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## United Nations Commission on International Trade Law

Working Group on Electronic Commerce  
Thirty-ninth session  
New York, 11-15 March 2002

### Provisional agenda, annotations thereto and scheduling of meetings of the thirty-ninth session

#### I. Provisional agenda

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4. Electronic contracting: provisions for a draft convention
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#### II. Annotations

##### Item 1. Opening of the session

1. The thirty-ninth session of the Working Group will be held at the United Nations Headquarters, in New York, from 11 to 15 March 2002. The session will be opened on Monday, 11 March 2002, at 10:30 a.m. The Working Group is composed of all States members of the Commission, which are the following States: 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, United States of America and Uruguay (which alternates annually with Argentina).

**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. Electronic contracting: provisions for a draft convention**

3. At its thirty-third session, in 2000, the Commission held a preliminary exchange of views on proposals for future work in the field of electronic commerce. Three topics were suggested as indicating possible areas where work by the Commission would be desirable and feasible. The first dealt with electronic contracting, considered from the perspective of the United Nations Sales Convention; the second was online dispute settlement and the third topic was dematerialization of documents of title, in particular in the transport industry.

4. The Commission welcomed the proposal to study further the desirability and feasibility of undertaking future work in respect of those topics. The Commission generally agreed that, upon completing the preparation of the Model Law on Electronic Signatures, the Working Group would be expected to examine, at its thirty-eighth session, some or all of the above-mentioned topics, as well as any additional topic, with a view to making more specific proposals for future work by the Commission at its thirty-fourth session (Vienna, 25 June-13 July 2001). It was agreed that 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.<sup>1</sup>

5. The Working Group considered those proposals at its thirty-eighth session, in 2001, on the basis of a set of notes dealing with a possible convention to remove obstacles to electronic commerce in existing international conventions (A/CN.9/WG.IV/WP.89); dematerialization of documents of title (A/CN.9/WG.IV/WP.90) and electronic contracting (A/CN.9/WG.IV/WP.91).

6. The Working Group held an extensive discussion on issues related to electronic contracting (A/CN.9/484, paras. 94-127). The Working Group concluded its deliberations on future work by recommending to the Commission that work towards the preparation of an international instrument dealing with certain issues in electronic contracting be started on a priority basis. At the same time, it was agreed to recommend to the Commission that the Secretariat should be entrusted with the preparation of the necessary studies concerning three other topics considered by the Working Group, 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 (*ibid.*, para. 134).

7. At the thirty-fourth session of the Commission, in 2001, there was wide support for the recommendations made by the Working Group, which were found to constitute a sound basis for future work by the Commission. The views varied, however, as regards the relative priority to be assigned to the topics. One line of thought was that a project aiming at removing obstacles to electronic commerce in existing instruments should have priority over the other topics, in particular over the preparation of a new international instrument dealing with electronic contracting. It was said that references to “writing”, “signature”, “document” and other similar provisions in existing uniform law conventions and trade agreements already created legal obstacles and generated uncertainty in international transactions conducted by electronic means. Efforts to remove those obstacles should not be delayed or neglected by attaching higher priority to issues of electronic contracting.

8. The prevailing view, however, was in favour of the order of priority that had been recommended by the Working Group. It was pointed out, in that connection, that the preparation of an international instrument dealing with issues of electronic contracting and the consideration of appropriate ways for removing obstacles to electronic commerce in existing uniform law conventions and trade agreements were not mutually exclusive. The Commission was reminded of the common understanding reached at its thirty-third session that 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.<sup>2</sup>

9. There were also differing views regarding the scope of future work on electronic contracting, as well as the appropriate moment to begin such work. Pursuant to one view, the work should be limited to contracts for the sale of tangible goods. The opposite view, which prevailed in the course of the Commission’s deliberations, was that the Working Group on Electronic Commerce should be given a broad mandate to deal with issues of electronic contracting, without narrowing the scope of the work from the outset. It was understood, however, that consumer transactions and contracts granting limited use of intellectual property rights would not be dealt with by the Working Group. The Commission took note of the preliminary working assumption made by the Working Group that the form of the instrument to be prepared could be that of a stand-alone convention dealing broadly with the issues of contract formation in electronic commerce (A/CN.9/484, para. 124), without creating any negative interference with the well-established regime of the United Nations Convention on Contracts for the International Sale of Goods (*ibid.*, para. 95), and without unduly interfering with the law of contract formation in general. Broad support was given to the idea expressed in the context of the thirty-eighth session of the Working Group that, to the extent possible, the treatment of Internet-based sales transactions should not differ from the treatment given to sales transactions conducted by more traditional means (*ibid.*, para. 102).

10. As regards the timing of the work to be undertaken by the Working Group, there was support for commencing consideration of future work without delay during the third quarter of 2001. However, strong views were expressed that it would be preferable for the Working Group to wait until the first quarter of 2002, so as to afford States sufficient time to hold internal consultations. The Commission accepted that suggestion and decided that the first meeting of the Working Group on issues of electronic contracting should take place in the first quarter of 2002.<sup>3</sup>

11. The Working Group will have before it a note by the Secretariat discussing selected issues on electronic contracting, in particular those that were mentioned during the thirty-eighth session of the Working Group (A/CN.9/WG.IV/WP.95). That note, which the Working Group may wish to use as a basis for its deliberations, contains in its annex I an initial draft tentatively called "Preliminary Draft Convention on [International] Contracts Concluded or Evidenced by Data Messages". The Working Group will also have before it a note by the Secretariat transmitting comments that have 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). 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-eighth session (A/CN.9/484);
- (b) Draft Guide to Enactment of the UNCITRAL Model Law on Electronic Signatures: Note by the Secretariat (A/CN.9/493);
- (c) Possible future work in the field of electronic contracting: Note by the Secretariat (A/CN.9/WG.IV/WP.91);
- (d) United Nations Convention on Contracts for the International Sale of Goods;
- (e) UNCITRAL Model Law on Electronic Commerce with Guide to Enactment (1996).

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

**Item 5. Legal barriers to the development of electronic commerce in international instruments relating to international trade**

13. 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.<sup>4</sup>

14. The Working Group considered proposals for removing obstacles to electronic commerce in existing international conventions at its thirty-eighth session, in 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 to undertake work towards 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 be requested to 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 study should be carried out by the Secretariat with the assistance of outside experts and in consultation with relevant international governmental and non-governmental organizations.

15. The Working Group will have before it a note by the Secretariat containing information on the progress made thus far by the Secretariat in connection with this topic (A/CN.9/WG.IV/WP.97). The Working Group may wish to use that note as a basis for its deliberations. Furthermore, the following background documents will be made available at the session:

(a) 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);

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

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

#### **Item 6. Other business**

17. 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 the assessment of the appropriateness of the UNCITRAL Model Law on International Commercial Arbitration, as well as the UNCITRAL Arbitration Rules, for meeting the specific needs of online arbitration.

#### **Item 7. Adoption of the report**

18. The Working Group may wish to adopt, at the close of its session, on Friday, 15 March 2002, a report for submission to the thirty-fifth session of the Commission (to be held in New York in June 2002).

#### **Meetings**

19. The session of the Working Group will take place from 11 to 15 March 2002 at the United Nations Headquarters, in New York. There will be five working days available for consideration of the agenda items at the session. Meeting hours will be from 10:00 to 13:00 and from 15:00 to 18:00, except on Monday, 11 March 2002, when the session will commence at 10:30 a.m. The Working Group may wish to note that, consistent with decisions taken by the Commission at its thirty-fourth session (see A/56/17, para. 381), 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).

*Notes*

<sup>1</sup> *Official Records of the General Assembly, Fifty-fifth Session, Supplement No. 17 (A/55/17)*, paras. 384-388.

<sup>2</sup> *Ibid.*, *Fifty-seventh Session, Supplement No. 17 (A/57/17)*, para. 293.

<sup>3</sup> *Ibid.*, para. 295.

<sup>4</sup> *Ibid.*, *Fifty-fourth Session, Supplement No. 17 (A/54/17)*, paras. 316.

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