



General Assembly

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**United Nations Commission
on International Trade Law**
Working Group II (Arbitration and Conciliation)
Sixty-third session
Vienna, 7-11 September 2015

Annotated provisional agenda

I. Provisional agenda

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2. Election of officers.
3. Adoption of the agenda.
4. International commercial conciliation: enforceability of settlement agreements.
5. Organization of future work.
6. 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), Colombia (2016), Côte d'Ivoire (2019), Croatia (2016), Czech Republic (2016), Denmark (2019), Ecuador (2019), El Salvador (2019), Fiji (2016), France (2019), Gabon (2016), 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

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(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-third session of the Working Group will be held at the Vienna International Centre, from 7 to 11 September 2015. Meeting hours will be from 9.30 a.m. to 12.30 p.m. and from 2 to 5 p.m., except on Monday, 7 September 2015, when the session will be opened at 10 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. International commercial conciliation: Enforceability of settlement agreements

(a) Background information

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 enforceability of settlement agreements resulting from international commercial conciliation (A/CN.9/822). 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.¹

6. At its sixty-second session, the Working Group considered that topic on the basis of notes by the Secretariat (A/CN.9/822 and A/CN.9/WG.II/WP.187). After discussion, the Working Group agreed to suggest to the Commission that it be given a mandate to work on the topic of enforcement of settlement agreements, to identify the relevant issues and develop possible solutions, including the preparation of a convention, model provisions or guidance texts. Considering that differing views were expressed as to the form and content, as well as the feasibility, of any particular instrument, it was also agreed to suggest that a mandate on the topic be

¹ *Official Records of the General Assembly, Sixty-ninth Session, Supplement No. 17 (A/69/17)*, para. 129.

broad enough to take into account the various approaches and concerns (A/CN.9/832, para. 59).

7. At its forty-eighth session, the Commission had before it the report of the Working Group on the work of its sixty-second session (A/CN.9/832) as well as comments by States on their legislative framework in relation to enforcement of settlement agreement (A/CN.9/846 and its addenda). The Commission agreed that the Working Group should commence work at its sixty-third session on the topic of enforcement of settlement agreements to identify relevant issues and develop possible solutions, including the possible preparation of a convention, model provisions or guidance texts. The Commission also agreed that the mandate of the Working Group with respect to that topic should be broad to take into account the various approaches and concerns.²

8. At its sixty-third session, the Working Group is expected to consider the issue of enforceability of settlement agreements as it arises in the field of international commercial conciliation on the basis of a note by the Secretariat (A/CN.9/WG.II/WP.190).

(b) Documentation

9. The Working Group will have before it a note by the Secretariat regarding the issue of enforceability of settlement agreements (A/CN.9/WG.II/WP.190).

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);
- 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)*); forty-seventh session (*Official Records of the General Assembly, Sixty-ninth Session, Supplement No. 17 (A/69/17)*); and, if available, forty-eighth session (under preparation);
- Report of Working Group II (Arbitration and Conciliation) on the work of its sixty-second session (A/CN.9/832);
- Planned and possible future work, Proposal by the Government of the United States of America, Future work for Working Group II: A/CN.9/822;
- Settlement of commercial disputes, Enforceability of settlement agreements resulting from international commercial conciliation/mediation, Compilation of comments by Governments: A/CN.9/846 and its addenda 1-5; and
- Settlement of commercial disputes, Enforceability of settlement agreements resulting from international commercial conciliation/mediation, notes by the Secretariat: A/CN.9/WG.II/WP.187 and A/CN.9/WG.II/WP.188.

² Report of the Commission on the work of its forty-eighth session, under preparation.

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. Organization of future work

12. At its forty-eighth session, the Commission approved the draft text of the revised UNCITRAL Notes on Organizing Arbitral Proceedings in principle and requested the Secretariat to revise the draft text in accordance with the deliberations and decisions of the Commission. It was agreed that the Secretariat could seek input from the Working Group on specific issues, if necessary, during its sixty-fourth session.

13. At that session, the Commission also considered the topic of concurrent proceedings and the preparation of a code of ethics/conduct, in the field of both investor-State and purely commercial arbitration.³

14. Regarding concurrent proceedings, there was general support for retaining the topic of concurrent proceedings on the agenda of the Commission. It was highlighted that concurrent proceedings have proven to be detrimental to investment practice and thus was of particular interest to States. While support was expressed for the Working Group to undertake work on the topic as a matter of priority, it was widely felt that it was premature at this stage and work should be undertaken only after a thorough analysis of the issues. The Commission requested the Secretariat to explore the topic further, in close cooperation with experts including those from other organizations working actively in that area and to report to the Commission at a future session with a detailed analysis of the topic including possible work that could be carried out.⁴

15. Regarding the preparation of a code of ethics/conduct, it was suggested that existing laws, regulations and rules (for example, provisions on disclosure in relation to impartiality and independence) that had an impact on the conduct of arbitrators should be identified. It was also suggested that work conducted by other organizations on the topic would need to be considered. In that context, it was noted that in international arbitration, counsels for the parties as well as the arbitral tribunals could be bound by more than one standard of ethics depending on their nationality, affiliation with bar associations as well as place of arbitration. The Commission requested the Secretariat to explore the topic in a broad manner, including in the fields of both commercial and investment arbitration, taking into account existing laws, rules and regulations as well as any standards established by other organizations. The Secretariat was requested to assess the feasibility of work in that area and report to the Commission at a future session.⁵

³ Ibid.

⁴ Ibid.

⁵ Ibid.

Item 6. Adoption of the report

16. The Working Group may wish to adopt, at the close of its session, a report for submission to the forty-ninth session of the Commission, scheduled to be held in New York, from 27 June to 15 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

17. The sixty-third session of the Working Group 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,⁶ 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).

18. The Working Group may wish to note that its sixty-fourth session is scheduled to be held in New York, from 1-5 February 2016.

⁶ *Official records of the General Assembly, Fifty-sixth Session, Supplement No. 17 and corrigendum (A/56/17 and Corr.3)*, para. 381.