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Report of Working Group VI (Security Interests) on the work of its third session (New York, 3-7 March 2003)

Contents

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I. Introduction

1. At its present session, the Working Group continued its work on the development of "an efficient legal regime for security rights in goods involved in a commercial activity".[1] 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.[2]

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.[3]

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.[4] 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.[5]

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 Add.1-5 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. 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.[6]

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 Add.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).

II. Organization of the session

7. The Working Group, which was composed of all States members of the Commission, held its third session in New York from 3 to 7 March 2003. The session was attended by representatives of the following States members of the Commission: Argentina (alternating annually with Uruguay), Austria, Brazil, Cameroon, Canada, China, Colombia, France, Germany, Hungary, India, Iran

(Islamic Republic of), Italy, Japan, Kenya, Lithuania, Mexico, Morocco, Paraguay, Russian Federation, Singapore, Spain, Sweden, Thailand and United States of America.

8. The session was attended by observers from the following States: Australia, Jordan (Hashemite Kingdom of), Malta, Marshall Islands, Philippines, Republic of Korea, Turkey, Venezuela and Viet Nam.

9. The session was also attended by observers from the following national or international organizations: (a) organizations of the United Nations system: International Monetary Fund (IMF), International Bank for Reconstruction and Development (the World Bank); (b) intergovernmental organizations: International Institute for the Unification of Private Law (UNIDROIT); (c) non-governmental organizations invited by the Commission: American Bar Association (ABA), Center for International Legal Studies, Commercial Finance Association (CFA), Inter-American Bar Association (IABA), International Chamber of Commerce (ICC), International Federation of Insolvency Professionals (INSOL), International Swaps and Derivatives Association (ISDA), Max-Planck-Institute of Foreign and Comparative Law, National Law Center for Inter-American Free Trade (NLCIFT), The Association of the Bar of the City of New York, the European Law Students Association (ELSA), and the Union of Industrial and Employers' Confederations of Europe (UNICE).

10. The Working Group elected the following officers:

Chairman: Ms. Kathryn SABO (Canada)

Rapporteur: Mr. M. R. UMARJI (India)

11. The Working Group had before it the following documents: A/CN.9/WG.VI/WP.7 (provisional agenda), A/CN.9/WG.VI/WP.2 and Addenda 8, 11 and 12 (first version of the draft Guide), as well as A/CN.9/WG.VI/WP.6 and Addenda 1 to 3 (second version of the draft Guide).

12. The Working Group adopted the following agenda:

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.

III. Deliberations and decisions

13. At the beginning of its deliberations, the Working Group held a moment of silence in memory of Ms. Pascale de Boeck, representative of the International Monetary Fund. The Working Group considered chapters VIII, XI and XII of the first version of the draft Guide and chapter II and paragraphs 1 to 33 of chapter III of the second version of the draft Guide. The deliberations and decisions of the Working Group are set forth below in part IV. The Secretariat was requested to

prepare, on the basis of those deliberations and decisions, a revised version of the chapters of the draft Guide discussed at the present session.

14. Having noted that the World Bank was working on a technical paper that would address both insolvency and secured transactions issues, the Working Group recommended that increased efforts by both the Commission and the World Bank should be made to ensure coordination and to avoid duplication of efforts and inconsistent results, and to promote complementarity as required within the United Nations system. It was stated that it was important to recognize the value of the Commission's open process in which a broad scope of expertise in the world was involved.

IV. Preparation of a legislative guide on secured transactions

Chapter VIII. Pre-default rights and obligations of the parties (A/CN.9/WG.VI/WP.2/Add.8)

A. Limitations

15. It was suggested that paragraph 7, referring to overreaching by the secured creditor, should be recast in more neutral terms. It was stated that the debtor in possession of the encumbered assets could also abuse its advantageous position. It was also observed that the reference to limitations based on public policy was sufficient in that regard and that the reference to overreaching could be deleted. In response to a suggestion that overreaching by the secured creditor should be discussed in paragraph 7 in more detail, it was noted that the matter should be discussed together with the issue of over-collateralization in the context of chapter III, dealing with the creation of the security right (see A/CN.9/WG.VI/WP.6/Add.3, para. 26).

B. Default rules

16. In order to avoid any confusion with the breach of contractual obligations (reflected with the term "default"), it was agreed that reference should be made to rules supplementing the security agreement or to dispositive rules rather than to default rules.

17. With respect to the reference to the maximization of the value of the encumbered assets in paragraph 13, the concern was expressed that it might inadvertently place on the secured creditor a burden that would outweigh any benefits. In order to address that concern, it was suggested that reference should be made to preservation of current value rather than to the maximization of the value of the assets. In that connection, it was also suggested that responsible behaviour on the part of those in control of the assets should be linked to the preservation of the value of the assets not only for the purpose of covering subsequent default but also for the purpose of returning the assets to the debtor upon payment of the secured obligation.

C. Duty of care

18. Several suggestions were made. One suggestion was that the changes proposed with respect to paragraph 13 should be made in paragraph 16 as well. Another suggestion was that the first example given in paragraph 17 be removed as it contradicted a common rule applicable to possessory security rights that the return of the encumbered assets resulted in the extinction of the security right.

19. Yet another suggestion was that deterioration of the value of the encumbered assets, whether in the case of possessory or non-possessory security rights, needed to be addressed by a specific rule. Such a rule could provide that the debtor would have to offer additional security or the secured creditor could treat such a deterioration of value as an event of default. It was stated that such a rule should create a right and not an obligation for the secured creditor to monitor the market value of the encumbered asset and to advise the debtor as to the proper course of action. It was observed, however, that, while such a rule might be appropriate and expected by the parties to certain transactions (e.g. relating to securities), it might not be appropriate and might surprise parties to other transactions (e.g. relating to the acquisition by a consumer of a personal computer). It was also observed that in either case devaluation was a matter that was normally dealt with in the security agreement and did not need to be addressed by supplementary rules.

20. In response to a question, it was said that no problem arose in the case of increase in the value of the encumbered assets, since the secured creditor had a right to claim only the amount of the secured obligation. After discussion, it was agreed that the matter could be discussed as another example of issues which the parties might wish to settle in the security agreement (see A/CN.9/WG.VI/WP.2/Add.8, para. 12).

D. Right to be reimbursed for reasonable expenses

21. The concern was expressed that the second sentence of paragraph 18 might inadvertently preclude the secured creditor from charging to the debtor expenses other than reasonable expenses incurred in pursuance of the secured creditor's duty of care. In order to address that concern, the suggestion was made that that sentence should be deleted. On the other hand, it was stated that that sentence should be preserved since it clarified the first sentence. In response, it was pointed out that the second sentence of paragraph 18 might be read as going beyond the first sentence which dealt with expenses associated with the secured creditor's duty of care only. In order to bridge that difference, it was suggested that the matter might be left to be settled by the parties in the security agreement.

E. Duty to keep the encumbered assets identifiable

22. The concern was expressed that, in its present formulation, paragraph 20 might inadvertently fail to protect the debtor if the secured creditor commingled the encumbered assets with other assets. In order to address that concern, it was suggested that, in the case of fungible assets, reference should be made to the duty of the secured creditor to preserve assets of the same quantity or value.

F. Duty to take steps to preserve the debtor's rights

23. It was suggested that paragraph 21 should clearly refer to the possibility that certain intangibles that were incorporated in documents of title could be subject to possessory security rights. It was also suggested that paragraph 21 should state further that the possession of the instrument created a duty of care both with respect to the instrument and to the right incorporated in it. As to the last sentence of paragraph 21, which dealt with a different issue, it was suggested that the notion of parties secondarily liable needed to be clarified.

G. Right to impute revenues to the payment of the secured obligation

24. It was suggested that monetary proceeds should be distinguished from non-monetary proceeds in that the former could be applied to the payment of the secured obligation but the latter could not. The secured creditor should be able to hold non-monetary proceeds as encumbered assets. With respect to monetary proceeds, the secured creditor should be able to apply them to the payment of the secured obligation unless the secured creditor turned them over to the debtor.

H. Right to assign the secured obligation and the security right

25. A number of concerns were expressed with respect to paragraph 24. One concern was that paragraph 24 might inadvertently give the impression that an agreement limiting the ability of the secured creditor to assign the secured obligation or the security right should be upheld. It was stated that such a result would be inconsistent with article 9, paragraph 1, of the United Nations Convention on the Assignment of Receivables in International Trade ("the United Nations Assignment Convention"), under which an assignment was effective notwithstanding any agreement limiting a creditor's right to assign its receivables. In order to address that concern, it was suggested that paragraph 24 should be revised to state that the security right should be transferred with the secured obligation.

26. Another concern was that paragraph 24 failed to recognize practices in which security rights were assigned separately from the obligations they secured. It was stated that that was normal practice in financing transactions, involving, for example, the transfer of a security right of a parent corporation in the assets of a subsidiary to a financing institution so as to ensure new credit to the subsidiary, or in transactions in which the secured creditor transferred its security right to a new creditor in order to ensure that the new creditor would have priority over the initial

secured creditor. It was mentioned that in such situations the security right remained accessory to the secured obligation and the obligations of the debtor did not change, while its rights could be enhanced through the accumulation of defences based on the underlying original contract but also on the contract transferring the security right. In that connection, some doubt was expressed. It was stated that, in some legal systems, an assignment of the security right separately from the secured obligation could affect the accessory character of the security right. In response, it was mentioned that such a result could be avoided by the appropriate analysis and recommendation in the draft Guide. It was also mentioned that such an assignment might create uncertainty as to the way in which the debtor could discharge its obligation. In response, it was pointed out that discharge remained subject to the underlying original transaction and the law applicable to it. The example was given of a law, under which, in the case of notice of the assignment to the debtor, payment should be made to the assignee, while, in the absence of notice, payment should be made to the assignor.

I. Right to "repledge" the encumbered asset

27. It was stated that the rule that the repledge could not be for a longer time than the pledge was an appropriate one and should be preserved. A number of suggestions were made, however, with respect to the formulation of that rule. One suggestion was that, as in some legal systems such a rule existed only with respect to securities, it would be useful to clarify that the rule in paragraph 25 applied to assets other than securities as well. Another suggestion was that paragraph 25 should discuss whether the new pledgee should have a right ranking ahead of the debtor to obtain the asset after payment of the secured obligation (to the initial pledgee who extended credit to the debtor).

J. Right to insure against loss or damage of the encumbered asset

28. It was stated that the issue of the deterioration of the encumbered assets should be discussed elsewhere since it involved a decline in their value and was not a risk against which insurance was normally available (see para. 19).

K. Duty to account and to keep adequate records

29. Differing views were expressed as to whether paragraph 31 reflected an appropriate rule. One view was that a duty to account and to keep adequate records should not be imposed on the debtor in the case of a non-possessory security right, if such a duty had not been created by the agreement of the parties. Another view was that such a rule was appropriate, whether or not it was foreseen in the security agreement, since the right in the encumbered assets extended to proceeds that included income generated by the assets. In response, it was stated, however, that that depended on whether civil fruits should be treated in the same way as proceeds, a matter that was still pending. On the other hand, it was said that, if such a duty was to be imposed on the debtor in the case of a non-possessory security right, it should also be imposed on the secured creditor in the case of a possessory security right.

L. Right to use, mix, commingle and process the encumbered asset

30. It was suggested that paragraph 34 should make it clear that, in the case of a disposition of the encumbered assets that might result in the extinction of the security right, the secured creditor might have a security right in the proceeds. Some doubt was expressed as to whether the matter should be addressed by way of a rule supplementing the security agreement or be left to be settled by the parties in their agreement.

M. Duty to return encumbered assets upon payment of secured obligation

31. It was suggested that a new paragraph should be added to discuss the duty of the secured creditor to return the encumbered asset to the debtor (in the case of a possessory security right) or to register a notice of release (in the case of a non-possessory security right). It was stated that that matter was briefly addressed in the summary and recommendations (see A/CN.9/WG.VI/WP.2/Add.8, para. 38).

N. Summary and recommendations

32. Several suggestions were made. One suggestion was that, as a matter of drafting, this part of the draft Guide should follow the structure of the general remarks that drew a distinction between possessory and non-possessory security rights, and between rights in tangible and intangible assets. Another suggestion was that a recommendation should be included with respect to rights and duties associated with intangible assets (e.g. receivables), incorporated in documents, such as negotiable instruments, that could be subject to possessory security rights.

33. Yet another suggestion was that, with respect to fungible assets, paragraph 37 should be recast to focus on the duty to maintain their quantity or value. Yet another suggestion was that the duty of the secured creditor to return the encumbered asset (or register a release notice; see para. 30) in the case of payment of the secured obligation, which was dealt with briefly in paragraph 38, should be discussed in a separate paragraph. While some doubt was expressed as to whether that matter needed to be discussed at all, it was felt that such a rule was not obvious and could usefully be discussed since in some legal systems the secured creditor could retain the encumbered assets even after payment of the secured obligation so as to secure payment of other obligations.

34. Yet another suggestion was that in paragraph 39 the term “apply” should be substituted for the term “impute”; that right should exist only in the case of default; and the reference to the retention of proceeds of the encumbered assets as additional security should be preserved to cover situations where non-monetary proceeds were involved that could not be applied to the payment of the secured obligation.

35. After discussion, the Working Group requested the Secretariat to revise chapter VIII taking into account the views expressed and the suggestions made.

Chapter XI. Conflict of laws and territorial application (A/CN.9/WG.VI/WP.2/Add.11)

General remarks

36. While some doubt was expressed as to whether the draft Guide, whose primary aim was to promote substantive law reform, should include any or detailed conflict of laws rules, it was agreed that without clear and detailed conflict of laws rules the draft Guide would be incomplete. It was stated that the draft Guide could not achieve its objectives, in particular, if it failed to provide certainty as to the law applicable to publicity and priority. It was also observed that, for that reason, modern secured transactions laws in a number of countries contained conflict of laws rules. To the extent that such rules were included in laws other than secured transactions laws, it was pointed out, they were based on substantial knowledge and expertise of the relevant commercial context.

37. In addition, it was said that the preparation of workable conflict of laws rules on matters relating to commercial transactions was impossible without an examination of the specific commercial context and the economic impact of such conflict of laws rules. The United Nations Assignment Convention and the Convention on the Law Applicable to Certain Rights in Respect of Securities Held with an Intermediary, adopted by the Hague Conference on Private International Law in December 2002, were mentioned as successful examples of such a joint commercial and conflict of laws approach.

38. In order to ensure that the same approach would be followed in the present context, it was agreed that the cooperation of the Hague Conference should be sought. It was stated that such a cooperation would allow an optimal use of resources and expertise available both in the field of substantive and conflict of laws rules that was necessary in order to prepare rules that would promote the economic objectives of the regime envisaged in the draft Guide. It was also agreed that the impact of insolvency on any conflict of laws rules should be considered in coordination with Working Group V (Insolvency Law).

39. With respect to the title of the chapter, it was suggested that it should refer only to conflict of laws, since the function of conflict of laws rules in defining the territorial scope of application of substantive law regime envisaged in the draft Guide did not need to be highlighted in the title.

40. As to the contents of chapter XI, a number of suggestions of a general nature were made. One suggestion was that the law applicable to security rights in goods in transit and in documents of title should also be discussed. Another suggestion was that the law applicable to securities should not be addressed as it was dealt with by a Convention of the Hague Conference and was the subject of current work carried out by the International Institute for the Unification of Private Law (UNIDROIT). There was broad support for all those suggestions. Yet another suggestion was that the limitations to the freedom of the parties to choose the law applicable to property rights should be highlighted at the beginning of chapter XI (see para. 48).

41. After discussion, the Working Group decided that the draft Guide should include conflict of laws rules and proceeded to consider chapter XI focusing on the alternative rules set forth in the summary and recommendations.

A. Law governing the creation, publicity and priority of a security right

42. It was noted that under both alternatives 1 and 2, the creation, publicity and priority of a possessory security right was subject to the law of the State in which the encumbered asset was located (*lex rei sitae or lex situs*), while the creation, publicity and priority of a security right in intangible property was subject to the law of the State in which the grantor was located. Broad support was expressed for those rules.

43. In addition, it was noted that the difference between alternatives 1 and 2 lay in the fact that under alternative 1, the creation and publicity of a non-possessory security right in tangible property was subject to the law of the grantor's location, while the priority of such a right was subject to the *lex rei sitae*; and, under alternative 2, the creation, publicity and priority of a non-possessory security right in tangible property was subject to the *lex rei sitae*, while, if the right was in mobile goods, those matters were subject to the law of the grantor's location (or the law of the State from which their movement was controlled).

44. Differing views were expressed with respect to the points of difference between alternatives 1 and 2. One view was that, to the extent alternatives 1 and 2 differed, alternative 1 was preferable, since: it would result in a single law governing publicity of a non-possessory right in tangible property, while, under alternative 2, more than one law could govern the creation, publicity and priority of such a right in the case of goods located in more than one jurisdiction; goods tended to move more often than grantors; and alternative 1 did not require a special rule for mobile goods as alternative 2 did. Another view was that alternative 2 was preferable, since: it was structured around the generally acceptable *lex rei sitae* and included only limited exceptions, while alternative 1, with respect to the priority of non-possessory right in tangible property, departed from the *lex rei sitae* without sufficient justification and would result in different laws governing publicity and priority of such rights.

45. Another suggestion was that the creation, publicity and priority of a possessory security right should be governed by the *lex rei sitae*, while with respect to a non-possessory right those matters should be governed by the law of the grantor's location.

46. In response to a question, it was noted that neither alternative 1 nor alternative 2 was inconsistent with the United Nations Assignment Convention, since: article 22 of the Convention covered some creation-related issues with substantive law rules and, through the definition of priority (see article 5 (h)), referred all other creation, publicity and priority issues to the law of the assignor's (i.e. the grantor's) location; articles 27 and 28 of the Convention dealt with contractual issues; article 29 dealt with the assignee-debtor relationship; and article 30 dealt with priority issues in a way that was consistent with both alternative 1 and 2. In addition, it was noted that, in the case of a retention of title clause, the grantor/debtor would be the buyer. Moreover, it was noted that the reference to negotiable instruments in alternative 1 was intended to include documents of title, such as bills of lading.

47. After discussion, it was agreed that the alternative rules as to the law governing the creation, publicity and priority of a security right should be recast so as to highlight their similarities, with respect to which there was general agreement in the Working Group, and their differences, with respect to which differing views had been expressed.

B. Party autonomy with respect to the law governing the creation of a security right

48. The Working Group went on to consider a suggestion that the creation of a security right (and the pre-default rights and obligations of the parties) might be governed by the law chosen by the parties to the security agreement. In support, it was stated that there was no reason to limit party autonomy with respect to the law applicable to the creation of a security right as long as the rights of third parties were not affected. It was also observed that the Convention on the Law Applicable to Certain Rights in Respect of Securities Held with an Intermediary, prepared by the Hague Conference, could provide a useful precedent of such an approach. In opposition, however, it was observed that, while there was no difficulty in allowing party autonomy to operate with respect to contractual rights, it would be very difficult to accept such an approach with respect to proprietary rights. It was also said that the distinction between contractual and proprietary matters in that respect was fundamental and could not be ignored. In addition, it was pointed out that the text of the Hague Conference mentioned above was different since it dealt with special transactions and allowed party autonomy to operate not in the relationship between the secured creditor and the debtor but rather in the relationship between the debtor and its intermediary.

C. Subsequent change in the connecting factor

49. It was noted that paragraph 25 dealt with the impact of a change in the connecting factor (e.g. in the location of the grantor or of the assets) on the law applicable. It was also noted that such a change could create particular problems if, for example, the grantor moved from a State that had no publicity system to a State with a publicity system such as the one envisaged in the draft Guide. In such a situation, with the grace period proposed, a secured creditor would have some time to meet the publicity requirements of the new jurisdiction. It was suggested that the objective of the grace period to establish a balance between pre-change and post-change rights should be explained in the draft Guide. In that connection, it was observed that the grace period provided a cut-off date for the due diligence burden of the parties. It was stated that the holders of pre-change rights should monitor the grantor or the encumbered assets but not on a daily basis. Similarly, it was said, the holders of post-change rights should monitor their grantors or the relevant assets to discover whether they moved from one jurisdiction to another but not back to an indefinite period of time.

D. Law governing the enforcement of a security right

50. Differing views were expressed as to whether substantive matters affecting the enforcement of security rights should be subject to the law of the State where enforcement took place (*lex fori*; alternative 1), to the law governing creation and, possibly, priority (alternative 2), or to the law governing the contractual relationship of the creditor and the debtor (*lex contractus*; alternative 3). One view was that the *lex contractus* was preferable on grounds of economic efficiency. It was stated that the public policy of the forum State was sufficient to limit the application of the *lex contractus* to cases in which such application could produce unfair results for the grantor. It was also observed that alternative 1 would be the least preferable as, to the extent a party could choose the place of enforcement ("forum shopping") and thus possibly affect the rights of secured creditors, the value of assets as sources of credit would diminish. Another view was that enforcement involved by definition matters relating to public policy and should thus be left to the law of the State where enforcement took place. It was pointed out that, to the extent enforcement would be sought in jurisdictions where assets were located, there was no or only minimal risk of forum shopping. Yet another view was that the matter depended on the meaning of the term "substantive matters affecting the enforcement of the rights of a secured creditor". According to that view, if enforcement of the contract which gave rise to the secured obligation was meant, an approach based on party autonomy could be considered. If, however, enforcement of a security right was meant, there was no room for party autonomy. It was agreed that that matter needed to be further clarified.

E. The impact of insolvency on the law applicable

51. It was noted that, in the case of insolvency of the debtor or the third-party grantor, a number of issues arose, including which law governed the creation, publicity and enforcement of a security right, which law governed enforcement and whether the law applicable to those issues was affected by the stays or the effects of reorganization proceedings.

52. The Working Group agreed that the impact of insolvency on the law applicable (whether the assets were located in the jurisdiction where the insolvency proceeding was opened or in another jurisdiction) was a matter that could have broad implications for the insolvency proceedings and, therefore, should be addressed primarily in the draft Guide on Insolvency Proceedings.

53. It was generally considered, however, that while insolvency was bound to affect all individual enforcement actions, it should not change the law applicable to the creation, publicity and priority of a security right, wherever the encumbered assets were located.

54. It was suggested that those matters could usefully be discussed in a joint meeting of Working Groups V (Insolvency Law) and VI (Security Interests). Pending consideration of those matters by Working Group V and determination as to whether such a joint meeting would be necessary to discuss again the chapter of the draft Guide dealing with insolvency matters, the Working Group decided that it did not need to make a recommendation. The Working Group noted that, in any case,

the matter might need to be considered by the Commission at its thirty-sixth session, to be held in Vienna from 30 June to 18 July 2003.

F. Scope of conflict of laws rules

55. The Working Group considered the question whether conflict of laws rules should be prepared with respect to security rights in other types of asset, such as bank deposits, letters of credit, securities and intellectual property rights. It was agreed that no rules should be prepared on security rights in assets excluded from the scope of the draft Guide, such as securities (as to intellectual property rights, see para. 90). With respect to bank deposits, it was suggested that they should be included as they were among the core commercial assets to be covered by the draft Guide (see, however, para. 90). As to letters of credit, the concern was expressed that any rules might overlap with existing rules.

56. It was agreed that the focus of the conflict of laws rules should be on core commercial assets, such as goods, inventory, receivables and bank deposits. Once agreement had been reached with respect to the rules applicable to those assets, the Working Group could consider whether conflict rules with respect to security rights in other types of asset might be necessary.

57. After discussion, the Working Group requested the Secretariat to revise chapter XI, taking into account the views expressed and the suggestions made.

Chapter XII. Transition issues (A/CN.9/WG.VI/WP.2/Add.12)

General remarks

58. There was general agreement in the Working Group that the draft Guide should include clear recommendations on issues of transition from the old regime to the new regime envisaged in the draft Guide. It was stated that appropriate transition rules would facilitate the application of the new regime without undue interference with existing rights and thus enhance the acceptability and the success of the new regime. In addition it was said that, to the extent transition rules provided clear solutions that were fashioned to address specific secured transactions issues, they could better achieve that result than transition rules generally applicable in a State enacting legislation based on the draft Guide.

59. As to the structure of chapter XII, it was agreed that chapter XII should be recast to set forth the transition questions that should be addressed and to make recommendations concerning those questions. Such issues included: setting an effective date; the priority of pre-effective date rights; transition period for parties to pre-effective date transactions to take steps to preserve their rights; effectiveness of pre-effective date rights as between the parties; enforcement of pre-existing rights after the effective date.

60. However, the view was expressed that chapter XII represented a line of thought that presented two problems. One problem was that it failed to take into account the principle of non-retroactivity of the law. The other problem was that it

was structured around a transition period that could not adequately protect the rights of pre-reform creditors.

61. An alternative line of thought would be that, in principle, the new law would not apply to pre-reform transactions except in a few prescribed situations. Exceptions mentioned included situations where a pre-reform transaction was invalid under the old law and valid under the new law; and the performance of a pre-reform transaction went beyond the effective date of the new law.

A. Effective date

62. It was agreed that the draft Guide should include a clear recommendation that the secured transactions legislation specify the date as of which it would enter into force ("effective date"). In addition, it was agreed that the draft Guide should provide guidance to States as to the considerations to be taken into account in the determination of the effective date. Several considerations were mentioned, including the following: the impact of the effective date on credit decisions; maximization of benefits to be derived from the new legislation; the necessary regulatory, institutional, educational and other arrangements to be made by the State; the status of the pre-existing law and other infrastructure; the harmonization of the new secured transaction legislation with other legislation; the content of constitutional rules with respect to pre-effective date transactions; and standard practice for the entry into force of legislation (e.g. on the first day of a month). Moreover, it was agreed that, while the draft Guide should mention those considerations, it did not need to recommend a specific time period, since its length would depend on those considerations and vary from country to country.

B. Transition period

63. It was agreed that the draft Guide should recommend that the secured transaction legislation allow some period of time for parties to transactions under the pre-effective date regime to take any steps necessary to preserve their rights ("transition period").

64. As to the combination of the effective date with the transition period, it was stated that the effective date of new legislation could be a few months after the date of its enactment or coincide with the date of enactment in which case a transition period should be established for parties to adjust their transactions. Another possible approach mentioned was to allow a few months until the new legislation entered into force and, at the same time, to introduce a transition period. Some preference was expressed for the latter approach, provided that the time between enactment and entry into force would be short, while the transition period would be longer.

65. It was suggested that, within the transition period, parties should be allowed to take steps to preserve their rights but also to cancel pre-effective date contracts. The latter suggestion was objected to on the grounds that it would inadvertently result in upsetting existing relationships.

C. Priority

66. It was suggested that the draft Guide should set out the questions relating to the impact of new legislation on priority issues and suggest possible answers. Such questions mentioned included: (i) which law applied to the priority between post-effective date rights; (ii) which law applied to the priority between pre-effective date rights; (iii) which law applied to the priority between post-effective date and pre-effective date rights.

67. It was widely felt that the answer to the first question mentioned above should be that the new law should apply. As to the second question, one view was that the answer would depend on the specific circumstances. If nothing had happened other than the effective date having been reached, the pre-reform law should apply. However, that might not be the case if an action occurred that might have affected priority even under the pre-reform regime (see A/CN.9/WG.VI/WP.2/Add.12, para. 9). Another view was that the pre-reform law should apply in all cases.

68. With respect to the third question mentioned above, it was agreed that the new law should apply as long as the holder of a right under the pre-reform law was given a period of time to ensure priority under the new law while during that period of time its priority was preserved (see A/CN.9/WG.VI/WP.2/Add.12, para. 10). It was stated that it should be made clear that the action to be taken by the holder of a right under the pre-reform law was unilateral and was aimed at ensuring priority under the new law. In response to a question, it was mentioned that third parties could be informed that a secured party on record was a holder of a right under the pre-reform law (whose priority went back to the time it had established priority under the pre-reform law) by special notice on the record. In response to another question, it was stated that if under the pre-reform law priority was based on the time of creation of a right, establishing that time would be a matter of evidence.

69. In the discussion, the suggestion was made that the draft Guide should also discuss the issue of which party should bear the cost of compliance with the new law. In that connection, it was stated that the cost of compliance should be as low as possible since it might affect the acceptability of the new law.

70. It was stated that, under the alternative approach proposed above (see paras. 60 and 61), in the case of a priority dispute between a pre-reform and a post-reform right, the pre-reform right would have priority according to the order of creation (if neither party had registered), or according to the order of registration (where both the pre-reform and the post-reform creditor had registered), or if it was subsequently registered within the transition period or in any case (even if the post-reform right had been registered).

71. After discussion, the Secretariat was requested to revise chapter XII, taking into account the views expressed and the suggestions made. The Secretariat was also requested to include, either in chapter XI or in chapter XII, discussion and recommendations relating to transition with respect to conflict of laws rules.

72. Having completed the consideration of all the chapters of the first version of the draft Guide (A/CN.9/WG.VI/WP.2 and Add.1-12), the Working Group went on to consider the first chapters of the second version of the draft Guide (A/CN.9/WG.VI/WP.6 and Add.1-3). In order to ensure that it would have the time to consider chapter III (Basic approaches to security) and chapter IV (Creation), the

Working Group decided to postpone consideration of chapter I (Introduction) and chapter II (Key objectives).

Chapter III. Basic approaches to security (A/CN.9/WG.VI/WP.6/Add.2)

A. Pledge

73. With respect to the discussion of the lender's liability for damage caused by encumbered assets, including environmental damage, in paragraph 12 of chapter III, it was suggested that the problem and the ways in which it could be addressed could be further explained if a few examples were to be mentioned of cases in which a lender taking possession, title or deemed control of an encumbered asset, either upon creation or foreclosure, should not be liable for damage caused by the asset. Examples mentioned included: holding title to goods through a negotiable instrument (bill of lading or warehouse receipt) without being involved in the management of the vessel or the warehouse; acting as limited partner (as opposed to general partner) in a limited partnership holding title in or control of the asset or the facility in which it is stored; taking control of the encumbered asset for the purpose of foreclosure, provided that the lender sold it at the earliest possible and commercially reasonable time; and acquiring title (as a result of obtaining or enforcing security) in an asset that was previously contaminated without the lender knowing or being able to know about it despite the reasonable steps taken by the lender. To the extent it clarified the impact of the lender's environmental liability on credit decisions, that suggestion was met with interest, although a concern was expressed with respect to the last of the examples mentioned.

74. However, differing views were expressed as to whether the draft Guide should include recommendations on lender's liability for environmental damage caused by the encumbered assets. One view was that it would be useful to include in the draft Guide such recommendations. It was stated that that matter posed major obstacles to certain financing transactions. It was also observed that the mere possibility that a lender might be exposed to liability for environmental damage was often sufficient to result in the lender refusing to extend credit. It was also said that that problem could not be addressed through insurance because, to the extent it was available, insurance would not cover criminal liability nor loss of reputation. In addition, it was mentioned that there were only few countries in which the matter was addressed in legislation. The prevailing view, however, was that the draft Guide should not include such recommendations. It was stated that environmental liability raised fundamental public policy issues that were beyond the scope of the draft Guide. It was also observed that, in order to include such recommendations in the draft Guide, the Working Group would need to consider all the issues involved, including the impact of any recommendations on parties other than the lenders. It was also said that, in view of the substantial differences existing among the various legal systems, in particular with respect to environmental liability, it would be very difficult to reach agreement on any recommendations and, in any case, such an effort might divert attention from the main issues that needed to be addressed in the draft Guide.

75. After discussion, the Working Group agreed that the examples mentioned above could be included in the draft Guide to illustrate the impact of lender's liability for damage caused by the encumbered assets on the availability and the cost of credit, without any recommendations in that respect.

B. Non-possessory security

76. With respect to the last sentence of paragraph 21, the concern was expressed that it failed to take into account the fact that possession did not create the problem of "false wealth" since the existence of non-possessory rights was generally assumed. In order to address that concern, it was suggested that that sentence should be deleted. While it was agreed that "false wealth" associated with possession was a problem of declining importance in modern economies, which was admitted in paragraph 19, it was stated that that was due mainly to the existence of filing systems. It was, therefore, suggested that that sentence should be rather recast to emphasize the need for the draft Guide to address issues of publicity and priority, and to highlight the benefits of publicity by filing rather than by taking possession.

77. As to paragraph 23, it was suggested that it should clarify that selective regulation of non-possessory security rights only created difficulties in addressing conflicts of priority between possessory and non-possessory security rights.

C. Security rights in intangible movable property

78. It was suggested that the reference in paragraph 25 to intangibles being by definition incapable of physical possession should be included in the definition of "intangibles" in the terminology section of the draft Guide (see A/CN.9/WG.VI/WP.6/Add.1, section B). It was also suggested that the reference to "some legal systems" in the last sentence of paragraph 28 should be deleted since the fact that notification of the debtor might not be desirable for some reason was true irrespective of the legal system involved.

D. Transfer of title for security purposes

79. With respect to paragraph 31, it was suggested that the cost and efficiency was an additional feature of the transfer of title for security purposes that might be included. As to paragraph 33, it was noted that the last two sentences were intended to state that in a comprehensive security regime there was no need for title transfers as separate devices. The concern was expressed, however, that that statement might inadvertently appear as discouraging the use of transfer of title. In order to address that concern, it was suggested that the last two sentences of paragraph 33 should be deleted. That suggestion was objected to. It was stated that those sentences were descriptive and reflected the fact that title devices were developed in practice because law did not provide for non-possessory security rights. It was also observed that comprehensive security regimes accommodated title devices but treated them in the same way as security devices. After discussion, it was agreed that those sentences should be revised to better reflect their intended meaning and to clarify that transfer of title might play a role even in the context of a comprehensive

security regime. Drafting suggestions made included deleting the word "modern", replacing the word "allowing" with the word "treating", and adding the word, "separate", before "security device".

E. Retention of title

80. While agreeing that the discussion of advantages and disadvantages of the retention of title was useful, the Working Group felt that it could be supplemented by the elaboration of further advantages and disadvantages. Additional advantages mentioned included that retention of title was cost-effective, it was suited to both short-term and long-term financing, and it gave rise to a security right for both the debtor and the creditor. Further disadvantages mentioned included that retention of title gave the seller a dominant position with respect to other creditors, it precluded the buyer from acquiring title until the full payment of the purchase price, it entailed a high due diligence cost in the absence of publicity, and it went beyond providing security for credit.

81. Differing views were expressed as to how retention of title should be treated in the regime envisaged in the draft Guide. One view was that it should be integrated in a comprehensive security regime and be treated as a security right. It was stated that such an approach appropriately recognized the usefulness of retention of title. It was also observed that the economic objective of encouraging supplier credit could be achieved by recognizing that, as long as it was publicized, retention of title could be given priority as of the day it was established ("super-priority"). In that connection, it was suggested that any recommendation to treat retention of title as a security device should be accompanied by another recommendation giving it super-priority.

82. Another view was that retention of title should not be treated as a security device, but be preserved as a sales transaction with special characteristics, its informality, cost-effectiveness and source of supplier credit as an alternative to bank credit. It was also observed that treating retention of title as a security device might negatively affect its privileged position and reduce its efficiency. In response, it was said that even in a comprehensive security regime, retention of title had a useful role to play and had a privileged position to the extent that it had super-priority. It was also pointed out that, whether or not it was treated in the same way as a security device, it did not necessarily permit the creditor to separate the assets from the estate in the case of the debtor's insolvency. In addition, it was said that, in a country without a developed secured transaction law, the introduction of a comprehensive security regime might be the most efficient approach. Moreover, it was pointed out that that might not be the case for a country with a developed legal system if the cost of conversion of title devices to security devices were high.

83. Several specific suggestions were made. As to the two last sentences of paragraph 35, it was suggested that they should be deleted as they were based on an economic judgement that was inappropriate for the draft Guide. With respect to paragraph 38, it was suggested that it should clarify that some countries did not recognize that contractual retention of title clauses had effect as against third parties.

84. After discussion, it was agreed that the discussion of retention of title in chapter III should be revised to include further advantages and disadvantages and to

better clarify the policy choices between a special regime for title devices and a regime in which title devices would be integrated in a comprehensive security regime.

F. Uniform comprehensive security

85. With respect to paragraph 43, it was suggested that it should emphasize the main characteristic of systems with uniform, comprehensive security, namely that they promoted substance over form and the objective of maximizing the availability of credit. As to paragraph 45, it was suggested that it should be revised to acknowledge that, in reforming their secured transactions laws, States could enact a single law dealing with both possessory and non-possessory security rights or leave in place their law on possessory security and enact a law dealing only with non-possessory rights. It was observed that merging the rules in one law promoted transparency but not at the cost of flexibility, since all the various devices were available for parties to use so as to address their needs. It was also pointed out that, in the case of an approach based on separate laws, States would need to ensure that they addressed conflicts of priority between rights governed by the various laws.

G. Summary and recommendations

86. With respect to the note after paragraph 48, recalling its decision that the draft Guide should include examples but not recommendations (see para. 75), the Working Group decided that the note could be retained in a summary form for further consideration of the matter at a future session.

87. As to paragraph 51, it was agreed that it should clarify that the regime envisaged in the draft Guide should deal with security rights in tangible and intangible assets, with the exception of types of asset that were excluded. As a matter of drafting, it was suggested that the words “to this type of asset” should be substituted for the words “to this type of security”.

88. With respect to securities that were excluded from the scope of the draft Guide, it was agreed that the draft Guide should make it clear that such exclusion did not mean that they could not be encumbered but rather that security rights in such assets would be subject to other legislation. Noting that that matter was addressed elsewhere in the draft Guide (see A/CN.9/WG.VI/WP.6/Add.1, para. 9), the Working Group agreed that a cross-reference should be included at the appropriate place in chapter III.

89. With respect to the note after paragraph 51, it was agreed that the principles of the United Nations Assignment Convention should be reflected in the draft Guide. In addition, it was agreed that other matters relating to security rights in receivables should also be addressed. In that connection, it was suggested that the next version of the draft Guide should discuss the rights of third-party debtors (e.g. debtors of receivables subject to a security right).

90. As to other assets, such as bank deposits, it was agreed that the decision as to whether they should be included in the draft Guide should be postponed until the Working Group had developed rules on the core commercial assets addressed in the

draft Guide (i.e. goods, inventory and receivables). The Working Group agreed that the same approach should be followed with respect to intellectual property rights. It was stated that work on security rights in goods that were subject, e.g. to trademarks, could have an impact on intellectual property law. In that connection, a note of caution struck emphasizing the complexity of the issues involved and that any work in that respect would have to be coordinated with the work of other organizations, such as the World Intellectual Property Organization (WIPO).[7]

91. As to paragraphs 52 and 53, it was agreed that they should be replaced with two alternative recommendations in square brackets. The first alternative would provide for a comprehensive regime in which title devices that served security functions would be treated in the same way as security devices. The other alternative would provide a special regime for title devices separate from that applicable to security rights. A note of caution was struck that, in such a case, the relationship (e.g. priority) of title devices to security rights would need to be addressed. In that connection, it was suggested that the draft Guide should emphasize that both alternatives would accommodate title devices. As to the super-priority for title devices and its scope discussed in paragraph 53 and the note after paragraph 53, while broad support was expressed, it was agreed that it should be discussed in the chapter on priority. It was also agreed that the statement that treatment of transfer or retention of title as a security device did not prejudice their qualification for other purposes should be retained in that context.

Chapter IV. Creation (A/CN.9/WG.VI/WP.6/Add.3)

A. Introduction

92. With respect to paragraph 1, it was suggested that, given that publicity should not be a requirement for effectiveness but only for priority, the reference to the security agreement not being “usually” sufficient to create a security right should be toned down.

B. Accessory character of the security right

93. While it was generally agreed that the fact that the security right was accessory to the secured obligation was a fundamental principle of secured transactions law and should be discussed, it was widely felt that that principle needed to be further explained. It was stated, for example, that with respect to revolving loan transactions, the principle could be explained by reference to enforcement. The security right was accessory to the secured obligation in the sense that it could not be enforced if there had not been any advance on the loan. In that connection, it was pointed out that, in revolving loan transactions, the accessory nature of security rights could also be explained by reference to the possibility that security rights could secure future advances and thus exist even before any advance had been made.

94. As to the accessory nature of title devices, it was observed that the matter was treated differently in the various legal systems. In any case, as that matter related to the treatment of title as security devices, it was agreed that its discussion should be

deleted from paragraph 4. In that connection, the suggestion was made that the discussion of title devices might be consolidated at the end of each chapter or in one separate chapter.

C. Limitations on types of obligations that could be secured

95. With respect to paragraph 6, it was agreed that it should be revised to state that special regimes should not be prescribed for a broad variety of "transactions" rather than obligations in order to avoid creating the impression that a special regime on title devices could not encompass a broad variety of obligations.

D. Varieties of obligations

96. It was suggested that the last sentence of paragraph 7 should be revised to state that the only non-monetary obligation that a security right could not secure was an obligation that was not capable of conversion to money.

97. As to paragraphs 9 to 11, it was suggested that the current conceptual distinctions should be supplemented by examples of practical situations. Three practical situations were mentioned, the not so common situation where a security right was created for a pre-existing obligation that was owing, the very common situation where a security right was created for an obligation that was contracted for but was not yet owing and the situation that was common in continuing credit relationships where a security agreement was created to secure future advances. It was also suggested that the second sentence of paragraph 11 should be deleted since it addressed a complex conceptual issue on which legal systems differed.

E. Description

98. With respect to paragraph 13, it was suggested that the notions of "all sums clauses" and "maximum amount clauses" should be further explained. It was also stated that reference should be made to the ability of the parties to agree on the maximum amount to be secured. As to paragraph 14, it was suggested that the last sentence should be expanded to outline advantages to the borrower from revolving credit transactions.

99. It was suggested that paragraph 15 should be either deleted or revised to refer to other law the matter of conversion of the secured obligation to local currency (e.g. law of contracts or regulatory law). It was stated that, in the absence of default and disposition of the encumbered asset, there was no need to convert the secured obligation to local currency. It was also observed that, even in the event of default and disposition, the issue of conversion should be left to the original contract from which the secured obligation arose and to the law governing the obligation. In practice, it was explained, the secured obligation and the proceeds of the disposition of the asset should be in the same currency.

F. Assets to be encumbered

100. Regarding paragraph 16, it was widely felt that the asset or its value, rather than title to it, was the object of the security right. It was agreed, however, that the matter could be reviewed once the Working Group had an opportunity to consider the issue of title as a requirement for the creation of a security right. It was also suggested that paragraph 16 should be limited to the principle that the grantor could not grant more rights than it had. It was also stated that the last sentence of paragraph 16 should be reconsidered as it appeared to be addressing an issue of priority and implying that the first creditor to acquire a security right had priority.

101. With respect to paragraphs 17 and 18, it was suggested that their order should be reversed. It was also suggested that the meaning of paragraph 18 could usefully be clarified by way of an example.

G. Future assets

102. It was suggested that the statement in the last sentence of paragraph 21 should be strengthened. It was also suggested that the descriptive character of paragraph 22 should be further emphasized to avoid giving the impression that it contained any recommendations.

103. In addition, it was suggested that in paragraph 23 only the first sentence should be retained to emphasize the importance of the ability to use future assets for obtaining credit. It was stated that the second sentence contained a statement that might not be fully correct and that the matter addressed in the third sentence essentially raised an issue of insolvency law that should be addressed either in the draft Insolvency Guide or in the chapter on insolvency of the draft Guide on Secured Transactions. In any case, it was suggested that paragraph 23 was not the appropriate place for the discussion of the impact of secured credit on unsecured creditors.

H. Assets not specifically identified

104. It was stated that the identification of inventory by reference to its location, mentioned in paragraph 24, might inadvertently lead to the loss of security since inventory was likely to be moved.

105. As to paragraph 26, several suggestions were made. One suggestion was that the third sentence should be balanced by recognizing that competing creditors could settle priority conflicts among themselves by way of agreement. Another suggestion was that the fourth sentence should clarify that the limitation referred to did not deprive the unsecured creditor of the benefit of excess value after satisfaction of the secured obligation. Yet another suggestion was that the fourth sentence should explain that valuation of the encumbered asset would entail cost and time.

I. Enterprise mortgage and floating charges

106. It was suggested that the draft Guide should clarify that an enterprise mortgage or other equivalent right could include, inter alia, new assets, cash flow and immovables.

107. As to paragraph 31, it was suggested that it should be revised to dispel any doubt that competition between providers of credit, which in itself could reduce cost, might not be desirable.

108. After discussion, the Working Group requested the Secretariat to revise paragraphs 1 to 33 of chapter III, taking into account the views expressed and the suggestions made.

V. Future work

109. The Working Group noted that its fourth session was scheduled to take place in Vienna from 8 to 12 September 2003, subject to confirmation of those dates by the Commission at its thirty-sixth session.

Notes

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

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

[3] Ibid., *Fifty-fifth Session, Supplement No. 17* (A/55/17), para. 459.

[4] Ibid., *Fifty-sixth Session, Supplement No. 17 (*A/56/17), para. 351.

[5] Ibid., para. 357.

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

[7] Ibid, *Fifty-sixth Session, Supplement No. 17* (A/56/17), paras. 354-356.