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Work programme of the Commission

Note by the Secretariat

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I. Introduction

A. Background

1. At its forty-sixth session, in 2013, the Commission agreed that it should reserve time for discussion of UNCITRAL's future work as a separate topic at each Commission session (A/68/17, para. 310). This Note has been prepared to assist the Commission's consideration its overall work programme and planning of its activities at this forty-ninth session.

2. This Note considers UNCITRAL's main activities, that is legislative development and activities designed to support the effective implementation, use and understanding of UNCITRAL texts. This Note also introduces possible future work in these activities.

3. The Commission may wish to consider its work programme and activities taking into account the progress reports of its Working Groups and reports from the Secretariat noted below, and the conclusions reached at its forty-eighth session under this agenda item (A/70/17, paras. 335-365). The Commission also has before it several draft texts for consideration and possible adoption. When setting UNCITRAL's work programme for the forthcoming period, the Commission may also wish to recall its decision at the forty-sixth session that it would normally plan for the period to the next Commission session, but that some longer-term indicative planning (for a three-to-five year period) may also be appropriate (A/68/17, para. 305).

4. Documents for the current Commission session are available at www.uncitral.org/uncitral/commission/sessions/49th.html.¹ They include:

(a) Progress reports of the Commission's Working Groups:

A/CN.9/860 and A/CN.9/866 — Report of Working Group I (MSMEs) on the work of its 25th and 26th sessions (Vienna, 19-23 October 2015; New York, 4-7 April 2016)

A/CN.9/861 and A/CN.9/867 — Report of Working Group II (Arbitration and Conciliation) on the work of its 63rd and 64th sessions (Vienna, 7-11 September 2015; New York, 1-5 February 2016)

A/CN.9/862 and A/CN.9/868 — Report of Working Group III (Online Dispute Resolution) on the work of its 32nd and 33rd sessions (Vienna, 30 November-4 December 2015; New York, 29 February-4 March 2016)

A/CN.9/863 and A/CN.9/869 — Report of Working Group IV (Electronic Commerce) on the work of its 52nd and 53rd sessions (Vienna, 9-13 November 2015; New York, 9-13 May 2016)

A/CN.9/864 and A/CN.9/870 — Report of Working Group V (Insolvency Law) on the work of its 48th and 49th sessions (Vienna, 14-18 December 2015; New York, 2-6 May 2016)

¹ Titles and symbols of the documents referred to are current as at the date of submission of this Note, but are subject to change. Further documents may also be issued, and, if so, will be available at the UNCITRAL weblink indicated.

A/CN.9/865 and A/CN.9/871 — Report of Working Group VI (Security Interests) on the work of its 28th and 29th sessions (Vienna, 12-16 October 2015; New York, 8-12 February 2016)

(b) Draft texts for consideration and possible adoption by the Commission, and comments by States thereon:

A/CN.9/879 — A note by the Secretariat containing the draft revised UNCITRAL Notes on Organizing Arbitral Proceedings

A/CN.9/884 and Addenda 1-4 — A note by the Secretariat containing the draft Model Law on Secured Transactions

A/CN.9/885 and Addenda 1-4 — A note by the Secretariat containing the draft Guide to Enactment of the draft Model Law on Secured Transactions

A/CN.9/886 and A/CN.9/887 — Comments by States on the draft Model Law on Secured Transactions

A/CN.9/888 — A note by the Secretariat containing the draft Technical Notes on Online Dispute Resolution²

(c) Reports on other events and from the Secretariat:

A/CN.9/872 and A/CN.9/877 — Technical assistance activities undertaken since the Commission's forty-seventh session and technical assistance resources, Note by the Secretariat, including UNCITRAL publications, the UNCITRAL website, and a survey of the activities undertaken by the UNCITRAL Regional Centre for Asia and the Pacific (RCAP) since the Commission's forty-seventh session

A/CN.9/873 — Status and progress of CLOUT, Note by the Secretariat (including updates on the current activities concerning digests)

A/CN.9/874 — Bibliography of recent writings related to UNCITRAL's work

A/CN.9/875 — Coordination activities: Brief survey of the activities undertaken by the Secretariat since the Commission's forty-seventh session to ensure coordination with the work of other organizations active in the field of international trade law, Note by the Secretariat

A/CN.9/876 — Status of conventions and model laws, Note by the Secretariat

A/CN.9/880 — A note by the Secretariat on code of ethics in international arbitration

A/CN.9/881 — A note by the Secretariat on possible future work on concurrent proceedings in international arbitration

A/CN.9/882 — Technical assistance to law reform: Compilation of comments by States on a draft guidance note on strengthening United Nations support to States to implement sound commercial law reforms

² As at the date of submission of this note, States have not yet had the opportunity to comment on the draft Notes. Document A/CN.9/893 — Comments by States on the draft Technical Notes on Online Dispute Resolution will be issued if such comments are received.

A/CN.9/883 — Technical assistance to law reform: Draft guidance note on strengthening United Nations support to States, upon their request, to implement sound commercial law reforms

A/CN.9/889 — A note by the Secretariat on Possible future work in procurement and infrastructure development

A/CN.9/891 — Report on the Colloquium on Identity Management and Trust Services (Vienna, 21-22 April 2016)

A/CN.9/892 — A Note by the Secretariat on a joint proposal on cooperation in the area of international commercial contract law (with a focus on sales) prepared by the Secretariat and the secretariats of the Hague Conference on Private International Law and the International Institute for the Unification of Private Law (“Unidroit”)

5. Background documents from the Commission’s forty-eighth session are available at www.uncitral.org/uncitral/en/commission/sessions/48th.html. The Commission may wish to refer to the following documents in particular:

A/CN.9/841 — Planned and possible future work — Note by the Secretariat

A/CN.9/850 — Planned and possible future work in procurement and infrastructure development — Note by the Secretariat

A/CN.9/854 — Possible future work in the area of electronic commerce — legal issues related to identity management and trust services

A/CN.9/855 — Proposal by the Government of Algeria: possible future work in the area of international arbitration between States and investors — code of ethics for arbitrators

A/CN.9/856 — Possible future work in the area of electronic commerce — Contractual issues in the provision of cloud computing services — Proposal by Canada

A/CN.9/857 — Possible future work in the area of online dispute resolution — Proposal by Israel

A/CN.9/858 — Possible future work in the area of online dispute resolution — Proposal by Colombia, Honduras and the United States of America

A/70/17 — Report of the Commission’s forty-eighth session (especially paras. 335-365)³

³ Background documents from the Commission’s forty-fifth to forty-seventh sessions are available at www.uncitral.org/uncitral/commission/sessions/45th.html, www.uncitral.org/uncitral/commission/sessions/46th.html and www.uncitral.org/uncitral/commission/sessions/47th.html.

II. Summary of current activities and proposals for future work programme

A. Legislative development

1. Current legislative programme

6. Table 1 below sets out legislative development currently under way in the Commission's Working Groups, and the envisaged completion dates of the texts concerned.

Table 1
Current legislative activities

<i>Topic</i>	<i>Report and document references</i>	<i>Envisaged completion date</i>
<i>MSMEs (WG I)</i>		
Preparation of legal standards on simplified business incorporation and registration	A/CN.9/860 and A/CN.9/866	Estimated 2018 or beyond
<i>Arbitration (WG II)</i>		
(i) Revision of the UNCITRAL Notes on Organizing Arbitral Proceedings	A/CN.9/861 and A/CN.9/867	To be completed during the session of the Commission
(ii) Enforcement of settlement agreements resulting from international conciliation/mediation		Ongoing
<i>Online Dispute Resolution (WG III)</i>		
Preparation of a non-binding descriptive document reflecting elements of an ODR process	A/CN.9/868 and A/CN.9/888	Completed at Working Group level; to be considered by the Commission for possible adoption
<i>Electronic commerce (WG IV)</i>		
(i) Electronic transferable records	A/66/17, para. 238; A/CN.9/863 and A/CN.9/869	Estimated 2017
(ii) Electronic single window facilities	A/66/17, para. 240	Ongoing
<i>Insolvency (WG V)</i>		
(i) Model law or legislative provisions on selected international issues, including jurisdiction, access and recognition in the cross-border insolvency of enterprise groups	A/CN.9/691 A/65/17, para. 259(a) A/CN.9/798 A/CN.9/803 A/CN.9/829	Ongoing
(ii) Obligations of directors of enterprise group's members in the period approaching insolvency	A/CN.9/691 A/65/17, para. 259(b) A/CN.9/829	Since text overlaps with work on topic (i), finalization related to progress with that topic.
(iii) Model law or model legislative provisions on recognition and enforcement of insolvency-related judgements	A/69/17, para. 155 A/CN.9/829	Ongoing

<i>Topic</i>	<i>Report and document references</i>	<i>Envisaged completion date</i>
(iv) Study on the insolvency of large and complex financial institutions	A/CN.9/691 A/65/17, para. 260 A/CN.9/763	Ongoing
(v) Convention on selected international insolvency issues – informal consultations	A/69/17, para. 158	Ongoing
<i>Security Interests (WG VI)</i>		
(i) Preparation of a draft Model Law on Secured Transactions	A/CN.9/865 and A/CN.9/871 A/CN.9/884 and Addenda 1-4	2016
(ii) Preparation of a draft Guide to Enactment of the draft Model Law on Secured Transactions	A/CN.9/885 and Addenda 1-4	To be confirmed

7. As noted above, the following draft texts will be presented for consideration and possible adoption at this Commission session:

Draft revised UNCITRAL Notes on Organizing Arbitral Proceedings (A/CN.9/879)

Draft Technical Notes on Online Dispute Resolution (A/CN.9/888)⁴

Draft Model Law on Secured Transactions (A/CN.9/884 and Addenda 1-4)⁵

Progress of Working Groups

8. At its forty-seventh session, the Commission requested that the progress and status of the work of each Working Group, as set out in their reports, be collated and presented to the Commission so as to allow context of each Working Group's suggestions for future work and for prioritization among existing and new topics to be clearer (A/69/17, para. 253). A brief summary of the progress of each Working Group is accordingly presented below.

MSMEs (Working Group I)

9. At its twenty-fifth session (Vienna, 19 to 23 October 2015), Working Group I continued its exploration of the legal issues surrounding the simplification of incorporation and on good practices in business registration. In respect of the latter, the Working Group decided that work should proceed along the lines of a concise legislative guide on key principles in business registration, without prejudice to considering other possible legislative texts at a later stage. In respect of the former issue, the Working Group resumed its consideration of the concepts as contained in a draft model law on a simplified business entity.

⁴ Document A/CN.9/893 will contain a compilation of any comments by States on the Technical Notes on Online Dispute Resolution.

⁵ Documents A/CN.9/886 and A/CN.9/887 contain comments by States on the draft Model Law on Secured Transactions.

10. At its twenty-sixth session (New York, 4 to 8 April 2016), Working Group I resumed its deliberations on the issues as contained in a draft model law on a simplified business entity and decided that the legislative text on that topic should be in the form of a legislative guide (consisting of recommendations and commentary) that reflected its policy discussions to date. In respect of its discussion on key principles in business registration, the Working Group considered draft recommendations and commentary for a legislative guide. In addition, the Working Group also considered the general architecture of its work on MSMEs, and agreed that its MSME work should be accompanied by an introductory document which would form a part of the final text and would provide an overarching framework for current and future work on MSMEs. The Working Group also agreed that the current two legislative texts being considered by it could be attached to and underpin that contextual framework as legal pillars, and that the number of legal pillars could then be expanded as necessary to accommodate the adoption by the Commission of any additional legislative texts on MSMEs.⁶

Arbitration (Working Group II)

11. At its sixty-fourth session, the Working Group considered the draft revised UNCITRAL Notes on Organizing Arbitral Proceedings (“the Notes”), prepared on the basis of the deliberations and decisions of the Commission at its forty-eighth session (A/CN.9/WG.II/WP.194). In accordance with the mandate that work on the topic should be completed, the Working Group will submit the revised version of the Notes for consideration by the Commission at its current session (A/CN.9/867, para. 15).

12. Further, in line with the mandate received from the Commission, the Working Group commenced, at its sixty-third session, work on the topic of enforcement of settlement agreements with the aim of identifying relevant issues and developing possible solutions, including the possible preparation of a convention, model provisions or guidance text, on the basis of notes by the Secretariat. The Working Group considered during both its sixty-third and sixty-fourth sessions the scope of a possible instrument, the questions of validity, content and form of settlement agreements, as well as the main features of an enforcement procedure and defences to enforcement, on the basis of notes by the Secretariat (A/CN.9/WG.II/WP.190 and A/CN.9/WG.II/WP.195). It was agreed that the Secretariat should prepare for the forthcoming session of the Working Group a document outlining the issues considered so far and setting out draft provisions without prejudice to the final form of the instrument, grouping provisions into broad categories. Further, delegations were encouraged to review the experience of those jurisdictions where the enforcement of settlement agreements had been the subject of litigation, and to report back to the Working Group on the matter.

Online dispute resolution (Working Group III)

13. At its forty-eighth session (Vienna, 29 June-16 July 2015), the Commission instructed Working Group III to continue its work towards elaborating a non-binding descriptive document reflecting elements of an ODR process, on which elements the Working Group had previously reached consensus,

⁶ A/CN.9/866, paras. 86 to 87.

excluding the question of the nature of the final stage of the ODR process (arbitration/non-arbitration). It was also agreed that the Working Group would be given a time limit of one year or no more than two Working Group sessions, after which the work of the Working Group would come to an end, whether or not a result had been achieved.

14. At its thirty-second and thirty-third sessions (Vienna, 30 November-4 December 2015 and New York, 29 February-4 March 2016),⁷ the Working Group conducted deliberations on a draft text entitled “Technical Notes on Online Dispute Resolution”, in accordance with the Commission’s instructions, and has completed its consideration thereof. The final document is submitted for consideration by the Commission at its current session.

Electronic commerce (Working Group IV)

15. At its fifty-second (Vienna, 9-13 November 2014) and fifty-third sessions (New York, 9-13 May 2015) the Working Group continued its work on the preparation of a Model Law on Electronic Transferable Records.

16. At its forty-fourth session, in 2011, the Commission welcomed the ongoing cooperation between the Secretariat and other relevant organizations on legal issues relating to electronic single-window facilities, and asked the Secretariat to contribute as appropriate, with a view to discussing relevant matters at the working group level when the progress of joint work offered a sufficient level of detail. In that respect, the Secretariat has regularly contributed to the preparation by UN/ESCAP of a Framework Agreement on Facilitation of Cross-border Paperless Trade in Asia and the Pacific. The Commission will hear an oral report on the content of that Framework Agreement and its relevance for the promotion of the adoption, use and uniform interpretation of UNCITRAL texts on electronic commerce.

Insolvency (Working Group V)

17. At its forty-eighth and forty-ninth sessions, the Working Group continued its deliberations on (a) the structure and key elements of a draft legislative text to facilitate the cross-border insolvency of multinational enterprise groups; (b) the draft commentary and recommendations on the obligations of directors of enterprise group companies in the period approaching insolvency; and (c) the draft model law on the recognition and enforcement of insolvency-related judgements. The work on (b) is well-developed, but finalization depends upon progress with topic (a), as the solutions developed with respect to the conduct of enterprise group insolvencies will have an impact upon the nature of the obligations of directors of relevant group members and the steps that might be required to discharge those obligations.

Security Interests (Working Group VI)

18. At its twenty-eighth and twenty-ninth sessions (Vienna, 12-16 October 2015, and New York, 8-12 February 2016, respectively), the Working Group adopted the draft Model Law on Secured Transactions (A/CN.9/865 and A/CN.9/871), and, at its twenty-ninth session, decided to submit it to the Commission for consideration and

⁷ A/CN.9/862 and A/CN.9/868.

adoption at its forty-ninth session (A/CN.9/865, para. 14, and A/CN.9/871, paras. 15 and 91). At its twenty-eighth session, the Working Group noted that, in order to complete the draft Guide to Enactment that the Commission had decided should accompany the Model Law (A/70/17, para. 216), it might need an additional one or two sessions, and, at its twenty-ninth session, decided to request the Commission for an additional one or two sessions for that purpose (A/CN.9/865, para. 104, and A/CN.9/871, para. 91, respectively).

2. Future legislative programme

19. At its forty-sixth session, the Commission underscored the importance of a strategic approach to the allocation of resources inter alia to legislative development, in the light of the increasing number of topics referred to UNCITRAL for consideration (A/68/17, paras. 294-295). The Commission has emphasized the benefit of UNCITRAL's primary working method — that is, legislative development through formal negotiations in a working group (A/69/17, para. 249).

20. The Commission has also reaffirmed that it retained the authority and responsibility for setting UNCITRAL's workplan, especially as regards the mandates of Working Groups, though the role of Working Groups in identifying possible future work and the need for flexibility to allow a Working Group to decide on the type of legislative text to be produced were also recalled (*ibid.*).

21. Table 2 below sets out proposals for future work by the Commission, annotated to show whether the work is mandated or possible future work. "Mandated future work" is planned legislative development, i.e. work in respect of which the Commission has provided a mandate to a Working Group. Items denoted as "possible future work" are topics proposed to the Commission, which the Commission may wish to consider. The final column of the table identifies areas in which a proposal may involve issues of another subject area relevant to UNCITRAL.

22. The Commission may wish to consider the items set out in Table 2, the more detailed descriptions in the paragraphs following that table and the other documents referred to in this section when setting its work programme for the year to the Commission session in 2017. The Commission may also recall that further proposals seeking legislative mandates for other subject-areas may be made at the current session, by States and/or international organizations.

Table 2
Summary of mandated and possible future legislative activity

<i>Subject area</i>	<i>Proposal</i>	<i>Document reference</i>	<i>Mandated/possible future work</i>	<i>Other relevant subject areas</i>
Arbitration (WG II)	Concurrent proceedings in the field of investment arbitration	Para. 23 below A/CN.9/881	Possible	—
	Code of ethics in international arbitration	Para. 23 below A/CN.9/880	Possible	

<i>Subject area</i>	<i>Proposal</i>	<i>Document reference</i>	<i>Mandated/possible future work</i>	<i>Other relevant subject areas</i>
Electronic commerce (WG IV)	Identity management and trust services Cloud computing Mobile commerce	Para. 24 below A/70/17, para. 358; A/CN.9/891	Mandated	MSMEs (mobile payments)
Security Interests (WG VI)	Contractual Guide on Secured Transactions Uniform law text on intellectual property licensing	Para. 25 below A/70/17, para. 217	Mandated	Arbitration, MSMEs
Procurement and Infrastructure Development (not before WG)	Revisions to the UNCITRAL texts on PFIP ⁸	Para. 28 below A/CN.9/889	Possible	Arbitration/conciliation

Arbitration (Working Group II)

23. At its forty-sixth session, in 2013, the Commission identified that the subject of concurrent proceedings was increasingly important particularly in the field of investment arbitration and might warrant further consideration.⁹ At its forty-seventh session, in 2014, the Commission considered whether to mandate its Working Group II (Arbitration and Conciliation) to undertake work in the field of concurrent proceedings in investment treaty arbitration, based on a note prepared by the Secretariat, briefly outlining the issues at stake (A/CN.9/816, Addendum). At that session, it was said that future work in that area could be beneficial. Further, it was suggested that UNCITRAL ought not to limit its work to parallel proceedings arising in the context of investment arbitration, but rather, in light of the implication such work might have on other types of arbitration practice, to extend that work to commercial arbitration as well. It was also said, however, that parallel proceedings in investment arbitration, and those in commercial arbitration, raised different issues and might need to be considered separately.¹⁰ After discussion, the Commission agreed that the Secretariat should explore the matter further, in close cooperation with experts and other organizations working actively in that area. That work should focus on treaty-based investor-State arbitration, without disregarding the issue in the context of international commercial arbitration. The Commission requested the Secretariat to report to the Commission at a future session, outlining the issues at stake and identifying work that UNCITRAL might usefully undertake in the area.¹¹ At its forty-eighth session, in 2015, the Commission considered a note by the Secretariat in relation to concurrent proceedings in investment arbitration (A/CN.9/848) and requested the Secretariat to report to the Commission at a future session with a detailed analysis of the topic including possible work that could be

⁸ The UNCITRAL Legislative Guide on Privately-Financed Infrastructure Projects (2000) and the Model Legislative Provisions on Privately-Financed Infrastructure Projects (2003), available at www.uncitral.org/uncitral/uncitral_texts/procurement_infrastructure.html.

⁹ *Official Records of the General Assembly, Sixty-eighth Session, Supplement No. 17* (A/68/17), paras. 129-133 and 311.

¹⁰ *Ibid.*, para. 127.

¹¹ *Ibid.*, para. 130.

carried out.¹² Document A/CN.9/881 provides further details on the proposals in this subject area.

Electronic commerce (Working Group IV)

24. At its forty-eighth session, in 2015, the Commission instructed the Secretariat to conduct preparatory work on identity management and trust services, cloud computing and mobile commerce, including through the organization of colloquiums and expert group meetings, for future discussion at the Working Group level following the current work on electronic transferable records. The Commission also asked the Secretariat to share the result of that preparatory work with Working Group IV, with a view to seeking recommendations on the exact scope, possible methodology and priorities for the consideration of the Commission at its forty-ninth session. The Commission will have before it the report on the Colloquium on Identity Management and Trust Services held in Vienna, Austria on 21 and 22 April 2016 (A/CN.9/894).

Security Interests (Working Group VI)

25. As Table 1 indicates, it is envisaged that a draft Model Law on Secured Transactions (the “draft Model Law”) was completed and submitted by Working Group VI to the Commission for consideration and adoption at the present session. As to the draft Guide to Enactment, the Commission may wish to consider whether one or two sessions should be given to the Working Group to complete it and submit it to the Commission for adoption in 2017.

26. As to the contractual guide on secured transactions in particular for small and medium-sized enterprises and enterprises in developing countries, and to a uniform law text on intellectual property licensing, topics that were placed by the Commission on its future work agenda at its forty-third session (see A/65/17, paras. 264 and 273), the Commission may wish to consider them at a future session on the basis of notes to be prepared by the Secretariat, after a colloquium or expert group meeting.

27. The Commission may wish to consider whether, in the context of any future work on MSME finance, the draft Model Law and the draft Guide to Enactment might need to be expanded to address matters related to secured finance to MSMEs. The Commission may also wish to note the discussion by the Working Group of the issue of the resolution of disputes arising from security agreements through alternative dispute resolution mechanisms (A/CN.9/871, paras. 83-86) and consider whether that matter should also be added on its future work agenda. The Commission may wish to consider whether both those matters should be retained on its future work programme and discussed at a future session on the basis of notes to be prepared by the Secretariat, after a colloquium or expert group meeting to be held within existing resources.

Procurement and infrastructure development (not currently before a Working Group)

28. At its forty-eighth session, the Commission considered possible future work on the topic of suspension and debarment in public procurement and in

¹² Ibid., *Seventieth session, Supplement No. 17* (A/70/17), para. 147.

public-private partnerships (PPPs). As regards suspension and debarment, the Commission instructed the Secretariat to undertake certain exploratory work on the question and to report further to the Commission at its forty-ninth session. As regards PPPs, the Commission decided to keep the topic on its agenda, that the Secretariat would continue to follow the topic to advance preparations should it eventually be taken up, and that the Secretariat would report further to the Commission again at its forty-ninth session. Document A/CN.9/889 — A note by the Secretariat on possible future work in procurement and infrastructure development — reports to the Commission accordingly, concluding that work on suspension and debarment might be appropriate at a future time, and suggesting that limited work on PPPs might be appropriate in the short term.

29. The Commission may wish to assess the need for conference time for those of the above proposals it decides to take up, and to make recommendations regarding the use of conference time and regarding informal working methods accordingly.

B. Current and possible future activities to support the adoption and use of UNCITRAL texts

30. The reports available to this forty-ninth session of the Commission describing UNCITRAL's current activities in the provision of technical assistance, promoting ways to ensure a uniform interpretation and application of UNCITRAL texts; identifying the status of and work of other bodies in promoting its texts, coordination and cooperation with other relevant bodies and promoting the rule of law at the national and international levels ("support activities") are as follows:

A/CN.9/872 and A/CN.9/877 — Technical assistance to law reform and technical assistance resources, including UNCITRAL publications, the UNCITRAL website and UNCITRAL regional presence: survey of the activities undertaken by the UNCITRAL Regional Centre for Asia and the Pacific (RCAP)

A/CN.9/873 — Promotion of ways and means of ensuring a uniform interpretation and application of UNCITRAL legal texts: Status and progress of CLOUT, Note by the Secretariat (including updates on the current activities concerning digests)

A/CN.9/874 — Bibliography of recent writings related to UNCITRAL's work

A/CN.9/875 — Coordination activities: Brief survey of the activities undertaken by the Secretariat since the Commission's forty-seventh session to ensure coordination with the work of other organizations active in the field of international trade law, Note by the Secretariat

A/CN.9/876 — Status of conventions and model laws, Note by the Secretariat

A/CN.9/882 — Technical assistance to law reform: Compilation of comments by States on a draft guidance note on strengthening United Nations support to States to implement sound commercial law reforms

A/CN.9/883 — Technical assistance to law reform: Draft guidance note on strengthening United Nations support to States, upon their request, to implement sound commercial law reforms

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

31. The Commission has emphasized the importance of support activities and the need to encourage such activities at the global and regional levels through the Secretariat, through the expertise available in the Working Groups and Commission, through member States and through partnering arrangements with relevant international organizations, as well as promoting increased awareness of UNCITRAL's texts in these organizations and within the United Nations system (A/69/17, paras. 263-265). It has requested the Secretariat to continue with those activities to the extent that its resources permit (A/70/17, para. 365).

32. The UNCITRAL secretariat continues undertaking activities on the rule of law in those areas of work of the United Nations and other entities that are of general relevance to UNCITRAL. It also participates in initiatives across the United Nations system relevant to the implementation of the 2030 Agenda for Sustainable Development. These activities are described in a note by the Secretariat on coordination activities (A/CN.9/875). In addition, the Commission will hear an oral report by the Secretariat on the implementation of the relevant decisions taken by the Commission at its forty-eighth session. (*Official Records of the General Assembly, Seventieth Session, Supplement No. 17* (A/70/17), paras. 300-301.)

33. As regards technical assistance activities, in addition to a note by the Secretariat on the activities undertaken since the Commission's forty-eighth session and on the technical assistance resources (A/CN.9/872), the Commission will have before it a revised draft guidance note on strengthening United Nations support to States, upon their request, to implement sound commercial law reforms (A/CN.9/883), submitted to the Commission for its consideration pursuant to its decision at its forty-eighth session (*Official Records of the General Assembly, Seventieth Session, Supplement No. 17* (A/70/17), paras. 251-252). It will also have before it the compilation of comments by States received by the Secretariat on the earlier versions of the draft guidance note (A/CN.9/882).

34. In accordance with the deliberations of the Commission at its second, third, thirty-first, forty-first, forty-fourth and forty-fifth sessions where it promoted the dissemination of information and the harmonization of the application of the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("New York Convention", A/CN.9/814, para. 1) as well as the preparation of a guide on that convention, the Secretariat's work on the finalization of a guide on the New York Convention, in close cooperation with experts, is scheduled for completion in the course of 2016. Some chapters of the guide are currently contained in documents A/CN.9/786, A/CN.9/814 and its addenda, as well as on the website www.newyorkconvention1958.org.

35. At its forty-eighth session in 2015, the Commission expressed support for increasing, within available resources, the number of promotional and capacity-building activities aimed at supporting adoption and effective implementation of the United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980). In this regard, at its forty-ninth session, the Commission will have before it a joint proposal on cooperation in the area of international commercial contract law (with a focus on sales) prepared by the Secretariat and the secretariats of the Hague Conference on Private International

Law and the International Institute for the Unification of Private Law (“Unidroit”) (A/CN.9/892).

36. The Secretariat plans to prepare and distribute an accession toolkit in respect of the United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (the “Rotterdam Rules”), as well as for the United Nations Convention on Transparency in Treaty-based Investor-State Arbitration (“Mauritius Convention on Transparency”). It is anticipated that this material will assist States intending to ratify the instruments; work in relation to the Rotterdam Rules has proceeded in preparing the materials and it is expected that the text will be finalized for the Commission to note at its 50th session in 2017.

III. Commemoration of the fiftieth anniversary of the establishment of UNCITRAL in 2016

37. At its forty-eighth session, the Commission considered that a third UNCITRAL Congress should be held to commemorate UNCITRAL’s fiftieth anniversary, which falls in 2016. The Secretariat was requested to undertake preparatory work towards the organization of such a Congress, which the Commission anticipated would take place in 2017 (A/70/17, para. 366). The Congress is envisaged to be held during the first week of the Commission’s fiftieth session in 2017, from 4-6 July.

38. One of the objectives of the Congress is to suggest possible areas for future UNCITRAL activity for the medium-term and onwards, which the Commission may wish to consider along with its existing programme of work. It is anticipated that opening the Congress to all persons and organizations with an interest in international trade and commerce will enhance the opportunity to identify relevant topics of potential interest to UNCITRAL. In terms of context, the Congress will also consider how the work of UNCITRAL and its contribution to trade law reform and innovation can support the United Nations sustainable development goals, through reforms to encourage commerce at the national and international levels. The Congress will examine, therefore, the potential of UNCITRAL as a technical forum to discuss legal obstacles to cross-border commerce and to propose legislative solutions.

39. Initial consultations indicate five thematic areas may be of possible interest for ongoing modernization and harmonization of international trade law:

- (a) The development of the digital economy, including international data transfers;
- (b) Global supply chains and access to inputs — credit, transport, infrastructure;
- (c) Trade in services;
- (d) Finance in international trade: International capital flows, access to credit, payments;
- (e) Exploitation of global public goods/“natural” and emerging resources (e.g. cyberspace, outer space).

40. Within these areas, some of which fall within the existing work programme of the Commission, and any others identified, the Congress will examine the potential for relevant legislative development within UNCITRAL. It is therefore anticipated that the Congress will identify emerging subject areas in which UNCITRAL has a role to play, whether at the level of rules for the national economy or rules addressing cross-border relationships that will be implemented domestically.

41. It is recognized that the above five broad areas are only starting points and will overlap to some degree; they are also not intended to be exclusive. It is also anticipated that cross-cutting issues such as promotion of sustainable competitiveness, inclusive trade and enhanced productivity may arise in some or all of them.

42. In this context, relevant process questions will include whether there is a clear understanding of the obstacles to cross-border commerce that an UNCITRAL text might address; whether the consensual development, within UNCITRAL, of a legislative text would be feasible, and whether a legislative text in relevant subject areas would enhance the possibilities for cross-border commerce. The Congress would also seek to identify whether other organizations are engaged in work on any such areas, not only to avoid duplication, but also in the context of the Commission's mandate to coordinate the work of organizations active in the field of international trade law.

43. As not all participants at the Congress may be familiar with the work of UNCITRAL, the Congress will also include a session exploring its objectives and methods of work. The session is designed to encourage contributions on policy and practice from all States, relevant organizations, policymakers, academics and others that can assist UNCITRAL member States in developing, revising, enacting and interpreting UNCITRAL texts.

44. The Secretariat will seek the views of the academic community, policymakers, legal practitioners and others on the thematic areas noted above, including through a call for papers. It is anticipated that the agenda for the Commission will be set in the autumn of 2016.

45. Information about the Congress will be published on the UNCITRAL website, at www.uncitral.org/uncitral/en/commission/colloquia/50th-anniversary.html. The Secretariat will provide an oral report on the proceedings at the Congress at the 50th session of the Commission, and a written report will be issued at a later date.