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Planned and possible future work

Note by the Secretariat

Contents

	<i>Paragraphs</i>	<i>Page</i>
I. Introduction	1-5	2
A. Background	1-5	2
II. Summary of current activities	6-9	3
A. Legislative work	6-7	3
B. Other activities	8-9	4
III. Summary of planned and possible activities after July 2013	10-14	5
A. Legislative work	10-11	5
1. Planned future work	10	5
2. Possible future work	11	6
B. Activities to support the adoption and use of UNCITRAL texts	12-14	9
IV. Allocation of resources and prioritization	15-47	9
A. Level of activity and need for prioritization or alteration in working methods	15-18	9
B. Prioritization of subject areas	19-33	10
C. Possible need for alteration of working methods	34-37	13
D. Prioritization within UNCITRAL's overall work programme	38-42	13
E. Related questions	43-47	15
1. Working group and Commission support for activities promoting the adoption and use of UNCITRAL texts	43-44	15
2. Issuing documents in all official UNCITRAL languages	45-47	15



I. Introduction

A. Background

1. At its forty-fourth session in 2011, the Commission requested the Secretariat to prepare a note on strategic planning for its next session (A/66/17, para. 343).

2. A Note by the Secretariat in response to that request entitled “A strategic direction for UNCITRAL” (A/CN.9/752 and Add.1, referred to in this paper as the “Strategic Direction paper”) was submitted to the Commission at its forty-fifth session. The Commission agreed to consider and provide further guidance on UNCITRAL’s strategic direction at its forty-sixth session, and requested the Secretariat to reserve sufficient time to allow for a detailed discussion at that time (A/67/17, para. 231).

3. In the Strategic Direction paper, certain factors were set out to assist the Commission when considering possible future work, particularly in choosing between topics where resources are insufficient to address all current and possible future topics (A/CN.9/752, paras. 20 and 21). The current paper sets out details of current and possible future work; since the Commission may consider that UNCITRAL has indeed reached a situation of insufficient resources (see, further, section IV below), the paper has been produced to assist the Commission both in its discussions on future work at this forty-sixth session, and in discussing the Strategic Direction paper (A/CN.9/752 and Add.1).

4. The scope of this paper encompasses all of UNCITRAL’s main work areas: planned and possible future legislative texts, technical assistance to law reform, promotion of uniform interpretation and application of UNCITRAL texts, status and promotion of those texts, coordination and cooperation with other organizations active in its field of activity and promoting the rule of law. The aim is to enable the Commission to consider how any mandate given for work on any one activity and in any topic will impact UNCITRAL’s other activities and topics.

5. The Commission may wish to take into account the following documents in considering these issues. Background documents presented to the Commission at its forty-fifth session (available at www.uncitral.org/uncitral/commission/sessions/45th.html) are:

A/CN.9/752 and Add.1 A strategic direction for UNCITRAL, Note by the Secretariat; and

A/67/17 Report of the Commission’s forty-fifth session.

Documents for the current Commission session, (available at www.uncitral.org/uncitral/commission/sessions/46th.html) are:

A/CN.9/760 and A/CN.9/765 Reports of the fifty-seventh and fifty-eighth sessions of Working Group II;

A/CN.9/762 and A/CN.9/769 Reports of the twenty-sixth and twenty-seventh sessions of Working Group III;

A/CN.9/761 and A/CN.9/768 Reports of the forty-sixth and forty-seventh sessions of Working Group IV;

- A/CN.9/763 and A/CN.9/766 Reports of the forty-second and forty-third sessions of Working Group V;
- A/CN.9/764 and A/CN.9/767 Reports of the twenty-second and twenty-third sessions of Working Group VI;
- A/CN.9/773 Status of the conventions and model laws, Note by the Secretariat;
- A/CN.9/775 Technical assistance activities undertaken since the Commission's forty-fifth session and technical assistance resources, Note by the Secretariat, including UNCITRAL publications, the UNCITRAL website, and a survey of the activities undertaken by the UNCITRAL Regional Centre for Asia and the Pacific (RCAP) since the Commission's forty-fifth session;
- A/CN.9/776 Brief survey of the activities undertaken by the Secretariat since the Commission's forty-fifth session to ensure coordination with the work of other organizations active in the field of international trade law, Note by the Secretariat;
- A/CN.9/777 Status and progress of CLOUT, Note by the Secretariat (including updates on the current activities concerning digests);
- A/CN.9/779 Report of a Colloquium on Public-Private Partnerships;
- A/CN.9/780 Creating an enabling legal environment for microbusiness and small and medium-sized enterprises, Note by the Secretariat;
- A/CN.9/785 Possible future work in the field of dispute settlement, Note by the Secretariat;
- A/CN.9/788 Meeting on commercial fraud, Note by the Secretariat.

II. Summary of current activities

A. Legislative work

6. The table below sets out current and ongoing legislative activities, and their envisaged completion dates.

7. As the table indicates, draft texts on arbitration, insolvency and security interests will be presented for adoption at the forty-sixth session of the Commission. The Working Groups concerned (II, V and VI) will therefore be available for future work, some of which is already mandated by the Commission (as discussed in section III, paras. 10-14 below). Working Group I completed its work on developing the UNCITRAL Model Law on Public Procurement and Guide to Enactment in April 2012. It has not met since the forty-fifth Commission session in 2012 and is thus available for future work. Working Groups III and IV are engaged with ongoing work.

Table 1
Current and ongoing legislative activities

<i>Topic</i>	<i>Report references</i>	<i>Envisaged completion date</i>
<i>Arbitration (WG II)</i>		
(i) Preparation of a legal standard on transparency in treaty-based investor arbitration	A/CN.9/760 and A/CN.9/765	2013
(ii) Applicability of the UNCITRAL Rules on transparency to the settlement of disputes arising under existing investment treaties (draft text of a recommendation and convention)		2013
Preparation of a Guide to the 1958 New York Convention	n/a – prepared by Secretariat	Extracts for consideration 2013; completion 2014
<i>Online dispute resolution (WG III)</i>		
Preparation of a legal standard on online dispute resolution for cross-border electronic transactions	A/CN.9/762 and A/CN.9/769	Estimated 2014 or beyond
<i>Electronic commerce (WG IV)</i>		
Electronic transferable records	A/CN.9/761 and A/CN.9/768	Estimated 2015 or beyond
<i>Insolvency (WG V)</i>		
(i) Revisions to Guide to Enactment of the Model Law on Cross-Border Insolvency	A/CN.9/763 and A/CN.9/766	2013
(ii) Obligations of directors of an enterprise in the period approaching insolvency		2013
(iii) Updating of The Model Law on Cross-Border Insolvency: the Judicial Perspective		2013
<i>Security interests (WG VI)</i>		
(i) Draft Technical Legislative Guide on the Implementation of a Security Rights Registry	A/CN.9/764 and A/CN.9/767	2013
(ii) Draft Model Law on Secured Transactions ¹		Not yet known

B. Other activities

8. UNCITRAL's main areas of activity other than legislative development are part of its mandate to support the adoption and use of UNCITRAL texts. The main activities concerned are technical cooperation and assistance, which covers both

¹ At its twenty-third session (2013), the Working Group had a general exchange of views with respect to the draft Model Law and, in particular, the scope of the Working Group's mandate in that regard.

promotion of the adoption of a text and its application and interpretation, and coordination of work in the field of international trade law. As the Strategic Direction paper notes, harmonization in its true sense requires that, in addition to legislative activity, these areas be addressed for each text that UNCITRAL adopts (see, further, A/CN.9/752, para. 3).

9. Reports available to the forty-sixth session of the Commission describing UNCITRAL's current activities in these areas will be as follows:

A/CN.9/772 Bibliography of recent writings related to UNCITRAL's work;

A/CN.9/775 Technical assistance to law reform and technical assistance resources, including UNCITRAL publications, the UNCITRAL website and UNCITRAL regional presence: survey of the activities undertaken by the UNCITRAL Regional Centre for Asia and the Pacific (RCAP);

A/CN.9/773 Status and promotion of UNCITRAL legal texts (status of the conventions and model laws resulting from UNCITRAL's work as well as the status of the New York Convention);

A/CN.9/776 Coordination and cooperation: (i) Brief survey of the activities undertaken by the Secretariat; (ii) Reports of other international organizations;

A/CN.9/777 Promotion of ways and means of ensuring a uniform interpretation and application of UNCITRAL legal texts: (i) Case Law on UNCITRAL texts (CLOUT), (ii) Digests of case law relating to UNCITRAL legal texts;

Oral report Role of UNCITRAL in promoting the rule of law at the national and international levels.

III. Summary of planned and possible activities after July 2013

A. Legislative work

1. Planned future work

10. The Commission has previously considered proposals for future legislative work on the following topics and mandated a working group to commence such work at a future time:²

(a) *Arbitration*: See the Note by the Secretariat on possible future work in the field of dispute settlement (A/CN.9/785), which addresses (i) arbitrability: this topic has been maintained by Working Group II on its future work agenda since 2006 (A/62/17, para. 177);³ and (ii) revision of the 1996 UNCITRAL Notes on Organizing Arbitral Proceedings. The Commission has agreed to decide at a future session whether draft revised Notes should be examined by the Working Group

² Items that the Commission has considered in outline, but agreed to revisit after discussion of further or revised proposals submitted to it, are discussed in the following sub-section as proposals for possible future work.

³ See, also, subsequent reports of the Commission A/63/17 and Corr.1, para. 316; A/64/17, para. 299; and A/66/17, para. 203.

before being considered by the Commission, or whether the work should be undertaken by the Secretariat (A/67/17, para. 70).

(b) *Insolvency*: The Working Group's current mandate extends, in addition to issuing guidance on the interpretation of selected concepts of the UNCITRAL Model Law on Cross-Border Insolvency relating to the centre of main interests, to possibly developing a legislative text (such as a model law, convention, or provisions for a domestic insolvency law) addressing selected international issues, including jurisdiction, access and recognition. Working Group V has recommended that the Commission confirm its view that the scope of the Working Group's mandate as originally approved included centre of main interests in the context of enterprise groups (A/CN.9/763, para. 13). Working Group V agreed that this topic be handled upon completion of the current revisions proposed for the Guide to Enactment of the UNCITRAL Model Law on Cross-Border Insolvency relating to the centre of main interests of individual debtors (A/CN.9/763, para. 14). The Working Group has also agreed that directors' obligations in the context of the insolvency of enterprise groups should be considered (A/CN.9/763, para. 92 and A/CN.9/766, para. 104); and

(c) *Security interests*: The Commission provided a mandate for the preparation of a Model Law on Secured Transactions to Working Group VI to commence work on the preparation of a simple, short and concise model law on secured transactions (A/67/17, para. 105). The report of that Working Group includes an exchange of views on that mandate and the scope of a model law to be developed (A/CN.9/767, paras. 63-64).⁴

2. Possible future work

11. The Commission has before it proposals for possible future legislative work on the following subject areas (listed alphabetically):

(a) *Arbitration*: See the Note by the Secretariat on possible future work in the field of dispute settlement (A/CN.9/785), which addresses work identified in consultations held by the Secretariat: the question of concurrent proceedings in the field of investment arbitration was seen as increasingly important;

(b) *Commercial fraud*: UNCITRAL has considered the issue of international commercial fraud at several sessions commencing with its thirty-fifth session in 2002 (A/57/17, paras. 279-290; see also further discussions referred to in para. 75 of the Agenda for the forty-sixth Commission session). At this session, the Commission will have before it a note on commercial fraud (A/CN.9/788) outlining the conclusions of an informal meeting hosted by the Secretariat in Vienna on 29-30 April 2013;

(c) *Electronic commerce*: The Commission has previously agreed that work regarding electronic transferable records might include certain aspects of other topics such as identity management, use of mobile devices in electronic commerce and electronic single window facilities. However, there has been no mandate by the Commission for a working group to take up these subjects, other than as aspects of current work on electronic transferable records (A/66/17, paras. 235 and 239);

⁴ See footnote 1.

(d) *Insolvency*: In addition to the topics relating to the remainder of its current mandate, the following topics for possible future work were mentioned at the forty-third session of the Working Group (A/CN.9/766, para. 109), acknowledging that a further mandate for such topics would have to be sought from the Commission at some future time: private international law rules applicable in insolvency proceedings, especially as they relate to enterprise groups; the effectiveness of current instruments in the light of the global financial crisis, in particular, the provisions of the Legislative Guide on Insolvency Law relating to financial contracts; the relevance of the Model Law on Cross-Border Insolvency to the resolution of financial institutions; and enforcement of substantive rights and claims in a cross-border insolvency context;

(e) *International contract law*: At its forty-fifth session, in 2012, the Commission considered the desirability of work in the area of international contract law on the basis of a proposal by Switzerland (A/CN.9/758). It was determined that there was a prevailing view in support of requesting the Secretariat to organize symposiums and other meetings, including at the regional level, maintaining close cooperation with Unidroit, with a view to compiling further information to assist the Commission in the assessment of the desirability and feasibility of future work in the field of general contract law at a future session. At its forty-sixth session, the Secretariat will present an oral report on this topic to the Commission;

(f) *Microfinance/Creating an enabling legal environment for microbusiness and small and medium-sized enterprises (MSMEs)*: At its forty-fifth session, the Commission agreed that one or more colloquiums on microfinance and related matters would be held with a focus on topics related to creating an enabling legal environment for microfinance and micro, small and medium-sized business. At its forty-sixth session, the Commission will have before it a note (A/CN.9/780) outlining the key findings of the colloquium organized by the Secretariat in Vienna on 16-18 January 2013, as well as recommendations for consideration by the Commission. The Commission will also hear an oral report on State's replies to a questionnaire (circulated in 2011-2012) on their experience with the establishment of a legislative and regulatory framework for microfinance;

(g) *Online dispute resolution (ODR)*: Future work raised with the Commission at its forty-fourth session includes guidelines and minimum requirements for online dispute resolution providers and neutrals; substantive legal principles for resolving disputes; and a cross-border enforcement mechanism (A/66/17, paras. 213-214);

(h) *Public procurement and related areas, including public-private partnerships (PPPs)*: At its forty-fifth session, the Commission agreed that a glossary of terms used in the UNCITRAL Model Law on Public Procurement and suggested topics for procurement regulations should be produced to support the Model Law. Draft papers on these topics will be before the Commission for its consideration (A/CN.9/771 and A/CN.9/772, respectively).

The Commission also agreed to explore the possibility of issuing further guidance papers on several topics to support the implementation and use of the Model Law, and instructed the Secretariat to undertake a study of topics that might warrant such guidance papers. The Commission also instructed the Secretariat to explore options for publishing and publicizing the various resources and papers

themselves (A/67/17, paras. 109, 110 and 114). As regards several of those topics (suspension, debarment and self-cleaning, codes of conduct, interaction between suppliers or contractors and procuring entities and internal controls), the consultations indicated that there may be a need for further legislative work on some or all of these issues. As regards the other topics, the consultations indicated that further legislative activity was not warranted, but that further materials would be provided to the Secretariat in due course.

As regards PPPs, the recommendations emanating from a Colloquium, held in Vienna from 2-3 May 2013 pursuant to the Commission's suggestion made at its forty-fifth session (*supra*, para. 120), to consider possible future work in public-private partnerships (PPPs) will also be before the Commission for its consideration (A/CN.9/779);

(i) *Security interests*: The Commission has agreed that security interests in non-intermediated securities (in the sense of securities other than those credited in a securities account), the rights and obligations of the parties to a security agreement and specific issues arising in the context of intellectual property licensing practices should continue to be retained on the future work agenda of Working Group VI (A/67/17, paras. 105, 268 and 273), as previously recommended by the 2010 International Colloquium on Security Interests (www.uncitral.org/uncitral/en/commission/colloquia_security.html).

Table 2

Summary of planned and possible future legislative activity

<i>Subject area</i>	<i>Proposal</i>	<i>Planned or possible future work</i>	<i>Other relevant subject areas</i>
Arbitration	- Arbitrability; Revision of the Notes on Organizing Arbitral Proceedings	Planned	–
	- Multiple, concurrent proceedings in the field of investment arbitration; Dispute boards	Possible	
Commercial Fraud	Conclusions of informal meeting to be considered	–	
Electronic commerce	Identity management; single Windows; mobile commerce	Possible	–
Insolvency	Centre of main interests in the enterprise group context (including international aspects such as jurisdiction, access and recognition); directors' obligations in the group context	Planned	
International contract law	Broad proposal on international contract law	Possible	–
Microfinance/creating an enabling legal environment for MSMEs	Legal aspects of an enabling environment for MSMEs, e.g. corporate structure, dispute resolution, electronic transfers, access to credit and insolvency	Possible	Arbitration/ conciliation, insolvency, security interests, E-commerce
ODR	Guidelines and related issues; substantive legal principles; cross-border enforcement mechanism	Possible	Arbitration/ conciliation, E-commerce

<i>Subject area</i>	<i>Proposal</i>	<i>Planned or possible future work</i>	<i>Other relevant subject areas</i>
Public Procurement	Sanctions-related issues	Possible	Arbitration/conciliation
PPPs	Development of a Model Law or Legislative Guide ⁵	Possible	Arbitration/conciliation
Security interests ⁶	- Preparation of a Model Law on Secured Transactions	Planned	Insolvency
	- Non-intermediated securities; party rights; intellectual property	Possible	

B. Activities to support the adoption and use of UNCITRAL texts

12. Reports of the activities supporting the adoption and use of UNCITRAL texts (including technical assistance; promotion of ways and means of ensuring a uniform interpretation and application of UNCITRAL texts; identifying the status of and work in promoting UNCITRAL texts; coordination and cooperation; and promoting the rule of law at the national and international levels) are included in documents A/CN.9/772, A/CN.9/773, A/CN.9/775, A/CN.9/776 and A/CN.9/777; other activities will be reported orally to the Commission.⁷ These activities are expected to continue in the coming year at approximately the same level as in the year to July 2013.

13. As noted at several places in those documents, however, the demand for such activities far exceeds the resources available in the Secretariat to meet it, even given the additional resources provided by the UNCITRAL regional office in Incheon.

14. The implications for planning of future work within UNCITRAL and its strategic direction are discussed below.

IV. Allocation of resources and prioritization

A. Level of activity and need for prioritization or alteration in working methods

15. At its forty-fifth session, the Commission stated that, "... as is clear from the above analysis, UNCITRAL cannot continue, with its existing resources, to generate legal texts at the current rate and work towards the implementation and use of all UNCITRAL texts to the extent necessary." (A/CN.9/752/Add.1, at para. 25).

⁵ The Colloquium will take place after the date of this Report. The development of a legal text on PPPs is one of the issues for discussion at the Colloquium; it is therefore included here for completeness, and the Report of the Colloquium will need to be examined for its recommendations (A/CN.9/779).

⁶ See footnote 1.

⁷ With respect to coordination activities on security interests, see provisional agenda A/CN.9/759, para. 18.

16. At the legislative level, paragraph 7 and Table 1 indicate the ongoing activities of the Working Groups, including those to be concluded at the Commission's forty-sixth session and those that are ongoing; Working Group I does not have a current legislative mandate. The Commission therefore has significant flexibility in setting its future legislative work programme. Paragraphs 10 and 11, including Table 2, set out the existing proposals for future work; the final column of the table identifies areas in which a proposal may involve issues of another subject area. More details of some of the proposals are found in the oral reports to the Commission and in the following documents: A/CN.9/785 (arbitration and conciliation); A/CN.9/763, paragraphs 13 and 14 and A/CN.9/766, paragraphs 103 and 104 (insolvency); A/CN.9/780, paragraphs 49-55 (Microfinance/Creating an enabling legal environment for MSMEs); A/66/17, paragraphs 213-214 (ODR); A/CN.9/779 (PPPs); and A/CN.9/788 (commercial fraud).

17. Clearly, six working groups cannot work on all of these activities simultaneously if UNCITRAL's current working methods are to be preserved (these methods are set out in A/CN.9/752, para. 5 and Section B), unless some of the suggestions proposed in the Strategic Direction paper are adopted (A/CN.9/752, paras. 34 and 35, and 37-40), such as (a) allocation of more than one topic to each working group, and (b) placing of greater emphasis on informal negotiations than on formal negotiations when developing texts, so that one working group could handle more than one topic within its allocated two weeks of conference time per annum.

18. In other words, UNCITRAL's legislative activity has now reached a level at which prioritization of subject-areas and/or some alteration in working methods is a necessity, even before considering the allocation of resources between legislative and other activity (a question that is addressed in section D, paras. 38-42 below).

B. Prioritization of subject areas

19. Prioritization of subject areas was discussed at the first Commission session in 1968, which concluded it was the appropriate manner of selecting topics for its work (A/7216, para. 39). At that first session the Commission also had before it a report on the progressive development of the law of international trade, submitted by the Secretary-General to the General Assembly at its twenty-first session — the session at which UNCITRAL was established (A/6396).

20. The Secretary-General's Report stated that, "in considering topics suitable for harmonization and unification, three general observations should be made. First ... harmonization is more easily achieved in technical branches of the law than in subjects closely connected with national traditions and basic principles of domestic law" (A/6396, para. 203). Examples of technical branches of the law given included transportation, international banking and arbitration.

21. The second observation was that, "the unification process is desirable per se only when there is an economic need and when unifying measures would have a beneficial effect on the development of international trade" (A/6396, para. 204).

22. The third observation was that, "in addition to their direct impact, unifying measures tend to have what is called a 'radiation' effect. This occurs when, for example, a State which is not a party to an international convention decides to apply

the principle on which the international convention is founded, or when a unifying technique used in one international instrument is subsequently made part of another.” (A/6396, para. 205).

23. At its first session, the Commission decided that it would select certain substantive topics for inclusion in its future work programme and identify certain topics for priority (A/7216, para. 34). The Report of that session does not set out the debate on prioritization on specific topics in detail, but the conclusions reflect the matters and suggested topics set out in the Report of the Secretary-General (see, also, the Strategic Direction paper, A/CN.9/752, para. 6). The Commission also stated at its first session that it would focus on short-term topics, rather than committing to all proposed topics at that session, with indications as to priority (A/7216, para. 34).

24. While there have been many developments in private international trade law since that time, the Commission may consider that those observations should continue to guide its selection of subjects.

25. The first observation underpins why UNCITRAL has not engaged in matters such as the regulation of corporate and taxation law. Instead, it has focussed on the areas set out in paragraph 20 above and others such as international sale of goods, electronic commerce, insolvency and online dispute resolution as more fully described in the Strategic Direction paper (A/CN.9/752, paras. 6 and 7).

26. The second observation, among other things, explains why UNCITRAL has taken up some subjects that are more closely connected with national traditions — such as public procurement and insolvency law. This is because such subjects have a potential beneficial effect on the development of international trade, rather than a potential benefit in terms of development of the legal and regulatory framework in a particular country alone. (In the case of public procurement, the OECD estimates that the total market value approaches 13 per cent of GDP in OECD countries and more elsewhere, the European Union indicates that international trade even within its borders is under 5 per cent of contract value, and many systems were riddled with obstacles to foreign participation before texts to remove them were issued by the World Trade Organization, the European Union, the World Bank and regional development banks, and UNCITRAL.)

27. As the Commission will be aware, the third observation has been proved in practice. Some examples include the enactment by the six States members of the Commission de la Communauté Economique et Monétaire de l’Afrique Centrale (CEMAC) of the substance of the United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (the Rotterdam Rules) without ratification of the Convention; the use by the Organisation pour l’Harmonisation en Afrique du Droit des Affaires (OHADA) of the United Nations Convention on Contracts for the International Sale of Goods (CISG) as a regional law without ratification of the Convention; and, in the context of updating e-commerce laws, the inclusion by several States of provisions of the United Nations Convention on the Use of Electronic Communications in International Contracts (ECC), without ratification of the Convention, as well as the enactment of a regional model law based on the Convention.

28. In the Strategic Direction paper, it is noted that setting priorities in UNCITRAL’s work programme requires a consideration of not only the current and

likely future scope of that programme (in terms of the resources available for its activities), but also the role and relevance of UNCITRAL both within the United Nations and in the field of international trade and commerce (A/CN.9/752/Add.1, para. 24). The Strategic Direction paper continues that “UNCITRAL’s role and relevance can be assessed by reference to the work and priorities of the United Nations, donor communities and priorities of national governments. Key developments, such as the Paris Declaration on Aid Effectiveness (2005), and major international issues of concern — anti-corruption agenda, 2008 global financial crisis, conflict/post-conflict situations — will shape the priorities of these bodies” (ibid.).

29. It is suggested that a further principle that the Commission may wish to apply when prioritizing subject areas is the extent to which work on any subject selected by the Commission would (a) accord with the priorities of these bodies and member States, and (b) enable a symbiotic approach with the activities of these bodies as set out in the notes by the Secretariat on technical assistance activities and activities to ensure coordination with the work of other organizations active in the field of international trade law undertaken since the Commission’s forty-fifth session (A/CN.9/775 and A/CN.9/776, respectively).

30. The Commission may therefore wish to apply the three observations and the matters in the preceding paragraph in selecting among the proposals in Table 2 for future legislative activity. The materials referred to in paragraph 16 above that describe the proposals in more detail may assist the Commission in assessing how they fit within its mandate and within the priorities of donor communities and national governments. Were the Commission to decide, for example, that a topic was of importance to development, but fell outside its mandate to address international trade law, the Commission might also consider recommending it to another body active in law reform for its own work programme.

31. In that regard, the Commission may also wish to balance the proposals of existing working groups for further work in their subject areas with the views of member States at a more strategic level.

32. As regards the time period over which it plans its future work, the Commission may wish to consult members of, and observers to, relevant working groups as well as the Secretariat on the likely time frame for planned and possible future legislative activity, so as to ensure that its planning accords with the life cycle of a text (see the Strategic Direction paper on that topic, paras. 6-62). In addition, the Commission may consider that some of the future work proposals, whether possible or planned, should be addressed sooner, and others later — in other words, that it addresses prioritization in terms both of importance and time frame.

33. The Commission may also wish to consider whether the priority it sets among subjects for legislative activity should apply also to activities supporting the adoption and use of UNCITRAL texts and its broader work programme, or whether other considerations should also apply in that context. Some considerations on the possible scope of activities to support the adoption and use of UNCITRAL texts are discussed in paragraphs 39 and 41 below.

C. Possible need for alteration of working methods

34. The Commission may wish to bear in mind the issues raised regarding working methods in the Strategic Direction paper, including the number of sessions of working groups per year, documentation and ways of working (paras. 34-40). In summary, that section of the Strategic Direction paper notes the importance of the consensus-based methodology of the Commission's work in ensuring the acceptability of its texts, but that servicing six working groups was stretching the Secretariat's resources to the maximum; undertaking some work informally; and the question of reducing documentation.

35. One option noted above would be for each working group to take on more than one topic at a time: one meeting per annum could be reserved for one topic, and the second meeting for another (thus preserving the allotted conference time for working group sessions). This approach would facilitate legislative activity on more than six topics at a time. However, the Commission may consider that that approach would also stretch the Secretariat's resources beyond breaking point.

36. Another option would be to increase the proportion of informal to formal negotiations, with some texts being developed outside the working group structure and presented directly to the Commission (as has been done previously, as noted in the Strategic Direction paper, para. 33). Indeed, in its first session, the Commission stated that the balance between informal and formal negotiations should be assessed in the light of the nature of the topic concerned (A/7216, para. 43). However, as the Strategic Direction paper also notes, the risk is that the universal representation that also supports the acceptability of UNCITRAL texts might thereby be compromised (paras. 35 and 37-40).

37. The Commission may also wish to consider ways of streamlining documentation, as suggested in the Strategic Direction paper (A/CN.9/752, para. 36). Issues relating to the translation of UNCITRAL documents and texts are considered in paragraphs 45-47 below.

D. Prioritization within UNCITRAL's overall work programme

38. While the Strategic Direction paper notes that the comparative advantage of UNCITRAL (as compared with other organizations working in similar areas) lies in its legislative working methods as described (A/CN.9/752, paras. 35 and 37-40), the Commission indicated at its forty-fifth session that it would consider the suggestions in that paper to promote an integrated approach to UNCITRAL's range of activities, beginning with the development of a proposed legislative project and carrying through to technical assistance and monitoring of the use and adoption of the resulting text. Indeed, as the Strategic Direction paper points out, the activities supporting the enactment and use of UNCITRAL texts give UNCITRAL's legislative work meaning and relevance: "without those activities, the legislative texts remain little more than reference tools" (A/CN.9/752, para. 41).

39. With its current and anticipated level of resources and the existing balance between legislative activity and activity on other aspects of the mandate, the Secretariat is likely to be able to continue to adjust its current level of activity to support the adoption and use of UNCITRAL texts. Nonetheless, it is clear that the Secretariat cannot undertake further activities, such as those suggested as a possible basis for a work programme promoting the rule of law at the national and international levels, which the Commission indicated it wished to consider at this session (A/67/17, para. 230). These activities included, for example:

(a) Supporting the adoption and use of those existing texts not currently supported by an existing working group or other legislative work (for a complete list of texts as at 29 May 2012, see Annex to the Strategic Direction paper, A/CN.9/752/Add.1);

(b) Developing practice guidelines or training materials for judges working in cross-border areas of the law, beyond what was done by Working Group V (Insolvency Law) with regard to cross-border insolvency;

(c) Formalizing networking by creating a list of participants (“listserv”) that would allow experts to “meet” and exchange information, as well as help States that needed assistance to identify experts in the field. The example was given of a similar mechanism that had been launched by the Hague Conference on Private International Law;

(d) Further developing the cooperation of UNCITRAL with the World Bank on elaborating the links between economic development and trade law, and the role of trade law in helping States attract foreign trade and investment, and enhancing the visibility and integration of trade law within the broader United Nations rule of law agenda, the benefits of which are described in the Strategic Direction paper (A/CN.9/752/Add.1, paras. 17-20);

(e) Monitoring experience in the adoption and use of UNCITRAL texts, which can be used both to indicate where revision or modernization may be necessary, and to improve the efficiency of future legislative work; and

(f) Identifying existing resources and publications of other bodies active in relevant law reform and development, which might be made available to support the implementation, interpretation and use of UNCITRAL texts, and establishing mechanisms for ongoing collaboration with such other bodies.

40. The Commission has not yet considered whether and how to mobilize additional and external resources for its activities, such as through joint activities and cooperation with other bodies, as raised in the Strategic Direction paper (A/CN.9/752/Add.1, para. 23). Despite its vastly increased workload and output, as that paper points out, the Secretariat currently operates with more or less the same level of human and other resources in real terms that it was allocated shortly after it was established (A/CN.9/752, para. 25); that is 14 professional posts and 7 general service posts, plus 1 professional post and 1 general service post to support the RCAP in Incheon. Indeed, a consequence for the Secretariat of budget cuts throughout the United Nations is that one of the general service posts has been identified for abolition as of 1 January 2014, with the consequence that ensuring the ongoing publication of the UNCITRAL Yearbook will prove difficult. It is also

assumed that the current financial backdrop is such that the availability of external resources will be limited.

41. Furthermore, experience with existing technical assistance and coordination projects indicates that external support provided, for example, by financing Secretariat travel to events organised by third parties to promote the adoption and use of UNCITRAL texts, may create additional pressure on the Secretariat to dedicate appropriate resources to the implementation of such projects.

42. The Commission may therefore wish to consider, when assessing the usefulness of the activities set out in paragraph 39 above, whether the current balance between them and legislative activities is optimal, given current resources. In that regard, the Commission may wish to assess whether the continuing servicing of six working groups is appropriate. Reducing the number of working groups involved on legislative activity to five, for example, would allow the Secretariat to devote more of its time to these other activities.

E. Related questions

1. Working group and Commission support for activities promoting the adoption and use of UNCITRAL texts

43. The Strategic Direction paper suggests that setting aside time at UNCITRAL meetings for the sharing of information by States on initiatives they were undertaking to promote UNCITRAL instruments would, inter alia, make States that might be seeking assistance aware of initiatives that they could access for their benefit. The Commission reserved that topic for possible discussion at its forty-sixth session (A/67/17, para. 230).

44. Including such a time at the end of a working group session before consideration of the report of that session, could both improve the efficiency of that session, and allow States to demonstrate their commitment to supporting the adoption and use of UNCITRAL texts. That type of discussion, which does not require negotiation or deliberation, would not need to be recorded in the report of the relevant session. A similar approach could be taken, as appropriate, for sessions of the Commission.

2. Issuing documents in all official UNCITRAL languages

45. The Commission may be aware of the increasing difficulties of ensuring documents are issued simultaneously in all official United Nations languages. UNCITRAL documents consume a significant portion of resources allocated for translation at the United Nations Office at Vienna. The increasing difficulties reflect, in part, the increase in volume of UNCITRAL documents noted in the Strategic Direction paper (A/CN.9/752, para. 36) and in part other pressures on the language sections concerned. Publications issued by UNCITRAL are particularly affected on the basis that they are not prepared for a specific meeting and thus do not have a firm deadline by which they must be issued. In one recent case, the final Spanish language version of a lengthy UNCITRAL text is unlikely to be published until some two years after its adoption by the Commission.

46. The Commission may also wish to note that the resources available for the translation of material for the website are increasingly limited.

47. The Commission may therefore wish to consider alternative mechanisms to ensure that the policy goal behind the issue of documents in all official languages — the wide understanding of UNCITRAL texts — can be fulfilled. Such mechanisms may include the use of external translators to provide unofficial translations of original texts and/or greater use of United Nations working languages only for some documents. The Commission may also wish to assist the Secretariat in identifying external sources and, as necessary, financial support for such purposes.
