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UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW

Thirtieth session

SUMMARY RECORD (PARTIAL)\* OF THE 628th MEETING

Held at the Vienna International Centre, Vienna,  
on Wednesday, 28 May 1997, at 9.30 a.m.

**Chairman:** Mr. BOSSA (Uganda)

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

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*The meeting was called to order at 9.40 a.m.*

**CROSS-BORDER INSOLVENCY: DRAFT MODEL LEGISLATIVE PROVISIONS** (*continued*)  
(A/CN.9/435)

**Future work**

1. **The CHAIRMAN** said that the Commission should first consider the proposal made by the representative of Spain at the previous meeting concerning the consideration of treaty provisions.
2. **Mr. BURMAN** (United States of America) said that the proposal should be taken up at an appropriate time, along with discussion of other insolvency issues. Perhaps it could be considered at the next session.
3. **Mr. TELL** (France) thought that the proposal should be considered along with other proposals for future work.
4. **Mr. RENGGER** (Germany) asked for more time to consider the proposal. However, he did not see the advantage of developing model provisions for bilateral treaties. A bilateral treaty might run counter to the principle that all creditors were to be treated equally.
5. **Mr. CHOUKRI SBAI** (Observer for Morocco) thought that the Model Law raised various problems in the area of cooperation, in particular. It was a very good law, and constituted an important basis for cooperation in insolvency matters, but it would be useful for it to be converted into a convention. He fully supported the proposal of the representative of Spain.
6. **Mr. WESTBROOK** (United States of America) noted that there were several projects in the insolvency area to be considered, especially in relation to the banking and finance sector, which had been excluded from the Model Law. Consideration should also be given to a choice-of-law convention, and to procedures and practices relating to the reorganization of enterprises. Consultations would be needed before a decision was taken on future work. He agreed with the representative of Germany that bilateral treaties would not be appropriate for insolvency matters.
7. **Ms. ALLEN** (United Kingdom) agreed with the representatives of the United States and Germany that there was no need to press ahead with the work suggested by the representative of Spain. The impact of the Model Law should first be assessed.
8. **Mr. TELL** (France) said that his delegation had maintained, throughout the work of the Working Group, its preference for a convention rather than a model law. What was needed was not model provisions for incorporation in bilateral treaties but, in the medium term, the preparation of a convention. However, a decision in that regard could only be made in the context of UNCITRAL's work programme as a whole.
9. **Mr. KONKKOLA** (Finland) doubted whether the proposal by the representative of Spain was appropriate for the time being. It might lead to confusion and cause States to delay enactment of the Model Law.
10. **Mr. MARKUS** (Observer for Switzerland) said that the proposal of the representative of Spain was excellent in principle, but only a multilateral approach would be appropriate. Account should also be taken of the priorities of the future work programme.

11. **Mr. LEBEDEV** (Russian Federation) said that the idea put forward by the representative of Spain was interesting and useful. The effectiveness of cooperation on cross-border insolvency would depend on international treaties, either bilateral or multilateral. It could be considered in the context of the future work programme. However, a Working Group session on the single issue might not be appropriate at that stage.

12. **Mr. HERRMANN** (Secretary of the Commission) said that, in discussing future work, the Commission would have to set priorities. There were a number of possibilities for future work in the insolvency area, including the question of the interrelationship between cross-border insolvency proceedings and arbitration proceedings. There might be room for informal consultations on the question of future work. Regarding the Spanish proposal, it would need to be decided whether a draft convention or model provisions for treaties were to be considered.

13. **Ms. SANDERSON** (Observer for Canada) thought that, in view of the scarcity of resources, the Commission should be careful about embarking on new projects.

14. **Mr. BURMAN** (United States of America) thought that the issue should be considered at the Commission's next session. That would allow the Secretariat to receive comments from delegations on topics to be considered. It would also allow consideration of further developments, for example in the European Union or the Organization of American States.

15. **Mr. MADRID PARRA** (Spain) said that his proposal would not preclude preparation of a convention. The issue of a convention versus model treaty provisions could be resolved in a working group.

16. **Mr. AL-ZAID** (Observer for Kuwait) said that he had always maintained the advantages of a model law compared with a convention, in view of its flexibility. It would be difficult to convert the Model Law into a convention. If it emerged that there were shortcomings in the Model Law, it could be improved.

17. **Mr. SHANG Ming** (China) agreed that the newly completed Model Law needed time to be accepted. It would be premature to consider conversion of the provisions into a convention, which many States considered would be inappropriate. There were also more urgent issues to take up, given resource constraints. Consideration of whether the proposal of the representative of Spain should be addressed should be deferred until the effect of the Model Law had been appraised.

18. **Mr. GILL** (India) thought that the Model Law needed a chance to be enacted. He supported the view that, in the light of the financial constraints faced by UNCITRAL, a decision on the inclusion of the topic in the work programme should be deferred.

19. **Mr. MORI** (Japan) shared the view of the representative of China that it would be premature to discuss a binding convention.

20. **The CHAIRMAN** said that, as he understood the situation, although there was some support in principle for the proposal of the representative of Spain, the general view was that the time was not appropriate to discuss it. Time was needed to see how the Model Law would work.

### **Guide to Enactment**

21. **The CHAIRMAN** said that normally the Guide should have been approved at the same time as the Model Law. However, time precluded that, and a decision was required on how to proceed.

22. **Mr. HERRMANN** (Secretary of the Commission) said that the situation was not new. A final Guide could not be ready at the same session as the adoption of an instrument if it was to contain comments on final changes. In the case of the Model Law on Electronic Commerce, the Commission had requested the Secretariat to prepare a final version of the Guide to Enactment reflecting the deliberations and decisions made at the session. The Commission had mandated the publication of the final version of the Guide to be prepared by the Secretariat together with the text of the Model Law, as a single document. He suggested that the same procedure should be followed in the present case.
23. There was no formal need for the Guide to be adopted by the Commission. If the Commission wished to adopt it, that would have to wait until the next session. In the case of the Model Law on Electronic Commerce, the Secretariat had first prepared a draft and then consulted some of the delegations, especially in relation to provisions where different views had been expressed. That, he believed, had proved satisfactory.
24. **Mr. TELL** (France) said that important issues had been referred to the Guide. The Guide should appear as soon as possible after publication of the Model Law, but he wanted the right to review its content.
25. **Mr. GRIFFITH** (Australia) said that he had sympathy with the concerns of the representative of France. However, without a Guide to Enactment, it might appear that the Model Law was provisional. Perhaps the Secretariat could prepare a Guide, and then a successor guide could be approved by the next session of the Commission.
26. **Mr. GLOS BAND** (Observer for the International Bar Association) agreed that the Guide must be published before the next session of the Commission. The absence of a final Guide might make the Model Law appear more tentative than was actually the case.
27. **Mr. RENGER** (Germany) suggested, following previous practice, that the Secretariat should liaise closely with delegations which might have strong views on certain elements of the Guide.
28. **Ms. NIKANJAM** (Islamic Republic of Iran) said that the Guide notes on sensitive points should be reviewed earlier than the next session of the Commission.
29. **Mr. ABASCAL** (Mexico) agreed that the procedure followed for the Guide to Enactment of the Model Law on Electronic Commerce should be adopted in the present case.
30. **Mr. BONELL** (Italy) said that he was not aware of any precedent for a body adopting a normative text to adopt an explanatory report at the same time. The adoption of the Model Law should not be delayed and the Secretariat should be allowed to complete the work of publication.
31. **Ms. LOIZIDOU** (Observer for Cyprus) hoped that the Guide prepared by the Secretariat would be published as soon as possible to assist legislators in the enacting States. Those countries that had comments on the content of the Guide could communicate them to the Secretariat within a specified time.
32. **Mr. TELL** (France) said that the adoption of the Guide to Enactment was not on the agenda of the present session of the Commission and it had not been possible for his delegation to submit the French version of the draft Guide to its experts for review. The final revision of the Guide should be made by members of the Commission. All he asked was that his delegation should have an opportunity to make its comments known to the Secretariat prior to publication.

33. **Mr. GLOS BAND** (Observer for the International Bar Association) expressed the hope that there would be a final version of the Guide available as soon as possible.
34. **Mr. CHOUKRI SBAI** (Observer for Morocco) would prefer the earliest possible publication of the Guide. It provided explanatory notes and guidance to legislators in drafting legislation. It was quite appropriate to entrust the Secretariat with the preparation of the final text, reflecting the views expressed by delegations. He saw no need for a further session to discuss the issues contained in it.
35. **Mr. MADRID PARRA** (Spain) shared the concerns expressed by the representative of France. The same procedure as in the case of the Model Law on Electronic Commerce should be followed. On that basis, the task of finalizing the Guide could be entrusted to the Secretariat. The final draft should be made available to delegations in all the languages so that they could rapidly respond with their comments.
36. **Mr. MARKUS** (Observer for Switzerland) said the Guide should be concluded as soon as possible, otherwise there was a risk that enactment would be deferred by States. The inclusion of certain points in the Guide had been discussed. A draft Guide should be submitted to Governments as soon as possible for comment.
37. **Mr. GRIFFITH** (Australia) was anxious that the Guide should be issued as soon as possible, and wondered how soon that could be, and whether comments by Governments could be returned within a specified time frame of, say, twenty-one days. Otherwise the Guide should be issued as soon as possible.
38. **Mr. BONELL** (Italy) said that he had no objection to consultation with Governments, but could not agree to the preparation of a draft in six languages for consideration by all Governments. He was strongly in favour of the adoption and preparation as soon as possible, by the Secretariat, of what had always been a Secretariat paper.
39. **Mr. ABASCAL** (Mexico) stressed that the Guide was not an official commentary, but just a document to assist implementation. It was not the first time that it had been agreed that the Secretariat should finalize and publish such a Guide.
40. **Mr. BURMAN** (United States of America) thought that guidance had been given to the Secretariat. Many of the issues that had been discussed at the present session would appear in the report. That would clarify what might appear in the Guide. Those Governments that felt that points in the Guide should be clarified could notify the Secretariat. There was no need for a further draft.
41. **Mr. GILL** (India) saw the Guide as a mechanism for explaining the aims of the articles to legislators. It was important to have the Guide as soon as possible. The Secretariat could prepare a draft, which would be circulated to Governments for timely comment.
42. **The CHAIRMAN** took it that the general view was that the preparation of the Guide to Enactment should be entrusted to the Secretariat. The Secretariat would be guided by the Commission's report. There was a precedent for the procedure, and any other procedure would be slow and expensive. In the absence of any objection, he took it that the Commission wished to adopt a recommendation that the Guide should be prepared by the Secretariat, so that both the Model Law and the Guide would be ready for submission to the General Assembly.

43. **Mr. HERRMANN** (Secretary of the Commission) said that the consultation process requested by the representative of France would be provided for.

*The discussion covered in the summary record ended at 11.30 a.m.*