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# Report of Working Group VI (Security Interests) on the work of its thirtieth session (Vienna, 5-9 December 2016)

## Contents



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# I. Introduction

1. At its present session, Working Group VI (Security Interests) commenced its work on the preparation of a draft guide to enactment (the "draft Guide to Enactment") of the UNCITRAL Model Law on Secured Transactions (the "Model Law"), pursuant to a decision taken by the Commission at its forty-eighth session (Vienna, 29 June-16 July 2015).[1] At that session, the Commission had noted that, in preparing a draft model law, the Working Group was mindful of the fact that it would be a more effective tool for States modernizing their legislation if background and explanatory information were provided to assist States in considering it for enactment. In addition, the Commission noted that, in the preparation of a draft model law, the Working Group had assumed that it would be accompanied by such a guide and referred a number of matters to that guide for clarification.[2]

2. The Commission also agreed that the draft Guide to Enactment should: (a) be as short as possible; (b) include cross-references to the UNCITRAL Legislative Guide on Secured Transactions (the "Secured Transactions Guide") and the other texts of the Commission on secured transactions, including the United Nations Convention on the Assignment of Receivables in International Trade (the "Assignment Convention"), the Supplement on Security Rights in Intellectual Property (the "Intellectual Property Supplement") and the UNCITRAL Guide on the Implementation of a Security Rights Registry (the "Registry Guide"); (c) focus on giving guidance to legislators rather than users of the text; (d) explain the thrust of each provision or section of the Model Law and any difference with the corresponding recommendations of the Secured Transactions Guide or the provisions of another UNCITRAL text on secured transactions; and (e) give guidance to States with respect to matters referred to them and in particular explain each option offered in various articles of the Model Law to assist enacting States in choosing one of the options offered.[3]

3. At its forty-ninth session (New York, 27 June-15 July 2016), the Commission adopted the Model Law.[4] At that session, the Commission had before it the draft Guide to Enactment (A/CN.9/885 and Add.1-4). The Commission noted that the draft Guide to Enactment provided background and explanatory information that could assist States in considering the Model Law for adoption. In addition, the Commission noted with appreciation that the draft Guide to Enactment was already at an advanced stage. Moreover, the Commission noted that a number of issues were referred to the draft Guide to Enactment even at its forty-ninth session, and thus the draft Guide to Enactment was an extremely important text for the implementation and interpretation of the Model Law. After discussion, the Commission agreed to give the Working Group up to two sessions to complete its work and submit the draft Guide to Enactment to the Commission for final consideration and adoption at its fiftieth session in 2017.[5]

4. In addition, the Commission agreed that, if the Working Group completed its work in less than two sessions it should use any time remaining to discuss its future work in a session or in a colloquium to be organized by the Secretariat. Moreover, the Commission agreed that, subject to further discussion of the overall future work of the Commission, a colloquium to discuss future work on security interests should be held

[1] *Official Records of the General Assembly, Seventieth Session, Supplement No. 17* (A/70/17), para. 215.
[2] Ibid.
[3] Ibid., para. 216.
[4] Ibid., *Seventy-first Session, Supplement No. 17* (A/71/17), para. 119.
[5] Ibid., paras. 120-122.

even if the Working Group used the full time of the two sessions to complete its work on the draft Guide to Enactment.[6]

# II. Organization of the session

5. The Working Group, which was composed of all States members of the Commission, held its thirtieth session in Vienna from 5 to 9 December 2016. The session was attended by representatives of the following States members of the Working Group: Australia, Brazil, Bulgaria, Canada, China, Colombia, Côte d'Ivoire, Czechia, El Salvador, France, Germany, Indonesia, Iran (Islamic Republic of), Israel, Italy, Japan, Kenya, Mexico, Pakistan, Panama, Philippines, Poland, Republic of Korea, Romania, Russian Federation, Spain, Switzerland, Thailand, Turkey, United States of America, Venezuela (Bolivarian Republic of) and Zambia.

6. The session was attended by observers from the following States: Croatia, Cyprus, Dominican Republic, Mali, Portugal, Republic of Moldova, Slovakia, Sudan, Syrian Arab Republic and Tunisia. The session was also attended by observers from the Holy See and the European Union.

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

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

(b) *Intergovernmental organizations*: Asian Clearing Union (ACU) and Asian-African Legal Consultative Organization (AALCO);

(c) *International non-governmental organizations invited by the Commission*: American Bar Association (ABA), Centro de Estudios de Derecho, Economía y Política (CEDEP), Commercial Finance Association (CFA), European Banking Federation (EBF), European Investment Bank (EIB), Factors Chain International and the EU Federation for Factoring and Commercial Finance Industry (FCI and EUF), Forum for International Conciliation and Arbitration (FICACIC), INSOL Europe, International Insolvency Institute (III), Moot Alumni Association (MAA), National Law Centre for Inter-American Free Trade (NLCIFT) and The European Law Students' Association (ELSA).

8. The Working Group elected the following officers:

*Chairperson*: Ms. Kathryn SABO (Canada)

*Rapporteur*: Ms. Jennifer Wanjiru NG'ANG'A (Kenya)

9. The Working Group had before it the following documents: A/CN.9/WG.VI/WP.70 (Annotated Provisional Agenda) and A/CN.9/WG.VI/WP.71 and Add.1 to 6 (Draft Guide to Enactment of the UNCITRAL Model Law on Secured Transactions).

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 Guide to Enactment of the UNCITRAL Model Law on Secured Transactions.

[6] Ibid., paras. 122 and 356.

5. Future work.

6. Other business.

7. Adoption of the report.

# III. Deliberations and decisions

11. The Working Group considered notes by the Secretariat entitled “Draft Guide to Enactment of the UNCITRAL Model Law on Secured Transactions” (A/CN.9/WG.VI/WP.71 and Add.1-4, and part of 5) and its future work. The deliberations and decisions of the Working Group are set forth below in chapters IV and V respectively. The Secretariat was requested to revise the draft Guide to Enactment to reflect the deliberations and decisions of the Working Group.

# IV. Draft Guide to Enactment of the UNCITRAL Model Law on Secured Transactions

## A. General part of the draft Guide to Enactment (A/CN.9/WG.VI/WP.71, paras. 1-33)

12. At the outset, it was agreed that the draft Guide to Enactment should be addressed mainly to the executive and legislative branches of Government to assist them in their consideration of the Model Law for enactment, but also secondarily to users of the Model Law. It was also agreed that the draft Guide to Enactment should not attempt to provide transactional advice to parties of secured transactions, which would fit better in any future work on a contractual guide on secured transactions.

13. With respect to paragraphs 1-7, it was agreed that the discussion of the purpose of the draft Guide to Enactment should be shortened and avoid repetition (e.g. para. 6 should be deleted as it repeated a point made in para. 3).

14. With respect to paragraphs 8-20, it was agreed that: (a) the discussion of the purpose of the Model Law should be shortened; (b) the discussion of the earlier project of UNCITRAL on secured transactions should be briefly referred to in a footnote; (c) the preparatory work should be shortened and set out in a preface; and (d) the Commission’s decision and the General Assembly resolution with respect to the Model Law should be set out as separate annexes.

15. With respect to paragraphs 26-28, it was agreed that they should be revised to discuss the relationship between the Assignment Convention and the Model Law and the reasons why States that enacted one of those texts should also enact the other. With respect to paragraph 29, it was agreed that it should be revised to discuss: (a) the functional, integrated and comprehensive approach of the Model Law; and (b) coordination with other law in a separate section.

16. Subject to the above-mentioned changes (see paras. 12-15), the Working Group approved the substance of paragraphs 1 to 33 of document A/CN.9/WG.VI/WP.71.

## B. Chapter I. Scope of application and general provisions (A/CN.9/WG.VI/WP.71/Add.1, paras. 1-49)

17. With respect to paragraph 2, it was agreed that: (a) reference should be made to an example of an outright transfer of receivables by agreement (e.g. non-recourse factoring); (b) the need to have the same third-party effectiveness and priority rules

apply to both outright transfers of receivables by agreement and security rights in receivables should be added to the reasons why the Model Law applied to outright transfers of receivables by agreement; and (c) the possible exclusion of outright transfers of receivables by agreement for collection purposes could be explained by reference to the fact that they were not financing transactions (whether the transferor's interest was transferred or not, which was a matter of other law).

18. With respect to paragraph 9, it was agreed that the last sentence referred to lenders, rather than to consumer grantors or consumer debtors of receivables, and should thus be deleted, unless the indirect benefit to consumer grantors under article 24 of the Model Law could be briefly explained.

19. With respect to paragraph 11, it was agreed that it should be deleted, while the fact that negative pledge agreements did not bind third parties and thus a security right created despite such an agreement might be effective could be discussed in the context of article 3 on party autonomy (see para. 38 below).

20. With respect to paragraph 12, it was agreed that it should be revised to clarify that: (a) the Model Law applied to security rights in attachments (as defined in the Secured Transactions Guide) that were movable assets, but it did not include specific provisions on attachments; (b) the general provisions on security rights in movable assets applied to attachments; and (c) enacting States should be encouraged to implement the relevant recommendations of the Secured Transactions Guide dealing with security rights in attachments.

21. With respect to paragraph 13, it was agreed that it should be revised to clarify that not all terms defined in the Model Law were explained in the draft Guide to Enactment, as they were either self-explanatory or sufficiently explained in the Secured Transactions Guide, and thus cross-references to the relevant sections of the Secured Transactions Guide, if any, would be sufficient.

22. With respect to paragraph 15, it was agreed that it should be revised to clarify that the term that might replace the term "authorized deposit-taking institution" in a particular enacting State might not be a term of the national financial regulatory framework of that State but rather a generic term broad enough to include any institution authorized to receive deposits in the State whose law might be applicable under article 97 of the Model Law.

23. With respect to paragraph 17, it was agreed that it should be revised to clarify that the term "competing claimant": (a) was principally used in the context of a potential dispute between a secured creditor with a security right in an asset and another person with rights in that asset; and (b) included another creditor of the grantor (secured or not) that had a right in the asset, a buyer or lessee of the asset and the grantor's insolvency representative.

24. With respect to paragraph 18, it was agreed that it should be revised to: (a) briefly refer to the primary purpose for which consumer goods were used or intended to be used (same point in para. 20 of document A/CN.9/WG.VI/WP.71/Add.1 on "equipment"); (b) clarify that, depending on its use or intended use, a tangible asset, might be "consumer goods", "equipment" or "inventory"; and (c) clarify that the terms "consumer goods", "equipment" or "inventory" were relevant mainly for those provisions of the Model Law that dealt with acquisition security rights.

25. With respect to paragraph 19, it was agreed that the last sentence, stating that the term "writing" included electronic communications, should be deleted as that point was already made in the explanation of the definition of the term "writing" (see A/CN.9/WG.VI/WP.71/Add.1, para. 41).

26. In that connection, it was agreed that the draft Guide to Enactment should also include an explanation of the reference to outright transfers of receivables by agreement in the terms “encumbered asset”, “grantor”, “secured creditor”, “security agreement” and “security right”. With respect to the commentary on the definitions of the last two terms, it was also agreed that reference should be made to the functional, integrated and comprehensive approach of the Model Law.

27. With respect to paragraph 21, it was agreed that: (a) it need not refer to leases or licences; (b) the point that a lease might be a secured transaction might be addressed in the explanation of the term “security agreement”; and (c) the point that a lessee or licensee might create a security right in its rights under the lease or licence agreement might be made in the part of the draft Guide to Enactment dealing with article 6, paragraph 1 (see A/CN.9/WG.VI/WP.71/Add.1, para. 52).

28. With respect to paragraph 22, it was agreed that it should be revised to refer to the administration or supervision of the administration of the insolvency estate in insolvency proceedings or to use other wording referred to in the UNCITRAL Legislative Guide on Insolvency Law (the “Insolvency Guide”; see part two, chap. III, paras. 11-18 and 25, which referred to the administration of insolvency proceedings or the supervision of the debtor or the activities of the debtor).

29. With respect to paragraph 24, it was agreed that it should be revised to explain that the term “inventory” included tangible assets held by the grantor for lease or licence in the ordinary course of the grantor’s business.

30. With respect to paragraph 26, it was agreed that the reference to “banknotes and coins, as well as virtual currency, such as bitcoin” should be deleted, as it was sufficiently clear that banknotes and coins were national currency, while virtual currency was not. It was also explained that, as money was a tangible asset under the Model Law, the provisions of the Model Law on security rights in money would not be appropriate for virtual (i.e. intangible) currency.

31. With respect to paragraph 27, it was agreed that it should be revised to explain that, depending on its legal tradition, an enacting State might use the term “personal property” in the place of the term “movable asset”.

32. With respect to paragraph 30, it was agreed that it should be revised to: (a) explain first that the definition of the term “possession” was sufficiently broad to cover situations in which a person held an asset through another person; and (b) refer to the issuer of a negotiable document holding through various persons as a particular example of possession of an asset by a person through another person.

33. With respect to paragraph 31, it was agreed that it should be revised to better explain the differences between the meaning of the term “priority” in the Model Law, the Assignment Convention and the Secured Transactions Guide.

34. With respect to paragraphs 32-35, it was agreed that they should be simplified and clarified, while the issue of the protection of third parties should be discussed in the part of the draft Guide to Enactment dealing with the third-party effectiveness of security rights in proceeds (see A/CN.9/WG.VI/WP.71/Add.1, paras. 86-89). It was also agreed that the term “proceeds of proceeds” should be explained by reference to examples so as to avoid giving the impression that the security right might extend to an excessively broad range of assets.

35. With respect to paragraph 37, it was agreed that it should be revised to explain that the term “secured obligation” included obligations arising from credit extended “by lenders, sellers or lessors”, rather than “to finance the operation of a business or the purchase of goods”. It was also agreed that the last two sentences of paragraph 37 should be deleted as they repeated a rule of interpretation referred to in paragraph 13.

36. With respect to paragraph 38, it was agreed that it should be revised to explain that a broad definition of the term "securities" could result in an overlap with the terms "money", "receivable" and "negotiable instrument" and thus in uncertainty as to the regime applicable to security rights in those types of asset. It was also agreed that reference should be made to the need to coordinate the definition of the term "securities" in secured transactions law and "law governing the transfer of securities", as a State might not have a "securities transfer law" as such.

37. With respect to paragraph 40, it was agreed that it should be revised to clarify that the term "tangible asset" included money, negotiable instruments, negotiable documents and certificated non-intermediated securities (some of them being intangible assets embodied in a document), except for the purposes of certain articles that contained rules that were not appropriate for those types of asset.

38. With respect to paragraphs 43-45, it was agreed that they should be revised to explain: (a) that a negative pledge agreement could not bind persons that were not parties to that agreement and thus a security right created despite such an agreement would be effective; (b) the reasons why the articles listed in article 3, paragraph 1, were not subject to party autonomy; (c) that article 3, paragraph 3, applied to alternative dispute resolution, including arbitration, mediation, conciliation and online dispute resolution, referring to the discussion of those matters by the Commission at its forty-ninth session.[7]

39. With respect to paragraph 47, it was agreed that it should be revised to explain the term "commercial reasonableness" by reference to a range of steps that might be taken by a reasonable person in circumstances that were similar to those encountered by the grantor or the secured creditor in a particular case.

40. With respect to paragraph 48, it was agreed that reference should also be made to the interpretation of the provisions of the Model Law by courts and arbitral tribunals in States other than the enacting State.

41. Subject to the above-mentioned changes (see paras. 17-40), the Working Group approved the substance of paragraphs 1 to 49 of document A/CN.9/WG.VI/WP.71/Add.1.

## C. Chapter II. Creation of a security right (A/CN.9/WG.VI/WP.71/Add.1, paras. 50-83)

42. With respect to paragraph 50, it was agreed that it should be revised to: (a) avoid giving the impression that an enacting State might leave out all asset-specific rules, which included rules that were absolutely necessary for a modern secured transactions law, such as the rules dealing with security rights in receivables; and (b) clarify that an enacting State might wish to include in the general rules cross-references to the relevant asset specific rules or a provision that would state that the general rules would be subject to the asset-specific rules (see Model Law, footnote 4).

43. With respect to paragraph 52, it was agreed that it should be revised to clarify that: (a) the grantor needed to have a right in an asset or the power to encumber it at the time of the conclusion of the security agreement or later; (b) the grantor needed to be in possession of an asset on the basis of an agreement with the owner (such as a lease); and (c) in line with article 13, paragraph 1, the owner/grantor of a receivable had a right in the receivable or the power encumber it despite an anti-assignment agreement with the debtor of the receivable. It was also agreed that paragraph 52 should be revised to clarify that: (a) the transferor in an outright transfer of a

[7] Ibid., paras. 96-98.

receivable continued to have the power to encumber the receivable; (b) that power was implicit in the fact that the third-party effectiveness and priority rules of the Model Law applied to outright transfers of receivables by agreement; and (c) as a practical matter, if the transferee had made its right effective against third parties before a subsequent competing transferee or secured creditor, there would be no value left in the receivable for subsequent transferees or secured creditors.

44. With respect to paragraph 53, it was agreed that: (a) the second sentence should be deleted as it repeated a point already made in the last sentence of paragraph 51; (b) an enacting State should choose in the chapeau of paragraph 3 of article 6 the wording that best fit, not only its contract law, but also its law of evidence. With respect to paragraphs 54 and 55, it was agreed that they should include cross-references to the relevant discussion in the Secured Transactions Guide and the Registry Guide.

45. With respect to paragraph 56, it was agreed that the last sentence that dealt with assets that might be encumbered, rather than with obligations that might be secured, was out of place and should thus be deleted.

46. With respect to paragraph 60, it was agreed that the second sentence should be revised to clarify the reason why the description of encumbered assets in the security agreement was addressed in a separate article of the Model Law, while in the Secured Transactions Guide it had been addressed in paragraph (d) of recommendation 14 that dealt with the minimum content of the security agreement (a matter addressed in art. 6, para. 3, of the Model Law).

47. With respect to paragraph 61, it was agreed that a sentence should be added to clarify that: (a) article 10 did not imply that the secured creditor could only claim a right to proceeds where it could not enforce its security right in the original encumbered asset; and (b) the secured creditor could pursue both alternatives, except where assets were transferred to a person that acquired its rights in the assets free of the security right, which would be a very limited exception (mainly in the case of ordinary course-of-business transactions).

48. With respect to paragraphs 64, 66, 68-74, 81 and 82, a number of drafting suggestions were made. In that connection, the Working Group gave a mandate to the Secretariat to make any necessary drafting or other consequential change to the draft Guide to Enactment as a whole.

49. With respect to paragraph 83, it was agreed that it should be revised to clarify that, for the secured creditor to obtain a security right in both a tangible asset with respect to which intellectual property was used and the intellectual property, the security agreement would need to expressly provide for it (see Model Law, art. 60 and IP Supplement, rec. 243).

50. Subject to the above-mentioned changes (see paras. 42-49), the Working Group approved the substance of paragraphs 50 to 83 of document A/CN.9/WG.VI/WP.71/Add.1.

## D. Chapter III. Third-party effectiveness of a security right (A/CN.9/WG.VI/WP.71/Add.1, paras. 84-101)

51. With respect to paragraph 85, it was agreed that it should be revised to refer to the coordination of registries, not only by linking those registries, but also by way of appropriate priority rules dealing with the priority of security rights notices of which were registered in one Registry over security rights notices of which were registered in another Registry.

52. With respect to paragraph 89, it was agreed that it should be revised to clarify that, if a security right in an asset was effective against third parties, the security right in its proceeds should be effective for 20 to 25 days after the proceeds arose (for other suggestions as to time periods, see paras. 53, 68, 76, 88, 90, 97 and 104 below).

53. With respect to paragraph 93, it was agreed that a security right that was effective against third parties should continue to be effective for 45 to 60 days after a change in the applicable law (for other suggestions as to time periods, see para. 52 above, as well as paras. 68, 76, 88, 90, 97 and 104 below).

54. With respect to paragraph 94, it was agreed that it should be revised to elaborate on the criteria to be used for determining what would be a reasonably high price for the exemption from registration of low-value consumer transactions to be meaningful.

55. With respect to paragraph 95, it was agreed that it should be deleted, because the Model Law did not deal with specialized registration or title notation, and dealing with such matters required an analysis of various scenarios and issues, which would be beyond the scope of the draft Guide to Enactment.

56. With respect to paragraphs 100 and 101, it was agreed that they should: (a) be set out in a separate section as they did not deal with certificated non-intermediated securities; (b) refer only to negotiable instruments and certificated non-intermediated securities; and (c) clarify that States parties to the Convention Providing a Uniform Law For Bills of Exchange and Promissory Notes (Geneva, 1930) might wish to consider providing in their enactment of the Model Law for the creation/third-party effectiveness of a security right in negotiable instruments or certificated non-intermediated securities by an endorsement with the statement "value in security", "value in pledge" or any other similar statement and also for the comparative priority of that security right over security rights in those assets made effective against third parties by another method.

57. Subject to the above-mentioned changes (see paras. 51-56), the Working Group approved the substance of paragraphs 84 to 101 of document A/CN.9/WG.VI/WP.71/Add.1.

## E. Chapter IV. The registry system (A/CN.9/WG.VI/WP.71/Add.2, paras. 1-5)

58. With respect to paragraph 4, it was agreed that the words "as an alternative to the submission of paper notices and search requests" should be deleted in order to avoid giving the impression that registries, in which notices could be submitted both electronically and in paper, were recommended. With respect to paragraph 5, it was agreed that it should be revised to refer to the fact that the secured transactions laws of some States provided for the registration of notices with respect to non-consensual security rights or preferential claims created by operation of law, rights of judgement creditors and ownership rights of consignors and lessors under commercial consignments of inventory and long-term operating leases of goods. Subject to those changes, the Working Group approved the substance of paragraphs 1 to 5 of document A/CN.9/WG.VI/WP.71/Add.2.

## F. Model Registry Provisions

### 1. A/CN.9/WG.VI/WP.71/Add.2, paras. 6-55

59. With respect to paragraph 7, it was agreed that it should be revised to clarify that: (a) the Registry should not require evidence of authorization of the registration

by the grantor since registration did not create the security right; and (b) the grantor's authorization could be given after registration. With respect to paragraphs 7-14, it was agreed that the discussion of the grantor's authorization for registration should be shortened.

60. With respect to paragraphs 15 and 16, it was agreed that examples should be given of situations in which one notice would be sufficient for multiple security rights.

61. With respect to paragraph 18, it was agreed that it should be revised to clarify that advanced registration had priority consequences, referring to the discussion of the relevant priority provisions of the Model Law, rather than discussing priority issues in detail. With respect to paragraph 19, it was agreed that it should be revised to clarify that, to protect the person identified in a registered notice as the grantor where a security agreement was never concluded or was concluded but covered a narrower range of assets than those described in the registered notice, article 20 of the Model Registry Provisions provided a procedure to enable the grantor to obtain the compulsory amendment or cancellation of the registered notice, as the case might be.

62. With respect to paragraph 21, it was agreed that it should be revised to: (a) refer to the "prescribed registry notice form" to avoid giving the impression that the forms would be prescribed by the Registry rather than the rules of law or regulations dealing with registration issues; (b) the discussion of the registrant's identification should be set out in a separate paragraph; and (c) include in the evidence of the registrant's identity its contact details. With respect to paragraph 23, it was agreed that it should be revised to encourage electronic payments without precluding businesses, in particular of the informal sector, from making use of other modes of payment, as long as controls were in place to avoid the risk of staff embezzlement.

63. With respect to paragraph 25, it was agreed that it should be revised to clarify that, where a registry system required the entry of an identity number, entries that did not provide the required number of digits would be rejected as incomplete under article 6, paragraph 1 (a), of the Model Registry Provisions.

64. With respect to paragraph 34, it was agreed that it should be revised to explain that the secured transactions laws of some States provided for a State-issued identity or other official number as the grantor's identifier (same point for legal entities discussed in para. 37 of document A/CN.9/WG.VI/WP.71/Add.1).

65. With respect to paragraph 42, it was agreed that it should be revised to clarify that: (a) an enacting State that would provide for the description of the encumbered assets by serial number would need to revise the priority rules of the Model Law to specify the priority consequences of a registrant's failure to enter the relevant serial number, as well as the registry design and the registry-related provisions to accommodate serial-number-based registration and searching; and (b) using the specific serial number as the description might be risky since any error might render the description insufficient whereas a more generic description (e.g. a description of the grantor's automobile by make and model) might reduce the risk of error.

66. With respect to paragraph 46, it was agreed that it should be revised to further clarify that, where the names and addresses of the grantor and the secured creditor or its representative were expressed in a language that used a different character set than that prescribed by the Registry, they would need to be adjusted or transliterated to conform to the prescribed character set.

67. With respect to paragraph 47, it was agreed that it should clarify that the meaning of the words "without delay" would depend on the particular circumstances and would mean little or no delay in the case of an electronic Registry, and as soon as practically feasible in the case of a Registry that permitted the submission of notices

in paper form. It was also agreed that no specific time limit should be set, as, if the Registry did not comply with it, it could be liable to damages.

68. With respect to paragraphs 50 to 52, it was agreed that they should be revised to clarify that: (a) in option A of article 14, paragraph 1, of the Model Registry Provisions reference should be made to 5 years (to accommodate typical transactions); (b) in options A and C of article 14, paragraph 2, of the Model Registry Provisions reference should be made to 4 to 6 months (to give enough time to the secured creditor to extend the period of effectiveness of a notice); and (c) in option C of article 14, paragraph 1, of the Model Registry Provisions reference should be made to 10 years (which would be enough for most transactions) (for other suggestions as to time periods, see paras. 52 and 53 above, as well as paras. 76, 88, 90, 97 and 104 below).

69. With respect to paragraphs 53 and 54, it was agreed that they should be revised to explain that placing on the secured creditor, rather than on the Registry, the obligation to send a copy of the registered notice to the grantor was the result of a cost-benefit analysis and was also due to the fact the registration did not create any right. With respect to paragraph 55, it was agreed that it should be revised to clarify that: (a) article 15, paragraph 4, of the Model Registry Provisions provided that the secured creditor's liability for failure to send a copy of the notice to the grantor was limited to actual loss or damage resulting from that failure; and (b) how actual loss or damage would be measured was left to the relevant law of the enacting State.

70. Subject to the above-mentioned changes (see paras. 59-69), the Working Group approved the substance of paragraphs 6 to 55 of document A/CN.9/WG.VI/WP.71/Add.2.

### 2. A/CN.9/WG.VI/WP.71/Add.3, paras. 1-81

71. With respect to paragraphs 1 and 2, it was agreed that they should be revised to clarify that: (a) if a new secured creditor (e.g. an assignee of the secured obligation), or a law firm or other service provider acting on behalf of the new secured creditor, had the secure access code of the person identified in a registered initial notice as the secured creditor, it could register an amendment or cancellation notice; and (b) a new secured creditor would have an interest in registering an amendment notice changing the secured creditor identifier so as to obtain a new access code, thereby ensuring that the person identified in the initial registered notice as the secured creditor would no longer be able to register an amendment or cancellation notice.

72. With respect to paragraph 7, it was agreed that it should be revised to clarify that the "secure access requirements" referred to were those referred to in article 5 of the Model Registry Provisions.

73. With respect to paragraphs 11-18, it was agreed that they should be revised to explain that, in the exceptional case where there was no actual secured creditor or the secured creditor was no longer contactable, the grantor could request the registration of an amendment or cancellation notice from the person identified in the registered notice as the secured creditor.

74. With respect to paragraph 34, it was agreed that it should be revised to clarify that the Model Law did not require the indication of a "currency date" in the search results, as the laws of some States did, because registration under the Model Law was only effective once it was publicly searchable and thus a reference to a "currency date" was not necessary.

75. With respect to paragraph 39, it was agreed that the last sentence should be revised to clarify: (a) the difference between paragraphs 1 and 2 of article 24 of the Model Registry Provisions; and (b) the relationship between the burden created for a

searcher by an error made by the registrant in the notice with respect to the grantor's identifier and the seriously misleading test in paragraph 2 of article 24 of the Model Registry Provisions, with appropriate examples, if possible. With respect to paragraph 40, it was agreed that it should be revised to clarify that the person challenging the effectiveness of the registration would be a competing claimant in the context of a priority conflict with the secured creditor that would have to be resolved by a court, not the Registry.

76. The Working Group considered the various time periods which the Model Law left to each enacting State and agreed that the following time periods should be suggested in the draft Guide to Enactment: (a) for article 15, paragraph 2, of the Model Registry Provisions: 14 days (see A/CN.9/WG.VI/WP.71/Add.2, para. 54); (b) for article 20, paragraph 6, of the Model Registry Provisions: 14 days (A/CN.9/WG.VI/WP.71/Add.3, para. 18); (c) for article 25, paragraph 2 (a): 60-90 days (A/CN.9/WG.VI/WP.71/Add.3, para. 45); (d) for option A of article 26, paragraph 2 (a), of the Model Registry Provisions: 60-90 days (A/CN.9/WG.VI/WP.71/Add.3, para. 49); and (e) for option B of article 26, paragraph 2 (a), of the Model Registry Provisions: 15-30 days (A/CN.9/WG.VI/WP.71/Add.3, para. 50). It was also agreed that the draft Guide to Enactment should explain the reasons for each suggested time period, as well as the reasons why an enacting State should choose one or the other option suggested in the Model Law and the Model Registry Provisions (for other suggested time period, see paras. 52, 53 and 68 above, as well as paras. 88, 90, 97 and 104 below).

77. With respect to paragraph 54, it was agreed that it should be revised to clarify that the duties of the registrar would be determined by the relevant supervising authority in a law, regulation or other act implementing the Model Registry Provisions.[8] With respect to paragraph 55, it was agreed that it should be revised to refer to authorities that typically supervise security rights registries in various States, such as a ministry responsible for secured transactions law, another authority in charge of registries or a central bank.

78. With respect to paragraph 63, it was agreed that it should be revised to clarify how option B of article 30 of the Model Registry Provisions could be enacted by States that adopted option C or D of article 21 of the Model Registry Provisions. With regard to paragraph 64, it was agreed that, together with article 30, paragraph 3, it provided sufficient clarity as to the time period during which the archives of the Registry should be preserved. It was also agreed that paragraph 64 should be revised to clarify that a searcher of the registry archives should follow the procedures for searching archives in the enacting State.

79. With respect to paragraph 66, it was agreed that it should be further aligned with the wording of footnote 31 of the Model Law (which did not use the word "only" and referred to direct entry, rather than transmission, of information). With respect to paragraph 68, it was agreed that it should be revised to explain the relationship between the options of article 21 and those of article 31 of the Model Registry Provisions.

80. With respect to paragraphs 69-73, it was agreed that they should be revised to clarify: (a) the policy underlying the limitation of liability of the Registry (including appropriate references to the Secured Transactions Guide and the Registry Guide); (b) the need for the enacting State to coordinate article 32 of the Model Registry Provisions with its law on liability; (c) the relationship between paragraphs 1 and 2 of article 32 of the Model Registry Provisions; (d) the fact that only the first part of article 32, paragraph 1 (b) was in square brackets; and (e) that the limit of the

[8] Ibid., para. 49.

Registry's liability should be a maximum monetary amount not related the maximum value of the encumbered assets.

81. With respect to paragraph 74, it was agreed that it should be revised to further clarify that the registry fees under option A of article 33 of the Model Registry Provisions related to all fees for registry services at a cost-recovery level thus avoiding any hidden fees.

82. Subject to the above-mentioned changes (see paras. 71 to 81), the Working Group approved the substance of paragraphs 1 to 81 of document A/CN.9/WG.VI/WP.71/Add.3.

## G. Chapter V. Priority of a security right (A/CN.9/WG.VI/WP.71/Add.4, paras. 1-73)

83. With respect to paragraph 15, it was agreed that it should be revised to explain further article 33 and its relationship with article 11 with appropriate examples.

84. With respect to paragraphs 16-20, it was agreed that they should be revised to clarify that: (a) they referred to security rights created by a seller, lessor or licensor as opposed to a person who had acquired its rights from the seller, lessor or licensor; (b) the fact that a lessee or licensee acquired its rights free of a security right did not mean that it became an owner, but rather that it could enjoy its rights under the lease or licence agreement; and (c) the "shelter principle" in article 34, paragraphs 7 and 8, according to which subsequent buyers, lessees or licensees would also acquire their rights free of the security right.

85. With respect to paragraph 21, it was agreed that it should be revised to clarify that article 34, paragraph 9, provided that a buyer or lessee of consumer goods acquired its rights free of an acquisition security right if the security right was only effective against third parties by virtue of the operation of the automatic effectiveness rule in article 24, but that the buyer or lessee would take subject to the security right, if it was made effective against third parties in some other way before the buyer or lessee acquired its rights.

86. With respect to paragraph 22, it was agreed that, as the Model Law did not provide for specialized registration, the discussion of issues relating to specialized registries (in that paragraph, as well as in A/CN.9/WG.VI/WP.71/Add.1, para. 85 and A/CN.9/WG.VI/WP.71/Add.6, para. 10) should be moved to the part of the draft Guide to Enactment dealing with article 1, paragraph 3 (e), which addressed security rights in assets that would be subject to specialized registration.

87. With respect to paragraph 25, it was agreed that it should be revised to list typical examples of preferential claims in various legal systems (e.g. tax claims and employee claims), but without recommending their adoption. With respect to paragraph 26, it was agreed that it should be deleted as it was not directly related to article 36.

88. With respect to paragraph 29, it was agreed that it should be revised to clarify that, in article 37, paragraph 2 (a), reference should be made to 15 days (to provide the secured creditor with sufficient time to plan for the cut-off of the credit without excessively disadvantaging the judgment creditor) (for other suggested time periods, see paras. 52, 53, 68 and 76 above, as well as paras. 90, 97 and 104 below).

89. With respect to paragraph 31, it was agreed that it should be revised to clarify (perhaps in a separate paragraph) that: (a) the priority under article 38 could be obtained only if the acquisition secured creditor retained possession of the encumbered assets before delivery of the goods to the grantor; and (b) if the secured

creditor gave up possession of the encumbered assets, it would need to register, and it could not obtain the benefit of the priority rule in article 38 by obtaining possession in the context of the enforcement of its security right.

90. With respect to paragraphs 33 and 36, it was agreed that they should be revised to clarify that, in article 38, paragraphs 1 (b) and 4 (b), reference should be made to 15-20 days (for the grantor to be able to obtain credit from another financier without an undue delay) (for other suggested time period, see paras. 52, 53, 68, 76 and 88 above, as well as paras. 97 and 104 below). With respect to paragraphs 34 and 35, it was agreed that they should be revised to: (a) refer to "different" rather than "additional" requirements for an acquisition security right in inventory and its intellectual property equivalent to have super-priority; and (b) explain those different requirements.

91. With respect to paragraph 39, it was agreed that it should be revised to: (a) explain the reasons why lessors and licensors were given the same protection (i.e. priority over general acquisition secured creditors) as suppliers of goods on credit; and (b) clarify that financial lessors were meant and not lessors in true leases.

92. With respect to paragraph 44, it was agreed that it should be revised to: (a) refer to the part of the draft Guide to Enactment where the term "inventory equivalent intellectual property" and similar terms were explained in (see A/CN.9/WP.71/Add.4, para. 32); and (b) delete the last sentence. With respect to paragraph 47, it was agreed that it should be deleted as the third-party effectiveness and priority of security rights (including acquisition security rights) in insolvency were already covered by article 35 (see A/CN.9/WP.71/Add.4, para. 23).

93. With respect to paragraphs 49 to 51, it was agreed that they should be revised to clarify that subordination did not necessarily require an agreement.

94. With respect to paragraph 53, it was agreed that it should be revised to explain that: (a) paragraph 1 of article 44 was subject to article 37; (b) if a State included in its enactment of the Model Law article 6, paragraph 3 (d) (and art. 8, subpara. (e) of the Model Registry Provisions), the secured creditor could enforce its security right only up to the maximum amount set in the security agreement (and the notice); and (c) paragraph 2 of article 44 provided that, whatever priority a security right had under the priority rules in chapter V, it covered both present and future assets described in a registered notice.

95. With respect to paragraph 59, it was agreed that it should be revised to reflect more accurately the rationale for the priority rules in article 47 in line with the discussion in the Secured Transactions Guide (see chap. V, paras. 157-163). With respect to paragraph 61, it was agreed that its last sentence should be revised to clarify that, under article 47, paragraph 5: (a) the rights of set-off of the deposit-taking institution had priority over a secured creditor that had made its security right effective against third parties by a control agreement or registration; and (b) whether the deposit-taking institution had a right of set-off was a matter for other law.

96. With respect to paragraph 64, it was agreed that it should be revised to further explain: (a) the rationale for the rule in article 48, paragraph 1 (i.e. the negotiability of money as explained in the Secured Transactions Guide; see chap. V, para. 164); (b) the notion of "knowledge" in article 48, paragraph 1, and in particular that mere registration of a security right did not necessarily mean that the person in possession of money had knowledge that its possession violated the rights of the secured creditor under the security agreement; and (c) that article 48, paragraph 2, referred to other laws that might provide protection to persons in possession of money beyond that afforded under article 48, paragraph 1.

97. Once again, the Working Group considered the various time periods which the Model Law left to each enacting State and agreed that, for the time period referred to in article 49, paragraph 2, 7 days should be suggested in the draft Guide to Enactment. It was also agreed that: (a) these were suggestions, rather than recommendations, that an enacting State could use for its consideration of what would be appropriate for its own circumstances; and (b) issues relating to the measurement of time (e.g. whether only work days would count) would be left to the relevant law of the enacting State (for other suggestions as to time periods, see paras. 52, 53, 68, 76, 88 and 90 above, as well as para. 104 below).

98. With respect to paragraph 67, it was agreed that it should be revised to clarify that, while the rights of a secured creditor as an owner or licensor under intellectual property law were preserved by article 50, the rights of a secured creditor as a secured creditor under intellectual property law were preserved by article 1, paragraph 3 (b).

99. With respect to paragraph 69, it was agreed that it should be revised to refer to rules in States that had a special regime with respect to security rights in non-intermediated securities, rather than to "customs and practices". With respect to paragraph 71, it was agreed that it should be revised to clarify that: (a) the two methods set out in article 51, paragraph 2, were alternatives for enacting States to choose the one that best fit its law on securities transfer; and (b) if the law of a State provided for both alternatives, both of them could be retained in that State's enactment of article 51, paragraph 2 (and other articles that included a reference to those two alternatives, such as art. 27).

100. With respect to paragraph 73, it was agreed that it should be revised to clarify that, unlike articles 46, paragraph 2, and 49, paragraph 3, article 51, paragraph 5, did not include a rule, but rather deferred to law relating to the transfer of securities because: (a) the requirements of that law for the protection of transferees could be very different from the requirements of the law relating to negotiable instruments and negotiable documents; and (b) national laws diverged widely and the protection of transferees of non-intermediated securities did not lend itself to uniformity at the international level. In addition, it was agreed that paragraph 73 should clarify that, if a State neither had nor was prepared to introduce a law relating to the transfer of securities, it might not need to implement article 51, paragraph 5.

101. Subject to the above-mentioned changes (see paras. 83-100), the Working Group approved the substance of paragraphs 1 to 73 of document A/CN.9/WP.71/Add.4.

## H. Chapter VI. Rights and obligations of the parties and third-party obligors (A/CN.9/WG.VI/WP.71/Add.5, paras. 1-47)

102. With respect to paragraphs 1-5 and other paragraphs in chapter VI, it was agreed that they should be revised to clarify whether they were subject to party autonomy or not. With respect to paragraph 4, it was agreed that it should be revised to set out examples of steps that a secured creditor could take to preserve the value of tangible assets, such as precious metals, raw materials and certificated non-intermediated securities. With respect to paragraph 5, it was agreed that it should: (a) refer to other law without specifically identifying it; (b) emphasize that it dealt with the secured creditor's right to use encumbered assets in its possession; and (c) be placed in the commentary to article 55, which dealt with the secured creditor's right to use encumbered assets in its possession.

103. With respect to paragraph 6, it was agreed that it should be revised to clarify that: (a) the grantor was obliged to exercise its right to designate another person to whom the secured creditor should return the encumbered assets, in line with article 4,

in good faith and in a commercially reasonable manner (e.g. by avoiding to place on the secured creditor an undue burden); (b) the secured creditor would have a choice as to whether to return the encumbered assets to the grantor or deliver them to a person designated by the grantor but would also be obliged to exercise that option in line with the same standard of conduct; and (c) the same standard of conduct should apply to the additional cost to be borne by the grantor if the grantor requested the secured creditor to deliver the encumbered assets to a person designated by the grantor. With respect to paragraph 7, it was agreed that it should be clarified and avoid references to any specifically identified law.

104. With respect to paragraph 10, it was agreed that it should be revised to explain: (a) the reasons why it did not apply to an outright transfer of receivables by agreement (e.g. the transferor would know what the receivable was and there would not be a secured obligation); (b) the last sentence should be formulated as a question, rather than as a suggestion; (c) leave other matters, such as the legal consequences of the secured creditor's failure to comply or to give accurate information, to other law (A/CN.9/871, para. 71); and (d) suggest 7-14 days for article 56, paragraph 1 and 1 year for article 56, paragraph 2 (for other suggestions as to time periods, see paras. 52, 53, 68, 76, 88, 90 and 97 above).

105. With respect to paragraph 11, it was agreed that its last sentence should be revised to clarify: (a) that article 57 was subject to party autonomy; (b) delete the wording that suggested that the reason for the grantor's representation that the debtor of the receivable would be able to pay was that it was beyond the grantor's control, rather than a balanced risk allocation between the parties; and (c) that, if given, such a representation could refer to the grantor's solvency at the time of the conclusion of the security agreement or at the time the receivable would become payable. With respect to paragraph 12, it was agreed that its last sentence should be revised to clarify that it covered a case where an anti-assignment clause would be included in the terms of the receivable (i.e., in the case of a contractual receivable, in the terms of the agreement giving rise to the receivable or other agreement between the grantor and the debtor of the receivable).

106. With respect to paragraph 14, it was agreed that subparagraph (b) should be revised to refer to situations in which the parties might have agreed that no notification would be given. With respect to paragraph 15, it was agreed that it should be revised to refer to article 63 and to the commentary on article 63 (see A/CN.9/WG.VI/WP.71/Add.5, paras. 26-33), rather than article 64.

107. With respect to paragraph 16, it was agreed that it should be revised to refer to the fact that article 59 reiterated the right of the secured creditor in the proceeds of an encumbered asset, which was established in article 10. With respect to paragraph 17, it was agreed that it should refer to the secured creditor's right to retain the proceeds of any payment made to the secured creditor and to the payment of any proceeds paid to the grantor or to another person. With respect to paragraph 18, it was agreed that it should be revised to refer to the rule in article 79, paragraph 2, rather than to "normal practice in secured transactions relating to receivables".

108. With respect to paragraph 19, it was agreed that it should be revised to: (a) emphasize that the secured creditor would have the right to take the steps necessary to preserve the encumbered intellectual property "if so agreed with the grantor"; and (b) explain that the result of those steps to preserve the encumbered intellectual property would be the preservation of its value. With respect to paragraph 20, it was agreed that it should be revised to refer to the fact that article 53 did not apply to intangible assets (including intellectual property).

109. With respect to paragraph 21, it was agreed that it should be revised to clarify that the Model Law included in article 90 a rule on the location of a person that was based on article 5, subparagraph (h), of the Assignment Convention, but that rule applied only in the context of chapter VIII on conflict of laws. With respect to paragraph 22, it was agreed that it should be revised to explain the reasons why a payment instruction might change, for example, the person or the address of the debtor of the receivable, but not the currency of payment.

110. With respect to paragraph 30, it was agreed that it should be revised to: (a) explain that both security rights in, and outright transfers of, receivables were covered; and (b) avoid giving the impression that the discharge of the debtor of the receivable was conditional on that debtor making payment to the secured creditor with priority.

111. With respect to paragraph 37, it was agreed that it should be revised to clarify that: (a) the debtor of the receivable might agree not to raise "against the secured creditor" the defences and rights of set-off "that it could otherwise raise against a secured creditor under article 64"; and (b) the rule in paragraph 3 of article 65 was derived, in part, from the defences that might be raised even against a protected holder under article 30 of the United Nations Convention on International Bills of Exchange and International Promissory Notes (the "Bills and Notes Convention").

112. With respect to paragraph 39, it was agreed that its last sentence should be revised to clarify that rights of the grantor or the secured creditor for breach of an agreement between them could arise under other law or under the agreement.

113. With respect to paragraph 41, it was agreed that it should be revised to refer: (a) in its second sentence, to the law of the enacting State relating to negotiable instruments; and (b) in its third sentence, to the Bills and Notes Convention.

114. With respect to paragraph 43, it was agreed that it should be revised to refer to "other laws, such as sanction laws". With respect to paragraph 45, it was agreed that it should be revised to clarify that: (a) the fact that the deposit-taking institution might have a security right in a right to payment of funds credited to a bank account held with the deposit-taking institution would not affect its rights of set-off; and (b) rights of set-off might arise under other law or under an agreement between the deposit-taking institution and the grantor.

115. Subject to the above-mentioned changes (see paras. 102-114), the Working Group approved the substance of paragraphs 1 to 47 of document A/CN.9/WG.VI/WP.71/Add.5.

## I. Chapter VII. Enforcement of a security right (A/CN.9/WG.VI/WP.71/Add.5, paras. 48-59)

116. With respect to paragraph 49, it was agreed that it should be revised to: (a) follow more closely the formulation of the definition of the term "default" (see art. 2, subpara. (j)); and (b) clarify that the only relevant example of situations in which rights under article 72 could be exercised before default was the collection of a receivable by the secured creditor before default with the agreement of the grantor (see art. 82, para. 2). With respect to paragraph 51, it was agreed that it should be revised to avoid any reference to outright transferors, while the point should be made in a separate paragraph that articles 72 to 82 did not apply to outright transfers of receivables by agreement.

117. With respect to paragraphs 52-56, the Working Group noted that, at its forty-ninth session in 2016, the Commission had decided to include in article 3, a new

paragraph 3, dealing with alternative dispute resolution (ADR) and in the draft Guide to Enactment appropriate explanations that that new provision would not interfere with the way legal systems dealt with arbitrability, the protection of the rights of third parties or access to justice.[9] In addition, the Working Group noted that, while at its twenty-ninth session (New York, 8-12 February 2016) there was general agreement as to the value of ADR, it was agreed that, in view of the complexity of the matter and the need to coordinate with Working Group II (Dispute Settlement) and to discuss the matter on the basis of a detailed proposal, no reference to ADR should be made in article 67 (now art. 73) or other part of the draft Model Law (see A/CN.9/871, para. 85). Moreover, the Working Group noted that the matters addressed in paragraph 55 of document A/CN.9/WG.VI/WP.71/Add.5 had already been addressed in paragraph 45 of document A/CN.9/WG.VI/WP.71/Add.1, which the Working Group at its present session had agreed to revise (see para. 38 above).

118. Differing views were expressed with respect to whether paragraph 52 should refer to arbitration in particular. One view was that paragraph 52 should clarify that the words "other authority" in article 73 covered a court, arbitral tribunal, chamber of commerce or notary public. It was stated that the use of arbitration in particular in the context of enforcement was crucial for many businesses in States where enforcement proceedings were inefficient to be able to obtain credit. It was also observed that the first two sentences of paragraph 58 should be moved to paragraph 53. Another view was that, as a consensual method of dispute resolution, by definition arbitration could not bind third parties. In that connection, it was stated that the rights of the third parties with rights in the encumbered assets were bound to be affected by the enforcement of security right in those assets. The view was also expressed that proceedings before a court and a notary public were of a very different nature and should thus not be presented together as if they were similar.

119. The prevailing view was that paragraph 52 should not refer to an arbitral tribunal as if it were an authority with adjudicating powers to resolve disputes and bind parties other than the parties to the relevant arbitration agreement. It was stated that arbitration was a consensual dispute resolution mechanism and arbitral awards could not bind third parties. It was also observed that article 3, paragraph 3, was sufficient in stating, in the appropriate place in the Model Law (i.e. in article 3 that dealt with party autonomy), the principle that nothing in the Model Law affected any agreement of the parties to use alternative dispute resolution.

120. After discussion, it was agreed that paragraph 52 should be revised to: (a) avoid any reference to arbitral tribunals; (b) distinguish, as it was done in the commentary of the Secured Transactions Guide (see chap. VIII, paras. 29-33), between enforcement by application to a court or other authority vested by the State with adjudicating powers and enforcement without an application to a court or other authority with such powers; (c) give examples of other entities in which some States have vested with adjudicating powers to resolve disputes and issue decisions binding on all parties; and (d) clarify that public notaries, bailiffs, sheriffs or other court enforcement officers might assist in enforcement by a court or other authority or not, but not resolve disputes or issue decisions binding on all parties.

121. With respect to paragraph 53, it was agreed that it should be revised to refer to enforcement without application to a court or other authority, rather than to enforcement "with minimal supervision by a court or other authority". With respect to paragraph 55, it was agreed that it should be deleted, as its substance was already covered in paragraph 45 of document A/CN.9/WG.VI/WP.71/Add.1, as revised at the

[9] Ibid., para. 98.

present session (see para. 38 above). With respect to paragraph 56, it was agreed that it should be revised to explain the rationale for the reference to expeditious proceedings.

122. With respect to paragraph 57, it was agreed that it should be revised to refer to the considerations to be taken into account by enacting States in deciding which of the options offered in article 74 to choose. With respect to paragraph 58, it was agreed that it should be deleted in view of the decision of the Working Group to avoid any reference to arbitral tribunals in paragraph 52 (see para. 120 above). With respect to paragraph 59, it was agreed that it should be revised to elaborate on the types of expeditious proceedings envisaged in article 74.

123. Subject to the above-mentioned changes (see paras. 116-122), the Working Group approved the substance of paragraphs 48 to 59 of document A/CN.9/WG.VI/WP.71/Add.5.

# V. Future work

124. At the close of its session, the Working Group noted that, at its forty-ninth session in 2016, the Commission, had placed a number of topics on its future work programme to be discussed at a future session on the basis of notes to be prepared by the Secretariat, after a colloquium or expert group meeting, to be held within existing resources.[10] In that connection, the Working Group noted with appreciation the work of the Secretariat in organizing the Fourth International Colloquium on Secured Transactions, which was scheduled to take place in Vienna from 15 to 17 March 2017. The Working Group also noted that the Commission's Fiftieth Anniversary Congress would take place in Vienna from 4 to 6 July 2017 (in the context of the Fiftieth Commission session, which was scheduled to take place in Vienna from 3 to 21 July 2017) and that the Congress would discuss issues for the long-term work programme of the Commission. Finally, the Working Group noted that its thirty-first session was scheduled to take place in New York from 13 to 17 February 2017.

[10] Ibid., para. 125.