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Work programme of the Commission

Note by the Secretariat

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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-second session, in 2019, 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-third session of the Commission, in 2020 (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. Table 2 lists topics for possible future work by the Commission that were suggested in the past and that the Commission decided to retain on its long-term work programme. It also lists UNCITRAL texts which the Commission mandated the Secretariat to update from time to time when relevant legal developments so warrant. No work on the topics listed in table 2 is currently undertaken.

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>Finalization of texts by the Commission at its fifty-second session, in 2019</i>	<i>Work by the Working Groups</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>UNCITRAL limited liability organization (UNLLO)</i></p> <p>At its forty-sixth session, in 2013, the Commission entrusted Working Group I with work aimed at reducing the legal obstacles faced by MSMEs throughout their life cycle, starting with the legal questions surrounding the simplification of incorporation.⁷ After completion of work on key principles of a business registry, Working Group I proceeded with the discussion of a draft legislative guide on an UNCITRAL limited liability organization at its thirty-first (Vienna, 8–12 October 2018) and thirty-second (New York, 25–29 March 2019) sessions (A/CN.9/963 and A/CN.9/968).</p>	<p><i>Contractual networks – report of the colloquium</i></p> <p>Following the consideration of proposals for possible future work by UNCITRAL on contractual networks at its fiftieth and fifty-first sessions (A/CN.9/925 and A/CN.9/954), the Commission, at its fifty-first session, authorized Working Group I to hold a colloquium on that topic.⁸ The report of the colloquium held in New York on 25–26 March 2019 is contained in document A/CN.9/991.</p> <p><i>Consolidation of the results of UNCITRAL’s work on legal aspects of MSMEs’ business life cycle</i></p> <p>In order to strengthen and complete the work aimed at reducing the legal obstacles faced by MSMEs throughout their business life cycle, the Secretariat suggests that the Commission should consolidate the results of work undertaken by different UNCITRAL working groups on aspects related to MSMEs’ business life cycle, including MSMEs’ insolvency and MSMEs’ access to finance. Working Group I may be authorized to undertake</p>	

⁷ Ibid., para. 321.

⁸ Ibid., *Seventy-third Session, Supplement No. 17 (A/73/17)*, para. 253 (c).

such work jointly with Working Group V and experts of Working Group VI (Security Interests). The Commission may wish to recall that, at its fifty-first session, in 2018, it had before it a note by the Secretariat on adopting an enabling legal environment for the operation of MSMEs (A/CN.9/941), which was intended to provide the context for the work of UNCITRAL on MSMEs.⁹ No action was taken by the Commission on that document at that session. The Commission may wish to authorize Working Group I or the Secretariat to prepare an expanded version of that note building on the above-proposed consolidation of the results of UNCITRAL's work on legal aspects of MSMEs' business life cycle.

⁹ Ibid., para. 70.

	<i>Finalization of texts by the Commission at its fifty-second session, in 2019</i>	<i>Work by the Working Groups</i>	<i>Preparatory or exploratory work currently undertaken by the Secretariat</i>	<i>Possible future work</i>
Dispute settlement	<p><i>Mediation Rules and Mediation Notes</i></p> <p>At its fifty-first session, in 2018, the Commission noted that the Secretariat would prepare notes on organizing mediation proceedings and update the UNCITRAL Conciliation Rules in the light of the mediation framework adopted at that session.¹⁰ The draft UNCITRAL mediation rules are contained in document A/CN.9/986 and the draft UNCITRAL notes on mediation are contained in document (A/CN.9/987) (both texts were prepared by the UNCITRAL secretariat in consultation with experts).</p>	<p><i>Expedited arbitration</i></p> <p>At its fifty-first session, in 2018, the Commission mandated Working Group II to take up issues relating to expedited arbitration.¹¹ The Working Group commenced that work at its sixty-ninth session (New York, 4–8 February 2019) (A/CN.9/969).</p>	<p><i>Guide to Enactment and Use of the UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation, 2018</i></p> <p>At its fifty-first session, in 2018, the Commission requested the Secretariat to prepare a guide to enactment and use of the referred Model Law.¹² The draft is under preparation by the Secretariat and is expected to be submitted to the Commission for its consideration at the fifty-third session, in 2020.</p>	<p><i>High-tech dispute resolution – a possible proposal by Israel</i></p> <p>The Secretariat was informed by a representative of Israel in UNCITRAL that Israel intended to submit to the Secretariat a proposal on possible future work by UNCITRAL in the field of arbitration in international high-tech related disputes, with the request to transmit it for consideration by the Commission at its fifty-second session. As of the date of this note, no such proposal has been received by the Secretariat.</p>
Investor-State dispute settlement (ISDS) reform	-	<p>At its fiftieth session, in 2017, the Commission mandated Working Group III to work on the possible reform of investor-State dispute settlement.¹³ At its thirty-sixth (Vienna, 29 October–2 November 2018) and thirty-seventh (New York, 1–5 April 2019) sessions, the Working Group continued its work on that topic (A/CN.9/964 and A/CN.9/970).</p>	-	-

¹⁰ Ibid., paras. 246 and 254.

¹¹ Ibid., paras. 244, 245 and 252.

¹² Ibid., para. 67.

¹³ Ibid., *Seventy-second Session, Supplement No. 17 (A/72/17)*, para. 264.

	<i>Finalization of texts by the Commission at its fifty-second session, in 2019</i>	<i>Work by the Working Groups</i>	<i>Preparatory or exploratory work currently undertaken by the Secretariat</i>	<i>Possible future work</i>
Electronic commerce	<p><i>Cloud computing notes and an online reference tool incorporating them</i></p> <p>At its fifty-first session, in 2018, the Commission considered the recommendation of Working Group IV (Electronic Commerce) that the Commission should review the draft notes on the main issues of cloud computing contracts at its fifty-second session, in 2019, and authorize its publication or issuance in the form of an online reference tool, in both cases as a work product of the Secretariat (A/CN.9/936, para. 44). The Commission decided to review the draft notes on the main issues of cloud computing contracts at its fifty-second session and requested the Secretariat to prepare a pilot online tool containing the draft notes and a note illustrating the considerations relating to the preparation of such online tool.¹⁴ Documents A/CN.9/974 and A/CN.9/975 are presented to the Commission for its consideration at the session pursuant to those decisions.</p>	<p><i>Identity management and trust services</i></p> <p>At its fifty-first session, in 2018, the Commission requested Working Group IV to work on the preparation of a text aimed at facilitating cross-border recognition of identity management and trust services, on the basis of the principles and issues identified by the Working Group at its fifty-sixth session.¹⁵ At its fifty-seventh (Vienna, 19–23 November 2018) and fifty-eighth (New York, 8–12 April 2019) sessions, the Working Group continued its work on legal issues relating to identity management and trust services (A/CN.9/965 and A/CN.9/971).</p>	<p><i>Digital economy</i></p> <p>At its fifty-first session, in 2018, the Commission decided that the Secretariat should compile information on legal issues related to the digital economy and report that information for its consideration at a future session.¹⁶ For information on the work undertaken on that topic by the Secretariat so far and a possible way forward, see the annex to this note.</p>	-

¹⁴ Ibid., paras. 150 and 155.

¹⁵ Ibid., *Seventy-third Session, Supplement No. 17 (A/73/17)*, para. 159.

¹⁶ Ibid., paras. 247, 248 and 253 (b).

	<i>Finalization of texts by the Commission at its fifty-second session, in 2019</i>	<i>Work by the Working Groups</i>	<i>Preparatory or exploratory work currently undertaken by the Secretariat</i>	<i>Possible future work</i>
Insolvency law	<p><i>Enterprise group insolvency</i></p> <p>Pursuant to the mandate approved by the Commission at its forty-seventh session, in 2014,¹⁷ Working Group V continued the work on the topic of enterprise group insolvency and completed it by approving and transmitting for finalization and adoption by the Commission at its fifty-second session the draft model law on enterprise group insolvency contained in the annex to the report of the fifty-fourth session of the Working Group (A/CN.9/966), the draft guide to enactment of the model law contained in document A/CN.9/WG.V/WP.165 as expected to be amended by the Working Group at its fifty-fifth session (A/CN.9/972) and the draft text on obligations of directors of enterprise group companies in the period approaching insolvency contained in document A/CN.9/990.</p>	<p><i>Insolvency of MSMEs</i></p> <p>At its forty-ninth session, in 2016, the Commission agreed that Working Group V should develop appropriate mechanisms and solutions, focusing on both natural and legal persons engaged in commercial activity, to resolve the insolvency of MSMEs.¹⁸ At its fifty-first session (New York, 10–19 May 2017), the Working Group commenced its deliberations on MSME insolvency, based upon the provisions of the UNCITRAL Legislative Guide on Insolvency Law. The work on that topic is ongoing (see A/CN.9/966 and A/CN.9/972 for the reports of the most recent sessions of the Working Group at which the topic was considered. See also in the MSMEs row above a suggestion to consolidate all the results of work undertaken by different UNCITRAL working groups on aspects related to MSMEs' business life cycle, including MSMEs' insolvency).</p>	<p><i>Background study on the relevant issues of asset tracing in the area of insolvency</i></p> <p>At its fifty-first session, in 2018, after discussion of a proposal for possible future work on civil law aspects of asset tracing and recovery (A/CN.9/WG.V/WP.154), the Commission decided that the Secretariat should prepare a background study on the relevant issues of asset tracing in the area of insolvency, taking into account work undertaken by other organizations.¹⁹ Research for the background study is ongoing. It has covered the relevant work of international organizations and initiatives (e.g., the United Nations Office on Drugs and Crime under the United Nations Convention against Corruption, the World Bank, the Stolen Asset Recovery Initiative (StAR) and the Lausanne Process). Review of national legal frameworks for national asset tracing and recovery in insolvency proceedings and solutions for tracing and recovery of digital assets has commenced.</p>	<p><i>Harmonizing applicable law in insolvency proceedings – proposal by the European Union</i></p> <p>On 26 April 2019, the European Union submitted the above referred proposal to the Secretariat, with the request to transmit it for consideration by the Commission at its fifty-second session. The proposal is contained in document A/CN.9/995.</p> <p><i>Asset tracing and recovery – a proposal by the United States of America to call a colloquium and thereafter commence work on the development of model legislative provisions on civil asset tracing and recovery in both common law and civil law systems</i></p> <p>On 13 May 2019, the United States submitted the above referred proposal to the Secretariat, with the request to transmit it for consideration by the Commission at its fifty-second session. The proposal is contained in document A/CN.9/996. The Commission may wish to recall that the original proposal on that topic (A/CN.9/WG.V/WP.154) was considered by Working Group V at its fifty-third session, in 2018 (A/CN.9/937, paras. 121–122), and by the Commission, at its</p>

¹⁷ Ibid., *Sixty-ninth Session, Supplement No. 17 (A/69/17)*, para. 155.

¹⁸ Ibid., *Seventy-first Session, Supplement No. 17 (A/71/17)*, para. 246.

¹⁹ Ibid., *Seventy-third Session, Supplement No. 17 (A/73/17)*, para. 253 (d).

	<i>Finalization of texts by the Commission at its fifty-second session, in 2019</i>	<i>Work by the Working Groups</i>	<i>Preparatory or exploratory work currently undertaken by the Secretariat</i>	<i>Possible future work</i>
Judicial sale of ships	-	Pursuant to the decision of the Commission at its fifty-first session, in 2018, ²¹ Working Group VI commenced work on the preparation of a draft instrument on the judicial sale of ships at its thirty-fifth session (New York, 13–17 May 2019) (A/CN.9/973).	-	fifty-first session, in 2018 (see also the column to the left). ²⁰
Other topics	<i>Public-private partnerships (PPPs)</i> - At its past sessions, the Commission requested the Secretariat to revise and consolidate the UNCITRAL Legislative Guide on Privately Financed Infrastructure Projects (2000) and the UNCITRAL Model Legislative Provisions on Privately Financed Infrastructure Projects (2003) in consultation with experts. ²² The revised and consolidated text is contained in document A/CN.9/982 and addenda.	-	-	<i>Warehouse receipts – a note by the Secretariat</i> At its fifty-first session, in 2018, the Commission requested the Secretariat to conduct exploratory and preparatory work on the above referred topic in order to refer that work to a working group in due course. ²³ A note by the Secretariat on warehouse receipts is contained in document A/CN.9/992 . The Commission may wish to recall that Working Group VI (Security Interests), at its thirty-third session (New York, 30 April–4 May 2018), following a discussion on a proposal to prepare a substantive text on warehouse receipts in cooperation with other international and regional organizations, had requested a mandate from the Commission to develop a modern and predictable

²⁰ Ibid., paras. 237, 249 and 250.

²¹ Ibid., para. 252.

²² Ibid., *Fifty-eighth Session, Supplement No. 17 (A/58/17)*, paras. 18–21; *ibid.*, *Seventy-second Session, Supplement No. 17 (A/72/17)*, para. 274; and *ibid.*, *Seventy-third Session, Supplement No. 17 (A/73/17)*, para.137.

²³ Ibid., *Seventy-third Session, Supplement No. 17 (A/73/17)*, paras. 249 and 253 (a).

Security interests

At its fiftieth session, in 2017, the Commission entrusted Working Group VI with the task of preparing a practice guide on secured transactions.²⁴ At its thirty-fourth session (Vienna, 17–21 December 2018), Working Group VI completed that work. The report of that session ([A/CN.9/967](#)) and the final draft of the practice guide ([A/CN.9/993](#)) are before the Commission for its consideration at the fifty-second session. (See also in the MSMEs row above a suggestion to consolidate all the results of work undertaken by different UNCITRAL working groups on aspects related to MSMEs' business life cycle, including MSMEs' access to finance.)

legal regime ([A/CN.9/938](#), paras. 92–93).

Railway consignment notes – a possible proposal by China

The Secretariat was informed by a representative of China in UNCITRAL that China intended to submit a proposal on possible future work by UNCITRAL on railway consignment notes in the context of interconnectivity and intermodal and multimodal transport, with the request to transmit it for consideration by the Commission at its fifty-second session. As of the date of this note, no such proposal has been received by the Secretariat.

²⁴ Ibid., *Seventy-second Session, Supplement No. 17* ([A/72/17](#)), para. 227.

Table 2
Possible future legislative activity

<i>Subject area</i>	<i>Topics</i>
Security interests	At its past sessions, the Commission decided to retain the following topics for further discussion at a future session, without assigning any priority to them: - Intellectual property licensing - Alternative dispute resolution in secured transactions ²⁵
Public procurement	<i>Update of the Guide to Enactment of the UNCITRAL Model Law on Public Procurement</i> The Preface to the Guide to Enactment, which the Commission adopted in 2012, ²⁶ acknowledges that practices and procedures in public procurement will develop and change to adapt to changing economic and other circumstances. The Preface states that for that reason UNCITRAL may update the Guide from time to time, to reflect new practices and procedures, and experience gained in the implementation and use of the Model Law in practice. It was envisaged that the electronic version of the Guide available on the UNCITRAL website would be considered the up-to-date and authoritative version.
Insolvency law	<i>Update of the Judicial Perspective</i> When the text was adopted by the Commission in 2011, the Commission requested the Secretariat to establish a mechanism for updating the Judicial Perspective on an ongoing basis. ²⁷ Since then, the updated Judicial Perspective was issued in 2013.

III. Supporting activities

6. Table 3 lists activities of the Secretariat planned until the next session of the Commission in 2020 in support of the legislative work by the Commission and its working groups and in support of acceptance, understanding, uniform interpretation and application and effective implementation of UNCITRAL texts.

Table 3
Supporting activities

A. Specific activities

<i>Description of the activity</i>	<i>Place and date</i>
The signing ceremony of the Singapore Convention on Mediation	Singapore, 7 August 2019
Annual ADR conference (co-hosted with the Ministry of Justice of the Republic of Korea, the Korean Commercial Arbitration Board (“KCAB”), the Seoul International Dispute Resolution Centre, the International Chamber of Commerce (“ICC”) International Court of Arbitration, and other partners)*	Seoul, Republic of Korea, 20 September 2019

* The Conference is aimed at government and judicial officials, experts, practitioners, scholars, and representatives from arbitration centres. Previous iterations have brought together over 250 speakers and participants from 40 jurisdictions, and side events have included national updates on arbitration reform and the impact of UNCITRAL texts in various jurisdictions.

²⁵ Ibid., *Seventy-first Session, Supplement No. 17 (A/71/17)*, paras. 124–125; and *ibid.*, *Seventy-second Session, Supplement No. 17 (A/72/17)*, paras. 225 and 229.

²⁶ Ibid., *Sixty-seventh Session, Supplement No. 17 (A/67/17)*, para. 46.

²⁷ Ibid., *Sixty-sixth Session, Supplement No. 17 (A/66/17)*, para. 198.

<i>Description of the activity</i>	<i>Place and date</i>
Working Group III (ISDS Reform) – support to host countries in organization of intersessional regional meetings	The next intersessional regional meeting is scheduled in Guinea, 25 and 26 September 2019
The third edition of the UNCITRAL Asia-Pacific Judicial Summit (a biennial event organized with the Department of Justice of the Government of the Hong Kong Special Administrative Region of the People’s Republic of China, and the Judiciary of Hong Kong, China)	Hong Kong, China, 4 and 5 November 2019
Participation at the biannual OHADA Council of Ministers meeting	Guinea-Bissau, November 2019
UNCITRAL Asia-Pacific Day**	November–December 2019, various universities across the region
** During this annual event, regional universities are invited to propose a special programme that can range from special lectures and seminars to public conferences on topics related to the work of UNCITRAL and developments in international trade and commerce. Universities that have participated in past events include those in Australia, China, including Hong Kong, India, Japan, the Philippines, and Singapore, and the plans are to expand this year’s event to universities in other jurisdictions such as the Republic of Korea and Thailand.	
Series events in conjunction with the fortieth anniversary of the United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980) (CISG)	Throughout 2019–2020, various places (e.g., Vienna and Hong Kong, China, end March–early April 2020)
A capacity-building and training seminar on UNCITRAL texts for 15–20 government and judicial officials from across South-East Asia	Incheon, Republic of Korea, the first trimester of 2020
An inaugural annual workshop on UNCITRAL texts for South Asian and African countries, in cooperation with the Ministry of Foreign Affairs of India and the Asian-African Legal Consultative Organization (AALCO)	New Delhi, India, March 2020
Working Group V (Insolvency Law) – coordination of work with the World Bank on MSME insolvency	ICR Task Force meeting, Washington, D.C., spring 2020

B. Recurrent or ongoing activities

<i>Subject area</i>	<i>Description of the activity</i>
CISG	Finalization of a guide on international commercial contracts (with a focus on sales) prepared in cooperation with the Hague Conference on Private International Law and the International Institute for the Unification of Private Law (Unidroit) ²⁸
Electronic commerce	Coordination and cooperation on aspects of single windows and paperless trade facilitation ²⁹

²⁸ For an earlier report on this project by the Secretariat to the Commission, see *Official Records of the General Assembly, Seventy-third Session, Supplement No. 17 (A/73/17)*, paras. 176–177.

²⁹ At its forty-fourth session, in 2011, the Commission had requested the Secretariat to continue cooperating with other organizations undertaking work on electronic single-window facilities and to contribute to that work, as appropriate, with a view to discussing relevant matters at the

<i>Subject area</i>	<i>Description of the activity</i>
	Preparation of explanatory materials on the enactment of UNCITRAL texts in the area of electronic commerce ³⁰
Public procurement	Cooperation with the United Nations Office on Drugs and Crime (UNODC) and the International Anti-Corruption Academy (Laxenburg) (IACA) on anti-corruption in public procurement Cooperation with the Turin School of Development (ITCILO) on delivery of training on UNCITRAL subjects, including for the Master in Public Procurement Management for Sustainable Development Implementation of the European Bank for Reconstruction and Development (EBRD)-UNCITRAL Initiative on Public Procurement ³¹
Insolvency law	Preparation of a digest on the Model Law on Cross-Border Insolvency ³² Preparation of explanatory materials on the enactment of three model laws in the area of insolvency law (see A/CN.9/966 , para. 109)
General	Cooperation and coordination with international organizations active in the field of the law of international trade Maintenance of the UNCITRAL website and development of online e-learning and other capacity-building tools Expansion of case law in the CLOUT system and the Transparency Repository and update of the published digests of case law Review, upon request of States and international organizations, of draft laws, to ascertain their compliance with UNCITRAL texts Development and implementation of technical assistance and capacity-building programmes in the area of international commercial law (in the 2019–2020 cycle, for China and for Saudi Arabia, upon their request) Other technical assistance to States and international organizations, upon their request, to build capacity to use UNCITRAL texts Coordination with, and support to, the UNCITRAL Regional Centre for Asia and the Pacific (RCAP) as regards that Centre's technical assistance, cooperation, coordination and promotional activities and events Review of enacted laws to ascertain their compliance with UNCITRAL texts for the web pages of the UNCITRAL website on the status of UNCITRAL texts Development of a curriculum for an annual week-long, in-depth training on UNCITRAL texts Contribution to periodicals, reports and other writings on the work of UNCITRAL ³³

working group level when the progress of joint work offered a sufficient level of detail (*Official Records of the General Assembly, Sixty-sixth Session, Supplement No. 17 (A/66/17)*, para. 240). The Secretariat has continued that work and reported annually to the Commission on relevant developments (for the most recent report, see *Official Records of the General Assembly, Seventy-third Session, Supplement No. 17 (A/73/17)*, para. 160).

³⁰ *Official Records of the General Assembly, Seventy-second Session, Supplement No. 17 (A/72/17)*, paras. 112–114.

³¹ <https://www.ppi-ebd-uncitral.com/index.php/en/ebd-uncitral-initiative/action-plan>.

³² *Official Records of the General Assembly, Sixty-seventh Session, Supplement No. 17 (A/67/17)*, para. 156.

³³ For details of these and other general supporting activities, see the relevant reports by the Secretariat to the Commission ([A/CN.9/976](#), [A/CN.9/977](#), [A/CN.9/978](#), [A/CN.9/979](#), [A/CN.9/980](#), [A/CN.9/984](#), [A/CN.9/985](#) and [A/CN.9/988](#)).

Annex

Summary of exploratory work on digital economy undertaken by the Secretariat since the fifty-first session of the Commission, in 2018

1. At its fifty-first session, in 2018, the Commission requested that the Secretariat “compile information on legal issues related to the digital economy, including by organizing, within existing resources and in cooperation with other organizations, symposiums, colloquiums and other expert meetings”.³⁴ It also requested that the Secretariat report that information for consideration by the Commission at a future session. In doing so, the Commission stressed that discussions should focus on identifying legal obstacles and their possible solutions, and should avoid privacy and data protection issues.³⁵
2. Since that session of the Commission, the Secretariat has undertaken a range of activities to discharge this exploratory mandate, and expects work to continue beyond the fifty-second session of the Commission. Specifically, the Secretariat has attended and organized a series of events on legal issues related to the digital economy in partnership with Member States and other organizations, as outlined below. In preparing for this exploratory work, it was decided to proceed on the basis that international rules and legislation on trade have so far dealt with goods, assets, commodities and rights in rem, and that the virtual character of data and digital assets gives rise to numerous legal issues that are readily classifiable as goods and services.
3. On 5 September 2018, the Secretariat attended the “SOLAIR” conference in Prague on the international harmonization of private law with regard to artificial intelligence (AI) and intelligent autonomous robotics, which was organized by the Institute of State and Law of the Czech Academy of Sciences in cooperation with the Ministry of Industry and Trade of Czechia. Among other things, the conference addressed the relevance of UNCITRAL texts to smart contracts in the context of contract formation and performance, as well as liability frameworks for the operation of AI systems.
4. On 15 March 2019, the Secretariat partnered with the Institute for Advanced Judicial Studies (the Institut des Hautes Études sur la Justice) and the Ministry for Europe and Foreign Affairs of France to hold an expert meeting in Paris to discuss legal issues relating to cross-border data flows and AI. The meeting was attended by over 30 experts from academia, government, legal practice, industry, civil society and other international institutions, and focused on (a) the definition of data, (b) the use and quality of data, (c) data ownership, (d) data storage and localization, and (e) the use of AI.
5. At the meeting, experts observed that, beyond the realms of privacy, data protection, intellectual property and data localization, few rules existed governing data transactions that recognize data as a valuable and tradable commodity. Several experts advocated a focus on contracts as the tool for regulating data flows. In this regard, reference was made to the ongoing joint project of the American Law Institute (ALI) and European Law Institute (ELI) for the development of principles for the data economy, which is looking at different types of data transactions, such as contracts for the supply of data, for access to data sources, for “toleration” of processing, and for the processing of data.³⁶ Some experts suggested that there is merit in UNCITRAL considering a revision of the United Nations Convention on Contracts for the

³⁴ *Official Records of the General Assembly, Seventy-third Session, Supplement No. 17 (A/73/17)*, para. 253 (b).

³⁵ *Ibid.*

³⁶ For details of this project, see <https://www.europeanlawinstitute.eu/projects-publications/current-projects-feasibility-studies-and-other-activities/current-projects/data-economy/>.

International Sale of Goods (Vienna, 1980),³⁷ which does not cover data transactions, or the development of a separate framework for data transactions.

6. Most experts opposed the extension of property rights to data. One expert emphasized the need for a taxonomy of data rights, such as the right to access data, to use data, to dispose of data, and to destroy data. Another expert suggested that the law could conceivably recognize a limited right of control over data held by a third party in cases where a person has been involved in the generation of those data (so-called “co-generated data”), a right that is being considered as part of the joint ALI/ELI project.

7. On AI, several experts drew a link between the development and use of AI systems on the one hand and the free flow of data and data quality on the other hand. Experts also discussed the issue of attributability of acts performed by AI systems, as well as transparency in their operation.

8. On 6–7 May 2019, the Secretariat joined with Unidroit to hold a workshop in Rome, under the patronage of the Ministry of Foreign Affairs and International Cooperation of Italy, on legal issues arising from the use of smart contracts, AI and distributed ledger technology (DLT). The workshop was attended by around 50 experts from academia, government, legal practice and other international institutions, and featured panels on (a) defining concepts related to AI, smart contracts, digital assets and DLT, with a particular focus on their use in financial transactions, (b) the institutional frameworks that facilitate the use of these features of the digital economy, (c) how these features fit within existing principles of contract law, property law, and conflict of law rules, as well as within existing international instruments (notably existing UNCITRAL and Unidroit instruments), and (d) how they fit with existing non-contractual liability regimes, as well as with existing court procedure rules and remedies.

9. At the workshop, a possible coordinated future work programme was outlined for consideration by UNCITRAL and Unidroit. Experts discussed the need for a legal taxonomy of key features of the digital economy, such as AI, smart contracts, digital assets and digital ledgers, and an appraisal of existing UNCITRAL, Unidroit and other instruments to determine how they apply to these features. It was noted that certain concepts that are enshrined in these existing instruments may need to be adjusted or updated so as to apply to the use of new technologies. An example provided was the shift from automated to autonomous systems; while both may be considered electronic means, the latter involves reduced human intervention through the use of machine “learning”. The work could also encompass a review of liability and risk allocation issues arising from the use of AI systems, as well as an analysis of the legal issues arising from the “tokenization” of assets (or a narrower analysis focussing on particular documents of title such as warehouse receipts). It was noted that issues such as insolvency, conflict of laws, institutional frameworks, the role of platforms, enforcement mechanisms, and dispute resolution could provide the groundwork for this analysis. It was suggested that a joint follow-up event be organized to fine-tune the scope of this possible work.

10. The Secretariat has partnered with the Ministry of Information Technologies and Communications of Colombia, in cooperation with the Organization for American States and the Inter-American Development Bank, to hold a conference on 5 June 2019 in Bogota on legal issues relating to the digital economy. The themes of the conference, which brings together experts from government, legal practice and academia, are (a) cross-border data flows and (b) smart contracts and AI. The conference will also address the relevance to Latin America of topics on the current work programme of UNCITRAL in the area of electronic commerce, namely (c) electronic identity management and trust services and (d) paperless trade facilitation.

³⁷ United Nations, Treaty Series, vol. 1489, No. 25567.

11. These events have highlighted the importance of data and digital assets in the digital economy. They have also provided justification for further work on these topics at an international level. Specifically, the view has been aired that (a) the law has a role to play in creating certainty for commercial participants in the digital economy and predictability in commercial transactions, (b) the law can foster the use and development of AI systems, smart contracts, DLT, and other new technologies, and should not be used as an obstacle to such use and development, (c) work at an international level may prevent fragmented responses from the various national legal systems that are yet to begin addressing the legal challenges, which could create an obstacle to cross-border trade, and (d) work in this area, particularly in cross-border data flows, can contribute to bridging the digital divide. Moreover, several parameters have been emphasized for possible future work, including (a) technology neutrality, specifically the need to avoid regulating a particular technology such as DLT, (b) the need to focus on the disruptive features of new technologies on commercial transactions, and (c) the relevance of non-discrimination and functional equivalence in fostering the use of new technologies in the execution of commercial transactions.

12. The Secretariat has received expressions of interest from several Member States in hosting similar events in the future on legal issues related to the digital economy. A workshop with industry and business is planned for September 2019 in the Republic of Korea, and another event will take place in Belarus later in the year.

13. In addition to these events, the Secretariat has been carrying out a review of literature on legal aspects of the use of AI, smart contracts, digital assets and digital ledgers, as well as monitoring relevant developments in government and industry practice.

14. The exploratory work carried out by the Secretariat has highlighted a number of topical issues that touch upon different areas of UNCITRAL work, such as electronic commerce, security interests and insolvency. These issues are relevant for governments, the business community, legal practitioners and the courts. Given the fruitful outcomes of the activities carried out so far, and the interest from other Member States in future events, it is proposed that the Secretariat continue work to discharge the exploratory mandate conferred by the Commission at its fifty-first session. In particular, it is proposed that the Secretariat continue its collaboration with the Unidroit secretariat with a view to refining a proposal for possible future work in this area, and report back to the Commission at its fifty-third session, in 2020.
