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International Trade Law**
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Exploratory work on the impact of COVID-19 on international trade law – Part I*

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* Part II may be found in document [A/CN.9/1081](#).



I. Introduction

1. The Commission may wish to recall its decision¹ during its fifty-third session (2020) to request its secretariat to organize a series of virtual panels that considered the role that UNCITRAL texts could play in assisting States with their COVID-19 economic response and recovery efforts (see paras. 4 to 11 below for additional detail). At its resumed fifty-third session (2020), the Commission requested² the UNCITRAL secretariat to commence exploratory work regarding whether measures that had been imposed by States to mitigate the effects of the pandemic had exposed gaps or obstacles to cross-border trade and investment that could be overcome through possible future work by UNCITRAL (see paras. 12 to 13 below for additional detail on the proposal leading to that decision).

2. In keeping with the request of the Commission³, the secretariat undertook three main steps in compiling its report to the Commission. The first step, the results of which are reflected in the present document, was the preparation (in partnership with interested governments) and circulation of a questionnaire through which States could provide their experience in terms of COVID-19 measures and identify obstacles to cross-border trade that had been encountered by businesses.

3. The second and third steps taken by the secretariat in exploring the proposal are reported in [A/CN.9/1081](#). The second step was the identification of efforts that had been made by other international organizations in gathering information on COVID-19 measures implemented by States and policy support provided by such organizations to States. The third step taken by the secretariat in its exploratory work was the holding of online round tables and events in cooperation with interested Governments, the first of which was an open webinar on the “Digitalization of International Trade”, held on 30 March 2021 in cooperation with the Ministry of Economic Development of the Russian Federation and the International Comparative and Law Research Center (Moscow). Additional online round tables and events are planned, including a component on simplified insolvency regimes for MSEs to occur during an international legal forum in May 2021,⁴ which will be reported orally to the Commission.

Virtual panel series on COVID-19 response and recovery

4. In requesting⁵ its secretariat to organize during its fifty-third session (2020) a series of virtual panels that considered the role that UNCITRAL texts could play in assisting States with their COVID-19 economic response and recovery efforts, the Commission observed that many of the legislative tools developed by UNCITRAL could play an important role in assisting States in their economic response and recovery efforts in the context of the COVID-19 pandemic and that a strong legal framework would facilitate that recovery and help to revitalize commercial activity and global trade.⁶

5. The series of six virtual panels took place from 8 to 16 July 2020 and involved several key partners of UNCITRAL. The first panel focused on “Identification and authentication in the digital economy”, and emphasized the important role that laws recognizing the use of electronic signatures, including the relevant UNCITRAL texts,⁷ had played in assisting States in accelerating the move to online business

¹ *Official Records of the General Assembly, Seventy-fifth Session, Supplement No. 17 (A/75/17, part one)*, para. 107.

² *Official Records of the General Assembly, Seventy-fifth Session, Supplement No. 17 (A/75/17, part two)*, paras. 16(i) and 89.

³ *Ibid.*, para. 88.

⁴ Round Table “MSE Debtors and Creditors in Trouble: is a Simplified Insolvency Regime the Solution?”, St. Petersburg International Legal Forum, 21 May 2021.

⁵ *Official Records of the General Assembly, Seventy-fifth Session, Supplement No. 17 (A/75/17, part one)*, para. 107.

⁶ *Ibid.*, para. 108.

⁷ UNCITRAL Model Laws on Electronic Commerce and on Electronic Signatures.

processes, as well as the need to address the interoperability of identity management systems and the portability of identity credentials across systems.⁸

6. The second virtual panel on “Digital economy and trade finance”, was hosted in partnership with ICC and focused on paperless trade facilitation and electronic payments, highlighting the importance of the UNCITRAL Model Law on Electronic Transferable Records to assist in supporting supply chains, particularly for micro-, small and medium-sized enterprises (MSMEs), that were being particularly negatively affected given their liquidity shortage and difficulties in accessing credit. Panellists also stressed the desirability of a broader adoption of UNCITRAL texts, and reaffirmed the soundness of the past work of UNCITRAL in this field and the relevance of its ongoing efforts on digital trade.⁹

7. The third virtual panel on “Assisting economic recovery-targeting MSMEs”, and was hosted in partnership with the World Bank Group, and discussed the importance of efficient, effective and simplified insolvency proceedings to resolve financial distress of micro- and small enterprises (MSEs), with reference to the ongoing work of UNCITRAL. In addition, measures needed to be taken by both the public and private sectors to enhance access to credit for MSMEs, including legislative reforms based on UNCITRAL texts on secured transactions.¹⁰

8. The fourth panel of the virtual series focused on public-private partnerships; and public procurement. The implications of the COVID-19 pandemic for public-private partnership contracts already in force were considered, as were the necessity of adaptation mechanisms between the contracting authority and the private partner to address unexpected financial changes, including reference to the mechanisms for contract adaptation provided in the UNCITRAL Model Legislative Provisions on Public Private Partnerships. In the area of public procurement, legislative initiatives related to the establishment or improvement of the public procurement and legal frameworks for public-private partnership were ongoing around the world, again supported by UNCITRAL texts.¹¹

9. The fifth virtual panel session addressed the impact of COVID-19 on international dispute resolution, examining the measures necessary to ensure the safe operation of the institutions, and those aimed at the effective administration of arbitral proceedings, as well as the use of digital technology to facilitate the different stages of the proceedings (such as remote hearings), and the issuance of guidelines to assist parties and the arbitral tribunal. Increased digitization and further use of technology were expected, as were expedited procedures, the use of artificial intelligence, asynchronous hearings, online platforms and other innovative measures. UNCITRAL texts on dispute resolution (including on mediation) were said to be flexible enough to accommodate these changing circumstances, but might warrant further examination in the context of the evolving environment.¹²

10. The sixth virtual panel session, “Gender, trade and COVID-19”, was hosted in partnership with UN-Women and highlighted how UNCITRAL texts could help promote pro-women and gender-responsive policies in line with the Sustainable Development Goals. In particular, mediation was said to be particularly suited to women entrepreneurs by encouraging a constructive and managed dialogue in a safe environment, including online, while improving laws on business registration would assist MSMEs operated by women, such as through adoption of the UNCITRAL Legislative Guide on Key Principles of a Business Registry. Finally, the discussion also examined how UNCITRAL texts on electronic commerce looked at how

⁸ Ibid., para. 111.

⁹ Ibid., para. 112.

¹⁰ Ibid., para. 113.

¹¹ Ibid., para. 114.

¹² Ibid., para. 115.

e-commerce platforms could assist the economic participation of women, as well as foster women entrepreneurship.¹³

11. The Commission expressed its overall satisfaction that the panel discussions had demonstrated that many UNCITRAL texts could support States in their economic recovery in the face of the unprecedented COVID-19 crisis, and reiterated the importance of continuing to develop legislative tools to assist States in modernizing and strengthening their legal frameworks and to better withstand and recover from global economic shocks.¹⁴

The proposal for possible future work in A/CN.9/1039/Rev.1

12. At its resumed fifty-third session (2020), and following the virtual panel series, the Commission considered¹⁵ a proposal for possible future work made by the Government of the Russian Federation, and supported by the Governments of Armenia and Viet Nam.¹⁶ That proposal noted that States had implemented measures aimed at mitigating the effects of the COVID-19 pandemic, and expressed concern regarding disruptions caused to global trade as well as the potential negative impact that such measures might have on cross-border trade and commerce, both during the current pandemic and in the case of other large-scale emergencies. It was proposed that the UNCITRAL secretariat engage in exploratory work to consider whether such measures had exposed gaps or obstacles to cross-border trade and investment that could be overcome through work by UNCITRAL in harmonising cross-border rules in certain areas, for example regarding: (a) the permissible scope of state interference into contractual obligations; (b) issues of liability of a party to a contract given the frustration of performance (due to force majeure); (c) mandatory alteration of the terms of performance of obligations; (d) alleviated bankruptcy rules; (e) the digitalization of legal procedures in formation and execution of contracts; (f) online voting in companies; and (g) elaborated provisions on smart contracts.¹⁷

13. The Commission recognized the timeliness and relevance of the proposal, and (as noted in paras. 1 and 2 above) requested the UNCITRAL secretariat to commence exploratory work on whether measures that had been imposed by States to mitigate the effects of the pandemic had exposed gaps or obstacles to cross-border trade and investment that could be overcome through possible future work by UNCITRAL, in particular by identifying what had been done by other international organizations on that topic, and to report back to the Commission at its fifty-fourth session in 2021. To that end, the secretariat was requested to organize in partnership with interested Governments or organizations, online round tables and other events through which States could share their experience on legislative responses to the pandemic and relevant experts could discuss possible ways forward.¹⁸

14. As noted above (see para. 2), the first of the three steps undertaken by the UNCITRAL secretariat in compiling its report to the Commission may be found in the following paragraphs, summarizing the responses of States to a questionnaire circulated to them.

II. Questionnaire circulated to States

15. In order to gather information from States regarding the types of mitigation measures that they had put in place in light of the COVID-19 pandemic, as well as the potential impact those measures might have on international trade matters relevant

¹³ Ibid., para. 116.

¹⁴ Ibid., para. 117.

¹⁵ *Official Records of the General Assembly, Seventy-fifth Session, Supplement No. 17 (A/75/17, part two)*, paras. 16(i) and 86–89.

¹⁶ See document [A/CN.9/1039/Rev.1](#).

¹⁷ *Official Records of the General Assembly, Seventy-fifth Session, Supplement No. 17 (A/75/17, part two)*, para. 86.

¹⁸ Ibid., paras. 16(i) and 89.

to the work of UNCITRAL, a questionnaire was prepared (in partnership with interested governments) and circulated to member and observer States. The responses received from States¹⁹ were used to compile the information reflected in this section of the report.

16. A number of States cautioned that the content of their response was not exhaustive of the COVID-19 measures that had been introduced, but rather was representative of the types of actions taken. States reported having implemented their mitigation measures by way of legislation, ministerial order, government directives and decrees, and court circulars or directives. In most cases, when legislating the relevant measures, States or their subnational jurisdictions adopted a series of different legislative enactments depending on the subject matter of the legislation.

17. In one State, a single comprehensive approach was taken to legislating the main temporary measures necessitated by the pandemic (along with separate measures related to simplified insolvency, financial and other assistance and specific sectoral support). While the questionnaire was not designed to elicit the means through which States implemented measures, at least one State established a dedicated system for instituting a moratorium on enforcement of contractual rights and obligations, negotiating a solution, and when negotiation between the parties was unsuccessful, for seeking a determination on the issues from government-designated authorities (for additional details, see para. 24 below).

A. Response measures to alleviate negative impacts on businesses

18. The first section of the questionnaire requested States to indicate the response measures that had been adopted to alleviate the negative impacts of the pandemic on businesses, and to provide a link to any relevant legislation in that regard, in respect of each of the areas outlined below.

1. Bankruptcy and insolvency

19. States responded as follows on measures taken in respect of bankruptcy and insolvency:

- (a) Extension of deadlines or suspension of creditors' rights to file for insolvency;
- (b) Initiation of insolvency proceedings by State bodies has been suspended for businesses with pandemic-related problems;
- (c) Increases in the threshold of debt required to trigger default or a declaration of bankruptcy;
- (d) Relaxation of criteria for debtors to seek financial recovery;
- (e) Extension of deadlines in which debtors must file for insolvency in COVID-related bankruptcies;
- (f) Suspension of wrongful trading cases against directors;
- (g) "Extraordinary moratorium" (requiring the consent of creditors after a certain time) which suspended enforcement orders and realisation of collateral rights against debtor, while protecting the debtor from termination of contracts for utilities,

¹⁹ Responses were received from 31 States: Angola, Argentina, Armenia, Austria, Azerbaijan, Bahrain, Canada, Czechia, Ecuador, India, Indonesia, Italy, Israel, Japan, Jordan, Kyrgyzstan, Lebanon, Madagascar, Malta, Poland, Russian Federation, Saudi Arabia, Senegal, Singapore, Slovakia, Slovenia, Sweden, Switzerland, Thailand, Turkey and the United States of America. The responses of those States that agreed to share them may be accessed (in the language in which they were submitted) through the following link to password-protected information: www.unodc.org/missions/en/uncitral/information.html.

raw materials, goods and services, and permitted the debtor to prioritise the payment of costs related to maintaining the business over older debts;

(h) Reduction in the duration of the discharge of time for the discharge of debt proceedings;

(i) Establishment of a procedure for informal or out-of-court preventive restructuring;

(j) Assistance to corporations in distress, with additional periods of “breathing space”, court-appointed professionals to prepare a restructuring plan, and establishment of a fund for the payment of such professionals;

(k) Restructuring and insolvency proceedings were included as urgent cases which could proceed despite pandemic restrictions;

(l) Introduction of a new type of debtor-initiated simplified restructuring proceeding, including suspension of enforcement actions and protection of key agreements against early termination;

(m) Implementation of an electronic system to facilitate insolvency and restructuring proceedings, including electronic filing and mobile applications;

(n) Additional support for businesses in sectors (e.g. travel, tourism, hospitality and events) that had been particularly damaged by COVID measures;

(o) Adoption of pre-packaged reorganization plans to expedite and simplify the process;

(p) Financially troubled banks were assisted through acquisition, consolidation or integration; and

(q) Banks were provided additional liquidity through a reduction in the required reserve amount and additional support.

2. Support for small and medium-sized enterprises

20. States responded as follows in respect of measures taken to support small and medium-sized enterprises (SMEs):

(a) Measures to ensure the stability of imports of materials important for MSMEs;

(b) Measures to facilitate or promote imports and exports to and by MSMEs, such as stimulating MSME competitiveness, credit restructuring, tax relaxation, expansion of financing, and brand consolidation;

(c) Financial support, including payroll support, payment of utilities, exemptions from payment of municipal licensing and other fees and taxes, deferral of or relief from loan and monthly rental payments;

(d) Targeted assistance for cooperatives, as well as women and young entrepreneurs, those in the informal sector, and specific industries, such as the cultural and creative sectors;

(e) Establishment of lines of credit for MSMEs, including micro-finance societies, and access to finance, including very low interest and collateral or guarantee-free loans, as well as deferrals of interest;

(f) Allocation of a minimum percentage (by value) of public procurement contracts to SMEs;

(g) Stimulus for the training of new entrepreneurs or those affected by the pandemic, as well as enhanced unemployment programmes;

(h) Implementation of electronic platforms to provide assistance to businesses and administer programmes;

(i) Establishment of a multi-pronged support programme with a particular focus on digitalization (communication; training and information; e-commerce; support to trade fair industry; financial support; promotional initiatives);

(j) Relaxation of statutory requirements and compliance matters, including extensions of deadlines for filing required documents, such as annual returns or financial statements, as well as measures to permit renegotiation of contracts, including penalties;

(k) Simplified insolvency, including simplified debt restructuring and winding up programmes; and

(l) Expansion of qualifying criteria to increase the number of MSMEs and permit greater access to assistance programmes.

3. Public procurement

21. States responded as follows in respect of measures regarding public procurement:

(a) Creation of online platforms and supply hubs to provide the government with advice on the procurement of critical goods and services for pandemic response and recovery, such as for personal protective equipment (PPE);

(b) Implementation of shorter tender procedures, flexible conditions for concluding contracts, the use of online communication and recommendations for changing contractual obligations, as well as seminars to inform authorities, suppliers and target groups;

(c) Non-tender purchases of protective equipment temporarily permitted;

(d) Government institutions ordered to accelerate procurement of critical goods and services and private sector compelled to produce essential health products;

(e) Restrictions on public procurement of goods, works and services not necessary for safeguarding public health;

(f) Electronic processes for all steps and necessary documentation were undertaken, including electronic signatures and circulation via an electronic procurement platform and electronic systems for appeals and post-contract modifications;

(g) Virtual meetings of clarification and evaluation committees;

(h) Authority to amend public procurement contracts and adapt the legal relationship between the parties to account for changes necessitated by the pandemic;

(i) Exclusion of the liability of the contracting authority for receivables as a result of improper or non-performance due to the pandemic; and

(j) Specific measures to assist MSEs by limiting the deduction of financial penalties from remuneration of contractors, permitting partial payments and advances on contracts, and reducing the amount required for bid security.

4. Electronic commerce

22. States responded as follows to the question in respect of electronic commerce (including in the areas of electronic signatures, electronic authentication and paperless trade):

(a) Expansion and modernization of existing electronic commerce and electronic signature laws, including for automation of government payments, continuity of electronic payment systems and services, and reduction of fees for electronic payment services;

(b) Improvements to legislation to facilitate transactions and ensure security through electronic authentication and verification of identity;

(c) Acceleration in the digitisation of public administration has propelled legislation on simplification and expansion of trust services (such as electronic signatures, stamps and authentication);

(d) Expansion and establishment of contactless point of sale and delivery services;

(e) Providing electronic channels to send and receive remittances at any time from any location;

(f) Transition of economic support and development support to electronic platforms;

(g) Access to financial services and monetary operations improved through collaboration with banking industry and fintech businesses and supporting digital payment in all sectors;

(h) Expansion and improvement of legislation on electronic signatures;

(i) Authorization of virtual commissioning of an oath or affirmation or witnessing the signature of legal documents, and extension of electronic notarial acts to all transactions and procedures requiring the involvement of a notary;

(j) One-stop information exchange platform for exporters and importers to interact with business partners and stakeholders on international trade transactions;

(k) Business licensing permitted by electronic means; and

(l) Increasing e-commerce initiatives generated new opportunities for employment.

5. Business-to-business contractual relations

23. States responded as follows to the question in respect of business-to-business contractual relations (including drafting, interpretation and application of force majeure clauses):

(a) Temporary variations of statutory deadlines or time periods;

(b) Reduced sanctions for late payment of debts;

(c) Limits on interest rates and penalties on late payments by natural persons;

(d) Deferral of loan and rental payments and automatic extension of contractual terms;

(e) Suspension of lessor's right to terminate leases for business premises;

(f) For public-private partnerships, procedures were simplified and times were reduced for the preparation of projects and the selection of private partners for project implementation;

(g) Relief extended to businesses whose contracts were affected by a delay or breach in a construction or supply contract, such as payments for rental equipment for construction projects that had to be halted;

(h) Measures adopted to partially reimburse lost income for the self-employed due to quarantine and for those unable to work because of childcare obligations;

(i) Measures to sensitize contracting parties to be flexible in the execution of their sales, rental and other contracts;

(j) Courts adjudicating cases of contractual breach or delay were requested to assess compliance with government containment measures as a means to avoid liability, including for forfeitures or penalties; and

(k) Disputes regarding contractual obligations that were affected by the epidemiological emergency were subject to mediation prior to being admissible in court.

24. On the whole, many of the measures (not limited to those in this section) implemented by States entailed amendment or suspension of certain contractual rights and obligations between parties, thus having an impact on various aspects of performance of the contract, including hardship, frustration, force majeure, contractual breach, and penalties for breach. Of particular interest may be the procedure established pursuant to the comprehensive legislation adopted by one State (see para. 17 above) for temporary relief from legal and enforcement action for individuals and businesses (including MSMEs) that were unable to perform certain contractual obligations due to COVID-19 (e.g. those relating to commercial leases or licenses, construction or supply contracts, or the provision of goods and services for events). In such cases, the party seeking relief would serve a notification for relief on the other party or parties to the contract, following which a temporary moratorium would be imposed on the execution of contractual rights (such as the institution of arbitration or insolvency proceedings, enforcement of security rights, repossession of goods, termination of contracts, or payment of penalties). If after negotiation during the moratorium the parties to the contract were not able to reach agreement on amending the terms of the contract, a party could apply for a determination of the contractual terms to a panel of assessors established by a government ministry and guided by senior judges.

6. Transportation and logistics

25. States responded as follows to the question in respect of transportation and logistics:

(a) Changes to customs codes to facilitate the import of goods necessary to combat the pandemic;

(b) Facilitation of remote access to customs systems to process customs declarations in export, transit and import;

(c) Extension of time limits applicable to various customs operations and application of a more flexible approach to customs procedures, as well as facilitation of convoys for the transport of pandemic-related goods to third countries;

(d) Quarantine of drivers and operators resulted in delayed delivery of goods across borders;

(e) Exports through States heavily affected by COVID-19 were rerouted, and contactless roll-on/roll-off transport flights between some States was facilitated;

(f) Export train services to some States were established;

(g) Expedited customs arrangements permitted an uninterrupted flow of goods, including vaccines, and created favourable conditions for foreign trade;

(h) Suspension or extension of certain regulatory rules for road transport, such as the replacement of drivers' licenses, inspections, registrations, permits, and certificates, as well as the payment of fuel taxes;

(i) Subsidy programmes for road, rail and air passenger and other transport businesses, including public transport;

(j) Extension of time limits for payment by railway freight carriers of infrastructure fees and waiver of sanctions;

(k) Exemption from airport and air navigation fees for airlines carrying humanitarian goods;

(l) Expedited passage of cargo vehicles through road checkpoints;

(m) Use of e-commerce to improve the quality of transport services and ensure delivery of packages; and

(n) Expansion of authorised distribution times for packages ordered online.

7. Corporate governance

26. States reported on the following measures implemented in the area of corporate governance:

(a) Measures to permit electronic or virtual attendance at corporate and board meetings and to participate in voting without being physically present (including by proxy), as well as electronic reporting on annual meetings;

(b) Measures to permit general meetings and voting to be conducted entirely by mail;

(c) Extension of deadlines to hold annual meetings and extend terms of office or appointments, as necessary, and authorization of electronic delivery of meeting notices and financial documents;

(d) Extension of deadlines in which to file required documents with authorities, including financial statements, audits, and reports of any supervisory board; and

(e) Suspension of rule through which shareholder and intercompany loans were repaid only after the claims of other creditors had been settled.

B. Response measures to support businesses

27. The second portion of the questionnaire requested States to specify the response measures that had been adopted to support businesses (including in the form of financial assistance), and the criteria that had been established for such businesses to receive support, again requesting an indication of any legislative basis for such measures and whether new legislation was needed.

28. States provided the following information in response to the second portion of the questionnaire:

(a) Excise taxes on certain products were temporarily waived;

(b) The obligation of banks to hold additional capital as a buffer was abolished;

(c) Deadlines for the submission of data by supervised entities were deferred;

(d) Measures were implemented to enhance the business cash flow of medium and large firms through the granting of credit guarantees;

(e) Tax deferrals were implemented based on certain criteria, such as a 25 per cent reduction in turnover as compared with the previous year;

(f) Establishment of a guarantee fund to finance investment to support public and private beneficiaries (in the health and other key sectors) that had difficulty securing funding due to the pandemic;

(g) Implementation of tax credits and deferral of other mandatory payments, such as social security contributions (which were added to employee wages);

(h) Establishment of lines of credit, as well as social and economic mitigation programmes, for key industries and sectors, as well as those suffering the worst impacts of the pandemic (such as airlines, tourism, crafts and artisanal businesses, entertainment and sports, cinema and culture);

(i) Streamlining of bureaucratic requirements, such as those for statistical registration and certain commercial licenses;

(j) Establishment of a standard model of accreditation of private sector employees, ensuring their mobility and protection by COVID-19 prevention measures;

(k) Dedicated webinars to help businesses overcome challenges due to lockdowns, including personalized coaching in numerous areas;

(l) Rent deferrals and rental assistance;

(m) One-time grants for businesses, non-profits and cooperative associations, and loan relief programmes (including interest rate reductions), as well as ongoing financial assistance for organizations in financial distress;

(n) Assistance with utility payments and grants to cover the cost of equipment needed for teleworking;

(o) Free Internet domain name and free website provided with issuance of a commercial registration certificate;

(p) Waiver of point-of-sale terminal fees and payment gateways to support fintech sector and facilitate e-commerce; and

(q) Extension of deadlines for completion in contracts with enterprises.

29. The Commission may wish to note that the eligibility criteria for businesses to receive support varied widely not only from one State to the next, but also within a State, from one industry, sector or subnational jurisdiction to the next.

C. Monitoring or compliance regimes for businesses receiving support

30. The third section of the questionnaire requested States to specify the type of monitoring or compliance regime that had been applied to businesses receiving the support outlined in the previous section.

31. States responded that the following monitoring or compliance regimes had been implemented:

(a) The creation of a dedicated supervision and monitoring committee, in the relevant government ministry;

(b) Monitoring systems established for foreign trade participants seeking to use expedited customs arrangements;

(c) Business recipients of COVID-19 support packages were required to provide attestations, which were subject to post-award audit (including inspection visits, investigations and possible issuance of subpoenas) to ensure compliance with eligibility criteria and application procedures, as well as disclosure of receipt of other government assistance;

(d) Applicant business information was validated by business registry authorities (support was based on the number of employees and the amount of annual sales or exports);

(e) Control documentation could be demanded for up to 10 years following the receipt of financial assistance;

(f) Solvency assessments could be administered prior to the granting of short-term liquidity loans or financing;

(g) Online monitoring of timely implementation of obligations;

(h) Authorities could seize property to ensure repayment of an incorrect or excessive amount or revoke deferral of taxes; and

(i) Failure to provide correct information could result in fines or imprisonment.

D. Obstacles to cross-border trade and commerce reported by businesses

32. The fourth portion of the questionnaire requested States to specify the kinds of obstacles reported by businesses (if any) to cross-border trade and commerce due to measures implemented by States to overcome the COVID-19 pandemic.

33. States responded that the following obstacles have been reported by businesses:

(a) Businesses were being asked by importers or trade associations in another State (that had imposed a series of restrictive import measures) to provide a statement or letter of attestation confirming that the exports were in conformity with internationally recognized guidance to prevent the contamination of food products with the virus causing COVID-19;

(b) Major economic damage was reported by the tourism industry, cultural, artisanal and creative sectors, as well as the service and hospitality industries;

(c) Travel restrictions had seriously disrupted trade in services, as well as disrupting commercial and investment activities;

(d) Delays in mail service had caused disruptions where original documents were required;

(e) Lack of harmonized rules for the digitalization of company law processes, including virtual meetings and authentication measures;

(f) Export restrictions on some products (such as personal protection equipment, and pharmaceutical products and ingredients) had caused disruptions;

(g) Closure of local markets and restriction of internal and cross-border movement;

(h) Restriction of labour movement across borders had caused labour shortages;

(i) The imposition of major closures had caused delayed shipments and disruptions in cross-border value chains;

(j) Manufacturing had been unable to scale up production due to shutdowns, labour shortages, and component and raw material shortages;

(k) Difficulty in obtaining the necessary export documentation; and

(l) Depreciation of national currency had occurred.

E. Legislation to overcome obstacles to cross-border trade

34. The fifth section of the questionnaire requested States to specify any legislation that had been passed to overcome obstacles to cross-border trade, and any other legislative measures that had been adopted to respond to the COVID-19 pandemic that could affect cross-border trade, other than those already outlined in response to the first section of the questionnaire, as reported in section A above (see paras. 19 to 26).

35. States responded that relevant legislation had been passed in the following areas:

(a) The introduction of quarantines for entering and exiting an epidemic zone, which could include restrictions on the export or import of certain goods or certain consignments of goods, or which could include exemptions for persons transporting certain goods and materials;

(b) Relief from import duties and value added taxes on goods required in an emergency and those needed to combat the pandemic (usually not including those imported for resale);

(c) Abolition of the export ban on vital goods (such as ventilators, personal protective equipment and disinfectants);

- (d) Amendments to intellectual property legislation to authorize the manufacture of patented inventions to respond to the public health emergency;
- (e) Relaxation of licensing requirements for importation and production of medical devices and to encourage procurement of necessary medical equipment;
- (f) Simplified import licensing requirements to ensure availability of basic commodities and support continued manufacturing activities;
- (g) States of emergency were declared in which Ministerial orders could be made for the protection of property and the health or safety of persons, including restrictions on the movement of persons;
- (h) Travel corridors were established between certain countries to assist the recovery of the tourism sector;
- (i) Measures to stimulate business competitiveness, tax relaxation, expansion of financing and brand consolidation;
- (j) Changes made to screening of applications by foreign investors to protect strategic sectors;
- (k) Non-legislative efforts to assist businesses and business organizations to solve identified trade problems with their counterparts in other States; and
- (l) Non-legislative efforts to work within a regional economic integration organization to identify barriers to the single market and how to avoid them.

F. Measures regarding commercial dispute settlement

36. The sixth element of the questionnaire requested States to specify measures that had been put in place to mitigate the effects of the pandemic on commercial dispute settlement (for example, facilitating remote hearings, expanding fast-track proceedings, or extension of limitation periods). Importantly, some measures were implemented on a temporary basis, for the duration of the pandemic, while others formed part of a general move towards broader, expedited and more digitalised access to commercial dispute settlement proceedings.

37. States responded that measures that had been undertaken in this regard included:

- (a) Facilitation of remote hearings using telephone, videoconferencing and available technologies (some States have focused mainly on the use of remote proceedings in cases of insolvency and debt resolution);
- (b) Use of videoconferencing technology for witness testimony, including development of court-controlled videoconferencing capabilities;
- (c) Changes to rules regarding physical presence in administrative buildings and for searching court files;
- (d) Facilitation of electronic sharing of documents and files, as well as electronic notices and filing services;
- (e) Suspension of limitation periods and extension of deadlines and other time periods, as well as the use of fast-track proceedings;
- (f) Urging all judicial officials, parties and counsel to use remote proceedings unless in-person appearances were necessary to ensure meaningful access to justice;
- (g) Adoption of new administrative platforms for electronic management of cases and filing of documents;
- (h) Reduction in the number of judges required to hear a proceeding;
- (i) Legislative changes to codes of civil procedure to effect changes (such as those noted above), and to generally expedite matters and render them capable of being conducted safely;

- (j) Increased use of online mediation and post-judgment mediation; and
- (k) Postponement of non-urgent hearings and the conduct of civil proceedings entirely through written procedures.

G. Specific issues requiring harmonized legal solutions

38. The final substantive section of the questionnaire requested that States indicate issues related to COVID-19 response and recovery that would most benefit from harmonized legal solutions in the area of international commercial law, in light of the acknowledgement by the Commission at its fifty-third session²⁰ that several of UNCITRAL's legislative tools could play an important role in assisting States to mitigate the effect of pandemic response measures, as well as aid their economic recovery efforts, and renewed calls by the Commission for States to consider adopting UNCITRAL legislative texts, particularly in the fields of electronic commerce and insolvency, as well as instruments supporting MSMEs, and those promoting the effective settlement of commercial disputes.

39. Most States (23 of 30) did not identify any issues in response to this question. Some States identified significant global issues raised by the pandemic that could be addressed (for example, a harmonised legal system through which States could access pharmaceutical products and vaccines; coordinated global implementation of vaccines; long and short-term approaches to the liberalization of goods in the health sector; coordination of humanitarian and bilateral cooperation; or an agreed definition of essential goods, essential medical goods or global public goods), but none of these issues would appear to fall within UNCITRAL's current mandate.

40. Other issues identified by States could be said to be more directly related to issues that might fall within the mandate of the Commission. These included: (a) common standards in electronic service of documents, electronic filing of applications and documents in the courts and remote hearings; (b) legal assistance to MSMEs on an e-commerce platform; (c) accelerated digital transformation that could improve the digital and trading infrastructure and facilitate digital payment and frameworks for online transactions and security; (d) harmonized digital processes in corporate governance matters, including the facilitation of online meetings; (e) legal aid to small business; (f) contractual obligations; and (g) force majeure clauses.

H. Conclusions based on questionnaire responses

41. After review of the questionnaire responses provided by States and as summarized above, a number of the measures implemented by States to provide economic relief for commercial stakeholders would not lend themselves to cross-border harmonization. For obvious reasons and because these measures were taken in an emergency situation, the measures were similar in terms of providing fiscal and other support for economic actors. However, the approach and focus in each State was reflective of the priorities in that State, and specifically targeted for those purposes. In the instances where measures might require international notification, or concern matters such as pharmaceutical products or vaccines, they would fall within the mandate of forums other than UNCITRAL (see, for example, those referred to in para. 39 above).

42. However, a number of the measures that States have implemented to address the COVID-19 pandemic have focused on digitization of commercial and other activity to permit safe and contactless operations, as well as to facilitate and support commercial activity. Review of the questionnaire responses has confirmed the findings of the virtual webinar series from the fifty-third session of the Commission as outlined above (see paras. 4 to 11) in terms of the soundness of both the past work

²⁰ *Official Records of the General Assembly, Seventy-fifth Session, Supplement No. 17 (A/75/17, part one)*, para. 27.

of UNCITRAL and its ongoing development of additional work to facilitate the transition to digital trade and to support MSMEs. The adoption of UNCITRAL texts in key areas supported States in their efforts to mitigate the economic effects of measures required by the COVID-19 pandemic, including: the Model Laws on Electronic Commerce, Electronic Signatures, and Electronic Transferable Records; the suite of insolvency texts, including the Model Law on Cross-Border Insolvency and the Legislative Guide on Insolvency Law; texts on secured transactions and receivables; the Model Legislative Provisions on Public-Private Partnerships; texts on dispute resolution (including mediation); and the Legislative Guide on Key Principles of a Business Registry. Moreover, ongoing and preparatory work by the UNCITRAL secretariat in a number of important areas continued to develop legislative tools to assist States in modernizing and strengthening their legal frameworks and to better withstand and recover from global economic shocks, such as work on insolvency provisions for SMEs, recognition of identity management and trust services, support for MSMEs, further dematerialization of transport documents, in addition to mediation and expedited arbitration. The preliminary analysis by the secretariat of the responses elicited by the questionnaire suggests that, apart from the provision of direct financial support or tax benefits to help business cope with the disruptive effects of the pandemic and the relaxation of trade-related formalities and procedures, most measures have focused on insolvency-related relief and enabling transactions to continue despite the travel restrictions, social distancing and other obstacles to in-person meetings imposed by governments. Whereas measures falling under the first category are of an economic nature and therefore outside the scope of the UNCITRAL mandate, several measures in the second group can be supported by the enactment of existing UNCITRAL texts or raise issues that are being considered in the context of ongoing work. In this context, the proposed future work on legal issues of the digital economy, such as further automation of transactions, use of artificial intelligence to trade and related data transactions, the use of trading and dispute settlement platforms becomes particularly relevant. Another area where UNCITRAL has not worked for some time is the area of payments and it could be further explored whether developments in this area could warrant harmonized efforts, particularly in the area of digital payments. Additional areas where measures taken by States could be further supported by UNCITRAL are measures described in paragraphs 17 and 24 above, which include amendment or suspension of certain contractual rights and obligations between parties, and relate more generally to contract law. While this area is not currently in the work programme of UNCITRAL, the Commission may wish to consider whether response and recovery from the pandemic would warrant further exploration. It should be noted that the Unidroit Principles of International Commercial Contracts, which the Commission has endorsed and recommended for use by contract parties²¹ already deal with matters such as hardship, force majeure, contractual breach, and penalties for breach.²²

²¹ *Official Records of the General Assembly, Sixty-seventh Session, Supplement No. 17 (A/67/17)*, para. 140

²² See the relevant paragraphs regarding the International Institute for Unification of Private Law (Unidroit) in [A/CN.9/1081](#).