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UNITED NATIONS COMMISSION
ON INTERNATIONAL TRADE LAW
Working Group on
Electronic Commerce
Thirty-first session
New York, 18-28 February 1997

PROVISIONAL AGENDA

1. Election of officers
2. Adoption of the agenda
3. Planning of future work on the legal aspects of
Electronic Commerce: digital signatures,
certification authorities and related legal issues
4. Other business
5. Adoption of the report

Notes on the provisional agenda

Upon adoption of the UNCITRAL Model Law on Electronic Commerce, the Commission, at its twenty-ninth session, proceeded with a discussion of future work in the field of electronic commerce, based on a preliminary debate held by the Working Group on Electronic Data Interchange at its thirtieth session (A/CN.9/421, paras. 109-119). It was generally agreed that UNCITRAL should continue its work on the preparation of legal standards that could bring predictability to electronic commerce, thereby enhancing trade in all regions.

New proposals were made as to possible topics and priorities for future work. One proposal was that the Commission should start preparing rules on digital signatures. It was stated that the establishment of digital signature laws, together with laws recognizing the actions of "certifying authorities", or other persons authorized to issue electronic certificates or other forms of assurances as to the origin and attribution of messages "signed" digitally, was regarded in many countries as essential for the development of electronic commerce. It was pointed out that the ability to rely on digital signatures would be a key to the growth of contracting as well as the transferability of rights to goods or other interests through electronic media. In a number of jurisdictions, new laws governing digital signatures were currently being prepared. It was reported that such law development was already non-uniform. Should the Commission decide to undertake work in that area, it would have an opportunity to harmonize the new laws, or at least to establish common principles in the field of electronic signatures, and thus to provide an international infrastructure for such commercial activity.

Considerable support was expressed in favour of the proposal. It was generally felt, however, that, should the Commission decide to undertake work in the field of digital signatures through its Working Group on Electronic Data Interchange, it should give the Working Group a precise mandate. It was also felt that, since it was impossible for UNCITRAL to embark on the preparation of technical standards, care should be taken that it would not become involved in the technical issues of digital signatures. It was recalled that the Working Group, at its thirtieth session, had recognized that work with respect to certifying authorities might be needed, and that such work would probably need to be carried out in the context of registries and service providers. However, the Working Group had also felt that it should not embark on any technical consideration regarding the appropriateness of using any given standard (A/CN.9/421, para. 111). A concern was expressed that work on digital signatures might go beyond the sphere of trade law and also involve general issues of civil or administrative law. It was stated in response that the same was true of the provisions of the Model Law and that the Commission should not shy away from preparing useful rules for the reason that such rules might also be useful beyond the sphere of commercial relationships.

Another proposal, based on the preliminary debate held by the Working Group, was that future work should focus on service providers. The following were mentioned as possible issues to be considered with respect to service providers: the minimum standards for performance in the absence of party agreement; the scope of assumption of risk by the end parties; the effect of such rules or agreements on third parties; allocation of the risks of interlopers' or other unauthorized actions; and the extent of mandatory warranties, if any, or other obligations when providing value-added services (see A/CN.9/421, para. 116).

It was widely felt that it would be appropriate for UNCITRAL to examine the relationship between service providers, users and third parties. It was said that it would be very important to direct such an effort towards the development of international norms and standards for commercial conduct in the field, with the intent of supporting trade through electronic media, and not have as a goal the establishment of a regulatory regime for service providers, or other rules which could create costs unacceptable for market applications of EDI

(see A/CN.9/421, para. 117). It was also felt, however, that the subject-matter of service providers might be too broad and cover too many different factual situations to be treated as a single work item. It was generally agreed that issues pertaining to service providers could appropriately be dealt with in the context of each new area of work addressed by the Working Group.

Yet another proposal was that the Commission should begin work on the preparation of the new general rules that were needed to clarify how traditional contract functions could be performed through electronic commerce. Uncertainties were said to abound as to what "performance", "delivery" and other terms meant in the context of electronic commerce, where offers and acceptances and product delivery could take place on open computer networks across the world. The rapid growth of computer-based commerce as well as transactions over the Internet and other systems had made that a priority topic. It was suggested that a study by the Secretariat could clarify the scope of such work. Should the Commission, after examination of the study, decide to pursue this task, one option would be to place such rules in the "Special provisions" section of the UNCITRAL Model Law on Electronic Commerce.

A further proposal was that the Commission should focus its attention on the issue of incorporation by reference. It was recalled that the Working Group had agreed that that topic would appropriately be dealt with in the context of more general work on the issues of registries and service providers (A/CN.9/421, para. 114). The Commission was generally agreed that the issue could be dealt with in the context of work on certification authorities.

After discussion, the Commission agreed that placing the issue of digital signatures and certification authorities on the agenda of the Commission was appropriate, provided that it was used as an opportunity to deal with the other topics suggested by the Working Group for future work. It was also agreed as to a more precise mandate for the Working Group that the uniform rules to be prepared should deal with such issues as: the legal basis supporting certification processes, including emerging digital authentication and certification technology; the applicability of the certification process; the allocation of risk and liabilities of users, providers and third parties in the context of the use of certification techniques; the specific issues of certification through the use of registries; and incorporation by reference.

The Commission requested the Secretariat to prepare a background study of the issues of digital signatures and service providers, based on an analysis of laws currently being prepared in various countries. On the basis of that study, the Working Group should examine the desirability and feasibility of preparing uniform rules on the above-mentioned topics. It was agreed that work to be carried out by the Working Group at its thirty-first session could involve the preparation of draft rules on certain aspects of the above-mentioned topics. The Working Group was requested to provide the Commission with sufficient elements for an informed decision to be made as to the scope of the uniform rules to be prepared. In view of the broad scope of activities covered by the UNCITRAL Model Law on Electronic Commerce and by possible future work in the area of electronic commerce, it was decided that the

Working Group on Electronic Data Interchange would be renamed "Working Group on Electronic Commerce".^{1/}

The Working Group is composed of all States members of the Commission. These are:

Algeria, Argentina, Australia, Austria, Botswana, Brazil, Bulgaria, Cameroon, Chile, China, Ecuador, Egypt, Finland, France, Germany, Hungary, India, Iran (Islamic Republic of), Italy, Japan, Kenya, Mexico, Nigeria, Poland, Russian Federation, Saudi Arabia, Singapore, Slovakia, Spain, Sudan, Thailand, Uganda, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America and Uruguay.

Item 1. Election of officers

The Working Group, in accordance with its practice at previous sessions, may wish to elect a Chairman and a Rapporteur.

Item 3. Planning of future work on the legal aspects of Electronic Commerce: digital signatures, certification authorities and related legal issues

The Working Group will have before it a note by the Secretariat discussing the issues of digital signatures, certification authorities and related legal issues (A/CN.9/WG.IV/WP.71). The Working Group may wish to use the note as a basis for its deliberations.

The following documents will be made available at the session:

- (a) Report of the Working Group on Electronic Data Interchange on the work of its thirtieth session (A/CN.9/421);
- (b) Report of the United Nations Commission on International Trade Law on the work of its twenty-ninth session (Official Records of the General Assembly, Fifty-first Session, Supplement No. 17 (A/51/17));
- (c) UNCITRAL Model Law on Electronic Commerce and Guide to Enactment.

^{1/} Official Records of the General Assembly, Fifty-first Session, Supplement No. 17 (A/51/17), paras. 216-224.

Item 5. Adoption of the report

The Working Group may wish to adopt, at the close of its session, a report for submission to the thirtieth session of the Commission (to be held from 12 to 30 May 1997 at Vienna).

Meetings

The session of the Working Group will take place from 18 to 28 February 1997 at the United Nations Headquarters, New York. There will be 7 working days available for consideration of the agenda items at the session. No meeting will be scheduled for Thursday, 27 February, in order to allow for the preparation of the draft report of the session. Meeting hours will be from 10:00 to 13:00 and from 15:00 to 18:00, except on Tuesday, 18 February 1997, when the session will commence at 10:30.