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Report of the United Nations Commission on International Trade Law on its thirty-seventh session

14-25 June 2004

General Assembly

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Fifty-ninth session
Supplement No. 17 (A/59/17)

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Contents

I. Introduction

1. The present report of the United Nations Commission on International Trade Law (UNCITRAL) covers the thirty-seventh session of the Commission, held in New York from 14 to 25 June 2004.

2. Pursuant to General Assembly resolution 2205 (XXI) of 17 December 1966, the report is submitted to the General Assembly and is also submitted for comments to the United Nations Conference on Trade and Development.

II. Organization of the session

A. Opening of the session

3. The thirty-seventh session of the Commission was opened on 14 June 2004.

B. Membership and attendance

4. The General Assembly, in its resolution 2205 (XXI) established the Commission with a membership of 29 States, elected by the Assembly. By its resolution 3108 (XXVIII) of 12 December 1973, the Assembly increased the membership of the Commission from 29 to 36 States. By its resolution 57/20 of 19 November 2002, the General Assembly further increased the membership of the Commission from 36 States to 60 States. The current members of the Commission, elected on 16 October 2000 and 17 November 2003, are the following States, whose term of office expires on the last day prior to the beginning of the annual session of the Commission in the year indicated:[1] Algeria (2010), Argentina (2007), Australia (2010), Austria (2010), Belarus (2010), Belgium (2007), Benin (2007), Brazil (2007), Cameroon (2007), Canada (2007), Chile (2007), China (2007), Colombia (2010), Croatia (2007), Czech Republic (2010), Ecuador (2010), Fiji (2010), France (2007), Gabon (2010), Germany (2007), Guatemala (2010), India (2010), Iran (Islamic Republic of) (2010), Israel (2010), Italy (2010), Japan (2007), Jordan (2007), Kenya (2010), Lebanon (2010), Lithuania (2007), Madagascar (2010), Mexico (2007), Mongolia (2010), Morocco (2007), Nigeria (2010), Pakistan (2010), Paraguay (2010), Poland (2010), Qatar (2007), Republic of Korea (2007), Russian Federation (2007), Rwanda (2007), Serbia and Montenegro (2010), Sierra Leone (2007), Singapore (2007), South Africa (2007), Spain (2010), Sri Lanka (2007), Sweden (2007), Switzerland (2010), Thailand (2010), the former Yugoslav Republic of Macedonia (2007), Tunisia (2007), Turkey (2007), Uganda (2010), United Kingdom of Great Britain and Northern Ireland (2007), United States of America (2010), Uruguay (2007), Venezuela (2010) and Zimbabwe (2010).

5. With the exception of Argentina, Benin, Ecuador, Fiji, Gabon, Israel, Lebanon, Paraguay, Poland, South Africa, the former Yugoslav Republic of Macedonia, Uruguay and Zimbabwe, all the members of the Commission were represented at the session.

6. The session was attended by observers from the following States: Bolivia, Cambodia, Denmark, Greece, Holy See, Indonesia, Kuwait, Libyan Arab Jamahiriya, Philippines, Saudi Arabia, Slovakia, Ukraine and Viet Nam.

7. The session was also attended by observers from the following international organizations:

(a) *United Nations system*: World Bank, International Monetary Fund and World Intellectual Property Organization;

(b) *Intergovernmental organizations*: Asian-African Legal Consultative Organization, European Community and International Cotton Advisory Committee;

(c) *Non-governmental organizations invited by the Commission*: American Bar Association, American Bar Foundation, Arab Union for International Arbitration, Cairo Regional Centre for International Commercial Arbitration, Center for International Legal Studies, Forum for International Commercial Arbitration, Global Center for Dispute Resolution Research, Groupe de réflexion sur l'insolvabilité et sa prévention, Institute of International Banking Law and Practice, INSOL International, International Bar Association, International Insolvency Institute, International Law Institute and Union internationale des avocats.

8. The Commission welcomed the participation of international non-governmental organizations with expertise in the major items on the agenda. Their participation was crucial for the quality of texts formulated by the Commission and the Commission requested the Secretariat to continue to invite such organizations to its sessions (see also paras. 114, 116 and 117 below).

C. Election of officers

9. The Commission elected the following officers:

Chairman:	Wisit Wisitsora-At (Thailand)
Vice-Chairmen:	Ricardo Sandoval López (Chile) Petar Šarčević (Croatia) Simon Onekutu (Nigeria)
Rapporteur:	David Morán Bovio (Spain)

D. Agenda

10. The agenda of the session, as adopted by the Commission at its 776th meeting, on 14 June 2004, was as follows:

1. Opening of the session.
2. Election of officers.
3. Adoption of the agenda.
4. Finalization and adoption of the draft UNCITRAL Legislative Guide on Insolvency Law.
5. Arbitration: progress report of Working Group II.

6. Transport law: progress report of Working Group III.

7. Electronic commerce: progress report of Working Group IV.

8. Security interests: progress report of Working Group VI.

9. Possible future work in the area of public procurement.

10. Monitoring implementation of the 1958 New York Convention.

11. Case law on UNCITRAL texts, digests of case law on the United Nations Sales Convention and other uniform texts.

12. Training and technical assistance. Follow-up to in-depth evaluation of work of the Commission's secretariat concerned with training and technical assistance.

13. Status and promotion of UNCITRAL legal texts.

14. Relevant General Assembly resolutions.

15. Coordination and cooperation. Follow-up to in-depth evaluation of work of the Commission's secretariat concerned with coordination and cooperation.

16. Other business.

17. Date and place of future meetings.

18. Adoption of the report of the Commission.

E. Adoption of the report

11. At its 787th, 792nd and 793rd meetings, on 21 and 25 June 2004, the Commission adopted the present report by consensus.

III. Finalization and adoption of the draft UNCITRAL legislative guide on insolvency law

Part One. Designing the key objectives and structure of an effective and efficient insolvency law

12. The Commission considered the recommendations and commentary (A/CN.9/WG.V/WP.70 (Part I)), the revisions to the recommendations proposed (A/CN.9/559/Add.1) and the revisions to the commentary proposed (A/CN.9/559/Add.2).

13. The Commission approved the substance of part one of the draft guide, including the amendments proposed (A/CN.9/559/Add.1 and 2), with the following revisions:

(a) Deletion of the words "other than judicial authorities" in the last sentence of paragraph 4 of document A/CN.9/559/Add.2;

(b) Addition at the end of paragraph 9 (A/CN.9/WG.V/WP.70 (Part I)) of words along the lines of the following: "To the extent that a debtor is excluded from the scope of such legal mechanisms, it and its creditors will not be subject to the discipline of the mechanism, nor will they enjoy the protections afforded by the mechanism";

(c) Substitution of the word "minimized" for "avoided" in the last sentence of paragraph 21 (A/CN.9/WG.V/WP.70 (Part I)) to address the concern that the last sentence of the paragraph was inconsistent with the real importance of social and political concerns to insolvency law and should be revised;

(d) Addition at the beginning of paragraph 75 (A/CN.9/WG.V/WP.70 (Part I)) after the words "an insolvency law can" of words along the following lines: "assign specific functions to other participants, such as the insolvency representative and creditors, or to some other authority, such as an insolvency or corporate regulator";

(e) Addition of a short, general summary at the end of part one of work being undertaken by international organizations in the area of building institutional capacity, as requested by Working Group V (Insolvency Law) at its thirtieth session (see A/CN.9/551, para. 115).

14. The concern was raised as to whether the last sentence of paragraph 41 of document A/CN.9/WG.V/WP.70 (Part I) should be construed as meaning that a subordination agreement entered into prior to insolvency would be void once insolvency proceedings commenced. The Commission noted that Working Groups V and VI had agreed (see A/CN.9/550, para. 20) that, as a general principle, subordination agreements should be respected in insolvency, but that parties could not agree to a higher ranking than provided for under the insolvency law. It was also noted that the substance of that conclusion was to be reflected in part two, chapter V, section B, of the draft guide dealing with priorities and it was agreed that an appropriate note could be added to paragraph 41.

Part Two. Core provisions for an effective and efficient insolvency law

15. The Commission considered the recommendations and commentary (A/CN.9/WG.V/WP.70 (Part II)), as well as the proposed amendments to the recommendations and the commentary (A/CN.9/559/Add.1-3).

16. The Commission approved the substance of chapter I, section A, "Eligibility and jurisdiction", including the amendments proposed (A/CN.9/559/Add.1), and agreed that footnote 1 to paragraph 87 of document A/CN.9/WG.V/WP.70 (Part II), if appropriately amended, should be retained to explain the scope of the term "economic activities" as used in the draft guide.

17. The Commission approved the substance of chapter I, section B, "Commencement of proceedings", including the amendments proposed (A/CN.9/559/Add.1), and agreed that the commentary should make it clear that recommendation 13, subparagraph (b), as amended, stated the principal courses of action open to the debtor, but was not intended to be exhaustive. The Commission approved the addition at the end of paragraph 143 of document

A/CN.9/WG.V/WP.70 of words along the following lines: “Creditors other than those applying for commencement of proceedings may have a direct interest in being notified of the commencement of those proceedings.”

18. The Commission approved the substance of chapter I, section C, “Applicable law governing in insolvency proceedings”, including the amendments proposed (A/CN.9/559/Add.1), noting that Working Group V had agreed to relocate recommendation 179, previously included in the chapter on applicable law, to part one of the draft guide and to replace the words “general law” with “law other than the insolvency law” to ensure consistency throughout the draft guide.

19. The Commission approved the substance of chapter II, section A, “Assets constituting the insolvency estate”, including the amendments proposed (A/CN.9/559/Add.1).

20. The Commission approved the substance of chapter II, section B, “Protection and preservation of the insolvency estate”, including the amendments proposed (A/CN.9/559/Add.1), with the following revisions:

(a) Revision of the heading of recommendation 31 to reflect its content more accurately;

(b) Revision of recommendation 33 to include termination of provisional measures when successfully challenged under recommendation 31;

(c) Reversal of the order of recommendations 38 and 39;

(d) Deletion of the square brackets and retention of the suggested text in recommendations 27, subparagraph (d), and 38;

(e) Addition at the end of paragraph 215 of words along the following lines: “This approach avoids some of the complexities associated with ongoing valuation of the encumbered assets that may be required under the first approach noted above.”

21. In response to the concern that recommendation 34, subparagraph (b), as revised (A/CN.9/559/Add.1), should not apply to prevent enforcement of a security interest in liquidation, it was noted that that concern could be addressed under recommendation 35, which contemplated possible exceptions to the stay.

22. The Commission approved the substance of chapter II, section C, “Use and disposal of assets”, including the amendments proposed (A/CN.9/559/Add.1), with the following revisions:

(a) Deletion of the words “and assets owned by a third party” from subparagraph (a) of the purpose clause (see A/CN.9/559/Add.1) and insertion of a new subparagraph along the lines of “permit and specify the conditions for the use of assets owned by a third party”;

(b) Retention of all the square bracketed text in recommendation 40B, subparagraph (b), without the brackets;

(c) Retention of the references to both “use” and “disposal” in recommendation 43A and clarification in the commentary that the secured creditor referred to in subparagraph (a) must have a security interest that covered the cash proceeds;

(d) Addition before the last sentence of paragraph 234 of words along the following lines: "Where an asset is relinquished to a secured creditor by an insolvency representative, the insolvency law might provide that the secured creditor's claim is reduced by the value of the relinquished asset".

23. Concern was expressed that the obligation to provide notice to all creditors in recommendation 41 might prove onerous. The Commission noted that under recommendation 117 an insolvency law might provide for a creditor committee to have a role with respect to the sale of certain assets. It was agreed that, where that approach was adopted, notifying the creditor committee would satisfy the notice requirement of recommendation 41 and that that clarification should be included in the commentary to section C. It was also agreed that reference to "sale of significant assets" in recommendation 117 should be revised to refer to sales "outside the ordinary course of business".

24. The Commission approved the substance of chapter II, section D, "Post-commencement finance", including the amendments proposed (A/CN.9/559/Add.1 and 2), with the following revisions:

(a) Amendment of the last sentence of recommendation 49 to provide that the insolvency law might require the court to authorize creditors (or the creditor committee) to consent to the provision of post-commencement finance;

(b) Addition at the end of paragraph 243 of words along the following lines: "This risk must be balanced against the prospect that preservation of going concern value by continued operation of the business will benefit those creditors".

25. The Commission approved the substance of chapter II, section E, "Treatment of contracts", including the amendments proposed (A/CN.9/559/Add.1), with the following revisions:

(a) Inclusion of a reference to acceleration clauses in recommendation 56 and the relevant paragraphs of the commentary;

(b) Removal of the square brackets and retention of the words "be heard by the court" in recommendation 62;

(c) Removal of the square brackets and retention of the text in the *chapeau* to recommendation 66;

(d) Retention of the words "contractual price of the performance" in subparagraph (a) of recommendation 66 without square brackets and deletion of the reference to the "costs under the contract of the benefits conferred on the estate";

(e) Deletion of the text in square brackets in subparagraph (d) of recommendation 70.

26. In response to the view that recommendation 56 did not reflect the approach to automatic termination clauses adopted in many countries, it was recalled that the Working Group had decided to stress the importance of overriding such clauses to protection of the value of the insolvency estate and to ensuring the continuation of contracts for the benefit of reorganization. It was noted that further explanation of the reference to curing a breach in recommendation 65 might be included in the commentary.

27. The Commission approved the substance of chapter II, section F, "Avoidance proceedings", including the amendments proposed (A/CN.9/559/Add.1), with the following revisions:

(a) Retention of the reference to potential creditors in recommendation 73, subparagraph (a), and paragraph 314;

(b) Deletion of the first part of recommendation 80 up to the words "the insolvency law";

(c) Deletion of the second sentence of recommendation 82 after the words "insolvency proceedings" on the basis that any transaction entered into before commencement might amount to a preference and a transaction entered into in a reorganization that preceded a liquidation would be a transaction entered into after commencement and not therefore subject to the suspect period;

(d) Substitution of the words "insolvency law" for the word "court" in the second sentence of recommendation 83;

(e) Addition at the end of paragraph 334 of words along the following lines: "With the exception of transactions involving wrongful behaviour, it is highly desirable therefore that suspect periods be of a reasonably short duration to ensure commercial certainty and to reduce any negative impact that avoidance provisions will have on the availability and cost of credit";

(f) Insertion in paragraph 341 of a reference to the need to commence avoidance proceedings within a reasonably short period of time to avoid uncertainty and delay.

28. The Commission approved the substance of chapter II, section G, "Rights of set-off".

29. The Commission approved the substance of chapter II, section H, "Financial contracts and netting", including the amendments proposed (A/CN.9/559/Add.1), with the following revisions:

(a) Addition at the end of paragraph 360 of the following sentence: "The exceptions for financial contracts should be drafted broadly enough to protect the significant interests of parties that deal in financial contracts and to prevent systemic risk";

(b) Addition in the first sentence of the purpose clause of the words "on financial markets" after the words "in the context of financial transactions".

30. The Commission approved the substance of chapter III, section A, "The debtor", including the amendments proposed (A/CN.9/559/Add.1), with the following revisions:

(a) Removal of the square brackets from the text in recommendation 96;

(b) Amendment of recommendation 97A along the following lines: "Where the debtor is a debtor in possession, the insolvency law should specify those functions of the insolvency representative that may be performed by the debtor in possession", to avoid the implication that the debtor in possession must have all of the powers of an insolvency representative;

(c) Addition at the end of paragraph 376 of words along the following lines: "Where the insolvency law provides for a debtor to remain in control of the business, it is desirable that the law specify the powers and functions of an insolvency representative that may be exercised by that debtor in possession";

(d) Addition of a reference to professional secrets in the first sentence of paragraph 387.

31. The Commission approved the substance of chapter III, section B, "The insolvency representative", including the amendments proposed (A/CN.9/559/Add.1), with the following revisions:

(a) Addition at the end of recommendation 100, subparagraph (b), of words along the following lines: "or a person employed by the insolvency representative where the conflict of interest or the circumstances that may lead to a conflict of interest or lack of independence arise in the course of insolvency proceedings";

(b) Removal of the square brackets from the text in recommendation 104;

(c) In paragraph 402, addition in the second sentence of the words "prior engagement as an auditor of the debtor" and at the end of the penultimate sentence of the words "including specifying those relationships that will disqualify a person from being appointed".

32. The Commission approved the substance of chapter III, section C, "Creditors—participation in insolvency proceedings", including the amendments proposed (A/CN.9/559/Add.1), with the following revisions:

(a) In recommendation 112, removal of the square brackets from the proposed text in order to underline the importance of the insolvency law specifying the matters to be discussed at the first meeting of creditors, deletion of the word "certain" and addition of appropriate emphasis in the commentary on the need for the insolvency law to specify the matters to be discussed;

(b) As a matter of drafting, deletion of the word "generally" from the second sentence of recommendation 112 and addition of the words "any other" before "meeting of creditors";

(c) In view of the discussion on recommendation 41 on use and disposal of assets, deletion of the words after "reorganization plan" in recommendation 117, subparagraph (b), and insertion of a new subparagraph along the lines of "receiving notice of and being consulted on matters in which their class has an interest, including the sale of assets outside the ordinary course of business";

(d) In the first sentence of paragraph 443, addition of the words "or other form of creditor representation" after the words "creditors committee" and in the fourth sentence of paragraph 469, addition of the words "or taking advantage of confidential information received as a committee member" after the words "prior approval of the court".

33. The Commission noted that the commentary relating to levels of participation and functions of creditors had been revised by the Secretariat to streamline the text.

34. The Commission approved the substance of chapter III, section D, "Party in interest's right to be heard and to appeal".

35. The Commission agreed that it might be useful to include, as an annex to the draft guide, a list of, or index to, those recommendations and paragraphs addressing the treatment of security interests in insolvency, based upon document A/CN.9/WG.V/WP.71.

36. The Commission approved the substance of chapter IV, section A, "The reorganization plan", including the amendments proposed (A/CN.9/559/Add.3), with the following revisions:

(a) In recommendation 126, deletion in the first sentence of the words from "submitted" to "vote on approval]" to focus the recommendation on preparation of the disclosure statement and addition of the word "disclosure" before "statement" in the second sentence;

(b) In recommendation 127, deletion of the word "those" in square brackets and the words following "equity holders" at the end of the sentence, to ensure that the plan and disclosure statement are available more widely than just to those who may be entitled to vote on approval of the plan or whose rights are affected or modified by the plan;

(c) In recommendation 128, subparagraphs (a) and (b), removal of the square brackets and retention of the text; deletion of subparagraph (c) and the associated footnote 91a; and removal of the square brackets and retention of the text in subparagraph (f). It was noted that the manner in which assets of the debtor were to be treated in the plan was intended to be covered under subparagraph (d) of recommendation 128;

(d) In recommendation 129, subparagraph (a), removal of the square brackets and retention of the text and amendment of the text along the lines of a "summary" or "description of the plan"; and in subparagraph (c), deletion of the example set forth in parentheses; in subparagraph (f), deletion of the first text in square brackets, and removal of the square brackets and retention of the second text in square brackets concerning adequate provision for satisfaction of the debtor's obligations;

(e) In recommendation 130, inclusion of equity holders in the scope of the recommendation;

(f) In recommendations 130A-D, retention of the recommendations and deletion of the square brackets;

(g) In recommendation 130A, inclusion of equity holders in the scope of the recommendation, addition of the words "or affected" after "modified" and removal of the square brackets and retention of the text "the opportunity to vote";

(h) In recommendation 130B, inclusion of equity holders in the scope of the recommendation and deletion of the word "adversely";

(i) In recommendation 130C, amendment of the text along the following lines: "The insolvency law should specify that creditors entitled to vote on approval of the plan should be separately classified according to their respective rights and that each class should vote separately";

(j) In recommendation 130D, inclusion of equity holders in the scope of the recommendation and retention of the word "treatment" without square brackets;

(k) In recommendation 133, deletion of the text in square brackets in the first sentence concerning modification of rights, and removal of the square brackets and retention of the text in the second sentence addressing approaches to approval and specifying a minimum standard for approval;

(l) In recommendation 134, deletion of the first text in square brackets concerning modification of rights, and removal of the square brackets and retention of the cross-reference to recommendation 138, subparagraphs (a)-(e);

(m) In recommendation 138, removal of the square brackets and retention of the text in subparagraph (a) relating to requisite approvals, removal of the square brackets and retention of the text providing that a creditor will receive "at least as much under the plan" in subparagraph (b), amendment of the reference to "contrary to the law" in subparagraph (c) to "contrary to law" and amendment of subparagraph (e) along the following lines: "Except to the extent that affected classes of creditors have agreed otherwise, if a class of creditors has voted against the plan, that class shall receive under the plan full recognition of its ranking under the insolvency law and the distribution to that class under the plan should conform to that ranking";

(n) In recommendation 142, removal of the square brackets and retention of the text relating to the timing of amendment of the plan;

(o) In recommendation 143, deletion of the text in square brackets at the beginning of the second sentence, removal of the brackets and retention of both references to parties "affected by the modification" in the second sentence;

(p) In recommendation 145, deletion of subparagraph (b) on the basis that it might be interpreted as giving certain parties wide powers to apply for conversion without cause, in subparagraph (f) deletion of the square brackets and retention of the reference to breach "by the debtor" and amendment of the final words to "or an inability to implement the plan". A proposal to add text to recommendation 145, subparagraph (f), to the effect that the court should first consider the possibility of modifying the reorganization plan before converting proceedings to liquidation did not obtain sufficient support.

37. A proposal was made to include a recommendation to the effect that "The insolvency law should specify that any class of creditors or equity holders that would receive no distribution under the plan would be deemed to have rejected the plan" in order to reduce costs and delay in soliciting approval of the plan and to invoke the protections applicable under the insolvency law to creditors voting against the plan. That proposal was not supported on the basis that creditors should not be deprived of their right to vote and that deeming those creditors to have voted against the plan might expose them to other liabilities.

38. The Commission approved the substance of chapter IV, section B, "Expedited reorganization proceedings", including the amendments proposed (A/CN.9/559/Add.3), with the following revisions:

(a) In recommendation 146: amendment of subparagraph (a) to ensure that a debtor could apply for expedited proceedings not only when it was eligible to apply for reorganization under recommendation 9, but also when it could satisfy the commencement standard included in recommendation 146 by including the words "is or" at the beginning of subparagraph (a); deletion of the words "and by each

affected creditor not part of a voting class" from subparagraph (b); and addition of a recommendation 146A along the following lines:

"The insolvency law may additionally specify that an expedited proceeding can be commenced on the application of any debtor if:

"(a) The debtor's liabilities exceed or are likely to exceed its assets; and

"(b) The requirements of recommendation 146, subparagraphs (b) and (c), are satisfied."

(b) In recommendation 147, in subparagraph (c), amendment of the reference to "preferential creditors" to "unaffected creditors"; deletion of the phrase "such as tax or social security authorities or employees"; removal of the square brackets, and retention of the first alternative text to require agreement of unaffected creditors to any modification of their rights;

(c) With respect to recommendation 149, it was noted that the opening words to subparagraph (b) were required to enable the court to apply the effects of commencement more broadly than affected creditors where, for example, measures were required to apply to other creditors to protect the insolvency estate;

(d) In recommendation 150, removal of the square brackets and retention of the references to "affected" creditors and deletion of the words at the end of the first sentence of the *chapeau*, "using existing available means";

(e) In recommendation 151, alignment of subparagraph (c) with the amendments agreed with respect to the corresponding subparagraph (c) of recommendation 147.

39. The Commission approved amendment of recommendation 153 along the following lines: "The insolvency law may specify that where there is a substantial breach by the debtor of the terms of the plan or an inability to implement the plan, the court may close the judicial proceedings and parties in interest may exercise their rights at law." It was also agreed that that text should be added as a new recommendation to follow recommendation 145, on the basis that there would be situations in which it would be appropriate to close the proceedings rather than to convert them to liquidation.

40. The Commission approved the substance of chapter V, section A, "Treatment of creditor claims", including the amendments proposed (A/CN.9/559/Add.1), with the following revisions:

(a) Removal of the square brackets from the text in recommendation 162 and deletion of the words "to deny" at the end of the second sentence;

(b) Removal of the square brackets from the text in recommendation 163 and deletion of the words "to deny the claim";

(c) In recommendation 169, substitution of the word "person" for "party" and substitution of the word "reduced" for "restricted" in subparagraph (b), in line with the discussion in paragraph 610 of the commentary;

(d) In paragraph 571, amendment of the third, fourth and fifth sentences along the following lines:

"Insolvency laws adopt different approaches to excluded claims. Under some laws, the creditors holding those claims cannot participate and have no recourse for collecting their debt from the debtor; their claim is effectively extinguished. Under other laws, however, alternative courses of recovery are preserved and the claim can be pursued outside the insolvency proceedings";

(e) In paragraph 586, in the first sentence, addition of the words "required to be submitted under the insolvency law that are" after the words "different approaches to those claims".

41. In response to a question as to whether non-monetary claims would be covered by recommendation 155, it was observed that the purpose of the recommendation as drafted was to emphasize the need for the insolvency law to specify the types of claim that should be submitted and to include some examples. As such, it was not intended to imply that non-monetary claims could not be submitted. It was noted that the matter could be clarified in the commentary.

42. The Commission approved the substance of chapter V, section B, "Priorities and distribution of proceeds", including the amendments proposed (A/CN.9/559/Add.1), with the following revisions:

(a) Revision of the heading of recommendation 174 to "Ranking of claims other than secured claims";

(b) Deletion of the second sentence of footnote 112, on the basis that the matter was appropriately addressed in the commentary at paragraph 633;

(c) Addition in paragraph 617 after "applicable law" of words along the following lines: "(which may provide for subordination of certain types of claim, for example, those of related persons)";

(d) Addition at the end of paragraph 621 of words along the following lines: "The general principle of recognizing pre-commencement priorities should be interpreted to include priorities based upon a subordination agreement, provided the parties' agreement is not to provide a ranking higher than otherwise would be accorded under the applicable law";

(e) Addition of the word "treaty" between "international" and "obligations" in paragraph 631 and addition of the following words after "obligations": "such as those applicable to employees claims, which are discussed further below";

(f) Insertion of a full stop after the phrase "class of priority claims" in the first sentence of paragraph 633 and amendment of the following two sentences along the following lines: "In a number of cases those claims rank higher than other priority claims, and specifically above tax and social security claims, and in a few cases above secured claims (see paras. 625 and following above). The approach of providing priority for workers' claims is generally consistent with the special protection that is afforded to employees in other areas of insolvency law (see chapter III.D.6) as well as with the approach of international treaties on protection of workers.[111]";

(g) Insertion in the second sentence of paragraph 634 after "wage guarantee fund" of the following words: "or insurance scheme providing a separate source of funds to ensure the settlement of employees' claims".

43. The Commission approved the substance of chapter V, section C, "Treatment of corporate groups in insolvency".

44. The Commission approved the substance of chapter VI, section A, "Discharge", including the amendments proposed (A/CN.9/559/Add.1), with the following revisions:

(a) Amendment of the heading before recommendation 184 to "Discharge of a natural person debtor in liquidation";

(b) Placement of the second sentence of recommendation 185 in a new recommendation and amendment of the text along the following lines: "Where the insolvency law provides that conditions may be attached to a debtor's discharge, those conditions should be kept to a minimum to facilitate the debtor's fresh start and be clearly set forth in the insolvency law";

(c) Reversal of the order of paragraphs 653 and 654, insertion of the heading "(a) Where the debtor is a legal entity" before paragraph 654; insertion of the heading "(b) Where the debtor is a natural person" before paragraph 653; and addition of a third sentence to paragraph 653 along the following lines: "It should be noted that discharge of a natural person debtor generally does not affect the liability of a third party that has guaranteed the obligations of that debtor".

45. The Commission approved the substance of chapter VI, section B, "Conclusion of proceedings", including the amendments proposed (A/CN.9/559/Add.1) with the following revisions:

(a) Reversal of the order of recommendations 186 and 187 to reflect the emphasis accorded to reorganization throughout the draft guide;

(b) Deletion of the words following "closed" at the end of recommendation 187;

(c) Addition of a second sentence to paragraph 667 along the following lines: "It is desirable that the insolvency law specify the party that can apply for conclusion of proceedings, whether the application for conclusion and the decision to conclude should be publicized and whether creditors could be heard on the application".

46. Those recommendations not specifically referred to in the present report were approved by the Commission without amendment.

47. The Commission approved those terms of the glossary set forth in document A/CN.9/551 and not finalized by Working Group V (Insolvency Law) at its thirtieth session, as follows:

(a) "Creditor", "debtor in possession", "ordinary course of business" "preference" and "related person", without amendment;

(b) "Claim", with the words "other theory of legal obligation" amended to "other type of legal obligation" and the word "assets" in the note retained without square brackets;

(c) "Commencement of proceedings", with the words "The event determining the" deleted;

(d) “Netting”, with the word “mutual” deleted and the word “under” retained without square brackets;

(e) “Priority”, with the word “person” amended to “claim”;

(f) “Secured claim”, with the words after “debtor’s default” deleted;

(g) “Secured creditor”, with the text amended to “A creditor holding a secured claim”;

(h) “Security interest”, with the text amended to “A right in an asset to secure payment or other performance of one or more obligations”;

(i) “Voluntary restructuring negotiations”, with the words “resulting in” replaced with “aiming at”;

(j) “Fraudulent transfer” deleted.

48. The Commission approved those terms of the glossary set forth in document A/CN.9/WG.V/WP.70 (Part I) and not considered by Working Group V at its thirtieth session, as follows:

(a) “Reorganization”, “sale as a going concern” and “suspect period” without amendment;

(b) “Reorganization plan”, with the second and third sentences deleted;

(c) “Set-off”, with the second sentence deleted and “(balanced)” in the first sentence replaced with words along the lines of “applied in satisfaction or reduction”;

(d) “Stay of proceedings”, with the word “perfection” replaced with “actions to make a security interest effective against third parties”;

(e) “Unsecured creditor” replaced with “a creditor without a security interest” and the remainder of the definition deleted; and

(f) “Retention of title”, “secured debt”, “state-owned enterprise”, “superpriority” and “unsecured debt” deleted.

49. The Commission approved terms (a)-(i), (k)-(w) and (y) without amendment. Term (j), “encumbered asset”, was amended by deleting the word “obtained”; term (x), “post-commencement claim”, was amended by deleting the words “from an act or omission occurring”; term (z), “protection of value”, was amended to make the language conform to recommendation 39 and to refer to assets owned by third parties by replacing “a security interest” with “encumbered assets and assets owned by third parties”.

50. The Commission approved the following additions and revisions to the commentary of the draft guide to reflect the Commission’s deliberations and decisions on the recommendations:

(a) In part one of the draft guide, the addition of two notes on interpretation to the effect that:

(i) References to “person” should be interpreted as including both natural and legal persons, unless otherwise indicated;

(ii) "Creditors" should be interpreted as including both the creditors in the forum State and foreign creditors, unless otherwise specified;

(b) Addition of the term "court" to the glossary with the following definition: "A judicial or other authority competent to control or supervise an insolvency proceeding";

(c) Addition of a footnote to paragraph 41, cross-referencing paragraph 621 on treatment of subordination agreements in insolvency;

(d) Revision of the first sentence of paragraph 58 to reflect amendments to part two, chapter IV, section B, on expedited reorganization proceedings along the following lines: "Since reaching agreement through voluntary restructuring negotiations is often impeded by the ability of creditors to take individual enforcement action and by the need for unanimous consent to alter the terms of some existing classes of debt, some countries have adopted different types of mechanism, including 'pre-insolvency' or 'pre-packaged' procedures, to address those situations. The expedited reorganization proceedings discussed in the Guide to address those situations follow the procedure of reorganization, but on an expedited basis, combining voluntary restructuring negotiations, where a plan is negotiated and agreed by a majority of affected creditors, with reorganization proceedings commenced under the insolvency law to obtain court confirmation of the plan in order to bind dissenting creditors";

(e) In part two of the draft guide, revision of the fourth sentence of paragraph 116 concerning use of presumptions of insolvency, along the following lines: "There is a practical need for a creditor to be able to present proof, such as by way of a presumption, which establishes the insolvency of a debtor, without placing an unreasonably heavy burden of proof on creditors. A presumption that the debtor is generally unable to pay its debts might be established where, for example, the debtor fails to pay one or more of its debts, and the unpaid debt is undisputed, that is, not subject to a legitimate dispute or offset. Where the law provides for such a presumption, there is a corresponding need for the insolvency law to provide the debtor with an opportunity to rebut the presumption and specify the grounds upon which it might be rebutted. These grounds might include the debtor showing that it was able to pay its debts; that the debt was subject to a legitimate dispute; or any other negation of the elements by which a creditor established the presumption. Notifying a debtor of an application for commencement of insolvency proceedings by the creditor will allow the debtor the opportunity to dispute a creditor's claims regarding its financial position (see also chapter I.B.5 (e))";

(f) Addition of text at the end of paragraph 142 to address notification of foreign creditors, along the following lines: "A further consideration is whether to expressly address notification of foreign creditors in any notice requirements included in an insolvency law, to ensure the equal treatment of domestic and foreign creditors, and to take account of the international trend of abolishing discrimination based upon the nationality of the creditor. The factors to be balanced in determining that issue are discussed below in the context of the manner of giving notice";

(g) Addition of text at the end of paragraph 143, to reflect changes to recommendation 13, paragraph (b), along the following lines: "The debtor would have various courses of action open to it, including consenting to the application, disputing the applicant's claim as to its financial position, and requesting the

commencement of different proceedings (e.g. where the application is for liquidation, requesting commencement of reorganization). The debtor may also have jurisdictional or procedural defences to a creditor application";

(h) Addition of a sentence at the end of paragraph 148 along the following lines: "For example, where an application to commence insolvency proceedings might otherwise be denied, some insolvency laws provide an exception for individuals with insufficient assets to fund the administration of proceedings, enabling the affairs of that debtor to be investigated to determine if there are assets that can be recovered and whether or not the debtor should receive a discharge";

(i) Addition after the first sentence of paragraph 170 of text along the following lines: "Where the debtor is a natural person, some jurisdictions exclude torts of a personal nature such as defamation, injury to credit or reputation, or personal bodily injury. The debtor remains personally entitled to sue and to retain what is recovered on the basis that the incentive to vindicate wrongdoing otherwise would be diminished, but the debtor not be entitled to sue for any loss of earnings associated with those causes of action";

(j) Addition after paragraph 181 of text along the following lines, based on paragraph 13 of document A/CN.9/550, to address the issue of making a security interest effective against a third party: "With respect to actions to make a security interest effective against third parties, some laws dealing with security interests provide specified time periods within which those security interests should be made effective against third parties, whether by registration, publicity or some other means. Where the law of a State includes such time periods, the insolvency law may recognize them, permitting security interests to be made effective against the debtor and third parties after commencement of insolvency proceedings, but within the specified time period. Where the law does not include such time periods, the stay applicable on commencement of insolvency proceedings would operate to prevent the security interest from being made effective. The question of whether such an act in insolvency would make the security interest effective against third parties should be distinguished from the question of whether or not such acts should be permitted. The effect in insolvency will depend upon the act that is required to make the interest effective. Where, for example, effectiveness requires registration, it might be permitted to occur after commencement, but where it involves, for example, the secured creditor taking possession of an asset, a different view might be taken, as such an action would reduce the assets available for the estate";

(k) Addition of a sentence at the end of paragraph 196 to reflect changes to recommendation 33, along the following lines: "Provisional measures would also terminate when an application for commencement is denied or the order for provisional measures is successfully challenged";

(l) Deletion of the words "such as the date of commencement, with provision for ongoing review" at the end of the second sentence of paragraph 213 and the addition of text to address valuation of assets, along the following lines: "having regard to the purpose for which the valuation is required. In some cases assets may have been valued by the parties before commencement of the proceedings and that valuation may still be valid at commencement. There may be a need for an overall valuation shortly after commencement for the purpose of registering all assets and liabilities and preparing a net balance of the debtor's

position, so that the insolvency representative will have some idea of the value of the estate. Assets, in particular encumbered assets, may need to be valued in the course of proceedings to determine the value of the secured claim (and any related unsecured claim) and issues of protection. Assets may also need to be valued in support of the disposition of segments of the business or of specific assets other than in the ordinary course of business, and at confirmation to satisfy applicable requirements. A related issue is the cost of valuation and the party that should bear that cost" and deletion of the last sentence of paragraph 213;

(m) Addition after the first sentence of paragraph 225, to reflect changes to recommendations 41 and 117, paragraph (b), of a sentence along the following lines: "Where a creditor committee is formed and the insolvency law provides for creditors to be consulted on the sale of assets outside the ordinary course of business, a requirement to notify creditors of any proposed sale might be satisfied by notifying the creditor committee, in order to minimize costs and avoid any delay associated with notifying all creditors";

(n) To reflect the substance of recommendation 65, the addition of a sentence before the last sentence of paragraph 276, along the following lines: "An insolvency law should clearly address those circumstances in which the debtor is required to cure a default in order for the contract to be continued";

(o) To reflect changes to recommendation 66, addition of a sentence along the following lines, after the second sentence of paragraph 278: "Where a contract continues to be performed prior to a determination to continue or reject that contract, the costs of continued performance arising under the contract should be payable as an administrative expense" and, at the end of the paragraph, a further sentence along the following lines: "If the insolvency representative uses third party-owned assets that are in the possession of the debtor subject to contract, the costs under the contract of continued performance of the contract should be payable as an administrative expense, and the third party should be protected against diminution of the value of those assets, to the extent that that is not covered by the contract";

(p) Addition, in paragraph 314, of an example to explain that the reference to "potential creditors" is to parties that were not creditors at the time the avoidable transaction took place, but who were about to become creditors, such as where the debtor was negotiating new lending and transferred assets to avoid their becoming subject to a security interest;

(q) Deletion, from the first sentence of paragraph 316, of the words from "and generally" to the end of the sentence, to reflect the changes adopted with respect to recommendation 73;

(r) Addition of a sentence at the end of paragraph 341 on timing of commencement of avoidance, along the following lines: "Whichever approach is adopted, it is desirable that the time period be relatively short, as in the examples noted above, to avoid uncertainty and ensure that the insolvency proceedings proceed expeditiously";

(s) Addition of the following words at the end of the first sentence of paragraph 343 to reflect the "ordinary course" defence in recommendation 82: "and, for example, was a transaction in the ordinary course of business";

(t) Addition, in the first sentence of paragraph 387, of the words "concerning the debtor" to reflect changes to recommendation 96, as well as a reference to "professional secrets or privileged or otherwise confidential information";

(u) Revision of the opening words of paragraph 408 (xv), to reflect the revision of recommendation 104, along the following lines: "continuing operation and management of the business";

(v) Addition of a sentence at the end of paragraph 451, to reflect the discussion on recommendation 112, along the following lines: "Where the insolvency law provides for such a meeting to be convened, it is desirable that it also specify the matters to be discussed and resolved at that meeting";

(w) Addition before the last sentence of paragraph 466, to align it with recommendations 117, paragraph (b) and 41 and paragraph 225, of text along the following lines: "The creditor committee may also have a role with respect to receiving notice on behalf of creditors of certain issues of interest to the creditors it represents. For example, where the insolvency law provides that creditors should be consulted on the sale of assets outside the ordinary course of business, notice of any such proposed sale may be provided through the creditor committee to save time, minimize costs and facilitate consultation between the committee and the creditors it represents";

(x) To reflect the changes made to recommendation 129, the addition of the words "a summary of the plan" and "non-financial information that might have an impact on the future performance of the debtor, such as the availability of a new patent" to the second sentence of paragraph 505;

(y) Revision of the second and third sentences of paragraph 547 along the following lines: "As already discussed, this approach may not resolve the financial difficulties of the debtor, depending upon the state of implementation of the plan when it fails, and could lead to a race for assets that the commencement of collective proceedings was intended to avoid. There may be situations, however, where the appropriate course of action is to permit the court to close proceedings and allow parties in interest to exercise their rights at law. An example might be where the remaining assets are secured and there will be no distribution to unsecured creditors. In some circumstances and depending upon the state of implementation of the plan, a compromise approach may be to allow ...";

(z) Revision of paragraph 557 to align it with the changes made to recommendations 146 and 146A, along the following lines: "It is desirable that expedited reorganization proceedings be available on the application of a debtor that is not yet eligible to commence proceedings under the general reorganization provisions of an insolvency law, but is likely to be generally unable to pay its debts in the future as they mature. Including provisions in an insolvency law that permit such debtors to commence expedited proceedings recognizes the need to address financial difficulty at an early stage and allows advantage to be taken of a voluntary restructuring agreement that the majority of affected creditors has approved. Commencing expedited proceedings will ensure the protection of dissenting creditors under the insolvency law. Jurisdictional requirements relevant to applications for insolvency proceedings generally would also apply";

(aa) Addition at the beginning of paragraph 558 of a sentence along the following lines: “An insolvency law may also provide that expedited proceedings are available to a debtor that is already eligible to commence full proceedings under the insolvency law (see chapter I.B).”;

(bb) With respect to paragraphs 559-565, the addition (as appropriate) of text to address the content of recommendations 149, paragraph (b), 150, 152 and 153 concerning the effects of commencement of expedited proceedings and the circumstances where it will be appropriate for the court to broaden the classes of creditors affected; notification of commencement of expedited proceedings; the effect of a confirmed plan; and the failure of implementation. That text would draw upon the material addressing the same issues in chapter IV;

(cc) To address the issue of non-monetary claims, addition after the second sentence of paragraph 571 of a sentence along the following lines: “An insolvency law may also need to address the treatment of claims of a non-monetary nature, such as a right to performance of an obligation (e.g. delivery of specific property) or a non-recourse loan”;

(dd) In paragraph 594, to reflect the revision of recommendation 162, addition of the following text: (i) “or require special treatment, such as where they are claims by related persons” at the end of the second sentence; (ii) “or subjected to special treatment” in the third sentence; and (iii) “and facilitate review by the court where the insolvency representative’s decision is contested” at the end of the fourth sentence;

(ee) Revision of the third last sentence of paragraph 669 to reflect the changes made to recommendations 145A and 153, along the following lines: “Where the reorganization plan is not fully implemented, the insolvency law may provide that where there is a substantial breach of the plan by the debtor or the plan cannot be implemented, the insolvency law may provide for the court to convert the proceedings to liquidation, in order to avoid leaving the debtor in an insolvent state with its financial situation unresolved. Alternatively, the insolvency law may provide for dismissal of the proceedings in appropriate circumstances. These might include where the remaining assets are secured and there will be no distribution to unsecured creditors. Whether conversion constitutes a formal conclusion of the reorganization proceedings ...”;

(ff) Addition of a sentence on applicable law in insolvency proceedings at the end of paragraph 652, “Labour contracts”, contained in document A/CN.9/WG.V/WP.72, along the following lines: “In some States, such protections will apply only to individual employment contracts, while in others, these provisions also will apply to collective bargaining agreements”.

51. The Commission approved the inclusion of the UNCITRAL Model Law on Cross-Border Insolvency[2] and the Guide to Enactment[3] as an annex to the draft guide and noted that, since paragraphs 18, 19, 31, 72, 74 and 75 of the Guide to Enactment referred to the Convention on Insolvency Proceedings of the European Union, it would need to be amended to take account of the entry into force of Council regulation (EC) No. 1346/2000 of 29 May 2000 on insolvency proceedings.

52. The Commission also noted that references to the discussion of relevant issues in the commentary were to be added to the recommendation section and that

relevant recommendations might also be referred to at appropriate points in the commentary.

53. The Commission requested the Secretariat to edit and finalize the text of the guide in the light of the Commission's deliberations, undertaking any further revisions required to align the commentary of the draft with the recommendations.

54. The Commission heard a statement from the observer for the International Monetary Fund (IMF), recognizing the broad participation of the international community and the resulting high quality of the draft text and looking forward to it serving as a key tool in informing effective insolvency law internationally. Reference was made to the agreement reached between IMF, the World Bank and UNCITRAL on the basis of the proposal set forth in paragraph 21 of document A/CN.9/551. It was noted that in the next few months the World Bank would finalize the revision of its Principles and Guidelines for Effective Insolvency and Creditor Rights Systems, that those Principles would then be combined with the draft guide and some additional work on institutional and regulatory frameworks to form a unified document, which would be presented to the Executive Boards of IMF and the Bank in October 2004. Endorsement by the Boards would allow the unified standard to be used in the assessment of countries' insolvency systems.

55. At its 792nd meeting, on 25 June, the Commission adopted the following decision:

The United Nations Commission on International Trade Law,

Recognizing the importance to all countries of strong insolvency regimes,

Recognizing also that it is demonstrably in the public interest to have an effective and efficient insolvency regime as a means of encouraging economic development and investment,

Noting the growing realization that reorganization regimes are critical to corporate and economic recovery, the development of entrepreneurial activity, the preservation of employment and the availability of venture capital,

Noting also that the effectiveness of reorganization regimes affects the availability of finance in the capital market, with comparative analysis of such systems becoming both common and essential for lending purposes, which affects countries at all levels of economic development,

Noting further the importance of social policy issues, including the interests of stakeholders in an insolvent debtor, to the design of an insolvency regime,

Recognizing that solutions to the key economic, legal and legislative issues raised by insolvency that are negotiated internationally through a process involving a broad range of constituents will be useful both to States that do not have an effective and efficient insolvency regime and to States that are undertaking a process of review and modernization of their insolvency regimes,

Noting that the UNCITRAL legislative guide on insolvency law (to which the UNCITRAL Model Law on Cross-Border Insolvency[2] and Guide to Enactment[3] are annexed) and an UNCITRAL legislative guide on secured transactions, which is currently under preparation in Working Group VI (Security Interests), together will form key elements of a modern commercial law framework,

Recalling the mandate given to Working Group V (Insolvency Law) to prepare a comprehensive statement of key objectives and core features for a strong insolvency, debtor-creditor regime, including out-of-court restructuring, and a legislative guide containing flexible approaches to the implementation of such objectives and features, including a discussion of the alternative approaches possible and the benefits and detriments of such approaches and recommendations,

Appreciating the participation in and support for the development of the legislative guide of international intergovernmental and non-governmental organizations active in the field of insolvency law reform,

Noting with approval the collaboration and commitment to consistent resolution of common issues between Working Group V (Insolvency Law) and Working Group VI (Security Interests) on the treatment of secured creditors and security interests in insolvency,

Confirming its intention to continue coordination and cooperation with the World Bank and the International Monetary Fund to facilitate the development of a unified international standard in the area of insolvency law,

Expressing its appreciation to Working Group V (Insolvency Law) for its work in developing the draft UNCITRAL legislative guide on insolvency law,

1. *Adopts* the *UNCITRAL Legislative Guide on Insolvency Law*, consisting of the text contained in the working paper of Working Group V (Insolvency),[4] as amended in the note by the Secretariat of 30 April 2004,[5] with the amendments adopted by the Commission at its thirty-seventh session,[6] and of the UNCITRAL Model Law on Cross-Border Insolvency[2] and Guide to Enactment[3] annexed thereto, and authorizes the Secretariat to edit and finalize the text of the *Legislative Guide* in the light of the deliberations of the Commission;

2. *Requests* the Secretary-General to transmit the text of the *Legislative Guide* to Governments and other interested bodies;

3. *Recommends* that all States utilize the *Legislative Guide* to assess the economic efficiency of their insolvency law regimes and give favourable consideration to the *Legislative Guide* when revising or adopting legislation relevant to insolvency, and invites States that have used the *Legislative Guide* to advise the Commission accordingly;

4. *Recommends also* that all States continue to consider implementation of the UNCITRAL Model Law on Cross-Border Insolvency.

IV. Arbitration: progress report of Working Group II

56. At its thirty-second session, in 1999, the Commission, having exchanged views on its future work in the area of international commercial arbitration, decided to entrust that work to one of its working groups. It agreed that the priority items for consideration by the working group should be, inter alia, requirement of written form for the arbitration agreement and enforceability of interim measures of protection.[7] The working group, subsequently named Working Group II (Arbitration and Conciliation), commenced its work pursuant to that mandate at its thirty-second session (Vienna, 20-31 March 2000).

57. At its thirty-seventh session, the Commission took note of the progress made by the Working Group at its thirty-ninth (Vienna, 10-14 November 2003) and fortieth (New York, 23-27 February 2004) sessions (see A/CN.9/545 and A/CN.9/547, respectively). The Commission noted that the Working Group had continued its discussions on a draft text for a revision of article 17 of the UNCITRAL Model Law on International Commercial Arbitration[8] on the power of an arbitral tribunal to grant interim measures of protection and on a draft provision on the recognition and enforcement of interim measures of protection issued by an arbitral tribunal (for insertion as a new article of the Model Law, tentatively numbered 17 bis). The Commission commended the Working Group for the progress made so far regarding the issue of interim measures of protection.

58. The Commission was informed that the Working Group intended to complete its review of draft articles 17 and 17 bis of the Model Law, including finalizing its position on how to deal with ex parte interim measures in the Model Law, at its next two sessions (see para. 136 (b) below). The view was reiterated that the issue of ex parte interim measures, which the Commission agreed remained an important issue and a point of controversy, should not delay progress on the revision of the Model Law.[9] It was observed, in response, that the Working Group had not spent much time discussing the issue at its recent sessions. The hope was expressed that consensus could be reached on the issue by the Working Group at its next session, based on a revised draft to be prepared by the Secretariat.

59. The Commission also noted that the Working Group had yet to complete its work in relation to draft article 17 ter dealing with interim measures issued by state courts in support of arbitration and in relation to the "writing requirement" contained in article 7, paragraph 2, of the Model Law and article II, paragraph 2, of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "New York Convention").[10] With respect to the New York Convention, the Commission was informed that the Working Group had been invited to consider whether the Convention should be included in a list of international instruments to which the draft convention dealing with certain issues of electronic contracting currently being prepared by Working Group IV (Electronic Commerce) would apply (see also paras. 67-72).

60. With respect to future work in the field of settlement of commercial disputes, the Commission recalled that, at its previous session, it had heard proposals that arbitrability as well as a revision of the UNCITRAL Arbitration Rules[11] and the UNCITRAL Notes on Organizing Arbitral Proceedings[12] could be considered for inclusion in future work, once the existing projects currently being considered by the Working Group had been completed.[13] While the Commission was generally of the view that it would be premature to make a final decision at its current session regarding possible future work in the field of settlement of commercial disputes, some support was expressed for the Working Group to consider the possibility of undertaking a limited revision of the UNCITRAL Arbitration Rules. In that respect, the view was expressed that particular caution should be exercised in determining the scope of such a revision, which should be precisely defined in order to avoid undermining the stability of the reference offered by the UNCITRAL Arbitration Rules over the almost 30 years of existence of that instrument. The view was also expressed that preliminary consideration of a possible revision of the Rules should not prevent the Working Group from envisaging other possible topics for future

work, such as the use of arbitration in corporate governance or the use of online dispute resolution mechanisms.

61. The Commission noted that 2005 would mark the twentieth anniversary of adoption of the Model Law and agreed that conferences to celebrate that anniversary should be organized in different regions to provide a forum for considering the experience of courts and arbitral tribunals with domestic enactments of the Model Law, as well as for considering possible future work in the field of settlement of commercial disputes.

V. Transport law: progress report of Working Group III

62. At its thirty-fourth session, in 2001, the Commission established Working Group III (Transport Law) to prepare, in close cooperation with interested international organizations, a legislative instrument on issues relating to the international carriage of goods by sea, such as the scope of application, the period of responsibility of the carrier, the obligations of the carrier, the liability of the carrier, the obligations of the shipper and transport documents.[14] At its thirty-fifth session, in 2002, the Commission approved the working assumption that the draft instrument on transport law should cover door-to-door transport operations, subject to further consideration of the scope of application of the draft instrument after the Working Group had considered the substantive provisions of the draft instrument and come to a more complete understanding of their functioning in a door-to-door context.[15] At its thirty-sixth session, in 2003, the Commission noted the complexities involved in the preparation of the draft instrument and authorized the Working Group, on an exceptional basis, to hold its twelfth and thirteenth sessions on the basis of two-week sessions, with the agreement that the length of the Working Group's sessions would be reassessed at the thirty-seventh session of the Commission, in 2004.[16] For the consideration of the matter at the Commission's thirty-seventh session, see paragraphs 132 and 133 below.

63. At its thirty-seventh session, the Commission took note of the reports of the twelfth (Vienna, 6-17 October 2003) and thirteenth (New York, 3-14 May 2004) sessions of the Working Group (A/CN.9/544 and A/CN.9/552, respectively).

64. The Commission noted with appreciation that the Working Group had continued its consideration of the draft instrument on the carriage of goods [wholly or partly] [by sea]. The Commission reaffirmed its appreciation of the magnitude of the project and of the complexities involved in the preparation of the draft instrument, given in particular the controversial issues that remained open for discussion and that required the striking of a delicate balance between the various conflicting interests at stake.

65. The Commission was informed that, at its twelfth and thirteenth sessions, the Working Group had proceeded with its second reading of the draft instrument and had made progress regarding a number of difficult issues, such as those regarding the scope of application of the instrument and of key liability provisions. The Commission was also informed that, with a view to accelerating the exchange of views, the formulation of proposals and the emergence of consensus in preparation for a third and final reading of the draft instrument, a number of delegations participating in the thirteenth session of the Working Group had taken the initiative

of creating an informal consultation group for the continuation of discussion between sessions of the Group.

66. The Commission expressed its support for the efforts of the Working Group to accelerate the progress of its work on the complex project. With respect to a possible time frame for completion of the draft instrument, a number of speakers were of the view that it would be desirable to complete a third reading of the draft text with a view to its adoption by the Commission in 2006. However, it was also felt by a number of speakers that achieving a high degree of quality should be a paramount objective in the preparation of the draft instrument. That objective should not be compromised by hasty deliberation of the important issues that remained to be solved. After discussion, the Commission agreed that 2006 would be a desirable goal for completion of the project, but that the issue of establishing a deadline for such completion should be revisited at its thirty-eighth session, in 2005. (For the next two sessions of the Working Group, see paragraph 136 (c) below.)

VI. Electronic commerce: progress report of Working Group IV

67. At its thirty-fourth session, in 2001, the Commission endorsed a set of recommendations for future work that had been made by Working Group IV (Electronic Commerce) at its thirty-eighth session (New York, 12-23 March 2001).[17]

68. At its thirty-seventh session, the Commission took note of the reports of the Working Group on the work of its forty-second (Vienna, 17-21 November 2003) and forty-third (New York, 15-19 March 2004) sessions (A/CN.9/546 and A/CN.9/548, respectively).

69. The Commission noted with appreciation that the Working Group had continued its consideration of a preliminary draft convention dealing with selected issues of electronic contracting and reaffirmed its belief that an international instrument dealing with certain issues of electronic contracting would be a useful contribution that would facilitate the use of modern means of communication in cross-border commercial transactions.

70. The Commission was informed that the Working Group had undertaken a review of articles 8-15 of the revised text of the preliminary draft convention at its forty-second session. The Commission noted that the Working Group, at its forty-third session, had reviewed articles X and Y as well as articles 1-4 of the draft convention and that the Working Group had held a general discussion on draft articles 5-7 bis.

71. The Commission expressed its support for the efforts by the Working Group to incorporate in the draft convention provisions aimed at removing possible legal obstacles to electronic commerce that might arise under existing international trade-related instruments. The Commission was informed that the Working Group had agreed that it should endeavour to complete its work on the draft convention with a view to enabling its review and approval by the Commission in 2005. The Commission expressed its appreciation for the Working Group's endeavours and agreed that a timely completion of the Group's deliberations on the draft convention should be treated as a matter of importance, which would justify the approval of a

forty-fourth session of the Working Group of two weeks' duration, to be held in October 2004 (see paras. 134 and 136 (d) below).

72. Views were exchanged regarding possible future work in the field of electronic commerce after completion of the current project. While it was generally agreed that no decision could be made in that respect at that stage, the Commission took note of various suggestions. One suggestion was that the Working Group should consider the preparation of guidelines to assist States with the establishment of a comprehensive legal framework to facilitate the use of electronic commerce. Possible elements of such guidelines could include data protection issues, intellectual property rights and electronic fraud issues. Another suggestion was that the Working Group might re-examine the issue of negotiability and transfer of rights in tangible or intangible goods by electronic means. Yet another suggestion was that the Working Group might need to consider its future role in the light of the conclusions to be reached in 2005 by the World Summit on the Information Society, convened by the United Nations and the International Telecommunication Union. One more suggestion noted was that the Working Group could serve as an instrument of cooperation with other working groups and with bodies outside UNCITRAL. The Secretariat was requested to consider preparing any relevant study to facilitate discussion by the Commission at its thirty-eighth session, in 2005, on the issue of future work in the area of electronic commerce.

VII. Security interests: progress report of Working Group VI

73. At its thirty-fourth session, in 2001, the Commission entrusted Working Group VI (Security Interests) with the task of developing an efficient legal regime for security rights in goods involved in a commercial activity, including inventory.[18] At its thirty-fifth session, in 2002, the Commission confirmed the mandate given to the Working Group and that the mandate should be interpreted widely to ensure an appropriately flexible work product, which should take the form of a legislative guide.[19] At its thirty-sixth session, in 2003, the Commission confirmed that it was up to the Working Group to consider the exact scope of its work and, in particular, whether trade receivables, letters of credit, deposit accounts and intellectual and industrial property rights should be covered in the draft legislative guide.[20]

74. At its thirty-seventh session, the Commission had before it the reports of Working Group VI on the work of its fourth (Vienna, 8-12 September 2003) and fifth (New York, 22-25 March 2004) sessions (A/CN.9/543 and A/CN.9/549, respectively). The Commission also had before it the report of the second joint session of Working Groups V (Insolvency Law) and VI (A/CN.9/550).

75. The Commission commended Working Group VI for having completed the second reading of the draft guide on secured transactions, including the introduction and the chapters on key objectives (A/CN.9/WG.VI/WP.6/Add.1) and creation (A/CN.9/WG.VI/WP.6/Add.3), as well as the third reading of the chapter on publicity (A/CN.9/WG.VI/WP.9/Add.2), priority (A/CN.9/WG.VI/WP.9/Add.3), insolvency (A/CN.9/WG.VI/WP.9/Add.6) and conflict of laws (A/CN.9/WG.VI/WP.9/Add.7). In that connection, the Commission noted with interest that, at its fifth session, the Working Group had agreed that publicity should be a precondition of the effectiveness of security rights against third parties and of

ensuring the protection of third parties (A/CN.9/549, para. 35). The Commission also expressed its appreciation to Working Groups V and VI for the progress made during their second joint session, at which they had considered pending issues of common interest (see A/CN.9/WG.V/WP.71).

76. In addition, the Commission noted with appreciation the progress made by the Working Group in the coordination of its work on conflict of laws with the Hague Conference on Private International Law and in particular the plans for a joint meeting of experts. The Commission also commended the efforts to coordinate with the International Institute for the Unification of Private Law (Unidroit), which was preparing a text on security interests in securities. The Commission also expressed its appreciation for the coordination with the World Bank, which was preparing principles and guidelines for effective insolvency and creditor rights systems, and in particular for the agreement that the World Bank text would form with the draft legislative guide on secured transactions a single international standard.

77. Moreover, the Commission noted with interest that a preliminary consolidated set of recommendations might be ready by early 2005. The Commission also welcomed the preparation of additional chapters on various types of asset, such as negotiable instruments, deposit accounts, letters of credit and intellectual property rights. In that connection, while the importance of those types of asset was generally recognized, it was stated that including them in the draft guide should not be at the expense of slowing down work with respect to the core assets within the scope of the draft guide (i.e. goods, including inventory, and trade receivables).

78. After discussion, the Commission confirmed the mandate given to Working Group VI at the thirty-fourth session of the Commission and subsequently confirmed at its thirty-fifth and thirty-sixth sessions (see para. 73 above). The Commission also requested the Working Group to expedite its work so as to submit the draft guide to the Commission for final adoption as soon as possible and, it is hoped, in 2006. (For the next two sessions of the Working Group, see para. 136 (f) below.)

VIII. Possible future work in the area of public procurement

79. At its thirty-sixth session, in 2003, the Commission considered a note by the Secretariat on possible future work in the area of public procurement (A/CN.9/539 and Add.1). It was observed that the UNCITRAL Model Law on Procurement of Goods, Construction and Services[21] contained procedures aimed at achieving competition, transparency, fairness, economy and efficiency in the procurement process and that it had become an important international benchmark in procurement law reform. Nevertheless, it was also observed that, despite the widely recognized value of the Model Law, novel issues and practices had arisen since its adoption that might justify an effort to adjust its text.[22] At that session, strong support was expressed for the inclusion of procurement law in the Commission's work programme[23] and the Commission requested the Secretariat to prepare detailed studies on the issues identified in the note by the Secretariat (A/CN.9/539 and Add.1) and to formulate proposals on how to address them with a view to their consideration by a working group that might be convened in the third quarter of 2004.[24]

80. At its thirty-seventh session, the Commission had before it a note by the Secretariat (A/CN.9/553) submitted pursuant to that request containing a summary of the studies of issues that might merit consideration in a review of the Model Law; those studies had been undertaken by the Secretariat since the thirty-sixth session of the Commission, in consultation with organizations having experience and expertise in the area of public procurement, and focused on issues arising from the increased use of electronic communications in public procurement (A/CN.9/553, paras. 10-40), as well as possible additional issues (A/CN.9/553, paras. 41-82).

81. The Commission agreed that the Model Law would benefit from being updated to reflect new practices, in particular those resulting from the use of electronic communications in public procurement, and the experience gained in the use of the Model Law as a basis for law reform. In addition to the legislative treatment of electronic communications in public procurement, the procurement of services and remedies and enforcement were mentioned as examples of issues worthy of consideration. It was also stated that it might be useful to consider simplifying the presentation of the model provisions. However, it was pointed out that in updating the Model Law care should be taken not to depart from the basic principles behind it and not to modify the provisions whose usefulness had been proven.

82. The Commission decided to entrust the drafting of proposals for the revision of the Model Law to its Working Group I (Procurement). The Working Group was given a flexible mandate to identify the issues to be addressed in its considerations and the Secretariat was requested to present to the Working Group appropriate notes further elaborating upon issues discussed in the note by the Secretariat (A/CN.9/553) in order to facilitate the considerations of the Group. (For the next two sessions of the Working Group, see para. 136 (a) below.)

IX. Monitoring implementation of the New York Convention

83. The Commission recalled that, at its twenty-eighth session, in 1995, it had approved a project, undertaken jointly with Committee D of the International Bar Association, aimed at monitoring the legislative implementation of the New York Convention.[25] The Secretariat presented an oral progress report to the Commission, indicating that, as at 8 April 2004, there were 134 States parties to the New York Convention and that the Secretariat had received 75 replies to the questionnaire.

84. The Commission expressed its appreciation to those States parties which had provided replies since its thirty-sixth session and called on the remaining States parties to send their replies. Subject to the availability of necessary resources, the Secretariat was invited to make every effort to produce a preliminary analysis of the replies received for consideration by the Commission at its thirty-eighth session, in 2005.

X. Case law on UNCITRAL texts and digests of case law on the United Nations Sales Convention and other uniform texts

A. Case law

85. The Commission noted with appreciation the continuing work under the system established for the collection and dissemination of case law on UNCITRAL texts (CLOUT), consisting of the preparation of abstracts of court decisions and arbitral awards relating to UNCITRAL texts, compilation of the full texts of those decisions and awards, as well as of the preparation of research aids and analytical tools, such as thesauri and indices. As at 22 June 2004, 42 issues of CLOUT had been prepared for publication, dealing with 489 cases, relating mainly to the United Nations Convention on Contracts for the International Sale of Goods[26] and the UNCITRAL Model Law on International Commercial Arbitration.[8]

86. The Commission expressed its appreciation to the national correspondents for their work in selecting decisions and preparing case abstracts. It was widely felt that CLOUT continued to be an important aspect of the overall training and technical assistance information activities undertaken by UNCITRAL. It was also generally felt that the wide distribution of CLOUT in both paper and electronic formats, in all the six official languages of the United Nations, promoted the uniform interpretation and application of UNCITRAL texts by facilitating access to decisions and awards from other jurisdictions.

B. Digests of case law on the United Nations Sales Convention and other uniform texts

87. The Commission recalled that, at its thirty-fourth session, in 2001,[27] it had requested the Secretariat to prepare, in cooperation with experts and national correspondents, a text in the form of an analytic digest of court and arbitral decisions identifying trends in the interpretation of the United Nations Sales Convention. The Commission was informed that a digest of case law on the Convention had been prepared pursuant to the Commission's guidelines for preparing such a digest.[27] Taking note of the introduction to the digest of case law on the Sales Convention (A/CN.9/562), the Commission expressed its appreciation to experts and national correspondents for their contribution to the preparation of the digest. The Commission was further informed that, pursuant to its request at its thirty-fifth session, in 2002,[28] the sample drafts of a digest of case law on articles 3, 14 and 34 of the Model Law had been prepared by the Secretariat (A/CN.9/563 and Add.1).

88. There was general support in the Commission for both digests, to be published in the six official languages of the United Nations, which would assist in the dissemination of information on the two texts and further promote their adoption as well as their uniform interpretation. In addition, it was said that the digests would help judges, arbitrators, practitioners, academics and government officials use the case law relating to UNCITRAL texts more efficiently. In addition, the existence of the digests would eliminate any objection or reservation that those UNCITRAL texts failed to enhance legal certainty because of the lack of sufficient experience

with their application. Thus, the digest of case law on the Sales Convention would help to reduce the practice of excluding its applicability in contracts where it would otherwise apply.

89. In the context of the discussion of the sample drafts of a digest of case law on the Model Law, it was stated that digests of case law should not constitute an independent authority indicating the interpretation to be given to individual provisions, but should rather serve as a reference tool summarizing and pointing to the decisions that had been included in the digests. In addition, it was reiterated that the digests should present court decisions and arbitral awards in an objective way without any criticism or endorsement.[29] It was also stated that the digest of case law on the Model Law should avoid paraphrasing and thus possibly misrepresenting provisions of the Model Law.

90. The Commission noted that 2005 would mark the twenty-fifth anniversary of the adoption of the Sales Convention and the twentieth anniversary of the adoption of the Model Law and noted with satisfaction that conferences would be organized in different regions of the world in order to celebrate those anniversaries and to consider the experience of courts and arbitral tribunals with those texts (see also para. 61 above). States were invited to consider organizing such conferences.

91. Bearing in mind those comments, the Commission expressed its satisfaction with the publication of the digest of case law on the Sales Convention and requested the Secretariat to complete the preparation of a digest of case law relating to the Model Law.

XI. Training and technical assistance: follow-up to the in-depth evaluation of work of the Commission's secretariat concerned with training and technical assistance

92. The Commission had before it a note by the Secretariat (A/CN.9/560) describing the training and technical activities undertaken since its thirty-sixth session and the direction of future activities, in particular in view of the approval by the General Assembly in December 2003 of additional human resources for the secretariat of UNCITRAL (in the form of three Professional officers), which would be devoted in part to implementing its expanded functions as regards training and technical assistance. The Commission noted that recruitment action was already under way, with two positions having already been filled and the other having been advertised.

93. The Commission requested the Secretariat to prepare a work programme and timetable for implementation of the expanded technical assistance function. The Commission recommended that the Secretariat identify national and regional needs, in conjunction with national, regional and international organizations, such as the International Trade Centre, and permanent missions to the United Nations; technical legal assistance requirements in the area of international trade law reform; and opportunities for the development of joint programmes, as well as opportunities in existing programmes providing technical legal assistance in that area.

94. The Commission reiterated its appeal to all States, international organizations and other interested entities to consider making contributions to the Trust Fund for

UNCITRAL Symposia, if possible in the form of multi-year contributions, so as to facilitate planning and enable the Secretariat to meet the increasing demands from developing countries and States with economies in transition for training and technical legislative assistance. The Commission expressed its appreciation to those States which had contributed to the fund since the thirty-sixth session, namely, France, Greece, Mexico, Singapore and Switzerland. The Commission also expressed its appreciation to organizations that had contributed to the programme by providing funds or staff or by hosting seminars.

95. The Commission appealed to the relevant bodies of the United Nations system, organizations, institutions and individuals to make voluntary contributions to the trust fund established to provide travel assistance to developing countries that are members of the Commission. The Commission noted that no contributions to the trust fund for travel assistance had been received since the thirty-sixth session, but noted with appreciation those countries which, since the inception of the fund, had contributed, namely, Austria, Cambodia, Cyprus, Kenya, Mexico and Singapore.

96. It was noted that, since the thirty-sixth session of the Commission, seminars and briefing missions had been organized by the Secretariat (see A/CN.9/560, para. 19). In addition, it was noted that members of the Secretariat had participated as speakers at a number of meetings convened by other organizations and also that a number of requests had been turned down for lack of resources.

XII. Status and promotion of UNCITRAL legal texts

97. The Commission considered the status of the conventions and model laws emanating from its work, as well as the status of the New York Convention, on the basis of a note by the Secretariat (A/CN.9/561). The Commission noted with pleasure the new actions of States and jurisdictions subsequent to the closure of its last session, on 11 July 2003, regarding the following instruments:

(a) Convention on the Limitation Period in the International Sale of Goods (New York, 1974), as amended by the Protocol of 11 April 1980.[30] New action by Paraguay; number of States parties: 18;

(b) [Unamended] Convention on the Limitation Period in the International Sale of Goods (New York, 1974).[31] New action by Paraguay; number of States parties: 25;

(c) United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980). New action by the Republic of Korea; number of States parties: 63;

(d) Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958). New action by Nicaragua; number of States parties: 134;

(e) UNCITRAL Model Law on International Commercial Arbitration (1985). New jurisdictions that have enacted legislation based on the Model Law: Bangladesh, Japan, Spain and Thailand;

(f) UNCITRAL Model Law on Procurement of Goods, Construction and Services (1994). New jurisdictions that have enacted legislation based on the Model Law: Slovakia;

(g) UNCITRAL Model Law on Electronic Commerce (1996).[32] New jurisdictions that had enacted legislation based on the Model Law: Dominican Republic; Mauritius; Panama; South Africa; the overseas territory of the United Kingdom of Great Britain and Northern Ireland, the Cayman Islands; and, within the United States of America, the State of Massachusetts;

(h) UNCITRAL Model Law on Cross-Border Insolvency (1997). New jurisdictions that had enacted legislation based on the Model Law: Poland and Romania;

(i) UNCITRAL Model Law on Electronic Signatures (2001).[33] New jurisdictions that had enacted legislation based on the Model Law: Mexico;

(j) UNCITRAL Model Law on International Commercial Conciliation (2002).[34] New jurisdictions that had enacted legislation based on the Model Law: Croatia. The Uniform Mediation Act, which was prepared by the National Conference of Commissioners on Uniform State Laws in the United States and was recommended to the states of the United States, was also based on the Model Law.

98. The Commission requested States that had enacted or were about to enact legislation based on a model law prepared by the Commission or that were considering legislative action regarding a convention resulting from the work of the Commission to inform the secretariat of the Commission accordingly. In that connection, the Commission was informed that its secretariat would include copies of national enactments on the UNCITRAL web site, in the original language and, where available, in a translation, even if unofficial, into one or more of the official languages of the United Nations. Making available national enactments of UNCITRAL instruments was said to be useful to other States in their consideration of similar legislative action. Member States were requested to assist the secretariat in obtaining the necessary authorization to publish legislation on the UNCITRAL web site in cases where specific texts or legislation databases were subject to copyright protection.

99. The Commission noted that, in order to be complete and produce practical results, efforts towards the unification and harmonization of trade law needed to result in the adoption and uniform application by States of texts prepared by the Commission. To achieve that result, the Commission requested its secretariat to increase its efforts aimed at assisting States in considering texts prepared by the Commission for adoption. The Commission appealed to the representatives and observers attending the meetings of the Commission and its working groups to contribute, to the extent they deemed appropriate, to facilitating consideration of texts of the Commission by legislative organs of their States.

XIII. Relevant General Assembly resolutions

A. Resolutions 58/75 and 58/76

100. The Commission took note with appreciation of General Assembly resolutions 58/75, on the report of the Commission on the work of its

thirty-sixth session, and 58/76, on the Model Legislative Provisions on Privately Financed Infrastructure Projects, both of 9 December 2003.

B. Resolution 58/270

101. The Commission also took note with appreciation of General Assembly resolution 58/270 of 23 December 2003, entitled "Questions relating to the proposed programme budget for the biennium 2004-2005", in annex III of which the General Assembly decided to approve the following new posts in the Commission's secretariat to be funded from the regular budget for the biennium 2004-2005: 1 D-2, 1 P-5 and 1 P-2. In that connection, the Commission recalled its deliberations at its thirty-fifth and thirty-sixth sessions regarding the strengthening of its secretariat.[35, 36]

102. The Commission was informed that two new posts had already been filled, one by a lateral transfer from New York, and that the third post was currently being advertised with a view to completing the recruitment process as soon as possible. As a result of the expansion of the Commission's secretariat, it had been upgraded from a branch to a division within the Office of Legal Affairs—the International Trade Law Division. The Commission noted that the Division was in a process of restructuring: in particular, two pillars, of which the Commission had been informed at its thirty-sixth session,[37] were being established, one dealing primarily with uniform legislation and the other focusing on technical assistance coordination and external affairs.

XIV. Coordination and cooperation: follow-up to the in-depth evaluation of work of the Commission's secretariat concerned with coordination and cooperation

A. Coordination of work in the area of security interests

103. The Commission had before it a note by the Secretariat entitled "Coordination of work: activities of international organizations in the area of security interests" (A/CN.9/565). The Commission noted with appreciation the coordination efforts undertaken by its secretariat and agreed that increased efforts were necessary to ensure that comprehensive and consistent advice be given to States by all organizations involved in the area of security interests law.

104. The Commission noted in particular efforts of the European Commission towards a new community instrument in which the issue of the law applicable to third-party effects of assignments, which had been settled in article 22 of the United Nations Convention on the Assignment of Receivables in International Trade (General Assembly resolution 56/81, annex) by reference to the law of the State in which the assignor was located, would be addressed. In that connection, the Commission noted with appreciation that initial contacts between its secretariat and representatives of the European Commission had indicated a willingness to address the matter in a coordinated way that would be consistent with the Assignment Convention.

105. It was widely felt that the rule in article 22 of the Assignment Convention provided certainty for third parties and thus would most likely increase the availability and reduce the cost of credit and that adoption of a different rule by the European Union would not only have a negative impact on the availability and the cost of credit but would also produce disharmony in trade relationships involving parties located within and outside the European Union, as well as European Union parties where a priority dispute was brought before a court in a non-European Union country.

106. A number of States, including States members of the European Union, indicated that they were considering ratifying or acceding to the Assignment Convention and that, as a result, had a great interest in seeing the Union adopt an approach to the issue of the law applicable to third-party effects of assignments that would be consistent with the approach followed in article 22 of the Assignment Convention. In the discussion, strong support was expressed for holding a coordination meeting that would involve representatives of the European Commission, UNCITRAL and relevant industry to resolve the matter as soon as possible so as to remove any obstacle to wide adoption of the Assignment Convention.

107. After discussion, the Commission recommended that every effort be made to avoid a future European Union instrument taking a different approach from article 22 of the Assignment Convention and requested the Secretariat to organize a meeting with representatives of the European Commission, Member States of the United Nations and industry with a view to resolving the matter as soon as possible.

B. International colloquium on commercial fraud

108. At its thirty-fifth session, the Commission had considered a proposal that the Secretariat prepare a study of fraudulent financial and trade practices in various areas of trade and finance for consideration at a future session of the Commission. At that session, the Commission had been informed that fraudulent practices, which were often international in character, had a significant adverse economic impact on world trade and negatively affected legitimate devices used in world trade. It was noted that the incidence of such fraud was growing, in particular since the advent of the Internet had offered additional avenues to the perpetrators.[38]

109. At its thirty-sixth session, the Commission had considered a note by the Secretariat on possible future work relating to commercial fraud (A/CN.9/540). The Commission had been informed at that session that one of the major problems in attempting to combat commercial fraud in an effective manner was the difficulty of bringing together the appropriate public and private bodies necessary to do so and support had been expressed for the recommendation made by the Secretariat that an international colloquium be organized to address various aspects of the problem of commercial fraud from the point of view of private law and to permit an exchange of views from various interested parties, including those working in national Governments, intergovernmental organizations and relevant private organizations with a particular interest and expertise in combating commercial fraud.[39]

110. At its thirty-seventh session, the Commission had before it a note by the Secretariat containing a report on the Colloquium on International Commercial

Fraud (A/CN.9/555), held in Vienna from 14 to 16 April 2004. The Commission expressed its appreciation for the note and the suggestions for future work contained in it (A/CN.9/555, paras. 62-71). It heard statements to the effect that the rising incidence of commercial fraud posed a considerable and growing obstacle to the growth of international trade.

111. As to the work that might be done in that area in the future, the Commission was in agreement that it would be useful if, wherever appropriate, examples of commercial fraud were to be discussed in the particular contexts of projects worked on by the Commission so as to enable delegates involved in those projects to take the problem of fraud into account in their deliberations. The Secretariat was requested to facilitate such discussions where it seemed appropriate.

112. In addition, noting that education and training played a significant part in the prevention of fraud, the Commission noted with interest suggestions according to which the Secretariat should consider preparing, in close consultation with experts, including those who had been involved in the preparation of the Colloquium, lists of common features present in typical fraudulent schemes. Such lists, accompanied by comments, could be useful as educational material for participants in international trade and other potential targets of fraudsters to the extent they would help them protect themselves and avoid becoming victims of fraudulent schemes. National and international organizations interested in fighting commercial fraud could be invited to circulate such material among their members, an exercise that could help test and improve those lists. While it was not proposed that the Commission itself or its intergovernmental working groups be directly involved in that activity, the Secretariat would keep the Commission informed about it.

C. Implementation of General Assembly resolution 58/75 and the report of the Office of Internal Oversight Services

113. The Commission took note of the provisions of General Assembly resolution 58/75 related to the Commission's coordination role, and the report of the Office of Internal Oversight Services on the in-depth evaluation of legal affairs,[40] in particular recommendation 13, entitled "Increased coordination with trade law organizations", which read as follows:

> "To enhance coordination in accordance with its basic mandate and ensure a concerted approach to common issues, the International Trade Law Branch (ITLB) should meet annually with key organizations working on trade law issues to share information and workplans."

114. There was general support for the notion that the Commission, as the core legal body in the United Nations system in the field of international trade law, should adopt a more proactive attitude, through its secretariat, in fulfilling the terms of its mandate as regards coordination of activities of international organizations active in the field of international trade law both within and outside the United Nations system. It was agreed that such coordination might include the establishment of regular patterns of communication with intergovernmental organizations. It was also agreed that the Commission should work, where appropriate, with international non-governmental organizations that were formulating rules governing international trade. The exercise by the Commission of

an increased role in the coordination of the work programme of the various organizations involved might also be envisaged. It was widely recognized that fulfilling that part of the Commission's mandate, which was dependent to a large extent on the availability of the necessary resources, should be facilitated by the recent increase in the staff of its secretariat.

115. As to the practical means of enhancing coordination referred to in recommendation 13, it was generally agreed that the idea of meeting annually with international organizations working on trade law issues should be interpreted in a flexible manner to allow for periodical exchanges of information on a sector-by-sector basis (for example, as regards procurement, online dispute resolution, transport documents, insolvency and secured transactions). It was also agreed that particular emphasis should be placed on coordination of activities between the Commission and regional organizations. In that respect, it was agreed that the Commission should seek to increase the use of its standards in efforts for the harmonization of trade law at the regional level.

XV. Other business

A. Partnerships between the United Nations and non-state actors, in particular the private sector

116. The Commission had before it a note by the Secretariat on recent developments throughout the United Nations system with respect to partnerships between the United Nations and non-state actors, in particular the private sector, and possible implications of those developments for the Commission's work (A/CN.9/564). The Commission agreed on the importance to the work of the Commission of actively engaging non-state actors, through their direct participation at meetings of the Commission and its intergovernmental working groups, in the work of promoting texts adopted by the Commission and in technical assistance related to UNCITRAL texts.

117. With respect to public-private partnerships, the Commission heard a statement by a representative of the Global Compact Office of the Secretariat on the origin, goals and objectives of the Global Compact and of its achievements and adherence to date. The key principles, in the areas of human rights, labour standards and the environment, which the Global Compact sought to integrate into business activities to advance good corporate citizenship were set forth in paragraph 6 of the note by the Secretariat (A/CN.9/564) and further information was available on the web site of the Global Compact (www.unglobalcompact.org). The Commission noted the relevance of the Global Compact to the work of the Commission and the potential for UNCITRAL texts to advance the goals of the Global Compact. The Commission recommended that member States and observers make information on the initiative known to private enterprises and business associations, such as chambers of commerce, in their own countries in order to promote wider adherence to and the application of its principles.

B. Willem C. Vis International Commercial Arbitration Moot

118. It was noted with appreciation that the Institute of International Commercial Law at Pace University School of Law in White Plains, New York, had organized the Eleventh Willem C. Vis International Commercial Arbitration Moot in Vienna from 2 to 8 April 2004. As in previous years, the Moot had been co-sponsored by the Commission. It was noted that legal issues dealt with by the teams of students participating in the Eleventh Moot had been based on the United Nations Sales Convention, the International Arbitration Rules of the Singapore International Arbitration Centre, the UNCITRAL Model Law on International Commercial Arbitration and the New York Convention. Some 135 teams from law schools in 42 countries had participated in the Eleventh Moot. The best team in oral arguments was that of Osgoode Hall of York University, Toronto, Canada. The Commission noted that its secretariat had organized lectures relating to its work during the period in which the Moot had been held. It was widely felt that the annual Moot, with its broad international participation, presented an excellent opportunity to disseminate information about uniform law texts and for teaching international trade law. It was noted that the Twelfth Willem C. Vis International Commercial Arbitration Moot was to be held in Vienna from 18 to 24 March 2005.

C. UNCITRAL web site

119. The Commission expressed its appreciation for the UNCITRAL web site (www.uncitral.org), which contained current UNCITRAL documents and *travaux préparatoires* in the six official languages of the United Nations. It regarded the web site as an important component of the Commission's overall programme of information activities and training and technical assistance and noted that the web site was being used increasingly by delegates for efficient access to documents needed in their work. The Commission encouraged the Secretariat to continue to bear in mind the principle of multilingualism in maintaining and upgrading the site.

D. Bibliography

120. The Commission noted with appreciation the bibliography of recent writings related to its work (A/CN.9/566). The Commission was informed that the bibliography was being updated on the UNCITRAL web site on an ongoing basis. The Commission stressed that it was important for the bibliography to be as complete as possible and, for that reason, requested Governments, academic institutions, other relevant organizations and individual authors to send copies of relevant publications to its secretariat.

E. Limitation of documentation

121. The Commission was apprised of an internal memorandum of 21 April 2004 from the Secretary-General containing drafting guidelines for reports drafted and/or compiled in the Secretariat. Under the drafting guidelines, reports (including those of intergovernmental bodies) should be "action-oriented" and limited to:

1. A brief discussion on organizational and procedural matters.

2. Recommendations, including resolutions and decisions adopted.

3. Policy recommendations emanating from multi-stakeholder dialogues and panels and roundtables rather than summaries of the meetings.

4. New developments, findings and recommendations, particularly for recurrent reports.

5. Quotations from United Nations documents only when legislative authority is cited.

Furthermore, the drafting guidelines provide that reports should not include:

1. A summary of statements made at opening and closing meetings, unless pertinent to conclusions reached.

2. Summaries of statements by individuals, a list of speakers for each item could be included instead.

3. A general summary of statements under each item.

4. Analysis of information provided unless required to support policy findings.

5. A lengthy discussion on organizational and procedural matters.

6. Repetition of already published texts or repetition of texts with only minor changes.

7. Extraneous information that does not contribute to deliberations.

Finally, according to the drafting guidelines:

1. Biennialization/triennialization and consolidation of reports are not a priori reasons to exceed page limits.

2. When the Secretary-General is not explicitly requested to reproduce *in extenso* information received from Member States, government replies should be summarized and page limits should apply.

3. Cut-off dates should be established and maintained for inclusion of information requested from Member States.

4. Specific questionnaires should be provided whenever possible to focus information provided. The questionnaires could also encourage limiting the replies to a predetermined length.

5. A list of reports requested at each session should be presented to the body concerned before closure of the session.

122. In his memorandum, the Secretary-General requested officials of the Secretariat to ensure that reports prepared under their authority, including those to be issued in the name of intergovernmental and expert bodies, were drafted in strict accordance with the drafting guidelines.

123. With respect to the notion of “page limit” referred to in the memorandum, the attention of the Commission was drawn to the report of the Secretary-General on

improving the performance of the Department of General Assembly Affairs and Conference Services (A/57/289), paragraph 57 of which reads as follows:

> "57. **Enforcing page limits.** As a result of reinforced instructions by the Secretary-General, the 16-page limit (7,200 words) on reports originating in the Secretariat is being applied systematically. Waivers to the rule are granted in only a limited number of cases. More attention must also be paid to the 20-page guideline (9,000 words) for reports of subsidiary bodies, special rapporteurs and the like, which account for a significant proportion of documents issued. Essentially, the 20-page limit will now serve as a guideline for all reports not falling within the 16-page limit. Since Secretariat officials often draft such reports, they will be required to strive for observance of the guideline".

In addition, the attention of the Commission was drawn to paragraph 15 of General Assembly resolution 53/208 B of 18 December 1998, in which the Assembly stressed once again the need for compliance with existing page limits; and invited all intergovernmental bodies to consider, where appropriate, the possibility of further reducing the length of their reports from 32 to 20 pages without adversely affecting either the quality of presentation or the content of the reports.

124. The Commission appreciated the provision of background information on the drafting guidelines contained in the Secretary-General's memorandum (see para. 121 above), which aimed to achieve the page limits for reports of subsidiary bodies as discussed above. However, the Commission recalled the particular characteristics of its work that made it inappropriate for page limits to be applied to the documentation of the Commission or its subsidiary bodies.

125. The Commission noted that it had been established by the General Assembly by its resolution 2205 (XXI) with a broad mandate to further the progressive harmonization and unification of the law of international trade and in that respect to bear in mind the interests of all peoples, in particular those of developing countries, in the extensive development of international trade. The Commission also recalled that, if international legal rules were to be drawn up by consensus, the building of such consensus would typically require an analysis and precise statement of existing law and commercial practice. In addition, the Commission recalled that the legal standards it prepared for consideration by States when modernizing their legislation in the field of international trade law had to be justified by evidence of existing law and the requirements of its progressive development in the light of the current needs of the international community. Thus, the draft articles or other recommendations contained in documentation prepared for the Commission or its subsidiary bodies and in the reports of the Commission and its subsidiary bodies themselves had to be supported by sufficient references to existing law, commercial practice and other relevant data, including treaties, judicial decisions and, occasionally, doctrine.

126. In addition, the Commission noted that maintaining the level of detail and high quality of its documentation was necessary for the following reasons: (a) they were a critical component in the process of consulting States and obtaining their views; (b) they assisted individual States in the understanding and interpretation of the rules embodied in legal standards prepared by the Commission; (c) they were part of the *travaux préparatoires* of such standards and were frequently referred to or quoted by national legislators, judges and lawyers applying the standards; and

(d) they contributed to the dissemination of information about international trade law in accordance with the relevant United Nations programme.

127. Accordingly, the Commission considered that it would be entirely inappropriate to attempt in advance and *in abstracto* to fix the maximum length of its reports or those of its subsidiary bodies or of the various studies and other working documents presented to it or its subsidiary bodies. As explained above, the length of a given Commission document would depend on a number of variable factors, such as the nature of the topic and the extent of relevant legal practice, doctrine and precedent. The Commission considered therefore that regulations on page limits such as those contained in the report of the Secretary-General (A/57/289) should not apply to its documentation. In that respect, the Commission noted an important qualification in the Secretary-General's drafting guidelines that reports should not include "analysis of information provided unless required to support policy findings". To the extent that the reports of the Commission and its subsidiary bodies invariably contained explanations and recommendations adopted concerning texts of legal standards prepared by the Commission, such explanations and recommendations were "policy findings" and should necessarily be supported by the "analysis of information" that constituted the *travaux préparatoires*. The Commission unanimously agreed that *travaux préparatoires* were indispensable to legislative deliberations and to judicial interpretation and differed fundamentally from summaries of meetings devoted to other types of deliberation.

128. It was noted that a waiver of page limits could be granted with respect to particular documents, but that that was a time-consuming process. The Commission urged the General Assembly to reconsider the application of page limits in connection with the Commission's work. The Commission also recalled that it and its subsidiary bodies were fully conscious of the need to achieve economies whenever possible in the overall volume of documentation and would continue to bear such considerations in mind, as evidenced by the efforts made, in particular, by its Working Group III (Transport Law), which had recently achieved a considerable reduction in the length of its report (A/CN.9/552). It was generally felt, however, that such efforts had reached the limit beyond which further reduction would considerably affect the quality of the documentation needed to reflect the implications of a particularly important and complex project.

F. Provision of summary records

129. The Commission was informed that, in its resolution 58/250 of 23 December 2003, the General Assembly had requested the Secretary-General to review the list of bodies entitled to summary records, in full consultation with all relevant intergovernmental bodies, with a view to assessing the need for such records, and to explore the possibility of delivering them in a more efficient and effective manner. The Secretariat had therefore been requested to consult with the members of the Commission to determine whether they could consider the possibility of relinquishing or curtailing the use of summary records. The two main factors brought to the attention of the Commission on behalf of the Committee on Conferences were the limited resources available for producing those records and the consequent delay in their issuance. The Commission was informed that, under the prevailing circumstances, it was unlikely that records would be produced in a

timely manner in the foreseeable future. The following possible alternatives to summary records were suggested for consideration by the Commission: (a) unedited verbatim transcripts in the original language (as currently in use by the Committee on the Peaceful Uses of Outer Space); (b) digital sound recordings of the proceedings made available in all six official languages on the United Nations web site or at specially equipped listening booths; (c) provisional issuance of summary records in the original language, with non-simultaneous issuance in the other languages at a later stage; or (d) limiting summary records to decision-making meetings (the Commission, for example, using summary records only when preparing legal instruments).

130. The Commission unanimously stressed the importance of summary records as essential elements of the *travaux préparatoires* that should be available for subsequent reference when interpreting the standards drawn up by the Commission. It was generally agreed that the issuance of summary records shortly after the related deliberations had taken place was desirable and would allow for the reproduction of those records in the *UNCITRAL Yearbook* prepared during the year following a given session of the Commission. However, it was also agreed that speed in the production of summary records was not the most important factor. Summary records would remain useful and indispensable for the full understanding of the legislative history of a given legal text even if they were issued a few years after the adoption of that text. With respect to the suggested alternatives, it was generally agreed that: (a) unedited verbatim transcripts would be of little use in view of the lack of a translation in the other official languages; (b) digital sound recordings would be even less useful in view of the lack of proper indexing, which would make the use of such recordings extremely difficult and time-consuming; (c) provisional issuance of summary records in the original language might be acceptable, provided that the other language versions would in fact be issued, albeit at a later stage; and (d) limiting the use of summary records was already consistent with the practice followed by UNCITRAL, which made use of summary records only in the context of its deliberations for the preparation of a normative instrument.

G. Proposed strategic framework for the period 2006-2007

131. The Commission's attention was drawn to subprogramme 5 (Progressive harmonization, modernization and unification of the law of international trade) of the proposed strategic framework for the period 2006-2007 (A/59/6 (Prog.6)). The Commission noted with appreciation that, in drafting the indicators of achievement for 2006-2007, the Secretariat had put into practice the lessons learned as regards the formulation of the expected accomplishments and indicators of achievement for the biennium 2002-2003. In particular, in situations where it was acceptable or unavoidable to formulate expected accomplishments in broad and unfocused terms, those had been combined with realistic and usable indicators of achievement.

XVI. Date and place of future meetings

A. General discussion on the duration of sessions

132. The Commission recalled that, at its thirty-sixth session, it had agreed that: (a) working groups should normally meet for a one-week session twice a year; (b) extra time, if required, could be allocated from the unused entitlement of another working group provided that such an arrangement would not result in the increase of the total number of 12 weeks of conference services per year currently allotted to sessions of all six working groups of the Commission; and (c) if any request by a working group for extra time would result in the increase of the 12-week allotment, it should be reviewed by the Commission, with proper justification being given by that working group regarding the reasons for which a change in the meeting pattern was needed.[41] At the same session, it had also been agreed that the situation with regard to the duration of sessions of Working Group III (Transport Law) would need to be reassessed at the thirty-seventh session of the Commission (see also para. 62).[42]

133. At its thirty-seventh session, for the reasons noted by the Commission at its thirty-sixth session,[43] the Commission decided to accommodate again the need of Working Group III (Transport Law) for two-week sessions, utilizing the entitlement of Working Group V (Insolvency Law), which was not expected to meet in the second half of 2004 or in 2005.

134. The Commission also approved the holding of a two-week session of Working Group IV (Electronic Commerce) in October 2004 in order to ensure the uninterrupted process of negotiation and drafting of the draft convention and its circulation for comments shortly after the session in October. The Commission noted that, by accelerating the work of Working Group IV, it would be possible not to hold one week of meetings of Working Group IV in late 2005.

B. Thirty-eighth session of the Commission

135. The Commission approved the holding of its thirty-eighth session in Vienna from 4 to 22 July 2005. It was noted that the Commission did not intend to make full use of its four-week allotment of conference services in 2005. The duration of the session might be shortened further, should a shorter session become advisable in view of the draft texts produced by the various working groups.

C. Sessions of working groups up to the thirty-eighth session of the Commission

136. The Commission approved the following schedule of meetings for its working groups:

(a) Working Group I (Procurement) would hold its sixth session in Vienna from 30 August to 3 September 2004 and its seventh session in New York from 4 to 8 April 2005;

(b) Working Group II (Arbitration) would hold its forty-first session in Vienna from 13 to 17 September 2004 and its forty-second session in New York from 10 to 14 January 2005;

(c) Working Group III (Transport Law) would hold its fourteenth session in Vienna from 29 November to 10 December 2004 and its fifteenth session in New York from 18 to 28 April 2005 (the United Nations would be closed on 29 April, Orthodox Good Friday);

(d) Working Group IV (Electronic Commerce) would hold its forty-fourth session in Vienna from 11 to 22 October 2004 and, if necessary, a forty-fifth session in New York from 11 to 15 April 2005;

(e) Working Group V (Insolvency Law). No session of the Working Group was envisaged;

(f) Working Group VI (Security Interests) would hold its sixth session in Vienna from 27 September to 1 October 2004 and its seventh session in New York from 24 to 28 January 2005.

D. Sessions of working groups in 2005 after the thirty-eighth session of the Commission

137. The Commission noted that tentative arrangements had been made for working group meetings in 2005 after its thirty-eighth session (the arrangements were subject to the approval of the Commission at its thirty-eighth session):

(a) Working Group I (Procurement) would hold its eighth session in Vienna from 17 to 21 October 2005;

(b) Working Group II (Arbitration) would hold its forty-third session in Vienna from 3 to 7 October 2005;

(c) Working Group III (Transport Law) would hold its sixteenth session in Vienna from 28 November to 9 December 2005;

(d) Working Group IV (Electronic Commerce). No session of the Working Group was envisaged;

(e) Working Group V (Insolvency Law). No session of the Working Group was envisaged;

(f) Working Group VI (Security Interests) would hold its eighth session in Vienna from 5 to 9 September 2005.

Notes

[1] Pursuant to General Assembly resolution 2205 (XXI), the members of the Commission are elected for a term of six years. Of the current membership, 17 were elected by the Assembly at its fifty-fifth session, on 16 October 2000 (decision 55/308), and 43 were elected by the Assembly at its fifty-eighth session, on 17 November 2003 (decision 58/407). By its resolution 31/99, the Assembly altered the dates of commencement and termination of membership by deciding that members would take office at the beginning of the first day of the regular annual session of the Commission immediately following their election and that their

terms of office would expire on the last day prior to the opening of the seventh regular annual session of the Commission following their election.

[2] *Official Records of the General Assembly, Fifty-second Session, Supplement No. 17* (A/52/17), annex I.

[3] A/CN.9/442, annex.

[4] A/CN.9/WG.V/WP.70 (Parts I and II).

[5] A/CN.9/559 and Add.1-3.

[6] *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 17* (A/59/17), paras. 12-53.

[7] Ibid., *Fifty-fourth Session, Supplement No. 17* (A/54/17), para. 380.

[8] Ibid., *Fortieth Session, Supplement No. 17* (A/40/17), annex I.

[9] Ibid., *Fifty-eighth Session, Supplement No. 17* (A/58/17), para. 203.

[10] United Nations, *Treaty Series,* vol. 330, No. 4739.

[11] *Official Records of the General Assembly, Thirty-first Session, Supplement No. 17* (A/31/17), para. 57.

[12] *UNCITRAL Yearbook,* vol. XXVII: 1996, part three, annex II.

[13] *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 17* (A/58/17), para. 204.

[14] Ibid., *Fifty-sixth Session, Supplement No. 17* and corrigendum (A/56/17 and Corr. 3), para. 345.

[15] Ibid., *Fifty-seventh Session, Supplement No. 17* (A/57/17), para. 224.

[16] Ibid., *Fifty-eighth Session, Supplement No. 17* (A/58/17), para. 208.

[17] Ibid., *Fifty-sixth Session, Supplement No. 17* and corrigendum (A/56/17 and Corr.3), paras. 291-293.

[18] Ibid., para. 358.

[19] Ibid., *Fifty-seventh Session, Supplement No. 17* (A/57/17), para. 204.

[20] Ibid., *Fifty-eighth Session, Supplement No. 17* (A/58/17), para. 222.

[21] Ibid., *Forty-ninth Session, Supplement No. 17* and corrigendum (A/49/17 and Corr.1), annex I.

[22] Ibid., *Fifty-eighth Session, Supplement No. 17* (A/58/17), paras. 225-230.

[23] Ibid., para. 229.

[24] Ibid., para. 230.

[25] Ibid., *Fiftieth Session, Supplement No. 17* (A/50/17), paras. 401-404.

[26] United Nations, *Treaty Series,* vol. 1489, No. 25567.

[27] *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 17* and corrigendum (A/56/17 and Corr.3), para. 395.

[28] Ibid., *Fifty-seventh Session, Supplement No. 17* (A/57/17), para. 243.

[29] Ibid., *Fifty-sixth Session, Supplement No. 17* and corrigendum (A/56/17 and Corr.3), paras. 393-395.

[30] United Nations, *Treaty Series,* vol. 1511, No. 26121.

[31] Ibid., No. 26119.

[32] *Official Records of the General Assembly, Fifty-first Session, Supplement No. 17* (A/51/17), annex I.

[33] Ibid., *Fifty-sixth Session, Supplement No. 17* (A/56/17), annex II.

[34] Ibid., *Fifty-seventh Session, Supplement No. 17* (A/57/17), annex I.

[35] Ibid., *Fifty-seventh Session, Supplement No. 17* (A/57/17), paras. 258-271.

[36] Ibid., *Fifty-eighth Session, Supplement No. 17* (A/58/17), paras. 256-261.

[37] Ibid., paras. 257 and 258.

[38] Ibid., *Fifty-seventh Session, Supplement No. 17* (A/57/17), paras. 279-290.

[39] Ibid., *Fifty-eighth Session, Supplement No. 17* (A/58/17), paras. 238 and 240.

[40] E/AC.51/2002/5.

[41] *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 17* (A/58/17), para. 275.

[42] Ibid., para. 208.

[43] Ibid., para. 272.

Annex

List of documents before the Commission at its thirty-seventh session

Symbol	*Title or description*
A/CN.9/541	Annotated provisional agenda and organization of work of the thirty-seventh session
A/CN.9/542	Report of Working Group V (Insolvency Law) on the work of its twenty-ninth session (Vienna, 1-5 September 2003)
A/CN.9/543	Report of Working Group VI (Security Interests) on the work of its fourth session (Vienna, 8-12 September 2003)
A/CN.9/544	Report of Working Group III (Transport Law) on the work of its twelfth session (Vienna, 6-17 October 2003)
A/CN.9/545	Report of Working Group II (Arbitration) on the work of its thirty-ninth session (Vienna, 10-14 November 2003)
A/CN.9/546	Report of Working Group IV (Electronic Commerce) on the work of its forty-second session (Vienna, 17-21 November 2003)
A/CN.9/547	Report of Working Group II (Arbitration) on the work of its fortieth session (New York, 23-27 February 2004)
A/CN.9/548	Report of Working Group IV (Electronic Commerce) on the work of its forty-third session (New York, 15-19 March 2004)
A/CN.9/549	Report of Working Group VI (Security Interests) on the work of its fifth session (New York, 22-25 March 2004)
A/CN.9/550	Report of Working Group V (Insolvency Law) and Working Group VI (Security Interests) on the work of their second joint session (New York, 26 and 29 March 2004)
A/CN.9/551	Report of Working Group V (Insolvency Law) on the work of its thirtieth session (New York, 29 March-2 April 2004)
A/CN.9/552	Report of Working Group III (Transport Law) on the work of its thirteenth session (New York, 3-14 May 2004)
A/CN.9/553	Note by the Secretariat on possible future work in the area of public procurement
A/CN.9/554	Report on the UNCITRAL-INSOL Judicial Colloquium on Cross-Border Insolvency, 2003
A/CN.9/555	Report on the UNCITRAL Colloquium on International Commercial Fraud
A/CN.9/556	[*Not issued*.]
A/CN.9/557	Explanatory note on the United Nations Convention on the Assignment of Receivables in International Trade

Symbol	*Title or description*
A/CN.9/558	Compilation of comments by international organizations on the draft UNCITRAL legislative guide on insolvency law
A/CN.9/558/Add.1	Compilation of comments by Governments on the draft UNCITRAL legislative guide on insolvency law
A/CN.9/559 and Add.1-3	Draft UNCITRAL legislative guide on insolvency law: revisions to document A/CN.9/WG.V/WP.70
A/CN.9/560	Note by the Secretariat on training and technical assistance
A/CN.9/561	Note by the Secretariat on the status of conventions and model laws
A/CN.9/562	Note by the Secretariat: introduction to the digest of case law on the United Nations Sales Convention
A/CN.9/563 and Add.1	Note by the Secretariat: uniform interpretation of UNCITRAL texts; sample digest of case law on the UNCITRAL Model Law on International Commercial Arbitration (1985)
A/CN.9/564	Note by the Secretariat on partnerships between the United Nations and non-state actors, in particular the private sector: recent developments across the United Nations and possible implications for the Commission's work
A/CN.9/565	Note by the Secretariat on the coordination of work: activities of international organizations in the area of security interests
A/CN.9/566	Note by the Secretariat: bibliography of recent writings related to the work of UNCITRAL
A/CN.9/WG.V/WP.70 (Parts I and II)	Draft legislative guide on insolvency law
A/CN.9/WG.V/WP.71	Note by the Secretariat on the treatment of security interests in the draft legislative guide on insolvency law
A/CN.9/WG.V/WP.72	Note by the Secretariat on the draft legislative guide on insolvency law