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**United Nations Commission on  
International Trade Law****Forty-first session**

New York, 16 June-3 July 2008

**Facilitation of cooperation, direct communication and  
coordination in cross-border insolvency proceedings****Note by the Secretariat**

1. At its thirty-eighth session (2005), the Commission had before it a number of proposals for future work in the area of insolvency law (A/CN.9/582 and Add.1-7), including the use of protocols in cross-border insolvency cases. An international colloquium was held in Vienna from 14 to 16 November 2005 to discuss this and other topics proposed for consideration.
2. At its thirty-ninth session (2006), the Commission considered the report of that colloquium (A/CN.9/596) and noted that the proposal on cross-border insolvency protocols was closely related and complementary to the promotion and use of a text already adopted by the Commission, the Model Law on Cross-Border Insolvency, which had been adopted at that time by 11 States as the basis for legislation and was the subject of increasing interest and discussion. The Commission was of the view that it would be appropriate to consider how implementation of the coordination and cooperation provisions of the Model Law could be facilitated by making the legal and judicial experience with respect to the negotiation, use and content of protocols available, in some form, to the international legal community.
3. The Commission agreed that initial work to compile that practical experience should be facilitated informally through consultation with judges and insolvency practitioners.
4. At its fortieth session (2007), the Commission considered a preliminary report (A/CN.9/629) on the outcome of consultations with judges and insolvency practitioners to collect experience with respect to negotiating and using cross-border insolvency protocols and, in particular, a draft outline of possible notes on cross-border cooperation, including cross-border protocols, that was attached to the preliminary report.



5. The Commission emphasized the practical importance of facilitating cross-border cooperation in insolvency cases. It expressed its satisfaction with respect to the progress made on the work of compiling practical experience with negotiating and using cross-border insolvency protocols based on the draft outline of contents in document A/CN.9/629. It reaffirmed that that work should continue to be developed informally by the Secretariat in consultation with judges, practitioners and other experts.

6. Further consultations have been held with judges and insolvency practitioners and a compilation of practical experience, organized around the outline of contents annexed to the previous report to the Commission, has been prepared by the Secretariat. Because of timing and translation constraints, the document will not be available for the Commission, but an oral report of its contents will be provided.

7. The Commission may wish to provide guidance on how work on further development of the compilation should proceed. As a working paper, the compilation might be referred, for example, to Working Group V (Insolvency Law) at its thirty-fifth session (November 2008) for an initial discussion to determine whether consideration by an additional full session of Working Group V in the first half of 2009 would be desirable, taking into account developments in Working Group V with respect to the international treatment of enterprise groups in insolvency (in the context of which coordination and cooperation are likely to be of considerable importance) and the relationship between the compilation and implementation of coordination and cooperation under articles 25-27 of the UNCITRAL Model Law on Cross-Border Insolvency. The Commission might wish to provide the necessary authorization for such a working group session to be held in the event that Working Group V determines it to be desirable.