



**United Nations**

# **Report of the United Nations Commission on International Trade Law**

**Fifty-fourth session  
(28 June–16 July 2021)**

**General Assembly**

**Official Records  
Seventy-sixth Session  
Supplement No. 17**



**General Assembly**  
Official Records  
Seventy-sixth Session  
Supplement No. 17

# **Report of the United Nations Commission on International Trade Law**

**Fifty-fourth session**  
**(28 June–16 July 2021)**



United Nations • New York, 2021

*Note*

Symbols of United Nations documents are composed of letters combined with figures. Mention of such a symbol indicates a reference to a United Nations document.

[6 August 2021]

## Contents

<i>Chapter</i>	<i>Page</i>
I. Introduction . . . . .	1
II. Organization of the session . . . . .	1
A. Opening of the session . . . . .	1
B. Membership and attendance . . . . .	1
C. Election of officers . . . . .	3
D. Agenda . . . . .	3
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 . . . . .	3
F. Establishment of the Committee of the Whole . . . . .	3
G. Adoption of the report . . . . .	4
III. Summary of the work of the Commission at its fifty-fourth session . . . . .	4
IV. Consideration of the draft legislative guide on an UNCITRAL limited liability organization . . . . .	6
A. Introduction . . . . .	6
B. Finalization of the draft legislative guide on an UNCITRAL limited liability organization . . . . .	7
C. Adoption of the UNCITRAL Legislative Guide on Limited Liability Enterprises . . . . .	10
V. Consideration of a text on a simplified insolvency regime . . . . .	12
A. Introduction . . . . .	12
B. General statements . . . . .	13
C. Action on the recommendation of the Working Group (A/CN.9/1052, para. 104) . . . . .	13
D. Consideration of the draft recommendations (A/CN.9/1052, annex) . . . . .	14
E. Consideration of the draft commentary (A/CN.9/WG.V/WP.172, A/CN.9/WG.V/WP.172/Add.1 and A/CN.9/1077) . . . . .	14
F. Elements for a decision by the Commission on agenda item 5 . . . . .	16
G. Decision by the Commission . . . . .	17
VI. Consideration of texts in the area of mediation . . . . .	19
A. General remarks and background . . . . .	19
B. Consideration of the draft UNCITRAL mediation rules . . . . .	20
1. Deliberations . . . . .	20
2. Adoption of the UNCITRAL Mediation Rules . . . . .	22
C. Consideration of the draft UNCITRAL notes on mediation . . . . .	23
1. Deliberations . . . . .	23
2. Adoption of the UNCITRAL Notes on Mediation . . . . .	24
D. Consideration of the draft guide to enactment and use of the UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation (2018) . . . . .	25
1. Deliberations . . . . .	25

2.	Adoption of the Guide to Enactment and Use of the UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation (2018).....	26
VII.	Consideration of the draft expedited arbitration rules and the draft explanatory note thereto ..	26
A.	Introduction .....	26
B.	Consideration of the draft UNCITRAL expedited arbitration rules .....	27
C.	Consideration of the draft explanatory note to the UNCITRAL Expedited Arbitration Rules .....	32
D.	Decision by the Commission.....	35
VIII.	Micro-, small and medium-sized enterprises: progress report of Working Group I .....	36
IX.	Investor-State dispute settlement reform: progress report of Working Group III .....	37
X.	Electronic commerce: progress report of Working Group IV .....	39
XI.	Judicial sale of ships: progress report of Working Group VI .....	40
XII.	Work programme .....	41
A.	Legislative programme under consideration by working groups .....	41
B.	Additional topics considered at earlier sessions of the Commission .....	42
1.	Possible topics in the area of insolvency law: civil asset tracing and recovery and applicable law in insolvency proceedings .....	42
2.	Warehouse receipts .....	43
3.	Negotiable multimodal transport documents .....	43
4.	Legal issues related to the digital economy (including dispute resolution) .....	44
5.	The impact of COVID-19 on international trade law .....	46
C.	Other topics (including non-legislative work).....	47
1.	Dispute resolution .....	47
2.	Climate change mitigation, adaptation and resilience.....	47
D.	Methods of work.....	48
E.	Resource requirements to implement investor-state dispute settlement reform.....	49
XIII.	Endorsement of texts of other organizations: Unidroit Principles of International Commercial Contracts 2016 .....	51
XIV.	Coordination and cooperation .....	52
A.	General .....	52
B.	Reports of other international organizations .....	53
1.	Hague Conference on Private International Law.....	53
2.	Unidroit.....	53
3.	Permanent Court of Arbitration .....	54
4.	Organization of American States .....	54
5.	Organization for Harmonization of Business Law in Africa .....	55
C.	International governmental and non-governmental organizations invited to sessions of UNCITRAL and its working groups.....	55
XV.	Technical assistance to law reform .....	55
A.	General .....	55

B.	Technical cooperation and assistance activities .....	56
C.	Dissemination of information on the work and texts of UNCITRAL .....	61
D.	Resources and funding .....	63
E.	UNCITRAL presence in the Asia-Pacific region .....	64
XVI.	Promotion of ways and means of ensuring a uniform interpretation and application of UNCITRAL legal texts.....	65
A.	Case Law on UNCITRAL Texts (CLOUT) .....	66
B.	Digests of case law.....	66
XVII.	Status of conventions and model laws and the operation of the repository of published information under the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration. ....	67
A.	General discussion .....	67
B.	Operation of the transparency repository .....	68
C.	Bibliography of recent writings related to the work of UNCITRAL .....	68
XVIII.	Current role of UNCITRAL in promoting the rule of law.....	69
A.	Introduction .....	69
B.	UNCITRAL comments to the General Assembly .....	70
XIX.	Relevant General Assembly resolutions .....	71
XX.	Other business.....	72
A.	Enlargement of the UNCITRAL membership .....	72
B.	Evaluation of the role of the UNCITRAL secretariat in facilitating the work of the Commission .....	75
XXI.	Date and place of future meetings.....	75
A.	Fifty-fifth session of the Commission .....	75
B.	Sessions of working groups.....	75
<b>Annexes</b>		
I.	UNCITRAL Legislative Recommendations on Limited Liability Enterprises .....	77
II.	UNCITRAL Legislative Recommendations on Insolvency of Micro- and Small Enterprises .	81
III.	UNCITRAL Mediation Rules .....	102
IV.	UNCITRAL Expedited Arbitration Rules.....	107
V.	List of documents before the Commission at its fifty-fourth session .....	111





## I. Introduction

1. The present report of the United Nations Commission on International Trade Law (UNCITRAL) covers the fifty-fourth session of the Commission, held in Vienna from 28 June to 16 July 2021.
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-fourth session of the Commission was opened on 28 June 2021. Welcoming remarks were delivered by the Under-Secretary-General for Legal Affairs and Legal Counsel of the United Nations, 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:<sup>1</sup> Algeria (2025), Argentina (2022), Australia (2022), Austria (2022), Belarus (2022), Belgium (2025), Brazil (2022), Burundi (2022), Cameroon (2025), Canada (2025), Chile (2022), China (2025), Colombia (2022), Côte d'Ivoire (2025), Croatia (2025), Czechia (2022), Dominican Republic (2025), Ecuador (2025), Finland (2025), France (2025), Germany (2025), Ghana (2025), Honduras (2025), Hungary (2025), India (2022), Indonesia (2025), Iran (Islamic Republic of) (2022), Israel (2022), Italy (2022), Japan (2025), Kenya (2022), Lebanon (2022), Lesotho (2022), Libya (2022), Malaysia (2025), Mali (2025), Mauritius (2022), Mexico (2025), Nigeria (2022), Pakistan (2022), Peru (2025), Philippines (2022), Poland (2022), Republic of Korea (2025), Romania (2022), Russian Federation (2025), Singapore (2025), South Africa (2025), Spain (2022), Sri Lanka (2022), Switzerland (2025), Thailand (2022), Turkey (2022), Uganda (2022), Ukraine (2025), United Kingdom of Great Britain and Northern Ireland (2025), United States of America (2022), Venezuela (Bolivarian Republic of) (2022), Viet Nam (2025) and Zimbabwe (2025).
5. With the exception of Lesotho 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, Angola, Azerbaijan, Bahrain, Bulgaria, Burkina Faso, Costa Rica, Cyprus, Denmark,

<sup>1</sup> 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.

Egypt, El Salvador, Greece, Madagascar, Malta, Morocco, Myanmar, Netherlands, Oman, Portugal, Qatar, Slovakia, Slovenia, Sudan, Tunisia, Turkmenistan and Uruguay.

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 (UNCTAD), United Nations Industrial Development Organization and the World Bank Group;

(b) Intergovernmental organizations: Caribbean Court of Justice, Commonwealth of Independent States, Commonwealth Secretariat, Economic Cooperation Organization, European Bank for Reconstruction and Development, Gulf Cooperation Council, International Association of Legal Science, International Institute for the Unification of Private Law (Unidroit); Interparliamentary Assembly of Member Nations of the Commonwealth of Independent States, Islamic Development Bank, International Organization of la Francophonie, Organization for the Harmonization of Business Law in Africa (OHADA), Organization of American States (OAS), Organization of the Petroleum Exporting Countries (OPEC), Permanent Court of Arbitration (PCA) and South Centre;

(c) Invited non-governmental organizations: African Association of International Law, All India Bar Association, Alumni Association of the Willem C. Vis International Commercial Arbitration Moot, American Society of International Law, ArbitralWomen, Arbitration Institute of the Stockholm Chamber of Commerce, Asian International Arbitration Centre, Asia-Pacific Regional Arbitration Group, Beijing Arbitration Commission/Beijing International Arbitration Center, Caribbean Law Institute Centre, Cairo Regional Centre for International Commercial Arbitration, Center for International Legal Studies, Center of Arbitration of the Chamber of Commerce of Lima, Center for International Investment and Commercial Arbitration, Chartered Institute of Arbitrators, China Council for the Promotion of International Trade, Corporate Counsel International Arbitration Group, Comité Maritime International (CMI), Construction Industry Arbitration Council, European Law Students' Association, Forum for International Conciliation and Arbitration, Geneva Center for International Dispute Settlement, Georgian International Arbitration Centre, Latin American Group of Lawyers for International Trade Law, Hong Kong Mediation Centre, iCourts, Inter-American Bar Association, International Academy of Mediators, International Association for the Protection of Intellectual Property, International Association of Judicial Officers, International Association of Young Lawyers, International Bar Association, International Commercial Arbitration Court at the Chamber of Commerce and Industry of Ukraine, International Council for Commercial Arbitration, International Dispute Resolution Institute, International Federation of Freight Forwarders Associations (FIATA), International Institute for Conflict Prevention and Resolution, International Institute for Sustainable Development, International Law Institute, International Rail Transport Committee (CIT), International Swaps and Derivatives Association, International Union of Notaries, Institute of International Law, Ibero-American Institute of Bankruptcy Law, Kozolchyk National Law Center (NatLaw), Law Association for Asia and the Pacific, Madrid Court of Arbitration, Mediators Beyond Borders, Miami International Arbitration Society (MIAS), New York International Arbitration Center, Nigerian Institute of Chartered Arbitrators, Notaries of Europe, Paris Bar Association, PRIME Finance Foundation, Russian Arbitration Association, Singapore International Arbitration Centre, Stockholm Chamber of Commerce, Swiss Arbitration Association, Third World Network, Vienna International Arbitral Centre and Wuhan University Institute of International Law.

9. The Commission welcomed the participation of international non-governmental organizations with expertise in the major items on the agenda. Their participation was

crucial for the quality of texts formulated by the Commission and the Commission requested the Secretariat to continue to invite such organizations to its sessions.

### C. Election of officers

10. The following officers were elected to the Bureau of the fifty-fourth session of UNCITRAL:

<i>Chair:</i>	Philbert Abaka Johnson (Ghana)
<i>Vice-Chairs:</i>	Ghislain D'hoop (Belgium) Andrés Jana (Chile) Xian Yong Harold Foo (Singapore)
<i>Rapporteur:</i>	Hrvoje Sikiric (Croatia)

### D. Agenda

11. The agenda of the fifty-fourth session of UNCITRAL as contained in the note by the Secretariat ([A/CN.9/1041/Rev.1](#)) was adopted on 8 June 2021 by States members of UNCITRAL in accordance with the procedure for taking decisions of UNCITRAL during the coronavirus disease 2019 (COVID-19) pandemic.

### 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

12. The Commission had before it a note by the Secretariat ([A/CN.9/1078](#)) transmitting a decision entitled “Decision on the dates and place as well as the arrangements for the sessions of UNCITRAL working groups in the first half of 2021 during the coronavirus disease 2019 (COVID-19) pandemic” adopted by States members of UNCITRAL on 9 December 2020 in accordance with the procedure for taking decisions of UNCITRAL during the COVID-19 pandemic.

13. The Commission also had before it a note by the Secretariat ([A/CN.9/1079](#)) transmitting the following decisions adopted by States members of UNCITRAL in preparation for the fifty-fourth session of UNCITRAL in accordance with the procedure for taking decisions of UNCITRAL during the COVID-19 pandemic:

(a) Decision dated 8 June 2021 entitled “Decision on the procedure for taking decisions of UNCITRAL pertaining to its fifty-fourth session, as well as the organization and agenda of the fifty-fourth session” ([A/CN.9/1079](#), annex, decision I);

(b) Decision dated 17 June 2021 entitled “Decision on the election of the Bureau of the fifty-fourth session of UNCITRAL” ([A/CN.9/1079](#), annex, decision II);

(c) Decision dated 23 June 2021 entitled “Decision on the establishment of a Committee of the Whole during the fifty-fourth session of UNCITRAL and election of the chairperson of the Committee” ([A/CN.9/1079](#), annex, decision III).

14. The Commission took note of those decisions.

### F. Establishment of the Committee of the Whole

15. The Committee of the Whole, established by the decision of States members of UNCITRAL dated 23 June 2021 (see para. 13 (c) above) to consider a draft text under agenda item 4 (Consideration of a text on an UNCITRAL limited liability organization), met from 28 to 30 June 2021 and held five meetings. Maria Chiara Malaguti (Italy), elected to chair the Committee of the Whole in her personal capacity,

presented an oral report of the Committee to the Commission at its 1132nd meeting, on 30 June 2021. In accordance with the same decision, the Commission agreed to include the report of the Committee in the present report. (The report of the Committee of the Whole is reproduced in paragraphs 30–51 of the present report.)

### **G. Adoption of the report**

16. Recalling the decision of States members of UNCITRAL dated 8 June 2021 on the procedure for taking decisions of UNCITRAL pertaining to its fifty-fourth session (see para. 13 (a) above), the Commission used the procedure set out in that decision for the adoption of the report on its fifty-fourth session.

## **III. Summary of the work of the Commission at its fifty-fourth session**

17. With respect to agenda item 4 (Consideration of a text on an UNCITRAL limited liability organization), the Commission adopted the UNCITRAL Legislative Guide on Limited Liability Enterprises. The recommendations contained in the Legislative Guide are reproduced in annex I to the present report. The Commission also agreed to mandate the secretariat to draft guidance, with the assistance of experts, to assist States in the preparation of model organization rules that members of the UNCITRAL limited liability organization (UNLLO) might use in the establishment and management of the UNLLO and in defining their rights and obligations.

18. With respect to agenda item 5 (Consideration of a text on a simplified insolvency regime), the Commission adopted the Legislative Recommendations on Insolvency of Micro- and Small Enterprises (reproduced in annex II to the present report) and approved in principle the draft commentary to the Legislative Recommendations. The Commission requested the secretariat to revise the draft commentary in the light of the deliberations of the Commission and transmit the revised text for review and approval by Working Group V (Insolvency Law) at its fifty-ninth session in December 2021. The Commission requested Working Group V (Insolvency Law) to decide whether the revised text as approved by the Working Group should be considered final or should be transmitted for finalization and adoption by the Commission at its fifty-fifth session, in 2022.

19. With respect to agenda item 6 (Consideration of texts in the area of mediation), the Commission adopted the UNCITRAL Mediation Rules (reproduced in annex III to the present report), the UNCITRAL Notes on Mediation and the Guide to Enactment and Use of the UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation (2018).

20. With respect to agenda item 7 (Consideration of draft UNCITRAL Expedited Arbitration Rules and the accompanying explanatory note), the Commission adopted the UNCITRAL Expedited Arbitration Rules and the new article 1, paragraph 5, of the UNCITRAL Arbitration Rules (reproduced in annex IV to the present report). The Commission also approved in principle the Explanatory Note to the UNCITRAL Expedited Arbitration Rules and authorized Working Group II (Dispute Settlement) to finalize the text at its seventy-fourth session in 2021.

21. With respect to agenda item 8 (Progress report of working groups), the Commission considered the progress reports of Working Group III (Investor-State Dispute Settlement Reform), Working Group IV (Electronic Commerce) and Working Group VI (Judicial Sale of Ships). The Commission expressed its satisfaction with the progress made by these Working Groups.

22. With respect to agenda item 9 (Coordination and cooperation), the Commission took note of the notes by the Secretariat on coordination activities and on international governmental and non-governmental organizations invited to sessions of UNCITRAL

and its working groups, as well as the oral reports by the Hague Conference on Private International Law (HcCH), Unidroit, PCA, OAS and OHADA.

23. With respect to agenda item 10 (Endorsement of texts of other organizations: Unidroit Principles 2016), the Commission congratulated Unidroit on having made a further contribution to the facilitation of international trade by preparing general rules for international commercial contracts and commended the use of the Unidroit Principles 2016, as appropriate, for their intended purposes.

24. With respect to agenda item 11 (Secretariat reports on non-legislative activities), the Commission took note of the notes by the Secretariat concerning non-legislative activities. The Commission expressed its gratitude to States and organizations that had contributed to the UNCITRAL trust funds since the Commission's fifty-third session, and called upon all States, international organizations and other interested entities to consider or to continue making contributions to those trust funds. The Commission welcomed the report on the transparency repository and expressed its support for continued operation of the repository as a key mechanism for promoting transparency in investor-State arbitration. The Commission also recalled the importance of ensuring a uniform interpretation and application of its texts, and reiterated its call for contributions from all legal traditions to its uniform interpretation tools. All States that enacted UNCITRAL texts were invited to nominate national correspondents for reporting relevant case law to the UNCITRAL secretariat.

25. With respect to agenda item 12 (Work programme of the Commission), the Commission:

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

(b) Agreed that both topics on civil asset tracing and recovery and applicable law in insolvency proceedings should be referred to Working Group V (Insolvency Law);

(c) Noted that the Working Group on a Model Law on Warehouse Receipts convened by Unidroit in consultation with the UNCITRAL secretariat might need more than two sessions before it could submit a preliminary draft for consideration by the Unidroit Governing Council, possibly in 2023, and subsequent transmittal to the first available UNCITRAL working group;

(d) Requested the secretariat to report to the Commission, at its fifty-fifth session, on the progress made, including on the preparation of a preliminary draft of a new instrument on negotiable multimodal transport documents, and agreed to give high priority to the project for assignment to the next available working group;

(e) Requested the secretariat to continue to develop the legal taxonomy and authorized the secretariat to publish the content of the taxonomy, requested the secretariat to organize a colloquium on dispute resolution in the digital economy during the seventy-fifth session of Working Group II (Dispute Settlement), mandated Working Group IV (Electronic Commerce) to host a focused conceptual discussion on the use of artificial intelligence and automation in contracting, with a view to refining the scope and nature of the work to be conducted, and requested the secretariat to continue preparatory work on data transactions;

(f) With respect to legal issues related to the impact of COVID-19 on international trade law, requested the secretariat to continue its exploratory work of the issues identified in the progress report as possible issues falling within the mandate of UNCITRAL and to continue to hold expert meetings and other events with interested stakeholders to further advance the exploratory work. The Commission further requested the secretariat to continue exploring the options for establishing an online platform for information exchange by States;

(g) Requested Working Group II (Dispute Settlement) to discuss the topic of early dismissal and present the results of its discussions to the Commission at its fifty-

fifth session, and decided that the topic of adjudication would be discussed in a colloquium to be held at the seventy-fifth session of Working Group II;

(h) Requested the secretariat to consult with interested States with a view to developing a more detailed proposal on the topic of climate change mitigation, adaptation and resilience for presentation to the Commission for its consideration at its next session in 2022;

(i) Agreed to extend until its fifty-fifth session the arrangements for the sessions of UNCITRAL working groups during the COVID-19 pandemic as contained in document [A/CN.9/1078](#); and also agreed that it was premature to decide on possible adjustments to the work methods of UNCITRAL on a permanent basis, and that it would revisit the issue at its fifty-fifth session in 2022;

(j) Recommended to the General Assembly to allocate additional conference and supporting resources to the secretariat for a single period of four years from 2022 to 2025, as outlined in document [A/CN.9/1063](#), on the condition that the Commission would during its annual session re-evaluate and, if needed, revisit its decision concerning the need for allocating one additional one-week session per year and supporting resources to Working Group III (Investor-State Dispute Settlement Reform) taking into consideration the Working Group's report on the use of its resources. Accordingly, the Commission requested Working Group III to report annually on the use of its resources.

26. With respect to agenda item 13 (Date and place of future meetings):

(a) The Commission provisionally approved the holding of its fifty-fifth session in New York, from 27 June to 15 July 2022, and the schedule for working group sessions in the second half of 2021 and 2022 as set out in the table below paragraph 389 of the present report;

(b) With regard to the New York meetings in the first half of 2022, the Commission decided that if the global situation concerning the COVID-19 pandemic did not significantly improve and if conferences services in New York were not able to accommodate its decision to hold meetings in-person and online at hours feasible for all delegates to participate, the in-person component of such meetings could be held at the Vienna International Centre, and the Secretariat should ensure that sufficient conference time (at least four hours a day) with interpretation was provided for each of the working group sessions.

27. With respect to agenda item 14 (Other business), the Commission recommended to the General Assembly to consider the draft resolution on the enlargement of the membership of the Commission as contained in paragraph 383 of the present report.

28. With respect to agenda item 15 (Virtual panel discussion on technical assistance activities focusing on MSMEs recovery), the Commission commended the Secretariat for having organized two virtual panel discussions on technical assistance activities, focusing on the recovery of micro-, small and medium-sized enterprises (MSMEs) from the COVID-19 economic shock and celebrating the UNCITRAL Asia-Pacific Day and Latin America and the Caribbean Day. The Chair of the present session called upon States to host an inaugural series of UNCITRAL Africa Day in 2022 and expressed appreciation for the evident engagement of many States in the region, and their willingness, along with States from other regions, to work with UNCITRAL to support the annual UNCITRAL Day.

## **IV. Consideration of the draft legislative guide on an UNCITRAL limited liability organization**

### **A. Introduction**

29. The Commission heard an introduction of the report of Working Group I (Micro-, Small and Medium-sized Enterprises) on the work of its thirty-fourth session

(A/CN.9/1042) and the summary of the Chair and the Rapporteur on the work of Working Group I at its thirty-fifth session (A/CN.9/1048). Both documents outlined progress in the preparation of the final draft of a legislative guide on an UNCITRAL limited liability organization and informed the latest iteration of that text (A/CN.9/1062), which was before the Commission for finalization and possible adoption.

## **B. Finalization of the draft legislative guide on an UNCITRAL limited liability organization**

30. The Committee of the Whole (see para. 15 above) considered the text of the draft legislative guide on an UNCITRAL limited liability organization and approved the changes as set out below. Paragraphs and recommendations not referred to below were adopted by the Committee as drafted.

### **Introduction**

31. It was noted that the opening phrase of paragraph 7 (“Without prejudice to the rights of third parties”) did not sufficiently emphasize the importance of third-party protection in order to balance the “freedom and autonomy” of the entrepreneur. The Committee thus agreed to delete that phrase and insert a sentence at the end of the paragraph along the lines of “at the same time this flexibility should be accompanied by some rules to protect the rights of third parties”.

### **Terminology**

32. With regard to certain terms defined in the Terminology section, the Committee deliberated as follows:

(a) *Member(s)*. There was agreement to delete that term since members own “shares” of an MSME and not the MSME per se. It was also felt that the name “member(s)” was sufficiently clear and did not require additional explanation.

(b) *Majority*. There was agreement to add language along the lines of “or any other majority as determined in the organization rules” at the end of the definition in order to ensure consistency with draft recommendation 11 and related commentary pursuant to which members could agree to allocate rights among themselves based on contributions.

(c) *Qualified majority*. There was agreement to delete this definition as the term was only used in paragraph 77 of the draft guide and its meaning could be further clarified in that context.

### **Recommendation 4 and paragraphs 31 to 37**

33. In order to avoid potential confusion with paragraph 34 which referred to a member’s liability for personal guarantees given with respect to the obligations of the UNLLO, the Committee agreed to add text along the following lines after the first sentence of paragraph 31: “solely by reason of being a member of the UNLLO”.

### **Recommendation 5 and paragraphs 38 to 41**

34. A suggestion that the commentary to recommendation 5 could clarify that an UNLLO should have sufficient assets at its formation was not taken up by the Committee. Previous deliberations of the Working Group on this matter were recalled and there was agreement that paragraphs 40 and 41 provided adequate mechanisms for creditors and third-party protection.

### **Recommendation 6 and paragraphs 42 to 44**

35. For improved clarity of the text, the Committee agreed to revise the second part (“it is best...legal context”) of the last sentence of paragraph 42 along the

following lines: “that distinguishes it from legal forms existing in the local legal context and that highlights its nature as a limited liability enterprise”.

#### **Recommendation 9 and paragraphs 53 to 60**

36. There was no support for a proposal to delete the phrase “for these reasons” in the fifth sentence in paragraph 55.

37. Concerns were expressed that the last sentence in paragraph 57 might be interpreted as leaving it open to the UNLLO to include any additional information deemed appropriate by the UNLLO. It was said that the intention of that sentence was to allow for voluntary submission of additional information by the UNLLO. The attention of the Committee was drawn to the practical difficulties for registries to accept additional information submitted by the UNLLO, in particular information in a paper format. In support of the view that the UNLLO may only submit additional information as deemed appropriate by States, it was explained that the objective of paragraph 57 was to allow States to expand the minimum list of information required for the registration of the UNLLO as set out in recommendation 9. After discussion, the Committee agreed to replace the phrase “deemed appropriate” by “they deem appropriate” so as to clarify that such additional information must be deemed appropriate by States. A suggestion to delete the word “any” did not receive sufficient support.

#### **Recommendation 10 and paragraphs 61 to 68**

38. The Committee accepted a suggestion to insert the word “including” before the phrase “on the following issues” in the chapeau sentence of paragraph 62. It was, however, noted that that issue should be revisited in the context of the discussion in the Commission of the mandate for the secretariat to prepare the model organization rules.

39. With respect to the last sentence in paragraph 64, a suggestion to replace the phrase “legal tradition” by “various circumstances including legal tradition” did not receive sufficient support.

40. With respect to the second to the last sentence in paragraph 68, different views were expressed as to whether its scope should be broader than what was envisaged under draft recommendation 19 (b). Some delegations expressed the concern that the current wording might be interpreted as requiring notices to be sent to third parties every time when changes were introduced to the organization rules. In this respect, a proposal was made to insert the phrase “a manager’s authority to bind” before “the UNLLO” to clarify that the scope was limited to the circumstance under draft recommendation 19 (b). It was noted that most provisions in the organization rules only concerned the internal governance of the UNLLO and not the rights of third parties. Given that “manager” is not a defined term in the draft guide, it was added that paragraph 92 should be amended to include cross references to all paragraphs where the word “manager” was used.

41. Other delegations were in favour of a broader scope so as to ensure that any changes made to the organization rules that might affect the rights of third parties should be disclosed in order to be effective against third parties. It was suggested that the term “for example” should thus be inserted in the bracket text (referring to draft rec. 19 (b)) to illustrate that this requirement would also apply in other situations. Another example was provided referring to a change in the management structure of the UNLLO, which might affect the rights of third parties. It was also explained that a broader scope would be appropriate in order to protect third parties as the draft guide did not require organization rules to be made public.

42. After discussion, the Committee agreed to revise the paragraph as follows:

“The Guide does not require that the organization rules of an UNLLO be made public. This approach protects the privacy of members and adds to the ease of the UNLLO’s operations by avoiding the need to file amendments with the



business registry or other public authority each time a change is made to the organization rules (see para. 59). However, the UNLLO itself might decide to make them available to the public in order to strengthen its reputation on the market. States may also require the UNLLO to disclose its organization rules to increase accountability and transparency of the UNLLO in particular when the organization rules of an UNLLO derogate from the default provisions applicable to the UNLLO, as a condition for such derogations to be effective against third parties (see, for instance, para. 94 and recommendation 19 (b)). To accommodate the different legal tradition and practices of the States, the Guide leaves States the option to decide how that information should be disclosed to the third parties.”

#### **Recommendation 13 and paragraphs 76 to 77**

43. Several suggestions were made with respect to references to “operation” and “qualified majority” in paragraph 77, recalling the decision of the Committee to delete the definition of “qualified majority” in the Terminology section (see para. 32 above). After discussion, the Committee agreed to amend paragraph 77 along the following lines:

“Although the Guide advocates that unanimity should be required for decisions that affect the existence and essential aspects of the operation of an UNLLO, the legal tradition in some States may not require unanimous consent on such matters. Furthermore, as noted above (see para. 76), the opposition of one member may obstruct the effective governance of the UNLLO. States may therefore decide to lower the threshold for decisions referred to in recommendation 13 (a) and require instead only a qualified majority (that is, a set percentage of the UNLLO members by number or the UNLLO members’ rights above the threshold required for majority). In any event, when departing from recommendation 13, legislation prepared on the basis of the Guide should clearly indicate the quantum necessary for any decisions.”

#### **Recommendation 14 and paragraphs 78 to 80**

44. The Committee agreed to insert the phrase “and the members have not agreed in the organization rules that one or more designated managers shall be appointed” at the end of the last sentence in paragraph 79 for improved clarity. It was also clarified that the reference to “recommendation 14” in the second to last sentence in paragraph 79 should be corrected to read “recommendation 17”.

#### **Recommendation 16 and paragraphs 85 and 86**

45. The Committee agreed to replace the phrase “such decisions” in the third sentence of paragraph 85 with “decisions on the appointment and removal of a designated manager” for improved clarity.

#### **Recommendation 20 and paragraphs 95 to 100**

46. The Committee agreed to delete the second sentence of paragraph 99 on the basis that the reference to “forego limited liability protection” might be confusing in the context of liability of one UNLLO member against other members. It was emphasized that the principle of limited liability protection, as a distinctive feature of the UNLLO, referred to a liability shield against creditor claims and that principle should not be derogated from. It was also added that that sentence did not fit well into the context of that paragraph.

#### **Recommendation 25 and paragraphs 115 to 121**

47. The Committee agreed to amend the third sentence in paragraph 118 along the following lines: “Such agreements would not by themselves entitle the third party to become a member of the UNLLO”.

### **Recommendation 26 and paragraphs 122 to 130**

48. Concerns were expressed that the last sentence in paragraph 130 might be seen to propose a solution that would trigger abusive practices against minority members as it allowed the remaining members not to pay an expelled member the fair value of his or her rights in the UNLLO depending on the circumstances of the expulsion. Several suggestions were made to amend that sentence in line with the understanding that the expelled members should receive payment reflecting the fair value of their rights. After discussion, the Committee agreed to amend that sentence along the following lines:

“In case of expulsion, the expelled members should also receive compensation for their rights in the UNLLO over a reasonable period of time, although depending on the particular circumstances, the payment may not necessarily have to reflect the full value of their rights. The UNLLO may have a right to set off sums due to itself or other members by the expelled member, or have a claim for damages against the expelled member.”

### **Name of the UNCITRAL limited liability organization**

49. The Committee was informed about deliberations of Working Group I on possible names to replace “UNLLO”, which had been used on an interim basis. The Committee supported the general agreement in Working Group I that the name should include the term “limited liability” as that was a distinctive feature of the UNLLO. Preference was expressed to include in the name the word “enterprise” instead of “entity” or “organization”. It was said that although “organization” had been used since the first draft of the guide, “enterprise” was a common word for business forms.

50. The Committee noted that reference to “UNCITRAL” should not be included in the name, not only because in some countries the use of “UNCITRAL” or “United Nations” to identify a business entity might not be consistent with the domestic legal tradition, but also because General Assembly resolution 92 (I) of 7 December 1946 generally prohibited the use of the name of the United Nations and of abbreviations of that name through the use of its initial letters for commercial purposes. Proposals to use terms such as “simplified” or “flexible” in the name to reflect key features of the UNLLO did not receive sufficient support. There was also no support for a proposal to add a distinctive phrase or an abbreviation similar in all languages next to the name.

51. The Committee heard a proposal that the name should include a reference to MSMEs so that the scope of the final text could be easily identifiable, which would contribute to promoting MSMEs. That proposal did not receive sufficient support as it might create confusion since the definition of MSME varied in different jurisdictions. There was, however, general agreement for a reference to MSMEs to be included in the title of the final text also in the light of the work of UNCITRAL on MSMEs. The Committee thus agreed to propose to the Commission that the title of the final text could read along the lines of “UNCITRAL MSME texts series: Legislative Guide on Limited Liability Enterprises.”

## **C. Adoption of the UNCITRAL Legislative Guide on Limited Liability Enterprises**

52. In accordance with the procedure for taking decisions of UNCITRAL during the COVID-19 pandemic, the Commission adopted the following decision on 8 July 2021:

*“The United Nations Commission on International Trade Law,*

*“Recalling General Assembly resolution 2205 (XXI) of 17 December 1966, in which the Assembly established the United Nations Commission on International Trade Law with the purpose of promoting the progressive*

harmonization and unification of the law of international trade in the interests of all peoples, in particular those of developing countries,

“*Recalling* General Assembly resolution [70/1](#) of 25 September 2015, in which the Assembly adopted the 2030 Agenda for Sustainable Development, which encourages the formalization and growth of micro-, small and medium-sized enterprises, and promotes women’s economic empowerment,

“*Noting* that micro-, small and medium-sized enterprises are the backbone of many economies worldwide,

“*Mindful* that many micro-, small and medium-sized enterprises have limited bargaining power and experience several obstacles, many of which are exacerbated by operating in the informal economy, thus missing the growth opportunities offered by the domestic and international markets,

“*Believing* that legislation on simplified business forms that reduces formalities for business formation, promotes flexible organization and operation and spares micro-, small and medium-sized enterprises from unnecessary legal burdens, can effectively support them throughout their life cycle,

“*Hopeful* that a simplified legal form for micro-, small and medium-sized enterprises could also facilitate the economic inclusion of women and other entrepreneurs who may face obstacles under unfavourable cultural, institutional and legislative frameworks, such as youth and ethnic minorities,

“*Convinced* that a simplified legal form for micro-, small and medium-sized enterprises can encourage their migration to the formal sector, which increases business registration of previously unregistered enterprises, thus promoting greater compliance with legal requirements, and better visibility with the public,

“*Recalling* the valuable guidance (as contained in the *UNCITRAL Legislative Guide on Key Principles of a Business Registry* (2018)) the Commission has provided towards the establishment of simple, efficient and cost-effective business registration to assist in the formation of businesses, in particular micro-, small and medium-sized enterprises,

“*Recalling also* the mandate given to Working Group I (Micro-, Small and Medium-sized Enterprises) to prepare legal standards aimed at reducing the legal obstacles encountered by micro-, small and medium-sized enterprises throughout their life cycle, in particular those in developing economies, and that such work should start with a focus on the legal questions surrounding the simplification of incorporation,

“*Expressing* its appreciation to Working Group I for its work in developing the draft legislative guide on an UNCITRAL limited liability organization and to intergovernmental and invited non-governmental organizations active in the field of business formation reform for their support and participation in that work,

“1. *Adopts* the UNCITRAL Legislative Guide on Limited Liability Enterprises, contained in document [A/CN.9/1062](#) as revised by the Commission at its fifty-fourth session, and authorizes the Secretariat to edit and finalize the text of the Legislative Guide in the light of those revisions;

“2. *Requests* the Secretary-General to publish the Legislative Guide as part of the UNCITRAL MSME texts series, including electronically, in the six official languages of the United Nations, and to disseminate it, together with any relevant promotional materials, to Governments and other interested bodies, so that it becomes widely known and available;

“3. *Recommends* that the Legislative Guide be given due consideration, as appropriate, by legislators, policymakers and other relevant bodies and stakeholders.

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

### A. Introduction

53. The Commission recalled the mandate given to its Working Group V (Insolvency Law) to work on a simplified insolvency regime, using the UNCITRAL Legislative Guide on Insolvency Law (the “Insolvency Guide”) as the starting point.<sup>2</sup> It further recalled that the Working Group considered the topic at several sessions<sup>3</sup> and presented the reports of those sessions for consideration by the Commission at its fifty-second and fifty-third sessions, in 2019 and 2020, respectively.<sup>4</sup> The Commission also recalled that, at its resumed fifty-third session, it had confirmed that the work on a simplified insolvency regime should continue in the Working Group with a view to adopting a text on that topic by the Commission, if possible, already at its fifty-fourth session, in 2021, also in the light of the relevance of the topic to COVID-19 response and recovery measures.<sup>5</sup>

54. At its current session, the Commission had before it the reports of the fifty-seventh and fifty-eighth sessions of the Working Group (A/CN.9/1046 and A/CN.9/1052) and a draft text on a simplified insolvency regime consisting of the draft recommendations annexed to the report of the fifty-eighth session of the Working Group (A/CN.9/1052) and the draft commentary contained in the notes by the Secretariat (A/CN.9/WG.V/WP.172 and A/CN.9/WG.V/WP.172/Add.1). The Commission noted that the draft commentary should be read together with a note by the Secretariat (A/CN.9/1077) that listed amendments proposed to be made in the draft commentary.

55. The Commission took note of the agreement reached at the Working Group’s fifty-eighth session to transmit the draft text to the Commission for consideration and assessment of the policies on which the draft text was based and whether those policies were responsive to the mandate given to the Working Group. The Commission noted that the Working Group had recommended to the Commission that, after such consideration and assessment, the Commission might wish to (a) adopt the draft recommendations as revised at the session of the Commission; (b) approve in principle the accompanying commentary and request the secretariat to circulate the commentary together with the recommendations to States and relevant intergovernmental and non-governmental international organizations, for comment; and (c) request the Working Group to refine and complete the commentary, consistent with the policy considerations underlying the draft recommendations, if adopted by the Commission at its fifty-fourth session, for adoption at its fifty-fifth session (A/CN.9/1052, para. 104).

56. The Commission expressed its appreciation to the Working Group, its Chair, and the secretariat for the preparation of the draft text and the hard work accomplished since the Commission’s last session under difficult circumstances caused by the COVID-19 pandemic.

<sup>2</sup> *Official Records of the General Assembly, Sixty-eighth Session, Supplement No. 17 (A/68/17)*, para. 326; and *ibid.*, *Seventy-first Session, Supplement No. 17 (A/71/17)*, para. 246.

<sup>3</sup> See the report of the fifty-fifth session of the Working Group (New York, 28–31 May 2019) (A/CN.9/972), the report of the fifty-sixth session of the Working Group (Vienna, 2–5 December 2019) (A/CN.9/1006), the report of the fifty-seventh session of the Working Group (Vienna (online), 7–10 December 2020) and the report of the fifty-eighth session of the Working Group (New York (online), 4–7 May 2021). For preliminary consideration of the topic, see the reports of the fifty-first (New York, 10–19 May 2017), fifty-third (New York, 7–11 May 2018) and fifty-fourth (Vienna, 10–14 December 2018) sessions of the Working Group (A/CN.9/903, paras. 13–14; A/CN.9/937, chap. VI; and A/CN.9/966, paras. 114–143).

<sup>4</sup> *Official Records of the General Assembly, Seventy-fourth Session, Supplement No. 17 (A/74/17)*, paras. 176–183; and *ibid.*, *Seventy-fifth Session, Supplement No. 17 (A/75/17)*, part two, paras. 42–45.

<sup>5</sup> *Ibid.*, *Seventy-fifth Session, Supplement No. 17 (A/75/17)*, part two, para. 45.

## B. General statements

57. The Commission heard statements in support of the earliest adoption of the text in the light of its relevance to the post-COVID-19 economic recovery, as was noted by the Commission at its resumed fifty-third session (see para. 53 above). It noted the views expressed about the draft text, in particular that the text achieved the proper interaction with the Insolvency Guide, carefully balanced various interests and different traditions and accommodated numerous policy options. It was explained that, while being consistent and coherent with the Insolvency Guide, which was used as the starting point for preparing the text, as requested by the Commission (see para. 53 above), the draft text deviated from the Insolvency Guide in some respects to ensure that a simplified insolvency regime responded to the needs of micro- and small enterprises (MSEs) in insolvency effectively and efficiently. Incorporation in the draft text of innovative solutions to both liquidation and reorganization proceedings was highlighted in particular.

58. The Commission was informed about the launch on 23 April 2021 of the revised World Bank Principles for Effective Insolvency and Creditor/Debtor Regimes, prepared by the World Bank's Insolvency Task Force.<sup>6</sup> The World Bank highlighted the addition of specific principles targeting insolvency of MSEs, captured in principles C18, C19, C20 and D1.6. The Commission noted with appreciation that those additions were coherent with the recommendations contained in the draft text, which was in line with the request made by the Commission at its previous session<sup>7</sup> and would provide strong, coordinated guidance to countries in the development of their MSE insolvency regimes. The Commission took note of the plans of its secretariat and the World Bank Group to hold later in 2021 a joint training programme for judges from advanced economies and emerging markets on the "Unified Insolvency and Creditor Rights Standard ("Unified ICR Standard)", which was recognized by the Financial Stability Board as an assessment tool to assist countries in their efforts to evaluate and improve insolvency and creditor/debtor regimes (see para. 299 below). Such training was considered especially timely since the economic effects of the current pandemic have emphasized the need for stronger insolvency regimes and understanding of the Unified ICR Standard.

59. The Commission deferred its final decision on whether the text should be part five of the Guide, its supplement, or a stand-alone text, noting the different views expressed on that matter. Different views were also expressed on desirability of publishing the text as part of the series of UNCITRAL texts addressing legal aspects of the business cycle of MSMEs, as suggested by the secretariat. While noting that the text should undoubtedly be part of UNCITRAL insolvency texts, support was expressed for exploring various routes for promoting it, including alongside other texts of UNCITRAL on MSMEs. Noting that the text did not define MSEs, deferring such definition to domestic law, establishing a proper link with other UNCITRAL texts on MSME was considered helpful in that regard. The exclusion of medium-sized enterprises from the scope of the work on a simplified insolvency regime was, however, noted, which might potentially cause confusion if the text was indeed treated as part of the UNCITRAL MSME texts series. (For further consideration of those issues, see para. 76 (f) below.)

## C. Action on the recommendation of the Working Group (A/CN.9/1052, para. 104)

60. Views differed on whether the Commission should adopt the text at its current session. One view was that the secretariat should be requested to prepare the

<sup>6</sup> Available at <https://openknowledge.worldbank.org/bitstream/handle/10986/35506/Principles-for-Effective-Insolvency-and-Creditor-and-Debtor-Regimes.pdf>.

<sup>7</sup> *Official Records of the General Assembly, Seventy-fifth Session, Supplement No. 17 (A/75/17)*, part one, para. 42.

consolidated text of the revised recommendations and the commentary for consideration by the Working Group before the Commission adopted the text or part thereof and before such a text was sent for comment by States and relevant organizations, as was recommended by the Working Group (see para. 55 above). It was recalled in that context that the Working Group had considered the draft commentary only up to paragraph 285 out of 389 paragraphs. The other view was that the Commission should adopt the recommendations, and the General Assembly should endorse them this year, which would be highly timely and relevant under the current circumstances caused by the COVID-19 pandemic, while the draft commentary might be approved in principle and referred to the secretariat or the Working Group for further elaboration.

61. After discussion, the Commission agreed to consider the draft text, commencing with the draft recommendations annexed to the report of the fifty-eighth session of the Working Group (A/CN.9/1052) followed by the draft commentary, deferring its decision on the adoption of the draft text or any part thereof until after it had a chance to consider the draft text. (see para. 77 below for the decision of the Commission.)

#### **D. Consideration of the draft recommendations (A/CN.9/1052, annex)**

62. The Commission approved the draft recommendations annexed to the report of the fifty-eighth session of the Working Group unchanged. With reference to draft recommendation 107, the Commission heard a suggestion to include in the text additional safeguards for the provision of the pre-commencement finance, such as a requirement on the debtor and the party providing such finance to have a viable business rescue plan. Such requirement was considered particularly important when public funding was involved in the rescue plan. In response, it was noted that additional safeguards for the provision of the pre-commencement finance might be included in the draft commentary to draft recommendation 107 rather than in that draft recommendation itself. It was also noted that for post-commencement finance, other draft recommendations, such as draft recommendation 67, would be relevant.

63. A suggestion that the text should require more than one creditor to apply for commencement of simplified insolvency proceedings against the MSE debtor was not taken up.

#### **E. Consideration of the draft commentary (A/CN.9/WG.V/WP.172, A/CN.9/WG.V/WP.172/Add.1 and A/CN.9/1077)**

64. Paragraphs 1 to 84 of the draft commentary were approved with changes listed in paragraphs 6 to 14 of document A/CN.9/1077.

65. The Commission took note of formatting and editorial changes expected to be made throughout the draft commentary set out in paragraphs 3 and 4 of document A/CN.9/1077. As regards a suggestion in paragraph 5 of that document that it might be desirable to find a more user-friendly presentation of materials in the text, it was noted that the placement of the recommendations and the commentary in the final text might depend on its final form, that is, whether it would become part five or a supplement to the Insolvency Guide or a stand-alone text, but flexibility and innovative approaches to its publication should not be hindered (on that point, see further para. 76 (d) below).

66. With reference to paragraph 15 of document A/CN.9/1077, views differed on the desirability of including paragraphs 91 bis and 91 ter as drafted in the commentary. While some support was expressed for including them, with a possible deletion of the opening phrase in paragraph 91 bis, the prevailing view was contrary to their inclusion, as they were felt to be unbalanced and in fact suggesting that the voting should be the preferred approach for approval of a MSE reorganization plan. It was considered that the matter had been extensively dealt with by the Working Group and

reasons for preferring the deemed approval approach were sufficiently explained in the text. In the view of other delegations, the two approaches should be presented as options for States to consider. Concerns expressed in the Working Group with the deemed approval approach, in particular attaching legal significance to the creditor silence, were recalled.

67. The Commission approved paragraphs 85–91 of the draft commentary unchanged. In subsequent discussion, the Commission heard a proposal to replace paragraphs 91 bis and 91 ter with a footnote to paragraph 279 of the draft commentary that would read: “A requirement of a vote on a MSE reorganization plan with majority approval is retained, for example, in the World Bank Principles for Effective Insolvency and Creditor/Debtor Regimes (2021), principle C19.7 and footnote 25, for the reasons set out above. While retaining that requirement, principle C19.7 provides that the law should simplify voting requirements, including by using electronic means where appropriate, and that creditors’ silence or lack of a negative vote on a duly notified reorganization plan should be considered as acceptance of the plan and counted as an affirmative vote. Creditors that vote against a plan would not be expected to additionally raise objection or sufficient opposition to the plan.”

68. Later in discussion, a proposal was made to revise paragraph 279 as follows:

“279. Bearing in mind the broad impetus of providing a simplified and efficient process, while at the same time ensuring protection of all parties in interest, the MSE Insolvency Guide thus seeks to achieve the right balance between these competing goals through: (a) deemed approval, which aims to address the issue of creditor disengagement; and (b) individual notification and other safeguards for creditors. Where concerns exist, particularly in emerging markets and developing economies, that the mechanism of deemed approval may produce a negative impact on the protection of creditor’s rights or on the availability of credit for MSEs or it may require a stronger institutional capacity than that required for holding a formal vote, States may retain voting in all MSE insolvency cases as provided for in the revised World Bank Principles for Effective Insolvency and Creditor/Debtor Regimes,\* or may require voting in some specified cases and preserving it as an option in other cases. Where voting is required, States should consider allowing counting absent votes or abstentions as positive votes in a simplified insolvency regime.

“\* The World Bank Principles for Effective Insolvency and Creditor/Debtor Regimes (2021), principle C19.7 and footnote 25, provide that the law should simplify voting requirements, including by using electronic means where appropriate, and that creditors’ silence or lack of a negative vote on a duly notified reorganization plan should be considered as acceptance of the plan and counted as an affirmative vote. Creditors that vote against a plan would not be expected to additionally raise objection or sufficient opposition to the plan.”

69. Some delegations expressed support for the proposal as it was felt that developing countries might not have sufficient institutional capacity to handle the deemed approval procedure for approving an MSE reorganization plan. It was also noted that inconsistencies between the UNCITRAL text and the World Bank Principles for Effective Insolvency and Creditor/Debtor Regimes might jeopardize the promotion of the UNCITRAL text as part of the Unified ICR Standard.

70. Other delegations expressed concern about the proposed text, in particular a reference therein to “emerging markets and developing economies”, noting that it might be inappropriate to single out a particular group of countries in that context. In addition, it was felt that such a reference conveyed that the approach recommended in the UNCITRAL text was less relevant to those markets and economies. It was emphasized that the two approaches, deemed approval and voting, should be treated equally.

71. In the light of those divergent views, the Commission confirmed its earlier approval in principle of paragraph 279 unchanged (see para. 67 above). The



Commission agreed to add a footnote to that paragraph as reproduced in paragraph 67 above. The understanding was that if a proposal was made to the Working Group to amend that part of the draft commentary, the Working Group would consider it in due course.

72. The Commission approved the remaining draft commentary with the amendments listed in document [A/CN.9/1077](#) and with the deletion of the text in square brackets at the end of paragraph 321. Noting that the text in square brackets in paragraph 317 was taken from the Insolvency Guide and that no support was expressed for deleting it, the Commission agreed to retain it without square brackets. With reference to the discussion earlier at the session of possible amendments to the draft commentary accompanying recommendation 107 (see para. 62 above), the Commission agreed that no changes would be required in that part of the draft commentary.

73. The Commission noted that footnote 67 in the draft commentary would change to reflect the approved title of the UNCITRAL Legislative Guide on Limited Liability Enterprises (see para. 52 above) and, consequently, the words in both sets of square brackets in that footnote would be deleted.

74. The Commission took note of the following changes that would be made throughout the recommendations and the draft commentary consequential to its decision to adopt the text as part five of the Guide (see para. 76 (f) below): (a) the title of the text would read: “UNCITRAL Legislative Guide on Insolvency Law. Part five: Legislative Guide on Insolvency Law for Micro- and Small Enterprises”; (b) the numbering of the recommendations in part five of the Insolvency Guide would start with number 271, to follow the last number of the recommendation in part four of the Guide as amended by the Commission in 2019; and (c) cross-references to the recommendations in the recommendations themselves and the draft commentary, including the tables of concordance, would reflect the new numbering of the recommendations. The understanding was that, where the text was published as part of the UNCITRAL MSME texts series, the numbering of the recommendations would start with number 1 and the text would appear with the title “Legislative Guide on Insolvency Law for Micro- and Small Enterprises.” The secretariat was requested to ensure that no confusion would arise from the different appearances of the text in the two series.

75. The Commission took note of the concern expressed by some delegations that the deliberations at the session were not conducive to a thorough consideration of the draft commentary. It was noted in particular that the absence of the consolidated text of the draft recommendations and the draft commentary did not allow the Commission to consider two parts of the text together. With reference to the requirement of simultaneous distribution of United Nations documents in the six languages of the United Nations, concerns were expressed about the late issuance of documents in some languages for consideration under agenda item 5. The secretariat was requested to pay more attention to that requirement, including when establishing deadlines for receipt of comments on texts being circulated for comment.

## **F. Elements for a decision by the Commission on agenda item 5**

76. Recalling its earlier consideration of various matters related to the finalization of the text, including its title, interaction with the Insolvency Guide and publication as part of the UNCITRAL insolvency and MSMEs texts series (see para. 59 above), the Commission reached the following agreement:

(a) To adopt the recommendations as approved unchanged at the current session (see para. 62 above) and annex them to the report of the session. It was considered essential for the Working Group to have the final set of recommendations in order to ensure the effective and efficient work on the finalization of the commentary. For that reason, the suggestions to allow the Working Group to amend the recommendations in the course of finalization of the draft commentary, even under



the condition that amendments would be made only when strictly necessary, for example, in case of unforeseen problems, did not receive sufficient support;

(b) To approve in principle the draft commentary as revised at the current session. The suggestion that not only the draft commentary but also the draft recommendations should be approved only in principle at the current session so that the Working Group could finalize and transmit the final consolidated text to the Commission for its adoption at its fifty-fifth session, in 2022, did not receive sufficient support;

(c) To request the secretariat to present the consolidated text of the adopted recommendations and the approved-in-principle commentary to the Working Group for review and finalization at its fifty-ninth session, limiting the scope of review to the newly added text. The suggestions to circulate the draft commentary for consultation among States in writing, without referring the text to the Working Group for its review and finalization, did not receive sufficient support. It was noted that certain parts of the draft commentary required further elaboration, and the Working Group's input was considered essential in that respect to ensure that the text as a whole was coherent and accurate. Different steps were suggested to avoid undue delays with finalization of the text and its publication, as well as unduly taking conference time allocated to the Working Group. It was in particular suggested that the consolidated text could be circulated to States for comment in writing and, only if any substantive comments were received, the text would be sent with those comments to the Working Group. That process, it was noted, would make it possible to estimate more accurately the time needed for consideration of the text during the session. That suggestion did not receive support in the absence of means of verification of comments received and their significance justifying the Working Group's involvement in their consideration;

(d) In preparing the consolidated text, to follow the style suggested in paragraph 5 of document [A/CN.9/1077](#);

(e) To adopt the title for the text as approved by the Working Group, "Legislative Guide on Insolvency Law for Micro- and Small Enterprises";

(f) To request the Secretariat to reflect in its publication programme and take any other measures to ensure future publication of the final text, including electronically and in the six official languages of the United Nations, as part of the UNCITRAL insolvency texts series (part five of the Insolvency Guide) and also, in line with the mandate originally given to the Working Group, as part of the UNCITRAL MSME texts series. Recalling an earlier concern that a confusion might arise if the text limited to MSEs was included in the UNCITRAL MSME texts series (see para. 59 above), a point was made that enterprises considered medium-sized in some jurisdictions might be qualified as MSEs in other jurisdictions. The need to promote the text in as many suitable ways as possible was emphasized. Some delegations considered that it was premature to discuss publication aspects before the text was finalized and adopted in its entirety.

## G. Decision by the Commission

77. In accordance with the procedure for taking decisions of UNCITRAL during the COVID-19 pandemic, the Commission adopted the following decision on 12 July 2021:

*"The United Nations Commission on International Trade Law,*

*"Recognizing the importance of effective, efficient and predictable insolvency regimes for investment, entrepreneurial activity, employment, economic recovery and sustainable development,*

*"Recalling that the UNCITRAL Legislative Guide on Insolvency Law provides for key elements of an effective, efficient and predictable insolvency regime,*

“*Acknowledging* the important role of micro- and small businesses in economies around the globe,

“*Convinced* that it is in the interest of all States to resolve financial difficulties of micro- and small businesses effectively and efficiently at an early stage of financial distress,

“*Concerned* that standard business insolvency processes designed for large and medium-sized enterprises may not be suitable for micro- and small businesses, or their cost may be prohibitive for micro- and small businesses in financial distress,

“*Recognizing that* expeditious, simple, flexible and low-cost proceedings should be made available and easily accessible to micro- and small businesses at an early stage of their financial distress in order to enable their fresh start,

“*Taking note of* special socioeconomic policy considerations involved in the design of simplified insolvency proceedings for micro- and small businesses in the light of characteristics of such enterprises, in particular the prevalence of comingled personal and business assets and debts, and the need to address specificities of their insolvencies, such as creditor disengagement and concerns over stigmatization because of insolvency,

“*Recalling* in that context the mandate given to Working Group V (Insolvency Law),<sup>8</sup>

“*Expressing its appreciation* to the Working Group for preparing a draft UNCITRAL legislative guide on insolvency law for micro- and small enterprises that offers solutions to enable expeditious liquidation of non-viable MSEs and reorganization of viable micro- and small businesses at an early stage of their financial distress,

“*Appreciating* the participation in, and support for, that work of relevant international intergovernmental and non-governmental organizations,

“*Noting with approval* the collaboration between the Working Group and the World Bank Group towards facilitating the development of a unified international standard in the area of insolvency law, encompassing provisions on MSE insolvency,

“1. *Adopts* the Legislative Recommendations on Insolvency of Micro- and Small Enterprises, annexed to the report of the United Nations Commission on International Trade Law on the work of its fifty-fourth session;<sup>9</sup>

“2. *Approves in principle* the draft commentary to the Legislative Recommendations contained in the working papers of Working Group V<sup>10</sup> and in a note by the Secretariat,<sup>11</sup> with amendments adopted by the Commission at its fifty-fourth session;<sup>12</sup>

“3. *Requests* the secretariat to revise the draft commentary in the light of those amendments and other relevant deliberations of the Commission and transmit the revised text for review and approval by the Working Group at its fifty-ninth session in December 2021;

“4. *Requests* the Working Group to decide at its fifty-ninth session, in December 2021, whether the approved text should be considered final or should be transmitted for finalization and adoption by the Commission at its fifty-fifth session, in 2022.”

<sup>8</sup> *Official Records of the General Assembly, Seventy-first Session, Supplement No. 17 (A/71/17)*, para. 246.

<sup>9</sup> *Ibid.*, *Seventy-sixth Session, Supplement No. 17 (A/76/17)*, annex II.

<sup>10</sup> [A/CN.9/WG.V/WP.172](#) and [A/CN.9/WG.V/WP.172/Add.1](#).

<sup>11</sup> [A/CN.9/1077](#).

<sup>12</sup> *Official Records of the General Assembly, Seventy-sixth Session, Supplement No. 17 (A/76/17)*, paras. 64–75.

## VI. Consideration of texts in the area of mediation

### A. General remarks and background

78. The Commission recalled that, at its fifty-first session, in 2018, it had finalized the United Nations Convention on International Settlement Agreements Resulting from Mediation (the Singapore Convention on Mediation)<sup>13</sup> and the UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation (the Model Law on Mediation).<sup>14</sup> In that light, the Commission had decided that the secretariat would prepare notes on organizing mediation proceedings, update the UNCITRAL Conciliation Rules in the light of the mediation framework,<sup>15</sup> and prepare a supplement to the “Guide to enactment and use of the UNCITRAL Model Law on International Commercial Conciliation”, which should provide guidance on how sections 2 and 3 of the amended Model Law should each be enacted as a stand-alone legislative text.<sup>16</sup>

79. The Commission further recalled that, at its fifty-second session, in 2019, it had had before it the draft UNCITRAL mediation rules (A/CN.9/986, the “draft rules”) and the draft UNCITRAL notes on mediation (A/CN.9/987, the “draft notes”), prepared by the secretariat in broad consultation with experts to ensure consistency with the legal framework on mediation, further reflecting current mediation practice. The Commission recalled that, at that session it had not been in a position to adopt the draft rules and the draft notes in view of the insufficient time for States to consult with experts and local stakeholders. The adoption was therefore postponed until a later session of the Commission.<sup>17</sup>

80. It was recalled that the Secretariat received comments by States and updated the draft texts accordingly. Furthermore, it circulated the draft UNCITRAL mediation rules (A/CN.9/1026) and the draft UNCITRAL notes on mediation (A/CN.9/1027), as well as 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).

81. It was further recalled that the outbreak of the COVID-19 pandemic had required putting in place for the fifty-third session, in 2020, arrangements different from those agreed upon by the Commission at its fifty-second 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 had been necessary.<sup>18</sup> Nevertheless, the Commission requested Working Group II to review the mediation texts so as to facilitate their speedy adoption.<sup>19</sup>

82. Accordingly, at its seventy-third session, Working Group II undertook a review of the mediation texts, considered the comments received thereon from States, and requested the secretariat to prepare a revised version for consideration by the Commission.<sup>20</sup>

<sup>13</sup> General Assembly resolution 73/198.

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

<sup>15</sup> *Ibid.*, para. 254.

<sup>16</sup> *Ibid.*, para. 67.

<sup>17</sup> *Official Records of the General Assembly, Seventy-fourth Session, Supplement No. 17 (A/74/17)*, para. 123.

<sup>18</sup> *Official Records of the General Assembly, Seventy-fifth Session, Supplement No. 17 (A/75/17)*, part two, para. 93.

<sup>19</sup> *Ibid.*, para. 30.

<sup>20</sup> A/CN.9/1049, paras. 68–72.

## **B. Consideration of the draft UNCITRAL mediation rules**

### **1. Deliberations**

83. The Commission considered the text of the draft UNCITRAL mediation rules, as contained in document [A/CN.9/1074](#).

#### *Articles 1 and 2*

84. The Commission adopted articles 1 and 2, without any modification.

#### *Article 3*

85. A proposal to amend paragraph 2 to provide for a procedure involving an institution for appointing a mediator where the parties could not agree on one did not receive support as it was considered that article 3 provided sufficient flexibility to the parties to obtain assistance, if necessary.

86. With regard to article 3, the Commission agreed to: (a) add the words “in consultation with the parties” in the first sentence of paragraph 5; (b) reorder the words “gender and geographical diversity of candidates” in the second sentence of paragraph 5 so as to read “geographical diversity and gender of the candidates”; and (c) include a reference to paragraph 5 in the first sentence of paragraph 8. Subject to those changes, the Commission adopted article 3.

#### *Article 4*

87. With regard to article 4, it was agreed that the words “or persons” should be added after the word “person” in the first sentence of paragraph 5 to accommodate instances where a party would be represented by more than one person. Subject to that change, the Commission adopted article 4.

#### *Articles 5 to 8*

88. The Commission adopted articles 5 to 8, without any modification.

#### *Article 9*

89. With respect to article 9, proposals were made that: (a) to cater for multiparty mediation, the declaration of one party should have the effect of termination for that party only; (b) the date of termination should be the date of the receipt of the declaration, instead of the date of the declaration; and (c) a provision whereby an institution could terminate the mediation, particularly where no mediator was appointed and the parties might be unwilling to terminate themselves, should be included. Those proposals did not receive support.

90. With respect to article 9, subparagraph (a), it was agreed that the following words should be added at the end of the subparagraph: “or such other date as agreed by the parties in the settlement agreement”. It was explained that that would cater for situations where parties would need to take some steps in relation to the mediation procedure after the conclusion of the settlement agreement. Subject to that change, the Commission adopted article 9.

#### *Article 10*

91. The Commission adopted article 10, without any modification.

#### *Article 11*

92. With regard to article 11, the Commission agreed to: (a) delete the word “any” before the word “expert” in paragraph 1 (c); (b) include a reference to article 3, paragraph 3 in paragraph 1 (d); and (c) refer to article 9 (e) instead of article 9 (d) in paragraph 5. Subject to those changes, the Commission adopted article 11.

### *Article 12*

93. With regard to article 12, a concern was expressed about a situation where a mediator would act as a representative or counsel of a party in other dispute resolution proceedings. While views were expressed that if the parties had agreed to such an arrangement, that should be possible, it was generally felt that that would be rare and should be treated differently from when the mediator acted as an arbitrator. Therefore, it was agreed that the paragraph should be divided into three paragraphs. One would address the general rule that a mediator should not act as an arbitrator unless agreed by the parties, which would be in line with article 13 of the Model Law on Mediation. Another would state the general rule that a mediator would not be allowed to act as a representative or counsel of a party in other proceedings. Further, the third sentence of article 12 would be retained as a separate paragraph as it dealt with the obligation of the parties to not present the mediator as a witness in other dispute resolution proceedings.

94. After discussion, the Commission adopted article 12 as follows:

“1. Unless otherwise agreed by the parties, the mediator shall not act as an arbitrator in respect of the dispute that was or is the subject of the mediation and of a dispute that has arisen from the same or a related contract or legal relationship.

“2. The mediator shall not act as a representative or counsel of a party in any arbitral, judicial or other dispute resolution proceedings in respect of the dispute that was or is the subject of the mediation and of a dispute that has arisen from the same or a related contract or legal relationship.

“3. The parties shall not present the mediator as a witness in any such proceedings.”

### *Article 13*

95. Suggestions to delete article 13 and to limit the scope of the waiver by the parties did not receive support. Accordingly, article 13 was adopted, without any modification.

### *Model mediation clauses*

96. The Commission then considered the model mediation clauses found in the annex to the draft UNCITRAL mediation rules.

97. A suggestion to broaden the scope of the model mediation clauses beyond contracts by inserting the words “or any other legal relationship” after the word “contract” in the chapeau of the clauses did not receive support.

98. Concerns were expressed with regard to the use of the term “place” of mediation, as the place of mediation did not have the same legal implications as the “place of arbitration”, including for cross-border enforcement. In that context, it was pointed out that the Singapore Convention on Mediation did not require a “place” of mediation for the enforcement of a settlement agreement. Accordingly, it was agreed to replace that word with the word “location”, which would refer to the physical venue where the mediation would take place. Further, the Commission agreed that in the second set of subparagraphs in the multi-tiered clause, references in subparagraph (a) should be to an “appointing” authority instead of a “selecting” authority. Subject to those changes, the Commission adopted the model mediation clauses in the annex.

### *Model declaration of disclosure and model statement of availability*

99. In the light of paragraphs 6 and 7 of article 3, the Commission agreed to include the following model declaration of disclosure and model statement of availability in the annex to the UNCITRAL Mediation Rules.

#### **“Model declaration of disclosure**

*“No circumstances to disclose*

“To the best of my knowledge, there are no circumstances, past or present, likely to give rise to justifiable doubts as to my impartiality or independence. I shall promptly notify the parties of any such circumstances that may subsequently come to my attention during this mediation.

*“Circumstances to disclose*

“Attached is a statement of (a) my past and present professional, business and other relationships with the parties and (b) any other relevant circumstances [Include statement.] I confirm that those circumstances do not affect my independence and impartiality. I shall promptly notify the parties of any such further relationships or circumstances that may subsequently come to my attention during this mediation.”

**“Model statement of availability**

“I confirm, on the basis of the information presently available to me, that I can devote the time necessary to conduct this mediation.”

*Other matters*

100. The Commission agreed that it would be useful to prepare recommendations to assist mediation institutions on how to adjust the UNCITRAL Mediation Rules for their use, which would facilitate the UNCITRAL Mediation Rules serving as a model for institutional rules. The secretariat was requested to undertake such preparation, resource permitting.

## **2. Adoption of the UNCITRAL Mediation Rules**

101. In accordance with the procedure for taking decisions of UNCITRAL during the COVID-19 pandemic, the Commission adopted the following decision on 14 July 2021:

*“The United Nations Commission on International Trade Law,*

*“Recognizing* the value of dispute settlement methods referred to by expressions such as mediation, conciliation and expressions of similar import, as a means of amicably settling disputes arising in the context of international commercial relations,

*“Noting* that such dispute settlement methods are increasingly used in international and domestic commercial practice as an alternative to litigation,

*“Considering* that the use of such dispute settlement methods results in significant benefits, such as reducing the instances where a dispute leads to the termination of a commercial relationship, facilitating the administration of international transactions by commercial parties and producing savings in the administration of justice by States,

*“Recalling* General Assembly resolutions on UNCITRAL instruments on such dispute settlement methods, namely resolution [35/52](#) of 4 December 1980, as well as resolutions [73/198](#) and [73/199](#) of 20 December 2018, on the UNCITRAL Conciliation Rules, the United Nations Convention on International Settlement Agreements Resulting from Mediation and the UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation, respectively,

*“Convinced* that the preparation of mediation rules that are acceptable in countries with different legal, social and economic systems would complement the existing legal framework on international mediation and significantly contribute to the effective settlement of disputes and to the development of harmonious international economic relations,

*“Mindful* of developments in the mediation practice since the adoption of the UNCITRAL Conciliation Rules (1980),

“Noting further that the preparation of the UNCITRAL Mediation Rules benefited greatly from consultations with Governments and interested intergovernmental and non-governmental organizations,

“1. *Adopts* the UNCITRAL Mediation Rules as they appear in annex III to the report of the United Nations Commission on International Trade Law on the work of its fifty-fourth session;<sup>21</sup>

“2. *Recommends* the use of the UNCITRAL Mediation Rules in the settlement of disputes arising in the context of international commercial relations;

“3. *Requests* the Secretary-General to publish the UNCITRAL Mediation Rules, including electronically, in the six official languages of the United Nations, and to disseminate it broadly to Governments and other interested bodies.”

## C. Consideration of the draft UNCITRAL notes on mediation

### 1. Deliberations

102. The Commission considered the text of the draft UNCITRAL notes on mediation, as contained in paragraph 6 of document [A/CN.9/1075](#).

*Introduction, paras. 1–15*

103. The Commission adopted paragraphs 1 to 15 of the draft UNCITRAL notes on mediation, without any modification.

*Note 1: Commencement of the mediation, paras. 16–28*

104. With regard to paragraph 28, subparagraph (iii), it was agreed that the words “administrative and” should be added before the words “logistical matters”. Subject to that change, the Commission adopted note 1.

*Note 2: Selection and appointment of a mediator, paras. 29–35*

105. With regard to the last sentence of paragraph 31, it was agreed that the phrase at the end of the sentence should be revised to read: “geographical diversity and gender”. With regard to the second sentence of paragraph 35, it was agreed that the word “foresee” should be replaced with the word “require”. Subject to those changes, the Commission adopted note 2.

*Note 3: Preparatory steps, paras. 36–55*

106. The Commission agreed as follows:

- After the first sentence of paragraph 37, text along the following lines should be added: “The fee of the mediator may or may not be dependent on the outcome of the mediation or the amount in dispute. Furthermore, the parties should agree from the outset that the mediator will be paid regardless of the outcome.”;
- Paragraph 37, subparagraph (iii) should be revised to read “...such as for travel, accommodation, administrative and technological support”;
- The second sentence of paragraph 43 should be deleted;
- The word “ascertain” in paragraph 44 should be replaced with the word “discuss”.

107. Subject to those changes, the Commission adopted note 3.

<sup>21</sup> *Official Records of the General Assembly, Seventy-sixth Session, Supplement No. 17 (A/76/17), annex III.*



*Note 4: Conduct of the mediation, paras. 56–70*

108. With regard to paragraphs 67 and 68, a proposal to highlight the fact that ex parte communication should be subject to the agreement of the parties (including that the parties could agree that there should not be ex parte communication in the proceedings) did not receive support. It was, however, noted that the parties could agree on whether or not to allow for ex parte communications. The Commission adopted note 4, without any modification.

*Note 5: Settlement agreement, paras. 71–79*

109. The Commission adopted note 5, without any modification.

*Note 6: Termination of the mediation, paras. 80–81*

110. Subject to incorporating in paragraph 80 the changes agreed by the Commission with regard to article 9 of the UNCITRAL Mediation Rules (see para. 90 above), the Commission adopted note 6. In addition, the Commission requested the secretariat to modify other parts of the mediation notes to reflect its decisions on the UNCITRAL Mediation Rules.

*Note 7: Mediation in the investor-State dispute settlement context, paras. 82–87*

111. It was proposed that the section on mediation in the investor-State dispute settlement context should be deleted, in particular as that topic was currently being discussed by UNCITRAL Working Group III (Investor-State Dispute Settlement Reform) and as guidelines on investor-State mediation were under preparation. It was, however, suggested that retaining some parts of note 7 could acknowledge the significance of mediation in resolving investor-State disputes. After discussion, the Commission agreed to delete note 7.

## 2. Adoption of the UNCITRAL Notes on Mediation

112. In accordance with the procedure for taking decisions of UNCITRAL during the COVID-19 pandemic, the Commission adopted the following decision on 14 July 2021:

*“The United Nations Commission on International Trade Law,*

*“Recognizing the value of dispute settlement methods referred to by expressions such as mediation, conciliation and expressions of similar import, as a means of amicably settling disputes arising in the context of international commercial relations,*

*“Noting that such dispute settlement methods are increasingly used in international and domestic commercial practice as an alternative to litigation,*

*“Considering that the use of such dispute settlement methods results in significant benefits, such as reducing the instances where a dispute leads to the termination of a commercial relationship, facilitating the administration of international transactions by commercial parties and producing savings in the administration of justice by States,*

*“Recalling the resolutions on UNCITRAL instruments on such dispute settlement methods, namely resolution 35/52 of 4 December 1980 as well as resolutions 73/198 and 73/199 of 20 December 2018, on the UNCITRAL Conciliation Rules, the United Nations Convention on International Settlement Agreements Resulting from Mediation and the UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation, respectively,*

*“Noting that the purpose of the UNCITRAL Notes on Mediation is to list and briefly describe matters relevant to the organization of mediation and that the Notes, prepared with a focus on international mediation, are intended to be*



used in a general and universal manner, regardless of whether the mediation is administered by an institution,

“*Noting* that the UNCITRAL Notes on Mediation do not seek to promote any practice as best practice given that procedural styles and practices in mediation do vary and that each of them has its own merit,

“*Noting further* that the preparation of the UNCITRAL Notes on Mediation benefited greatly from consultations with Governments and interested intergovernmental and international non-governmental organizations active in the field of mediation,

“1. *Adopts* the 2021 UNCITRAL Notes on Mediation consisting of the text contained in document [A/CN.9/1075](#), with amendments adopted by the Commission at its fifty-fourth session, and authorizes the secretariat to edit and finalize the text of the Notes pursuant to the deliberations of the Commission at that session;

“2. *Recommends* the use of the Notes, including by parties to mediation, mediators and mediation institutions, as well as for academic and training purposes with respect to international commercial dispute settlement;

“3. *Requests* the Secretary-General to publish the 2021 UNCITRAL Notes on Mediation, including electronically, and in the six official languages of the United Nations, and to make all efforts to ensure that the Notes become generally known and available.”

## **D. Consideration of the draft guide to enactment and use of the UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation (2018)**

### **1. Deliberations**

113. The Commission considered the text of the draft guide to enactment and use of the UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation (2018), as contained in section II of document [A/CN.9/1073](#).

*Introductory remarks and introduction to the Model Law, paras. 1–27*

114. The Commission adopted that part, without any modification.

*Article-by-article remarks*

*Section 1: General principles, paras. 28–37*

115. With regard to paragraph 36, the Commission agreed to add the phrase “as well as to the need to provide uniformity in its application and the observance of good faith” at the end of the first sentence. Subject to that change, the Commission adopted section 1.

*Section 2: International commercial mediation, paras. 38–97*

116. With regard to paragraph 57, it was agreed that reference to international commercial arbitration should be deleted and the first sentence should begin with the words “mediation practice shows”. Subject to those changes, the Commission adopted section 2.

*Section 3: International settlement agreements, paras. 98–167*

117. With regard to paragraph 122, it was agreed to add a footnote in the first sentence, making a reference to article 8 (1) (a) of the Singapore Convention on Mediation,

which provided a reservation for States with regard to settlement agreements involving government entities.

118. With regard to paragraph 164, it was agreed to delete the second sentence as it could be misleading.

119. Subject to those changes, the Commission adopted Section 3.

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

120. In accordance with the procedure for taking decisions of UNCITRAL during the COVID-19 pandemic, the Commission adopted on 14 July 2021 the Guide to Enactment and Use of the UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation (2018), consisting of the text contained in document [A/CN.9/1073](#), with amendments adopted by the Commission at its fifty-fourth session, and authorized the Secretariat to edit and finalize the text of the Guide pursuant to the deliberations of the Commission at that session.

121. The Commission recommended the use of the Guide to understand, consider and implement the Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation, including, by parties to mediation, mediators, mediation institutions as well as for academic and training purposes with respect to international commercial dispute settlement.

122. The Commission further requested the Secretary-General to publish the Guide to Enactment and Use of the UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation (2018), together with the Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation, including electronically, and in the six official languages of the United Nations, and to make all efforts to ensure that the Guide become generally known and available.

## **VII. Consideration of the draft UNCITRAL expedited arbitration rules and the draft explanatory note thereto**

### **A. Introduction**

123. The Commission recalled that, at its fifty-first session, in 2018, it had mandated Working Group II to take up issues relating to expedited arbitration.<sup>22</sup> The Commission took note of the progress made by the Working Group in preparing the draft UNCITRAL expedited arbitration rules (the “draft expedited rules”) during its seventy-second and seventy-third sessions based on the respective reports of the Working Group ([A/CN.9/1043](#) and [A/CN.9/1049](#)) and expressed its satisfaction with the progress made.

124. The Commission noted that the Working Group had approved the draft expedited rules at its seventy-third session (New York, 22–26 March 2021). Upon the request by the Commission to consider how the draft expedited rules could be presented in connection with the UNCITRAL Arbitration Rules,<sup>23</sup> the Working Group agreed to present the draft expedited rules as an appendix to the UNCITRAL Arbitration Rules and to add a paragraph in article 1 of the UNCITRAL Arbitration Rules to incorporate the UNCITRAL Expedited Arbitration Rules. Based on the deliberations at the seventy-third session, a revised version of the draft expedited rules and its annexes

---

<sup>22</sup> *Official Records of the General Assembly, Seventy-third Session, Supplement No. 17 (A/73/17)*, para. 252.

<sup>23</sup> *Ibid.*, *Seventy-fifth Session, Supplement No. 17 (A/75/17)*, part two, para. 29.

was prepared and presented to the Commission for finalization and adoption (A/CN.9/1082).

125. In addition, a revised version of the explanatory note to the UNCITRAL Expedited Arbitration Rules was prepared and presented to the Commission for its consideration (A/CN.9/1082/Add.1).

## **B. Consideration of the draft UNCITRAL expedited arbitration rules**

126. At the outset, the Commission considered the text of an additional paragraph in article 1 of the UNCITRAL Arbitration Rules as contained in section II.A of document A/CN.9/1082 and adopted the additional paragraph, without any modification.

127. The Commission proceeded to consider the text of the draft UNCITRAL expedited arbitration rules as contained in section II.B of document A/CN.9/1082. It was noted that the name “UNCITRAL Expedited Arbitration Rules” would appear after the heading “Appendix to the UNCITRAL Arbitration Rules” in the UNCITRAL Expedited Arbitration Rules as published.

128. The Commission adopted articles 1 and 2 of the draft expedited rules, without any modification.

129. While a suggestion was made to include a reference to due process and fairness in article 3, paragraph 2, it was stated that the paragraph should be read in conjunction with article 17, paragraph 1, of the UNCITRAL Arbitration Rules, which highlighted the need for the arbitral tribunal to provide for a fair process. Therefore, the Commission adopted article 3 of the draft expedited rules, without any modification.

130. The Commission adopted articles 4 to 8 of the draft expedited rules, without any modification.

131. With regard to articles 9 and 10, questions were raised with regard to the use of the phrases “consult the parties” and “after inviting the parties to express their views”. It was explained that the term “consult” was used in article 9 to highlight the need for an interactive engagement and communication between the arbitral tribunal and the parties on how to conduct the arbitration. It was further noted that article 9 presented a case management conference as an example on how to conduct the consultations. It was further explained that the phrase “after inviting the parties to express their views” was used throughout the UNCITRAL Arbitration Rules and in articles 2, 3, 10, 11, and 14 of the draft expedited rules to refer to situations where the arbitral tribunal would be required to give the parties an opportunity to express their opinion before the tribunal took a decision on a certain matter. It was clarified that the use of the two phrases would be similar in the sense that there was no need to obtain the agreement of the parties, while the tribunal would need to make efforts to take into account the views expressed by the parties. It was agreed that the slight distinction between the two phrases should be further elaborated in the explanatory note.

132. The Commission adopted articles 9 to 14 of the draft expedited rules, without any modification.

133. With regard to article 15, paragraph 1, it was suggested that reference should be made to the production of “further” evidence, as parties would generally be expected to present the complete set of evidence along with their statement of claim or defence in accordance with articles 4 and 5. However, it was pointed out that the parties were not necessarily required to do so (see para. 31 of A/CN.9/1082/Add.1) and that the wording was in line with article 27, paragraph 3, of the UNCITRAL Arbitration Rules. After discussion, the Commission adopted article 15 of the draft expedited rules, without any modification.

134. The Commission then considered article 16 of the draft expedited rules.

*Article 16, paragraph 1*

135. With regard to paragraph 1, it was noted that article 10 provided a carve-out by including the words “subject to article 16”. In this regard, it was suggested that if the parties had agreed that an award should be rendered within a period of less than six months from the date of the constitution of the arbitral tribunal and that period was deemed unreasonable to the arbitral tribunal, the tribunal would not have the discretion to extend the period in accordance with article 10. To provide the tribunal with the discretion to modify the parties’ choice of an unrealistic time period, a proposal was made that the phrase “unless otherwise agreed by the parties” should be replaced with the phrase “unless the parties agree to a later date”. It was explained that with the revision, paragraph 1 would not apply when the parties had agreed to a period of less than six months.

136. In response, it was said that the parties should be free to agree on a period of less than six months, which should also be respected by the arbitral tribunal. It was further said that if the arbitral tribunal found the period unreasonable, it would be possible to extend the period in accordance with paragraph 2, yet only in exceptional circumstances. Therefore, preference was expressed for retaining the current text of paragraph 1. It was also mentioned that the inclusion of the phrase “unless the parties agree to a later date” or similar wording could be misunderstood as incentivizing the parties to agree to a period of time longer than six months. It was further mentioned that it would be useful to highlight the fact that parties were able to agree on a period of time other than provided for in article 16 and thus support was expressed for retaining the current text.

137. After discussion, the Commission agreed that paragraph 1 should read: “The award shall be made within six months from the date of the constitution of the arbitral tribunal unless otherwise agreed by the parties.”

*Article 16, paragraph 2*

138. With regard to paragraph 2, it was agreed that the phrase “the period of time in paragraph 1” should be replaced with the phrase “the period of time established in accordance with paragraph 1” so as to refer not only to the “six months” in paragraph 1 but also to any period of time agreed by the parties.

*Article 16, paragraph 3*

139. With regard to paragraph 3, it was noted that the current text, along with subparagraph (d) of the model arbitration clause, was the result of a compromise reached by Working Group II at its seventy-third session, after having considered a number of different approaches on whether and how to introduce a maximum period of time for rendering the award.

140. Accordingly, some support was expressed for the current text of paragraph 3, which provided that the maximum overall time frame (including any extended period) for rendering the award in expedited arbitration should not be longer than nine months from the date of the constitution of the arbitral tribunal. It was said that such a rule would respond to the expectations of the parties that an award would be rendered within a short time period and would be an important feature of the Expedited Rules. It was further said that providing a firm deadline would incentivize arbitral tribunals to handle the proceedings more diligently. It was noted that paragraph 3, however, did not impose any limitation on the number of extensions and that parties were free to agree on a time frame longer than nine months.

141. Concerns were raised about the situation where the arbitral tribunal would not be able to render an award within the nine-month period, in particular if unusual circumstances arose near the end of that period. It was mentioned that concerns also arose when the arbitral tribunal needed only a short period of time beyond the nine-month period to render the award. It was said that as paragraph 3 necessitated the agreement of the parties to extend the time period beyond nine months, if the parties

did not agree, that could result in the termination of the proceedings without any award being made, or a late award being made, which, in some jurisdictions, might not be enforceable or could be annulled for non-compliance with the procedure agreed by the parties. It was further said that such possibility could motivate a recalcitrant party to simply delay the proceedings beyond nine months and, for a party predicting an unsuccessful result, not to agree to any extension. As a general point, it was stressed that, while an expedited proceeding was one of the goals to be achieved through the application of the UNCITRAL Expedited Arbitration Rules, it was as important to ensure that the awards rendered through such proceedings were not susceptible to annulment and were enforceable in the end.

142. To avoid this risk, it was stated that article 2, paragraph 2, provided a solution to the problem since if it could be foreseen that an award would not be rendered within the nine-month period, a party could request that the UNCITRAL Expedited Arbitration Rules no longer apply pursuant to article 2, paragraph 2, thus making article 16, paragraph 3, no longer applicable. However, it was pointed out that such a process required a request by one of the parties and could not be initiated by the arbitral tribunal. Along the same lines, it was said that shifting to non-expedited arbitration at the final stages of the arbitration could prove more disruptive than necessary (for example, if the tribunal needed only one modest extension to complete its award) and could open the proceeding to additional delay tactics by a recalcitrant party.

143. Therefore, it was suggested to provide a narrow “safety valve” to allow the arbitral tribunal to have one final extension beyond the nine-month time frame upon its own initiative. It was mentioned that the parties’ power to jointly prevent such an extension would be preserved and that the grounds for the final extension would need to be framed narrowly. Accordingly, the following text was proposed (proposal A) in lieu of the current text of paragraphs 2 and 3:

“2. The arbitral tribunal may, in exceptional circumstances and after inviting the parties to express their views, extend the period of time referred to in paragraph 1. Any such extensions shall not exceed a total of nine months from the date of the constitution of the arbitral tribunal for making the award except as set out in paragraph 3.

“3. If the arbitral tribunal, having extended the time for its award to the limit permitted under paragraph 2, concludes that particular exceptional circumstances place at risk its ability to render an enforceable award within nine months from the date when the arbitral tribunal was constituted, it shall state those reasons, propose a final extended time limit, and give the parties a fixed period to express their views. If all parties object within the fixed period, the arbitral tribunal shall render its award within the nine-month period.”

144. There was some support for proposal A based on the fact that it preserved the ability of the arbitral tribunal to render an enforceable award even beyond the nine-month time frame. However, a number of questions were raised including: (a) whether the parties were able to agree on a time period longer than nine months in paragraph 2; (b) whether having no fixed time limit in paragraph 3 could allow the arbitral tribunal to propose a lengthy period, which could be longer than those provided for in paragraphs 1 and 2, thus making the proceeding no longer expedited; (c) whether an objection by one of the parties should be sufficient to require the arbitral tribunal to render the award within the nine-month time frame; (d) the meaning of the phrase “particular exceptional circumstances place at risk its ability to render an enforceable award”; (e) whether the circumstances in paragraph 3 should be limited similar to those stipulated in article 14 of the UNCITRAL Model Law on International Commercial Arbitration; and (f) whether paragraph 3 should provide that the arbitral tribunal ought to make efforts to obtain the agreement of the parties in extending beyond the nine-month period rather than referring to the parties’ objection.

145. To accommodate some of the views expressed, an alternative proposal (proposal B) was put forward for consideration by the Commission. Proposal B read as follows:

“2. The arbitral tribunal may, in exceptional circumstances and after inviting the parties to express their views, extend the period of time referred to in paragraph 1. The extended period of time shall not exceed a total of nine months from the date of the constitution of the arbitral tribunal except as set out in paragraph 3, unless otherwise agreed by the parties.

“3. If the arbitral tribunal, having extended the period of time in accordance with paragraph 2, considers that the exceptional circumstances of the case place at risk its ability to render an award within that extended period of time, it shall propose a final extension of no more than three months, state the reasons, and give the parties a time period to express their views. If all parties object within that time period, the arbitral tribunal shall render the award within [the] period of time extended in accordance with paragraph 2.”

146. With regard to paragraph 2 of proposal B, it was clarified that the overall extended period of time should be no longer than nine months from the date of the constitution of the arbitral tribunal, while the parties would be free to agree on a different period or even agree that there should be no maximum period of time at all. While a suggestion was made to limit the period of each extension (for example, three months), it was agreed that paragraph 2 should provide a maximum period of time and give flexibility within that period for the tribunal to extend (in certain cases, more than once). With regard to the drafting, it was suggested that the phrase “as set out in paragraph 3” was superfluous as paragraph 3 already contained a reference to paragraph 2.

147. With regard to paragraph 3, different views were expressed on the fixed period of “three months” for the final extension. One view was that the maximum period of the extension should be shorter than three months as it was a final extension. Another view was that there should be no fixed time limit and that the arbitral tribunal should be able to propose the period of time it considered sufficient to render the award. In support, it was said that while a final three-month extension might provide finality about when the award should be rendered, it would not resolve the problem of enforceability posed by a fixed time limit.

148. It was generally felt that there should be a way for the arbitral tribunal to render an enforceable award beyond the final time limit in paragraph 3. Suggestions were made that an explicit reference to article 2 should be made in paragraph 3. Another view was that article 16 should provide a separate rule, allowing a party to request that the UNCITRAL Expedited Arbitration Rules no longer apply and that the proceedings would be conducted under the UNCITRAL Arbitration Rules instead. While a view was expressed that a party should not be able to request withdrawal, it was generally felt that a mechanism similar to article 2, paragraph 2, should be provided for. Yet another view was that it should be possible for the arbitral tribunal to determine on its own that the UNCITRAL Expedited Arbitration Rules no longer apply to the arbitration, unless both parties objected to such a determination. However, it was generally felt that the rule in article 2 that the non-application of the UNCITRAL Expedited Arbitration Rules required the agreement of the parties or a request by a party should be preserved also in the context of article 16.

149. Questions were raised whether a circumstance where the arbitrator was no longer able to perform his or her functions or force majeure was covered by paragraph 3. It was clarified that paragraph 3 addressed a different situation in the sense that the arbitral tribunal would not be incapacitated, since he or she was in a position to propose a final extension and state the reasons. It was further pointed out that the impossibility to act or force majeure would usually lead to the arbitrator withdrawing from office, parties agreeing on termination of his or her services, or a similar decision by the competent authority, rather than an extension of the time frame during the incapacity. While a suggestion was made that the issue of the arbitrator’s impossibility to act or incapacity to perform the duties should be dealt with in

article 16 as a separate paragraph, it was agreed that the relevant issues were better addressed in the explanatory note, by clarifying the meaning of the phrase “place at risk its ability to render an award”.

150. On the basis of the deliberations, a further drafting proposal was made (proposal C), as follows:

“2. The arbitral tribunal may, in exceptional circumstances and after inviting the parties to express their views, extend the period of time established in accordance with paragraph 1. The extended period of time shall not exceed a total of nine months from the date of the constitution of the arbitral tribunal.

“3. If the arbitral tribunal concludes that it is at risk of not rendering an award within nine months from the date of the constitution of the arbitral tribunal, it shall propose a final extended time limit, state the reasons for the proposal, and invite the parties to express their views within a fixed period of time. If all parties agree to the proposal, the extension shall be adopted.

“4. If a party objects to the extension in paragraph 3, any party may make a request that the Expedited Rules no longer apply to the arbitration. After inviting the parties to express their views, the arbitral tribunal may determine to continue to conduct the arbitration in accordance with the UNCITRAL Arbitration Rules.”

151. There was general support for proposal C on the grounds that it provided clear guidance on ways to preserve the enforceability of an award if the nine-month period were to lapse and if a proposal by the arbitral tribunal to extend beyond that period was not accepted by the parties.

152. With regard to paragraph 2, a suggestion to add the words “unless otherwise agreed by the parties” at the end of the second sentence did not receive support as parties were free to do so and such autonomy was already highlighted in paragraph 1.

153. With regard to paragraph 3, it was noted that the threshold for the final extension was stricter than the one in paragraph 2 as the tribunal had to state the reasons and all parties’ agreement needed to be sought. It was agreed that it would be useful if the explanatory note further elaborated on the phrases “exceptional circumstances” and “at risk of not rendering an award” by providing concrete examples. There was also support for not introducing a fixed time limit but, rather, leaving it to the arbitral tribunal to propose a reasonable period of time to render the award, as the arbitral tribunal would be best placed to assess what that period should be. It was further mentioned that as the final extension would in any case be subject to the agreement of the parties, it would not need to be limited as proposals for an unreasonable period would likely be opposed by one or more parties. It was further agreed that the explanatory note to paragraph 3 should further elaborate on the impossibility of the arbitrator to act, including how those circumstances could be addressed in expedited arbitration.

154. It was suggested that the last sentence of paragraph 3 should be revised to read: “The extension shall be adopted only if all parties express their agreement to the proposal within the fixed period of time”. While it was mentioned that the condition to be met in that sentence was twofold (all parties agreeing to the extension and doing so within the fixed period of time), it was observed that an agreement by the parties after the fixed time period would allow the extension to be adopted without paragraph 4 being invoked.

155. With regard to paragraph 4, a suggestion that it should be possible for the arbitral tribunal to determine on its own (thus without the request of any party) that the UNCITRAL Expedited Arbitration Rules should not apply to the arbitration did not receive support. However, it was agreed that the explanatory note should mention the possibility for the arbitral tribunal to remind the parties of making the request pursuant to article 2, including when making the proposal for the extension in accordance with paragraph 3 of article 16. While some support was expressed for making a

cross-reference to article 2 in paragraph 4, it was agreed to retain paragraph 4 without any cross-reference so that article 16 would be self-contained. It was agreed that the relationship between article 2 and article 16, paragraph 4, including the conditions to be met as well as the result of the determination, should be further elaborated in the explanatory note.

156. After discussion, the Commission adopted article 16 as follows:

“1. The award shall be made within six months from the date of the constitution of the arbitral tribunal unless otherwise agreed by the parties.

“2. The arbitral tribunal may, in exceptional circumstances and after inviting the parties to express their views, extend the period of time established in accordance with paragraph 1. The extended period of time shall not exceed a total of nine months from the date of the constitution of the arbitral tribunal.

“3. If the arbitral tribunal concludes that it is at risk of not rendering an award within nine months from the date of the constitution of the arbitral tribunal, it shall propose a final extended time limit, state the reasons for the proposal, and invite the parties to express their views within a fixed period of time. The extension shall be adopted only if all parties express their agreement to the proposal within the fixed period of time.

“4. If there is no agreement to the extension in paragraph 3, any party may make a request that the Expedited Rules no longer apply to the arbitration. After inviting the parties to express their views, the arbitral tribunal may determine to continue to conduct the arbitration in accordance with the UNCITRAL Arbitration Rules.”

157. The Commission further agreed that the heading of article 16 should read: “Period of time for making the award”.

158. With regard to the annexes to the UNCITRAL Expedited Arbitration Rules, it was agreed that subparagraph (d) of the model arbitration clause should be deleted in the light of the agreed text of article 16 and that the explanatory note could mention alternative approaches that parties could take regarding the time period for making the award. It was further agreed to make a reference to the full title “UNCITRAL Expedited Arbitration Rules” at the end of the model statement. Subject to those changes, the Commission adopted the model arbitration clause and the model statement.

### **C. Consideration of the draft explanatory note to the UNCITRAL Expedited Arbitration Rules**

159. The Commission proceeded to consider the text of the draft explanatory note to the UNCITRAL Expedited Arbitration Rules (the “explanatory note”) as contained in document [A/CN.9/1082/Add.1](#).

160. The Commission confirmed that references to the previous reports of the Working Group need not to appear in the final version of the explanatory note.

#### **Introduction**

161. The Commission agreed to add in the second sentence of paragraph 2 the word “express” before the word “consent”. Subject to that change, the Commission adopted paragraphs 1 to 3 of the explanatory note.

#### **Section A – Scope of application**

162. A suggestion to add at the end of the second sentence in paragraph 5 a phrase along the lines of “if all parties are in agreement” did not receive support.

163. It was agreed that paragraph 6 provided useful guidance and should be retained.



164. With regard to paragraph 7, a suggestion was made that the explanatory note should include a list of articles of the UNCITRAL Arbitration Rules that were modified by the UNCITRAL Expedited Arbitration Rules to provide more guidance and clarity to the parties. It was noted that the footnote to article 1 provided a list of articles that did not apply in the context of expedited arbitration. In response, it was pointed out that the explanatory note sufficiently addressed the interaction between the UNCITRAL Arbitration Rules and the UNCITRAL Expedited Arbitration Rules and that creating such list would not necessarily be comprehensive.

165. With respect to the last sentence of paragraph 9, it was agreed to add the word “expressly” before the word “agreed”.

166. In relation to paragraph 9, a suggestion was made that the explanatory note should make clear that in case a subsequent version of the UNCITRAL Expedited Arbitration Rules was to be adopted, the applicable version would be the version in force at the time of the commencement of arbitration. Another suggestion was that the explanatory note should clarify that parties would remain free to agree on any version of the UNCITRAL Expedited Arbitration Rules. After discussion, it was agreed to add the following at the end of paragraph 9: “If a subsequent version of the Expedited Rules were to be prepared, it should be understood that article 1(2) of the UNCITRAL Arbitration Rules would apply. This would mean that the Expedited Rules in effect on the date of commencement of the arbitration would apply unless the parties have agreed on the current or any other version.”

167. The Commission agreed to retain paragraph 15 and to add at the end the following: “When deciding that certain provisions would no longer apply, the arbitral tribunal should make clear to the parties how the arbitration would be conducted and which provisions would apply and which would not.”

168. Subject to the above-mentioned changes agreed by the Commission, section A was adopted.

#### **Section B – General provision on expedited arbitration**

169. It was suggested that paragraphs 21 and 24 should underline the importance of due process. After discussion, it was agreed that the following would be added at the end of paragraph 21: “The arbitral tribunal should also comply with the requirements of due process”. It was also agreed that the following would be included as the penultimate sentence of paragraph 24: “The arbitral tribunal should also be mindful of due process requirements”. Subject to those changes, the Commission adopted section B.

#### **Sections C (Notice of arbitration, response thereto, statements of claim and defence application) to F (Appointment of the arbitrator)**

170. The Commission adopted sections C to F, without any modification.

#### **Section G – Consultation with the parties**

171. The Commission agreed that the following would be inserted as the second sentence of paragraph 60:

“The terms “consult” and “consultation” are used to highlight the interactive nature of the engagement between the arbitral tribunal and the parties when discussing how expedited arbitration would be conducted. In general, the phrase “after inviting the parties to express their views” is used throughout the UNCITRAL Arbitration Rules, as well as in articles 2, 3, 10, 11, 14 and 16 of the Expedited Rules, to refer to a situation where the arbitral tribunal is required to give the parties an opportunity to express their opinion before the arbitral tribunal takes a decision on a certain matter in order to allow them to voice support, concerns or objections.”

172. It was further agreed that the first sentence of paragraph 61 should be expanded to read as follows: “Article 9 requires the arbitral tribunal to consult the parties on how to organize the proceedings. It thus conveys the expectation that the arbitral tribunal will engage actively with the parties rather than to simply invite them to express their views. The article mentions that one way of such consultation would be through a case management conference.”

173. With regard to the last sentence of paragraph 63, it was agreed that it should be revised to read: “Upon receipt of the statement of defence from the respondent, consultation may be required with the parties, in particular if ...”.

174. Subject to the above-mentioned changes agreed by the Commission, section G was adopted.

#### **Section H – Time frames and the discretion of the arbitral tribunal**

175. With regard to paragraph 69, it was agreed that the text should be revised so as to indicate that the arbitral tribunal should comply with due process requirements instead of endeavouring to comply. Subject to that change, the Commission adopted section H.

#### **Section I – Hearings**

176. The Commission agreed to retain paragraph 72 in the explanatory note. It was also agreed to add the words “and guarantee due process” at the end of paragraph 76. Subject to that change, the Commission adopted section I.

#### **Sections J (Counterclaims and claims for the purpose of set-off) to M (Evidence)**

177. The Commission adopted sections J to M, without any modification.

#### **Section N – Making of the award**

178. It was generally felt that section N of the explanatory note as well as other parts of the explanatory note would need to be adjusted and updated to reflect the deliberations and decision of the Commission on article 16 of the draft expedited rules (see paras. 156–157 above). The Secretariat was requested to prepare a revised version of the explanatory note accordingly.

179. Regarding paragraphs 88 and 89, a suggestion was made that the paragraphs should refer more generally to when the time frame for the award lapsed rather than the nine-month time frame to cater for the cases where the time frame might be different.

180. It was said that paragraph 90 focused too much on the risks of a non-reasoned award. Therefore, it was suggested that the paragraph should be revised to alert the parties of the possibility to agree to a non-reasoned award as provided for in article 34 of the UNCITRAL Arbitration Rules and to briefly mention the benefits of such an agreement.

181. Another suggestion was that the explanatory note should elaborate on the circumstances where the arbitrator was incapacitated and the impact such incapacity could have on the time frames in expedited arbitration, including any suspensions.

182. Considering that article 16, paragraph 3, of the draft expedited rules required the agreement of the parties to the final time limit proposed by the arbitral tribunal, it was suggested that the following be included in the explanatory note: “It will be the responsibility of the arbitral tribunal to ascertain that the agreement to its proposal is expressed without ambiguity. For example, if in response to the proposal, a party agrees only to a period of time shorter than that proposed by the arbitral tribunal, the arbitral tribunal may invite the other parties to express their agreement to such shorter period of time.”

### **Section O – Model arbitration clause for expedited arbitration**

183. It was agreed that the second sentence of paragraph 92 should be deleted. Subject to that change, the Commission adopted section O.

### **Section P – The Expedited Rules and the Transparency Rules**

184. A view was expressed that the application of the UNCITRAL Expedited Arbitration Rules should be limited to commercial arbitration, and not be extended to investment arbitration. In support, it was said that because of the nature and complexities of investment arbitration, a considerable amount of time was required for the preparation of the case and the production of evidence, and, in that context, an expedited arbitration procedure might not be suitable. For that reason, it was stated that, as a rule, it should be left to the States to include a reference to the UNCITRAL Expedited Arbitration Rules in their respective investment treaties, in order for them to apply. In response, it was said that the suitability of the UNCITRAL Expedited Arbitration Rules for investment arbitration is a question left to the disputing parties. Yet another view was that paragraphs 95 to 99 would need to be simplified as they were not clear.

185. With regard to paragraph 94, it was agreed that the following words be added at the end of the last sentence: “as express consent of the State is necessary for the application of the Expedited Rules”. It was agreed that the first sentence of paragraph 95 should be revised as follows: “According to article 1(4) of the UARs (as adopted in 2013), the UNCITRAL Rules on ...”. Subject to those changes, the Commission adopted section P.

### **Section Q – Early dismissal and preliminary determination**

186. The Commission agreed to not include paragraph 100 in the explanatory note as the issues dealt within that paragraph did not pertain to the UNCITRAL Expedited Arbitration Rules but more generally to the UNCITRAL Arbitration Rules.

### **Section R – Time frames in the Expedited Rules**

187. The Commission adopted section R, without any modification.

### **Way forward**

188. Considering that it was not in a position to adopt the entirety of the explanatory note, the Commission decided to approve the explanatory note in principle and to task Working Group II to finalize the text at its fall session in 2021 based on the decisions and deliberations of the Commission. The Commission also requested the Secretariat to publish the UNCITRAL Expedited Arbitration Rules along with the explanatory note upon finalization of the text by the Working Group.

## **D. Decision by the Commission**

189. In accordance with the procedure for taking decisions of UNCITRAL during the COVID-19 pandemic, the Commission adopted the following decision on 21 July 2021:

*“The United Nations Commission on International Trade Law,*

*“Recalling General Assembly resolution 2205 (XXI) of 17 December 1966, which established the United Nations Commission on International Trade Law with the purpose of furthering the progressive harmonization and unification of the law of international trade,*

“*Recalling also* General Assembly resolutions 31/98 of 15 December 1976 and 65/22 of 10 January 2011 recommending the use of the Arbitration Rules of the United Nations Commission on International Trade Law,<sup>24</sup>

“*Noting* that expedited arbitration is being increasingly used in international and domestic commercial practice for parties to reach a final resolution of the dispute in a cost- and time-effective manner,

“*Recognizing* the value of expedited arbitration as a streamlined and simplified procedure for settling disputes that arise in the context of international commercial relations within a shortened time frame,

“*Recognizing also* the need to balance the efficiency of the arbitral proceedings and the rights of the disputing parties to due process and fair treatment,

“*Noting* that the preparation of the draft UNCITRAL expedited arbitration rules and the draft explanatory note benefited greatly from consultations with Governments and interested intergovernmental and international non-governmental organizations,

“*Expressing its appreciation* to Working Group II (Dispute Settlement) for formulating the draft UNCITRAL expedited arbitration rules and the draft explanatory note,

“1. *Adopts* the UNCITRAL Expedited Arbitration Rules and the new article 1, paragraph 5, of the UNCITRAL Arbitration Rules, as they appear in annex IV to the report of the United Nations Commission on International Trade Law on the work of its fifty-fourth session;<sup>25</sup>

“2. *Decides* that the UNCITRAL Expedited Arbitration Rules and the new article 1, paragraph 5, of the UNCITRAL Arbitration Rules shall come into effect on 19 September 2021;

“3. *Approves in principle* the draft explanatory note to the UNCITRAL Expedited Arbitration Rules, and authorizes Working Group II (Dispute Settlement) to finalize the text at its seventy-fourth session in 2021;

“4. *Recommends* the use of the UNCITRAL Expedited Arbitration Rules in the settlement of disputes arising in the context of international commercial relations;

“5. *Requests* the Secretary-General to publish the UNCITRAL Expedited Arbitration Rules and the final text of the explanatory note together with the UNCITRAL Arbitration Rules (as revised in 2010, with new article 1, paragraph 4, as adopted in 2013, and with new article 1, paragraph 5, as adopted in 2021), including electronically, and in the six official languages of the United Nations, and to make all efforts to ensure that the UNCITRAL Expedited Arbitration Rules become generally known and available.”

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

190. In connection with the outlined progress in the preparation of the draft legislative guide on an UNCITRAL limited liability organization by Working Group I (see para. 29 above), it was recalled that one delegation had previously voiced objections regarding the submission of the draft legislative guide to the Commission

<sup>24</sup> For the text of the UNCITRAL Arbitration Rules (1976), see *Official Records of the General Assembly, Thirty-first Session, Supplement No. 17 (A/31/17)*, chap. V, sect. C. For the text of the UNCITRAL Arbitration Rules (as revised in 2010), see *Official Records of the General Assembly, Sixty-fifth Session, Supplement No. 17 (A/65/17)*, annex I.

<sup>25</sup> *Ibid.*, *Seventy-sixth Session, Supplement No. 17 (A/76/17)*, annex IV.

for consideration and possible adoption and that the Working Group had not adopted the summary of the Chair and the Rapporteur on the work of Working Group I at its thirty-fifth session as its report. It was emphasized that in the future the chairs of working groups must strictly follow the procedures for the adoption of decisions and reports in order to avoid difficulties. In general, it was said that a summary that was not adopted by the working group as its report should be descriptive in nature and not entail any decisions to be taken.

191. As requested by Working Group I (see t [A/CN.9/1048](#) para. 25), the Commission agreed to mandate the secretariat to draft guidance, with the assistance of experts, to assist States in the preparation of model organization rules that members of a limited liability enterprise might use in the establishment and management of such an enterprise and in defining their rights and obligations. The Commission also agreed to allow the secretariat to rename the instrument (referred to as “Model Organization Rules: multi-member UNLLO managed by all members exclusively” in [A/CN.9/WG.I/WP.122](#)) if the content of the guidance would be inconsistent with the definition of “organization rules” in the Legislative Guide.

192. Questions were raised with respect to the scope of the mandate of Working Group I to work on the topic of access to credit for MSMEs. It was noted that certain subject areas addressed in working papers prepared by the Secretariat ([A/CN.9/WG.I/WP.119](#) and [A/CN.9/WG.I/WP.119/Add.1](#)) did not fall under the UNCITRAL mandate, and research on this topic should be limited to relevant subject areas. Concerns were expressed as to whether it would be feasible to adapt the UNCITRAL Model Law on Secured Transactions to the needs of MSMEs, since the provisions of that text would not vary depending on the nature of the borrower (whether a sole proprietor or a business).

193. In response, the decision of the Commission during its fifty-third session to encourage Working Group I to conclude its deliberations on the Guide in order to devote full consideration to the topic of access to credit for MSMEs at its thirty-fifth session was recalled.<sup>26</sup> It was also explained that the working papers were of a general nature and intended for legislators and policy makers interested in or actively involved in facilitating access to credit for MSMEs. It was added that the working papers took into account different areas of law which could have a positive or negative impact on the access to credit for MSMEs without aiming at harmonizing them, but rather at identifying the most suitable measures to improve access to credit for MSMEs. It was also clarified that policy aspects relating to access to credit were addressed in the working papers only to the extent they were instrumental in reducing the legal constraints that made access credit difficult for MSMEs. By way of example, the current work of Working Group V (Insolvency Law) was mentioned, which aimed to tailor the mechanisms already provided in the Insolvency Guide for MSMEs and develop simplified insolvency mechanisms.

## **IX. Investor-State dispute settlement reform: progress report of Working Group III**

194. 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.<sup>27</sup>

<sup>26</sup> *Ibid.*, *Seventy-fifth Session, Supplement No. 17 (A/75/17)*, part two, para. 23.

<sup>27</sup> *Ibid.*, *Seventy-second Session, Supplement No. 17 (A/72/17)*, para. 264.

195. The Commission had before it the reports of Working Group III (Investor-State Dispute Settlement Reform) on the work of its thirty-ninth, fortieth and resumed fortieth sessions ([A/CN.9/1044](#), [A/CN.9/1050](#) and [A/CN.9/1054](#), respectively).

196. The Commission took note of the progress made by the Working Group, which had started to develop concrete reform elements to be recommended to the Commission (in accordance with the third phase of its mandate). The deliberations followed a 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).

197. The Commission commended the Working Group for its progress on the consideration of a number of reform elements, including:

(a) At its thirty-ninth session, (i) dispute prevention and mitigation as well as other means of alternative dispute resolution; (ii) treaty interpretation by States parties; (iii) security for costs; (iv) means to address frivolous claims; (v) multiple proceedings including counterclaims; and (vi) reflective loss and shareholder claims based on joint work with the Organization for Economic Cooperation and Development (OECD);

(b) At its fortieth session, (i) selection and appointment of investor-State dispute settlement tribunal members in a standing mechanism; and (ii) draft provisions for an appellate mechanism.

198. The Commission took note of the Working Group's conclusion that preparatory work should be undertaken on each of the reform elements considered at the thirty-ninth session, including further research and draft provisions for relevant instruments, and of the progress made at the fortieth session. The Commission was informed that a series of informal meetings in the form of webinars were held to advance the preparation of the draft code of conduct for adjudicators in international investment disputes, prepared jointly with the Secretariat of the International Centre for Settlement of Investment Disputes (ICSID) and which resulted in the preparation of a revised version of the draft.

199. The Commission also took note that, for the sake of efficiency, during the pandemic, initial drafts of working papers on reform elements were being made available on the website of the Working Group for comments by delegations before being submitted as a working paper for consideration by the Working Group. In addition, meetings were held to provide a forum for exchange among delegations on these drafts in an informal setting. In order to ensure inclusiveness, some of these informal meetings that had been held in English were repeated in French and Spanish and some have been translated into French and English simultaneously, with the financial support of the German Federal Ministry for Economic Cooperation and Development (BMZ).

200. The Commission also took note of the consideration by the Working Group at its thirty-ninth session of how to plan its consultations on the organization of its work, including on resources needed, and of the informal consultations that had been held prior to the resumed fortieth session, where that matter had been considered by the Working Group. It was noted that the workplan contained in document [A/CN.9/1054](#) was prepared as a workable roadmap for progress to be made by the Working Group, and that the workplan should be flexible and notional, so that the details could be adapted as progress would be made. The Commission noted the conclusion of the Working Group that the workplan was, in this regard, only a guide for the Working Group to advance or to progress its work, and that the focus should be on a request to the Commission for additional resources and the factors that were driving it (for deliberation on that matter, see chap. XII, sect. E, below).

201. With regard to the workplan, a number of comments were noted. First, it was stated that consideration of cross-cutting issues (currently placed under the category of reform of procedural rules for investor-State dispute settlement) would require

more conference time and would need to be placed preferably as a separate work stream, given the range of such issues (alternatives to investor-State dispute settlement, dispute prevention methods, exhaustion of local remedies, counterclaims and investor obligations, third party participation, regulatory chill, calculation of damages, among others). Second, it was stated that the workplan should better take account of the limited resources available to developing States (as well as technical difficulties that they faced) that restricted their effective participation in informal sessions. Further, it was noted that to guarantee inclusiveness, interpretation services during the informal sessions were necessary. Regarding the reference in document [A/CN.9/1054](#) to adoption on a “rolling basis”, it was clarified that the phrase meant that the Commission could adopt a given reform element, approve it in principle or take other appropriate action, which would make it possible for States to adopt it in their investment treaty practice rather than having to wait for the completion of the work on all the reform options. In that context, some concerns were expressed that such an approach might not allow issues of greater interest to developing countries being considered by the Working Group earlier and could disturb taking a more holistic approach to investor-State dispute settlement reform. In response to suggestions to revise certain paragraphs of document [A/CN.9/1054](#), it was said that the document reflected the deliberations of the Working Group and had been adopted as its report through the established procedure during the COVID-19 pandemic (see [A/CN.9/1078](#)). A suggestion was made that Working Group III should conduct a periodic review of the workplan to monitor and evaluate the Working Group's progress and ensure full and effective participation of all States and other interested stakeholders.

202. The Commission heard, with interest, a presentation regarding the wide participation in the sessions of the Working Group, in particular the participation of developing States, which exemplified the importance of the topic and the continued interest of States in investor-State dispute settlement reform. It was stressed that the enhanced participation in the Working Group, where the sessions were held in-person, depended again heavily on the financial resources available to States. In that context, the Commission expressed its appreciation to the European Union, the Government of France and BMZ 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. The Commission also expressed its appreciation for the contributions of the Government of France to advance the research work of the secretariat and to allow interpretation to French during informal sessions foreseen in the workplan of the Working Group. States were urged to contribute to, and support, those efforts.

203. The Commission took note of the outreach activities of the secretariat aimed at raising awareness about the work of the Working Group and ensuring that the process would remain inclusive and fully transparent.

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

## **X. Electronic commerce: progress report of Working Group IV**

205. 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.<sup>28</sup> 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

<sup>28</sup> *Ibid.*, *Seventy-third Session, Supplement No. 17 (A/73/17)*, para. 159.



use of identity management and trust services, and that the outcome of the work had implications for matters beyond commercial transactions.<sup>29</sup>

206. At the present session, the Commission had before it the report of the Working Group on the work of its sixtieth session, held from 19 to 23 October 2020 (A/CN.9/1045) and the report on its sixty-first session, held from 6 to 9 April 2021 (A/CN.9/1051). At those sessions, the Working Group continued its work on the basis of draft provisions prepared by the secretariat.

207. The Commission was informed that the Working Group had made significant progress towards completion of an instrument in the form of a legislative text but that it had not been possible to finalize that text in the reduced time available for meetings in hybrid form. The Commission was also informed that the Working Group expected to complete the work on the text and its explanatory materials at its forthcoming sixty-second session with a view to their submission to the Commission at its fifty-fifth session, in 2022.

208. 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-fifth session, in 2022.

## **XI. Judicial sale of ships: progress report of Working Group VI**

209. The Commission had before it the reports of Working Group VI on the work of its thirty-seventh session, held from 14 to 18 December 2020 (A/CN.9/1047/Rev.1) and at its thirty-eighth session, held from 19 to 23 April 2021 (A/CN.9/1053).

210. The Commission was informed that the Working Group had used those sessions to continue the preparation of a draft instrument on the recognition of foreign judicial sales of ships and that the working assumption within the Working Group was that the instrument would take the form of a convention. It was noted that over the course of the two sessions, the Working Group had carried out an article-by-article review of the substantive provisions and had made significant progress in its deliberation of open issues. Those issues included (a) the judicial sales within scope, (b) the function and content of the notice requirements for judicial sales benefitting from the recognition regime under the draft convention, (c) the issuance and international effect of the certificate of judicial sale, and (d) the establishment of a centralized online repository, which would perform a “passive” function of publishing notices and certificates of judicial sale in support of the recognition regime. The Commission heard that the secretariat was preparing a fourth revision of the draft as a basis for the deliberations of the Working Group at its next session and that the text of the draft convention was nearing finalization.

211. The Commission heard expressions of satisfaction with the progress made by the Working Group and the ongoing discussions with the secretariat of the International Maritime Organization (IMO) regarding the functionality and modalities of hosting the repository as an additional module within the IMO Global Integrated Shipping Information System. One view was that, given the progress made by the Working Group, as reflected in the reports, the Working Group might be in a position to complete the text in 2022. The Commission was thus invited to consider assigning meeting dates for the Working Group early enough to allow for circulation of the draft convention for comments by States well ahead of the fifty-fifth session of the Commission, in 2022, with a view to its approval by the Commission and transmittal to the General Assembly for adoption, if the Working Group were indeed to complete the text by then. Another view was that more work on the draft convention was required to achieve a broader consensus on its contents and that it was premature for the Commission to set a target for approving the draft in 2022. There was support for the view that the Working Group should be given sufficient time for its deliberations

<sup>29</sup> Ibid., *Seventy-fourth Session, Supplement No. 17 (A/74/17)*, para. 172.



and that member States should have ample time to hold internal and regional consultations. While holding a session of the Working Group in the first half of 2022 earlier than originally forecast (A/CN.9/1041/Rev.1, para. 58) could be envisaged, the thirty-ninth session of the Working Group should not be held any earlier than the last quarter of 2021. The Commission took note of those concerns, which would inform its consideration of the dates and places of its working groups (see chapter XXI below).

## XII. Work programme

212. 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.<sup>30</sup>

213. The Commission took note of the documents prepared to assist its discussions on the topic (A/CN.9/1068 and the documents referred to therein, including the proposals contained in documents A/CN.9/1008, A/CN.9/1060, A/CN.9/1061, A/CN.9/1064 and A/CN.9/1064/Add.1, A/CN.9/1064/Add.2, A/CN.9/1064/Add.3, A/CN.9/1064/Add.4, A/CN.9/1066, A/CN.9/1080 and A/CN.9/1081) and of lists of activities of the secretariat planned until the fifty-fifth session of the Commission in support of the legislative work by the Commission and its working groups.

### A. Legislative programme under consideration by working groups

214. The Commission took note of the progress of its working groups as reported earlier in the session (see chaps. IV– XI of the present report) and reaffirmed the programme of current legislative activities set out in table 1 of document A/CN.9/1068 as follows:

(a) As regards micro-, small and medium-sized enterprises, the Commission confirmed that Working Group I should start 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,<sup>31</sup> 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 (i) finalize the text of the explanatory note to the UNCITRAL Expedited Arbitration Rules at its seventy-fourth session in 2021; (ii) discuss the topic of early dismissal at the same occasion (see para. 242 below); (iii) during its seventy-fifth session, in 2022, hold a colloquium to explore the relevant legal issues and to identify the scope and nature of possible legislative work on dispute resolution in the digital economy (see para. 233 below); and (iv) reserve some time at that session for another colloquium to discuss the desirability and feasibility of work on adjudication and present the results of those colloquiums to the fifty-fifth session of the Commission, in 2022 (see para. 243 below);

(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 with a view to its adoption by the Commission at its fifty-fifth session, in 2022, and reserve sufficient time at its sixty-third session, in 2022, to hold a focused conceptual discussion on use of artificial intelligence and automation in contracting (see para. 236 below);

<sup>30</sup> Ibid., *Sixty-eighth Session, Supplement No. 17 (A/68/17)*, para. 310.

<sup>31</sup> Ibid., *Seventy-fourth Session, Supplement No. 17 (A/74/17)*, para. 192 (a).

(e) With respect to insolvency, the Commission confirmed that Working Group V was expected to complete expeditiously its work on the draft commentary to the Legislative Recommendations on Insolvency of Micro- and Small Enterprises, which the Commission approved in principle at the current session (see para. 77 above) so as to take up two new legislative projects, as agreed by the Commission during the session (see para. 217 below);

(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, with a view, if possible, to its approval by the Commission at its fifty-fifth session, in 2022.

## **B. Additional topics considered at earlier sessions of the Commission**

### **1. Possible topics in the area of insolvency law: civil asset tracing and recovery and applicable law in insolvency proceedings**

215. The Commission recalled its consideration at its earlier sessions of the proposals by the United States for possible future work by UNCITRAL on civil asset tracing and recovery ([A/CN.9/WG.V/WP.154](#) and [A/CN.9/996](#)) and the proposal by the European Union on behalf of its member States for possible future work by UNCITRAL on applicable law in insolvency proceedings ([A/CN.9/995](#)).<sup>32</sup> At the current session, the Commission had before it the report of the Colloquium on Applicable Law in Insolvency Proceedings (Vienna, 11 December 2020) ([A/CN.9/1060](#)) and noted that it had preliminarily considered the report of the Colloquium on Civil Asset Tracing and Recovery (Vienna, 6 December 2019) ([A/CN.9/1008](#)) at its fifty-third session, in 2020, agreeing to delay the final decision in respect of possible future work on asset tracing and recovery until it had had a chance to consider the report of the Colloquium on Applicable Law in Insolvency Proceedings.<sup>33</sup>

216. The Commission took note of conclusions reached at the colloquiums ([A/CN.9/1008](#), para. 48, and [A/CN.9/1060](#), para. 47). The Commission considered that both topics were important, requiring harmonization of inconsistent and fragmented legislative approaches, filling in existing gaps and tackling digital aspects. Both topics were considered relevant to insolvency proceedings, in particular to the preservation of the insolvency estate of the debtor, and thus appropriate for referral to UNCITRAL Working Group V (Insolvency Law) in the light of its recognized expertise and competence in the area of insolvency law. The established record of that Working Group in handling two or more topics simultaneously was recalled. The work products on both topics were expected to usefully supplement existing UNCITRAL insolvency texts. It was noted that the work in the Working Group on both topics should build on those texts, other relevant UNCITRAL texts (e.g., on secured transactions), the reports of the colloquiums and any additional preparatory work that the secretariat might need to undertake before the topics were taken up by the Working Group.

217. After discussion, the Commission agreed that both topics should be referred to Working Group V (Insolvency Law), noting that the work on the draft commentary to the Legislative Recommendations on Insolvency of Micro- and Small Enterprises approved in principle at the current session (see para. 77 above) was expected to be completed by the Working Group expeditiously. The Working Group, while having flexibility to organize its work, was requested to treat both topics equally (i.e., working on them either in parallel or in tandem) and ensure transparency and inclusiveness in its methods of work. The Commission noted that both topics touched upon a broad range of issues and the scope of work required careful delineation. There

<sup>32</sup> Ibid., *Seventy-third Session, Supplement No. 17 (A/73/17)*, paras. 250, 251 and 253 (d); *ibid.*, *Seventy-fourth Session, Supplement No. 17 (A/74/17)*, paras. 200–206; and *ibid.*, *Seventy-fifth Session, Supplement No. 17 (A/75/17)*, part two, paras. 62–66.

<sup>33</sup> Ibid., *Seventy-fifth Session, Supplement No. 17 (A/75/17)*, part two, para. 65.

was agreement that the work on civil asset tracing and recovery should be limited to insolvency proceedings, but the Commission was mindful of the fact that the results of that work might turn out to be helpful in other areas of law where civil asset tracing and recovery were relevant and that it would be unwise at the present stage to categorically exclude the possibility for UNCITRAL to decide to expand that project to other areas of its work. It was also understood that the form the work might take on both topics would be decided at a later stage.

## 2. Warehouse receipts

218. The Commission recalled that it had decided to place the topic of warehouse receipt financing on its work programme at its forty-ninth session, in 2016.<sup>34</sup> The Commission also recalled that it had considered progress reports by the secretariat at its fifty-first session, in 2018,<sup>35</sup> at its fifty-second session, in 2019<sup>36</sup> and at its fifty-third session, in 2020, when the Commission endorsed the recommendations set out in the relevant note by the Secretariat (A/CN.9/1014) concerning the scope of the project, the possible content of a model law on the private law aspects of warehouse receipts, as well as the methodology for such work, in particular that it be carried out jointly with Unidroit.<sup>37</sup>

219. At the present session, the Commission had before it a note in which the secretariat presented the progress made since the fifty-third session of the Commission (A/CN.9/1066). The Commission was informed of the deliberations held at the two sessions of the Working Group on a Model Law on Warehouse Receipts convened by Unidroit in consultation with the UNCITRAL secretariat (hereafter the “Working Group”), both of which had taken place via videoconference.<sup>38</sup> At the second session, the Working Group had considered an issues paper prepared by the Unidroit secretariat concerning the content of a future model law on the private law aspects of warehouse receipts, as well as the preliminary draft provisions for such a model law that were prepared by the drafting committee established at the first session.<sup>39</sup> The Commission noted that the third session of the Working Group was scheduled for 1 to 3 September 2021.

220. The Commission took note with the appreciation of the progress made and agreed that the drafting of uniform provisions on the topic required a neutral and functional approach that respected differences in legal doctrines and practice among various legal systems. The Commission was mindful of the importance of giving the Working Group sufficient time to consider those matters and develop an acceptable solution and agreed that the Working Group might need more than two sessions before it could submit a preliminary draft model law on the private law aspects of warehouse receipts for consideration by the Unidroit Governing Council, possibly at its 102nd session, in 2023, and subsequent transmittal to the first available UNCITRAL Working Group.

## 3. Negotiable multimodal transport documents

221. The Commission recalled that, at its fifty-second session, in 2019, the Government of China had presented a proposal on possible future work by UNCITRAL towards the development of a negotiable transport document to facilitate multimodal carriage of goods, in particular by railway in the Euro-Asian space (A/CN.9/998). The Commission also recalled that, at that session, it had considered with interest the proposal and agreed to request its secretariat to examine the matter

<sup>34</sup> Ibid., *Seventy-first Session, Supplement No. 17 (A/71/17)*, para. 125.

<sup>35</sup> Ibid., *Seventy-third Session, Supplement No. 17 (A/73/17)*, para. 249.

<sup>36</sup> Ibid., *Seventy-fourth Session, Supplement No. 17 (A/74/17)*, paras. 196 and 221 (b).

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

<sup>38</sup> The first and second sessions took place on 2–4 December 2020 and 10–12 March 2021, respectively. For the reports of those sessions including the list of participants (annex I), see [www.unidroit.org/work-in-progress/model-law-on-warehouse-receipts](http://www.unidroit.org/work-in-progress/model-law-on-warehouse-receipts).

<sup>39</sup> The documents of the second session are available at [www.unidroit.org/work-in-progress/model-law-on-warehouse-receipts](http://www.unidroit.org/work-in-progress/model-law-on-warehouse-receipts).

further in consultation with other relevant organizations and to report back to the Commission, at its fifty-third session, in 2020, on the progress it had made.<sup>40</sup> The Commission further recalled that, at its fifty-third session, it had considered the note by the Secretariat on the results of its exploratory work on the topic (A/CN.9/1034), and requested the secretariat to start preparatory work towards the development of a new international instrument on negotiable multimodal transport documents.<sup>41</sup>

222. At the present session, the Commission had before it a note by the secretariat summarizing the preparatory work done in response to the Commission's request at its fifty-third session (A/CN.9/1061). The Commission was informed, in particular, of the results of the research done by the secretariat and the consultations with experts and interested organizations, primarily through an expert group meeting on a new international instrument on negotiable multimodal transport documents that took place online on 2 and 3 February 2021,<sup>42</sup> and an open webinar on "International experiences with the dematerialization of negotiable transport documents" that took place on 13 and 14 April 2021.<sup>43</sup>

223. The Commission welcomed the preparatory work done by the secretariat and confirmed its strong interest for the project, which was felt to have considerable practical significance for world trade, in particular for the economic growth of developing countries. The Commission agreed that the primary purpose of a new international instrument should be to ensure legal recognition of a medium neutral negotiable transport document in different modes of transport and that, for that purpose, it was desirable to focus first on negotiable transport documents and subsequently consider whether other types of transport documents accepted by banks for documentary credit should also be encompassed. The Commission agreed on the need for proper coordination and interface with the liability regimes provided under existing conventions on international carriage of goods by various modes and invited the secretariat to continue its work in close coordination with other organizations currently working on or exploring solutions to enable the use of a negotiable transport document in the rail plus or other multimodal context (e.g., the Economic Commission for Europe, the Economic and Social Commission for Asia and the Pacific, the Intergovernmental Organisation for International Carriage by Rail and the Organization for Cooperation of Railways), as well as other organizations with relevant expertise, or representing relevant industries (e.g., UNCTAD, the International Civil Aviation Organization, the International Chamber of Commerce, CMI, FIATA, CIT, the International Road Transport Union, the International Air Transport Association, and representatives of the banking sector and shippers interests).

224. The Commission requested the secretariat to report to the Commission, at its fifty-fifth session, in 2022, on the progress made, including on the preparation of a preliminary draft of a new instrument on negotiable multimodal transport documents. The Commission agreed to give high priority to the project for assignment to the next available working group.

#### **4. Legal issues related to the digital economy (including dispute resolution)**

225. The Commission had before it a progress report of exploratory and preparatory work undertaken by the secretariat on the project (A/CN.9/1064, A/CN.9/1064/Add.1, A/CN.9/1064/Add.2, A/CN.9/1064/Add.3 and A/CN.9/1064/Add.4), as well as a

<sup>40</sup> *Official Records of the General Assembly, Seventy-fourth Session, Supplement No. 17 (A/74/17)*, paras. 216–218.

<sup>41</sup> *Ibid.*, *Seventy-fifth Session, Supplement No. 17 (A/75/17)*, part two, paras. 81–82.

<sup>42</sup> Attended by more than 30 invited experts from academia, private practice and interested Governments. Presentations were made by representatives of UNCTAD, the Economic Commission for Europe, the Economic and Social Commission for Asia and the Pacific, the Organization for Cooperation of Railways, CIT, CMI and FIATA.

<sup>43</sup> The web page of the webinar may be found at <https://uncitral.un.org/en/webinar-dematerialization-negotiable-transport-documents>.

proposal for legislative work on electronic transactions and the use of artificial intelligence and automation (A/CN.9/1065).

**(a) Legal taxonomy**

226. The Commission recalled that, at its fifty-third session, in 2019, it had requested the secretariat to continue to develop a legal taxonomy of emerging technologies and their applications and to continue its appraisal of how existing UNCITRAL texts applied to the legal issues identified.<sup>44</sup> It took note of the subsequent work done by the secretariat to revise and expand the taxonomy, which served both as a record of the secretariat's exploratory work and as a map to guide future work. It heard that the secretariat planned to use the same methodology to prepare a new section of the taxonomy on distributed ledger (including blockchain) systems, and that the taxonomy could also serve as a basis for other activities of the secretariat in supporting the central and coordinating role of UNCITRAL within the United Nations system in addressing legal issues related to the digital economy and digital trade.

227. The Commission requested the secretariat to continue to develop the legal taxonomy in cooperation and coordination with relevant international organizations and authorized the secretariat to publish the content of the taxonomy.

**(b) Dispute resolution in the digital economy**

228. The Commission proceeded to consider a report on activities of the secretariat in relation to dispute resolution in the digital economy (A/CN.9/1064/Add.4) and the proposals presented therein.

229. With regard to technology-related dispute resolution, the Commission requested the secretariat to continue to engage with experts with a view to preparing an outline of provisions to assist in the operation of such dispute resolution.

230. With regard to online platforms for dispute resolution, there was general support that the secretariat should continue to collaborate with the Department of Justice of Hong Kong, China.

231. With regard to stocktaking of developments in dispute resolution in the digital economy, there was general support for the proposal that the secretariat should compile, analyse and share relevant information. It was mentioned that issues arising from the digitization would need to be carefully examined, for example, access to and preservation of digital evidence and its impact on the relationship between courts and arbitral proceedings. It was widely felt that the stocktaking would need to take into account the disruptive aspects of digitization, in particular with respect to due process and fairness.

232. Recognizing the limited resources available to the secretariat, the Government of Japan offered to contribute the financial resources necessary to implement the stocktaking project in its entirety. The Commission expressed its appreciation and gratitude to the Government of Japan for its offer to provide extrabudgetary contributions. The secretariat was given the flexibility to identify possible means and ways to implement the stocktaking project, subject to the relevant rules and regulations of the United Nations and the internal approval process in the Office of Legal Affairs.

233. In the light of the broad support expressed for holding a colloquium on topics related to dispute resolution in the digital economy, the Commission requested the secretariat to organize a colloquium during the seventy-fifth session of Working Group II to further explore the relevant legal issues and to identify the scope and nature of possible legislative work. It was agreed that the agenda for the colloquium should include, among others: (a) model provisions that could be utilized in the context of technology-related disputes or provisions to be incorporated by reference

<sup>44</sup> *Official Records of the General Assembly, Seventy-fifth Session, Supplement No. 17 (A/75/17)*, part two, para. 76.

in dispute resolution clauses; (b) legal standards that would apply to online platforms with in-built dispute resolution mechanisms and those dedicated mainly to dispute resolution; (c) impact of the use of technology in dispute resolution and the need for new standards; and (d) means to preserve the core principles of international dispute resolution in the light of all the developments. It was reiterated that the results of the colloquium should allow the Commission to make an informed decision at its next session on the desirability and feasibility of any future legislative work in the area of dispute settlement.

**(c) The use of artificial intelligence and automation in contracting**

234. The Commission recalled that, at its fifty-third session, it had requested the secretariat to present proposals for concrete legislative work for its consideration at the present session.<sup>45</sup>

235. The Commission heard different views on how to proceed with the proposal for legislative work on electronic transactions and the use of artificial intelligence and automation. One view was that the proposal was timely and identified the issues to be addressed with sufficient depth, and the topic was ready to be referred to Working Group IV. Another view, however, considered that it was not sufficient for the proposal to identify issues to be addressed and that the proposal did not sufficiently demonstrate that the use of artificial intelligence and automation raised problems in practice that called for legal solutions. It was considered that, without adequate justification of the need for legal harmonization in that area, the topic should not be referred to the Working Group. Yet another view was that the topic was important and deserved attention but an in-depth conceptual discussion was needed to refine the issues identified in the proposal before referring the topic to the Working Group. It was added that such a conceptual discussion needed to be structured and should be informed by input from legal experts and businesses that used artificial intelligence and automation in contracting.

236. Broad support was expressed to refer the issues identified by the secretariat to the Working Group, which the Commission asked to hold a focused conceptual discussion with a view to refining the scope and nature of the work to be conducted. While it was suggested that the discussion could take place in the form of a colloquium, the prevailing view was that the discussion should take place within the Working Group.

**(d) Data transactions**

237. Broad support was expressed for the secretariat to continue preparatory work on data transactions. It was noted that the topic might eventually be referred to Working Group IV to be dealt with in tandem with the topic of the use of artificial intelligence and automation in contracting (see paras. 234–236 above). It was added that work on those topics might eventually lead to the preparation of a “second generation” legislative text on electronic commerce, which could build on a consolidation of existing UNCITRAL texts on electronic commerce.

**5. The impact of COVID-19 on international trade law**

238. The Commission took note of the progress report by the Secretariat on the exploratory work undertaken pursuant to the request of the Commission at its fifty-third session<sup>46</sup> (A/CN.9/1080 and A/CN.9/1081). To supplement the material contained in that progress report, the Commission was informed that, following the issuance of the report, the secretariat had held an open webinar on 18 June 2021 on COVID-19 measures implemented by States, in cooperation with the Ministry of

<sup>45</sup> Ibid.

<sup>46</sup> *Official Records of the General Assembly, Seventy-fifth Session, Supplement No. 17 (A/75/17)*, part two, para. 89.



Economic Development of the Russian Federation and the International and Comparative Law Research Center.

239. The Commission expressed its appreciation to States that shared best practices and experiences through their responses to the questionnaire circulated by the secretariat. Broad support was expressed for continuing exploratory work on the topic, which was considered to be of considerable significance to States. It was added that work should be confined to the mandate of UNCITRAL. It was further noted that the focus should be on the legal response and recovery measures of States rather than international organizations.

240. There was support for mandating the secretariat to explore further the feasibility of establishing an online platform through which States could share their experiences with the implementation of measures to mitigate the effects of the COVID-19 pandemic, taking into account its financial and human resource implications. The view was expressed that the platform should be public, transparent and user-friendly and allow for interaction between users, whether on the platform itself or through designated contact points. Some doubt was expressed about the utility of the platform. It was added that information exchange could be better addressed through existing technical assistance and cooperation channels.

241. After discussion, the Commission requested the secretariat to continue its exploratory work of the issues identified in the progress report as possible issues falling within the mandate of UNCITRAL and to continue to hold expert meetings and other events with interested stakeholders to further advance the exploratory work. The Commission further requested the secretariat to continue exploring the options for establishing an online platform for information exchange by States.

## **C. Other topics (including non-legislative work)**

### **1. Dispute resolution**

#### **(a) Early dismissal**

242. The Commission considered the suggestion by Working Group II for it to consider and develop provisions on early dismissal for possible inclusion in the UNCITRAL Arbitration Rules (A/CN.9/1049, para. 60). While some concerns were expressed (including the divergence in approaches in different jurisdictions and also in the context of investment arbitration), the Commission requested Working Group II to discuss the topic at its seventy-fourth session upon finalizing the explanatory note to the UNCITRAL Expedited Arbitration Rules and present the results of its discussions to the Commission at its fifty-fifth session, in 2022.

#### **(b) Adjudication**

243. The Commission heard a proposal for adjudication procedure to be examined with an aim to prepare rules on international adjudication. It was noted that such work could usefully complement the work on expedited arbitration. Questions were raised about the interaction of such rules with existing rules and the enforceability of decisions rendered through adjudication. Considering the interest expressed in the Commission, it was decided that the topic of adjudication would be discussed in a colloquium to be held at the seventy-fifth session of Working Group II to discuss the desirability and feasibility of the work on adjudication by the Commission (see para. 233 above).

### **2. Climate change mitigation, adaptation and resilience**

244. The Commission recalled the round-table discussion on the Net Zero Legislative Project that had taken place on 9 July 2021 as a side event of the fifty-fourth session of the Commission (see para. 320 below). The Commission heard a proposal to examine (a) how existing UNCITRAL texts could be aligned with climate change mitigation, adaptation and resilience goals, and (b) whether further work could be

done by UNCITRAL to facilitate those goals in the implementation of those texts or through the development of new texts. It was added that public-private partnerships could be an area of focus for stocktaking existing texts, while legal uncertainty regarding the legal status of carbon credits traded in voluntary carbon markets could be a focus for future legislative work.

245. Broad support was expressed for the Commission to consider the proposal further, based on more precise information on the work involved. It was added that member States might need to carry out further internal consultations across different government agencies before a decision on future work could be taken, and that such work would need to be undertaken within existing public international law frameworks, such as the Paris Agreement on climate change of 2015.

246. After discussion, the Commission requested the secretariat to consult with interested States with a view to developing a more detailed proposal on the topic for presentation to the Commission for its consideration at its next session, in 2022.

#### **D. Methods of work**

247. The Commission heard a suggestion to extend until the fifty-fifth session of UNCITRAL, in 2022, the arrangements for the sessions of UNCITRAL working groups during the COVID-19 pandemic as contained in document [A/CN.9/1078](#), which extended the decision on the format, officers and methods of work of the UNCITRAL working groups during the COVID-19 pandemic adopted by States members of UNCITRAL on 19 August 2020. While some delegations suggested that the desirability of such arrangements would need to be reviewed by States members of UNCITRAL in December 2021, the prevailing view was that, in principle, such arrangements should be extended until the fifty-fifth session of the Commission. It was explained that member States could revisit the desirability of such arrangements on an ad hoc basis in case the global situation concerning the COVID-19 pandemic significantly improved. The need to ensure transparency and inclusiveness during deliberations was emphasized. In response, it was noted that the implementation of vaccination programmes varied in different countries and interim ad hoc decisions by States members of UNCITRAL should be avoided to the extent possible.

248. After discussion, the Commission agreed to extend until its fifty-fifth session the arrangements for the sessions of UNCITRAL working groups during the COVID-19 pandemic as contained in document [A/CN.9/1078](#).

249. The Commission took note of a list of possible adjustments in methods of work of UNCITRAL as contained in document [A/CN.9/1068](#). While general support was expressed for those possible adjustments, concerns were expressed that details of those adjustments would need to be further elaborated and discussed, including, for example, (a) the possibility for delegates to review and provide comments on a draft report before it is circulated for adoption through silence procedure and the languages in which comments could be handled and circulated by the secretariat, (b) the possibility for allowing parts of a report to be adopted in case silence was broken with respect to certain contentious issues, (c) the suitable meeting hours and platform for hybrid meetings, and (d) rules on the organization of informal consultations (e.g., frequency, advance notice, moderation and role of a working group's chairperson). As regards the holding of informal consultations, while the usefulness of such consultations as a means for clarifying positions, explaining issues and canvassing options was widely acknowledged, delegations emphasized the need to clearly differentiate them from working group sessions, which were the proper forum for taking decisions. As regards the possible adjustment to enhance tools that the UNCITRAL secretariat used for collecting and keeping current contact details of delegates and observers, there was broad support for making contact details available to delegates, with a strong preference being expressed for a closed password-protected system which could be accessed by delegates; however, Permanent Missions of States



Members of the United Nations should continue to receive all relevant communications.

250. After discussion, the Commission recalled that some of the adjustments would in any event apply to all UNCITRAL meetings until its fifty-fifth session as a result of its decision to extend the arrangements for the sessions of UNCITRAL working groups during the COVID-19 pandemic as contained in document [A/CN.9/1078](#). The Commission agreed that it was premature to decide on those possible adjustments on a permanent basis, and that it would revisit the issue at its fifty-fifth session, in 2022, in the light of the experience gained in the meantime.

## **E. Resource requirements to implement investor-State dispute settlement reform**

251. The Commission recalled that it had, during its fifty-third session, considered the resource requirements for the implementation of the work programme with respect to investor-State dispute settlement reform (referred to below as the “ISDS Project”), but due to the limited time available at that session and divergence in views, it was not able to come to a consensus on a proposed way forward.<sup>47</sup> It was further recalled the need for Working Group III to develop a workplan had been highlighted at that session.

252. The Commission noted that Working Group III, at its resumed fortieth session in May 2021, considered a workplan ([A/CN.9/1054](#), annex), which was generally accepted as providing a flexible roadmap for progress to be made by the Working Group. Considering that the workplan was prepared on the basis of a resource request for one additional one-week session per year from 2022 to 2025, the Working Group requested the secretariat to revise the document on resource implications and present it to the Commission ([A/CN.9/1054](#), paras. 35 and 36).

253. The Commission proceeded to consider the resource requirement to implement the ISDS Project on the basis of document [A/CN.9/1063](#), focusing its deliberation on whether it would recommend to the General Assembly that additional conference time and supporting resources be allocated to the secretariat for advancing and completing the ISDS Project, providing an additional one-week session per year for a period of four years (2022–2025).

254. The Commission heard an oral presentation by the chairperson of Working Group III on the work and resourcing plan. It was recalled that the workplan contained in document [A/CN.9/1054](#) was the result of a compromise achieved after extensive informal consultations open to all delegations as well as deliberations at the formal sessions of the Working Group since 2018. It was said that while the workplan was specific and detailed, it was intended to remain flexible, and that such flexibility was the key to how it would function. It was underlined that the scheduling of work for each of the reform options would need to be adjusted as progress was made, particularly with regard to the so-called cross-cutting issues. It was further said that the workplan would be reviewed on a regular basis so as to ensure that it continued to meet the needs of the Working Group, and that it remained effective and efficient. It was also underlined that the number of informal meetings could be adjusted going forward, based on the Working Group’s requirements, the effectiveness of such meetings, the ability to ensure that such meetings were inclusive and transparent, and in the light of the limited capacity of certain delegations to prepare adequately for, and attend, such meetings.

255. Concerns were expressed about the number of informal meetings envisaged in the workplan. The need to ensure (a) a balance between formal and informal meetings, (b) interpretation in informal meetings (including translation of documents) for the sake of transparency and inclusiveness, and (c) proper intervals between the meetings to allow for sufficient preparation time were emphasized. It was suggested that the

<sup>47</sup> *Ibid.*, paras. 102–119.

difference in views regarding the adequate number of informal meetings should not affect the decision of the Commission on its request for additional resources for formal meetings.

256. It was suggested that the workplan should put more emphasis on the cross-cutting issues, which were of particular interest to developing countries (for example, assessment of damages, right to regulate, regulatory chill, exhaustion of local remedies, involvement of domestic courts and third-party participation). It was further suggested that additional conference time be allocated to those issues, possibly as a separate workstream, to allow for adequate deliberation and to develop appropriate solutions. Similarly, it was suggested that the work on a multilateral instrument on investor-State dispute settlement reform deserved a separate workstream. Lastly, a suggestion was made that all of the reform options should be viewed in an interlocking manner that can build on one another so as to not lose sight of the aim of the ISDS Project, which was to address the concerns being raised about the legitimacy of the current regime for investor-State dispute settlement.

257. While a number of other suggestions were made on the workplan, it was reiterated that the workplan was a notional document providing only a roadmap and that details could be adjusted as progress was made. It was broadly felt that the workplan would need to remain flexible and at the same time, ensure that the reform process remained government-led, inclusive and transparent.

258. Regarding the request for resources to hold one additional week of working group session for a period of four years from 2022 to 2025, broad support was expressed on the basis that additional conference time would be useful to the Working Group to maintain its momentum and advance on its work in the following years. It was widely felt that the request by Working Group III was a reasonable one foreseeing the completion of the ISDS Project in a reasonable time period while balancing a number of different interests. It was emphasized that without additional resources, the completion of the ISDS Project could be postponed to 2028 or even later. The importance and urgency of the ISDS Project, including in particular for developing countries, were underlined.

259. Concerns were expressed that the workplan still required revisions to accommodate the interest of all stakeholders taking part in the reform process and that the number of informal meetings envisaged in the workplan was excessive. Concerns were also expressed about the burden that the additional conference time could have on certain delegations. Accordingly, it was suggested that the Commission should not make a hasty decision to request additional resources given the limited resources of States resulting from the situation of the COVID-19 pandemic. In response, it was pointed out that the flexibility inherent in the workplan and its periodic review by the Working Group could mitigate such concerns and that such concerns were not a reason to delay a decision on the request for additional resources.

260. It was said that the request for additional resources should be regarded as being exceptional in nature and should not set a precedent for further requests by Working Group III. It was pointed out that a decision to request additional resources should take into account the fact that the Commission would be expected to adopt reform options on a rolling basis, which was part of the compromise reached by the Working Group as making it possible to achieve tangible results sooner than later. It was also indicated that a balanced approach should be taken in relation to the other working groups and allocation of resources among them. It was further pointed out that ways to make effective use of existing conference resources available to the Working Group should continue to be pursued. It was said that additional conference time should not be to the detriment of the developing countries that might lack the resources or technical capacity to join those sessions.

261. A suggestion was made to limit the request for one additional week of conference time to the year 2022, with the Commission considering whether to make the request again at its next session. Another suggestion was to retain the current request for a period of four years but for the Commission to review annually the

progress made by Working Group III, in particular its use of the additional conference time and supporting resources.

262. While views were expressed on the scheduling of the additional one-week session and its place, it was generally felt that the details could be considered by the Commission once the requested additional resources were granted by the General Assembly.

263. After discussion, based on strong support, the Commission decided to recommend to the General Assembly that additional conference and supporting resources be allocated to the secretariat for a single period of four years, from 2022 to 2025, as outlined in document [A/CN.9/1063](#), on the condition that the Commission would during its annual session re-evaluate and, if needed, revisit its decision concerning the need for allocating one additional one-week session per year and supporting resources to Working Group III taking into consideration the Working Group's report on the use of its resources. Accordingly, the Commission requested Working Group III to report annually on the use of its resources.

### **XIII. Endorsement of texts of other organizations: Unidroit Principles of International Commercial Contracts 2016**

264. Unidroit requested the Commission to consider possible endorsement of the Unidroit Principles of International Commercial Contracts 2016.<sup>48</sup>

265. The Commission noted that the 2016 edition of the Unidroit Principles was its fourth edition; the Unidroit Principles had been initially published in 1994 and then in 2004 and 2010. It was recalled that the Commission had endorsed the Unidroit Principles 2010 at its forty-fifth session, in 2012.<sup>49</sup>

266. It was further noted that the main objective of the Unidroit Principles 2016 was to take better into account the special needs of long-term contracts, and that, as such, they amended six provisions of the Unidroit Principles 2010 and several Comments to those Principles.

267. Overall, general support was expressed for recognizing that the Unidroit Principles 2016 set forth a comprehensive set of rules for international commercial contracts, complementing a number of international trade law instruments, including the United Nations Sales Convention.

268. Taking note of the amendments made in the Unidroit Principles 2016 and their usefulness in facilitating international trade, the Commission adopted the following decision in accordance with the procedure for taking decisions of UNCITRAL during the COVID-19 pandemic on 30 July 2021:

*“The United Nations Commission on International Trade Law,*

*“Expressing its appreciation to the International Institute for the Unification of Private Law (Unidroit) for transmitting to it the text of the 2016 edition of the Unidroit Principles of International Commercial Contracts,*

*“Taking note that the Unidroit Principles 2016 complement a number of international trade law instruments, including the United Nations Convention on Contracts for the International Sale of Goods,<sup>50</sup>*

<sup>48</sup> Available from [www.unidroit.org](http://www.unidroit.org).

<sup>49</sup> *Official Records of the General Assembly, Sixty-seventh Session, Supplement No. 17 (A/67/17)*, paras. 137–140.

<sup>50</sup> United Nations, *Treaty Series*, vol. 1489, No. 25567.

“*Noting* that the Preamble of the Unidroit Principles 2016 states that:

‘These Principles set forth general rules for international commercial contracts.

‘They shall be applied when the parties have agreed that their contract be governed by them.

‘They may be applied when parties have agreed that their contract be governed by general principles of law, the *lex mercatoria* or the like.

‘They may be applied when the parties have not chosen any law to govern their contract.

‘They may be used to interpret or supplement international uniform law instruments.

‘They may be used to interpret or supplement domestic law.

‘They may serve as a model for national and international legislators.’

“*Congratulating* Unidroit on having made a further contribution to the facilitation of international trade by preparing general rules for international commercial contracts,

“*Commends* the use of the Unidroit Principles 2016, as appropriate, for their intended purposes.”

## XIV. Coordination and cooperation

### A. General

269. The Commission had before it a note by the Secretariat ([A/CN.9/1069](#)) providing information on the activities of international organizations in the field of international trade law in which the secretariat had participated since the fifty-third session of the Commission. The Commission noted the impact of the measures taken around the world to contain the COVID-19 pandemic on the secretariat’s coordination efforts in the reporting period, some of which had taken place remotely by videoconference, while other activities had been cancelled or postponed.

270. The Commission noted with appreciation the cooperation between the secretariat and Unidroit in the preparation of a model law on warehouse receipts (see para. 277 (a) below, and [A/CN.9/1066](#)). The Commission also took note of the cooperation between the secretariat and Unidroit in the area of factoring and, more generally, in the area of secured transactions, as well as on legal issues related to the digital economy (see [A/CN.9/1064](#), [A/CN.9/1064/Add.1](#), [A/CN.9/1064/Add.2](#), [A/CN.9/1064/Add.3](#) and [A/CN.9/1064/Add.4](#)); and the scope for cooperation with HccH in connection with legal issues of the digital economy and online dispute resolution. The Commission further expressed its gratitude to the HccH for its contribution to the organization of the Colloquium on the Applicable Law in Insolvency Proceedings (see para. 215 above and para. 276 (b) below, and [A/CN.9/1060](#)).

271. 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 relating specifically to the insolvency of micro- and small enterprises, building on the work done in the past meetings of the Insolvency and Creditor/Debtor Rights Task Force of the World Bank Group. The Commission stressed the importance of ensuring coherence between the work of UNCITRAL and that of the World Bank on that matter.

272. The Commission was informed of the results of the Fourth Conference on International Coordination of Secured Transactions Law Reforms, which the secretariat had co-hosted with the World Bank Group, Unidroit, the International

Insolvency Institute and NatLaw. The Commission took note of the initiative of those organizations to develop an informal consultation mechanism to facilitate the collection and sharing of information with regard to on-going secured transactions law reforms and cooperation upon receiving request for technical assistance.

273. More generally, 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, Asia-Pacific Economic Cooperation, the Energy Charter Treaty secretariat, ICSID, 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 and the World Trade Organization.

274. 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,<sup>51</sup> as a means of avoiding duplication of efforts and promoting efficiency, consistency and coherence in the unification and harmonization of international trade law.

## **B. Reports of other international organizations**

275. 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**

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

(a) *Legal Guide to Uniform Instruments in the Area of International Commercial Contracts, with a Focus on Sales*. The publication of the Guide and further collaboration with UNCITRAL and Unidroit to promote awareness of the Guide among relevant stakeholders were emphasized;

(b) *Colloquium on Applicable Law in Insolvency Proceedings*. The colloquium was co-hosted by the UNCITRAL secretariat and the permanent bureau of HccH, who expressed interest for cooperation in relation to possible future work on that topic following the mandate by the Council on General Affairs and Policy of HccH.

### **2. Unidroit**

277. 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 the scope of the project was defined after a webinar jointly organized by Unidroit and UNCITRAL. The Working Group held two sessions in December 2020 and March 2021, and the third session was scheduled for September 2021;

<sup>51</sup> See General Assembly resolution 2205 (XXI), sect. II, para. 8.

(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 then grew into a fully-fledged Working Group. Three meetings of the Working Group were held since November 2020;

(c) *Tripartite Legal Guide to Uniform Legal Instruments in the Area of International Commercial Contracts, with a Focus on Sales.* The final publication of the *Guide* was highlighted.

### 3. Permanent Court of Arbitration

278. The representative of PCA made a statement providing a summary of the work of PCA in the period 2020–2021, including an update of its provision of registry support in a number of different arbitration proceedings and, in particular, its experience with the operation of the UNCITRAL Arbitration Rules (including the 1976, 2010 and 2013 versions). The Commission took note with satisfaction of the continuing coordination and cooperation with PCA, in particular the cooperation to ensure that one PCA-administered investor-State case in which the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration apply may be reflected in the UNCITRAL transparency repository. 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

279. The representative of OAS briefly reported on the following activities:

(a) *Simplified business start-up.* The OAS secretariat invited the UNCITRAL secretariat to deliver a presentation on the work of UNCITRAL Working Group I (i.e., key elements of the Legislative Guide on Limited Liability Enterprises) at a regional meeting of OAS focal points for the Model Law on the Simplified Corporation. It was emphasized that the Legislative Guide and the Model Law could function as complimentary mechanisms in the reforms for simplifying business incorporation;

(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 launched a publication (available online) 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). The OAS secretariat also participated in the Fourth Conference on International Coordination for Secured Transactions Law Reforms hosted by the UNCITRAL secretariat and supported the initiative for a Joint Committee to coordinate this effort;

(c) *International contract law.* The OAS secretariat continued to disseminate the *Guide on the Law Applicable to International Commercial Contracts in the Americas*, which had been referenced, for example, by Hispanic-Luso-American Institute of International Law and OAS Member States in their own domestic reforms;

(d) *Warehouse receipts.* The Inter-American Juridical Committee (IAJC) had approved draft principles in 2016 but has held any further work in abeyance. As technical secretariat to IAJC, the OAS secretariat expressed its support for the joint initiative by UNCITRAL and Unidroit to develop a model law on warehouse receipts.

280. The representative of OAS also noted the over-arching mandate approved by the OAS General Assembly for the secretariat to promote greater dissemination of private

international law among member States, in collaboration with other organizations that work in this area. In October 2020, the OAS General Assembly had instructed its secretariat to explore ways of applying private international law to reactivate the economy, strengthen small businesses, resolve conflicts between individuals and provide legal certainty. It also requested the promotion of the study of private international law in the Americas, possibly with the participation of other organizations specializing in that field. The secretariat was pleased to learn of the initiative by the UNCITRAL secretariat to hold the annual event known as the “Latin America and the Caribbean Day” (see para. 289 below) and expressed its interest and support for a similar event at a future date. Finally, it was also reported that IAJC, as the OAS advisory body on juridical matters, included on its agenda the topic of contracts between merchants with one contractually weaker party.

## **5. Organization for Harmonization of Business Law in Africa**

281. OHADA highlighted its longstanding excellent relationship with UNCITRAL, which translated into the organization of joint activities as well as a regular exchange of information between UNCITRAL and OHADA on subjects of common interest. The signature of a cooperation agreement between the two institutions on 26 October 2017 was recalled in that context.

282. In 2021, the collaboration between the two institutions materialized with the joint webinar on challenges and opportunities offered by the digital economy in the francophone area and Western Africa, which was held online on 11 May 2021, with the assistance of the International Organization of la Francophonie. On that occasion, Government representatives and experts were able to share their views on the current challenges linked with the acceleration of the digital transformation and the potential enactment by OHADA of a uniform Act on electronic transactions. In addition, OHADA expressed its willingness to continue to take part in the work of UNCITRAL Working Group III (Investor-State Dispute Settlement Reform) as well as to participate in the efforts of African and francophone countries in that work.

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

283. The Commission had before it a note by the Secretariat providing information about the newly accepted international governmental and non-governmental organizations, and non-governmental organizations whose applications were declined in the period from the start of the fifty-third session of UNCITRAL until 19 May 2021 (A/CN.9/1072). 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 investor-State dispute settlement issues.

# **XV. Technical assistance to law reform**

## **A. General**

284. The Commission had before it the following notes by the Secretariat, addressing activities undertaken between 1 April 2020 and 31 March 2021 to support the adoption, use and uniform interpretation of UNCITRAL texts (“support activities”): the note by the Secretariat on technical cooperation and assistance (A/CN.9/1058); the note by the Secretariat on activities undertaken by the UNCITRAL Regional Centre for Asia and the Pacific (A/CN.9/1057); and the note by the Secretariat on the dissemination of information and related activities to support the work of UNCITRAL and the use of its texts, including the report on CLOUT and digests (A/CN.9/1059).

285. The Commission recalled that these support activities were integral elements of harmonizing international trade law in practice, and included raising awareness and promoting the effective understanding of UNCITRAL texts and general outreach

activities; providing advice and assistance to States on adoption and use of those texts; and building capacity to support their effective use, implementation and uniform interpretation, as further explained in the above notes.

## **B. Technical cooperation and assistance activities**

286. The Commission expressed its appreciation for the efforts of the secretariat to meet the increased demand for support activities, noting that the ongoing COVID-19 measures had required almost all activities reported to be undertaken online. It welcomed that, during the reporting period, there had been a near two thirds increase in the number of activities and a growth in capacity-building as well as awareness-raising activities: the number of participants in support activities had approached 8,000 in 2018, 14,000 in 2019 and had exceeded 24,000 in 2020. The Commission also appreciated the expanded geographical reach in support activities, itself facilitated by the secretariat's commitment to a multilingual approach, with participants from Africa, Asia and Latin America and the Caribbean increasing from 59 per cent of participants in the period 2019–2020 to 69 per cent of participants in the period 2020–2021.

287. The Commission was particularly appreciative of the analysis of the extent and scope of support activities. It recalled that the secretariat had implemented a technical cooperation and assistance strategy in 2019, including a planning, data collection and monitoring tool, which had allowed the generation of this information and analysis.<sup>52</sup>

288. The Commission also expressed its appreciation for the extent of support activities carried out in partnership with governments, international and regional organizations, multilateral and regional development agencies, professional associations, organizations of practitioners, and chambers of commerce and arbitration centres, recognizing the enhanced efficiency and effectiveness through such collaborations.

289. The Commission welcomed the expansion of engagement with partners from the academic sphere, including the UNCITRAL Day series of events (for those in the Asia-Pacific region, see para. 311 below). The Commission also noted with appreciation the participation of representatives of Latin American and Caribbean Governments and regional universities in the first edition of the UNCITRAL Latin American and the Caribbean Day. This first edition had involved 30 online events across the region, introduced the work of UNCITRAL to an expanded audience and elicited a renewed commitment to both UNCITRAL and international trade law reform in particular with regard to transparency in international investment dispute settlement.

### **1. Panels on technical assistance activities<sup>53</sup>**

290. The Commission commended the secretariat for having organized two virtual panel discussions on technical assistance activities, held during the Commission's 1156th meeting, on Friday, 16 July, focusing on the recovery of MSMEs from the COVID-19 economic shock and on the celebration of the UNCITRAL Asia-Pacific Day and the Latin America and the Caribbean Day.

<sup>52</sup> See A/CN.9/1032, para. 31, implementing the relevant recommendations contained in the report of the Office of Internal Oversight Services on the evaluation of the Office of Legal Affairs (E/AC.51/2019/9, summarizing text in headings above paras. 34 and 69).

<sup>53</sup> The programme, a video recording of the panels, speaker details and summaries of their remarks are available at <https://uncitral.un.org/en/content/technical-assistance-and-coordination>.



**(a) Micro-, small and medium-sized enterprises and recovery from the COVID-19 economic shock**

291. The first panel discussion took the form of a round table to discuss the critical role of MSMEs in recovering from the COVID-19 economic shock and the vital contribution of a high-quality enabling commercial law framework to that recovery.

292. The Commission heard a brief overview of UNCITRAL legislative texts and ongoing work to support MSMEs throughout the business life cycle.

293. Four countries from Africa, Asia and Latin America then shared their approach to supporting the recovery from the COVID-19 induced economic shock, focusing on steps to support MSMEs and the important role of an effective commercial law framework.<sup>54</sup>

294. A representative of Côte d'Ivoire highlighted the issue faced by informal businesses in the country as they were not eligible for financial and administrative support provided by the Government in response to the crisis. He noted that the crisis had accelerated programmes to formalize and register micro- and small businesses and had provided an opportunity to review the legal framework for MSMEs. Recalling the role of government and donors in providing capacity-building and information to entrepreneurs, he highlighted the recommendations on a simplified insolvency proceeding for MSEs and expressed interest in its use in further work on this topic in the country.

295. A representative of Thailand discussed measures taken to facilitate simpler and speedier dispute resolution options for MSMEs, highlighting the mediation of legal financial disputes for distressed MSMEs. The Commission heard that a clear framework for settling disputes enhanced effective access to justice for MSMEs. In addition, the representative of Thailand announced that mediation for financial disputes and debt restructuring for MSMEs would be included in the national agenda, with the new Thailand Business Mediation Centre to promote pre-litigation mediation for MSMEs currently under development by the Bank of Thailand and the Court of Justice of Thailand.

296. A representative of Colombia explained recent legislative changes in Colombia, reflecting UNCITRAL texts on MSMEs and insolvency law, and the open and consultative process leading up to the reforms to support their acceptability, effectiveness and key objectives (expeditious, simple and flexible procedure, universal applicability and friendly e-access to documents). He commended UNCITRAL for its thoughtful and rigorous work in those fields and expressed the wish that the recommendations and commentaries to its insolvency texts be made available as soon as possible.

297. A representative of Burkina Faso described the legal framework on the promotion of MSMEs and the measures taken to assist MSMEs in the economic crisis caused by the pandemic. These included enhancing access to public procurement, which was crucial to ensure sustainable growth of MSMEs, and providing financial support from various sources. In addition, COVID-19 response measures included support for the development of MSMEs in the health and pharmaceutical sector, which was a key pillar of the promotion of MSMEs in the country.

298. Two long-time partners of UNCITRAL in the delivery of technical assistance then shared their perspectives drawing on current projects and their anticipated impact.

299. A representative from the World Bank Group highlighted the importance of an effective insolvency regime for MSMEs in the pandemic context and generally. Emphasizing the long-standing cooperation between the UNCITRAL secretariat and

<sup>54</sup> A representative of India was unable to join the session for technical reasons. Her remarks on digital tools in India to develop MSMEs, as well as the importance of raising the minimum threshold for default to initiate insolvency proceedings, among other initiatives, will be made available at the above web link.

the World Bank, and recalling the World Bank Group and the secretariat's planned joint judicial capacity-building session in autumn 2021 (see para. 58 above), the representative noted the benefits of such joint training. It would allow judges from advanced economies and emerging markets to exchange views and experiences in handling insolvency cases and to increase their awareness of UNCITRAL and World Bank Group insolvency texts.

300. A representative of the German Cooperation Agency (GIZ) explained its project on good governance in the Western Balkan States, to support the legal framework for economic development and especially MSMEs. Noting the importance of regional cooperation in particular in attracting investment into the region, she recalled that the UNCITRAL dispute resolution framework had played a significant role. The countries in the region had all used UNCITRAL texts in their dispute settlement mechanisms and were actively participating in current discussions on investor-State dispute settlement reform. In concluding, she informed the Commission that GIZ was pleased to continue this cooperation and welcomed the adoption of the dispute resolution instruments at this session.

301. Reflecting on the points already made, a representative of Mexico highlighted the devastating effect of the pandemic on MSMEs, given their scale and high proportion of employment in Mexico, and the importance of access to benefits offered in the formal economy. Noting that informal MSMEs were among the businesses hardest hit, he welcomed UNCITRAL legislative work on the MSME life cycle including insolvency to map out and support MSMEs.

302. Further discussion considered lessons that could be drawn from the experience. The importance of building resilience into commercial law frameworks to mitigate the effects of worldwide emergencies similar to the COVID-19 pandemic in future work of UNCITRAL was agreed.

303. In that regard, a representative of Chile emphasized the importance of empowering women entrepreneurs with the support of dedicated organizations at the international and regional levels, calling upon coordination with other United Nations bodies and agencies, such as the United Nations Development Programme and the Economic Commission for Latin America and the Caribbean, that were heavily involved in this major topic.

304. A representative of the Dominican Republic detailed the support measures provided to MSMEs and emphasized the importance of the international cooperation in that respect, with capacity-building for entrepreneurs being made more affordable through digital means.

305. That panel concluded with a broad agreement that the use of UNCITRAL texts could support economic recovery in countries at all levels of economic development, particularly in areas such as insolvency and access to finance, which would allow MSMEs to be established, grow and flourish, with the potential to enhance social as well as economic development through educational and employment opportunities.

306. The Commission welcomed that demonstration of the relevance of the work of UNCITRAL to the 2030 Agenda for Sustainable Development, and thanked the participants for their contributions. The Commission took note of the priorities and needs expressed by States during the panel, which had highlighted the importance of tools throughout the business cycle of MSMEs, from business establishment and registration, through access to credit and effective and efficient dispute settlement. It expressed its gratitude for the support of the donor community and their collaboration with UNCITRAL in supporting all countries, and in particular those with lower levels of development, in commercial law reform to facilitate recovery from the economic impact of the COVID-19 pandemic. In that context, the Commission also welcomed

the joint UNCITRAL-World Bank Group judicial capacity-building initiative aimed at promoting international best practices in the area of insolvency law.<sup>55</sup>

307. From that perspective, the Commission stated, attracting investment, building resilience into the commercial law framework and focusing on measures to allow MSMEs to grow and flourish would provide not just economic but also social benefits. The Commission also recalled discussions earlier in the session on States' commitments towards net zero carbon emissions, and agreed that it should take all three pillars of sustainable development into consideration in its future activities

**(b) Celebration of the annual UNCITRAL Day**

308. The panel highlighted the importance of the annual UNCITRAL Day, which comprised an academic series of events that the UNCITRAL secretariat co-hosts with institutions of higher learning and public agencies during the last trimester of each year. The Commission heard that the series commemorates the establishment of UNCITRAL was initially launched in 2014 by the UNCITRAL Regional Centre for Asia and the Pacific (the "Regional Centre") as the annual UNCITRAL Asia-Pacific Day, and in 2020 was expanded to the Latin America and the Caribbean region.

309. The Commission commended the secretariat for the UNCITRAL day events, noting that their main objective was to raise awareness of UNCITRAL among law students, future participants in and contributors to the work of UNCITRAL. The Commission also welcomed the opportunity that the "UNCITRAL days" had provided to States and partner organizations to illustrate their contributions to the harmonization of international trade law in practice through the use of UNCITRAL texts in their own technical assistance activities, and noted that detailed reports of the 2020 events of the UNCITRAL Asia-Pacific Day and the UNCITRAL Latin America and the Caribbean Day were available on the UNCITRAL website.<sup>56</sup>

310. The Chairman of the fifty-third session of UNCITRAL stated that it had been an honour to launch the inaugural UNCITRAL Latin America and the Caribbean Day in 2020, whose theme had been transparency in treaty-based investor State arbitration. In response to COVID-19, the UNCITRAL Latin America and the Caribbean Day were held online, but had nonetheless involved 30 events and 34 partner institutions in 16 jurisdictions. The events had been highly successful in promoting and raising awareness of UNCITRAL among experts, government officials, policymakers, stakeholders, students and future leaders in international private law and reflected the commitment of States and collaboration with the secretariat. UNCITRAL texts had been included in academic curricula following the UNCITRAL Latin America and the Caribbean Day. The Chairman of the fifty-third session of UNCITRAL expressed his pleasure at the forthcoming 2021 UNCITRAL Latin America and the Caribbean Day, and affirmed the commitment of Peru to that event.

311. A representative of the Republic of Korea commended the secretariat's continued success since the first UNCITRAL Asia-Pacific Day in 2014 in engaging students and academics with the work of UNCITRAL and the importance of legal harmonization at the global level, including the Regional Centre's co-organizing 19 UNCITRAL Asia-Pacific Day activities in 2020 with 35 partner institutions in 10 jurisdictions, reaching a live audience of approximately 8,500 participants, and highlighted the importance of the collaboration between the Centre and the Republic of Korea.

312. A representative of Argentina affirmed the country's commitment to the development of international trade law, which was also the objectives of the annual UNCITRAL days and to supporting the 2021 edition of the UNCITRAL Day in Argentina. Argentina welcomed the participation of its universities and regional

<sup>55</sup> See the Commission's invitation to the secretariat to intensify its capacity-building activities in support of the judiciary, and to report to future sessions on those activities (A/74/17, para. 251).

<sup>56</sup> The reports on UNCITRAL Asia-Pacific Day and Latin America and the Caribbean Day in 2020 are available at <https://uncitral.un.org>.

organizations (such as the American Association of Private International Law). In 2020, eight Argentinian universities had hosted events with a diverse pool of students and international and national experts, including well-known professors, arbitrators, experts from the public and private sector.

313. A representative of the International Chamber of Commerce Arbitration and Alternative Dispute Resolution, North Asia, lauded the robust partnership with the Regional Centre resulting in seven UNCITRAL Asia-Pacific Day events in three jurisdictions in 2020, adding that plans were already under way for this year's series to help young generations better understand international law and the rule-making process.

314. The panel concluded with a discussion of the benefits to other regions of holding the annual UNCITRAL Day in the future, an invitation to join the 2021 UNCITRAL Day flagship series, and a commitment to holding an inaugural UNCITRAL Africa Day series of events in 2022.

315. The Commission welcomed the successes of the annual UNCITRAL Day in both the Asia-Pacific and the Latin American and Caribbean regions, welcomed the forthcoming 2021 series, and took note of the potential benefits for other regions to host UNCITRAL Day events. In this regard, the Chairman of the current session called upon States to host an inaugural series of UNCITRAL Africa Day in 2022, and expressed appreciation for the evident engagement of many States in the region, and their willingness, along with States from other regions, to work with UNCITRAL to support the annual UNCITRAL Days

## **2. Side events to the fifty-fourth session of UNCITRAL**

316. The Commission also welcomed the initiative of the secretariat in organizing side events to its fifty-fourth session, and took note of the issues raised, as summarized below.

317. On 30 June 2021, approximately 50 representatives from African States and beyond came together for an African forum, and shared their thoughts on areas of commercial law with particular resonance in the region. Those areas included digitization of the economy and the establishment of a harmonized legal framework for a fair and efficient settlement of international investment disputes, and discussions also highlighted the critical importance of transparency, accountability and good governance in the commercial law framework. The importance of harmonization of commercial law in the region, reflected in the adoption of the African Continental Free Trade Area Agreement, was also raised. Participants agreed on the critical need to enhance participation of African countries in the work of UNCITRAL, to ensure that the work could take account of regional interests, and the need – also vital to support progress towards the sustainable development goals in the region – to deploy technical assistance and capacity-building tools to enhance the effective understanding and use of UNCITRAL texts.

318. On 7 July 2021, following the Commission's adoption of the UNCITRAL Mediation Rules, UNCITRAL Notes on Mediation and the Guide to Enactment and Use of the UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation (2018) (see chap. VI above), approaching 100 participants attended a round table on investor-State mediation, jointly organized with ICSID. Participants shared experience on the necessary institutional capacity of States to allow for constructive use of mediation, the legal framework, the ICISD mediation rules (currently under adoption) and on treaty practice. Examples of States' good practices, from different regions, were presented and the possible role of an advisory centre on investment law in fostering mediation was considered. Speakers agreed that the Singapore Convention on Mediation provided for a momentum conducive to mediation, but that public awareness-raising and capacity-building continued to be of the essence.

319. On 8 July 2021, approximately 50 participants witnessed a presentation of the Swiss Arbitration Association Toolbox, an electronic platform providing practical advice on the various stages of an arbitration, and complementing the UNCITRAL Notes on Organizing Arbitral Proceedings.<sup>57</sup> The participants learned how the Toolbox provided guidance to arbitrators of all levels of experience and for arbitrations under different sets of arbitral rules using an interactive questionnaire to direct users to relevant information.

320. On 9 July 2021, approximately 60 participants listened to a proposal to initiate a Net Zero legislative project, through collaboration among the Net Zero Lawyers' Alliance, the Oxford Sustainable Law Programme, the Climate Law and Governance Initiative and the Centre for International Sustainable Development Law. The initiative included a focus on existing climate change mitigation and adaptation objectives in modern commercial law, tools important for States that had committed to mitigate and adapt to climate change in the 2015 Paris Agreement, and would also consider areas in which additional tools would be needed. A round-table discussion considered existing UNCITRAL texts on public-private partnerships, international contracts for the sale of goods, dispute resolution and legal frameworks to support MSMEs, which could offer legal tools to assist both States and non-State actors in moving towards net zero emissions by 2050, and the possible need for additional texts to address issues in global energy, infrastructure, industrial and land use markets and systems. The round table concluded that a feasibility study would help States members of UNCITRAL to consider the role of UNCITRAL in addressing those critical issues.

321. On 12 July 2021, UNCITRAL launched its first online course, "Introduction to the United Nations Commission on International Trade Law", developed in partnership with the International Training Centre of the International Labour Organization and designed to complement the secretariat's face-to-face training activities and to increase its knowledge-sharing capacity.<sup>58</sup> Some 90 participants heard that the course was primarily aimed at prospective UNCITRAL delegates and government officials that might request or receive technical assistance and capacity-building activities, and that other technical contributors and researchers and practitioners with a general interest in UNCITRAL might also find it useful. The initial three modules introduced UNCITRAL and its work,<sup>59</sup> and it was noted that additional subject-specific modules were planned.

### **C. Dissemination of information on the work and texts of UNCITRAL**

322. The Commission also welcomed the activities of the secretariat to raise awareness and understanding of UNCITRAL and its activities, including press releases, induction briefings to member States and other stakeholders, and contributions to periodicals, reports and other writings relevant to the work of UNCITRAL. The Commission expressed particular appreciation for the expanded online and social media presence of UNCITRAL,<sup>60</sup> and the greater use of videoconferences and webinars and written materials addressing UNCITRAL texts. Those outreach activities, it noted, were designed to reach not only existing UNCITRAL delegates and observers at its sessions, but also to meet an emerging interest in UNCITRAL from a broader audience (itself reflected in increasing consumption of the online and social media information of UNCITRAL).

323. In that regard, the Commission expressed particular gratitude for the release of an online programme of learning materials, available on a web-based distance

<sup>57</sup> The Toolbox is accessible free of charge at <https://toolbox.swissarbitration.org/toolbox/home> and will be updated as necessary.

<sup>58</sup> The course is available at <https://ecampus.itcilo.org/course/view.php?id=1637>, and a link will be provided on the UNCITRAL website.

<sup>59</sup> For further details, see A/CN.9/1059, paras. 11–14.

<sup>60</sup> Available at <https://uncitral.un.org> and on Facebook, YouTube, LinkedIn, Twitter and Soundcloud.

learning platform of the International Training Centre of the International Labour Organization, via a link from the UNCITRAL website. The Commission took note of a side event to its annual session, at which the programme was presented, and its benefits explained, and of the interest generated among the audience from all regions that it attracted (see para. 321 above).

324. The Commission also recalled the international character of its texts and, in that context, emphasized the importance of the tools made available on the UNCITRAL website both to enhance the effective understanding of the provisions of its texts and to promote their uniform interpretation. The Commission underscored that those tools provided mechanisms to further the progressive harmonization of international trade law in practice (in that regard, see also the Commission's discussion of CLOUT and digests in chapter XVI below).

325. The Commission noted the important role played by the UNCITRAL Law Library, especially its continued provision of online services and response to information requests throughout the COVID-19 pandemic. The Commission recalled its request that the secretariat continue to explore the development of new social media features on the UNCITRAL website as appropriate,<sup>61</sup> noting that the development of such features in accordance with the applicable guidelines was also welcomed by the General Assembly.<sup>62</sup> In that regard, the Commission noted with approval the continued use and development of the UNCITRAL LinkedIn and Facebook pages, the Twitter account for the Secretary of UNCITRAL, the Soundcloud account for podcasts, and the increased use of the YouTube account for the dissemination of information on the work and texts of UNCITRAL and use as an entry point into the Commission's work. The Commission was informed that during the reporting period, the number of followers of the YouTube account quadrupled and the number of followers on LinkedIn increased from approximately 17,000 to 27,000, a 60 per cent increase.<sup>63</sup> Finally, recalling the General Assembly resolutions commending the website's six-language interface,<sup>64</sup> the Commission requested the secretariat to continue to provide, via the website, UNCITRAL texts, publications, and related information, in a timely manner and in the six official languages of the United Nations.

## **1. Forthcoming activities**

326. The Commission welcomed the information on activities planned for the coming year, and its benefits as a planning tool for States and other potential participants, and which also provided an example of the benefits of the secretariat's data system as noted in paragraph 287 above.

## **2. International commercial law moot competitions**

327. The Commission recalled that UNCITRAL co-sponsored a series of international commercial law moot competitions. It noted that despite the limitations caused by the COVID-19 pandemic, most Moots took place virtually, such as the Willem C. Vis International Commercial Arbitration Moot, the Madrid Commercial Arbitration Moot, the Frankfurt Investment Moot, the Spanish-language VIII International Investment Moot, the Foreign Direct Investment International Arbitration Moot and Second Annual Arabic Moot Competition.

---

<sup>61</sup> *Official Records of the General Assembly, Seventieth Session, Supplement No. 17 (A/70/17)*, para. 247.

<sup>62</sup> General Assembly resolutions 69/115, para. 21; 70/115, para. 21; and 74/182, para. 27.

<sup>63</sup> For details of expanded UNCITRAL social media following, see A/CN.9/1059, paras. 8–9.

<sup>64</sup> General Assembly resolution 75/133, para. 32.

## D. Resources and funding

### 1. Voluntary contributions to UNCITRAL trust funds

328. The Commission noted that the continuing ability to respond to requests from States and regional organizations for technical assistance and capacity-building activities was dependent upon the availability of funds to meet associated costs. The Commission also took note that the secretariat had sought to maximize its available resources for technical cooperation and assistance activities through: (a) a strategic approach to the delivery of such activities, reflecting the priorities assigned to subject-areas and activities; (b) strategically-directed cooperation and partnerships with international organizations, regional offices and bilateral assistance providers in line with the Commission's suggestions in previous years; (c) seeking to secure additional voluntary contributions to UNCITRAL trust funds<sup>65</sup> (see paras. 331–332 below); and (d) delivery on a cost-share or no-cost basis where appropriate. The Commission also took note of the relevant activities set out in the note by the Secretariat (A/CN.9/980/Rev.1), and recalled the need for the Secretariat to remain neutral and independent in partnering in the delivery of technical assistance and related activities.<sup>66</sup>

329. The Commission reiterated its earlier requests to the secretariat to explore sources of extrabudgetary funding.<sup>67</sup> The Commission further noted that, despite active fundraising by the secretariat, the balances in the trust funds remained insufficient to meet the anticipated demand for technical assistance activities and requests for travel assistance, which were expected to recommence in person in the coming months.

330. The Commission expressed its gratitude to States and organizations that had contributed to the UNCITRAL trust fund for symposiums since the Commission's fifty-third session (as noted in A/CN.9/1059, para. 49):

(a) To the Government of the Republic of Korea (to support participation in the Asia-Pacific Economic Cooperation Ease of Doing Business project);

(b) To the Government of China under a memorandum of understanding with the United Nations;

(c) To the Government of France under a grant agreement to support research on investor-State dispute settlement, and for an agreement concluded for additional support in the forthcoming reporting period, including to facilitate the participation of developing countries and least developed countries in the activities of Working Group III, and for interpretation at informal meetings and for translation of materials;

(d) To the Government of Indonesia;

(e) To the Government of Saudi Arabia;

(f) To the Deutsche Gesellschaft für Zusammenarbeit (GIZ) by appointment of BMZ for strengthening the role of developing and least developed countries in the investor-State dispute settlement reform.

331. The Commission reiterated its call upon all States, international organizations and other interested entities to consider making contributions to the UNCITRAL trust fund for symposiums, if possible in the form of multi-year contributions or as specific-purpose contributions, in order to facilitate planning and enable the secretariat to meet the increasing number of requests for technical cooperation and assistance activities.

332. With respect to the trust fund for granting travel assistance to developing countries members of UNCITRAL, the Commission appealed to the relevant bodies

<sup>65</sup> *Official Records of the General Assembly, Seventy-third Session, Supplement No. 17 (A/73/17)*, para. 142.

<sup>66</sup> *Ibid.*, para. 188.

<sup>67</sup> *Official Records of the General Assembly, Seventy-fifth Session, Supplement No. 17 (A/75/17)*, part one, paras. 71–72.



of the United Nations system, organizations, institutions and individuals to make contributions to that trust fund. The Commission also expressed its appreciation to the Governments of Austria and France for their contributions.

333. The Commission further noted that the European Union had made resources available to provide financial support for constructive engagement and effective participation in the fulfilment of the mandate of UNCITRAL Working Group III (Investor-State Dispute Settlement Reform). While that funding is directed to UNCITRAL legislative activities, attendance at the sessions of the Working Group supports the development of capacity among the participating developing countries to participate more effectively in UNCITRAL legislative development. However, as a result of the COVID-19 pandemic, no travel assistance was granted during the reporting period.

334. The Commission recalled with gratitude the contributions from the European Union and the OPEC Fund for International Development that had permitted the operation of the transparency repository after its establishment, and expressed its appreciation to the European Union for its renewed contribution of 300,000 euros, which, it noted, together with an accompanying contribution, would allow the operation of the transparency repository for a further period of three years. In this regard, BMZ further provided support to the transparency repository during 2021, with a view to promoting the Rules on Transparency in Treaty-based Investor-State Arbitration and the United Nations Convention on Transparency in Treaty-based Investor-State Arbitration (the Mauritius Convention on Transparency)<sup>68</sup> (together with the transparency repository referred to as “the transparency standards”) and thereby good governance, focusing especially on African States.

## 2. Internship programme

335. The Commission welcomed the continuation of the internship programme in both the UNCITRAL secretariat in Vienna and 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 come from the regional group of Western European 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 reported, the Commission 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.

## E. UNCITRAL presence in the Asia-Pacific region

336. The Commission had before it a note by the Secretariat on the activities undertaken by the Regional Centre for Asia and the Pacific ([A/CN.9/1057](#)) in the period since the last report to the Commission in 2020 ([A/CN.9/1024](#)).

337. The Commission recognized benefits in the region resulting from the regional activities of the secretariat, through its Regional Centre, in the levels of awareness, adoption and implementation of harmonized and modern international trade law standards elaborated by UNCITRAL. Examples included the accession by Tonga to the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention),<sup>69</sup> the ratification by Australia to the Mauritius Convention on Transparency and the entry into force of the United Nations Convention on International Settlement Agreements Resulting from Mediation (Singapore Convention on Mediation) in September 2020 (for other treaty actions and enactments, see also chapter XVII below). The Commission also highlighted the

<sup>68</sup> General Assembly resolution [69/116](#), annex.

<sup>69</sup> United Nations, *Treaty Series*, vol. 330, No. 4739.



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

338. The Commission commended the Regional Centre for having continued to deliver flagship activities during the reporting period, namely the UNCITRAL special session (Seoul, 3–4 November 2020), the ninth edition of the Asia-Pacific Alternative Dispute Resolution Conference (Seoul, 5–6 November 2020), and the seventh edition of the annual UNCITRAL Asia-Pacific Day. On the latter, the Commission welcomed the 19 events held with 35 universities and partners in the region during the last quarter of 2020, which, as in previous years, had proved highly successful in support of the activities and objectives of the Regional Centre.<sup>70</sup>

339. The Commission noted with appreciation the additional events and public, private and civil society initiatives that the Regional Centre had organized or supported through secretariat participation, and the technical assistance and capacity-building services provided to States, international and regional organizations and development banks in the region. It also expressed strong support for the Regional Centre's continued coordination and cooperation efforts with regional stakeholders active in trade law reform, and with United Nations funds, programmes and specialized agencies active in the region.

340. The Commission further 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. During the reporting period, the Regional Centre had received 14 interns. 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 other interested entities to consider making contributions to UNCITRAL trust funds to enable the continued delivery of those activities, noting that the Regional Centre relied fully on the annual financial contribution from the Incheon Metropolitan City to the UNCITRAL trust fund for symposiums to meet the cost of its operation and programme (\$500,000 from 2011 to 2016 and \$450,000 from 2017 to 2021).

341. The Government of the Republic of Korea announced it would extend financial and human resources support for the operation of the Regional Centre for an additional five-year period from 2022 to 2026, with the same annual contribution of \$450,000, including the necessary amendments to the memorandum of understanding signed on 18 November 2011 between the United Nations and the Ministry of Justice and the Incheon Metropolitan City of the Republic of Korea. Noting that since 2012, the Republic of Korea had contributed approximately \$5,000,000 in total to the Regional Centre and acknowledging the Centre's significant contributions to the provision of technical assistance by UNCITRAL in the region during said period, it was suggested that the role of the Centre be expanded to include legislative activities and exploratory work on new topics so as to fully utilize the Centre's potential and resources.

342. The Commission expressed its gratitude to the Government of the Republic of Korea for extending its financial contribution, and 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.

## **XVI. Promotion of ways and means of ensuring a uniform interpretation and application of UNCITRAL legal texts**

343. The Commission recalled the importance of ensuring a uniform interpretation and application of its texts, and it reiterated its calls for contributions from all legal

<sup>70</sup> For further information, see the publication entitled "UNCITRAL Asia-Pacific Day report", available at <https://uncitral.un.org>.

traditions to its uniform interpretation tools. In that regard, the Commission invited all States that had enacted UNCITRAL texts to nominate national correspondents for reporting relevant case law to the UNCITRAL secretariat in order to contribute to the increased collection of relevant case law.

## A. Case Law on UNCITRAL Texts (CLOUT)

344. Emphasizing the benefits of the Case Law on UNCITRAL Texts (CLOUT) system as a tool to support continued and sustained capacity-building in the use and implementation of UNCITRAL texts, the Commission welcomed the secretariat's ongoing efforts in implementing measures to rejuvenate CLOUT. It also expressed its gratitude for the compilation of cases and the establishment of CLOUT partnerships, in line with the Commission's request at its fifty-second session, in 2019.<sup>71</sup>

345. The Commission recognized that the COVID-19 pandemic had had an impact on the proposed rejuvenation of CLOUT, that those effects might continue after the pandemic had abated and that the secretariat was preparing proposals to adapt to the changing situation. It noted that possible measures included convening the meeting of the CLOUT national correspondents during the annual Willem C. Vis International Commercial Arbitration Moot, and organizing a panel on the contribution of CLOUT to the promotion of the use and uniform interpretation of UNCITRAL texts during the Commission's fifty-fifth session, in 2022.

346. The Commission also expressed its appreciation for the 56 cases reported during the reporting period, which, it was noted, underscored the value of CLOUT and digests of case law in promoting uniform interpretation of UNCITRAL texts, recalling the importance of ensuring such uniform interpretation and application of its texts. In that regard, the Commission reiterated its call for contributions from all legal traditions to its uniform interpretation tools.

347. The Commission also took note with satisfaction of the performance of the 1958 New York Convention website<sup>72</sup> and the successful coordination between that website and CLOUT.

## B. Digests of case law

348. The Commission recalled that, at its forty-fifth session in 2012, it had agreed that, in the light of the growing number of cases collected in CLOUT interpreting the UNCITRAL Model Law on Cross-Border Insolvency, a digest of that case law should be prepared to provide wider and more ready access to the relevant cases and draw attention to emerging trends in the interpretation of the Model Law.<sup>73</sup> The Commission further recalled that, since that session, the secretariat had regularly updated the Commission on the preparation of the digest and, at its fifty-third session in 2020, it had invited the secretariat to finalize the digest and publish it as a paper and electronic booklet in the six official languages of the United Nations.<sup>74</sup>

349. At the current session, the Commission was informed that the first edition of the *Digest of Case Law on the UNCITRAL Model Law on Cross-Border Insolvency* had been completed, and the English language version had been made available on the UNCITRAL website. The Commission noted that the *Digest* analysed the relevant case law, highlighting common views and reporting any divergent approach.

350. The Commission expressed its appreciation for the finalization of the *Digest of Case Law on the UNCITRAL Model Law on Cross-Border Insolvency* and requested

<sup>71</sup> *Official Records of the General Assembly, Seventy-fourth Session, Supplement No. 17 (A/74/17)*, para. 247.

<sup>72</sup> Available at [www.newyorkconvention1958.org](http://www.newyorkconvention1958.org).

<sup>73</sup> *Official Records of the General Assembly, Sixty-seventh Session, Supplement No. 17 (A/67/17)*, paras. 153 and 156.

<sup>74</sup> *Ibid.*, *Seventy-fifth Session, Supplement No. 17 (A/75/17)*, part one, para. 20.

the Secretariat to make available the other five language versions of the *Digest* as soon as possible. It noted, in particular, the relevance of the *Digest* to the implementation of article 8 of the Model Law, which stated that in the interpretation of the Model Law regard was to be had to its international origin. The Commission was of the view that, as CLOUT had assisted the goal of uniform interpretation of the Model Law, it was to be expected that the *Digest* would also support the goal by encouraging judges to consider how the Model Law had been applied by courts in jurisdictions where it had been enacted.

351. The Commission encouraged the secretariat's efforts towards collecting more case law on the Model Law from civil law jurisdictions for inclusion in CLOUT and in a future edition of the *Digest*. It also encouraged the secretariat's efforts to prepare and publish an update of the publication to be entitled *The Model Law on Cross-Border Insolvency: the Judicial Perspective* as soon as practicable in the light of the finalization of the *Digest*. The Commission also noted that, with the expected enactment by States of the other two recently adopted model laws in the area of insolvency law – the UNCITRAL Model Law on Recognition and Enforcement of Insolvency-Related Judgements and the UNCITRAL Model Law on Enterprise Group Insolvency – the need would arise for the secretariat to monitor closely not only the case law relevant to those texts but also the interaction of that case law with the case law on the UNCITRAL Model Law on Cross-Border Insolvency.

352. The Commission expressed appreciation to the secretariat for its continued efforts to update the existing digests of case law on UNCITRAL texts and ensure their wide dissemination. It emphasized the role of the digests as important tools for the promotion of the uniform interpretation of international trade law, in particular by building local capacity of judges, arbitrators and other legal practitioners to interpret international trade law standards in the light of their international character and the need to promote uniformity in their application and the observance of good faith in international trade.

## **XVII. Status of conventions and model laws and the operation of the repository of published information under the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration**

### **A. General discussion**

353. The Commission considered the status of the conventions and model laws emanating from its work and the status of the New York Convention on the basis of a note by the Secretariat (A/CN.9/1056). The Commission noted with appreciation the information on treaty actions and legislative enactments received since its fifty-third session.

354. The Commission also noted the following actions and legislative enactments made known to the Secretariat subsequent to the submission of the Secretariat's note:

(a) United Nations Convention on the Use of Electronic Communications in International Contracts (New York, 2005).<sup>75</sup> Domestic legislation enacting the substantive provisions of the Convention has been adopted in 22 States. New domestic legislation based on the Convention has been adopted in Afghanistan (2020);

(b) United Nations Convention on International Settlement Agreements Resulting from Mediation (New York, 2018)<sup>76</sup> – signature by Brazil (6 States parties);

<sup>75</sup> General Assembly resolution 60/21, annex.

<sup>76</sup> *Official Records of the General Assembly, Seventy-third Session, Supplement No. 17 (A/73/17)*, annex I.

(c) UNCITRAL Model Law on Electronic Commerce (1996).<sup>77</sup> Legislation based on or influenced by the Model Law has been adopted in 77 States in a total of 156 jurisdictions. New legislation based on the Model Law has been adopted in Afghanistan (2020);

(d) UNCITRAL Model Law on Electronic Signatures (2001).<sup>78</sup> Legislation based on or influenced by the Model Law has been adopted in 36 States. New legislation based on the Model Law has been adopted in Afghanistan (2020).

355. The Commission expressed appreciation to the General Assembly for 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.

## B. Operation of the transparency repository

356. The Commission recalled that the repository of published information under the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration (the “transparency repository”), adopted at its forty-sixth session in 2013, had been established under article 8 of the Rules on Transparency. The Commission also recalled reports on the transparency repository that had been provided at its previous sessions,<sup>79</sup> as well as its decision at the fifty-third session to extend the operation of the transparency repository for an additional three years, 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.<sup>80</sup>

357. The Commission also recalled the note by the Secretariat of the current session which provided an update on the Rules on Transparency and the transparency repository (A/CN.9/1056, paras. 15–17).

358. The Commission welcomed the report on the transparency repository and expressed its support for continued operation of the repository as a key mechanism for promoting transparency in investor-State arbitration.

359. The Commission further expressed its appreciation to BMZ, to the European Commission as well as the OPEC Fund for International Development for their commitment to provide funding that would allow the UNCITRAL secretariat to continue operating the transparency repository as well as promoting the UNCITRAL transparency standards (see para. 334 above).

## C. Bibliography of recent writings related to the work of UNCITRAL

360. The UNCITRAL Law Library specializes in international commercial law. Its collection features important titles and online resources in that field in the six United

<sup>77</sup> United Nations publication, Sales No. E.99.V.4.

<sup>78</sup> General Assembly resolution 56/80, annex.

<sup>79</sup> *Official Records of the General Assembly, 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; *ibid.*, *Seventy-fourth Session, Supplement No. 17 (A/74/17)*, paras. 290–292; and *ibid.*, *Seventy-fifth Session, Supplement No. 17 (A/75/17)*, part one, paras. 89–99.

<sup>80</sup> *Ibid.*, *Seventy-fifth Session, Supplement No. 17 (A/75/17)*, part one, para. 24.

Nations official languages. From May 2020 to May 2021, library staff responded to approximately 550 reference requests, originating in over 40 countries. There were no library visitors due to the restrictions to access imposed during the COVID-19 pandemic, but individuals from 34 countries enquired about the possibility of visiting the Library.

361. Considering the broader impact of the texts of UNCITRAL, the Commission took note of the bibliography of recent writings related to the work of UNCITRAL (A/CN.9/1055) 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 11,121 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 organizations active in the field of international trade law. In that regard, the Commission recalled and repeated its request that organizations invited to the Commission's annual session donate copies of their journals, reports and other publications to the UNCITRAL Law Library for review.<sup>81</sup> The Commission expressed appreciation to all non-governmental organizations that donated materials.

## XVIII. Current role of UNCITRAL in promoting the rule of law

### A. Introduction

362. The Commission recalled that the item had been on the agenda of the Commission since its forty-first session, in 2008,<sup>82</sup> 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.<sup>83</sup> The Commission further recalled that, at its forty-first to fifty-third sessions, from 2008 to 2020, the Commission, in its annual reports to the General Assembly,<sup>84</sup> transmitted comments on its role in promoting the rule of law at the national and international levels.

363. 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.9/1071). The Commission noted that General Assembly, in its resolution 75/141, had reiterated its invitation to the Commission to comment on its current role in promoting the rule of law. The same resolution did not identify any specific subtopic for discussion at its next session, inviting Member States and the Secretary-General to suggest possible subtopics for future Sixth Committee debates, for inclusion in the forthcoming annual report, with a view to assisting the Sixth Committee in choosing future subtopics.<sup>85</sup>

<sup>81</sup> Ibid., *Seventieth Session, Supplement No. 17 (A/70/17)*, para. 264.

<sup>82</sup> 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.

<sup>83</sup> 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.

<sup>84</sup> *Official Records of the General Assembly, Sixty-third Session, Supplement No. 17* and corrigendum (A/63/17 and A/63/17/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. 317–342; *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; *ibid.*, *Seventy-fourth Session, Supplement No. 17 (A/74/17)*, paras. 303–308; and *ibid.*, *Seventy-fifth Session, Supplement No. 17 (A/75/17)*, part one, para. 25.

<sup>85</sup> General Assembly resolution 75/141, para. 23.

364. In its comments to the General Assembly this year, the Commission decided to highlight its role for the promotion of the rule of law and the implementation of the Sustainable Development Goals, with reference to the texts finalized and adopted at the current session. (For comments of the Commission transmitted to the General Assembly under this agenda item, as requested in para. 20 of General Assembly resolution 75/141, see sect. B below.)

365. The Commission further recalled that, at its fifty-third session, it had requested the Chair of UNCITRAL, other members of the Bureau of that session, States and the UNCITRAL secretariat to take appropriate steps to ensure that the contribution of UNCITRAL to the implementation of the international anti-corruption agenda be duly acknowledged in an outcome document of that special session of the General Assembly. The special session was rescheduled because of the COVID-19 pandemic and took place from 2 to 4 June 2021.

366. The Commission noted that the contribution by UNCITRAL was brought to the attention of the Conference of the States Parties to the United Nations Convention against Corruption and that while not referenced directly, the States parties, in their draft political declaration under the section entitled “Anti-corruption as an enabler for the 2030 Agenda for Sustainable Development”, underscored that “the anti-corruption work of the United Nations should be strongly linked and coordinated with measures and programmes contributing to strengthening the rule of law at the national and international levels.”

367. 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 took note of the invitation by the secretariat to consider whether the criteria it used for assessing 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),<sup>86</sup> could be applied to ensure even greater alignment of its work with the Sustainable Development Goals, taking into account that the Goals are time-bound (until 2030).

368. 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 of their contribution to the implementation of the Sustainable Development Goals. In that context, the Commission noted that the High-level Political Forum on Sustainable Development, which usually takes place in parallel with annual sessions of UNCITRAL, provides an annual opportunity for States, the secretariat, organizations and institutions to highlight the role of UNCITRAL in the implementation of the Sustainable Development Goals.<sup>87</sup>

369. The Commission also reiterated the view that the promotion of the rule of law in commercial relations should be an integral part of the broader agenda of the United Nations to promote the rule of law at the national and international levels, including through the Rule of Law Coordination and Resource Group supported by the Rule of Law Unit in the Executive Office of the Secretary-General of the United Nations.

## **B. UNCITRAL comments to the General Assembly**

370. The Commission highlighted the relevance of its current work to the promotion of the rule of law and the implementation of the Sustainable Development Goals, with

<sup>86</sup> Ibid. *Sixty-eighth Session, Supplement No. 17 (A/68/17)*, paras. 294–295.

<sup>87</sup> For example, the theme of the Forum held from 6–15 July 2021 was “Sustainable and resilient recovery from the COVID-19 pandemic that promotes the economic, social and environmental dimensions of sustainable development: building an inclusive and effective path for the achievement of the 2030 Agenda in the context of the decade of action and delivery for sustainable development” with the focus on the most critical trade-offs and synergies between the Goals”.



reference to the texts finalized and adopted at the current session. The Commission noted that the decisions adopting those texts (see paras. 52, 77, 101, 112, 120 and 189 above) demonstrated the interrelationship between the promotion of the rule of law in commercial relations and sustained economic development.

371. The Commission recognized the UNCITRAL Legislative Guide on Limited Liability Enterprises and the UNCITRAL Legislative Recommendations on Insolvency of Micro- and Small Enterprises promote the rule of law at the national and international levels and support the implementation of the Sustainable Development Goals. Specifically, the work in these areas supports target 8.3 of Sustainable Development Goal 8, which includes the encouragement of the formalization and growth of micro-, small and medium-sized enterprises. These texts are especially timely considering the COVID-19 pandemic and are expected to assist States in mitigating the effects of the measures required to control the pandemic, as well as in their economic recovery efforts – especially women who have borne a disproportionate burden of the economic fallout from the COVID-19 crisis.

372. The Commission also recognized non-adversarial methods, in particular mediation, are seen to be swifter and less expensive than adversarial dispute settlement, benefiting commercial enterprises, promoting long-term and cross-border commercial transactions, and offering States possible cost savings in administration of justice. Micro-, small and medium-sized enterprises may not have the financial resources or time to pursue solutions through adversarial dispute settlement. Thus, non-adversarial dispute settlement, such as mediation, may be particularly suitable for MSMEs. An essential prerequisite for an effective dispute settlement is the ability to enforce, including across borders, an award or a settlement agreement reached through a dispute settlement mechanism or procedure in a cost-effective way. The Singapore Convention on Mediation establishes a harmonized legal framework to enforce mediation settlement agreements across borders. The UNCITRAL Notes on Mediation, the UNCITRAL Mediation Rules and the Guide to Enactment and Use of the UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation (2018) (see paras. 101, 112, 120 and 189 above)<sup>88</sup> are expected to facilitate the use of the Singapore Convention on Mediation and the Model Law, and the texts are expected to contribute to Sustainable Development Goal 16.

373. The Commission further recognized that the UNCITRAL Expedited Arbitration Rules (see para. 189 above) will provide for a streamlined, simplified and cost-effective procedure that preserves the fundamental principles of arbitration, such as party autonomy and due process. The UNCITRAL Expedited Arbitration Rules will be particularly appropriate for low-value cases that are not overly complex and may further contribute to the post-pandemic recovery by providing a procedural option for MSMEs, which are to a large extent family-owned or owned by women. This text was expected to contribute to Sustainable Development Goal 16.

374. The Commission noted the expected contribution of its ongoing work on access to credit for MSMEs, investor-State dispute settlement reform, electronic commerce (identity management and trust services), and judicial sale of ships to the achievement of the relevant Sustainable Development Goals.

## **XIX. Relevant General Assembly resolutions**

375. 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.<sup>89</sup> Pursuant

<sup>88</sup> For the text of the Model Law, see *Official Records of the General Assembly, Seventy-third Session, Supplement No. 17 (A/73/17)*, annex II. For the discussion of supplementary texts, see *ibid.*, paras. 67 and 254.

<sup>89</sup> *Official Records of the General Assembly, Seventy-second Session, Supplement No. 17 (A/72/17)*, para. 480.

to that request, the Commission had before it at its fifty-fourth session a note by the Secretariat (A/CN.9/1070) summarizing the content of operative paragraphs of General Assembly resolution 75/133.

376. The Commission took note of that General Assembly resolution.

## XX. Other business

### A. Enlargement of the UNCITRAL membership

377. The Commission recalled that, at its fifty-second session, in 2019, it considered a proposal for enlarging the membership of UNCITRAL. The Commission further recalled its discussion at the fifty-third session, in 2020, whereby it was stressed that a decision by the Commission recommending enlargement of its membership should be adopted by consensus.<sup>90</sup> At that session, the Commission welcomed the willingness of the Government of Japan to continue to organize and lead Vienna-based consultations and requested the secretariat to continue to facilitate the process.<sup>91</sup>

378. The Commission proceeded to consider a proposal by the Governments of Austria, Canada, Japan, Pakistan and Sri Lanka as contained in document A/CN.9/1067. The Commission was informed that the Governments of Mexico and Viet Nam had joined as co-sponsors after the proposal was submitted.

379. The Commission noted that since the fifty-third session, a series of Vienna-based informal consultations had taken place, including during the current session. An oral report on the outcome of those informal consultations was provided by the coordinator, including a draft text of a decision to be taken by the Commission on the matter (see para. 383 below).

380. There was broad support for the draft decision as reflecting a collective compromise obtained through the series of informal consultations. It was recalled that there was general support for the enlargement of the membership, while there had been divergence in views on the size of the enlargement and their distribution, as illustrated in the table following paragraph 5 in document A/CN.9/1067. Some delegations expressed the view that while they would have preferred other options to be reflected in the decision by the Commission, they were willing to accept option E in the spirit of compromise.

381. It was noted that the enlargement discussions provided an opportunity to achieve equitable geographical distribution of the membership of the Commission, thus addressing the current underrepresentation by certain regional groups. It was stated that the draft decision being considered by the Commission was not fully satisfactory nor fair as it increased the gap in regional representation. Accordingly, it was pointed out that the regional representation resulting from the suggested increase in membership should not be a precedent for the enlargement of the membership of the Commission in the future nor other bodies in the United Nations system. It was stressed that efforts should be made in the future to improve the representation of developing countries and to achieve equitable geographical distribution in the membership of the Commission, also giving due regard to the adequate representation of the principal economic and legal systems of the world.

382. The Commission expressed its appreciation to the tireless efforts by the coordinator of the informal consultations as well as to the Government of Japan for hosting the consultations. The Commission also expressed its satisfaction with the support provided by the secretariat to support the deliberations.

<sup>90</sup> Ibid., *Seventy-fifth Session, Supplement No. 17 (A/75/17)*, part two, paras. 120–123.

<sup>91</sup> Ibid., para. 124.



383. After discussion, the Commission decided to recommend to the General Assembly that it consider the following text as its resolution on the enlargement of the membership of the Commission:

*“The General Assembly,*

*“Recalling* its resolution 2205 (XXI) of 17 December 1966, by which it established the United Nations Commission on International Trade Law with a mandate to further the progressive harmonization and unification of the law of international trade and in that respect to bear in mind the interests of all peoples, in particular those of developing countries, in the extensive development of international trade,

*“Recalling also* its resolution 3108 (XXVIII) of 12 December 1973, by which it increased the membership of the Commission from 29 to 36 States, and its resolution 57/20 of 19 November 2002, by which it increased the membership of the Commission from 36 to 60 States,

*“Being satisfied* with the practice of the Commission of inviting States not members of the Commission and relevant intergovernmental and international non-governmental organizations to participate as observers in the sessions of the Commission and its working groups and to take part in the formulation of texts by the Commission, as well as with the practice of reaching decisions by consensus without a formal vote,

*“Observing* that the considerable number of States that have participated as observers and made valuable contributions to the work of the Commission indicates that there exists an interest in active participation in the Commission beyond the current 60 member States, and noting that there is an interest by a significant number of current member States of the Commission to continue their roles as members and from other States to become new members,

*“Convinced* that wider participation of States in the work of the Commission would further the progress of its work and that an increase in the membership of the Commission would stimulate interest in its work,

*“Recognizing* that the Commission should continue to strive towards the achievement of increased and active participation, and that increased membership could be a contributing factor in this regard,

*“Recognizing also* the importance of the promotion of equitable geographical distribution in the membership of the Commission,

*“Acknowledging* that member States of the Commission consulted with each other and other interested States on the proposal to enlarge the membership of the Commission,

*“1. Takes note* of the fact that the impact of an increase in the membership of the United Nations Commission on International Trade Law on the secretariat services required to properly facilitate the work of the Commission would not be material enough to quantify and that the increase would therefore have no financial implications;

*“2. Decides* to increase the membership of the Commission from 60 to 70 States, bearing in mind that the Commission is a technical body; the regional representation resulting from this increase in membership shall not be a precedent for the enlargement of other bodies in the United Nations system;

*“3. Also decides* that the 10 additional members of the Commission shall be elected by the General Assembly for a term of six years in accordance with the following rules:

(a) In electing the additional members, the General Assembly shall observe the following distribution of seats:

(i) Two from African States;

- (ii) Two from Asia-Pacific States;
  - (iii) Two from Eastern European States;
  - (iv) Two from Latin American and Caribbean States;
  - (v) Two from Western European and other States;
- (b) Of the 10 additional members, five, that is, one from each regional group, shall be elected at the election to be held during the seventy-sixth session of the General Assembly;
- (c) The additional members elected in accordance with subparagraph (b) shall take office from the first day of the fifty-fifth session of the Commission in 2022;
- (d) The remaining five additional members, that is, one from each regional group, shall be elected at the election to be held during the seventy-ninth session of the General Assembly;
- (e) The additional members elected in accordance with subparagraph (d) shall take office from the first day of the fifty-eighth session of the Commission in 2025;
- (f) The provisions of section II, paragraphs 4 and 5, of General Assembly resolution 2205 (XXI) shall also apply to the additional members;
- “4. *Further decides* that, when electing members of the Commission, Member States shall take into account the voluntary pledges of the candidates which outline the concrete commitments of the candidates to the work of the Commission;
- “5. *Appeals* to Member States, the relevant United Nations organs, organizations, institutions and individuals, in order to ensure full participation by the Member States in the sessions of the Commission and its working groups, to consider making voluntary contributions to the trust funds established to provide travel assistance to developing countries that are members of the Commission, as well as technical assistance, capacity-building and other forms of support as appropriate, at their request and in consultation with the secretariat;
- “6. *Calls upon* member States of the Commission to make efforts to achieve their increased and active participation in the sessions of the Commission and its working groups which serve as an important forum for strategy and decision-making of the work of the United Nations in the field of international trade law, while giving due regard to the need to facilitate the participation of developing countries, and stresses the need to explore all appropriate means to achieve that objective;
- “7. *Requests* the Secretariat to periodically provide to the Commission data on the attendance of member States of the Commission and observer States to the sessions of the Commission and its working groups;
- “8. *Requests* the Commission to discuss and consider at its session in 2030, and subsequent sessions if necessary, issues in relation to this resolution, including ways to promote equitable geographical representation of regional groups as well as to increase the effective participation of representatives of all Member States, while giving due regard to the adequate representation of the principal economic and legal systems of the world, and of developed and developing countries, with a view to taking further actions as necessary, including on the basis of the above-mentioned criteria.”

## **B. Evaluation of the role of the UNCITRAL secretariat in facilitating the work of the Commission**

384. An online questionnaire on the level of satisfaction of UNCITRAL with the services provided by its secretariat was made available to States. The Commission was informed that 34 responses had been received and that the level of satisfaction with the services provided by the secretariat remained high. On average, respondents gave 4.79 out of 5 for “the services and support provided to the Commission”, respondents gave 4.65 out of 5 for “the availability of information on the UNCITRAL website”, and respondents gave 4.74 out of 5 for “the adaptability and responsiveness of the UNCITRAL secretariat to the challenges and circumstances arising from the COVID-19 pandemic”.

385. The Commission expressed appreciation to its secretariat for its work.

## **XXI. Date and place of future meetings**

### **A. Fifty-fifth session of the Commission**

386. The Commission provisionally approved the holding of its fifty-fifth session in New York, from 27 June to 15 July 2022, recognizing that adjustments might need to be made with respect to that session in the light of the global situation concerning COVID-19 pandemic closer to the session.

### **B. Sessions of working groups**

387. With regard to the New York meetings in the first half of 2022, the Commission decided that if the global situation concerning COVID-19 pandemic did not significantly improve and if conference services in New York were not able to accommodate its decision to hold meetings in-person and online at hours feasible for all delegates to participate, the in-person component of such meetings could be held at the Vienna International Centre, subject to the availability of conference services and in close consultation with the Department for General Assembly and Conference Management. It was further agreed that if the in-person component of the session were to be held at the Vienna International Centre, the Secretariat should ensure that sufficient conference time (at least four hours a day) with interpretation was provided to each of the working group sessions.

388. One delegation suggested that the Commission should more generally reconsider the desirability of retaining the pattern of alternating meetings between New York and Vienna in view of the costs entailed and the difficulties it created for internal coordination in member States. The Commission considered, however, that it was not prepared to discuss that suggestion at the present session.

389. The Commission considered conference service requirements in the light of its work programme, reports of its working groups and a note by the Secretariat (A/CN.9/1063). It approved the following schedule of working group sessions in the second half of 2021 and 2022, 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.

	<i>Second half of 2021 (Vienna)</i>	<i>First half of 2022 (New York)</i>	<i>Second half of 2022 (Vienna) (to be confirmed by the Commission at its fifty-fifth session, in 2022)</i>
Working Group I (MSMEs)	Thirty-sixth session 4–8 October 2021	Thirty-seventh session 9–13 May 2022	Thirty-eighth session 10–14 October 2022
Working Group II (Dispute Settlement)	Seventy-fourth session 27 September– 1 October 2021	Seventy-fifth session 28 March–1 April 2022	Seventy-sixth session 19–23 September 2022
Working Group III (Investor-State Dispute Settlement Reform)	Forty-first session 15–19 November 2021 (falls on Gurpurab)	Forty-second session 14–18 February 2022	Forty-third session 26–30 September 2022
Working Group IV (Electronic Commerce)	Sixty-second session 22–26 November 2021	Sixty-third session 4–8 April 2022	Sixty-fourth session 31 October– 4 November 2022
Working Group V (Insolvency Law)	Fifty-ninth session 13–17 December 2021	Sixtieth session 18–22 April 2022	Sixty-first session 28 November– 2 December 2022
Working Group VI (Judicial Sale of Ships)	Thirty-ninth session 18–22 October 2021	Fortieth session 7–11 February 2022	Forty-first session 12–16 December 2022

## Annex I

### UNCITRAL Legislative Recommendations on Limited Liability Enterprises

#### A. General provisions

Recommendation 1: The law should provide that a Limited Liability Enterprise (“LLE”) is governed by this law and by the organization rules.

Recommendation 2: The law should provide that an LLE may be formed for any lawful business or commercial activity.

Recommendation 3: The law should provide that the LLE has a legal personality distinct from its members.

Recommendation 4: The law should provide that a member is not personally liable for the obligations of the LLE solely by reason of being a member of that LLE.

Recommendation 5: The law should not require a minimum capital for the formation of an LLE.

Recommendation 6: The law should provide that the name of the LLE must include a phrase or abbreviation that identifies it as an LLE.

#### B. Formation of the LLE

Recommendation 7: The law should:

(a) Provide that an LLE must have at least one member from the time of its formation until its dissolution; and

(b) Specify whether an LLE may only have natural persons as members and if not, the extent to which legal persons are permitted.

Recommendation 8: The law should provide that the LLE is formed once it is registered.

Recommendation 9: The law should:

(a) Require the following information and supporting documents for the registration of the LLE:

(i) The name of the LLE;

(ii) The business address or, when the business does not have a standard form address precise geographical location of the LLE;

(iii) The identity of the registrant(s);

(iv) The identity of each person who manages the LLE; and

(v) Its unique identifier, if such an identifier has already been assigned; and

(b) Keep additional information required, if any, to a minimum.

#### C. Organization of the LLE

Recommendation 10: The law should:

(a) Specify the allowable forms of the organization rules; and

(b) Provide that the organization rules may address any matters relating to the LLE subject to the law.

## **D. Members' rights and decision-making in the LLE**

Recommendation 11: The law should establish that unless otherwise agreed in the organization rules, members have equal rights in the LLE irrespective of their contributions, if any.

Recommendation 12: The law should:

Specify the decisions on the LLE to be reserved to the members, which, at a minimum, should include decisions on:

- (a) Adoption and amendment of the organization rules, in particular:
  - (i) Management structure of the LLE and its modification;
  - (ii) Allocation of rights of the members in the LLE if not equal; and
  - (iii) Member's contributions;
- (b) Conversion and restructuring; and
- (c) Dissolution.

Recommendation 13: The law should specify that unless otherwise agreed in the organization rules:

- (a) Decisions concerning the LLE which are reserved to the members under recommendation 12 are to be taken by unanimity; and
- (b) Any other decisions which are reserved to the members pursuant to the organization rules are to be taken by majority.

## **E. Management of the LLE**

Recommendation 14: The law should provide that the LLE is managed by all of its members exclusively, unless members agree in the organization rules that one or more designated managers shall be appointed.

Recommendation 15: The law should provide that when the LLE is managed by all of its members exclusively and unless otherwise agreed in the organization rules, differences among members on matters concerning day-to-day operations of the LLE should be resolved by a majority decision of the members.

Recommendation 16: The law should provide that, when the LLE is not managed by all of its members exclusively, designated manager(s) may be appointed and removed by a majority decision of the members, unless otherwise agreed in the organization rules.

Recommendation 17: The law should provide that when the LLE is managed by one or more designated manager(s):

- (a) Such managers are responsible for all matters that are not reserved to the members of the LLE pursuant to this law and, where applicable, to the organization rules; and
- (b) Disputes among themselves should be resolved by a majority decision of the managers, unless otherwise agreed in the organization rules.

Recommendation 18: The law should provide that persons who manage the LLE shall meet the legal requirements for those in a management position.

Recommendation 19: The law should provide that:

- (a) Every manager has the authority to bind the LLE, unless otherwise agreed in the organization rules; and
- (b) Restrictions upon such authority will not be effective against third parties dealing with the LLE without proper notice.

---

Recommendation 20: The law should provide that any manager of the LLE owes a duty of care and a duty of loyalty to the LLE.

## **F. Members' contributions to the LLE**

Recommendation 21: The law should establish that members may agree in the organization rules on the type, timing and value of their contributions.

## **G. Distributions**

Recommendation 22: The law should provide that distributions are made to members in proportion to their rights in the LLE unless otherwise agreed in the organization rules.

Recommendation 23: The law should prohibit distributions to any member if upon giving effect to such distribution:

- (a) The total assets of the LLE would be less than the sum of its total liabilities; or
- (b) The LLE would not be able to pay its foreseeable debts as they become due.

Recommendation 24: The law should provide that each member who received a distribution, or any portion thereof, made in violation of recommendation 23 is liable to reimburse the LLE for this distribution or portion thereof.

## **H. Transfer of rights**

Recommendation 25: The law should provide that unless otherwise agreed in the organization rules:

- (a) A member of an LLE may transfer its rights in the LLE when the other members, if any, agree to the transfer; and
- (b) The death of a member shall not cause the dissolution of the LLE. In the case of the death of a member, its rights in an LLE shall be transferrable to any successor(s) in accordance with the law(s) of the State.

## **I. Withdrawal**

Recommendation 26: The law should provide that:

- (a) Members may withdraw from the LLE upon agreement or reasonable cause; and
- (b) Be paid over a reasonable period of time the fair value of their rights in the LLE, unless otherwise agreed in the organization rules.

## **J. Conversion or restructuring**

Recommendation 27: The law should provide the necessary legal mechanisms to:

- (a) Facilitate members of the LLE to convert it into another legal form or to restructure it; and
- (b) Ensure protection of third parties affected by a conversion or restructuring.

## **K. Dissolution**

Recommendation 28: The law should:

- (a) Provide that the LLE shall be dissolved in the following circumstances:
  - (i) The occurrence of any event that is specified in the organization rules as causing the dissolution of the LLE;
  - (ii) A decision by the members;
  - (iii) The rendering of a judicial or administrative decision that the LLE is dissolved;
  - (iv) The LLE is left without any member with appropriate legal capacity; or
  - (v) Any other event specified in this law; and

(b) Establish the necessary provisions and procedures for the protection of third parties.

Recommendation 29: The law should provide that the LLE shall continue after the occurrence of any of the circumstances specified in recommendation 28 (a) only for the purpose of winding-up.

## **L. Record-keeping, inspection and disclosure**

Recommendation 30: The law should provide that the LLE must keep certain records, including of:

- (a) Information provided to the business registry;
- (b) The organization rules, if and where such rules have been adopted in writing or otherwise recorded;
- (c) Identity of past and present designated managers, members and beneficial interest owners of legal entities, if any, as well as their last known contact details;
- (d) Financial statements, if any;
- (e) Tax returns or reports; and
- (f) The activities, operations and finances of the LLE.

Recommendation 31: The law should provide that each member has the right to inspect and copy records of the LLE and to obtain available information concerning its activities, finances and operations.

## **M. Dispute resolution**

Recommendation 32: The law should facilitate the submission to alternative dispute resolution mechanisms of any dispute concerning the governance and operation of the LLE.



## Annex II

### UNCITRAL Legislative Recommendations on Insolvency of Micro- and Small Enterprises\*

#### A. Key objectives of a simplified insolvency regime

1. States should provide for a simplified insolvency regime and for that purpose consider the following key objectives:

(a) Putting in place expeditious, simple, flexible and low-cost insolvency proceedings (henceforth referred to as “simplified insolvency proceedings”);

(b) Making simplified insolvency proceedings available and easily accessible to micro- and small-sized enterprises (MSEs);

(c) Promoting the MSE debtor’s fresh start by enabling expedient liquidation of non-viable MSEs and reorganization of viable MSEs through simplified insolvency proceedings;

(d) Ensuring protection of persons affected by simplified insolvency proceedings, including creditors, employees and other stakeholders (henceforth referred to as “parties in interest”) throughout simplified insolvency proceedings;

(e) Providing effective measures to facilitate participation by creditors and other parties in interest in simplified insolvency proceedings, and to address creditor disengagement;

(f) Implementing an effective sanctions regime to prevent abuse or improper use of the simplified insolvency regime and to impose appropriate penalties for misconduct;

(g) Addressing concerns over stigmatization because of insolvency; and

(h) Where reorganization is feasible, preserving employment and investment.

Those objectives are in addition to the objectives of an effective insolvency law as set out in recommendations 1–5 of the UNCITRAL Legislative Guide on Insolvency Law (the “Guide”), such as the provision of certainty in the market to promote economic stability and growth, maximization of value of assets, preservation of the insolvency estate to allow equitable distribution to creditors, equitable treatment of similarly situated creditors, ensuring transparency and predictability, recognition of existing creditor rights and establishment of clear rules for ranking of priority.

#### B. Scope of a simplified insolvency regime

##### Application to all micro- and small-sized enterprises

2. States should ensure that a simplified insolvency regime applies to all MSEs. Aspects of the regime may differ depending on the type of MSE. (*See recommendations 8 and 9 of the Guide.*)

##### Comprehensive treatment of all debts of individual entrepreneurs

3. States should ensure that all debts of an individual entrepreneur are addressed in a single simplified insolvency proceeding unless the State decides to subject some debts of individual entrepreneurs to other insolvency regimes, in which case

\* The recommendations in this annex with the accompanying commentary will be published as both part five of the UNCITRAL Legislative Guide on Insolvency Law and as part of the UNCITRAL MSME texts series. Where they are published as part five of the UNCITRAL Legislative Guide on Insolvency Law, their numbering will start with number 271.

procedural consolidation or coordination of linked insolvency proceedings should be ensured.

#### **Types of simplified insolvency proceedings**

4. States should ensure that a simplified insolvency regime provides for simplified liquidation and simplified reorganization. (*See recommendation 2 of the Guide.*)

### **C. Institutional framework**

#### **Competent authority and an independent professional**

5. The insolvency law providing for a simplified insolvency regime should:

(a) Clearly indicate the competent authority; (*See recommendation 13 of the Guide.*)

(b) Specify the functions of the competent authority and any independent professional used in the administration of simplified insolvency; and

(c) Specify mechanisms for review and appeal of the decisions of the competent authority and any independent professional used in the administration of simplified insolvency proceedings.

#### **Possible functions of the competent authority**

6. The insolvency law providing for a simplified insolvency regime may specify, for example, the following functions of the competent authority:

(a) Verification of eligibility requirements for commencement of a simplified insolvency proceeding;

(b) Verification of accuracy of information provided to the competent authority by the debtor, creditors and other parties in interest, including as regards the debtor's assets, liabilities and recent transactions;

(c) Resolution of disputes concerning the type of proceeding to commence;

(d) Conversion of one proceeding to another;

(e) Exercise of control over the insolvency estate;

(f) Verification and review of the reorganization plan and the liquidation schedule for compliance with law;

(g) Supervision of the implementation of a debt repayment or reorganization plan and verification of the implementation of the plan;

(h) Decisions related to the stay of proceedings, relief from the stay, creditors' objections or opposition, disputes, approval of a liquidation schedule and confirmation of a reorganization plan; and

(i) Oversight of compliance by the parties with their obligations under the simplified insolvency regime, including any obligations owed to employees under the insolvency law and other laws applicable within insolvency proceedings.

#### **Appointment of persons to assist the competent authority in the performance of its functions**

7. The insolvency law providing for a simplified insolvency regime should allow the competent authority to appoint one or more persons, including independent professionals, to assist it in the performance of its functions.

#### **Possible functions of an independent professional**

8. If the insolvency law providing for a simplified insolvency regime envisages the use of an independent professional in the administration of simplified insolvency

proceedings, it should allocate the functions of the competent authority, such as those illustrated in recommendation 6, between the competent authority and an independent professional. That law may provide for such allocation to be determined by the competent authority itself.

#### **Support with the use of a simplified insolvency regime**

9. The insolvency law providing for a simplified insolvency regime should specify measures to make assistance and support with the use of a simplified insolvency regime readily available and easily accessible. Such measures may include services of an independent professional; templates, schedules and standard forms; and an enabling framework for the use of electronic means where information and communications technology in the State so permits and in accordance with other applicable law of that State.

#### **Mechanisms for covering costs of administering simplified insolvency proceedings**

10. The insolvency law providing for a simplified insolvency regime should specify mechanisms for covering the costs of administering simplified insolvency proceedings where assets and sources of revenue of the debtor are insufficient to meet those costs. (*See recommendations 26 and 125 of the Guide.*)

### **D. Main features of a simplified insolvency regime**

#### **Default procedures and treatment**

11. The insolvency law providing for a simplified insolvency regime should specify the default procedures and treatment that apply unless any party in interest objects or intervenes with a request for a different procedure or treatment or other circumstances exist that justify a different procedure or treatment.

#### **Short time periods**

12. The insolvency law providing for a simplified insolvency regime should specify short time periods for all procedural steps in simplified insolvency proceedings, narrow grounds for their extension and the maximum number, if any, of permitted extensions.

#### **Reduced formalities**

13. Consistent with the objective of establishing a cost-effective simplified insolvency regime, the insolvency law providing for a simplified insolvency regime should reduce formalities for all procedural steps in simplified insolvency proceedings, including for submission of claims, for obtaining approvals and for giving notices and notifications.

#### **Debtor-in-possession in simplified reorganization proceedings**

##### *Debtor-in-possession as the default approach*

14. The insolvency law providing for a simplified insolvency regime should specify that, in simplified reorganization proceedings, the debtor remains in control of its assets and the day-to-day operation of its business with appropriate supervision and assistance of the competent authority.

##### *Rights and obligations of the debtor-in-possession*

15. The insolvency law providing for a simplified insolvency regime should specify the rights and obligations of the debtor-in-possession, in particular as regards the use

and disposal of assets,<sup>1</sup> post-commencement finance<sup>2</sup> and treatment of contracts,<sup>3</sup> and allow the competent authority to specify them on a case-by-case basis.

*Limited or total displacement of the debtor-in-possession*

16. The insolvency law providing for a simplified insolvency regime should specify:

(a) Circumstances justifying limited or total displacement of the debtor-in-possession in simplified reorganization proceedings;

(b) Persons who may displace the debtor-in-possession in simplified reorganization proceedings; and

(c) That the competent authority should be authorized to decide on displacement and terms of displacement on a case-by-case basis. (*See recommendations 112 and 113 of the Guide.*)

**Possible involvement of the debtor in the liquidation of the insolvency estate**

17. The insolvency law providing for a simplified insolvency regime may specify circumstances under which the competent authority may allow the debtor's involvement in the liquidation of the insolvency estate and the extent of such involvement.

**Deemed approval**

18. The insolvency law providing for a simplified insolvency regime should specify the matters which require approval of creditors and establish the relevant approval requirements. (*See recommendation 127 of the Guide.*) It should also specify that approvals on those matters are deemed to be obtained where:

(a) Those matters have been notified by the competent authority to relevant creditors in accordance with procedures and time periods established for such purpose in the insolvency law providing for a simplified insolvency regime or by the competent authority; and

(b) Neither objection nor sufficient opposition as regards those matters is communicated to the competent authority in accordance with procedures and time periods established for such purpose in the insolvency law providing for a simplified insolvency regime or by the competent authority.

**E. Participants**

**Rights and obligations of parties in interest**

19. The insolvency law providing for a simplified insolvency regime should specify rights and obligations of the MSE debtor, of the creditors and of other parties in interest, including employees where applicable under national law, such as:

(a) The right to be heard and request review on any issue in the simplified insolvency proceedings that affects their rights, obligations or interests; (*See recommendations 137 and 138 of the Guide.*)

(b) The right to participate in the simplified insolvency proceedings and to obtain information relating to the proceeding from the competent authority subject to appropriate protection of information that is commercially sensitive, confidential or private; (*See recommendations 108, 111 and 126 of the Guide.*)

<sup>1</sup> See recommendations 52–62 of the Guide that will be applicable, mutatis mutandis, in a simplified insolvency regime. References to the insolvency representative in those recommendations should be read as references to the debtor-in-possession unless limited or total displacement of the debtor from the operation of the business takes place.

<sup>2</sup> *Idem.*, but with reference to recommendations 63–68 of the Guide.

<sup>3</sup> *Idem.*, but with reference to recommendations 69–86 and 100–107 of the Guide.

(c) Where the debtor is an individual entrepreneur, the right of the debtor to retain the assets excluded from the insolvency estate by law. (*See recommendation 109 of the Guide.*)

### **Obligations of the debtor**

20. The insolvency law providing for a simplified insolvency regime should specify the obligations of the MSE debtor that should arise on the commencement of, and continue throughout, the proceedings. The obligations should include the following:

(a) To cooperate with and assist the competent authority to perform its functions, including, where applicable, to take effective control of the estate, wherever located, and of business records, and to facilitate or cooperate in the recovery of the assets;

(b) To provide accurate, reliable and complete information relating to its financial position and business affairs, subject to allowing the debtor the time necessary to collect the relevant information, with the assistance of the competent authority where required, including an independent professional where appointed, and subject to appropriate protection of commercially sensitive, confidential and private information;

(c) To provide notice of the change of a habitual place of residence or place of business;

(d) To adhere to the terms of the liquidation schedule or reorganization plan; and

(e) In the day-to-day operation of the business, to have otherwise due regard to the interests of creditors and other parties in interest.

(*See recommendations 110 and 111 of the Guide.*)

### **Protection of employees' rights and interests in simplified insolvency proceedings**

21. The insolvency law providing for a simplified insolvency regime should require the competent authority to ensure that all requirements of insolvency law and other laws applicable within insolvency proceedings relating to the protection of employees' rights and interests in insolvency are complied with in simplified insolvency proceedings. Those requirements may include, in particular, the requirement to keep the MSE debtor's employees properly informed, either directly or through their representatives, about the commencement of a simplified insolvency proceeding and all matters arising from that proceeding affecting their employment status and entitlements.

## **F. Eligibility, application and commencement**

### **Eligibility**

22. The insolvency law providing for a simplified insolvency regime should establish the criteria that debtors must meet in order to be eligible for simplified insolvency proceedings, minimizing the number of such criteria, and specify under what conditions creditors of the eligible debtors may also apply for commencement of simplified insolvency proceedings with respect to those debtors.

(*See recommendations 8, 9 and 14-16 of the Guide.*)

### **Commencement criteria and procedures**

23. The insolvency law providing for a simplified insolvency regime should:

(a) Establish transparent, certain and simple criteria and procedures for commencement of simplified insolvency proceedings;

(b) Enable applications for simplified insolvency proceedings to be made and dealt with in a speedy, efficient and cost-effective manner; and

(c) Establish safeguards to protect debtors, creditors and other parties in interest, including employees, from abuse of the application procedure.

*(See the text preceding recommendation 14 of the Guide.)*

### **Commencement on debtor application**

#### *Application*

24. The insolvency law providing for a simplified insolvency regime should allow eligible debtors to apply for commencement of a simplified insolvency proceeding at an early stage of financial distress without the need to prove insolvency. *(See recommendation 15 of the Guide.)*

#### *Information to be included in the application*

25. The insolvency law providing for a simplified insolvency regime should specify information that the debtor must include in its application for commencement of a simplified insolvency proceeding, keeping the disclosure obligation at the stage of application to the minimum. It should require that information to be accurate, reliable and complete.

#### *Effective date of commencement*

26. The insolvency law providing for a simplified insolvency regime should specify that where the application for commencement is made by the debtor:

(a) The application for commencement will automatically commence a simplified insolvency proceeding; or

(b) The competent authority will promptly determine its jurisdiction and whether the debtor is eligible and, if so, commence a simplified insolvency proceeding.

*(See recommendation 18 of the Guide.)*

### **Commencement on creditor application**

27. The insolvency law providing for a simplified insolvency regime should specify that a simplified insolvency proceeding may be commenced on the application of a creditor of a debtor which is eligible for simplified insolvency proceedings, provided that:

(a) Notice of application is promptly given to the debtor;

(b) The debtor is given the opportunity to respond to the application, by contesting the application, consenting to the application or requesting the commencement of a proceeding different from the one applied for by the creditor; and

(c) A simplified insolvency proceeding of the type to be determined by the competent authority commences without agreement of the debtor only after it is established that the debtor is insolvent.

*(See recommendation 19 of the Guide.)*

### **Denial of application**

#### *Possible grounds for denial of application*

28. The insolvency law providing for a simplified insolvency regime should specify that, where the decision to commence a simplified insolvency proceeding is to be made by the competent authority, the competent authority should deny the application if it finds that:

- (a) It does not have jurisdiction;
- (b) The applicant is ineligible; or
- (c) The application is an improper use of the simplified insolvency regime.

*(See recommendation 20 of the Guide.)*

*Prompt notice of denial of application*

29. The insolvency law providing for a simplified insolvency regime should require the competent authority to promptly give notice of its decision to deny the application to the applicant, and where the application was made by a creditor, also to the debtor. *(See recommendation 21 of the Guide.)*

*Possible consequences of denial of application*

30. The insolvency law providing for a simplified insolvency regime should set out possible consequences of denial of application, including that a different type of insolvency proceeding may commence if criteria set out in the insolvency law for the commencement of that other type of insolvency proceeding are met.

*Possible imposition of costs and sanctions against the applicant*

31. The insolvency law providing for a simplified insolvency regime should allow the competent authority, where it has denied an application to commence a simplified insolvency proceeding under recommendation 28, to impose costs or sanctions, where appropriate, against the applicant for submitting the application. *(See recommendation 20 of the Guide.)*

**Notice of commencement of proceedings**

32. The insolvency law providing for a simplified insolvency regime should require that:

- (a) The competent authority should give the notice of the commencement of the simplified insolvency proceeding using the means appropriate to ensure that the information is likely to come to the attention of parties in interest; and
- (b) The debtor and all known creditors should be individually notified by the competent authority of the commencement of the simplified insolvency proceeding unless the competent authority considers that, under the circumstances, some other form of notice would be more appropriate.

*(See recommendations 23 and 24 of the Guide.)*

**Content of the notice of commencement of a simplified insolvency proceeding**

33. The insolvency law providing for a simplified insolvency regime should specify that the notice of commencement of a simplified insolvency proceeding is to include:

- (a) The effective date of the commencement of the simplified insolvency proceeding;
- (b) Information concerning the application of the stay and its effects;
- (c) Information concerning submission of claims or that the list of claims prepared by the debtor will be used for verification;
- (d) Where submission of claims by creditors is required, the procedures and time period for submission and proof of claims and the consequences of failure to do so (see recommendation 51 below); and
- (e) Time period for expressing objection to the commencement of a simplified insolvency proceeding (see recommendation 34 below).

*(See recommendation 25 of the Guide.)*

### **Creditor objection to the commencement of a simplified insolvency proceeding**

34. The insolvency law providing for a simplified insolvency regime should specify that creditors may object to the commencement of a simplified insolvency proceeding or a particular type thereof or to the commencement of any insolvency proceeding with respect to the debtor, provided they do so within the time period established in the insolvency law as notified to them by the competent authority in the notice of the commencement of the simplified insolvency proceeding (see recommendations 32 and 33 above).

### **Possible consequences on claims of creditors not notified of the commencement of the simplified insolvency proceeding**

35. The insolvency law providing for a simplified insolvency regime should specify consequences on claims of creditors not notified of the commencement of the simplified insolvency proceeding.

### **Dismissal of a simplified insolvency proceeding after its commencement**

#### *Possible grounds for dismissal of the proceeding*

36. The insolvency law providing for a simplified insolvency regime should permit the competent authority to dismiss the proceeding if, after its commencement, the competent authority determines, for example, that:

- (a) The proceeding constitutes an improper use of the simplified insolvency regime; or
- (b) The applicant is ineligible.

*(See recommendation 27 of the Guide.)*

#### *Prompt notice of the dismissal of the proceeding*

37. The insolvency law providing for a simplified insolvency regime should require the competent authority to promptly give notice of its decision to dismiss the proceeding using the procedure that was used for giving notice of the commencement of the simplified insolvency proceeding. *(See recommendation 29 of the Guide.)*

#### *Possible consequences of dismissal of the proceeding*

38. The insolvency law providing for a simplified insolvency regime should set out possible consequences of the dismissal of the proceeding, including that a different type of insolvency proceeding may commence if criteria set out in the insolvency law for the commencement of that other type of insolvency proceeding are met.

#### *Possible imposition of costs and sanctions against the applicant*

39. Where the proceeding is dismissed, the insolvency law providing for a simplified insolvency regime should allow the competent authority to impose costs or sanctions, where appropriate, against the applicant for commencement of the proceeding. *(See recommendation 28 of the Guide.)*

## **G. Notices and notifications**

### **Procedures for giving notices**

40. The insolvency law providing for a simplified insolvency regime should require the competent authority to give notices related to simplified insolvency proceedings and use simplified and cost-effective procedures for such purpose. *(See recommendations 22 and 23 of the Guide.)*



**Individual notification**

41. The insolvency law providing for a simplified insolvency regime should require that the debtor and any known creditor should be individually notified by the competent authority of all matters on which their approval is required, unless the competent authority considers that, under the circumstances, some other form of notification would be more appropriate. (*See recommendation 24 of the Guide.*)

**Appropriate means of giving notice**

42. The insolvency law providing for a simplified insolvency regime should specify that the means of giving notice must be appropriate to ensure that the information is likely to come to the attention of the intended party in interest. (*See recommendation 23 of the Guide.*)

**H. Constitution, protection and preservation of the insolvency estate****Constitution of the insolvency estate**

43. The insolvency law providing for a simplified insolvency regime should identify:

(a) Assets that will constitute the insolvency estate, including assets of the debtor, assets acquired after commencement of the simplified insolvency proceeding and assets recovered through avoidance or other actions; (*See recommendation 35 of the Guide.*)

(b) Where the MSE debtor is an individual entrepreneur, assets excluded from the estate that the MSE debtor is entitled to retain (see recommendation 19 (c) above). (*See recommendations 38 and 109 of the Guide.*)

**Undisclosed or concealed assets**

44. The insolvency law providing for a simplified insolvency regime should specify that any undisclosed or concealed assets form part of the insolvency estate.

**Date from which the insolvency estate is to be constituted**

45. The insolvency law providing for a simplified insolvency regime should specify the effective date of commencement of a simplified insolvency proceeding as the date from which the estate is to be constituted. (*See recommendation 37 of the Guide.*)

**Avoidance in simplified insolvency proceedings**

46. The insolvency law providing for a simplified insolvency regime should ensure that avoidance mechanisms available under the insolvency law<sup>4</sup> can be used in a timely and effective manner to maximize returns in simplified insolvency proceedings. The competent authority should be allowed to convert a simplified insolvency proceeding to a different type of insolvency proceeding where the conduct of avoidance proceedings necessitates doing so.

**Stay of proceedings***Scope and duration of the stay*

47. The insolvency law providing for a simplified insolvency regime should specify that the stay of proceedings applies on commencement and throughout simplified insolvency proceedings unless: (a) it is lifted or suspended by the competent authority on its own motion or upon request of any party in interest; or (b) the relief from the stay is granted by the competent authority upon request of any party in interest. Any

<sup>4</sup> See recommendations 87–99 of the Guide.

exceptions to the application of the stay should be clearly stated in the law. (*See recommendations 46, 47, 49 and 51 of the Guide.*)

*Rights not affected by the stay*

48. The insolvency law providing for a simplified insolvency regime should specify that the stay does not affect:

- (a) The right to commence individual actions or proceedings to the extent necessary to preserve a claim against the debtor;
- (b) The right of a secured creditor, upon application to the competent authority, to protection of the value of the asset(s) in which it has a security interest;
- (c) The right of a third party, upon application to the competent authority, to protection of the value of its asset(s) in the possession of the debtor; and
- (d) The right of any party in interest to request the competent authority to grant relief from the stay. (*See recommendations 47, 50, 51 and 54 of the Guide.*)

## **I. Treatment of creditor claims**

### **Claims affected by simplified insolvency proceedings**

49. The insolvency law providing for a simplified insolvency regime should specify claims that will be affected by simplified insolvency proceedings, which should include claims of secured creditors, and claims that will not be affected by simplified insolvency proceedings. (*See recommendations 171 and 172 of the Guide.*)

### **Admission of claims on the basis of the list of creditors and claims prepared by the debtor**

50. The insolvency law providing for a simplified insolvency regime may require the debtor to prepare the list of creditors and claims, with the assistance of the competent authority or an independent professional where necessary, unless the circumstances justify that the competent authority prepares the list itself with the assistance of the debtor or entrusts an independent professional with that task. It should specify that:

- (a) The list so prepared should be circulated by the competent authority to all listed creditors for verification, indicating the time period for communicating any objection or concern as regards the list to the competent authority;
- (b) In the absence of any objection or concern communicated to the competent authority or the independent professional as applicable within the established time period, the claims are deemed to be undisputed and admitted as listed;
- (c) In case of objection or concern, the competent authority takes action with respect to disputed claim(s) (see recommendation 54 below).

(*See recommendations 110 (b)(v) and 170 of the Guide.*)

### **Submission of claims by creditors**

51. The insolvency law providing for a simplified insolvency regime should allow the competent authority, when circumstances of the case so justify, to require creditors to submit their claims to the competent authority, specifying the basis and amount of the claim. It should require in such case that:

- (a) The procedures and the time period for submission of the claims and consequences of failure to submit a claim in accordance with those procedures and time period should be specified by the competent authority in the notice of commencement of the simplified insolvency proceeding (see recommendations 32 and 33 above) or in a separate notice;

(b) A reasonable period of time should be given to creditors to submit their claims expeditiously;

(c) Formalities associated with submission of claims should be minimized and the use of electronic means for such purpose should be enabled where information and communication technology in the State so permits and in accordance with other applicable law of that State.

*(See recommendations 169, 170, 174 and 175 of the Guide.)*

#### **Admission or denial of claims**

52. The insolvency law providing for a simplified insolvency regime should allow the competent authority to:

(a) Admit or deny any claim, in full or in part;

(b) Subject claims by related persons to a special scrutiny and treatment, in full or in part; and

(c) Determine the portion of a secured creditor's claim that is secured and the portion that is unsecured by valuing the encumbered asset.

*(See recommendations 177, 179 and 184 of the Guide.)*

#### **Prompt notice of denial of claims or subjecting them to a special scrutiny or treatment**

53. Where the claim is to be denied or subjected to a special scrutiny or treatment, the insolvency law providing for a simplified insolvency regime should require the competent authority to give prompt notice of the decision and the reasons for the decision to the creditor concerned, indicating the time period within which the creditor can request review of that decision. *(See recommendations 177 and 181 of the Guide.)*

#### **Treatment of disputed claims**

54. The insolvency law providing for a simplified insolvency regime should permit a party in interest to dispute any claim, either before or after admission, and request review of that claim. It should authorize the competent authority or another competent State body to review a disputed claim and decide on its treatment, including by allowing the proceeding to continue with respect to undisputed claims. *(See recommendation 180 of the Guide.)*

#### **Effects of admission**

55. The insolvency law providing for a simplified insolvency regime should specify the effects of admission of a claim, including entitling the creditor whose claim has been admitted to participate in the simplified insolvency proceeding, to be heard, to participate in a distribution and to be counted according to the amount and class of the claim for determining sufficient opposition and establishing the priority to which the creditor's claim is entitled. *(See recommendation 183 of the Guide.)*

## **J. Features of simplified liquidation proceedings**

#### **Decision on a procedure to be used**

56. The insolvency law providing for a simplified insolvency regime should require that the competent authority, after commencement of a simplified liquidation proceeding, should promptly determine whether the sale and disposal of the assets of the insolvency estate and distribution of proceeds to creditors will take place in the proceeding:

(a) Where it is determined that the sale and disposal of the assets of the insolvency estate and distribution of proceeds to creditors will take place, the insolvency law providing for a simplified insolvency regime should require the preparation, notification and approval of the liquidation schedule (see recommendations 57–64 below);

(b) Where it is determined that the sale and disposal of the assets of the insolvency estate and distribution of proceeds to creditors will not take place, the insolvency law providing for a simplified insolvency regime should require the competent authority to close the simplified liquidation proceeding (see recommendations 65–67 below).

### **Procedure involving the sale and disposal of assets and distribution of proceeds**

#### *Preparation of the liquidation schedule*

57. The insolvency law providing for a simplified insolvency regime may require the competent authority to prepare the liquidation schedule unless circumstances of the case justify entrusting the preparation of the liquidation schedule to the debtor, an independent professional or another person.

#### *Time period for preparing a liquidation schedule*

58. The insolvency law providing for a simplified insolvency regime should specify the maximum time period for preparing a liquidation schedule after commencement of a simplified liquidation proceeding, keeping it short, and authorize the competent authority to establish a shorter time period where the circumstances of the case so justify. It should also specify that any time period established by the competent authority must be notified to the person responsible for preparing the liquidation schedule and to (other) known parties in interest.

#### *Minimum contents of the liquidation schedule*

59. The insolvency law providing for a simplified insolvency regime should specify the contents of a liquidation schedule, keeping it to the minimum, including that the liquidation schedule should:

- (a) Identify the party responsible for the realization of the assets of the insolvency estate;
- (b) List assets of the debtor, specifying those that are subject to security interests;
- (c) Specify the means of realization of the assets (public auction or private sale or other means);
- (d) List amounts and priorities of the admitted claims; and
- (e) Indicate the timing and method of distribution of proceeds from the realization of the assets.

#### *Notification of the liquidation schedule to all known parties in interest*

60. The insolvency law providing for a simplified insolvency regime should require the competent authority to give notice of the liquidation schedule to all known parties in interest, specifying a short period for expressing any objection to the liquidation schedule.

#### *Prior review of the liquidation schedule by the competent authority*

61. Where the liquidation schedule is prepared by a person other than the competent authority, the insolvency law providing for a simplified insolvency regime should require the competent authority, before giving notice of the liquidation schedule, to review the liquidation schedule to ascertain its compliance with the law and when it

is not so compliant, to make any required modifications to the liquidation schedule to ensure that it is compliant.

*Approval of the liquidation schedule*

62. The insolvency law providing for a simplified insolvency regime should require the competent authority to approve the liquidation schedule if it receives no objection within the established time period and there are no other grounds for the competent authority to reject the liquidation schedule.

*Treatment of objections*

63. Where there is objection, the insolvency law providing for a simplified insolvency regime should allow the competent authority either to modify the liquidation schedule, approve it unmodified or convert the proceeding to a different type of insolvency proceeding.

*Prompt distribution of proceeds in accordance with the insolvency law*

64. The insolvency law providing for a simplified insolvency regime should require distributions to be made promptly and in accordance with the insolvency law. (*See recommendation 193 of the Guide.*)

**Procedure not involving the sale and disposal of assets and distribution of proceeds**

*Notice of a decision to proceed with the closure of the proceeding*

65. The insolvency law providing for a simplified insolvency regime should require the competent authority to promptly notify the debtor, all known creditors and other known parties in interest about its determination that no sale and disposal of the assets of the insolvency estate and no distribution of proceeds to creditors will take place in the proceeding and its decision therefore to proceed with the closure of the proceeding. It should require the notice: (a) to include reasons for that determination and the list of creditors, assets and liabilities of the debtor; and (b) to specify a short time period for expressing any objection to that decision.

*Decision to close the proceeding in the absence of objection*

66. The insolvency law providing for a simplified insolvency regime should require the competent authority, in the absence of any objection to its decision to proceed with the closure of the proceeding, to close the proceeding.<sup>5</sup>

*Treatment of objections*

67. Where the competent authority receives an objection to its decision to proceed with the closure of the proceeding, the insolvency law providing for a simplified insolvency regime should permit the competent authority to commence verification of reasons for the objection, following which the competent authority may decide:

- (a) To revoke its decision and commence a simplified liquidation proceeding involving the sale and disposal of assets and distribution of proceeds;
- (b) To convert a simplified liquidation proceeding to a different type of insolvency proceeding; or
- (c) To close the proceeding.<sup>6</sup>

<sup>5</sup> The competent authority would be expected to take a decision on discharge not later than at the time of the closure of the proceeding even if discharge itself may take effect later, for example, after expiration of the monitoring period or implementation of a debt repayment plan. See section L for related recommendations on discharge.

<sup>6</sup> Idem.

## **K. Features of simplified reorganization proceedings**

### **Preparation of a reorganization plan**

68. The insolvency law providing for a simplified insolvency regime should allow the competent authority to appoint, where necessary, an independent professional to assist the debtor with the preparation of the reorganization plan or decide that circumstances of the case justify entrusting the preparation of the plan to an independent professional.

### **Time period for the proposal of a reorganization plan**

69. The insolvency law providing for a simplified insolvency regime should fix the maximum time period for the proposal of a reorganization plan after commencement of a simplified reorganization proceeding and authorize the competent authority, where the circumstances of the case so justify, to establish a shorter time period subject to its possible extension up to the maximum period specified in the law. (*See recommendation 139 of the Guide.*)

### **Notice of the time period established for the proposal of a reorganization plan**

70. The insolvency law providing for a simplified insolvency regime should require the competent authority to give notice of the time period that it established for the proposal of a reorganization plan to the person responsible for preparing the reorganization plan and to (other) parties in interest.

### **Consequences of not submitting the reorganization plan within the established time period**

71. The insolvency law providing for a simplified insolvency regime should specify that, if the reorganization plan is not submitted within the established time period, an insolvent debtor is deemed to enter the liquidation proceeding while, for a solvent debtor, the reorganization proceeding will terminate. (*See recommendation 158 (a) of the Guide.*)

### **Alternative plan**

72. The insolvency law providing for a simplified insolvency regime may envisage the possibility for creditors to file an alternative plan. Where it does so, it should specify the conditions and the time period for exercising such an option.

### **Content of the reorganization plan**

73. The insolvency law providing for a simplified insolvency regime should specify the minimum contents of a plan, including:

- (a) The list of assets of the debtor, specifying those that are subject to security interests;
- (b) The terms and conditions of the plan;
- (c) The list of creditors and the treatment provided for each creditor by the plan (e.g., how much they will receive and the timing of payment, if any);
- (d) A comparison of the treatment afforded to creditors by the plan and what they would otherwise receive in liquidation; and
- (e) Proposed ways of implementing the plan.

(*See recommendations 143 (d) and 144 of the Guide.*)

### **Notification of the reorganization plan to all known parties in interest**

74. The insolvency law providing for a simplified insolvency regime could require the competent authority or an independent professional to ascertain compliance of the

reorganization plan with the procedural requirements as provided in the law, and upon making any required modification to ensure that it is so compliant, to notify the plan to all known parties in interest to enable them to object or express opposition to the proposed plan. The notice should explain the consequences of any abstention and specify the time period for expressing any objection or opposition to the plan.

#### **Effect of the plan on unnotified creditors**

75. The insolvency law providing for a simplified insolvency regime should specify that a creditor whose rights are modified or affected by the plan should not be bound by the terms of the plan unless that creditor has been given the opportunity to express opposition on the approval of the plan. (*See recommendation 146 of the Guide.*)

#### **Approval of the reorganization plan by creditors**

##### *Undisputed reorganization plan*

76. The insolvency law providing for a simplified insolvency regime should specify that the plan is deemed to be approved by creditors if the requirements under recommendation 18 are fulfilled.

##### *Disputed plan*

77. The insolvency law providing for a simplified insolvency regime should:

(a) Allow the modification of the plan to address objection or sufficient opposition to the plan;

(b) Establish a short time period for introducing modifications and transmitting a modified plan to all known parties in interest;

(c) Require the competent authority to transmit any modified plan to all known parties in interest indicating a short time period for expressing any objection or opposition to the modified plan;

(d) Require the competent authority to terminate the simplified reorganization proceedings for a solvent debtor or convert the simplified reorganization proceeding to a simplified liquidation proceeding for an insolvent debtor (i) if modification of the original plan to address objection or sufficient opposition is not possible or (ii) if objection or sufficient opposition to the modified plan is communicated to the competent authority within the established time period; and

(e) Specify that the modified plan is approved by creditors if the competent authority receives no objection and no sufficient opposition to the modified plan within the established time period.

(*See recommendations 155, 156 and 158 of the Guide.*)

#### **Confirmation of the plan by the competent authority**

78. The insolvency law providing for a simplified insolvency regime should require the competent authority to confirm the plan approved by creditors. It should require the competent authority, before confirming the plan, to ascertain that the creditor approval process was properly conducted, creditors will receive at least as much under the plan as they would have received in liquidation, unless they have specifically agreed to receive lesser treatment, and the plan does not contain provisions contrary to law. (*See recommendation 152 of the Guide.*)

#### **Challenges to the confirmed plan**

79. The insolvency law providing for a simplified insolvency regime should permit the confirmed plan to be challenged on the basis of fraud. It should specify:

(a) A time period for bringing such a challenge calculated by reference to the time the fraud is discovered;

- (b) The party that may bring such a challenge;
- (c) That the challenge should be heard by the relevant review body; and
- (d) That a simplified reorganization proceeding may be converted to a simplified liquidation proceeding or a different type of insolvency proceeding where the confirmed plan is successfully challenged.

*(See recommendations 154 and 158 (d) of the Guide.)*

#### **Amendment of a plan**

80. The insolvency law providing for a simplified insolvency regime should permit the amendment of a plan and specify:

- (a) The parties that may propose amendments;
- (b) The time at which the plan may be amended, including between submission and approval and during implementation, and a mechanism for communicating amendments to the competent authority; and
- (c) The mechanism for approval of amendments of the confirmed plan, which should include a notice by the competent authority of proposed amendments to all parties in interest affected by the amendments, the approval of the amendments by those parties, the confirmation of the amended plan by the competent authority, and the consequences of failure to secure approval of proposed amendments. *(See recommendations 155 and 156 of the Guide.)*

#### **Supervision of the implementation of the plan**

81. The insolvency law providing for a simplified insolvency regime may entrust supervision of the implementation of the plan to the competent authority or an independent professional as applicable. *(See recommendation 157 of the Guide.)*

#### **Consequences of the failure to implement the plan**

82. The insolvency law providing for a simplified insolvency regime should specify that, where there is substantial breach by the debtor of the terms of the plan or inability to implement the plan, the competent authority may on its own motion or at the request of any party in interest:

- (a) Convert the simplified reorganization proceeding to a simplified liquidation proceeding or a different type of insolvency proceeding;
- (b) Close the simplified reorganization proceeding and parties in interest may exercise their rights at law;
- (c) If closed, reopen the simplified reorganization proceeding;
- (d) If closed, open a simplified liquidation proceeding; or
- (e) Grant any other appropriate type of relief.

*(See recommendations 158 (e) and 159 of the Guide)*

#### **Conversion of a simplified reorganization to a liquidation**

83. The insolvency law providing for a simplified insolvency regime should provide that at any point during a simplified reorganization proceeding, the competent authority may, on its own motion or at the request of a party in interest or an independent professional, where appointed, decide that the proceeding be discontinued and converted to a liquidation, if the competent authority determines that the debtor is insolvent and there is no prospect for viable reorganization. Where the competent authority considers conversion to liquidation before submission of a reorganization plan, the competent authority should be mindful of the time needed to prepare and submit a reorganization plan (see recommendations 69 and 70 above) and



may consult the independent professional in making the decision, if one has been appointed.

## **L. Discharge**

### **Discharge in simplified liquidation proceedings**

#### *Decision on discharge*

84. The insolvency law providing for a simplified insolvency regime should specify that, in a simplified liquidation proceeding, discharge should be granted expeditiously.

#### *Discharge conditional upon expiration of a monitoring period*

85. Where the insolvency law provides that discharge may not apply until after the expiration of a specified period of time following commencement of insolvency proceedings during which period the debtor is expected to cooperate with the competent authority (“monitoring period”), the insolvency law providing for a simplified insolvency regime should:

(a) Fix the maximum duration of the monitoring period, which should be short;

(b) Allow the competent authority to establish a shorter duration of the monitoring period on a case-by-case basis;

(c) Specify that, after expiration of the monitoring period, the debtor should be discharged upon decision of the competent authority where the debtor has not acted fraudulently and has cooperated with the competent authority in performing its obligations under the insolvency law. (*See recommendation 194 of the Guide.*)

#### *Discharge conditional upon the implementation of a debt repayment plan*

86. The insolvency law providing for a simplified insolvency regime may specify that full discharge may be conditional upon the implementation of a debt repayment plan. In such case, it should allow the competent authority to specify the duration of the debt repayment plan (“discharge period”) and require the discharge procedures to include verification by the competent authority:

(a) Before the debt repayment plan becomes effective, that the debt repayment obligations reflect the situation of the individual entrepreneur and are proportionate to his or her disposable income and assets during the discharge period, taking into account the equitable interest of creditors; and

(b) On expiry of the discharge period, that the individual entrepreneur has fulfilled his or her repayment obligations under the debt repayment plan, in which case the individual entrepreneur is discharged upon confirmation by the competent authority of the fulfilment of the debt repayment plan by the debtor.

### **Discharge in simplified reorganization proceedings**

87. The insolvency law providing for a simplified insolvency regime may specify that full discharge in simplified reorganization is conditional upon successful implementation of the reorganization plan and it shall take immediate effect upon confirmation by the competent authority of such implementation.

### **General provisions**

#### *Conditions for discharge*

88. Where the insolvency law providing for a simplified insolvency regime specifies that conditions may be attached to the MSE debtor’s discharge, those conditions

should be kept to a minimum and clearly set forth in the insolvency law. (*See recommendation 196 of the Guide.*)

*Exclusions from discharge*

89. Where the insolvency law providing for a simplified insolvency regime specifies that certain debts are excluded from a discharge, those debts should be kept to a minimum and clearly set forth in the insolvency law. (*See recommendation 195 of the Guide.*)

*Criteria for denying discharge*

90. The insolvency law providing for a simplified insolvency regime should specify criteria for denying a discharge, keeping them to a minimum.

*Criteria for revoking a discharge granted*

91. The insolvency law providing for a simplified insolvency regime should specify criteria for revoking a discharge granted. In particular, it may specify that the discharge is to be revoked where it was obtained fraudulently. (*See recommendation 194 of the Guide.*)

## **M. Closure of proceedings**

92. The insolvency law providing for a simplified insolvency regime should specify minimal and simple procedures by which simplified insolvency proceedings should be closed. (*See recommendations 197 and 198 of the Guide.*)

## **N. Treatment of personal guarantees; procedural consolidation and coordination**

### **Treatment of personal guarantees**

93. A simplified insolvency regime should address, including through procedural consolidation or coordination of linked proceedings, the treatment of personal guarantees provided for business needs of the MSE debtor by individual entrepreneurs, owners of limited liability MSEs or their family members.

### **Procedural consolidation or coordination of linked business, consumer and personal insolvency proceedings**

#### *Orders of procedural consolidation and coordination*

94. The insolvency law may require procedural consolidation or coordination of linked business, consumer and personal insolvency proceedings in order to address comprehensively intertwined business, consumer and personal debts of individual entrepreneurs, owners of limited liability MSEs and their family members. The law may specify that, in such cases, the competent authority or another competent State body, as the case may be, may order procedural consolidation or coordination of linked proceedings on its own motion or upon request of any party in interest, which may be made at the time of application for commencement of insolvency proceedings or at any subsequent time.

#### *Modification or termination of an order for procedural consolidation or coordination*

95. The insolvency law should specify that an order for procedural consolidation or coordination may be modified or terminated, provided that any actions or decisions already taken pursuant to the order are not affected by the modification or termination. Where more than one State body is involved in ordering procedural consolidation or coordination, those State bodies may take appropriate steps to coordinate modification or termination of procedural consolidation or coordination.

*Notice of procedural consolidation and coordination*

96. The insolvency law should establish requirements for giving notice with respect to applications and orders for procedural consolidation or coordination and modification or termination of procedural consolidation or coordination, including the scope and extent of the order, the parties to whom notice should be given, the party responsible for giving notice and the content of the notice.

## **O. Conversion**

### **Conditions for conversion**

97. The insolvency law should provide for conversion between different types of proceedings in appropriate circumstances and subject to applicable eligibility and other requirements.

### **Procedures for conversion**

98. The insolvency law should address procedures for conversion, including notification to all known parties in interest about the conversion, and mechanisms for addressing objections to that course of action.

### **Effect of conversion on post-commencement finance**

99. The insolvency law should specify that where a simplified reorganization proceeding is converted to a liquidation proceeding, any priority accorded to post-commencement finance in the simplified reorganization proceeding should continue to be recognized in the liquidation proceeding. (*See recommendation 68 of the Guide.*)

### **Other effects of conversion**

100. The insolvency law should address other effects of conversion, including on deadlines for actions, the stay of proceedings and other steps taken in the proceeding being converted. (*See recommendation 140 of the Guide.*)

## **P. Appropriate safeguards and sanctions**

101. The insolvency law providing for a simplified insolvency regime should build in appropriate safeguards to prevent abuses and improper use of a simplified insolvency regime and permit the imposition of sanctions for abuse or improper use of the simplified insolvency regime, for failure to comply with the obligations under the insolvency law and for non-compliance with other provisions of the insolvency law. (*See recommendations 20, 28 and 114 of the Guide.*)

## **Q. Pre-commencement aspects**

### **Obligations of persons exercising control over MSEs in the period approaching insolvency**

102. The law relating to insolvency should specify that, at the point in time when the persons exercising control over the business knew or should have known that insolvency was imminent or unavoidable, they should have due regard for the interests of creditors and other stakeholders and take reasonable steps at an early stage of financial distress to avoid insolvency and, where it is unavoidable, to minimize the extent of insolvency. Reasonable steps might include:

- (a) Evaluating the current financial situation of the business;
- (b) Seeking professional advice where appropriate;
- (c) Not committing the business to the types of transaction that might be subject to avoidance unless there is an appropriate business justification;

- (d) Protecting the assets so as to maximize value and avoid loss of key assets;
- (e) Ensuring that management practices take into account the interests of creditors and other stakeholders;
- (f) Considering holding informal debt restructuring negotiations with creditors; and
- (g) Applying for commencement of insolvency proceedings if it is required or appropriate to do so.

*(See recommendations 255, 256 and 257 of the Guide.)*

### **Early rescue mechanisms**

103. As a means of encouraging the early rescue of MSEs, a State should consider establishing mechanisms for providing early signals of financial distress to MSEs, increasing financial and business management literacy among MSE managers and owners and promoting their access to professional advice. These mechanisms should be available and easily accessible to MSEs.

### **Informal debt restructuring negotiations**

#### *Removing disincentives for the use of informal debt restructuring negotiations*

104. For the purpose of avoiding MSE insolvency, the State may consider identifying and removing disincentives for the use of informal debt restructuring negotiations.

#### *Providing incentives for participation in informal debt restructuring negotiations*

105. The State may consider providing appropriate incentives for the participation of creditors, including public bodies, and other relevant stakeholders, in particular employees, in informal debt restructuring negotiations.

#### *Institutional support with the use of informal debt restructuring negotiations*

106. The State may consider providing for:

- (a) Involvement of a competent public or private body, where necessary, to facilitate informal debt restructuring negotiations between creditors and debtors and between creditors;
- (b) A neutral forum to facilitate negotiation and resolution of debtor-creditor and inter-creditor issues; and
- (c) Mechanisms for covering or reducing the costs of the services mentioned in subparagraphs (a) and (b) above.

### **Pre-commencement business rescue finance**

107. The law should:

- (a) Facilitate and provide incentives for finance to be obtained by MSEs in financial distress before commencement of insolvency proceedings for the purpose of rescuing business and avoiding insolvency;
- (b) Subject to proper verification of appropriateness of that finance and protection of parties whose rights may be affected by the provision of such finance, provide appropriate protection for the providers of such finance, including the payment of such finance provider at least ahead of ordinary unsecured creditors;
- (c) Provide appropriate protection for those parties whose rights may be affected by the provision of such finance.

## Annex III

### UNCITRAL Mediation Rules

#### Article 1 – Application of the Rules

1. Where parties have agreed that disputes between them shall be submitted to mediation under the UNCITRAL Mediation Rules, then these Rules shall apply. The Rules may apply irrespective of the basis, whether contractual or not, upon which the mediation is carried out.
2. Mediation under the Rules is a process, whether referred to by the term mediation, conciliation or an expression of similar import, whereby parties request a third person or persons (“the mediator”) to assist them in their attempt to reach an amicable settlement of their dispute. The mediator shall not have the authority to impose upon the parties a solution to the dispute.
3. The parties to a mediation shall be presumed to have referred to the Rules in effect on the date of commencement of the mediation, unless the parties have agreed to apply a particular version of the Rules.
4. The parties may agree to exclude or vary any provision of the Rules at any time.
5. Where any provision of these Rules is in conflict with a provision of the law applicable to the mediation from which the parties cannot derogate, including any applicable instrument or court order, that provision of law shall prevail.

#### Article 2 – Commencement of mediation

1. Mediation in respect of a dispute that has arisen shall be deemed to have commenced on the day on which the parties to that dispute agree to engage in mediation, unless otherwise agreed.
2. If a party that invited another party to mediate does not receive an acceptance of the invitation within 30 days from the day on which the invitation was sent by any means that provides for a record of its transmission, or within such other period of time as specified in the invitation, the party may elect to treat this as a rejection of the invitation to mediate.

#### Article 3 – Number and appointment of mediators

1. There should be one mediator, unless otherwise agreed. Where there is more than one mediator, the mediators shall act jointly.
2. The parties should endeavour to appoint a mediator by agreement, unless a different appointment procedure applies. They may agree to replace a mediator at any time.
3. The parties may seek the assistance of an institution or person for appointing a mediator.
4. In recommending or selecting individuals to act as mediator, the institution or person shall have regard to:
  - (a) The professional expertise and qualifications of the prospective mediator, experience as a mediator and ability to conduct the mediation;
  - (b) Any relevant accreditation and/or certification awarded to the prospective mediator by a recognized professional mediation standards body;
  - (c) The availability of the mediator; and
  - (d) Such considerations as are likely to secure the appointment of an independent and impartial mediator.
5. If the parties have different nationalities, the institution or person, in consultation with the parties, may also take into account the advisability of appointing

a mediator of a nationality other than the nationalities of the parties. In addition, the institution or person, in selecting, shall take into consideration geographical diversity and gender of the candidates.

6. When a person is approached in connection with a possible appointment as mediator, that person shall disclose any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence, including the disclosure of details of any personal, professional, financial or other interest that may influence the outcome of the dispute. A mediator, from the time of appointment and throughout the mediation, shall, without delay, disclose to the parties any such circumstances as they arise.

7. Prior to accepting the appointment, the prospective mediator shall ensure his or her availability to conduct the mediation diligently and efficiently.

8. In the event the mediator cannot perform her or his functions, the parties shall appoint a substitute mediator pursuant to the procedure mentioned in paragraphs 2, 3, 4, and 5. Paragraph 6 and 7 shall apply to the newly appointed mediator.

#### **Article 4 – Conduct of mediation**

1. The parties may agree on the manner in which the mediation is to be conducted. Otherwise, the mediator may determine the conduct of the mediation in consultation with the parties, taking into account the circumstances of the case, any wishes that the parties may express and the need for a speedy settlement of the dispute.

2. The mediator shall maintain fair treatment of the parties and, in so doing, shall take into account the circumstances of the case.

3. In order to facilitate the conduct of the mediation:

(a) The parties and the mediator may convene a meeting at an early stage to agree on the organization of the mediation;

(b) The parties, or the mediator with the consent of the parties, may arrange for administrative assistance by a suitable institution or person; and

(c) The parties, or the mediator with the consent of the parties, may appoint experts.

4. In conducting the mediation, the mediator may, in consultation with the parties and taking into account the circumstances of the dispute, utilize any technological means as he or she considers appropriate, including to communicate with the parties and to hold meetings remotely.

5. A party may be represented or assisted by a person or persons of its choice. The name, address and function of such persons shall be communicated to all parties and to the mediator in advance of the mediation or without delay. This communication shall also indicate the scope of authority and whether the purpose of the appointment is for representation or assistance.

#### **Article 5 – Communication between the parties and the mediator**

1. The mediator may meet or communicate with the parties together or with each of them separately.

2. At any stage of the mediation, the parties may submit information concerning the dispute, such as statements describing the general nature of the dispute, the points at issue, and any supporting document or additional information deemed appropriate. The information may also include a description of the goals, interests, needs and motivations of the parties as well as any relevant documents.

3. When the mediator receives information concerning the dispute from a party, the mediator shall keep such information confidential, unless that party indicates that the information is not subject to the condition that it should be kept confidential, or

expresses its consent to the disclosure of such information to another party to the mediation.

#### **Article 6 – Confidentiality**

Unless otherwise agreed by the parties, all information relating to the mediation, including, if relevant, the settlement agreement, shall be kept confidential by those involved in the mediation, except where disclosure is required by the law or as referred to under article 8, paragraph 4.

#### **Article 7 – Introduction of evidence in other proceedings**

1. Unless otherwise agreed by the parties, a party to the mediation, the mediator and any third person, including those involved in the administration of the mediation shall not, in arbitral, judicial or other dispute resolution proceedings, rely on, introduce as evidence or give evidence regarding any of the following:

- (a) An invitation by a party to engage in mediation or the fact that a party was willing to participate in mediation;
- (b) Views expressed, or suggestions made by a party in the mediation in respect of a possible settlement of the dispute;
- (c) Statements or admissions made by a party in the course of the mediation;
- (d) Proposals made by the mediator or the parties;
- (e) The fact that a party had indicated its willingness to accept a proposal (or parts thereof) for settlement made by the mediator or the parties; and
- (f) A document prepared primarily for purposes of the mediation.

2. Paragraph 1 applies irrespective of the form of the information or evidence referred to therein.

3. Paragraphs 1 and 2 apply whether or not the arbitral, judicial, or other dispute resolution proceedings relate to the dispute that is or was the subject matter of the mediation.

4. Subject to the limitations of paragraph 1, evidence that is otherwise admissible in arbitral, judicial, or other dispute resolution proceedings does not become inadmissible as a consequence of having been used or disclosed in the mediation.

#### **Article 8 – Settlement agreement**

1. Once the parties agree on the terms of a settlement to resolve all or part of the dispute through mediation, they should prepare and sign a settlement agreement. If requested by the parties and if the mediator deems it appropriate, the mediator may provide support to the parties in preparing the settlement agreement.

2. Unless otherwise agreed by the parties, the mediator or the mediation institution may sign or stamp the settlement agreement or provide other evidence that the agreement resulted from mediation.

3. The requirement that a settlement agreement shall be signed by the parties is met in relation to an electronic communication if:

- (a) A method is used to identify the parties and to indicate the parties' intention in respect of the information contained in the electronic communication;
- (b) The method is used either:
  - (i) As reliable as appropriate for the purpose for which the electronic communication was generated or communicated, in the light of all the circumstances, including any relevant agreement; or
  - (ii) Proven in fact to have fulfilled the functions described in subparagraph (a) above, by itself or together with further evidence.

4. By signing the settlement agreement, the parties agree that the settlement agreement can be used as evidence that it results from mediation, and that it can be relied upon for seeking relief under the applicable law.

#### **Article 9 – Termination of mediation**

The mediation shall terminate:

(a) By the signing of the settlement agreement by the parties, on the date of the agreement or such other date as agreed by the parties in the settlement agreement;

(b) By a declaration of the parties to the mediator to the effect that the mediation is terminated, on the date of the declaration;

(c) By a declaration of a party to the other party and the mediator, if appointed, to the effect that it no longer wishes to pursue mediation, on the date of the declaration;

(d) By a declaration of the mediator, after consultation with the parties, to the effect that further efforts at mediation are no longer justified, on the date of the declaration;

(e) By a declaration of the mediator, after consultation with the parties, in the situation referred to in article 11, paragraph 5, on the date of the declaration; or

(f) At the expiration of any mandatory period in the applicable international instrument, court order or mandatory statutory provision, or as agreed upon by the parties.

#### **Article 10 – Arbitral, judicial, or other dispute resolution proceedings**

1. Mediation may take place under the Rules at any time regardless of whether arbitral, judicial, or other dispute resolution proceedings have been already initiated.

2. Where the parties have agreed to mediate and have also expressly undertaken not to initiate, during a specified period of time or until a specified event has occurred, arbitral, judicial or other dispute resolution proceedings with respect to an existing or future dispute, such an undertaking shall be complied with, except to the extent necessary for a party, in its opinion, to preserve its rights. Initiation of such proceedings is not of itself to be regarded as waiver of the agreement to mediate or as a termination of the mediation.

#### **Article 11 – Costs and deposit of costs**

1. The method for fixing the costs of mediation should be agreed upon by the parties and the mediator as early as possible in the mediation. Upon termination of the mediation, the mediator shall fix the costs of the mediation, which shall be reasonable in amount and give written notice thereof to the parties. The term “costs” includes only:

(a) The fees of the mediator;

(b) The travel and other expenses of the mediator;

(c) The cost of expert advice requested by the mediator with the agreement of the parties;

(d) The cost of any assistance provided pursuant to article 3, paragraph 3, and article 4, paragraph 3, of the Rules; and

(e) Any other expenses that may have been accrued out of the mediation, including in relation to translation and interpretation services.

2. Unless otherwise agreed by the parties, the costs, referred to in paragraph 1, are borne equally by the parties and, in the case of multiparty mediation, they are shared pro rata. All other expenses incurred by a party are borne by that party.



3. The mediator, upon appointment, may request each party to deposit an equal amount as an advance for the costs referred to in paragraph 1, unless otherwise agreed by the parties and the mediator.

4. During the course of the mediation, the mediator may request supplementary deposits in an equal amount from each party, unless otherwise agreed by the parties and the mediator.

5. If the required deposits under paragraphs 3 and 4 are not paid in full by all parties within a reasonable period set by the mediator, the mediator may suspend the mediation or may declare the termination of the mediation, in accordance with article 9, subparagraph (e).

6. Upon termination of the mediation and if deposits were received, the mediator shall render an accounting to the parties of the deposits received and return any unexpended funds to the parties.

#### **Article 12 – Role of the mediator in other proceedings**

1. Unless otherwise agreed by the parties, the mediator shall not act as an arbitrator in respect of the dispute that was or is the subject of the mediation and of a dispute that has arisen from the same or a related contract or legal relationship.

2. The mediator shall not act as a representative or counsel of a party in any arbitral, judicial or other dispute resolution proceedings in respect of the dispute that was or is the subject of the mediation and of a dispute that has arisen from the same or a related contract or legal relationship.

3. The parties shall not present the mediator as a witness in any such proceedings.

#### **Article 13 – Exclusion of liability**

Save for intentional wrongdoing, the parties waive, to the fullest extent permitted under the applicable law, any claim against the mediator based on any act or omission in connection with the mediation.

### **Annex**

#### **Model mediation clauses**

##### *Mediation only*

Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination, or invalidity thereof, shall be submitted to mediation in accordance with the UNCITRAL Mediation Rules.

*Note: The parties should consider adding:*

- (a) The year of adoption of the version of the Rules;
- (b) The parties agree that there will be one mediator, appointed by agreement of the parties [within 30 days of the mediation agreement], and if the parties cannot agree, the mediator shall be selected by [relevant selecting authority];
- (c) The language of the mediation shall be ...;
- (d) The location of mediation shall be ... .

##### *Multi-tiered clause*

Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination, or invalidity thereof, shall be submitted to mediation in accordance with the UNCITRAL Mediation Rules.

*Note: Parties should consider adding:*

- (a) The selecting authority shall be (name of institution or person);

- (b) The language of the mediation shall be ...;
- (c) The location of mediation shall be... .

If the dispute, or any part thereof, is not settled within [(60) days] of the request to mediate under these Rules, the parties agree to resolve any remaining matters by arbitration in accordance with the UNCITRAL Arbitration Rules.

*Note: Parties should consider adding:*

- (a) The appointing authority shall be (name of institution or person);
- (b) The number of arbitrators shall be (one or three);
- (c) The place of arbitration shall be (town and country);
- (d) The language of the arbitration shall be... .

**Model declaration of disclosure**

*No circumstances to disclose*

To the best of my knowledge, there are no circumstances, past or present, likely to give rise to justifiable doubts as to my impartiality or independence. I shall promptly notify the parties of any such circumstances that may subsequently come to my attention during this mediation.

*Circumstances to disclose*

Attached is a statement of (a) my past and present professional, business and other relationships with the parties and (b) any other relevant circumstances. [*Include statement.*] I confirm that those circumstances do not affect my independence and impartiality. I shall promptly notify the parties of any such further relationships or circumstances that may subsequently come to my attention during this mediation.

**Model statement of availability**

I confirm, on the basis of the information presently available to me, that I can devote the time necessary to conduct this mediation.

## Annex IV

### UNCITRAL Expedited Arbitration Rules

#### A. Text of the additional paragraph in article 1 of the UNCITRAL Arbitration Rules

“5. The Expedited Arbitration Rules in the appendix shall apply to the arbitration where the parties so agree.”

#### B. Text of the UNCITRAL Expedited Arbitration Rules

##### Appendix to the UNCITRAL Arbitration Rules

##### UNCITRAL Expedited Arbitration Rules

##### Scope of application

###### *Article 1*

Where parties have agreed that disputes between them in respect of a defined legal relationship, whether contractual or not, shall be referred to arbitration under the UNCITRAL Expedited Arbitration Rules (“Expedited Rules”), then such disputes shall be settled in accordance with the UNCITRAL Arbitration Rules as modified by these Expedited Rules and subject to such modification as the parties may agree.<sup>1</sup>

###### *Article 2*

1. At any time during the proceedings, the parties may agree that the Expedited Rules shall no longer apply to the arbitration.
2. At the request of a party, the arbitral tribunal may, in exceptional circumstances and after inviting the parties to express their views, determine that the Expedited Rules shall no longer apply to the arbitration. The arbitral tribunal shall state the reasons upon which that determination is based.
3. When the Expedited Rules no longer apply to the arbitration pursuant to paragraph 1 or 2, the arbitral tribunal shall remain in place and conduct the arbitration in accordance with the UNCITRAL Arbitration Rules.

##### Conduct of the parties and the arbitral tribunal

###### *Article 3*

1. The parties shall act expeditiously throughout the proceedings.
2. The arbitral tribunal shall conduct the proceedings expeditiously taking into account the fact that the parties agreed to refer their dispute to expedited arbitration and the time frames in the Expedited Rules.
3. The arbitral tribunal may, after inviting the parties to express their views and taking into account the circumstances of the case, utilize any technological means as it considers appropriate to conduct the proceedings, including to communicate with the parties and to hold consultations and hearings remotely.

<sup>1</sup> Unless otherwise agreed by the parties, the following articles in the UNCITRAL Arbitration Rules do not apply to expedited arbitration: article 3(4)(a) and (b); article 6(2); article 7; article 8(1); first sentence of article 20(1); article 21(1); article 21(3); article 22; and second sentence of article 27(2).

## **Notice of arbitration and statement of claim**

### *Article 4*

1. A notice of arbitration shall also include:
  - (a) A proposal for the designation of an appointing authority, unless the parties have previously agreed thereon; and
  - (b) A proposal for the appointment of an arbitrator.
2. When communicating its notice of arbitration to the respondent, the claimant shall also communicate its statement of claim.
3. The claimant shall communicate the notice of arbitration and the statement of claim to the arbitral tribunal as soon as it is constituted.

## **Response to the notice of arbitration and statement of defence**

### *Article 5*

1. Within 15 days of the receipt of the notice of arbitration, the respondent shall communicate to the claimant a response to the notice of arbitration, which shall also include responses to the information set forth in the notice of arbitration pursuant to article 4(1)(a) and (b) of the Expedited Rules.
2. The respondent shall communicate its statement of defence to the claimant and the arbitral tribunal within 15 days of the constitution of the arbitral tribunal.

## **Designating and appointing authorities**

### *Article 6*

1. If all parties have not agreed on the choice of an appointing authority 15 days after a proposal for the designation of an appointing authority has been received by all other parties, any party may request the Secretary-General of the Permanent Court of Arbitration (hereinafter called the “PCA”) to designate the appointing authority or to serve as appointing authority.
2. When making the request under article 6(4) of the UNCITRAL Arbitration Rules, a party may request the Secretary-General of the PCA to serve as appointing authority.
3. If requested to serve as appointing authority in accordance with paragraph 1 or 2, the Secretary-General of the PCA will serve as appointing authority unless it determines that in view of the circumstances of the case, it is more appropriate to designate an appointing authority.

## **Number of arbitrators**

### *Article 7*

Unless otherwise agreed by the parties, there shall be one arbitrator.

## **Appointment of a sole arbitrator**

### *Article 8*

1. A sole arbitrator shall be appointed jointly by the parties.
2. If the parties have not reached agreement on the appointment of a sole arbitrator 15 days after a proposal has been received by all other parties, a sole arbitrator shall, at the request of a party, be appointed by the appointing authority in accordance with article 8(2) of the UNCITRAL Arbitration Rules.

---

## **Consultation with the parties**

### *Article 9*

Promptly after and within 15 days of its constitution, the arbitral tribunal shall consult the parties, through a case management conference or otherwise, on the manner in which it will conduct the arbitration.

## **Discretion of the arbitral tribunal with regard to periods of time**

### *Article 10*

Subject to article 16 of the Expedited Rules, the arbitral tribunal may at any time, after inviting the parties to express their views, extend or abridge any period of time prescribed under the UNCITRAL Arbitration Rules and the Expedited Rules or agreed by the parties.

## **Hearings**

### *Article 11*

The arbitral tribunal may, after inviting the parties to express their views and in the absence of a request to hold hearings, decide that hearings shall not be held.

## **Counterclaims or claims for the purpose of set off**

### *Article 12*

1. A counterclaim or a claim for the purpose of a set-off shall be made no later than in the statement of defence provided that the arbitral tribunal has jurisdiction over it.
2. The respondent may not make a counterclaim or rely on a claim for the purpose of a set-off at a later stage in the arbitral proceedings, unless the arbitral tribunal considers it appropriate to allow such claim having regard to the delay in making it or prejudice to other parties or any other circumstances.

## **Amendments and supplements to a claim or defence**

### *Article 13*

During the course of the arbitral proceedings, a party may not amend or supplement its claim or defence, including a counterclaim or a claim for the purpose of a set-off, unless the arbitral tribunal considers it appropriate to allow such amendment or supplement having regard to when it is requested or prejudice to other parties or any other circumstances. However, a claim or defence, including a counterclaim or a claim for the purpose of a set-off, may not be amended or supplemented in such a manner that the amended or supplemented claim or defence falls outside the jurisdiction of the arbitral tribunal.

## **Further written statements**

### *Article 14*

The arbitral tribunal may, after inviting the parties to express their views, decide whether any further written statement shall be required from the parties or may be presented by them.

## **Evidence**

### *Article 15*

1. The arbitral tribunal may decide which documents, exhibits or other evidence the parties should produce. The arbitral tribunal may reject any request, unless made by all parties, to establish a procedure whereby each party can request another party to produce documents.

2. Unless otherwise directed by the arbitral tribunal, statements by witnesses, including expert witnesses, shall be presented in writing and signed by them.
3. The arbitral tribunal may decide which witnesses, including expert witnesses, shall testify to the arbitral tribunal if hearings are held.

#### **Period of time for making the award**

##### *Article 16*

1. The award shall be made within six months from the date of the constitution of the arbitral tribunal unless otherwise agreed by the parties.
2. The arbitral tribunal may, in exceptional circumstances and after inviting the parties to express their views, extend the period of time established in accordance with paragraph 1. The extended period of time shall not exceed a total of nine months from the date of the constitution of the arbitral tribunal.
3. If the arbitral tribunal concludes that it is at risk of not rendering an award within nine months from the date of the constitution of the arbitral tribunal, it shall propose a final extended time limit, state the reasons for the proposal, and invite the parties to express their views within a fixed period of time. The extension shall be adopted only if all parties express their agreement to the proposal within the fixed period of time.
4. If there is no agreement to the extension in paragraph 3, any party may make a request that the Expedited Rules no longer apply to the arbitration. After inviting the parties to express their views, the arbitral tribunal may determine to continue to conduct the arbitration in accordance with the UNCITRAL Arbitration Rules.

### **C. Text of annexes to the UNCITRAL Expedited Arbitration Rules**

#### **Model arbitration clause for contracts**

Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the UNCITRAL Expedited Arbitration Rules.

*Note: Parties should consider adding:*

- (a) The appointing authority shall be . . . [name of institution or person];
- (b) The place of arbitration shall be . . . [town and country];
- (c) The language to be used in the arbitral proceedings shall be ...;

#### **Model statement**

*Note. Parties should consider requesting from the arbitrator the following addition to the statement of independence pursuant to article 11 of the UNCITRAL Arbitration Rules:*

I confirm, on the basis of the information presently available to me, that I can devote the time necessary to conduct this arbitration diligently, efficiently, expeditiously and in accordance with the time limits in the UNCITRAL Arbitration Rules and the UNCITRAL Expedited Arbitration Rules.

## Annex V

## List of documents before the Commission at its fifty-fourth session

<i>Symbol</i>	<i>Title or description</i>
<a href="#">A/CN.9/1041/Rev.1</a>	Provisional agenda, annotations thereto and scheduling of meetings of the fifty-fourth session
<a href="#">A/CN.9/1042</a>	Report of Working Group I (Micro-, Small and Medium-sized Enterprises) on the work of its thirty-fourth session
<a href="#">A/CN.9/1043</a>	Report of Working Group II (Dispute Settlement) on the work of its seventy-second session
<a href="#">A/CN.9/1044</a>	Report of Working Group III (Investor-State Dispute Settlement Reform) on the work of its thirty-ninth session
<a href="#">A/CN.9/1045</a>	Report of Working Group IV (Electronic Commerce) on the work of its sixtieth session
<a href="#">A/CN.9/1046</a>	Report of Working Group V (Insolvency Law) on the work of its fifty-seventh session
<a href="#">A/CN.9/1047/Rev.1</a>	Report of Working Group VI (Judicial Sale of Ships) on the work of its thirty-seventh session
<a href="#">A/CN.9/1048</a>	Summary of the Chair and the Rapporteur on the work of Working Group I (Micro-, Small and Medium-sized Enterprises) at its thirty-fifth session
<a href="#">A/CN.9/1049</a>	Report of Working Group II (Dispute Settlement) on the work of its seventy-third session
<a href="#">A/CN.9/1050</a>	Report of Working Group III (Investor-State Dispute Settlement Reform) on the work of its fortieth session
<a href="#">A/CN.9/1051</a>	Report of Working Group IV (Electronic Commerce) on the work of its sixty-first session
<a href="#">A/CN.9/1052</a>	Report of Working Group V (Insolvency Law) on the work of its fifty-eighth session
<a href="#">A/CN.9/1053</a>	Report of Working Group VI (Judicial Sale of Ships) on the work of its thirty-eighth session
<a href="#">A/CN.9/1054</a>	Report of Working Group III (Investor-State Dispute Settlement Reform) on the work of its resumed fortieth session
<a href="#">A/CN.9/1055</a>	Bibliography of recent writings related to the work of UNCITRAL

<i>Symbol</i>	<i>Title or description</i>
A/CN.9/1056	Status of conventions and model laws and the operation of the Transparency Registry
A/CN.9/1057	UNCITRAL regional presence
A/CN.9/1058	Technical cooperation and assistance
A/CN.9/1059	Dissemination of information and related activities to support the work of UNCITRAL and the use of its texts, including the report on CLOUT and digests
A/CN.9/1060	Report of the Colloquium on Applicable Law in Insolvency Proceedings
A/CN.9/1061	Results of the preparatory work by the UNCITRAL secretariat towards the development of a new international instrument on negotiable multimodal transport documents
A/CN.9/1062	Draft Legislative Guide on an UNCITRAL limited liability organization
A/CN.9/1063	Resource requirements to implement investor-State dispute settlement (ISDS) reform
A/CN.9/1064	Legal issues related to the digital economy (including dispute resolution) – progress report
A/CN.9/1064/Add.1	Revised draft legal taxonomy – revised section on artificial intelligence and automation
A/CN.9/1064/Add.2	Revised draft legal taxonomy – revised section on data transactions
A/CN.9/1064/Add.3	Revised draft legal taxonomy – new section on online platforms
A/CN.9/1064/Add.4	Legal issues related to the digital economy – dispute resolution in the digital economy
A/CN.9/1065	Legal issues related to the digital economy – proposal for legislative work on electronic transactions and the use of artificial intelligence and automation
A/CN.9/1066	Warehouse receipts
A/CN.9/1067	Enlargement of the membership of the United Nations Commission on International Trade Law
A/CN.9/1068	Work programme of the Commission
A/CN.9/1069	Coordination activities
A/CN.9/1070	Relevant General Assembly resolutions
A/CN.9/1071	Role of UNCITRAL in promoting the rule of law at the national and international levels



<i>Symbol</i>	<i>Title or description</i>
<a href="#">A/CN.9/1072</a>	Coordination and cooperation: international governmental and non-governmental organizations invited to sessions of UNCITRAL and its working groups
<a href="#">A/CN.9/1073</a>	Settlement of commercial disputes: draft guide to enactment and use of the UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation (2018)
<a href="#">A/CN.9/1074</a>	Settlement of commercial disputes: international commercial mediation – draft UNCITRAL Mediation Rules
<a href="#">A/CN.9/1075</a>	Settlement of commercial disputes: international commercial mediation: draft UNCITRAL Notes on Mediation
<a href="#">A/CN.9/1077</a>	Consideration of a draft text on a simplified insolvency regime: revisions to the draft commentary contained in working papers <a href="#">A/CN.9/WG.V/WP.172</a> and Add.1 in the light of deliberations of Working Group V (Insolvency Law) at its fifty-eighth session
<a href="#">A/CN.9/1078</a>	Decision adopted by States members of UNCITRAL in December 2020 concerning working group sessions in accordance with the procedure for taking decisions of UNCITRAL during the coronavirus disease 2019 (COVID-19) pandemic
<a href="#">A/CN.9/1079</a>	Decisions adopted by States members of UNCITRAL in June 2021 concerning the fifty-fourth session of UNCITRAL in accordance with the procedure for taking decisions of UNCITRAL during the coronavirus disease 2019 (COVID-19) pandemic
<a href="#">A/CN.9/1080</a>	Exploratory work on the impact of COVID-19 on international trade law – part I
<a href="#">A/CN.9/1081</a>	Exploratory work on the impact of COVID-19 on international trade law – part II
<a href="#">A/CN.9/1082</a>	Draft UNCITRAL Expedited Arbitration Rules
<a href="#">A/CN.9/1082/Add.1</a>	Draft Explanatory Note to the UNCITRAL Expedited Arbitration Rules