
General Assembly

Distr.: Limited
12 February 2002



Original: English

**United Nations Commission
on International Trade Law**

Working Group VI (Security Interests)

First session

New York, 20-24 May 2002

Draft legislative guide on secured transactions**Report of the Secretary-General****Background remarks**

1. At its thirty-third session in 2000, the Commission considered a report of the Secretary-General on possible future work in the area of secured credit law (A/CN.9/475). At that session, the Commission agreed that security interests was an important subject and had been brought to the attention of the Commission at the right time, in particular in view of the close link of security interests 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. It was also 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. Furthermore, in order to ensure the optimal benefits from law reform, including financial-crisis prevention, poverty reduction and facilitation of debt financing as an engine for economic growth, any effort on security interests would need to be co-ordinated with efforts on insolvency law.¹

2. At its thirty-fourth session in 2001, the Commission considered a further report by the Secretariat (A/CN.9/496). At that session, the Commission agreed that work should be undertaken in view of the beneficial economic impact of a modern

¹ Official Records of the General Assembly, Fifty-fifth Session, Supplement No. 17 (A/55/17), para. 459.

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 sector, 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.²

3. While some concerns were expressed with respect to the feasibility of work in the field of secured credit law, the Commission noted that those concerns were not widely shared and went on to consider the scope of work.³ It was widely felt that work should focus on security interests in goods involved in a commercial activity, including inventory. It was also agreed that securities and intellectual property should not be dealt with as matters of priority. With respect to securities, the Commission noted the interest of the International Institute on Private Law (Unidroit). As to intellectual property, it was stated that there was less need for work in that area, the issues were extremely complex and any efforts to address them should be co-ordinated with other organizations, such as the World Intellectual Property Organization (WIPO).⁴ As to the form of work, the Commission considered that a model law might be too rigid and noted the suggestions made for a set of principles with a legislative guide that would include, where feasible, model legislative provisions.⁵

4. After discussion, the Commission decided to entrust a working group with the task of developing "an efficient legal regime for security rights in goods involved in a commercial activity, including inventory, to identify the issues to be addressed, such as the form of the instrument, the exact scope of the assets that can serve as collateral ...".⁶ Emphasizing the importance of the matter and the need to consult with representatives of the relevant industry and practice, the Commission recommended that a two- to three-day colloquium be held.⁷

5. In order to facilitate the work of the Working Group, the Secretariat has prepared, with the assistance of experts, the present first, preliminary draft Legislative Guide on Secured Transactions. In terms of scope of work, this draft starts from the working assumption that a guide should have as wide a scope as possible. The justification for this approach lies in one of the key objectives of any secured credit regime, namely the full utilization of assets for the purpose of

² Ibid., Fifty-sixth Session, Supplement No. 17 (A/56/17), para. 351.

³ Ibid., para. 352-354.

⁴ Ibid., paras. 354-356.

⁵ Ibid., para. 357.

⁶ Ibid., para. 358.

⁷ Ibid., para. 359.

obtaining credit, which requires a comprehensive regime in terms of assets, obligations and parties covered (see A/CN.9/WG.VI/WP.2/Add.1, para. 11). Modern secured credit regimes take a comprehensive and flexible approach to accommodate common practice in which a borrower may utilize whatever asset it has and a lender can take security over any asset, tangible and intangible. This practice reflects the need to provide adequate security to lenders and facilitates access to low-cost credit. It also reflects the difficulty in drawing a clear distinction between tangible and intangible assets.

6. With a view to ensuring that there will be no overlap with the work of other organizations (e.g. Organization of American States, Unidroit or the Hague Conference on Private International Law), the Working Group may wish to consider referring in this Guide to securities only in general terms, leaving the details to the legislative texts being prepared by other organizations. The approach followed in the UNCITRAL Legislative Guide on Privately Infrastructure Projects with respect to the United Nations Convention on the Assignment of Receivables provides a good example of the harmonious co-existence between a legislative text and a guide.

7. Addenda to this introductory document contain the following draft chapters: I (introduction), II (key objectives of an efficient secured transactions regime), III (basic approaches to security), IV (creation of security rights), V (publicity), VI (publicity via filing), VII (priority), VIII (rights and obligations of parties before default), IX (default and enforcement), X (insolvency), XI (conflict of laws and territorial application) and XII (transition issues). The report of the International Colloquium on Secured Transactions, organized jointly by the Secretariat and the Commercial Finance Association (Vienna, 20-22 March 2002) will also be issued as a working paper (A/CN.9/WG.VI/WP.3).