



General Assembly

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United Nations Commission on International Trade Law

Working Group on Insolvency Law
Twenty-fourth session
New York, 23 July-3 August 2001

Provisional Agenda

1. Election of officers
2. Adoption of the agenda
3. Preparation of a legislative guide on insolvency law
4. Other business
5. Adoption of the report

Notes on the provisional agenda

1. The Commission, at its thirty-second session (1999), had before it a proposal by Australia (A/CN.9/462/Add.1) on possible future work in the area of insolvency law. The proposal referred to recent regional and global financial crises and the work undertaken in international forums in response to those crises. Reports from those forums stressed the need to strengthen the international financial system in three areas - transparency; accountability; and management of international financial crises by domestic legal systems. According to those reports, strong insolvency and debtor-creditor regimes were an important means for preventing or limiting financial crises and for facilitating rapid and orderly workouts from excessive indebtedness. The proposal before the Commission recommended that, in view of its universal membership, its previous successful work on cross-border insolvency and its established working relations with international organizations that have expertise and interest in the law of insolvency, the Commission was an appropriate forum to put insolvency law on its agenda. The proposal urged that the Commission consider entrusting a working group with the development of a model law on corporate insolvency to foster and encourage the adoption of effective national corporate insolvency regimes.

2. The Commission expressed its appreciation for the proposal. It noted that different work projects had been undertaken by other international organizations such as the International Monetary Fund, the World Bank and the International Bar Association on the development of standards and principles for insolvency regimes. It noted that the broad objective of those organizations, while differing in scope and working methods as a consequence of their respective mandates and membership, was to modernize insolvency practices and laws. The initiatives taken in those organizations were proof of the necessity of assisting States to re-assess their insolvency laws and practices. Those various initiatives, however, were also in need of strengthened coordination, where appropriate, so as to avoid inefficient duplication of work and achieve consistent results.

3. Recognition was expressed in the Commission for the importance to all countries of strong insolvency regimes. The view was expressed that the type of insolvency regime that a country had adopted had become a “front-line” factor in international credit ratings. Concern was expressed, however, about the difficulties associated with work on an international level on insolvency legislation, which involved sensitive and potentially diverging socio-political choices. In view of those difficulties, it was feared the work might not be brought to a successful conclusion. It was said that a universally acceptable model law was in all likelihood not feasible and that any work needed to take a flexible approach that would leave options and policy choices open to States. While the Commission heard expressions of support for such flexibility, it was generally agreed that the Commission could not take a final decision on committing itself to establishing a working group to develop model legislation or another text without further study of the work already being undertaken by other organizations and consideration of the relevant issues.

4. To facilitate that further study, the Commission was invited by the Secretariat to consider the possibility of devoting one session of a working group to ascertaining what, in the current landscape of efforts, would be an appropriate product (such as a model law, model provisions, a set of principles or other text) and to defining the scope of the issues to be included in that product. Diverging views were expressed in response. One view was that more background work should be undertaken by the Secretariat and presented to the Commission at its thirty-third session for a decision as to whether substantive work of elaborating a uniform law or another text of a recommendatory nature should be undertaken. Another view was that the question could be referred to one session of a working group, for the purpose of exploring those various issues, with a report to be made to the Commission at its thirty-third session in 2000 on the feasibility of undertaking work in the field of insolvency. At that time, the Commission would have before it sufficient information to make a final decision on that issue. It was emphasized that preparatory work for the session of the working group would require coordination with other international organizations already undertaking work in the area of insolvency law, since the results of their work would constitute important elements in the deliberations towards recommending to the Commission what it might usefully contribute in that area. It was pointed out that the importance and urgency of work on insolvency law had been identified in a number of international organizations and there was wide agreement that more work was required in order to foster the development and adoption of effective national corporate insolvency regimes.

5. The prevailing view in the Commission was that an exploratory session of a working group should be convened to prepare a feasibility proposal for consideration by the

Commission at its thirty-third session and that that exploratory session of the Working Group on Insolvency Law should be held at Vienna from 6 to 17 December 1999.

6. At its thirty-third session (2000) the Commission noted the recommendation that the Working Group had made in its report (A/CN.9/469, para. 140) and gave the Group the mandate to prepare a comprehensive statement of key objectives and core features for a strong insolvency, debtor-creditor regime, including consideration of out-of-court restructuring, and a legislative guide containing flexible approaches to the implementation of such objectives and features, including a discussion of the alternative approaches possible and the perceived benefits and detriments of such approaches. It was agreed that in carrying out its task the Working Group should be mindful of the work under way or already completed by other organizations, including the World Bank, the International Monetary Fund (IMF), the Asian Development Bank (ADB), INSOL International (INSOL) (an international federation of insolvency professionals) and Committee J of the Section on Business Law of the International Bar Association (IBA). It was noted that, in order to obtain the views and benefit from the expertise of those organizations, the Secretariat would organize a colloquium before the next session of the Working Group, in cooperation with INSOL and the IBA, as had been offered by those organizations.¹

7. That colloquium was organized with the co-sponsorship and organizational assistance of INSOL and in conjunction with the IBA at Vienna, 4-6 December 2000. The colloquium was designed to provide a forum for dialogue among insolvency practitioners and experts, international organizations and Government representatives on the work of other organizations in the area of insolvency law reform (including the reports of the World Bank, the IMF, the ADB, INSOL and the IBA), the needs of nations either undertaking or considering undertaking reform of part or all of their domestic laws relating to insolvency and to determine the manner in which the Commission and other organizations could assist the process of reform.

8. The approximately 150 participants from 40 countries included lawyers, accountants, bankers, judges and insolvency practitioners, as well as representatives of Governments and international organizations such as the ADB, the European Bank for Reconstruction and Development (EBRD), the IBA, the IMF, INSOL and the World Bank. The speakers included insolvency officials, judges, practitioners and representatives of organizations who have had significant experience in insolvency law and law reform initiatives.

9. Broad support was expressed by participants in favour of the Commission undertaking work on the key elements of an effective insolvency regime (see Report on UNCITRAL/INSOL/IBA Global Insolvency Colloquium, document A/CN.9/495, para. 34). The Colloquium strongly recommended that approximately 6 months be allowed for thorough preparation of drafts for consideration by the Working Group. It was noted also that the mandate given by the Commission to the Working Group referred to the work underway or already completed by other international organizations and required the Working Group to commence its work after receipt of the reports currently being prepared by other organizations, including the World Bank. The Colloquium heard that the World Bank report was expected to be finalised in early 2001.

¹ Official Records of the General Assembly, Fifty-fifth Session, Supplement No. 17, A/55/17, para. 408.

10. In light of those factors, the meeting of the Working Group scheduled for 26 March to 6 April 2001 at New York was rescheduled for 23 July to 3 August 2001 at New York. Subject to approval by the Commission, a further Working Group meeting might take place from 3 to 14 December 2001 at Vienna.

11. The Working Group on Insolvency Law is composed of all States members of the Commission. These are:

Austria, Benin, Brazil, Burkina Faso, Cameroon, Canada, China, Colombia, Fiji, France, Germany, Honduras, Hungary, India, Iran (Islamic Republic of), Italy, Japan, Kenya, Lithuania, Mexico, Morocco, Paraguay, Romania, Russian Federation, Rwanda, Sierra Leone, Singapore, Spain, Sudan, Sweden, Thailand, The former Yugoslav Republic of Macedonia, Uganda, United Kingdom of Great Britain and Northern Ireland, Uruguay and United States of America.

Item 1. Election of officers

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

Item 3. Preparation of legislative guide on insolvency law

13. The Working Group will have before it, and may wish to use as a basis for its deliberations, two Reports of the Secretary-General: "First draft of a legislative guide on insolvency law" (A/CN.9/WG.V/WP.54, WP.54/Add.1 and Add.2) and "Alternative approaches to out-of-court insolvency processes" (A/CN.9/WG.V/WP.55). Document A/CN.9/WG.V/WP.54 sets forth the Introduction and Part One of the draft legislative guide. The Introduction discusses the organization and scope of the guide and a glossary of terms. Part One discusses the key objectives of effective and efficient insolvency regimes. Document A/CN.9/WG.V/WP.54/Add.1 sets forth Part Two of the legislative guide, "Core provisions of an effective and efficient insolvency regime". This Part analyses and discusses policy questions raised by 13 topics which have been identified as forming the basis of an effective and efficient insolvency regime and sets forth recommended approaches to those topics. Document A/CN.9/WG.V/WP.54/Add.2 is a preliminary draft of legislative provisions which give effect to some of the approaches recommended in Addendum 1 in respect of those 13 topics.

14. Background materials may be found in the following documents: Possible future work on insolvency law: Note by the Secretariat A/CN.9/WG.V/WP.50; Report of the Working Group on Insolvency Law on the work of its twenty-second session A/CN.9/469; and Report on UNCITRAL/INSOL/IBA Global Insolvency Colloquium A/CN.9/495. These documents may be found on the UNCITRAL website www.uncitral.org under "Working Groups" and then "Working Group on Insolvency Law".

Item 5. Adoption of the report

15. The Working Group may wish to adopt, at the close of its session, a report for submission to the thirty-fifth session of the Commission (to be held in 2002, at New York).

Dates and scheduling of meetings

16. The session of the Working Group on Insolvency Law will take place from 23 July to 3 August 2001 at the United Nations Headquarters, New York. There will be 8 working days for consideration of the agenda. No formal meeting will be scheduled for Thursday, 2 August, to allow for the preparation of the draft report of the session, which will be adopted on Friday, 3 August. Meeting hours will be from 10.00 to 13.00 and from 15:00 to 18:00, except on Monday, 23 July 2001, when the session will commence at 10.30.

17. It is suggested that documents A/CN.9/WG.V/WP.54 and Addendum 1 and A/CN.9/WG.V/WP.55 form the basis of the Working Group's discussion. A/CN.9/WG.V/WP.54/Add.2 is provided for information only to give the Working Group an indication of the types of provisions that would ultimately be included in the draft guide. It is not envisaged that this document would be discussed in any detail at the current session of the Working Group.

18. It is envisaged that the Working Group would discuss the different topics in Parts One and Two of the draft guide in sequential order, with the aim of completing a preliminary consideration of all topics by the end of Wednesday, 1 August 2001. It is also suggested that the topic of alternative out-of-court insolvency processes set forth in document A/CN.9/WG.V/WP.55 be discussed on the afternoon of Friday, 27 July 2001.