United Nations A/CN.9/938

General Assembly

Distr.: General
10 May 2018

Original: English

United Nations Commission on International Trade Law
Fifty-first session
New York, 25 June–13 July 2018

Report of Working Group VI (Security Interests) on the work of its thirty-third session (New York, 30 April–4 May 2018)

I. Introduction

1. At its present session, Working Group VI (Security Interests) continued its work on the preparation of a draft practice guide to the UNCITRAL Model Law on Secured Transactions ("Practice Guide"), pursuant to a decision taken by the Commission at its fiftieth session (Vienna, 3–21 July 2017).[1] At that session, there was support in the Commission to provide guidance to users (such as parties to transactions, judges, arbitrators, regulators, insolvency administrators and academics) of the UNCITRAL Model Law on Secured Transactions ("Model Law") to maximize the benefits of secured transactions laws.[2]

2. The Commission agreed that broad discretion should be accorded to the Working Group in determining the scope, structure and content of the draft Practice Guide, but it was felt that the draft Practice Guide could address the following: (a) contractual issues (such as the types of secured transaction that were possible under the Model Law); (b) transactional issues (such as the valuation of collateral); (c) regulatory issues (such as the conditions under which movable assets were treated as eligible collateral for regulatory purposes); and (d) issues relating to finance to micro-businesses (such issues relating to the enforcement of security interests).[3]

3. At its thirty-second session (Vienna, 11–15 December 2017), the Working Group commenced its work on the draft Practice Guide based on a note by the Secretariat entitled Draft Practice Guide to the UNCITRAL Model Law on Secured Transactions: Annotated List of Contents (A/CN.9/WG.VI/WP.75) and requested the Secretariat to prepare a first draft of the Practice Guide, reflecting the deliberations and decisions of the Working Group (A/CN.9/932, para. 9).

II. Organization of the session

4. The Working Group, which was composed of all States members of the Commission, held its thirty-third session in New York from 30 April–4 May 2018.

[1] *Official Records of the General Assembly, Seventy-second Session, Supplement No. 17* (A/72/17), paras. 227 and 449.
[2] Ibid., para. 222.
[3] Ibid., paras. 227 and 449.

The session was attended by representatives of the following States members of the Working Group: Argentina, Australia, Belarus, Bulgaria, Canada, China, Czechia, Ecuador, France, Germany, Greece, India, Indonesia, Italy, Japan, Kuwait, Libya, Mexico, Philippines, Poland, Republic of Korea, Romania, Russian Federation, Singapore, Spain, Switzerland, Thailand, Turkey, Uganda, United Kingdom of Great Britain and Northern Ireland and United States of America.

5. The session was attended by observers from the following States: Algeria, Angola, Cambodia, Cyprus, Cuba, Democratic Republic of the Congo, Dominican Republic, Equatorial Guinea, Iraq, Jamaica, Portugal, Qatar, Senegal, Saudi Arabia and Sudan.

6. The session was attended by an observer from the Holy See.

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

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

(b) *Intergovernmental organizations*: European Investment Bank (EIB);

(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), Factors Chain International and the EU Federation for Factoring and Commercial Finance Industry (FCI and EUF), International Insolvency Institute (III), Law Association for Asia and the Pacific (LAWASIA) and National Law Centre for Inter-American Free Trade (NLCIFT).

The Working Group elected the following officers:

Chairperson: Mr. Bruce WHITTAKER (Australia)

Rapporteur: Ms. Pavlína RUCKI (Czechia)

8. The Working Group had before it the following documents: A/CN.9/WG.VI/WP.76 (Annotated Provisional Agenda) and A/CN.9/WG.VI/WP.77 (Draft Practice Guide to the UNCITRAL Model Law on Secured Transactions).

9. 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 Practice Guide to the UNCITRAL Model Law on Secured Transactions.
5. Future work and other business
6. Adoption of the report.

III. Deliberations and decisions

10. The Working Group engaged in discussions based on a note by the Secretariat entitled “Draft Practice Guide to the UNCITRAL Model Law on Secured Transactions” (A/CN.9/WG.VI/WP.77). The deliberations and decisions of the Working Group are set forth below in chapter IV. At the close of the session, the Working Group requested the Secretariat to revise the draft Practice Guide to reflect the deliberations and decisions of the Working Group.

IV. Draft Practice Guide to the UNCITRAL Model Law on Secured Transactions

A. General remarks

11. At the outset of its deliberations, the Working Group recalled that at its last session it had agreed upon a number of working assumptions pertaining to the structure and intended audience of the draft Practice Guide as well as its scope and style. It was noted the first draft of the Practice Guide as contained in document A/CN.9./WG.VI/WP.77 had been prepared in line with those working assumptions.

Structure

12. It was generally agreed that the draft Practice Guide should retain its current structure consisting of an introductory chapter, a chapter on contractual and transactional issues, and a chapter dealing with regulatory aspects.

13. With regard to the introductory chapter, views were expressed that it could be shortened to provide a summary of the draft Practice Guide and with an aim to further promote the adoption of the Model Law (for further discussion, see para. 85 below). It was also pointed out that some parts of Chapter I as currently drafted could be incorporated into Chapter II to provide more detailed information. In that context, the Working Group agreed to discuss the length and substance of each chapter as it continued its deliberations on the draft Practice Guide. In addition, suggestions to include visual aids in the draft Practice Guide were made.

Intended audience

14. Recalling its discussion on the intended audience (see paras. 12–18 of A/CN.9/932), the Working Group reaffirmed that the draft Practice Guide should provide useful guidance to a wide range of readers that might not necessarily be familiar with secured transactions as contemplated by the Model Law. It was also reaffirmed that intended audiences for Chapters I and II and for Chapter III (prudential regulatory authorities and regulated financial institutions) were different.

15. During the discussion, it was pointed out that the consideration of the primary target audience of the draft Practice Guide would be useful to determine: (i) the substance of the draft Practice Guide; and (ii) its tone or style, depending on the level of experience and sophistication that a potential reader would have with regard to secured transactions in general and the Model Law.

16. It was widely felt that the draft Practice Guide should be addressed to those who might not be familiar with or have less experience with the application of the Model Law.

17. After discussion, it was felt that the draft Practice Guide could provide guidance to a wide range of readers, including parties to secured transactions, third-parties that might be impacted by such transactions (for example, potential buyers of the encumbered assets, other creditors of the grantor and insolvency administrators), judges and other public officials that would be interpreting or implementing the Model Law, as well as relevant regulatory authorities. It was also widely felt that the primary target audience of the draft Practice Guide should be lenders and others providers of secured credit (including sellers on retention-of-title terms and financial lessors) based on the Model Law and that the draft Practice Guide should highlight the types of transactions that they could engage in. It was therefore agreed that the draft Practice Guide should be drafted with such potential secured creditors in mind, while at the same time addressing points of practical importance to other readers in the relevant parts of the draft Practice Guide.

Other issues

18. During the discussion, a suggestion was made that the draft Practice Guide should refer to the "Model Law" rather than the "Law". The Secretariat was requested to review the document and to make appropriate adjustments.

B. How to engage in secured transactions: guidance on contractual and transactional issues (A/CN.9/WG.VI/WP.77, paras. 68–281)

19. The Working Group agreed to first consider the contents of Chapter II of the draft Practice Guide, as it was felt that its deliberations on issues dealt with in Chapter II would have an impact on the contents and level of detail to be provided in Chapter I.

20. It was noted that while the scenario presented in paragraph 69 was intended to provide an example of a simple secured transaction that would apply throughout the draft Practice Guide, readers might find it difficult to refer to that scenario in later portions of Chapter II. It was therefore suggested that scenarios should be reproduced when applicable and presented in boxes for the benefit of the readers. It was also suggested that the draft Practice Guide should indicate the nature of the parties involved in those secured transactions (for example, Manufacturer or Borrower X; Bank or Financier Y) in the scenarios to avoid any confusion.

21. With regard to the scenario in paragraph 69, it was suggested that more complicated examples should be provided at the outset of the draft Practice Guide to illustrate different opportunities provided by the Model Law. However, it was also suggested that a simple transaction would be more useful to illustrate the fundamental steps required in the Model Law, in other words, how to create a security right and make it effective against third parties. The fact that some of those requirements might be novel in certain jurisdictions was highlighted. It was also noted that more complex types of examples could be developed based on the scenario in paragraph 69.

1. Secured transactions under the Law: The fundamentals (A/CN.9/WG.VI/WP.77, paras. 70–89)

22. The Working Group decided to consider the scenario in paragraph 69 within the context of Chapter II.A.

How to create a security right

23. It was felt that paragraphs 70 to 74 could be abbreviated to focus on practical aspects required to create a security right. For example, it was noted that the issues addressed in paragraphs 72 to 74 could be included in the scenario or be mentioned more briefly.

24. In response, it was said that the draft Practice Guide would need to address those issues (the possibility that the grantor may not necessarily have ownership, that a party other than the debtor may grant a security right and the creation of a security right over a future asset), which might be novel in jurisdictions adopting the Model Law. It was further mentioned that those aspects were currently mentioned in general terms in Chapter I.

25. Subject to its further discussion on Chapter I, the Working Group agreed that paragraphs 70 to 74 should be revised to briefly outline how parties could create a security right under the scenario in paragraph 69.

How to make a security right effective against third parties

26. Similar to its approach taken above, the Working Group agreed that paragraphs 75 to 89 should avoid a lengthy discussion on the legal aspects and focus instead on the steps to be taken by parties to achieve third-party effectiveness with reference to the scenario in paragraph 69, namely, that a security right can be made

effective against third parties by registering a notice, that registration of a notice can take place at any time, and that taking possession of the asset was not appropriate for that scenario. The Working Group agreed to further consider the issues after its consideration of Chapter I.

2. Different types of financing facilitated by the Model Law (A/CN.9/WG.VI/WP.77, paras. 90–128)

General aspects

27. With respect to Chapter II.B, the following suggestions were made:

(a) Financing based on all assets of the grantors should be included as a type of financing facilitated by the Model Law and further explained;

(b) Sophisticated transactions like securitization, value chain arrangements, and supply chain financing should not be dealt with in the Practice Guide or should only be mentioned briefly;

(c) Issues arising from agriculture value chains could be briefly mentioned in Chapter II.C;

(d) Focus should be on new transactions that were made possible with the enactment of the Model Law as well as improvements brought forth by such enactments;

(e) There was a need for the Practice Guide to provide some examples of secured transactions involving certain types of assets, such as bank accounts and financial instruments, while noting the comprehensive scope of the Model Law;

(f) The use of intermediated securities as collateral should be mentioned because, although excluded from the scope of the Model Law, they constituted an important type of collateral. In that context, it was further suggested that the use of non-intermediated securities, which fell within the scope of the Model Law, should be illustrated in detail; and

(g) Including examples of consumer financing should be considered, although the main focus of the Practice Guide should continue to be to provide guidance to businesses.

28. After discussion, the Working Group agreed that:

(a) In providing illustrations of transactions, emphasis should be given to their security aspects and the application of the Model Law to such transactions, rather than to their financing aspects;

(b) Examples should be presented at the outset of each transaction for the benefit of the readers;

(c) The list to be provided should not be presented as an exhaustive list of transactions possible under the Model Law;

(d) An illustration of secured transactions involving all assets of the grantor should be included as a separate section after the section dealing with acquisition financing;

(e) Sophisticated financing techniques (for example, securitization, project financing, value chain arrangements, and supply chain financing) should be mentioned as possible transactions but not explained in detail;

(f) The use of intermediated securities as collateral, though excluded from the scope of the Model Law, could be mentioned to draw the attention of the readers to the fact that intermediated securities were commonly used for security purposes and thus constituted an important type of collateral;

(g) In contrast, illustrations should be provided for how financing using non-intermediated securities as collateral (including in the context of corporate groups) was facilitated by the Model Law; and

(h) Acknowledging that the focus of the Practice Guide was secured lending to businesses, financing to individuals for personal, family and household purposes could be mentioned as an example under the section dealing with acquisition financing.

Acquisition financing

29. With respect to acquisition financing, it was agreed that:

(a) A number of different examples of acquisition financing should be introduced at the outset, which would include a sale on retention-of-title terms, acquisition financing of intellectual property, as well as those involving different types of lenders;

(b) The non-unitary approach as discussed in the UNCITRAL Legislative Guide on Secured Transactions Guide (as well as the terms "unitary" and "non-unitary") would not be dealt with in the Practice Guide; instead, examples would highlight that the approach of the Model Law made it possible to achieve substantially the same outcomes as might have been available in prior law; and

(c) The notion of super-priority should be described briefly with a few simple examples on how to obtain such super-priority.

Inventory and receivable revolving loan financing

30. With respect to inventory and receivable revolving loan financing, it was agreed that:

(a) As this type of secured transaction may be novel in a number of jurisdictions, more detailed information could be provided on the requirements for, and the consequences of, those transactions;

(b) While technical terms may be introduced and used when appropriate, use of terms like "borrowing base", which might not be known in many jurisdictions, should be avoided and instead be described in general terms; and

(c) In the example provided in paragraph 110, references should be made that: (i) it would be common to also create a security right in bank accounts; and (ii) a control agreement would not always be needed as the deposit-taking bank would in many cases be the lender itself.

Factoring

31. With respect to factoring, it was agreed that the section should deal broadly with financing based on outright transfers of receivables, of which factoring was one common example. It was further agreed that, with regard to factoring on recourse and non-recourse bases, the section should explain why and how the Model Law would apply to both instances, as currently described in paragraphs 23 and 24 of document A/CN.9/WG.VI/WP.77.

Securitization

32. In accordance with its previous decision (see para. 28(e) above), the section on securitization should be deleted.

Term loan financing

33. Considering that the Working Group decided to include in Chapter II.B transactions encumbering all assets of the grantor (see para. 28(d) above), it was agreed that there was no need to retain the section on term loan financing. In support,

it was stated that term loan financing did not raise any issues unique to secured transactions that merited specific attention in the draft Practice Guide.

Sale and leaseback transactions

34. It was agreed that sale and leaseback transactions should not be presented as a distinct type of transaction in Chapter II.B and that the draft Practice Guide should simply provide an explanation as to how those transactions would fit into the scheme of the Model Law, which provided a functional approach. It was suggested that certain aspects of those transactions could be mentioned in the section dealing with acquisition financing (see para. 98 of document A/CN.9/WG.VI/WP.77).

Financing practices involving negotiable documents and instruments

35. With regard to financing practices involving negotiable documents and instruments, it was agreed that the section should be revised to focus on secured lending based on negotiable documents and to provide more practical guidance (for example, on the possibility of achieving third-party effectiveness through possession of the negotiable document). It was further agreed that the draft Practice Guide would note the possibility of using negotiable instruments for security purposes along with other types of assets. In that context, it was suggested that the rights of a secured creditor in possession of a negotiable instrument in States party to the Geneva Uniform Law and the Bills and Notes Convention could be addressed in Chapter I.E.

Financing related to intellectual property

36. With regard to financing involving intellectual property, it was agreed that:

(a) The section should be re-organized to highlight the benefit that the Model Law introduced with regard to the financing involving intellectual property;

(b) The section should not present the types of transaction involving intellectual property as falling into two broad categories, but rather provide a typical example of such transaction which could include different types of intellectual property (for example, patents and copyrights); and

(c) The section should also touch upon the fact that intellectual property might be included in the pool of assets when a security right was granted over all assets of the grantor and in that context, possibly explain that a security right over a tangible asset with which an intellectual property might be associated would not extend to the intellectual property, unless agreed by the parties.

37. With respect to the suggestion that the section should highlight the interaction of the Model Law with the law relating to intellectual property as found in article 1(3)(b) of the Model Law, it was noted that the draft Practice Guide included a general discussion on the interaction of the Model Law with other laws of a State in Chapter I.E. Therefore it was suggested that this section should describe how article 1(3)(b) of the Model Law could facilitate the use of intellectual property as collateral.

38. As a drafting point, it was suggested that the use of the term “company” should be avoided in the draft Practice Guide, as many grantors might not take such a legal form.

3. Due Diligence — a key preliminary step for secured financing (A/CN.9/WG.VI/WP.77, paras. 129–167)

Introduction

39. With respect to introductory paragraphs 129 to 135, it was felt that they could be simplified while highlighting that the appropriate level of due diligence might vary depending on the type of secured transaction.

40. The Working Group then considered whether and to what extent the draft Practice Guide should address over-collateralization. It was generally felt that the draft Practice Guide should not address different policy approaches to over-collateralization, as the Model Law had not taken a position on the matter and as the notion of over-collateralization was unclear and understood differently in various jurisdictions. It was noted that in some States, a security right encumbering too much collateral could be deemed null or its enforcement jeopardized through the operation of other laws. Therefore, it was suggested that issues relating to over-collateralization should be addressed in Chapter I.E dealing with the interaction of the Model Law with other laws, alerting lenders that their security right could be impacted.

41. It was further noted that there was no provision in the Model Law that restricted over-collateralization, but rather that the Model Law made it possible for a secured creditor to create a security right over a broad range of assets (including all assets of the grantor) in a simple fashion. It was stated that this could result in the lender not properly conducting due diligence. Therefore, it was suggested that the draft Practice Guide should provide ample guidance to lenders that taking a security right in all assets of the grantor should not be a substitute for conducting due diligence. In that context, it was pointed out that the draft Practice Guide should describe ways to ensure that due diligence could be conducted in an effective manner.

42. During the discussion, it was pointed out that while the Model Law allowed a borrower to grant a security right over the remaining value of the collateral to other creditors, it could, in practice, be difficult to do so, which raised concerns about access to credit in certain jurisdictions. In that vein, it was suggested that the matter could be addressed in the chapter dealing with regulatory aspects. In relation, reference was made to article 6(3)(d) of the Model Law, which provided States the option of requiring that the security agreements state the maximum amount for which the security right could be enforced. It was explained that the underlying rationale of that option was to facilitate grantor's access to secured financing from other creditors when the value of the assets encumbered by the prior security right exceeded the maximum amount agreed to by the parties in their security agreement.

43. After discussion, the Working Group agreed that the draft Practice Guide should not include any policy discussion on over-collateralization. It was further agreed that so as to provide practical guidance, Chapter I.E would indicate that as laws or jurisprudence in certain States might penalize lenders for taking excessive collateral for a given loan, lenders should take due caution. It was also agreed that Chapter II.C would instead highlight the importance of lenders to conduct proper due diligence, even when their loan was sufficiently secured by collateral, including when all assets of the grantor were encumbered. It was further agreed that means to conduct cost and time-effective due diligence could be mentioned.

Due diligence on the borrower and other grantors

44. With respect to the section on due diligence on the borrower and other grantors, it was agreed that the focus should be on aspects of due diligence specific to secured lending and not lending in general. It was also widely felt that the section should not give the impression to lenders that due diligence was required under the Model Law (as it might increase transaction costs) but rather that it would be prudent to conduct due diligence to ensure the effectiveness of their security right. It was also agreed that the section should make it clear that the Sample Certificate provided in the annex was not a standard to be followed but merely an example that could be adjusted depending on the type of borrower and other circumstances. The Working Group further agreed that detailed explanation of the different parts of the Sample Certificate could be included as annotations in the annex.

Due diligence on the collateral

45. With regard to the list provided in paragraph 147, it was generally felt that the list sufficiently covered matters to be covered by lenders in undertaking due diligence on the collateral. In line with its deliberations (see paras. 40 and 43 above), the Working Group agreed that the list could include the need for lenders to assess whether there were possibly other laws (or decisions by courts) that could impact the efficacy of the security right they purported to obtain. It was suggested that reference could be made to article 6(3)(d) of the Model Law.

46. With regard to section 3 of the Sample Certificate, it was agreed that the list contained therein should include a wide variety of possible assets and at the same time, highlight common assets that businesses could provide as collateral.

47. With respect to paragraphs 149 to 151, it was agreed that the need for lenders not only to verify the rights that a grantor had in the asset but also to assess the nature and the extent to which such rights would serve as appropriate security should be highlighted. It was further agreed that paragraph 151 could include an example of how lenders would verify the rights of the grantor in intellectual property, both registered and unregistered.

48. With respect to paragraphs 152 to 157, it was agreed that they should illustrate the following points in practical terms:

(a) The need to ascertain the existence of conflicting security rights including with regard to acquisition financing;

(b) Measures to be taken by a potential lender when it identified the existence of competing security rights or other rights in the asset (for example, terminating the transaction, requesting a cancellation notice or a subordination agreement);

(c) That search of the Registry might not always be sufficient as possession and control agreements were other means to achieve third-party effectiveness in the Model Law;

(d) Guidance on how lenders could verify possession of the asset at a given time as well as continuity in possession; and

(e) Measures to be taken when the asset had been acquired by the potential grantor (for example, inquiring whether the asset was acquired in the ordinary course of business) as well as when the asset might be proceeds and thus subject to a competing security right.

49. With respect to paragraphs 158 and 159, it was agreed that they should be moved closer to paragraphs 148 to 151.

50. With regard to paragraphs 160 and 161, it was agreed that they should highlight that the valuation methods of the collateral would differ depending on the types of asset and also depending on whether the secured creditor would dispose of the asset (for example, inventory) or collect it (for example, receivables). It was agreed that more guidance should be provided to lenders on how to value the assets bearing in mind that the valuation would depend largely on what the lender could recover upon default of the grantor in a disposition of the collateral that might take place under conditions of a forced sale. It was further stated that paragraph 161, which dealt with the administrative aspects of the revolving facility, should be revised to focus on the valuation of the income stream of the borrower in the case of an all asset security right.

51. With regard to paragraph 162, it was agreed that emphasis should be made that a prudent lender should determine whether the collateral was adequately insured, while not giving the impression that the Model Law required collateral to be insured, as insurance might not be readily available. It was further agreed that the discussion on how a security right extended to insurance proceeds under the Model Law and how the secured creditor could make arrangements to exercise such rights could be explained in more detail. It was also suggested that the paragraphs could note the

possibility of creating a security right over insurance proceeds as original collateral. It was further agreed that paragraph 163 could be deleted.

52. With regard to paragraphs 164 to 167, it was agreed that there was a need to distinguish and explain why a lender would need information as to the place of central administration of the borrower, the location of the collateral, and the name and address of the depositary bank. It was further agreed that paragraphs 165 and 166 should be deleted or placed in Chapter II.G dealing with the enforcement of a security right.

53. At the end of its discussion on Chapter II.C, the Working Group agreed that the draft Practice Guide should contain a separate section illustrating the importance of continued monitoring as part of due diligence before and after closing the deal. In conjunction, it was stated that that section could particularly highlight aspects that lenders would need to take into account when engaging in secured transactions with micro-businesses, as relevant information might not be publicly available and such businesses were more likely to change identifiers.

4. Searching the registry (A/CN.9/WG.VI/WP.77, paras. 168–175)

Why and when to search?

54. It was felt that paragraphs 168 and 169 were primarily focused on the perspective of a lender. In that context, it was agreed that they should also address the need as well as reasons for third parties (such as buyers, the grantor's judgment creditors and insolvency representatives) to conduct a search of the Registry.

55. With regard to paragraph 169, it was noted that the circumstances might differ depending on which option in article 38 of the Model Law a State enacted. In that sense, it was agreed that the paragraph should be clarified.

How to search?

56. With respect to close match registry systems, it was noted that a searcher would first verify whether the search result revealed notices pertaining to the potential grantor and then verify whether the collateral mentioned in those notices were relevant. It was agreed that paragraph 172 including the last sentence should be revised to clarify those points.

57. With respect to paragraph 173, it was agreed that the draft Practice Guide should advise the secured creditor to register an amendment notice where the name of the grantor changed after the registration of a notice. It was also agreed that the draft Practice Guide should address circumstances where the encumbered asset had been transferred.

Searches in other registries

58. It was agreed that the draft Practice Guide should list examples of other registries where the lender would typically have to conduct a search. It was also agreed to modify paragraph 174 to reflect the point that a potential lender would need to conduct a search of all relevant registries whether or not the assets fell within the scope of the Model Law if they were to be included in the security agreement.

5. Preparing the security agreement (A/CN.9/WG.VI/WP.77, paras. 176–187)

59. With respect to paragraphs 176 to 187, it was agreed that:

(a) Those paragraphs should be restructured to focus on compliance with legal requirements under the Model Law on one hand and on best practices from a practical perspective on the other;

(b) The requirement that the written security agreement be signed by the grantor should be mentioned;

(c) The Sample Agreement as provided in the annex should be introduced earlier in the section to allow for references to be made;

(d) Consistent with the decision on the Sample Certificate (see para. 44 above), the Sample Agreement should be presented as an example, which would need to be adjusted depending on the type of transaction; and

(e) The description of how the principle of party autonomy operated in the Model Law in paragraph 186 should be improved.

60. Considering the functional approach taken in the Model Law, it was noted that retention-of-title or financial lease agreements would also need to be in writing to constitute a valid security agreement under the Model Law.

6. Registration of a notice in the Registry (A/CN.9/WG.VI/WP.77, paras. 188–230)

How and where to register and who should register?

61. It was agreed that paragraphs 188 to 192 should be restructured to address separately the questions of who should register, where to register and how to register. It was agreed that the "notice-based" registry system should be briefly outlined in that context as it might be novel to some readers. With regard to the question of where to register, it was agreed that the draft Practice Guide would note to lenders that they might need to register in a registry other than the general security rights registry and in certain circumstances, in a registry of another State. In relation, it was mentioned that reference could be made to the list of registries that would be provided in Chapter II.D (see para. 58 above).

Information to be included in an initial notice

62. With regard to paragraphs 195 to 205, it was agreed that they should briefly list the information required in an initial notice without providing too much explanation. In that context, it was agreed that attention should also be drawn to information that a registrant might prefer not to include in notices (for example, security agreements, invoices or documents with proprietary or confidential information), as they would be made public through the Registry. It was agreed that the example in paragraph 204 should be retained as it provided useful guidance.

Registration of an amendment notice

63. With regard to paragraph 211, it was agreed that the paragraph should explain that the new secured creditor (which was assigned a security right) would have an interest in registering an amendment notice, as it would want to avoid the previous secured creditor (which assigned its security right) inadvertently registering an amendment or cancellation notice.

Proceeds

64. With regard to paragraphs 214 to 216, it was agreed that they should be retained in Chapter II.F, possibly incorporating certain aspects mentioned in paragraphs 87 to 89 of document A/CN.9/WG.VI/WP.77. It was agreed that the revised paragraphs should distinguish more clearly when an amendment notice needed to be registered with regard to proceeds and when it was not necessary, using examples of different types of proceeds.

65. With regard to paragraph 217, it was suggested that the second sentence should be further clarified. With regard to paragraph 219, it was suggested that the last sentence should highlight that the secured creditor would need to ensure that it was informed of any expiry of registrations.

66. With regard to the three options provided in article 26 of the Model Registry Provisions dealing with post-registration transfer of the encumbered asset, it was agreed that the draft Practice Guide should further elaborate on what the secured

creditor would need to do under each option. The Working Group agreed that the placement of such text would be determined at a later stage.

What are the obligations of the secured creditor with regard to registration

67. It was suggested that the second sentence of paragraph 220 be re-drafted to state that a grantor's written authorization could be obtained in a simple manner and not provide an implication that such requirement would impede the efficiency of the registration process. It was suggested that paragraph 221 should include cross-references to paragraphs 222 and 223, as they described safeguard measures for grantors in the circumstance described in paragraph 221.

68. It was agreed that the draft Practice Guide could include sample forms for authorizing registration of a notice and for requesting the registration of an amendment or cancellation notice in the annex.

Registration inadvertently amended or cancelled

69. With respect to paragraph 230, it was agreed that the draft Practice Guide could describe how a secured creditor would need to address registration inadvertently amended or cancelled in accordance with the different options provided in article 21 of the Model Registry Provision. The Working Group agreed that the placement of such text would be determined at a later stage.

7. Priority competitions

70. After discussion, the Working Group agreed to include a separate section on priority competitions in Chapter II, which would consolidate relevant parts from Chapters I and II. Considering the wide range of priority competitions that could arise, it was agreed that some typical examples would be provided illustrating how the provisions of the Model Law would resolve such competitions.

8. How to enforce a security right (A/CN.9/WG.VI/WP.77, paras. 231–263)

Notion of default and enforcement

71. It was stated that default did not necessarily trigger the enforcement of a security right by a creditor. Therefore, it was agreed that the section should begin with a generic description of what would generally constitute default (including the insolvency of the debtor or grantor, and commencement of enforcement by a lower-ranking secured creditor) and further explain options available to secured creditors (including the assignment of the security right). It was further agreed that some discussion on issues that arose in the context of enforcement of security rights against micro-businesses could be mentioned.

72. The Working Group agreed that the introductory paragraphs of the section on enforcement would state that enforcement may differ depending on the type of assets and that corresponding examples would be provided.

Terminating and taking over the enforcement process

73. It was agreed that the paragraphs dealing with termination of and taking over enforcement process could be placed at the end of the section on enforcement. It was further agreed that paragraphs 234 and 235 should more accurately reflect the rule in article 75 of the Model Law, which referred to "affected persons".

Obtaining possession of the collateral

74. With respect to paragraphs 242 and 243, it was agreed that judicial and extrajudicial means of obtaining possession should be presented in a neutral fashion.

75. In response to concerns raised about the appropriateness of paragraph 245 in the draft Practice Guide (based on the idea that seizing several or all assets of the grantor might be a sensible business decision), it was agreed that the enforcement section

would instead include a paragraph highlighting that the general standards of conduct in article 4 of the Model Law also applied to enforcement of a security right and that secured creditors were thus expected to exercise their rights in good faith and in a commercially reasonable manner during enforcement.

Disposition of the collateral

76. It was agreed that more practical advice should be given with regard to steps to be taken by the secured creditor in disposing the encumbered asset (including ways to identify or, in certain cases, create secondary markets). It was mentioned that the first sentence of paragraph 246 could be re-phrased to better reflect the expectation of the secured creditor and that the paragraph as a whole should mention that a secured creditor could also dispose of receivables and other intangible assets.

Leasing or acquisition of the collateral and collection of payment

77. It was generally felt that the section on enforcement should set out the different options available to a secured creditor separately and in a neutral fashion, explaining why the secured creditor might wish to dispose of, lease, license or acquire the encumbered asset. As discussed (see para. 72 above), it was agreed that the draft Practice Guide should set out the different enforcement options available for certain assets, for example, that a secured creditor might wish to dispose of receivables in certain cases or collect payment in other cases. With regard to paragraph 257, it was agreed that the operation of article 80(4) and (5) of the Model Law should be described in more detail.

78. The Working Group agreed to include sample templates of payment instructions in the annex.

Distribution of proceeds and rights of the buyer or other transferee of the collateral

79. It was agreed that paragraphs 260 to 264 should be presented together. It was agreed that those paragraphs would explain that disposition could be done judicially or extrajudicially and further explain how the distribution of proceeds as well as the rights of the buyer or other transferees would differ in each circumstance.

9. Transition (A/CN.9/WG.VI/WP.77, paras. 265–267)

80. It was widely felt that the section on transition should be further elaborated to provide more practical guidance to parties when a new secured transaction law had been enacted based on the Model Law. It was noted that transactions that were primarily impacted by the transition provisions of the Model Law were those that were entered into before the effective date of the new law.

81. It was agreed that more examples in addition to the one provided in paragraph 267 should be provided also drawing upon the experience of States that had gone through such transition. It was also agreed that the draft Practice Guide should touch upon issues relating to the enforcement of a prior security right.

82. It was further agreed that paragraph 266 should be clarified that while the third-party effectiveness of a prior security right might be preserved, priority of that security right as against the rights of competing claimants would need to be determined in accordance with article 106 of the Model Law.

10. Cross-border transactions (A/CN.9/WG.VI/WP.77, paras. 53–58 and 268–281)

83. The Working Group agreed that issues that arose from cross-border transactions should be dealt with collectively in the draft Practice Guide and thus decided to consolidate Chapter I.F into Chapter II.I. It was noted that cross-border secured transactions often raised very complex questions, particularly due to the diversity of the circumstances and of the laws that could be applicable (including laws of other States that might not have enacted the Model Law or not have included the conflict-of-laws provisions). In that context, it was agreed that the section should not

aim to provide comprehensive guidance but rather a general overview of the relevant issues through examples.

84. It was agreed that the section should first explain and emphasize why lenders would need to determine the law(s) that would be applicable to the creation, third-party effectiveness (including in which State to register), priority and enforcement of a security right as well as in the case of the grantor's insolvency. It was stated that the key message to be delivered was that lenders would need to take into account laws of other jurisdictions when they engaged in secured transactions that might have a cross-border element.

C. Introduction (A/CN.9/WG.VI/WP.77, paras. 1–67)

85. After completing its consideration of Chapter II (see paras. 19–84 above), the Working Group then considered Chapter I, which provided an introduction to the draft Practice Guide. It was agreed that:

(a) Paragraphs 1 to 8 should be retained in Chapter I;

(b) Paragraphs 9 and 10 should be placed elsewhere in the draft Practice Guide and paragraph 10 revised to briefly mention the United Nations Convention on the Assignment of Receivables in International Trade;

(c) Paragraphs 11 to 16, though shortened, should be retained in Chapter I and also highlight that the Model Law provided for the creation of a security right over all assets of the grantor;

(d) Paragraph 11 should include current statistical data, if available, or examples of reforms taken by States to illustrate that the enactment of the Model Law had a positive impact on access to credit;

(e) Paragraphs 17 to 18 should be retained in Chapter I to briefly outline the nature of a security right under the Model Law including that a secured creditor would have priority over unsecured creditors;

(f) Paragraphs 19 to 24 should be retained in the draft Practice Guide as they provided useful guidance, but placed elsewhere;

(g) The draft Practice Guide should use terminology used in the Model Law to the extent possible;

(h) Paragraph 25 should be retained in Chapter I, giving particular emphasis to transactions that might not have been possible prior to the enactment of the Model Law;

(i) Paragraphs 26 to 29 should be placed in the new section dealing with priority (see para. 10 above) and paragraph 27 should accurately reflect article 29 of the Model Law with regard to priority competition between security rights that were made effective against third parties by registration of a notice, which was determined by the order of registration;

(j) Paragraphs 30 and 31 should be retained in Chapter I;

(k) Paragraphs 32 to 42 should simply set out the benefits and key features of the Registry, with detailed explanations placed elsewhere in the draft Practice Guide;

(l) The Glossary in paragraph 45 should be further developed and placed in the annex; in relation, the definitions should not simply repeat those found in the Model Law but be more descriptive and include examples, where appropriate;

(m) With regard to paragraphs 46 to 52, a short paragraph drawing the attention of the readers to the interaction of the Model Law with other laws of States should be retained in Chapter I, with the remaining paragraphs further elaborated and placed elsewhere in the draft Practice Guide;

(n) In accordance with the decision (see para. 83 above), paragraphs 53 to 58 would be consolidated with Chapter II.I; and

(o) With regard to paragraphs 59 to 67, Chapter I would include a few paragraphs on the specific features of, and typical transactions engaged in by, very small businesses and on the advantages that the Model Law provided for secured lending to such businesses; in relation, relevant transactional aspects relating to very small businesses would be dealt with in the respective sections of Chapter II.

D. The interaction between the Model Law and the prudential regulatory framework (A/CN.9/WG.VI/WP.77, paras. 282–304)

86. With regard to Chapter III in general, some doubts were expressed about its target audience. However, there was continued support for the inclusion of Chapter III in the draft Practice Guide, and that it be addressed primarily to financial institutions, as a way to ensure that the Model Law achieved its objective of increasing access to credit using movable assets as collateral and to ensure that financial institutions were informed of relevant considerations.

87. After discussion, it was agreed that Chapter III would be retained in the draft Practice Guide, be brief to the extent possible, explain the approaches in a neutral fashion, and be explanatory to set out the issues to be considered. The Working Group took note of a number of suggestions with regard to the drafting as well as the substance of Chapter III and requested the Secretariat to revise the Chapter accordingly for consideration at its next session.

E. Annex of the draft Practice Guide

88. With regard to the Sample Agreement and Sample Certificate provided in the annex of the draft Practice Guide, it was agreed that considering that they were supposed to provide examples rather than model templates, they could be simplified and presented in a neutral manner to accommodate various legal traditions. A number of suggestions received support and the Secretariat was requested to prepare additional samples (see paras. 68 and 78 above), within the resources permitting, for consideration by the Working Group at its next session.

V. Future work and other issues

89. The Working Group agreed to recommend to the Commission that its next session scheduled in Vienna be held from 17 to 21 December 2018 instead of the currently proposed dates of 26 to 30 November 2018.

90. Noting that the Working Group would likely be in a position to submit the draft Practice Guide for adoption by the Commission at its fifty-second session in 2019, the Working Group engaged in a discussion on possible future work for consideration by the Commission.

91. It was recalled that the Commission, at its fiftieth session, had retained in its future work agenda the topics of warehouse receipts, intellectual property licensing, and alternative dispute resolution for further discussion without assigning any priority to them (A/72/17, para. 229).

92. At this session, the Working Group took note of a proposal from the Governments of the United States of America and Mexico that work should be undertaken to prepare a substantive text on warehouse receipts, which would provide a modern and predictable legal framework. The desirability and feasibility of undertaking such work were highlighted and it was further suggested that such work should be undertaken in cooperation with other international and regional organizations that have been involved on the topic.

93. After discussion, the Working Group agreed to recommend to the Commission that it be mandated to undertake work as set out in the annex to this report.

94. The Working Group took note of an additional proposal that the Commission might wish to consider work on digital architectures in respect of secured transactions (including distributed ledgers, blockchain, smart contracts, and internet of things). It was felt that such work, which would build on and supplement the work of the Commission in the area of security interests, could further facilitate access to credit based on modern digital technology. It was suggested that the work on digital architectures could be conducted concurrently with the work on warehouse receipts. In response, it was mentioned that additional information might need to be provided to the Commission for it to fully consider the topic as possible future work.

95. After discussion, the Working Group also agreed to recommend to the Commission that work on digital architectures in respect of secured transactions be placed on its future work agenda, taking into account any additional information that might be provided for its consideration of the topic.

Annex

Proposal for Working Group VI to work on preparing a substantive text on warehouse receipts

I. Introduction

At the Fourth UNCITRAL International Colloquium on Secured Transactions (15–17 March 2017), experts recommended developing a modern general framework for the issuance, transfer and cancelation of warehouse receipts including: the duties and rights of issuers as well as holders of warehouse receipts; the mechanics of transferring warehouse receipts and the nature of rights that may be acquired by transferees under negotiable and non-negotiable documents; enforcement; clear rules addressing allocation of losses in case of a shortage; as well as rules concerning third party effectiveness of security rights in warehouse receipts, especially electronic warehouse receipts.[1]

Colloquium experts discussed both the desirability and feasibility of developing a legislative text on warehouse receipts in UNCITRAL. Colloquium experts pointed out that while the elaboration of rules and guides to promote access to credit and facilitate international trade has been on UNCITRAL's agenda for decades, no consideration has yet been given to modernizing and harmonizing the law relating to warehouse receipts. A legal instrument on warehouse receipts would allow many businesses to benefit from a predictable and modern legal framework that facilitates sales of warehouse receipts, as well as increasing access to credit by facilitating their use as collateral for loans, both of which are increasingly international. Application of this framework would not be limited to agricultural producers, but would equally benefit traders and processors that deal, for instance, with minerals or general inventory. The international trade aspect of this project has become important in recent years due to the development of supply and value chains that rely on adequate storage of commodities whose sales eventually generate receivables. UNCITRAL's work in developing legislative frameworks for negotiable documents in other contexts provides a natural basis for it to engage in developing a legal framework for warehouse receipts. A new UNCITRAL text on warehouse receipts would build on the UNCITRAL Model Law on Secured Transactions, which already contains rules on the third-party effectiveness, priority, enforcement, etc. of security rights in negotiable documents, including warehouse receipts.[2]

The proposal to have UNCITRAL engage in work on warehouse receipts attracted support among colloquium participants. It is, therefore, proposed that UNCITRAL engage in work on warehouse receipts along the lines suggested by colloquium experts. Any work on the subject should be conducted in consultation with other international organizations that have been involved in warehouse receipts projects and supply chain finance, especially Unidroit, the United Nations Conference on Trade and Development (UNCTAD), the World Bank, the Food and Agriculture Organization (FAO), the European Bank for Reconstruction and Development (EBRD), and the Organization of American States (OAS).

[1] See Note by the Secretariat, Possible future legislative work on security interests and related topics, 20 April 2017, A/CN.9/913, paras. 45–53 (providing a summary of the colloquium results on warehouse receipts). At its 50th Session, the Commission decided that work on warehouse receipts should be retained in its future work program. The United States stated that it intended to present a paper on warehouse receipts for consideration at a future session. See *Official Records of the General Assembly, Seventy-second Session, Supplement No. 17* (A/72/17), paras. 219–20, 225, 229.

[2] Marek Dubovec and Adalberto Elias, *A Proposal for UNCITRAL to develop a Model Law on Warehouse Receipts*, Uniform Law Review, Vol. 22 (2017), at 727–730.

II. Desirability

A modern and harmonized warehouse receipts legal regime contributes directly to economic growth and development. Warehouse receipts have many important commercial uses, including to facilitate sales and distribution of commodities and to allow businesses to access credit. Warehouse receipts benefit producers and traders, whether those engaged in domestic or cross-border transactions, who may rely on the possession or control of a negotiable warehouse receipt to demonstrate ownership and security rights to the goods. Their ability to sell and encumber warehouse receipts is a function of a predictable and certain legal framework. Warehouse receipt financing allows exporters and importers of agricultural commodities or other assets to access credit using warehouse receipts as collateral. Warehouse receipts are key components of supply chain financing when the chain of commerce involves highly merchantable "dry" commodities, goods or metals. Warehouse receipt financing is also important for smaller-size producers and traders who might otherwise struggle to access finance. These small businesses, often operating in emerging markets in Asia, Africa or South America, may be turned down while trying to borrow from banks because they do not otherwise have enough or acceptable collateral.[3]

As the colloquium experts noted, a significant majority of economies, especially in the developing world, lack any warehouse receipts legislation or have severely outdated frameworks.[4] As a result, warehouse receipts are underutilized as a tool for gaining access to credit, whether domestically or in international trade.[5]

UNCTAD reports that the primary barrier to the introduction of warehouse receipts financing is a lack of enabling legislation.[6] A joint study by the FAO and the EBRD has concluded that "a supportive legal framework is a common precondition for confidence in and acceptance of warehouse receipts for producers, credit providers, and market participants."[7] The World Bank reports that "… an effective legal framework for warehousing and documents of title is a crucial component of a healthy agricultural sector and business climate."[8] The International Finance Corporation ("IFC") further reports that warehouse receipts financing provides an important "avenue for banks to increase their penetration of local credit markets."[9]

---

[3] See Fred Heritage, *What are warehouse receipts and why are they so important?*, Business Advice (June 2017).

[4] Note by UNCITRAL Secretariat, *supra* note 1, para 48; see also Dubovec and Elias, *supra* note 2 at 729–730. The authors further explain the importance of a harmonized legal regime for warehouse receipts: "Even among economies that have adequate warehousing infrastructure and secondary markets, many still lack a modern law on warehouse receipts. The need is most evident in those economies that rely on agriculture to sustain economic growth. In addition, as developing economies mature and their actors get connected to global supply chains, warehouse receipts will play an increasingly important role in cross-border transactions. Coupled with the possibility of trading warehouse receipts internationally, modern secured transactions laws also increase their attractiveness to foreign lenders. The liquidity of warehouse receipts is further enhanced if the economy has established a commodity exchange for the trading and financing of electronic warehouse receipts."

[5] An effective warehouse regime requires both a reliable network of physical infrastructure with modern warehouses and a legal regime for warehouse receipts that inspires confidence among lenders. See Henry Gabriel, *Warehouse Receipts and Securitization in Agricultural Finance*, Uniform Law Review 2012 at 369 (2012).

[6] Note by the UNCTAD Secretariat, United Nations Doc. TD/B/C.1/MEM.2/10 (2010) at 9–10, available at http://unctad.org/en/Docs/cimem2d10_en.pdf.

[7] FAO & EBRD, Designing Warehouse Receipt Legislation: Regulatory Options and Recent Trends (2015), available at http://www.fao.org/3/a-i4318e.pdf; the foreword also states, "International experience shows that benefits are maximized when the receipt system is based on a well-designed and enabling legal framework that ensures integrity and transparency."

[8] World Bank, A Guide to Warehouse Receipts Financing Reform: Legislative Reform (2016), at 13 available at http://documents.worldbank.org/curated/en/885791474533448759/A-guide-to-warehouse-receipt-financing-reform-legislative-reform.

[9] IFC, Warehouse Finance and Warehouse Receipts Systems (2013), at 3. The report further highlights (at 2) that "banks in developing countries often remain overly liquid."

The World Bank's Enabling the Business of Agriculture finance indicators measure the quality of laws and regulations that promote access to financial services and food security, including a moveable collateral warehouse receipts index. They show that a substantial majority of States lack an adequate legal framework for warehouse receipts.

At a regional level, the OAS reports that "warehouse receipts are not widely used today in Latin America as a source of financing" and that "[o]ne reason appears to be the lack of a modern and harmonized approach to the relevant law."[10] An Asia Pacific Economic Cooperation Forum (APEC) survey demonstrates that warehousing "is still a nascent industry in the region which means large scope for growth" in part because of "the lack of laws on warehouse receipts, i.e. in many jurisdictions, warehouse receipts are not documents of title."[11] The APEC Secretariat has highlighted:

> "the need to improve warehousing capacity in the region through standard setting …, and if possible, the recognition of warehouse receipts as title documents … ."[12]

Both the OAS and APEC have reported that the lack of an adequate legal framework for warehouse receipts may be a contributing factor to a risk of fraud.[13]

Additionally, as has been widely recognized, a system of electronic negotiable warehouse receipts provides a number of advantages over paper based receipts including elimination of the need for physical endorsement, increased transparency, easier determinations of the holder through the registry, and security against fraud and mismanagement. The use of modern technology has the potential to significantly reduce the costs associated with designing an electronic warehouse receipts system that is registry based.[14]

The absence of a model legal framework presents challenges, including for cross-border supply-chain transactions. A number of international organizations, including the World Bank, the EBRD, FAO, and the OAS have examined and proposed mechanisms to address these challenges, such as by facilitating the adoption of warehouse receipts laws for the agriculture sector. But, as the UNCITRAL colloquium experts pointed out, no international or regional organization has adopted a model law on warehouse receipts, resulting in a lack of harmonization and ad hoc approaches.[15]

---

[10] OAS Inter-American Juridical Committee, Electronic Warehouse Receipts for Agricultural Products, *Principles for Electronic Warehouse Receipts for Agricultural Products*, at 1 available at http://www.oas.org/en/sla/iajc/docs/CJI-doc_505-16_rev2.pdf.

[11] APEC Secretariat, Regulatory Issues Affecting Trade and Supply Chain Finance (2015), at 13–14 available at http://mddb.apec.org/Documents/2015/SMEWG/SMEWG40/15_smewg40_007.pdf (reporting survey showing that with regard to the legal and regulatory framework, most of the firms cited lack of central registry for movable collateral which makes their lien priority uncertain [and] lack of laws on warehouse receipts i.e. in many jurisdictions, warehouse receipts are not documents of title." (footnotes omitted)).

[12] Id. at 4. See also APEC Economic Committee, Report by Hong Kong China, Mexico and the United States on Workshop on Supply Chain Finance and Implementation of Secured Transactions in a Cross-Border Context (August 20–21, 2016, APEC doc 2016/SOM3/EC/040) at 4 ("Another problem [causing underutilization of warehouse receipts] is the legal hurdle in the instrument itself, or more particularly, inherent in the legal system pursuant to which the instrument is issued.").

[13] See OAS, *supra* note 10 at 6 (under the dual document warehouse receipt system "there is potential for fraud and misuse."); APEC Secretariat, *supra* note 11 at ii ("Creditors find lack of title document … and fraudulent documents … as major problems").

[14] See Dubovec and Elias, *supra* note 2 at 730; FAO & EBRD, *supra* note 7, at 40; IFC, *supra* note 9, at 29–31; OAS, *supra* note 10 at 6.

[15] Dubovec and Elias, *supra* note 2 at 725–727.

III. Feasibility

UNCITRAL is well positioned to take the lead and formulate a model legal text on warehouse receipts that builds on the work of these other international agencies. UNCITRAL has substantial experience in developing legal texts on negotiable documents. The United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partially by the Sea (Rotterdam Rules) provides rules that facilitate the use of transportation documents, particularly bills of lading (the other main type of negotiable document). Additionally, the UNCITRAL Model Law on Electronic Transferable Records enables the use of electronic transferable records that are functionally equivalent to paper-based transferable documents, including warehouse receipts. For the security right aspects of warehouse receipts, the text would build on the principles, recommendations and model provisions enshrined in the UNCITRAL texts on security rights.[16]

IV. Conclusion

In conclusion we support establishing a working group to harmonize and modernize the legal framework on warehouse receipts. An UNCITRAL instrument on warehouse receipts would allow many businesses to benefit from a predictable and modern framework that facilitates sales of warehouse receipts, as well as their use as collateral for loans, whether domestically or in cross-border transactions. UNCITRAL is uniquely positioned to engage in this work.

[16] UNCITRAL Secretariat, *supra* note 1, para. 51.