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**United Nations Commission
on International Trade Law
Working Group IV (Electronic Commerce)
Forty-fifth session
Vienna, 10-14 October 2011**

Annotated provisional agenda

I. Provisional agenda

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II. Composition of the Working Group

1. The Working Group is composed of all States members of the Commission, which are the following: Algeria (2016), Argentina (2016), Armenia (2013), Australia (2016), Austria (2016), Bahrain (2013), Benin (2013), Bolivia (Plurinational State of) (2013), Botswana (2016), Brazil (2016), Bulgaria (2013), Cameroon (2013), Canada (2013), Chile (2013), China (2013), Colombia (2016), Czech Republic (2013), Egypt (2013), El Salvador (2013), Fiji (2016), France (2013), Gabon (2016), Georgia (2015), Germany (2013), Greece (2013), Honduras (2013), India (2016), Iran (Islamic Republic of) (2016), Israel (2016), Italy (2016), Japan (2013), Jordan (2016), Kenya (2016), Latvia (2013), Malaysia (2013), Malta (2013), Mauritius (2016), Mexico (2013), Morocco (2013), Namibia (2013), Nigeria (2016), Norway (2013), Pakistan (2016), Paraguay (2016), Philippines (2016), Poland (2012), Republic of Korea (2013),

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Russian Federation (2013), Senegal (2013), Singapore (2013), South Africa (2013), Spain (2016), Sri Lanka (2013), Thailand (2016), Turkey (2016), Uganda (2016), Ukraine (2014), United Kingdom of Great Britain and Northern Ireland (2013), United States of America (2016) and Venezuela (Bolivarian Republic of) (2016).

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.

III. Annotations to agenda items

Item 1. Opening of the session

3. The forty-fifth session of the Working Group will be held at the Vienna International Centre, from 10 to 14 October 2011. Meeting hours will be from 9.30 a.m. to 12.30 p.m. and from 2 to 5 p.m., except on Monday, 10 October 2011, when the session will be opened at 10 a.m.

4. The Working Group may wish to note that, consistent with decisions taken by the Commission at its thirty-fourth session,¹ the Working Group is expected to hold substantive deliberations during the first nine half-day meetings (that is, from Monday to Friday morning), with a draft report being prepared by the Secretariat for adoption at the tenth and last meeting of the Working Group (on Friday afternoon). The main conclusions reached by the Working Group at its ninth meeting (on Friday morning) will be summarily read out for the record at the tenth meeting (on Friday afternoon) and subsequently incorporated into the report.

Item 2. Election of officers

5. In accordance with its practice at previous sessions, the Working Group may wish to elect a Chairman and a Rapporteur.

Item 4. Legal issues relating to the use of electronic transferable records

(a) Background information

6. At its twenty-seventh session, in 1994, the Commission noted the recommendation by Working Group IV that preliminary work on the negotiability and transferability of rights in goods in an electronic environment should be undertaken and expressed general support for that recommendation.²

7. At its thirtieth session, in 1996, the Working Group [on Electronic Data Interchange] considered document A/CN.9/WG.IV/WP.69, which discussed both electronic and paper bills of lading and other maritime transport documents.

¹ *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 17 and corrigendum (A/56/17 and Corr.3)*, para. 381.

² *Official Records of the General Assembly, Forty-ninth Session, Supplement No. 17 and corrigendum (A/49/17 and Corr.1)*, para. 201.

That document provided an overview of attempts to deal with bills of lading in the electronic environment and made suggestions for model legislative provisions that were eventually adopted as articles 16 and 17 of the UNCITRAL Model Law on Electronic Commerce.

8. Furthermore, a preliminary analysis of the conditions for establishing the functional equivalence of electronic and paper bills of lading was provided, highlighting as a key issue the possibility to identify with certainty the holder of the bill, which would be entitled to delivery of the goods. Such issue brought into focus the need to ensure the uniqueness of an electronic record incorporating the title to the goods.

9. As a result, the Working Group [on Electronic Data Interchange] suggested the possibility to undertake further work in the context of a broader discussion on the legal regime for the carriage of goods by sea.³

10. At its twenty-ninth session, in 1996, the Commission took note of that suggestion and decided to start work in the field of transport law.⁴

11. At its thirty-eighth session, in 2001, the Working Group [on Electronic Commerce] considered document A/CN.9/WG.IV/WP.90, which discussed general legal issues relating to transfer of rights in tangible goods and other rights. It offered a comparative description of the methods used for the transfer of property interests in tangible property and for the perfection of security interests, and of the challenges posed by the transposition of those methods in an electronic environment. It also provided an update on initiatives using electronic means for the transfer of rights in tangible goods.

12. With respect to documents of title and negotiable instruments, that document stressed the desirability to ensure control over the electronic transferable record in a manner equivalent to physical possession, and suggested that a combination of a registry system and adequately secure technology could assist in ensuring the singularity and authenticity of an electronic record.

13. The Working Group [on Electronic Commerce] generally agreed on the importance of the topics under consideration and the usefulness of examining possible electronic substitutes or alternatives for paper-based documents of title and other forms of dematerialized instruments that represented or incorporated rights in tangible goods or rights having monetary value.⁵ It also agreed on the need for further study in order for the Working Group to define in more precise terms the scope of future work in the area.⁶ The Working Group therefore agreed to recommend to the Commission that the Secretariat be requested to study further the issues related to transfer of rights, in particular rights in tangible goods, by

³ Report of the Working Group on Electronic Data Interchange (EDI) on the Work of the Thirtieth Session (A/CN.9/421), paras. 104-108.

⁴ *Official Records of the General Assembly, Fifty-first Session, Supplement No. 17 (A/51/17)*, para. 215.

⁵ Report of the Working Group on Electronic Commerce on its thirty-eighth session (A/CN.9/484), para. 88.

⁶ *Ibid.*, para. 93.

electronic means and mechanisms for publicizing and keeping a record of acts of transfer or creation of security interests in such goods.⁷

14. Additional information on electronic transferable records may be found in document A/CN.9/WG.III/WP.47, discussing the draft provisions relating to electronic commerce contained in the then draft instrument on the carriage of goods [wholly or partly] [by sea] that was eventually adopted by the General Assembly as the United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (2008) (the “Rotterdam Rules”).⁸

15. At its forty-third session, in 2010, the Commission had before it additional information on the use of electronic communications for the transfer of rights in goods, with particular regard to the use of registries for the creation and transfer of rights (A/CN.9/692, paras. 12-47). At that session, the Commission requested the Secretariat to organize a colloquium on various topics of potential interest for future work in the area of electronic commerce, and to report on that colloquium so as to provide sufficient information for the Commission to make an informed decision and to give a clearly defined mandate to a working group, if deemed appropriate.⁹

16. That colloquium was held in New York from 14 to 16 February 2011. A summary of those discussions relating to electronic commerce was made available to the Commission in document A/CN.9/728/Add.1, paras. 7-30.

17. At its forty-fourth session, in 2011, the Commission mandated Working Group IV to undertake work in the field of electronic transferable records.¹⁰ In particular, at that session it was recalled that such work would be beneficial not only for the generic promotion of electronic communications in international trade, but also to address some specific issues such as assisting in the implementation of the “Rotterdam Rules”. Similarly, it was noted, other transport business, such as aviation, could benefit directly from the formulation of uniform legal standards in the field. It was also noted that work regarding electronic transferable records may include certain aspects of the other topics discussed in documents A/CN.9/728 and A/CN.9/728/Add.1.

(b) Documentation

18. The Working Group will have before it a note by the Secretariat regarding legal issues relating to the use of electronic transferable records (A/CN.9/WG.IV/WP.115). In addition, a Government has announced its intention to submit a proposal on future work on electronic transferable records. This proposal will be transmitted to the Working Group in a note by the Secretariat (A/CN.9/WG.IV/WP.116).

⁷ Ibid.

⁸ United Nations publication, Sales No. E.09.V.9.

⁹ *Official Records of the General Assembly, Sixty-fifth Session, Supplement No. 17 (A/65/17)*, para. 250.

¹⁰ *Official Records of the General Assembly, Sixty-sixth Session, Supplement No. 17 (A/66/17)*, para. 250.

19. A limited number of the following background documents will be made available at the session:

- UNCITRAL Model Law on Electronic Commerce with Guide to Enactment;
- UNCITRAL Model Law on Electronic Signatures with Guide to Enactment;
- United Nations Convention on the Use of Electronic Communications in International Contracts;
- Promoting confidence in electronic commerce: legal issues on international use of electronic authentication and signature methods;
- Electronic Data Interchange (A/CN.9/WG.IV/WP.69);
- Possible future work on electronic commerce: transfer of rights in tangible goods and other rights (A/CN.9/WG.IV/WP.90);
- Preparation of a draft instrument on the carriage of goods [wholly or partly] [by sea]: proposed revised provisions on electronic commerce (A/CN.9/WG.III/WP.47);
- Present and possible future work on electronic commerce (A/CN.9/692);
- Present and possible future work on electronic commerce (A/CN.9/728 and Add.1).

20. UNCITRAL documents are posted on the UNCITRAL website¹¹ upon their issuance in all official languages of the United Nations. Delegates may wish to check the availability of the documents by accessing the Working Group's page in the "Working Groups" section of the UNCITRAL website.

Item 5. Work of other international organizations on legal issues relating to the use of electronic transferable records

21. The Working Group may wish to consider work on legal issues relating to the use of electronic transferable records that is currently being undertaken by other international organizations in order to ensure coordination of efforts.

22. In particular, reference is made to the possible relation between the future work of the Working Group on issues of electronic transferable records and Draft Recommendation 37 on Signed Digital Evidence Interoperability, currently being prepared by the United Nations Centre for Trade Facilitation and E-business (UN/CEFACT).¹²

Item 6. Other business

23. The Working Group may wish to note that its forty-sixth session is scheduled to be held in New York, from 13 to 17 February 2012 or, if the resources required for the Secretariat to organize meetings in New York are not made available by the General Assembly, in Vienna from 9 to 13 January 2012.

¹¹ www.uncitral.org.

¹² Document ECE/TRADE/C/CEFACT/2010/14, available, with additional information on the process of consideration of Draft Recommendation 37, at <http://live.unece.org/cefact/index.html>.

Item 7. Adoption of the report

24. The Working Group may wish to adopt, at the close of its session, on Friday, 14 October 2011, a report for submission to the forty-fifth session of the Commission planned to be held in New York, from 18 June to 6 July 2012, or, if the resources required for the Secretariat to organize meetings in New York are not made available by the General Assembly, in Vienna from 9 to 27 July 2012.
