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**United Nations Commission
on International Trade Law**
Working Group II (Arbitration and Conciliation)
Sixty-fourth session
New York, 1-5 February 2016

Annotated provisional agenda

I. Provisional agenda

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3. Adoption of the agenda.
4. Revision of the UNCITRAL Notes on Organizing Arbitral Proceedings.
5. International commercial conciliation: enforceability of settlement agreements.
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), 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 (2019), Sierra Leone (2019), Singapore (2019), Spain (2016), Switzerland (2019), Thailand (2016), Turkey (2016), Uganda (2016), United Kingdom of Great Britain

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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-fourth session of the Working Group will be held at the United Nations Headquarters, New York, from 1 to 5 February 2016. 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, 1 February 2016, 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. Revision of the UNCITRAL Notes on Organizing Arbitral Proceedings

(a) Previous deliberations

5. 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 Proceedings¹ (also referred to below as the “Notes”). At that session, the Commission agreed that the Working Group should consider at its sixty-first session and, if necessary, at its sixty-second session, the revision of the Notes and that it should focus on matters of substance, leaving drafting to the Secretariat.²

6. At its forty-eighth session, in 2015, the Commission had before it a draft of revised Notes (contained in document A/CN.9/844), as it resulted from the work of the Working Group at its sixty-first (Vienna, 15-19 September 2014) and sixty-second (New York, 2-6 February 2015) sessions. The deliberations and decisions of the Working Group at those sessions are contained in document A/CN.9/826 and A/CN.9/832, respectively.

7. The Commission approved the draft revised Notes in principle, and requested the Secretariat to further revise the Notes taking into consideration its deliberations and decisions.³ It was also agreed that the Secretariat could seek input from the Working Group on specific issues during its sixty-fourth session. The Commission

¹ *UNCITRAL Yearbook*, vol. XXVII: 1996, part three, annex II.

² *Official Records of the General Assembly, Sixty-ninth Session, Supplement No. 17 (A/69/17)*, para. 128.

³ *Ibid.*, *Seventieth Session, Supplement No. 17 (A/70/17)*, para. 133.

further requested that the draft revised Notes be finalized for adoption at its forty-ninth session, in 2016.⁴

8. At its sixty-fourth session, the Working Group is expected to consider a revised draft version of the UNCITRAL Notes on Organizing Arbitral Proceedings on the basis of a note by the Secretariat (A/CN.9/WG.II/WP.194). The Working Group may wish to devote the first day and a half of the session to its consideration of the revision of the Notes.

(b) Documentation

9. 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.194).

10. 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, with amendments as adopted in 2006);
- Reports 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)*) and forty-eighth session (*Official Records of the General Assembly, Seventieth Session, Supplement No. 17 (A/70/17)*);
- Reports of Working Group II (Arbitration and Conciliation) on the work of its sixty-first (A/CN.9/826) and sixty-second (A/CN.9/832) sessions; and
- Settlement of commercial disputes, revision of the UNCITRAL Notes on Organizing Arbitral Proceedings, notes by the Secretariat: A/CN.9/WG.II/WP.183; A/CN.9/WG.II/WP.184; A/CN.9/WG.II/WP.186; A/CN.9/WG.II/WP.188 and A/CN.9/844.

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. International commercial conciliation: enforceability of settlement agreements

(a) Previous deliberations

12. 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

⁴ Ibid., paras. 14-133.

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.⁵

13. At its sixty-second session, the Working Group considered that topic on the basis of notes by the Secretariat (A/CN.9/822, A/CN.9/WG.II/WP.187 and A/CN.9/WG.II/WP.188). 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 broad enough to take into account the various approaches and concerns (A/CN.9/832, para. 59).

14. 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 the enforcement of settlement agreements (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 text. 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.⁶

15. At its sixty-third session, the Working Group considered 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).

16. At its sixty-fourth session, the Working Group is expected to continue its consideration of the topic on the basis of a note by the Secretariat (A/CN.9/WG.II/WP.195). The Working Group may wish to devote the remaining part its session to the consideration of that matter.

(b) Documentation

17. The Working Group will have before it notes by the Secretariat regarding the issue of enforceability of settlement agreements as it arises in the field of international commercial conciliation (A/CN.9/WG.II/WP.195).

18. 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);

⁵ Ibid., *Sixty-ninth Session, Supplement No. 17* (A/69/17), para. 129.

⁶ Ibid., *Seventieth Session, Supplement No. 17* (A/70/17), para. 142.

- Reports 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 forty-eighth session (*Official Records of the General Assembly, Seventieth Session, Supplement No. 17 (A/70/17)*);
- Reports of Working Group II (Arbitration and Conciliation) on the work of its sixty-second (A/CN.9/832) and sixty-third (A/CN.9/861) sessions;
- Settlement of commercial disputes, international commercial conciliation, enforceability of settlement agreements, notes by the Secretariat: A/CN.9/822; A/CN.9/WG.II/WP.187; A/CN.9/WG.II/WP.188 and A/CN.9/WG.II/WP.190; and
- Settlement of commercial disputes, enforcement of settlement agreements resulting from international commercial conciliation/mediation, compilation of comments by States: A/CN.9/WG.II/WP.191; A/CN.9/WG.II/WP.192 A/CN.9/846 and addenda 1 to 5.

19. 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 6. Organization of future work

20. At its forty-eighth 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 as possible items of future work.⁷

21. 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.⁸

22. 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

⁷ Ibid., paras. 143-151.

⁸ Ibid., para. 147.

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.⁹

Item 7. Adoption of the report

23. 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 2016. 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

24. The Working Group's sixty-fourth 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,¹⁰ 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).

25. The Working Group may wish to note that its sixty-fifth session is scheduled to be held in Vienna, from 5 to 9 September 2016.

⁹ Ibid., para. 151.

¹⁰ Ibid., *Fifty-sixth Session, Supplement No. 17* and corrigendum (A/56/17 and Corr.3), para. 381.