



United Nations

Report of the United Nations Commission on International Trade Law

**Fifty-third session
(6–17 July 2020 and 14–18 September
2020)**

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Report of the United Nations Commission on International Trade Law

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(6–17 July 2020 and 14–18 September 2020)



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Note

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[29 September 2020]

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Part one

Report of the United Nations Commission on International Trade Law on the first part of its fifty-third session, held online, from 6 to 17 July 2020

I. Introduction

1. Part one of the present report covers the first part of the fifty-third session of the United Nations Commission on International Trade Law (UNCITRAL), held online from 6 to 17 July 2020, from 1 p.m. to 3 p.m. (Central European Summer Time) (see para. 11 (b)(i) below for the decision of the UNCITRAL member States to hold the fifty-third session of UNCITRAL in two parts). A series of panel discussions on “UNCITRAL texts and COVID-19-related response and recovery” were held in conjunction with that part of the session on 8, 9 and 13–16 July as authorized by the UNCITRAL member States (see para. 11 (b)(ii) below).

2. Pursuant to General Assembly resolution 2205 (XXI) of 17 December 1966, the present report is submitted to the Assembly and is also submitted for comments to the United Nations Conference on Trade and Development.

II. Organization of the session

A. Opening of the session

3. The fifty-third session of the Commission was opened on 6 July 2020. Welcoming remarks were delivered by the Under-Secretary-General for Legal Affairs and United Nations Legal Counsel, Miguel de Serpa Soares.

B. Membership and attendance

4. The General Assembly, in its resolution 2205 (XXI), established the Commission with a membership of 29 States, elected by the Assembly. By its resolution 3108 (XXVIII) of 12 December 1973, the Assembly increased the membership of the Commission from 29 to 36 States. By its resolution 57/20 of 19 November 2002, the General Assembly further increased the membership of the Commission from 36 States to 60 States. The current members of the Commission, elected on 9 November 2015, 15 April 2016, 17 June 2016 and 17 December 2018, are the following States, whose term of office expires on the last day prior to the beginning of the annual session of the Commission in the year indicated:¹ 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

¹ Pursuant to General Assembly resolution 2205 (XXI), the members of the Commission are elected for a term of six years. Of the current membership, 23 were elected by the Assembly on 9 November 2015, at its seventieth session, 5 were elected by the Assembly on 15 April 2016, at its seventieth session, 2 were elected by the Assembly on 17 June 2016, at its seventieth session, and 30 were elected by the Assembly on 17 December 2018, at its seventy-third session. By its resolution 31/99, the Assembly altered the dates of commencement and termination of membership by deciding that members would take office at the beginning of the first day of the regular annual session of the Commission immediately following their election and that their terms of office would expire on the last day prior to the opening of the seventh regular annual session following their election.

(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).

5. With the exception of Burundi, Côte d'Ivoire, Lebanon, Lesotho, Libya, Mali, Pakistan, Sri Lanka and Uganda, all the members of the Commission were represented at the session.

6. The session was attended by observers from the following States: Armenia, Bhutan, Bolivia (Plurinational State of), Burkina Faso, Costa Rica, Egypt, El Salvador, Madagascar, Malta, Nigeria, Paraguay, Portugal, Slovakia, Tajikistan, Uruguay, Yemen and Zambia.

7. The session was also attended by observers from the European Union.

8. The session was also attended by observers from the following international organizations:

(a) United Nations system: United Nations Conference on Trade and Development (UNCTAD), Economic Commission for Latin America and the Caribbean, United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women) and World Bank;

(b) Intergovernmental organizations: Cooperation Council for the Arab States of the Gulf, Energy Community, European Bank for Reconstruction and Development, Hague Conference on Private International Law (HccH), International Institute for the Unification of Private Law (Unidroit), Organization for Economic Cooperation and Development (OECD), Organization for the Harmonization of Business Law in Africa, International Organization of la Francophonie (OIF), Organization of American States (OAS), Permanent Court of Arbitration (PCA), South Centre and World Trade Organization (WTO);

(c) Invited non-governmental organizations: ArbitralWomen, Arbitration Institute of the Stockholm Chamber of Commerce, Belgian Centre for Arbitration and Mediation, Cairo Regional Centre for International Commercial Arbitration, Center of Arbitration of the Chamber of Commerce of Lima, Center for International Investment and Commercial Arbitration, Center for International Legal Education, Centre de recherche en droit public of the University of Montreal, China Council for the Promotion of International Trade, China International Economic and Trade Arbitration Commission, China Society of Private International Law, Construction Industry Arbitration Council, European Law Institute, Georgian International Arbitration Centre, Institute of Law and Technology (Faculty of Law, Masaryk University, Czechia), International Academy of Mediators, International and Comparative Law Research Center, International Association of Young Lawyers, International Chamber of Commerce (ICC), International Dispute Resolution Institute, International Federation of Freight Forwarders Associations, International Law Institute, International Swaps and Derivatives Association, International Transport Workers' Federation, International Union of Notaries, International Women's Insolvency and Restructuring Confederation, Kozolchik National Law Center, Latin American Group of Lawyers for International Trade Law, Law Association for Asia and the Pacific, Madrid Court of Arbitration, New York City Bar Association, New York International Arbitration Center, New York State Bar Association, Nigerian Institute of Chartered Arbitrators, PRIME Finance Foundation, Queen Mary University of London, Russian Arbitration Centre at the Russian Institute of Modern Arbitration, Singapore International Arbitration Centre, Vienna International Arbitral Centre and World Economic Forum.

C. Election of officers

9. The following officers were elected to the Bureau of the fifty-third session of UNCITRAL:

Chair: Eric Anderson Machado (Peru)

Vice-Chairs: János Bóka (Hungary)
Paul Kuruk (Ghana)
Takashi Takashima (Japan)

Rapporteur: Kathryn Sabo (Canada)

D. Agenda

10. The following agenda was adopted for the first part of the fifty-third session of UNCITRAL:

1. Opening of the session.
2. Decisions adopted by States members of UNCITRAL 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 2020.
3. Approval of a joint UNCITRAL-Unidroit-the Hague Conference guide on commercial contract law for publication.
4. Endorsement of texts of other organizations: Incoterms 2020 rules.
5. Coordination and cooperation.
6. Secretariat reports on non-legislative activities:
 - (a) CLOUT and digests;
 - (b) Technical cooperation and assistance;
 - (c) Status and promotion of UNCITRAL legal texts and the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958);
 - (d) Consideration of the pilot operation of the repository of published information under the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration and the way forward;
 - (e) Relevant General Assembly resolutions;
 - (f) Current role of UNCITRAL in promoting the rule of law;
 - (g) Bibliography of recent writings related to the work of UNCITRAL.
7. UNCITRAL texts and COVID-19-related response and recovery.
8. Other business.

E. Decisions adopted by States members of UNCITRAL 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 2020

11. Under agenda item 2, the Commission had before it a note by the Secretariat ([A/CN.9/1013](#)) transmitting the following decisions adopted by States members of UNCITRAL in accordance with the procedure for taking decisions of UNCITRAL during the COVID-19 pandemic adopted by States members of UNCITRAL on 8 June 2020:

(a) Decision of 8 June 2020 on the procedure for taking decisions of UNCITRAL during the COVID-19 pandemic, by which the UNCITRAL member States agreed to apply, until the opening of the fifty-third session of UNCITRAL, a silence procedure of at least 72 hours for adopting decisions related to UNCITRAL;

(b) Decision of 23 June 2020 on the date, place, format and organization of the fifty-third session of UNCITRAL, by which the UNCITRAL member States:

(i) Decided to hold the first part of the fifty-third session of UNCITRAL virtually from 6 to 17 July 2020, and to adopt decisions pertaining to that part of the session in accordance with the procedure for taking decisions of UNCITRAL during the COVID-19 pandemic adopted by States members of UNCITRAL on 8 June 2020;

(ii) Authorized the secretariat to organize panel discussions on “UNCITRAL texts and COVID-19 response and recovery” in conjunction with the fifty-third session during the weeks of 6–17 July;

(iii) Decided that the resumed fifty-third session would take place in Vienna, from 14 to 18 September 2020, in a format to be agreed upon by the Commission on or around 14 August 2020 but not later than 28 August 2020, informed by inputs of the secretariat, taking into account evolving public health concerns and travel restrictions due to the COVID-19 pandemic;

(iv) Decided that, at that point, the Commission would also decide on the procedure for taking decisions during that part of the session;

(c) Decision of 30 June 2020 on the election of the Bureau of the fifty-third session of UNCITRAL (reflected in para. 9 above);

(d) Decision of 6 July 2020 on the adoption of the agenda of the first part of the fifty-third session of UNCITRAL, to be held virtually from 6 to 17 July 2020 (reflected in para. 10 above).

12. The Commission took note of those decisions and the statements that had been made by three UNCITRAL member States in explanation of position with respect to the decision of 8 June 2020 on the procedure for taking decisions of UNCITRAL during the COVID-19 pandemic. The Commission heard statements in explanation of position with respect to that decision that stressed the exceptional and temporary nature of the procedure, which should not set a precedent, and that a time frame of 72 hours was considered insufficient for processing decisions. Although a time frame of at least five working days was considered generally suitable, a point was made that such an extended time frame might be insufficient for processing some complex and technical decisions requiring internal expert consultations of States. It was noted that procedures for taking decisions in UNCITRAL during the COVID-19 pandemic should not inadvertently affect the quality of outcomes of the UNCITRAL work.

F. Adoption of the decisions and the report on the first part of the session

13. Recalling the applicable procedure for adopting decisions pertaining to the first part of the fifty-third session (see para. 11 (b)(i) above), the Commission used that procedure for the actions it took with respect to the agenda items considered at the first part of its fifty-third session (see para. 10 above) and for the adoption of chapters I–III of the report on the first part of the fifty-third session.

14. The actions taken by the Commission with respect to the agenda items considered at the first part of its fifty-third session were adopted by the Commission in accordance with that procedure on 17 and 24 July 2020 (see chapter III below). Chapters I–III of the report on the first part of the fifty-third session were adopted by the Commission in accordance with that procedure on 3 August 2020.

15. The Commission deferred to a later date the adoption of parts of the report containing a summary of deliberations at the first part of its fifty-third session and of notes and reports submitted by the Secretariat to the Commission.

III. Summary of the work of the Commission at the first part of its fifty-third session

16. With respect to agenda item 3, the Commission expressed its appreciation to its secretariat for the completion of the Legal Guide to Uniform Legal Instruments in the Area of International Commercial Contracts (with a focus on sales) as contained in document [A/CN.9/1029](#), with the adjustments set out in document [A/CN.9/1030](#), and requested its secretariat to publish the Guide as a booklet in both paper and electronic form in the six official languages of the United Nations and to explore the possibility of making it available in the form of an online tool, within the existing resources of the Secretariat.

17. With respect to agenda item 4, the Commission had before it a note by the Secretariat transmitting the request by ICC to UNCITRAL to endorse Incoterms 2020 ([A/CN.9/1028](#)). Taking note of the usefulness of the Incoterms 2020 rules in facilitating international trade, the Commission adopted the following decision:

“The United Nations Commission on International Trade Law,

“Expressing its appreciation to the International Chamber of Commerce for transmitting to it the text of the Incoterms 2020 rules, with an effective date of 1 January 2020,

“Congratulating the International Chamber of Commerce on having made a further contribution to the facilitation of international trade by making the Incoterms 2020 rules clearer and more accessible to global users than previous versions, while reflecting recent developments in international trade,

“Noting that the Incoterms 2020 rules constitute a valuable contribution to facilitating the conduct of global trade,

“Commends the use of the Incoterms 2020 rules, as appropriate, in international sales transactions.”

18. With respect to agenda item 5, the Commission took note of the notes by the Secretariat on coordination activities ([A/CN.9/1018](#)) and on international governmental and non-governmental organizations invited to sessions of UNCITRAL and its working groups ([A/CN.9/1023](#)), and took note of the oral reports by OAS, PCA, Unidroit and HccH. The Commission also took note of the criteria applied by its secretariat for inviting organizations to its sessions and those of its working groups (see <https://uncitral.un.org/en/about/faq/methods>). The Commission approved the results of its secretariat's assessment of a non-governmental organization's application for observer status with UNCITRAL, brought to the attention of the Commission in paragraph 6 (a) of the note by the Secretariat ([A/CN.9/1023](#)).

19. With respect to agenda item 6 (a), (b) (c), (e) and (g), the Commission took note with appreciation of the notes by the Secretariat ([A/CN.9/1017](#), [A/CN.9/1019](#), [A/CN.9/1020](#), [A/CN.9/1021](#), [A/CN.9/1024](#), [A/CN.9/1032](#) and [A/CN.9/1033](#)), in particular technical cooperation and assistance activities that took place since the last report to the Commission on technical cooperation and assistance in 2019, the introduction of the UNCITRAL Latin American and Caribbean Days in 2020, the conclusion of the memorandums of understanding with China, Hong Kong, China, Saudi Arabia and Singapore to support technical assistance activities in relation to UNCITRAL texts, and the events organized by China, Hong Kong, China, and Singapore with the UNCITRAL secretariat under those memorandums.

20. With respect to agenda item 6 (a), the Commission:

(a) Approved the publication of the Digest of Case Law on the Model Law on Cross-Border Insolvency. The Commission requested the Secretariat to publish that Digest as a paper and electronic booklet in the six official languages of the United Nations, within the existing resources of the Secretariat;

(b) Approved the preparation and publication of a guidance note on the enactment of the UNCITRAL Model Law on Cross-Border Insolvency, the UNCITRAL Model Law on Recognition and Enforcement of Insolvency-Related Judgments and the UNCITRAL Model Law on Enterprise Group Insolvency, as a note by the Secretariat. The Commission requested the Secretariat to publish that note as a paper and electronic booklet in the six official languages of the United Nations, within the existing resources of the Secretariat;

(c) Requested the secretariat to prepare, finalize and publish an update of the publication *UNCITRAL Model Law on Cross-Border Insolvency: The Judicial Perspective* as soon as practicable, as a paper and electronic booklet in the six official languages of the United Nations, within the existing resources of the Secretariat, and using a mechanism along the lines of that used for the 2013 update.

21. With respect to agenda item 6 (b), the Commission:

(a) Reiterated its call upon all States, international organizations and other interested entities to consider making contributions to the Trust Fund for UNCITRAL Symposia, if possible in the form of multi-year contributions or as specific-purpose contributions, in order to facilitate planning and enable its secretariat to meet the increasing number of requests for technical cooperation and assistance activities;

(b) Appealed to the relevant bodies of the United Nations system, organizations, institutions and individuals to make contributions to the trust fund for granting travel assistance to developing countries members of UNCITRAL;

(c) Encouraged the secretariat to continue to seek cooperation, including through formal agreements, to ensure coordination and funding for the technical assistance and capacity-building activities of the Regional Centre for Asia and the Pacific;

(d) Appreciated the efforts by its secretariat to increase diversity in the recruitment of interns and requested States and observer organizations to bring the possibility of an internship at UNCITRAL to the attention of interested persons and to consider granting scholarships for the purpose of attracting those most qualified for an internship at UNCITRAL.

22. With respect to agenda item 6 (c), the Commission requested the General Assembly, upon acting on UNCITRAL texts, to recommend to States to give favourable consideration to UNCITRAL texts and to request the Secretary-General to publish UNCITRAL texts, including electronically, in the six official languages of the United Nations, and take other measures to disseminate UNCITRAL texts as broadly as possible to Governments and all other relevant stakeholders.

23. The Commission further requested that non-governmental organizations invited to the Commission's annual session donate copies of their journals, reports and other publications to the UNCITRAL Law Library for review.

24. With respect to agenda item 6 (d), the Commission took note of a note by the Secretariat on the pilot operation of the repository of published information under the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration,² and consideration of the way forward (A/CN.9/1015) and adopted the following decision:

“The Commission reiterated its strong and unanimous opinion that the secretariat of the Commission should fulfil the role of the transparency

² *Official Records of the General Assembly, Sixty-eighth Session, Supplement No.17 (A/68/17)*, annex I.

repository and that it should continue to operate the transparency repository. The Commission expressed its appreciation to the European Commission for its renewed commitment to provide funding for a period of three years that would allow the UNCITRAL secretariat to continue operating the transparency repository. Accordingly, the Commission recommended to the General Assembly that it request the Secretary-General to continue to operate, through the secretariat of the Commission, the repository of published information in accordance with article 8 of the Rules on Transparency, as a continuation of the project until the end of 2023, to be funded entirely by voluntary contributions, and to keep the General Assembly and the Commission informed of developments regarding the funding and budgetary situation of the transparency repository.”

25. With respect to agenda item 6 (f), the Commission had before it a note by the Secretariat on the role of UNCITRAL in promoting the rule of law at the national and international levels ([A/CN.9/1022](#)) and decided to transmit to the General Assembly the following comments on the Commission’s current role in promotion of the rule of law in response to the invitation contained in paragraph 20 of General Assembly resolution [74/191](#):

“1. Taking note of General Assembly resolution [74/191](#) and responding to the invitation contained therein to continue to comment, in its report to the General Assembly, on its current role in promoting the rule of law,³ the Commission took into account that the upcoming debates of the Sixth Committee under the rule of law agenda item would focus on the subtopic “Measures to prevent and combat corruption”. The Commission decided to focus its comments on its current role in promoting the rule of law at the national and international levels on that subtopic. The Commission recalled its consideration of issues relevant to that subtopic at its sessions in 2010 and 2012.⁴

“2. The Commission highlighted the relevance of its work to the promotion of the rule of law and the implementation of the Sustainable Development Goals. The Commission, in particular, noted the contribution that its work in the area of public procurement and infrastructure development made to the implementation of international anti-corruption agenda. It was noted that the UNCITRAL Model Law on Public Procurement incorporated the mandatory minimum standards for procurement relevant to the implementation of article 9 (1) of the United Nations Convention against Corruption and that the anti-corruption safeguards of the UNCITRAL Model Legislative Provisions on Public-Private Partnerships and the UNCITRAL Legislative Guide on Public-Private Partnerships were made in line with the Convention. The Commission noted that its secretariat closely cooperated and coordinated with the United Nations Office on Drugs and Crime (UNODC), the custodian of the Convention, in the context of the implementation of that treaty. The Commission recalled that most recently, cooperation and coordination were ensured in preparation for the Colloquium on Civil Asset Tracing and Recovery, held on 6 December 2019,⁵ recognizing that asset recovery was a fundamental principle of the Convention. The Commission also recalled that its secretariat regularly delivered training on anti-corruption in public procurement at the International Anti-Corruption Academy (IACA). The Commission highlighted the potential need for expanded cooperation with UNODC and IACA, especially if the Commission decides to take up the subject of civil asset tracing and recovery.”

26. Noting the ongoing preparatory process under the auspices of the Conference of the States Parties to the United Nations Convention against Corruption for a special session of the General Assembly on challenges and measures to prevent and combat

³ General Assembly resolution [74/191](#), para. 20.

⁴ *Official Records of the General Assembly, Sixty-fifth Session, Supplement No. 17 (A/65/17)*, para. 32; *ibid.*, *Sixty-seventh Session, Supplement No. 17 (A/67/17)*, paras. 202 and 206.

⁵ For the report of the Colloquium, see document [A/CN.9/1008](#).

corruption and strengthen international cooperation, scheduled to take place from 2 to 4 June 2021, the Commission requested that the Chair of UNCITRAL at its fifty-third session, other members of the Bureau of that session, States and the UNCITRAL secretariat take appropriate steps to ensure that the contribution of UNCITRAL to the implementation of the international anti-corruption agenda is duly acknowledged in an outcome document of that special session of the General Assembly.

27. With respect to agenda item 7, after taking note of an oral report by its secretariat on the main takeaways from the panel discussions on “UNCITRAL texts and COVID-19 response and recovery” held from 8 to 16 July 2020 during the first part of the fifty-third session of UNCITRAL, the Commission adopted the following decision:

“The United Nations Commission on International Trade Law,

“Alarmed at the health crisis and the massive social and economic impact of the coronavirus disease 2019 (COVID-19) pandemic around the world,

“Concerned about the severe economic fallout from the interventions required to mitigate the effects of the pandemic and the likelihood that the crisis caused by the pandemic will continue to disrupt international trade and economic activity for the foreseeable future,

“Bearing in mind the disruptions caused to international logistics and supply chains, payment systems, public services, dispute resolution and commercial activities in connection with pandemic control measures, including social distancing and travel restrictions,

“Convinced that a strong legal framework will facilitate that recovery and help to revitalize commercial activity and global trade,

“1. Commends its secretariat for having organized a series of online panels during the Commission session to discuss the connection between the work of UNCITRAL and the economic consequences of the coronavirus disease 2019 (COVID-19) pandemic;

“2. Notes that several legislative tools that UNCITRAL has developed can play an important role in assisting States to mitigate the effects of the measures required to control the pandemic, as well as in their economic recovery efforts;

“3. Invites States to consider adopting UNCITRAL instruments capable of mitigating the disruption of international trade and business caused by necessary response measures to the COVID-19 pandemic by making it possible to conduct business transactions and transmit and use documents by using electronic means, in particular the UNCITRAL Model Law on Electronic Commerce, the UNCITRAL Model Law on Electronic Signatures and the UNCITRAL Model Law on Electronic Transferable Records;

“4. Also invites States, in the context of the measures they may adopt to stimulate the recovery of their economies, to consider adopting UNCITRAL instruments that may particularly support micro-, small and medium-sized enterprises by facilitating simplified business registration, reducing the cost of financing business transactions, and helping in the restructuring or orderly liquidation of distressed businesses, or to promote effective settlement of commercial disputes;

“5. Confirms the importance of the Commission continuing to develop instruments and other legislative tools to assist States in modernizing and strengthening their legal framework so as to improve their resilience in the face of severe economic shocks such as those occasioned by the crisis caused by the COVID-19 pandemic, as well as to increase their capacity to recover from such economic disruptions and to again achieve positive growth and development;

“6. Requests its secretariat to extend its technical assistance to States, upon their request, in the adoption of any relevant UNCITRAL instrument.”

28. With respect to agenda item 8, the Commission adopted the following decision:

“With respect to agenda item 8, the Commission approved the following preliminary dates of UNCITRAL working group sessions in the second half of 2020, which correspond to the tentative dates found in the report of UNCITRAL on the work of its fifty-second session,⁶ with adjustments made to the numbering of the sessions due to the fact that sessions of UNCITRAL Working Groups I, III, IV, V and VI could not take place in the first half of 2020 as scheduled:

Working Group I (Micro-, Small and Medium-sized Enterprises)	Thirty-fourth session 28 September (falls on Yom Kippur)– 2 October 2020
Working Group II (Dispute Settlement)	Seventy-second session 21–25 September 2020
Working Group III (Investor-State Dispute Settlement Reform)	Thirty-ninth session 5–9 October 2020
Working Group IV (Electronic Commerce)	Sixtieth session 19–23 October 2020
Working Group V (Insolvency Law)	Fifty-seventh session 7–11 December 2020
Working Group VI (Judicial Sale of Ships)	Thirty-seventh session 14–18 December 2020

Further consultation on the way forward and the format of the working group sessions will be conducted by the UNCITRAL member States not later than 19 August 2020.”

IV. Approval for publication of a joint UNCITRAL-Unidroit-the Hague Conference guide on commercial contract law

29. The Commission recalled its decision to prepare a guidance document in the area of international commercial contract law (with a focus on sales) in coordination with HccH and Unidroit (A/71/17, para. 281) and its request to the secretariat to finalize that guidance document before the Commission’s fifty-third session on the occasion of the fortieth anniversary of the United Nations Convention on Contracts for the International Sale of Goods (A/74/17, paras. 222 and 224).

30. The Commission took note with satisfaction of the draft Legal Guide to Uniform Legal Instruments in the Area of International Commercial Contracts (with a focus on sales), as contained in document A/CN.9/1029, with the adjustments set out in document A/CN.9/1030. Appreciation was expressed for the pro bono contribution of the experts involved in the preparation of the guide as well as for the close cooperation of the three organizations, which were encouraged to continue common endeavours.

31. The Commission was informed that the draft Legal Guide had already been considered positively by the governing bodies of HccH and Unidroit and that the text before the Commission incorporated the suggestions expressed in those forums. The Commission was also informed that further consultations had been carried out, which resulted in the formulation of the suggested adjustments to the draft Legal Guide contained in document A/CN.9/1030. The Commission was further informed that a technical annex listing online resources would be added to the draft Legal Guide. It was also suggested that an executive summary should be prepared. The Commission took note of the suggested adjustments and additions.

⁶ *Official Records of the General Assembly, Seventy-fourth Session, Supplement No. 17 (A/74/17)*, section XXIII.B.2.

32. Broad support was expressed for the publication of the Legal Guide with the suggested adjustments and additions. It was said that the Legal Guide accurately and comprehensively illustrated both the content of the various uniform contract law instruments, namely those on international sales, and their scope and interrelation, so as to highlight their synergy. It was added that such document was particularly useful to promote the adoption, effective use and uniform interpretation of those instruments.

33. It was suggested that the secretariats should explore manners to make the Legal Guide available as an online tool and prepare introductory materials to accompany the reader.

34. In conclusion, the Commission requested the Secretariat to publish the Legal Guide as a paper and electronic booklet in the six official languages of the United Nations and to explore the possibility of making it available in the form of an online tool, within the existing resources of the Secretariat.

V. Endorsement of texts of other organizations: Incoterms 2020 rules

35. ICC requested the Commission to consider endorsing the 2020 revision of the ICC rules for the use of domestic and international trade terms (“Incoterms 2020 rules”) for worldwide use ([A/CN.9/1028](#)).

36. It was generally noted that the Incoterms rules facilitated the conduct of global trade by providing trade terms that described the tasks, costs and risks involved in the delivery of goods from sellers to buyers and that they had been regularly updated to keep pace with the development of international trade.

37. It was recalled that the Commission had endorsed the Incoterms 1990 rules, the Incoterms 2000 rules and the Incoterms 2010 rules, respectively, at its twenty-fifth session, in 1992 ([A/47/17](#), para. 161), at its thirty-third session, in 2000 ([A/55/17](#), para. 434), and at its forty-fifth session, in 2012 ([A/67/17](#), para. 144).

38. It was also noted that the Incoterms 2020 rules had been made easier to use and understand than the previous versions of the rules through the addition of a more comprehensive introduction, upgraded explanatory notes for each rule, and an annex setting out the rules article by article.

39. Taking note of the usefulness of Incoterms 2020 rules in facilitating international trade, the Commission adopted the following decision:

“The United Nations Commission on International Trade Law,

“Expressing its appreciation to the International Chamber of Commerce for transmitting to it the text of the Incoterms 2020 rules, with an effective date of 1 January 2020,

“Congratulating the International Chamber of Commerce on having made a further contribution to the facilitation of international trade by making the Incoterms 2020 rules clearer and more accessible to global users than previous versions, while reflecting recent developments in international trade,

“Noting that the Incoterms 2020 rules constitute a valuable contribution for facilitating the conduct of global trade,

“Commends the use of the Incoterms 2020 rules, as appropriate, in international sales transactions.”

VI. Coordination and cooperation

A. General

40. The Commission had before it a note by the Secretariat ([A/CN.9/1018](#)) providing information on the activities of international organizations in the field of international trade law in which the secretariat had participated since the last note to the Commission ([A/CN.9/978](#)). The Commission noted that the secretariat's coordination efforts in the reporting period had been severely limited by the measures taken around the world to contain the COVID-19 pandemic. Most activities originally planned to take place after March 2020 had since been affected. In a few cases, it had been possible to carry out the activity remotely by videoconference. In most cases, however, the activities had been cancelled or postponed to dates yet to be determined.

41. The Commission took note with satisfaction of the coordination with HccH and Unidroit and the substantive completion of the joint guidance document on commercial contract law (with a focus on sales), which the Commission at the current session had approved for publication (see chapter IV above). The Commission also noted with appreciation the cooperation between the secretariat and Unidroit in the area of factoring law; the joint Unidroit-UNCITRAL workshop on warehouse receipts (26 March 2020, remote participation) (see part two, section X.C.1, below, and [A/CN.9/1014](#)); the joint work of the secretariat and Unidroit on legal issues related to the digital economy (see part two, section X.C.4, below, and [A/CN.9/1012](#), [A/CN.9/1012/Add.1](#), [A/CN.9/1012/Add.2](#) and [A/CN.9/1012/Add.3](#)); and the scope for cooperation with HccH in connection with the digital economy. Lastly, the Commission expressed its appreciation to HccH for its cooperation in connection with the organization of an international colloquium on the law applicable in insolvency proceedings (see part two, section X.C.3, below, and [A/CN.9/1016](#)).

42. The Commission noted with appreciation the coordination between the secretariat of UNCITRAL and the World Bank Group on amendments to the World Bank Principles for Effective Insolvency and Creditor/Debtor Regimes. The Commission noted that the proposed amendment will relate specifically to the insolvency of micro- and small enterprises, building on the work done in the past two meetings of the Insolvency and Creditor/Debtor Rights Task Force of the World Bank Group and reflected in the Task Force reports addressing aspects of insolvency of micro-, small and medium-sized enterprises. The Commission stressed the importance of ensuring coherence between the work of UNCITRAL and that of the World Bank on that matter.

43. The Commission expressed its satisfaction for the efforts made by the secretariat to cooperate and coordinate work with other organizations and entities, within and outside the United Nations system, both at a general level and on specific topics of the Commission's work programme, including the Asian-African Legal Consultative Organization, the Asia-Pacific Economic Cooperation, the Energy Charter Treaty Secretariat, the International Centre for Settlement of Investment Disputes, the Intergovernmental Organisation for International Carriage by Rail, OECD, OIF, OAS, the Organization for Security and Cooperation in Europe, PCA, the Economic Commission for Europe, UNCTAD, the United Nations Office on Drugs and Crime (UNODC) and WTO.

44. The Commission reiterated the importance of coordinating the activities of organizations active in the field of international trade law, which was a core element of the mandate that UNCITRAL received from the General Assembly,⁷ as a means of avoiding duplication of efforts and promoting efficiency, consistency and coherence in the unification and harmonization of international trade law.

⁷ See General Assembly resolution 2205 (XXI), sect. II, para. 8.

B. Reports of other international organizations

45. The Commission took note of the statements made on behalf of international and regional organizations invited to the session, which focused on activities of relevance for UNCITRAL.

1. Hague Conference on Private International Law

46. The Secretary-General of HccH reported on the developments concerning several HccH texts and activities. The Commission was informed about the following in particular:

(a) *Judgments Convention*. The most recent HccH Convention, the Judgments Convention, which was adopted in 2019, complemented the HccH Choice of Court, Service and Evidence Conventions, all of which enabled transnational litigation, ultimately improving access to justice and the rule of law. Those conventions did so by aligning with the United Nations Sustainable Development Goals and the work of the United Nations more broadly. The Judgments Convention added yet another piece to the existing legal framework for cross-border dispute resolution, together with the New York and Singapore Conventions. Together, those instruments provided a full spectrum of recognition and enforcement mechanisms for litigation and alternative dispute resolution at the international level, completing the much-awaited comprehensive architecture of cross-border dispute settlement;

(b) *Future areas of cooperation*. HccH noted the scope for cooperation with UNCITRAL on projects such as the ongoing work in relation to online dispute resolution for the protection of tourists and visitors, as well as possible future work by UNCITRAL on applicable law in insolvency proceedings.

2. Unidroit

47. The Secretary-General of Unidroit reported on the developments concerning several Unidroit texts and activities. The Commission was informed, in particular, about the following:

(a) *Model law on warehouse receipts*. The Governing Council of Unidroit had unanimously agreed to recommend to the Unidroit General Assembly to include the drafting, jointly with UNCITRAL, of a model law on warehouse receipts as a new project with high priority status in the Unidroit Work Programme for the period 2020–2022. It was reported that Unidroit and UNCITRAL had jointly organized and delivered a webinar to discuss global experiences with modernizing warehouse receipts systems, to identify emerging trends and to determine the main legal issues related to the development of legislative work, possibly to take the form of a model law, on warehouse receipts. The discussion took place with selected experts from various geographic regions with experience in legal reforms of warehouse receipt systems or related regimes, including members of academia, relevant stakeholders, institutional actors and organizations active in the field;

(b) *Work on artificial intelligence, smart contracts and distributed ledger technology*. The Unidroit Governing Council had also given the Unidroit secretariat a mandate to conduct further work on digital assets that built on the results of the two workshops jointly held by Unidroit and UNCITRAL in Rome and Vienna (May 2019 and March 2020, respectively). Unidroit had assembled a core group of experts, which should grow into a fully fledged working group after the September session of the Unidroit Governing Council. Part of the work of that new project on digital assets would consist of the drafting of a conceptual taxonomy (see also [A/CN.9/1012](#)), and Unidroit was keen to cooperate closely with UNCITRAL on it.

3. Permanent Court of Arbitration

48. The representative of PCA made a statement providing a summary of the work of PCA in the period 2019–2020, including an update of its provision of registry

support in a number of different arbitration and conciliation proceedings and, in particular, its experience with the operation of the UNCITRAL Arbitration Rules. The Commission took note with satisfaction of the continuing coordination and cooperation with PCA. The Commission was informed of the experience of PCA in providing administrative support in relation to the UNCITRAL Arbitration Rules and the role of the Secretary-General of PCA as designating authority under the Rules. The Commission also noted the contributions made by PCA to the ongoing work of Working Groups II and III, in particular with respect to expedited arbitration and the selection and appointment of arbitrators in investment arbitration.

4. Organization of American States

49. The representative of OAS noted that the OAS General Assembly had approved mandates in several areas of private international law, including the following:

(a) *Greater dissemination of private international law among member States.* By way of an overarching mandate, the OAS General Assembly had instructed its secretariat to promote greater dissemination of private international law among its member States, in collaboration with other organizations and associations that worked in that area, in particular UNCITRAL, HccH, Unidroit and the American Association of Private International Law;

(b) *Secured transactions.* The OAS General Assembly had instructed its secretariat to continue promoting among its member States the *Model Inter-American Law on Secured Transactions*. In that regard, the OAS secretariat had recently completed a publication on that model law that included an annotation of the text (part I) and progress reports on the process and status of reform efforts in several member States (part II);

(c) *International contract law.* The OAS General Assembly had instructed the secretariat to disseminate the *Guide on the Law Applicable to International Commercial Contracts in the Americas*, which had been approved by the Inter-American Juridical Committee (IAJC) in 2019. In that regard, the OAS secretariat had made the guide available online in English, Spanish and Portuguese, had provided copies to a wide number of entities (e.g., international organizations, professional associations and law schools) and had initiated a number of informational events and presentations on the guide;

(d) *Simplifying business laws.* The OAS General Assembly had requested the secretariat to disseminate the *Model Law on the Simplified Incorporation* as widely as possible and to support those member States that so request with technical assistance for the adoption of the Model Law.

50. The representative of OAS also noted that, in addition to mandates approved by the OAS General Assembly, IAJC, as the advisory body on juridical matters, also undertook studies on its own initiative. The current agenda of IAJC includes:

(a) *Electronic warehouse receipts for agricultural products.* IAJC had completed draft principles on that topic in 2016, which were forwarded to the OAS General Assembly. After consideration, the OAS General Assembly referred those draft principles back to IAJC for further development. IAJC was holding in abeyance any further work on that topic until a decision was made by UNCITRAL and Unidroit on their own work in the area. In the interim, as the technical secretariat of IAJC, the OAS secretariat continued to collaborate on the topic with the secretariats of both UNCITRAL and Unidroit;

(b) *Recognition and enforcement of judgments.* IAJC had included the topic on its agenda with a view to consideration of domestic procedures, the duplicity and complexity of which frequently impinge on the effectiveness of existing international instruments on recognition and enforcement of judgments that typically leave procedural matters to the domestic laws of States parties. Work on that topic was currently in process.

C. International governmental and non-governmental organizations invited to sessions of UNCITRAL and its working groups

51. At its fifty-third session, the Commission had before it a note by the Secretariat providing information about the newly accepted intergovernmental organizations and non-governmental organizations, and non-governmental organizations whose applications had been declined in the period since the start of the fifty-first session of UNCITRAL until 1 June 2020 (A/CN.9/1023). The Commission took note of that information as well as of the separate list of additional non-governmental organizations invited only to sessions of Working Group III while it is working on issues of investor-State dispute settlement.

52. The Commission also took note of the criteria applied by the secretariat for inviting organizations to its sessions and those of its working groups (<https://uncitral.un.org/en/about/faq/methods>). The Commission heard divergent views on the desirability of moving non-governmental organizations invited to sessions of Working Group III (Investor-State Dispute Settlement Reform) from the list specific to that working group to the general list of non-governmental organizations (A/CN.9/1023, paras. 7–8).

53. The Commission considered the request by Mumbai Grahak Panchayat that the secretariat reconsider the decision not to invite that organization to participate as an observer in sessions of UNCITRAL Working Group IV (Electronic Commerce). The Commission noted the assessment of its secretariat that Mumbai Grahak Panchayat was not international in membership and focus and lacked a demonstrated expertise in the area of work currently dealt with by Working Group IV. The Commission agreed that it had no elements to reverse the decision of the secretariat.

VII. Publications to promote a uniform interpretation and application of UNCITRAL texts (CLOUT and digests) and support their implementation and enactment

54. The Commission considered the note by the Secretariat on publications to promote a uniform interpretation and application of UNCITRAL texts (CLOUT and digests) and support their implementation and enactment (A/CN.9/1017).

55. It was noted that the Case Law on UNCITRAL Texts (CLOUT) system was an important tool to collect information on the use and implementation of UNCITRAL texts that could significantly contribute to the delivery of continued and sustained capacity-building efforts.

56. It was indicated that the secretariat had started implementing measures to rejuvenate CLOUT, in particular with respect to the compilation of cases and the establishment of CLOUT partnerships, in line with the Commission's request at its fifty-second session, in 2019 (A/74/17, para. 247).

57. The Commission expressed its appreciation for the value of CLOUT, including the digests, in promoting uniform interpretation of UNCITRAL texts, and welcomed the efforts of the secretariat in rejuvenating CLOUT.

58. The Commission took note with satisfaction of the performance of the 1958 New York Convention Guide web platform, available at www.newyorkconvention1958.org, and the successful coordination between that website and CLOUT.

59. The Commission took note of the progress made in the preparation of a digest of case law on the Model Law on Cross-Border Insolvency and invited the secretariat to finalize its publication by the end of the year 2020 or as soon as practicable thereafter. The Commission requested the secretariat to publish that digest as a paper and electronic booklet in the six official languages of the United Nations, within the existing resources of the Secretariat.

60. The Commission recalled its request to the secretariat to proceed with the preparation of explanatory materials to assist States wishing to enact the UNCITRAL model laws in the area of insolvency law (A/74/17, para. 222 (b)).

61. The Commission requested the secretariat to prepare a guidance note on the enactment of the UNCITRAL Model Law on Cross-Border Insolvency, the Model Law on Recognition and Enforcement of Insolvency-Related Judgments and the Model Law on Enterprise Group Insolvency and publish it as a note by the Secretariat, as both a paper and electronic booklet, in the six official languages of the United Nations and within the existing resources of the Secretariat.

62. The Commission also noted that a significant amount of jurisprudence on the Model Law on Cross-Border Insolvency had been issued since 15 April 2013 and that global mitigation efforts made necessary by the COVID-19 pandemic were expected to occasion a large number of insolvencies.

63. In the light of that context and the finalization of the digest on case law on the Model Law on Cross-Border Insolvency, the Commission requested the secretariat to prepare and publish an update of the publication *The Model Law on Cross-Border Insolvency: The Judicial Perspective* as soon as practicable, as both a paper and electronic booklet, in the six official languages of the United Nations, using a mechanism along the lines of that used for the 2013 update.

VIII. Technical assistance to law reform

A. General

64. The Commission had before it the following: a note by the Secretariat (A/CN.9/1032) on technical cooperation and assistance activities undertaken in the period since the previous report to the Commission, in 2019 (A/CN.9/980/Rev.1); a note by the Secretariat (A/CN.9/1024) on the activities undertaken by the UNCITRAL Regional Centre for Asia and the Pacific in the period since the previous report to the Commission in 2019 (A/CN.9/988); and a note by the Secretariat (A/CN.9/1033) on the dissemination of information and related activities to support the work of UNCITRAL and the use of its texts.

1. Technical cooperation and assistance activities

65. The Commission recalled that the secretariat's technical cooperation and assistance activities included: (a) raising awareness and promoting the effective understanding of UNCITRAL texts to allow States to enact them effectively; (b) providing advice and assistance in drafting laws and regulations enacting UNCITRAL texts, including through gap analyses and other diagnostic tools; and (c) building capacity in the adoption, use and interpretation of UNCITRAL texts. The Commission recognized that effective adoption, use and interpretation of UNCITRAL texts were integral elements of harmonizing international trade law in practice.

66. The Commission expressed its appreciation for the work undertaken by the secretariat in that regard and for the secretariat's efforts to enhance their delivery and effectiveness. Appreciation was expressed to the secretariat by States for the technical assistance provided in their jurisdictions in the year ending with the current session. Interest was expressed for ongoing cooperation in the coming year. The introduction of the UNCITRAL Latin American and Caribbean Days in the third quarter of 2020 was specifically welcomed. The introduction of more induction briefings and the provision of information on UNCITRAL to interested stakeholders were also commended. The Commission welcomed the conclusion of memorandums of understanding with China, Hong Kong, China, Saudi Arabia and Singapore, to support technical assistance activities supporting UNCITRAL texts, and expressed its appreciation for the events organized by China, Hong Kong, China, and Singapore, with the secretariat under those memorandums.

67. The Commission noted with regret that technical cooperation and assistance activities had been curtailed because of the measures taken to address the financial situation of the Organization in October 2019. The Commission also noted that, starting in March 2020, measures taken to contain the COVID-19 pandemic had caused the cancellation and postponement of activities, notably some celebrations of the fortieth anniversary of the United Nations Convention on Contracts for the International Sale of Goods in 2020 (“CISG@40”) and activities to support the use of UNCITRAL texts on public-private partnerships, electronic commerce and secured transactions in several States. The Commission expressed its appreciation for the secretariat’s efforts to adapt to the circumstances and explore ways to deliver its activities to support the adoption and use of UNCITRAL texts as far as possible, and to increase its online and social media presence and organize videoconferences and webinars.

2. Voluntary contributions to the trust funds

68. The Commission noted the increasing demand for technical assistance from the UNCITRAL secretariat and the resource-intensive nature of technical assistance and cooperation activities and noted that the continuing ability of the UNCITRAL secretariat to respond to demand for those activities was dependent upon the availability of extrabudgetary funds and additional financial and human resources.

69. The Commission expressed its gratitude to China, France, Indonesia and the Republic of Korea and for their contributions to the Trust Fund for UNCITRAL Symposia, and to the Governments of Austria and France for their contributions to the trust fund for granting travel assistance to developing countries that were members of UNCITRAL, since the Commission’s fifty-second session.

70. The Commission further noted that the European Union and the Swiss Agency for Development and Cooperation had provided financial contributions and that the Deutsche Gesellschaft für Internationale Zusammenarbeit by appointment of the Federal Ministry for Economic Cooperation and Development of Germany had made contributions in kind to support the participation of developing countries in Working Group III (Investor-State Dispute Settlement Reform). It was noted that, while that funding was directed to UNCITRAL legislative activities, attendance at the sessions of the Working Group supported the development of the capacity of the participating developing countries to participate more effectively in UNCITRAL legislative activities. The funds were used to facilitate participation of the following States in the sessions of Working Group III in the period reported: Argentina, Bolivia (Plurinational State of), Burkina Faso, Central African Republic, Chile, Colombia, Costa Rica, Democratic Republic of the Congo, Ecuador, Gabon, Guinea, Iran (Islamic Republic of), Kenya, Kyrgyzstan, Lesotho, Mali, Myanmar, Namibia, Nigeria, Paraguay, Senegal and Uruguay.⁸

71. The Commission noted that the secretariat had sought to secure additional voluntary contributions and to organize activities involving travel with co-funding and cost-sharing whenever possible. It also recognized the work of the secretariat to enhance the strategic focus of its technical cooperation and assistance activities, in particular through the conclusion of strategically oriented partnerships, and to evaluate the efficiency and effectiveness of those activities through systematic data collection and analysis.

72. The Commission encouraged the secretariat to continue those efforts, including exploring sources of extrabudgetary funding. At the same time, it noted that despite those efforts, including active fundraising by the secretariat, the balances in the trust funds remained insufficient to meet the full demand for technical assistance and travel assistance. The Commission reiterated its call to all States, the relevant bodies of the United Nations system, organizations, institutions and individuals to consider making

⁸ The agreement between the United Nations and the European Union funds travel to the sessions of Working Group III whether or not the developing countries concerned are members of UNCITRAL.

contributions to the trust funds, if possible in the form of multi-year contributions or as specific-purpose contributions, in order to facilitate planning and enable the UNCITRAL secretariat to meet the increasing number of requests for technical assistance and cooperation and travel assistance.

3. Dissemination of information on the work and texts of UNCITRAL

73. The Commission noted the important role played by the UNCITRAL website (<https://uncitral.un.org>) and the UNCITRAL Law Library for the dissemination of information on the work and texts of UNCITRAL. The Commission recalled its request that the secretariat continue to explore the development of new social media features on the UNCITRAL website as appropriate,⁹ noting that the development of such features in accordance with the applicable guidelines was also welcomed by the General Assembly.¹⁰ In that regard, the Commission noted with approval the continued use and development of the UNCITRAL LinkedIn and Facebook pages and the addition of a Twitter account for the Secretary of UNCITRAL and an UNCITRAL Soundcloud account for podcasts.¹¹ Finally, the Commission recalled the General Assembly resolutions commending the website's interface in the six official languages.¹²

4. International commercial law moot competitions

74. The Commission noted that, as a result of measures taken to contain the COVID-19 pandemic, activities in several UNCITRAL-sponsored moots took place online,¹³ and the sixth mediation and negotiation competition (organized jointly by the International Bar Association and the Vienna International Arbitration Centre with the support of the UNCITRAL secretariat), in which 33 teams from 16 jurisdictions were registered to participate, had to be cancelled.

5. Internship programme

75. The Commission welcomed the continuation of the internship programme in both the UNCITRAL secretariat in Vienna and in the Regional Centre, expressing its hope that the interruption caused by measures taken to contain the COVID-19 pandemic would not be longer than necessary. Noting that the majority of applicants came from the regional group of Western Europe and other States and the secretariat's difficulties in attracting candidates from African and Latin American States and candidates with fluent Arabic language skills, as had been reported to the Commission earlier, the Commission appreciated the efforts taken by its secretariat to increase diversity among the interns. It requested States and observer organizations to bring the possibility of an internship at the UNCITRAL secretariat to the attention of interested persons and to consider granting scholarships for the purpose of attracting those most qualified for the internship.

B. Activities undertaken by the Regional Centre

76. The Commission recognized the tangible progress made in the levels of awareness, adoption and implementation of harmonized and modern international trade law standards elaborated by UNCITRAL in the Asia-Pacific region as a result of the activities of the Regional Centre. The Commission also highlighted the impact

⁹ *Official Records of the General Assembly, Seventieth Session, Supplement No. 17 (A/70/17)*, para. 247.

¹⁰ General Assembly resolutions 69/115, para. 21; 70/115, para. 21; and 74/182, para. 27.

¹¹ LinkedIn, www.linkedin.com/company/uncitral; Facebook, www.facebook.com/uncitral/; Twitter: <https://twitter.com/annajoubinbret>; Soundcloud, <https://soundcloud.com/uncitral>.

¹² General Assembly resolutions 61/32, para. 17; 62/64, para. 16; 63/120, para. 20; 69/115, para. 21; 70/115, para. 21; and 74/182, para. 27.

¹³ For further details on these moots, see [A/CN.9/1032](https://www.uncitral.org/publications/2017/01/A/CN.9/1032), paras. 65–71.

of the Regional Centre in mobilizing contributions to the work of UNCITRAL from the Asia-Pacific region.

77. The Commission noted in particular that 20 signatories of the United Nations Convention on International Settlement Agreements Resulting from Mediation (the Singapore Convention on Mediation)¹⁴ were located in the Asia-Pacific region (Afghanistan, Brunei Darussalam, China, Fiji, India, Iran (Islamic Republic of), Jordan, Kazakhstan, Lao People's Democratic Republic, Malaysia, Maldives, Palau, Philippines, Qatar, Republic of Korea, Samoa, Saudi Arabia, Singapore, Sri Lanka and Timor-Leste). It was noted that the Convention would enter into force on 12 September 2020, with four ratifications: Fiji and Singapore on 25 February 2020; Qatar on 12 March 2020 and Saudi Arabia on 5 May 2020.

78. The Commission also noted other legislative actions with respect to UNCITRAL texts by States from the region: the accessions of Papua New Guinea, Maldives and Palau to the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention) and of the Lao People's Democratic Republic to the United Nations Convention on Contracts for the International Sale of Goods.

79. The Commission commended the Regional Centre for having continued to deliver flagship activities during the reporting period, namely, the inaugural edition of the UNCITRAL Regional Centre Incheon Law and Business Forum (Incheon, Republic of Korea, 18 September 2019), the eighth edition of the Asia-Pacific Alternative Dispute Resolution (ADR) Conference, including the alternative dispute resolution special session (Seoul, 19 and 20 September 2019), the third edition of the UNCITRAL Asia-Pacific Judicial Summit (Hong Kong, China, 4–5 November 2019), and the sixth edition of the UNCITRAL Asia-Pacific Day academic series. With regard to the latter, the Commission welcomed the ground-breaking total of 17 universities and institutions which co-hosted 13 events in seven countries (China, India, Japan, Republic of Korea, Russian Federation, Thailand and Viet Nam) during the last quarter of 2019. Coupled with the comprehensive range of UNCITRAL topics covered, the regional academic events again proved highly successful in support of the activities and objectives of the Regional Centre.¹⁵

80. The Commission noted with appreciation the additional events and public, private and civil society initiatives that the Regional Centre had organized or supported, and the technical assistance and capacity-building services provided to States, international and regional organizations and development banks in the region. The Commission welcomed the statement by the delegation of the Republic of Korea confirming the continuation of its support for the Regional Centre, and conveying its confidence in the Regional Centre's ability to enhance international trade and promote legal certainty in international commercial transactions in Asia and the Pacific.

81. The Commission expressed strong support for the Regional Centre's continued coordination and cooperation efforts with regional stakeholders, development banks and other institutions active in trade law reform, and with United Nations funds, programmes and specialized agencies active in the region.

82. The Commission noted that the Regional Centre was staffed with one professional, one programme assistant, one team assistant and two legal experts, and that its core project budget allowed for the occasional employment of experts and consultants. It was noted that, during the reporting period, the Regional Centre had received 13 interns. The Commission also noted that the Regional Centre relied fully on the annual financial contribution from the Incheon Metropolitan City to the Trust Fund for UNCITRAL Symposia to meet the cost of its operation and programme

¹⁴ *Official Records of the General Assembly, Seventy-third Session, Supplement No. 17 (A/73/17)*, annex I. Forty-six States signed the Singapore Convention on Mediation at the signing ceremony in Singapore on 7 August 2019 – the highest number of signatories on the opening day of a convention prepared by UNCITRAL – with six additional States following in the subsequent months.

¹⁵ See, for example, [A/74/17](#), para. 275.

(\$500,000 from 2011 to 2016 and \$450,000 from 2017 to 2021). The Commission expressed its gratitude to the City. The Commission further expressed its gratitude to the Ministry of Justice of the Republic of Korea and to the government of Hong Kong, China, for the extension of their contribution of two legal experts on non-reimbursable loans.

83. The Commission encouraged the Secretariat to continue to seek cooperation, including through formal agreements, to ensure coordination and funding for the technical assistance and capacity-building activities of the Regional Centre. It repeated its call upon all States, international organizations and interested persons to consider making contributions to the Trust Fund for UNCITRAL Symposia to enable the continued delivery of those activities.

IX. Status and promotion of UNCITRAL legal texts and the New York Convention

A. General discussion

84. The Commission considered the status of the conventions and model laws emanating from its work and the status of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958) (the New York Convention),¹⁶ on the basis of a note by the Secretariat (A/CN.9/1020). The Commission also noted that section III.B of the note supplemented a note by the Secretariat on the operation of the transparency repository that was also before the Commission during its fifty-third session (A/CN.9/1015). The Commission noted with appreciation the information on treaty actions and legislative enactments received since its fifty-second session.

85. The Commission also noted the following treaty actions and legislative enactments made known to the secretariat subsequent to the submission of the note by the Secretariat:

(a) Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958): accessions by Palau and Tonga (164 States parties);

(b) United Nations Convention on the Use of Electronic Communications in International Contracts (New York, 2005):¹⁷ accession by Bahrain and Kiribati (14 States parties);

(c) United Nations Convention on International Settlement Agreements Resulting from Mediation (New York, 2018): ratification by Saudi Arabia (4 States parties);

(d) UNCITRAL Model Law on Cross-Border Insolvency (1997). New legislation based on the Model Law has been adopted in Myanmar. Legislation based on the Model Law has been adopted in 47 States in a total of 50 jurisdictions.

86. The Commission expressed appreciation to the General Assembly for the support it provided to UNCITRAL in its activities and in particular its distinct role in furthering the dissemination of international commercial law. In particular, the Commission referred to the long-established practice of the General Assembly, upon acting on UNCITRAL texts, to recommend to States to give favourable consideration to UNCITRAL texts and to request the Secretary-General to publish UNCITRAL texts, including electronically, in the six official languages of the United Nations, and take other measures to disseminate UNCITRAL texts as broadly as possible to Governments and all other relevant stakeholders.

¹⁶ United Nations, *Treaty Series*, vol. 330, No. 4739, p. 3.

¹⁷ General Assembly resolution 60/21, annex.

B. Bibliography of recent writings related to the work of UNCITRAL

87. The UNCITRAL Law Library specializes in international commercial law. Its collection features important titles and online resources in that field in the six United Nations official languages. From May 2019 to May 2020, library staff responded to approximately 400 reference requests, originating in over 40 countries, and hosted researchers from over 15 countries.

88. Considering the broader impact of UNCITRAL texts, the Commission took note of the bibliography of recent writings related to the work of UNCITRAL (A/CN.9/1019) and the influence of UNCITRAL legislative guides, practice guides and contractual texts as described in academic and professional literature. The consolidated bibliography contains more than 10,860 entries, reproduced in English and in the original language versions. The Commission noted the importance of facilitating a comprehensive approach to the creation of the bibliography and the need to remain informed of activities of non-governmental organizations active in the field of international trade law. In this regard, the Commission recalled and repeated its request that non-governmental organizations invited to the Commission's annual session donate copies of their journals, reports and other publications to the UNCITRAL Law Library for review.¹⁸ The Commission expressed appreciation to all non-governmental organizations that donated materials.

X. Consideration of the pilot operation of the repository of published information under the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration and the way forward

89. The Commission had before it a report on the operation of the repository of published information under the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration, and consideration of the way forward (A/CN.9/1015). That report was supplemented by section III.B of a note by the Secretariat on the status of conventions and model laws that was also before the Commission at the current session (A/CN.9/1020, paras. 15–20).

90. The Commission recalled that the repository of published information (the “transparency repository”) had been established under article 8 of the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration (the Rules on Transparency). The Commission also recalled reports on the transparency repository that had been provided at its previous sessions.¹⁹

91. The Commission was informed of several projects and activities that had taken place since its fifty-second session, in 2019, to raise awareness of the Rules on Transparency and the United Nations Convention on Transparency in Treaty-based Investor-State Arbitration (New York, 2014) (the Mauritius Convention on Transparency)²⁰ (together referred to as “the UNCITRAL transparency standards”) and to promote their effective understanding and to raise awareness of the benefits of selecting the transparency repository among parties to relevant disputes (A/CN.9/1015, paras. 11–21). It was noted that those activities had contributed significantly to broader adoption, use and uniform interpretation of the UNCITRAL transparency standards and to the enhanced transparency in the settlement of international investment disputes.

¹⁸ Ibid., *Seventieth Session, Supplement No. 17 (A/70/17)*, para. 264.

¹⁹ Ibid., *Sixty-ninth Session, Supplement No. 17 (A/69/17)*, paras. 107–110; *ibid.*, *Seventieth Session, Supplement No. 17 (A/70/17)*, paras. 152–161; *ibid.*, *Seventy-first Session, Supplement No. 17 (A/71/17)*, paras. 166–173; *ibid.*, *Seventy-second Session, Supplement No. 17 (A/72/17)*, paras. 308–321; *ibid.*, *Seventy-third Session, Supplement No. 17 (A/73/17)*, paras. 204–208; and *ibid.*, *Seventy-fourth Session, Supplement No. 17 (A/74/17)*, paras. 290–292.

²⁰ General Assembly resolution 69/116, annex.

92. The Commission was informed that, overall, and partly as a result of the promotional activities, the trend in investor-State dispute settlement was moving towards transparency. The Commission recalled that, following ratification by Mauritius, Canada and Switzerland (listed in the chronological order of ratification), the Mauritius Convention on Transparency entered into force on 18 October 2017. It was noted that since that date, Cameroon and the Gambia had ratified the Convention and none of those five ratifying States had made reservations; as a result, the transparency repository was part of the investor-State dispute settlement regime created by investment treaties concluded by those States.²¹ Thus, the Rules on Transparency apply on a unilateral basis under approximately 200 treaties concluded before 1 April 2014 by those States, provided that the claimant agrees to their application.

93. The Commission also noted that, additionally, a further 18 countries had signed the Mauritius Convention on Transparency: Australia, Belgium, Benin, Bolivia (Plurinational State of), Congo, Finland, France, Gabon, Germany, Iraq, Italy, Luxembourg, Madagascar, Netherlands, Sweden, Syrian Arab Republic, United Kingdom and United States.

94. The Commission was informed that since the date of the note by the Secretariat on the status of conventions and model laws before the Commission at its current session (A/CN.9/1020) (see para. 89 above), the Plurinational State of Bolivia had enacted a national law ratifying the Mauritius Convention on Transparency.²² It was also noted that several Latin American countries had concluded free trade agreements and investment treaties including transparency provisions based on the UNCITRAL transparency standards, which might lead to additional signatures and ratifications of the Mauritius Convention on Transparency.

95. The Commission recalled that the transparency repository operated as a pilot project and on the basis of voluntary contributions. The continuing ability to operate the transparency repository, raise awareness and promote effective understanding and use of the UNCITRAL transparency standards would depend upon the availability of voluntary contributions to meet associated costs.

96. With respect to the current budgetary situation of the transparency repository, the Commission was informed that the secretariat was in contact with the European Commission and the Fund for International Development of the Organization of the Petroleum Exporting Countries (OFID) regarding the obtaining of renewed funding. The Commission was further informed that the European Commission had expressed its firm commitment to support the transparency repository with a minimum of €300,000 over the next three years and that the respective grant agreement was being drafted. The Commission expressed its appreciation to the European Commission for its renewed commitment to provide funding that would allow the UNCITRAL secretariat to continue the operation of the transparency repository.

97. The Commission was also informed that the secretariat was currently in contact with interested States regarding additional funding. The Commission reiterated its call to all States, international organizations and interested persons to consider making contributions to the funding of the transparency repository, if possible, in the form of multi-year contributions, so as to facilitate its continued operation.

98. The Commission was informed that, with the recent provision of funds from the European Commission and taking into account the pending decision by OFID to continue funding, as well as possible additional funding from interested States, its secretariat would be able to continue operating the transparency repository until the end of 2023.

99. After discussion, the Commission reiterated its strong and unanimous opinion that the UNCITRAL secretariat should fulfil the role of the transparency repository

²¹ *Official Records of the General Assembly, Seventy-third Session, Supplement No.17 (A/73/17)*, para. 205.

²² Plurinational State of Bolivia, Law No. 1276/2020.

and that it should continue to operate the transparency repository. The Commission expressed its appreciation to the European Commission for its renewed commitment to provide funding for a period of three years that would allow the UNCITRAL secretariat to continue operating the transparency repository. Accordingly, the Commission recommended to the General Assembly that it request the Secretary-General to continue to operate, through the UNCITRAL secretariat, the repository of published information in accordance with article 8 of the Rules on Transparency, as a continuation of the project until the end of 2023, to be funded entirely by voluntary contributions, and to keep the General Assembly and the Commission informed of developments regarding the funding and budgetary situation of the transparency repository.

XI. Current role of UNCITRAL in promoting the rule of law

100. The Commission recalled that the item had been on the agenda of the Commission since its forty-first session, in 2008,²³ in response to the General Assembly's invitation to the Commission to comment, in its report to the General Assembly, on the Commission's current role in promoting the rule of law.²⁴ The Commission further recalled that, at its forty-first to fifty-second sessions, in 2008 to 2019, respectively, the Commission, in its annual reports to the General Assembly,²⁵ transmitted comments on its role in promoting the rule of law at the national and international levels.

101. The Commission also recalled that it had considered it essential to keep a regular dialogue with the Rule of Law Coordination and Resource Group through the Rule of Law Unit and to keep abreast of progress made in the integration of the work of UNCITRAL into the United Nations joint rule of law activities. The Commission recalled that, to that end, it requested the secretariat to organize briefings by the Rule of Law Unit biennially, when sessions of the Commission were held in New York.²⁶ The Commission recalled that the briefings consequently took place at the Commission's forty-fifth, forty-seventh, forty-ninth and fifty-first sessions, in 2012, 2014, 2016 and 2018²⁷ respectively. The Commission noted that a briefing could not take place at its fifty-third session because of the changes to the agenda in response to the COVID-19 pandemic.

102. At the current session, the Commission had before it a note by the Secretariat on the role of UNCITRAL in promoting the rule of law at the national and international levels (A/CN.9/1022). Taking note of General Assembly resolution 74/191 and responding to the invitation contained therein to continue to comment, in

²³ For the decision of the Commission to include the item on its agenda, see *Official Records of the General Assembly, Sixty-second Session, Supplement No. 17 (A/62/17)*, part two, paras. 111–113.

²⁴ General Assembly resolutions 62/70, para. 3; 63/128, para. 7; 64/116, para. 9; 65/32, para. 10; 66/102, para. 12; 67/97, para. 14; 68/116, para. 14; 69/123, para. 17; 70/118, para. 20; 71/148, para. 22; 72/119, para. 25; 73/207, para. 20; and 74/191, para. 20.

²⁵ *Official Records of the General Assembly, Sixty-third Session, Supplement No. 17* and corrigendum (A/63/17 and Corr.1), para. 386; *ibid.*, *Sixty-fourth Session, Supplement No. 17 (A/64/17)*, paras. 413–419; *ibid.*, *Sixty-fifth Session, Supplement No. 17 (A/65/17)*, paras. 313–336; *ibid.*, *Sixty-sixth Session, Supplement No. 17 (A/66/17)*, paras. 299–321; *ibid.*, *Sixty-seventh Session, Supplement No. 17 (A/67/17)*, paras. 195–227; *ibid.*, *Sixty-eighth Session, Supplement No. 17 (A/68/17)*, paras. 267–291; *ibid.*, *Sixty-ninth Session, Supplement No. 17 (A/69/17)*, paras. 215–240; *ibid.*, *Seventieth Session, Supplement No. 17 (A/70/17)*, paras. 318–324; *ibid.*, *Seventy-first Session, Supplement No. 17 (A/71/17)*, paras. 318–342; *ibid.*, *Seventy-second Session, Supplement No. 17 (A/72/17)*, paras. 435–441; *ibid.*, *Seventy-third Session, Supplement No. 17 (A/73/17)*, paras. 232–233; and *ibid.*, *Seventy-fourth Session, Supplement No. 17 (A/74/17)*, paras. 303–308.

²⁶ *Ibid.*, *Sixty-fifth Session, Supplement No. 17 (A/65/17)*, para. 335.

²⁷ *Ibid.*, *Sixty-seventh Session, Supplement No. 17 (A/67/17)*, paras. 199–210; *ibid.*, *Sixty-ninth Session, Supplement No. 17 (A/69/17)*, paras. 229–233; *ibid.*, *Seventy-first Session, Supplement No. 17 (A/71/17)*, paras. 313–317; and *ibid.*, *Seventy-third Session, Supplement No. 17 (A/73/17)*, paras. 230–231.

its report to the General Assembly, on its current role in promoting the rule of law,²⁸ the Commission took into account that the upcoming debates of the Sixth Committee under the rule of law agenda item would focus on the subtopic “Measures to prevent and combat corruption”. The Commission decided to focus its comments on its current role in promoting the rule of law at the national and international levels on that subtopic. The Commission recalled its consideration of issues relevant to that subtopic at its sessions in 2010 and 2012²⁹ and decided to transmit to the General Assembly the comments reproduced in paragraph 25 of the present report.

103. The Commission highlighted the relevance of its work to the promotion of the rule of law and the implementation of the Sustainable Development Goals. As stated in the note by the Secretariat on the role of UNCITRAL in promoting the rule of law at the national and international levels (A/CN.9/1022, para. 10 (b)), at its fifty-second session, the Commission was informed that the programme budget planning and performance framework required a close alignment of the programme of each United Nations entity with the Sustainable Development Goals.³⁰ Considering those and other developments highlighted in section II of that note by the Secretariat, in particular the calls for accelerated actions to achieve the Sustainable Development Goals (A/CN.9/1022, para. 26), the Commission took note of the invitation by the secretariat to consider whether the criteria it used for assessing the feasibility and desirability of undertaking work on a new topic (such as the promotion of international trade law, legal feasibility, economic need and relevance to specific needs of developing countries)³¹ could be applied to ensure even greater alignment of its work with the Sustainable Development Goals.

104. The Commission reiterated its request to States, the secretariat, organizations and institutions to continue their efforts towards increasing awareness of the role of UNCITRAL standards and activities for the promotion of the rule of law at the national and international levels and the implementation of the Sustainable Development Goals. In that context, the Commission noted with appreciation the efforts by States, the UNCITRAL secretariat and UNODC to acknowledge the important contribution that UNCITRAL makes to the implementation of the international anti-corruption agenda during the special session of the General Assembly on challenges and measures to prevent and combat corruption and strengthen international cooperation, scheduled to take place from 2 to 4 June 2021, and in the outcome document of that special session, for which the preparatory process is taking place under the auspices of the Conference of the States Parties to the United Nations Convention against Corruption.³² The Commission requested that the Chair of UNCITRAL at its fifty-third session, other members of the Bureau of that session, States and the UNCITRAL secretariat take appropriate steps to ensure that the contribution of UNCITRAL to the implementation of the international anti-corruption agenda is duly acknowledged in an outcome document of that special session of the General Assembly (see para. 26 above). In addition, the Commission noted that the High-Level Political Forum on Sustainable Development, whose meetings usually took place in parallel with the annual sessions of UNCITRAL, provided an annual opportunity for States, the secretariat, organizations and institutions to highlight the role of UNCITRAL in the implementation of the Sustainable Development Goals.³³

²⁸ General Assembly resolution 74/191, para. 20.

²⁹ *Official Records of the General Assembly, Sixty-fifth Session, Supplement No. 17 (A/65/17)*, para. 324; and *ibid.*, *Sixty-seventh Session, Supplement No. 17 (A/67/17)*, paras. 202 and 206.

³⁰ *Ibid.*, *Seventy-fourth Session, Supplement No. 17 (A/74/17)*, para. 302.

³¹ *Ibid.*, *Sixty-eighth Session, Supplement No. 17 (A/68/17)*, paras. 294 and 295.

³² See General Assembly resolution 74/276 and decision 74/568.

³³ For example, the theme of the Forum held from 7 to 16 July 2020 was “Accelerated action and transformative pathways: realizing the decade of action and delivery for sustainable development”, with a focus on the most critical trade-offs and synergies between the Goals.

XII. Relevant General Assembly resolutions

105. The Commission recalled that, at its fiftieth session, in 2017, it had requested the secretariat to replace an oral report to the Commission on relevant General Assembly resolutions with a written report to be issued before the session.³⁴ Pursuant to that request, the Commission had before it at its fifty-third session a note by the Secretariat (A/CN.9/1021) summarizing the content of operative paragraphs of General Assembly resolutions 74/182, on the report of UNCITRAL on the work of its fifty-second session, 74/183, on the UNCITRAL Model Legislative Provisions on Public-Private Partnerships, and 74/184, on the UNCITRAL Model Law on Enterprise Group Insolvency.

106. The Commission took note of those General Assembly resolutions.

XIII. UNCITRAL texts and COVID-19-related response and recovery

107. The Commission recalled its request to the secretariat to organize during its fifty-third session a series of virtual panels that considered the role that UNCITRAL texts could play in assisting States with their COVID-19 economic response and recovery efforts. That request was made in recognition of the fact that COVID-19 was not only an alarming global health crisis but also causing extensive social and economic disruptions. States were experiencing severe economic fallout from the interventions required to mitigate the effects of the pandemic, and the expectation of the Commission was that the COVID-19 crisis would continue to negatively impact international trade and economic activity for the foreseeable future.

108. The Commission observed that many of the legislative tools developed by UNCITRAL could play an important role in assisting States in their economic response and recovery efforts in the context of the COVID-19 pandemic and that a strong legal framework would facilitate that recovery and help to revitalize commercial activity and global trade.

109. The series of six virtual panels, which were open to all interested stakeholders, took place from 8 to 16 July 2020 and involved several key partners of UNCITRAL. The various panels were organized with a similar structure, consisting of a panel or a round-table discussion by experts, generally followed by an invitation for interventions from representatives of States, and concluding with a question-and-answer session. The public response to the Commission's initiative was very positive: the overall number of registrations received from stakeholders (not counting the official delegations to the Commission's session) was over 2,300, with an average of 1,340 participants registering for each session. A recording of each session has been posted on the UNCITRAL website, as have presentations approved for that purpose.

110. An oral report was made to the Commission on 17 July 2020, outlining the following key takeaways from the virtual panel sessions.

111. The first day of the series, 8 July 2020, focused on "Identification and authentication in the digital economy." Panellists 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. Discussion highlighted how the COVID-19 pandemic was accelerating the move to online business processes, a situation which underlined 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,

³⁴ *Official Records of the General Assembly, Seventy-second Session, Supplement No. 17 (A/72/17)*, para. 480.

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 in this area being carried out by Working Group IV.

112. The second virtual panel, on 9 July 2020 was entitled “Digital economy and trade finance.” It was hosted in partnership with ICC and focused on paperless trade facilitation and electronic payments. After a short video message from the Secretary General of ICC highlighting the importance of the UNCITRAL Model Law on Electronic Transferable Records, the panel described how the COVID-19 crisis was disrupting existing supply chains, posing challenges for businesses reaching out to new partners and relying solely on online credentials. Micro-, small and medium-sized enterprises were being particularly negatively affected given their liquidity shortage and difficulties in accessing credit. Panellists also stressed the desirability of 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).

113. The third virtual panel session took place on 13 July 2020, entitled “Assisting economic recovery—targeting micro-, small and medium-sized enterprises”. The session, hosted in partnership with the World Bank Group, consisted of panels 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, with reference to the current work of UNCITRAL Working Group V and the World Bank Group. Panellists explained how insolvencies of micro- and small enterprises differ from the insolvencies of larger enterprises, highlighting the need to ensure an insolvency regime designed for micro- and small enterprises with the objective of quickly rehabilitating and reintegrating entrepreneurs into productive activities, thus benefiting all of 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 micro-, small and medium-sized enterprises, a situation exacerbated by the COVID-19 crisis. A wide range of actions taken by the public sector to enhance access to credit for micro-, small and medium-sized enterprises 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 highlighted that legislative reforms based on UNCITRAL texts on secured transactions could have a positive impact on access to credit for micro-, small and medium-sized enterprises by facilitating the use of a wide range of movable assets (including receivables) as collateral.

114. The panels on 14 July 2020, the fourth day of the virtual series, were on two areas of government contracting: public-private partnerships; and public procurement. Speakers on the panel on public-private partnerships discussed the implications of the COVID-19 pandemic for public-private partnership contracts already in force and the necessity of adaptation mechanisms between the contracting authority and the private partner to address cost increases in the provision of public services or unexpected financial changes (such as revenue shortfall due to a decline in demand or legislated occupancy limitations). The mechanisms for contract adaptation provided in the UNCITRAL Model Legislative Provisions on Public-Private Partnerships were noted, and their relevance in the current context was stressed. Panellists in the second area, public procurement, shared their relevant experiences, noting recent trends towards convergence in legal rules on procurement, which had intensified during the COVID-19 pandemic. Such trends included the establishment of digital procurement, tools for emergency contracting, and the effects on the supply chain. Concerns were raised about stockpiling becoming an alternative to emergency procurement, a result indicative of market failure but possibly also of

an inadequacy of applicable processes. State interventions following the two panels revealed that legislative initiatives related to the establishment or improvement of the public procurement and legal frameworks for public-private partnership were ongoing around the world, as well as demonstrating the strong need for services and infrastructure to meet the Sustainable Development Goals and the necessity of establishing safeguards against corruption or the mismanagement of public funds in such projects.

115. On 15 July 2020, the fifth virtual panel session was hosted in partnership with the Vienna International Arbitration Centre and addressed the COVID-19 impact on international dispute resolution. This panel followed a different structure from the other panel sessions as it was organized as two round tables with representatives of arbitral institutions for an audience of practitioners, and discussion focused on practical measures rather than on legislative policy (hence, no specific slot was set aside for State interventions). During the first round table, representatives of five arbitral institutions addressed the short-term consequences and shared measures they took to respond to the COVID-19 crisis, ranging from measures to ensure the safe operation of the institutions to measures aimed at the effective administration of arbitral proceedings. Other measures taken included the use of digital technology to facilitate the different stages of the proceedings, such as remote hearings, and the issuance of guidelines to assist parties and the arbitral tribunal. The second round table examined the long-term consequences of the pandemic and how international dispute resolution could evolve as a result. Increased digitization and further use of technology, expedited procedures, the use of artificial intelligence, asynchronous hearings, online platforms and other innovative measures were outlined, all of which were likely to change how disputes would be resolved. However, 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. Overall, it was observed that UNCITRAL texts on dispute resolution (including on mediation) were flexible enough to accommodate these changing circumstances, but that further examination of those texts could be made in the context of the evolving environment.

116. The sixth virtual panel session, on “Gender, trade and COVID-19”, was hosted in partnership with UN-Women on 16 July 2020. Providing critical new perspectives on the work of UNCITRAL, the panel highlighted how UNCITRAL texts could help promote pro-women and gender-responsive policies in line with the Sustainable Development Goals. It was noted that women were bearing a disproportionate burden of the economic fallout from the COVID-19 crisis, partly because their economic activity was often in the sectors – including informal sectors – that had been hardest hit by the crisis. The first part of the panel discussion explored how mediation could be particularly suited to women entrepreneurs by encouraging a constructive and managed dialogue in a safe environment, including online. 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. The second topic dealt with the importance of fast and simple business registration procedures to support micro-, small and medium-sized enterprises transitioning to the formal economy, which was an important element in the COVID-19 recovery phase because access to government recovery assistance was often limited to businesses formally recognized by the State. The panel emphasized that improving laws on business registration would assist micro-, small and medium-sized enterprises operated by women, as well as the key role played in this regard by the *UNCITRAL Legislative Guide on Key Principles of a Business Registry*. The third 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 could catalyse the economic participation of women, as well as foster women entrepreneurship. Attention was also drawn to the UNCTAD eTrade for Women initiative, which sought to raise the profile of women digital entrepreneurs and included them in policy decision-making processes.

117. The Commission commended the secretariat for facilitating the virtual panel series within a short time frame and in a challenging environment. Satisfaction was expressed that the panel discussions had demonstrated that many UNCITRAL texts could support States in their economic recovery in the face of the unprecedented COVID-19 crisis. The Commission thanked the panellists for their participation and their insight, as well as the many States that had intervened to share their own experiences and efforts made in response to the pandemic. It was observed that additional exchanges by States on their experience could be useful going forward, as was the further sharing of best practices to combat the economic crisis occasioned by the COVID-19 pandemic. The Commission reiterated the importance of continuing to develop legislative tools to assist States in modernizing and strengthening their legal frameworks and to better withstand and recover from global economic shocks.

XIV. Other business

A. Dates of working group sessions in the second half of 2020

118. At its 1110th meeting, on 7 July 2020, the Commission considered the following dates of UNCITRAL working group sessions in the second half of 2020, which corresponded to the tentative dates found in the report of UNCITRAL on the work of its fifty-second session,³⁵ with adjustments made to the numbering of the sessions due to the fact that sessions of UNCITRAL Working Groups I, III, IV, V and VI could not take place in the first half of 2020 as scheduled:

Working Group I (Micro-, Small and Medium-sized Enterprises)	Thirty-fourth session 28 September (falls on Yom Kippur)– 2 October 2020
Working Group II (Dispute Settlement)	Seventy-second session 21–25 September 2020
Working Group III (Investor-State Dispute Settlement Reform)	Thirty-ninth session 5–9 October 2020
Working Group IV (Electronic Commerce)	Sixtieth session 19–23 October 2020
Working Group V (Insolvency Law)	Fifty-seventh session 7–11 December 2020
Working Group VI (Judicial Sale of Ships)	Thirty-seventh session 14–18 December 2020

119. At its 1117th meeting on 17 July 2020, the Commission, noting that the decision containing those dates had not been adopted, considered a revised text of the draft decision reading as follows:

“With respect to agenda item 8, the Commission approved the following preliminary dates of in-person UNCITRAL working group sessions in the second half of 2020, which correspond to the tentative dates found in the report of UNCITRAL on the work of its fifty-second session,³⁶ with adjustments made to the numbering of the sessions due to the fact that sessions of UNCITRAL Working Groups I, III, IV, V and VI could not take place in the first half of 2020 as scheduled:

Working Group I (Micro-, Small and Medium-sized Enterprises)	Thirty-fourth session 28 September (falls on Yom Kippur)– 2 October 2020
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³⁵ Ibid., *Seventy-fourth Session, Supplement No. 17 (A/74/17)*, section XXIII.B.2.

³⁶ Ibid.

Working Group II (Dispute Settlement)	Seventy-second session 21–25 September 2020
Working Group III (Investor-State Dispute Settlement Reform)	Thirty-ninth session 5–9 October 2020
Working Group IV (Electronic Commerce)	Sixtieth session 19–23 October 2020
Working Group V (Insolvency Law)	Fifty-seventh session 7–11 December 2020
Working Group VI (Judicial Sale of Ships)	Thirty-seventh session 14–18 December 2020

“In case the holding of the working group sessions will not be possible including because of the coronavirus disease 2019 (COVID-19) pandemic, the decision on dates, place and format of the sessions could be taken by the Commission at its resumed fifty-third session.”

120. The delegation proposing the revised text was of the view that UNCITRAL working group sessions should take place in person because an online format of meetings was not conducive to productive and inclusive deliberations and consensus-building. In addition to the connection issues that arose during the first part of the session that prevented some delegations from taking the floor, that delegation referred to difficulties of participation arising from participation from different time zones, the need for participants to combine routine office work with servicing UNCITRAL online sessions, the lack of interpretation for the largest part of the first part of the fifty-third session and the limited amount of time allotted for deliberations (two hours per day compared with the usual six hours at in-person meetings). Negative implications of holding online and hybrid sessions for the budgeting processes of States and the participation of State experts in future UNCITRAL sessions were also noted. It was explained that for those reasons, the proposed text referred to preliminary dates of the working group sessions with the understanding that those dates could be adjusted by the Commission at its resumed fifty-third session in September 2020 in the light of the evolving situation with the COVID-19 pandemic. In that context, reference was made to the methods of work established by the United Nations to ensure that its work continued during the pandemic. The point was made that they could not be changed unilaterally.

121. While sharing those concerns and agreeing that an in-person format was preferable for UNCITRAL meetings, other delegations were of the view that holding online meetings, even if they were of reduced duration, was a better alternative to holding no meetings at all, since they allowed UNCITRAL to make at least some progress. It was pointed out that, although technical and other difficulties during online meetings could not be avoided altogether, efforts could be made to minimize them.

122. Emphasizing the need to agree on the dates of the working group sessions as soon as possible for the planning purposes of experts and the secretariat, many delegations agreed to discuss the format of the working group sessions at a later stage but noted that they were against the suggestion that no UNCITRAL working group sessions should take place if it were impossible to hold them in person. One view was that working group sessions and the resumed fifty-third session could take place either in person or in an online format (with no decisions to be taken in the online meetings) but not in a hybrid format, in order not to put delegations on an unequal footing. It was noted, however, that the current situation with the COVID-19 pandemic made it impossible to hold in-person meetings in the coming months with participation of experts from capitals, which was considered essential, leaving the online meetings as the only option. Another delegation was of the view that the possibility of holding hybrid meetings should not be excluded since enabling both in-person and online

participation facilitated inclusive processes. In the view of some other delegations, online meetings, which could be suitable for the discussion of procedural and administrative matters and for holding informal briefings, were not appropriate for formal meetings of UNCITRAL and its working groups at which legal texts were being negotiated or substantive discussions were being held.

123. Stressing that the dates of the sessions but not the format of the sessions were the focus of the draft decision on the dates of the UNCITRAL working group sessions in the second half of 2020 and expressing frustration about the inability of the UNCITRAL member States to adopt that decision, some delegations encouraged the Chair and the Bureau of the fifty-third session of UNCITRAL to use all tools available to them under the applicable rules of procedure to advance the work of UNCITRAL. Recalling the past practice of the Commission to delegate decisions on specific dates for working group sessions to the secretariat, some delegations were of the view that the Chair or the secretariat, upon consultation with the Bureau, should be able to adopt decisions on the dates of future working group sessions and other similar administrative decisions related to the work of UNCITRAL. It was also considered appropriate for the Chair to initiate formal consultations in writing with the UNCITRAL member States on more sensitive issues, for example, on the format of the resumed fifty-third session, and to rule on the basis of the written submissions by the UNCITRAL member States. The opposite view was that it was for the UNCITRAL member States, not for the Chair, the Bureau or the secretariat, to take decisions on matters related to UNCITRAL.

124. After discussion, the Commission agreed to put for adoption the following revised text of a draft decision on the dates of the UNCITRAL working group sessions in the second half of 2020 and noted the plans of its Chair at the fifty-third session to convene informal consultations on outstanding issues related to the working group sessions on 29 July 2020 and on the format of the resumed fifty-third session and the procedure for taking decisions during that part of the session on 19 August 2020:

“With respect to agenda item 8, the Commission approved the following preliminary dates of UNCITRAL working group sessions in the second half of 2020, which correspond to the tentative dates found in the report of UNCITRAL on the work of its fifty-second session,³⁷ with adjustments made to the numbering of the sessions due to the fact that sessions of UNCITRAL Working Groups I, III, IV, V and VI could not take place in the first half of 2020 as scheduled:

Working Group I (Micro-, Small and Medium-sized Enterprises)	Thirty-fourth session 28 September (falls on Yom Kippur)– 2 October 2020
Working Group II (Dispute Settlement)	Seventy-second session 21–25 September 2020
Working Group III (Investor-State Dispute Settlement Reform)	Thirty-ninth session 5–9 October 2020
Working Group IV (Electronic Commerce)	Sixtieth session 19–23 October 2020
Working Group V (Insolvency Law)	Fifty-seventh session 7–11 December 2020
Working Group VI (Judicial Sale of Ships)	Thirty-seventh session 14–18 December 2020

³⁷ Ibid.

“Further consultation on the way forward and the format of the working group sessions will be conducted by the UNCITRAL member States not later than 19 August 2020.”

125. That decision was adopted by the Commission in accordance with the procedure for taking decisions of UNCITRAL during the COVID-19 pandemic on 24 July 2020.

B. Methods of work of UNCITRAL during the COVID-19 pandemic

126. The unprecedented difficulties caused by COVID-19 for international trade and the increasingly important role of UNCITRAL in facilitating trade and investment were stressed, and objections were raised to any attempt to bring the UNCITRAL work to a complete stop. The shared goal of all UNCITRAL member States, it was noted, should be to move the work of UNCITRAL forward as much as possible in the light of the urgent need for the results of that work.

127. Many delegations were of the view that, in the light of the obstacles posed by the pandemic, alternative methods of work, including the use of remote means of communication, should be put in place to ensure progress in the work of UNCITRAL. At the same time, it was recognized that the work process should be not only flexible but also as inclusive as possible and respect the practical challenges and limitations faced by States.

128. It was considered essential to advance work in all working groups, and it was recalled that much work remained to be done in some working groups, while other working groups were about to complete their work and present texts to the Commission for finalization and adoption in 2021. With reference to the work methods of UNCITRAL working groups, it was noted that they could be adjusted in each working group depending on the nature of the project, the stage of its consideration, the level of agreement that existed among the UNCITRAL member States on the issues being considered and other relevant considerations. Some delegations supported the use of intersessional consultations, the preparation by the secretariat of interim texts reflecting the results of those consultations, and making those interim texts available to States for further comment in writing before the secretariat's submission of a final draft for translation, issuance and consideration by a working group at the formal session. The view was expressed that priority should be given to finalizing issues with respect to which there was a convergence of views among the UNCITRAL member States.

129. In the view of other delegations, although online informal meetings allowed some working groups to make progress, such meetings had their limits, and formal meetings of working groups (online, hybrid or in-person) should therefore resume as soon as possible in order to validate and formalize the results of those informal consultations. In response to concerns that decisions should not be taken during online meetings, it was noted that no decision-taking akin to decision-taking in the Commission took place in working groups, which prepared and agreed on texts and transmitted them for finalization and adoption or approval by the Commission itself.

130. A number of States recalled that the silence procedure for taking decisions was made applicable only to decisions leading to the session and to the decisions pertaining to the first part of the session. The view was expressed that the usual procedure for taking decisions by UNCITRAL should be reinstated after the first part of the session, that is, taking decisions by consensus, which did not exclude recourse to a vote if consensus could not be reached.

131. One delegation reported that it had not been able to connect to the Commission meeting on 17 July and for that reason it reserved the right to object to the results of that meeting. It reiterated its view that the online format was not suitable for UNCITRAL formal meetings. It emphasized the importance of transparency and visibility of UNCITRAL deliberations and decision-taking processes and that any

methods of work put in place during COVID-19 pandemic should be considered temporary or exceptional and not to be setting a precedent.

C. Other matters

132. While expressing appreciation for their participation in the sessions as observers, some observer States expressed interest in becoming UNCITRAL members. The Commission heard about plans of the coordinator of informal consultations on the enlargement of the UNCITRAL membership to inform the Commission at its resumed fifty-third session about the results of those consultations and the proposed steps forward.

133. The Commission also heard a statement on a digital event being organized jointly by the Ministry of Law of Singapore and the UNCITRAL secretariat on the occasion of the entry into force of the Singapore Convention on Mediation (12 September 2020). UNCITRAL delegates and observers were invited to join that event, which would be hosted at www.singaporeconvention.org.

134. Appreciation was expressed to the Chair and the entire Bureau of the fifty-second session and to the secretariat for their hard work, creativity and dedication, including in managing the complex decision-taking process leading to the session, which had made the holding of the first part of the session possible and allowed UNCITRAL to advance its work under the difficult and unprecedented circumstances caused by the COVID-19 pandemic. Special thanks were expressed to the secretariat for organizing panel discussions on UNCITRAL texts and the COVID-19-related response and recovery during the session.

Annex

List of documents before the Commission at the first part of its fifty-third session

<i>Symbol</i>	<i>Title or description</i>
A/CN.9/1001/Rev.1	Provisional agenda, annotations thereto and scheduling of meetings of the fifty-third session
A/CN.9/1013	Decisions pertaining to the fifty-third session of UNCITRAL adopted by States members of UNCITRAL 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 2020
A/CN.9/1015	Report on the operation of the repository of published information under the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration, and consideration of the way forward
A/CN.9/1017	Publications to promote a uniform interpretation and application of UNCITRAL texts (CLOUT and digests) and support their implementation and enactment
A/CN.9/1018	Coordination activities
A/CN.9/1019	Bibliography of recent writings related to the work of UNCITRAL
A/CN.9/1020	Status of conventions and model laws
A/CN.9/1021	Relevant General Assembly resolutions
A/CN.9/1022	Role of UNCITRAL in promoting the rule of law at the national and international levels
A/CN.9/1023	Coordination and cooperation: international governmental and non-governmental organizations invited to sessions of UNCITRAL and its working groups
A/CN.9/1024	UNCITRAL regional presence: activities of the UNCITRAL Regional Centre for Asia and the Pacific
A/CN.9/1028	Endorsement of texts of other organizations: Incoterms 2020 rules
A/CN.9/1029	Legal Guide to Uniform Legal Instruments in the Area of International Commercial Contracts (with a focus on sales)
A/CN.9/1030	Adjustments to the draft Legal Guide to Uniform Legal Instruments in the Area of International Commercial Contracts (with a focus on sales), as contained in document A/CN.9/1029
A/CN.9/1032	Technical cooperation and assistance
A/CN.9/1033	Dissemination of information and related activities to support UNCITRAL's work and the use of its texts

Part two

Report of the United Nations Commission on International Trade Law on its resumed fifty-third session, held in Vienna (with online participation), from 14 to 18 September 2020

I. Introduction

1. Part two of the present report covers the resumed fifty-third session of the United Nations Commission on International Trade Law (UNCITRAL), held in Vienna, with arrangements put in place for both in-person and remote participation, from 14 to 18 September 2020, at alternating times, either from 9 a.m. to 11 a.m. and from 1 p.m. to 3 p.m., or from 12 p.m. to 2 p.m. and from 4 p. m. to 6 pm (Central European Summer Time), each day (see para. 11 (b) below for the decision of the UNCITRAL member States on the organization and agenda of the resumed fifty-third session of UNCITRAL).
2. Pursuant to General Assembly resolution 2205 (XXI) of 17 December 1966, the present report is submitted to the Assembly and is also submitted for comments to the United Nations Conference on Trade and Development.

II. Organization of the session

A. Opening of the session

3. The resumed fifty-third session of the Commission was opened on 14 September 2020.

B. Membership and attendance

4. The General Assembly, in its resolution 2205 (XXI), established the Commission with a membership of 29 States, elected by the Assembly. By its resolution 3108 (XXVIII) of 12 December 1973, the Assembly increased the membership of the Commission from 29 to 36 States. By its resolution [57/20](#) of 19 November 2002, the General Assembly further increased the membership of the Commission from 36 States to 60 States. The current members of the Commission, elected on 9 November 2015, 15 April 2016, 17 June 2016 and 17 December 2018, are the following States, whose term of office expires on the last day prior to the beginning of the annual session of the Commission in the year indicated:³⁸ 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),

³⁸ Pursuant to General Assembly resolution 2205 (XXI), the members of the Commission are elected for a term of six years. Of the current membership, 23 were elected by the Assembly on 9 November 2015, at its seventieth session, 5 were elected by the Assembly on 15 April 2016, at its seventieth session, 2 were elected by the Assembly on 17 June 2016, at its seventieth session, and 30 were elected by the Assembly on 17 December 2018, at its seventy-third session. By its resolution [31/99](#), the Assembly altered the dates of commencement and termination of membership by deciding that members would take office at the beginning of the first day of the regular annual session of the Commission immediately following their election and that their terms of office would expire on the last day prior to the opening of the seventh regular annual session following their election.

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).

5. With the exception of Burundi, Côte d'Ivoire, Ecuador, Kenya, Lesotho, Libya, Mali, South Africa and Uganda, all the members of the Commission were represented at the resumed session.

6. The session was attended by observers from the following States: Bahrain, Bolivia (Plurinational State of), Bulgaria, Burkina Faso, Cambodia, Costa Rica, Egypt, El Salvador, Greece, Jordan, Latvia, Madagascar, Malta, Myanmar, Nicaragua, Paraguay, Portugal, Slovak Republic, Sweden, Tunisia and Yemen.

7. The session was also attended by observers from the Holy See and the European Union.

8. The session was also attended by observers from the following international organizations:

(a) United Nations system: United Nations Conference on Trade and Development, Economic Commission for Latin America and the Caribbean, United Nations Environment Programme and International Centre for the Settlement of Investment Disputes of the World Bank Group;

(b) Intergovernmental organizations: Organization for the Harmonization of Business Law in Africa;

(c) Invited non-governmental organizations: ArbitralWomen, Arbitration Institute of the Stockholm Chamber of Commerce, Centre of Law and Computer Studies of the Balearic Islands, China International Economic and Trade Arbitration Commission, Construction Industry Arbitration Council, European Law Institute, European Trade Union Confederation, Georgian International Arbitration Centre, Institute of Law and Technology (Faculty of Law, Masaryk University, Czechia), Instituto Iberoamericano de Derecho Concursal, International Academy of Mediators, International and Comparative Law Research Centre, International Union of Judicial Officers, International Bar Association, International Federation of Freight Forwarders Associations (FIATA), International Institute for Environment and Development, International Institute for Sustainable Development, International Law Institute, International Swaps and Derivatives Association, Korean Commercial Arbitration Board, Kozolchik National Law Center, Latin American Group of Lawyers for International Trade Law, Law Association for Asia and the Pacific, Max Planck Institute for Comparative and International Private Law, MOOT Alumni Association, Nigerian Institute of Chartered Arbitrators, PRIME Finance Foundation Arbitration Institute of the Stockholm Chamber of Commerce and Vienna International Arbitral Centre.

C. Officers

9. The Bureau of the fifty-third session of UNCITRAL consisted of the following officers elected on 30 June 2020 (see part one, para. 9, above):

Chair: Eric Anderson Machado (Peru)

Vice-Chairs: János Bóka (Hungary)
Paul Kuruk (Ghana)
Takashi Takashima (Japan)

Rapporteur: Kathryn Sabo (Canada)

D. Agenda

10. The following agenda was adopted for the resumed fifty-third session of UNCITRAL (see para. 11 (b) below for the relevant decision):

1. Opening of the resumed fifty-third session.
2. 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 2020.
3. Progress report of working groups (including a proposal by Belgium as regards Working Group II ([A/CN.9/1035](#))).
4. Work programme of the Commission:
 - (a) A note by the Secretariat on the work programme of the Commission ([A/CN.9/1016](#));
 - (b) 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](#), [A/CN.9/1012/Add.1](#), [A/CN.9/1012/Add.2](#) and [A/CN.9/1012/Add.3](#));
 - (c) Consideration of the progress made in exploratory work by the Secretariat on legal issues of railway consignment notes ([A/CN.9/1034](#));
 - (d) Report of the Colloquium on Civil Asset Tracing and Recovery ([A/CN.9/1008](#));
 - (e) A new date in 2020 for the colloquium on applicable law in insolvency proceedings;
 - (f) Consideration of the progress made in exploratory work by the secretariat on warehouse receipts ([A/CN.9/1014](#));
 - (g) Consideration of additional topics for possible future work ([A/CN.9/1037](#) and [A/CN.9/1039](#)).
5. Dates and place of future meetings in 2021.
6. Other business:
 - (a) 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](#));
 - (b) Enlargement of the UNCITRAL membership;
 - (c) Evaluation of the role of the UNCITRAL secretariat in facilitating the work of the Commission;
 - (d) Other matters.
7. Adoption of the report, including the narrative part of the report of the first part of the session.

E. 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 2020

11. Under agenda item 2, the Commission had before it a note by the Secretariat (A/CN.9/1038) transmitting the following decisions adopted by States members of UNCITRAL in August 2020 in accordance with the procedure for taking decisions of UNCITRAL during the COVID-19 pandemic agreed upon by States members of UNCITRAL on 8 June 2020:

(a) Decision of 19 August 2020 on the format, officers and methods of work of the UNCITRAL working groups during the coronavirus disease 2019 (COVID-19) pandemic;

(b) Decision of 28 August 2020 on the organization and agenda of the resumed fifty-third session of UNCITRAL.

12. The Commission took note of those decisions and a statement made reiterating views made during the first part of the session on the procedure for taking decisions of UNCITRAL during the COVID-19 pandemic (see part one, para. 12, above).

F. Adoption of the remaining parts of the report on the first part of the session and the report on the resumed session

13. Recalling the applicable procedure for adopting decisions pertaining to the fifty-third session (see part one, para. 11, and the decision of 28 August 2020 referred to in para. 11 (b) above), the Commission used that procedure for the adoption of the remaining chapters of the report on the first part of the fifty-third session and of the report on the resumed fifty-third session.

14. The remaining chapters of the report on the first part of the fifty-third session and chapters I, II and IV to IX of the report on the resumed fifty-third session were adopted by the Commission in accordance with that procedure on 18 September 2020. The remaining chapters of the report on the resumed fifty-third session were adopted by the Commission in accordance with that procedure on 28 September 2020.

III. Summary of the work of the Commission at the resumed fifty-third session

15. With respect to agenda item 3, Progress report of working groups, the Commission:

(a) Took note of the reports of its working groups on the work of their sessions held in the second half of 2019 and, as regards Working Groups II and III, also in January–February 2020;

(b) Took note with appreciation of progress achieved intersessionally by those working groups whose March, April and May sessions in the first half of 2020 were postponed due to the COVID-19 pandemic;

(c) Requested its working groups to proceed with their work so that the results of that work could be presented to the Commission for finalization and adoption as soon as possible, and in case of Working Groups I, IV and V at its next session, in 2021, if possible;

(d) Requested Working Group II to review revised mediation texts to be prepared by the secretariat prior to their finalization and adoption by the Commission in 2021.

16. With respect to agenda item 4, Work programme of the Commission, the Commission:

(a) Reaffirmed the programme of current legislative activities carried out by its working groups;

(b) Delayed deciding on possible future work on asset tracing and recovery until after it had considered the report of the International Colloquium on Applicable Law in Insolvency Proceedings;

(c) Agreed that the International Colloquium on Applicable Law in Insolvency Proceedings should take place on 11 December 2020 using the entitlement of Working Group V, with the consequential adjustment of the dates of the fifty-seventh session of the Working Group (see part one, para. 118, above) to 7–10 December 2020;

(d) As regards work on warehouse receipts, requested its secretariat to proceed with the preparatory work in cooperation with the International Institute for the Unification of Private Law (Unidroit) towards the development of a model law on the private law aspects of warehouse receipts, as proposed in paragraphs 24–26 of the note by the Secretariat (A/CN.9/1014) and present the results of that work to the Commission for consideration at its next session;

(e) As regards work on railway consignment notes, requested the secretariat to start preparatory work (convening as necessary expert group meetings and, resources permitting, an UNCITRAL colloquium), in close coordination and cooperation with relevant international organizations towards the development of a new international instrument on multimodal negotiable transport documents that could be used for contracts not involving carriage by sea, and present the results of that work to the Commission for consideration at its next session;

(f) As regards work on legal issues of the digital economy, reaffirming its central and coordinating role within the United Nations system in addressing legal issues related to the digital economy and digital trade, requested the secretariat to: (i) proceed with preparation of a legal taxonomy, in cooperation and coordination with relevant international organizations; (ii) hold a colloquium with the objective of establishing a priority list of legal issues to be taken up by the Commission; and (iii) present the report of the colloquium to the Commission at its next session so that the Commission could decide on the allocation of that work;

(g) With respect to a proposal by Belgium, requested Working Group II to consider that proposal in conjunction with its current work on expedited arbitration and recommend to the Commission, when the results of that work are presented to it for finalization and adoption, how the provisions could be presented in connection with the UNCITRAL Arbitration Rules;

(h) With respect to a proposal by Japan on stocktaking of dispute resolution in the modern context (A/CN.9/1037), supported by all delegations that spoke on the proposal, requested the secretariat to commence research on issues identified in the proposal, noting their relevance to the digital economy and COVID-19-related developments in the area of dispute resolution, and to report back to the Commission at its fifty-fourth session, in 2021, if possible, on possible future work in that area. The secretariat was given flexibility as regards the resources, means and ways to undertake that work;

(i) With respect to a proposal by the Russian Federation (A/CN.9/1039), co-sponsored by Armenia and Viet Nam, recognizing its timeliness and relevance, requested the secretariat to commence exploratory work on the topic, in particular by identifying what had been done by other international organizations on that topic. To that end, the secretariat was requested to hold webinars, seminars, round tables and other events. It further requested its working groups to reflect on the impact of the COVID-19 pandemic in their areas of work.

17. With respect to agenda item 5, the Commission approved the dates and place of its fifty-fourth session, to be held in Vienna from 28 June to 16 July 2021, and the

dates and place of its working group sessions in the first half of 2021, as contained in chapter XI of this report. It took note of the tentative dates for the sessions of its working groups in Vienna, in the second half of 2021, and the efforts of the secretariat to reschedule the dates of Working Group VI in November 2021 so that it would not fall on the week of the Thanksgiving holidays.

18. With respect to agenda item 6, Other business, the Commission:

(a) Having heard a wide range of views on the question of resources required to implement the work programme with respect to investor-State dispute settlement reform, was not able to come to a consensus on a proposed way forward on that question in the limited time that it had in its hybrid session, and encouraged the Working Group to continue to make progress on its mandate;

(b) Took note of the progress made with respect to the proposal to enlarge the UNCITRAL membership during the Vienna-based informal consultations, stressed that the decision on the UNCITRAL enlargement should be adopted by consensus, encouraged the UNCITRAL member States to continue to consult with each other and other interested States through the Vienna-based process, 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, in 2021;

(c) Took note of the results of evaluation by States of the role of the secretariat in servicing UNCITRAL, welcomed an online procedure introduced by the secretariat for such evaluation, and expressed appreciation for the work of its secretariat, in particular under the difficult circumstances arising from the COVID-19 pandemic.

IV. Micro-, small and medium-sized enterprises: progress report of Working Group I

19. The Commission had before it the report of Working Group I on the work of its thirty-third session ([A/CN.9/1002](#)) outlining progress on the draft legislative guide on an UNCITRAL limited liability organization, which was aimed at reducing the legal obstacles faced by micro-, small and medium-sized enterprises throughout their life cycle and, in particular, those in developing economies.³⁹

20. The Commission noted that progress made at that session included deliberations on the following recommendations and related commentary as contained in the annex to a note by the Secretariat on the draft legislative guide ([A/CN.9/WG.I/WP.116](#)): recommendation 1 (section II.A, on general provisions), recommendation 10 (section II.C, on the organization of the UNCITRAL limited liability organization), recommendation 11 (section II.D, on membership in a limited liability organization), recommendation 18 (section II.F, on Members' share of and contributions to the limited liability organization), recommendations 19–21 (section II.G, on distributions), recommendation 22 (section II.H, on transfer of rights), recommendation 23 (section II.I, on restructuring or conversion), recommendation 24 (section II.J, on dissolution and winding-up), recommendation 25 (section II.K, on dissociation or withdrawal), recommendations 26 and 27 (Section II.L, on record-keeping, inspection and disclosure) and recommendation 28 (section II.M, on dispute resolution). With those deliberations, the Working Group had completed the first review of all sections of the draft legislative guide.

21. The Commission also took note of the two informal online consultations on the draft legislative guide, organized by the secretariat following the global outbreak of the COVID-19 pandemic and the postponement of the thirty-fourth session of the Working Group, scheduled to be held in New York from 23 to 27 March 2020.

³⁹ *Official Records of the General Assembly, Sixty-eighth Session, Supplement No. 17 (A/68/17)*, para. 321; reiterated *ibid.*, *Sixty-ninth Session, Supplement No. 17 (A/69/17)*, para. 134 and *Seventieth Session, Supplement No. 17 (A/70/17)*, paras. 220, 225, and 340.

22. A concern was expressed that in the preparation of the draft legislative guide the Working Group had not paid enough attention to the need to develop a neutral text that took into account various legal traditions in a balanced manner. There was also concern that a discussion on access to credit at the upcoming session (28 September–2 October 2020) of the Working Group might be untimely, since the priority should be to finalize the work on the UNCITRAL limited liability organization. The importance of finalizing the draft legislative guide without delay was further emphasized.

23. The Commission took note of those concerns, commended the Working Group for the progress made on the draft legislative guide and encouraged the Working Group to conclude its deliberations on the guide at its upcoming session in order to devote full consideration to the topic of access to credit for micro-, small and medium-sized enterprises at its thirty-fifth session, scheduled to be held in the first half of 2021.

V. Dispute settlement: progress report of Working Group II

24. The Commission recalled that, at its fifty-first session, in 2018, it had approved a mandate for Working Group II to take up issues relating to expedited arbitration.⁴⁰ The Commission took note of the progress made by the Working Group in preparing draft provisions on expedited arbitration during its seventieth and seventy-first sessions based on the respective reports of the Working Group ([A/CN.9/1003](#) and [A/CN.9/1010](#)).

25. It was noted that for the upcoming session of the Working Group, the secretariat had prepared a revised draft of the expedited arbitration provisions as they would appear as an appendix to the UNCITRAL Arbitration Rules, which was without prejudice to any determination on their final presentation ([A/CN.9/WG.II/WP.214](#) and [A/CN.9/WG.II/WP.214/Add.1](#)).

26. In that context, the Commission considered a proposal by the Government of Belgium ([A/CN.9/1035](#)) based on the fact that some of the draft provisions on expedited arbitration could also bring valuable improvements to non-expedited arbitration under the UNCITRAL Arbitration Rules (for example, the possibility of holding a case management conference by videoconference or other modern means of communication). The proposal stated that the Working Group should be given the flexibility to identify such provisions and to suggest modifications to the UNCITRAL Arbitration Rules, if considered necessary.

27. While some support was expressed for that proposal, it was felt that the work should focus on issues relating to expedited arbitration as mandated by the Commission in 2018. The urgent need to finalize that work was reiterated, and concerns were expressed about the possible delays if the Working Group's mandate were to be revisited in accordance with the proposal. It was also pointed out that the UNCITRAL Arbitration Rules provided sufficient flexibility for the parties and the arbitral tribunal to apply some of the expedited arbitration provisions to their arbitral proceedings.

28. Nonetheless, it was emphasized that the work of the Working Group should clearly address the interaction between the UNCITRAL Arbitration Rules and the expedited arbitration provisions and ensure coherence between the two texts. In that context, it was suggested that there could be merit in considering the question of whether some of the provisions on expedited arbitration could apply more generally (including in non-expedited arbitration under the UNCITRAL Arbitration Rules) once the Working Group had completed its work on expedited arbitration.

29. After discussion, the Commission expressed its satisfaction with the progress made by the Working Group. It further requested the Working Group to continue its

⁴⁰ *Ibid.*, *Seventy-third Session, Supplement No. 17* ([A/73/17](#)), para. 252.

work on preparing the draft provisions on expedited arbitration and, when it presented the provisions to the Commission, to consider how the provisions could be presented in connection with the UNCITRAL Arbitration Rules. It was also agreed that the possible need for consequential modifications to the UNCITRAL Arbitration Rules would be considered by the Commission as its future work programme once it finalized and adopted the expedited arbitration provisions (see para. 84 below).

30. In response to a suggestion that Working Group II should be requested to review the texts on international mediation prior to the fifty-fourth session of the Commission so as to facilitate speedy adoption of those texts, it was noted that the secretariat had received comments on the draft UNCITRAL Mediation Rules (A/CN.9/1026) and the draft UNCITRAL Notes on Mediation (A/CN.9/1027) and was expecting to receive comments on the 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). It was noted that the revised drafts of those texts would be prepared taking into account such comments, which could then be considered briefly by the Working Group prior to their finalization and adoption by the Commission in 2021.

VI. Investor-State dispute settlement reform: progress report of Working Group III

31. The Commission recalled that, at its fiftieth session, in 2017, it had approved a mandate for Working Group III to work on the possible reform of investor-State dispute settlement. It further recalled that the Working Group was, in discharging that mandate and in line with the UNCITRAL process, to ensure that the deliberations, while benefiting from the widest possible breadth of available expertise from all stakeholders, would be government-led, with high-level input from all Governments, consensus-based and fully transparent.⁴¹

32. The Commission had before it the reports of Working Group III (Investor-State Dispute Settlement Reform) on the work of its thirty-eighth and resumed thirty-eighth sessions (A/CN.9/1004 and A/CN.9/1004/Add.1).

33. The Commission took note of the discussions of the Working Group, which had focused on the third stage of the mandate (development of any relevant solutions to be recommended to the Commission). The Commission also took note of the project schedule prepared by the Working Group at its thirty-eighth session aimed at elaborating and developing multiple potential reform solutions simultaneously, to the maximum extent of the Working Group's capacity and in the light of the tools available (A/CN.9/1004, paras. 16–17). The Commission commended the Working Group for its progress on the consideration of the establishment of an advisory centre, a code of conduct for adjudicators, the regulation of third-party funding, the questions of appellate and multilateral court mechanisms and the selection and appointment of members of tribunals for investor-State dispute settlement. It took note of the Working Group's conclusion that preparatory work should be undertaken on each of these options, including further research and draft provisions for relevant instruments. It also took note that, for the sake of efficiency, draft working papers on some of these topics (including the draft code of conduct prepared jointly with the International Centre for Settlement of Investment Disputes) were made available on the website of UNCITRAL for comments by delegations before presentation to the Working Group.

34. The Commission heard a presentation regarding the increased participation in the sessions of the Working Group, in particular the participation of developing States, and the continued interest of States in investor-State dispute settlement reform. It was stressed that the enhanced participation in the Working Group depended heavily on the financial resources available to States. In that context, the Commission expressed its appreciation to the European Union, the Government of France, the

⁴¹ Ibid., *Seventy-second Session, Supplement No. 17 (A/72/17)*, para. 264.

German Federal Ministry for Economic Cooperation and Development (BMZ), and the Swiss Agency for Development and Cooperation for their contributions to the UNCITRAL trust fund for granting travel assistance to developing countries, aimed at enabling the participation of representatives of developing States in the deliberations of the Working Group, and was informed about ongoing efforts by the secretariat to secure additional voluntary contributions. States were urged to contribute to and support those efforts.

35. The Commission took note of the outreach activities of the secretariat aimed at raising awareness of the work of the Working Group and ensuring that the process remained inclusive and fully transparent. It also took note of informal webinars and other informal events and consultations organized or facilitated by the secretariat following the global outbreak of COVID-19 pandemic and the postponement of the thirty-ninth session of the Working Group, including on the topics on the agenda of the postponed session (dispute prevention and mitigation as well as other means of alternative dispute resolution; treaty interpretation by States parties; reflective loss and shareholder claims based on joint work with the Organization for Economic Cooperation and Development; and the development of a multilateral instrument on investor-State dispute settlement reform). The recording of the webinars organized jointly with the Academic Forum on Investor-State Dispute Settlement, as well as the presentations made, were available on the website of UNCITRAL. The Commission further noted the series of webinars organized jointly with the International Centre for Settlement of Investment Disputes on the draft code of conduct for adjudicators in investor-State dispute settlement.

36. The Commission expressed its satisfaction with the progress made by the Working Group through a constructive, inclusive and transparent process, and the support provided by the secretariat.

VII. Electronic commerce: progress report of Working Group IV

37. The Commission recalled that, at its fifty-first session, in 2018, it had decided that the Working Group should consider legal issues relating to identity management and trust services with a view to preparing a text aimed at facilitating cross-border recognition of identity management and trust services.⁴² The Commission also recalled that, at its fifty-second session, in 2019, it had noted that the Working Group should work towards an instrument that could apply to both domestic and cross-border use of identity management and trust services, and that the outcome of the work had implications for matters beyond commercial transactions.⁴³

38. At the present session, the Commission had before it the report of the Working Group on the work of its fifty-ninth session, held in Vienna from 25 to 29 November 2019 (A/CN.9/1005). At that session, the Working Group continued its work on the basis of draft provisions prepared by the secretariat. The Commission was informed that the sixtieth session of the Working Group, scheduled to take place in New York from 6 to 9 April 2020, had been postponed due to the effects of the COVID-19 pandemic and was now scheduled to take place in Vienna from 19 to 23 October 2020.

39. The Commission was also informed that, to facilitate the progress of work, the secretariat had invited States, international governmental organizations and those international non-governmental organizations invited to the Working Group to submit comments on the draft provisions contained in document [A/CN.9/WG.IV/WP.162](#). The secretariat had received submissions from 24 States and the European Union, as well as from two international organizations, which had been summarized for the consideration of the Working Group at its sixtieth session.

40. It was noted that the current work of the Working Group was directly relevant to promoting confidence in online transactions and therefore could significantly

⁴² Ibid., *Seventy-third Session, Supplement No. 17 (A/73/17)*, para. 159.

⁴³ Ibid., *Seventy-fourth Session, Supplement No. 17 (A/74/17)*, para. 172.

support the economic recovery from the effects of the COVID-19 pandemic. It was said that due consideration should be given to outstanding issues and that, although the project did not deal with privacy and data protection, its implications for data governance should be taken into account, in particular with respect to developing countries and the use of data for non-commercial purposes.

41. The Commission expressed its satisfaction with the progress made by the Working Group and the support provided by the secretariat and encouraged the Working Group to finalize its work and submit it to the consideration of the Commission at its fifty-fourth session, in 2021.

VIII. Insolvency law: progress report of Working Group V

42. The Commission recalled that, at its forty-sixth session, in 2013, it had requested Working Group V (Insolvency Law) to conduct, at its session in the first half of 2014, a preliminary examination of issues relevant to the insolvency of micro-, small and medium-sized enterprises and, in particular, to consider whether the UNCITRAL Legislative Guide on Insolvency Law provided sufficient and adequate solutions for micro-, small and medium-sized enterprises. If it did not, the Working Group had been requested to consider what further work and potential work product might be required to streamline and simplify insolvency procedures for micro-, small and medium-sized enterprises.⁴⁴ The Commission also recalled that the conclusions of the Working Group on those issues had been included in its progress report to the Commission in 2014, which highlighted that the issues facing micro-, small and medium-sized enterprises were not entirely novel and that solutions for them should be developed in the light of the key insolvency principles and the guidance already provided by the Legislative Guide (A/CN.9/803, para. 14).

43. The Commission also recalled that, at its forty-ninth session, in 2016, it had agreed that the Working Group should develop appropriate mechanisms and solutions, focusing on both natural and legal persons engaged in commercial activity, to resolve the insolvency of micro-, small and medium-sized enterprises. While the key insolvency principles and the guidance provided in 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 micro-, small and medium-sized enterprises and develop new and simplified mechanisms as required, taking into account the need for those mechanisms to be equitable, fast, flexible and cost-efficient. The form the work might take should be decided at a later time and should be based on the nature of the various solutions that were being developed.⁴⁵

44. The Commission had before it the report of Working Group V on the work of its fifty-sixth session, held in Vienna from 2 to 5 December 2019 (A/CN.9/1006). It heard an oral report by the secretariat on several rounds of informal consultations held by the Working Group since that time with a view to advancing work on a draft text on a simplified insolvency regime. The Commission noted that the focus of deliberations in the Working Group remained on the institutional framework, transparency and other safeguards during liquidation and reorganization proceedings, in particular in zero-asset cases, discharge and interaction of the text with the Legislative Guide.

45. The Commission noted that the substantial progress had been made on the text despite the postponed fifty-seventh session that could not take place in May 2020 due to the COVID-19 pandemic but that a number of substantive issues remained outstanding. 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

⁴⁴ Ibid., *Sixty-eighth Session, Supplement No. 17 (A/68/17)*, para. 326.

⁴⁵ Ibid., *Seventy-first Session, Supplement No. 17 (A/71/17)*, para. 246.

in the light of the relevance of the topic to COVID-19 response and recovery measures.

IX. Judicial sale of ships: progress report of Working Group VI

46. The Commission recalled that, at its fifty-first session, it had agreed to allocate working group time to the topic of the judicial sale of ships.⁴⁶ The Commission also recalled that the topic had been allocated to Working Group VI (Security Interests) after completing its work on a draft practice guide to the UNCITRAL Model Law on Secured Transactions at its thirty-fourth session, held in Vienna from 17 to 21 December 2018.

47. The Commission had before it the report of Working Group VI on the work of its thirty-sixth session, held in Vienna from 18 to 22 November 2019 (A/CN.9/1007). The Commission commended the Working Group for the significant progress made at that session and took note of the wide support expressed within the Working Group to continue working on the assumption that the draft instrument would eventually take the form of a convention (A/CN.9/1007, para. 99). In that connection, doubt was expressed as to the need for a convention rather than another type of instrument, along with the hope that the Commission consider that question in due course. In response, support was expressed for the working assumption held so far by the Working Group, as only a convention was capable of ensuring the level of uniformity needed to affirm the international effects of judicial sales of ships.

48. The Commission noted that the thirty-seventh session of the Working Group, scheduled to be held in New York from 20 to 24 April 2020, had been postponed following the global outbreak of the COVID-19 pandemic. The Commission was informed that, in order to advance the consideration of the second revision of the draft convention, the secretariat had requested written comments by States and international organizations by 30 September 2020, and those comments were to be analysed and reflected in further documents for consideration by the Working Group at the rescheduled thirty-seventh session.

X. Work programme

49. The Commission recalled its agreement to reserve time for discussion of its overall work programme as a separate topic at each session, to facilitate the effective planning of its activities.⁴⁷

50. The Commission took note of the documents prepared to assist its discussions on the topic (A/CN.9/1016 and the documents referred to therein, including the proposals contained in documents A/CN.9/1008, A/CN.9/1011, A/CN.9/1012, A/CN.9/1012/Add.1, A/CN.9/1012/Add.2 and A/CN.9/1012/Add.3, A/CN.9/1014, A/CN.9/1034, A/CN.9/1036, A/CN.9/1037, A/CN.9/1039 and A/CN.9/1040) and of topics that the Commission, in previous sessions, had decided to retain for further discussion at a future session, without assigning any priority to them.⁴⁸

A. Legislative programme under consideration by working groups

51. The Commission took note of the progress of its working groups as reported earlier in the session (see chapters IV to IX of the present report) and reaffirmed the

⁴⁶ Ibid., *Seventy-third Session, Supplement No. 17 (A/73/17)*, para. 252.

⁴⁷ Ibid., *Sixty-eighth Session, Supplement No. 17 (A/68/17)*, para. 310.

⁴⁸ See *Official Records of the General Assembly, Seventy-first Session, Supplement No. 17 (A/71/17)*, paras. 124–125 (intellectual property licensing); and *ibid.*, *Seventy-second Session, Supplement No. 17 (A/72/17)*, paras. 225 and 229 (alternative dispute resolution in secured transactions).

programme of current legislative activities set out in table 1 of document [A/CN.9/1016](#) as follows:

(a) As regards micro-, small and medium-sized enterprises, the Commission confirmed that Working Group I should continue its work to prepare a legislative guide on an UNCITRAL limited liability organization with a view to its finalization in 2021 and to start as soon as possible to consider the draft materials on access to credit for micro-, small and medium-sized enterprises that the UNCITRAL secretariat had prepared pursuant to the Commission's request,⁴⁹ also in the light of the relevance of the topic in the context of COVID-19 response and recovery measures;

(b) With respect to dispute settlement, the Commission agreed that Working Group II should continue the work on expedited arbitration;

(c) With respect to investor-State dispute settlement reform, the Commission agreed that Working Group III should continue with its work programme as mandated;

(d) As regards e-commerce, the Commission confirmed that Working Group IV should proceed with the preparation of a model law on legal issues related to identity management and trust services, if possible, with a view to its adoption by the Commission at its fifty-fourth session, in 2021;

(e) With respect to insolvency, the Commission confirmed that the work on insolvency of micro- and small enterprises should continue in Working Group V with a view to its adoption by the Commission at its fifty-fourth session, in 2021, if possible, also in the light of the relevance of the topic in the context of COVID-19 response and recovery measures;

(f) As regards the judicial sales of ships, the Commission confirmed that Working Group VI should continue its work to prepare an international instrument on that subject.

B. Possible adjustments in methods of work of UNCITRAL that hindered the implementation of its work programme in the period 2019–2020 (the COVID-19 pandemic)

52. The Commission expressed its appreciation to its secretariat for the various measures taken to avoid a complete interruption to the UNCITRAL work programme activities planned for the period affected by the COVID-19 pandemic since March 2020. In particular, the secretariat had used webinars, live-streaming events, podcasts, virtual meetings and other online tools and written communications wherever possible to reach out to delegates and observers, coordination and cooperation partners and beneficiaries of the UNCITRAL technical assistance programme.

53. The Commission also noted the overall positive response of member States to those initiatives. As regards its own working methods and those of its working groups, the Commission confirmed the usefulness of extending the term of office of the entire bureaux of all UNCITRAL working groups until its fifty-fourth session, in 2021, in order to facilitate intersessional consultations during the COVID-19 pandemic, as it had decided on 11 August 2020 (see chapter II above). For the same reason, the Commission also confirmed the usefulness of its current practice of electing its own bureau for the entire period from the first day of a session until the day before the opening of the following session. Lastly, the Commission agreed that those arrangements might need to be extended beyond its fifty-fourth session, if the measures applied because of the COVID-19 pandemic continued to be in place, or for similarly exceptional situations in the future. The Commission requested its Bureau to monitor the functioning of those arrangements and to make proposals for any necessary adjustments, in consultation with member States and the secretariat.

⁴⁹ *Official Records of the General Assembly, Seventy-fourth Session, Supplement No. 17 (A/74/17)*, para. 192 (a).

C. Additional topics considered at earlier sessions of the Commission

54. The Commission recalled the importance of a strategic approach to the allocation of resources to legislative development and its role in setting the work programme of UNCITRAL and the mandates of working groups.⁵⁰ On that basis, the Commission considered several proposals for possible future legislative development, including both proposals discussed at earlier sessions and new proposals.

1. Warehouse receipts

55. The Commission recalled that, at its fifty-first session, in 2018, it had requested its secretariat to conduct exploratory and preparatory work on warehouse receipts with a view to referring that work to a working group in due course.⁵¹ The Commission further recalled that at its fifty-second session, it had considered a note in which the secretariat (A/CN.9/992) provided an overview of a study presented to it by the Kozolchyk National Law Center (NatLaw)⁵² on possible future work on warehouse receipts. Having noted the practical relevance of the project given the importance of warehouse receipts to agriculture and food security, and their use in supply and value chains, the Commission, at that session, confirmed its earlier decision to place the topic on its work programme but agreed that it still needed to consider several important elements before embarking on the development of an international legal instrument on warehouse receipts. The Commission therefore agreed to request the secretariat to proceed with its preparatory work and to convene a colloquium with other organizations having relevant expertise, with a view to considering the questions of scope and nature of the work discussed at the present session and possibly advancing the preparation of initial draft materials.⁵³

56. At the present session, the Commission had before it a note in which the secretariat presented the progress made since the fifty-second session of the Commission (A/CN.9/1014). The Commission was informed that its secretariat had invited Unidroit to participate in and contribute to the preparatory phase of the Commission's work in the area of warehouse receipts. The choice to partner with Unidroit for such preparatory work had followed naturally from the long-standing relationship between both organizations and the complementary nature of their respective work programmes and areas of expertise, in particular, general secured transactions law, negotiable instruments and micro-, small and medium-sized enterprises, as regards UNCITRAL, and private law and agriculture (but also asset-based secured transactions), as regards Unidroit.

57. The Commission was informed that, in line with the mandate received from the Commission at its fifty-second session (see para. 55 above), and in order to discuss the proposal to conduct legislative work on warehouse receipts, Unidroit and the UNCITRAL secretariat had jointly organized and held a workshop with a broad audience of experts and organizations on 26 March 2020⁵⁴ (due to the measures put in place by States and the United Nations in response to the COVID-19 pandemic, the workshop eventually took place in the form of a webinar by videoconference). The webinar was arranged by the Unidroit secretariat and involved selected experts from various geographic regions with experience in legal reforms of warehouse receipt systems or related regimes, such as those governing secured transactions and electronic commerce, including members of academia, relevant stakeholders, institutional actors and organizations active in the field.

⁵⁰ Ibid., *Sixty-eighth Session, Supplement No. 17 (A/68/17)*, paras. 294–295.

⁵¹ Ibid., *Seventy-third Session, Supplement No. 17 (A/73/17)*, paras. 249 and 253 (a).

⁵² NatLaw is a non-profit research and educational institution affiliated with the James E. Rogers College of Law at the University of Arizona in Tucson, Arizona.

⁵³ *Official Records of the General Assembly, Seventy-fourth Session, Supplement No. 17 (A/74/17)*, paras. 196 and 221(b).

⁵⁴ The programme is available at www.unidroit.org/english/news/2020/200326-warehouse-receipts/programme-e.pdf.

58. The Commission took note of the main conclusions and recommendations of the webinar, namely that:

(a) International organizations working on the ground in developing and middle-income jurisdictions, including the Food and Agriculture Organization of the United Nations, the International Finance Corporation and the World Bank, and regional intergovernmental organizations such as the Organization of American States had identified a need for international legislative guidance on warehouse receipts (possibly in the form of a model law), as many countries need to modernize their national legal frameworks for warehouse receipts and address the challenges and opportunities brought by new technologies also with a view to facilitating the financing of micro-, small and medium-sized enterprises;

(b) The drafting of a global legislative standard on warehouse receipts should be feasible, as generally the core regulation of the topic was conceptually similar across jurisdictions, including those with divergent legal cultures;

(c) The global nature of UNCITRAL and Unidroit, as well as their expertise, made them especially suitable for the task.

59. With regard to the scope of such guidance, the Commission also noted the advice of the experts attending the webinar that, assuming that the work could take the form of a model law:

(a) The text should be as comprehensive as possible, focusing on the private law aspects of the warehouse receipts system and covering both negotiable and non-negotiable instruments, including electronic and paper-based warehouse receipts; that it should be designed in a flexible manner in order to accommodate different legal traditions and the context of diverse jurisdictions; and that it should in any case consider the special needs of smallholders and small and medium-sized enterprises;

(b) The use of electronic platforms, distributed ledger technology systems and other technological mechanisms already in use in the more developed warehouse receipt systems ought to be considered;

(c) It would be important to bear in mind the institutional and regulatory framework of the operation of warehouses, but those and other regulatory matters (such as financial services and prudential supervision) should not be the focus of the work and would be best addressed in a guide to enactment or a users' guide to accompany the model law;

(d) Lastly, the text should be consistent with the UNCITRAL Model Law on Secured Transactions as well as with other relevant existing instruments of both institutions.

60. The Commission concurred with the assessment set out above and requested the secretariat to proceed with the necessary preparatory work towards the development of a model law on the private law aspects of warehouse receipts, covering both electronic and paper, negotiable and non-negotiable receipts. The Commission agreed to authorize such work to start on a broad basis aiming at the preparation of a comprehensive instrument covering all the essential aspects necessary to regulate the private law side of a system of warehouse receipts, including, inter alia, (a) a set of definitions of the main concepts, (b) form and content requirements for the receipts, (c) the rights and obligations of the parties concerned, (d) the negotiability and the means of transfer of the documents, (e) the substitution and removal of goods from the warehouse, and the termination of storage, and (f) aspects concerning the creation and third-party effectiveness of a security right in warehouse receipts (and stored goods), as well as relevant priority and enforcement-related issues. The Commission endorsed the expert's recommendation that a text on warehouse receipts should contemplate the issuance and negotiation of electronic warehouse receipts, including through electronic platforms, distributed ledger technology systems, in the form of tokenized or digital assets, or other technological mechanisms, also taking into account possible future work by UNCITRAL on legal aspects of the digital economy,

including issues related to distributed ledger technology and electronic trading platforms (see [A/CN.9/1012](#), [A/CN.9/1012/Add.1](#), [A/CN.9/1012/Add.2](#) and [A/CN.9/1012/Add.3](#)).

61. As regards the methodology, and bearing in mind the overall work programme of the Commission and the expected progress of the projects currently being dealt with by the various working groups, the Commission agreed to carry out the project jointly with Unidroit, and noted with appreciation the information that the Governing Council of Unidroit had already authorized its secretariat to participate in such a joint project. The Commission also agreed with the proposal by the secretariat that Unidroit could convene a study group or working group set up by Unidroit under the auspices of its Governing Council and to which the UNCITRAL secretariat would be invited in order to start the work. In response to a question as to how the Commission would be kept abreast of the progress of work during the initial phase, it was pointed out that the composition of the study group or working group to be set up by Unidroit would be agreed upon by both secretariats and would include a representative of the UNCITRAL secretariat, which would report to the Commission at its annual sessions. In accordance with the working methods of Unidroit, such a study group or working group would be composed of international legal experts representing different legal systems, international organizations and other relevant stakeholders invited to participate as observers. Once the Unidroit study group or working group had completed its work, the preliminary draft model law would be submitted for intergovernmental negotiations through an UNCITRAL working group, possibly by the second half of 2022, with a view to its ultimate adoption by UNCITRAL. The Commission further agreed that the final text to be adopted by UNCITRAL would bear the names of both organizations, in recognition of their close cooperation and the contribution by Unidroit during the preparatory phase of the project. The Commission requested the secretariat to report on the progress of the work at its annual sessions.

2. Civil asset tracing and recovery

62. The Commission recalled that, at its fifty-first session, in 2018, after discussion of a proposal for possible future work on civil asset tracing and recovery ([A/CN.9/WG.V/WP.154](#)), it had requested the secretariat to examine the relevant issues of asset tracing in the area of insolvency, taking into account work undertaken by other organizations.⁵⁵ The Commission further recalled that at its fifty-second session, it had considered a proposal submitted by the United States calling for a colloquium to explore further the matter with a view to starting work thereafter on the development of model legislative provisions on civil asset tracing and recovery in both common law and civil law systems ([A/CN.9/996](#)). At that time, the Commission had agreed on the importance of the topic and on the usefulness of providing further guidance for States to equip themselves with effective tools for asset recovery, and had requested the secretariat to organize a colloquium in conjunction with the fifty-sixth session of Working Group V in December 2019, in cooperation with other relevant international organizations, to further clarify and refine various aspects of the Commission's possible work in this area, for consideration by the Commission at its fifty-third session, in 2020.⁵⁶

63. At the present session, the Commission had before it the report of the secretariat on the Colloquium on Civil Asset Tracing and Recovery (Vienna, 6 December 2019), held after the fifty-sixth session of Working Group V (Insolvency Law) ([A/CN.9/1008](#)). The Commission expressed its appreciation to its secretariat for having organized the Colloquium, which had been attended by more than 100 participants from 45 jurisdictions, of which approximately 10 jurisdictions represented the common law tradition and 35 jurisdictions represented the civil law tradition. Most participants were experts specialized in asset tracing and recovery in

⁵⁵ *Official Records of the General Assembly, Seventy-third Session, Supplement No. 17 (A/73/17)*, para. 253 (d).

⁵⁶ *Ibid.*, *Seventy-fourth Session, Supplement No. 17 (A/74/17)*, paras. 201–203.

a particular field of law. The Commission took note of the following main conclusions drawn from the secretariat's exploratory work on the topic and from the Colloquium:

(a) Asset tracing and recovery was affected by several parallel processes at the national, regional and international levels, in particular, on the one hand, by processes addressing money-laundering, corruption and terrorism financing and other instruments addressing transnational organized crime or international crime that required States to cooperate and better coordinate their asset tracing and recovery efforts, and, on the other hand, by measures aimed at protecting personal data, individual privacy, public policy and local interests that might interfere with the effectiveness and efficiency of asset tracing and recovery;

(b) Digital aspects (both the use of digital means and data for asset tracing and recovery, and the tracing and recovery of digital assets) should be considered;

(c) Several regional and international instruments addressed civil asset tracing and recovery tools. In particular, the processes facilitated by the United Nations Office on Drugs and Crime (UNODC) for the review of implementation of the United Nations Convention against Corruption were relevant. The second review cycle, which was expected to be completed by the end of 2020, would inform the international community of the status of implementation by States parties of chapter V of the Convention, including its asset tracing and recovery provisions;

(d) Domestic civil asset tracing and recovery tools were diverse. Depending on the legal tradition, they could be found in case law or in civil procedure law and, in addition, in sector-specific laws. Some jurisdictions in the civil law tradition, in the absence of a legislative base for civil asset tracing and recovery, gave unlimited discretion to courts to handle needs in civil asset tracing and recovery on a case-by-case basis, including in the cross-border context;

(e) Most challenges from civil asset tracing and recovery in the cross-border context arose due to: (i) lack of awareness of existing asset tracing and recovery tools in various jurisdictions; (ii) the absence of asset tracing and recovery tools in some jurisdictions; (iii) inefficiency of some existing asset tracing and recovery tools in certain jurisdictions; (iv) difficulty in obtaining cross-border recognition and enforcement of asset tracing and recovery orders and powers of receivers and liquidators and other persons involved in asset tracing and recovery; and (v) unavailability of some domestic asset tracing and recovery tools to foreign practitioners.

64. There was general agreement on the importance of the issues raised in the Colloquium and associated work by the secretariat, as well as on the usefulness of offering guidance to States in the area of civil asset tracing and recovery in order to facilitate the use of such mechanisms in the cross-border context. The Commission took note of suggestions regarding the form, scope and method of any work it might wish to undertake in this area, namely: references to the diverse spectrum of texts that UNCITRAL had prepared (legislative texts, uniform contractual clauses and rules and explanatory texts). Support was expressed for the development of a flexible, non-prescriptive text, possibly along the lines of a toolkit, that would inform States in respect of good practices regarding asset tracing and recovery. The Commission further noted the need for it to consider whether any possible work on the topic should be limited to the area of insolvency law; and whether any possible work on the topic could take place in a working group or in plenary meeting in the Commission, or be undertaken by the secretariat with the involvement of experts. In respect of these issues, support was expressed for the view that, keeping in mind existing instruments and work being undertaken in other forums, the scope of the work should be limited to insolvency, at least at the outset, and that Working Group V might thus be the most appropriate body in which to consider the topic, after appropriate development by the secretariat.

65. In considering these matters, the Commission observed that the International Colloquium on Applicable Law in Insolvency Proceedings, which the Commission

had requested its secretariat to organize, possibly in conjunction with the fifty-seventh session of Working Group V, had been postponed as a result of measures necessary to mitigate the COVID-19 pandemic (see para. 66 below). As both topics would have an impact on the work programmes of the UNCITRAL secretariat and Working Group V, the Commission agreed to delay its final decision in respect of possible future work on asset tracing and recovery, including the form and scope that such work might take until it was possible to convene the International Colloquium on Applicable Law in Insolvency Proceedings and report on its outcome to the Commission at its fifty-fourth session.

3. Applicable law in insolvency proceedings

66. The Commission recalled that, at its fifty-first session, the European Union had presented a proposal to dedicate future work to applicable law related to insolvency as an alternative to work on civil asset tracing and recovery.⁵⁷ At that time, it was stressed that the issue of applicable law was an important matter that warranted consideration. The Commission further recalled that at its fifty-second session, it had considered a proposal submitted by the European Union in support of future work by UNCITRAL on harmonizing applicable law in insolvency proceedings (A/CN.9/995). At its fifty-second session, the Commission had agreed on the importance of the topic, which complemented the significant work already done by the Commission on insolvency law, in particular cross-border insolvency. The Commission had also agreed, however, that the subject matter was potentially complex and required a high level of expertise in various subjects of private international law, as well as on choice of law in areas such as contract law, property law, corporate law, securities and banking and other areas on which the Commission had not recently worked. The Commission had further agreed that it was essential to carefully delineate the scope and nature of the work that the Commission could undertake. For that purpose, the Commission had requested its secretariat to organize a colloquium, in cooperation with other relevant international organizations, possibly in conjunction with the fifty-seventh session of Working Group V, with a view to submitting proposals that were more concrete for consideration by the Commission at its fifty-third session, in 2020.⁵⁸ Due to mitigation measures required by the COVID-19 pandemic, the fifty-seventh session of Working Group V was postponed from May 2020 to December 2020. The Commission requested the secretariat to organize the agreed colloquium on 11 December 2020 (or as soon as practicable thereafter), thus shortening the fifty-seventh session of Working Group V accordingly, and to report on conclusions reached by the colloquium at the fifty-fourth session of the Commission.

4. Legal issues related to the digital economy (including high-tech dispute settlement)

67. The Commission recalled the mandate given to the secretariat, at its fifty-first session (New York, 25 June–13 July 2018), to compile information on legal issues related to the digital economy, including by organizing, within existing resources and in cooperation with other organizations, symposiums, colloquiums and other expert meetings, and to report that information for its consideration at a future session.

68. The Commission took note of the progress report of exploratory work undertaken by the secretariat on legal issues related to the digital economy (A/CN.9/1012). It also took note of the preliminary taxonomy and appraisal of existing UNCITRAL texts as set out in the addenda to that report (A/CN.9/1012/Add.1 (artificial intelligence), A/CN.9/1012/Add.2 (data transactions) and A/CN.9/1012/Add.3 (digital assets)). The Commission heard a summary of the events which the secretariat had organized since the fifty-second session of the Commission, including (a) the inaugural Incheon Law and Business Forum, co-organized with the Ministry of Justice of Korea and the Incheon Metropolitan City

⁵⁷ Ibid., *Seventy-third Session, Supplement No. 17* (A/73/17), para. 251.

⁵⁸ Ibid., *Seventy-fourth Session, Supplement No. 17* (A/74/17), para. 206.

on the theme of “Challenges of doing business in the digital economy in Asia and the Pacific” (Incheon, Republic of Korea, 18 September 2019), (b) the seminar co-organized with the Ministry of Foreign Affairs of Peru on electronic commerce and legal issues related to the digital economy (Lima, 12 February 2020), and (c) an expert group meeting in Vienna, in collaboration with the Unidroit secretariat, to advance work on the taxonomy (Vienna, 10 and 11 March 2020). It also heard that the secretariat had worked in cooperation with the Governments of Czechia, Israel and Japan to organize two virtual panels – one on artificial intelligence and data contracts, the other on high-tech dispute settlement – as part of a parallel programme to the Society Law, Artificial Intelligence and Robotics (SOLAIR) Conference 2020 (Prague, 10 and 11 September 2020). An additional takeaway from the panel on artificial intelligence and data contracts was the need for providing guidance to commercial parties on contracting for artificial intelligence services, particularly in view of the differences between artificial intelligence and traditional software. A takeaway from the panel on hi-tech dispute resolution was the need to discuss tools addressing the expertise of arbitrators, the duration of proceedings, confidentiality and access to digital evidence.

69. The Commission expressed its appreciation to the secretariat for its work in compiling and analysing information on the topics and legal issues addressed in the progress report, and for the proposals for future work (see the workplan set out in table 1 of [A/CN.9/1012](#)), in particular the proposal to organize colloquiums to refine the scope of several topics put forward in the workplan for preparatory work. The Commission also heard a proposal for a colloquium to focus on dispute resolution in international high-tech-related transactions, in furtherance of a proposal made by the Governments of Israel and Japan ([A/CN.9/997](#)), which the Commission had considered at its fifty-second session. The Commission recalled that, at that session, it was agreed that disputes arising out of transactions in the digital economy should be combined with other exploratory work on legal issues related to the digital economy ([A/74/17](#), para. 215). It was felt that the topic would benefit from further analysis and focus in order to avoid developing sector-specific rules and to address broader challenges presented by the use of artificial intelligence and other emerging technologies in dispute resolution, including through the use of platforms to settle disputes. The point was made that, while sector-specific rules for dispute resolution had been proposed in the past, sector participants tended to revert to generic rules over time. The merits of generic rules for dispute resolution was reaffirmed.

70. Broad support was expressed for work to continue on legal issues related to the digital economy in accordance with the workplan put forward by the secretariat. In this regard, several additional points were made during the discussion.

71. First, it was emphasized that work on digital trade was of heightened importance in the wake of the COVID-19 pandemic. The Commission recalled that the series of online panels organized during the first part of the present session (7–17 July 2020) had highlighted (a) how the pandemic was accelerating the move to online business processes, (b) the importance of paperless trade facilitation and electronic payments, and (c) the relevance of the ongoing efforts of UNCITRAL on digital trade (see part one, para. 27, above).

72. Second, it was reiterated that UNCITRAL played a central and coordinating role within the United Nations system in addressing legal issues related to digital trade⁵⁹ and that it should continue to cooperate with other international organizations working on the topics addressed in [A/CN.9/1012](#). It was noted that the secretariat had coordinated the proposals for future work with the Unidroit secretariat and planned to continue collaborating with the Unidroit secretariat in further developing the taxonomy and on the Unidroit project on digital assets. It was also noted that the secretariat was monitoring the work being carried out within the United Nations system and in other international forums and that UNCITRAL could benefit from close association with the action envisaged in the *Road Map for Digital Cooperation*

⁵⁹ Ibid., para. 210.

which was presented by the Secretary-General in June 2020.⁶⁰ While it was noted that the Commission should ensure that its own work did not overlap with such other work, it was reiterated that the proposals for future work on artificial intelligence in particular were focused on artificial intelligence and automated contracting and did not overlap with the work of other organizations. Accordingly, there was no need for preparatory work on this topic to await the finalization of the work of other organizations. It was further noted that the secretariat was monitoring plurilateral and bilateral efforts to conclude digital trade agreements and was exploring intersections between those agreements, existing UNCITRAL instruments, and possible future work.

73. Third, it was noted that the fact that States were at different stages of formulating policies and legal responses in relation to the topics put forward for future work should not in itself prevent UNCITRAL from undertaking preparatory work on those topics, and it was noted that such work could prevent fragmented national legal responses. It was emphasized that legal issues raised by digital trade were, by their very nature, transnational and thus lent themselves to an international response. It was also noted that future work would build on the experience and expertise of UNCITRAL in developing legislative texts in the area of e-commerce, and could support the adoption of those existing texts, including the Model Law on Electronic Commerce and Model Law on Electronic Transferable Records. In this regard, it was pointed out that those texts supported digital transformation and could assist efforts to bridge the digital divide.

74. Fourth, the view was reiterated that any future work should respect the principle of technology neutrality, specifically, the need to avoid regulating a particular technology and the need for any new instrument to be “future-proof”.

75. Finally, while some preliminary views were offered on the priority of the different topics put forward in the workplan – in particular artificial intelligence, data transactions and platforms – the general view was that it was too early to prioritize between topics. It was added that prioritization of topics should pay attention to (a) the commercial usage of the technologies and applications (i.e., the tools of digital trade) being addressed, (b) the existence of legal obstacles that lend themselves to the kinds of rules developed by UNCITRAL in the past, including in the Model Law on Electronic Commerce, and (c) the effect of proposed harmonized rules on facilitating trade. It was noted that many of the topics were interconnected – for instance, artificial intelligence depended on data transactions, while platforms were used to host data transactions, automated contracting and dispute resolution – and therefore that work on one topic may raise the need to address other topics. It was suggested that the taxonomy should serve as a map to guide future work. It was reiterated that future work should avoid privacy and data protection issues,⁶¹ as well as intellectual property issues.

76. The Commission reaffirmed that UNCITRAL plays a central and coordinating role within the United Nations system in addressing legal issues related to the digital economy and digital trade. The Commission requested the secretariat to continue to develop the taxonomy and to continue its appraisal of existing UNCITRAL texts in accordance with the workplan set out in table 1 of [A/CN.9/1012](#). It also requested the secretariat to organize colloquiums to refine the scope of the topics identified in the workplan and any other topics identified by the secretariat in its ongoing exploratory work (including dispute resolution and platforms), and to present proposals for concrete legislative work for consideration by the Commission at its next session in 2021.

⁶⁰ [A/74/821](#).

⁶¹ *Official Records of the General Assembly, Seventy-third Session, Supplement No. 17 (A/73/17)*, para. 253(b).

5. Railway consignment notes

77. The Commission noted that, at its fifty-second session, it had considered a proposal by the Government of China to develop a legal framework for negotiable railway consignment notes (A/CN.9/998), which the Commission felt had considerable practical significance for world trade in view of the importance of railway transport in facilitating trade and the increase in trade volume using railway transport. However, given the wide range of issues involved and their complexity, the Commission had agreed, as a first step, to request the secretariat to conduct research on legal issues related to the use of railway or other consignment notes, and coordinate with other relevant organizations such as the Intergovernmental Organization for International Carriage by Rail (OTIF), the Organization for Cooperation between Railways (OSJD), the International Rail Transport Committee, the relevant United Nations regional commissions, FIATA, the Economic Commission for Europe and the International Chamber of Commerce. The Commission requested the secretariat to report to the Commission at its next session so that it could make a more informed decision on the way forward.⁶²

78. At the current session, the Commission had before it a note in which the secretariat summarized the exploratory work done in response to the Commission's request, the tentative conclusions it has drawn therefrom, and its proposals on the way forward for consideration by the Commission (A/CN.9/1034). The note indicated that current international trade law recognized only the (maritime) bill of lading as meeting the requirements of negotiability and thus being capable of use as a vehicle for transferring rights or otherwise exercising control over the goods represented by the bill of lading, a function which was expressly recognized in article 51 (3) of the United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (the "Rotterdam Rules").⁶³ However, none of the international conventions on carriage of goods by other means, be it by air,⁶⁴ road,⁶⁵ or rail⁶⁶ contemplated the transfer of the right of control of the goods⁶⁷ by transfer of the relevant transport document. The Uniform Rules concerning the Contract for International Carriage of Goods by Rail (CIM) appended to the Convention concerning International Carriage by Rail⁶⁸ even provided expressly, in article 6, paragraph 5, that "the consignment notes shall not have effect as a bill of lading". (A/CN.9/1034, paras. 5–6). The note also pointed out that the United Nations Conference on Trade and Development (UNCTAD)/International Chamber of Commerce (ICC) Rules for Multimodal Transport Documents (the "UNCTAD/ICC

⁶² Ibid., *Seventy-fourth Session, Supplement No.17 (A/74/17)*, paras. 217–218.

⁶³ General Assembly resolution 63/122, annex (with corrections in depositary notifications C.N.563.2012.TREATIES-XI.D.8 and C.N.105.2013.TREATIES-XI.D.8).

⁶⁴ Convention for the Unification of Certain Rules Relating to International Carriage by Air Warsaw, 12 October 1929 (League of Nations, *Treaty Series*, vol. 137, p. 1), as amended by the Hague Protocol of 28 September 1955 and by Additional Protocol No. 4, signed at Montreal on 25 September 1975. See also the Convention for the Unification of Certain Rules for International Carriage by Air (the Montreal Convention), signed at Montreal on 28 May 1999 (United Nations, *Treaty Series*, vol. 2242, p. 309).

⁶⁵ Convention on the Contract for the International Carriage of Goods by Road (Geneva, 19 May 1956) (United Nations, *Treaty Series*, vol. 399, p. 189), amended by the 1978 Protocol.

⁶⁶ Convention concerning International Carriage by Rail of 9 May 1980), as amended by the Protocol of Modification of 3 June 1999 (www.cit-rail.org/en/rail-transport-law/cotif/). The Convention applies in more than 50 States, mainly in Europe, North Africa and the Middle East. The second main agreement in the railway sector is the Agreement on International Railway Freight Communications of (1 November 1951), as amended and supplemented as of 1 July 2019, developed by OSJD. The Agreement applies in 29 countries, mainly in Asia and Eastern Europe.

⁶⁷ The right of control, as specified in article 50 (1) of the Rotterdam Rules includes (a) the right to give or modify instructions in respect of the goods that do not constitute a variation of the contract of carriage; (b) the right to obtain delivery of the goods at a scheduled port of call or, in respect of inland carriage, any place en route; and (c) the right to replace the consignee by any other person including the controlling party.

⁶⁸ Uniform Rules concerning the Contract for International Carriage of Goods by Rail, appendix B to the Convention concerning International Carriage by Rail, as amended by the Protocol of Modification of 1999 (www.cit-rail.org/en/rail-transport-law/cotif/).

Rules”)⁶⁹ contemplated the issuance of both negotiable and non-negotiable transport documents and were often incorporated by reference in transport documents, such as the standard bills of lading developed by FIATA.⁷⁰ However, the UNCTAD/ICC Rules were of a contractual nature, and it was unclear how many jurisdictions would recognize the negotiability of a multimodal transport document only on the basis of a contractual provision if the contract of carriage did not include a maritime segment (A/CN.9/1034, para. 7).

79. The note further described various initiatives to promote legal interoperability and harmonize the railway transport documents, with the support of the two railway organizations administering those agreements, OTIF and OSJD, including the standard CIM/SMGS consignment note developed by the International Rail Transport Committee in 2006, and the technical specifications for the electronic CIM/SMGS consignment note became available for use in July 2019.⁷¹ However, the CIM/SMGS consignment notes contemplated delivery of cargo to the consignee and currently did not provide for negotiable consignment notes (A/CN.9/1034, para. 9). The note also referred to the broader harmonization efforts currently advancing under the auspices of the Economic Commission for Europe, which in November 2009 had established an expert group under its Working Party on Rail Transport (SC.2) with the mandate to develop a unified railway law.⁷² The unified railway law was intended to offer “railway undertakings and their customers the opportunity to conclude a single contract of carriage for specific international transport of goods by rail (in particular between Europe and Asia) and to agree in this contract to apply a single international legal regime (known as an opt-in)”.⁷³ The draft unified railway law covered a wide range of substantive issues, including transport documents, obligations of the parties, liability for loss or damage and delivery of goods,⁷⁴ but in its original version, it did not contemplate negotiable consignment notes. A proposal to insert provisions to that effect had been submitted to the expert group at its twenty-first session (Geneva, 16–18 October 2019).⁷⁵ Those provisions, which did not yet contemplate an electronic version of the railway consignment notes, still had to be considered by the expert group.⁷⁶

80. Lastly, the note provided information about two events devoted to the discussion of ways to develop negotiable transport documents that could be used in carriage of goods by rail which the UNCITRAL secretariat had organized and in which it had participated. The first was an expert group discussion held in connection with the High-Level Symposium on the Use of Railway Consignment Notes and the Future Legal Framework of International Trade, co-organized by the Ministry of Commerce of China, other Chinese Government entities and the UNCITRAL secretariat in Chongqing, China, on 11 and 12 December 2019, with the support of the municipal government of Chongqing. The second was an expert group meeting organized by the UNCITRAL secretariat on 15 and 16 April 2020, which had taken place by videoconference due to the measures put in place by States and the United Nations in response to the COVID-19 pandemic. The Commission was informed of the suggestion arising out of those consultations that it was worthwhile exploring the feasibility of undertaking such work using a “dual track” approach, in which the envisaged negotiable instrument would ultimately co-exist with unimodal transport documents without interfering with liability regimes mandatorily applicable under

⁶⁹ TRADE/WP.4/INF.117/CORR.1.

⁷⁰ See the Negotiable FIATA Multimodal Transport Bill of Lading.

⁷¹ The technical specifications of the electronic CIM/SMGS consignment note are available at www.cit-rail.org/media/files/documentation/freight/cim/e-fb_cim-smgs_en_2019-07-01.pdf?cid=120604.

⁷² ECE/TRANS/2011/3.

⁷³ Economic Commission for Europe, “Presenting the Unified Railway Law (URL) as a new UNECE statutory instrument for the international transport of goods by rail”, paper, January 2019.

⁷⁴ The most recent version of the draft unified railway law is contained in ECE/TRANS/2016/15.

⁷⁵ ECE/TRANS/SC.2/GEURL/2019/16.

⁷⁶ ECE/TRANS/SC.2/GEURL/2019/14.

existing international conventions. It was also suggested that the work should be conducted in cooperation with the relevant organizations and involve wide consultations with member States in all geographic regions, in particular with those States which might have special legal or regulatory requirements for the implementation of such a negotiable transport document.

81. The Commission was informed that the exploratory work and the consultations carried out by its secretariat so far had identified a demand for negotiable transport documents that could cover carriage by modes other than sea carriage, in particular by railway. The Commission concurred with that assessment and considered that its established record in developing global instruments on transport law and electronic commerce made UNCITRAL a well-suited body for developing a uniform regime for such multimodal negotiable transport documents, taking into account existing conventions, rules and business practices. Such work could cover types of transport document (negotiable and non-negotiable), issuance and contents of transport documents, rights and obligations of the carriers or multimodal transport operators in respect of the contents and evidentiary function of documents, the delivery of goods and electronic transport documents. The inclusion of electronic transport documents could be particularly timely for supporting the new types of supply chain and logistics models expected to develop in response to the widespread business disruptions caused by the COVID-19 pandemic.

82. The Commission requested its secretariat to start preparatory work towards the development of a new international instrument on multimodal negotiable transport documents that could also be used for contracts not involving carriage by sea. Such work should be conducted in close coordination and cooperation with all relevant international organizations, in particular the Economic Commission for Europe, OTIF, OSJD and the International Rail Transport Committee, with a view to ensuring that UNCITRAL work complement and support, but not interfere with, any ongoing work of those international organizations. The initial work by the UNCITRAL secretariat could take the form of expert group meetings and, resources permitting, a UNCITRAL colloquium. Lastly, the Commission requested its secretariat to report to the Commission, at its fifty-fourth session, in 2021, on the progress made, including on the preliminary draft of a new instrument on multimodal transport documents.

83. While not objecting to the continuation of the work, as agreed by the Commission, one delegation expressed the concern that any legislative work in the area might be irrelevant to some States, as was currently the case with the work on the judicial sale of ships.

D. Other topics (including non-legislative work)

1. New proposals for future work in the aftermath of the COVID-19 pandemic

84. With regard to proposal put forward by the Government of Belgium on possible modifications to the UNCITRAL Arbitration Rules in the light of the work by Working Group II on expedited arbitration ([A/CN.9/1035](#)), the Commission decided to consider the possible need for consequential modifications to the UNCITRAL Arbitration Rules as its future work programme once it had finalized and adopted the expedited arbitration provisions (see para. 29 above).

85. The Commission then considered a proposal put forward by the Government of Japan that the secretariat should conduct activities (including research and the hosting of expert group meetings, webinars and online consultations) to collect and compile information on the latest trends regarding international dispute resolution ([A/CN.9/1037](#)). The proposal noted that the crisis caused by COVID-19 had highlighted the need to improve resilience towards such global crises and to achieve modernization, in particular in that area. It was suggested that there was a need to monitor the changing landscape of dispute resolution, the evolving practices and the development of new forms of dispute resolution. General support was expressed for the secretariat to conduct research and take stock of the wide range of developments

in that area. It was widely felt that the secretariat should be given flexibility in carrying out the activities mentioned in the proposal. In the light of support received, the Commission requested the secretariat to explore possible means to implement such activities and report back to the Commission at its fifty-fourth session, in 2021.

86. The Commission considered a proposal put forward by the Government of the Russian Federation ([A/CN.9/1039](#), co-sponsored by Armenia and Viet Nam) to update the work programme of the Commission to include the regulation of measures to combat the consequences of the global COVID-19 pandemic and other emergencies that entail material restrictions to global trade. It was stated that the COVID-19 pandemic had posed a number of challenges to States, and their responses eventually caused serious disruptions to world trade because of the lack of a uniform international legal framework. It was suggested that the Commission could play a role in formulating norms which would support States' responses to and recovery from such emergencies. It was mentioned that, given its broad mandate covering "almost all issues of international trade regulation", UNCITRAL could be "the best forum to discuss and elaborate unified approaches to the regulation of international trade in the conditions of emergencies, similar by their nature to a global pandemic, the protection of the trade participants, and successfully coping with the impact of such phenomena." Possible concrete areas of work included the following: (a) the permissible scope of state interference into contractual obligations; (b) issues of liability of a party to a contract given the frustration of performance (due to force majeure); (c) mandatory alteration of the terms of performance of obligations; (d) alleviated bankruptcy rules; (e) the digitalization of legal procedures in formation and execution of contracts; (f) online voting in companies; and (g) elaborated provisions on smart contracts. It was emphasized that such work could enhance the predictability of international transactions in a situation similar to the COVID-19 pandemic, which would benefit both States and businesses of all sizes. To carry out such work, it was suggested that the secretariat should be mandated to undertake research in that area, organize informal meetings and prepare a report identifying specific topics lending themselves to work by the Commission. It was noted that the work should focus on matters related to overcoming the consequences of the global pandemic and other large-scale emergencies that create material impediments to international trade, to identify in that context the topics which were correlated to the mandate of UNCITRAL and had not been considered by other international organizations, and to do preliminary research and hold events to discuss those matters. It was also suggested that the secretariat should present the results of that work to the Commission for consideration at its next session, that UNCITRAL working groups should reflect on the impact of COVID-19 in their areas of work and that the Commission should consider the format of future work on those matters. It was further suggested that based on the study to be conducted by the secretariat, the Commission could decide how to make progress with that project at its next session, in 2021, including the formulation of an additional working group.

87. Strong support was expressed for that proposal in view of its timeliness and the urgent need to support States in responding to and recovering from the COVID-19 pandemic. It was also said that the Commission could make a significant contribution to those response and recovery measures by developing a harmonized approach that helped reduce the disruption caused by certain types of measures, and by assisting States to improve the resilience of their commercial law frameworks to the effects of worldwide emergencies similar to the COVID-19 pandemic. Some delegations expressed the view that resources should be allocated to consideration of this issue on a standing basis.

88. However, doubts were also expressed in the light of the breadth of the proposal. It was said that responses taken by States had varied or were likely to vary depending on the circumstances, thus making it difficult to take a harmonized approach. It was also stated that work in some of the areas mentioned in the proposal were being undertaken by other international organizations, whereas other areas could be examined by existing working groups, but some did not fall within the

purview/mandate of the Commission. It was further mentioned that the desirability and feasibility of formulating international standards in those areas would first need to be examined and that it was premature to consider whether the topic required consideration by any existing working group or the establishment of a new one.

89. After discussion, the Commission requested the secretariat to explore the proposal further, considering, in particular, inputs and feedbacks received during the virtual panels on UNCITRAL texts and COVID-19-related response and recovery. The secretariat was requested to organize, within its existing resources, but also in partnership with interested Governments or organizations, online round tables or meetings in which States could share their experience on legislative responses to COVID-19 and relevant experts could discuss possible ways forward. It was suggested that, regardless of any legislative work that the Commission might wish to undertake, the secretariat should explore the possibility of developing an online information platform where States might share their experiences with legal response and recovery measures related to the COVID-19 pandemic, ideally in real time. Similar to the approach taken by the secretariat with regard to its exploratory work on digital economy, the secretariat was to take a holistic approach of the various issues and report back to the Commission at its fifty-fourth session, in 2021, on how the COVID-19 pandemic had impacted international trade, the legislative responses of States and areas where the Commission could embark on future work.

2. Other topics

90. The Commission also considered a few topics that had been proposed as possible future work at earlier working group sessions, as well as other activities of a non-legislative nature to be included in the work programme, as they appeared in table 2 of document [A/CN.9/1016](#).

E. Priorities and timetable for future legislative projects

91. The Commission concluded its deliberations on possible future projects as follows:

(a) As far as the allocation of working group time was concerned, priority should be given to organizing a colloquium to consider applicable law in insolvency proceedings, in 2020, to allow the Commission to further consider the topic at its fifty-fourth session, in 2021;

(b) The secretariat should continue its preparatory work on warehouse receipts in cooperation with Unidroit (see paras. 60–61 above);

(c) The secretariat should conduct exploratory and preparatory work on railway consignment notes for further consideration by the Commission;

(d) With regard to legal issues related to the digital economy, including on dispute resolution in connection with high-tech disputes, the secretariat should:

(i) Continue to develop the legal taxonomy of emerging technologies used in digital trade and their applications, in cooperation with Unidroit and the Hague Conference on Private International Law, with a view to its completion and publication in 2021 upon approval by the Commission at its fifty-fourth session, in 2021;

(ii) Organize colloquiums to refine the scope of the topics identified in the relevant note ([A/CN.9/1012](#)) and any other topics identified by the secretariat in its ongoing exploratory work (including dispute resolution and platforms), and to present proposals for concrete legislative work for consideration by the Commission at its next session in 2021;

(e) The secretariat should explore possible means to collect and compile information on the latest trends regarding dispute resolution and report back to the Commission at its fifty-fourth session in 2021;

(f) The secretariat should conduct exploratory work on matters of international commercial law related to overcoming the consequences of the global pandemic, such as COVID-19, and other large-scale emergencies that create material impediments to international trade and inform the Commission on the progress made in that work, as appropriate.

92. The Commission further confirmed the request to the secretariat to prepare explanatory materials on the enactment of UNCITRAL texts in the area of electronic commerce.⁷⁷

XI. Date and place of future meetings

A. Fifty-fourth session of the Commission

93. The Commission recalled that, at its fifty-second session, in 2019, it had 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.⁷⁸ The Commission noted that that understanding was reached when it was working under normal conditions. It further noted that the outbreak of the COVID-19 pandemic had required putting in place for the fifty-third session arrangements different from those agreed upon by the Commission at its fifty-second session, in 2019. It recognized that the availability of a third week was instrumental for holding the session and that, in the light of the format of the session, postponement of the consideration of legislative texts (i.e., mediation texts) to the next session was also necessary.

94. In the light of that experience and possible continued disruptions to the normal conditions of work faced by UNCITRAL and its working groups in 2021, the Commission stressed the need to retain flexibility as regards dates and duration and other arrangements for its annual sessions. Taking those considerations into account, the Commission provisionally approved the holding of its fifty-fourth session in Vienna from 28 June to 16 July 2021, recognizing that adjustments might need to be made with respect to that session in the light of prevailing circumstances closer to the session.

95. The practice of the secretariat consulting States about the provisional agenda was welcomed and the secretariat was encouraged to continue it. The Commission also recalled its earlier requests to its secretariat to take steps towards streamlining work at annual sessions of UNCITRAL with the goal of shortening sessions to two weeks where possible. It was suggested that means proven to be effective at the current session in improving efficiency in Commission deliberations could be used in the organization of future sessions of UNCITRAL regardless of their format.

96. One delegation expressed support for holding the fifty-fourth session on those dates only on the condition that the session would be held in person, noting that otherwise it would be impossible for delegations to consider thoroughly legislative texts and the results of the secretariat's research work, which was scheduled for consideration by the Commission at its next session. According to the view of that delegation, in the light of the expected workload, three weeks might not be sufficient for the Commission to complete all scheduled work at the fifty-fourth session.

97. On the understanding that dates were allocated for sessions expected to be held in a normal, in-person format, and agreeing with the view that holding in-person sessions was preferable, the Commission recalled that the format of the current session had been a subject of consultations by the UNCITRAL member States. The Commission noted that the format of the next session might become the subject of

⁷⁷ *Official Records of the General Assembly, Seventy-second Session, Supplement No. 17 (A/72/17)*, paras. 112–114.

⁷⁸ *Ibid.*, *Seventy-fourth Session, Supplement No. 17 (A/74/17)*, para. 331.

consultations if the COVID-19 situation did not permit the Commission to meet in person.

B. Sessions of working groups in 2021

98. The Commission recalled that, at its thirty-sixth session, in 2003, it had 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.⁷⁹

99. It further recalled that, at its fifty-second session, in 2019, it decided that extra time for conference services, if required, could also be allocated to working groups from the unused time of the Commission session.⁸⁰ 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.⁸¹

100. The Commission further recalled that, at its fiftieth session, in 2017, it 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.⁸²

101. The Commission considered conference service requirements in the light of its work programme, reports of its working groups, a note by the Secretariat (A/CN.9/1011) and submissions by States (A/CN.9/1036 and A/CN.9/1040). It approved the following schedule of working group sessions in 2021, taking note that the last day of the tentative dates of the forty-first session of Working Group III (19 November 2021) would fall on Gurburab, one of the significant holidays of the United Nations, unless alternative dates would be allocated to that Working Group taking into account its needs. As regards tentative dates in the second half of 2021, the Commission noted efforts by its secretariat towards rescheduling tentative dates for the November 2021 session of Working Group VI so as to avoid holding the session during the week of the Thanksgiving holidays.

	<i>First half of 2021 (New York)</i>	<i>Second half of 2021 (Vienna) (to be confirmed by the Commission at its fifty-fourth session, in 2021)</i>
Working Group I (Micro-, Small and Medium-sized Enterprises)	Thirty-fifth session 22–26 March 2021	Thirty-sixth session 4–8 October 2021
Working Group II (Dispute Settlement)	Seventy-third session 8–12 February 2021	Seventy-fourth session 27 September–1 October 2021

⁷⁹ Ibid., *Fifty-eighth Session, Supplement No. 17 (A/58/17)*, para. 275.

⁸⁰ Ibid., *Seventy-fourth Session, Supplement No. 17 (A/74/17)*, para. 323.

⁸¹ Ibid., para. 325.

⁸² Ibid., *Seventy-second Session, Supplement No. 17 (A/72/17)*, para. 485.

	<i>First half of 2021 (New York)</i>	<i>Second half of 2021 (Vienna) (to be confirmed by the Commission at its fifty-fourth session, in 2021)</i>
Working Group III (Investor-State Dispute Settlement Reform)	Fortieth session 12–16 April 2021	Forty-first session 15–19 November 2021 (falls on Gurpurab)
Working Group IV (Electronic Commerce)	Sixty-first session 5–9 April 2021	Sixty-second session 18–22 October 2021
Working Group V (Insolvency Law)	Fifty-eighth session 3 to 7 May 2021	Fifty-ninth session 13–17 December 2021
Working Group VI (Judicial Sale of Ships)	Thirty-eighth session 19–23 April 2021	Thirty-ninth session 22–26 November 2021

XII. Other business

A. Consideration of resource requirements for the implementation of the work programme of the Commission

102. The Commission had before it a note by the Secretariat on resources to implement the work programme with respect to investor-State dispute settlement reform (A/CN.9/1011) that supplemented 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.9/1016). The Commission took note that Working Group III had been scheduled to consider, at its thirty-ninth session in the first half of 2020, among other things, how to plan its future work and whether to request additional session time from the Commission given its workload. It was noted that that session could not take place as scheduled due to the COVID-19 pandemic.

103. The Commission heard oral presentations of submissions made by Governments as contained in documents A/CN.9/1036 and A/CN.9/1040. The former document expressed the view that the Commission session in 2023 should be set as the target date for completion of the work on investor-State dispute settlement reform and that, therefore, the Commission should request the General Assembly to allocate the necessary resources for that purpose. It was indicated that the current reform efforts of the investor-State dispute settlement regime were the first since its establishment in the 1960s and that reform was necessary and urgently needed. The latter document expressed the view that Working Group III would need to complete its first review of the reform options currently on its agenda before the Commission would be in a position to adequately assess whether there was a need for additional resources for Working Group III to complete its mandate. It was indicated that a discussion within the Working Group regarding its agenda and a workplan, including on the various tools available for advancing work, would help the Commission to make an informed decision. In addition, it was stated that uncertainties caused by the COVID-19 pandemic with respect to travel, as well as budgetary constraints, could have a negative impact on the ability of delegations to prepare for and participate in an increased number of sessions. Accordingly, it was suggested that the decision on the resource requirements of Working Group III should be postponed to the fifty-fourth session of the Commission in 2021.

104. The Commission also heard an oral presentation by the Chair of Working Group III on a series of informal consultations that took place on the matter, reporting that varied views had been expressed among those able to effectively participate in the informal consultations, on the questions of time frame for the completion of the investor-State dispute settlement reforms and the resources required, among other issues. A view was expressed that those informal consultations lacked inclusiveness

because they had been conducted only in English. Another view expressed was that presenting the outcome of such consultations was at odds with UNCITRAL working methods because the results of the consultations had not yet been reported back to the Working Group. In response, it was said that the outbreak of the COVID-19 pandemic made it necessary to work in a flexible manner as had also been evidenced in the preparation leading to and during the fifty-third session of the Commission.

105. With respect to the question of the period of time for the Working Group to complete its work, reference was made to document [A/CN.9/1011](#), in which it was anticipated that the Working Group would need 10 more years to complete its work. Various views were expressed on what the reasonable period of time for the completion of the work would be, ranging from 3 to 7 years. It was also expressed that it was not possible to decide on a definite end date – although it would be useful – because of the uncertainties caused by the COVID-19 pandemic and also because the Working Group did not yet have a detailed workplan to estimate with certainty when the project could be completed. Another view was that there would be no need to set an end date as that was not necessarily a practice followed in UNCITRAL working groups. Doubts were expressed with respect to the need to accelerate the pace of work of the Working Group, given the vast range of reform options and complexity of the issues being considered by the Working Group.

106. The view was also expressed that there was no need for the Working Group to proceed with its work more expeditiously than other working groups, which also handled important subjects. It was also proposed to hold the meetings of those working groups that were not held in the first half of the year 2020 because of the COVID-19 pandemic.

107. Regarding means to accelerate the work to reduce the anticipated time frame of 10 years, it was stated that it would be essential to increase the number of working group sessions because decisions can be made only in such formal sessions with interpretation, a necessary condition for inclusivity. However, it was also mentioned that the Working Group would need to consider more comprehensively how it could efficiently use the time it had, as well as consider other options, such as requesting any available time of the Commission and using other tools more effectively such as small drafting groups, virtual informal meetings, written procedures and intersessional meetings, before requesting an increase in the number of working group sessions per year.

108. A proposal, containing four main elements, was presented for consideration by the Commission aimed at bridging the various views expressed. The four elements were as follows:

(1) The Commission would agree in principle to support Working Group III with the necessary resources to complete its work in a reasonable period of time;

(2) A resourcing plan could be prepared by the Chair and the Rapporteur of Working Group III with interested Government delegations and with the assistance of the secretariat, which shall be consulted upon with Government delegations through a written process, and possibly through informal consultations, and presented to the Commission in 2021;

(3) The Commission would confirm that it would consider and decide upon the resourcing plan at its session in 2021;

(4) The Commission would allocate to Working Group III any unused time of its session in 2021 and resources to hold two additional weeks of virtual meetings with interpretation in the six official languages of the United Nations.

109. With respect to point (1) of the proposal, it received some support. For some delegations, the notion of “reasonable time” was questioned as being unclear. It was also mentioned that the Working Group should be urged to complete its work as soon as possible. Another suggestion was that the Commission could generally commend

the will of the Working Group to complete its work on the reform of investor-State dispute settlement without committing to allocate additional resources at that stage.

110. With respect to point (2) of the proposal, again it received some support on the basis that it would allow the Commission to make an informed decision in 2021 on the resources needed by the Working Group to complete its work within an acceptable time frame, taking into account that the Working Group would have completed its first review of the various reform options, and that a resourcing plan including the various tools available to the Working Group would be developed.

111. It was suggested that a resourcing plan should quantify or define the resources needed for the Working Group to complete its work on the reform options. It was further said that a resourcing plan should contain (a) how the Working Group could use the various tools at its disposal, including the sessions of the Working Group, expert groups, seminars, intersessional meetings as well as other means; (b) the resources required for the use of those tools, including those required for translation and interpretation of meetings; and (c) the issues or reform options to be discussed as well as the estimated time required for each issue or reform option.

112. It was also suggested that delegations should not only be consulted after a draft resourcing plan was prepared but also when such a draft was being prepared. As a matter of procedure, it was suggested that a resourcing plan should be discussed and adopted by the Working Group through consensus so that it could be presented to the Commission, given the magnitude of the issues under consideration and in order to ensure a cooperative and inclusive process. In response, it was said that the Working Group's meeting time would be more efficiently used if devoted to the consideration of substantive matters. Some delegations observed that the Chair and the Rapporteur of the Working Group would be best placed to lead informal consultations on that matter particularly with interested government delegations, and to ensure that all views would be reflected, when developing the resourcing plan to be presented to the Commission.

113. A number of delegations questioned the need for a resourcing plan at all, on the basis that the Working Group had already spent some time developing a workplan which provided for the development of multiple reform options simultaneously and that document [A/CN.9/1011](#) already contained the necessary information to decide on the resources needed, but noted that they would be willing to accept the development of one on the basis of the overall compromise reached and if it was clear that Working Group session time would not be used.

114. Regarding point (3) of the proposal, it also received some support. However, it was suggested that the Commission should consider the resourcing plan once it was developed and that it would be too early for it to already decide at this session that it will make a decision on the plan at its next session.

115. Regarding point (4) of the proposal, some support was expressed for the request for additional resources, including dedicating expanded conference time and increased resources to Working Group III for a time-limited period. It was, however, stated that the current circumstances including the financial constraints of the United Nations and Governments made it difficult to seek any additional resource from the General Assembly. It was mentioned that any request for additional resources should be based on a detailed and documented plan including the reasons why the resources were needed, the approximate cost estimate and how those resources were to be utilized.

116. A number of questions were considered regarding the amount of additional conference time that could be allotted to Working Group III in 2021, where and how such resources would be sought, the format of any additional meetings and the maximum number of Working Group meetings in 2021. Meanwhile, it was also stated that even if any additional meetings were to be allocated, it may be difficult for some member States to participate due to resource constraints and travel restrictions.

117. It was said that the Commission could consider allocating to Working Group III any unused conference time of the Commission for its fifty-fourth session in 2021, on a non-precedential basis. In response, it was stated that, as the Commission had quite a full agenda next year, it would be difficult to commit to such an allocation at the current stage (see paras. 93–97 above).

118. Noting that some of the working group sessions could not take place as scheduled in 2020, it was suggested that the secretariat should consult with the Department for General Assembly and Conference Management to seek to organize two additional weeks of virtual working group meetings utilizing any unused entitlements of the Commission in 2020. It was difficult, however, for the secretariat to assess the status of these unused entitlements at that stage. Yet another option was to recommend to the General Assembly that two additional weeks of conference resources to hold virtual meetings of Working Group III be allocated to UNCITRAL in 2021, if it was not possible to hold two additional weeks within the existing resources. With regard to the format of the additional meetings, preference was expressed for virtual meetings. With regard to the total number of additional weeks to be sought, some expressed the view that a maximum of three weeks could be sought, while others stated that two weeks should be sufficient.

119. After discussion, having heard a wide range of views, the Commission was not able to come to a consensus on a proposed way forward on that question in the limited time that it had in its hybrid session. Consequently, the topic remained open for further consideration by the Commission at its next session, in 2021. In the meantime, the Commission encouraged the Working Group to continue to make progress on its mandate.

B. Enlargement of UNCITRAL membership

120. The Commission recalled that, at its fifty-second session, in 2019, it 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.⁸³

121. At its fifty-third session, the Commission heard an oral report by the delegation of Japan as organizer of the intersessional consultations and regional group meetings in Vienna on that proposal. In the ensuing discussion, there was support for the view that enlarging the membership of UNCITRAL could help ensure active participation of developing countries in UNCITRAL. The countervailing view was that an enlargement of membership would not necessarily lead to active participation by regions or groups of countries underrepresented in the Commission. In that respect, a call was made to all delegations to consider contributing to the trust fund established to provide travel assistance to developing countries that are members of the Commission at their request and in consultation with the Secretary-General, in order to defray travel costs of participation by those countries in UNCITRAL sessions. In support of the idea of enlargement, it was noted that observer States were almost absent at the fifty-third session, despite arrangements put in place to participate online and marginal costs which such participation would involve. That fact, it was said, emphasized the practical utility of the proposal, as membership status at UNCITRAL would allow delegations to obtain internal approvals to secure not only financial but also human resources for UNCITRAL-related matters.

122. There was support for the view that UNCITRAL was not a political body but a legal body and, therefore, the composition of UNCITRAL should reflect the balanced representation of various legal traditions. According to those delegations, such balance had already been achieved in the current composition of UNCITRAL. The

⁸³ Ibid., *Seventy-fourth Session, Supplement No. 17 (A/74/17)*, paras. 311–315.

importance of the principle of equitable geographical distribution of seats in UNCITRAL as well as the need to consider the interests of developing countries citing General Assembly resolution 2205 (XXI) of 17 December 1966 establishing UNCITRAL were also emphasized.

123. There was agreement that the process should not be rushed and should be consensus-based. A concern was raised that a decision by the Commission on an enlargement of its membership, if taken in 2021, might not be reflected in the election cycle of the General Assembly, as it was noted that the next election was scheduled for December 2021. In that respect, clarification was made that the Commission was not involved in the election process which was handled by the General Assembly. The view was expressed that, as had been done on past occasions of UNCITRAL membership enlargement, an appropriate solution would be found in the General Assembly itself when the need arose.

124. The Commission took note of the progress that had been made with respect to the proposal through the Vienna-based informal consultations and meetings led by the Government of Japan and encouraged its member States to continue consulting with each other and other interested States with a view to resolving the remaining open issues and bringing the results of the intersessional consultations to the Commission for its consideration and appropriate action at its next session, in 2021. The Commission stressed that a decision by the Commission recommending enlargement of its membership should be adopted by consensus. In that context, it welcomed Japan's willingness to continue to organize and lead Vienna-based consultations on that matter and requested the secretariat to continue to facilitate the process.

C. Evaluation of the role of the UNCITRAL secretariat in facilitating the work of the Commission

125. The Commission recalled that, as a result of changes introduced in the budgetary framework, "facilitating the work of UNCITRAL" was not listed among the planned results of the UNCITRAL secretariat, but nevertheless the UNCITRAL secretariat had intended to continue circulating during the sessions of UNCITRAL for self-evaluation a questionnaire on 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).⁸⁴ At the current session, such questionnaire was made available to States online.

126. The Commission heard that 25 responses had been received, and the level of satisfaction with the services provided to UNCITRAL by the UNCITRAL secretariat, as indicated in those responses, remained high (on average, respondents gave 4.84 out of 5 for "the services and support provided to the Commission", respondents gave 4.6 out of 5 for "the availability of information on the UNCITRAL website", respondents gave 4.64 out of 5 for "the adaptability and responsiveness of the UNCITRAL secretariat to the challenges and circumstances arising from the COVID-19 pandemic", and respondents gave 4.64 out of 5 for "the organization of the virtual panel series: UNCITRAL texts and COVID-19 response and recovery").⁸⁵

127. Several delegations expressed their gratitude to the secretariat for its commitment, flexibility, responsiveness and innovativeness in facilitating the work of UNCITRAL during the COVID-19 pandemic. Noting that not all issues were within

⁸⁴ Ibid., paras. 319–320.

⁸⁵ After the session, the secretariat received eight additional responses, which affected as follows the results of the evaluation presented to the Commission at the session: on average respondents gave 4.79 out of 5 for "the services and support provided to the Commission", respondents gave 4.52 out of 5 for "the availability of information on the UNCITRAL website", respondents gave 4.61 out of 5 for "the adaptability and responsiveness of the UNCITRAL secretariat to the challenges and circumstances arising from the COVID-19 pandemic" and respondents gave 4.55 out of 5 for "the organization of the virtual panel series: UNCITRAL texts and COVID-19 response and recovery".

the control of the UNCITRAL secretariat, some delegations noted that improvements could be made in an interface of the Interprefy platform and that the work of UNCITRAL could generally benefit from modern technology including those improvements that would allow participants to express support or disagreement with statements made, without having to request the floor to speak. Suggestions were made to consider the use of alternative platforms to alleviate technical difficulties faced by some delegations. Other delegations, although noting that improvements could always be made, were of the view that the platform Interprefy was adequate since it ensured multilingualism. They expressed appreciation for efforts made to allow UNCITRAL to hold formal meetings in the six official languages of the United Nations on that platform.

128. Noting the usual delays with the availability of official documents of UNCITRAL in the languages other than English, another suggestion for improvement was to announce the availability of advance copies of documents in English on other language versions of the relevant web pages of the UNCITRAL website so that delegations could at least work with the English version in the interim.

129. The Commission expressed appreciation to its secretariat for its work in servicing UNCITRAL. It was also noted that States, in their statements to the Sixth Committee of the General Assembly on the report of the Commission, often included their views on the work of the UNCITRAL secretariat in servicing the Commission. It was noted that such statements should also be considered the essential source of States' feedback about the performance of the UNCITRAL secretariat.

Annex

List of documents before the Commission at its resumed fifty-third session

<i>Symbol</i>	<i>Title or description</i>
A/CN.9/1002	Report of Working Group I (MSMEs) on the work of its thirty-third session
A/CN.9/1003	Report of Working Group II (Dispute Settlement) on the work of its seventieth session
A/CN.9/1004	Report of Working Group III (Investor-State Dispute Settlement Reform) on the work of its thirty-eighth session
A/CN.9/1004/Add.1	Report of Working Group III (Investor-State Dispute Settlement Reform) on the work of its resumed thirty-eighth session
A/CN.9/1005	Report of Working Group IV (Electronic Commerce) on the work of its fifty-ninth session
A/CN.9/1006	Report of Working Group V (Insolvency Law) on the work of its fifty-sixth session
A/CN.9/1007	Report of Working Group VI (Judicial Sale of Ships) on the work of its thirty-sixth session
A/CN.9/1008	Report of the Colloquium on Civil Asset Tracing and Recovery
A/CN.9/1009	Compilation of comments on the draft legislative guide on an UNCITRAL limited liability organization as contained in working paper A/CN.9/WG.I/WP.118
A/CN.9/1009/Add.1	Compilation of comments on the draft legislative guide on an UNCITRAL limited liability organization as contained in working paper A/CN.9/WG.I/WP.118
A/CN.9/1010	Report of Working Group II (Dispute Settlement) on the work of its seventy-first session
A/CN.9/1011	Resources to implement the work programme with respect to investor-State dispute settlement reform
A/CN.9/1012	Legal issues related to the digital economy
A/CN.9/1014	Possible future work on warehouse receipts
A/CN.9/1016	Work programme of the Commission
A/CN.9/1034	Possible future work on railway consignment notes
A/CN.9/1035	Progress report of Working Group II: proposal by the Government of Belgium
A/CN.9/1036	Work programme: submission by Austria, Belgium, Bulgaria, France, Germany, Ghana, Italy, Mauritius, the Netherlands, Poland, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland and the European Union
A/CN.9/1037	Work programme: submission by the Government of Japan
A/CN.9/1038	Decisions adopted by States members of UNCITRAL in August 2020 in accordance with the procedure for taking

<i>Symbol</i>	<i>Title or description</i>
	decisions of UNCITRAL during the coronavirus disease 2019 (COVID-19) pandemic
A/CN.9/1039	Work programme: submission by the Government of the Russian Federation
A/CN.9/1040	Other business: submission by Australia, Bahrain, Chile, Israel, Japan, Mexico, Peru, Thailand and the United States of America
