



# General Assembly

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## United Nations Commission on International Trade Law Forty-third session

### Summary record (partial)\* of the 920th meeting

Held at Headquarters, New York, on Tuesday, 6 July 2010, at 10 a.m.

*Chairperson:* Mr. Sandoval ..... (Chile)

## Contents

Current and possible future work in the area of electronic commerce

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\* No summary record was prepared for the rest of the meeting.

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*The discussion covered in the summary record began at 10.25 a.m.*

**Current and possible future work in the area of electronic commerce (A/CN.9/692)**

1. **Mr. Sorieul** (Secretary of the Commission) said that, since the adoption in 2005 of the United Nations Convention on the Use of Electronic Communications in International Contracts, the Commission had not worked on matters relating to electronic commerce, but had continued its cooperation with the World Customs Organization (WCO). There were a number of topics relating to electronic commerce that the Commission might now wish to consider.

2. **Mr. Lee Jae Sung** (International Trade Law Division), introducing the note by the Secretariat on present and possible future work on electronic commerce (A/CN.9/692), recalled that the Commission had requested the secretariat to follow legal developments in the area of electronic commerce, in particular the legal aspects of implementing a cross-border single window facility, and to prepare studies on electronic transferable records.

3. The Commission might wish, in its Working Group IV on electronic commerce, to review progress by the Joint Legal Task Force on Coordinated Border Management of the World Customs Organization and the Commission on single window facilities. With regard to electronic transferable records, the Commission had requested the secretariat to prepare studies in the light of the proposals submitted by the United States of America (A/CN.9/681 and Add.1) and Spain (A/CN.9/682). In that connection, the Republic of Korea had introduced legislation enabling the use of electronic bills of lading. The Commission might now wish to consider whether that topic should be referred to Working Group IV. The complexity of the issue was such that it might be helpful to organize a colloquium in late 2010 in preparation for a session of the Working Group in 2011.

4. Identity management had attracted attention as a promising means of authentication in the context of trusted remote relations. The use of mobile devices was becoming a powerful tool for financial transactions, especially in developing countries. The Commission might consider whether further studies of those two areas should be conducted by the secretariat.

5. **Mr. Loken** (United States of America) said that his delegation supported the convening of a colloquium, in particular to consider the closely related topics of electronic single window facilities, electronic transferable records and identity management. Discussion at a colloquium would help to define the work of the Working Group.

6. There had been progress on the single window mechanism in international and domestic commerce to an extent that rendered its consideration by the Commission appropriate and timely, within the broader context of electronic transferable records.

7. He welcomed the provision of information on the new legal framework in the Republic of Korea; it would provide a template for work on electronic bills of lading, as one aspect of transferable records. Electronic bills of lading were long overdue, and could greatly improve the efficiency of trade and commerce.

8. Identity management involved several of the issues dealt with by the Commission in the Model Law on Electronic Commerce, and was inextricably linked with electronic transferable records and single window mechanisms.

9. **Mr. Oh Soo-geun** (Republic of Korea) said that his delegation supported the suggestions in the note on possible future work. With the rapid changes brought about by the application of information technology to commerce, it was important for the Commission not to delay. A colloquium, in fall 2010, would be helpful in identifying issues and establishing priorities.

10. **Mr. Morán Bovio** (Spain) said that his delegation did not agree with the previous speakers: the four topics covered in the note were completely distinct from one another. Moreover, the electronic registry system introduced in the Republic of Korea was diametrically opposed to the earlier proposals by his delegation for an electronic record subject to control.

11. He recalled in that connection that the question of electronic bills of lading had been definitively resolved by the adoption of the United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (the "Rotterdam Rules"), which the European Parliament had recently recommended for implementation. For the Commission now to pursue proposals on bills of lading based on the Korean model of a registry as outlined in the note would amount to taking two different positions on a

fundamental element of international commerce, as the Rotterdam Rules were not compatible with that model, which represented a different system.

12. His delegation could not support any such proposals — they would, in effect, torpedo the Rules. In practice, States might well suspend implementation of the Rules pending the Commission's deliberations.

13. The Korean model might provide a possibility in respect of single electronic transferable records, such as electronic promissory notes or bills of exchange, rather than bills of lading. The Commission would, however, need to decide between a registry and a control system.

14. The secretariat should separate out the various components of the note. The separated components could be considered individually, for example, in the case of the single window facility, in cooperation with the World Customs Organization, which had also yet to finalize its views.

15. The Commission could then consider further the concept of a single transferable electronic record that could serve as a means of payment. As matters stood, the question could not be referred to a working group, or even to a group of experts, since it would similarly have to tackle the issue of a registry or control system. The Commission might revert to the topic at a later session, and perhaps consider both systems, but they must be kept separate.

16. The Commission was in the vanguard of electronic commerce. It must avoid any confusion in dealing with that vital issue if it was to continue to render the same level of service and maintain its leadership position.

17. **Mr. Maradiaga** (Honduras) said that his Government had ratified the United Nations Convention on the Use of Electronic Communications in International Contracts, though had yet to deposit the instrument of ratification owing to domestic political considerations.

18. The issues before the Commission were topical and important. In his view, they could be taken up by the Working Group, and the various points raised discussed on the basis of thorough analysis. That would allow the Commission to follow its traditional approach of devising a norm that would meet with universal acceptance. His delegation could accept the suggestions before the Commission.

19. **Ms. Sabo** (Canada) noted that the issues in question had come before the Commission before. Regarding the single window, the secretariat should continue to monitor the situation, and, in due course, the Working Group on electronic commerce could consider the results produced by the Joint Legal Task Force and provide input to the Commission.

20. The other topics presented in the note, however, posed difficulties for her delegation. Regarding electronic transferability of records, there was not sufficient commonality among the different areas involved for work on a broad project to be undertaken. The topic needed to be narrowed down. It was important for the Working Group on electronic commerce to have a clearly defined and circumscribed mandate. Resources were not available for unfocused discussion prior to the identification of specific tasks.

21. While identity management and use of mobile devices were of interest, not enough information was available to justify consideration by the Working Group.

22. The secretariat should organize a colloquium covering a number of electronic commerce topics, refine the results with a meeting of experts, then come back to the Commission in 2011 with more specific proposals, which the Commission would then prioritize.

23. **Ms. Lim Sai Nei** (Singapore) expressed her delegation's support for consideration of electronic transferable records and for the holding of a colloquium. The points raised by the representative of Spain could be discussed then.

24. **Mr. Bellenger** (France) said that his delegation had reservations concerning the note on possible future work. The question of single window facilities seemed to fall within the purview of the World Customs Organization, whose intentions were not known to the Commission. Electronic transferable records had already been discussed on prior occasions, most recently in the drafting of the United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea, and was a closed topic.

25. He wondered whether the intent was to establish new working groups to consider the issues raised, including online dispute resolution. That would impose

a burden on the secretariat; it would be better to refer the issues to one group.

26. **Mr. Schoefisch** (Germany) agreed that it was important for the Working Group to have a clear mandate; it was very difficult to work in working groups with broad mandates. It would be useful to have a colloquium to consider appropriate topics with a view to devising a clear mandate for the Working Group on electronic commerce.

27. **Mr. Loken** (United States of America) said that his delegation's earlier proposal on transferable records was designed to accommodate more than one approach, and did not favour the single controlled electronic document over an electronic registry mechanism. In fact, in practice, the two could be combined: it was possible to have a single controlled document that was provided a requisite level of assurance by means of an electronic registry. For that reason his delegation's proposal had not taken a firm position on any particular mechanism.

28. In addition, different requisites might apply to different commercial sectors. There could not be a "one size fits all" approach to transferable records. The topic remained the single most important unresolved area of electronic commerce and merited the Commission's attention.

29. He did not see any complication or conflict regarding the Rotterdam Rules. Indeed, the experts involved in the formulation of those Rules were in agreement with his delegation that there were various methods by which the desired result could be attained and still fall within the definition of electronic transport record contained in the Rules.

30. The issues raised, while complex, were resolvable, and work thereon would be the next important development following on from the very successful Model Law on Electronic Commerce. He assured the Commission that the work would not result in any provisions on the transport of goods that were inconsistent with the Rotterdam Rules.

31. **Mr. Tornero** (Observer for the International Air Transport Association) said that the International Air Transport Association supported the position of the United States of America, and also favoured the holding of a colloquium on the transferability of electronic records, including electronic airway bills.

32. **The Chairperson** said that the Commission had before it suggestions for analysis of the proposals in the note on possible future work on electronic commerce, including the separating out of the various topics in view of the issues concerning control and registry mechanisms. The majority opinion was that a colloquium should be convened to consider the issues further, with a view to giving the Working Group on electronic commerce a clear mandate.

33. **Mr. Chan Wah-Teck** (Singapore) said that the note by the Secretariat (A/CN.9/692, para. 8) indicated that some of the legal issues identified with regard to electronic single window facilities were enforcement-related. When the work on electronic single window facilities had begun, his delegation had expressed concern that the work might stray into the realm of national regulatory systems, which were outside the Commission's remit. While his delegation did not object to the work being done in conjunction with the World Customs Organization, if that work concerned regulatory systems more than the harmonization of rules for common approaches to customs clearances, then great care would be required. Different countries had different regulatory models in order to give effect to their differing national policies; attempting to harmonize them might be a futile exercise. Working modalities could, of course, be harmonized, but on that front much had already been achieved through the Model Law on Electronic Commerce and the United Nations Convention on the Use of Electronic Communications in International Contracts, which provided clear rules for functional equivalence between electronic communications and paper-based systems. While many delegations might wish the work on electronic single window facilities to continue, and considerable resources had been devoted to it already, the Commission should be wary of straying into the realm of national regulatory systems.

34. **Ms. Sabo** (Canada) said that the topic of electronic single window facilities could be explored at the proposed colloquium. It was important for the Commission to have another opportunity to discuss it, and to clarify the Working Group's mandate, before the Group took up any project in that regard.

35. **Mr. Morán Bovio** (Spain), expressing support for the comments made by the representative of Canada, said that a colloquium was necessary in order to have a more detailed discussion of the possible conflict that had arisen with regard to electronic records, and to

establish a clear mandate for the Working Group. His delegation stood ready to work with others on the fundamental issue of negotiable electronic records. Like others, his delegation believed that registry systems and control systems were incompatible; the former implied the involvement of an external authority, whereas the latter did not. The Working Group should concentrate on the transferability of single electronic records. It should not address the question of single window facilities because such a discussion would depend on the outcome of any work on transferability of single electronic records.

36. **Mr. Dennis** (United States of America) said that no unnecessary limits should be placed on the scope of matters to be considered at the colloquium; in particular, the single window concept should not be separated from discussions on transferability. The topic of single window systems was broader than that of transferability, but some of the issues relating to single window systems were inherent in any discussion of the different modalities by which various rights or interests could be transferred through electronic means. Therefore, the discussion of each topic should be informed by developments in the other.

37. **The Chairperson** said that there seemed to be a consensus that a colloquium should be held in the near future in order to discuss all the topics proposed in document A/CN.9/692 and to determine a clear agenda for the Working Group.

38. **Ms. Sabo** (Canada) asked whether the secretariat would produce a report on the outcome of the colloquium for the Commission to consider at its next session.

39. **Mr. Sorieul** (Secretary of the Commission) said that the secretariat would be guided by the Commission on that issue: either it could produce a report for the Commission to consider at its next session, or the Working Group could meet to discuss the outcome of the colloquium before the Commission's next session.

40. **Mr. Schoefisch** (Germany) said his delegation agreed that the proposed colloquium should cover all the possible topics set out in document A/CN.9/692. After the colloquium had been held and a report had been produced by the secretariat, the Commission should have the opportunity to discuss that report before it was taken up by the Working Group. It could decide on the Working Group's mandate at its next session.

41. **Mr. Morán Bovio** (Spain), expressing agreement with the comments made by the representative of Germany, reiterated his delegation's belief that the registry system and the control system were incompatible and said that his delegation looked forward to the outcome of the proposed colloquium in that regard. It was crucial for the question to be resolved if further progress was to be made. The secretariat might wish to hold a meeting of experts as well as a colloquium, and should have full freedom to decide on the best way of proceeding.

42. **The Chairperson** said he took it that the Commission wished to request the secretariat to organize, as it saw fit, a colloquium and/or a meeting of experts on all the possible future work topics set out in document A/CN.9/692 and to prepare a report on the outcome of those discussions, including a proposed agenda for the Working Group, for submission at the Commission's forty-fourth session. The secretariat should be given broad discretion as to the best way to proceed.

43. *It was so decided.*

*The meeting was suspended at 11.35 a.m. and resumed at noon.*

*Possible future work on online dispute resolution in cross-border electronic commerce transactions (A/CN.9/706 and A/CN.9/710)*

44. **Mr. Lemay** (International Trade Law Division), introducing the note by the Secretariat on possible future work on online dispute resolution in cross-border electronic commerce transactions (A/CN.9/706) and the note supporting the possible future work on online dispute resolution by UNCITRAL submitted by the Institute of International Commercial Law (A/CN.9/710), recalled that the Commission, at its forty-second session, had requested the secretariat to prepare studies with a view to consideration of the matter of online dispute resolution at a future session. Pursuant to a further request from the Commission, the secretariat had organized a colloquium on the topic, which had been held in Vienna in March 2010. A summary of the colloquium proceedings, the key issues that had been identified and the colloquium's conclusions was contained in document A/CN.9/706.

45. **Mr. Boulos** (Egypt) said that his delegation attached great importance to the discussion on online dispute resolution in cross-border electronic commerce

transactions. Communications technology had undergone remarkably rapid development in recent decades and, though the pace of development varied from one country to another, computers had become an integral part of everyday life for people all over the world. In Egypt, with a view to gaining access to the international system of electronic signatures and promoting electronic commerce, a law on electronic signatures had been adopted in 2004 and licences had been granted to four private companies to operate as certificate authorities for electronic signatures in 2007. The use of laptops and mobile telephones to conduct electronic transactions was widespread and had spurred huge growth in electronic commerce in both business-to-business and business-to-consumer environments.

46. Two of the challenges associated with the growth in electronic commerce were how to develop an effective international system of settling disputes relating to electronic commerce transactions and how to ensure the protection of parties to electronic contracts in situations where one party failed to honour its obligations. Courts had difficulty settling such disputes for a variety of reasons, including the high volume of small-value claims, the contrast between the low value of the transaction and the high cost of litigation, questions of applicable law in both electronic commerce and consumer protection contexts and difficulties of enforcement of foreign judgements.

47. Some of the ideas that had been put forward, such as the institution of an automatic, easy-access system that would allow the majority of disputes to be resolved without the intervention of human beings, seemed somewhat utopian. However, the same had been said of many technological innovations that had subsequently become a reality. It was up to the Commission to apply its legal expertise to the ideas put forward by technology experts so as to ensure that justice was served in the field of electronic commerce.

48. **Mr. Loken** (United States of America) supported the remarks by the representative of Egypt. In view of the increasing number of people with access to the Internet, generic rules on online dispute resolution needed to be designed, as proposed in the note by the Secretariat (A/CN.9/706, para. 51); a working group should be mandated for that purpose. The lack of dispute resolution mechanisms was holding up the development of online commerce.

49. **Mr. Oh** Soo-geun (Republic of Korea) said that the Commission was the right forum to develop such rules, following discussion of their intended scope and possible form. Hard or binding law would be required for some types of such commerce, while only soft or non-binding law would be applicable in others. The Commission, which already possessed expertise in the areas of electronic commerce and arbitration, could be relied on to adopt the necessary flexible approach and had the added advantage of reaching its decisions by consensus; moreover, any rules it might develop, being endorsed by the General Assembly of the United Nations, were likely to develop subsequently into hard law. His delegation accordingly supported the proposal to assign the topic of online dispute resolution to a working group for future development by the Commission.

50. **Ms. Sabo** (Canada) said that her delegation shared the interest expressed in the topic, but believed that the two issues of business-to-business commerce and business-to-consumer commerce should be dealt with separately. The former fell squarely within the mandate of the Commission, while consumer matters, on which it was more difficult to reach an agreement, lay outside its traditional concerns. She therefore suggested that work should focus initially on business-to-business commerce and move on subsequently to tackle the question of business-to-consumer transactions; alternatively, one working group could focus on the former and a separate working group could concern itself with the latter.

51. **Ms. Smyth** (Australia) concurred on the timeliness of work to develop generic rules for online dispute resolution and said that her delegation was favourable to the convening of a working group for the purpose. The distinction made by the Canadian delegation between the two types of electronic commerce should be borne in mind, as should the unequal access of States to such commerce.

52. **Mr. Mekjian** (Armenia) agreed that attention needed to be given to the issues raised relating to electronic and mobile commerce and that a working group should be charged with drawing up the required global rules.

53. **Mr. Schoefisch** (Germany), concurring, said that the working group could be one of the two already established on arbitration and electronic commerce respectively or be an entirely new working group. It should start by addressing business-to-business

commerce, leaving aside for the time being the more difficult field of business-to-consumer transactions.

54. **Ms. Umoren** (Nigeria) said that, like other developing countries, Nigeria lacked electronic communication capacity. While supporting the proposed work on electronic commerce disputes, her delegation hoped that it would take account of the differing situations of countries. The cross-border problems that arose in Nigeria in that area could not be addressed adequately owing to a lack of courts and enabling legislation. Clear rules must be designed.

55. **Mr. Bellenger** (France) said that if the proposed generic rules were not binding, the question would arise of the modes of implementation of decisions based on those rules. Such rules would create a system more akin to mediation than to arbitration; it would be a private system regulated by an international organization. Other concerns that should be addressed included the protection of personal data and consumer rights.

56. **Ms. Lim Sai Nei** (Singapore) said that both businesses and consumers must be protected and that the issues raised by the delegation of France could usefully be addressed in a working group, perhaps set up on an ad hoc basis.

57. **Mr. Sato** (Japan) said that the working group should focus on ways of encouraging electronic commerce while protecting consumers.

58. **Mr. Velásquez Argaña** (Paraguay) expressed support both for the work being done on the topic by the Organization of American States and for the proposed initiative by the Commission. In Paraguay a new law was shortly to be enacted on electronic commerce and electronic signatures.

59. **Mr. Boumsong** (Cameroon) said that, while in Cameroon, as in Nigeria, there were obstacles to the development of electronic commerce, it was becoming more widespread. In a pragmatic and forward-looking spirit, his delegation therefore supported future work on the topic by a working group of the Commission.

60. **Ms. Hu Guolei** (China) supported the proposal that a working group should initially focus on business-to-business commerce. When it turned its attention to business-to-consumer transactions, it should address the concerns raised by the delegation of France.

61. **Mr. Leinonen** (Observer for Finland) said that the proposed working group would need to resolve a

number of challenging issues. However, before it was set up, the Commission should decide to confine its initial mandate to business-to-business commerce. It would be advisable to set aside for the time being any work on business-to-consumer transactions.

*The meeting rose at 1.05 p.m.*