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United Nations Commission on International Trade Law

Working Group on Privately Financed Infrastructure Projects
Fourth session
Vienna, 24-28 September 2001

Provisional agenda, annotations thereto and scheduling of meetings of the fourth session

I. Provisional agenda

1. Opening of the session
2. Election of officers
3. Adoption of the agenda
4. Possible addendum to the UNCITRAL Legislative Guide on Privately Financed Infrastructure Projects
5. Other business
6. Adoption of the report

II. Annotations

Item 1. Opening of the session

1. The fourth session of the Working Group (previously named Working Group on time-limits and limitations (prescription) in the international sale of goods) will be held at the Vienna International Centre from 24 to 28 September 2001. The session will be opened on Monday, 24 September 2001, at 10:00 a.m. The Working Group is composed of all States members of the Commission, which are the following: Austria, Benin, Brazil, Burkina Faso, Cameroon, Canada, China, Colombia, Fiji, France, Germany, Honduras, Hungary, India, Iran (Islamic Republic of), Italy, Japan, Kenya, Lithuania, Mexico, Morocco, Paraguay, Romania, Russian Federation, Rwanda, Sierra Leone, Singapore, Spain, Sudan, Sweden, Thailand, The former Yugoslav Republic of Macedonia, Uganda, United Kingdom of Great Britain and Northern Ireland, United States of America, and Uruguay (which alternates annually with Argentina).

Item 2. Election of officers

2. In accordance with its practice at previous sessions, the Working Group may wish to elect a Chairman and a Rapporteur.

Item 4. Possible addendum to the UNCITRAL Legislative Guide on Privately Financed Infrastructure Projects

3. At its thirty-third session (New York, 12 June - 7 July 2000), the Commission adopted the UNCITRAL Legislative Guide on Privately Financed Infrastructure Projects, consisting of the legislative recommendations (A/CN.9/471/Add.9), with the amendments adopted by the Commission at that session and the notes to the legislative recommendations (A/CN.9/471/Add.1-8), which the Secretariat was authorized to finalize in the light of the deliberations of the Commission.¹ The Legislative Guide has since been published in all official languages.

4. At the same session the Commission also considered a proposal for future work in that area. It was suggested that, although the Legislative Guide would be a useful reference for domestic legislators in establishing a legal framework favourable to private investment in public infrastructure, it would be nevertheless desirable for the Commission to formulate more concrete guidance in the form of model legislative provisions or even in the form of a model law dealing with specific issues.²

5. After consideration of that proposal, the Commission decided that the question of the desirability and feasibility of preparing a model law or model legislative provisions on selected issues covered by the Legislative Guide should be considered by the Commission at its thirty-fourth session. 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.³

6. A Colloquium under the title "Privately Financed Infrastructure: Legal Framework and Technical Assistance" was organized with the co-sponsorship and organizational assistance of the Public-Private Infrastructure Advisory Facility (PPIAF), a multi-donor technical assistance facility aimed at helping developing countries improve the quality of their infrastructure through private sector involvement. It was held from 2 to 4 July 2001 in Vienna, during the second week of the thirty-fourth session of the Commission.

7. At its thirty-fourth session, in 2001, the Commission took note with appreciation of the results of the Colloquium as summarized in a note by the Secretariat (A/CN.9/488) and expressed its gratitude to the Public-Private Infrastructure Advisory Facility (PPIAF) for its financial and organizational support. The Commission also expressed its appreciation to the various international intergovernmental and non-governmental organizations represented and to the speakers at the Colloquium. Finally, the Commission agreed that the proceedings of the Colloquium be published by the United Nations and endorsed the recommendation made at the Colloquium that the Secretariat, in coordination with other organizations, should undertake joint initiatives to ensure the widespread knowledge of the Legislative Guide.

8. Various views were expressed as to the desirability and feasibility of further work of the Commission in the field of privately financed infrastructure projects.

9. There was wide support for the view that there was a significant demand for model legislation providing for more specific guidance, especially in developing countries and in countries with economies in transition. In this connection, it was suggested that the Legislative Guide should be implemented by way of drafting a set of core model provisions dealing with some of the substantive issues identified and dealt with in the Legislative Guide. It was pointed out that, while the Legislative Guide was in itself a valuable product to assist domestic legislators in the process of enacting or reviewing legislation in that field, the effectiveness of that process would be significantly increased if model legislative provisions

were available. It was also noted that the prompt undertaking of such further work would take advantage of the vast and significant expertise gathered throughout the process which led to the adoption of the Legislative Guide and would allow it to be easily and effectively achieved within a reasonable amount of time. Finally, it was further observed that there was no inconsistency between undertaking such further work, on the one hand, and undertaking efforts to promote knowledge and dissemination of the Legislative Guide, on the other hand.

10. The concern that excessive proximity between the adoption of the Legislative Guide and the undertaking of further work in the same field might adversely affect the considerable and valuable work which led to the adoption of the Legislative Guide, ultimately reducing its impact, also appeared to be widely shared. It was observed that the flexible approaches reflected in the Legislative Guide already provided sufficient guidance to legislators wishing to use it as a template while in the process of enacting or reviewing national laws. Another view was that no further significant guidance was to be expected from the drafting of a limited set of model legislative provisions, since the need to refer to the recommendations contained in the Legislative Guide would remain unaffected. Accordingly, it was suggested that consideration of the desirability of further work should be deferred to a later stage, in order to allow legislators to become more familiar with the existence and the contents of the Legislative Guide and to actually test its utility. A further view was that such deferral might also prove useful since it would provide an opportunity for accurately identifying the issues to which harmonization efforts should actually be devoted.

11. After considering the different views that were expressed, the Commission agreed that a working group should be entrusted with the task of drafting core model legislative provisions in the field of privately financed infrastructure projects. The Commission was of the view that, if further work in the field of privately financed infrastructure projects was to be accomplished within reasonable time, it was essential to carve out a specific area from among the many issues dealt with in the Legislative Guide. Accordingly, it was agreed that the first session of such working group should identify the specific issues on which model legislative provisions, possibly to become an addendum to the Legislative Guide, could be formulated.⁴

12. The Working Group will have before it the UNCITRAL Legislative Guide on Privately Financed Infrastructure Projects. The Working Group may wish to use the legislative recommendations contained in the Legislative Guide as a basis for its deliberations. The Working Group will also have before it the report on the Colloquium referred to in paragraph 6 (A/CN.9/488). In accordance with a suggestion made at the Colloquium (A/CN.9/488, para. 19), the Working Group might further wish to devote its attention to a specific phase of the privately financed infrastructure projects, namely the selection of the concessionaire, with a view to formulating specific drafting proposals for legislative provisions addressing that phase.

Item 6. Adoption of the report

13. The Working Group may wish to adopt, at the close of its session, a report for submission to the thirty-fifth session of the Commission (to be held in New York from 10 to 28 June 2002).

Meetings

14. The session of the Working Group will take place from 24 to 28 September 2001 at the Vienna International Centre. There will be five working days available for consideration of the agenda items at the session. Meeting hours will be from 9:30 to 12:30 and from 14:00 to 17:00, except on Monday, 24 September 2001, when the session will commence at 10:00 a.m.

¹ *Official Records of the General Assembly, Fifty-fifth Session, Supplement No. 17* (A/55/17), paras. 195-368.

² *Ibid.*, para. 375.

³ *Ibid.*, para. 379.

⁴ *Ibid.*, *Fifty-sixth Session, Supplement No. 17* (A/56/17), para. 369 (the report will be issued in August).