



General Assembly

Distr.: General

29 August 2017

Original: English

United Nations Commission on International Trade Law Forty-eighth session

Summary record (partial) of the 1013th meeting

Held at the Vienna International Centre, Vienna, on Thursday, 9 July 2015, at 2 p.m.

Chair: Mr. Reyes Villamizar (Colombia)

Contents

Agenda item

18 Work programme of the Commission (*continued*)

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent as soon as possible to the Chief, Conference Management Service, room D0771, Vienna International Centre.

Corrected records will be reissued electronically on the Official Document System of the United Nations (<http://documents.un.org>).

V.15-05186 (E) 060917 070917



Please recycle The recycling symbol, consisting of three chasing arrows forming a triangle.

The meeting was called to order at 2.15 p.m.

Work programme of the Commission (*continued*)
([A/CN.9/841](#), [A/CN.9/850](#), [A/CN.9/854](#), [A/CN.9/856](#) and
[A/CN.9/858](#); [A/CN.9/WG.I/WP.83](#);
[A/CN.9/WG.IV/WP.133](#))

Electronic commerce (continued)

1. **Ms. Masterton** (United Kingdom) said that her delegation supported the Secretariat's suggestion, made at the previous meeting, that the Secretariat should review the three proposals set out in documents [A/CN.9/854](#), [A/CN.9/856](#) and [A/CN.9/WG.4/WP.133](#) over the course of the next year with a view to making a recommendation to the Working Group with regard to the order of priority of the topics concerned. In view of the comments made by other delegations, it seemed that those who were in support of work on identity management would also support clarification of the scope of that work before a mandate was given. The Secretariat's review would help the Commission to reach that more specific objective and, importantly, would clarify how those issues might overlap or complement one another. There was no doubt that taking the time at the current stage to clarify the mandate of the Working Group would save time in the future.

2. **Mr. Lapiere** (Observer for Belgium) said that his delegation likewise supported the Secretariat's suggestion. Drawing attention to paragraph 22 of document [A/CN.9/854](#), he requested that consideration be given to the proposal set out in that paragraph to establish an informal group of experts to support the Secretariat in drafting legislative proposals relating to identity management and trust services, bearing in mind the Secretariat's limited budgetary resources.

3. **Ms. Sabo** (Canada) said it was her understanding that the Working Group could already begin discussing some of the proposed topics at its fifty-fourth or fifty-fifth session. It would be very useful for the Working Group to do so as soon as possible. It should be left to the Secretariat to decide whether to establish an expert group as proposed.

4. **Mr. Bana** (International Bar Association) said that his delegation fully supported the three proposals and stood ready to participate in and contribute to the preparatory work to be undertaken.

5. **The Chair** said he took it, on the basis of the comments made, that the Commission wished to accept

the Secretariat's suggestion as to the manner in which Working Group IV should proceed. The Secretariat could prepare a report on its preparatory work on the three proposed topics for consideration by the Working Group at its fifty-fifth session, in May 2016.

6. *It was so agreed.*

Online dispute resolution (continued)

7. **Mr. Kim** (United States of America) said that it was clear from consultations with other delegations that there was no consensus as to how to proceed with regard to the draft procedural rules for online dispute resolution, but there was reluctance to continue that work indefinitely without result. There appeared to be support for the proposal presented by his delegation, together with the delegations of Colombia and Honduras, in document [A/CN.9/858](#) for the drafting of notes on the organization of online dispute resolution proceedings, which would provide a foundation for the Working Group to achieve practical results within a short period of time. However, that tentative agreement was subject to certain caveats.

8. The first was that the Commission should instruct the Working Group to continue its work on elaborating a non-binding descriptive document reflecting elements of an online dispute resolution process, on which elements the Working Group had previously reached consensus, excluding the question of the nature of the final stage of the online dispute resolution process, arbitration or non-arbitration. The second was that there should be a clear time limit of one year, after which the Working Group must conclude its work.

9. In addition, in order to ensure that those requirements were fulfilled, the Commission would need to address the timing of the Working Group's sessions. He therefore proposed swapping the tentative dates of the Working Group's forthcoming session with those of the forty-eighth session of Working Group V, meaning that the next session of Working Group III would be held from 14 to 18 December 2015.

10. **Mr. Marquez García** (Colombia), expressing support for those comments, said that it was important for the Working Group to continue its work for only a limited time. If the proposal was accepted, it would be helpful to move the dates of the Working Group's session as proposed in order to allow sufficient time to prepare the draft document.

11. **Mr. Sorieul** (Secretary of the Commission) cautioned that the likely consequence of the suggested change in dates of sessions was that Working Group V would face the same problem of having insufficient time to prepare for its next session. A possible solution would be to schedule just one session of Working Group III for the spring of 2016 and to use the session time available in October 2015 for the proposed colloquiums or expert group meetings on the topics to be considered by Working Group IV. Consequently, a number of informal meetings might be required.

12. **Ms. Clift** (Secretariat) said that since Working Group V had only recently held its forty-seventh session, it would indeed be unrealistic to prepare documents in time for its next session if that session was held in October. Moreover, that Working Group was facing difficulties in finding a way forward with regard to one of the topics it was considering and a number of delegations were working on a proposal intended to resolve those difficulties, for which more time was needed.

13. **Mr. Maradiaga** (Honduras), expressing support for the proposal presented by the representative of the United States, said that Working Group III should hold its next session in December 2015, given the need to achieve concrete results within a reasonable period. During the intervening period, information and communications technologies could be used to exchange and circulate proposals and specific information in order to facilitate the Working Group's work.

14. **Mr. Zhang** (China), supported by **Mr. Leong** (Singapore), said that his delegation also supported the proposal presented. The Working Group should use its forthcoming session to work on a preliminary draft that built on the proposals already made by delegations, given that those proposals were the product of significant work. Depending on the progress of the discussions, it could then be decided how the Working Group should proceed at its subsequent sessions. The Working Group should be given an open mandate, and the text should be formulated solely on the basis of the work of the Working Group.

15. **Ms. Sabo** (Canada) said that it would be helpful if alternative dates in late November or early December could be found for the Working Group's session.

16. **Mr. Ngugi** (Kenya), welcoming the proposal presented by the United States representative, said that

the Working Group should hold two sessions to cover the proposed work, in order to take full advantage of the proposed maximum period of one year for that work.

17. **Mr. Decker** (Observer for the European Union) said that his delegation joined others in supporting the proposal of the United States representative, including with regard to the suggested time limit of one year for the work to be undertaken, especially in view of the need for clarity with regard to the Working Group's mandate. In that regard, he welcomed the efforts made by delegations thus far to prepare compromise proposals in the interests of facilitating the Working Group's work and the achievement of consensus, and highlighted the importance of those proposals in guiding the Working Group's deliberations over the coming year. Since the Secretariat should be given sufficient time to prepare the documentation for the forthcoming session, his delegation supported the suggestion made by the representative of Canada that time should be allocated in early December rather than in October. However, his delegation could also accept the suggestion that only one session of Working Group III should be held during the coming year.

18. **Ms. Jamschön Mac Garry** (Argentina), welcoming the proposal made by the representative of the United States and seconding the view that the Working Group's mandate should be clearly defined, particularly in view of the time limit proposed, requested clarification with regard to the type of text envisaged as the product of the proposed work, such as recommendations, notes, model provisions or a practical guide.

19. **Mr. Kim** (United States of America) said that his delegation had envisioned a technical and explanatory document that would reflect the progress that had already been made on some of the more technical issues regarding online dispute resolution, such as independent neutrals and due process requirements.

20. **Mr. Schoefisch** (Germany) said that, in view of the difficulties that had been faced by the Working Group over the years, it was very useful to have a clear-cut mandate. His delegation therefore supported the proposal made by the representative of the United States. A time limit was essential given the protracted nature of the Working Group's discussions thus far, and it was important that the text to be prepared should be ready for consideration by the Commission at its

forty-ninth session. If no result was reached, the work of the Working Group should come to an end.

21. His delegation also supported the suggestion that the Working Group should meet in late November or in December so that the Secretariat and delegations would have sufficient time to prepare, and agreed that, in order to avoid disrupting the work of Working Group V by using the dates reserved for that Group's session, alternative dates should be found.

22. **Ms. Chobisara** (Thailand) said that, while her delegation welcomed the proposal, the Working Group should have an open mandate with regard to the form of the text to be developed.

23. **Mr. Lee** (Republic of Korea) said that his delegation supported the proposal, but the forthcoming meeting of the Working Group should not adversely affect the work of the other working groups. The Working Group's mandate should be very precise in order to avoid an impasse similar to that previously encountered, and to ensure a tangible outcome.

24. **Ms. Laborte-Cuevas** (Philippines) expressed support for the views expressed in favour of an open mandate for the Working Group, so that all of the proposals made to date could be discussed.

25. **Ms. Strasser** (Austria) said that she agreed with the comments made by the representatives of the Republic of Korea and Germany.

26. **Mr. Bellenger** (France) said he concurred with previous speakers that the Commission would be unable to produce a text within one or two sessions unless it was given a precise and detailed mandate.

27. **Mr. Mita** (Japan) said that his delegation joined others in supporting the proposal made by the United States representative.

28. **Mr. Leinonen** (Observer for Finland), **Ms. Laursen** (Denmark), **Ms. Bereczki** (Hungary) and **Mr. Matter** (Switzerland) expressed support for the proposal and for the view that the Working Group should be given a clear mandate in order to ensure that its discussions were focused.

29. **Mr. Wijnen** (Observer for the Netherlands) said that his delegation likewise supported the proposal and, while in favour of holding the next Working Group session in December, could also accept the suggestion of a single session during the coming year.

30. **Ms. Faber** (Observer for Luxembourg), joining previous speakers in supporting the proposal, said she agreed that the postponement of the session of Working Group III to the end of the year should not adversely affect the other working groups, particularly Working Group V, which should meet on the dates originally scheduled for its session.

31. **Ms. Malaguti** (Italy) expressed appreciation for the efforts made to reach agreement in the form of the United States delegation's proposal, which had her delegation's support and would facilitate the efficiency of the Commission's work in view of the many topics that it was to take up.

32. **Mr. Ahmed** (Observer for Egypt) said that his delegation also supported the proposal and considered that a clear mandate for the Working Group would ensure efficiency and adherence to the time limit that had been proposed. The session of Working Group III should be held at the end of the year, but that should not affect the work of other working groups.

33. **Mr. Chan** (Singapore) said that the importance of preparatory work for the coming session of the Working Group should be underscored. Given the tremendous burden that that work would place on the Secretariat, and in order to ensure that the discussions were as productive as possible and did not take longer than the two sessions allocated to the Working Group, it might be useful for all delegations that had views on the proposals made by the Secretariat in terms of the structure and content of the text to be developed to present those views for consideration well before the session. That would require the Secretariat's report on its preparatory work to be circulated in advance so that delegations had sufficient time to provide their comments, which would facilitate the discussions and save time. The limited duration of the Working Group's mandate must be borne in mind throughout the course of the work, and the discussions must be as efficient, focused and constructive as possible.

34. **The Chair** said he took it that the Commission wished to accept the proposed programme of work for Working Group III on the understanding that that work would take into account the various earlier proposals and would be subject to a time limit of one year, or no more than two Working Group sessions, and that the Secretariat would seek alternative dates for the Working Group's thirty-second session.

35. *It was so decided.*

Insolvency

36. **Ms. Clift** (Secretariat), drawing attention to paragraph 15 (c) of document [A/CN.9/841](#), said that, since the Commission's previous session, the Secretariat had monitored developments in international work on the topic of financial contracts as requested, and had reported on those developments in document [A/CN.9/851](#), paragraphs 1-5. Referring to paragraph 4 of that document, she noted that the World Bank's revision of Principle 10.4 of its Principles for Effective Creditor Rights and Insolvency Systems had been approved insofar as those principles related to the treatment of financial contracts in insolvency. Consequently, the World Bank principles and the recommendations of the UNCITRAL Legislative Guide on Insolvency Law (2004), which together formed the two elements of the unified standard on effective creditor rights and insolvency, were now inconsistent, which might lead to uncertainty for States that used the Guide as a tool for law reform. In view of the concern that the Guide no longer reflected best practice with respect to the treatment of financial contracts in insolvency, the Secretariat suggested, as outlined in paragraph 5 of document [A/CN.9/851](#), that an informal study should be undertaken to examine the implications of the recent developments described for the relevant recommendations of the Guide, with a view to determining the extent to which those recommendations might need to be revised. On the basis of that study, the Secretariat would either submit draft revisions to Working Group V if those revisions were only minor or, if more work was required, submit a report to the Commission for consideration at its forty-ninth session.

37. **Ms. Maslen** (World Bank) expressed support for the Secretariat's proposal that the Working Group should consider current best practice in the treatment of financial contracts in insolvency and update the UNCITRAL Insolvency Law Guide accordingly. The Guide was an invaluable tool for the provision of technical assistance to developing member countries of the World Bank that requested the Bank's help in reforming legal and regulatory frameworks on business insolvency. An updated version of the Guide would ensure enhanced synergies and consistency with the World Bank's publications and ongoing work on insolvency.

38. **Ms. Vicandi Plaza** (Spain), referring to paragraphs 6-13 of document [A/CN.9/851](#), said that the restructuring of sovereign debt should not be part of the future work of Working Group V. The Secretariat should therefore not be requested to monitor developments in international work in that area. Within the general framework of the United Nations, the International Monetary Fund (IMF) was the agency responsible for the analysis and monitoring of mechanisms in relation to the restructuring of the sovereign debt of States. Moreover, through its resolution [67/247](#), the General Assembly had requested an ad hoc committee to analyse that subject within the framework of the United Nations Conference on Trade and Development (UNCTAD), and the Commission was already working on a large number of other subjects. Thus, rather than duplicating the work on the topic that was being carried out in other forums, the Commission should exchange information, procedures and experience relating to the subjects already on its agenda, and use its human and financial resources in an effective and balanced manner, establishing priorities and a strategic approach in order to make optimal use of those resources.

39. **Mr. Kim** (United States of America) said that his delegation did not support the proposal concerning work in the area of insolvency treatment of financial contracts, since Working Group V already had a full agenda, including high-priority and complex topics, and even after concluding its current work would need to consider the important question of what additional work was needed in order to address insolvency issues relating to micro-, small and medium-sized enterprises. The time available for the consideration of those important topics alone was insufficient. No study was needed in order to ascertain the amount of work required to review the relevant recommendations of the UNCITRAL Insolvency Law Guide and ensure consistency with current international best practice, since it was clearly likely that it would take the Working Group multiple sessions to address that topic. The development of the Principles on the Operation of Close-Out Netting Provisions, of the International Institute for the Unification of Private Law (Unidroit), had taken years of work involving difficult negotiations to reach a solution that was acceptable to all Unidroit member States. It was clear that addressing the topic in the Working Group would not be a simple exercise of ensuring the consistency of the UNCITRAL Insolvency Law Guide with the Unidroit Principles. Any discussion

that sought to reopen issues already considered by Unidroit would inevitably be controversial, and, as was known, there was already disagreement on a number of the issues involved. His delegation was concerned that, as a result, work in that area would be neither fast nor easy, and would inevitably distract the Working Group from the subject areas to which its work was contributing something new and invaluable. All UNCITRAL instruments probably needed to be updated at some point after completion, but UNCITRAL resources should not be devoted to constantly reopening and revising past instruments, especially when another organization had already produced an up-to-date instrument in the same area.

40. **Mr. Marquez García** (Colombia) said that he agreed with the representative of Spain that the restructuring of sovereign debt should not be taken up by the Working Group, given that the subject had been dealt with by UNCTAD and such duplication should be avoided; moreover, it was a matter of international public law.

41. **Mr. Lapiere** (Observer for Belgium) said that the Commission should not request the Secretariat to monitor developments in international work relating to the elaboration of a sovereign debt restructuring mechanism. That issue should be discussed by organizations that had the appropriate expertise, namely IMF and the Paris Club, and duplication thus avoided.

42. **Ms. Clift** (Secretariat) said that the Secretariat did not intend to seek a mandate to carry out work on sovereign debt restructuring. During the discussions that had taken place in UNCTAD, reference had been made to UNCITRAL both with respect to insolvency law and international commercial arbitration. The Secretariat had therefore provided the information set out in document [A/CN.9/851](#) simply in fulfilment of its role of reporting to the Commission on work undertaken by other organizations that might have implications for, or overlap with, the Commission's work. In that regard, she recalled that sovereign debt restructuring had also been discussed in the context of coordination and cooperation under item 14 of the current session agenda.

43. **Ms. Sabo** (Canada), welcoming the Secretariat's clarification, said that with regard to possible topics for the Working Group, she agreed with the representative of the United States there was no immediate need to pursue work relating to financial contracts. It was important to complete the work on multinational

enterprise groups as, although that work was very challenging, the benefits of succeeding outweighed the difficulties that it presented. The Working Group should also complete its consideration of the other topics before it. Her delegation supported future work on the recognition and enforcement of insolvency-related judgments, which should also be a priority for the Working Group.

44. **Ms. Vicandi Plaza** (Spain), referring to paragraph 13 of document [A/CN.9/851](#) in relation to sovereign debt restructuring, said that the Commission should not request the Secretariat to monitor issues that fell outside the Commission's purview, although her delegation had no objection to the Secretariat's maintaining contact with and attending meetings of other bodies if it considered such activities appropriate to and beneficial for its work.

45. **Mr. Kim** (United States of America) said that his delegation agreed that the Secretariat should not be burdened with a request to monitor yet another topic. Given the extent to which other organizations, particularly IMF, had been engaged in the issue of sovereign debt restructuring, and the fact that that issue essentially concerned international public law, the issue should not be considered as a possible area of future work or monitoring; instead, the Secretariat should focus on current projects.

46. **The Chair**, noting that there appeared to be consensus that the Secretariat should not monitor developments relating to sovereign debt restructuring, invited the Commission to return to its consideration of the proposal to review the UNCITRAL Insolvency Law Guide with respect to the treatment of financial contracts.

47. **Mr. Estrella Faria** (Observer for the International Institute for the Unification of Private Law), responding to the comments made by the representative of the United States with regard to the Unidroit Principles on the Operation of Close-Out Netting Provisions, said that the topic of netting had been dealt with only in the course of implementation of the Institute's work on capital markets. The work on netting had been approved by the Unidroit General Assembly in 2010, after which three sessions of a study group had been convened, that group comprising representatives of academia, practising lawyers and representatives of domestic and international regulatory institutions and the financial sector, including IMF, the European Central Bank, the

Bank for International Settlements and representatives of the Bank of France, the Bank of England and the United States Federal Reserve System. The first draft of the Principles had then been submitted to the Unidroit Governing Council, which had approved the convening of a committee of governmental experts. Nearly all 63 member States of Unidroit had sent delegates to participate in that work. Most delegations had been comprised of representatives of ministers of finance or central banks and other types of regulatory institutions. That work had resulted in the Principles on the Operation of Close-Out Netting Provisions, which had been approved by the Unidroit Governing Council in May 2013 and subsequently published. The Principles had already become the source of inspiration for domestic legislation on netting. If the Commission decided to update the UNCITRAL Insolvency Law Guide to reflect the Principles, Unidroit would be willing, in the spirit of cooperation, to participate in that work with a view to ensuring the full consistency and relevance of the work of the two organizations.

48. **The Chair** said he took it, in the light of the comments made, that the Working Group should focus on the topics on which it was already working and that it should not be requested to review the UNCITRAL Insolvency Law Guide in relation to the insolvency treatment of financial contracts.

49. *It was so agreed.*

Micro-, small and medium-sized enterprises

50. **Mr. Schoefisch** (Germany), recalling that the existing mandate of Working Group I had been confirmed by the Commission at its 1007th meeting, reaffirmed his delegation's support for that decision.

51. **Mr. Marquez García** (Colombia), noting the relevance of the Working Group's work on simplification of incorporation for developing countries, said that that work was of particular importance to Colombia, as it was his delegation that had proposed the mandate that had been given to the Working Group. Recalling that his delegation had also submitted to the Working Group, at its twenty-second session, a proposal for a model law on simplified corporations, which was set out in document [A/CN.9/WG.I/WP.83](#), he requested the Commission to invite the Working Group to consider that document in the course of its discussion of simplification of incorporation, and proposed that the Working Group should develop a model law on the

simplification of incorporation so that that text could be submitted to the Commission at its forty-ninth session.

52. **Mr. Kim** (United States of America) said that Working Group I was especially important to his delegation as micro-, small and medium-sized enterprises were the engines of economic growth and job creation around the globe, particularly in developing countries. His delegation was therefore pleased that the Commission had decided, in 2013, to ask a working group to work on the development of an enabling legal environment to facilitate the life cycle of micro-, small and medium-sized enterprises, beginning with the implementation of simplified rules of incorporation and operation of such enterprises. His delegation strongly supported the mandate of Working Group I and hoped that UNCITRAL would be able to pursue work on additional topics, such as business registration, financial inclusion, mobile payments, access to credit and alternative dispute resolution. Some of those topics would require coordination with other working groups, such as Working Group II and Working Group V.

53. The reports of Working Group I underscored the importance of establishing an enabling legal environment for micro and small enterprises in developing countries to effectively reach international markets through electronic and mobile commerce. As noted by the Secretariat at the Commission's forty-sixth session, when the Working Group had been given its current mandate, the creation of such an environment also contributed to reinforcing the rule of law at country level, which was conducive to the growth of a fair, stable and predictable system for generating inclusive, sustainable and equitable development. He welcomed the fact that the Working Group, at its twenty-fourth session, had taken up consideration of a draft model law on simplified business incorporation, as an initial priority. In that connection, his delegation supported the delegation of Colombia in seeking the conclusion of that work by 2016. The Working Group was poised to make excellent progress on simplified incorporation at its forthcoming session, and he hoped that the Working Group would be in a position to begin work on additional topics in the near future.

54. **Mr. Sorieul** (Secretary of the Commission), drawing attention to the distinction made in document [A/CN.9/841](#) between current legislative activities, mandated future work and possible future work, said it was his understanding of the Commission's preliminary

discussion that there were no proposals for future projects for Working Group I. While there had been mention earlier during the session of the possible extension of the Working Group's current mandate, its current work would in any case extend beyond the Commission's current session. That continuation of its mandate should not, therefore, be considered as future activities.

55. **Ms. Gómez Ricaurte** (Ecuador) said it was not her understanding that the Commission had concluded its discussion of the activities of Working Group I. The mandate of the Working Group should be reaffirmed and priority should be given to the issue of simplified incorporation, with special focus on developing countries, before other topics were taken up.

56. **Mr. Marquez García** (Colombia), clarifying his earlier comments, said that his delegation also sought reaffirmation of the Working Group's current mandate, with particular emphasis on simplification of incorporation.

57. **Mr. Bellenger** (France) said that there was no need to reopen the previous week's discussion concerning the Working Group's current mandate, which, as the Secretariat had pointed out, should be distinguished from future activities. The Commission had already come to the clear conclusion, on the basis of that discussion, that the Working Group's mandate should be broad.

58. **Mr. Ngugi** (Kenya), said that, as he understood it, the purpose of revisiting the Working Group's current mandate under agenda item 18 was simply to confirm that mandate.

59. **Ms. Malaguti** (Italy), speaking as Chair of the Working Group at its twenty-third and twenty-fourth sessions, said that while the Working Group's mandate had indeed been reaffirmed earlier during the session, some delegations simply wished to clarify their positions with respect to that mandate. She welcomed the initiative of the delegation of Colombia to develop an instrument on simplified incorporation that could be widely applied, particularly given the many issues that the topic raised in relation to developing countries, and expressed appreciation for the delegation's efforts to garner the support of other Latin American countries for that project. The Working Group would work on that issue as much as possible, and there was a good chance that concrete results could be achieved very soon. Its

mandate was sufficiently broad to allow, in addition, the discussion of specific topics.

60. **Ms. Sabo** (Canada), supported by **Mr. Lee** (Republic of Korea), said that her delegation opposed narrowing the Working Group's mandate, which had been confirmed the previous week as a broad mandate, to focus only on simplified incorporation.

61. **The Chair** said that the request by the representative of Colombia that the Working Group should consider document [A/CN.9/WG.I/WP.83](#) with a view to the development of a model law on simplification of incorporation added a new element to the previous week's discussion of the Working Group's work. The implication of that proposal was not, however, that the documents already before the Working Group would no longer be considered. It was worth reiterating that the Working Group should focus on simplified incorporation and that the experience of developing countries should be taken into account.

62. **Mr. Petrovic** (Croatia) requested clarification as to whether the Commission was being asked to narrow the Working Group's mandate to focus exclusively on incorporation, which his delegation would oppose, or simply to confirm it. Given that document [A/CN.9/WG.I/WP.83](#) had already been submitted to the Working Group and the Working Group was already focusing on simplified incorporation, the purpose of the current discussion was unclear.

63. **Ms. Polo Flórez** (Colombia) said that the desire of a number of delegations to reiterate the Working Group's mandate simply reflected the interest of developing countries in addressing issues affecting their economies. That mandate would allow the Working Group to consider specific issues without detriment to its original focus on simplification of incorporation. In that regard, she welcomed the constructive comments made by the Chair of the Working Group, which inspired confidence that the Working Group would make good progress and its discussions would yield a positive result.

64. **Mr. Schoefisch** (Germany) said that the Working Group's existing mandate had already been confirmed and, as he understood it, there was no further action for the Commission to take. As the Chair of the Working Group had indicated, the Working Group was free to discuss specific issues within that broad mandate.

65. **The Chair** said that the new element of the discussion was simply the request made by the representative of Colombia that document [A/CN.9/WG.I/WP.83](#), and in particular the proposal it contained, should be taken into account.

66. **Ms. Sabo** (Canada) said that, although the proposal of the delegation of Colombia was useful, it did not constitute a new element of the discussion regarding the Working Group's work, as it continued to be considered by the Working Group and the Group's mandate remained unchanged. It was for the Working Group to decide what action to take with respect to the documents submitted to it.

67. **Mr. Kim** (United States of America) said that it was unnecessary to return to the discussion of the Working Group's current mandate. The Commission, at the current stage of its discussions, was required only to consider the possible future work of the Working Group, which was already adequately addressed in table 2 and subparagraph 15 (e) of document [A/CN.9/841](#).

68. **The Chair** said he took it that the Commission wished to include document [A/CN.9/WG.I/WP.83](#) among the documents under consideration by the Working Group under its current mandate as reaffirmed.

69. *It was so agreed.*

Security interests

70. **Ms. Nicholas** (Secretariat), drawing attention to paragraph 15 (h) of document [A/CN.9/841](#), recalled that Working Group VI, in elaborating the draft model law on secured transactions, had considered the possible benefits of an accompanying guide to enactment that would set out the background to the model law and explanatory information for the benefit of enacting States. The Commission might wish to instruct the Working Group to undertake that work with a view to the submission of both the draft model law and the draft guide to enactment to the Commission for consideration and adoption at its forty-ninth session. Other possible future work in the field of security interests, including work on a contractual guide on secured transactions, particularly for micro-, small and medium-sized enterprises and enterprises in developing countries, and a uniform law text on intellectual property licensing, might be considered at a later stage. The Commission would be presented with more concrete proposals

relating to those topics in the form of notes by the Secretariat, for further consideration.

The meeting was suspended at 4.10 p.m. and resumed at 4.25 p.m.

71. **Mr. Sorieul** (Secretary of the Commission), referring to the Commission's earlier discussion with regard to possible alternative dates for the next session of Working Group III, informed the Commission that the Conference Management Service had proposed the week of 2-6 November or the week of 23-27 November 2015.

Public procurement and infrastructure development

72. **Ms. Nicholas** (Secretariat), drawing attention to document [A/CN.9/850](#), said that there were two topics that the Commission might wish to take into consideration in the area of procurement and infrastructure development, namely suspension and debarment in public procurement and public-private partnerships.

73. Referring to paragraphs 2-16 of document [A/CN.9/850](#), she recalled that the UNCITRAL Model Law on Public Procurement, which had been adopted in 2011, contained only limited provisions on sanctions for non-compliance with the procedures it established. That had been the subject of some discussion among countries seeking to incorporate the Model Law into their national systems. While there was general agreement that procedures for suspension and debarment were extremely important in the implementation of a procurement system and in combating corruption, there was considerable variation in practice, as highlighted by the work carried out in the area by the World Bank, the Organization for Economic Cooperation and Development (OECD) and other organizations. Nevertheless, there was significant agreement on the key elements of the suspension and debarment procedure, such that work by the Commission could lead to a short, non-binding text that set out the procedures to be followed in cases of misconduct. The Secretariat had discussed that possibility with the World Bank, which had its own suspension and debarment area of operation, and it had been agreed that, should the Commission decide to undertake work in that area, the work would be carried out in close cooperation with the World Bank with a view to the joint endorsement of a set of standards, if possible. The Secretariat had also taken account of the

requirements that would need to be fulfilled for the work to be taken up, including the requirements that duplication of the work of other bodies should be avoided and resources should be used judiciously.

74. Having considered all of those issues, the Secretariat suggested that the proposed work should not be undertaken by a working group because of its highly technical nature; instead, the Secretariat could explore the possible development of a non-binding text as described, in cooperation with the World Bank, other multilateral development banks and member States, in particular those which had been active in the implementation of the United Nations Convention against Corruption. It would then report back to the Commission so that appropriate action could be taken.

75. **Mr. Fruhmenn** (Austria), supported by **Mr. Lee** (Republic of Korea), welcomed the Secretariat's proposal in light of the difficulties arising from suspension and debarment cases, at both the national and the international levels, and the significant differences between legal systems in that field. The topic merited further work by UNCITRAL.

76. **Mr. Kim** (United States of America) said that, although the topic was of great importance, he was uncertain whether it would be useful to develop a legislative text at the current stage. Recalling that the Commission had decided several years ago to discontinue active work on procurement topics, and given the amount of resources that had been dedicated to that topic in recent years, he doubted that more work in that area was currently justified. Nevertheless, his delegation was willing to consider the possibility of further preparatory work on the subject by the Secretariat, subject to the proviso that the main objective of that work should be to determine whether demand among States for a legislative instrument in that area was strong and whether they were likely to use such a text. Even if development banks and other organizations had an interest in the topic, it would only be worthwhile developing an instrument if States were inclined to adopt it.

77. **Ms. Sabo** (Canada), expressing support for the comments made by the representative of the United States, said that it would be preferable to describe the proposed work as exploratory rather than preparatory. A legislative text might not be appropriate given the differences between legal systems with respect to treatment of the topic.

78. **The Chair** said he took it, in the light of the comments made, that there was consensus that the Secretariat should carry out exploratory work as proposed and report to the Commission on that work at the Commission's forty-ninth session.

79. *It was so agreed.*

Public-private partnerships

80. **Ms. Nicholas** (Secretariat), referring to paragraphs 17-40 of document [A/CN.9/850](#), said that many experts working in the field of public-private partnerships had suggested to the Secretariat that it would be helpful if the existing UNCITRAL texts on privately financed infrastructure projects were updated. During the two colloquiums that had been held to explore issues that might need to be taken into account if such a project were to be undertaken, it had become clear that very significant work might be needed. She recalled that the Commission had thus far declined to provide a mandate for significant future work in that area primarily because that work would require significant resources both of member States and the Secretariat and demand for that work appeared to be greater among experts and donor organizations than among member States. Consequently, the Secretariat had sought to reduce the scope for a significant project and, over the course of the past year, had undertaken a demand assessment, as part of which it had been in contact with a number of member States, largely developing countries, in order to assess their interest in a legal text as the outcome of such a project. While there was significant interest in having an up-to-date UNCITRAL text on public-private partnerships, there was considerably less interest in participating in the elaboration of such a text. Experts in that field had carried out a comprehensive review of the existing texts on privately financed infrastructure projects, and had provided UNCITRAL with detailed information on how each provision should be updated. They had also identified, to the extent possible, elements of those texts that currently only provided guidance but should be redrafted as model legislative provisions.

81. The Secretariat was confident that both the work needed and the impact on its resources would be limited given that so much had already been achieved. Therefore, with limited Secretariat involvement but significant and wide-ranging regional and national input, and the involvement of multilateral development

banks and other experts in the field, an updated text on private-public partnerships containing model legislative provisions and a revised legislative guide explaining those provisions could probably be presented to the Commission for its consideration in 2016. The model provisions would not constitute a comprehensive model law, but could form the basis for a law in any State. It was important for the Commission to consider whether its review of the proposed provisions at its forty-ninth session would provide sufficient visibility and the opportunity to ensure that consensus on the provisions was reached.

82. **Mr. Bellenger** (France) said that his delegation supported the Secretariat's proposal and indeed had been in favour of the commencement of work on public-private partnerships in 2014 in view of the importance of that topic, particularly for developing countries. It also supported the organization of international colloquiums or similar events that would bring together a broad range of participants to discuss the issues concerned.

83. **Mr. Fruhmenn** (Austria), likewise expressing support for the Secretariat's proposal, asked the Secretariat to clarify the type of mechanism that would be used to ensure that the proposed text was discussed as widely as possible before it was submitted to the Commission for consideration, given that there would be only limited time at the Commission's next session for member States to express their views.

84. **Mr. Kim** (United States of America) said that the conclusions drawn from the consultations held by the Secretariat with experts and representatives of States and organizations, as presented in document [A/CN.9/850](#), indicated that the scope of the proposed work amounted to reviewing and redrafting a large amount of the existing texts on privately financed infrastructure projects. It was implausible that that work could be achieved in one year with limited Secretariat oversight and through colloquiums rather than a working group, as suggested in that document. The development of the original public-private partnership instruments and even the preparatory work carried out by the Secretariat on public-private partnerships to date had taken many years. He was concerned that the project could become a lengthy one and eventually involve a working group. While the topic was important and the Secretariat had done a great deal of exploratory work on it, he was not convinced that the work should move

forward at the current stage or that further resources should be allocated for that purpose given the extensive work that would be needed and the fact that there might be work of higher priority to be done, although that possibility could be reviewed in the future. Moreover, the existing instruments on privately financed infrastructure projects were of high quality and were still very useful.

85. **Mr. Lee** (Republic of Korea) said that, while he understood the concerns expressed by the representative of the United States, the subject was very important, particularly for developing countries. He had observed at first hand that there was great demand in those countries for legislative guidance and information on public-private partnerships. He therefore endorsed the view that the Commission should continue to explore a way forward on that issue.

86. **Ms. Sabo** (Canada), expressing agreement with the comments made by the representative of the United States, said that her delegation had consistently voiced opposition to work on public-private partnerships in view of the huge variety of projects and interests involved and the fact that it was not an area that lent itself to harmonization in the manner proposed. Moreover, the Commission had just agreed to give the Secretariat a mandate to proceed with work on public procurement, which made it highly unlikely that an additional task, particularly one that was likely to involve a great deal more work than had been suggested, could be accommodated. Her delegation would be willing to consider the proposed mandate in 2016, once the outcome of the work on public procurement was known and it was clear what resources were available.

87. **Ms. Nicholas** (Secretariat), responding to the question posed by the representative of Austria, said that, as suggested in document [A/CN.9/850](#), inclusiveness and multilingualism would be ensured through colloquiums, to the extent that resources were available. In that regard, she noted that the two colloquiums already held on the topic had been well attended. The idea was to encourage experts on the topic, including those from member States, to participate to the extent possible.

88. **Mr. Sorieul** (Secretary of the Commission) said that, whether or not the Commission decided to request the Secretariat to work on public-private partnerships, the Secretariat would be extremely limited in terms of the work it could carry out before the Commission's

next session. It could consider hosting colloquiums on the matter, but colloquiums held within the United Nations forum and in all six official languages of the Organization would require time and resources. The Commission had entrusted the Secretariat with a large amount of work and had decided to hold 12 sessions of the working groups over the course of the coming year, which meant that the amount of meeting time that could be requested of the Conference Management Service would also be limited. Moreover, the work would require considerable drafting and the circulation of a large number of documents among member States for comment, and meetings would then be needed to evaluate those comments. He therefore proposed that the

Commission should keep the matter on its agenda and that the Secretariat should keep it abreast of further developments and be as prepared as possible should the topic be taken up.

89. *It was so agreed.*

The meeting rose at 5.05 p.m.