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### Working methods of the Commission

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### Note by the Secretariat

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\* A/CN.9/482.

## I. Introduction

1. In its resolution 55/151 of 12 December 2000, the General Assembly requested the Secretary-General to submit to it, at its fifty-sixth session, a report on the implications of increasing the membership of the United Nations Commission on International Trade Law. That report is contained in document A/CN.9/500.

2. The considerations relating to a possible expansion of its membership offer an opportunity for the Commission to review its current working methods with a view to exploring ways to make the best possible use of the resources available to it. The review of the working methods of the Commission would seem to be particularly useful at the present stage, in view of the consistent and significant increase in the Commission's work programme in recent years and the various proposals for future work currently on its agenda.

## II. Overview of current work of the Commission and possible future work

### A. International commercial arbitration

3. Pursuant to the mandate given to it by the Commission,<sup>1</sup> the Working Group on International Commercial Arbitration (previously called the Working Group on International Contract Practices) is currently considering harmonized texts on the written form for arbitration agreements, interim measures of protection and conciliation.

4. The number of further issues on the agenda of the Working Group, including possible future work on on-line dispute resolution, jointly with the Working Group on Electronic Commerce, suggests that the Working Group would still require a number of sessions to complete its task.

### B. Insolvency law

5. At its thirty-third session, in 2000, the Commission gave the Working Group on Insolvency

Law a mandate to prepare a comprehensive statement of key objectives and core features for a strong insolvency, debtor-creditor regime, including consideration of out-of-court restructuring. For that purpose, the Working Group received the mandate to prepare a legislative guide containing flexible approaches to the implementation of such objectives and features, including a discussion of the alternative approaches possible and the perceived benefits and detriments of such approaches.<sup>2</sup>

6. The nature of the work with which the Commission entrusted the Working Group and the complexity of the subject suggest that the Working Group would still require a number of sessions to complete its task.

### C. Electronic commerce

7. At its thirty-second session, in 1999, the Commission took note of a recommendation adopted on 15 March 1999 by the Centre for the Facilitation of Procedures and Practices for Administration, Commerce and Transport (CEFACT) of the Economic Commission for Europe that the Commission should consider the actions necessary to ensure that references to "writing", "signature" and "document" in conventions and agreements relating to international trade allowed for electronic equivalents.<sup>3</sup> Further proposals for future work in the field of electronic commerce were considered by the Commission at its thirty-third session, in 2000.<sup>4</sup> They included electronic contracting, considered from the perspective of the United Nations Convention on Contracts for the Sale of Goods ("the United Nations Sales Convention"), dispute settlement and dematerialization of documents of title, in particular in the transport industry.

8. At its thirty-eighth session, held in New York from 12 to 23 March 2001, the Working Group on Electronic Commerce examined the above-mentioned topics. The Working Group agreed to recommend to the Commission that work towards the preparation of an international instrument dealing with certain issues in electronic contracting should be begun on a priority basis. At the same time, it was agreed to recommend to the Commission that the Secretariat should be entrusted with the preparation of the necessary studies concerning three other topics considered by the

Working Group, namely: (a) a comprehensive survey of possible legal barriers to the development of electronic commerce in international instruments, including, but not limited to, those instruments already mentioned in the CEFACCT survey; (b) a further study of the issues related to transfer of rights, in particular, rights in tangible goods, by electronic means and mechanisms for publicizing and keeping record of acts of transfer or the creation of security interests in such goods; and (c) a study discussing the UNCITRAL Model Law on International Commercial Arbitration, as well as the UNCITRAL Arbitration Rules, to assess their appropriateness for meeting the specific needs of online arbitration.

9. Should the Commission endorse the recommendations made by the Working Group, it is expected that the Working Group would be occupied for a number of sessions, with work on the area of electronic contracting being commenced immediately.

#### **D. Privately financed infrastructure projects**

10. At its thirty-third session, in 2000, the Commission adopted the UNCITRAL Legislative Guide on Privately Financed Infrastructure Projects and considered a proposal for future work in that area. After consideration of the various views expressed, the Commission decided that it should consider at its thirty-fourth session the question of the desirability and feasibility of preparing a model law or model legislative provisions on selected issues covered by the Legislative Guide.<sup>5</sup> In order to assist the Commission in making an informed decision on the matter, the Secretariat was requested to organize a colloquium, in cooperation with other interested international organizations or international financial institutions, to disseminate knowledge about the Legislative Guide. The participants in the colloquium should be invited to make recommendations on the desirability and, in particular, the feasibility of a model law or model legislative provisions in the area of privately financed infrastructure projects for consideration by the Commission at its thirty-fourth session. The colloquium will be held at the Vienna International Centre during the second week of the thirty-fourth session of the Commission, from 2 to 4 July 2001. The conclusions reached at the colloquium will be

submitted by the Secretariat for consideration by the Commission at the latest during the last week of its thirty-fourth session.

11. Should the Commission decide to prepare a model law or model legislative provisions on selected issues covered by the Legislative Guide, such work would most probably need to be assigned to a working group.

#### **E. Transport law**

12. Following a mandate renewed by the Commission at its thirty-third session,<sup>6</sup> the Secretariat, in cooperation with the International Maritime Committee (CMI), is currently reviewing a broad range of issues in international transport law with a view to presenting, at the next session of the Commission, a report identifying issues in transport law in respect of which the Commission might undertake future work and, to the extent possible, also presenting possible solutions. The results of the work thus far undertaken by the Secretariat are summarized in document A/CN.9/497.

13. Should the Commission decide to prepare an international instrument, such as a convention on transport law, such work would most probably need to be assigned to a working group.

#### **F. Security rights**

14. Following a request by the Commission,<sup>7</sup> the Secretariat has prepared a study discussing in detail selected problems in the field of secured credit law and the possible solutions for consideration by the Commission at its thirty-fourth session (A/CN.9/496). At the thirty-third session of the Commission, it was agreed that, after considering the study, the Commission could decide whether further work could be undertaken, on which topic and in which context.

15. Should the Commission decide to prepare a model law or a similar instrument, such work would most probably need to be assigned to a working group.

### III. Review of the working methods of the Commission

#### A. Current working methods

16. In accordance with established practice, the Commission is entitled to hold one annual session of up to 40 meetings (a total of 20 working days) and its working groups have at their disposal a combined total allotment of up to 120 meetings (a total of 60 working days). With few exceptions, the Commission's entitlement to conference services for its working groups has traditionally been used for one annual session of the Commission, normally lasting two or three weeks (occasionally four), and two annual sessions of each of its three working groups.

17. Each session of a working group normally lasts two weeks, with two meetings per day. In order for the report to be adopted during the session, portions of the draft report are usually prepared by the secretariat of the Commission and sent for translation as the deliberations of the working group evolve. The last day of the session has traditionally been devoted to the adoption of the report. With a view to ensuring that the entire draft report is available in all official languages of the United Nations on the last day of the session, no meetings have been held on the penultimate day, which has been traditionally used only for the preparation of the draft report.

18. The experience with the working groups shows that, although two meetings are scheduled for the last day, in most cases the working groups are able to adopt the report during the morning meeting. In practice, therefore, most working groups have held only 17 meetings per session, instead of the 20 meetings to which they would normally be entitled.

#### B. Possible alternative arrangements for the duration and number of sessions of working groups

19. The nature of the instruments prepared by the Commission and the inherent difficulties of legal unification and harmonization at a universal scale require careful preparatory work by the working groups. The length and number of the sessions of the working groups were originally conceived so as to give

the working groups sufficient time for the preparation of texts for adoption by the Commission.

20. With a total entitlement of only six working group sessions every year, an increase in the number of projects handled by the Commission would mean that normally only one annual session of a working group could be devoted to each project. Given the overall limitation on the conference time to which each subsidiary body of the General Assembly is entitled, it is unlikely that more meeting time could be allocated to the Commission. Therefore, the inclusion of additional topics in the Commission's work programme would only seem possible under one of the following options: (a) if the Commission were to increase the number of working groups to a total of six, each of them holding two annual sessions of one week only; or (b) if each working group would take up two different topics (i.e. one per week) during their sessions or if two working groups would share the same two-week meeting period, one session being held in the first week and the other during the second week (i.e. two sessions back-to-back).

21. The practical implications of these options could be felt in four areas: (a) travel costs for delegations and members of the Secretariat; (b) pace and quality of work; (c) preparation and adoption of session reports; and (d) conference costs. These implications are discussed below.

##### 1. Travel and related costs for delegations and members of the Secretariat

22. An increase in the number of working groups, each holding two one-week sessions per year, as mentioned above under the first option in paragraph 20, would result in additional travel costs both for delegations and the Secretariat, the latter as a result of the alternating pattern of meetings of the Commission and its working groups. No provision for such an increase has been made in the budget of the Secretariat for the current biennium.

23. The second option (i.e. that either a working group would take up two different topics (one per week) during a given session, or two working groups would hold consecutive (back-to-back) meetings) might not have such negative financial implications, although the situation may vary from delegation to delegation. For member States and observers that are usually represented by the same delegates at all, or at

least at more than one, of the sessions of the working groups, the financial implications of either option might be negligible. For member States and observers that send delegations of varying composition to each working group session, depending on the topic under consideration, the financial implications might be the same as under the first option, to the extent that those member States and observers might prefer to change the composition of their delegations during the second week. As regards the travel costs of members of the secretariat of the Commission, this option might result in an increase of travel costs compared with the current situation, to the extent that the different topics would require a change of staff servicing the period of meetings; however, every effort would be made to have the same staff members service the entire period of meetings.

## **2. Implications for pace and quality of work**

24. Both options would result in a reduction of the time available for the consideration of each topic to a maximum of 10 meetings (i.e. five days) per working group session. The total conference time would thus be approximately one half of the time currently devoted by a working group to a project entrusted to it. The apparent disadvantage of those options would be that, all other factors remaining equal, a working group would need, in a purely arithmetical calculation, twice as many sessions as it currently has in order to finalize a draft text for adoption by the Commission.

25. A review of the practice of other subsidiary bodies of the General Assembly dealing with legal matters shows that, despite the generalized trend towards reducing the duration of sessions of working groups and ad hoc committees, neither the pace nor the quality of the output of such bodies has been adversely affected. A recent example is the Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996 to elaborate an international convention for the suppression of terrorist bombings and, subsequently, an international convention for the suppression of acts of nuclear terrorism, to supplement related existing international instruments and, thereafter, to address means of further developing a comprehensive legal framework of conventions dealing with international terrorism.<sup>8</sup> The Ad Hoc Committee has adopted the pattern of holding one session per year over a one- or two-week period, usually early in the year. The work is then continued in the framework of a

working group of the Sixth Committee, which meets later in the year. Despite the short duration of its sessions, within less than five years the Ad Hoc Committee has negotiated several texts resulting in the adoption of two treaties.<sup>9</sup> The Ad Hoc Committee prepared a draft international convention for the suppression of acts of nuclear terrorism and, by the end of 2000, it had begun work on a draft comprehensive convention on international terrorism. The fourth session of the Ad Hoc Committee lasted one week.<sup>10</sup>

26. Shortening the duration of sessions of inter-governmental bodies usually requires some adaptation of their proceedings to avoid reducing the pace at which their work is accomplished. The practice of some other bodies, such as the Working Group established by the Sixth Committee of the General Assembly for the purpose of considering measures to eliminate international terrorism or the Ad Hoc Committee established by General Assembly resolution 51/210, suggests that shorter sessions may induce delegations to resort to informal consultations prior or parallel to the actual meeting, thus reserving conference time only for those issues that require deliberation at a formal meeting.<sup>11</sup> The effective combination of plenary deliberations and inter-sessional consultations has led to optimal utilization of conference time. This, in turn, has enabled the bodies concerned to achieve their objectives in a timely manner without loss of quality.

27. In the case of the Commission, shortening the duration of working group sessions may have the additional advantage of facilitating the task of composing delegations of member States and observers. In informal meetings between the Secretariat, member States and observers, it has been pointed out that it is becoming increasingly difficult to secure the participation of experts in working group sessions, in particular experts from Governments, industry or private practice, who often are not in a position to relinquish their ordinary professional duties for two consecutive weeks.

## **3. Implications for the preparation and adoption of reports on sessions of the working groups**

28. The reduction of the conference time available for each working group session, if accepted by the Commission, would also require a revision of the manner in which the reports of the working groups are

prepared and adopted. Currently, one full day, usually the penultimate day, is reserved exclusively for the preparation of the report, with no meeting being held on that day. If the total conference time were reduced to a maximum of 10 meetings (i.e. five days), the current practice would have to be discontinued, in order to use as much conference time as possible for substantive deliberations. Given the time needed for translation and distribution of the draft report, it would seem unfeasible to have a report covering the entire period of deliberations ready for adoption by the working group at its last meeting, as is currently the case. The Commission might thus wish to consider the following options:

(a) *Partial report with adoption at the same session.* Under this option, a working group could hold substantive deliberations during the first eight meetings (for example, from Monday to Thursday), with a draft report on the entire period being prepared by the Secretariat. Although there might be a need for securing night shifts of translation staff, it would appear prima facie feasible to have the last portions of the draft report (i.e. those relating to the deliberations during the eighth meeting, on Thursday afternoon) available at the tenth meeting (on Friday afternoon). However, under this option no report would be prepared on deliberations held during the ninth meeting (Friday morning). The apparent disadvantage of this option might be countered in various ways. For example, a working group preparing a draft instrument might wish to use the first eight meetings for a discussion of individual provisions, while reserving the ninth meeting for discussion of open issues or an exchange of views of a more general nature, which might not need to be reflected in the report. Alternatively, its main conclusions might be summarily read out for the record by the Chairman at the tenth meeting and subsequently incorporated in the report, or information on those deliberations could be included by the Secretariat in the working paper prepared for the subsequent session of the working group;

(b) *Full report with adoption at a later stage.* Under this option, a working group could hold substantive deliberations during the entire conference time available, with a draft report on the entire period being prepared by the Secretariat. However, the working group would not adopt the report at the same session. It might be adopted by the working group at the beginning of its next session, as is the practice in some

organizations, or it might be published later by the Secretariat as its own account of the proceedings. Under the first option, delegations would have an opportunity, at the later session, to request corrections or amendments to the draft report. Until then, however, the report would have the status of a draft. Another potential disadvantage might be that delegates might not be the same at two consecutive sessions, or their memory of the proceedings might not be as vivid as it would have been during the same session. In the second case, if the report would be prepared by the Secretariat, it would not normally be submitted to the working group for approval.

#### 4. Implications for conference costs

29. In principle, neither of the options proposed in paragraph 20 would have a significant financial impact on most conference costs (e.g. the costs of conference rooms, document clerks and conference officers, sound recording and engineering), with the possible exception of costs related to interpretation services. Possible impact on costs related to interpretation services would depend upon a number of factors, such as the length of contracts of the interpreters or whether out-of-area interpreters would be needed to service the meetings, in which case additional travel costs would be incurred by the Organization. The extent to which either option would entail additional cost cannot be anticipated, as it would also depend on how working group meetings would fit within the overall schedule of meetings at each duty station (i.e. New York and Vienna) in any given period.

## IV. Conclusions and recommendations

30. It is clear from the review of the Commission's work programme that, under the current working methods, it would not be possible for the Commission to continue its current work programme and to take up work simultaneously in all the areas currently under consideration for future work. Should the length and periodicity of working group sessions remain unchanged, the Commission would need either to decline taking up work on certain topics or to postpone such work until such time as one of its working groups completes its current tasks. That, however, would cause the Commission to forego the favourable opportunity for trade law unification that is presented by

globalization and trade liberalization. Furthermore, delaying unification efforts or declining to take up future work needed by business might frustrate the expectations of member States and other organizations that have submitted proposals for future work by the Commission in those areas.

31. The proposals formulated by the Secretariat for a revision of the working methods of the Commission are intended to avoid disruption in the Commission's work programme and negative impact on its overall unification efforts. In formulating such alternatives, the Secretariat was mindful of the need to ensure the best possible use of the resources available to the Commission. The Secretariat has therefore attempted to formulate proposals that, if accepted by the Commission, could address the expected increase in the Commission's work programme without lowering the high standards of professional care that have distinguished the work of the Commission and contributed so much to its high reputation.

<sup>10</sup> See the report of the Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996 (*Official Records of the General Assembly, Fifty-fifth Session, Supplement No. 37 (A/55/37)*, para. 1).

<sup>11</sup> The Working Group held extensive consultations between sessions. The same procedure is being used by the Ad Hoc Committee established by General Assembly resolution 51/210 (see *Official Records of the General Assembly, Fifty-fifth Session, Supplement No. 37 (A/55/37)*, para. 9).

#### Notes

<sup>1</sup> *Official Records of the General Assembly, Fifty-fourth Session, Supplement No. 17 (A/54/17)*, paras. 340-343.

<sup>2</sup> *Ibid.*, *Fifty-fifth Session, Supplement No. 17 (A/55/17)*, para. 409.

<sup>3</sup> *Ibid.*, *Fifty-fourth Session, Supplement No. 17 (A/54/17)*, para. 316.

<sup>4</sup> *Ibid.*, *Fifty-fifth Session, Supplement No. 17 (A/55/17)*, paras. 384-388.

<sup>5</sup> *Ibid.*, para. 379.

<sup>6</sup> *Ibid.*, para. 427.

<sup>7</sup> *Ibid.*, para. 463.

<sup>8</sup> This mandate continued to be renewed and revised on an annual basis by the General Assembly in its resolutions on measures to eliminate international terrorism.

<sup>9</sup> The International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly in its resolution 52/164 of 15 December 1997, and the International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly in its resolution 54/109 of 9 December 1999.