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UNITED NATIONS COMMISSION
ON INTERNATIONAL TRADE LAW
Working Group on Insolvency Law
Twenty-second session
Vienna, 6-17 December 1999

PROVISIONAL AGENDA

1. Election of officers
2. Adoption of the agenda
3. Possible future work on insolvency law: consideration of the note by the Secretariat
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.^{1/} 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.^{2/}

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. Subsequently, after the Commission had discussed its future work in the area of arbitration, it was decided that the Working Group on Insolvency Law would hold that exploratory session at Vienna from 6 to 17 December 1999.

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

Algeria, Australia, Austria, Botswana, Brazil, Bulgaria, Burkina Faso, Cameroon, China, Colombia, Egypt, Fiji, Finland, France, Germany, Honduras, Hungary, India, Iran (Islamic Republic of), Italy, Japan, Kenya, Lithuania, Mexico, Nigeria, Paraguay, Romania, Russian Federation, Singapore, Spain, Sudan, Thailand, Uganda, United Kingdom of Great Britain and Northern Ireland, United States of America and Uruguay.

Item 1. Election of officers

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

Item 3. Insolvency law

8. The Working Group will have before it, and may wish to use as a basis for its deliberations, the following document:

(a) Possible future work on insolvency law: Note by the Secretariat (A/CN.9/WG.V/WP.50).

Item 5. Adoption of the report

9. The Working Group may wish to adopt, at the close of its session, a report for submission to the thirty-third session of the Commission (to be held from 12 June to 7 July 2000, at New York).

Meetings

10. The session of the Working Group will take place from 6 to 17 December 1999 at the Vienna International Centre. There will be 8 working days available for consideration of the Secretariat Note. No meeting will be scheduled for Thursday, 16 December, in order to allow for the preparation of the draft report of the session, which will be adopted on Friday, 17 December. Meeting hours will be from 9.30 to 12:30 and from 14:00 to 17:00, except on Monday, 6 December, 1999, when the session will commence at 10:00 a.m.

Notes

1/ Possible future work in the area of insolvency law: Proposal by Australia,
A/CN.9/462/Add.1.

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2/ Official Records of the General Assembly, Fifty-fourth Session, Supplement No. 17
(A/54/17), paras. 381-385.