



United Nations

Report of the United Nations Commission on International Trade Law

**Forty-sixth session
(8-26 July 2013)**

General Assembly
Official Records
Sixty-eighth session
Supplement No. 17

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I. Introduction

1. The present report of the United Nations Commission on International Trade Law (UNCITRAL) covers the forty-sixth session of the Commission, held in Vienna from 8 to 26 July 2013.
2. Pursuant to General Assembly resolution 2205 (XXI) of 17 December 1966, this report is submitted to the Assembly and is also submitted for comments to the United Nations Conference on Trade and Development.

II. Organization of the session

A. Opening of the session

3. The forty-sixth session of the Commission was opened on 8 July 2013.

B. Membership and attendance

4. The General Assembly, in its resolution 2205 (XXI), established the Commission with a membership of 29 States, elected by the Assembly. By its resolution 3108 (XXVIII) of 12 December 1973, the Assembly increased the membership of the Commission from 29 to 36 States. By its resolution 57/20 of 19 November 2002, the Assembly further increased the membership of the Commission from 36 States to 60 States. The current members of the Commission, elected on 3 November 2009, on 15 April 2010, on 14 November 2012 and on 14 December 2012, are the following States, whose term of office expires on the last day prior to the beginning of the annual session of the Commission in the year indicated:¹ Algeria (2016), Argentina (2016), Armenia (2019), Australia (2016), Austria (2016), Belarus (2016), Botswana (2016), Brazil (2016), Bulgaria (2019), Cameroon (2019), Canada (2019), China (2019), Colombia (2016), Côte d'Ivoire (2019), Croatia (2016), Denmark (2019), Ecuador (2019), El Salvador (2019), Fiji (2016), France (2019), Gabon (2016), Georgia (2015), Germany (2019), Greece (2019), Honduras (2019), Hungary (2019), India (2016), Indonesia (2019), Iran (Islamic Republic of) (2016), Israel (2016), Italy (2016), Japan (2019), Jordan (2016), Kenya (2016), Kuwait (2019), Liberia (2019), Malaysia (2019), Mauritania (2019), Mauritius (2016), Mexico (2019), Namibia (2019), Nigeria (2016), Pakistan

¹ Pursuant to General Assembly resolution 2205 (XXI), the members of the Commission are elected for a term of six years. Of the current membership, 28 were elected by the Assembly on 3 November 2009, two were elected by the Assembly on 15 April 2010, 29 were elected by the Assembly on 14 November 2012 and one was elected by the Assembly on 14 December 2012. By its resolution 31/99, the Assembly altered the dates of commencement and termination of membership by deciding that members would take office at the beginning of the first day of the regular annual session of the Commission immediately following their election and that their terms of office would expire on the last day prior to the opening of the seventh regular annual session following their election. The following six States members elected by the Assembly on 3 November 2009 agreed to alternate their membership among themselves until 2016 as follows: Belarus (2010-2011, 2013-2016), Czech Republic (2010-2013, 2015-2016), Poland (2010-2012, 2014-2016), Ukraine (2010-2014), Georgia (2011-2015) and Croatia (2012-2016).

(2016), Panama (2019), Paraguay (2016), Philippines (2016), Republic of Korea (2019), Russian Federation (2019), Sierra Leone (2019), Singapore (2019), Spain (2016), Switzerland (2019), Thailand (2016), Turkey (2016), Uganda (2016), Ukraine (2014), United Kingdom of Great Britain and Northern Ireland (2019), United States of America (2016), Venezuela (Bolivarian Republic of) (2016) and Zambia (2019).

5. With the exception of Armenia, Botswana, Cameroon, Côte d'Ivoire, Fiji, Gabon, Greece, Jordan, Liberia, Mauritania, Sierra Leone and Zambia, all the members of the Commission were represented at the session.

6. The session was attended by observers from the following States: Afghanistan, Angola, Belgium, Bolivia (Plurinational State of), Burkina Faso, Chile, Cuba, Czech Republic, Dominican Republic, Finland, Guatemala, Lithuania, Malta, Netherlands, Poland, Qatar, Romania, Senegal, Slovakia, Slovenia, Sweden and Viet Nam.

7. The session was also attended by observers from the State of Palestine and the European Union.

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

(a) *United Nations system*: International Centre for Settlement of Investment Disputes, United Nations Conference on Trade and Development, Economic Commission for Europe and World Bank;

(b) *Intergovernmental organizations*: International Institute for the Unification of Private Law (Unidroit), Inter-Parliamentary Assembly of the Eurasian Economic Community, Permanent Court of Arbitration and World Customs Organization;

(c) *Invited non-governmental organizations*: American Arbitration Association and International Centre for Dispute Resolution, American Bar Association, Center for International Environmental Law, Center for International Legal Studies, European Law Students Association, Forum for International Conciliation and Arbitration, Institute of International Banking Law and Practice, Institute of Law and Technology (Masaryk University), Inter-American Bar Association, International Arbitration Institute, International Association of Lawyers, International Bar Association, International Insolvency Institute, International Institute for Sustainable Development, International Swaps and Derivatives Association, International Women's Insolvency and Restructuring Confederation, Madrid Court of Arbitration, Moot Alumni Association, National Law Center for Inter-American Free Trade, New York State Bar Association and Swiss Arbitration Association.

9. The Commission welcomed the participation of international non-governmental organizations with expertise in the major items on the agenda. Their participation was crucial for the quality of texts formulated by the Commission, and the Commission requested the Secretariat to continue to invite such organizations to its sessions.

C. Election of officers

10. The Commission elected the following officers:

- Chair:* Michael Schöll (Switzerland)
Vice-Chairs: Rodrigo Labardini Flores (Mexico)
Salim Moollan (Mauritius)
Hrvoje Sikirić (Croatia)
Rapporteur: Sukpuck Phongsathit (Thailand)

D. Agenda

11. The agenda of the session, as adopted by the Commission at its 958th meeting, on 8 July 2013, was as follows:

1. Opening of the session.
2. Election of officers.
3. Adoption of the agenda.
4. Consideration of issues in the area of arbitration and conciliation:
 - (a) Finalization and adoption of UNCITRAL rules on transparency in treaty-based investor-State arbitration;
 - (b) Consideration of instruments on the applicability of the UNCITRAL rules on transparency to the settlement of disputes arising under existing investment treaties;
 - (c) Preparation of a guide on the 1958 New York Convention;
 - (d) International commercial arbitration moot competitions.
5. Consideration of issues in the area of security interests:
 - (a) Finalization and adoption of the Technical Legislative Guide on the Implementation of a Security Rights Registry;
 - (b) Progress report of Working Group VI;
 - (c) Coordination in the field of security interests.
6. Consideration of issues in the area of insolvency law:
 - (a) Finalization and adoption of revisions to the Guide to Enactment of the UNCITRAL Model Law on Cross-Border Insolvency;
 - (b) Finalization and adoption of legislative recommendations on directors' obligations in the period approaching insolvency;
 - (c) Finalization and adoption of revisions to the UNCITRAL Model Law on Cross-Border Insolvency: the Judicial Perspective;
 - (d) Progress report of Working Group V.
7. Consideration of issues in the area of public procurement.

8. Online dispute resolution: progress report of Working Group III.
9. Electronic commerce: progress report of Working Group IV.
10. Technical assistance to law reform.
11. Promotion of ways and means of ensuring a uniform interpretation and application of UNCITRAL legal texts.
12. Status and promotion of UNCITRAL legal texts.
13. Coordination and cooperation:
 - (a) General;
 - (b) Reports of other international organizations;
 - (c) International governmental and non-governmental organizations invited to sessions of UNCITRAL and its Working Groups.
14. UNCITRAL regional presence.
15. Role of UNCITRAL in promoting the rule of law at the national and international levels.
16. Planned and possible future work, including in the areas of arbitration and conciliation, commercial fraud, electronic commerce, insolvency law, international contract law, microfinance, online dispute resolution, public procurement and infrastructure development, including public-private partnerships, and security interests.
17. Relevant General Assembly resolutions.
18. Other business.
19. Date and place of future meetings.
20. Adoption of the report of the Commission.

E. Adoption of the report

12. The Commission adopted the present report by consensus at its 965th meeting, on 11 July 2013, its 972nd meeting, on 17 July 2013, its 975th meeting, on 19 July 2013, and its 982nd and 983rd meetings, on 26 July 2013.

III. Consideration of issues in the area of arbitration and conciliation

A. Finalization and adoption of a revised version of the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration

1. Introduction

13. The Commission recalled the decision made at its forty-first session,² in 2008, and forty-third session,³ in 2010, namely that the topic of transparency in treaty-based investor-State arbitration should be dealt with as a matter of priority immediately after completion of the revision of the UNCITRAL Arbitration Rules.⁴ At its forty-third session, the Commission entrusted its Working Group II (Arbitration and Conciliation) with the task of preparing a legal standard on that topic. At its forty-fourth session, in 2011, the Commission reiterated its commitment expressed at its forty-first session regarding the importance of ensuring transparency in treaty-based investor-State arbitration.⁵

14. At its current session, the Commission had before it the reports of Working Group II (Arbitration and Conciliation) on the work of its fifty-seventh session, held in Vienna from 1 to 5 October 2012, and its fifty-eighth session, held in New York from 4 to 8 February 2013 (A/CN.9/760 and A/CN.9/765, respectively). It also had before it the text of the draft UNCITRAL rules on transparency in treaty-based investor-State arbitration, as it resulted from the third reading of those rules, at the fifty-eighth session of the Working Group, and as contained in document A/CN.9/783.

15. The Commission took note of the summary of the deliberations on the rules on transparency that had taken place since the fifty-third session of the Working Group, held in Vienna from 4 to 8 October 2010. The Commission also took note of the comments on the rules on transparency and on the proposed amendments to the UNCITRAL Arbitration Rules (as revised in 2010) that had been submitted by Governments, as set out in document A/CN.9/787 and its addenda.

2. Consideration of the draft UNCITRAL rules on transparency in treaty-based investor-State arbitration

Draft article 1: Scope of application

16. The Commission was reminded that, at its fifty-eighth session, the Working Group had expressed formal and unanimous support for a revised compromise proposal (A/CN.9/765, paras. 75 and 78), which included article 1, on the scope of

² *Official Records of the General Assembly, Sixty-third Session, Supplement No. 17* and corrigendum (A/63/17 and Corr.1), para. 314.

³ *Ibid.*, *Sixty-fifth Session, Supplement No. 17* (A/65/17), para. 190.

⁴ For the text of the UNCITRAL Arbitration Rules (1976), see *Official Records of the General Assembly, Thirty-first Session, Supplement No. 17* (A/31/17). For the text of the UNCITRAL Arbitration Rules (as revised in 2010), see *Official Records of the General Assembly, Sixty-fifth Session, Supplement No. 17* (A/65/17), annex I.

⁵ *Official Records of the General Assembly, Sixty-sixth Session, Supplement No. 17* (A/66/17), paras. 200-202.

application. On that basis, the Commission considered the drafting suggestions as contained in paragraphs 6 to 10 of document A/CN.9/783.

General

17. It was agreed to retain the structure and paragraph order of article 1.

Paragraph (2) chapeau; and new paragraph (9)

18. The Commission noted that paragraphs (1) and (2) addressed application of the rules on transparency to investor-State arbitration initiated under the UNCITRAL Arbitration Rules. The application of the rules on transparency in conjunction with other arbitration rules was dealt with indirectly under paragraph (7). For the sake of consistency with that provision, and to clarify that the rules on transparency could apply irrespective of the applicable arbitration rules, the Commission considered whether the words in brackets in paragraph (2), “[or (ii) in treaty-based investor-State arbitrations initiated under other arbitration rules or ad hoc]”, should be added in the chapeau of paragraph (2).

19. The view was expressed that the rules on transparency should be available for use in all forms of arbitration, whether under the UNCITRAL Arbitration Rules, under the arbitration rules of arbitral institutions or in ad hoc arbitration. The Commission took note of submissions by arbitral institutions as contained in document A/CN.9/WG.II/WP.173, in which they had indicated that their institutional arbitration rules could operate in conjunction with the rules on transparency should the parties to the treaty or the disputing parties so decide.

20. The Commission agreed that, for the sake of clarity, the possible application of the rules on transparency in conjunction with other arbitration rules or in ad hoc arbitration ought to be expressly provided for in the rules on transparency. In support of that approach, it was further said that the mandate of UNCITRAL was to prepare a legal standard on transparency that could be applied universally, without limiting its application to arbitration under the UNCITRAL Arbitration Rules.

21. The Commission further agreed that the matter should not be addressed in paragraph (2), which distinguished between the application of the rules on transparency under existing treaties and the application of the rules under future treaties, in both cases when investor-State arbitration was initiated under the UNCITRAL Arbitration Rules. It was agreed that different considerations applied with respect to other arbitration rules or in ad hoc proceedings.

22. After discussion, the Commission agreed to include in article 1 a new paragraph, numbered paragraph (9), which would read as follows: “These Rules are available for use in investor-State arbitrations initiated under rules other than the UNCITRAL Arbitration Rules or in ad hoc proceedings”. A new sub-heading, “Application in non-UNCITRAL arbitrations”, would also be added. It was clarified that that provision, which was designed to indicate the availability of the rules on transparency under other sets of arbitration rules or in ad hoc proceedings, would apply subject to party autonomy, namely when parties to the treaty or the disputing parties so agreed.

23. In line with that decision, it was agreed that the chapeau of paragraph (2) would read as follows: “In investor-State arbitrations initiated under the

UNCITRAL Arbitration Rules pursuant to a treaty concluded before (*date of coming into effect of the Rules on Transparency*), these Rules shall apply only when:".

Paragraph (2)(b)

24. It was suggested that the term "home State of the investor" in paragraph (2)(b) was unusual and could raise arguments on jurisdiction and nationality in relation to the application of the rules on transparency. In that respect, a suggestion was made to replace the phrase "in the case of a multilateral treaty, the home State of the investor and the respondent State" with the phrase "in the case of a multilateral treaty, the relevant parties".

25. In response, it was said that the phrase "the relevant parties" would not be suitable in relation to proceedings initiated under multilateral treaties such as the Energy Charter Treaty,⁶ in which identifying the "relevant parties" might be difficult and in which use of the criterion of "respondent State" would be more straightforward. It was decided to retain the phrase "respondent State".

26. In order to achieve a more neutral outcome, and the one presumably intended by the reference to the "home State of the investor", it was proposed to replace that phrase with "the State of the claimant". It was said that such wording: (a) avoided the need to make a determination based on jurisdiction or nationality by referring to the State under which the claimant had invoked the treaty protection; and (b) avoided the risk of issues arising in relation to the phrase "investor" and whether, for example, there had been a qualifying investment. It was said that, while such issues might be raised at a jurisdictional phase of proceedings, it was not intended that they should be invoked in relation to the application of the rules on transparency.

27. After discussion, the Commission agreed to replace the words "the home State of the investor" in paragraph (2)(b) with the words "the State of the claimant".

Paragraph (3)(b)

28. It was said that the language "whilst not undermining the transparency objective of the Rules" in paragraph (3)(b) could be reframed in a more positive and neutral manner.

29. A proposal was made to replace the words "whilst not undermining" with "achieving".

30. A second proposal was made to replace the phrase "whilst not undermining" with the phrase "and is consistent with", such that paragraph (3)(b) would read: "(b) The arbitral tribunal shall have the power, beside its discretionary authority under certain provisions of these Rules, to adapt the requirements of any specific provision of these Rules to the particular circumstances of the case if such adaptation is necessary to conduct the arbitration in a practical manner and is consistent with the transparency objective of these Rules".

⁶ United Nations, *Treaty Series*, vol. 2080, No. 36116.

31. It was agreed that it was desirable to avoid the value judgement attached to words such as “achieving” or “undermining”. Consequently, it was agreed to adopt the phrase “and is consistent with”.

32. It was furthermore agreed that paragraph (3)(b) should be made consistent with other provisions in the rules that gave the arbitral tribunal power or discretion after consultation with the disputing parties. The location of such wording in paragraph (3)(b) was left open for further consideration.

33. It was also said that, if such consultation by the arbitral tribunal was intended, the rules should expressly so state, and the Secretariat was requested to review the text of the rules in its entirety and ensure consistency in that respect.

34. Further to that review and the clarification that, throughout the rules on transparency, wherever it was intended that the arbitral tribunal should consult with disputing parties, that fact was explicitly specified, it was agreed that the words “after consultation with the disputing parties” would be included in paragraph (3)(b) after the words “to the particular circumstances of the case”.

Footnotes

35. It was suggested to amend the footnotes to article 1, paragraph (1), in order to ensure that the term “treaty providing for the protection of investments or investors” could also be applied to territories that might be treaty parties but that would not fall under the definition as currently drafted. As part of that proposal, it was suggested to remove the definition in the second footnote of “‘party to the treaty’ or ‘State’”. In response, it was recalled that the word “State” was used throughout the rules and that therefore a second footnote to paragraph (1) was necessary in order to ensure, inter alia, that regional economic integration organizations were included within that definition.

36. Another suggestion was made to align the definition of “treaty providing for the protection of investments or investors” in the first footnote more closely with the definition of a “treaty” in the Vienna Convention on the Law of Treaties,⁷ with necessary adaptation for the purpose of the rules on transparency.

37. A subsequent proposal was made to amend the first footnote so that it would read as follows: “For the purpose of the Rules on Transparency, a ‘treaty’ shall be understood broadly as encompassing any bilateral or multilateral treaty that contains provisions on the protection of investments or investors and a right for investors to resort to arbitration against parties to the treaty, including any treaty commonly referred to as a free trade agreement, economic integration agreement, trade and investment framework or cooperation agreement, or bilateral investment treaty.”

38. That proposal was accepted, and it was agreed that the language contained in paragraph 37 above would replace the first footnote. In addition, as the definition in the footnote referred to the term “treaty”, instead of the phrase “treaty providing for the protection of investment or investors”, it was agreed to move the footnote reference in the text of paragraph (1) to appear after the word “(‘treaty’)”.

⁷ Ibid., vol. 1155, No. 18232.

39. In relation to the second footnote, it was agreed that the word “a” should be added before the word “State” and that the words “applies equally to” should be replaced with the words “includes, for example, a”.

Adoption of article 1

40. With the modifications agreed and reflected under paragraphs 16 to 39 above, the Commission adopted the substance of article 1.

Draft article 2: Publication of information at the commencement of arbitral proceedings

41. It was suggested that a control mechanism might need to be included in article 2 in order to provide for some discretion on the part of the repository institution when a disputing party contested the applicability of the rules, or when a frivolous or abusive claim was initiated. It was also said that such a mechanism might be included in guidelines for the repository.

42. It was recalled that article 2 deliberately restricted information to be published at the notice stage to the factual information listed in that article in order to ensure that the role of repository was one that did not require discretion or decision-making. Any disagreement between disputing parties would then be resolved by the arbitral tribunal before further documents were sent to the repository. The Commission expressed its understanding that the repository was indeed expected, upon receipt of information, to publish that information according to the rules.

Adoption of article 2

43. After discussion, the Commission adopted the substance of article 2.

Draft article 3: Publication of documents

Paragraph (3)

44. It was considered whether to retain the text contained in square brackets in paragraph (3). It was said that, while as a legal matter that text, which provided an example as to how the arbitral tribunal might make information available under that paragraph, was not necessary, it did provide useful guidance to arbitral tribunals.

45. After discussion, it was agreed that the text should be retained and the square brackets deleted.

Paragraph (5)

46. It was said that the current text of paragraph (5) was not sufficiently clear. It was furthermore said that paragraph (5) should encompass only requests made under paragraph (3) of article 3, and not requests made under paragraph (2), since documents falling under the latter category would be automatically published in any event.

47. After discussion, the Commission agreed on the following drafting proposal in relation to paragraph (5): “A person granted access to documents under paragraph 3 shall bear any administrative costs of making those documents available to that

person, such as the costs of photocopying or shipping documents to that person, but not the costs of making those documents available to the public through the repository”.

48. It was said that the repetition of the words “that person” was necessary in order to clarify that the relevant costs to be borne were limited to the costs of making those documents available to the person making that request, and did not include, for example, the photocopying or shipping costs relating to delivering documents to the registry.

Adoption of article 3

49. One delegation expressed concerns that article 3 opened the door to the publication of large volumes of documentation requiring redaction, which it said might considerably increase the costs and length of investment arbitration proceedings.

50. After discussion, the Commission adopted the substance of article 3 as modified by paragraphs 44 to 48 above.

Draft article 4: Submission by a third person

Paragraph (2)

51. As a matter of drafting, it was agreed that the words “such” and “as may be” in the chapeau of paragraph (2) would be deleted.

52. It was also agreed to replace the words “such as, for example, funding around 20 per cent of its overall operations annually” with the following: “(e.g. funding around 20 per cent of its overall operations annually)”.

Paragraph (3)

53. It was suggested to align the language of paragraph (3) with the wording of the second sentence of article 5, paragraph (2), and therefore to replace the words “In determining whether to allow such a submission” in article 4, paragraph (3), with the words “In exercising its discretion to allow such submissions”.

54. In response, it was said that the purpose of those paragraphs was different. Article 5, paragraph (2), granted arbitral tribunals discretion in relation to whether to accept submissions, while article 4, paragraph (3), enumerated a list of factors that the arbitral tribunal should take into consideration in its determination of whether to allow a submission. Consequently, it was agreed that the wording of article 4, paragraph (3), should not be amended, and the substance of article 4, paragraph (3), was adopted in the form set out in paragraph 17 of document A/CN.9/783.

Paragraphs (5) and (6)

55. It was agreed to replace the phrase “the submission” in both paragraphs (5) and (6) with the phrase “any submission” for the sake of consistency with the mirroring provisions of article 5, paragraphs (4) and (5).

Adoption of article 4

56. After discussion, the Commission adopted the substance of article 4, with the modifications agreed under paragraphs 51 to 55 above.

Draft article 5: Submission by a non-disputing party to the treaty*Paragraphs (1) and (2)*

57. As a matter of drafting, it was agreed to change the word “accept” in paragraphs (1) and (2) to the word “allow”, to promote consistency with the terminology used in article 4.

Paragraph (2)

58. Concerns were expressed that, under paragraph (2), there would be a risk that the submission by the non-disputing party to the treaty might come very close to relying on diplomatic protection. It was clarified that that risk pertained only to paragraph (2). It was pointed out that paragraph (1) was addressing submissions on issues of treaty interpretation from a non-disputing party to the treaty. Regarding treaty interpretation, it was said that the non-disputing party to the treaty might bring a perspective on the interpretation of the treaty, including access to the *travaux préparatoires*, which might not be otherwise available to the arbitral tribunal, thus avoiding one-sided interpretations limited to the respondent State’s contentions.

59. In relation to paragraph (2), it was clarified that that paragraph was not meant to allow submissions that would support the claim of the investor in a manner tantamount to diplomatic protection. One delegation said that the word “tantamount” might not give the arbitral tribunal sufficient guidance. That view was not shared.

60. Some delegations supported leaving paragraph (2) unamended.

61. Other delegations supported either deleting paragraph (2) or including express language to clarify that such a provision should not permit a State to provide arguments in an arbitration in support of an investor who was a national of that State, which would go beyond the intended scope of that provision and amount to diplomatic protection. A proposal was made in that respect to add, at the end of paragraph (2), the following text: “, and the need to avoid submissions by a non-disputing party which would support the claim of the investor in a manner which would be tantamount to diplomatic protection”.

62. Delegations expressed differing views in relation to whether the purpose of that language was in fact covered under article 4, paragraph (3)(b), of the rules, to which article 5, paragraph (2), was in any event subject. After discussion, the Commission expressed the view that, even if that matter was already covered under article 4, paragraph (3)(b), it would be useful, for the avoidance of doubt, to include a specific provision on that matter in article 5, paragraph (2). In that light, an alternative proposal was made to include, at the end of paragraph (2), a new sentence as follows: “For the avoidance of doubt, in exercising its discretion to allow such submissions, the arbitral tribunal shall take into consideration the need to avoid submissions by a non-disputing party which would support the claim of the

investor in a manner which would be tantamount to diplomatic protection.” The Commission agreed to consider that proposal further at a later stage.

63. After further consideration of the matter, the Commission agreed that the following phrase would be added at the end of paragraph (2): “, and, for greater certainty, the need to avoid submissions which would support the claim of the investor in a manner tantamount to diplomatic protection”.

64. The Commission considered that the opening words of article 4, paragraph (3), and article 5, paragraph (2), could in fact be harmonized, because it was said that the reasoning set out in paragraphs 53 and 54 above no longer applied in the light of that amendment. The Commission reviewed paragraph 40 of document A/CN.9/760 in that respect but agreed that, when an arbitral tribunal was called upon in the rules to exercise its discretion, as a matter of fact, the criteria in article 1, paragraph (4), were plainly brought into application regardless of whether the rules used the term “discretion”. The Commission agreed that the words “In exercising its discretion to accept such submissions” in article 5, paragraph (2), would be replaced with the phrase “In determining whether to allow such submissions”.

Adoption of article 5

65. After discussion, the Commission adopted the substance of article 5, with the modifications agreed under paragraphs 57 to 64 above.

Draft article 6: Hearings

66. The Commission was reminded that, at its fifty-eighth session, the Working Group had expressed formal and unanimous support for the revised compromise proposal that included article 6, on open hearings.

67. In response to a concern that article 6 might be ambiguous in relation to whether disputing parties could agree to close hearings, it was clarified that the principle set forth in paragraph (1) was that hearings were public, subject only to paragraphs (2) and (3) of article 6. It was recalled that the question of whether disputing parties could agree to close hearings was considered at length by the Working Group, which had not accepted that proposal. It was pointed out that article 6 should be considered in the light of the provisions of article 1.

Adoption of article 6

68. After discussion, article 6 was adopted in substance without modification.

Draft article 7: Exceptions to transparency

69. The Commission was reminded that, at its fifty-eighth session, the Working Group had expressed formal and unanimous support for the revised compromise proposal that included article 7, on exceptions to transparency. It was further recalled that the Working Group had agreed to limit the exceptions to transparency to the protection of confidential or protected information (article 7, paragraphs (1) to (5)) and the protection of the integrity of the arbitral process (article 7, paragraphs (6) and (7)) (A/CN.9/765, paras. 75 and 78).

General

70. It was agreed to retain the structure and paragraph order of article 7.

“Third persons” — “Non-disputing parties” — “Public”

71. A suggestion was made to delete the phrase “non-disputing parties to the treaty” from paragraphs (1), (3) and (5) on the basis that the phrase “the public” was sufficiently broad.

72. The Commission expressed the understanding that the term “the public” as used in the rules was a generic one, which was intended to include within its ambit “third persons”, as referred to under article 4, and “non-disputing parties”, as referred to under article 5. The Commission considered whether there was a need to clarify that understanding in the rules, by way of a footnote or in the text of the rules itself.

73. In response, it was said that information made available to the public would be published on the website of the repository, and that by implication the term “the public” must include both “third persons” and “non-disputing parties”.

74. After discussion, the Commission agreed that the term “the public” was a generic term, which, when used in the rules, included also both third persons and non-disputing parties. Consequently, it was agreed to adopt the suggestion set out in paragraph 71 above.

Paragraph (3)

75. A suggestion was made to place the last sentence of paragraph (3) at the beginning of that paragraph. That proposal did not receive support for the reason that the last sentence of the provision was meant to address the specific situation of parties not agreeing on the redaction of confidential or protected information.

76. For the sake of drafting consistency, the Commission agreed to replace the word “in” appearing before the word “consultation” in the chapeau of paragraph (3) with the word “after”.

Paragraph (5)

77. A suggestion was made to add the words “public interest or” before the words “security interest” for the reason that the term “public interest” was more commonly used in certain jurisdictions than the term “security interest”. That proposal did not receive support.

Adoption of article 7

78. After discussion, the Commission adopted the substance of article 7, with the modifications agreed under paragraphs 70 to 76 above.

Draft article 8: Repository of published information

79. The Commission recalled the unanimous decision of the Working Group that the UNCITRAL secretariat was the natural and preferred choice to undertake the role of a repository of information under the rules. It was said that the United Nations, as a neutral and universal body, and its secretariat, as an independent organ

under the Charter of the United Nations, should be expected to undertake the core functions of a repository under the rules on transparency, as a public administration directly responsible for the servicing and proper operation of its own legal standards.

80. The Commission expressed its strong and unanimous opinion that the UNCITRAL secretariat should fulfil the role of a transparency repository. The Commission emphasized that the work of UNCITRAL was crucial for the promotion of the rule of law at the national and international levels, and that legislative standards elaborated by UNCITRAL directly contributed to the promotion of sustainable development.

81. In that regard, it was stated that the aim of the transparency repository was the promotion of economic development and welfare. The Commission expressed agreement that transparency was a main value of good governance and of the rule of law and that therefore its work in that field promoted the welfare of developing countries. It was also noted that the mention of the United Nations on the list of the international organizations eligible for official development assistance covered UNCITRAL, as a permanent commission of the General Assembly of the United Nations.

82. The Commission mandated the Secretariat to seek, through the Fifth and Sixth Committees of the General Assembly, the funding necessary to enable it to undertake the role of transparency repository. Several delegations indicated that the request for additional funding of the UNCITRAL secretariat should be made on a cost-neutral budgetary basis in relation to the United Nations regular budget.

83. The Commission agreed that the date of coming into effect of the rules on transparency would be 1 April 2014, that date having been chosen to allow the Secretariat sufficient time to seek regular budget or extrabudgetary funding to fulfil the mandate set out in paragraph 79 above.

84. After discussion, the Commission agreed that article 8 of the rules would be amended to read: "The repository of published information under the Rules on Transparency shall be the Secretary-General of the United Nations or an institution named by UNCITRAL".

85. It was said that that wording would permit, in the event the UNCITRAL secretariat was not able to obtain funding from the General Assembly or extrabudgetary funding prior to the coming into effect of the rules on transparency on 1 April 2014, another institution, designated by the Commission at its current session, to undertake the repository function until such time as the UNCITRAL secretariat did obtain the necessary resources.

86. It was emphasized that any other institution designated by the Commission to undertake the repository function in those circumstances would be doing so on a temporary, "backup" basis, and only until the UNCITRAL secretariat had obtained the requisite resources. It was clarified that any institution would, upon notice by the UNCITRAL secretariat that it had obtained the necessary resources, provide all data it held or published in relation to functioning as a repository, cease to perform the functions of a repository at that time, and do so at no cost to UNCITRAL and its secretariat.

87. It was recalled that two institutions, the International Centre for Settlement of Investment Disputes (ICSID) and the Permanent Court of Arbitration (PCA), had expressed willingness to act as a repository should the UNCITRAL secretariat not have the resources to do so. The International Centre and PCA both reaffirmed their willingness to undertake that function. Each institution separately confirmed to the Commission that it was willing to do so on a temporary basis, and to return data to the UNCITRAL secretariat at no cost upon confirmation from the UNCITRAL secretariat that it had obtained the relevant resources to fulfil the mandate of the Commission to undertake that role.

88. The Commission highly commended PCA and ICSID, both for the quality of the work of their respective institutions in the field of investment arbitration and for the support they had shown for the work of the Working Group and their contributions thereto, as well as their support of the functions of a transparency repository and their willingness to support that work should the UNCITRAL secretariat not have the resources to do so.

89. Having expressed its gratefulness for the offers of both institutions and the technical quality of such offers, the Commission emphasized that it expected any institution that might be called upon to serve as a repository on a temporary basis to work closely with the UNCITRAL secretariat and, as required, with the other institution.

90. The Permanent Court and ICSID proceeded to present their respective technical capabilities in relation to fulfilling the role of transparency repository. Both institutions referred to letters they had made available to delegations in order to set out their capabilities in a more detailed written form.

Presentation by the institutions

91. The Deputy Secretary-General of PCA made a presentation and indicated that PCA was an intergovernmental organization founded in 1899 pursuant to the Convention for the Pacific Settlement of International Disputes, which was revised in 1907.⁸ The two founding conventions of PCA specified that PCA was to remain available at all times and to all States, whether or not they had signed one of its founding conventions. The cooperation of PCA with UNCITRAL was long-standing. It was the designator of appointing authorities under the 1976 and 2010 UNCITRAL Arbitration Rules and had acted in that capacity in over 500 cases. In the past 10 years, PCA had also been asked to provide administrative support in the majority of known investment treaty arbitrations initiated under the UNCITRAL Arbitration Rules, and currently administered an estimated two thirds of known investor-State disputes under the UNCITRAL Arbitration Rules. In connection with its existing role as an archive for a growing number of public arbitrations, PCA was developing an upgraded database and search engine for case information on its website. That project was already fully funded and could be adapted to any specific needs identified by UNCITRAL for the repository. Should UNCITRAL itself be unable to fulfil the role of transparency repository under the

⁸ See Carnegie Endowment for International Peace, *The Hague Conventions and Declarations of 1899 and 1907* (New York, Oxford University Press, 1915). The text of the Convention is available from www.minbuza.nl/en/key-topics/treaties/search-the-treaty-database/1907/10/003316.html (accessed on 1 August 2013).

rules on transparency, PCA indicated its willingness to take on that role, including on an interim basis.

92. The International Centre summarized its capacity to act as the transparency repository in a letter of 1 July 2013, circulated to attendees. In short, ICSID indicated that it:

(a) Was a member of the World Bank Group, which was a United Nations specialized agency and thus part of the United Nations system;

(b) Was a global organization with 149 member States, virtually all of which were United Nations Member States;

(c) Would not ask States to contribute any funds to the repository, either directly or indirectly through membership fees (there were no fees for ICSID membership);

(d) Had administered approximately 70 per cent of all known investment arbitrations, and had administered more investment cases than all other organizations combined;

(e) Administered investment cases under any rules, including the UNCITRAL rules. It also undertook the full menu of related functions, such as acting as appointing authority or consolidating authority;

(f) Was the only institution with an established track record of transparency. It had published procedural details, awards, decisions and other case-related documents since 1995. It had offered basic, advanced and full-text search of documents since 2007, and had actually done the tasks envisioned for the repository since 2007;

(g) Was in the unique position to offer users a “one-stop” service, with full-text search of all documents published in ICSID cases and in cases published by ICSID as a repository. That would be a significant advantage to users, as it would combine the two lead sources of case law in one easily accessible location, through a single search;

(h) Was a highly cost-effective option, with absolutely no funding expected from States, and a minimal, one-time fee for disputing parties;

(i) Could develop and deploy a repository within 2-3 months if asked to do so.

The International Centre also indicated that, owing to the scope of article 1 of the rules on transparency, those rules might be adopted in treaties and by agreement of disputing parties, and hence would increasingly apply to cases under ICSID and other rules.

Discussion

93. It was said by some delegations that, as a matter of membership, they had not ratified the Convention on the Settlement of Investment Disputes between States and Nationals of Other States,⁹ that other countries had denounced the Convention

⁹ United Nations, *Treaty Series*, vol. 575, No. 8359.

and that those States thus felt more comfortable supporting the temporary option of the designation of PCA. In response, it was said that, in the context of the transparency repository, membership of one institution or the other was not relevant.

94. Some delegations expressed the view that ICSID had more expertise in the field of investment arbitration and of transparency in investment arbitration proceedings. It was said that in particular, given the presumptive temporary nature of any alternative institution hosting the transparency repository, a maximum of pre-existing institutional knowledge and expertise would be critical, and ICSID would be best placed in that regard.

95. Other delegations also observed that the technical specifications provided by ICSID, as well as the possibility for global full-text-search functionality with respect to both ICSID and UNCITRAL proceedings, were desirable.

96. Other delegations considered the role of the Secretary-General of PCA, as designator of appointing authorities in the UNCITRAL Arbitration Rules, as providing for a more natural link with UNCITRAL. It was also said that PCA handled a variety of cases involving States, including inter-State disputes under treaties and contract disputes between States and private parties, making it a desirable choice for some delegations. Some delegations referred to the slightly lower quoted cost that PCA would charge to parties to a dispute (free for the publication of up to 50 documents, and a flat fee of 750 euros for the publication of more than 50 documents).

97. After discussion, the Commission agreed by consensus that PCA should be designated, if necessary, to undertake the role of transparency repository on a temporary basis until the UNCITRAL secretariat obtained the resources to do so.

98. Concerns were raised that any temporary solution of having PCA act as the transparency repository should not become a permanent one. The Commission therefore requested the Secretariat to report to the Commission at its next session, in 2014, on the status of the establishment and functioning of the transparency repository.

Title of rules on transparency

99. It was said that entitling the rules on transparency “UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration” would provide further prima facie clarity in relation to their applicability in the context of investment arbitration as opposed to purely commercial arbitration. That proposal was agreed.

Form of the rules on transparency: Appendix or stand-alone rules

100. The Commission considered the question of the form in which the rules on transparency would be made available, i.e. whether the rules would be presented as a stand-alone text or would be appended to an amended version of the UNCITRAL Arbitration Rules. First, the Commission noted that the form of the rules on transparency would not affect the scope of their applicability under article 1. The Commission further noted that article 1 of the rules on transparency provided for their application under both the UNCITRAL Arbitration Rules (art. 1, paras. (1) and (2)) and other rules or in ad hoc proceedings (art. 1, para. (9)). In addition, it was said that the form that the rules on transparency would take raised two primary

policy considerations. On the one hand, users of the UNCITRAL Arbitration Rules ought to be made fully cognizant of the existence of the rules on transparency. On the other hand, commercial users of the amended version of the UNCITRAL Arbitration Rules should not be discouraged from using the Rules, or given an improper impression that the UNCITRAL Arbitration Rules would no longer be suitable for commercial arbitration.

101. A proposal was made with a view to reconciling those policy concerns. It was suggested that the rules on transparency should be published together with the amended version of the UNCITRAL Arbitration Rules, although not as an appendix thereto. In addition, it was suggested that the rules on transparency should be published as a stand-alone text.

102. After discussion, the proposal contained in paragraph 101 above was adopted. The Commission requested the Secretariat to publish the rules on transparency, including electronically, both together with the amended version of the UNCITRAL Arbitration Rules and as a stand-alone text.

3. UNCITRAL Arbitration Rules (with new article 1, paragraph (4), as adopted in 2013)

103. It was recalled that, following the agreement of the Commission on the scope of application of the rules on transparency, article 1 of the UNCITRAL Arbitration Rules (as revised in 2010) would require amendment in order to articulate a link with the rules on transparency (A/CN.9/765, paras. 79-80; and A/CN.9/783, paras. 28-39).

104. The Commission took note of the fact that the establishment of the amended version of the UNCITRAL Arbitration Rules, which would create a link to the rules on transparency, would necessarily have an implication for references to the UNCITRAL Arbitration Rules in treaties concluded after the coming into force of the rules on transparency. Specifically, it was clarified that a reference to the UNCITRAL Arbitration Rules as adopted in 1976, or as revised in 2010, in a treaty concluded after the coming into force of the rules on transparency would have the effect of precluding the application of the rules on transparency (A/CN.9/783, para. 31).

Amendment to the UNCITRAL Arbitration Rules

105. The Commission considered a new paragraph (4) of article 1 to amend the UNCITRAL Arbitration Rules (as revised in 2010): “4. For investor-State arbitration initiated pursuant to a treaty providing for the protection of investments or investors, these Rules include the UNCITRAL Rules on Transparency [as an appendix] [as amended from time to time], subject to article 1 of the UNCITRAL Rules on Transparency.” (A/CN.9/765, para. 79; and A/CN.9/783, para. 29).

106. Further to the agreement (set out in paragraphs 101 and 102 above) that the rules on transparency would not be included as an appendix to the amended version of the UNCITRAL Arbitration Rules, it was consequently agreed that the text in square brackets, “[as an appendix]”, should be deleted.

107. It was also considered whether the language of a new paragraph (4) of article 1 of the UNCITRAL Arbitration Rules should be evolutive in nature, and include

language such as “as amended from time to time” or “in effect on the date of commencement of the arbitration”.

108. A number of delegations expressed the view that including evolutive language might deter countries from adopting the rules on transparency in future treaties. It was pointed out that, while the UNCITRAL Arbitration Rules (as revised in 2010) did have evolutive language (in article 1, paragraph (2)), the 1976 UNCITRAL Arbitration Rules did not.

109. After discussion, it was agreed that the UNCITRAL Arbitration Rules (as revised in 2010) would be amended to include a new article 1, paragraph (4), as follows: “4. For investor-State arbitration initiated pursuant to a treaty providing for the protection of investments or investors, these Rules include the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration, subject to article 1 of the Rules on Transparency.”

Title of amended UNCITRAL Arbitration Rules

110. It was recalled that the amendment to the UNCITRAL Arbitration Rules (as revised in 2010) would result in a new version of the UNCITRAL Arbitration Rules, bearing the date of the adoption of the amendment and becoming effective as from the date of coming into effect of the rules on transparency (A/CN.9/765, paras. 33 and 79; and A/CN.9/783, para. 30).

111. The Commission considered the title of that amended version of the UNCITRAL Arbitration Rules. The following proposal was made in that respect: “UNCITRAL Arbitration Rules (with new article 1, paragraph 4, as adopted in 2013)”. That proposal was adopted.

B. Consideration of instruments on the applicability of the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration to the settlement of disputes arising under existing investment treaties

112. The Commission recalled that, at its forty-fourth session, in 2011, it had confirmed that the question of applicability of the legal standard on transparency to investment treaties concluded before the date of coming into effect of the rules on transparency was part of the mandate of the Working Group and a question of great practical interest, taking account of the high number of investment treaties currently in existence.¹⁰ In that context, the Commission considered the options for making the rules on transparency applicable to existing investment treaties, either by way of a convention, whereby States could express consent to apply the rules on transparency to arbitration under their existing investment treaties, or by a recommendation urging States to make the rules applicable in the context of treaty-based investor-State dispute settlement. The Commission also took note of the possibility of making the rules on transparency applicable to existing investment treaties by joint interpretative declaration pursuant to article 31, paragraph (3)(a) of

¹⁰ *Official Records of the General Assembly, Sixty-sixth Session, Supplement No. 17 (A/66/17)*, para. 200.

the Vienna Convention on the Law of Treaties, or by an amendment or modification of a relevant treaty pursuant to articles 39-41 of that Convention (A/CN.9/784).

Consideration of a recommendation

113. A view was expressed that the mandate of the Working Group was to explore options to make the rules on transparency applicable to existing investment treaties, but that it did not prejudge the outcome in favour of a recommendation.

114. The Commission agreed to include in its decision adopting the rules on transparency a recommendation urging parties to investment treaties to apply the standard to existing investment treaties. The purpose of the recommendation would be to highlight the importance of transparency in the context of treaty-based investor-State arbitration. The recommendation would leave it to parties to investment treaties to decide on the means of implementing the transparency standard in the context of existing investment treaties. The text of paragraph 1 of the draft recommendation as set out in paragraph 20 of document A/CN.9/784 was considered by the Commission.

115. Some delegations requested that qualifying language be introduced into that text. The request did not receive support.

116. After discussion, the following text was agreed, and its inclusion in the decision of the Commission adopting the rules on transparency was requested:

Also recommends that, subject to any provision in the relevant investment treaties that may require a higher degree of transparency, the Rules on Transparency be applied through appropriate mechanisms to investor-State arbitration initiated pursuant to investment treaties concluded before the date of coming into effect of the Rules on Transparency, to the extent such application is consistent with those investment treaties.

(See paragraph 128 below for the decision.)

Consideration of the preparation of a convention on transparency in treaty-based investor-State arbitration

117. Several delegations expressed support for entrusting Working Group II (Arbitration and Conciliation) with the task of preparing a convention on transparency. By way of clarification, it was said that, should a convention be concluded, it would be open for those States that wished to opt in to the rules on transparency in relation to their existing treaties to ratify it. It was emphasized that there would not be any expectation on any other State to sign or ratify such a convention.

118. It was further said that an essential component of the revised compromise proposal (see para. 16 above), was the need, ancillary to the rules on transparency, for a convention which would provide States a simple and efficient mechanism to apply the rules to existing treaties.

119. In support of that view, it was said that the large number of existing treaties, to which the rules on transparency would be applicable only on an opt-in basis, rendered such a convention critical in promoting and developing the work on transparency as contained in the rules. It was further stated that the elaboration of a

multilateral instrument would be a logical next step for a credible commitment towards transparency in investment arbitration under existing treaties.

120. It was pointed out that those States that had large portfolios of existing bilateral investment treaties and that wished to make the rules on transparency applicable to those treaties in an efficient way should not be precluded from doing so.

121. In reply, it was noted that the standards embodied by the rules on transparency were new, and that all States could not be expected to be ready to apply those standards at the present time. A view was expressed that, while delegations had acknowledged the importance of transparency, the compromise achieved by the rules was not a perfect one and a convention would have the effect of upsetting the delicate balance struck in article 1 of the rules.

122. A concern was also expressed that a convention could be perceived as changing dynamics in terms of negotiating bilateral investment treaties, or that pressure could be brought to bear on States to adopt it.

123. To alleviate that concern, the Commission agreed that there was not, and should not be, any value judgement attached to whether a State decided to accede to the convention, and that pressure ought not be brought to bear on States to accede to a convention. It was said that that matter could be clarified, for instance, in the preamble to the convention.

124. For the record, it was noted that the draft text of a convention placed before the Commission in paragraph 5 of document A/CN.9/784 was a proposal by the secretariat which had not yet been the subject of any discussion in the Working Group.

125. After discussion, the Commission agreed to provide, in addition to the existing mandate it had given to the Working Group to consider options in relation to the application of the rules on transparency to existing treaties, a specific mandate to prepare a convention thereon. The views of delegations that had expressed concerns in relation to a convention were also noted and, in that light, the Commission considered the possibility of providing a mandate to the Working Group that would explicitly take into account that the aim of the convention was to give those States that wished to make the rules on transparency applicable to their existing treaties an efficient mechanism to do so, without creating any expectation that other States would use the mechanism offered by the convention.

126. Some delegations proposed a differently worded mandate as follows: "The Commission gives the mandate to the Working Group to draft a convention to facilitate the application of the rules on transparency while taking into account the concerns by some States as regards possible difficulties of immediate application of the rules on transparency to existing treaties." That wording was said not to articulate the aim of the convention set out in paragraph 125 above, namely to give those States that wished to make the rules on transparency applicable to their existing treaties an efficient mechanism to do so, and was not supported.

127. After discussion, the Commission agreed by consensus to entrust the Working Group with the task of preparing a convention on the application of the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration to existing treaties, taking into account that the aim of the convention was to give those States

that wished to make the rules on transparency applicable to their existing treaties an efficient mechanism to do so, without creating any expectation that other States would use the mechanism offered by the convention.

C. Decision adopting the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration and the UNCITRAL Arbitration Rules (with a new article 1, paragraph (4), as adopted in 2013)

128. At its 965th meeting, on 11 July 2013, the Commission adopted the following decision:

“The United Nations Commission on International Trade Law,

“Recalling General Assembly resolution 2205 (XXI) of 17 December 1966, which established the United Nations Commission on International Trade Law with the purpose of furthering the progressive harmonization and unification of the law of international trade in the interests of all peoples, in particular those of developing countries,

“Recalling also General Assembly resolutions 31/98 of 15 December 1976 and 65/22 of 10 January 2011 recommending the use of the Arbitration Rules of the United Nations Commission on International Trade Law,¹¹

“Recognizing the value of arbitration as a method of settling disputes that may arise in the context of international relations, and the wide use of arbitration for the settlement of treaty-based investor-State disputes,

“Recognizing also the need for provisions on transparency in the settlement of treaty-based investor-State disputes to take account of the public interest involved in such arbitrations,

“Recognizing further that some parties to investment treaties have adopted high transparency standards in certain treaties providing for the protection of investments or investors,

“Bearing in mind that the UNCITRAL Arbitration Rules are widely used for the settlement of treaty-based investor-State disputes,

“Bearing in mind also that, in connection with the modernization of the UNCITRAL Arbitration Rules (as revised in 2010), adoption of the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration is particularly timely,

“Noting that the preparation of the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration was the subject of due deliberation in UNCITRAL and that they benefitted from extensive consultations

¹¹ For the text of the UNCITRAL Arbitration Rules (1976), see *Official Records of the General Assembly, Thirty-first Session, Supplement No. 17 (A/31/17)*, chap. V, sect. C. For the text of the UNCITRAL Arbitration Rules (as revised in 2010), see *Official Records of the General Assembly, Sixty-fifth Session, Supplement No. 17 (A/65/17)*, annex I.

with Governments and interested intergovernmental and international non-governmental organizations,

“*Believing* that the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration would contribute significantly to the establishment of a harmonized legal framework for a fair and efficient settlement of international investment disputes,

“*Recognizing* the need pursuant to the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration for an institution to serve as a repository of information and the critical role the transparency repository would play in implementing those Rules,

“*Recalling* the universal membership of the United Nations and the independence and neutrality of its Secretariat,

“1. *Adopts* the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration, as they appear in annex I to the report of UNCITRAL on its forty-sixth session (A/68/17), and the UNCITRAL Arbitration Rules (with new article 1, paragraph 4, as adopted in 2013), as provided for in chapter III, section A.3, of that report;

“2. *Requests* the Secretary-General, through the UNCITRAL secretariat, to perform the functions of the transparency repository in relation to the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration;

“3. *Also requests* the Secretary-General to publish and disseminate broadly the text of the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration, and the UNCITRAL Arbitration Rules (with new article 1, paragraph 4, as adopted in 2013), including electronically, and to transmit them to Governments and organizations interested in the field of dispute settlement;

“4. *Recommends* the use of the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration and the UNCITRAL Arbitration Rules (with new article 1, paragraph 4, as adopted in 2013) in relation to the settlement of investment disputes, and invites parties to investment treaties that include the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration in their investment treaties to advise the Commission accordingly;

“5. *Also recommends* that, subject to any provision in the relevant investment treaties that may require a higher degree of transparency, the Rules on Transparency be applied through appropriate mechanisms to investor-State arbitration initiated pursuant to investment treaties concluded before the date of coming into effect of the Rules on Transparency, to the extent such application is consistent with those investment treaties.”

D. Future work

129. The Commission took note of document A/CN.9/785, on possible future work in the field of settlement of commercial disputes, and held a preliminary discussion

regarding work that could be recommended in the field of international arbitration in view of the consideration of that matter by the Commission under agenda item 16 (see paras. 292 to 332 below).

130. It was said that the UNCITRAL Notes on Organizing Arbitral Proceedings (1996)¹² required updating as a matter of priority. It was agreed that the preferred forum for that work would be that of a working group, to ensure that the universal acceptability of those Notes would be preserved. It was recommended that a single session of the working group should be devoted to consideration of the Notes and that such consideration should take place as the next topic of future work, after completion of the draft convention (see para. 127 above).

131. It was suggested that the subject of concurrent proceedings was increasingly important, particularly in the field of investment arbitration, and might warrant further consideration. In particular, it was said that it was not unusual for one arbitration to be initiated in relation to a particular dispute, and concurrently for related parties to initiate parallel proceedings, to seek, in whole or in part, the same relief. It was further said that addressing the subject of concurrent proceedings would also be in the spirit of promoting a harmonized and consistent approach to arbitration. Some delegations observed that the issue of concurrent proceedings was in such flux that developing a harmonized approach at the present time might be premature.

132. Another issue raised was that of parallel proceedings in commercial arbitrations, where preventing or avoiding parallel State court proceedings and arbitral proceedings in relation to the same subject matter might be an issue best dealt with on a multilateral level. Different suggestions were made as to the form work might take in relation to concurrent proceedings in commercial arbitration. It was suggested that promoting a uniform interpretation of article 8 of the UNCITRAL Model Law on International Commercial Arbitration¹³ might be one solution. Another option suggested was that of guidelines in relation to that matter. Yet another view was that it would be premature to decide which form such future work might take and that any decision on future work on that topic ought to preserve the option of analysing the issue of parallel proceedings in commercial arbitrations in the context of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York on 10 June 1958.¹⁴

133. It was suggested that the topic of future work should be revisited at a future session of the Commission, after completion of the current work on developing a convention on transparency.

¹² *Official Records of the General Assembly, Fifty-first Session, Supplement No. 17 (A/51/17)*, chap. II.

¹³ For the text of the UNCITRAL Model Law on International Commercial Arbitration (1985), see *Official Records of the General Assembly, Fortieth Session, Supplement No. 17 (A/40/17)*, annex I. For the text of the UNCITRAL Model Law on International Commercial Arbitration (1985), with amendments as adopted in 2006, see *Official Records of the General Assembly, Sixty-first Session, Supplement No. 17 (A/61/17)*, annex I (revised articles only), and United Nations publication, Sales No. E.08.V.4.

¹⁴ United Nations, *Treaty Series*, vol. 330, No. 4739.

E. Preparation of a guide on the 1958 New York Convention

134. At its twenty-eighth session, in 1995, the Commission approved a project, undertaken jointly with Committee D (now known as the Arbitration Committee) of the International Bar Association, aimed at monitoring the legislative implementation of the New York Convention.¹⁵

135. At its forty-first session, in 2008, the Commission considered a written report in respect of the project, covering implementation of the New York Convention by States, its interpretation and application, and the requirements and procedures put in place by States for enforcing an award under the New York Convention, based on replies sent by 108 States parties to the Convention (A/CN.9/656 and Add.1). At that session, the Commission welcomed the recommendations and conclusions contained in the report, noting that they highlighted areas where additional work might need to be undertaken to enhance uniform interpretation and effective implementation of the Convention. The Commission agreed that work should be undertaken to eliminate or limit the effect of legal disharmony in that field. The Commission was generally of the view that the outcome of the project should consist in the development of a guide on the New York Convention, with a view to promoting a uniform interpretation and application of the Convention, thus avoiding uncertainty resulting from its imperfect or partial implementation and limiting the risk that practices of States might diverge from the spirit of the Convention. The Commission requested the Secretariat to study the feasibility of preparing such a guide. Also at that session, the Commission agreed that, resources permitting, the activities of the Secretariat in the context of its technical assistance programme could include dissemination of information on the judicial interpretation of the New York Convention, which would usefully complement other activities in support of the Convention.¹⁶

136. The Commission took note of General Assembly resolution 62/65 of 6 December 2007, in which the Assembly, recognizing the value of arbitration as a method of settling disputes in international commercial relations, contributing to harmonious commercial relations, stimulating international trade and development and promoting the rule of law at the international and national levels, and expressing its conviction that the New York Convention had strengthened respect for binding commitments, inspired confidence in the rule of law and ensured fair treatment in the resolution of disputes arising over contractual rights and obligations, requested the Secretary-General to increase efforts to promote wider adherence to the Convention and its uniform interpretation and effective implementation.

137. The Commission recalled that it had been informed, at its forty-fourth and forty-fifth sessions, in 2011 and 2012, that the Secretariat was carrying out a project related to the preparation of a guide on the New York Convention, in close cooperation with G. Bermann (Columbia University School of Law) and E. Gaillard (Sciences Po, École de Droit), who had established research teams to work on the

¹⁵ *Official Records of the General Assembly, Fiftieth Session, Supplement No. 17 (A/50/17)*, paras. 401-404.

¹⁶ *Ibid.*, *Sixty-third Session, Supplement No. 17 and corrigendum (A/63/17 and Corr.1)*, paras. 355 and 360.

project. The Commission had been informed that Mr. Gaillard and Mr. Bermann, in conjunction with their respective research teams and with the support of the Secretariat, had established a website (www.newyorkconvention1958.org) to make the information gathered in preparation of the guide on the New York Convention publicly available. The website was aimed at promoting the uniform and effective application of the Convention by making available details on its judicial interpretation by States parties. The Commission had also been informed that the UNCITRAL secretariat planned to maintain close connection between the cases collected in the system for collecting and disseminating case law relating to UNCITRAL texts (the “CLOUT system”) (see paras. 235 to 240 below) and the cases available on the website dedicated to the preparation of the guide on the New York Convention.¹⁷ At its forty-fifth session, the Commission had expressed its appreciation for the establishment of the website and the work done by the Secretariat, as well as by the experts and their research teams, and requested the Secretariat to pursue efforts regarding the preparation of the guide on the New York Convention.¹⁸

138. At its current session, the Commission had before it an excerpt of the guide on the New York Convention for its consideration (A/CN.9/786).

139. The Commission expressed its appreciation to the Secretariat and the experts and their teams involved in the project for their work towards the implementation of the mandate the Commission had received from the General Assembly to promote and ensure a uniform interpretation and application of international conventions.

140. Concerns were expressed that a guide would indicate preference for some views over others, and would therefore not reflect an international consensus on the interpretation of the New York Convention. The question of the form in which the guide might be published was therefore raised. In response, it was pointed out that the drafting approach adopted in the preparation of the guide was similar to that of other UNCITRAL guides or digests, such as the *Digest of Case Law on the United Nations Convention on Contracts for the International Sales of Goods*.¹⁹ It was explained that various options were available for the publication of such works. One option was that the guide could be published under the responsibility of the Secretariat; the example of the *UNCITRAL Legal Guide on Electronic Funds Transfers* (1987)²⁰ was given. It was suggested that the Commission could also take note of the guide on the New York Convention, without endorsing its content, and request the Secretariat to publish it. Another possibility would be for the Secretariat to circulate the text of the guide, once completed, with a view to collecting comments from States for consideration by the Commission at a future session. After discussion, the Commission requested the Secretariat, resources permitting, to submit the guide to the Commission at its next session, in 2014, for further consideration of the status of the guide and how it would be published.

¹⁷ Ibid., *Sixty-sixth Session, Supplement No. 17* (A/66/17), para. 252; and
ibid., *Sixty-seventh Session, Supplement No. 17* (A/67/17), para. 135.

¹⁸ Ibid., *Sixty-seventh Session, Supplement No. 17* (A/67/17), para. 136.

¹⁹ Available from www.uncitral.org/uncitral/en/case_law/digests.html (accessed 1 August 2013).

²⁰ United Nations publication, Sales No. E.87.V.9.

F. International commercial arbitration moot competitions

1. Willem C. Vis International Commercial Arbitration Moot

141. It was noted that the Association for the Organization and Promotion of the Willem C. Vis International Commercial Arbitration Moot had organized the Twentieth Moot, the oral arguments phase of which had taken place in Vienna from 22 to 28 March 2013. As in previous years, the Moot had been co-sponsored by the Commission. Legal issues addressed by the teams of students participating in the Twentieth Moot were based on the United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980).²¹ A total of 291 teams from law schools in 66 countries participated, with the best team in oral arguments being from the City University of Hong Kong. The oral arguments phase of the Twenty-first Willem C. Vis International Commercial Arbitration Moot will be held in Vienna from 11 to 17 April 2014.

142. It was also noted that the Tenth Willem C. Vis (East) International Commercial Arbitration Moot had been organized by the Chartered Institute of Arbitrators, East Asia Branch, and co-sponsored by the Commission. The final phase had been organized in Hong Kong, China, from 11 to 17 March 2013. A total of 93 teams from 27 jurisdictions had taken part in the Tenth (East) Moot. The winning team in the oral arguments was from the University of Canberra. The Eleventh (East) Moot would be held in Hong Kong, China, from 31 March to 6 April 2014.

2. Madrid Commercial Arbitration Moot 2013

143. It was noted that Carlos III University of Madrid had organized the Fifth International Commercial Arbitration Competition in Madrid from 15 to 20 April 2013. The Madrid Moot had also been co-sponsored by the Commission. The legal issues involved in the competition related to an international sale of shares in which the United Nations Sales Convention and the Unidroit Principles of International Commercial Contracts²² were applicable, as well as the UNCITRAL Model Arbitration Law, the New York Convention and the UNCITRAL Arbitration Rules (as revised in 2010), with the Madrid Court of Arbitration as the appointing authority. A total of 23 teams from law schools or masters programmes in eight countries had participated in the Madrid Moot in Spanish. The best team in oral arguments was ICADE University which won the final against Pontifical Catholic University of Peru. The Sixth Madrid Moot would be held from 21 to 25 April 2014.

²¹ United Nations, *Treaty Series*, vol. 1489, No. 25567.

²² Available from www.unidroit.org/english/principles/contracts/main.htm (accessed 1 August 2013).

IV. Consideration of issues in the area of security interests

A. Finalization and adoption of the UNCITRAL Guide on the Implementation of a Security Rights Registry

1. Introduction

144. At the current session, the Commission had before it: (a) a note by the Secretariat entitled “Draft Technical Legislative Guide on the Implementation of a Security Rights Registry” (A/CN.9/WG.VI/WP.54 and Add.1-4), which contained commentary; (b) a note by the Secretariat entitled “Draft UNCITRAL Guide on the Implementation of a Security Rights Registry” (A/CN.9/781 and Add.1 and 2), which contained, respectively, all of the changes to the commentary, terminology and recommendations, and the examples of registry forms of the draft registry guide agreed to by the Working Group at its twenty-third session (A/CN.9/767, para. 15); and (c) the reports of Working Group VI (Security Interests) on its twenty-second and twenty-third sessions (A/CN.9/764 and A/CN.9/767, respectively).

145. At the outset, the Commission agreed that the Secretariat should be given the mandate to make the changes necessary to implement the decisions of the Commission taken at the current session, ensure consistency in the terminology used and avoid duplication.

2. Consideration of the draft Registry Guide

Preface (A/CN.9/WG.VI/WP.54 and A/CN.9/781, paras. 1 and 2)

146. The Commission adopted the preface of the draft Registry Guide unchanged, on the understanding that the preface would be updated to reflect the decisions of the Commission at its current session.

Introduction (A/CN.9/WG.VI/WP.54, A/CN.9/WG.VI/WP.54/Add.1, paras. 1-23, A/CN.9/781, paras. 3-24, and A/CN.9/781/Add.1, terminology)

147. With respect to paragraph 4, subparagraph (g), of document A/CN.9/WG.VI/WP.54, the Commission agreed that reference to the Regulations and Procedures for the International Registry of the International Civil Aviation Organization should be updated to refer to the fifth edition, published in 2013.

148. With respect to the term “address”, the Commission agreed that it should be revised to refer to: (a) a physical address, which could be either a street address or a post office box number; and (b) an electronic address. The Commission further agreed that the commentary should provide examples of other addresses that would also be effective for communicating information and explain that enacting States should design the registry forms in such a way as to allow registrants to choose from the types of addresses mentioned.

149. With respect to the term “grantor”, the Commission agreed that it should be revised to refer to the person identified “in the designated field” in the notice as the grantor (for the meaning of the term “grantor”, see also paras. 169 and 170 below).

150. With respect to the term “registrant”, the Commission agreed that it should be revised to refer to “the person who submits the prescribed registry notice form to the registry”. The Commission also agreed that the commentary should explain that a courier or other mail service provider used by the registrant to transmit a paper notice would not be considered as a registrant.

151. With respect to the term “regulation”, the Commission agreed that it should be revised to refer to the body of rules “adopted” (rather than “implemented”) by the enacting State with respect to the registry, as adoption would precede implementation.

152. With respect to the term “secured creditor”, the Commission agreed that it should be revised to refer to the person identified “in the designated field” in the notice as the secured creditor (for the meaning of the term “secured creditor”, see also paras. 169 and 170 below).

153. With respect to paragraph 23 of document A/CN.9/WG.VI/WP.54, the Commission agreed that the words in subparagraph (c) of the second sentence “that indicates the grantor’s intent to create a security right” should be deleted, as the matter was already covered in subparagraph (b) of that sentence.

154. With respect to paragraph 28 of document A/CN.9/WG.VI/WP.54, the Commission agreed that the second sentence should be revised to state that registration of a notice in a general security rights registry was the general method of achieving third-party effectiveness except with respect to a security right in a right to receive the proceeds under an independent undertaking (see the *UNCITRAL Legislative Guide on Secured Transactions*,²³ recommendations 32 and 50).

155. With respect to paragraphs 18 to 20 of document A/CN.9/WG.VI/WP.54/Add.1, the Commission agreed that they should be revised to clarify that coordination among registries would be required only if the secured transactions law included certain types of assets and a specialized registry existed with respect to those types of assets.

156. Subject to above-mentioned changes, the Commission adopted the introduction to the draft Registry Guide.

Chapter I. Establishment and functions of the security rights registry (A/CN.9/WG.VI/WP.54/Add.1, paras. 34-49, A/CN.9/781, paras. 26-31, and A/CN.9/781/Add.1, recommendations 1-3)

157. The Commission adopted chapter I (Establishment and functions of the security rights registry) unchanged.

Chapter II. Access to the services of the registry (A/CN.9/WG.VI/WP.54/Add.1, paras. 50-65, A/CN.9/781, paras. 26-31, and A/CN.9/781/Add.1, recommendations 4-10)

158. With respect to recommendations 4 to 10, the Commission agreed that:

(a) Recommendation 6, subparagraph (a) (i), should be revised to refer to “the applicable” form prescribed by the registry;

²³ United Nations publication, Sales No. E.09.V.12.

(b) The words “except as provided in recommendations 8, subparagraph (a), and 10, subparagraph (a)” should be added at the beginning of recommendation 7, subparagraph (c);

(c) Recommendation 8, subparagraph (a), should be revised to refer to “information”, rather than “the information”, not entered in “each required designated field”.

159. Subject to above-mentioned changes, the Commission adopted chapter II (Access to the services of the registry).

Chapter III. Registration (A/CN.9/WG.VI/WP.54/Add.2, paras. 1-49, A/CN.9/781, paras. 32-40, and A/CN.9/781/Add.1, recommendations 11-22)

160. With respect to paragraph 44 of document A/CN.9/WG.VI/WP.54/Add.2, the Commission agreed that it should further explain that any attachment to a notice would be part of that notice and, therefore, should also be removed when information contained in the notice was to be removed from the public registry record.

161. With respect to recommendation 12, the Commission agreed that the words “for the purposes of recommendations 16, 18, 30, 32 and 34,” should be added at the beginning of recommendation 12 to clarify its scope and that recommendation 12 should be placed right before recommendation 16.

162. With respect to recommendation 13, the Commission considered various suggestions as to how to implement the aim of option C to set a maximum time limit for the period of effectiveness of the registration of a notice. One suggestion was that, in the case of an extension, the new period could start when the amendment notice was registered, with the maximum limit applying to that amendment notice. It was stated that, as a result, if the maximum limit was, for example, 15 years and the registrant chose to indicate seven years in the initial notice, the registrant could indicate 15 years in each amendment notice. In support of that suggestion, it was observed that such an approach would be similar to the approach taken in option A, according to which each amendment notice could be for the period of time specified in the law. It was also pointed out that such an approach would provide the flexibility necessary to accommodate the needs of parties to long-term security agreements. Another suggestion was that the new period should start when the current period expired, as long as all the notices together would not exceed the maximum time limit. It was stated that, as a result, in the example mentioned above, the registrant could indicate only eight years in the amendment notice. In support of that suggestion, it was observed that such an approach would appropriately implement the policy of option C to set a maximum time limit and thus draw a real distinction between option B (which included no maximum limit) and option C. Yet another suggestion was that the new period could start when the amendment notice was registered, with the maximum limit applying to one amendment notice only, with the result that, in the example mentioned above, the registration could indicate 15 years only in the first amendment notice.

163. After discussion, the Commission agreed that recommendation 13 should be revised to read along the following lines:

“The regulation should provide that:

“Option A

“(a) The registration of an initial notice is effective for [a short period of time, such as five years, specified in the law of the enacting State];

“(b) The period of effectiveness of the registration may be extended within [a short period of time, such as six months, specified in the law of the enacting State] before its expiry; and

“(c) The registration of an amendment notice extending the period of effectiveness extends the period for [the period of time specified in subparagraph (a)] beginning from the time of expiry of the current period.

“Option B

“(a) The registration of an initial notice is effective for the period of time indicated by the registrant in the designated field in the notice;

“(b) The period of effectiveness of the registration may be extended at any time before its expiry by the registration of an amendment notice that indicates in the designated field a new period of effectiveness; and

“(c) The registration of an amendment notice extending the period of effectiveness extends the period for the amount of time specified by the registrant in the amendment notice beginning from the time of expiry of the current period.

“Option C

“(a) The registration of an initial notice is effective for the period of time indicated by the registrant in the designated field in the notice, not exceeding [a long period of time, for example, 20 years, specified in the law of the enacting State];

“(b) The period of effectiveness of the registration may be extended within [a short period of time, such as six months, specified in the law of the enacting State] before its expiry by the registration of an amendment notice that indicates in the designated field a new period of effectiveness not exceeding [the maximum period of time specified in subparagraph (a)]; and

“(c) The registration of an amendment notice extending the period of effectiveness extends the period for the amount of time specified by the registrant in the amendment notice beginning from the time of expiry of the current period.”

164. With respect to recommendation 14, the Commission agreed that it should refer to “a” security right and “a” security agreement.

165. With respect to recommendation 18, the Commission agreed that subparagraph (b)(ii) should: (a) refer also to cancellation notices; (b) refer to “a” current address of the grantor, as the grantor might have more than one address; and (c) clarify that, if the secured creditor did not know the grantor’s address, the

secured creditor would be entitled to send the copy of the notice to the grantor's last "known" address or to the grantor's address that was "reasonably available". The Commission also agreed that the commentary should explain that the change referred to the grantor's relevant address (for example, the grantor's address set forth in the registry record), as otherwise the secured creditor might be exposed to the risk of sending the copy to a wrong address or might abuse that right and send the copy to an address that would be irrelevant to the transaction, giving rise to the security right to which the notice related.

166. With respect to recommendation 22, the Commission agreed that it should be revised to clarify that the information in the notice ought to be expressed in the character set determined and publicized by the registry.

167. Subject to the above-mentioned changes, the Commission adopted chapter III (Registration) of the draft Registry Guide.

Chapter IV. Registration of initial notices (A/CN.9/WG.VI/WP.54/Add.2, paras. 50-71, A/CN.9/WG.VI/WP.54/Add.3, paras. 1-35, A/CN.9/781, paras. 41-58, and A/CN.9/781/Add.1, recommendations 23-29)

168. With respect to paragraph 55 of document A/CN.9/WG.VI/WP.54/Add.2, the Commission agreed that the reference in the second sentence to the search request form should be deleted, as the address of the grantor did not need to be indicated in a search request.

169. With respect to certain recommendations, the view was expressed that the terms "grantor" and "secured creditor" did not mean the persons identified in the notice as the grantor and the secured creditor (as explained in the terminology) but rather meant the actual grantor and the actual secured creditor. Various suggestions were made. One suggestion was that, depending on the context, different terms should be used (e.g. "grantor" and "grantor of record"). Another suggestion was that the terminology should clarify that, depending on the context, the grantor (or the secured creditor) was either the actual grantor (or the actual secured creditor) or the grantor (or the secured creditor) identified or to be identified in the notice as the grantor (or the secured creditor). Yet another suggestion was that that clarification could be made in the commentary, with an additional clarification as to the context in which those terms had one or the other meaning.

170. After discussion, the Commission agreed that: (a) the explanation of the terms "grantor" and "secured creditor" in the terminology section of the draft Registry Guide should be deleted; (b) the commentary in the terminology section should explain that those terms had generally the same meaning as they had in the Secured Transactions Guide, except in certain instances in which, depending on the context, they meant the person identified in the notice; (c) the term "secured creditor" in recommendation 3, subparagraph (g), and recommendations 18, 19 and 31 should be replaced by the words "the person identified in the notice as the secured creditor"; (d) the term "grantor" in recommendation 18 should be replaced with the words "the person identified in the notice as the grantor"; (e) the commentary to recommendation 19, as revised, should clarify that the person identified in the notice as the secured creditor would be the person authorized to amend the information in a registered notice; and (f) the commentary to recommendation 33

should clarify that that recommendation dealt with the obligation of the actual secured creditor.

171. With respect to recommendation 23, it was agreed that the words “either in the same notice or in separate notices” at the end of subparagraph (b) should be deleted, while the commentary could explain that, in the case of multiple grantors or secured creditors, it was up to the registrant to determine whether to enter the required information in the same notice or in separate notices.

172. With respect to recommendation 24, the Commission agreed that subparagraphs (b) to (e) were overly prescriptive and, in any case, each enacting State would have to revise it depending on its naming conventions. Thus, the Commission decided that the examples in subparagraphs (b) to (e) should be included in the commentary and that recommendation 24 should instead include text along the following lines: “(b) [the enacting State should specify the various components of the grantor’s name and the designated field for each component]”; and “(c) [the enacting State should specify the official documents on the basis of which the grantor’s name should be determined and the hierarchy among those official documents]”. In addition, the Commission agreed that a new subparagraph should be added along the following lines “(d) [the enacting State should specify the way in which the grantor’s name should be determined in the case of a name change after the issuance of an official document]”.

173. With respect to recommendation 25, the Commission agreed that, for reasons of consistency with recommendation 24, it should be revised to include two subparagraphs along the following lines “(a) the grantor identifier is the name of the grantor; and (b) the name of the grantor is the name as specified in a current [document, ...] constituting the legal person”.

174. With respect to recommendation 26, for reasons of consistency with recommendation 24, the Commission agreed that it should be revised to read along the following lines “[the enacting State should specify the grantor identifier in special cases, such as a person that is subject to insolvency proceedings and a trustee or representative of an estate]”. It was also agreed that the examples set forth in recommendation 26 should be included in the commentary, with appropriate modifications (see the note to the Commission that follows recommendation 26 in document A/CN.9/781/Add.1).

175. With respect to recommendation 28, the Commission agreed that the words “unless otherwise provided in the law” at the beginning of subparagraphs (b) and (c) should be deleted, as they might inadvertently give the impression that they were intended to introduce an exception to the rule of law contained in subparagraph (a) (see the Secured Transactions Guide, recommendation 14, subpara. (d), and recommendation 63).

176. With respect to recommendation 29, subparagraph (a), it was agreed that, to avoid the tautology “an amendment notice that amends”, that wording should be revised to read as follows: “an amendment notice that changes”.

177. Subject to the above-mentioned changes, the Commission adopted chapter IV (Registration of initial notices).

Chapter V. Registration of amendment and cancellation notices (A/CN.9/WG.VI/WP.54/Add.4, paras. 1-41, A/CN.9/781, paras. 59-69, and A/CN.9/781/Add.1, recommendations 30-33)

178. With respect to recommendation 31, the Commission agreed that both options A and B should be revised to provide that a secured creditor named in multiple registered notices may amend or request the registry to amend “its information” (and not the information of other secured creditors mentioned in those notices).

179. With respect to recommendation 32, while a registration number was defined to mean a unique number allocated by the registry to an initial notice, for consistency with recommendation 30, subparagraph (a)(i), the Commission agreed that reference should be made to the registration number of the “initial” notice.

180. With respect to recommendation 33, the Commission agreed that it should refer to the obligation of the secured creditor to “register” (rather than submit) an amendment or cancellation notice. The Commission also agreed that the commentary should explain that that wording was intended to ensure that a secured creditor could not be considered as having discharged that obligation by merely submitting a notice without ensuring that it was actually registered and not rejected for any of the reasons mentioned in recommendation 8.

181. Subject to the above-mentioned changes, the Commission adopted chapter V (Registration of amendment and cancellation notices).

Chapter VI. Search criteria and search results (A/CN.9/WG.VI/WP.54/Add.4, paras. 42-51, A/CN.9/781, paras. 70-71, and A/CN.9/781/Add.1, recommendations 34 and 35)

182. With respect to paragraphs 46-48 of document A/CN.9/WG.VI/WP.54/Add.4, the Commission agreed that retrieval of information should be explained by reference to a search by the registry in accordance with the registry’s search logic. The Commission also agreed that reference to the term “search logic” should be deleted, as it was a technical term that might not be used in all States and, in any case, its substance (namely the way in which information was organized and retrieved) would be an integral part of any registry system. Accordingly, the Commission agreed that the reference to “search logic” in recommendation 35, subparagraph (b), should be deleted. Subject to those changes, the Commission adopted chapter VI (Search criteria and search results).

Chapter 7. Registration and search fees (A/CN.9/WG.VI/WP.54/Add.4, paras. 52-58, A/CN.9/781, para. 72, and A/CN.9/781/Add.1, recommendation 36)

183. The Commission adopted chapter VII (Registration and search fees) unchanged.

Annex II. Examples of registry forms (A/CN.9/781/Add.2)

184. The Commission then turned to the examples of registry forms set forth in annex II of the draft Registry Guide. With respect to form I (Initial notice), the Commission agreed that: (a) the checkboxes in front of “natural person” and “legal person” in sections A and B should be deleted (the same change should be made to

form II, sections A to F; form IV, sections C and D; and form VI, section A); (b) reference to “P.O. Box (if any)” in sections A and B should be revised to “Street or P.O. Box (if any)” (the same change should be made to form II, sections A, C, D and F; form IV, sections A and D; and form V, section A); (c) reference to “Electronic or other address (if any)” in sections A and B should be changed to “Electronic address (if any)” (the same change should be made to form II, sections A, C, D and F; form IV, sections A and D; and form V, section A); (d) the box “additional information about the grantor” following legal person in section A should be deleted (the same changes should be made to form II, sections A and C; and form IV, section D); (e) the box on special cases of grantors in section A should be placed in square brackets, with a footnote making reference to the relevant commentary (the same changes should be made to form II, sections A and C; and form IV, section D); (f) sections A.2 and B.2 should be removed and a note should be inserted stating that the forms should be designed to accommodate cases in which there were multiple grantors and/or secured creditors; and (g) section D should be revised to reflect options A to C of recommendation 13.

185. With respect to form II (Amendment notice), the Commission agreed that: (a) “registration no. of initial notice” in the second box should be revised to “registration no. of the initial notice to which the amendment relates” (the same changes should be made to the second box of form IV and to form VIII, section B.2); and (b) section J should read “J. Extend duration of registration” and should be revised to reflect options A to C of recommendation 13.

186. With respect to form III (Cancellation notice), the Commission agreed that “registration no. of initial notice to be cancelled” in the second box should be revised to state “registration no. of the initial notice to which the cancellation relates” (the same changes should be made to the second box of form V and form VIII, sections B.3).

187. With respect to form IV (Amendment notice pursuant to a judicial or administrative order), the Commission agreed that section G (extend or reduce duration of registration) should be deleted entirely. With respect to form VI (Search request form), the Commission agreed that a separate section should be provided for searchers submitting a paper search request to indicate the person and the address to which the paper search result should be mailed.

188. With respect to form VII (Search results), the Commission agreed that the footnote should reiterate recommendation 35, which required that the search result should set forth all information in each registered notice that matched the specific search criterion, without the need for an additional search, while the presentation of such information might differ depending on the registry system.

189. With respect to form VIII (Rejection of a registration of a search request), the Commission agreed that: (a) the reasons for rejection in section B should be more specific and separate checkboxes should be inserted with regard to the address of the grantor and the secured creditor; and (b) the word “relevant” in section B.2 should be deleted, and separate checkboxes should be placed, respectively, for information for addition, deletion and change.

190. Subject to the above-mentioned changes, the Commission adopted annex II (Examples of registry forms).

3. Adoption of the UNCITRAL Guide on the Implementation of a Security Rights Registry

191. At its 970th meeting, on 16 July 2013, the Commission adopted the following decision:

“The United Nations Commission on International Trade Law,

“Recalling General Assembly resolution 63/121 of 11 December 2008, in which the Assembly recommended that all States give favourable consideration to the UNCITRAL Legislative Guide on Secured Transactions²⁴ when revising or adopting legislation relevant to secured transactions,

“Recognizing that an efficient secured transactions regime with a publicly accessible security rights registry of the kind recommended in the Secured Transactions Guide is likely to increase access to affordable secured credit and thus promote economic growth, sustainable development, the rule of law and financial inclusion and assist in combating poverty,

“Noting with satisfaction that the UNCITRAL Guide on the Implementation of a Security Rights Registry is consistent with and usefully supplements the Secured Transactions Guide and that, together, the two guides will provide comprehensive guidance to States with respect to legal and practical issues that need to be addressed when implementing a modern secured transactions regime,

“Noting also that secured transactions law reform could not be effectively implemented without the establishment of an efficient, publicly accessible security rights registry where information about the potential existence of a security right in movable assets may be registered, and that States urgently need guidance with respect to the establishment and operation of such registries,

“Noting further that the harmonization of national security rights registries on the basis of the Registry Guide is likely to increase the availability of credit across national borders and thus facilitate the development of international trade, which, if achieved on the basis of equality and mutual benefit to all States, is an important element in promoting friendly relations among States,

“Expressing its appreciation to international intergovernmental and non-governmental organizations active in the field of secured transactions law reform for their participation in and support for the development of the Registry Guide,

“Expressing also its appreciation to the participants of Working Group VI (Security Interests), as well as to the Secretariat, for their contribution to the development of the Registry Guide,

“1. Adopts the UNCITRAL Guide on the Implementation of a Security Rights Registry, consisting of the text contained in documents A/CN.9/WG.VI/WP.54, A/CN.9/WG.VI/WP.54/Add.1-4, A/CN.9/781 and

²⁴ United Nations publication, Sales No. E.09.V.12.

A/CN.9/781/Add.1-2, with amendments adopted by the Commission at its forty-sixth session, and authorizes the Secretariat to edit and finalize the text of the UNCITRAL Guide on the Implementation of a Security Rights Registry pursuant to the deliberations of the Commission at that session;

“2. *Requests* the Secretary-General to publish the UNCITRAL Guide on the Implementation of a Security Rights Registry, including electronically, and to disseminate it broadly to Governments and other interested bodies;

“3. *Recommends* that all States give favourable consideration to the UNCITRAL Guide on the Implementation of a Security Rights Registry when revising relevant legislation, administrative regulations or guidelines, and to the *UNCITRAL Legislative Guide on Secured Transactions*²⁵ when revising or adopting legislation relevant to secured transactions, and invites States that have used the guides to advise the Commission accordingly;

“4. *Also recommends* that all States continue to consider becoming party to the United Nations Convention on the Assignment of Receivables in International Trade,²⁶ the principles of which are also reflected in the *UNCITRAL Legislative Guide on Secured Transactions*, and the optional annex of which refers to the registration of notices with regard to assignments.”

B. Progress report of Working Group VI and future work

192. Recalling its decision to refer to the Working Group the preparation of a simple, short and concise model law on secured transactions based on the recommendations of the Secured Transactions Guide and consistent with all texts prepared by UNCITRAL on secured transactions, the Commission noted that, at its twenty-third session, Working Group VI (Security Interests) had had a general exchange of views on the basis of a note prepared by the Secretariat entitled “Draft Model Law on Secured Transactions” (A/CN.9/WG.VI/WP.55 and Add.1 to 4). The Commission also noted that the Secretariat was in the course of preparing a revised version of the draft Model Law that would implement the mandate given by the Commission to the Working Group and facilitate commercial finance transactions.

193. It was agreed that the preparation of the draft Model Law was an extremely important project to complement the work of the Commission in the area of security interests and provide urgently needed guidance to States as to how to implement the recommendations of the Secured Transactions Guide. It was also agreed that, in view of the importance of modern secured transactions law for the availability and the cost of credit, and the importance of credit for economic development, such guidance was extremely important and urgent to all States at a time of economic crisis but in particular to States with developing economies and economies in transition. In addition, it was stated that the scope of the draft Model Law should include all economically valuable assets.

194. After discussion, subject to further discussions on the priorities to be set by the Commission with regard to planned and possible future work (see paras. 292 to 332

²⁵ Ibid.

²⁶ General Assembly resolution 56/81, annex.

below), the Commission confirmed its decision that Working Group VI should prepare a simple, short and concise model law on secured transactions based on the recommendations of the Secured Transactions Guide and consistent with all texts prepared by UNCITRAL on secured transactions.

V. Consideration of issues in the area of insolvency law

A. Finalization and adoption of revisions to the Guide to Enactment of the UNCITRAL Model Law on Cross-Border Insolvency

195. The Commission recalled its decision to entrust Working Group V (Insolvency Law) with a mandate to develop several topics, the first of which concerned a proposal by the United States, as described in document A/CN.9/WG.V/WP.93/Add.1, paragraph 8, to provide guidance on the interpretation and application of selected concepts of the UNCITRAL Model Law on Cross-Border Insolvency²⁷ relating to centre of main interests and possibly to develop a model law or provisions on insolvency law addressing selected international issues, including jurisdiction, access and recognition, in a manner that would not preclude the development of a convention.²⁸

196. With respect to the first part of that mandate, the Commission had before it the draft of proposed revisions to the Guide to Enactment of the Model Law on Cross-Border Insolvency (see A/CN.9/WG.V/WP.112) and the further revisions agreed by the Working Group at its forty-third session (see A/CN.9/766).

197. Having considered the text, the Commission adopted the following additional revisions:

(a) Reinsertion of paragraphs 14 to 17 of the published version of the Guide to Enactment of the Model Law on Cross-Border Insolvency²⁹ after paragraph 13, under the heading “B. Origin of the Model Law”;

(b) Insertion of a cross reference in paragraphs 123F and G so as to clarify that the date by reference to which those factors were to be considered by the court should be the date as discussed in paragraphs 128A to D;

(c) Replacement of the words “The Model Law” at the beginning of paragraph 166 with the words “Article 23, paragraph 1”.

198. At its 973rd meeting, on 18 July 2013, the Commission adopted the following decision:

“The United Nations Commission on International Trade Law,

“Noting that legislation based upon the UNCITRAL Model Law on Cross-Border Insolvency³⁰ has been enacted in some 20 States,

²⁷ General Assembly resolution 52/158, annex.

²⁸ *Official Records of the General Assembly, Sixty-fifth Session, Supplement No. 17 (A/65/17), para. 259.*

²⁹ A/CN.9/442, annex.

³⁰ General Assembly resolution 52/158, annex.

“*Noting also* the widespread increase in the incidence of cross-border insolvency proceedings and, accordingly, the growing opportunities for use and application of the Model Law in cross-border insolvency proceedings and the development of international jurisprudence interpreting its provisions,

“*Noting further* that courts frequently have reference to the Guide to Enactment of the Model Law³¹ for guidance on the background to the drafting and interpretation of its provisions,

“*Recognizing* that some uncertainty with respect to the interpretation of certain provisions of the Model Law has emerged in the jurisprudence arising from its application in practice,

“*Convinced* of the desirability, in the interpretation of those provisions, of regard to the international origin of the Model Law and the need to promote uniformity in its application,

“*Convinced also* of the desirability of providing additional guidance through revision of the Guide to Enactment of the Model Law with respect to the interpretation and application of selected aspects of the Model Law to facilitate uniform interpretation,

“*Appreciating* the support and participation of international intergovernmental and non-governmental organizations active in the field of insolvency law reform in the revision of the Guide to Enactment of the Model Law,

“*Expressing* its appreciation to Working Group V (Insolvency Law) for its work in revising the Guide to Enactment of the Model Law,

“1. *Adopts* the Guide to Enactment and Interpretation of the UNCITRAL Model Law on Cross-Border Insolvency, contained in document A/CN.9/WG.V/WP.112, as revised by the Working Group at its forty-third session (see A/CN.9/766) and by the Commission at its current session (see the report of the Commission on its forty-sixth session, (A/68/17), para. 197), and authorizes the Secretariat to edit and finalize the text of the Guide to Enactment and Interpretation in the light of those revisions;

“2. *Requests* the Secretary-General to publish, including electronically, the revised text of the Guide to Enactment and Interpretation of the Model Law, together with the text of the Model Law, and to transmit it to Governments and interested bodies, so that it becomes widely known and available;

“3. *Recommends* that the Guide to Enactment and Interpretation of the Model Law be given due consideration, as appropriate, by legislators, policymakers, judges, insolvency practitioners and other individuals concerned with cross-border insolvency laws and proceedings;

“4. *Also recommends* that all States continue to consider implementation of the UNCITRAL Model Law on Cross-Border Insolvency,

³¹ A/CN.9/442, annex.

and invites States that have enacted legislation based upon the Model Law to advise the Commission accordingly.”

B. Finalization and adoption of legislative recommendations on directors’ obligations in the period approaching insolvency

199. The Commission recalled its decision to entrust Working Group V (Insolvency Law) with a mandate to develop several topics, the second of which concerned a proposal by the United Kingdom (A/CN.9/WG.V/WP.93/Add.4), the International Association of Restructuring, Insolvency and Bankruptcy Professionals (INSOL International) (A/CN.9/WG.V/WP.93/Add.3) and the International Insolvency Institute (A/CN.9/582/Add.6) concerning the obligations of directors and officers of an enterprise in the period approaching insolvency. The focus of the work undertaken on that topic has been upon the obligations that arise in the period approaching insolvency, but that become enforceable only once insolvency proceedings commence.

200. With respect to that part of that mandate, the Commission had before it a draft of the proposed text on directors’ obligations in the period approaching insolvency (A/CN.9/WG.V/WP.113) and the revisions agreed by the Working Group at its forty-third session (see A/CN.9/766).

201. In accordance with the working assumption adopted by the Working Group, the draft text has been prepared as an additional part of the UNCITRAL Legislative Guide on Insolvency Law,³² and thus contains a commentary and a set of legislative recommendations.

202. Having considered the text, the Commission adopted the following additional revisions:

(a) Deletion of the words “As noted above” at the beginning of the third sentence of paragraph 37;

(b) Deletion of the words “such as” in the second sentence of paragraph 51; and

(c) Addition of a footnote with a cross-reference to paragraph 12 (a) of the glossary to the Legislative Guide to explain the phrase “administrative expenses” in recommendation 10.

203. Although no proposal was made to revise the current text, the concern was reiterated as to the appropriateness of including draft recommendation 12 on the basis that it could not properly be considered part of the law relating to insolvency, but pertained instead to corporate or criminal law. A different view was that the sorts of measures contemplated were available in the insolvency regimes in a number of jurisdictions and were aimed at encouraging appropriate behaviour on the part of directors.

³² United Nations publication, Sales No. E.05.V.10.

204. At its 973rd meeting, on 18 July 2013, the Commission adopted the following decision:

“The United Nations Commission on International Trade Law,

“Recognizing that effective insolvency regimes are increasingly seen as a means of encouraging economic development and investment, as well as fostering entrepreneurial activity and preserving employment,

“Considering that effective insolvency regimes, in addition to providing a predictable legal process for addressing the financial difficulties of troubled enterprises and the necessary framework for their efficient reorganization or orderly liquidation, should also permit an examination to be made of the circumstances giving rise to insolvency, and in particular the conduct of directors of such an enterprise in the period before insolvency proceedings commence,

“Noting that the UNCITRAL Legislative Guide on Insolvency Law,³³ while addressing the obligations of directors of an enterprise once insolvency proceedings commence, does not address the conduct of directors in the period approaching insolvency and the obligations that might be applicable to directors in that period,

“Considering that providing incentives for directors to take timely action to address the effects of financial distress experienced by an enterprise may be key to its successful reorganization or liquidation and that such incentives should be part of an effective insolvency regime,

“Appreciating the support and participation of international intergovernmental and non-governmental organizations active in the field of insolvency law reform in the development of an additional part of the Legislative Guide addressing the obligations of directors in the period approaching insolvency,

“Expressing its appreciation to Working Group V (Insolvency Law) for its work in developing part four of the Legislative Guide, on the obligations of directors in the period approaching insolvency,

“1. Adopts part four of the UNCITRAL Legislative Guide on Insolvency Law, consisting of the text in document A/CN.9/WG.V/WP.113 as revised by the Working Group at its forty-third session (see A/CN.9/766) and by the Commission at its current session (see the report of the Commission on its forty-sixth session (A/68/17), para. 202), and authorizes the Secretariat to edit and finalize the text of part four of the UNCITRAL Legislative Guide on Insolvency Law in the light of those revisions;

“2. Requests the Secretary-General to publish, including electronically, the text of part four of the UNCITRAL Legislative Guide on Insolvency Law, to transmit it to Governments and other interested bodies and to consider consolidating parts one to four of the Legislative Guide and publishing them, including electronically, at a future date;

³³ United Nations publication, Sales No. E.05.V.10.

“3. *Recommends* that all States utilize the UNCITRAL Legislative Guide on Insolvency Law to assess the economic efficiency of their insolvency law regimes and give favourable consideration to the Legislative Guide when revising or adopting legislation relevant to insolvency, and invites States that have used the Guide to advise the Commission accordingly.”

C. Finalization of revisions to the UNCITRAL Model Law on Cross-Border Insolvency: the Judicial Perspective

205. The Commission recalled its decision at its forty-fourth session, in 2011, to adopt the UNCITRAL Model Law on Cross-Border Insolvency: the Judicial Perspective and its request to the Secretariat to establish a mechanism for updating the Judicial Perspective on an ongoing basis in the same flexible manner in which it was developed, ensuring that its neutral tone was maintained and that it continued to meet its stated purpose.³⁴

206. The Commission noted that the Secretariat had established a board of experts to advise on the updating of the Judicial Perspective to take account of recent jurisprudence interpreting the Model Law on Cross-Border Insolvency and to reflect revisions proposed to the Guide to Enactment of the Model Law on Cross-Border Insolvency.

207. The Commission had before it the draft of the proposed updates to the Judicial Perspective (A/CN.9/778) and the report of the Working Group on its forty-third session (A/CN.9/766), in which the Working Group had noted the proposed updates to the text. The Commission noted that the updated text had also been provided to the participants in the Tenth Multinational Judicial Colloquium, organized by UNCITRAL in conjunction with INSOL International and the World Bank, which had been held in The Hague on 18 and 19 May 2013.

208. The Commission agreed that the preface should include reference to the names and States of the experts constituting the board of experts consulted on the updates to the Judicial Perspective. The Commission also supported a suggestion that the preface should clarify that judgements issued prior to 15 April 2013 were included and that later judgements would be considered for inclusion in a subsequent update of the Judicial Perspective.

209. The Commission took note of the updates to the Judicial Perspective and commended the Secretariat and the board of experts for their work in maintaining the currency of the text, which provided a valuable resource for judges considering insolvency cases involving cross-border issues. The Commission authorized the Secretariat to edit and finalize the text of the updated Judicial Perspective and requested that it be published, including electronically, and transmitted to Governments, together with the request that the text be made available to relevant authorities so that it would become widely known and available.

³⁴ *Official Records of the General Assembly, Sixty-sixth Session, Supplement No. 17 (A/66/17)*, para. 198.

D. Progress report of Working Group V

210. The Commission considered the reports of the Working Group on its forty-second and forty-third sessions (A/CN.9/763 and A/CN.9/766), noting that at its forty-third session (New York, 15-19 April 2013) the Working Group had discussed remaining elements of the mandate referred to in paragraph 195 above, particularly as it related to the applicability of the concept of centre of main interests to enterprise groups and the possible development of a model law or provisions on insolvency law addressing selected international issues, including jurisdiction, access and recognition, in a manner that would not preclude the development of a convention, together with other topics for possible future work.

211. The Commission held a preliminary exchange of views, noting that decisions on the priority of these issues and on issues of future work would subsequently be made under agenda item 16 (see paras. 292-332 below). Reference was made to the proposal in A/CN.9/789 and to the conclusions of the Working Group in paragraphs 104 to 109 of A/CN.9/766. It was noted that enterprise group issues in cross-border insolvency continued to be an area of key concern and that continuing the work in this area could usefully build upon existing consensus reached in respect of centre of main interests and directors' obligations in the context of single enterprises.

212. Support was expressed for the holding of a colloquium to enable the Working Group to clarify enterprise group issues and other parts of its current mandate. It was suggested that such a colloquium could also provide an opportunity to consider topics for possible future work, including those that may be of particular interest to developing countries, those of particular relevance to dealing with the global financial crisis and specific matters such as treatment of employee rights in insolvency and the interface between specialized insolvency regimes being developed for banking and financial institutions and general insolvency law. Another view was that Working Group V should continue with its mandate as planned. Yet another view was that the mandate should not proceed, as the Working Group did not have a plan for what its work on those topics would produce and no work should take place until that issue was clarified.

213. A related issue was whether such a colloquium should replace Working Group sessions currently scheduled for 2013 and 2014. One view was that it should not, and that once the colloquium had been held to clarify how best to approach the existing mandate, the Working Group sessions should proceed and that further approval from the Commission was not required to undertake work to complete the existing mandate. A different view was that a colloquium should take the place of Working Group sessions scheduled for 2013 and 2014 and that Working Group sessions would resume only with the approval of the Commission. (For further consideration of this matter, see paras. 324-326 below.)

VI. Consideration of issues in the area of public procurement

214. The Commission recalled its instructions to the Secretariat to undertake a study of topics that were not adequately covered in the UNCITRAL Model Law on Public Procurement (2011)³⁵ and its accompanying Guide to Enactment and that might warrant

³⁵ *Ibid.*, annex I.

guidance papers to support the effective implementation, interpretation and use of the Model Law, to explore options for publishing and publicizing the various resources and papers themselves, including through cooperation with other relevant reform agencies, and to undertake a study of existing resources and publications of those agencies that might be made available to such ends.³⁶

215. The Commission considered two draft documents produced to support the Model Law in this way: “Guidance on procurement regulations to be promulgated in accordance with article 4 of the UNCITRAL Model Law on Public Procurement” (A/CN.9/770) and “Glossary of procurement-related terms used in the UNCITRAL Model Law on Public Procurement” (A/CN.9/771).

216. The Commission adopted the following decision regarding those documents:

“The United Nations Commission on International Trade Law,

“Recalling the adoption of its Model Law on Public Procurement at its forty-fourth session, in 2011, and an accompanying Guide to Enactment at its forty-fifth session, in 2012,³⁷

“Expressing appreciation to the Secretariat for having prepared the documents “Guidance on procurement regulations to be promulgated in accordance with article 4 of the UNCITRAL Model Law on Public Procurement” (A/CN.9/770) and “Glossary of procurement-related terms used in the UNCITRAL Model Law on Public Procurement” (A/CN.9/771),

“1. Adopts the documents “Guidance on procurement regulations to be promulgated in accordance with article 4 of the UNCITRAL Model Law on Public Procurement” and “Glossary of procurement-related terms used in the UNCITRAL Model Law on Public Procurement”;

“2. Requests the Secretary-General to publish those documents, including electronically, to disseminate them broadly to Governments and other interested bodies and to make all efforts to ensure that they become generally known and available;

“3. Recommends that those documents be considered by States and reform agencies when reforming public procurement systems on the basis of the UNCITRAL Model Law on Public Procurement and accompanying Guide to Enactment, so as to support the effective implementation and use of the Model Law.”

217. As regards the other topics with regard to which additional guidance had been suggested by the Commission at its forty-fifth session, in 2012,³⁸ and in response to an oral report of the Secretariat on its consultations with experts on these topics, the Commission decided that:

(a) Issues of contract management and administration and procurement planning might be addressed in any future work in the field of public-private partnerships; accordingly, no further work on those topics should be undertaken at

³⁶ Ibid., *Sixty-seventh Session, Supplement No. 17* (A/67/17), paras. 110 and 114.

³⁷ Ibid., *Sixty-sixth Session, Supplement No. 17* (A/66/17), para. 192; and *Sixty-seventh Session, Supplement No. 17* (A/67/17), para. 46.

³⁸ Ibid., *Sixty-seventh Session, Supplement No. 17* (A/67/17), para. 110.

this time (as regards future work in the field of public-private partnerships, see paras. 327-331 below);

(b) A detailed existing publication of a member State on issues of promoting competition in the procurement process and mitigating risks of collusion had been provided to UNCITRAL, and the Secretariat was encouraged to make reference to it on the UNCITRAL website;

(c) The Model Law and the Guide addressed in sufficient detail the legal aspects of the effective use of the Model Law's procurement methods, centralized purchasing and framework agreements, sustainability and environmental procurement and access for small and medium-sized enterprises to procurement markets, but recognized that other reform agencies might publish additional material on the implementation and use of legal enabling provisions, as experience with such tools increases; where such additional materials could support the effective implementation and use of the Model Law, they would be brought to the Commission for its consideration in due course;

(d) Although the importance of the remaining topics was growing, they were not addressed in the Model Law or in detail in the Guide to Enactment (notably, use of contractors, issues relating to their capabilities, suspension, debarment and "self-cleaning"); if additional materials from outside sources, or if it were suggested that additional materials developed by UNCITRAL, could support the effective implementation and use of the Model Law, the matter would be brought to the Commission for its consideration in due course;

(e) Further work on harmonization between public procurement law and other branches of law was considered to be of lower priority and would not be considered further at this time.

VII. Online dispute resolution: progress report of Working Group III

218. The Commission recalled its previous discussions of online dispute resolution³⁹ and took note with appreciation of the progress made by Working Group III (Online Dispute Resolution), as reflected in its reports on its twenty-second to twenty-seventh sessions (A/CN.9/716, A/CN.9/721, A/CN.9/739, A/CN.9/744, A/CN.9/762 and A/CN.9/769). The Commission commended the Secretariat for the working papers and reports prepared for those sessions.

219. In relation to the recent deliberations of the Working Group, the Commission recalled that differing views had been expressed in the Working Group in relation to the nature of the final stage of online dispute resolution proceedings under the draft rules being discussed in the Working Group, and that in order to reconcile those views, the Working Group had proposed at its twenty-sixth session, a two-track system, one track of which ended in arbitration and one of which did not. It was

³⁹ *Ibid.*, *Sixty-fourth Session, Supplement No. 17* (A/64/17), paras. 338 and 341-343; *Sixty-fifth Session, Supplement No. 17* (A/65/17), paras. 252 and 257; *Sixty-sixth Session, Supplement No. 17* (A/66/17), para. 213; and *Sixty-seventh Session, Supplement No. 17* (A/67/17), paras. 71-79.

recalled that the genesis of that proposal could be found in document A/CN.9/762 and its annex.

220. The Commission noted that at the twenty-seventh session of the Working Group, a number of delegations had reiterated that the Working Group needed to devise a global online dispute resolution system accommodating both jurisdictions that provided for pre-dispute arbitration agreements to be binding on consumers and jurisdictions that did not (A/CN.9/769, para. 16). The Commission took note of the two structural proposals in relation to the rules that had been made at that session, one for a business-to-business set of rules intended to precede the development of a business-to-consumer set of rules, and the other a modified proposal implementing a two-track system. The Commission further noted the determination of the Working Group in relation to those proposals, namely, that there had not been a preponderance of views supporting the discarding of the two-track system in favour of a business-to-business-only set of rules as a preliminary stage, and that all components of the modified two-track proposal would be put in square brackets for further consideration and that the concerns raised in relation to that proposal would be further addressed (A/CN.9/769, paras. 14-43).

221. At its forty-fifth session, in 2012, the Commission had decided that the Working Group should: (a) consider and report back at a future session of the Commission on how the draft rules would respond to the needs of developing countries and those facing post-conflict situations, in particular with regard to the need for an arbitration phase to be part of the process; (b) continue to include in its deliberations the effects of online dispute resolution on consumer protection in developing and developed countries and countries in post-conflict situations, including in cases where the consumer was the respondent party in an online dispute resolution process; and (c) continue to explore a range of means of ensuring that online dispute resolution outcomes were effectively implemented, including arbitration and possible alternatives to arbitration. At that session, the Commission furthermore reaffirmed the mandate of the Working Group on online dispute resolution in respect of low-value, high-volume cross-border electronic transactions, and the Working Group was encouraged to continue to conduct its work in the most efficient manner possible.⁴⁰

222. After discussion, the Commission unanimously confirmed the decision made at its previous session on the matter,⁴¹ namely that:

(a) The Working Group should consider and report back at a future session of the Commission on how the draft rules would respond to the needs of developing countries and those facing post-conflict situations, in particular with regard to the need for an arbitration phase to be part of the process;

(b) The Working Group should continue to include in its deliberations the effects of online dispute resolution on consumer protection in developing and developed countries and countries in post-conflict situations, including in cases where the consumer was the respondent party in an online dispute resolution process;

⁴⁰ Ibid., *Sixty-seventh Session, Supplement No. 17* (A/67/17), para. 79.

⁴¹ Ibid.

(c) The Working Group should continue to explore a range of means of ensuring that online dispute resolution outcomes were effectively implemented, including arbitration and possible alternatives to arbitration;

(d) The mandate of the Working Group on online dispute resolution in respect of low-value, high-volume cross-border electronic transactions was reaffirmed, and that the Working Group was encouraged to continue to conduct its work in the most efficient manner possible.

VIII. Electronic commerce: progress report of Working Group IV

223. The Commission recalled that at its forty-fourth session, in 2011, it had mandated Working Group IV (Electronic Commerce) to undertake work in the field of electronic transferable records. At its current session, the Commission had before it reports of the Working Group on its forty-sixth session (A/CN.9/761), held in Vienna from 29 October to 2 November 2012, and forty-seventh session (A/CN.9/768), held in New York from 13 to 17 May 2013.

224. The Commission noted that the Working Group, at its forty-sixth session, had agreed that generic rules based on a functional approach should be developed encompassing various types of electronic transferable records and that draft provisions should be prepared in the form of a model law, without prejudice to the decision on the final form (A/CN.9/761, paras. 18 and 93). It was further noted that the Identity Management Legal Task Force of the American Bar Association had submitted a paper on identity management (A/CN.9/WG.IV/WP.120) for that session.

225. The Commission noted that the Working Group, at its forty-seventh session, had had the first opportunity to consider the draft provisions on electronic transferable records with the general understanding that its work should be guided by the principles of functional equivalence and technological neutrality, and should not deal with matters governed by the substantive law (A/CN.9/768, para. 14).

226. The view was expressed that work on electronic transferable records should take into consideration the Convention Providing a Uniform Law for Bills of Exchange and Promissory Notes (Geneva, 7 June 1930)⁴² and the Convention Providing a Uniform Law for Cheques (Geneva, 19 March 1931),⁴³ as dematerialization or introduction of electronic equivalents of such instruments might create legal difficulties in States parties to those conventions.

227. Noting that the current work of the Working Group would greatly assist in facilitating electronic commerce in international trade, the Commission expressed its appreciation to the Working Group for the progress made and commended the Secretariat for its work.

228. The Commission also took note of other developments in the field of electronic commerce. It was first noted that the United Nations Convention on the Use of Electronic Communications in International Contracts (New York, 2005)⁴⁴ had entered into force on 1 March 2013 with three States parties. It was further

⁴² League of Nations, *Treaty Series*, vol. CXLIII, No. 3313.

⁴³ *Ibid.*, vol. CXLIII, No. 3316.

⁴⁴ General Assembly resolution 60/21, annex.

explained that substantive provisions of the Electronic Communications Convention, which had 16 additional signatories, had influenced States that were revising or enacting their legislation on electronic commerce, and thus had the unforeseen yet very positive effect of updating and supplementing the UNCITRAL Model Law on Electronic Commerce.⁴⁵

229. The Commission was also informed about the technical assistance and coordination activities in the field of electronic commerce undertaken by the Secretariat, including through the UNCITRAL Regional Centre for Asia and the Pacific. It was noted that cooperation activities, such as the Secretariat's participation in the revision of recommendation No. 14 on authentication of trade documents by means other than signature of the United Nations Centre for Trade Facilitation and Electronic Business, ensured the consistency of such projects with UNCITRAL texts on electronic commerce. Coordination with the Economic and Social Commission for Asia and the Pacific, the World Customs Organization and the European Commission were also noted.

230. After discussion, the Commission reaffirmed the mandate of the Working Group relating to electronic transferable records and requested the Secretariat to continue reporting to the Commission on relevant developments in the field of electronic commerce.

IX. Technical assistance: law reform

231. The Commission had before it a note by the Secretariat (A/CN.9/775) describing the technical cooperation and assistance activities undertaken subsequent to the date of the note on that topic submitted to the Commission at its forty-fifth session, in 2012 (A/CN.9/753). The Commission stressed the importance of such technical cooperation and assistance and expressed its appreciation for the activities undertaken by the Secretariat referred to in document A/CN.9/775.

232. The Commission noted that the continuing ability to respond to requests from States and regional organizations for technical cooperation and assistance activities was dependent upon the availability of funds to meet associated costs. The Commission further noted that, despite efforts by the Secretariat to solicit new donations, funds available in the UNCITRAL Trust Fund for Symposia were very limited. Accordingly, requests for technical cooperation and assistance activities continued to be very carefully considered, and the number of such activities, which of late had mostly been carried out on a cost-share or no-cost basis, was limited. The Commission requested the Secretariat to continue exploring alternative sources of extrabudgetary funding, in particular by more extensively engaging permanent missions, as well as other possible partners in the public and private sectors. The Commission also encouraged the Secretariat to seek cooperation with international organizations, including through regional offices, and bilateral assistance providers in the provision of technical assistance, and appealed to all States, international organizations and other interested entities to facilitate such cooperation and take any other initiative to maximize the use of relevant UNCITRAL standards in law reform.

⁴⁵ General Assembly resolution 51/162, annex.

233. The Commission reiterated its appeal to all States, international organizations and other interested entities to consider making contributions to the UNCITRAL Trust Fund for Symposia, if possible in the form of multi-year contributions or as specific-purpose contributions, in order to facilitate planning and enable the Secretariat to meet the increasing number of requests from developing countries and countries with economies in transition for technical cooperation and assistance activities. The Commission expressed its appreciation to the Government of the Republic of Korea, through its Ministry of Justice, and to the Government of Indonesia for their contributions to the Trust Fund since the Commission's forty-fifth session, as well as to organizations that had contributed to the programme by providing funds or by hosting seminars.

234. The Commission appealed to the relevant bodies of the United Nations system, organizations, institutions and individuals to make voluntary contributions to the Trust Fund established to provide travel assistance to developing countries that were members of the Commission. The Commission expressed its appreciation to Austria for contributing to the UNCITRAL Trust Fund since the Commission's forty-fifth session, thereby enabling travel assistance to be granted to developing countries that were members of UNCITRAL.

X. Promotion of ways and means of ensuring a uniform interpretation and application of UNCITRAL legal texts

235. The Commission considered document A/CN.9/777, "Promotion of ways and means of ensuring a uniform interpretation and application of UNCITRAL legal texts", which provided information on the current status of the case law on UNCITRAL texts (CLOUT) system and of the digests of case law on the United Nations Convention on Contracts for the International Sale of Goods and on the UNCITRAL Model Law on International Commercial Arbitration.

236. The Commission expressed its continuing belief that the CLOUT system and the digests were an important tool for promoting uniform interpretation of international trade law and noted with appreciation the increasing number of UNCITRAL legal texts that were currently represented in the CLOUT system. As at 26 April 2013 (date of document A/CN.9/777), 128 issues of compiled case-law abstracts had been prepared, dealing with 1,234 cases. The cases relate to the New York Convention⁴⁶ and the following nine UNCITRAL texts:

- Convention on the Limitation Period in the International Sale of Goods (New York, 1974)⁴⁷ and Convention on the Limitation Period in the International Sale of Goods as amended by the Protocol of 11 April 1980 (Vienna)⁴⁸

⁴⁶ The Commission may recall that at its forty-first session, in 2008, it agreed that, resources permitting, the Secretariat could collect and disseminate information on the judicial interpretation of the New York Convention. For this reason, the CLOUT system includes only recent case law concerning the Convention. See *Official Records of the General Assembly, Sixty-third Session, Supplement No. 17* and corrigendum (A/63/17 and Corr.1), para. 360.

⁴⁷ United Nations, *Treaty Series*, vol. 1511, No. 26119.

⁴⁸ *Ibid.*, vol. 1511, No. 26121.

- United Nations Convention on the Carriage of Goods by Sea (Hamburg, 1978)⁴⁹
- United Nations Sales Convention
- UNCITRAL Model Law on International Credit Transfers (1992)⁵⁰
- United Nations Convention on Independent Guarantees and Stand-by Letters of Credit (New York, 1995)⁵¹
- UNCITRAL Model Law on International Commercial Arbitration (1985), with amendments as adopted in 2006⁵²
- UNCITRAL Model Law on Electronic Commerce, 1996⁵³
- UNCITRAL Model Law on Cross-Border Insolvency
- Electronic Communications Convention.

While most of the abstracts published came from Western European and other States, a small decrease in the number of abstracts attributable to that regional group and a parallel modest increase in the abstracts from Latin America and the Caribbean was recorded, compared to the figures in 2012. The volume of abstracts from the other regional groups had not changed.

237. The network of national correspondents initiated its mandate on the first day of the forty-fifth session of the Commission, in 2012. The network is currently composed of 64 correspondents representing 31 countries. The Commission noted that paragraph 7 of document A/CN.9/777 was inaccurate in that respect, since it failed to list Denmark among the countries that had recently nominated national correspondents. Since the previous note to the Commission (A/CN.9/748), national correspondents had provided approximately 36 per cent of the abstracts published.

238. The Commission noted with appreciation that the Secretariat had promoted the *Digest of Case Law on the United Nations Convention on Contracts for the International Sale of Goods* and the *Digest of Case Law on the Model Law on International Commercial Arbitration* in various ways and that the English version of the former had been printed in paper format thanks to the financial support and collaboration of the University of Pittsburgh School of Law and the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ). The Commission also noted that translation of the Digest into the other five official languages of the United Nations in some cases had been finalized and in other cases was under way. The Commission was informed of the progress of preparation of the digest of case law on the UNCITRAL Model Law on Cross-Border Insolvency.

239. The Commission also took note of the collaboration with Professors G. Bermann and E. Gaillard and their teams, which had resulted in the setting up of

⁴⁹ Ibid., vol. 1695, No. 29215.

⁵⁰ *Official Records of the General Assembly, Forty-seventh Session, Supplement No. 17 (A/47/17)*, annex I.

⁵¹ United Nations, *Treaty Series*, vol. 2169, No. 38030, p. 163.

⁵² *Official Records of the General Assembly, Fortieth Session, Supplement No. 17 (A/40/17)*, annex I; and *ibid.*, *Sixty-first Session, Supplement No. 17 (A/61/17)*, annex I.

⁵³ General Assembly resolution 51/162, annex.

a database on the New York Convention, including material used in the preparation of the guide on that Convention (see para. 137 above).

240. The Commission welcomed the news that the Secretariat had found some internal resources for the updating and upgrading of the CLOUT system in order to make it more user-friendly. The Commission, expressing its appreciation for the work of the Secretariat on the CLOUT system, noted the resource-intensive nature of the system and once again acknowledged the need for further resources to sustain it. As it had done previously,⁵⁴ the Commission appealed to all States to assist the Secretariat in the search for available funding at the national level to ensure the coordination and expansion of the system.

XI. Status and promotion of UNCITRAL texts

241. The Commission considered the status of the conventions and model laws emanating from its work and the status of the New York Convention, on the basis of a note by the Secretariat (A/CN.9/773). The Commission noted with appreciation the information on treaty actions and legislative enactments received since its forty-fifth session. In particular, it expressed appreciation for the efforts made by the Max Planck Institute for Comparative and International Private Law (Hamburg, Germany) to identify and provide information to the Secretariat on legislation enacting UNCITRAL model laws.

242. The Commission also noted with appreciation the following actions and enactments made known to the Secretariat subsequent to the submission of the note by the Secretariat:

(a) New York Convention: withdrawal of declaration by Mauritius (149 States parties);

(b) UNCITRAL Model Law on Electronic Commerce (1996):⁵⁵ legislation based on the Model Law had been adopted in Grenada (2008), Oman (2008) and San Marino (2013); legislation influenced by the principles on which the Model Law is based had been adopted in Bangladesh (2006) and the United States, in the State of Georgia (2009);

(c) UNCITRAL Model Law on Electronic Signatures (2001):⁵⁶ legislation based on the Model Law had been adopted in Grenada (2008) and San Marino (2013); legislation influenced by the principles on which the Model Law is based had been adopted in Oman (2008);

(d) UNCITRAL Model Law on International Commercial Conciliation (2002):⁵⁷ legislation based on the Model Law had been adopted in Belgium (2005) and Luxembourg (2012); legislation influenced by the principles on which the Model Law is based had been adopted in France (2011), Switzerland (2008) and the United States, in the State of Hawaii (2013).

⁵⁴ *Official Records of the General Assembly, Sixty-fourth Session, Supplement No. 17 (A/64/17)*, para. 372.

⁵⁵ General Assembly resolution 51/162, annex.

⁵⁶ General Assembly resolution 56/80, annex.

⁵⁷ General Assembly resolution 57/18, annex.

243. The Commission noted that, to make it even more useful, the record of treaty actions and legislative enactments of model laws could reflect additional aspects of the impact of UNCITRAL texts. In this regard, it took note of the May 2013 Accord on Fire and Building Safety in Bangladesh.⁵⁸ The Accord is an agreement between trade unions and international fashion retailers to establish certain minimum safety standards in the Bangladesh garment industry in the light of the Rana Plaza tragedy. In order to create a binding dispute settlement regime, the Accord references the New York Convention and the UNCITRAL Model Law on International Commercial Arbitration (1985), with amendments as adopted in 2006.⁵⁹ The Accord demonstrates the wide recognition of the legal effectiveness of those texts, and it also serves as a reminder of the status of those texts as widely accepted norms and models for the creation of legal accountability.

244. Considering the broader impact of UNCITRAL texts, the Commission also took note of the bibliography of recent writings related to the work of UNCITRAL (A/CN.9/772) and noted with appreciation the influence of UNCITRAL legislative guides, practice guides and contractual texts. To facilitate a comprehensive approach to the creation of the bibliography and to further the understanding of the influence of UNCITRAL texts, the Commission called on non-governmental organizations, in particular those invited to the Commission's annual session, to donate copies of their journals, annual reports and other publications to the UNCITRAL Law Library for review. In this regard, the Commission expressed appreciation to the German Institution of Arbitration for its donation of all existing and forthcoming issues of the *German Arbitration Journal (Zeitschrift für Schiedsverfahren)*.

XII. Coordination and cooperation

A. General

245. The Commission had before it a note by the Secretariat (A/CN.9/776) providing information on the activities of international organizations active in the field of international trade law in which the UNCITRAL secretariat had participated since the last note to the Commission (A/CN.9/749). The Commission noted with appreciation that the Secretariat had engaged in activities with a number of organizations both within and outside the United Nations system, including the European Union, the Hague Conference on Private International Law, the Organization for Economic Cooperation and Development, the United Nations Centre for Trade Facilitation and Electronic Business, the United Nations Conference on Trade and Development, the Economic Commission for Europe, Unidroit, the United Nations Inter-Agency Cluster on Trade and Productive Capacity of the United Nations System Chief Executives Board for Coordination, and the World Bank.

246. The Commission noted that the coordination activity of the Secretariat concerned topics discussed in all the current UNCITRAL working groups and that

⁵⁸ Available from www.industrialunion.org/sites/default/files/uploads/documents/2013-05-13_-_accord_on_fire_and_building_safety_in_bangladesh_0.pdf (accessed 16 July 2013).

⁵⁹ *Official Records of the General Assembly, Fortieth Session, Supplement No. 17 (A/40/17)*, annex I; and *ibid.*, *Sixty-first Session, Supplement No. 17 (A/61/17)*, annex I.

the Secretariat participated in expert groups, working groups and plenary meetings with the purpose of sharing information and expertise and avoiding duplication of work and of the resultant products. The Commission also noted that that work often involved travel to meetings of the organizations mentioned in paragraph 245 above and the expenditure of funds allocated for official travel. The Commission reiterated the importance of coordination work being undertaken by UNCITRAL as the core legal body in the United Nations system in the field of international trade law and supported the use of travel funds for that purpose.

247. As examples of current efforts, the Commission noted with particular appreciation the coordination activities involving the Hague Conference on Private International Law and Unidroit.

B. Coordination and cooperation in the field of security interests

248. The Commission took note with appreciation of the coordination efforts undertaken in the last two decades in the field of security interests, as reflected, for example, in a United Nations publication entitled “UNCITRAL, Hague Conference and Unidroit texts on security interests: comparison and analysis of major features of international instruments relating to secured transactions”.⁶⁰ It was widely felt that those efforts were an excellent example of the kind of coordination and cooperation that the Commission had been supporting for years in order to avoid duplication of efforts and conflicts among legal texts prepared by various organizations.

249. Recalling the mandate it had given to the Secretariat at its forty-fourth session, in 2011,⁶¹ the Commission noted with appreciation the efforts of the Secretariat in: (a) preparing in cooperation with the World Bank a first draft of a joint set of UNCITRAL-World Bank principles on secured transactions that would incorporate the recommendations of the *UNCITRAL Legislative Guide on Secured Transactions*; and (b) cooperating closely with the European Commission with a view to ensuring a coordinated approach to the issue of the law applicable to the third-party effects of assignments of receivables, taking into account the approach followed in the United Nations Convention on the Assignment of Receivables in International Trade and the Secured Transactions Guide. It was widely felt that such coordination was particularly important and should continue. After discussion, the Commission renewed its mandate to the Secretariat to continue with such coordination efforts and report to the Commission.

C. Reports of other international organizations

250. The Commission took note of statements made on behalf of the following international and regional organizations.

⁶⁰ Available from www.uncitral.org/uncitral/en/uncitral_texts/security/2011UNCITRAL_HCCH_Unidroit_texts.html (accessed 1 August 2013).

⁶¹ *Official Records of the General Assembly, Sixty-sixth Session, Supplement No. 17 (A/66/17)*, para. 228.

International Institute for the Unification of Private Law (Unidroit)

251. The Commission heard a statement made on behalf of Unidroit welcoming the current coordination and cooperation with UNCITRAL and reaffirming its commitment to cooperate closely with the Commission.

252. Unidroit reported that:

(a) At its 92nd session (Rome, 8-10 May 2013), the Unidroit Governing Council had adopted the Model Clauses for the Use of the Unidroit Principles of International Commercial Contracts. The UNCITRAL secretariat had provided comments to the draft Model Clauses in order to clarify the relationship between the Unidroit Principles and article 7 of the United Nations Sales Convention. The Unidroit Governing Council had adopted the Model Clauses and reflected the UNCITRAL secretariat's observations through an amendment to the comments accompanying the Model Clauses;

(b) At the same session, the Unidroit Governing Council had taken note of the report concerning possible future work on long-term contracts and invited the Unidroit secretariat to undertake preliminary in-house steps to identify the issues related to investment and other long-term contracts not adequately addressed in the 2010 edition of the Unidroit Principles;

(c) The Unidroit Governing Council had taken note of the progress in negotiations for the establishment of the international registry for railway rolling stock and of the first meeting of the Preparatory Commission for the Establishment of the International Registry for Space Assets (Rome, 6-7 May 2013). The following States had participated in the work of the Preparatory Commissions: Brazil, China, Czech Republic, France, Germany, India, Italy, Russian Federation, Saudi Arabia, South Africa and United States. The International Telecommunication Union, the International Civil Aviation Organization and the Intergovernmental Organization for Carriage by Rail, as well as a number of other participants and representatives of the financial and commercial world, had been invited to attend the session as observers. The Unidroit Governing Council had requested that the Unidroit secretariat continue assigning high priority to the promotion of both Protocols to the Convention on International Interests in Mobile Equipment (Cape Town, 2001);⁶²

(d) The Cape Town Convention now had 58 States parties and the Registry established under the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment⁶³ had reached the remarkable level of nearly 400,000 entries since its establishment in 2006;

(e) The Unidroit Governing Council had continued to consider possible additions to the Cape Town system. At its ninety-second session, the Council had taken note of reports on: (a) a possible fourth protocol to the Cape Town Convention on agricultural, mining and construction equipment, as well as the expressions of support from several industry associations on its potential economic impact; (b) a possible future protocol on ships and maritime transport equipment; and (c) a possible future protocol on off-shore wind power generation equipment. The

⁶² Available from www.unidroit.org/english/conventions/mobile-equipment/main.htm (accessed 1 August 2013).

⁶³ United Nations, *Treaty Series*, vol. 2367, No. 41143.

Governing Council agreed to proceed with preliminary work on a potential fourth protocol, on agricultural, mining and construction equipment, assigned medium priority, and had requested that the Unidroit secretariat prepare a feasibility study on whether satisfactory conditions existed to move forward with work in respect of the other two topics;

(f) The draft principles on the operation of close-out netting provisions had been adopted by the Governing Council together with the accompanying comments;

(g) The Unidroit Committee on Emerging Markets Issues would hold its third meeting in Istanbul later in the year, for the purpose of establishing the scope and methodology for drafting a legislative guide on principles and rules capable of enhancing trading in securities in emerging markets;

(h) Two sessions had been held by the Unidroit working group charged with the preparation of a legal guide on contract farming, a project to which the Unidroit Governing Council had assigned high priority with a view to its substantive completion in 2014. The Food and Agriculture Organization of the United Nations, the International Fund for Agricultural Development and the World Food Programme had actively participated in the preparation of the guide. The Council had reaffirmed its interest in possible future work on private law aspects of agricultural investment and financing (including land investment contracts, land tenure regimes, legal structure of agricultural enterprises) and had encouraged the Unidroit secretariat to revisit those issues once the legal guide on contract farming had been completed.

253. With regard to the Model Clauses, the Commission recalled its observations at its fortieth session related to its endorsement of the 2004 edition of the Unidroit Principles, in which it had developed its position on the proper relationship between the Unidroit Principles and the United Nations Sales Convention.⁶⁴ It was reiterated that the Unidroit Principles should not be construed as the “general principles” on which the United Nations Sales Convention is based. It was noted that those “general principles” formed an integral component of the interpretive hierarchy found in article 7 of the United Nations Sales Convention. It was also noted that, for the Unidroit Principles to displace the principles referred to in article 7 of the United Nations Sales Convention, it was necessary for the parties contractually to exclude the application of article 7. While noting the amendment made to the comments found in the Model Clauses, the Commission suggested that, with a view to avoiding any confusion as to the roles of the Unidroit Principles and the United Nations Sales Convention, and the relationship between the two instruments, this issue should be further discussed at the colloquium to be held in celebration of the thirty-fifth anniversary of the United Nations Sales Convention, or at another event (see para. 315 below).

254. The Commission took note of the decision by the Unidroit Governing Council to seek substantive cooperation with UNCITRAL. After discussion, the Commission agreed that Unidroit, the Hague Conference on Private International Law and UNCITRAL should emphasize their cooperation with particular regard to the areas of intersection of the three organizations. The Commission also expressed broad

⁶⁴ *Official Records of the General Assembly, Sixty-second Session, Supplement No. 17 (A/62/17)*, paras. 209-213.

support for the suggestion that a report, jointly prepared by the UNCITRAL secretariat and Unidroit highlighting possible joint projects, be submitted to the Commission at its next session.

European Union

255. The Commission heard a statement by the European Commission on its proposal for a Common European sales law. The justifications for the proposal were noted, including the legal barriers to trade presented by divergent contract laws. It was noted that the proposal was for an optional contract law instrument that would be open for selection in cross-border business-to-consumer transactions and business-to-business transactions where one party was a small or medium-sized enterprise. It was also noted that the Common European sales law, as proposed, would be available for selection in any transaction where at least one party to the transaction was located in the European Union. The influence of international instruments, including the United Nations Sales Convention and the Unidroit Principles, on the European Commission's proposal was also noted. Finally, it was noted that the proposal was still being considered under the legislative procedures of the European Union.

World Bank

256. The Commission heard a statement made on behalf of the World Bank, in which appreciation was expressed to UNCITRAL and its secretariat for the continuing cooperation with the World Bank. It was noted that over the previous years the work of the World Bank in supporting the modernization of the enabling legal environment for economic growth and trade had been significantly enhanced by the work of UNCITRAL and its working groups. In particular, the work being done by the two organizations in establishing uniform legal frameworks in the field of public procurement, arbitration and conciliation, insolvency and secured transactions was highlighted.

D. International governmental and non-governmental organizations invited to sessions of UNCITRAL and its Working Groups

257. At its current session, the Commission recalled that, at its forty-third session, in 2010, it had adopted the summary of conclusions on UNCITRAL rules of procedure and methods of work.⁶⁵ In paragraph 9 of the summary, the Commission had decided to draw up and update as necessary a list of international organizations and non-governmental organizations with which UNCITRAL had long-standing cooperation and which had been invited to sessions of the Commission. The Commission also recalled that, further to its request,⁶⁶ the Secretariat had adjusted the online presentation of information concerning intergovernmental and non-governmental organizations invited to sessions of UNCITRAL and its working

⁶⁵ Ibid., *Sixty-fifth Session, Supplement No. 17 (A/65/17)*, annex III.

⁶⁶ Ibid., *Sixty-sixth Session, Supplement No. 17 (A/66/17)*, paras. 288-298.

groups and the modality of communicating such information to States, and the adjustments made were to the satisfaction of the Commission.⁶⁷

258. The Commission took note that since its forty-fifth session, in 2012, the following organizations had been added to the list of non-governmental organizations invited to sessions of UNCITRAL and its working groups: European Law Institute, (www.europeanlawinstitute.eu), Korean Commercial Arbitration Board (www.kcab.or.kr) and Panel of Recognised International Market Experts in Finance (www.primefinancedisputes.org).

259. In response to a query on the inclusion in the list of the Korean Commercial Arbitration Board, it was explained that the national affiliation of a non-governmental organization was not a decisive factor in deciding on whether to invite it to UNCITRAL sessions. The Commission recalled that a number of national non-governmental organizations were invited by UNCITRAL to its sessions because of their prominent role in legal developments not only in their own jurisdiction but also in the jurisdictions of a particular region or worldwide, as reflected by their generally multinational membership. The need to achieve a balanced representation of non-governmental organizations from various geographical regions and groups of countries at different levels of development was also taken into account. Efforts were also made to avoid overrepresentation of organizations from a particular country or region or with a particular expertise that was already sufficiently represented in the Commission.

260. The Commission recalled the criteria that the Secretariat applied when deciding on whether to invite a new organization to UNCITRAL sessions. The Commission reaffirmed its understanding, as reflected in paragraph 10 of the summary of conclusions on UNCITRAL rules of procedure and methods of work (see para. 257 above), that it was for the Secretariat to inform the States members of the Commission about its decision to invite a new non-governmental organization to UNCITRAL sessions and it was for the Commission to take a final decision when an objection was raised to that decision. The Commission also confirmed its understanding that invitations extended to non-governmental organizations to attend sessions of UNCITRAL and its working groups had no bearing on the observer status of those organizations in any body of the United Nations system, and that the status of a non-governmental organization with the Economic and Social Council had no bearing on a decision on whether that organization should be invited to UNCITRAL sessions. The list of non-governmental organizations invited to sessions of UNCITRAL was compiled and made available to States for the sole purpose of informing them about organizations being invited to the sessions.

261. The point was made that the criteria applied by the Secretariat in taking decisions on inviting new non-governmental organizations to UNCITRAL sessions and the procedure for applying such criteria should be made as objective as possible. The view was also expressed that the Secretariat ought to inform States members of the Commission before an invitation was extended to a new non-governmental organization and before that organization was added to the list. It was recalled that the same issues had been discussed at length at previous sessions of the Commission. The Commission reaffirmed the compromise achieved on those

⁶⁷ *Ibid.*, *Sixty-seventh Session, Supplement No. 17 (A/67/17)*, paras. 176-178.

issues, as reflected in paragraphs 9 and 10 of the summary of conclusions on UNCITRAL methods of work referred to above.

XIII. UNCITRAL regional presence

262. The Commission took note of the activities undertaken by the UNCITRAL Regional Centre for Asia and the Pacific subsequent to the date of the report on that topic to the Commission at its forty-fifth session, in 2012, and referred to in paragraphs 51 to 70 of document A/CN.9/775.

263. The representative of the Republic of Korea made reference to the close cooperation that its Government, in particular its Ministry of Justice, had enjoyed with the Regional Centre for Asia and the Pacific and provided some examples of the outcome of that cooperation. The interest of the Republic of Korea in pursuing further joint work was indicated.

264. The representative of Kenya confirmed that its Government was continuing to consider hosting an UNCITRAL regional centre in Nairobi.⁶⁸

265. The Commission stressed the importance of the tasks assigned to the Regional Centre for Asia and the Pacific and expressed its appreciation for the activities undertaken.

266. The Commission acknowledged with gratitude the contribution of the Republic of Korea to the Regional Centre for Asia and the Pacific and welcomed the continuing interest in the establishment of a regional centre by the Government of Kenya. The Commission requested the Secretariat to keep the Commission informed of developments regarding the operation of the Regional Centre for Asia and the Pacific and the establishment of other UNCITRAL regional centres, with particular respect to their funding and budget.

XIV. Role of UNCITRAL in promoting the rule of law at the national and international levels

A. Introduction

267. The Commission recalled that the item on the role of UNCITRAL in promoting the rule of law at the national and international levels had been on the agenda of the Commission since its forty-first session, in 2008,⁶⁹ in response to the General Assembly's invitation to the Commission to comment, in its report to the General Assembly, on the Commission's current role in promoting the rule of law.⁷⁰ The Commission further recalled that since that session, the Commission, in its annual reports to the General Assembly, had transmitted comments on its role in promoting the rule of law at the national and international levels, including in the

⁶⁸ Ibid., para. 192.

⁶⁹ For the decision of the Commission to include the item on its agenda, see *Official Records of the General Assembly, Sixty-second Session, Supplement No. 17 (A/62/17)*, part two, paras. 111-113.

⁷⁰ General Assembly resolutions 62/70, para. 3; 63/128, para. 7; 64/116, para. 9; 65/32, para. 10; and 66/102, para. 12.

context of post-conflict reconstruction. It expressed its conviction that the promotion of the rule of law in commercial relations should be an integral part of the broader agenda of the United Nations to promote the rule of law at the national and international levels, including through the Rule of Law Coordination and Resource Group supported by the Rule of Law Unit in the Executive Office of the Secretary-General.⁷¹ The Commission noted with satisfaction that that view had been endorsed by the General Assembly.⁷²

268. The Commission further recalled that at its forty-third session, in 2010, it had indicated that it considered it essential to maintain a regular dialogue with the Rule of Law Coordination and Resource Group through the Rule of Law Unit and to keep abreast of progress made in the integration of the work of UNCITRAL into United Nations joint rule of law activities. To that end, it had requested the Secretariat to organize briefings by the Rule of Law Unit every other year, when sessions of the Commission were held in New York.⁷³ Consequently, a briefing had taken place at the Commission's forty-fifth session in New York in 2012.⁷⁴

269. At that session, the Commission had been informed about the progress made in achieving increased awareness about the work of UNCITRAL and integration of that work into the rule of law activities of the United Nations and other organizations. The Commission had also been informed of the preparations for the September 2012 high-level meeting of the General Assembly on the rule of law at the national and international levels and expected outcomes of that meeting. At that session, the Commission had formulated its position as regards ways and means of ensuring that aspects of the work of UNCITRAL were duly reflected at the high-level meeting and in its outcome document, and in the message to the high-level meeting itself.⁷⁵

B. Relevant developments since the forty-fifth session of the Commission

270. At its forty-sixth session, the Commission heard an oral report by the Chairman of its forty-fifth session on the implementation of the relevant decisions of the Commission taken at its forty-fifth session.⁷⁶ It was reported, in particular, that by a special invitation of the General Assembly, the Chairman of the forty-fifth session of UNCITRAL had delivered a statement to the high-level meeting in which he had underscored the mutually reinforcing impact of the rule of law and economic development and highlighted the importance of the work of UNCITRAL in

⁷¹ *Official Records of the General Assembly, Sixty-third Session, Supplement No. 17* and corrigendum (A/63/17 and Corr.1), para. 386; *ibid.*, *Sixty-fourth Session, Supplement No. 17* (A/64/17), paras. 413-419; *ibid.*, *Sixty-fifth Session, Supplement No. 17* (A/65/17), paras. 313-336; *ibid.*, *Sixty-sixth Session, Supplement No. 17* (A/66/17), paras. 299-321; and *ibid.*, *Sixty-seventh Session, Supplement No. 17* (A/67/17), paras. 195-227.

⁷² Resolutions 63/120, para. 11; 64/111, para. 14; 65/21, paras. 12-14; 66/94, paras. 15-17; and 67/89, paras. 16-18.

⁷³ *Official Records of the General Assembly, Sixty-fifth Session, Supplement No. 17* (A/65/17), para. 335.

⁷⁴ *Ibid.*, *Sixty-seventh Session, Supplement No. 17* (A/67/17), paras. 195-227.

⁷⁵ *Ibid.*, paras. 211-223.

⁷⁶ *Ibid.*

promoting the rule of law in commercial relations and in the broader context. The Commission took note with satisfaction of the Declaration of the high-level meeting of the General Assembly on the rule of law at the national and international levels,⁷⁷ in paragraph 7 of which Member States reaffirmed that the rule of law and development were interlinked and mutually reinforcing and expressed their conviction that that interrelationship should be considered in the post-2015 international development agenda. The Commission was, in particular, glad to note that in paragraph 8 of the Declaration, States recognized the importance of fair, stable and predictable legal frameworks for generating inclusive, sustainable and equitable development, economic growth and employment, generating investment and facilitating entrepreneurship, and in that regard commended the work of UNCITRAL.

271. The Commission expressed its appreciation to the Chairman of its forty-fifth session for the report and for ensuring that the UNCITRAL message to the high-level meeting was delivered and that aspects of the work of UNCITRAL were duly reflected at the high-level meeting and in its outcome document.

272. The Commission also noted with satisfaction the participation of the Chairman of its forty-fifth session in the General Assembly's thematic debate on "Entrepreneurship for development", held in New York on 26 June 2013, and in a conference co-hosted by the Peacebuilding Commission and the United Nations Global Compact on potential of private sector to help fragile countries emerge from conflict. The Commission endorsed efforts to increase awareness across the United Nations system of the work done by UNCITRAL and its relevance to other areas of work of the United Nations.

273. The Commission was also informed that its secretariat, upon the request of the Rule of Law Unit, had prepared a draft guidance note of the Secretary-General on the promotion of the rule of law in commercial relations. The draft guidance note, which was under consideration by the Unit and would subsequently be transmitted to members of the Rule of Law Coordination and Resource Group for comment, drew on the Commission's decisions taken since 2008 under the agenda item that were aimed at (a) building sustained capacity of States to promote the rule of law in commercial relations, with the assistance of the international community where necessary; and (b) increasing the ability of the United Nations to respond effectively, when called upon to do so, to the needs of States to build such local capacity. The note was intended to be relevant to United Nations rule of law activities, in particular those promoting economic development, in a variety of situations, including conflict prevention, post-conflict reconstruction and development contexts. The Commission requested the Secretariat to bring the guidance note to the attention of the Commission once it was issued, for the purpose of disseminating it as widely as possible.

274. The Commission heard about other developments since its last session related to the implementation of the rule of law agenda of the United Nations. In particular, it learned about initiatives across the United Nations system to formulate the post-2015 development agenda, to which the rule of law was integral. It was, in particular, informed about the work of the Open Working Group on Sustainable

⁷⁷ General Assembly resolution 67/1.

Development Goals and the Intergovernmental Committee of Experts on Sustainable Development Financing.

275. The Commission noted the relevance of its work to those and other efforts across the United Nations system. It requested its Bureau at the current session and its secretariat to take appropriate steps to ensure that the areas of work of UNCITRAL and the role of UNCITRAL in the promotion of the rule of law and sustainable development were not overlooked, and to report to the Commission at its next session on the steps taken in that direction.

C. Comments to the General Assembly on the current role of UNCITRAL in the promotion of the rule of law

276. The Commission took note of General Assembly resolution 67/97 on the rule of law at the national and international levels. In paragraph 14 of that resolution, the Assembly had invited the Commission to continue to comment, in its reports to the General Assembly, on its current role in promoting the rule of law. In paragraph 17 of that resolution, the Assembly had decided to focus the upcoming Sixth Committee debates in 2013 under the agenda item “The rule of law at the national and international levels” on the subtopic “The rule of law and the peaceful settlement of international disputes”. Consequently, the Commission decided to focus its comments to the General Assembly on its role in promoting the rule of law and the peaceful settlement of international disputes.

277. To facilitate the formulation by the Commission of the comments on that subtopic pursuant to the above-mentioned invitation by the General Assembly, a panel discussion was organized by the Secretariat with participation of experts in the relevant areas of work of UNCITRAL (arbitration and conciliation and online dispute resolution).

1. Summary of the rule of law briefing on the role of UNCITRAL in promoting the rule of law and the peaceful settlement of international disputes

278. The panel discussion started by highlighting the important role of international commercial arbitration rules in strengthening the rule of law through the peaceful settlement of international disputes. Arbitration was an area in which UNCITRAL had been working since its inception, and UNCITRAL had become well known for its development of core legal instruments, such as the UNCITRAL Arbitration Rules and the UNCITRAL Model Arbitration Law, and for monitoring the effective implementation of the 1958 New York Convention.

279. It was noted that international commercial arbitration had been one of the most effective means of resolving international economic disputes, such as cross-border disputes over investments in natural resources. As such, it was argued, international commercial arbitration might have reduced the opportunity for inter-State conflicts by obviating the need for States to confront one another directly on behalf of their aggrieved citizens, through reprisals, claims espousals or other means. Moreover, it might have contributed to avoiding aggravation of situations in volatile situations (for example, by preventing societies from sliding back into conflict).

280. The speakers highlighted the distinct features of international arbitration that made it valuable in the peaceful settlement of disputes, especially those disputes arising in unstable and politically charged relationships (for example, cross-border investments in the extractive industries, post-conflict disputes related to transboundary damages, seizure of property or territorial claims). Among such valuable features, the speakers noted flexibility (the ability of disputing parties to deploy an ad hoc procedure that was specifically adapted to the particular dispute, rather than being bound by the fixed procedures of a local court) and neutrality through denationalization of the legal forum for adjudicating disputes (the arbitral tribunal was independent of disputing parties, as well as insulated from instructions or interference by the respective Governments, and was empowered to rule on its own jurisdiction).

281. It was indicated that the neutrality of the forum was of special value in post-conflict situations and other volatile situations where recourse to domestic courts of States in conflict was often out of the question (either because the courts were dysfunctional or because of suspicion of bias or even hostility of the local courts, raising also questions of personal safety, or because of the lack of court independence, including where a domestic court was charged with determining the legality of the actions of its own government).

282. UNCITRAL instruments in the area of international commercial arbitration, it was said, provided practical means to ensure that those distinct features of international arbitration worked in practice. As regards flexibility, it was said that the UNCITRAL Arbitration Rules allowed great flexibility in adapting the procedure to the requirements of the dispute by permitting the parties to define the issues to be resolved, the number of arbitrators, the identity of the arbitrators, the forum and the applicable law. Once the tribunal had been empanelled, it was said, it had the inherent power to work out its own procedures, in consultation with the parties, such as the time within which the award would be rendered, the number and order of pleadings and how the tribunal would obtain evidence. As regards neutrality, it was submitted that the UNCITRAL Model Arbitration Law had been the most successful single instrument for ensuring an independent and harmonized approach to international arbitration.

283. The speakers also commended the efforts of UNCITRAL, in cooperation with other stakeholders, towards achieving near-universal accession to the 1958 New York Convention (which currently had 149 States parties) and towards its effective implementation and uniform interpretation and application by collecting and disseminating case law and other materials related to that Convention. It was stated that the contribution of the Convention to strengthening the rule of law was indisputable: the Convention had been the bedrock of international arbitration, providing for more than 50 years a common set of standards for the recognition and enforcement of international arbitration awards. (On this subject, see also para. 136 above.)

284. The framework provided by those instruments, it was said, was an effective means of attracting investment needed for sustainable development and capacity-building, which in turn might effectively deter many conflicts currently triggered by economic factors.

285. The speakers recalled the adoption by UNCITRAL, earlier in the session, of the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration (see para. 128 above). With reference to the definition of the rule of law as articulated in United Nations documents,⁷⁸ which explicitly refers to legal and procedural transparency, it was emphasized that without such transparency no other fundamental requirements of the rule of law, such as accountability, legal certainty, fairness in the application of laws and the avoidance of arbitrariness, could be achieved. The potential impact of the UNCITRAL Rules on Transparency on achieving all those fundamentals of the rule of law was highlighted, in particular in an area where transparency seemed much needed: exploitation of public resources. The UNCITRAL Rules on Transparency, it was said, covered nearly all aspects of treaty-based investor-State arbitrations. They were nuanced and balanced, but to achieve what they were intended to achieve they needed to be effectively implemented. According to speakers, the important work of UNCITRAL should therefore continue: UNCITRAL should not only soon prepare a convention devising a mechanism for applicability of the Rules to existing investment treaties but also take steps towards practical implementation of the Rules, collection and dissemination of the relevant information as required under the Rules and promotion of good practices with respect to the use of the Rules. In response, it was noted that that ought to be balanced with the need to respect the basis on which investment decisions were made, and that changing the rules that were applicable to such decisions was itself contrary to the rule of law.

286. The Commission heard then the suggestion for increased use of mediation and the role of domestic courts in the settlement of international economic disputes. The value of mediation was highlighted as a flexible, cheap and fast method of settlement of disputes and as the effective mechanism towards reaching an early amicable settlement between disputing parties. Data were presented indicating that in many cases of investor-State arbitration, disputes were in fact settled amicably before the final award was rendered. It was said that, despite that preference for amicable settlements of disputes, mediation was not widely used and known. The perceived disadvantages of that mechanism, in particular uncertainties as regards enforcement of the results of mediation, as well as the lack of the explicit power in law by any entity to negotiate on behalf of the State in the framework of mediation procedures, contributed to its relative unpopularity. Many jurisdictions did not have a consolidated law encompassing substantially all aspects of commercial mediation or capacity to handle mediation of commercial disputes. That was despite the fact that many jurisdictions surveyed by the World Bank provided for court referral of cases to mediation or conciliation in commercial disputes where court proceedings had been initiated. The role of the UNCITRAL Conciliation Rules (1980)⁷⁹ and the UNCITRAL Model Law on International Commercial Conciliation⁸⁰ in strengthening the domestic framework for mediation was highlighted: robust domestic rules on mediation were considered to be a prerequisite for fostering mediation of international disputes and ensuring that safeguards of at least some

⁷⁸ See the report of the Secretary-General on the rule of law and transitional justice in conflict and post-conflict societies (S/2004/616), para. 6.

⁷⁹ *Official Records of the General Assembly, Thirty-fifth Session, Supplement No. 17 (A/35/17)*, chap. V, sect. A, para. 106.

⁸⁰ General Assembly resolution 57/18, annex.

transparency, accountability and anti-corruption applied to negotiations held in the framework of mediation procedures.

287. The Commission also heard a presentation on the evolving nature of online dispute resolution and its potential to expedite resolution of disputes in various contexts, especially in post-conflict societies where face-to-face communication with the aim of resolving disputes could be difficult. The Commission was informed that technology-assisted or technology-based online dispute resolution mechanisms, as well as technology-facilitated online dispute prevention guarantees, were already being tested, including in some post-conflict communities. To some extent, state-of-the-art technologies using artificial intelligence and an ability to learn and improve automatically may work as a substitute for arbitrators, conciliators or mediators by generating dispute settlement options with minimal human intervention or without such intervention. Factors such as their round-the-clock availability and accessibility, speed and affordability could also increase their popularity. Any endeavour at the international level to increase effectiveness and efficiency of peaceful settlement of international disputes should therefore not underestimate the potential role of online dispute resolution. Globally harmonized principles and standards (including on accreditation of providers, procedural safeguards, substantive regulation and trust-building applications) for online dispute resolution to be used in various contexts (including business-to-business, business-to-consumer or consumer-to-consumer, and possibly other contexts) were paramount to ensure sustainable operation of providers of online dispute resolution and the effectiveness of such mechanisms. In that respect, the work of UNCITRAL Working Group III (Online Dispute Resolution) was highlighted as being very valuable.

2. Action by the Commission

288. The Commission expressed its appreciation to the panellists for their statements and endorsed their views about the role of UNCITRAL and its instruments in the area of arbitration and conciliation in the promotion of the rule of law and the peaceful settlement of international disputes. The Commission highlighted the potentially significant role of the UNCITRAL Rules on Transparency in that respect as well. The Commission also noted the evolving nature of online dispute resolution and its potential role in dispute settlement in various contexts, in particular in post-conflict situations.

289. The Commission recalled the activities of the Secretariat on technical assistance with law reforms in the area of settlement of disputes, as reported in the note by the Secretariat on technical cooperation and assistance (A/CN.9/775) (see para. 231 above). The Commission also heard a statement on projects in South-East Europe and the State of Palestine as regards domestic arbitration and conciliation laws, undertaken in cooperation with GIZ. It also recalled the technical assistance mission to Iraq on the adoption of the New York Convention, in cooperation with the United States Department of Commerce. The Commission recalled its discussion of the role of the guide on the 1958 New York Convention in facilitating the understanding of the text of the Convention, its effective implementation, uniform interpretation and application (see paras. 134-140 above). In that respect, the Commission noted with appreciation that GIZ expressed the wish

to support the preparation of the guide on the 1958 New York Convention as an important tool in technical assistance activities in the area of dispute settlement.

290. The Commission emphasized the importance of technical assistance activities of its secretariat for strengthening the rule of law and called for closer cooperation and coordination within the United Nations system and with the relevant stakeholders outside the United Nations system to achieve the increased use of UNCITRAL standards. The Commission reiterated that the role of States in that respect should also be considerably enhanced.

291. The Commission recalled that the General Assembly, in paragraph 17 of its resolution 67/97, had decided to focus the Sixth Committee debates in 2014 under the agenda item entitled “The rule of law at the national and international levels” on the subtopic “Sharing States’ national practices in strengthening the rule of law through access to justice”. The Commission invited comments and studies on that subtopic for consideration by the Commission at its forty-seventh session, to be held in 2014.

XV. Planned and possible future work, including in the areas of arbitration and conciliation, commercial fraud, electronic commerce, insolvency law, international contract law, microfinance, online dispute resolution, public procurement and infrastructure development, including public-private partnerships, and security interests

292. The Commission recalled its request at its forty-fourth session, in 2011, that the Secretariat should prepare a note on strategic planning, for consideration by the Commission at its forty-fifth session, to include possible options for the future work of UNCITRAL and an assessment of their financial implications.⁸¹ It also recalled its agreement to provide further guidance on the strategic direction of UNCITRAL at the present session, and had requested the Secretariat to reserve sufficient time in the present forty-sixth session to allow for a detailed discussion on the matter.⁸²

293. The Commission considered the note by the Secretariat on planned and possible future work (A/CN.9/774), which supplemented the note by the Secretariat on a strategic direction for UNCITRAL (A/CN.9/752 and Add.1), prepared in response to the request at the forty-fourth session referred to above. The attention of the Commission was also drawn to the reports and documents referred to in those documents. There was broad support for the approach and key points set out in documents A/CN.9/774 and A/CN.9/752 and Add.1.

294. The Commission discussed some general considerations that it might apply in planning and prioritizing the future work of UNCITRAL, including both its legislative activity and the other activities to support the adoption and use of UNCITRAL texts described in paragraph 12 of document A/CN.9/774. It underscored the importance of taking a strategic approach to the allocation of the

⁸¹ *Official Records of the General Assembly, Sixty-sixth Session, Supplement No. 17 (A/66/17)*, para. 343.

⁸² *Ibid.*, *Sixty-seventh Session, Supplement No. 17 (A/67/17)*, para. 231.

scarce resources of UNCITRAL, in the context of its mandate to modernize and harmonize international trade law, and in the light of the increasing number of topics referred to UNCITRAL for consideration.

295. The Commission recalled certain strategic considerations that had been raised at its forty-fifth session, namely:

(a) Identifying the subject areas that should be accorded the highest priority, by reference to the role and relevance of UNCITRAL;

(b) The sustainability of the existing *modus operandi*, i.e. current emphasis on formal rather than informal negotiations when developing texts, given current resources;

(c) Achieving the optimal balance among the activities of UNCITRAL, given current resources;

(d) The mobilization of additional resources and the extent to which UNCITRAL should seek external resources for its activities, such as through joint activities and cooperation with other bodies.⁸³

296. As regards the subject areas that should be accorded the highest priority, the Commission noted that prioritization involved issues of both importance and urgency, and recalled the various considerations that the Commission had previously set out referred to in section IV.B (“Prioritization of subject areas”) of document A/CN.9/774.

297. The Commission emphasized the importance of undertaking legislative development on those topics on which it was likely that consensus could be achieved, for which an economic need (in the sense used in document A/CN.9/774) existed, and which were likely to result in a legislative text with a beneficial effect on the development of international trade law. It was underscored that the extent to which an envisaged legislative text would support the development of international trade law as expressed in the mandate given to UNCITRAL by the General Assembly should be the main factor guiding the Commission in deciding whether or not to take up a topic. While some delegations emphasized the issues of promoting sustainable economic and social development and the rule of law in assessing the priority to be ascribed to topics, others stated that such support would be a desirable effect of harmonizing and modernizing international trade law itself.

298. The Commission heard a description of certain issues set out in a proposal by the United States, contained in section II of document A/CN.9/789. With reference to the issues set out in section II of that document (in the subsection entitled “Sustainability of existing *modus operandi*”), some States considered that the project-based approach to the denomination of working groups described therein would be appropriate. Others expressed the view, which subsequently prevailed, that the flexibility that a project-based approach was designed to have had existed since the decision taken in 2003 to increase the number of working groups from three to six. It was acknowledged that the allocation of conference time among working groups could also be undertaken flexibly, rather than through an automatic allocation of two weeks per subject per year.

⁸³ *Ibid.*, para 229.

299. Concern was expressed that, should the Commission establish semi-permanent or permanent working groups whose remit and mandate were not regularly reviewed, topics that the Commission might consider to be high priorities for UNCITRAL to work upon might be crowded out. However, it was agreed that the expertise within working groups should be recognized and supported, as a way of supporting the high quality and sustained relevance of UNCITRAL texts.

300. The Commission also emphasized that the development of UNCITRAL texts as a matter of course should be undertaken through the working group process. In that regard, the Commission recalled the link between that formal negotiation process and the universal applicability and hence acceptance of UNCITRAL texts, the importance of the transparency that that process conferred, and the need to continue the inclusive working methods of UNCITRAL. It was also agreed that the multilingualism of the working methods of UNCITRAL constituted key support for its work and, even though it was resource-hungry, should be continued.

301. The Commission agreed that there were exceptional situations in which more informal working methods might be appropriate, including addressing highly technical aspects of topics, and addressing drafting issues when a text was nearing completion. It was suggested that, in the latter scenario, such methods might be accelerated through reliance on experts and special rapporteurs to facilitate the final preparation for submission of a text to the Commission for adoption. The importance of transparency and inclusiveness and of avoiding the dominance of specialized groups and interests in informal working methods was emphasized. It was agreed that the Secretariat should be permitted the flexibility to organize informal work to suit the needs of each relevant subject area. The Commission stressed, however, that there should both be limits to such informal working methods and that all legislative texts should be considered by the Commission prior to adoption. In addition, it was noted that preparatory work prior to referring a topic to a working group was both appropriate and necessary, such as through Secretariat studies, the holding of colloquiums and the assistance of outside experts from different legal traditions and affiliations. The Commission recalled earlier statements in that regard, cited in section II of document A/CN.9/789,⁸⁴ under the heading "Subject matters that should be accorded highest priority", to the effect that as a rule a subject matter would not be referred to a working group before a study was undertaken by the Secretariat.

302. The nature of a legislative text was also raised. It was suggested that formal negotiations should be limited to the development of binding texts (such as conventions) and standard-setting documents (such as model laws), and that informal legislative development would be appropriate for legislative guides and other forms of guidance. Another view, which subsequently prevailed, was that a more flexible approach was needed, both because there was not always a clear dividing line between binding and other types of text and because the type of text that was appropriate might become clear only during formal negotiations. It was nonetheless agreed that the mandate for a working group should be precise, should reflect the maturity of the subject matter and should clearly identify the scope of

⁸⁴ See, for example, *Official Records of the General Assembly, Thirty-third Session, Supplement No. 17 (A/33/17)*, paras. 67-68; and a note by the Secretariat on the UNCITRAL rules of procedure and methods of work (A/CN.9/638, para. 20).

work to be undertaken, including the envisaged nature of the legislative text where appropriate.

303. Bearing in mind the scarce resources available to UNCITRAL and particularly the limited conference time available (14 weeks annually in the period 2012-2013, including each Commission session), the Commission agreed to assess whether or not legislative development in any particular topic should be referred to a working group on the basis of four tests, the first of which was whether it was clear that the topic was likely to be amenable to harmonization and the consensual development of a legislative text. In that regard, recalling that UNCITRAL was a global rather than regional organization, it was agreed that such an assessment required the potential for international and not merely regional harmonization.

304. The second test was whether the scope of a future text and the policy issues for deliberation were sufficiently clear. The third test was whether there existed a sufficient likelihood that a legislative text on the topic would enhance modernization, harmonization or unification of the international trade law. The fourth test was that legislative development should generally not be undertaken if so doing would duplicate legislative work on topics being undertaken by other international or intergovernmental bodies and that preparatory work to identify any areas of potential duplication should be undertaken before a topic was referred to a working group.

305. The Commission agreed that it would normally assess topics for consideration and legislative development on an annual basis, but that some longer-term indicative planning would be appropriate, so as to understand what the Commission would be expected to address over a three-to-five year period. Possible preparations for an event to celebrate the thirty-fifth anniversary of the United Nations Sales Convention in 2015 were cited as an example (see para. 315 below). The importance of giving appropriate flexibility to the Secretariat in such planning was recalled.

306. The Commission noted that it would also bear in mind the relevance of assessing the role and relevance of UNCITRAL activities within the broader United Nations agenda and the priorities of donor communities and national Governments. While there was broad support for pursuing a harmonized approach to relevant issues with these bodies, views differed as to the benefits of adopting other agencies' priorities, and it was agreed that cooperation in this area should be undertaken on a case-by-case basis.

307. The Commission also considered the balance of the work of UNCITRAL in legislative development and the other activities undertaken to support UNCITRAL texts. As regards technical assistance, and noting the increasing demand for Secretariat participation in such work as reflected in the note by the Secretariat on technical cooperation and assistance (A/CN.9/775) (see para. 231 above), the Commission underlined the importance of such assistance in ensuring the effective implementation of UNCITRAL texts. It was suggested that a significant element of technical assistance would be to educate potential users of the texts on the policy solutions and rules they encompassed, so as to enable the users to implement and use the texts effectively. The Secretariat was invited to consider methods of undertaking that work commensurate with its resources, for example through coordination with other relevant agencies within the United Nations system and beyond. The limited extent of the Secretariat's ability to engage in such activities

was highlighted, however, bearing in mind both the need to ensure that the Secretariat allocated sufficient resources to servicing the sessions of the Commission and its working groups and the need for States to play a major role in technical assistance activities.

308. As regards coordination and cooperation with other relevant law reform agencies, the Commission emphasized the need for ongoing efforts to secure effective links within and beyond the United Nations (such as with the multilateral development banks and other international and regional organizations, in particular the Hague Conference on Private International Law and Unidroit), to identify joint projects where appropriate, and to set priorities with such bodies based on the expertise within each such body. Examples were given of such coordination and cooperation referred to in the note by the Secretariat on coordination activities (A/CN.9/776) (see para. 245 above). (See also paras. 245-256 above.)

309. A suggestion was made that the possibility of appointing the Chairman of the Commission for the duration of the calendar year and not for the duration of the Commission session (which begins at the opening of the session and ends immediately before the following annual session) should be examined.

310. The Commission considered the proposals for ongoing and future work before it in the light of the above-mentioned matters, and agreed that it should reserve time for discussion of future work as a separate topic at each Commission session. Its conclusions regarding the subject areas for planned and possible future legislative work identified in document A/CN.9/774 were as follows.

Arbitration and conciliation

311. The Commission recalled the summary of its discussion on planned and future work in the area of arbitration and conciliation (see paras. 127 and 129-133 above) and agreed that the future activities in the area of commercial dispute settlement identified in paragraphs 127 and 129-133 above should be submitted to Working Group II (Arbitration and Conciliation), which would meet for two one-week sessions during the year to June 2014.

Commercial fraud

312. The Commission heard an oral report on the topic of commercial fraud, drawing upon the information set out in the note by the Secretariat on commercial fraud (A/CN.9/788). The Commission recalled that, at its forty-first session, in 2008, it had requested the Secretariat to publish the “Indicators of commercial fraud” (A/CN.9/624 and Add.1 and 2), as subsequently amended, a text that had been considered generally useful,⁸⁵ and heard that a group of experts convened pursuant to the Commission’s suggestion at its previous session, in 2012,⁸⁶ should continue to meet periodically to consider the continuing relevance and accuracy of those indicators. Reference was made to plans to develop under the auspices of the core group of experts on identity-related crime of the Commission on Crime Prevention and Criminal Justice model legislation on identity-related crime, and to a

⁸⁵ *Official Records of the General Assembly, Sixty-third Session, Supplement No. 17* and corrigendum (A/63/17 and Corr.1).

⁸⁶ *Ibid.*, *Sixty-seventh Session, Supplement No. 17* (A/67/17), para. 232.

request made in that context to the United Nations Office on Drugs and Crime to coordinate with UNCITRAL on the development of such model legislation.⁸⁷ Noting that there was no current proposal to prepare a new legislative text in this area, the Commission welcomed the suggestion that it be kept informed of future developments.

Electronic commerce

313. The Commission recalled the summary of its discussion on planned and future work in the area of electronic commerce (paras. 223-230 above) and agreed that the continuation of work towards developing a legislative text in the field of electronic transferable records would be continued at two one-week sessions of Working Group IV (Electronic Commerce) during the year to June 2014, and that at a future time it would be assessed whether that work would extend to identity management, single windows and mobile commerce.

International contract law

314. The Commission heard an oral report on international contract law. It recalled the related discussions at its forty-fifth session, in 2012,⁸⁸ as summarized in paragraph 11 (e) of document A/CN.9/774, and the proposal from Switzerland set out in document A/CN.9/758 referred to therein. The Commission recalled that at that session it had requested the Secretariat to organize symposiums and other meetings, including at the regional level and within available resources, maintaining close cooperation with Unidroit, with a view to compiling further information to assist the Commission in the assessment of the desirability and feasibility of future work in the field of general contract law at a future session, including the possible need for supplementing existing instruments in that field. The Secretariat indicated that, for lack of resources, it had not been able to engage in the activities requested but had co-sponsored a symposium entitled “Assessing the CISG and other international endeavours to unify international contract law” at the Villanova University School of Law, United States, in January 2013; held an expert meeting on contract law at the UNCITRAL Regional Centre for Asia and the Pacific in February 2013; and had included relevant documents in the bibliography on its website. It was noted that the Secretariat would continue reviewing the situation and report to the Commission as necessary.

315. In the light of that discussion and having heard an oral presentation of the subject as set out in document A/CN.9/789, the Commission also requested the Secretariat to commence planning for a colloquium to celebrate the thirty-fifth anniversary of the United Nations Sales Convention, to take place on a date after the forty-seventh Commission session, to be held in 2014. The Commission agreed that the scope of that colloquium could include looking at the Convention broadly and include some of the issues raised by an earlier proposal submitted at its forty-fifth session (A/CN.9/758),⁸⁹ as well as other developments in

⁸⁷ See *Official Records of the Economic and Social Council, 2013, Supplement No. 10* and corrigendum (E/2013/30 and Corr.1), chap. I, sect. B, draft resolution III, para. 7.

⁸⁸ *Official Records of the General Assembly, Sixty-seventh Session, Supplement No. 17 (A/67/17)*, paras. 127-132.

⁸⁹ *Ibid.*

the field, such as the Unidroit Principles of International Commercial Contracts, and explore the need for further work in that area.

Microfinance and the formalization of micro-, small- and medium-sized enterprises

316. The Commission heard a summary of the work undertaken by the Secretariat in the area of microfinance and the formalization of micro-, small- and medium-sized enterprises, and the results of a colloquium held in that field on 16-18 January 2013, further to the request of the Commission at its forty-fifth session, in 2012.⁹⁰

317. The Commission took note of the broad consensus among participants at the colloquium to recommend that a UNCITRAL working group be entrusted with addressing the legal aspects of an enabling legal environment for micro-, small- and medium-sized enterprises. Participants identified five broad areas where the Commission could provide guidance, to be articulated so as to address the business cycle of such enterprises. The starting point would be guidance that allowed for simplified business start-up and operation procedures. Other topics to be taken up subsequently included the following: (a) a system for resolving disputes between borrowers and lenders, including taking into account possibilities for the use of online dispute resolution; (b) effective access to financial services for micro-, small- and medium-sized enterprises, including consideration of broadening the scope of existing UNCITRAL instruments on e-commerce and international credit transfers to accommodate mobile payment systems; (c) guidance on ensuring access to credit, addressing issues such as transparency in lending and enforcement in a range of lending transactions; and (d) insolvency of micro-, small- and medium-sized enterprises, focusing on fast-track procedures and business rescue options so as to develop workable alternatives to formal insolvency processes in line with both the key characteristics of an effective insolvency system and the needs of such enterprises. Existing UNCITRAL instruments as well as guidance already developed by international organizations were said to be suitable building blocks for work in those areas. As to the form the Commission guidance could take, the Commission was further advised that a flexible tool, such as a legislative guide or a model law according to the topics, would contribute to harmonizing efforts in that sector and provide momentum for reforms that would further encourage micro-business participation in the economy.

318. The Commission also heard a proposal from the Government of Colombia (A/CN.9/790), suggesting that the Commission should create a new mandate for a working group focused on the enterprise life cycle, particularly in relation to micro-, small- and medium-sized enterprises. The working group should begin with the facilitation of simplified business incorporation and registration and follow on to other matters, such as those discussed at the 2013 colloquium, in order to create an enabling legal environment for that type of business activity. The proposal was broadly supported.

319. It was pointed out that in many economies, both developing and developed, the informal sector contributed a significant share of national income and employment. However, informality could perpetuate non-compliance with the law and work against strengthening the rule of law. It could increase the risk of

⁹⁰ Ibid., para. 126.

non-payment of taxes, increase corruption and constitute a negative environment for foreign investment and trade. Several delegations indicated that micro-, small- and medium-sized enterprises needed a legal basis on which to engage in trade at the international level and that there was a need for greater harmonization in the area of creating an enabling legal environment for such enterprises, which it was said would contribute to an increase in international and regional cross-border trade.

320. Views were expressed on the question of whether the tests for assignment of a matter to a working group (see paras. 303 and 304 above) were met in that case. It was questioned whether certain topics, such as insolvency, dispute resolution and secured transactions, relating to matters already being addressed by other working groups, might better be dealt with by those working groups rather than by another working group. Some delegations questioned whether the subject matter was sufficiently developed for consideration by a working group and stressed that the necessary groundwork needed to be prepared by the Secretariat in advance of the working group's first meeting.

321. After discussion, the Commission agreed that work on international trade law aimed at reducing the legal obstacles faced by micro-, small- and medium-sized enterprises throughout their life cycle and, in particular, those in developing economies should be added to the work programme of the Commission. The Commission also agreed that such work should start with a focus on the legal questions surrounding the simplification of incorporation and that the Secretariat should prepare documentation as a prerequisite to the early convening of the session of a working group. The Commission agreed that the Secretariat should include in its preparatory documentation to the working group (a) empirical information demonstrating how that work affected sustainable development and inclusive finance and (b) information on how that work was complementary to the work of other international and intergovernmental organizations — both within and outside the United Nations — having a mandate in those fields.

322. The Commission also agreed to discontinue the use of the term “microfinance” when referring to the new subject matter to be allocated to a working group, namely, Working Group I.

Online dispute resolution

323. The Commission recalled the summary of its discussion on planned and future work in the area of online dispute resolution (see paras. 218 to 222 above) and agreed that the work on online dispute resolution would continue accordingly at two one-week sessions of Working Group III in the year to June 2014.

Insolvency

324. The Commission recalled the summary of its discussion on planned and future work in the area of insolvency law (see paras. 210-213 above), noting that the current mandate of Working Group V (Insolvency Law) had not been exhausted but that the Working Group was not yet clear on how best to proceed with that work.

325. After discussion, the Commission decided that Working Group V (Insolvency Law) should hold a colloquium in the first few days of the working group session scheduled for the second half of 2013 to clarify how it would proceed with the enterprise group issues and other parts of its current mandate and to consider topics

for possible future work, including insolvency issues specific to micro-, small- and medium-sized enterprises. The conclusions of that colloquium would not be determinative but should be considered and evaluated by the Working Group in the remaining days of that session, in the context of the existing mandate. Topics identified for possible future work should be reported to the Commission in 2014.

326. With respect to the insolvency of micro-, small- and medium-sized enterprises, the Commission requested Working Group V to conduct, at its session to be held in the first half of 2014, a preliminary examination of relevant issues, and in particular to consider whether the UNCITRAL Legislative Guide on Insolvency Law⁹¹ provided sufficient and adequate solutions for such enterprises. If it did not, the Working Group was requested to consider what further work and potential work product might be required to streamline and simplify insolvency procedures for such enterprises. Its conclusions on those issues related to micro-, small- and medium-sized enterprises should be included in its progress report to the Commission in 2014 in sufficient detail to enable the Commission to consider what future work might be required, if any.

Public-private partnerships

327. The Commission heard a summary of the results of the colloquium organized by the Secretariat in May 2013 pursuant to the Commission's instruction to the Secretariat at its forty-fifth session, in 2012⁹² (the report of the colloquium is contained in document A/CN.9/779). The Commission noted the agreed importance of the topic in securing resources for infrastructure and other development, at the international and regional levels and for States at all stages of development.

328. As regards the four tests set out in paragraphs 303 and 304 above, the Commission noted that the topic of public-private partnerships was amenable to harmonization and the consensual development of a legislative text, given developments in public-private partnerships since the issue of the UNCITRAL texts on privately-financed infrastructure projects.⁹³ The Commission also heard the colloquium's conclusion that there was a lack of a universally accepted and acceptable standard on public-private partnerships.

329. As regards the mandate of UNCITRAL, it was recalled that the topic had already been the subject of legislative development within UNCITRAL, and it was noted that the work of other agencies in the field had been taken into account to avoid duplication of effort. It was observed that the instruments on privately-financed infrastructure projects, although recognized as comprehensive and accurate when they were issued, were not always used as the source of choice when enacting legislation on public-private partnerships. There was also agreement that the instruments on privately-financed infrastructure projects might be in need of some updating and revision, given the development in the market for public-private

⁹¹ Available from www.uncitral.org/uncitral/uncitral_texts/insolvency.html.

⁹² *Official Records of the General Assembly, Sixty-seventh Session, Supplement No. 17 (A/67/17)*, para. 120.

⁹³ The *UNCITRAL Legislative Guide on Privately-Financed Infrastructure Projects* (2000) and the *UNCITRAL Model Legislative Provisions on Privately Financed Infrastructure Projects* (2003), available from www.uncitral.org/uncitral/uncitral_texts/procurement_infrastructure.html.

partnerships, and that the key elements of a legislative text on public-private partnerships — drawing in large part on the instruments — were agreed.

330. However, noting the wide variation in terminology, scope and contents of existing texts at the national level, as reported at the colloquium, and some divergence of views as to whether a model law or other legislative text should be developed, it was considered that further preparatory work on the topic would be required so as to set a precise scope for any mandate to be given for development in a working group. In that regard, it was emphasized that any legislative text should ultimately be developed through a working group and that the preparatory work should be undertaken in an inclusive and transparent manner that took account of the experience in all regions, the need to include both the public and private sectors in consultations and multilingualism.

331. The view was expressed that minimal resources were required to carry out the necessary preparatory work, including consultations with experts. After discussion, the Commission agreed that the Secretariat would organize that preparatory work through studies and consultations with experts, and use up to one week of conference time previously allocated to Working Group I in the year to June 2014 for one or more colloquiums in cooperation with relevant international and regional bodies active in the field. Thereafter, a further report would be made to the Commission at its forty-seventh session.

Security interests

332. The Commission recalled the summary of its discussion on planned and future work in the area of security interests (paras. 192-194 above) and agreed that the continuation of work towards developing a model law on secured transactions would be undertaken in two one-week sessions of Working Group VI (Security Interests) in the year to June 2014, and that whether that work would include security interests in non-intermediated securities would be assessed at a future time.

XVI. Relevant General Assembly resolutions

333. The Commission took note of the following two General Assembly resolutions adopted on the recommendation of the Sixth Committee: resolution 67/89 on the report of the United Nations Commission on International Trade Law on the work of its forty-fifth session, and resolution 67/90 on recommendations to assist arbitral institutions and other interested bodies with regard to arbitration under the Arbitration Rules of the United Nations Commission on International Trade Law as revised in 2010. (See paras. 270, 276 and 291 above for consideration by the Commission of two other General Assembly resolutions related to the work of the Commission (resolutions 67/1 and 67/97).)

XVII. Other business

A. Entitlement to summary records

334. The Commission recalled that at its forty-fifth session, in 2012, it decided, while not relinquishing its entitlement to summary records under General Assembly resolution 49/221, to request that digital recordings continue to be provided at its forty-sixth and forty-seventh sessions, in 2013 and 2014, on a trial basis, in addition to summary records, as was done for the forty-fifth session. At that session, the Commission agreed that at its forty-seventh session, in 2014, it would assess the experience of using digital recordings and, on the basis of that assessment, take a decision regarding the possible replacement of summary records by digital recording. The Commission requested the Secretariat to report to the Commission on a regular basis on measures taken in the United Nations system to address possible problems with the use of digital recordings. It also requested the Secretariat to assess the possibility of providing digital recordings at sessions of UNCITRAL working groups, at their request, and to report to the Commission at its forty-seventh session, in 2014.⁹⁴

335. At its current session, the Commission heard a presentation about updates to the digital recording system available in the United Nations and saw the demonstration of the website through which the digital recordings of the forty-fifth and forty-sixth sessions of the Commission were made available. It was explained that (a) during the meeting, all interpretation channels and the floor sound were recorded digitally; (b) an electronic log showing the list of speakers was also created; (c) those recordings and the list of speakers were available shortly after the meeting; (d) the files were accessible through both the global meetings management system (gMeets), for the Secretariat, and the UNCITRAL website, for the public; (e) searching by date or title of the meeting was technically possible; and (f) there was an online tutorial explaining for users the main features of the system. The current digital recording system offered the user two options: to listen immediately to a particular intervention; and/or download a full meeting in MP3 format in any language of interpretation or the floor recording. The Secretariat could upload additional material to enrich the meeting archives and assist searching the audio files, for example by preparing a transcript of the meeting, which was currently produced by the Secretariat in English shortly after the meeting, for some United Nations bodies, from savings gained by no longer providing written records in all six official languages, the purpose of the transcription being to assist in finding the relevant information in the digital recording. Any electronically available material, such as written statements or presentations, could also be added.

336. It was explained that the digital system producing audio files for archival purposes was part of the gMeets platform and that platform enabled any intergovernmental body, if the body so decided, to replace or supplement their written meeting records or benefit from records of meetings where none was currently provided, such as in the case of UNCITRAL working groups. At the same time, the Commission was informed about General Assembly resolution 67/237, in

⁹⁴ *Official Records of the General Assembly, Sixty-seventh Session, Supplement No. 17 (A/67/17)*, para. 249.

which the Assembly noted the pilot project undertaken by the Committee on the Peaceful Uses of Outer Space at the United Nations Office at Vienna to make a transition to digital recordings of meetings in the six official languages of the Organization as a cost-saving measure, and emphasized that the further expansion of that measure would require consideration, including of its legal, financial and human resources implications, by the General Assembly and full compliance with the relevant resolutions of the Assembly, and requested the Secretary-General to report thereon and on the evaluation of the pilot project mentioned above to the Assembly at its sixty-eighth session.

337. The Commission noted problems with uploading on the UNCITRAL website the digital recordings of the forty-fifth session of the Commission on time and in all six official languages of the United Nations. The Commission was informed of steps taken and possible additional steps to ensure that digital recordings would be made available immediately in all six languages, regardless of where a session was held.

338. Questions were raised about sustainability of the system, in particular because of the need to archive the large volume of data and ensure that the data remained usable in future, regardless of changes in technology. In response, the Secretariat explained that, in order to ensure preservation of the data for an extended duration, measures had been put in place, such as multiple server and back-up services in various duty stations to prevent the data from being lost due to unprecedented events in one of the duty stations, such as the 2012 storm Sandy affecting New York.

339. In response to a query as regards citations of digital recordings in written materials, it was explained that the relevant practice had already developed: the speaker, the subject of his or her statement, the date, time and agenda item under which the statement was made were cited, and a hyperlink to the relevant digital recording was provided, thus allowing a reader of the document to instantaneously listen to the cited statement. At the same time, it was emphasized that digital recordings should not be treated as the official records of an intergovernmental body; they were only a recording tool. An appropriate decision of the relevant body in the United Nations system would be needed to upgrade their status to those of official records.

340. Support was expressed for the digital recordings as a viable alternative to summary records, taking into account their obvious advantages, such as (a) savings (as the digital recording system was inexpensive, and savings from eliminating the production of written summary records were significant); (b) efficiency (as digital recordings were immediately available, unlike the summary records or verbatim records which were sometimes produced months or even years after the meeting); (c) accuracy (as the floor language version of the digital audio files presented a fully authentic audio recording); and (d) environmental considerations.

341. The Commission expressed appreciation to the Secretariat for updating the Commission on the developments made in the digital recordings system. The Commission agreed that the UNCITRAL trial use of digital recordings, in parallel with summary records, should continue. The Commission also confirmed its agreement that at its next session, in 2014, it would assess the experience of using digital recordings and, on the basis of that assessment, would take a decision regarding the possible replacement of summary records by digital recordings.

342. The Commission agreed that, taking into account the Secretariat's confirmation that digital recordings could be easily provided at sessions of UNCITRAL working groups, such recordings should be provided by default. As was done by the Chair at the present session, the working group concerned should be reminded that the digital recordings of the session would be made publicly available. It was the understanding that an intergovernmental body could always request that no audio recording be taken during its particular session and thus opt out of the digital recordings services. The view was expressed that the Commission might decide at a future session whether digital recordings of working groups should be accompanied by a script.

B. Internship programme

343. The Commission recalled the considerations taken into account by its secretariat in selecting candidates for internship.⁹⁵ The Commission was informed that, since the Secretariat's oral report to the Commission at its forty-fifth session, in July 2012, 23 new interns had undertaken an internship with the UNCITRAL secretariat, 7 of whom in the UNCITRAL Regional Centre for Asia and the Pacific. Most interns came from developing countries and countries in transition and were female. The Commission was informed that, while during the period under review the situation with finding eligible and qualified candidates for internship from Latin American and Caribbean States had improved, the Secretariat continued facing difficulties in finding such candidates from African States, as well as candidates with Arabic language skills.

344. The Commission was also informed that the procedure for selecting interns had changed since 1 July 2013. Before that date, interns had been selected from among candidates listed in the roster maintained and administered by the United Nations Office at Vienna, while currently interns were selected by the UNCITRAL secretariat directly from among candidates who had applied to the job opening posted at the United Nations career portal (careers.un.org). States and observer organizations were requested to bring that substantial change in the procedure for selecting interns to the attention of interested persons.

C. Evaluation of the role of the Secretariat in facilitating the work of the Commission

345. The Commission recalled that at its fortieth session, in 2007,⁹⁶ it had been informed of the programme budget for the biennium 2008-2009, which listed among the expected accomplishments of the Secretariat "facilitating the work of UNCITRAL". The performance measure for that expected accomplishment was the level of satisfaction of UNCITRAL with the services provided, as evidenced by a rating on a scale ranging from 1 to 5 (5 being the highest rating).⁹⁷ At that session, the Commission had agreed to provide feedback to the Secretariat. From that session until the forty-fifth session of the Commission, in 2012, the Secretariat had

⁹⁵ Ibid., *Sixty-sixth Session, Supplement No. 17* (A/66/17), para. 329.

⁹⁶ Ibid., *Sixty-second Session, Supplement No. 17* (A/62/17), part one, para. 243.

⁹⁷ A/62/6 (Sect. 8) and Corr.1, table 8.19 (d).

circulated to delegates and representatives of observer States attending the annual sessions of UNCITRAL by the end of the session a questionnaire with the request to evaluate the quality of services provided by the Secretariat in facilitating the work of the Commission. The Commission noted that the Secretariat had not been receiving much feedback in response to that request; feedback received indicated a generally high level of satisfaction.

346. The Commission further took note that no such questionnaire had been circulated during the forty-fifth session of the Commission, in 2012; instead the Secretariat circulated to all States a note verbale on 22 March 2013 with the request that they indicate, by filling in the evaluation form enclosed to the note verbale, their level of satisfaction with the services provided to UNCITRAL by the UNCITRAL secretariat since the start of the forty-fifth session of UNCITRAL (held in New York from 25 June to 6 July 2012). The deadline for submission of the evaluation had been 7 July 2013, the day before the opening of the current session of the Commission.

347. The Commission was informed that the request had elicited an unusually high number of responses (15) and that the level of satisfaction with the services provided to UNCITRAL by the UNCITRAL secretariat remained high (an average of 4.8 out of 5). In the light of the higher number of replies received in the present year in response to the circulated note verbale, the Secretariat would continue the practice of soliciting the relevant feedback from States by means of a note verbale that would be circulated closer to the start of an annual session of the Commission, as had been done the present year, and reporting to the Commission at its annual sessions on the results of evaluation on the basis of the responses received.

XVIII. Date and place of future meetings

348. The Commission recalled that, at its thirty-sixth session, in 2003, it had agreed that (a) its working groups should normally meet for a one-week session twice a year; (b) extra time, if required, could be allocated to a working group provided that such arrangement would not result in an increase in the total number of 12 weeks of conference services per year currently allotted to sessions of all six working groups of the Commission; and (c) if any request by a working group for extra time would result in an increase in the 12-week allotment, the request should be reviewed by the Commission, with proper justification being given by that working group regarding the reasons for which a change in the meeting pattern was needed.⁹⁸

349. The Commission also recalled that, at its forty-fifth session, in 2012, it took note of paragraph 48 of General Assembly resolution 66/246 on questions relating to the proposed programme budget for the biennium 2012-2013, by which the Assembly had decided to increase non-post resources in order to provide sufficient funding for servicing the work of the Commission for 14 weeks and to retain the rotation scheme between Vienna and New York. In the light of that decision, the Commission noted at that session that the total number of 12 weeks of conference services per year could continue being allotted to six working groups of the

⁹⁸ *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 17 (A/58/17)*, para. 275.

Commission meeting twice a year for one week if annual sessions of the Commission were no longer than two weeks. Otherwise, adjustments would need to be made within the current 14-week allotment for all sessions of the Commission and its working groups.⁹⁹

350. At the current session, the Commission emphasized the need for flexibility in allocation of conference time (see para. 298 above).

A. Forty-seventh session of the Commission

351. In the light of the considerations set out above, the Commission approved the holding of its forty-seventh session in New York from 7 to 25 July 2014. The Secretariat was requested to consider shortening the duration of the session by one week if the expected workload of the session justified doing so.

B. Sessions of working groups

1. Sessions of working groups between the forty-sixth and the forty-seventh sessions of the Commission

352. In the light of the considerations set out above, the Commission approved the following schedule of meetings for its working groups:

(a) Working Group I would hold its twenty-second session in Vienna from 23 to 27 September 2013 and its twenty-third session in New York from 10 to 14 February 2014;

(b) Working Group II (Arbitration and Conciliation) would hold its fifty-ninth session in Vienna from 16 to 20 September 2013 and its sixtieth session in New York from 3 to 7 February 2014;

(c) Working Group III (Online Dispute Resolution) would hold its twenty-eighth session in Vienna from 18 to 22 November 2013 and its twenty-ninth session in New York from 24 to 28 March 2014;

(d) Working Group IV (Electronic Commerce) would hold its forty-eighth session in Vienna from 9 to 13 December 2013 and its forty-ninth session in New York from 28 April to 2 May 2014;

(e) Working Group V (Insolvency Law) would hold its forty-fourth session in Vienna from 16 to 20 December 2013 and its forty-fifth session in New York from 21 to 25 April 2014;

(f) Working Group VI (Security Interests) would hold its twenty-fourth session in Vienna from 7 to 11 October or 2 to 6 December 2013 and its twenty-fifth session in New York from 31 March to 4 April 2014.

353. The Commission authorized the Secretariat to adjust the schedule of working group meetings according to the needs of the working groups and the need to hold colloquiums as agreed by the Commission at the current session (see paras. 325 and

⁹⁹ Ibid., *Sixty-seventh Session, Supplement No. 17 (A/67/17)*, para. 258.

331 above). The Secretariat was requested to post on the UNCITRAL website the final schedule of the working group meetings once the dates had been confirmed.

2. Sessions of working groups in 2014 after the forty-seventh session of the Commission

354. The Commission noted that the following dates were allocated for UNCITRAL meetings in 2014 after its forty-seventh session: (a) 8-12 September 2014 or 20-24 October 2014; (b) 22-26 September 2014; (c) 10-14 November 2014; (d) 17-21 November 2014; (e) 8-12 December 2014; and (f) 15-19 December 2014.

Annex I

UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration

Article 1. Scope of application

Applicability of the Rules

1. The UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration (“Rules on Transparency”) shall apply to investor-State arbitration initiated under the UNCITRAL Arbitration Rules pursuant to a treaty providing for the protection of investments or investors (“treaty”)* concluded on or after 1 April 2014 unless the Parties to the treaty** have agreed otherwise.

2. In investor-State arbitrations initiated under the UNCITRAL Arbitration Rules pursuant to a treaty concluded before 1 April 2014, these Rules shall apply only when:

(a) The parties to an arbitration (the “disputing parties”) agree to their application in respect of that arbitration; or

(b) The Parties to the treaty or, in the case of a multilateral treaty, the State of the claimant and the respondent State, have agreed after 1 April 2014 to their application.

Application of the Rules

3. In any arbitration in which the Rules on Transparency apply pursuant to a treaty or to an agreement by the Parties to that treaty:

(a) The disputing parties may not derogate from these Rules, by agreement or otherwise, unless permitted to do so by the treaty;

(b) The arbitral tribunal shall have the power, besides its discretionary authority under certain provisions of these Rules, to adapt the requirements of any specific provision of these Rules to the particular circumstances of the case, after consultation with the disputing parties, if such adaptation is necessary to conduct the arbitration in a practical manner and is consistent with the transparency objective of these Rules.

Discretion and authority of the arbitral tribunal

4. Where the Rules on Transparency provide for the arbitral tribunal to exercise discretion, the arbitral tribunal in exercising such discretion shall take into account:

(a) The public interest in transparency in treaty-based investor-State arbitration and in the particular arbitral proceedings; and

(b) The disputing parties’ interest in a fair and efficient resolution of their dispute.

5. These Rules shall not affect any authority that the arbitral tribunal may otherwise have under the UNCITRAL Arbitration Rules to conduct the arbitration in

such a manner as to promote transparency, for example by accepting submissions from third persons.

6. In the presence of any conduct, measure or other action having the effect of wholly undermining the transparency objectives of these Rules, the arbitral tribunal shall ensure that those objectives prevail.

Applicable instrument in case of conflict

7. Where the Rules on Transparency apply, they shall supplement any applicable arbitration rules. Where there is a conflict between the Rules on Transparency and the applicable arbitration rules, the Rules on Transparency shall prevail. Notwithstanding any provision in these Rules, where there is a conflict between the Rules on Transparency and the treaty, the provisions of the treaty shall prevail.

8. Where any of these Rules is in conflict with a provision of the law applicable to the arbitration from which the disputing parties cannot derogate, that provision shall prevail.

Application in non-UNCITRAL arbitrations

9. These Rules are available for use in investor-State arbitrations initiated under rules other than the UNCITRAL Arbitration Rules or in ad hoc proceedings.

Footnotes to article 1, paragraph 1:

* For the purposes of the Rules on Transparency, a “treaty” shall be understood broadly as encompassing any bilateral or multilateral treaty that contains provisions on the protection of investments or investors and a right for investors to resort to arbitration against Parties to the treaty, including any treaty commonly referred to as a free trade agreement, economic integration agreement, trade and investment framework or cooperation agreement, or bilateral investment treaty.

** For the purposes of the Rules on Transparency, any reference to a “Party to the treaty” or a “State” includes, for example, a regional economic integration organization where it is a Party to the treaty.

Article 2. Publication of information at the commencement of arbitral proceedings

Once the notice of arbitration has been received by the respondent, each of the disputing parties shall promptly communicate a copy of the notice of arbitration to the repository referred to under article 8. Upon receipt of the notice of arbitration from the respondent, or upon receipt of the notice of arbitration and a record of its transmission to the respondent, the repository shall promptly make available to the public information regarding the name of the disputing parties, the economic sector involved and the treaty under which the claim is being made.

Article 3. Publication of documents

1. Subject to article 7, the following documents shall be made available to the public: the notice of arbitration, the response to the notice of arbitration, the statement of claim, the statement of defence and any further written statements or

written submissions by any disputing party; a table listing all exhibits to the aforesaid documents and to expert reports and witness statements, if such table has been prepared for the proceedings, but not the exhibits themselves; any written submissions by the non-disputing Party (or Parties) to the treaty and by third persons, transcripts of hearings, where available; and orders, decisions and awards of the arbitral tribunal.

2. Subject to article 7, expert reports and witness statements, exclusive of the exhibits thereto, shall be made available to the public, upon request by any person to the arbitral tribunal.

3. Subject to article 7, the arbitral tribunal may decide, on its own initiative or upon request from any person, and after consultation with the disputing parties, whether and how to make available exhibits and any other documents provided to, or issued by, the arbitral tribunal not falling within paragraphs 1 or 2 above. This may include, for example, making such documents available at a specified site.

4. The documents to be made available to the public pursuant to paragraphs 1 and 2 shall be communicated by the arbitral tribunal to the repository referred to under article 8 as soon as possible, subject to any relevant arrangements or time limits for the protection of confidential or protected information prescribed under article 7. The documents to be made available pursuant to paragraph 3 may be communicated by the arbitral tribunal to the repository referred to under article 8 as they become available and, if applicable, in a redacted form in accordance with article 7. The repository shall make all documents available in a timely manner, in the form and in the language in which it receives them.

5. A person granted access to documents under paragraph 3 shall bear any administrative costs of making those documents available to that person, such as the costs of photocopying or shipping documents to that person, but not the costs of making those documents available to the public through the repository.

Article 4. Submission by a third person

1. After consultation with the disputing parties, the arbitral tribunal may allow a person that is not a disputing party, and not a non-disputing Party to the treaty ("third person(s)"), to file a written submission with the arbitral tribunal regarding a matter within the scope of the dispute.

2. A third person wishing to make a submission shall apply to the arbitral tribunal, and shall, in a concise written statement, which is in a language of the arbitration and complies with any page limits set by the arbitral tribunal:

(a) Describe the third person, including, where relevant, its membership and legal status (e.g., trade association or other non-governmental organization), its general objectives, the nature of its activities and any parent organization (including any organization that directly or indirectly controls the third person);

(b) Disclose any connection, direct or indirect, which the third person has with any disputing party;

(c) Provide information on any government, person or organization that has provided to the third person (i) any financial or other assistance in preparing the submission; or (ii) substantial assistance in either of the two years preceding the

application by the third person under this article (e.g. funding around 20 per cent of its overall operations annually);

(d) Describe the nature of the interest that the third person has in the arbitration; and

(e) Identify the specific issues of fact or law in the arbitration that the third person wishes to address in its written submission.

3. In determining whether to allow such a submission, the arbitral tribunal shall take into consideration, among other factors it determines to be relevant:

(a) Whether the third person has a significant interest in the arbitral proceedings; and

(b) The extent to which the submission would assist the arbitral tribunal in the determination of a factual or legal issue related to the arbitral proceedings by bringing a perspective, particular knowledge or insight that is different from that of the disputing parties.

4. The submission filed by the third person shall:

(a) Be dated and signed by the person filing the submission on behalf of the third person;

(b) Be concise, and in no case longer than as authorized by the arbitral tribunal;

(c) Set out a precise statement of the third person's position on issues; and

(d) Address only matters within the scope of the dispute.

5. The arbitral tribunal shall ensure that any submission does not disrupt or unduly burden the arbitral proceedings, or unfairly prejudice any disputing party.

6. The arbitral tribunal shall ensure that the disputing parties are given a reasonable opportunity to present their observations on any submission by the third person.

Article 5. Submission by a non-disputing Party to the treaty

1. The arbitral tribunal shall, subject to paragraph 4, allow, or, after consultation with the disputing parties, may invite, submissions on issues of treaty interpretation from a non-disputing Party to the treaty.

2. The arbitral tribunal, after consultation with the disputing parties, may allow submissions on further matters within the scope of the dispute from a non-disputing Party to the treaty. In determining whether to allow such submissions, the arbitral tribunal shall take into consideration, among other factors it determines to be relevant, the factors referred to in article 4, paragraph 3, and, for greater certainty, the need to avoid submissions which would support the claim of the investor in a manner tantamount to diplomatic protection.

3. The arbitral tribunal shall not draw any inference from the absence of any submission or response to any invitation pursuant to paragraphs 1 or 2.

4. The arbitral tribunal shall ensure that any submission does not disrupt or unduly burden the arbitral proceedings, or unfairly prejudice any disputing party.

5. The arbitral tribunal shall ensure that the disputing parties are given a reasonable opportunity to present their observations on any submission by a non-disputing Party to the treaty.

Article 6. Hearings

1. Subject to article 6, paragraphs 2 and 3, hearings for the presentation of evidence or for oral argument (“hearings”) shall be public.

2. Where there is a need to protect confidential information or the integrity of the arbitral process pursuant to article 7, the arbitral tribunal shall make arrangements to hold in private that part of the hearing requiring such protection.

3. The arbitral tribunal shall make logistical arrangements to facilitate the public access to hearings (including where appropriate by organizing attendance through video links or such other means as it deems appropriate). However, the arbitral tribunal may, after consultation with the disputing parties, decide to hold all or part of the hearings in private where this becomes necessary for logistical reasons, such as when the circumstances render any original arrangement for public access to a hearing infeasible.

Article 7. Exceptions to transparency

Confidential or protected information

1. Confidential or protected information, as defined in paragraph 2 and as identified pursuant to the arrangements referred to in paragraphs 3 and 4, shall not be made available to the public pursuant to articles 2 to 6.

2. Confidential or protected information consists of:

(a) Confidential business information;

(b) Information that is protected against being made available to the public under the treaty;

(c) Information that is protected against being made available to the public, in the case of the information of the respondent State, under the law of the respondent State, and in the case of other information, under any law or rules determined by the arbitral tribunal to be applicable to the disclosure of such information; or

(d) Information the disclosure of which would impede law enforcement.

3. The arbitral tribunal, after consultation with the disputing parties, shall make arrangements to prevent any confidential or protected information from being made available to the public, including by putting in place, as appropriate:

(a) Time limits in which a disputing party, non-disputing Party to the treaty or third person shall give notice that it seeks protection for such information in documents;

(b) Procedures for the prompt designation and redaction of the particular confidential or protected information in such documents; and

(c) Procedures for holding hearings in private to the extent required by article 6, paragraph 2.

Any determination as to whether information is confidential or protected shall be made by the arbitral tribunal after consultation with the disputing parties.

4. Where the arbitral tribunal determines that information should not be redacted from a document, or that a document should not be prevented from being made available to the public, any disputing party, non-disputing Party to the treaty or third person that voluntarily introduced the document into the record shall be permitted to withdraw all or part of the document from the record of the arbitral proceedings.

5. Nothing in these Rules requires a respondent State to make available to the public information the disclosure of which it considers to be contrary to its essential security interests.

Integrity of the arbitral process

6. Information shall not be made available to the public pursuant to articles 2 to 6 where the information, if made available to the public, would jeopardize the integrity of the arbitral process as determined pursuant to paragraph 7.

7. The arbitral tribunal may, on its own initiative or upon the application of a disputing party, after consultation with the disputing parties where practicable, take appropriate measures to restrain or delay the publication of information where such publication would jeopardize the integrity of the arbitral process because it could hamper the collection or production of evidence, lead to the intimidation of witnesses, lawyers acting for disputing parties or members of the arbitral tribunal, or in comparably exceptional circumstances.

Article 8. Repository of published information

The repository of published information under the Rules on Transparency shall be the Secretary-General of the United Nations or an institution named by UNCITRAL.

Annex II

Amendment to article 1 of the UNCITRAL Arbitration Rules

UNCITRAL Arbitration Rules (with new article 1, paragraph 4, as adopted in 2013)

Scope of application

Article 1

4. For investor-State arbitration initiated pursuant to a treaty providing for the protection of investments or investors, these Rules include the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration (“Rules on Transparency”), subject to article 1 of the Rules on Transparency.

Annex III

List of documents before the Commission at its forty-sixth session

<i>Symbol</i>	<i>Title or description</i>
A/CN.9/759	Provisional agenda, annotations thereto and scheduling of meetings of the forty-sixth session
A/CN.9/760	Report of Working Group II (Arbitration and Conciliation) on the work of its fifty-seventh session
A/CN.9/761	Report of Working Group IV (Electronic Commerce) on the work of its forty-sixth session
A/CN.9/762	Report of Working Group III (Online Dispute Resolution) on the work of its twenty-sixth session
A/CN.9/763	Report of Working Group V (Insolvency Law) on the work of its forty-second session
A/CN.9/764	Report of Working Group VI (Security Interests) on the work of its twenty-second session
A/CN.9/765	Report of Working Group II (Arbitration and Conciliation) on the work of its fifty-eighth session
A/CN.9/766	Report of Working Group V (Insolvency Law) on the work of its forty-third session
A/CN.9/767	Report of Working Group VI (Security Interests) on the work of its twenty-third session
A/CN.9/768	Report of Working Group IV (Electronic Commerce) on the work of its forty-seventh session
A/CN.9/769	Report of Working Group III (Online Dispute Resolution) on the work of its twenty-seventh session
A/CN.9/770	Guidance on procurement regulations to be promulgated in accordance with article 4 of the UNCITRAL Model Law on Public Procurement
A/CN.9/771	Glossary of procurement-related terms used in the UNCITRAL Model Law on Public Procurement
A/CN.9/772	Note by the Secretariat on bibliography of recent writings related to the work of UNCITRAL
A/CN.9/773	Note by the Secretariat on status of conventions and model laws
A/CN.9/774	Note by the Secretariat on planned and possible future work
A/CN.9/775	Note by the Secretariat on technical cooperation and assistance
A/CN.9/776	Note by the Secretariat on coordination activities
A/CN.9/777	Note by the Secretariat on promotion of ways and means of ensuring a uniform interpretation and application of UNCITRAL legal texts

<i>Symbol</i>	<i>Title or description</i>
A/CN.9/778	The UNCITRAL Model Law on Cross-Border Insolvency: the Judicial Perspective
A/CN.9/779	Note by the Secretariat on possible future work in the area of public-private partnerships: report of the UNCITRAL colloquium on public-private partnerships
A/CN.9/780	Microfinance: creating an enabling legal environment for micro-business and small and medium-sized enterprises
A/CN.9/781 and Add.1-2	Draft UNCITRAL Guide on the Implementation of a Security Rights Registry
A/CN.9/782	Discussion paper on the International Colloquium on Public-Private Partnerships
A/CN.9/783	Settlement of commercial disputes: draft UNCITRAL rules on transparency in treaty-based investor-State arbitration
A/CN.9/784	Settlement of commercial disputes: applicability of the UNCITRAL rules on transparency to the settlement of disputes arising under existing investment treaties
A/CN.9/785	Settlement of commercial disputes: possible future work in the field of settlement of commercial disputes
A/CN.9/786	Settlement of commercial disputes: UNCITRAL Guide on the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958): excerpt, guide on article VII
A/CN.9/787 and Add.1-3 and Add.1/Corr.1	Settlement of commercial disputes: draft UNCITRAL rules on transparency in treaty-based investor-State arbitration: compilation of comments by Governments
A/CN.9/788	Note by the Secretariat on commercial fraud
A/CN.9/789	Proposal by the Government of the United States regarding UNCITRAL future work: provisional agenda item 16
A/CN.9/790	Proposal by the Government of Colombia
A/CN.9/791	Settlement of commercial disputes: draft UNCITRAL rules on transparency in treaty-based investor-State arbitration: repository of published information under article 8 of the draft UNCITRAL rules on transparency in treaty-based investor-State arbitration
A/CN.9/792 and Add.1-3	Revised Guide to Enactment of the Model Law and draft part four of the Legislative Guide on Insolvency Law: compilation of comments by Governments

