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United Nations Commission on International Trade Law
Working Group VI (Security Interests)
Eleventh session
Vienna, 4-8 December 2006

Annotated provisional agenda

I. Provisional agenda

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2. Election of officers.
3. Adoption of the agenda.
4. Preparation of a legislative guide on secured transactions.
5. Other business.
6. Adoption of the report.

II. Composition of the Working Group

1. The Working Group is composed of all States members of the Commission: Algeria, Argentina, Australia, Austria, Belarus, Belgium, Benin, Brazil, Cameroon, Canada, Chile, China, Colombia, Croatia, Czech Republic, Ecuador, Fiji, France, Gabon, Germany, Guatemala, India, Iran (Islamic Republic of), Israel, Italy, Japan, Jordan, Kenya, Lebanon, Lithuania, Madagascar, Mexico, Mongolia, Morocco, Nigeria, Pakistan, Paraguay, Poland, Qatar, Republic of Korea, Russian Federation, Rwanda, Serbia, Sierra Leone, Singapore, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Thailand, the former Yugoslav Republic of Macedonia, Tunisia, Turkey, Uganda, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Venezuela (Bolivarian Republic of) and Zimbabwe.

2. In addition, States that are not members of the Commission, as well as relevant international governmental and non-governmental organizations, may be invited to attend the session as observers. In accordance with established UNCITRAL

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practice, observer delegations may participate actively in the deliberations leading to decisions, which are taken by consensus.

III. Annotations to agenda items

Item 1. Opening of the session and scheduling of meetings

3. The eleventh session of the Working Group will be held at the Vienna International Centre from 4 to 8 December 2006. Meeting hours will be from 09:30 to 12:30 and from 14:00 to 17:00, except on Monday, 4 December 2006, when the session will be opened at 10:00. There will be five working days available for consideration of the agenda items at the session. 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 on the entire period being presented for adoption at the tenth and last meeting of the Working Group (on Friday afternoon).

Item 2. Election of officers

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

Item 4. Preparation of a legislative guide on secured transactions

(a) Previous deliberations of the Working Group

5. At its present session, the Working Group continues its work on the development of an efficient legal regime for security rights.[1] The Commission's decision to undertake work in the area of secured credit law was taken in response to the need for an efficient legal regime that would remove legal obstacles to secured credit and could thus have a beneficial impact on the availability and the cost of credit.[2]

6. At its thirty-third session (2000), the Commission discussed a report prepared by the Secretariat on issues to be addressed in the area of secured credit law (A/CN.9/475). At that session, the Commission agreed that secured credit law was an important subject and had been brought to the attention of the Commission at the right time, in particular in view of its close link with the work of the Commission on insolvency law. It was widely felt that modern secured credit laws could have a significant impact on the availability and the cost of credit and thus on international trade. It was also widely felt that modern secured credit laws could alleviate the inequalities in the access to lower-cost credit between parties in developed countries and parties in developing countries, and in the share such parties had in the benefits of international trade. A note of caution was struck, however, in that regard, to the effect that such laws needed to strike an appropriate balance in the treatment of privileged, secured and unsecured creditors so as to become acceptable to States. Furthermore, it was stated that, in view of the divergent policies of States, a flexible approach aimed at the preparation of a set of principles with a guide, rather than a model law, would be advisable.[3]

7. At its thirty-fourth session (2001), the Commission considered another report prepared by the Secretariat (A/CN.9/496) and agreed that work should be

undertaken in view of the beneficial economic impact of a modern secured credit law. It was stated that experience had shown that deficiencies in that area could have major negative effects on a country's economic and financial system. It was also stated that an effective and predictable legal framework had both short- and long-term macroeconomic benefits. In the short term, namely, when countries faced crises in their financial sectors, an effective and predictable legal framework was necessary, in particular in terms of enforcement of financial claims, to assist the banks and other financial institutions in controlling the deterioration of their claims through quick enforcement mechanisms and to facilitate corporate restructuring by providing a vehicle that would create incentives for interim financing. In the longer term, a flexible and effective legal framework for security rights could serve as a useful tool to increase economic growth. Indeed, without access to affordable credit, economic growth, competitiveness and international trade could not be fostered, with enterprises being prevented from expanding to meet their full potential.[4] As to the form of work, the Commission considered that a model law would be too rigid and noted the suggestions made for a set of principles with a legislative guide that would include legislative recommendations.[5]

8. At its first session (New York, 20-24 May 2002), the Working Group considered chapters I to V (Introduction and key objectives, Approaches to security, Creation and Publicity) and X (Insolvency) (A/CN.9/WG.VI/WP.2 and Add.1-5 and 10) of the first preliminary draft guide on secured transactions, prepared by the Secretariat. At that session, the Working Group requested the Secretariat to prepare revised versions of those chapters (see A/CN.9/512, para. 12). At that session, the Working Group also considered suggestions for the presentation of modern registration systems in order to provide the Working Group with information necessary to address concerns expressed with respect to registration of security rights in movable property (see A/CN.9/512, para. 65). At the same session, the Working Group agreed on the need for coordination with Working Group V (Insolvency Law) on matters of common interest and endorsed the conclusions of Working Group V with respect to those matters (see A/CN.9/512, para. 88).

9. At its thirty-fifth session (2002), the Commission considered the report of the first session of the Working Group (A/CN.9/512). It was widely felt that the legislative guide was a great opportunity for the Commission to assist States in adopting modern secured transactions legislation, which was generally thought to be a necessary, albeit not sufficient in itself, condition for increasing access to low-cost credit, thus facilitating the cross-border movement of goods and services, economic development and, ultimately, friendly relations among nations. In that connection, the Commission noted with satisfaction that the project had attracted the attention of international, governmental and non-governmental organizations and that some of those took an active part in the deliberations of the Working Group. The comments submitted to Working Group VI, in particular by the European Bank on Reconstruction and Development (A/CN.9/WG.VI/WP.4), were mentioned as an indication of that interest. At that session, the Commission also felt that the timing of the Commission's initiative was most opportune both in view of the relevant legislative initiatives under way at the national and the international level and in view of the Commission's own initiative in the field of insolvency law. After discussion, the Commission confirmed the mandate given to the Working Group at its thirty-fourth session to develop an efficient legal regime for security rights in goods, including inventory. The Commission also confirmed that the mandate of the

Working Group should be interpreted widely to ensure an appropriately flexible work product, which should take the form of a legislative guide.[6]

10. At its second session (Vienna, 17-20 December 2002), the Working Group considered chapters VI (Filing), VII (Priority) and IX (Default and enforcement) (A/CN.9/WG.VI/WP.2 and Add.6, 7 and 9) of the first preliminary draft guide on secured transactions, prepared by the Secretariat. At that session, the Working Group requested the Secretariat to prepare revised versions of those chapters (see A/CN.9/531, para. 15). In conjunction with that session and in accordance with suggestions made at the first session of the Working Group (see A/CN.9/512, para. 65), an informal presentation of the registration systems of security rights in movable property of New Zealand and Norway was held. Immediately before that session, Working Groups V (Insolvency Law) and VI (Security Interests) held their first joint session (Vienna, 16-17 December 2002), during which the revised version of former chapter X (new chapter IX; A/CN.9/WG.VI/WP.6/Add.5) on insolvency was considered. At that session, the Secretariat was requested to prepare a revised version of that chapter (see A/CN.9/535, para. 8).

11. At its third session (New York, 3-7 March 2003), the Working Group considered chapters VIII (Pre-default rights and obligations), XI (Conflict of laws) and XII (Transition) of the first preliminary draft guide on secured transactions (A/CN.9/WG.VI/WP.2/Add.8, A/CN.9/WG.VI/WP.2/Add.11 and A/CN.9/WG.VI/WP.2/Add.12) and chapters II (Approaches to security) and III (Creation), paragraphs 1-33 of the second version of the draft Guide (A/CN.9/WG.VI/WP.6/Add.2 and A/CN.9/WG.VI/WP.6/Add.3) and requested the Secretariat to prepare revised versions (A/CN.9/532, para. 13).

12. At its thirty-sixth session (2003), the Commission had before it the reports of Working Group VI (Security Interests) on the work of its second and third sessions (A/CN.9/531 and A/CN.9/532 respectively), as well as the report of the first joint session of Working Groups V and VI (A/CN.9/535). The Commission noted with appreciation the progress made by the Working Group in its work.[7]

13. At its fourth session (Vienna, 8-12 September 2003), the Working Group considered chapters IV (Creation), IX (Insolvency), I (Introduction), II (Key objectives) and paragraphs 1 to 41 of chapter VI (Priority) and requested the Secretariat to prepare revised versions of those chapters (see A/CN.9/543, para. 15).

14. At its fifth session (New York, 22-25 March 2004), the Working Group considered the summary and recommendations of chapters V (Publicity), VI (Priority), X (Conflict of laws) and requested the Secretariat to prepare revised versions of those chapters (see A/CN.9/549, para. 16).

15. At their second joint session (New York, 26 and 29 March 2004), Working Groups V (Insolvency Law) and VI (Security Interests) considered the treatment of security interests in the draft Legislative Guide on Insolvency Law on the basis of document A/CN.9/WG.V/WP.71 (see A/CN.9/550, para. 11).

16. At its thirty-seventh session in 2004, the Commission had before it the reports of Working Group VI (Security Interests) on the work of its fourth and fifth sessions (A/CN.9/543 and A/CN.9/549 respectively). The Commission commended the Working Group for the progress achieved so far and requested it to expedite its work

so as to submit the draft guide to the Commission for final adoption as soon as possible and hopefully in 2006.[8]

17. At its sixth session (Vienna, 27 September-1 October 2004), the Working Group considered chapters I and II (Introduction and key objectives), III (Basic approaches to security), IV (Creation), V (Effectiveness against third parties), VII (Pre-default rights and obligations), VIII (Default and enforcement), X (Conflict of laws) and XI (Transition) and requested the Secretariat to revise those chapters to reflect the deliberations and decisions of the Working Group (see A/CN.9/570, para. 8).

18. At its seventh session (New York, 24-28 January 2005), the Working Group considered chapters X (Conflict of laws), XII (Acquisition financing devices) and XVI (Security rights in bank accounts) and requested the Secretariat to revise those chapters to reflect the deliberations and decisions of the Working Group (see A/CN.9/574, para. 8).

19. At its thirty-eighth session (2005), the Commission had before it the reports of Working Group VI (Security Interests) on the work of its sixth and seventh sessions (A/CN.9/570 and A/CN.9/574 respectively). The Commission commended the Working Group for the progress achieved thus far, noted with interest the progress made by the Working Group in the coordination of its work with the Hague Conference on Private International Law, the International Institute for the Unification of Private Law (Unidroit), the World Bank and the World Intellectual Property Organization and requested the Working Group to expedite its work so as to submit the draft legislative guide to the Commission, at least for approval in principle, in 2006, and for final adoption in 2007.[9]

20. At its eighth session (Vienna, 5-9 September 2005), the Working Group considered recommendations in chapters VII (Pre-default rights and obligations), VIII (Default and enforcement), IX (Insolvency), X (Acquisition financing) and XI (Conflict of laws). It also considered terminology and recommendations related to: (i) negotiable instruments and negotiable documents (definitions (w) and (x), as well as recommendations 3 (d) and 24); (ii) proceeds from a drawing under an independent undertaking (definitions (y), (z), (aa) and (bb), as well as recommendations 25, 49, 62, 106 and 138); and intellectual property rights (definition (dd), and recommendation 3 (h)) (see A/CN.9/588, para. 8).

21. At its ninth session (New York, 30 January-3 February 2006), the Working Group considered recommendations in chapters V (Effectiveness against third parties), VI (Priority) and X (Acquisition financing devices) and requested the Secretariat to revise those chapters to reflect the deliberations and decisions of the Working Group (see A/CN.9/593, para. 8). At that session, in view of the expectation of the Commission to approve in principle the substance of the recommendations of the draft Guide at its thirty-ninth session, which was scheduled to take place in New York from 19 June to 7 July 2006, the Working Group agreed to hold an extra session, its tenth session, in New York from 1 to 5 May 2006 (see A/CN.9/593, para. 97).

22. At its tenth session (New York, 1-5 May 2006), the Working Group considered recommendations on security rights in receivables, negotiable instruments, negotiable documents, rights to payment of funds credited to bank accounts, rights to drawing proceeds from independent undertakings, as well as recommendations on

pre-default rights and obligations of the parties and recommendations 88 to 111 on default and enforcement. The Secretariat was requested to revise those recommendations to reflect the deliberations and decisions of the Working Group (see A/CN.9/603, para. 8). At that session, the Working Group noted that the Commission was expected to approve in principle the substance (i.e. the policy, not the formulation) of the recommendations of the draft Guide at its thirty-ninth session (New York, 19 June-July 2006).

23. At its thirty-ninth session (2006), the Commission had before it the reports of Working Group VI (Security Interests) on the work of its eighth, ninth and tenth sessions (A/CN.9/588, A/CN.9/593 and A/CN.9/603 respectively). The Commission expressed its satisfaction with the progress achieved so far by the Working Group VI (Security Interests) in developing a legislative guide on secured transactions and approved, in substance, the recommendations contained in documents A/CN.9/WG.VI/WP.21/Add.3, A/CN.9/WG.VI/WP.24 and Add.5, A/CN.9/WG.VI/WP.26/Add.4 to 8 and A/CN.9/611 and Add.1 and 2. After conclusion of its discussion of the recommendations of the draft Guide, the Commission expressed its appreciation to the Working Group for the results achieved so far in the development of the draft Guide and noted that the views expressed and the suggestions made by the Commission would be taken into account in the next version of the draft Guide.[10]

(b) Documentation for the eleventh session

24. The Working Group will have before it, and may wish to use as a basis of its considerations, notes by the Secretariat entitled: "Draft legislative guide on secured transactions" A/CN.9/WG.VI/WP.29 and Addendum 1 (Revised recommendations), as well as A/CN.9/WG.VI/WP.30 and Addenda (Revised commentaries). The following background documents will be made available at the session:

(a) Report of Working Group VI (Security Interests) on the work of its tenth session (A/CN.9/603);

(b) Report of Working Group VI (Security Interests) on the work of its ninth session (A/CN.9/593);

(c) Report of Working Group VI (Security Interests) on the work of its eighth session (A/CN.9/588);

(d) Report of Working Group VI (Security Interests) on the work of its seventh session (A/CN.9/574);

(e) Report of Working Group VI (Security Interests) on the work of its sixth session (A/CN.9/570);

(f) Report of Working Groups V (Insolvency Law) and VI (Security Interests) on the work of their second joint session (A/CN.9/550);

(g) Report of Working Group VI (Security Interests) on the work of its fifth session (A/CN.9/ 549);

(h) Report of Working Group VI (Security Interests) on the work of its fourth session (A/CN.9/543);

(i) Report of Working Groups V (Insolvency Law) and VI (Security Interests) on the work of their first joint session (A/CN.9/535);

(j) Report of Working Group VI (Security Interests) on the work of its third session (A/CN.9/532);

(k) Report of Working Group VI (Security Interests) on the work of its second session (A/CN.9/531);

(l) Report of Working Group VI (Security Interests) on the work of its first session (A/CN.9/512); and

(m) Notes by the Secretariat A/CN.9/WG.VI/WP.21/Add.3, A/CN.9/WG.VI/WP.24 and Add.5, A/CN.9/WG.VI/WP.26 and Add.4 to 8, and A/CN.9/611 and Add.1 and 2.

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 by accessing the Working Group's page in the "Working Groups" section of the UNCITRAL website.

Item 5. Other business

25. The following session of the Working Group is scheduled to take place in Vienna from 12 to 16 February 2007.

Item 6. Adoption of the report

26. The Working Group may wish to adopt, at the close of its session, on Friday, 8 December 2006, a report for submission to the fortieth session of the Commission to be held in Vienna from 25 June to 12 July 2007. The main conclusions reached by the Working Group at its eleventh 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.

Notes

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

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

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

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

[5] Ibid., para. 357.

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

[7] Ibid., *Fifty-eighth Session, Supplement No. 17* (A/58/17), paras. 215-222.

[8] Ibid., *Fifty-ninth Session, Supplement No. 17* (A/59/17), paras. 73-78.

[9] Ibid., *Sixtieth Session, Supplement No. 17* (A/60/17), paras. 186 and 187.

[10] Ibid., *Sixty-first Session, Supplement No. 17* (A/61/17), paras. 13 and 78.