



General Assembly

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**United Nations Commission
on International Trade Law**
Working Group II (Dispute Settlement)
Sixty-fifth session
Vienna, 12-23 September 2016

Annotated provisional agenda

I. Provisional agenda

1. Opening of the session.
2. Election of officers.
3. Adoption of the agenda.
4. Preparation of an instrument on enforcement of international commercial settlement agreements resulting from conciliation.
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: Argentina (2022), Armenia (2019), Australia (2022), Austria (2022), Belarus (2022), Brazil (2022), Bulgaria (2019), Burundi (2022), Cameroon (2019), Canada (2019), Chile (2022), China (2019), Colombia (2022), Côte d'Ivoire (2019), Czech Republic (2022), Denmark (2019), Ecuador (2019), El Salvador (2019), France (2019), Germany (2019), Greece (2019), Honduras (2019), Hungary (2019), India (2022), Indonesia (2019), Iran (the Islamic Republic of) (2022), Israel (2022), Italy (2022), Japan (2019), Kenya (2022), Kuwait (2019), Lebanon (2022), Lesotho (2022), Liberia (2019), Libya (2022), Malaysia (2019), Mauritania (2019), Mauritius (2022), Mexico (2019), Namibia (2019), Nigeria (2022), Pakistan (2022), Panama (2019), Philippines (2022), Poland (2022), Republic of Korea (2019), Romania (2022), Russian Federation (2019), Sierra

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Leone (2019), Singapore (2019), Spain (2022), Sri Lanka (2022), Switzerland (2019), Thailand (2022), Turkey (2022), Uganda (2022), United Kingdom of Great Britain and Northern Ireland (2019), United States of America (2022), Venezuela (the Bolivarian Republic of) (2022) 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-fifth session of the Working Group will be held at the Vienna International Centre, from 12 to 23 September 2016. Meeting hours will be from 9.30 a.m. to 12.30 p.m. and from 2 to 5 p.m., except on Monday, 12 September 2016, 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. Preparation of an instrument on enforcement of international commercial settlement agreements resulting from conciliation

(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 the question of 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 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

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

Working Group with respect to that topic should be broad to take into account the various approaches and concerns.²

7. At its sixty-third (Vienna, 7-11 September 2015) and sixty-fourth (New York, 1-5 February 2016) sessions, the Working Group considered that topic on the basis of notes by the Secretariat (A/CN.9/WG.II/WP.190 and A/CN.9/WG.II/WP.195, respectively). At its sixty-fourth session, the Working Group requested the Secretariat to prepare a document outlining the issues considered at the session and setting out draft provisions without prejudice to the final form of the instrument, grouping provisions into broad categories.³

8. At its forty-ninth session, the Commission had before it the report of the Working Group on the work of its sixty-third and sixty-fourth sessions (A/CN.9/861 and 867 respectively). After discussion, the Commission commended the Working Group for its work on the preparation of an instrument dealing with enforcement of international commercial settlement agreements resulting from conciliation and confirmed that the Working Group should continue its work on the topic.⁴

9. At its sixty-fifth 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.198).

(b) Documentation

10. The Working Group will have before it a note by the Secretariat regarding the preparation of an instrument on enforcement of international commercial settlement agreements resulting from conciliation (A/CN.9/WG.II/WP.198).

11. 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);
- 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)*), forty-eighth session (*Official Records of the General Assembly, Seventieth Session, Supplement No. 17 (A/70/17)*); and forty-ninth session (under preparation);
- Reports of Working Group II (Arbitration and Conciliation) on the work of its sixty-second (A/CN.9/832), sixty-third (A/CN.9/861) and sixty-fourth (A/CN.9/867) sessions;
- Settlement of commercial disputes, international commercial conciliation, enforceability of settlement agreements, notes by the Secretariat: A/CN.9/822;

² Ibid., *Seventieth Session, Supplement No. 17 (A/70/17)*, para. 142.

³ A/CN.9/867, para. 15.

⁴ Report of the Commission on the work of its forty-ninth session, under preparation.

A/CN.9/WG.II/WP.187; A/CN.9/WG.II/WP.188, A/CN.9/WG.II/WP.190 and A/CN.9/WG.II/WP.195; 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/WG.II/WP.196 and addenda 1, A/CN.9/846 and addenda 1 to 5.

12. 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

13. At its forty-ninth session, the Commission held a preliminary discussion regarding possible future work in the area of international dispute settlement. The Commission considered the topics of (i) concurrent proceedings; (ii) code of ethics/conduct for arbitrators; and (iii) possible reform of investor-State dispute settlement system.⁵

14. On the issue of concurrent proceedings, the Commission agreed that the Secretariat should continue to explore the topic and further develop possible work that could be undertaken with regard to concurrent proceedings as mentioned in section IV of document A/CN.9/881, for consideration by the Commission at a future session.

15. On the issue of a code of ethics/conduct for arbitrators, the Commission requested the Secretariat to continue exploring 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 on the matter.

16. The Commission considered a note providing a short overview of a research study on whether the United Nations Convention on Transparency in Treaty-based Investor-State Arbitration ("Mauritius Convention on Transparency") could provide a useful model for possible reforms in the field of investor-State arbitration, conducted within the framework of a research project of the Center for International Dispute Settlement (CIDS), a joint research centre of the University of Geneva and the Graduate Institute of International and Development Studies (A/CN.9/890). After discussion, the Commission requested the Secretariat to review how the project described in document A/CN.9/890 might be best carried forward, if approved as a topic of future work at the forthcoming session of the Commission, taking into consideration the views of all States and other stakeholders, including how this project might interact with other initiatives in this area and which format and processes should be used. In so doing, the Secretariat was requested to conduct broad consultations.

17. After deliberation, the Commission decided to retain the three topics on its agenda for further consideration at its next session. It further requested that the Secretariat, within its existing resources, continue to update and conduct preparatory

⁵ Ibid.

work on all the topics so that the Commission would be in a position to make an informed decision whether to mandate its Working Group II to undertake work in any of the topics, following the current work on the enforcement of settlement agreements resulting from conciliation. In that context, it was reaffirmed that priority should be given to the current work by Working Group II so that it could expeditiously complete its work on the preparation of an instrument on the topic.

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 fiftieth session of the Commission, scheduled to be held in Vienna, from 3 to 21 July 2017.

IV. Scheduling of meetings

19. The sixty-fifth session of the Working Group will last for nine working days. The Working Group may wish to note that the Vienna International Centre is closed on Tuesday, 13 September. The Working Group is expected to hold substantive deliberations during the first eight day meetings, with a draft report on the entire period being prepared by the Secretariat for adoption at the ninth and last meeting of the Working Group (on Friday, 23 September).

20. The Working Group may wish to note that its sixty-sixth session is scheduled to be held in New York, from 6 to 10 February 2017.
