



General Assembly

Distr.: General
26 April 2023

Original: English

**United Nations Commission on
International Trade Law**
Fifty-sixth session
Vienna, 3–21 July 2023

Work programme of the Commission

Note by the Secretariat

Contents

	<i>Page</i>
I. Background.....	2
II. Legislative activities.....	2
III. Supporting activities.....	9
IV. Possible adjustments in methods of work of UNCITRAL	10



I. Background

1. At its forty-sixth session, in 2013, the Commission agreed that it should reserve time for discussion of UNCITRAL's future work as a separate topic at each Commission session.¹ To assist the Commission's consideration of its overall work programme and planning of its activities at the fifty-sixth session, this note covers both the current and possible future legislative work programme (chapter II). It also covers supporting activities planned for the period up to the fifty-seventh session of the Commission (chapter III).

2. When setting UNCITRAL's work programme for the forthcoming period, the Commission may also wish to recall its decision at the forty-sixth session, in 2013, that it would normally plan for the period to the next Commission session, but that some longer-term indicative planning (for a three-to-five-year period) may also be appropriate.²

II. Legislative activities

3. At its past sessions, the Commission underscored the importance of a strategic approach to the allocation of resources to, inter alia, legislative development, in the light of the increasing number of topics referred to UNCITRAL for consideration.³ The Commission has emphasized the benefit of UNCITRAL's primary working method – that is, legislative development through formal negotiations in a working group.⁴ The Commission has also reaffirmed that it retains the authority and responsibility for setting UNCITRAL's workplan, especially as regards the mandates of working groups, though their role in identifying possible future work and the need to allow a working group the flexibility to decide on the type of legislative text to be produced were also recalled.⁵

4. At its forty-sixth session, in 2013, the Commission confirmed that it would consider whether to refer proposals for future work to a Working Group by reference to four criteria: (a) whether the Commission was satisfied that the topic was likely to be amenable to harmonization and the consensual development of a legislative text; (b) whether the scope of a possible future text and the policy issues for deliberation were clear; (c) whether there existed a sufficient likelihood that a proposed legislative text would enhance the law of international trade; and (d) whether the proposed work would duplicate work undertaken by other law reform bodies.⁶

5. Table 1 below provides an overview of the current legislative work by the Commission and its working groups as well as exploratory or preparatory work being undertaken by the UNCITRAL secretariat in accordance with the mandate given to it by the Commission.

¹ *Official Records of the General Assembly, Sixty-eighth Session, Supplement No. 17 (A/68/17)*, para. 310.

² *Ibid.*, para. 305.

³ *Ibid.*, para. 294.

⁴ *Ibid.*, *Sixty-ninth Session, Supplement No. 17 (A/69/17)*, para. 249.

⁵ *Ibid.*, para. 251.

⁶ *Ibid.*, *Sixty-eighth Session, Supplement No. 17 (A/68/17)*, paras. 303 and 304.

Table 1
Current legislative work

	<i>Consideration of texts by the Commission at its fifty-sixth session</i>	<i>Work by the Working Group</i>	<i>Preparatory or exploratory work currently undertaken by the secretariat</i>	<i>Possible future work</i>
Micro, small and medium-sized enterprises (MSMEs)	<p><i>Access to credit for MSMEs</i></p> <p>At its fifty-second session, in 2019, the Commission agreed to strengthen and complete its work on reducing the legal obstacles faced by MSMEs throughout their life cycles by requesting the secretariat to start preparing draft materials on MSME access to credit.⁷ The Working Group commenced and continued that work through its thirty-sixth to thirty-ninth sessions. A draft guide on access to credit for micro, small and medium-sized enterprises (A/CN.9/1155) and the reports of the thirty-eighth and thirty-ninth sessions of the Working Group (A/CN.9/1122 and A/CN.9/1128) are before the Commission for consideration.</p>	-----	-----	-----
Dispute settlement	<p><i>Guidance text on early dismissal and preliminary determination</i></p> <p>At its fifty-fifth session, in 2022, the Commission requested Working Group II to develop a guidance text on early dismissal and preliminary determination, on the basis of the text provided in document A/CN.9/1114, and to present it to the Commission for consideration at its fifty-sixth session.⁸ The text of the draft guidance text on early dismissal and preliminary determination (A/CN.9/1145) for inclusion into the UNCITRAL Notes on Organizing Arbitral Proceedings is before the Commission for consideration.</p>	<p><i>Technology-related dispute resolution and adjudication</i></p> <p>At its fifty-fifth session, in 2022, the Commission entrusted Working Group II with considering the topics of technology-related dispute resolution and adjudication jointly, and with considering ways to further accelerate the resolution of disputes by incorporating elements of both proposals.⁹ The reports of the seventy-sixth and seventy-seventh sessions of the Working Group (A/CN.9/1123 and A/CN.9/1129) are before the Commission for consideration.</p>	<p><i>Dispute resolution in the digital economy</i></p> <p>At its fifty-fifth session, the Commission requested the secretariat to continue to implement the stocktaking project on dispute resolution in the digital economy and to continue to take part in the Inclusive Global Legal Innovation Platform on Online Dispute Resolution. The secretariat was requested to report on the preliminary findings to the</p>	

⁷ Ibid., *Seventy-fourth Session, Supplement No. 17* (A/74/17), para. 192 (a).

⁸ Ibid., paras. 22 (c) and 229.

⁹ Ibid., paras. 22 (c) and 225.

	<i>Consideration of texts by the Commission at its fifty-sixth session</i>	<i>Work by the Working Group</i>	<i>Preparatory or exploratory work currently undertaken by the secretariat</i>	<i>Possible future work</i>
			Commission at its fifty-sixth session, in 2023. ¹⁰ At its fifty-sixth session, the Commission will have before it notes by the Secretariat on taxonomy and preliminary findings of stocktaking of developments in dispute resolution in the digital economy: A/CN.9/1154 and A/CN.9/1154/Add.1 .	
Investor-State dispute settlement (ISDS) reform	At its fifty-fifth session, in 2022, the Commission urged the Working Group to present the outcome of its work on a draft code of conduct and texts on alternative dispute resolution mechanisms to the Commission at its next session in 2023. ¹¹ A draft code of conduct for arbitrators in international investment dispute resolution and commentary (A/CN.9/1148), a draft code of conduct for judges in international investment dispute resolution and commentary (A/CN.9/1149), draft provisions on mediation (A/CN.9/1150) and draft guidelines on investment mediation (A/CN.9/1151) are before the Commission for consideration.	At its fiftieth session, in 2017, the Commission mandated Working Group III to work on the possible ISDS reform. ¹² The Working Group continued its work on the topic at its forty-third, forty-fourth and forty-fifth sessions. The reports of those sessions (A/CN.9/1124 , A/CN.9/1130 and A/CN.9/1131) are before the Commission for consideration.	-----	-----
Electronic commerce	-----	<i>Use of artificial intelligence and automation in contracting and data provision contracts</i> At its fifty-fifth session, in 2022 the Commission requested Working Group IV: (a) as a first stage, to compile provisions of UNCITRAL texts that apply	<i>Legal issues related to the digital economy: use of distributed ledger technology in trade</i> At its fifty-fifth session, in 2022, the Commission requested the secretariat to prepare a guidance	-----

¹⁰ Ibid., paras. 22 (b) and 222.

¹¹ Ibid., para. 184.

¹² Ibid., *Seventy-second Session, Supplement No. 17* ([A/72/17](#)), para. 264.

	Consideration of texts by the Commission at its fifty-sixth session	Work by the Working Group	Preparatory or exploratory work currently undertaken by the secretariat	Possible future work
		to automated contracting, and to revise those provisions, as appropriate, and as a second stage, to identify and develop possible new provisions that address a broader range of issues, including those identified by the Working Group at its sixty-third session; ¹³ and (b) in parallel, to proceed with work on data provision contracts on the basis of the preparatory work already accomplished. ¹⁴ Working Group IV addressed the topic of artificial intelligence and automation in contracting during its the sixty-fourth and sixty-fifth sessions and considered the topic of data provision contracts at its sixty-fifth session. Reports of the sixty-fourth and sixty-fifth sessions of the Working Group (A/CN.9/1125 and A/CN.9/1132) are before the Commission for consideration.	document on legal issues relating to the use of distributed ledger systems in trade, within existing resources, and in cooperation with other concerned organizations, as appropriate. ¹⁵ At its fifty-sixth session, the Commission will have before it a note by the Secretariat on legal issues relating to the use of distributed ledger technology in trade (scoping paper) (A/CN.9/1146).	
Insolvency law	-----	<i>Civil Asset Tracing and Recovery and Applicable law in insolvency proceedings</i> At its fifty-fourth session, in 2021, the Commission took note of conclusions reached at the colloquiums concerning civil asset tracing and recovery as well as applicable law in insolvency proceedings, and mandated Working Group V to commence work on both topics after completing the work on the draft commentary to the Legislative Recommendations on Insolvency of Micro-	-----	-----

¹³ Ibid., paras. 22 (e) and 163.

¹⁴ Ibid., paras. 22 (d) and 159.

¹⁵ Ibid., paras. 22 (f) and 169.

	<i>Consideration of texts by the Commission at its fifty-sixth session</i>	<i>Work by the Working Group</i>	<i>Preparatory or exploratory work currently undertaken by the secretariat</i>	<i>Possible future work</i>
		and Small Enterprises. ¹⁶ The Commission requested Working Group V to treat both topics equally, noting that the form the work might take on both topics would be decided at a later stage. ¹⁷ Working Group V commenced work on both topics at its fifty-ninth session and continued that work at its subsequent three sessions. The reports of the sixty-first and sixty-second sessions of the Working Group (A/CN.9/1126 and A/CN.9/1133) are before the Commission for consideration.		
Negotiable Multimodal Transport Documents	-----	At its fifty-fifth session, in 2022, the Commission assigned the topic of negotiable multimodal transport documents to Working Group VI. ¹⁸ During its forty-first and forty-second sessions, Working Group VI considered a set of preliminary draft provisions for an instrument on negotiable cargo documents. The instrument is intended to enable the issuance of documents of title representing goods received for international carriage irrespective of the actual modes of transportation used for the particular carriage, which will be used for financing purposes. The reports of the forty-first and forty-second sessions of the Working Group (A/CN.9/1127 and A/CN.9/1134) are before the Commission for consideration.	-----	-----

¹⁶ Ibid., *Seventy-sixth Session, Supplement No. 17* ([A/76/17](#)), paras. 216–217.

¹⁷ Ibid., para. 217.

¹⁸ Ibid., *Seventy-seventh Session, Supplement No. 17* ([A/77/17](#)), paras. 22 (h) and 202.

Exploratory and preparatory work undertaken by the UNCITRAL secretariat on other topics

Warehouse receipts

At its fifty-first session, in 2018, the Commission requested the secretariat to conduct exploratory and preparatory work on the topic of warehouse receipts.¹⁹ At its resumed fifty-third session, the Commission agreed to carry out the project jointly with UNIDROIT on the understanding that a preliminary draft model law on the topic would be prepared by a UNIDROIT study group or working group and would subsequently be submitted for intergovernmental negotiations through an UNCITRAL working group, with a view of its ultimate adoption by UNCITRAL.²⁰ At its fifty-fifth session, the Commission 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 Governing Council of UNIDROIT, possibly in 2023, and subsequent transmittal to the first available UNCITRAL working group.²¹ At its fifty-sixth session, the Commission will have before it a note by the Secretariat on the subject ([A/CN.9/1152](#)). The Commission may wish to consider assigning this topic to Working Group I with a view to beginning intergovernmental negotiations on a draft text developed by the Working Group on a Model Law on Warehouse Receipts, convened by UNIDROIT in consultation with the UNCITRAL secretariat.

The impact of COVID-19 on international trade law

At its resumed fifty-third session, the Commission had before it a proposal by Armenia, the Russian Federation and Viet Nam to update the work programme to include the consideration of measures to combat the consequences of the global coronavirus disease (COVID-19) pandemic and other emergencies that entail material restrictions to global trade ([A/CN.9/1039](#)). The Commission requested further exploration of the proposal, in particular by identifying what had been done by other organizations on that topic, and by organizing online round tables or meetings. The secretariat was requested to report back to the Commission at its fifty-fourth session on the impact that the COVID-19 pandemic had on international trade, the legislative responses of States and areas where the Commission could embark on future work.²² At its fifty-fourth session, the Commission took note of the progress report ([A/CN.9/1079](#), [A/CN.9/1080](#) and [A/CN.9/1081](#)) and expressed its appreciation to States that shared best practices and experiences through their responses to the questionnaire circulated by the secretariat.²³ The Commission requested the secretariat to continue its exploratory work on 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.²⁴ At its fifty-fifth session, the Commission took note of the progress made and requested the secretariat to continue its exploratory work on the impact of COVID-19 on international trade by holding expert group meetings and other events with interested stakeholders to further advance such work.²⁵ At its fifty-sixth session, the Commission will have before it a note by the Secretariat on the subject containing in an annex a document tentatively titled “COVID-19 and international trade law instruments: a legal toolkit by the UNCITRAL secretariat”, which the Commission may wish to authorize the secretariat to publish ([A/CN.9/1144](#)).

¹⁹ Ibid., *Seventy-third Session, Supplement No. 17* ([A/73/17](#)), paras. 249 and 253 (a).

²⁰ Ibid., *Seventy-fifth Session, Supplement No. 17* ([A/75/17](#)), part two, paras. 16 (d) and 61.

²¹ Ibid., *Seventy-seventh Session, Supplement No. 17* ([A/77/17](#)), paras. 22 (k) and 197.

²² Ibid., *Seventy-fifth Session, Supplement No. 17* ([A/75/17](#)), part two, paras. 16 (i), 86 and 89.

²³ Ibid., *Seventy-sixth Session, Supplement No. 17* ([A/76/17](#)), paras. 238–239.

²⁴ Ibid., para. 241.

²⁵ Ibid., *Seventy-seventh Session, Supplement No. 17* ([A/77/17](#)), para. 208.

Climate change mitigation, adaptation and resilience

At its fifty-fourth session, 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.²⁶ While broad support was expressed for the Commission to consider the proposal further, it was noted 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 2015.²⁷ 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 2022.²⁸ At its fifty-fifth session, the Commission took note of the progress made and requested the secretariat to conduct further research in the area, in consultation with outside experts and interested organizations from both within and outside the United Nations system. It also requested the secretariat to organize a colloquium or an expert group meeting on the various legal issues surrounding climate change mitigation, adaptation and resilience, in conjunction with relevant and interested international organizations, the results of which would facilitate its consideration at a future session.²⁹ At its fifty-sixth session, the Commission will have before it notes by the Secretariat on the subject ([A/CN.9/1153](#) and [A/CN.9/1153/Add.1](#)) and an oral report by the secretariat on the results of a two-day UNCITRAL Colloquium on Climate Change and International Trade Law that will be held on 12 and 13 July.

²⁶ Ibid., para. 244.

²⁷ Ibid., para. 245.

²⁸ Ibid., para. 246.

²⁹ Ibid., para. 216.

III. Supporting activities

6. Table 2 lists activities of the secretariat planned until the fifty-seventh session of the Commission in support of the legislative work by the Commission and its working groups.³⁰ It is separated in two parts: part (a) lists one-time events; and part (b) lists recurrent or ongoing activities. These activities include work by the secretariat, alone or in cooperation with other organizations, to prepare texts and explanatory materials to support the acceptance, understanding, uniform interpretation and application of UNCITRAL texts. (For activities that are more closely related to the technical cooperation and assistance work of the secretariat, see documents [A/CN.9/1137](#), [A/CN.9/1138](#) and [A/CN.9/1139](#)).

Table 2

Supporting activities

(a) Specific activities

<i>Description of the activity</i>	<i>Place and date</i>
Working Group session for the preparation of a Guide to Enactment for the Model Law on Warehouse Receipts, convened by UNIDROIT in consultation with UNCITRAL	Second half of 2023
Working Group for the preparation of a Guide to Enactment for the Model Law on Factoring convened by UNIDROIT	Either late 2023 or early 2024
Working Group on Bank Insolvency convened by UNIDROIT	September/October 2023
Working Group on Best Practices for Effective Enforcement convened by UNIDROIT	November/December 2023

(b) Recurrent or ongoing activities

7. Table 2, part (b) lists recurrent or ongoing activities, some of which are undertaken pursuant to partnerships or other collaborative initiatives (for a description of such initiatives, see the note by the Secretariat on technical cooperation and assistance ([A/CN.9/1138](#))).

<i>Subject area</i>	<i>Description of the activity</i>
Insolvency law	Participation in the World Bank Group's Insolvency and Creditor/Debtor Regimes Task Force in the context of an ongoing work on the unified Insolvency and Creditor Rights Standard ³¹
ISDS Reform	Support to host countries in the organization of intersessional meetings and host a number of informal online meetings on various elements of ISDS reform, including on the possible establishment of a standing mechanism
Secured transactions	Participation in the Sixth Conference on International Coordination of Secured Transactions Reform and the Joint Network for Coordinating Secured Transactions and Related Reforms (with the World Bank Group,

³⁰ Dates and location of events are tentative.

³¹ Comprised of the UNCITRAL Legislative Guide on Insolvency Law and the World Bank Principles for Effective Insolvency and Creditor/Debtor Regimes, recognized by the Financial Stability Board as one of the key standards for sound financial systems, representing the international consensus on best practices for evaluating and strengthening insolvency regimes. See Insolvency and Creditor Rights Standard – Financial Stability Board ([fsb.org](#)).

<i>Subject area</i>	<i>Description of the activity</i>
	UNIDROIT, Organization of American States, International Law Institute, and Kozolchyk National Law Centre)
Electronic commerce	Participation at the UNCTAD eWeek, which is organized in collaboration with the eTrade for all and other partners and which will be held from 4 to 8 December 2023 at the International Conference Center of Geneva (CICG), Switzerland
General	<p>Participation at the tripartite coordination meeting of UNCITRAL, UNIDROIT and HCCH at which current work of the three organizations, areas of mutual interest and possible joint activities are regularly discussed</p> <p>Coordination of the current legislative work of UNCITRAL and preparatory work of its secretariat with the relevant projects of UNIDROIT</p> <p>Participation in the International Organisations' Partnership for Effective International Rule-Making, led by the Organisation for Economic Co-operation and Development</p> <p>Operation of the Transparency Registry, a repository of published information in accordance with article 8 of the Rules on Transparency in Treaty-based Investor-State Arbitration, subject to the availability of resources³²</p> <p>Contribution to periodicals, reports and other writings on the work of UNCITRAL</p>

IV. Possible adjustments in methods of work of UNCITRAL

8. At its fifty-fifth session, in the light of the experience accumulated from the holding of UNCITRAL sessions during the COVID-19 pandemic, the Commission considered possible adjustments to its methods of work. Among other things, the Commission agreed to continue to arrange for the meetings of its working groups to be made available on a streaming or videoconferencing platform, which would allow delegates participating remotely to listen to the deliberations but not make active interventions.³³ It was, however, stressed that any such arrangement should continue to promote inclusivity and should seek to be effective in relation to costs and budgets.³⁴

9. The Commission may wish to note that the Secretariat provided live streaming in the six languages of the United Nations (webcasts with no possibility to make online interventions) for all sessions of UNCITRAL working groups that were held between the fifty-fifth and fifty-sixth sessions of the Commission. Arrangements were made to webcast those sessions through UN Web TV under the standard cost-recovery rate of approximately \$300 per meeting (up to 3 hours). Since the regular budget of UNCITRAL and its secretariat did not provide for the coverage of webcasting costs, the secretariat put in place exceptional measures to cover such costs, which are not sustainable in a long run.

10. The Commission may wish to consider discontinuing the livestreaming of UNCITRAL sessions or authorizing the secretariat to initiate a programme budget implication statement to cover the costs of webcasting UNCITRAL sessions. Discontinuation of livestreaming of any UNCITRAL sessions would be regrettable since live streaming allows not only to disseminate information about ongoing

³² See General Assembly resolution 77/99, para. 3.

³³ *Official Records of the General Assembly, Seventy-seventh Session, Supplement No. 17 (A/77/17)*, para. 237.

³⁴ *Ibid.*

UNCITRAL legislative work to the intended broader audience but also to increase awareness and understanding of that audience of UNCITRAL texts emanating from that legislative work and to build local capacity to use the texts upon their finalization. In the event that the Commission decides to continue the livestreaming of UNCITRAL sessions, the Commission may wish to note that such sessions will become searchable on UN Web TV.

11. Furthermore, the Commission, at its fifty-fifth session, had decided to allow Working Group III (and any other working group, when the need arose) to use the final meeting of its sessions for substantive deliberations and to continue the practice of adopting the report by a written procedure as outlined in paragraph 19 of document [A/CN.9/1103](#).³⁵ Since then, Working Group III conducted its forty-third to forty-fifth sessions and adopted the respective reports ([A/CN.9/1124](#), [A/CN.9/1130](#) and [A/CN.9/1131](#)) in that manner, which required a number of in-session documents to be processed following the session. The Commission may wish to confirm that this method of work should continue to allow for more substantive deliberations during the sessions, in particular for Working Group III.

³⁵ Ibid., para. 236.