



United Nations

**Report of the United Nations
Commission on International
Trade Law**

**Fifty-first session
(25 June–13 July 2018)**

General Assembly

**Official Records
Seventy-third session
Supplement No. 17**

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aspects of cloud computing, the Commission noted that the draft Secretariat notes on the main issues of cloud computing contracts would be available to the Commission at its fifty-second session, in 2019 (see para. 150 above);

(d) With respect to insolvency, the Commission noted that it was anticipated that two draft legislative texts would be sufficiently developed for submission by Working Group V to the Commission for finalization and adoption in 2019, namely the draft model law on enterprise group insolvency and its guide to enactment and a supplement to part four of the *UNCITRAL Legislative Guide on Insolvency Law* addressing the obligations of directors of enterprise group companies in the period approaching insolvency (see para. 132 above). The Commission confirmed that the work on insolvency of micro, small and medium-sized enterprises should continue (see para. 133 above);

(e) As regards secured transactions, the Commission confirmed that Working Group VI should continue its work to prepare a practice guide on the contractual, transactional and regulatory issues arising in the context of secured transactions (see also para. 163 above), with a request that it be presented to the Commission in 2019 for finalization and adoption.

B. Future legislative programme

239. The Commission recalled the importance of a strategic approach to the allocation of resources to, inter alia, legislative development, and its role in setting the work programme of UNCITRAL, especially as regards the mandates of working groups.⁵⁷

240. The Commission heard several proposals for possible future legislative development.

241. Firstly, the Government of Italy presented a proposal on possible future work on contractual networks (A/CN.9/954). It was recalled that an earlier proposal had been presented to the Commission at its fiftieth session, in 2017, and noted that document A/CN.9/954 clarified aspects of that proposal in response to comments received at the fiftieth session. It was noted that those networks provided an opportunity to organize cooperation between businesses without a requirement for a legal entity to be formed. They could facilitate sharing of resources; provide a means of accessing business opportunities not otherwise available to individual participating entities; facilitate access to finance for the network itself, rather than the individual participating entities; and permit sharing of property and of labour. It was pointed out that certain international organizations were undertaking projects using clusters, where the governance of the projects was organized in a manner similar to contractual networks but without the legal certainty provided by contractual networks. In conclusion, the delegation observed that work on such networks would complement the work on the UNCITRAL limited liability organization currently being considered by Working Group I.

242. The Government of Switzerland presented a proposal on possible future work on cross-border issues related to the judicial sale of ships (A/CN.9/944/Rev.1). The Commission recalled that a proposal had been made at its fiftieth session by CMI, that it had indicated its support for a colloquium to be initiated by CMI to discuss and advance the proposal, and that it had agreed to revisit the topic at a future session. The Commission noted that that colloquium had been held in February 2018 and that the proposal included the outcomes and conclusions of that colloquium.

243. In support of the proposal, it was noted that that issue had the potential to affect many areas of international trade and commerce, not simply the shipping industry, with several examples of that impact being provided. In support of work being undertaken by UNCITRAL, various parallels were drawn between the work currently

⁵⁷ Ibid., paras. 294 and 295.

being undertaken in Working Group V on recognition of insolvency-related judgments and a possible instrument on judicial sale of ships.

244. The Governments of Italy, Norway and Spain presented a proposal for possible future work in the field of dispute resolution (A/CN.9/959), in particular on expedited arbitration. The Government of Belgium supported that proposal in its submission (A/CN.9/961), suggesting in addition work on the conduct of arbitrators in the field of commercial arbitration, with a focus on questions of impartiality and independence of arbitrators. It was pointed out that the aim of the proposals was to improve the efficiency and quality of arbitral proceedings. 3

245. Regarding expedited arbitration, it was suggested that the work could consist of providing information on how the UNCITRAL Arbitration Rules could be modified or incorporated into contracts via arbitration clauses that provided for expedited procedures or in guidance to arbitral institutions adopting such procedures in order to ensure the right balance between speedy resolution of the process and respect for due process. Reference was also made to the possibility of considering jointly the topics of expedited arbitration and adjudication, as expedited arbitration would provide generally applicable tools for reducing the cost and time of arbitration, while adjudication would facilitate use of a particular tool that had demonstrated its utility in efficiently resolving disputes in a specific sector.

246. The Commission also heard the proposal that the Secretariat could undertake work on (a) updating the UNCITRAL Conciliation Rules (1980) to both reflect current practice and ensure consistency with the contents of the draft instruments finalized by the Commission at its current session, and (b) preparing notes on organizing mediation proceedings.

247. The Government of Czechia presented a proposal that the Secretariat should closely monitor developments relating to legal aspects of smart contracts and artificial intelligence (A/CN.9/960) and report back to the Commission on areas that might warrant uniform legal treatment, with a view to undertaking work in those fields when appropriate. 11

248. It was indicated that several suggestions had been made in the working groups and in the Commission with respect to various legal aspects of the digital economy. It was recalled that additional considerations on those legal aspects had been presented at the Congress held in 2017 on the occasion of the Commission's fiftieth session, to celebrate the fiftieth anniversary of UNCITRAL. It was suggested that UNCITRAL would benefit from a broader understanding of the legal issues related to the digital economy and, that to do so, it should monitor relevant developments on the basis of information compiled by the Secretariat. It was said that in addition to artificial intelligence and smart contracts, topics of possible relevance included the use of distributed ledger technology, supply chain management, payments and cross-border data flows. It was stressed that such work should not only legally enable the commercial use of new technologies and methods but also assist developing economies in bridging the digital gap.

249. In addition to the proposals noted above, reference was made to two proposals that had been considered by working groups and were contained in working group documents as noted in paragraph 237 above. The first of those proposals concerned warehouse receipts, which had first been considered at a colloquium on secured transactions (Vienna, 15–17 March 2017).⁵⁸ After further discussion at its thirty-third session (New York, 30 April–4 May 2018), Working Group VI requested a mandate on that issue to develop a modern and predictable legal regime (A/CN.9/938, paras. 92–93). In support of the proposal, the importance of warehouse receipts to agriculture and food security was noted, as well as their use in supply and value chains.

250. The second proposal concerned civil law aspects of asset tracing and recovery, which had been considered by Working Group V (A/CN.9/937, paras. 121–122). With respect to that proposal, it was suggested that it would be relevant not only to

⁵⁸ For further information, see www.uncitral.org/uncitral/en/commission/colloquia_security.html.

insolvency but also to treatment of commercial fraud and other topics. It was noted that many States lacked adequate legal tools for tracing and recovery. What was suggested was the development of a toolbox of legislative provisions from which States could choose, as indicated in document A/CN.9/WG.V/WP.154. It was emphasized that the work proposed was not intended to address criminal law or cross-border issues and that coordination and cooperation with other relevant organizations would be a key element, in order to avoid potential overlap and duplication. The first step, it was proposed, was to undertake work to explore the issues in more detail and identify the scope of possible work.

251. In that context, the European Union delegation presented as an alternative a proposal to dedicate future work to applicable law related to insolvency. It was stressed that the issue of applicable law was an important matter that warranted consideration.

252. After discussion, the Commission agreed that priority, in the allocation of working group time, should be given to the topics of judicial sale of ships and issues relating to expedited arbitration; that judicial sale of ships should be allocated to the first available working group, possibly Working Group VI when it had completed its current work on the practice guide, and that Working Group II should be mandated to take up issues relating to expedited arbitration.

253. Regarding the other topics discussed, the Commission came to the conclusion that the preparatory work on those matters was less mature, and given the limited resources of the Secretariat, should be given less priority. More preparatory work by the Secretariat would be needed before the Commission could decide on further steps on those matters. Accordingly, the Commission decided the following:

(a) The Secretariat should conduct exploratory and preparatory work on warehouse receipts in order to refer that work to a working group;

(b) The Secretariat should compile information on legal issues related to the digital economy, including by organizing, within existing resources and in cooperation with other organizations, symposiums, colloquiums and other expert meetings, and to report that information for its consideration at a future session. It was stressed that discussions should focus on identifying legal obstacles and their possible solutions and avoid privacy and data protection issues. In that respect, it was noted that Working Groups IV and VI had already compiled a list of legal matters related to the use of new technologies and methods, which could provide a basis for further expert discussion;

(c) With respect to the proposal on contractual networks, Working Group I was authorized to hold a colloquium in the context of a future working group session for the purpose of further analysing the relevance of those networks to the work on developing an enabling legal environment for micro, small and medium-sized enterprises and the desirability of taking up work of those networks. That discussion should also explore legal tools that achieve goals similar to contractual networks that were being used in both civil and common law jurisdictions;

(d) With regard to the proposal on asset tracing in the area of insolvency, the Secretariat should prepare a background study on the relevant issues, taking into account work undertaken by other organizations, in order to avoid duplication and overlap.

254. In the area of dispute settlement, the Commission noted that the Secretariat would prepare notes on organizing mediation proceedings and update the UNCITRAL Conciliation Rules in the light of the mediation framework adopted at its current session.

C. Technical cooperation and assistance activities

255. The Commission recalled the importance of support activities and the need to encourage such activities at the global and regional levels through the Secretariat, through the expertise available in the working groups and the Commission, through