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**United Nations Commission
on International Trade Law**
Working Group II (Arbitration and Conciliation)
Sixty-second session
New York, 2-6 February 2015

Annotated provisional agenda

I. Provisional agenda

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2. Election of officers.
3. Adoption of the agenda.
4. Enforcement of settlement agreements resulting from conciliation proceedings.
5. Revision of the UNCITRAL Notes on Organizing Arbitral Proceedings.
6. Organization of future work.
7. Adoption of the report.

II. Composition of the Working Group

1. The Working Group is composed of all States members of the Commission, which are the following: Algeria (2016), Argentina (2016), Armenia (2019), Australia (2016), Austria (2016), Belarus (2016), Botswana (2016), Brazil (2016), Bulgaria (2019), Cameroon (2019), Canada (2019), China (2019), Côte d'Ivoire (2019), Colombia (2016), Croatia (2016), Denmark (2019), Ecuador (2019), El Salvador (2019), Fiji (2016), France (2019), Gabon (2016), Georgia (2015), Germany (2019), Greece (2019), Honduras (2019), Hungary (2019), India (2016), Indonesia (2019), Iran (Islamic Republic of) (2016), Israel (2016), Italy (2016), Japan (2019), Jordan (2016), Kenya (2016), Kuwait (2019), Liberia (2019), Malaysia (2019), Mauritania (2019), Mauritius (2016), Mexico (2019), Namibia (2019), Nigeria (2016), Pakistan (2016), Panama (2019), Paraguay (2016), Philippines (2016), Poland (2016), Republic of Korea (2019), Russian Federation (2019), Sierra Leone (2019), Singapore (2019), Spain (2016), Switzerland (2019),



Thailand (2016), Turkey (2016), Uganda (2016), United Kingdom of Great Britain and Northern Ireland (2019), United States of America (2016), Venezuela (Bolivarian Republic of) (2016) and Zambia (2019).

2. States not members of the Commission and international governmental organizations may attend the session as observers and participate in the deliberations. In addition, invited international non-governmental organizations may attend the session as observers and represent the views of their organizations on matters where the organization concerned has expertise or international experience so as to facilitate the deliberations at the session.

III. Annotations to agenda items

Item 1. Opening of the session

3. The sixty-second session of the Working Group will be held at the United Nations Headquarters, New York, from 2 to 6 February 2015. Meeting hours will be from 10.00 a.m. to 1.00 p.m. and from 3.00 to 6.00 p.m., except on Monday, 2 February 2015, when the session will be opened at 10.30 a.m.

Item 2. Election of officers

4. In accordance with its practice at previous sessions, the Working Group may wish to elect a Chairman and a Rapporteur.

Item 4. Enforcement of settlement agreements resulting from conciliation proceedings

(a) Previous deliberations

5. At its forty-seventh session (New York, 7-18 July 2014), the Commission had before it a proposal for future work in relation to enforcement of international settlement agreements (A/CN.9/822). In support of that proposal, it was said that one obstacle to greater use of conciliation was that settlement agreements reached through conciliation might be more difficult to enforce than arbitral awards. In general, it was said that settlement agreements reached through conciliation are already enforceable as contracts between the parties¹ but that enforcement under contract law cross-border can be burdensome and time-consuming. Finally, it was said that the lack of easy enforceability of such contracts was a disincentive to commercial parties to mediate. Consequently, it was proposed that Working Group II develop a multilateral convention on the enforceability of international commercial settlement agreements reached through conciliation, with the goal of encouraging conciliation in the same way that the Convention on the Recognition and Enforcement of foreign Arbitral Awards (New York, 1958)² ("New York Convention") had facilitated the growth of arbitration.³

¹ Guide to Enactment and Use of the UNCITRAL Model Law on International Commercial Conciliation (2002), para. 89. *UNCITRAL Yearbook*, vol. XXXIII: 2002, part three, annex II.

² United Nations, *Treaty Series*, vol. 330, No. 4739, p. 3.

³ *Official Records of the General Assembly, Sixty-ninth Session, Supplement No. 17* (A/69/17), para. 123.

6. Support was expressed for possible work in that area on many of the bases expressed above. Doubts were also expressed as to the feasibility of the project and questions were raised in relation to that possible topic of work, including: (a) whether the new regime of enforcement envisaged would be optional in nature; (b) whether the New York Convention was the appropriate model for work in relation to mediated settlement agreements; (c) whether formalizing enforcement of settlement agreements would in fact diminish the value of mediation as resulting in contractual agreements; (d) whether complex contracts arising out of mediation were suitable for enforcement under such a proposed treaty; (e) whether other means of converting mediated settlement agreements into binding awards obviated the need for such a treaty; and (f) what the legal implications for a regime akin to the New York Convention in the field of mediation might be.⁴ It was furthermore observed that UNCITRAL had previously considered that issue when preparing the UNCITRAL Model Law on International Commercial Conciliation (2002),⁵ and particular reference was made to article 14 of the Model Law and paragraphs 90 and 91 of the Guide to Enactment and Use of that text.⁶

7. The Commission agreed that the Working Group should consider at its sixty-second session the issue of enforcement of international settlement agreements resulting from conciliation proceedings and should report to the Commission at its forty-eighth session, in 2015, on the feasibility and possible form of work in that area.⁷

8. At its sixty-second session, the Working Group is expected to consider the issue of enforcement of international settlement agreements resulting from conciliation proceedings on the basis of notes by the Secretariat (A/CN.9/822 and A/CN.9/WG.II/WP.187). The Working Group may wish to devote the first two days of its session to the consideration of that matter.

(b) Documentation

9. The Working Group will have before it notes by the Secretariat regarding the issue of enforcement of international settlement agreements resulting from conciliation proceedings (A/CN.9/822 and A/CN.9/WG.II/WP.187).

10. A limited number of the following background documents will be made available at the session:

- UNCITRAL Conciliation Rules (1980);
- UNCITRAL Model Law on International Commercial Conciliation with Guide to Enactment and Use (2002); and
- Report of the United Nations Commission on International Trade Law on the work of its thirty-fifth session (*Official Records of the General Assembly, fifty-seventh Session, Supplement No. 17* (A/57/17)); and forty-seventh session (*Official Records of the General Assembly, Sixty-ninth Session, Supplement No. 17* (A/69/17)).

⁴ Ibid., paras. 124 and 125.

⁵ *UNCITRAL Yearbook*, vol. XXXIII: 2002, part three, annex I.

⁶ Ibid., annex II.

⁷ *Official Records of the General Assembly, Sixty-ninth Session, Supplement No. 17* (A/69/17), para. 129.

11. UNCITRAL documents are posted on the UNCITRAL website (www.uncitral.org) upon their issuance in all the official languages of the United Nations. Delegates may wish to check the availability of the documents by accessing the Working Group's page in the "Working Groups" section of the UNCITRAL website.

Item 5. Revision of the UNCITRAL Notes on Organizing Arbitral Proceedings

(a) Previous deliberations

12. At its forty-seventh session (New York, 7-18 July 2014), the Commission mandated Working Group II to undertake work on the revision of the UNCITRAL Notes on Organizing Arbitral Proceedings.⁸ At that session, the Commission agreed that the Working Group should consider at its sixty-first and, if necessary, its sixty-second session, the revision of the UNCITRAL Notes on Organizing Arbitral Proceedings. In so doing the Working Group should focus on matters of substance, leaving drafting to the Secretariat.⁹

13. At its sixty-first session (Vienna, 15-19 September 2014), the Working Group identified areas where a revision of the Notes might be useful. The Working Group requested the Secretariat to prepare a draft of revised UNCITRAL notes on organizing arbitral proceedings, and in doing so, to identify specific issues for discussion at its sixty-second session. The Working Group may wish to devote the second half of the session to its consideration of the revision of the Notes, on the basis of a note prepared by the Secretariat (A/CN.9/WG.II/WP.186 and its addendum).

(b) Documentation

14. The Working Group will have before it a note by the Secretariat regarding the revision of the UNCITRAL Notes on Organizing Arbitral Proceedings (A/CN.9/WG.II/WP.186 and its addendum).

15. A limited number of the following background documents will be made available at the session:

- UNCITRAL Arbitration Rules (1976);
- UNCITRAL Arbitration Rules (as revised in 2010);
- UNCITRAL Notes on Organizing Arbitral Proceedings (1996);
- UNCITRAL Model Law on International Commercial Arbitration (1985, as amended in 2006); and
- Report of the United Nations Commission on International Trade Law on the work of its forty-seventh session (*Official Records of the General Assembly, Sixty-ninth Session, Supplement No. 17* (A/69/17)).

16. UNCITRAL documents are posted on the UNCITRAL website (www.uncitral.org) upon their issuance in all the official languages of the

⁸ *UNCITRAL Yearbook*, vol. XXVII: 1996, part three, annex II.

⁹ *Official Records of the General Assembly, Sixty-ninth Session, Supplement No. 17* (A/69/17), para. 128.

United Nations. Delegates may wish to check the availability of the documents by accessing the Working Group's page in the "Working Groups" section of the UNCITRAL website.

Item 6. Organization of future work

17. It may be noted that at its forty-seventh session, in relation to the issue of concurrent proceedings, the Commission agreed that the Secretariat should explore the matter further, in close cooperation with experts from other organizations working actively in that field. This work should focus on treaty-based investor-State arbitration, but should not disregard the issue in the context of international commercial arbitration. The Commission requested the Secretariat to report to the Commission at a future session, outlining the issues at stake and identifying work that UNCITRAL might usefully undertake in the field.¹⁰

Item 7. Adoption of the report

18. The Working Group may wish to adopt, at the close of its session, a report for submission to the forty-eighth session of the Commission, scheduled to be held in Vienna, from 29 June to 16 July 2015. The main conclusions reached by the Working Group at its ninth meeting (on Friday morning) will be summarily read out for the record at the tenth meeting and subsequently incorporated into the report.

IV. Scheduling of meetings

19. The Working Group's sixty-second session will last for five working days. There will be ten half-day meetings available for consideration of the agenda items. The Working Group may wish to note that, consistent with decisions taken by the Commission at its thirty-fourth session,¹¹ the Working Group is expected to hold substantive deliberations during the first nine half-day meetings (that is, from Monday to Friday morning), with a draft report on the entire period being prepared by the Secretariat for adoption at the tenth and last meeting of the Working Group (on Friday afternoon).

20. The Working Group may wish to note that its sixty-third session is scheduled to be held in Vienna, from 7-11 September 2015.

¹⁰ Ibid., para. 130.

¹¹ Ibid., *Fifty-sixth Session, Supplement No. 17* and corrigendum (A/56/17 and Corr.3), para. 381.