



# General Assembly

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## United Nations Commission on International Trade Law

Working Group II (Arbitration and Conciliation)  
Thirty-fifth session  
Vienna, 19-30 November 2001

### PROVISIONAL AGENDA

1. Election of officers
2. Adoption of the agenda
3. Preparation of model legislative provisions on international commercial conciliation
4. Other business
5. Adoption of the report

### Notes on the provisional agenda

1. At its thirty-second session, in 1999, the Commission had before it a note entitled “Possible future work in the area of international commercial arbitration” (A/CN.9/460). Welcoming the opportunity to discuss the desirability and feasibility of further development of the law of international commercial arbitration, the Commission generally considered that the time had come to assess the extensive and favourable experience with national enactments of the UNCITRAL Model Law on International Commercial Arbitration (1985), as well as the use of the UNCITRAL Arbitration Rules and the UNCITRAL Conciliation Rules, and to evaluate in the universal forum of the Commission the acceptability of ideas and proposals for improvement of arbitration laws, rules and practices.<sup>1</sup>

2. The Commission entrusted the work to one of its working groups, which it named the Working Group on Arbitration, and decided that the priority items for the Working Group should be conciliation,<sup>2</sup> requirement of written form for the arbitration agreement,<sup>3</sup> enforceability of interim measures of protection<sup>4</sup> and possible enforceability of an award that had been set aside in the State of origin.<sup>5</sup>

3. At its thirty-third session, in 2000, the Commission had before it the report of the Working Group on Arbitration on the work of its thirty-second session (A/CN.9/468). The Commission took note of the report with satisfaction and reaffirmed the mandate of the Working Group to decide on the time and manner of dealing with the topics identified for future work. Several statements were made to the effect that, in general, the Working Group, in deciding the priorities of the future items on its

agenda, should pay particular attention to what was feasible and practical and to issues where court decisions left the legal situation uncertain or unsatisfactory. Topics that were mentioned in the Commission as potentially worthy of consideration, in addition to those which the Working Group might identify as such, were the meaning and effect of the more-favourable-right provision of article VII of the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (hereinafter referred to as “the New York Convention”) (A/CN.9/468, para. 109 (k)); raising claims in arbitral proceedings for the purpose of set-off and the jurisdiction of the arbitral tribunal with respect to such claims (para. 107 (g)); freedom of parties to be represented in arbitral proceedings by persons of their choice (para. 108 (c)); residual discretionary power to grant enforcement of an award notwithstanding the existence of a ground for refusal listed in article V of the 1958 New York Convention (para. 109 (i)); and the power by the arbitral tribunal to award interest (para. 107 (j)). It was noted with approval that, with respect to “online” arbitrations (i.e. arbitrations in which significant parts or even all of arbitral proceedings were conducted by using electronic means of communication) (para. 113), the Working Group on Arbitration would cooperate with the Working Group on Electronic Commerce. With respect to the possible enforceability of awards that had been set aside in the State of origin (para. 107 (m)), the view was expressed that the issue was not expected to raise many problems and that the case law that gave rise to the issue should not be regarded as a trend.<sup>6</sup>

4. At its thirty-fourth session, held in Vienna from 25 June to 13 July 2001, the Commission took note with appreciation of the reports of the Working Group on the work of its thirty-third and thirty-fourth sessions (A/CN.9/485 and A/CN.9/487, respectively). The Commission commended the Working Group for the progress accomplished so far regarding the three main issues under discussion, namely, the requirement of the written form for the arbitration agreement, the issues of interim measures of protection and the preparation of a model law on conciliation.

5. With regard to conciliation, the Commission noted that the Working Group had considered articles 1-16 of the draft model legislative provisions (A/CN.9/WG.II/WP.113/Add.1). It was generally felt that work on those draft model legislative provisions could be expected to be completed by the Working Group at its next session. The Commission requested the Working Group to proceed with the examination of those provisions on a priority basis, with a view to the instrument being presented in the form of a draft model law for review and adoption by the Commission at its thirty-fifth session, in 2002.<sup>7</sup>

6. At the close of its thirty-fourth session, the Working Group requested the Secretariat to prepare revised drafts of those articles, based on the discussion in the Working Group, for consideration at its next session (A/CN.9/487, para. 20).

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

Austria, Benin, Brazil, Burkina Faso, Cameroon, Canada, China, Colombia, Fiji, France, Germany, Honduras, Hungary, India, Iran (Islamic Republic of), Italy, Japan, Kenya, Lithuania, Mexico, Morocco, Paraguay, Romania, Russian Federation, Rwanda, Sierra Leone, Singapore, Spain, Sudan, Sweden, Thailand, the Former Yugoslav Republic of Macedonia, Uganda, United States of America, United Kingdom of Great Britain and Northern Ireland, and Uruguay.

#### Item 1. Election of officers

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

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Item 3. Preparation of model legislative provisions on international commercial conciliation

9. The Working Group will have before it, and may wish to use as a basis for its deliberations, a note by the Secretariat containing revised draft articles of model legislative provisions on international commercial conciliation (A/CN.9/WG.II/WP.115) and a draft guide to enactment of the model legislative provisions (A/CN.9/WG.II/WP.116).

10. Background materials may be found in the following documents:

- Report of the Working Group on Arbitration on the work of its thirty-fourth session (A/CN.9/487);
- *Preparation of uniform provisions on: written form for arbitration agreements, interim measures of protection, and conciliation: report of the Secretary-General* (A/CN.9/WG.II/WP.113 and Add.1);
- Report of the Working Group on Arbitration on the work of its thirty-third session (A/CN.9/485);
- *Possible uniform rules on certain issues concerning settlement of commercial disputes: conciliation, interim measures of protection, written form for arbitration agreement: report of the Secretary-General* (A/CN.9/WG.II/WP.110);
- Report of the Working Group on Arbitration on the work of its thirty-second session (A/CN.9/468);
- *Possible uniform rules on certain issues concerning settlement of commercial disputes: conciliation, interim measures of protection, written form for arbitration agreement: report of the Secretary-General* (A/CN.9/WG.II/WP.108 and Add.1);
- Report of the United Nations Commission on International Trade Law on the work of its thirty-second session (*Official Records of the General Assembly, Fifty-fourth Session, Supplement No. 17 (A/54/17)*);
- *Possible future work in the area of international commercial arbitration: note by the Secretariat* (A/CN.9/460);
- *Enforcing Arbitration Awards under the New York Convention: Experience and Prospects* (United Nations publication, Sales No. E.99.V.2).
- UNCITRAL Model Law on International Commercial Arbitration
- UNCITRAL Conciliation Rules

11. The electronic version of the above-mentioned documents is accessible on the following website: [www.uncitral.org](http://www.uncitral.org).

Item 5. Adoption of the report

12. The Working Group may wish to adopt, at the close of its session, a report for submission to the thirty-fifth session of the Commission (to be held from 10 to 28 June 2002, in New York).

Dates and scheduling of meetings

13. The session of the Working Group will take place from 19 to 30 November 2001 at the Vienna International Centre. There will be 8 working days available for consideration of the agenda items at the session. No meeting will be scheduled for Thursday, 29 November, in order to allow for the preparation of the draft report of the session, which will be adopted on Friday, 30 November. Meeting hours will be from 09:30 to 12:30 and from 14:00 to 17:00, except on Monday, 19 November 2001, when the session will commence at 10:00 a.m.

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Notes

<sup>1</sup> *Official Records of the General Assembly, Fifty-fourth Session, Supplement No. 17 (A/54/17)*, para. 337.

<sup>2</sup> *Ibid.*, paras. 340-343.

<sup>3</sup> *Ibid.*, paras. 344-350.

<sup>4</sup> *Ibid.*, paras. 371-373.

<sup>5</sup> *Ibid.*, paras. 374 and 375.

<sup>6</sup> *Ibid.*, *Fifty-fifth Session, Supplement No. 17 (A/55/17)*, para. 396.

<sup>7</sup> *Ibid.*, *Fifty-sixth Session, Supplement No. 17 (A/56/17)*, paras. 309-315.