



# General Assembly

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**United Nations Commission on  
International Trade Law**  
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## Work programme

### **Submission by the Governments of Armenia, the Russian Federation and Viet Nam**

#### **Note by the Secretariat**

The Governments of Armenia, the Russian Federation and Viet Nam have submitted to the Secretariat a paper for consideration by the Commission at its resumed fifty-third session. The paper was received by the Secretariat on 28 August 2020. The text received by the Secretariat is reproduced as an annex to the present note in the form in which it was received.



## Annex

[Original: Russian]

### **Proposal by Armenia, the Russian Federation and Viet Nam to update the UNCITRAL agenda in the light of the novel coronavirus disease (COVID-19)**

#### **I. Introduction**

1. The novel coronavirus disease (COVID-19) pandemic that has swept the international community has not only caused a crisis in health care but has also had an overall adverse impact on the global economy and international trade.
2. Both the very emergence and the scale of the pandemic were unexpected for States, which have had to make tough decisions, striking a balance between the need to protect people's lives and health and the need to protect interests that are crucial for States' economies and international trade. In taking emergency regulatory measures, the legislative and executive authorities of States have had to contend with a lack of time, information, empirical evidence and analytical materials. No authoritative studies on relevant legal regulations existed to serve as a guide to minimize economic and other costs. The differences between the regulatory approaches chosen by States have inevitably affected international trade, since international businesses have faced the need to apply new emergency requirements.
3. The lack of uniformity in fundamental issues of international trade regulation during the COVID-19 pandemic cannot be regarded as an isolated problem the consequences of which, with time, will be smoothed over. Despite the positive results achieved in some States in the development of a vaccine, experts still view the risks of new waves of coronavirus infection as considerable. Such a scenario would mean new rounds of restrictions for international trade. Should that scenario arise, it could have even more devastating effects on the global economy. Even more importantly, the coronavirus outbreak has shown that the international community does not have a ready-to-deploy toolbox that could be used in various situations arising from significant and unforeseen restrictions of global trade. This means that in the case of new emergencies, even if they are unrelated to the coronavirus disease, the international community will once again have no instruments at the ready enabling it to adopt consistent regulatory solutions.
4. The COVID-19 pandemic has significantly affected the work and agenda of the United Nations. As one of the measures taken to combat the new disease, the Secretary-General has initiated the United Nations comprehensive response to COVID-19.<sup>1</sup> One of the key goals of the work of the United Nations in this area is to tackle the consequences of the pandemic and form a sustainable economy that is capable of withstanding challenges comparable to the coronavirus outbreak in the future.<sup>2</sup>
5. The World Trade Organization, the World Bank, the International Civil Aviation Organization and other international organizations have joined the World Health Organization in pursuing ways to overcome the consequences of the pandemic. However, those organizations are limited by their specialized areas of competence and therefore also in terms of the tools available to them. As a result, they are unable to develop unified legal solutions of a global or cross-sectoral nature. We believe that the United Nations Commission on International Trade Law (UNCITRAL), along

<sup>1</sup> See [www.un.org/sites/un2.un.org/files/un\\_comprehensive\\_response\\_to\\_covid-19\\_june\\_2020.pdf](http://www.un.org/sites/un2.un.org/files/un_comprehensive_response_to_covid-19_june_2020.pdf).

<sup>2</sup> See [www.un.org/en/un-coronavirus-communications-team/launch-report-socio-economic-impacts-covid-19](http://www.un.org/en/un-coronavirus-communications-team/launch-report-socio-economic-impacts-covid-19).

with other international institutions, can and should make a significant contribution to the fight against the pandemic and its negative consequences.

6. Given the extreme urgency of the issue of developing unified legal tools for combating the coronavirus disease and minimizing its adverse impact on international commerce, it appears necessary to update the current agenda of UNCITRAL to include issues relating to the regulation of measures to tackle the consequences of the global pandemic and other emergencies that entail major restrictions on world trade. For this purpose, we propose creating a working group with the corresponding mandate within UNCITRAL.

## **II. The consequences of COVID-19 restrictions for the global economy and businesses**

7. According to the United Nations report entitled “World economic situation and prospects as of mid-2020”, nearly 90 per cent of the world economy has been under some form of lockdown, disrupting supply chains, depressing consumer demand and putting millions out of work.<sup>3</sup>

8. From March through June 2020, States introduced new trade measures, 60 per cent of which were related to the spread of the coronavirus disease. The restrictions caused a significant decrease in production volumes. The trade coverage of the restrictive measures amounted to approximately \$417.5 billion.<sup>4</sup>

9. The outlook regarding the economic implications for international trade and the cross-border supply of goods and services remains negative owing to the COVID-19 pandemic. The Organization for Economic Cooperation and Development projects that global gross domestic product will drop by as much as 7.6 per cent in 2020.<sup>5</sup> According to estimates by the United Nations Conference on Trade and Development, foreign direct investment will decrease by 5–15 per cent, returning to the level seen in 2008–2009, the years of the global financial crisis.<sup>6</sup>

## **III. Leading role of UNCITRAL in developing unified approaches in the field of international trade law to tackle the consequences of the global pandemic and other emergencies**

10. Against the backdrop of the coronavirus outbreak, States have announced sets of measures aimed at adapting their existing regimes to the new conditions and overcoming the effects of the pandemic.<sup>7</sup> Those measures, however, have been largely uncoordinated.<sup>8</sup>

11. The current crisis is a sufficient and compelling reason to revise the work programme of UNCITRAL given that economic and financial crises have influenced its agenda in the past. As was illustrated during the UNCITRAL virtual panels on COVID-19,<sup>9</sup> the Commission has been successfully developing tools that States can implement with confidence in urgent circumstances, relying on the authority and the high level of expertise of UNCITRAL. Moreover, UNCITRAL has already started preliminary work and collected materials to assess the most effective regulatory framework in connection with the coronavirus disease.

<sup>3</sup> See [www.un.org/development/desa/en/news/policy/wesp-mid-2020-report.html](http://www.un.org/development/desa/en/news/policy/wesp-mid-2020-report.html).

<sup>4</sup> See [www.oecd.org/daf/inv/investment-policy/23rd-Report-on-G20-Trade-and-Investment-Measures.pdf](http://www.oecd.org/daf/inv/investment-policy/23rd-Report-on-G20-Trade-and-Investment-Measures.pdf).

<sup>5</sup> See [https://read.oecd-ilibrary.org/economics/oecd-economic-outlook/volume-2019/issue-2\\_7969896b-en#page4](https://read.oecd-ilibrary.org/economics/oecd-economic-outlook/volume-2019/issue-2_7969896b-en#page4).

<sup>6</sup> See <https://unctad.org/en/pages/newsdetails.aspx?OriginalVersionID=2299>.

<sup>7</sup> See [www.uneca.org/sites/default/files/PublicationFiles/atpc\\_brief-covid-19\\_export\\_restrictions-legal-analysis\\_eng\\_final1.pdf](http://www.uneca.org/sites/default/files/PublicationFiles/atpc_brief-covid-19_export_restrictions-legal-analysis_eng_final1.pdf).

<sup>8</sup> See [www.un.org/development/desa/en/wp-content/uploads/2020/07/PB-Compilation-final.pdf](http://www.un.org/development/desa/en/wp-content/uploads/2020/07/PB-Compilation-final.pdf).

<sup>9</sup> See <https://uncitral.un.org/en/COVID-19-panels>.

12. During the UNCITRAL virtual panels on COVID-19, States shared their experience of enacting various rules to facilitate the recovery of trade in goods (and services) and the exchange of information, with due regard for the necessary safety requirements and protection of businesses. Nevertheless, taking into account the positions voiced by the participants during that virtual event, it is evident that there is still a need for a more focused and inclusive discussion of instruments that would encourage the development of international trade during the coronavirus outbreak. The exchange of experience that took place during the virtual panels clearly cannot be considered exhaustive, but it could serve as solid empirical material for analysis and as an excellent starting point for the potential future work of UNCITRAL. At the same time, given that some States were unable, within the limited time frame of the virtual panels, to present in full the measures that they had taken, additional data collection on relevant practices in those States will be necessary.

13. As UNCITRAL is vested with a broad mandate that covers all aspects of international trade regulation, we believe that it is the best forum for discussing and elaborating unified approaches to the regulation of international trade during emergencies similar in nature to a global pandemic, the protection of trade participants and successfully coping with the impact of such phenomena.

14. The scale of the COVID-19 crisis is such that it has effectively had an impact on all areas of the UNCITRAL mandate.<sup>10</sup> Therefore, UNCITRAL is best placed to ensure the creation of a common benchmark for the international community that is based on best practices and that will help to simplify cross-border transactions, promote new practices in international trade and create a transparent and predictable legal environment enabling all interested parties to pursue cross-border economic activities with minimal constraints.

15. Since all States of the world have had to face the unforeseen emergency of COVID-19, a unified regulatory framework will, without a doubt, have a “radiation effect”. It will positively influence the actions of States in all relevant spheres of regulation. As a result, UNCITRAL texts will create a basis for new rules that take current challenges into account and regulate how States operate in the context of emergency trade restrictions.

16. In the opinion of Armenia, the Russian Federation and Viet Nam, the prompt updating of the UNCITRAL agenda in the light of new international challenges and threats will make it possible to:

(a) Study the newly emerging experience of introducing special rules into States’ legislation in emergency circumstances and identify the most successful practices and unresolved issues;

(b) Help businesses overcome the consequences of the pandemic by developing model clauses necessary to minimize risks to business activities given the current environment;

(c) Facilitate the formation of a more sustainable economy and international trade rules capable of effectively withstanding future challenges comparable to the COVID-19 crisis.

#### **IV. Tentative list of issues that could be considered in the work of UNCITRAL**

17. In view of the measures that States have taken to prevent the spread of the coronavirus, in practice, substantial problems may arise as a result of the lack of a unified legal framework, including with respect to the following issues:

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<sup>10</sup> *Official Records of the General Assembly, Twenty-third Session, Supplement No. 16 (A/7216)*, paras. 40 and 48.

(a) The permissible scope of State interference in contractual relations in emergency circumstances such as the COVID-19 pandemic (for example, mandatory lowering of the contract price for the duration of the restrictive measures; granting to a party the right of early termination; and temporary suspension of performance under continuing contracts (e.g., leases, financial leases, loans, etc.));

(b) Issues relating to the liability of a party to a contract in connection with the frustration of performance (due to force majeure) or with mandatory alteration of the terms of performance of obligations as a result of public-law bans imposed by States;

(c) Special bankruptcy rules to be applied for the duration of restrictive measures taken to combat the coronavirus disease (e.g., a moratorium on bankruptcy procedures and debt restructuring);

(d) Digitalization of legal procedures to reduce the risk of spreading the coronavirus disease (concluding contracts online (including via online aggregators), extending the list of instances in which online voting can be used in companies' corporate procedures, unifying the regulation of smart contracts and elaborating legal mechanisms for the authentication and identification of counterparties for the conclusion of cross-border contracts online);

(e) Possible additional legal mechanisms to support international trade in developing States and in the States that have suffered the most from the impact of the coronavirus outbreak;

(f) Protection of personal data in the course of remote work/provision of services, including the protection of images and voices and the means to identify them.

18. The international unification of these and other issues would enable the creation of a ready-to-use toolbox that States could implement on a voluntary basis in their domestic laws to minimize the impact of any new emergency on international trade. Furthermore, such unified approaches to issues of substantive law relating to State responses to emergencies would help to lower the transaction costs that trade parties incur in conducting legal analyses of the differences in regulation in various countries, which would also significantly and positively affect the development of international trade.

19. Accordingly, if a new working group is created, these and other issues could be part of its mandate.

## **V. Suggested scope of the work of UNCITRAL and its secretariat**

20. Given the considerable scope of issues related to overcoming the consequences of the coronavirus outbreak, their unprecedented urgency and the interdisciplinary connections between the affected spheres of regulation, it appears necessary to examine such issues in a separate working group that the Commission could propose to the General Assembly so that actual work would start no later than 2021 and a road map could be developed for the subsequent years. Moreover, given the urgent need to start discussing these issues as soon as possible, it would seem appropriate to raise the issue of addressing the Assembly with such a proposal at the very next meeting of UNCITRAL.

21. To achieve these objectives, it also appears expedient to instruct the UNCITRAL secretariat, as a matter of priority, to analyse available means of overcoming the legal problems identified during the COVID-19 pandemic and to treat this topic as one of utmost importance. This will help the new working group to begin looking into the most urgent matters as soon as possible.

22. Thus, the UNCITRAL secretariat could undertake a preliminary analysis of the current regulatory landscape, current and anticipated needs for the regulation of various legal relations and the existence or lack of appropriate legal mechanisms to

satisfy those needs (taking into account the necessity of prioritizing needs according to their urgency in terms of international unification). To assist the secretariat in gathering further information, States could submit to it their replies to the relevant questions.

23. The mechanisms that could be considered on the basis of the results of the new working group's activities might include, for instance, recommendations aimed at helping private parties to correctly formulate clauses in their contracts in order to minimize the risks posed by situations comparable to the pandemic; model laws in this sphere; and tools to ensure the normalization of the work of micro-, small and medium-sized enterprises in emergencies.

24. The development and unification of measures taken by States in the context of the coronavirus outbreak and its consequences may serve as fertile ground for attracting attention to the work of UNCITRAL in shaping regulation in the field of international trade law in emergency circumstances that affect the entire international community.

25. This topic meets the applicable criteria for priority topics as set out in the report on the progressive development of the law of international trade submitted by the Secretary-General to the General Assembly at its twenty-first session (A/6396).<sup>11</sup>

## VI. Conclusions

26. The United Nations system is built primarily on the principles of mutual cooperation and united efforts to overcome challenges that jeopardize the stability of the world order, the global economy and the welfare of the peoples of the world. The COVID-19 pandemic is precisely such a challenge, being unprecedented in terms of its nature and the number of people it has affected. It is for this reason that UNCITRAL, being not only an integral part of the United Nations but also the Organization's key body working to unify legal mechanisms in the sphere of international trade, cannot and should not remain on the sidelines.

27. Although the time and resources available to UNCITRAL are limited, it would be improvident to allow any delays in the search by States for new, unified and balanced instruments for responding to such emergencies as the coronavirus disease. States should act in unity and decide to allocate resources to UNCITRAL with a view to a prompt response to the problems that the coronavirus poses to the global community. We are convinced that UNCITRAL is the best forum for developing effective ways of overcoming the impact of the COVID-19 pandemic and helping the global community to create sustainable legal and economic systems that are capable of withstanding global challenges in the future.

28. Armenia, the Russian Federation and Viet Nam believe that supplementing the agenda of UNCITRAL in the face of new international challenges and threats will make it possible to:

(a) Unify the rules governing the adoption by States of measures in the context of a pandemic or other emergency;

(b) Incorporate into States' legislation best practices in the legal regulation of new sectors and issues arising from emergencies;

(c) Identify and pre-emptively remove unjustified legal barriers to international trade that have arisen as a result of States' taking restrictive measures in the sphere of trade;

(d) Facilitate the development of other institutions and branches of national legal systems that are also aimed at or related to the legal regulation of relevant spheres affected by emergencies (customs, tax and procedural laws);

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<sup>11</sup> See [A/CN.9/774](#).

(e) Enable UNCITRAL to make a practice-oriented contribution to the programme for tackling the consequences of COVID-19 and potential new emergencies;

(f) Facilitate the implementation of the Sustainable Development Goals.<sup>12</sup>

29. In view of the above, we invite the Commission to consider requesting the General Assembly to establish a new UNCITRAL working group. The mandate of such a group should concern matters related to overcoming the consequences of the global pandemic and other large-scale emergencies that create material impediments to international trade.

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<sup>12</sup> See [www.un.org/sustainabledevelopment/sustainable-development-goals](http://www.un.org/sustainabledevelopment/sustainable-development-goals).