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Twenty-seventh session

SUMMARY RECORD OF THE 523rd MEETING

Held at Headquarters, New York,
on Wednesday, 1 June 1994, at 3 p.m.

Chairman: Mr. MORAN (Spain)

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The meeting was called to order at 3.10 p.m.

NEW INTERNATIONAL ECONOMIC ORDER: PROCUREMENT (continued) (A/CN.9/392)

(b) PROCUREMENT OF SERVICES (continued)

Article 16

1. Mr. JAMES (United Kingdom) said that he had no objection to the proposal formulated by the United States delegation. Nevertheless it was his delegation's understanding that paragraph 2 of article 16 of the UNCITRAL Model Law on Procurement of Goods and Construction authorized the procuring entity to use a method of procurement other than tendering proceedings only pursuant to articles 17, 18, 19 or 20, and only if the conditions set forth in those articles were met.

2. The CHAIRMAN said that, if he heard no objection, he would take it that the Commission wished to approve the substance of article 16 and submit it to the Drafting Group for consideration of the United States proposal.

3. It was so decided.

Articles 17 and 18

4. The CHAIRMAN said that, if he heard no objection, he would take it that the Commission wished to approve articles 17 and 18.

5. It was so decided.

Article 19

6. The CHAIRMAN said that, if there was no objection, he would take it that the Commission wished to approve the substance of article 19 and submit it to the Drafting Group to consider the possibility of avoiding the repetition of the word "provided" in the English text and the replacement of the word "prestados" in the Spanish text by a more appropriate expression.

7. It was so decided.

Article 20

8. Mr. WALLACE (United States of America) said that he agreed with the text of article 20. He recalled that paragraph 1 (d) of the article, which authorized the procuring entity to contract with a single supplier for reasons of standardization, had been debated at great length in the Working Group. While such treatment had not caused particular difficulty in the procurement of goods, its application was much more complicated when the object of procurement was a service. For example, it could give rise to ethical problems. Accordingly, his delegation reserved the right to propose, when the commentary to the paragraph was considered, that reference should be made to the appropriateness of regulation of the matter by States under article 4.

9. The CHAIRMAN said that, if he heard no objection, he would take it that the Commission wished to approve article 20.

10. It was so decided.

Articles 21 to 35

11. The CHAIRMAN said that, if there was no objection, he would take it that the Commission wished to approve articles 21 to 35.

12. It was so decided.

Chapter IV

13. Mr. WALLACE (United States of America) said that it might be appropriate to amend slightly the title of chapter IV, "Procedures for procurement methods other than tendering", since the draft now included a chapter IV bis which also dealt with a procurement method other than tendering.

14. Mr. LEVY (Canada) proposed that the title should be amended to read: "Other common procurement methods".

15. The CHAIRMAN suggested that the possibility should also be considered of using the expression "alternative methods", suggested by Mr. Herrmann.

16. Mr. LEVY (Canada) endorsed Mr. Herrmann’s suggestion.

17. Mr. CHOUKRI SBAI (Morocco) suggested that the title of chapter IV should be "Two-stage procurement procedures".

18. Mr. TUVAYANOND (Thailand) said that he doubted whether it was appropriate to amend the title of the chapter, which was identical to the text of the Model Law already adopted, except to the extent that it was justified by the special nature of services. To do otherwise might suggest that the subject required special treatment.

19. The CHAIRMAN agreed that, before introducing changes, every effort should be made to establish reasons for them.

Articles 37 to 41

20. The CHAIRMAN, referring to articles 37 to 41, said that the amendments to the text reflected the ideas expressed at the meetings of the Working Group, while elsewhere the text retained the original drafting of the Model Law already adopted. Accordingly, if he heard no objection, he would take it that the Commission wished to approve the articles.

21. It was so decided.

Chapter IV bis

22. The CHAIRMAN invited the Commission to consider chapter IV bis, which was completely new. It would probably be necessary to begin with the matter of the title, which, at least in the Spanish version, was the same as that of article 41 bis.

23. Mr. WALLACE (United States of America) said that he had no objection to the title of the chapter, but thought it might be moved to become chapter III bis, since chapter III dealt with tendering proceedings, which were the principal procurement method for goods and construction, while chapter IV bis dealt with services.

24. Mr. SHI Zhaoyu (China) said that chapter IV bis dealt with requests for proposals. In the English text, chapter III used the word "proceedings", while chapter IV spoke of "procedures"; the Chinese text, on the other hand, used the same term for both. Further, chapter IV bis referred to "procedures" or methods, and thus was consistent with chapter IV. For the content of chapter IV bis to be consistent with that of chapters III and IV, he proposed that the title of chapter IV bis should be amended to read "Methods for the solicitation of proposals for services".

25. Mr. TUVAYANOND (Thailand) asked for clarification as to why, in the English text, two different expressions were used, one for the title of the chapter ("Requests for proposals") and the other for the title of article 41 bis ("Solicitation of proposals"). The reason for the difference was not clear.

26. Mr. WESTPHAL (Germany) noted that paragraph 54 of the report of the Working Group stated: "In particular, request for proposals and competitive negotiations dealt with cases in which the procuring entity did not know the nature of the technical solution to its needs", whereas article 39 dealt with cases where the procuring entity attributed particular importance to the quality of the services supplied. He wondered whether the expression "request for proposals" should be used, since, as he had just noted, it was reserved for a specific situation. In document A/CN.9/392, in connection with article 39 bis, three titles were proposed, one of which, "Special procedure for procurement of services", could perhaps be used to resolve the problem.

27. Mr. LEVY (Canada) said that his delegation also had some doubts concerning the title of chapter IV bis, since the expression "Request for proposals", used for article 38, should not be repeated. Since, when drafting legal texts, titles were usually left to the end, he suggested that the matter could be taken up again once consideration of the chapter was concluded. As for moving the title, he recalled that the structure of the Model Law had been the subject of extensive debate to ensure that the text ultimately adopted would be more coherent, but he agreed that it could be placed following the chapter on tendering proceedings, which would then be followed by other common or alternative methods.

28. Mr. WALLACE (United States of America) said that the title of the chapter involved a substantive issue to which he would not refer since the representative of Germany had already done so. In his view, the problem resided

partially in the fact that article 38 was entitled "Request for proposals". In his country and at the World Bank, so far as he knew, it was customary to refer to "RFP", or requests for proposals, the term which was normally used to designate that method of selecting services. That was what had led to the compromise solution of referring to a request for proposals for services. In order to solve the problem of the chapter title, he suggested that the title of article 41 bis should be changed to "Notice", which was the procedure that preceded a request for proposals, or RFP.

29. Mr. CHATURVEDI (India) agreed with the representative of China that the title of chapter IV bis was unclear. Apparently, the chapter dealt with special provisions on procurement of services. Thus, if the title was to be changed, as he believed it should be, it should read "Methods of procurement of services". He did not agree that the word "notice" should be used, as it would be unclear what type of notice was involved. With reference to paragraph 1 of article 41 bis, which stated that "A procuring entity shall solicit proposals for services", he said that the paragraph dealt with a method of procuring services, and that it was not always necessary to solicit proposals. He did not believe that that was the implication. Moreover, there was no mention of either the suitability or the qualifications of the person or entity that was to provide the services; that should be included in article 41 bis.

30. Mr. JAMES (United Kingdom) said that he shared the views expressed by most of the previous speakers. It would be useful to relocate the chapter and, at the same time, to adopt the suggestion made by the Secretary of the Commission that reference should be made to "alternative methods", as that would make the ensuing provisions clearer. In addition, while he agreed that the title of the chapter should be changed, he did not believe that the Commission should devote too much time to the matter, especially if the Working Group had already discussed it extensively. In his view, the title of article 41 bis led to confusion, and the question should be considered by the Drafting Group. The intention was basically to reflect the sequence of events in the procurement process, which consisted of a notice seeking expression of interest in submitting a proposal, followed by the forwarding of the relevant documents. The idea was that article 41 bis should deal with the notice procedure; the solicitation of proposals was what was sent in response to expressions of interest. He did not agree that the article should simply be entitled "Notice", although that term could be incorporated into the title.

31. Mr. WALSER (Observer for the World Bank) raised an issue concerning the structure of the chapter. While he could accept the need for the other procurement methods referred to in article 16, paragraph 3 (b), namely, two-stage tendering, request for proposals and competitive negotiation, he failed to understand why it was necessary to have two categories of requests for proposals for services, namely, the simple type referred to in article 38, which applied to goods as well as construction and services, and the more complex but, in his view, incorrect type outlined in chapter IV bis. He would appreciate an explanation in that regard. The two categories complicated the situation for the procuring entity, which must, in the final analysis, decide which type applied to services. In his view, the content of article 16, paragraph 3 (b) notwithstanding, the category of requests for proposals envisaged in article 38 was unnecessary and should be eliminated.

32. Mr. LEVY (Canada) said that the Drafting Group should take into account the pertinent suggestion made by the Secretary of the Commission that reference should be made to "alternative procurement methods". The problem could perhaps be solved by using the expression "principal methods of procurement of services" and providing for alternative methods applicable to goods, construction and services. Article 41 bis could be entitled "Announcement of solicitation of proposals", although that appeared to be somewhat redundant. In reply to the statement made by the Observer for the World Bank, he said that his Government was opposed to any attempt to delete article 38, which would apply to cases in which one did not know with certainty what was required, while article 41 bis would be reserved for those cases in which one knew precisely what was required.

33. Mr. WALLACE (United States of America) said that the idea of relocating chapter IV bis was interesting, as was the Canadian suggestion that reference should be made to the "principal" or "preferable" method; the suggestion made by the Secretary of the Commission that the other methods should be termed "alternative" would then be not only logical and appropriate, but also be in keeping with the tenor of the Guide. With regard to the title of article 41 bis, he believed that it dealt specifically with the concept of notice; the very word was included in the provision.

34. Mr. TUVAYANOND (Thailand) supported the Canadian proposal to change the title of chapter IV bis to "Notice of request for proposals for services".

35. Mr. LEVY (Canada) said that, in the English version of paragraph 1 of article 41 bis, the word "expression" should be replaced by "expressions".

36. Mr. HUNJA (International Trade Law Branch) said that one of the selection procedures listed in article 41 sexies was similar to the method provided for in article 38. Moreover, under the condition envisaged in article 17, paragraph 1 (a), where it was not feasible for the procuring entity to identify the characteristics of services, article 38 would presumably apply. It should be noted that the methods provided for in article 38 and in chapter IV bis overlapped to some extent.

37. The CHAIRMAN said that, as the Canadian delegation had noted, the procedure in article 17 would apply in cases where there were no details on the items to be procured; in cases where some information was available, the procedure in article 41 bis would apply.

38. Mr. WALLACE (United States of America) said that there was no way to know with certainty under what circumstances articles 38, 39 or article 41 bis would apply. Therefore, the article that was most appropriate, based on the various procedures provided for in each article, should be applied. Thus, article 41 bis established the requirement of a notice which did not appear in either article 38 or article 39. In contrast to articles 38 and 39, article 41 ter contained a detailed list of the information to be included in requests for proposals. In addition, the criteria listed in article 41 quater were very different from those listed in article 38.

39. His delegation would bow to the wishes of the Working Group and would, therefore, accept the 11 methods proposed, even though 5 of them could be

eliminated in the case of services, namely, two-stage tendering, the Canadian method, competitive negotiation, restricted tendering and request for quotations.

40. Mr. CHATURVEDI (India) said that the Canadian proposal concerning the title of chapter IV bis appeared to be correct. The first line of paragraph 1 of article 41 bis should read "A procuring entity shall solicit requests for proposals for services". Paragraph 1 should also mention the award of contracts, as well as experience.

41. Mr. SHI Zhaoyu (China) said that it did not seem appropriate to use the word "notice" in the title of chapter IV bis, since the chapter referred to many other questions. Chapter IV bis referred to procedure and should include special methods for services.

42. Mr. CHATURVEDI (India) asked whether the Commission was to conclude its work before the Drafting Group met.

43. Mr. HERRMANN (Secretary of the Commission) said that the Drafting Group met during the UNCITRAL session. The Group consisted of six teams of linguists who were responsible for preparing the various language versions in the six official languages of the Organization. Each language team consisted of a reviser from the United Nations translation services and a delegate attending the UNCITRAL session who, as a member of the team, represented a language rather than a Government. The Group was concerned solely with drafting questions; if it observed that a drafting change could have substantive consequences, it brought the matter to the attention of the Commission for resolution. Thus, with the help of the Drafting Group, UNCITRAL could examine the results of its work and adopt a final text at the close of its session.

The meeting was suspended at 4.35 p.m. and resumed at 5.05 p.m.

44. Mr. JAMES (United Kingdom) praised the representative of the United States of America for his eloquent defence of the provisions under discussion, and especially for chapter IV bis. That delegation should nevertheless make an effort to understand the issues raised by Mr. Hunja, which were of concern to several delegations.

45. The United States delegation had proposed the elimination of articles 38 and 39 so that the Commission might concentrate on chapter IV bis. In the view of the United Kingdom, however, it would be preferable to retain chapter IV bis and concentrate on articles 38 and 39 as well as on the criteria for their application. Although he did not wish to propose that solution, so as not to break the agreement that had been reached in the Working Group, he did wish to state the reasons that the Working Group had formulated those two opposing viewpoints. As Mr. Hunja had pointed out, the real problem presented by that text was the criteria on the basis of which the articles would be applied, which was related to article 16, which had been discussed at the previous session, and to the issues raised by articles 38 and 39 and chapter IV bis.

46. That question had been debated at length in the Working Group, which had considered, with respect to the Model Law, that the Group could not draft an

appropriate formula by which to impose on the procuring entity the obligation to use any one procedure, but could only indicate its preference for the more detailed procedure because it offered both greater transparency and greater protection. Those principles had been established in the preamble. The United Kingdom was prepared to accept the compromise reached in the Working Group.

47. The problem was not a legal one, but rather of how to persuade States of the advantages of the provisions contained in the Model Law. It was a matter of explaining to States that, although there existed a great variety of methods of procurement, a principle must obtain that would favour transparency and openness in procurement. That should be clearly stated in the commentary and in the report.

48. Since some circumstances called for prompt action, it was advisable to follow a less demanding procedure. In such cases, the Model Law afforded the enacting State the possibility of allowing the procuring entity to use any option that might be appropriate for the individual case. It was up to the enacting State to determine to what extent the procuring entity would assume responsibility, and it should be mentioned that both the Model Law and the Guide to Enactment of UNCITRAL Model Law contained many safeguards against adoption by the enacting State of unsatisfactory procedures. Those safeguards ensured that the procedures would have the greatest possible transparency and openness. All those factors should be clearly explained to enacting States, and particularly in the Guide.

49. Mr. HERRMANN (Secretary of the Commission) said that he was greatly concerned by what had occurred in the Working Group, namely, the discrepancy between the text to be approved (the Model Law) and the content of the Guide. That problem was related to the problem of "selling" the text, or, in other words, of explaining it. If there was a marked discrepancy between the text of the Law and that of the Guide, and it was a matter of convincing States that the Law would function just as well in either case, and the Guide stated the contrary, that contradiction did not encourage acceptance of the text.

50. In that connection, reference was often made to the multiplicity of options; when the actual wording of the Law was examined, however, there was not a single reference to the options of legislators: only the options open to the procuring entities were mentioned. And yet in the Working Group reference had often been made to the options that Governments should enjoy, since all States would not, of course, adopt the Model Law in its entirety. In one of the provisions of the previous drafts, the options of legislators were explicitly stated. He suggested, therefore, that if such options were not referred to in the text of the Law itself, they should at least be mentioned in a footnote, a method used in other cases of lesser importance. What must be ruled out was reference to the options only in the Guide. His suggestion reflected the hope that States would actually adopt the text as a model, and was in keeping with the idea of transparency referred to in the preamble.

51. Mr. WESTPHAL (Germany), commenting on the point raised by the United States of America, namely, that the Model Law included 11 methods of procurement while the Agreement on Procurement under the General Agreement on Tariffs and Trade (GATT) included only 3, said that the only solution on which the members of the

Working Group could agree was to establish that the legislator had a choice among the 11 methods proposed. That was not in his view, an easy process, since many countries lacked both experience and criteria in the area of procurement, and would not be in a position to choose the most appropriate method from among all those options. He doubted that UNCITRAL could set out principles in the Guide on which the legislator could base that choice, since not even the Working Group had been able to develop an acceptable approach to that problem.

52. Article 41 bis was too long and extremely detailed, and in one way or another sought to incorporate a special regime for services into the Model Law. Despite the fact that most delegations were opposed to drafting a separate text on the procurement of services, article 41 was a compilation of criteria relating to that question.

53. He reminded the Commission that the purpose of the Model Law was to help developing countries and countries with economies in transition to formulate their own competitive criteria for the procurement of services. It should not be forgotten, however, that although the United Nations, through UNCITRAL, might formulate a Model Law and recommend that States adopt it, they might prefer to adopt the GATT Agreement on Procurement, and to use other criteria as a model instead of those currently being prepared by UNCITRAL.

54. The Model Law was very complex, and had become more so as a result of the effort to incorporate the procurement of services. Germany therefore vigorously supported the proposal of the Secretary of the Commission that a footnote should be added to article 41 bis specifying that it was possible to choose among the various options offered.

55. Mr. LEVY (Canada) supported the suggestion made by the Secretary of the Commission that footnotes should be used to indicate to legislators that they could choose among the various options, and that they were not bound to adopt all of them. He also fully supported the statements of the United States of America and the United Kingdom with regard to the significance of the Model Law and the problems it raised at the current stage. Article 41 bis was unnecessary; the method envisaged in article 38 was relatively transparent and avoided the bureaucratic traps in article 41 bis. It had nevertheless been argued in the Working Group that procedures should be established that would approximate in so far as possible the tendering procedures. By way of a compromise, several delegations had requested that other methods should be included as well, and that the preferred method for the procurement of services should be indicated.

56. With regard to the concern expressed by Germany, he noted that if legislators experienced difficulties in determining the method to use, they might seek expert advice; it made no sense arbitrarily to eliminate any of the methods included in the article merely to simplify the text.

57. Mr. ABOUL ENEIN (Observer for the Regional Centre for Mercantile Arbitrage, Cairo) considered that the heading of chapter IV bis was unnecessary, and that two headings could be used instead under the original title of chapter IV, "Procedures for procurement methods other than tendering". The first would be "General procedures for procurement other than tendering" and would cover the

procurement of goods, construction and services; the second, "Special procedures for services", would cover article 41 bis and the paragraphs of that article which followed.

58. Mr. WALLACE (United States of America) conceded that the members of the Working Group had perhaps split hairs somewhat in developing an acceptable text, as the representative of Germany had suggested, but pointed out that the provisions of GATT and the Model Law were very different. GATT defined what was permissible, i.e., fair or unfair, in trade policy, but did not formulate detailed operational laws. It had not, for instance, defined services. The UNCITRAL Model Law doubtless had to be brought into line with the provisions of GATT, but it was no less true that it would be difficult to achieve the objectives of the Model Law on the basis of those rules. In any case, the suggestion by the Secretary of the Commission was quite interesting, the more so since there were already footnotes in chapter V, albeit for another purpose.

59. It also went without saying that the Guide must be brought into line with the contents of the Model Law. Although the content of the Guide might appear not to be precisely the same as that of the draft Model Law, the Working Group had never intended to deviate form its provisions.

60. With regard to the comments made by the representative of Canada, it was important to recall that the Model Law represented the first time that an attempt had been made to subject the procurement of services to public regulations in such a rigorous manner. States were entering into relatively unknown territory, which meant that in some cases they would have no alternative but to turn to experts. In fact, the World Bank and the United Nations itself sent experts to various countries to assist States on such matters. Nevertheless, the Commission had a responsibility to elaborate a Model Law that was as complete as possible. While the draft under consideration might not fulfil the requirements for order, simplicity, coherence and in-depth analysis called for in a Model Law of that type, there was no doubt that, under the circumstances, the discussions had been quite useful. Finally, it must be stressed that the Commission was not advocating the use of any particular method of procurement.

61. Mr. CHATURVEDI (India), referring to the statement by the Secretary of the Commission, said that the text must clearly indicate that States could choose among the different methods of procurement set forth in the Model Law. Certainly chapter V contained footnotes, but it remained to be seen whether the problem at hand could be solved in that way. In any case, his delegation would prefer to avoid that solution, which was far from ideal. If it had accepted such a solution on previous occasions, it was only to avoid going against the majority opinion in the Commission.

62. Mr. TUVAYANOND (Thailand) said that the text under consideration struck a satisfactory balance among the interests of the various members of the Commission. To redo what had been accomplished would be a waste of time and resources. He recognized that a number of options might exist, since circumstances were not the same in all countries. Moreover, the Commission was not empowered to impose methods of procurement on legislators. The Secretary's suggestion appeared to reflect the consensus of the Commission; it might be

possible to insert a footnote to ensure that lawmakers clearly understood that they were not obliged to employ all the methods mentioned in the Model Law, but were free to choose those which were in the best interests of their own countries.

63. Mr. WALSER (Observer for the World Bank) fully endorsed the Secretary's suggestion that the Commission should provide States with a better explanation of how to proceed in choosing one or more methods of procurement. It might be appropriate to state in the text itself that States were not obliged to adopt all the methods mentioned.

64. In recent years, the World Bank had been recommending that its member States should adopt the UNCITRAL Model Law on Procurement of Goods and Construction, since it was the only such law in existence. The Bank had also provided consulting services and financial support to assist the efforts of various countries in that area. Thanks to the Bank's efforts, Poland was preparing to submit the Model Law to its Parliament for adoption, and other countries, such as Bulgaria, Estonia, Latvia and Slovakia, were considering the possibility of doing so. Nevertheless, the Bank recommended the Model Law with some reservations. For example, it suggested that the method of competitive negotiation should not be applied, and once the draft was approved, the Bank would probably also recommend against application of article 16, paragraph 3 (b). In summary, the Bank gave general support to both the Model Law that had been adopted by the General Assembly and the draft Model Law before the Commission, and it intended to continue to promote the UNCITRAL model laws.

65. Mr. GRIFFITH (Observer for Australia) said that he did not know how to interpret the statement by the representative of the World Bank that his institution recommended the UNCITRAL Model Law on Procurement of Goods and Construction because it was the only such law in existence. He hoped that the Bank would adopt a more positive attitude in that regard.

66. As for the suggestion by the Secretary of the Commission, he wondered whether it might not be advisable for the Drafting Group to function as an informal working group in the preparation of the text and footnotes to be inserted into the present document. Consideration might also be given to the possibility of preparing a brief note to reflect the comments made by the representative of Thailand regarding article 12, paragraph 3. If those comments were included in the Guide to Enactment, they might go unnoticed, whereas that would not happen if they were included in a footnote.

67. The CHAIRMAN expressed his surprise at the last few statements. A model law was only a model for legislation, and lawmakers could either adopt it in its entirety or take from it what they deemed appropriate. If the Commission decided to use asterisks or footnotes, it would have to do so in every case where lawmakers had a choice. However, if the Commission did want to include such a notice, he felt that asterisks would not suffice; what was needed was a guide for legislators. Ideas regarding the drafting of such a guide could be submitted to the Secretariat.

68. He then turned to the question which several members had raised regarding conflicts between GATT and the Model Law. He had had an opportunity to study

the text of GATT and the directives of the European Community concerning State procurement. The methods were the same, but they had different names. It was important to note that GATT instructed States regarding the legislation to be drafted, whereas UNCITRAL offered a model, thus perfectly complementing the prescriptive nature of GATT. The question of incompatibility did not arise. The Model Law offered one possible way of doing things, and it was up to lawmakers to decide whether to accept it entirely or in part.

69. Mr. HERRMANN (Secretary of the Commission) noted that, while it was he who had suggested the use of footnotes, he had no particular preference for that method. One might say that he had mentioned it for want of a better one. The important thing was that the Model Law was by nature optional; however, while drafting it, both the Working Group and the Commission had been aware that some cases were more optional than others. The idea was that it should be a finished document which could be promulgated as written, with only technical changes. If it offered a solution that did not satisfy legislators, they could change it, as had been done, for example, with the Model Law on International Commercial Arbitration. The present Model Law set forth a number of possible methods of procurement, and no one was suggesting that a State should accept all of them. He felt that the question of whether or not to accept the various methods indicated should be raised not in a separate guide, but in the law itself. Lastly, since the content of the note was a subject that called for more substantive discussion, the matter should be settled by the Commission rather than by the Drafting Group.

70. Mr. JAMES (United Kingdom) echoed the sentiments of the Chairman and the Secretary of the Commission. The Drafting Group should not be responsible for writing substantive portions of the document, particularly if footnotes would also need to be included elsewhere in the Model Law. In the present case, the footnote was of critical importance. He was sorry if he had given the impression that he wished to reject the compromise reached by the Working Group. He had merely wished to remind the Commission that there had been another point of view. He was among those who thought that some States might wish to make use of all of the methods presented in the Model Law, but he felt it would be difficult to indicate to States in a brief note how many or which methods they should adopt. The appropriate place to do so was in the commentary, but when the question had been considered by the Commission and the suggestion had been made that each article might be followed by a commentary, that had not been considered practical. He was opposed to the idea of adding a footnote because discussion of its content would only be a waste of the Commission’s time.

71. The CHAIRMAN suggested that the asterisks might refer to the pertinent paragraphs of the Guide to Enactment. Perhaps time could be set aside to provide the Secretariat with ideas for the drafting of the Guide.

The meeting rose at 6.10 p.m.