



# General Assembly

Distr.: Limited  
14 December 2000

Original: English

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## United Nations Commission on International Trade Law

Working Group on Electronic Commerce  
Thirty-eighth session  
New York, 12-23 March 2001

### PROVISIONAL AGENDA\*

1. Election of officers
2. Adoption of the agenda
3. Draft Guide to Enactment of the UNCITRAL Model Law on Electronic Signatures
4. Possible future work by UNCITRAL in the field of electronic commerce
5. Other business
6. Adoption of the report

#### Notes on the provisional agenda

1. The Commission, at its thirtieth session, in 1997, endorsed the conclusions reached by the Working Group on Electronic Commerce at its thirty-first session with respect to the desirability and feasibility of preparing uniform rules on issues of digital signatures and certification authorities and possibly on related matters (see A/CN.9/437, paras. 156 and 157). The Commission entrusted the Working Group with the preparation of uniform rules on the legal issues of digital signatures and certification authorities.<sup>1</sup> The Working Group began the preparation of uniform rules for electronic signatures at its thirty-second session (January 1998) on the basis of a note prepared by the Secretariat (A/CN.9/WG.IV/WP.73). At its thirty-first session, in 1998, the Commission had before it the report of the Working Group (A/CN.9/446). The Commission noted that the Working Group, throughout its thirty-first and thirty-second sessions, had experienced manifest difficulties in reaching a common understanding of the new legal issues that had arisen from the increased use of digital and other electronic signatures. However, it was generally felt that the progress achieved so far indicated that the draft uniform rules on electronic signatures were progressively being shaped into a workable structure. The Commission reaffirmed the decision it had taken at its thirtieth session as to the feasibility of preparing such uniform rules and noted with satisfaction that the Working Group had become generally recognized as a particularly important international forum for the exchange of views regarding the legal issues of electronic commerce and for the preparation of solutions to those issues.<sup>2</sup>

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\* The dates initially scheduled for that session were 26 February to 9 March 2001. The session has had to be postponed to 12-23 March 2001.

2. The Working Group continued its work at its thirty-third (July 1998) and thirty-fourth (February 1999) sessions on the basis of notes prepared by the Secretariat (A/CN.9/WG.IV/WP.76, 79 and 80). At its thirty-second session, in 1999, the Commission had before it the reports of the Working Group on the work of those two sessions (A/CN.9/454 and A/CN.9/457, respectively). While the Commission generally agreed that significant progress had been made in the understanding of the legal issues of electronic signatures, it was also felt that the Working Group had been faced with difficulties in building a consensus as to the legislative policy on which the uniform rules should be based. After discussion, the Commission reaffirmed its earlier decisions as to the feasibility of preparing such uniform rules and expressed its confidence that more progress could be accomplished by the Working Group at its forthcoming sessions. While it did not set a specific time-frame for the Working Group to fulfil its mandate, the Commission urged the Group to proceed expeditiously with the completion of the draft uniform rules. An appeal was made to all delegations to renew their commitment to active participation in the building of a consensus with respect to the scope and content of the draft uniform rules.<sup>3</sup>

3. The Working Group continued its work at its thirty-fifth (September 1999) and thirty-sixth (February 2000) sessions on the basis of notes prepared by the Secretariat (A/CN.9/WG.IV/WP. 82 and 84). At its thirty-third session (2000), the Commission had before it the report of the Working Group on the work of those two sessions (A/CN.9/465 and 467, respectively). It was noted that the Working Group, at its thirty-sixth session, had adopted the text of articles 1 and 3-12 of the uniform rules. Some issues remained to be clarified as a result of the decision by the Working Group to delete the notion of enhanced electronic signature from the draft uniform rules. A concern was expressed that, depending on the decisions to be made by the Working Group with respect to articles 2 and 13, the remainder of the draft provisions might need to be re-examined to avoid creating a situation where the standard set by the uniform rules would apply equally to electronic signatures that ensured a high level of security and to low-value certificates that might be used in the context of electronic communications that were not intended to carry significant legal effect.

4. After discussion, the Commission expressed its appreciation for the efforts made by the Working Group and the progress achieved in the preparation of the draft uniform rules on electronic signatures. The Working Group was urged to complete its work with respect to the draft uniform rules at its thirty-seventh session and to review the draft guide to enactment to be prepared by the Secretariat.<sup>4</sup>

5. At its thirty-seventh session (September 2000), the Working Group discussed the issues of electronic signatures on the basis of the note prepared by the Secretariat (A/CN.9/WG.IV/WP.84) and the draft articles adopted by the Working Group at its thirty-sixth session (A/CN.9/467, Annex).

6. After discussing draft articles 2 and 12 (numbered 13 in document A/CN.9/WG.IV/WP.84), and considering consequential changes in other draft articles, the Working Group adopted the substance of the draft articles in the form of the draft UNCITRAL Model Law on Electronic Signatures. The text of the draft Model Law is annexed to the report of the thirty-seventh session of the Working Group (A/CN.9/483).

7. The Working Group discussed the draft guide to enactment of the draft Model Law on the basis of the notes prepared by the Secretariat (A/CN.9/WG.IV/WP.86 and WP.86/Add.1). The Secretariat was requested to prepare a revised version of the draft guide reflecting the decisions made by the Working Group, based on the various views, suggestions and concerns that had been expressed at the thirty-seventh session. Due to lack of time, the Working Group did not complete its deliberations regarding the draft guide to enactment. It was

agreed that some time should be set aside by the Working Group at its thirty-eighth session for completion of that agenda item. It was noted that the draft UNCITRAL Model Law on Electronic Signatures, together with the draft guide to enactment, would be submitted to the Commission for review and adoption at its thirty-fourth session, to be held at Vienna from 25 June to 13 July 2001.<sup>5</sup>

8. At its thirty-third session (2000), the Commission held a preliminary exchange of views regarding future work in the field of electronic commerce. Three topics were suggested as indicating possible areas where work by the Commission would be desirable and feasible. The first dealt with electronic contracting, considered from the perspective of the United Nations Sales Convention, which was generally felt to constitute a readily acceptable framework for on-line contracts dealing with the sale of goods. It was pointed out that, for example, additional studies might need to be undertaken to determine the extent to which uniform rules could be extrapolated from the United Nations Sales Convention to govern dealings in services or “virtual goods”, that is, items (such as software) that might be purchased and delivered in cyberspace. It was widely felt that, in undertaking such studies, careful attention would need to be given to the work of other international organizations such as the World Intellectual Property Organization (WIPO) and the World Trade Organization.

9. The second topic was dispute settlement. It was noted that the Working Group on Arbitration had already begun discussing ways in which current legal instruments of a statutory nature might need to be amended or interpreted to authorize the use of electronic documentation and, in particular, to do away with existing requirements regarding the written form of arbitration agreements. It was generally agreed that further work might be undertaken to determine whether specific rules were needed to facilitate the increased use of on-line dispute settlement mechanisms. In that context, it was suggested that special attention might be given to the ways in which dispute settlement techniques such as arbitration and conciliation might be made available to both commercial parties and consumers. It was widely felt that the increased use of electronic commerce tended to blur the distinction between consumers and commercial parties. However, it was recalled that, in a number of countries, the use of arbitration for the settlement of consumer disputes was restricted for reasons involving public policy considerations and might not easily lend itself to harmonization by international organizations. It was also felt that attention should be paid to the work undertaken in that area by other organizations, such as the International Chamber of Commerce (ICC), the Hague Conference on Private International Law and WIPO, which was heavily involved in dispute settlement regarding domain names on the Internet.

10. The third topic was dematerialization of documents of title, in particular in the transport industry. It was suggested that work might be undertaken to assess the desirability and feasibility of establishing a uniform statutory framework to support the development of contractual schemes currently being set up to replace traditional paper-based bills of lading by electronic messages. It was widely felt that such work should not be restricted to maritime bills of lading, but should also envisage other modes of transportation. In addition, outside the sphere of transport law, such a study might also deal with issues of dematerialized securities. It was pointed out that the work of other international organizations on those topics should also be monitored.

11. After discussion, the Commission welcomed the proposal to undertake studies on the three topics. While no decision as to the scope of future work could be made until further discussion had taken place in the Working Group on Electronic Commerce, the Commission generally agreed that, upon completing the preparation of the draft Model Law on Electronic Signatures, the Working Group would be expected, in the context of its general advisory function regarding the issues of electronic commerce, to examine,

at its thirty-eighth session, some or all of the above-mentioned topics, as well as any additional topic, with a view to making more specific proposals for future work by the Commission at its thirty-fourth session (Vienna, 25 June-13 July 2001). It was agreed that work to be carried out by the Working Group could involve consideration of several topics in parallel as well as preliminary discussion of the contents of possible uniform rules on certain aspects of the above-mentioned topics.

12. Particular emphasis was placed by the Commission on the need to ensure coordination of work among the various international organizations concerned. In view of the rapid development of electronic commerce, a considerable number of projects with possible impact on electronic commerce were being planned or undertaken. The Secretariat was requested to carry out appropriate monitoring and to report to the Commission as to how the function of coordination was fulfilled to avoid duplication of work and ensure harmony in the development of the various projects. The area of electronic commerce was generally regarded as one in which the coordination mandate given to UNCITRAL by the General Assembly could be exercised with particular benefit to the global community and deserved corresponding attention from the Working Group and the Secretariat.<sup>6</sup>

13. The Working Group is composed of all States members of the Commission. These are:

Algeria, Argentina, Australia, Austria, Botswana, Brazil, Bulgaria, Burkina Faso, Cameroon, China, Colombia, Egypt, Fiji, Finland, France, Germany, Honduras, Hungary, India, Iran (Islamic Republic of), Italy, Japan, Kenya, Lithuania, Mexico, Nigeria, Paraguay, Romania, Russian Federation, Singapore, Spain, Sudan, Thailand, Uganda, United Kingdom of Great Britain and Northern Ireland, and United States of America.

Item 1.        Election of officers

14. The Working Group, in accordance with its practice at previous sessions, may wish to elect a Chairman and a Rapporteur.

Item 3.        Draft Guide to Enactment of the UNCITRAL Model Law on Electronic Signatures

15. The Working Group will have before it a note by the Secretariat containing a revised Guide to Enactment of the draft UNCITRAL Model Law on Electronic Signatures (A/CN.9/WG.IV/WP.88). The Working Group may wish to use that note as a basis for its deliberations.

Item 4.        Possible future work by UNCITRAL in the field of electronic commerce

16. The Working Group will have before it a set of notes discussing possible topics for future work by UNCITRAL in the field of electronic commerce: possible convention to remove obstacles to electronic commerce in existing international conventions (A/CN.9/WG.IV/WP.89); dematerialization of documents of title (A/CN.9/WG.IV/WP.90); electronic contracting (A/CN.9/WG.IV/WP.91); and on-line dispute settlement (A/CN.9/WG.IV/WP.92). In addition, copies of the note regarding the issues of bills of lading and other maritime transport documents (A/CN.9/WG.IV/WP.69) issued by the Secretariat for the thirtieth session of the Working Group (1996) will be supplied for ease of reference. The Working Group may wish to use the above-mentioned notes as a basis for its deliberations.

17. The following documents will be made available at the session:

- (a) Report of the Working Group on Electronic Commerce on the work of its thirty-seventh session (A/CN.9/483);
- (b) Draft Guide to Enactment of the UNCITRAL Uniform Rules on Electronic Signatures: Note by the Secretariat (A/CN.9/WG.IV/WP.86);
- (c) Draft Guide to Enactment of the UNCITRAL Uniform Rules on Electronic Signatures: Note by the Secretariat (A/CN.9/WG.IV/WP.86/Add.1);
- (d) Report of the Working Group on Electronic Commerce on the work of its thirty-sixth session (A/CN.9/467);
- (e) Uniform Rules on Electronic Signatures: Note by the Secretariat (A/CN.9/WG.IV/WP.84);
- (f) Report of the Working Group on Electronic Commerce on the work of its thirty-fifth session (A/CN.9/465);
- (g) Draft Uniform Rules on Electronic Signatures: Note by the Secretariat (A/CN.9/WG.IV/WP.82);
- (h) Report of the Working Group on Electronic Commerce on the work of its thirty-fourth session (A/CN.9/457);
- (i) Draft Uniform Rules on Electronic Signatures: Note by the Secretariat (A/CN.9/WG.IV/WP.80);
- (j) Draft Uniform Rules on Electronic Signatures: Note by the Secretariat (A/CN.9/WG.IV/WP.79);
- (k) Report of the Working Group on Electronic Commerce on the work of its thirty-third session (A/CN.9/454);
- (l) Draft Uniform Rules on Electronic Signatures: Note by the Secretariat (A/CN.9/WG.IV/WP.76);
- (m) Report of the Working Group on Electronic Commerce on the work of its thirty-session (A/CN.9/446);
- (n) Draft Uniform Rules on Electronic Signatures: Note by the Secretariat (A/CN.9/WG.IV/WP.73);
- (o) Report of the Working Group on Electronic Commerce on the work of its thirty-first session (A/CN.9/437);
- (p) Planning of future work on electronic commerce: digital signatures, certification authorities and related legal issues: Note by the Secretariat (A/CN.9/WG.IV/WP.71); and
- (q) UNCITRAL Model Law on Electronic Commerce with Guide to Enactment (1996).

Item 6. Adoption of the report

18. The Working Group may wish to adopt, at the close of its session, a report for submission to the thirty-fourth session of the Commission (to be held from 25 June to 13 July 2001 at Vienna).

Meetings

19. The session of the Working Group will take place from 12 to 23 March 2001 in United Nations Headquarters, New York. There will be 8 working days available for consideration of the agenda items at the session. No meeting will be scheduled for Thursday, 22 March, in order to allow for the preparation of the draft report of the session. Meeting hours will be from 10:00 to 13:00 and from 15:00 to 18:00, except on Monday, 12 March 2001, when the session will commence at 10:30 a.m.

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<sup>1</sup> *Official Records of the General Assembly, Fifty-second Session, Supplement No. 17 (A/52/17)*, paras. 249-251.

<sup>2</sup> *Ibid.*, *Fifty-third Session, Supplement No. 17 (A/53/17)*, paras. 207-211.

<sup>3</sup> *Ibid.*, *Fifty-fourth Session, Supplement No. 17 (A/54/17)*, paras. 308-314.

<sup>4</sup> *Ibid.*, *Fifty-fifth Session, Supplement No. 17 (A/55/17)*, paras. 380-383.

<sup>5</sup> A/CN.9/483, paras. 21-23.

<sup>6</sup> *Ibid.*, *Fifty-fifth Session, Supplement No. 17 (A/55/17)*, paras. 384-388.