working Group: the geographic scope of the treaty
- Types of ships covered
- The existence and nature of the centralized online repository
- The conditions for a giving a judicial sale international effect
- The function of the notice requirements
- The operation of the grounds for refusal.

Expected output: Secretariat will prepare a third Revision of the Beijing Draft

Expected decision on agenda item 3



Commission to take note of the progress and express its views on next steps or timeframe for finalizing the work, when relevant.

Work Programme 2020-2021 – Overview – Agenda item 4

Working Group	Current legislative activity	Potential completion date	
	<i>Current work topic</i>	<i>2021</i>	<i>Later</i>
WG I	LG on simplified business entity Access to credit for MSMEs (Secured transactions +)	X	X
WG II	Expedited arbitration and related topics Notes on mediation and update of conciliation rules	X X	
WG III	Investor-State dispute settlement reform		X
WG IV	Identity management Preparatory work: digital economy	X	
WG V	MSE insolvency Preparatory work: civil aspects of asset tracing and recovery	X	
WG VI	Judicial sale of ships		X

IV - Work programme – agenda item 4

Main findings and report to the Commission of mandated exploratory work on:

- Railway consignment notes A/CN.9/1034, paras. 5, 7-12 and 42-45
- Legal issues of the digital economy (including high-tech dispute settlement) A/CN.9/1012, para. 12 and table 1

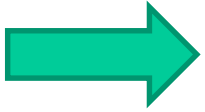
Two proposals for future work:

- Proposal by Japan on dispute resolution in modern times A/CN.9/1037
- Proposal by Russia for updating UNCITRAL's agenda due to COVID-19 A/CN.9/1039

Reports on preparatory and exploratory work (*continued*)

- Warehouse receipts A/CN.9/1014, paras. 21-26
- Civil asset tracing and recovery A/CN.9/1008, para. 48

Expected decisions on agenda item 4



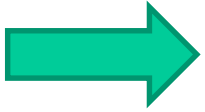
Expected actions on paragraphs 8-14 of A/CN.9/1016:

- Certain methods of work of UNCITRAL hindered the implementation of its programme during the COVID-19 pandemic
- Adjustments, like extension of the term of office of the bureaux of UNCITRAL and its working groups, may be needed

Commission to decide on way forward for:

- Railway consignment notes: move to preparatory work and holding of colloquium in 2021 ?
- Legal issues of the digital economy: colloquium to identify topics for preparatory work and begin preparatory work / continue work on legal taxonomy with Unidroit ?
- Warehouse receipts: preparatory work with Unidroit ?
- Civil asset tracing and recovery: preparatory work ?
- Decision on the new date for the International Colloquium on Applicable Law in Insolvency Proceedings

Expected decisions on agenda item 4



Commission to deliberate on proposals for future work:

- Expected action on a proposal by Belgium (A/CN.9/1035)
- Expected action on a proposal by Japan (A/CN.9/1037)
- Expected action on a proposal by Russia (A/CN.9/1039)

V - Dates and place of future meetings in 2021 – Agenda item 5

- Expected decision on the place and dates of the fifty-fourth session of UNCITRAL-arrangements have been made for the session in Vienna, from 28 June to 16 July 2021
- Expected decision on Working Group sessions in 2021

	First half of 2021 (New York)	Second half of 2021 (Vienna) (tentative, to be confirmed by the Commission at its 54th session, in 2021)
Working Group I (MSMEs)	35th session 22–26 March 2021	36th session 4–8 October 2021
Working Group II (Dispute Settlement)	73rd session 8–12 February 2021	74th session 27 September–1 October 2021
Working Group III (ISDS Reform)	40th session 12–16 April 2021	41st session 15–19 November 2021 (falls on Gurpurab)
Working Group IV (Electronic Commerce)	61st session 5–9 April 2021	62nd session 18–22 October 2021
Working Group V (Insolvency Law)	58th session 3–7 May 2021	59th session 13–17 December 2021
Working Group VI (Judicial Sale of Ships)	38th session 19–23 April 2021	39th session 22–26 November 2021

VI. Other business – Agenda item 6

- **Consideration of resource requirements for the implementation of the work programme of the Commission (A/CN.9/1011, A/CN.9/1036 and A/CN.9/1040)**
- **Taking note of progress report on intersessional consultations on the proposal for enlargement of UNCITRAL membership**
- **Taking note of the results of the evaluation of the role of the UNCITRAL secretariat in facilitating the work of the Commission**

Agenda item 7. Adoption of the report, including the narrative part of the report of the first part of the session

The following parts of the reports have already been adopted:

- Chapters I to III of the report of the first part of the fifty-third session (A/CN.9/LIII/CRP.1) - adopted on 3 August

Silence procedure has commenced until 18 September for:

- All narrative parts of the report of the first part of the fifty-third session (A/CN.9/LIII/CRP.1/Add.1 to 11)

Silence procedure will commence during the session for:

- Procedural/introductory and some narrative parts of the report of the resumed fifty-third session (A/CN.9/LIII/CRP.2 and A/CN.9/LIII/CRP.2/Add. 2 to 7 dealing with progress reports of working groups)

The remaining parts of the report of the resumed fifty-third session (A/CN.9/LIII/CRP.2/Add.1 and 8 to 10) will be put for adoption under a silence procedure around **25 September**