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## United Nations Commission on International Trade Law

Working Group VI (Security Interests)

Fifth session

New York, 22-25 March 2004

Second joint session of Working Groups V

(Insolvency Law) and VI (Security Interests)

New York, 26 and 29 March 2004

### I. Provisional agenda for fifth session of Working Group VI

1. Election of officers.
2. Adoption of the agenda.
3. Preparation of a legislative guide on secured transactions.
4. Other business.
5. Adoption of the report.

#### Notes on the provisional agenda

1. At its present session, the Working Group continues its work on the development of an efficient legal regime for security rights in goods involved in a commercial activity, including inventory.<sup>1</sup> The Commission's decision to undertake work in the area of secured credit law was taken in response to the need for an efficient legal regime that would remove legal obstacles to secured credit and could thus have a beneficial impact on the availability and the cost of credit.<sup>2</sup>

2. At its thirty-third session (2000), the Commission discussed a report prepared by the Secretariat on issues to be addressed in the area of secured credit law (A/CN.9/475). At that session, the Commission agreed that secured credit law was an important subject and had been brought to the attention of the Commission at the right time, in particular in view of its close link with the work of the Commission on insolvency law. It was widely felt that modern secured credit laws could have a significant impact on the availability and the cost of credit and thus on international trade. It was also widely felt that modern secured credit laws could alleviate the inequalities in the access to lower-cost credit between parties in developed countries and parties in developing countries, and in the share such parties had in the benefits



of international trade. A note of caution was struck, however, in that regard to the effect that such laws needed to strike an appropriate balance in the treatment of privileged, secured and unsecured creditors so as to become acceptable to States. Furthermore, it was stated that, in view of the divergent policies of States, a flexible approach aimed at the preparation of a set of principles with a guide, rather than a model law, would be advisable.<sup>3</sup>

3. At its thirty-fourth session (2001), the Commission considered another report prepared by the Secretariat (A/CN.9/496) and agreed that work should be undertaken in view of the beneficial economic impact of a modern secured credit law. It was stated that experience had shown that deficiencies in that area could have major negative effects on a country's economic and financial system. It was also stated that an effective and predictable legal framework had both short- and long-term macroeconomic benefits. In the short term, namely, when countries faced crises in their financial sector, an effective and predictable legal framework was necessary, in particular in terms of enforcement of financial claims, to assist the banks and other financial institutions in controlling the deterioration of their claims through quick enforcement mechanisms and to facilitate corporate restructuring by providing a vehicle that would create incentives for interim financing. In the longer term, a flexible and effective legal framework for security rights could serve as a useful tool to increase economic growth. Indeed, without access to affordable credit, economic growth, competitiveness and international trade could not be fostered, with enterprises being prevented from expanding to meet their full potential.<sup>4</sup> As to the form of work, the Commission considered that a model law would be too rigid and noted the suggestions made for a set of principles with a legislative guide that would include legislative recommendations.<sup>5</sup>

4. At its first session (New York, 20-24 May 2002), the Working Group considered chapters I to V and X (A/CN.9/WG.VI/WP.2 and Addenda 1 to 5 and 10) of the first preliminary draft guide on secured transactions, prepared by the Secretariat. At that session, the Working Group requested the Secretariat to prepare revised versions of those chapters (see A/CN.9/512, para. 12). At that session, the Working Group also considered suggestions for the presentation of modern registration systems in order to provide the Working Group with information necessary to address concerns expressed with respect to registration of security rights in movable property (see A/CN.9/512, para. 65). At the same session, the Working Group agreed on the need for coordination with Working Group V (Insolvency Law) on matters of common interest and endorsed the conclusions of Working Group V with respect to those matters (see A/CN.9/512, para. 88).

5. At its thirty-fifth session (2002), the Commission considered the report of the first session of the Working Group (A/CN.9/512). It was widely felt that the legislative guide was a great opportunity for the Commission to assist States in adopting modern secured transactions legislation, which was generally thought to be a necessary, albeit not sufficient in itself, condition for increasing access to low-cost credit, thus facilitating the cross-border movement of goods and services, economic development and ultimately friendly relations among nations. In that connection, the Commission noted with satisfaction that the project had attracted the attention of international, governmental and non-governmental organizations and that some of those took an active part in the deliberations of the Working Group. The comments submitted to Working Group VI in particular by the European Bank on

Reconstruction and Development (A/CN.9/WG.VI/WP.4) were mentioned as an indication of that interest. At that session, the Commission also felt that the timing of the Commission's initiative was most opportune both in view of the relevant legislative initiatives under way at the national and the international level and in view of the Commission's own initiative in the field of insolvency law. After discussion, the Commission confirmed the mandate given to the Working Group at its thirty-fourth session to develop an efficient legal regime for security rights in goods, including inventory. The Commission also confirmed that the mandate of the Working Group should be interpreted widely to ensure an appropriately flexible work product, which should take the form of a legislative guide.<sup>6</sup>

6. At its second session (Vienna, 17-20 December 2002), the Working Group considered chapters VI, VII and IX (A/CN.9/WG.VI/WP.2 and Addenda 6, 7 and 9) of the first preliminary draft guide on secured transactions, prepared by the Secretariat. At that session, the Working Group requested the Secretariat to prepare revised versions of those chapters (see A/CN.9/531, para. 15). In conjunction with that session and in accordance with suggestions made at the first session of the Working Group (see A/CN.9/512, para. 65), an informal presentation of the registration systems of security rights in movable property of New Zealand and Norway was held. Immediately before that session, Working Groups V (Insolvency Law) and VI (Security Interests) held their first joint session (Vienna, 16-17 December 2002), during which the revised version of former chapter X (new chapter IX; A/CN.9/WG.VI/WP.6/Add.5) on insolvency was considered. At that session, the Secretariat was requested to prepare a revised version of that chapter (see A/CN.9/535, para. 8).

7. At its third session (New York, 3-7 March 2003), the Working Group considered chapters VIII, XI and XII of the first preliminary draft guide on secured transactions (A/CN.9/WG.VI/WP.2/Add.8, A/CN.9/WG.VI/WP.2/Add.11 and A/CN.9/WG.VI/WP.2/Add.12) and chapters II and III (paras. 1-33) of the second version of the draft Guide (A/CN.9/WG.VI/WP.6/Add.2 and A/CN.9/WG.VI/WP.6/Add.3) and requested the Secretariat to prepare revised versions (A/CN.9/532, para. 13).<sup>7</sup>

8. At its thirty-sixth session in 2003, the Commission had before it the reports of Working Group VI (Security Interests) on the work of its second and third sessions (A/CN.9/531 and A/CN.9/532), as well as the report of the first joint session of Working Group V and VI (A/CN.9/535). The Commission noted with appreciation the progress made by the Working Group in its work.

9. At its fourth session (Vienna, 8-12 September 2003), the Working Group considered chapters IV (Creation), IX (Insolvency), I (Introduction), II (Key Objectives) and paragraphs 1 to 41 of chapter VII (Priority) and requested the Secretariat to prepare revised versions of those chapters (see A/CN.9/543, para. 15).

10. The Working Group is composed of all States members of the Commission: Austria, Benin, Brazil, Burkina Faso, Cameroon, Canada, China, Colombia, Fiji, France, Germany, Honduras, Hungary, India, Iran (Islamic Republic of), Italy, Japan, Kenya, Lithuania, Mexico, Morocco, Paraguay, Romania, Russian Federation, Rwanda, Sierra Leone, Singapore, Spain, Sudan, Sweden, Thailand, The former Yugoslav Republic of Macedonia, Uganda, United Kingdom of Great Britain and

Northern Ireland, United States of America and Uruguay (alternating annually with Argentina).

**Item 1. Election of officers**

11. The Working Group, in accordance with previous practice, may wish to elect a Chairman and a Rapporteur.

**Item 3. Preparation of a legislative guide on secured transactions**

12. The Working Group will have before it, and may wish to use as a basis for its deliberations, notes by the Secretariat entitled: "Draft legislative guide on secured transactions" (A/CN.9/WG.VI/WP.9 and Addenda 1 (Approaches to security), 2 (Publicity and filing), 3 (Priority), 4 (Pre-default rights and obligations), 7 (Conflict of laws) and 8 (Transition), as well as A/CN.9/WG.VI/WP.11 and Addenda 1 (Default and enforcement) and 2 (Insolvency). The electronic versions of these documents are or will be available also through the website of the UNCITRAL secretariat (<http://www.uncitral.org>).

13. The following documents will be made available at the session:

(a) Report of Working Group VI (Security Interests) on the work of its fourth session (A/CN.9/543);

(b) Report of Working Group VI (Security Interests) on the work of its third session (A/CN.9/532)

(c) Report of Working Group VI (Security Interests) on the work of its second session (A/CN.9/531);

(d) Report of Working Groups V (Insolvency Law) and VI (Security Interests) on the work of their first joint session (A/CN.9/535);

(e) Report of Working Group VI (Security Interests) on the work of its first session (A/CN.9/512);

(f) Report of the Secretary-General: draft legislative guide on secured transactions (A/CN.9/WG.VI/WP.9/Add.6);

(g) Report of the Secretary-General: draft legislative guide on secured transactions (A/CN.9/WG.VI/WP.6 and Addenda 1 through 5); and

(h) Report of the Secretary-General: draft legislative guide on secured transactions (A/CN.9/WG.VI/WP.2 and Addenda 1 through 12); and

(i) Report of the Secretary-General: draft legislative guide on insolvency law (A/CN.9/WG.V/WP.70).

**Item 4. Other business**

14. The sixth session of the Working Group is scheduled to take place in Vienna from 30 August to 3 September 2004 (five days), these dates being subject to confirmation by the Commission at its thirty-seventh session to be held in New York from 14 June to 2 July 2004.

**Item 5. Adoption of the report**

15. The Working Group may wish to adopt, at the close of its session, a report for submission to the thirty-seventh session of the Commission in 2004.

**Scheduling of meetings**

16. The fifth session of the Working Group will be held at the United Nations Headquarters from 22 to 25 March 2004, immediately before the second joint session of Working Groups V and VI and the thirtieth session of Working Group V. There will be four working days available for consideration of the agenda items. Meeting hours will be from 1000 to 1300 and from 1500 to 1800. The Working Group is expected to hold substantive deliberations during the first seven half-day meetings (that is from Monday to Thursday morning), with a draft report on the entire period being prepared by the Secretariat for adoption at the eighth and last meeting of the Working Group (on Thursday afternoon). The draft report covering the discussion on Thursday morning will be presented by the Secretariat orally in a summary form.

**II. Provisional agenda for second joint session of Working Groups V (Insolvency Law) and VI (Security Interests)**

1. Election of officers.
2. Adoption of the agenda.
3. Consideration of the treatment of security rights in insolvency proceedings.
4. Other business.
5. Adoption of the report.

**Notes on the provisional agenda**

17. At its thirty-fifth session (2002), the Commission noted with particular satisfaction the efforts undertaken by Working Group VI (Security Interests) and Working Group V (Insolvency Law) towards coordinating their work on a subject of common interest such as the treatment of security interests in the case of insolvency proceedings. Strong support was expressed for such coordination, which was generally thought to be of crucial importance for providing States with comprehensive and consistent guidance with respect to the treatment of security interests in insolvency proceedings. The Commission endorsed a suggestion made to revise chapter X of the draft legislative guide on secured transactions in light of the core principles agreed by Working Groups V and VI (see A/CN.9/511, paras. 126-127 and A/CN.9/512, para. 88). The Commission also endorsed a suggestion for closer coordination of the work of the two Working Groups, including a suggestion to hold a one-day joint meeting of the two Working Groups at their upcoming sessions.<sup>8</sup>

18. At their first joint session (Vienna, 16-17 December 2002), Working Group V and Working Group VI considered the treatment of security rights in insolvency proceedings on the basis of chapter IX, Insolvency, of the draft legislative guide on secured transactions (A/CN.9/WG.VI/WP.6/Add.5). At that session, the Secretariat was requested to prepare a revised version of chapter IX, Insolvency (see A/CN.9/535, para. 8).

19. At its thirty-sixth session (2003), the Commission expressed its appreciation to Working Group V and Working Group VI for the progress made during their first joint session on matters of common interest and noted with satisfaction the plans for further joint meetings of experts.<sup>9</sup>

**Item 1. Election of officers**

20. The Working Groups may wish to elect a Chairman and a Rapporteur of the joint session.

**Item 3. Consideration of the treatment of security rights in insolvency proceedings**

21. The Working Groups will have before them and may use as basis for their consideration the revised chapter on insolvency of the draft guide on secured transactions (A/CN.9/WG.VI/WP.11/Add.2), the draft legislative guide on insolvency law (A/CN.9/WG.V/WP.70) together with a summary outlining the treatment of secured creditors in the draft legislative guide on insolvency law (A/CN.9/WG.V/WP.71).

**Item 5. Adoption of the report**

22. The Working Groups may wish to adopt, at the close of their joint session, a report for submission to the thirty-seventh session of the Commission in 2004.

**Scheduling of meetings**

23. The joint session of Working Groups V and VI will be held at the United Nations Headquarters on 26 March 2004, with the adoption of the report taking place on 29 March 2004, in the afternoon. Meeting hours will be from 1000 to 1300 and from 1500 to 1800. The Working Groups are expected to hold substantive deliberations on Friday morning and afternoon, with a draft report being prepared by the Secretariat for adoption by the Working Groups on Monday, 29 March 2004, in the afternoon.

*Notes*

<sup>1</sup> *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 17 (A/56/17)*, para. 358.

<sup>2</sup> *Ibid.*, *Fifty-fifth Session, Supplement No. 17 (A/55/17)*, para. 455, and *Fifty-sixth Session, Supplement No. 17 (A/56/17)*, para. 347.

<sup>3</sup> *Ibid.*, *Fifty-fifth Session, Supplement No. 17 (A/55/17)*, para. 459.

<sup>4</sup> *Ibid.*, *Fifty-sixth Session, Supplement No. 17 (A/56/17)*, para. 351.

<sup>5</sup> *Ibid.*, para. 357.

<sup>6</sup> *Ibid.*, *Fifty-seventh Session, Supplement No. 17 (A/57/17)*, paras. 202-204.

<sup>7</sup> *Ibid.*, *Fifty-eighth Session, Supplement No. 17 (A/58/17)*, paras. 215-222.

<sup>8</sup> *Ibid.*, *Fifty-seventh Session, Supplement No. 17 (A/57/17)*, para. 203.

<sup>9</sup> *Ibid.*, *Fifty-eighth Session, Supplement No. 17 (A/58/17)*, para. 217.