



# General Assembly

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**United Nations Commission  
on International Trade Law  
Working Group VI (Security Interests)  
Sixteenth session  
Vienna, 2-6 November 2009**

## **Annotated provisional agenda**

### **I. Provisional agenda**

1. Opening of the session and scheduling of meetings.
2. Election of officers.
3. Adoption of the agenda.
4. Security interests in intellectual property.
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, which are the following: Algeria (2010), Armenia (2013), Australia (2010), Austria (2010), Bahrain (2013), Belarus (2010), Benin (2013), Bolivia (Plurinational State of) (2013), Bulgaria (2013), Cameroon (2013), Canada (2013), Chile (2013), China (2013), Colombia (2010), Czech Republic (2010), Ecuador (2010), Egypt (2013), El Salvador (2013), Fiji (2010), France (2013), Gabon (2010), Germany (2013), Greece (2013), Guatemala (2010), Honduras (2013), India (2010), Iran (Islamic Republic of) (2010), Israel (2010), Italy (2010), Japan (2013), Kenya (2010), Latvia (2013), Lebanon (2010), Madagascar (2010), Malaysia (2013), Malta (2013), Mexico (2013), Mongolia (2010), Morocco (2013), Namibia (2013), Nigeria (2010), Norway (2013), Pakistan (2010), Paraguay (2010), Poland (2010), Republic of Korea (2013), Russian Federation (2013), Senegal (2013), Serbia (2010), Singapore (2013), South Africa (2013), Spain (2010), Sri Lanka (2013), Switzerland (2010), Thailand (2010), Uganda (2010), United Kingdom of Great Britain and Northern



Ireland (2013), United States of America (2010), Venezuela (Bolivarian Republic of) (2010) and Zimbabwe (2010).

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 and scheduling of meetings**

3. The sixteenth session of the Working Group will be held at the Vienna International Centre from 2 to 6 November 2009. Meeting hours will be from 9.30 a.m. to 12.30 p.m. and from 2 to 5 p.m., except on Monday, 2 November 2009, when the session will be opened at 10 a.m. There will be five working days available for consideration of the agenda items at the session. The Working Group may wish to note that, consistent with decisions taken by the Commission at its thirty-fourth session,<sup>1</sup> 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. Security interests in intellectual property**

##### **(a) Background information**

5. At its thirty-ninth session, in 2006, the Commission considered its future work on secured financing law. It was noted that intellectual property rights (e.g. copyrights, patents and trademarks) were increasingly becoming an extremely important source of credit and should not be excluded from a modern secured transactions law. In addition, it was noted that the recommendations of the draft Legislative Guide on Secured Transactions (“the draft Guide”) generally applied to security rights in intellectual property to the extent that they were not inconsistent with intellectual property law. Moreover, it was noted that, as the recommendations had not been prepared with the special intellectual property law issues in mind, the draft Guide suggested that enacting States might consider making any necessary adjustments to the recommendations to address those issues.<sup>2</sup>

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

<sup>2</sup> *Official Records of the General Assembly, Sixty-first Session, Supplement No. 17 (A/61/17)*, paras. 81 and 82.

6. In order to provide more guidance to States, the suggestion was made that the Secretariat should prepare, in cooperation with international organizations with expertise in the fields of secured financing and intellectual property law and in particular the World Intellectual Property Organization (WIPO), a note for submission to the Commission at its fortieth session, in 2007, discussing the possible scope of work that could be undertaken by the Commission as a supplement to the draft Guide. In addition, it was suggested that, in order to obtain expert advice and the input of the relevant industry, the Secretariat should organize expert group meetings and colloquiums as necessary.<sup>3</sup> After discussion, the Commission requested the Secretariat to prepare, in cooperation with relevant organizations and in particular WIPO, a note discussing the scope of future work by the Commission on intellectual property financing. The Commission also requested the Secretariat to organize a colloquium on intellectual property financing ensuring to the maximum extent possible the participation of relevant international organizations and experts from various regions of the world.<sup>4</sup>

7. Pursuant to the decision of the Commission, the Secretariat organized in cooperation with WIPO a colloquium on security rights in intellectual property rights (Vienna, 18 and 19 January 2007). The colloquium was attended by experts on secured financing and intellectual property law, including representatives of Governments and national and international, governmental and non-governmental organizations. At the colloquium, several suggestions were made with respect to adjustments that would need to be made to the draft Guide to address issues specific to intellectual property financing.<sup>5</sup>

8. At the first part of its fortieth session (Vienna, 25 June–12 July 2007), the Commission considered a note by the Secretariat entitled “Possible future work on security rights in intellectual property” (A/CN.9/632). The note took into account the conclusions reached at the colloquium on security rights in intellectual property rights. In order to provide sufficient guidance to States as to the adjustments that they might need to make in their laws to avoid inconsistencies between secured financing and intellectual property law, the Commission decided to entrust Working Group VI (Security Interests) with the preparation of an annex to the draft Guide specific to security rights in intellectual property rights.<sup>6</sup>

9. At its resumed fortieth session (Vienna, 10–14 December 2007), the Commission finalized and adopted the UNCITRAL Legislative Guide on Secured Transactions (“the Guide”) on the understanding that an annex to the Guide specific to security rights in intellectual property rights would subsequently be prepared.<sup>7</sup>

10. At its thirteenth session (New York, 19–23 May 2008), the Working Group considered a note by the Secretariat entitled “Security rights in intellectual property rights” (A/CN.9/WG.VI/WP.33 and Add.1). At that session, the Working Group requested the Secretariat to prepare a draft of the annex to the Guide on security rights in intellectual property rights (“the draft Annex”) reflecting the deliberations

<sup>3</sup> Ibid., para. 83.

<sup>4</sup> Ibid., para. 86.

<sup>5</sup> See <http://www.uncitral.org/uncitral/en/commission/colloquia/2secint.html>.

<sup>6</sup> *Official Records of the General Assembly, Sixty-second Session, Supplement No. 17* (A/62/17 (Part I)), paras. 156, 157 and 162.

<sup>7</sup> Ibid., *Sixty-second Session, Supplement No. 17* (A/62/17 (Part II)), paras. 99 and 100.

and decisions of the Working Group (see A/CN.9/649, para. 13). As the Working Group was not able to reach agreement as to whether certain matters related to the impact of insolvency on a security right in intellectual property (see A/CN.9/649, paras. 98-102) were sufficiently linked with secured transactions law so as to justify their discussion in the draft Annex, it decided to revisit those matters at a future meeting and to recommend that Working Group V (Insolvency Law) be requested to consider those matters (see A/CN.9/649, para. 103).

11. At its forty-first session (New York, 16 June–3 July 2008), the Commission noted with satisfaction the good progress achieved by the Working Group. The Commission also noted the decision of the Working Group with respect to certain matters related to the impact of insolvency on a security right in intellectual property and decided that Working Group V should be informed and invited to express any preliminary opinion at its next session. It was also decided that, should any remaining issue require joint consideration by the two working groups after that session, the Secretariat should have discretion to organize a joint discussion of the impact of insolvency on a security right in intellectual property when the two Working Groups meet back to back in the spring of 2009.<sup>8</sup>

12. At its fourteenth session (Vienna, 20-24 October 2008), the Working Group continued its work based on a note prepared by the Secretariat entitled “Annex to the UNCITRAL Legislative Guide on Secured Transactions dealing with security rights in intellectual property (A/CN.9/WG.VI/WP.35 and Add.1). At that session, the Working Group requested the Secretariat to prepare a revised version of the draft Annex reflecting the deliberations and decisions of the Working Group (see A/CN.9/667, para. 15). The Working Group also referred to Working Group V (Insolvency Law) certain matters relating to the impact of insolvency on a security right in intellectual property (see A/CN.9/667, paras. 129-140). In that connection, it was widely felt that every effort should be made to conclude discussions of these matters as soon as possible, so that the result of those discussions could be included in the draft Annex by the fall of 2009 or the early spring of 2010 and the draft Annex could be submitted to the Commission for final approval and adoption at its forty-third session in 2010 (see A/CN.9/667, para. 143).

13. At its fifteenth session (New York, 27 April–1 May 2009), the Working Group continued its work based on a note by the Secretariat entitled “Draft Annex to the UNCITRAL Legislative Guide on Secured Transactions dealing with security rights in intellectual property” (A/CN.9/WG.VI/WP.37 and Add.1-4). At that session, the Working Group requested the Secretariat to prepare a revised version of the draft Annex reflecting the deliberations and decisions of the Working Group (see A/CN.9/670, para. 16). In addition, the Working Group, having taken note of a note by the Secretariat entitled “Discussion of intellectual property in the Legislative Guide on Insolvency Law” (A/CN.9/WG.V/WP.87), approved the substance of the discussion of the impact of insolvency of a licensor or licensee of intellectual property on a security right in that party’s rights under a licence agreement (see A/CN.9/WG.VI/WP.37/Add.4, paras. 22-40) and referred it to Working Group V (see A/CN.9/670, paras. 116-122). Moreover, the Working Group had a preliminary discussion about its future work programme (see A/CN.9/670, paras. 123-126).

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<sup>8</sup> Ibid., *Sixty-third Session, Supplement No. 17* (A/63/17), para. 326.

14. At its thirty-sixth session, Working Group V (Insolvency Law) considered the insolvency-related issues referred to it by Working Group VI on the basis of documents A/CN.9/WG.V/WP.87 and A/CN.9/WG.VI/WP.37/Add.4 and an extract from the report of the Working Group (see A/CN.9/670, paras. 116-122). At that session, Working Group V approved the contents of those parts of the draft Annex dealing with the impact of insolvency of a licensor or licensee of intellectual property on a security right in that party's rights under a licence agreement, as set forth in document A/CN.9/WG.VI/WP.37/Add.4, paragraphs 22-40, and the conclusions and revisions of Working Group VI reached at its fifteenth session (see A/CN.9/670, paras. 116-122).

**(b) Documentation for the sixteenth session**

15. The Working Group will have before it, and may wish to use as a basis of its considerations, a note by the Secretariat entitled "Draft Supplement to the UNCITRAL Legislative Guide on Secured Transactions dealing with security rights in intellectual property" (A/CN.9/WG.VI/WP.39 and Add.1-7). The Guide, which should be available at the session, may be used as background documentation.

16. 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**

17. The seventeenth session of the Working Group is scheduled to take place in New York from 8 to 12 February 2010.

**Item 6. Adoption of the report**

18. The Working Group may wish to adopt, at the close of its session, on Friday, 6 November 2009, a report for submission to the forty-third session of the Commission. 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.

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