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**United Nations Commission  
on International Trade Law**  
**Forty-second session**  
Vienna, 29 June-17 July 2009

## **Provisional agenda, annotations thereto and scheduling of meetings of the forty-second session**

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## **II. Annotations**

### **1. Opening of the session**

1. The forty-second session of the Commission will be held at the Vienna International Centre, from 29 June to 17 July 2009.<sup>1</sup> The session will be opened on Monday, 29 June 2009, at 10 a.m. (see below, section III, paras. 73-80 for more details about the scheduling of meetings). As at 29 June 2009, the United Nations Commission on International Trade Law will be composed of the following member States: Algeria, Armenia, Australia, Austria, Bahrain, Belarus, Benin, Bolivia, Bulgaria, Cameroon, Canada, Chile, China, Colombia, Czech Republic, Ecuador, Egypt, El Salvador, Fiji, France, Gabon, Germany, Greece, Guatemala, Honduras, India, Iran (Islamic Republic of), Israel, Italy, Japan, Kenya, Latvia, Lebanon, Madagascar, Malaysia, Malta, Mexico, Mongolia, Morocco, Namibia, Nigeria, Norway, Pakistan, Paraguay, Poland, Republic of Korea, Russian Federation, Senegal, Serbia, Singapore, South Africa, Spain, Sri Lanka, Switzerland, Thailand, Uganda, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela (Bolivarian Republic of) and Zimbabwe.

2. States not members of the Commission and international governmental organizations may attend the session as observers and participate in the deliberations. In addition, invited international non-governmental organizations may attend the session as observers and represent the views of their organizations on matters where the organization concerned has expertise or international experience so as to facilitate the deliberations at the session.

### **2. Election of officers**

3. Pursuant to a decision taken by the Commission at its first session, the Commission elects, for each session, a Chairperson, three Vice-Chairpersons and a Rapporteur.

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<sup>1</sup> *Official Records of the General Assembly, Sixty-third Session, Supplement No. 17 (A/63/17)*, para. 395.

#### 4. Finalization and adoption of UNCITRAL Notes on cooperation, communication and coordination in cross-border insolvency proceedings

4. At its thirty-ninth session, in 2006, the Commission had agreed that initial work to compile practical experience with negotiating and using cross-border insolvency agreements should be facilitated informally through consultation with judges and insolvency practitioners and that a preliminary progress report on that work should be presented to the Commission for further consideration at its fortieth session, in 2007.<sup>2</sup> At the first part of its fortieth session (Vienna, 25 June-12 July 2007), the Commission considered the preliminary report reflecting experience with respect to negotiating and using cross-border insolvency protocols (A/CN.9/629). The Commission expressed its satisfaction with respect to the progress made on the work of compiling practical experience with negotiating and using cross-border insolvency agreements and reaffirmed that that work should continue to be developed informally by the Secretariat in consultation with judges, practitioners and other experts.<sup>3</sup>

5. At its forty-first session, in 2008, the Commission had before it a note by the Secretariat reporting on further progress with respect to that work (A/CN.9/654). The Commission noted that further consultations had been held with judges and insolvency practitioners and a compilation of practical experience, organized around the outline of contents annexed to the previous report to the Commission (A/CN.9/629), had been prepared by the Secretariat. Because of timing and translation constraints, that compilation could not be submitted to the Commission's forty-first session.<sup>4</sup>

6. The Commission expressed its satisfaction with respect to the progress made on the work of compiling practical experience and decided that the compilation should be presented as a working paper to Working Group V (Insolvency Law) at its thirty-fifth session (17-21 November 2008) for an initial discussion. Working Group V could then decide to continue discussing the compilation at its thirty-sixth session in the spring of 2009 and make its recommendations to the forty-second session of the Commission, in 2009, bearing in mind that coordination and cooperation based on cross-border insolvency agreements were likely to be of considerable importance in searching solutions for the international treatment of enterprise groups in insolvency. The Commission decided to plan its forty-second session in 2009, so that it would be able to devote, if necessary, time to discussing recommendations of Working Group V.<sup>5</sup>

7. The Working Group considered the draft Notes on cooperation, communication and coordination in cross-border insolvency proceedings at its thirty-fifth session and requested that they be circulated to Governments for comment prior to its thirty-sixth session (May 2009) (see A/CN.9/666, para. 22). The draft Notes were circulated in November 2008.

8. At its forty-second session, the Commission will have before it (a) comments by Governments on the draft Notes (A/CN.9/WG.V/WP.86/Add.1-3), (b) a further

<sup>2</sup> Ibid., *Sixty-first Session, Supplement No. 17* (A/61/17), para. 209.

<sup>3</sup> Ibid., *Sixty-second Session, Supplement No. 17* (A/62/17), para. 191.

<sup>4</sup> Ibid., *Sixty-third Session, Supplement No. 17* (A/63/17), para. 320.

<sup>5</sup> Ibid., para. 321.

draft of the Notes, revised following the thirty-fifth session of the Working Group and taking into account the received comments of Governments (A/CN.9/WG.V/WP.86) and (c) the report of the thirty-sixth session of the Working Group (New York, 18-22 May 2009), at which that revised draft of the Notes was considered (A/CN.9/671). (For suggested scheduling of meetings to consider this agenda item, see paras. 74 and 78 below.)

## **5. Draft UNCITRAL Model Law on Public Procurement**

9. At its thirty-seventh session, in 2004, the Commission agreed that its 1994 Model Law on Procurement of Goods, Construction and Services<sup>6</sup> would benefit from being updated to reflect new practices, in particular those resulting from the use of electronic communications in public procurement, and the experience gained in the use of the Model Law as a basis for law reform.<sup>7</sup> It decided to entrust the drafting of proposals for the revision of the Model Law to its Working Group I (Procurement). The Working Group was given a flexible mandate to identify the issues to be addressed in its considerations.<sup>8</sup>

10. Until the Commission's forty-first session, in 2008, the Working Group held eight one-week sessions at which it considered studies and drafting materials prepared by the Secretariat.<sup>9</sup> At its thirty-eighth to forty-first sessions, in 2005 to 2008, respectively, the Commission reaffirmed its support for the review being undertaken and for the inclusion of novel procurement practices in the Model Law.<sup>10</sup> At its thirty-ninth session, the Commission recommended that the Working Group, in updating the Model Law and the Guide, should take into account issues of conflicts of interest and should consider whether any specific provisions addressing those issues would be warranted in the Model Law.<sup>11</sup> At its fortieth session, the Commission recommended that the Working Group should adopt a concrete agenda for its forthcoming sessions in order to expedite progress in its work.<sup>12</sup> At its forty-first session, the Commission invited the Working Group to proceed expeditiously with the completion of the project, with a view to permitting the finalization and adoption of the revised Model Law, together with its Guide to Enactment, within a reasonable time.<sup>13</sup>

11. At its forty-second session, the Commission will have before it (a) a draft Model Law on Public Procurement with an accompanying note by the Secretariat (A/CN.9/WG.I/WP.68 and Add.1 and A/CN.9/WG.I/WP.69 and addenda), (b) the reports of the fourteenth (Vienna, 8-12 September 2008), fifteenth (New York,

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<sup>6</sup> Ibid., *Forty-ninth Session, Supplement No. 17* and corrigendum (A/49/17 and Corr.1), annex I.

<sup>7</sup> Ibid., *Fifty-ninth Session, Supplement No. 17* (A/59/17), paras. 79-82.

<sup>8</sup> Ibid., paras. 81-82.

<sup>9</sup> For the reports of the Working Group on the work of its sixth to thirteenth sessions, see A/CN.9/568, A/CN.9/575, A/CN.9/590, A/CN.9/595, A/CN.9/615, A/CN.9/623, A/CN.9/640 and A/CN.9/648, respectively.

<sup>10</sup> *Official Records of the General Assembly, Sixtieth Session, Supplement No. 17* (A/60/17), para. 172; *ibid.*, *Sixty-first Session, Supplement No. 17* (A/61/17), para. 192; *ibid.*, *Sixty-second Session, Supplement No. 17* (A/62/17 (Part I)), para. 170; and *ibid.*, *Sixty-third Session, Supplement No. 17* (A/63/17), para. 307.

<sup>11</sup> Ibid., *Sixty-first Session, Supplement No. 17* (A/61/17), para. 192.

<sup>12</sup> Ibid., *Sixty-second Session, Supplement No. 17* (A/62/17 (Part I)), para. 170.

<sup>13</sup> Ibid., *Sixty-third Session, Supplement No. 17* (A/63/17), para. 307.

2-6 February 2009) and sixteenth<sup>14</sup> (New York, 26-29 May 2009) sessions of the Working Group (A/CN.9/664, A/CN.9/668 and A/CN.9/672, respectively), and (c) possible proposals for the revision of the draft Model Law based upon deliberations of the Working Group at its sixteenth session. (For suggested scheduling of meetings to consider this agenda item, see para. 75 below.)

## **6. Arbitration and Conciliation: progress report of Working Group II**

12. In accordance with a decision of the Commission at its thirty-ninth session, in 2006,<sup>15</sup> Working Group II (Arbitration and Conciliation) commenced its work on a revision of the UNCITRAL Arbitration Rules (1976)<sup>16</sup> at its forty-fifth session (Vienna, 11-15 September 2006), and continued it at its forty-sixth (New York, 5-9 February 2007), forty-seventh (Vienna, 10-14 September 2007), forty-eighth (New York, 4-8 February 2008), forty-ninth (Vienna, 15-19 September 2008) and fiftieth (New York, 9-13 February 2009) sessions.

13. At its forty-first session, in 2008, the Commission expressed the hope that the Working Group would complete its work on the revision of the UNCITRAL Arbitration Rules in their generic form, so that the final review and adoption of the revised Rules would take place at the forty-second session of the Commission, in 2009.<sup>17</sup> At its fiftieth session, the Working Group noted that it could not complete its review of the Rules at its current session in a manner that would bring the draft text to the level of maturity and quality required for submission to the next session of the Commission, in 2009. While the session of the Working Group had been conducted bearing in mind the hope expressed by the Commission at its forty-first session<sup>18</sup> and the encouragement provided by the General Assembly in its resolution 63/120 that the revised text of the Rules be finalized in 2009, the Working Group was generally of the view that it should complete its reading of the text before submitting it to the Commission. Since the Rules in their new version should remain in use for many years, the Working Group believed that the time required should be taken for meeting the high standard of UNCITRAL. The Working Group agreed to request the Commission for sufficient time to complete its work on the Rules (A/CN.9/669, para. 120).

14. At the forty-ninth session of the Working Group, a proposal was reiterated to revise the existing mechanism involving the designating and appointing authorities under the Rules (A/CN.9/665, paras. 46-50). Diverging views were expressed whether that question should be debated again in the Working Group (A/CN.9/665, para. 49). The Working Group agreed that that question might need to be re-examined after completion of the second reading of the Rules. The view was also expressed that, whether or not consensus could be reached in the Working Group,

<sup>14</sup> At the request of the Working Group (A/CN.9/668, para. 277) and upon consultation with the Bureau of the Commission, the sixteenth session of the Working Group was convened from 26 to 29 May 2009, at a time initially scheduled for the forty-fifth session of Working Group IV (Electronic commerce).

<sup>15</sup> *Official Records of the General Assembly, Sixty-first Session, Supplement No. 17* (A/61/17), paras. 182-187.

<sup>16</sup> *Ibid.*, *Thirty-first Session, Supplement No. 17* (A/31/17), para. 57.

<sup>17</sup> *Ibid.*, *Sixty-third Session, Supplement No. 17* (A/63/17), para. 315.

<sup>18</sup> *Ibid.*

the matter was of political nature and could only be settled by the Commission (A/CN.9/665, para. 50).

15. At its forty-second session, the Commission will have before it the reports of the forty-ninth and fiftieth sessions of the Working Group (A/CN.9/665 and A/CN.9/669, respectively). The Commission will also have before it a note by the Secretariat on the role of designating and appointing authorities under the UNCITRAL Arbitration Rules (A/CN.9/677). (For suggested scheduling of meetings to consider this agenda item, see para. 76 below.)

#### **7. Insolvency law: progress report of Working Group V**

16. At its thirty-ninth session, in 2006, the Commission referred the topic of the treatment of enterprise groups in insolvency, including the provision of post-commencement finance, to Working Group V (Insolvency Law) for consideration. The Working Group was given a flexible mandate to make appropriate recommendations to the Commission regarding the scope of its future work and the form it should take, depending upon the substance of the proposed solutions to the problems the Working Group would identify under that topic.<sup>19</sup>

17. The Working Group commenced its work on the topic at its thirty-first session (Vienna, 11-15 December 2006) and continued it at its thirty-second (New York, 14-18 May 2007), thirty-third (Vienna, 5-9 November 2007), thirty-fourth (New York, 3-7 March 2008), thirty-fifth (Vienna, 17-21 November 2008) and thirty-sixth (New York, 18-22 May 2009) sessions.

18. At its forty-first session, in 2008, the Commission noted that Working Group VI was not able to reach agreement as to whether certain matters related to the impact of insolvency on a security right in intellectual property were sufficiently linked with secured transactions to justify their discussion in the annex to the UNCITRAL Legislative Guide on Secured Transactions. The Commission decided that Working Group V should be informed of those matters and should be invited to express any preliminary opinion at its thirty-fifth session.<sup>20</sup> The discussion of those issues at the thirty-fifth and thirty-sixth sessions of Working Group V is included in the reports of those sessions.

19. At its forty-second session, the Commission will have before it the reports of the thirty-fifth (Vienna, 17-21 November 2008) and thirty-sixth (New York, 18-22 May 2009) sessions of the Working Group (A/CN.9/666 and A/CN.9/671, respectively). (For suggested scheduling of meetings to consider this agenda item, see para. 74 below.)

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

20. At the first part of its fortieth session (Vienna, 25 June-12 July 2007), the Commission considered a note by the Secretariat entitled "Possible future work on security rights in intellectual property" (A/CN.9/632).<sup>21</sup> The note took into account the discussions at a colloquium on security interests in intellectual property rights,<sup>22</sup>

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<sup>19</sup> Ibid., *Sixty-first Session, Supplement No. 17* (A/61/17), para. 209 (a) and (b).

<sup>20</sup> Ibid., *Sixty-third Session, Supplement No. 17* (A/63/17), para. 326.

<sup>21</sup> Ibid., *Sixty-second Session, Supplement No. 17* (A/62/17 (Part I)), para. 155.

<sup>22</sup> Further information about the Colloquium is available at

held in Vienna from 18 to 19 January 2007 pursuant to a decision of the Commission.<sup>23</sup> In order to provide sufficient guidance to States as to the adjustments that they would need to make in their laws to avoid inconsistencies between secured transactions and intellectual property law, the Commission decided to entrust Working Group VI (Security Interests) with the preparation of an annex to the UNCITRAL Legislative Guide on Secured Transactions addressing specifically security rights in intellectual property (the “draft Annex”).<sup>24</sup>

21. Working Group VI began its work at its thirteenth session (New York, 19-23 May 2008). At that session, the Working Group considered a note by the Secretariat entitled “Security rights in intellectual property rights”, which included a brief discussion of insolvency-related matters (A/CN.9/WG.VI/WP.33 and Add.1), and requested the Secretariat to prepare a draft Annex (A/CN.9/649, para. 13). In addition, the Working Group decided to revisit insolvency-related matters at a future session and to recommend to the Commission that Working Group V (Insolvency Law) be requested to consider them (A/CN.9/649, para. 103).

22. At its forty-first session, in 2008, the Commission noted with satisfaction the good progress achieved by the Working Group. The Commission also noted the decision of the Working Group with respect to certain matters related to the impact of insolvency on a security right in intellectual property, and decided that Working Group V should be informed and should be invited to express any preliminary opinion at its next session.<sup>25</sup> (See also para. 18 above.)

23. Working Group VI continued its work at its fourteenth session (Vienna, 20-24 October 2008). At that session, the Working Group considered a note by the Secretariat entitled “Annex to the UNCITRAL Legislative Guide on Secured Transactions dealing with security rights in intellectual property” (A/CN.9/WG.VI/WP.35 and Add.1), and requested the Secretariat to prepare a revised version of the draft Annex (A/CN.9/667, para. 15). In addition, the Working Group referred to Working Group V certain matters relating to the impact of insolvency on a security right in intellectual property (see A/CN.9/667, paras. 129-140).

24. At its thirty-fifth session (Vienna, 17-21 November 2008), Working Group V reviewed the issues involving insolvency law referred to it by Working Group VI for inclusion in the draft Annex and confirmed that the responses given in the table at the end of document A/CN.9/667 accurately reflected the impact of the UNCITRAL Legislative Guide on Insolvency Law. At that session, Working Group V requested the Secretariat to prepare a background paper on the discussion of intellectual property in the context of the treatment of contracts in the UNCITRAL Legislative Guide on Insolvency Law (A/CN.9/666, paras. 112-117).

25. At its fifteenth session (New York, 27 April-1 May 2009), Working Group VI considered a note by the Secretariat with regard to the impact of insolvency of a licensor or licensee of intellectual property on a security right in that party’s rights under a licence agreement (A/CN.9/WG.VI/WP.37/Add.4), taking into account the

<http://www.uncitral.org/uncitral/en/commission/colloquia/2secint.html>.

<sup>23</sup> *Official Records of the General Assembly, Sixty-first Session, Supplement No. 17* (A/61/17), para. 86.

<sup>24</sup> *Ibid.*, *Sixty-second Session, Supplement No. 17* (A/62/17 (Part I)), paras. 155-157 and 162.

<sup>25</sup> *Ibid.*, *Sixty-third Session, Supplement No. 17* (A/63/17), para. 326.

discussion of intellectual property in the context of the treatment of contracts in the UNCITRAL Legislative Guide on Insolvency Law (A/CN.9/WG.V/WP.87).

26. At its forty-second session, the Commission will have before it the report of the fourteenth and fifteenth sessions of the Working Group (A/CN.9/667 and A/CN.9/670, respectively). (For suggested scheduling of meetings to consider this agenda item, see para. 76 below.)

**9. Possible future work in the area of transport law: commentary on the United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea**

27. The Commission may wish to recall its approval of what was then known as the draft United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea at its forty-first session, in 2008,<sup>26</sup> and the subsequent adoption of that Convention by the General Assembly on 11 December 2008.<sup>27</sup> The General Assembly authorized the Convention to be opened for signature at a signing ceremony in Rotterdam on 23 September 2009<sup>28</sup> and called upon all Governments to consider becoming a party to the Convention.<sup>29</sup>

28. During its deliberations on the draft Convention from 2002 to 2008, Working Group III (Transport Law) considered whether certain aspects of the text should be further elaborated in a commentary or notes that could accompany the Convention upon its publication (see, for example, footnote 20 to article 9 in A/CN.9/WG.III/WP.101, which considered whether detail related to the term “readily ascertainable” should be specified in a note or a commentary accompanying publication of the Convention). However, no decision was made in that regard, and the Commission may wish to consider whether publication of the Convention should be accompanied by a commentary or notes, and what form those additional materials should take.

29. At its forty-second session, the Commission will have before it a note by the Secretariat (A/CN.9/679) suggesting possible formats for publication of the Convention and commentary thereon. (For suggested scheduling of meetings to consider this agenda item, see para. 76 below.)

**10. Possible future work in the area of electronic commerce**

30. The Commission may wish to recall that, at its forty-first session, in 2008, it requested the Secretariat to engage actively, in cooperation with the World Customs Organization (WCO) and the United Nations Centre for Trade Facilitation and Electronic Business (UN/CEFACT), and with the involvement of experts, in the study of the legal aspects involved in implementing a cross-border single window facility with a view to formulating a comprehensive international reference document on legal aspects of creating and managing a single window, and to report to the Commission on the progress of that work at its next session.<sup>30</sup>

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<sup>26</sup> Ibid., para. 298.

<sup>27</sup> Resolution 63/122, para. 2.

<sup>28</sup> Ibid., para. 3.

<sup>29</sup> Ibid., para. 4.

<sup>30</sup> *Official Records of the General Assembly, Sixty-third Session, Supplement No. 17* (A/63/17),



31. At its forty-second session, the Commission will have before it a note by the Secretariat (A/CN.9/678) containing an update on the progress of the work of the WCO-UNCITRAL Joint Legal Task Force on Coordinated Border Management Incorporating the International Single Window, as well as on other relevant developments in the field of single windows. The note will also refer to the possibility of separately undertaking work on a reference document on electronic commerce with a view to assisting countries, in particular developing ones, in the preparation of a legislative framework for electronic commerce. In particular, such document would aim at presenting various relevant issues to be included in a comprehensive framework and at discussing the most desirable implementation of electronic commerce legislative principles in other fields of international trade law, such as the other areas of work of UNCITRAL.

32. In addition, a delegation has announced its intention to submit a proposal for possible work on electronic commerce, dealing, in particular, with the electronic transfer of rights and documents. This proposal will be transmitted to the Commission, at its forty-second session, in a note by the Secretariat (A/CN.9/678/Add.1). (For suggested scheduling of meetings to consider this agenda item, see para. 76 below.)

## 11. Possible future work in the area of commercial fraud

33. The Commission may wish to recall its consideration of the subject of commercial fraud at its thirty-fifth to forty-first sessions, in 2002 to 2008, respectively.<sup>31</sup> At its thirty-seventh session, in 2004, the Commission agreed that it would be useful if, wherever appropriate, examples of commercial fraud were to be discussed in the particular contexts of projects worked on by the Commission so as to enable delegates involved in those projects to take the problem of fraud into account in their deliberations. In addition, the Commission agreed that the preparation of lists of common features present in typical fraudulent schemes (the “indicators of commercial fraud”) could be useful as educational material for participants in international trade and other potential targets of perpetrators of fraud to the extent they would help them protect themselves and avoid becoming victims of fraudulent schemes.<sup>32</sup>

34. At its thirty-eighth session, in 2005, the Commission’s attention was drawn to resolution 2004/26 adopted by the Economic and Social Council (ECOSOC) on 21 July 2004, pursuant to which an intergovernmental expert group would prepare a study on fraud and the criminal misuse and falsification of identity, and develop on the basis of such a study relevant practices, guidelines or other materials, taking into account in particular the relevant work of UNCITRAL. The resolution also recommended that the United Nations Office on Drugs and Crime (UNODC) serve

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paras. 333-338.

<sup>31</sup> Ibid., *Fifty-seventh Session, Supplement No. 17* (A/57/17), paras. 279-290; *ibid.*, *Fifty-eighth Session, Supplement No. 17* (A/58/17), paras. 231-241; *ibid.*, *Fifty-ninth Session, Supplement No. 17* (A/59/17), paras. 108-112; *ibid.*, *Sixtieth Session, Supplement No. 17* (A/60/17), paras. 216-220; *ibid.*, *Sixty-first Session, Supplement No. 17* (A/61/17), paras. 211-217; *ibid.*, *Sixty-second Session, Supplement No. 17* (A/62/17 (Part I)), paras. 196-203; and *ibid.*, *Sixty-third Session, Supplement No. 17* (A/63/17), paras. 339-347.

<sup>32</sup> Ibid., *Fifty-ninth Session, Supplement No. 17* (A/59/17), paras. 110-112.

as secretariat for the intergovernmental expert group, in consultation with the secretariat of UNCITRAL.<sup>33</sup>

35. At its forty-first session, in 2008, the Commission heard a report by the Secretariat on its work on the indicators of commercial fraud.<sup>34</sup> The Commission requested the Secretariat to make such adjustments and additions as were advisable to improve the indicators and subsequently to publish them as an information note.<sup>35</sup> Also at its forty-first session, the Commission heard a report on collaborative efforts undertaken by the Secretariat with UNODC in respect of its work on commercial and economic fraud, in particular on identity fraud, and requested the Secretariat to continue to cooperate with and to assist UNODC in its work on fraud, and to keep the Commission informed of developments in that area.<sup>36</sup>

36. At its forty-second session, the Commission will hear an oral report from the Secretariat providing a brief survey of its progress on the publication of the indicators of commercial fraud and on its collaboration with UNODC in respect of its work on commercial and economic fraud. (For suggested scheduling of meetings to consider this agenda item, see para. 76 below.)

## **12. Monitoring implementation of the 1958 New York Convention**

37. The Commission may wish to recall that, at its twenty-eighth session, in 1995, it had approved a project, undertaken jointly with Committee D (now known as the Arbitration Committee) of the International Bar Association, aimed at monitoring the legislative implementation of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York on 10 June 1958<sup>37</sup> (the “New York Convention”).<sup>38</sup> At its forty-first session, the Commission considered a written report in respect of the project, covering implementation of the New York Convention by States, its interpretation and application, and the requirements and procedures put in place by States for enforcing an award under the New York Convention, based on replies sent by 108 States parties to the New York Convention (A/CN.9/656 and Add.1).<sup>39</sup>

38. The Commission welcomed the recommendations and conclusions contained in the report, noting that they highlighted areas where additional work might need to be undertaken to enhance uniform interpretation and effective implementation of the New York Convention. The Commission agreed that work should be undertaken to eliminate or limit the effect of legal disharmony in that field. The Commission was generally of the view that the outcome of the project should consist in the development of a guide to enactment of the New York Convention, with a view to promoting a uniform interpretation and application of the Convention, thus avoiding uncertainty resulting from its imperfect or partial implementation and limiting the

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<sup>33</sup> Ibid., *Sixtieth Session, Supplement No. 17* (A/60/17), para. 217.

<sup>34</sup> Ibid., *Sixty-third Session, Supplement No. 17* (A/63/17), paras. 339-342.

<sup>35</sup> Ibid., paras. 343-344.

<sup>36</sup> Ibid., paras. 345-347.

<sup>37</sup> United Nations, *Treaty Series*, vol. 330, No. 4739.

<sup>38</sup> *Official Records of the General Assembly, Fiftieth Session, Supplement No. 17* (A/50/17), paras. 401-404.

<sup>39</sup> Ibid., *Sixty-third session, Supplement No. 17* (A/63/17), paras. 353-360.

risk that practices of States diverge from the spirit of the Convention. The Commission requested the Secretariat to study the feasibility of preparing such a guide.<sup>40</sup> The Commission also requested the Secretariat to publish on the UNCITRAL website the information collected during the project implementation, in the language in which it was received, and urged States to provide the Secretariat with accurate information to ensure that the data published on the UNCITRAL website remained up to date.<sup>41</sup>

39. In addition, the Commission agreed that, resources permitting, the activities of the Secretariat in the context of its technical assistance programme could usefully include dissemination of information on the judicial interpretation of the New York Convention, which would usefully complement other activities in support of the Convention.<sup>42</sup>

40. At its forty-second session, the Secretariat will present an oral progress report to the Commission. (For suggested scheduling of meetings to consider this agenda item, see para. 76 below.)

### **13. Technical assistance to law reform**

41. At its forty-second session, the Commission will have before it a note by the Secretariat on technical assistance activities undertaken since the Commission's forty-first session and on the technical assistance resources, including UNCITRAL publications, the UNCITRAL website, Case Law on UNCITRAL texts (CLOUT) and digests of case law (A/CN.9/675).

42. The Commission will also have before it a bibliography of recent writings related to its work (A/CN.9/673). (For suggested scheduling of meetings to consider this agenda item, see para. 76 below.)

### **14. Status and promotion of UNCITRAL legal texts**

43. At its forty-second session, the Commission will have before it a note by the Secretariat concerning the status of the conventions and model laws resulting from its work as well as the status of the New York Convention (A/CN.9/674). (For suggested scheduling of meetings to consider this agenda item, see para. 76 below.)

### **15. Working methods of UNCITRAL**

44. At the first part of its fortieth session (Vienna, 25 June-12 July 2007), the Commission had before it observations and proposals by France on the working methods of the Commission (A/CN.9/635), and engaged in a preliminary exchange of views on those observations and proposals. It was agreed at that session that the issue of working methods would be placed as a specific item on the agenda of the Commission at its resumed fortieth session (Vienna, 10-14 December 2007). In order to facilitate informal consultations among all interested States, the Secretariat was requested to prepare a compilation of procedural rules and practices established by UNCITRAL itself or by the General Assembly in its resolutions regarding the work of the Commission. The Secretariat was also requested to make the necessary

<sup>40</sup> Ibid., para. 355.

<sup>41</sup> Ibid., para. 356.

<sup>42</sup> Ibid., para. 360.

arrangements, as resources permitted, for representatives of all interested States to meet on the day prior to the opening of the resumed fortieth session of the Commission and, if possible, during the resumed session.<sup>43</sup>

45. At its resumed fortieth session, the Commission considered the issue of working methods on the basis of the observations and proposals by France on the working methods of the Commission (A/CN.9/635), observations by the United States on the same topic (A/CN.9/639) as well as the requested note by the Secretariat on rules of procedure and methods of work of the Commission (A/CN.9/638 and Add.1 to 6). The Commission was informed about the informal consultations held on 7 December 2007 among representatives of all interested States on the rules of procedure and methods of work of the Commission. At that session, the Commission agreed that: (i) any future review should be based on the previous deliberations on the subject in the Commission, the observations by France and the United States (A/CN.9/635 and A/CN.9/639, respectively), and the note by the Secretariat (A/CN.9/638 and addenda), which was considered as providing a particularly important historical overview of the establishment and evolution of UNCITRAL rules of procedure and methods of work; (ii) the Secretariat should be entrusted with the preparation of a working document describing current practices of the Commission with the application of rules of procedure and methods of work, in particular as regards decision-making and participation of non-State entities in the work of UNCITRAL, distilling the relevant information from its previous note (A/CN.9/638 and addenda); this working document would serve for future deliberations on the subject in the Commission in formal and informal settings. It was understood that, where appropriate, the Secretariat should indicate its observations on rules of procedure and methods of work for consideration by the Commission; (iii) the Secretariat should circulate the working document to all States for comment and subsequently compile any comments it might receive; (iv) informal consultations among all interested States might be held, if possible, before the forty-first session of the Commission; and (v) the working document might be discussed already at the Commission's forty-first session, time permitting.<sup>44</sup>

46. At its forty-first session, in 2008, the Commission had before it a note by the Secretariat describing current practices of the Commission as regards decision-making, status of observers in UNCITRAL, and preparatory work by the Secretariat (A/CN.9/653). At that session, the Commission also had before it a note by the Secretariat compiling the comments received on the note by the Secretariat (A/CN.9/653) prior to the Commission's forty-first session (A/CN.9/660 and Add.1-5). The Commission requested the Secretariat to prepare a first draft of a reference document, based on the note by the Secretariat (A/CN.9/653), for use by chairpersons, delegates and observers and by the Secretariat itself. It was understood that the reference document should be somewhat more normative in nature than document A/CN.9/653. While the term "guidelines" was most often used to describe the future reference document, no decision was made as to its final form. The Secretariat was requested to circulate the draft reference document for comments by States and interested international organizations and to prepare a compilation of those comments for consideration by the Commission at its forty-

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<sup>43</sup> Ibid., *Sixty-second Session, Supplement No. 17* (A/62/17 (Part I)), paras. 234-241.

<sup>44</sup> Ibid., (A/62/17 (Part II)), paras. 101-107.

second session. Without prejudice to other forms of consultation, the Commission decided that two days should be set aside for informal meetings to take place, with interpretation in the six official languages of the United Nations, at the beginning of the forty-second session of the Commission to discuss the draft reference document.<sup>45</sup>

47. At its forty-second session, the Commission will have before it a note by the Secretariat containing a first draft of a reference document (A/CN.9/676) and addenda to that note, if any, compiling the comments on that document, which the Secretariat may receive before the Commission's forty-second session. (For suggested scheduling of meetings to consider this agenda item, see para. 76 below.)

## **16. Coordination and cooperation**

### **(a) General**

48. At its forty-second session, the Commission will hear an oral report from the Secretariat providing a brief survey of the work of international organizations related to the harmonization of international trade law. As the Commission will recall from the discussion at its forty-first session, in 2008, the Secretariat suggested that the timing of both its general annual report on the current activities of international organizations related to the harmonization and unification of international trade law, as well as its ongoing series of specialized reports on particular topics, would in the future not necessarily be published prior to the annual session of the Commission. The reason given for that suggestion was to ensure greater flexibility in timing the publication of the report with the ongoing schedule of international activity and to alleviate the heavy burden on resources in respect of the translation and processing of documents immediately preceding each annual Commission session. To that end, the Secretariat will publish at a later date its 2009 annual report on the current activities of other international organizations. In addition, given the growing interest in insolvency issues that has been witnessed in the light of the current global economic crisis, the Secretariat will publish a more detailed study on insolvency-related activities.

### **(b) Reports of other international organizations**

49. Representatives of other international organizations will be given an opportunity to apprise the Commission of their current activities and possible means of strengthening cooperation. (For suggested scheduling of meetings to consider this agenda item, see para. 76 below.)

## **17. Role of UNCITRAL in promoting the rule of law at the national and international levels**

50. At its resumed fortieth session (Vienna, 10-14 December 2007), the Commission took note of General Assembly resolution 62/70 on the rule of law at the national and international levels, of 6 December 2007. The Commission in particular noted that, by paragraph 3 of that resolution, the General Assembly invited the Commission to comment, in its report to the General Assembly, on the Commission's current role in promoting the rule of law. At that session, the

<sup>45</sup> Ibid., *Sixty-third session, Supplement No. 17* (A/63/17), paras. 373-381.

Commission decided to include the item “Role of UNCITRAL in promoting the rule of law” in the agenda of its forty-first session and invited all States members of UNCITRAL and observers to exchange their views on this agenda item at that session.<sup>46</sup>

51. At its forty-first session, in 2008, the Commission, as requested by the General Assembly, transmitted comments on its role in promoting the rule of law at the national and international levels in its annual report to the General Assembly. The Commission saw its role in particular in providing assistance to States that sought to promote the rule of law in the area of international and domestic trade and investment, essential in advancing good governance and sustained economic development, the eradication of poverty and hunger, and thus the promotion of the well-being of all peoples and peaceful coexistence and cooperation among States. The Commission therefore expressed its conviction that promotion of the rule of law in commercial relations should be an integral part of the broader agenda of the General Assembly and the Secretary-General to promote the rule of law at the national and international levels. The Commission was looking forward to being part of strengthened and coordinated activities of the Organization in that respect.<sup>47</sup>

52. At its forty-second session, the Commission will have before it General Assembly resolution 63/128 on the rule of law at the national and international levels. By operative paragraphs 4 and 6, the General Assembly called upon the United Nations system to systematically address aspects of the rule of law in relevant activities, and encouraged the Secretary-General and the United Nations system to accord high priority to rule of law activities. The General Assembly, in operative paragraph 7 of that resolution, invited the Commission (and the International Court of Justice and the International Law Commission) to continue to comment, in its reports to the General Assembly, on its current role in promoting the rule of law. By operative paragraph 10 of the resolution, the General Assembly decided to focus the debates in the Sixth Committee, without prejudice to the consideration of the item as a whole, on the following sub-topics:

(a) At the sixty-fourth session, in 2009, on the sub-topic “Promoting the rule of law at the international level”. The Sixth Committee reached the understanding<sup>48</sup> that comments related to this sub-topic should address, among others, the issues of international dispute resolution mechanisms;

(b) At the sixty-fifth session, in 2010, on the sub-topic “Laws and practices of Member States in implementing international law”. The Sixth Committee reached the understanding<sup>49</sup> that comments related to this sub-topic should address, among others, laws and practices in the domestic implementation and interpretation of international law, strengthening and improving coordination and coherence of technical assistance and capacity-building in this area, mechanisms and criteria for evaluating the effectiveness of such assistance, ways and means of advancing donor coherence and perspectives of recipient States;

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<sup>46</sup> Ibid., *Sixty-second Session, Supplement No. 17* (A/62/17 (Part II)), paras. 111-113.

<sup>47</sup> Ibid., *Sixty-third Session, Supplement No. 17* (A/63/17), para. 386.

<sup>48</sup> Report of the Sixth Committee (A/63/443), para. 7.

<sup>49</sup> Ibid.

(c) At the sixty-sixth session, in 2011, on the sub-topic “Rule of law and transitional justice in conflict and post-conflict situations”. The Sixth Committee reached the understanding<sup>50</sup> that comments related to this sub-topic should address, among others, the role and future of national and international transitional justice and accountability mechanisms and informal justice systems.

53. The Commission may wish to take note of General Assembly resolution 63/128 and transmit comments, in its report to the General Assembly, on its current role in promoting the rule of law, with a particular focus on the issues related to the sub-topic “Promoting the rule of law at the international level”, such as the issues of international dispute resolution mechanisms, expected to be considered at the next session of the General Assembly. The Commission may also wish to draw the attention of its member States to the sub-topics expected to be considered at the following two sessions of the General Assembly, in 2010 and 2011, and invite them to submit comments in writing or orally for reflection in the Commission’s report to the General Assembly in respective years. The Commission may also wish to reiterate its call for additional resources to be allocated to the UNCITRAL secretariat to allow it to accord high priority to UNCITRAL rule of law activities under the programme of technical assistance with law reform in the field of commercial law to developing countries and countries with their economies in transition. (Copies of the resolution and the relevant report of the Sixth Committee (A/63/443) will be made available at the forty-second session of the Commission.) (For suggested scheduling of meetings to consider this agenda item, see para. 76 below.)

#### **18. Willem C. Vis International Commercial Arbitration Moot competition**

54. An oral report will be presented on the Sixteenth Annual Willem C. Vis International Commercial Arbitration Moot competition. (For suggested scheduling of meetings to consider this agenda item, see para. 76 below.)

#### **19. Relevant General Assembly resolutions**

55. The Commission may wish to take note of the following three General Assembly resolutions adopted on the recommendation of the Sixth Committee: resolution 63/120 on the reports of the United Nations Commission on International Trade Law on the work of its resumed fortieth and its forty-first sessions; resolution 63/121 on the Legislative Guide on Secured Transactions of the United Nations Commission on International Trade Law; and resolution 63/122 on the United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea. Copies of the resolutions and the relevant report of the Sixth Committee (A/63/438) will be made available at the forty-second session of the Commission. (For suggested scheduling of meetings to consider this agenda item, see para. 76 below.)

#### **20. Other business**

56. An oral report will be presented on the internship programme in the Commission’s secretariat. (For suggested scheduling of meetings to consider this agenda item, see para. 76 below.)

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<sup>50</sup> Ibid.

## **21. Date and place of future meetings**

### **Forty-third session of the Commission**

57. The forty-third session of the Commission will be held in New York. Arrangements have been made for the session to be held for three weeks, from 21 June to 9 July 2010.

### **Sessions of working groups**

58. At its thirty-sixth session, in 2003, the Commission agreed that: (a) working groups should normally meet for a one-week session twice a year; (b) extra time, if required, could be allocated from the unused entitlement of another working group provided that such arrangement would not result in the increase of the total number of 12 weeks of conference services per year currently allotted to sessions of all six working groups of the Commission; and (c) if any request by a working group for extra time would result in the increase of the 12-week allotment, it should be reviewed by the Commission, with proper justification being given by that working group regarding the reasons for which a change in the meeting pattern was needed.<sup>51</sup>

### **Sessions of working groups up to the forty-third session of the Commission**

#### *Working Group I (Procurement)*

59. The seventeenth session of the Working Group could be held in Vienna from 7 to 11 December 2009, and the eighteenth session could be held in New York, from 12 to 16 April 2010.

#### *Working Group II (Arbitration and Conciliation)*

60. The fifty-first session of the Working Group could be held in Vienna, from 14 to 18 September 2009, and the fifty-second session could be held in New York, from 1 to 5 February 2010.

#### *Working Group IV (Electronic Commerce)*

61. Should this be warranted by the progress of work done in cooperation with the World Customs Organization (see paras. 30-32 above), the forty-fifth session of the Working Group could be held in Vienna, from 27 to 30 October 2009 (a four-day session is scheduled, since 26 October will be an official holiday in Vienna), and the forty-sixth session could be held in New York, from 17 to 21 May 2010.

#### *Working Group V (Insolvency Law)*

62. The thirty-seventh session of the Working Group could be held in Vienna, from 9 to 13 November 2009, and the thirty-eighth session could be held in New York, from 19 to 23 April 2010.

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<sup>51</sup> *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 17 (A/58/17)*, para. 275.



*Working Group VI (Security Interests)*

63. The sixteenth session of the Working Group could be held in Vienna, from 2 to 6 November 2009, and the seventeenth session could be held in New York, from 8 to 12 February 2010.

**Additional time**

64. Tentative arrangements have been made for a one-week session in New York, from 24 to 28 May 2010. This time could be used to accommodate the need for a session of Working Group III (Transport Law) or another working group, depending on the needs of the working groups and subject to the Commission's decision.

**Sessions of working groups in 2010 after the forty-third session of the Commission***Working Group I (Procurement)*

65. Tentative arrangements have been made for the nineteenth session of the Working Group to be held in Vienna, from 11 to 15 October 2010.

*Working Group II (Arbitration and Conciliation)*

66. Tentative arrangements have been made for the fifty-third session of the Working Group to be held in Vienna, from 20 to 24 September 2010.

*Working Group III (Transport Law)*

67. Tentative arrangements have been made for the twenty-second session of the Working Group to be held in Vienna, from 13 to 17 December 2010.

*Working Group IV (Electronic Commerce)*

68. Tentative arrangements have been made for the forty-seventh session of the Working Group to be held in Vienna, from 6 to 10 December 2010.

*Working Group V (Insolvency Law)*

69. Tentative arrangements have been made for the thirty-ninth session of the Working Group to be held in Vienna, from 1 to 5 November 2010.

*Working Group VI (Security Interests)*

70. Tentative arrangements have been made for the eighteenth session of the Working Group to be held in Vienna, from 27 September to 1 October 2010.

71. For suggested scheduling of meetings to consider this agenda item, see para. 76 below.

**22. Adoption of the report of the Commission**

72. The General Assembly, in its resolution 2205 (XXI) of 17 December 1966, decided that the Commission should submit an annual report to it and that the report should be submitted simultaneously to the United Nations Conference on Trade and

Development for comments. Pursuant to a decision of the Sixth Committee,<sup>52</sup> the report of the Commission is introduced to the General Assembly by the chairperson of the Commission or by another officer designated by the chairperson. (For suggested scheduling of meetings to consider this agenda item, see para. 78 below.)

### **III. Scheduling of meetings and documentation**

73. At its forty-first session, in 2008, the Commission decided that two days at the beginning of the forty-second session of the Commission should be set aside for informal meetings, with interpretation in the six official languages of the United Nations, to discuss the draft reference document on the Commission's working methods<sup>53</sup> (see paras. 46 and 47 above). Accordingly, on Monday, 29 June 2009, after consideration of items 1-3 of the agenda, it is expected that the Commission would adjourn the formal meeting and would continue working in informal setting for the rest of the day of Monday, 29 June 2009, and for the entire day of Tuesday, 30 June 2009, to discuss the draft reference document on the Commission's working methods and any comment on that document, which the Secretariat may receive before the session.

74. The Commission would reconvene in formal setting in the morning of Wednesday, 1 July 2009, and would take up agenda item 4. The Secretariat recommends that the Commission devote the time from 1 to 2 July 2009 (Wednesday to Thursday) to consideration of items 4 and 7 on the agenda.

75. The Secretariat recommends that the Commission devote the time from 2 to 10 July to consideration of item 5 on the agenda.

76. The Secretariat recommends that the Commission devote the time from 13 to 15 July to consideration of items 6 and 8 to 21 on the agenda.

77. No formal meetings will be held on Thursday, 16 July 2009. That day will be used by the Secretariat to prepare the draft report, which will be presented to the Commission for adoption on Friday, 17 July 2009.

78. It is suggested that the Commission adopt the report of the session together with the UNCITRAL Notes on cooperation, communication and coordination in cross-border insolvency proceedings on Friday, 17 July 2009.

79. It should be noted that the above recommendations on the scheduling of meetings are intended to assist States and invited organizations in planning the attendance of their pertinent representatives; the actual scheduling will be determined by the Commission itself.

80. Meetings will be held from 9.30 a.m. to 12.30 p.m. and from 2 p.m. to 5 p.m., except on Monday, 29 June, when the morning meeting will commence at 10.00 a.m.

81. UNCITRAL documents are posted on the UNCITRAL website (<http://www.uncitral.org/>) upon their issuance in all the official languages of the United Nations. Delegates may wish to check the availability of the documents for

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<sup>52</sup> Ibid., *Twenty-third Session, annexes*, agenda item 88, document A/7408, para. 3.

<sup>53</sup> Ibid., *Sixty-third Session, Supplement No. 17* (A/63/17), para. 381.

the forty-second session by accessing the page of the forty-second session of the Commission in the “Commission Sessions” section of the UNCITRAL website (<http://www.uncitral.org/>).

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