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Report of Working Group VI (Security Interests) on the work of its twenty-fourth session (Vienna, 2-6 December 2013)

Contents

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I. Introduction

1. At its present session, Working Group VI (Security Interests) continued its work on the preparation of a model law on secured transactions (the "draft Model Law"), pursuant to a decision taken by the Commission at its forty-fifth session (New York, 25 June-6 July 2012).[1] At that session, the Commission agreed that, upon its completion of the UNCITRAL Guide on the Implementation of a Security Rights Registry (the "Registry Guide"), the Working Group should undertake work to prepare a simple, short and concise model law on secured transactions based on the general recommendations of the UNCITRAL Legislative Guide on Secured Transactions (the "Secured Transactions Guide") and consistent with all texts prepared by UNCITRAL on secured transactions, including the United Nations Convention on the Assignment of receivables in International Trade (the "United Nations Assignment Convention") and the Supplement on Security Rights in Intellectual Property (the "Intellectual Property Supplement").[2] The Commission also agreed that, consistent with the Commission's decision at its forty-third session, in 2010, the topic of security rights in non-intermediated securities, in the sense of securities other than those credited in a securities account, should continue to be retained on the future work programme for further consideration, on the basis of a note to be prepared by the Secretariat, which would set out all relevant issues so as to avoid any overlap or inconsistency with texts prepared by other organizations.

2. At its twenty-third session (New York, 8-12 April 2013), the Working Group had a general exchange of views on the basis of a note prepared by the Secretariat entitled "Draft Model Law on Secured Transactions" (A/CN.9/WG.VI/WP.55 and Add.1 to 4).

3. At its forty-sixth session (Vienna, 8-26 July 2013), the Commission noted that the Secretariat was in the course of preparing a revised version of the draft Model Law that would implement the mandate given by the Commission to the Working Group and facilitate commercial finance transactions.[3] It was agreed that the preparation of the draft Model Law was an extremely important project to complement the work of the Commission in the area of security interests and provide urgently needed guidance to States as to how to implement the recommendations of the Secured Transactions Guide. It was also agreed that, in view of the importance of modern secured transactions law for the availability and the cost of credit, and the importance of credit for economic development, such guidance was extremely important and urgent to all States at a time of economic crisis but in particular to States with developing economies and economies in transition. In addition, it was stated that the scope of the draft Model Law should include all economically valuable assets.[4]

4. After discussion, the Commission confirmed its decision that Working Group VI should prepare a simple, short and concise model law on secured transactions based on the recommendations of the Secured Transactions Guide and

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[1] *Official Records of the General Assembly, Sixty-seventh Session, Supplement No. 17* (A/67/17), para. 105.

[2] Ibid.

[3] Ibid., *Sixty-eighth Session, Supplement No. 17* (A/68/17), para. 192.

[4] Ibid., para. 193.

consistent with all texts prepared by UNCITRAL on secured transactions.[5] The Commission also agreed that the continuation of work towards developing a model law on secured transactions would be undertaken in two one-week sessions of Working Group VI (Security Interests) in the year to June 2014, and that whether that work would include security interests in non-intermediated securities would be assessed at a future time.[6]

II. Organization of the session

5. The Working Group, which was composed of all States members of the Commission, held its twenty-fourth session in Vienna from 2 to 6 December 2013. The session was attended by representatives of the following States members of the Working Group: Argentina, Armenia, Australia, Belarus, Brazil, Canada, Colombia, Croatia, Denmark, Ecuador, El Salvador, France, Germany, Indonesia, Iran (Islamic Republic of), Italy, Japan, Jordan, Kenya, Mexico, Pakistan, Panama, Republic of Korea, Russian Federation, Spain, Switzerland, Thailand, Ukraine, United States of America and Venezuela (Bolivarian Republic of).

6. The session was attended by observers from the following States: Angola, Bolivia (Plurinational State of), Czech Republic, Dominican Republic, Iraq, Poland, Qatar, Romania and Saudi Arabia. The session was also attended by an observer from the European Union.

7. The session was also attended by observers from the following international organizations:

(a) *United Nations system*: The World Bank;

(b) *Inter-governmental organizations*: Council of Interparliamentary Assembly of Member Nations of the Commonwealth of Independent States (IPA CIS);

(c) *International non-governmental organizations invited by the Commission*: American Bar Association (ABA), Commercial Finance Association (CFA), Forum for International Conciliation and Arbitration (FICACIC), International Chamber of Commerce (ICC), International Insolvency Institute (III), Moot Alumni Association (MAA), National Law Centre for Inter-American Free Trade (NLCIFT) and Union Internationale des Huissiers de Justice et Officiers Judiciaires (UIHJ).

8. The Working Group elected the following officers:

Chairman: Ms. Kathryn SABO (Canada)

Rapporteur: Ms. Denise Carla VASQUEZ WALLACH (Mexico)

9. The Working Group had before it the following documents: A/CN.9/WG.VI/WP.56 (Annotated Provisional Agenda), A/CN.9/WG.VI/WP.57 and Addenda 1-4 (Draft Model Law on Secured Transactions).

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[5] *Official Records of the General Assembly, Sixty-eighth Session, Supplement No. 17* (A/68/17), para. 194.

[6] Ibid., para. 332.

10. The Working Group adopted the following agenda:

1. Opening of the session and scheduling of meetings.
2. Election of officers.
3. Adoption of the agenda.
4. Draft Model Law on Secured Transactions.
5. Other business.
6. Adoption of the report.

III. Deliberations and decisions

11. The Working Group considered a note by the Secretariat entitled "Draft Model Law on Secured Transactions" (A/CN.9/WG.VI/WP.57 and Add.1 and 2). The deliberations and decisions of the Working Group are set forth below respectively in chapter IV. The Secretariat was requested to revise the draft Model Law to reflect the deliberations and decisions of the Working Group.

IV. Draft Model Law on Secured Transactions

A. General

12. Noting its mandate to prepare a simple, short and concise model law on secured transactions based on the recommendations of the Secured Transactions Guide and consistent with all texts prepared by UNCITRAL on secured transactions (see paras. 1 and 3 above), the Working Group began its deliberations with a general exchange of views. While it was generally agreed that the draft Model Law should be simple, short and concise, and consistent with the recommendations of the Secured Transactions Guide and all texts of UNCITRAL on secured transactions, differing views were expressed as to the manner in which that objective could be achieved. One view was that the Working Group should first prepare a list of contents or road map that would generally outline the structure of the draft Model Law. It was stated that, once agreement had been reached on those issues, the Working Group could begin considering the specific articles of the draft Model Law. It was also observed that the draft Model Law should deal with the most important issues and the basic principles to be extracted from the recommendations of the Secured Transactions Guide, while other issues and exceptions could be set out subsequently in a summary fashion or even in an annex to the draft Model Law. In that connection, by way of example, it was mentioned that: (a) the chapter on third-party effectiveness could focus on the most common methods of possession and registration, while the question whether any further qualification was necessary to deal with control could be addressed at a later stage; and (b) the chapter on the registry system could be limited to certain general principles, while the details could be referred to the registry regulations. It was also pointed out that the draft Model Law should be sufficiently flexible to accommodate differences among the various legal traditions.

13. Another view was that the draft Model Law should generally follow the structure of the Secured Transactions Guide and any adjustments that would need to be made should be considered at the time each particular chapter or section of the draft Model Law would be discussed. It was stated that, while the primary focus of work should be on core commercial assets, the draft Model Law should have as broad a scope as the Secured Transactions Guide so as to avoid inadvertently fragmenting the law and thus potentially creating gaps and inconsistencies. In that connection, it was pointed out that there was no need to exclude intellectual property from the scope of the draft Model Law. It was also mentioned that the provisions on acquisition financing were so important and necessary for an efficient law that they should be included in the draft Model Law itself. In that connection, the concern was expressed that enacting States might view matters addressed in an annex as less important and leave them out of their secured transactions law. In order to address that concern, the suggestion was made that other ways might be found to reflect optional text that an enacting State might implement depending on its particular needs (for example, a reference to the recommendations of the Secured Transactions Guide).

14. After discussion, the Working Group agreed that, while the draft Model Law should be simple, short and concise, and in line with the recommendations of the Secured Transactions Guide and all UNCITRAL texts on secured transactions, rather than trying to establish a blueprint or road map at the outset, the Working Group should consider the issues in the order they were addressed in the working papers before it, which were generally considered to form an excellent basis for discussion. In addition, it was agreed that the Working Group could identify and address key issues and basic principles, leaving additional issues and principles for discussion at a later stage. Moreover, it was agreed that, within the parameters set out by the recommendations of the Secured Transactions Guide, the draft Model Law should be sufficiently flexible to accommodate approaches taken in various jurisdictions.

B. Preamble (A/CN.9/WG.VI/WP.57)

15. Noting the diverging legislative approaches taken in various jurisdictions, the Working Group agreed that the preamble should be placed in a commentary, appropriately revised to deal more succinctly with the purpose of the draft Model Law. It was widely felt that the commentary should clarify that it would be up to each enacting State to include that text in a preamble, or a provision in or report on its law. In addition, it was agreed that, in line with the practice of UNCITRAL with respect to model laws, the commentary should take the form of a short guide to enactment of the draft Model Law that would include a general part and article-by-article remarks. In that connection, it was agreed that the guide to enactment should not duplicate but rather include cross-references to the Secured Transactions Guide, where possible or necessary.

C. Chapter I. Scope of application and general provisions (A/CN.9/WG.VI/WP.57)

Article 1. Scope of application

16. With respect to article 1, a number of suggestions were made. One suggestion was that, with the exception of the deference to consumer protection legislation in subparagraph 1 (b), subparagraphs 1 (a) through (d) should be deleted, as they unnecessarily repeated points that were sufficiently made in the chapeau of paragraph 1. Another suggestion was that paragraph 2 should be revised to simply state that, subject to chapter VII, section I, the draft Model Law applied to outright assignments of receivables. Yet another suggestion was that subparagraph 3 (a) should be revised to exclude the right to draw under an independent undertaking and the discussion on subparagraphs 3 (b) through (h) should be deferred until the Working Group had an opportunity to consider the draft Model Law as a whole. All those suggestions received sufficient support.

17. After discussion, the Working Group agreed that the chapeau of paragraph 1 should be retained with appropriate adjustments, while the examples given in subparagraphs 1 (a) through (d) should be discussed in the guide to enactment of the draft Model Law. In addition, it was agreed that the deference to consumer-protection legislation included in subparagraph 1 (b), should be reflected in a separate article. Moreover, it was agreed that paragraph 2 should be retained, revised as suggested (see para. 16 above). Finally, it was agreed that subparagraph 3 (a) should be revised as suggested (see para. 16 above), while paragraph 3 as a whole should be placed within square brackets indicating that the Working Group had postponed discussion until it had an opportunity to consider the draft Model Law as a whole.

Article 2. Definitions

18. The Working Group agreed that article 2 should be placed within square brackets indicating that the Working Group had deferred discussion until it had an opportunity to consider the draft Model Law as a whole.

Article 3. Party autonomy

19. Diverging views were expressed as to whether article 3 should be retained or deleted. One view was that article 3 should be deleted. It was stated that article 3 dealt with a contract law issue and did so in an incomplete way as: (a) paragraph 1 did not deal with an agreement between a secured creditor and a debtor of a receivable, and an agreement between a secured creditor and another secured creditor or a buyer of an encumbered asset; and (b) paragraph 2 did not provide for an agreement that might affect also the obligations of a third party or might benefit a third party. It was also observed that, in any case, several other articles of the draft Model Law (for example, article 11) sufficiently dealt with the issue of party autonomy and thus a general rule on party autonomy was not necessary.

20. Another view was that article 3 should be retained as it dealt with three issues of property law that might not be sufficiently addressed in all jurisdictions, the principle of party autonomy with respect to the property effects of a security agreement as between the parties, the limits of party autonomy in that regard and the fact that, unless otherwise provided in the draft Model Law, the provisions

dealing with the property effects of a security agreement between the parties were applicable in the absence of contrary agreement of the parties.

21. After discussion, the Working Group agreed that article 3 should be placed within square brackets indicating that the Working Group deferred discussion of article 3 until it had an opportunity to consider the draft Model Law as a whole (see paras. 43 and 101 below).

Article 4. Electronic communications

22. After discussion, the Working Group agreed that article 4 should be deleted and the matters addressed therein should be addressed in the guide to enactment of the draft Model Law.

D. Chapter II. Creation of a security right and rights and obligations of the parties (A/CN.9/WG.VI/WP.57)

Article 5. Creation of a security right

23. It was widely felt that article 5 should be retained as it dealt with a key issue that should be addressed in the draft Model Law. However, with respect to the structure and the formulation of article 5, a number of suggestions were made. One suggestion was that, while paragraph 1 could be revised to clarify that it referred to contractual security rights to which the draft Model Law applied, the words "except as otherwise provided in other law", which were intended to refer to security rights created by operation of law, should be deleted, as that point was sufficiently covered in article 1, paragraph 1. Another suggestion was that paragraph 1 should be merged with articles 6 and 7 in a new article under the heading "security agreement". Yet another suggestion was that paragraph 2 should be set out in a separate article, dealing with the effects of a security agreement, which could be placed right before article 10. Yet another suggestion was that paragraphs 3 and 4 should be placed in a separate article under the heading "time of creation of a security right". Yet another suggestion was that paragraph 3 could be deleted as stating the obvious and paragraph 4 could be merged with article 9, subparagraph 1 (b), under the heading "future assets".

24. The suggestions made with respect to paragraphs 1 and 2 (see para. 23 above) received sufficient support. With respect to paragraph 3, the suggestion was made that it would be useful to preserve in paragraph 1 a statement that a security right would not be created until the grantor acquired rights in the asset or the power to encumber it. With respect to paragraph 4, the suggestion was made that it should be revised to provide that a security right might be created in (or a security agreement might relate to) a future asset and be placed in a separate article that would follow article 5 as revised. Those suggestions received sufficient support. After discussion, it was agreed that article 5 should be revised to address all of the suggestions that received sufficient support.

Article 6. Minimum content of a security agreement

25. There was broad support in the Working Group for the policy of article 6 (which would become part of revised article 5; see paras. 23 and 24 above).

However, differing views were expressed as to whether subparagraph (a) should be retained. One view was that subparagraph (a) should be deleted. It was stated that that "intent" was a matter of contract law and reference to "intent" could give rise to questions, such as whether the reference was to subjective or objective intent. In addition, it was observed that reference to "intent" could be inadvertently misunderstood and make it difficult for a court to recharacterize a transaction that, irrespective of what the parties subjectively intended, objectively served security functions. Moreover, it was pointed out that, in any case, subparagraphs (b) through (d) were sufficient to reflect the intent of the parties. The prevailing view, however, was that subparagraph (a) should be revised and retained. It was widely felt that the objective intent of the parties to enter into a transaction that would have the effect of creating a security right should be preserved. After discussion, it was agreed that subparagraph (a) should be retained but revised to refer to the effect of an agreement creating a right that served security functions.

26. With respect to subparagraph (c), the concern was expressed that the words "if any" might raise a doubt as to whether a secured obligation was a necessary element of a security agreement, while, at the same time, were not sufficient to clarify that in an outright transfer of a receivable there would be no secured obligation. In order to address that concern, the suggestion was made that article 1, paragraph 2, should be revised to clarify that the draft Model Law applied to outright transfers of receivables "to the extent possible". That suggestion was objected to. It was stated that such wording would introduce uncertainty as to the application of the draft Model Law to outright transfers of receivables. It was also observed that the approach taken in the Secured Transactions Guide and reflected also in the draft Model Law to define the term "security agreement" so as to include for convenience of reference an agreement for an outright transfer of a receivable (see article 2, subpara. (bb)) should be considered carefully. In that connection, the suggestion was made that the term "security right" should also be defined to include the right of an owner of a receivable (see article 2, subpara. (cc)). After discussion, it was agreed that all provisions of the draft Model Law should be reviewed to determine whether they were appropriately formulated or should be revised to apply to outright transfers of receivables.

27. With respect to subparagraph (d), the suggestion was made that reference should be made to the "identification" (rather than to the "description") of the encumbered assets, as pursuant to an oral security agreement (which, under article 7, para. 2, could create a possessory security right) the secured creditor would obtain possession but would not need to describe the encumbered assets. Noting that article 6 applied to any security agreement, whether written or oral, the Working Group agreed that any appropriate modification should be made to ensure that that point was clearly reflected in article 6.

28. In the discussion, the suggestion was made that, if the draft Model Law were to apply to security rights in intellectual property, the remarks on subparagraph (d) in the guide to enactment should include a cross reference to the discussion of the description of intellectual property in a security agreement (see Intellectual Property Supplement, paras. 82-85). There was sufficient support for that suggestion.

29. With respect to subparagraph (e), the suggestion was made that it should be deleted. That suggestion was objected to. It was stated that in States that required that the maximum amount be mentioned in the security agreement, a security

agreement that failed to do so was ineffective. The suggestion was also made that the words "if any" should be deleted as they could be inadvertently misunderstood to mean that an indication of the maximum amount in the security agreement would not be necessarily required even in a State that chose to include a provision along the lines of subparagraph (e) in its secured transactions law. There was sufficient support for that suggestion. In response to a question, it was observed that, while it would be logical to have a maximum amount indicated in a written security agreement, an indication of a maximum amount could also be included in an oral security agreement. After discussion, the Working Group agreed that subparagraph (e) should be retained within square brackets, without the words "if any", and appropriate clarifications of the points made in the discussion should be included in the guide to enactment.

Article 7. Form of a security agreement

30. While broad support was expressed for the policy of article 7 (which would become part of revised article 5; see paras. 23 and 24 above), a number of suggestions were made as to the formulation of article 7, paragraph 1. One suggestion was that the Working Group should either decide whether a security agreement ought to be "concluded in" or "evidenced by" a writing, or whether these two options should be presented within square brackets in paragraph 1 for enacting States to choose. It was stated that the draft Model Law should include a clear provision on the legal consequence of the failure of the parties to put their agreement in writing. It was widely felt that it would be premature for the Working Group to make a decision on that matter, and thus all suggestions should be reflected in a revised version of article 7, paragraph 1, within square brackets for further consideration. It was stated that the two options could be understood as complementary in the sense that a security agreement should be concluded or, at least, evidenced in writing. It was also observed that that was a matter of contract law and could be avoided through the use of neutral language that would indicate in some manner that the minimum content of a security agreement ought to be "contained" in a writing.

31. Another suggestion was that the words "by itself or in conjunction with the course of conduct between the parties" should be removed from article 7, paragraph 1, and discussed in the guide to enactment. It was stated that those words might inadvertently be misconstrued as meaning that a security agreement as such would not be sufficient to create a security right and that that result would depend on the circumstances. It was also stated that only the minimum content of a security agreement needed to be included in a writing. There was sufficient support for that suggestion.

32. Yet another suggestion was that the term "writing" should be qualified by reference to wording along the following lines "that satisfies the minimum content requirements of article 6". There was sufficient support for that suggestion.

33. Yet another suggestion was that, for the reasons mentioned above (see para. 25 above), reference should be made to the grantor's "consent" rather than "intent". While support was expressed for that suggestion, the concern was expressed that use of the term "consent" might be understood as suggesting that the security right would be created by an act of another person that the grantor would only need to

consent to. In order to address that concern, the suggestion was made that article 7, paragraph 1, should clarify that the act of the grantor created the security right.

34. In view of the fact that article 7, paragraph 1, included a reference to a "writing" and in order to ensure that that reference was understood to include an electronic communication, the suggestion was made that article 4, paragraph 1 (which the Working Group had decided to delete; see para. 22 above) should be retained. While it was agreed that the matter could be discussed in the guide to enactment, it was widely felt that article 4, paragraph 1, should not be retained. The suggestion was also made that the matter could be addressed with a definition of the term "writing" that would include the thrust of article 4, paragraph 1.

35. With respect to article 7, paragraph 2, the question was raised as to whether it should be revised to provide for fictitious possession of intangible assets. It was widely felt that the definition of the term "possession" that explained possession by reference to actual possession was consistent with the approach followed in most jurisdictions and should be preserved (see article 2, subpara. (t)).

36. After discussion, the Working Group agreed that article 7, paragraph 1, should be revised to address those suggestions that received sufficient support (see paras. 30-35 above).

Article 8. Obligations secured by a security right

37. With respect to article 8, it was agreed that it should be retained as a separate article. It was also agreed that the guide to enactment should clarify that, as a matter of contract law, article 8 referred to "legally enforceable" obligations.

Article 9. Assets subject to a security right

38. While broad support was expressed for the policy of article 9, a number of suggestions were made as to its formulation. One suggestion was that the words "with the exception of [any limited and specific exceptions to be set out by the enacting State]" in the chapeau of paragraph 1 should be deleted. It was stated that the chapeau should not appear to be inviting or encouraging enacting States to provide for exceptions to the types of asset that could be subject to a security right. Another suggestion was that the guide to enactment could elaborate on the possibility of such exceptions either in the secured transactions law or other law with a further explanation that any exception should be limited and described or, at least, referred to in the secured transactions law in a clear and specific manner. Yet another suggestion was that subparagraphs 1 (a) to (c) should be recast as separate paragraphs as they dealt with different issues and that the portion of the chapeau referring to any type of asset be limited to subparagraph 1 (a). With respect to subparagraph 1 (b), it was suggested that the reformulated version indicate that the security agreement might provide for a security right in future assets. Those suggestions received sufficient support.

39. Differing views were expressed as to whether paragraph 2 should be retained. One view was that paragraph 2 should be deleted. It was stated that there was no need for the draft Model Law to deal with what it did not do and, in any case, the issue could be discussed in the guide to enactment. The prevailing view, however, was that paragraph 2 should be retained. It was widely felt that there was merit in indicating that the draft Model Law respected statutory limitations in other law,

qualifying the broad scope of paragraph 1. It was further suggested that the text of paragraph 2 would better fit in chapter I of the draft Model Law, reference should be made to "other law" in general (rather than to a specific provision of any other law) and the words in square brackets should be deleted as it would be uncommon for a legislation to state what it does not purport to achieve. All those suggestions received sufficient support.

40. After discussion, it was agreed that article 9, paragraph 1, should be revised and article 9, paragraph 2, should be revised and placed in chapter I of the draft Model Law (see paras. 38-39 above).

Article 10. Continuation of a security right in proceeds

41. Broad support was expressed for the policy of article 10. However, a number of suggestions were made with respect to its formulation. One suggestion was that the words "including proceeds of proceeds" in paragraph 1 should be deleted as the term "proceeds" was defined to include proceeds of proceeds (see article 2, subpara. (v)). Another suggestion was that paragraphs 2 and 3 should be revised to refer to proceeds in the form of money or funds credited to a bank account (in line with recommendation 20 of the Secured Transactions Guide). Yet another suggestion was that a separate article should be introduced in the draft Model Law to deal with types of commingled proceeds other than cash proceeds (in line with recommendation 22 of the Secured Transactions Guide). Those suggestions received sufficient support. After discussion, the Working Group agreed that article 10 should be revised as suggested and a new article should be prepared to deal with commingled non-cash proceeds.

42. With respect to security rights in attachments to movable and immovable property, the Working Group agreed that, while the issue was of importance, it could usefully be discussed in the guide to enactment with appropriate cross-references to the relevant parts of the Secured Transactions Guide.

Article 11. Rights and obligations of the parties

43. A number of concerns were expressed with respect to article 11. One concern was that its heading did not reflect accurately its contents. Another concern was that it appeared to indicate that there were no rights and obligations of the parties other than those set out in the security agreement (i.e., under the draft Model Law) or that there were no rights and obligations of the parties other than mutual (i.e., unilateral). Yet another concern was that it was not sufficiently clear whether article 11 was intended to establish a hierarchy among the sources of rights and obligations of the parties or whether it was intended to deal only with pre-default or also with post-default rights and obligations of the parties (addressed in article 57 of the draft Model Law). Yet another concern was that article 11 duplicated article 3 (party autonomy). In order to address those concerns, it was suggested that article 11 should be deleted and issues relating to party autonomy should be addressed in article 3 and discussed in the guide to enactment. All those suggestions received sufficient support. It was also suggested that party autonomy with respect to post-default rights and obligations of the parties might also need to be addressed in article 3 so as to have a comprehensive article addressing the principle of party autonomy early in the draft Model Law. However, some doubt was expressed as to whether such a comprehensive article might be necessary as the principle of party

autonomy was normally part of contract law. Deferring discussion of that latter issue until it had an opportunity to consider article 57 of the draft Model Law (see paras. 19 and 20 above, and para. 101 below), the Working Group agreed that article 11 should be deleted and party autonomy issues should be addressed in article 3 and discussed in the guide to enactment.

Article 12. Mandatory rules

44. While it was generally agreed that article 12 should be retained, a number of suggestions were made. One suggestion was that its heading should be revised to reflect its specific contents. Another suggestion was that it should be revised to include a complete list of rules, which the parties could not derogate from or vary by agreement. Yet another suggestion was that the guide to enactment should discuss the steps that the secured creditor ought to take to ensure that the grantor was placed in the same position it occupied prior to the creation of the security right (see Secured Transactions Guide, ch. VI, para. 38). There was sufficient support for all those suggestions. After discussion, the Working Group agreed that article 12 should be revised as suggested.

Article 13. Non-mandatory rules

45. It was widely felt that article 13 was useful to set out rules that could promote the policy objectives of the draft Model Law, apply in the absence of contrary agreement of the parties, reflect the normal expectations of the parties and, at the same time, provide guidance to the parties as to the issues they might wish to address in their agreement. However, a number of suggestions were made. One suggestion was that subparagraph (b) should be revised to provide that the secured creditor ought to apply the revenues generated from an encumbered asset in the secured creditor's possession or control to the payment of the secured obligation. There was not sufficient support for that suggestion. It was noted that, where the secured creditor was in possession or control of an encumbered asset, it made sense for the secured creditor to collect any revenues and, unless otherwise agreed (i.e., to turn them over to the grantor), the secured creditor should have the right to apply them to the secured obligation (see Secured Transactions Guide, ch. VI, para. 55).

46. Another suggestion was that, for reasons of clarity, the two issues addressed in subparagraph (b) should be set out separately. Yet another suggestion was that subparagraph (c) should be revised to clarify that a secured creditor should be entitled to inspect encumbered assets in the possession of the grantor "at all reasonable times". In that connection, it was widely felt that the reasonableness test should apply not only to the timing but also to all aspects of an inspection, including its place, manner and frequency. However, differing views were expressed as to whether the principle that, in exercising their rights, the parties should act in good faith and in a commercially reasonable manner should be set out in a general provision of the draft Model Law. One view was that such a general provision would be useful and render unnecessary the repetition of that principle throughout the draft Model Law. Another view was that, while the principle of good faith should apply to all rights of the parties, the commercial reasonableness test should apply only to post-default rights and obligations of the parties.

47. While it was generally agreed that what was commercially reasonable would depend on the circumstances of each case, the view was expressed that examples

should be set out in the guide to enactment to clarify the meaning of the term "commercial reasonableness". It was stated that, without such elaboration of examples, subparagraph (b) in its current formulation could introduce uncertainty as to when a secured creditor might be entitled to use an encumbered asset. In addition, it was observed that the meaning of commercial reasonableness would also depend on whether the grantor was a consumer or a micro-business. In that connection, it was pointed out that the draft Model Law would not override any consumer-protection rule and that standard might apply also to micro-businesses.

48. In response to a question as to whether an agreement between the grantor and the secured creditor under article 13 could affect the rights of a third party in possession of an encumbered asset, it was stated that article 13 would apply in such cases only if the third party acted as a representative of the secured creditor; otherwise, under article 3, an agreement between the grantor and the secured creditor should not affect the rights of a third party. It was agreed that that matter could be usefully clarified in the guide to enactment.

49. After discussion, the Working Group agreed that article 13 should be revised to address all the above-mentioned suggestions that received sufficient support (see paras. 45-48 above).

E. Chapter III. Effectiveness of a security right against third parties (A/CN.9/WG.VI/WP.57)

Article 14. Achieving third-party effectiveness

50. While it was agreed that a provision setting out the methods of achieving third-party effectiveness was useful, a number of concerns were expressed with respect to article 14. One concern was that, in its current formulation, paragraph 1, was confusing as it created the impression that third-party effectiveness might be achieved partially. In order to address that concern, it was suggested that paragraph 1 should be revised to clarify, in line with recommendations 29 and 30 of the Secured Transactions Guide, that a security right would not be effective against third parties, unless one of the methods necessary to achieve third-party effectiveness would be followed. There was general support for that suggestion.

51. Another concern was that, while the policy pursued in paragraphs 2 and 3 was generally acceptable, that policy was a matter of insolvency law rather than secured transactions law. In order to address that concern, the suggestion was made that those paragraphs should be deleted. While there was sufficient support for that suggestion, it was widely felt that the treatment of a security right in the case of the grantor's insolvency was a matter of paramount importance and merited discussion in the guide to enactment. It was also widely felt that, in order to provide guidance to States as to how to address those issues in their insolvency law, the thrust of paragraphs 2 and 3 could be set out in the guide to enactment with appropriate cross-references to the UNCITRAL Legislative Guide on Insolvency Law and the insolvency chapter of the Secured Transactions Guide.

52. After discussion, the Working Group agreed that paragraph 1 should be revised as suggested and paragraphs 2 and 3 should be deleted and discussed in the

guide to enactment, included in an annex or otherwise preserved as suggested (see paras. 50-51 above).

Article 15. General method for achieving third-party effectiveness: registration

53. A number of concerns were expressed with respect to article 15. One concern was that its heading did not exactly match its contents (which included a reference to methods other than registration). Another concern was that it addressed matters already addressed in chapter II (creation). Yet another concern was that article 15 would be unnecessary if article 14 addressed the methods for achieving third-party effectiveness in a general manner. In order to address those concerns, the suggestion was made that article 15 should be deleted or revised to set out the general and specific methods of third-party effectiveness, as well as the exceptions thereto (including the methods addressed in articles 16-18). There was sufficient support for those suggestions. After discussion, the Working Group agreed that article 15 should be deleted or revised as suggested.

Article 16. Different third-party effectiveness methods for different types of asset

54. After discussion, the Working Group agreed that article 16 should be deleted and the issues addressed therein should be dealt with in revised article 14 or revised article 15.

Article 17. Third-party effectiveness of a security right in a tangible asset by possession

55. After discussion, the Working Group agreed that article 17 should be deleted and the issues addressed therein should be dealt with in revised article 14 or revised article 15. It was also generally agreed that, as possession was defined to mean actual possession (see article 2, subpara. (t)), possession as a third-party effectiveness method applied only to tangible assets.

Article 18. Third-party effectiveness of a security right in a movable asset subject to a specialized registration or a title certificate system

56. After discussion, the Working Group agreed that article 18 should be deleted and the issues addressed therein should be dealt with in revised article 14 or revised article 15. It was also generally agreed that all that needed to be stated to reflect the thrust of article 18 was that a security right in a movable asset that was subject to specialized registration under other law could also be made effective against third parties by registration in a specialized registry.

Article 19. Automatic third-party effectiveness of a security right in proceeds

57. While broad support was expressed for the policy of article 19, several suggestions were made as to its formulation. One suggestion was that the words “in a generic way” in paragraph 1 should be replaced by a word along the following lines “sufficiently”. Another suggestion was to review words such as “of this article” in paragraph 2 (and throughout the draft Model Law) and “such proceeds” in paragraph 3. All those suggestions received sufficient support. After discussion, the Working Group agreed that article 19 should be revised as suggested.

Article 20. Continuity in third-party effectiveness of a security right upon change of method of third-party effectiveness

58. Some doubt was expressed as to whether article 20 addressed third-party effectiveness issues and should be retained in chapter III or rather priority issues and should be moved to chapter V. The concern was also expressed that article 20 might be unnecessarily complex. In order to address that concern, it was suggested that article 20 should be revised to state that the method of achieving third-party effectiveness might be changed and, if there was no lapse, third-party effectiveness continued. After discussion, the Working Group agreed that article 20 should be revised as suggested and retained within square brackets for further consideration.

Article 21. Lapse in third-party effectiveness or advance registration

59. Differing views were expressed as to whether the bracketed text in article 21 should be retained. One view was that the bracketed text should be retained. It was stated that, without that reference, article 21 would simply reiterate the principle indicated in other articles of the draft Model Law that third-party effectiveness could be established and would thus be unnecessary. Another view was that the bracketed text should be deleted. It was observed that, if the bracketed text was retained, article 21 would essentially amount to a priority rule that would belong in chapter V (e.g., article 46).

60. The concern was also expressed that, in its current formulation, article 21 dealt with too many issues. In order to address that concern, it was suggested that article 21 should be revised to clarify that: (a) if there was a lapse, third-party effectiveness discontinued, but could be re-established by any of the methods provided in the draft Model Law; and (b) when re-established, third-party effectiveness would date from the time when it would be re-established. As to the latter point, the view was expressed that it might be better placed in chapter V on priority.

61. After discussion, the Working Group agreed that article 21 should be revised as suggested (see paras. 59-60 above) and retained within square brackets for further consideration.

Article 22. Effect of a transfer of the encumbered asset

62. In view of the broad support expressed for the policy of article 22, the Working Group agreed that it should be retained.

Article 23. Continuity in third-party effectiveness upon change of the governing law

63. While some doubt was expressed as to the policy of article 23, the Working Group noted that it was based on recommendation 45 of the Secured Transactions Guide, and agreed that it should be retained, properly revised and explained in the guide to enactment.

F. Chapter IV. The registry system (A/CN.9/WG.VI/WP.57/Add.1)

General

64. The view was expressed that the guide to enactment should clarify that, depending on its legislative methods, each enacting State should consider whether to deal with registry-related issues in its secured transactions law or in its registry regulations. It was stated that, if a State decided to deal with registry-related issues in its registry regulations, a general provision along the lines of article 24 might be sufficient in the secured transactions law to state the principle that a security right registry should be established. While there was no disagreement with that view, the view was also expressed that the Working Group should review the articles in chapter IV and provide guidance to enacting States as to which articles might be usefully included in the secured transactions law and which articles would better fit in the registry regulations. After discussion, the Working Group agreed to proceed with its discussion of the articles in chapter IV (see para. 90 below).

Article 24. The security rights registry

65. As a matter of drafting, it was suggested that article 24 should be revised to refer to a regulation, while that term should be defined in article 2 along the following lines: “the rules dealing with the operation of the registry and the requirements for effecting a registration and conducting a search”. There was sufficient support for that suggestion. After discussion, the Working Group agreed that article 24 should be revised as suggested.

Article 25. The registrar and the registry regulation

66. The Working Group agreed to retain article 25 in its current formulation.

Article 26. Authority to register an initial notice

67. While there was broad support for the policy of article 26, a number of suggestions were made. One suggestion was that paragraph 1, on the one hand, and paragraphs 2 and 3, on the other, should be set out in separate articles. It was suggested that paragraph 1 dealt with the time of registration, while paragraphs 2 and 3 dealt with the grantor’s authorization for an initial notice. Another suggestion was that paragraph 1 should refer only to a time before or after the conclusion of the security agreement, as that reference would cover any time before or after creation of a security right. Another suggestion was that paragraph 3 should be revised to refer to “registration of an initial notice covering the assets described in the security agreement”. There was sufficient support for those suggestions.

68. Yet another suggestion was that paragraph 3 should be revised to provide that a security agreement would be sufficient to constitute authorization for the registration “unless otherwise agreed”. It was stated that a security agreement creating a security right which might be made effective against third parties by a method other than registration (for example, possession or control), would not constitute authorization for registration. That suggestion was objected to. It was observed that a general rule on party autonomy and appropriate explanations in the guide to enactment would be sufficient to address that matter.

69. After discussion, it was agreed that article 26 should be revised as suggested (see para. 67 above) and words along the following lines “unless otherwise agreed by parties” should be added within square brackets in paragraph 3 (see para. 68 above) for further consideration by the Working Group.

Article 27. One notice sufficient for multiple security rights arising from multiple agreements between the same parties

70. While there was broad support for the policy of article 27, it was suggested that its heading should be revised to match its contents and its text should be clarified. After discussion, the Working Group agreed that article 27 should be revised as suggested.

Article 28. Information required in an initial notice

71. While there was broad support in the Working Group for the policy of article 28, a number of suggestions were made as to its formulation. One suggestion was that the references in subparagraphs (a) through (c) to “satisfying the standard provided in” other articles were not necessary and should be deleted. Another suggestion was that, for reasons of consistency in the terminology used in the draft Model Law, reference should be made in subparagraph (c) to the description of an “encumbered” asset. Yet another suggestion was that subparagraph (e) should be revised to refer to “the maximum amount for which the security right may be enforced”. All those suggestions received sufficient support. While it was also suggested that subparagraph (d) should be revised to refer to “the duration” of the registration, it was agreed that for reasons of consistency with recommendation 23 of the Registry Guide the reference to “the period of effectiveness” of the registration should be retained. After discussion, the Working Group agreed that article 28 should be revised to address all those suggestions that received sufficient support.

Article 29. Grantor identifier

72. There was broad support in the Working Group for the policy of article 29. However, a number of suggestions were made with respect to its formulation. One suggestion was that paragraph 1 should be deleted as its thrust was addressed in article 34, paragraphs 1 and 2. Another suggestion was that the words “for the purposes of effective registration” in paragraphs 2 and 3 should be deleted and the matter discussed in the guide to enactment. Yet another suggestion was that, for reasons of consistency with the Registry Guide (rec. 24), reference should be made in the text within square brackets in paragraph 2 to the need for the enacting State to specify the various components of the grantor’s name and the designated field for each component, the official documents on the basis of which the grantor’s name should be determined and the hierarchy among those official documents, and the way in which the grantor’s name should be determined in the case of a name change after the issuance of an official document. Yet another suggestion was that paragraph 4 should be recast as a reminder to States to address those issues, while the text in paragraph 4 should be deleted and special cases should be discussed in the guide to enactment. All those suggestions received sufficient support. After discussion, the Working Group agreed that article 29 should be revised as suggested.

Article 30. Impact of a change of the grantor's identifier on the effectiveness of the registration

73. While there was broad support in the Working Group for the policy of article 30, a number of suggestions were made with respect to its formulation. One suggestion was that the heading of article 30 should be revised to better reflect its contents. Another suggestion was that article 30 should be restructured to refer to a change of the grantor's identifier and to the legal consequences of a secured creditor choosing not to register an amendment notice. Yet another suggestion was that paragraph 1 should be revised to: (a) refer to a change of the grantor's identifier and to the fact that an inconsequential change (in view of articles 29 and 34) should not bring about the effects of article 30; and (b) treat the registration of an amendment notice as a matter left to the discretion of the secured creditor, as failure of the secured creditor to register would have the limited impact as described in paragraph 2. All those suggestions received sufficient support. After discussion, the Working Group agreed that article 30 should be revised as suggested.

Article 31. Secured creditor identifier

74. Broad support was expressed for the policy of article 31. After discussion, it was agreed that paragraph 3 should include only a reminder to States to address the issue dealt with therein, while the text in paragraph 3 should be moved to the guide to enactment.

Article 32. Description of an encumbered asset covered by a notice

75. While broad support was expressed for article 32, a number of suggestions were made as to its formulation. One suggestion was that references should be made to "the extent to which" the notice described the encumbered assets in a manner that reasonably allowed their identification, as a description could partially meet that standard, as stated in article 34, paragraph 4. Another suggestion was that no reference needed to be made to the consequences of an insufficient description, as that matter was covered in article 34, paragraph 4. There was sufficient support for those suggestions. After discussion, it was agreed that article 32 should be revised as suggested.

Article 33. Period of effectiveness of the registration of a notice

76. There was broad support in the Working Group for the policy of article 33. As a matter for drafting, it was suggested that the qualification of the period of five years referred to in paragraph 1 as "short" should be deleted. There was sufficient support for that suggestion. It was also suggested that direct reference to a specific time period might be made in article 33 without any qualification as to whether a time period was short or long. After discussion, the Working Group agreed that article 33 should be revised to address those suggestions that received sufficient support.

Article 34. Consequences of an incorrect statement or insufficient description

77. While broad support was expressed for the policy of article 34, a number of suggestions were made. One suggestion was that reference should be made in paragraph 1 to a search conducted by the registry to avoid a situation in which a

searcher using more powerful software would retrieve more notices than those retrieved using the search software of the registry. Another suggestion was that paragraph 3 might be divided into two parts, while the one dealing with the description of the assets should be coordinated with paragraph 4 to ensure consistency in providing that an insufficient description of certain encumbered assets did render the registration ineffective with respect to other encumbered assets sufficiently described. Yet another suggestion was that the guide to enactment should clarify that the seriously misleading test in paragraph 3 was objective, while that test in paragraph 5 was subjective. Yet another suggestion was that the formulation of paragraph 5 might need to be reconsidered as third parties might not be misled by a longer or shorter period of effectiveness or a lower or higher maximum amount than intended, a matter that could be explained in the guide to enactment. There was sufficient support for all those suggestions. After discussion, the Working Group agreed that article 34 should be revised as suggested.

Article 35. Authority to register an amendment or cancellation notice

78. While broad support was expressed for the policy of article 35, a number of suggestions were made. One suggestion was that paragraph 1 should be revised to refer to the time "before or after the conclusion of the security agreement" and presented in a separate article dealing with the timing of an amendment or cancellation notice or merged with revised article 26 (see para. 67 above). Another suggestion was that subparagraph 2 (b) should be revised to refer only to an increase of the maximum amount for which the security right might be enforced and be presented in a separate article within square brackets dealing with the grantor's authorization (see para. 67 above). Yet another suggestion was that paragraph 3 should be revised to refer to all the relevant options and presented in a separate article dealing with the secured creditor's authorization of an amendment or cancellation notice, which raised different issues than those addressed in paragraph 2. There was support for all those suggestions. After discussion, the Working Group agreed that article 35 should be revised as suggested.

Article 36. Information required in an amendment notice

79. While there was broad support in the Working Group for the policy of article 36, it was suggested that subparagraph (b) did not need to refer to the manner for entering the relevant kind of information in the initial notice. It was also suggested that subparagraph (c) should be presented as paragraph 2 as the chapeau of article 36 did not fit the contents of subparagraph (c). There was sufficient support for those suggestions. After discussion, the Working Group agreed that article 36 should be revised as suggested.

Article 37. Information required in a cancellation notice

80. There was broad support in the Working Group for the policy of article 37. It was agreed that the term "registration number" was self-explanatory and did not need to be defined. It was suggested, however, that the terms "amendment notice" and "cancellation notice" might need to be defined in the draft Model Law. The Working Group agreed to postpone discussion of that matter until it had an opportunity to consider article 2 on definitions. After discussion, the Working Group agreed that article 37 should be retained unchanged.

Article 38. Compulsory amendment or cancellation

81. While there was broad support in the Working Group for the policy of article 38, a number of suggestions were made. One suggestion was that paragraph 1 should be revised to clarify when an amendment or cancellation notice ought to be registered. While the thrust of that suggestion was not objected to, the view was expressed that that matter might be better clarified in the guide to enactment. Another suggestion was that article 38 might fit better in chapter II, section II on the rights and obligations of the parties. In response, it was stated that, while the fact that the rights and obligations foreseen in article 38 were not subject to party autonomy could be addressed in chapter II, section II, the thrust of article 38 could be kept in chapter IV. Yet another suggestion was that subparagraph 1 (d) should be revised to clarify that it referred to a further commitment by the secured creditor to extend credit secured by a security right in the encumbered asset to which the notice related. Yet another suggestion was that paragraph 4 should be revised to avoid that the secured creditor might be able to charge a further fee if it did not comply with the written request of the grantor. Yet another suggestion was that paragraph 6 should be reformulated as a model legislative provision and explained in the guide to enactment. After discussion, the Working Group agreed that article 38 should be revised to address the suggestions made.

Article 39. Time of effectiveness of the registration of an initial or amendment notice

82. While there was broad support in the Working Group for the policy of article 39, a number of suggestions were made. One suggestion was that, in order to align the formulation of article 39 with the formulation of recommendation 11 of the Registry Guide, reference should be made to information being "accessible" (rather than "available"). Another suggestion was that a new paragraph should be added to address the time of effectiveness of a cancellation notice by reference to the time when the previously registered notice to which the cancellation notice related would no longer be accessible to searchers of the public registry record. Yet another suggestion was that new paragraphs should be added along the lines of recommendation 11, subparagraphs (b) and (c) of the draft Registry Guide (but not recommendation 15, as the obligation the registry to assign a registration number did not fit in article 39). After discussion, the Working Group agreed that article 39 should be revised as suggested.

Article 40. Searches

83. While there was agreement in the Working Group for the policy of article 40, a number of suggestions were made with respect to its formulation. One suggestion was that reference should be made to the fact that registry would "conduct" a search and "issue" a certificate, as the registry should be given some discretion in that regard. Another suggestion was that the need for a searcher to submit a search request in a manner prescribed in the regulation did not need to be mentioned in article 40 but could be explained in the guide to enactment. In response to a question as to whether reference to a request was necessary in paragraph 3, it was explained that a searcher might not need a certificate and, in any case, should have to pay a required fee (no matter how low) only if the searcher requested a

certificate. After discussion, the Working Group agreed that article 40 should be revised as suggested.

Article 41. Errors by the registry

84. A number of concerns were expressed with respect to article 41. One concern was that inclusion in the draft Model Law of a provision along the lines of article 41 might inadvertently give the impression that the draft Model Law promoted a paper-based registry, while it should promote an electronic registry. In order to address that concern it was suggested that the thrust of article 41 should rather be discussed in the guide to enactment. It was noted, however, that, as agreed, the Working Group should complete its review of the provisions of chapter IV and decide at a later time whether and where those provisions should be included (see para. 64 above). Another concern was that article 41 left it to the discretion of the registry to correct an error it had made, without clarifying the conditions under which the registry could exercise that discretion. In order to address that concern, it was suggested that article 41 should be recast to provide for an obligation of the registry to correct errors it had made. There was sufficient support for that suggestion on the understanding that a breach of such an obligation did not necessarily result in liability for the registry.

85. Yet another concern was that article 41 was incomplete as to the point of time as of which the correction would take effect. In order to address that concern, it was suggested that all the possible approaches should be set out as alternatives, including the following: (a) the correction would take effect as of the time it was made; (b) the correction would take effect as of the time it was made, subject however to the rights of parties that had registered a notice after the registration of the erroneous notice and before its correction; (c) the correction would take effect retroactively (i.e., as of the time the erroneous notice was registered); and (d) the registry would inform, and leave it to, the registrant to make the correction (see Registry Guide, para. 145). There was sufficient support for that suggestion. After discussion, the Working Group agreed that article 41 should be revised to address those of the suggestions that received sufficient support.

Article 42. Responsibility for loss or damage

86. A number of concerns were expressed with respect to article 42. One concern was that article 42 was inconsistent with the Secured Transactions Guide (rec. 56) and the Registry Guide (paras. 150-153). It was stated that States took different approaches to the issue of liability of the registry ranging from exemption from liability based on sovereign immunity to limited liability covered by insurance or funds to which part of the registry fees were deposited. In order to address that concern, it was suggested that the options in article 42 should be preceded by a reference to any liability the registry might have under other law of the enacting State and be recast so as to limit any liability, in the case of an electronic registry, to system malfunction (as the registrant should be responsible for any errors in a notice registered without the intervention of the registry) and, in the case of a paper-based registry, to errors or omissions by the registry in the entry of information in the registry record. The latter part of that suggestion was objected to. It was stated that it was inconsistent with the Secured Transactions Guide (rec. 56) and should not be included in article 42. Yet another concern was that using different terms

("responsibility" and "liability") was confusing. In order to address that concern, it was suggested that the relevant terminology should be explained and used consistently. All those suggestions received sufficient support. After discussion, it was agreed that article 42 should be revised to address those suggestions and placed within square brackets for further consideration by the Working Group.

Article 43. General registry operation provisions

87. Noting that article 43 dealt with matters relating to the operation of the registry, the Working Group recalled its decision to review the provisions of chapter IV and defer to a later stage a decision as to whether those provisions should be retained in the draft Model Law or discussed in the guide to enactment as matters to be dealt in the registry regulation (see para. 64 above). With respect to paragraph 1, it was widely felt that it could be discussed in the guide to enactment. With respect to paragraph 2, it was stated that it could be retained if it were revised to deal with the legal effect of the failure of a registrant to submit a notice in the manner prescribed by the registry. With respect to paragraphs 3 and 4, it was agreed that they should be retained within square brackets for further consideration by the Working Group. With respect to paragraph 5, it was generally agreed that it should be retained in a separate article that would need to be coordinated with articles 41 and 42, as well as with the provision dealing with amendment and cancellation notices that were not authorized by the secured creditor. It was also suggested that the new article would need to address the question as to who was entitled to submit an amendment notice when there was a change in the secured creditor. With respect to paragraph 6, it was suggested that the issues addressed therein should rather be discussed only in the guide to enactment by reference to the Registry Guide. With respect to paragraph 7, it was agreed that it should be retained. After discussion, the Working Group agreed that article 43 should be recast to address all those suggestions for further consideration by the Working Group.

Article 44. Registry forms

88. After discussion, it was agreed that article 44 should be deleted from the draft Model Law and discussed in the guide to enactment by way of reference to the relevant parts of the Registry Guide.

Article 45. Impact of a transfer of an encumbered asset on the effectiveness of the registration

89. A number of suggestions were made with respect to article 45, including that: (a) it should be revised to leave the registration of an amendment notice to the discretion of the secured creditor and to clarify the effects of its application to outright sales of receivables; and (b) it should be placed closer to article 30. After discussion, the Working Group agreed that article 45 should be revised as suggested.

90. At the close of the discussion of chapter IV by the Working Group, a suggestion was made that the problem of the proper place and contents of chapter IV (see para. 64 above) would be easier to resolve if the Working Group were to prepare both a draft model law and draft registry regulations. It was stated that in that way comprehensive guidance would be offered to States consistent with the Secured Transactions Guide and the Registry Guide. While support was expressed for that suggestion, it was observed that it would be premature for the

Working Group to make a recommendation that the Commission give such a broader mandate to the Working Group. However, the Secretariat was requested to include in chapter IV additional provisions from the Registry Guide, while keeping in mind the Working Group's mandate to prepare a simple, short and concise model law.

G. Chapter V. Priority of a security right (A/CN.9/WG.VI/WP.57/Add.2)

Article 46. Priority among security rights granted by the same grantor in the same encumbered asset

91. A number of suggestions were made with respect to article 46, including that: (a) paragraph 2 should be placed within square brackets and coordinated with article 20; and (b) paragraphs 2 through 4 should be placed within individual square brackets for further consideration by the Working Group.

Article 47. Priority of rights of transferees, lessees and licensees of an encumbered asset

92. A number of suggestions were made with respect to article 47, including that it should be revised to ensure consistent use of terminology and address in paragraph 7 the rights of parties that acquired a right in an encumbered asset not only from the buyer but also from subsequent transferees.

Article 48. Priority of rights of the grantor's insolvency representative [and creditors in the grantor's insolvency]

93. A number of suggestions were made with respect to article 48, including that it should be placed within square brackets for further consideration by the Working Group.

Article 49. Priority of preferential claims

94. A number of suggestions were made with respect to article 49, including that it should be aligned more closely with recommendation 83 of the Secured Transactions Guide, on which it was based, and that the guide to enactment should clarify the terminology used.

Article 50. Priority of rights of judgement creditors

95. A number of suggestions were made with respect to article 50, including that: (a) its heading should be revised to more closely match its content; (b) its text should be revised to clarify the temporal sequence of events and to ensure the consistent use of terminology.

Article 51. Irrelevance of knowledge of the existence of a security right

96. A number of suggestions were made, including that article 51 should be made subject to rules with respect to a protected holder of a negotiable instrument (see article 92, para. 2 (a)).

Article 52. Subordination

97. A number of suggestions were made with respect to article 52, including that the guide to enactment should refer to the discussion of subordination in the Secured Transactions Guide and explain by way of examples how any circular priority problems might be addressed.

Article 54. Priority of a security right registered in a specialized registry or noted on a title certificate

98. A number of suggestions were made with respect to article 54, including that the reference to notation of title should be preserved and paragraph 3 should be further clarified.

Article 55. Special priority claims

99. A number of suggestions were made with respect to article 55, including that paragraph 1 should be addressed in the context of article 49 on preferential claims and paragraphs 2 and 3 should be retained within square brackets.

100. After discussion, the Working Group agreed that articles 46-55 should be revised as suggested (see paras. 91-99 above).

H. Chapter VI. Enforcement of a security right (A/CN.9/WG.VI/WP.57/Add.2)

Article 56. General Standard of conduct in the context of enforcement and Article 57. Limitation on party autonomy

101. A number of suggestions were made with respect to articles 56 and 57, including that article 56 and paragraph 1 of article 57 should be placed in the general provisions of the draft Model Law, and paragraph 2 of article 57 should be retained in chapter VI (see paras. 19, 20 and 43 above).

Article 58. Liability

102. Differing views were expressed as to whether article 58 should be retained. It was agreed that, for the time being, it should be retained within square brackets for further consideration by the Working Group.

103. After discussion, the Working Group agreed that articles 56-58 should be revised as suggested (see paras. 101-102 above).