



# General Assembly

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**United Nations Commission  
on International Trade Law**  
Working Group VI (Security Interests)  
Eighth session  
Vienna, 5-9 September 2005\*

## **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. Preparation of a legislative guide on secured transactions.
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: Algeria, Argentina, Australia, Austria, Belarus, Belgium, Benin, Brazil, Cameroon, Canada, Chile, China, Colombia, Croatia, Czech Republic, Ecuador, Fiji, France, Gabon, Germany, Guatemala, India, Iran, Israel, Italy, Japan, Jordan, Kenya, Lebanon, Lithuania, Madagascar, Mexico, Mongolia, Morocco, Nigeria, Pakistan, Paraguay, Poland, Qatar, Republic of Korea, Russian Federation, Rwanda, Serbia and Montenegro, Sierra Leone, Singapore, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Thailand, the former Yugoslav Republic of Macedonia, Tunisia, Turkey, Uganda, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Venezuela and Zimbabwe.

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\* These dates are subject to confirmation by the Commission at its thirty-eighth session, to be held in Vienna from 4 to 15 July 2005.



2. In addition, States that are not members of the Commission, as well as relevant international governmental and non-governmental organizations, may be invited to attend the session as observers. In accordance with established UNCITRAL practice, observer delegations may participate actively in the deliberations leading to decisions, which are taken by consensus.

### **III. Annotations to agenda items**

#### **Item 1. Opening of the session and scheduling of meetings**

3. The seventh session of the Working Group will be held at the Vienna International Centre from 5 to 9 September 2005. Meeting hours will be from 0930 to 1230 and from 1400 to 1700, except on Monday, 5 September 2005, when the session will be opened at 1000. There will be five working days available for consideration of the agenda items at the session. 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. Preparation of a legislative guide on secured transactions**

##### **(a) Previous deliberations of the Working Group**

5. At its present session, the Working Group continues its work on the development of an efficient legal regime for security rights.<sup>1</sup> The Commission's decision to undertake work in the area of secured credit law was taken in response to the need for an efficient legal regime that would remove legal obstacles to secured credit and could thus have a beneficial impact on the availability and the cost of credit.<sup>2</sup>

6. At its thirty-third session (2000), the Commission discussed a report prepared by the Secretariat on issues to be addressed in the area of secured credit law (A/CN.9/475). At that session, the Commission agreed that secured credit law was an important subject and had been brought to the attention of the Commission at the right time, in particular in view of its close link 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. Furthermore, it was 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.<sup>3</sup>

7. At its thirty-fourth session (2001), the Commission considered another report prepared by the Secretariat (A/CN.9/496) and agreed that work should be undertaken in view of the beneficial economic impact of a modern 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 sectors, 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.<sup>4</sup> As to the form of work, the Commission considered that a model law would be too rigid and noted the suggestions made for a set of principles with a legislative guide that would include legislative recommendations.<sup>5</sup>

8. At its first session (New York, 20-24 May 2002), the Working Group considered chapters I to V (Introduction and key objectives, Approaches to security, Creation and Publicity) and X (Insolvency) (A/CN.9/WG.VI/WP.2 and Add.1 to 5 and 10) of the first preliminary draft guide on secured transactions, prepared by the Secretariat. At that session, the Working Group requested the Secretariat to prepare revised versions of those chapters (see A/CN.9/512, para. 12). At that session, the Working Group also considered suggestions for the presentation of modern registration systems in order to provide the Working Group with information necessary to address concerns expressed with respect to registration of security rights in movable property (see A/CN.9/512, para. 65). At the same session, the Working Group agreed on the need for coordination with Working Group V (Insolvency Law) on matters of common interest and endorsed the conclusions of Working Group V with respect to those matters (see A/CN.9/512, para. 88).

9. At its thirty-fifth session (2002), the Commission considered the report of the first session of the Working Group (A/CN.9/512). It was widely felt that the legislative guide was a great opportunity for the Commission to assist States in adopting modern secured transactions legislation, which was generally thought to be a necessary, albeit not sufficient in itself, condition for increasing access to low-cost credit, thus facilitating the cross-border movement of goods and services, economic development and, ultimately, friendly relations among nations. In that connection, the Commission noted with satisfaction that the project had attracted the attention of international, governmental and non-governmental organizations and that some of those took an active part in the deliberations of the Working Group. The comments submitted to Working Group VI, in particular by the European Bank on Reconstruction and Development (A/CN.9/WG.VI/WP.4), were mentioned as an indication of that interest. At that session, the Commission also felt that the timing of the Commission's initiative was most opportune both in view of the relevant

legislative initiatives under way at the national and the international level and in view of the Commission's own initiative in the field of insolvency law. After discussion, the Commission confirmed the mandate given to the Working Group at its thirty-fourth session to develop an efficient legal regime for security rights in goods, including inventory. The Commission also confirmed that the mandate of the Working Group should be interpreted widely to ensure an appropriately flexible work product, which should take the form of a legislative guide.<sup>6</sup>

10. At its second session (Vienna, 17-20 December 2002), the Working Group considered chapters VI (Filing), VII (Priority) and IX (Default and enforcement) (A/CN.9/WG.VI/WP.2 and Add.6, 7 and 9) of the first preliminary draft guide on secured transactions, prepared by the Secretariat. At that session, the Working Group requested the Secretariat to prepare revised versions of those chapters (see A/CN.9/531, para. 15). In conjunction with that session and in accordance with suggestions made at the first session of the Working Group (see A/CN.9/512, para. 65), an informal presentation of the registration systems of security rights in movable property of New Zealand and Norway was held. Immediately before that session, Working Groups V (Insolvency Law) and VI (Security Interests) held their first joint session (Vienna, 16-17 December 2002), during which the revised version of former chapter X (new chapter IX; A/CN.9/WG.VI/WP.6/Add.5) on insolvency was considered. At that session, the Secretariat was requested to prepare a revised version of that chapter (see A/CN.9/535, para. 8).

11. At its third session (New York, 3-7 March 2003), the Working Group considered chapters VIII (Pre-default rights and obligations), XI (Conflict of laws) and XII (Transition) of the first preliminary draft guide on secured transactions (A/CN.9/WG.VI/WP.2/Add.8, A/CN.9/WG.VI/WP.2/Add.11 and A/CN.9/WG.VI/WP.2/Add.12) and chapters II (Approaches to security) and III (Creation), paras. 1-33 of the second version of the draft Guide (A/CN.9/WG.VI/WP.6/Add.2 and A/CN.9/WG.VI/WP.6/Add.3) and requested the Secretariat to prepare revised versions (A/CN.9/532, para. 13).<sup>7</sup>

12. At its thirty-sixth session in 2003, the Commission had before it the reports of Working Group VI (Security Interests) on the work of its second and third sessions (A/CN.9/531 and A/CN.9/532), as well as the report of the first joint session of Working Group V and VI (A/CN.9/535). The Commission noted with appreciation the progress made by the Working Group in its work.

13. At its fourth session (Vienna, 8-12 September 2003), the Working Group considered chapters IV (Creation), IX (Insolvency), I (Introduction), II (Key Objectives) and paragraphs 1 to 41 of chapter VI (Priority) and requested the Secretariat to prepare revised versions of those chapters (see A/CN.9/543, para. 15).

14. At its fifth session (New York, 22-25 March 2004), the Working Group considered the summary and recommendations of chapters V (Publicity), VI (Priority), X (Conflicts of Laws) and requested the Secretariat to prepare revised versions of those chapters (see A/CN.9/549, para. 16).

15. At their second joint session (New York, 26 and 29 March 2004), Working Groups V (Insolvency Law) and VI (Security Interests) considered the treatment of security interests in the draft Legislative Guide on Insolvency Law on the basis of document A/CN.9/WG.V/WP.71 (see A/CN.9/550, para. 11).

16. At its thirty-seventh session in 2004, the Commission had before it the reports of Working Group VI (Security Interests) on the work of its fourth and fifth sessions (A/CN.9/543 and A/CN.9/549). The Commission commended the Working Group for the progress achieved so far and requested it to expedite its work so as to submit the draft guide to the Commission for final adoption as soon as possible and hopefully in 2006.<sup>8</sup>

17. At its sixth session (Vienna, 27 September-1 October 2004), the Working Group considered chapters I and II (Introduction and key objectives), III (Basic approaches to security), IV (Creation), V (Effectiveness against third parties), VII (Pre-default rights and obligations), VIII (Default and enforcement), X (Conflict of laws) and XI (Transition) and requested the Secretariat to revise those chapters to reflect the deliberations and decisions of the Working Group (see A/CN.9/570, para. 8).

18. At its seventh session (New York, 24-28 January 2005), the Working Group considered chapters X (Conflict of laws), XII (Acquisition financing devices) and XVI (Security rights in bank accounts) and requested the Secretariat to revise those chapters to reflect the deliberations and decisions of the Working Group (see A/CN.9/574, para. 8).

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

19. The Working Group will have before it, and may wish to use as a basis of its considerations, notes by the Secretariat entitled: “Draft legislative guide on secured transactions” (A/CN.9/WG.VI/WP.14/Add.1 (Priority), A/CN.9/WG.VI/WP.21 and Add.1 to 5 (Revised Recommendations), A/CN.9/WG.VI/WP.22/Add.1 (Introduction and Key Objectives), Add.2 (Basic approaches to security) and Add.3 (Creation)). The following background documents will be made available at the session:

(a) Report of Working Group VI (Security Interests) on the work of its seventh session (A/CN.9/574);

(b) Report of Working Group VI (Security Interests) on the work of its sixth session (A/CN.9/570);

(c) Report of Working Groups V (Insolvency Law) and VI (Security Interests) on the work of their second joint session (A/CN.9/550);

(d) Report of Working Group VI (Security Interests) on the work of its fifth session (A/CN.9/549);

(e) Report of Working Group VI (Security Interests) on the work of its fourth session (A/CN.9/543);

(f) Report of Working Groups V (Insolvency Law) and VI (Security Interests) on the work of their first joint session (A/CN.9/535);

(g) Report of Working Group VI (Security Interests) on the work of its third session (A/CN.9/532);

(h) Report of Working Group VI (Security Interests) on the work of its second session (A/CN.9/531);

(i) Report of Working Group VI (Security Interests) on the work of its first session (A/CN.9/512); and

(j) Report of the Secretary-General: draft legislative guide on secured transactions (A/CN.9/WG.VI/WP.9/Add.1-4 and 6-8, A/CN.9/WG.VI/WP.11 and Add.1 and 2, A/CN.9/WG.VI/WP.14 and Add.2 and 4, A/CN.9/WG.VI/WP.13 and Add.1 A/CN.9/WG.VI/WP.14 and Add.2 and 4, A/CN.9/WG.VI/WP.16 and Add.1, A/CN.9/WG.VI/WP.17 and Add.1, A/CN.9/WG.VI/WP.18 and Add.1 and A/CN.9/WG.VI/WP.19).

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**

20. The ninth session of the Working Group is scheduled to take place in New York from 30 January to 3 February 2005, those dates being subject to approval by the Commission at its thirty-eighth session to be held in Vienna from 4 to 15 July 2005.

#### **Item 6. Adoption of the report**

21. The Working Group may wish to adopt, at the close of its session, on Friday, 9 September 2005, a report for submission to the thirty-eighth 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.

#### *Notes*

<sup>1</sup> *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 17 (A/56/17)*, para. 358.

<sup>2</sup> *Ibid.*, *Fifty-fifth Session, Supplement No. 17 (A/55/17)*, para. 455, and *Fifty-sixth Session, Supplement No. 17 (A/56/17)*, para. 347.

<sup>3</sup> *Ibid.*, *Fifty-fifth Session, Supplement No. 17 (A/55/17)*, para. 459.

<sup>4</sup> *Ibid.*, *Fifty-sixth Session, Supplement No. 17 (A/56/17)*, para. 351.

<sup>5</sup> *Ibid.*, para. 357.

<sup>6</sup> *Ibid.*, *Fifty-seventh Session, Supplement No. 17 (A/57/17)*, paras. 202-204.

<sup>7</sup> *Ibid.*, *Fifty-eighth Session, Supplement No. 17 (A/58/17)*, paras. 215-222.

<sup>8</sup> *Ibid.*, *Fifty-ninth Session, Supplement No. 17 (A/59/17)*, paras. 73-78.