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Working Group on Electronic Commerce
Fortieth session
Vienna, 14-18 October 2002

Provisional agenda, annotations thereto and scheduling of meetings of the fortieth session

I. Provisional agenda

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II. Annotations

Item 1. Opening of the session

1. The fortieth session of the Working Group will be held at the Vienna International Centre from 14 to 18 October 2002. The session will be opened on Monday, 14 October 2002, at 10:00 a.m. The Working Group is composed of all States members of the Commission, which are the following States: Argentina (alternating annually with Uruguay), 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 Kingdom of Great Britain and Northern Ireland and United States of America.

Item 2. Election of officers

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

Item 4. Legal barriers to the development of electronic commerce in international instruments relating to international trade

3. At its thirty-second session, in 1999, the Commission took note of a recommendation that had been adopted on 15 March 1999 by the Centre for the Facilitation of Procedures and Practices for Administration, Commerce and Transport (CEFACT) (now the Centre for Trade Facilitation and Electronic Business) of the Economic Commission for Europe that UNCITRAL should consider the actions necessary to ensure that references to “writing”, “signature” and “document” in conventions and agreements relating to international trade allowed for electronic equivalents.¹

4. The Working Group considered proposals for removing obstacles to electronic commerce in existing international conventions at its thirty-eighth session, in March 2001, on the basis of a note by the Secretariat (A/CN.9/WG.IV/WP.89). The Working Group agreed to recommend to the Commission the preparation of an appropriate international instrument or instruments to remove those legal barriers to the use of electronic commerce that might result from international trade law instruments. The Working Group also agreed to recommend to the Commission that the Secretariat should carry out a comprehensive survey of possible legal barriers to the development of electronic commerce in international instruments, including, but not limited to, those instruments already mentioned in the CEFACT survey. Such a study should aim at identifying the nature and context of such possible barriers with a view to enabling the Working Group to formulate specific recommendations for an appropriate course of action. The Commission endorsed that recommendation, along with other recommendations for future work (see para. 10), at its thirty-fourth session, in 2001.²

5. The Secretariat began the survey by identifying and reviewing trade-relevant instruments from among the large number of multilateral treaties that were deposited with the Secretary-General. The Secretariat identified thirty-three treaties as being potentially relevant for the survey and analysed possible issues that might arise from the use of electronic means of communications under those treaties. The preliminary conclusions reached by the Secretariat in relation to those treaties are set out in a note by the Secretariat (A/CN.9/WG.IV/WP.94) that was submitted to the Working Group at its thirty-ninth session, in March 2002.

6. At that session, the Working Group took note of the progress that had been made by the Secretariat in connection with the survey, but did not have sufficient time to consider the preliminary conclusions of the survey. The Working Group requested the Secretariat to seek the views of member and observer States on the survey and the preliminary conclusions indicated therein and to prepare a report compiling such comments for consideration by the Working Group at a later stage.

The Working Group took note of a statement stressing the importance that the survey being conducted by the Secretariat should reflect trade-related instruments emanating from the various geographical regions represented on the Commission. For that purpose, the Working Group requested the Secretariat to seek the views of other international organizations, including organizations of the United Nations system and other intergovernmental organizations, as to whether there were international trade instruments in respect of which those organizations or their member States acted as depositaries that those organizations would wish to be included in the survey being conducted by the Secretariat.

7. The report of the Working Group on the work of its thirty-ninth session was before the Commission at its thirty-fifth session, in June 2002. The Commission reiterated its belief concerning the importance of its work in respect of legal barriers to electronic commerce that may result from trade-related international instruments, and its support for the efforts of the Working Group and the Secretariat in that respect. The Commission requested the Working Group to devote most of its time at its fortieth session, in October 2002, to a substantive discussion of various issues that had been raised in the Secretariat's initial survey (A/CN.9/WG.IV/WP.94).³

8. The Working Group will again have before it the note by the Secretariat referred to in paragraph 5 (A/CN.9/WG.IV/WP.94). The Working Group will also have before it a note by the Secretariat transmitting comments on the survey that were received from member and observer States, from inter-governmental organizations and international non-governmental organizations (A/CN.9/WG.IV/WP.98) in response to a circular communication issued by the Secretariat pursuant to the Working Group's request (see para. 6). The Working Group may wish to use those documents as a basis for its deliberations.

9. Furthermore, the following background documents will be made available at the session:

(a) Report of the Working Group on Electronic Commerce on the work of its thirty-ninth session (A/CN.9/509);

(b) Legal barriers to the development of electronic commerce in international instruments relating to international trade: Note by the Secretariat (A/CN.9/WG.IV/WP.89);

(c) Legal aspects of electronic commerce: Proposal by France (A/CN.9/WG.IV/WP.93).

10. The documents referred to above will also be available from the UNCITRAL web site (<http://www.uncitral.org>).

Item 5. Electronic contracting: provisions for a draft convention

11. At its thirty-fourth session, in 2001, the Commission endorsed a set of recommendations for future work that had been made by the Working Group on Electronic Commerce at its thirty-eighth session. They included the preparation of an international instrument dealing with selected issues on electronic contracting and consideration of three other topics, namely: (a) a comprehensive survey of possible legal barriers to the development of electronic commerce in international instruments; (b) a further study of the issues related to transfer of rights, in

particular rights in tangible goods, by electronic means and mechanisms for publicizing and keeping a record of acts of transfer or the creation of security interests in such goods; and (c) a study discussing the UNCITRAL Model Law on International Commercial Arbitration, as well as the UNCITRAL Arbitration Rules, to assess their appropriateness for meeting the specific needs of online arbitration.⁴

12. At its thirty-ninth session, the Working Group considered a note by the Secretariat discussing selected issues on electronic contracting. That note contained also, as its annex I, an initial draft tentatively entitled “Preliminary Draft Convention on [International] Contracts Concluded or Evidenced by Data Messages” (A/CN.9/WG.IV/WP.95). The Working Group further considered a note by the Secretariat transmitting comments that had been formulated by an ad hoc expert group established by the International Chamber of Commerce to examine the issues raised in document A/CN.9/WG.IV/WP.95 and the draft provisions set out in its annex I (A/CN.9/WG.IV/WP.96).

13. The Working Group began its deliberation by considering the form and scope of the preliminary draft convention (see A/CN.9/509, paras. 18-40). The Working Group agreed to postpone a discussion on exclusions from the draft convention until it had had an opportunity to consider the provisions related to location of the parties and contract formation. In particular, the Working Group decided to proceed with its deliberations by firstly taking up articles 7 and 14, both of which dealt with issues related to the location of the parties (paras. 41-65). After it had completed its initial review of those provisions, the Working Group proceeded to consider the provisions dealing with contract formation in articles 8-13 (paras. 66-121). The Working Group concluded its deliberations on the draft convention with a discussion on draft article 15 (paras. 122-125). The Working Group agreed that it should consider articles 2-4, dealing with the sphere of application of the draft convention and articles 5 (definitions) and 6 (interpretation) at its fortieth session. The Working Group requested the Secretariat to prepare a revised version of the preliminary draft convention, based on those deliberations and decisions for consideration by the Working Group at its fortieth session.

14. The Commission considered the working group’s report at its thirty-fifth session, in 2002. The Commission noted with appreciation that the Working Group had started its consideration of a possible international instrument dealing with selected issues on electronic contracting. The Commission reaffirmed its belief that an international instrument dealing with certain issues of electronic contracting might be a useful contribution to facilitate the use of modern means of communication in cross-border commercial transactions. The Commission commended the Working Group for the progress made in that regard. However, the Commission also took note of the varying views that were expressed within the Working Group concerning the form and scope of the instrument, its underlying principles and some of its main features. The Commission noted, in particular, the proposal that the Working Group’s considerations should not be limited to electronic contracts, but should apply to commercial contracts in general, irrespective of the means used in their negotiation. The Commission was of the view that member and observer States participating in the Working Group’s deliberations should have ample time for consultations on those important issues. For that purpose, the Commission considered that it might be preferable for the Working Group to postpone its discussions on a possible international instrument dealing with selected

issues on electronic contracting until its forty-first session (New York, 5-9 May 2003).⁵

15. The Working Group will hear an oral report by the Secretariat on the progress of its work to revise the preliminary draft convention so as to reflect the Working Group's deliberations at its thirty-ninth session. Furthermore, the following background documents will be made available at the session:

(a) The note referred to in paragraph 11 (A/CN.9/WG.IV/WP.95); and

(b) A note by the Secretariat transmitting comments thereon by an ad hoc expert group established by the International Chamber of Commerce (A/CN.9/WG.IV/WP.96).

16. These documents are also available from the UNCITRAL web site (<http://www.uncitral.org>).

17. Should there be sufficient time after conclusion of the Working Group's deliberations on agenda item 4, the Working Group may wish to consider issues that are common both to the so-called "omnibus convention" (agenda item 4) and to a possible international instrument dealing with selected issues on electronic contracting (agenda item 5).

Item 6. Other business

18. At its thirty-fifth session, in 2002, the Commission affirmed its understanding that all topics referred to in paragraph 11 should remain under consideration by the Working Group as items of its short- and medium-term work programmes. As had already been indicated at the Commission's thirty-third session, the work to be carried out by the Working Group could involve consideration of several topics in parallel as well as preliminary discussion of the contents of possible uniform rules on certain aspects of the above-mentioned topics. With respect to the issues of online dispute resolution (ODR), the Commission received information on the work under way or currently being considered in other international organizations. The Commission requested the Secretariat to continue monitoring closely such activities, with a view to developing suggestions, when appropriate, for future work by UNCITRAL in the field of ODR.

19. The Secretariat will make oral reports on the progress of the work concerning issues related to transfer of rights by electronic means, in particular, transfer of rights in tangible goods, and ODR.

Item 7. Adoption of the report

20. The Working Group may wish to adopt, at the close of its session, on Friday, 18 October 2002, a report for submission to the thirty-sixth session of the Commission (to be held in Vienna in 2003).

Meetings

21. The session of the Working Group will take place from 14 to 18 October 2002 at the Vienna International Centre. There will be five working days available for consideration of the agenda items at the session. Meeting hours will be from 9:30 to

12:30 and from 14:00 to 17:00, except on Monday, 14 October 2002, when the session will commence at 10:00 a.m. 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). The Working Group may wish to devote its first six half-day meetings (from Monday to Wednesday) to its deliberations on agenda item 4 and, should those deliberations be concluded by the sixth meeting, devote two half-day meetings (on Thursday) to agenda item 5. The Working Group may wish to reserve its penultimate half-day meeting (on Friday morning) for an exchange of views on the relationship between the preparation of a so-called “omnibus convention” (agenda item 4) and an international instrument dealing with selected issues on electronic contracting (agenda item 5) and for considering matters related to cooperation between UNCITRAL and other organizations in respect of agenda item 4.

Notes

- ¹ *Official Records of the General Assembly, Fifty-fourth Session, Supplement No. 17 (A/54/17)*, para. 316.
- ² *Ibid.*, *Fifty-sixth Session, Supplement No. 17 and corrigendum (A/56/17 and Corr.3)*, paras. 291-293.
- ³ *Ibid.*, *Fifty-seventh Session, Supplement No. 17 (A/57/17)*, para. 207 (to be released in the course of August 2002).
- ⁴ *Ibid.*, *Fifty-sixth Session, Supplement No. 17 and corrigendum (A/56/17 and Corr.3)*, paras. 291-293.
- ⁵ *Ibid.*, *Fifty-seventh Session, Supplement No. 17 (A/57/17)* (to be released in the course of August 2002), para. 206 (for the dates of the future sessions of the Working Group, see paras. 296 (d) and 297 (d)).
- ⁶ *Ibid.*, *Fifty-sixth Session, Supplement No. 17 and corrigendum (A/56/17 and Corr.3)*, para. 381.