United Nations A/CN.9/546

General Assembly

Distr.: General
8 December 2003

Original: English

**United Nations Commission on International Trade Law**
Thirty-seventh session
New York, 14 June-2 July 2004

# Report of the Working Group on Electronic Commerce on the work of its forty-second session

**(Vienna, 17-21 November 2003)**

## Contents



V.03-90475 (E) 260104 270104

# I. Introduction

1. At its thirty-third session, in 2000, the United Nations Commission on International Trade Law (UNCITRAL) held a preliminary exchange of views on proposals for future work in the field of electronic commerce. Three topics were suggested as indicating possible areas where work by the Commission would be desirable and feasible: electronic contracting, considered from the perspective of the United Nations Convention on Contracts for the International Sale of Goods[1] (the "United Nations Sales Convention"); online dispute settlement; and dematerialization of documents of title, in particular in the transport industry.

2. The Commission welcomed the proposal to study further the desirability and feasibility of undertaking future work on those topics. The Commission generally agreed that, upon completing the preparation of the Model Law on Electronic Signatures, the Working Group would be expected to examine, at its thirty-eighth session, some or all of the above-mentioned topics, as well as any additional topic, with a view to making more specific proposals for future work by the Commission at its thirty-fourth session, in 2001. It was agreed that work to be carried out by the Working Group could involve consideration of several topics in parallel as well as preliminary discussion of the contents of possible uniform rules on certain aspects of the above-mentioned topics.[2] The Working Group considered those proposals at its thirty-eighth session on the basis of a set of notes dealing with a possible convention to remove obstacles to electronic commerce in existing international conventions (A/CN.9/WG.IV/WP.89); dematerialization of documents of title (A/CN.9/WG.IV/WP.90); and electronic contracting (A/CN.9/WG.IV/WP.91).

3. The Working Group held an extensive discussion on issues related to electronic contracting (see A/CN.9/484, paras. 94-127). The Working Group concluded its deliberations on future work by recommending to the Commission that work towards the preparation of an international instrument dealing with certain issues in electronic contracting be started on a priority basis. At the same time, it was agreed to recommend to the Commission that the Secretariat be entrusted with the preparation of the necessary studies concerning three other topics considered by the Working Group: (a) a comprehensive survey of possible legal barriers to the development of electronic commerce in international instruments; (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 a 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,[3] as well as the UNCITRAL Arbitration Rules,[4] to assess their appropriateness for meeting the specific needs of online arbitration (see A/CN.9/484, para. 134).

4. At the thirty-fourth session of the Commission, in 2001, there was wide support for the recommendations made by the Working Group, which were found to constitute a sound basis for future work by the Commission. Views varied, however, as regards the relative priority to be assigned to the different topics. One line of thought was that a project aimed at removing obstacles to electronic commerce in existing instruments should have priority over the other topics, in particular over the preparation of a new international instrument dealing with electronic contracting. It was said that references to "writing", "signature", "document" and other similar

provisions in existing uniform law conventions and trade agreements had already created legal obstacles and generated uncertainty in international transactions conducted by electronic means. Efforts to remove those obstacles should not be delayed or neglected by attaching higher priority to issues of electronic contracting.

5. The prevailing view, however, was in favour of the order of priority that had been recommended by the Working Group. It was pointed out, in that connection, that the preparation of an international instrument dealing with issues of electronic contracting and the consideration of appropriate ways for removing obstacles to electronic commerce in existing uniform law conventions and trade agreements were not mutually exclusive. The Commission was reminded of the common understanding reached at its thirty-third session that work to be carried out by the Working Group could involve consideration of several topics in parallel as well as preliminary discussion of the contents of possible uniform rules on certain aspects of the above-mentioned topics.[5]

6. There were also differing views regarding the scope of future work on electronic contracting, as well as the appropriate moment to begin such work. Pursuant to one view, the work should be limited to contracts for the sale of tangible goods. The opposite view, which prevailed in the course of the Commission's deliberations, was that the Working Group on Electronic Commerce should be given a broad mandate to deal with issues of electronic contracting, without narrowing the scope of the work from the outset. It was understood, however, that consumer transactions and contracts granting limited use of intellectual property rights would not be dealt with by the Working Group. The Commission took note of the preliminary working assumption made by the Working Group that the form of the instrument to be prepared could be that of a stand-alone convention dealing broadly with the issues of contract formation in electronic commerce (see A/CN.9/484, para. 124), without creating any negative interference with the well-established regime of the United Nations Sales Convention (see A/CN.9/484, para. 95), and without interfering unduly with the law of contract formation in general. Broad support was given to the idea expressed in the context of the thirty-eighth session of the Working Group that, to the extent possible, the treatment of Internet-based sales transactions should not differ from the treatment given to sales transactions conducted by more traditional means (see A/CN.9/484, para. 102).

7. As regards the timing of the work to be undertaken by the Working Group, there was support for commencing consideration of future work without delay during the third quarter of 2001. However, strong views were expressed that it would be preferable for the Working Group to wait until the first quarter of 2002, so as to afford States sufficient time to hold internal consultations. The Commission accepted that suggestion and decided that the first meeting of the Working Group on issues of electronic contracting should take place in the first quarter of 2002.[6]

8. At its thirty-ninth session, the Working Group considered a note by the Secretariat discussing selected issues on electronic contracting, which contained an initial draft, tentatively entitled "Preliminary draft convention on [international] contracts concluded or evidenced by data messages" (A/CN.9/WG.IV/WP.95, annex I). The Working Group further considered a note by the Secretariat transmitting comments that had been formulated by an ad hoc expert group established by the International Chamber of Commerce to examine the issues raised

in document A/CN.9/WG.IV/WP.95 and the draft provisions set out in its annex I (A/CN.9/WG.IV/WP.96).

9. The Working Group began its deliberations by considering the form and scope of the preliminary draft convention (see A/CN.9/509, paras. 18-40). The Working Group agreed to postpone discussion on exclusions from the draft convention until it had had an opportunity to consider the provisions related to location of the parties and contract formation. In particular, the Working Group decided to proceed with its deliberations by first taking up articles 7 and 14, both of which dealt with issues related to the location of the parties (see A/CN.9/509, paras. 41-65). After it had completed its initial review of those provisions, the Working Group proceeded to consider the provisions dealing with contract formation in articles 8-13 (see A/CN.9/509, paras. 66-121). The Working Group concluded its deliberations on the draft convention with a discussion of draft article 15 (see A/CN.9/509, paras. 122-125). The Working Group agreed that it should consider articles 2-4, dealing with the sphere of application of the draft convention, and articles 5 (Definitions) and 6 (Interpretation), at its fortieth session. The Working Group requested the Secretariat to prepare a revised version of the preliminary draft convention, based on those deliberations and decisions, for consideration by the Working Group at its fortieth session.

10. At its fortieth session, the Working Group was also informed of the progress that had been made by the Secretariat in connection with the survey of possible legal obstacles to electronic commerce in existing trade-related instruments. The Working Group was informed that the Secretariat had begun the work by identifying and reviewing trade-relevant instruments from among the large number of multilateral treaties that were deposited with the Secretary-General. The Secretariat had identified 33 treaties as being potentially relevant for the survey and analysed possible issues that might arise from the use of electronic means of communication under those treaties. The preliminary conclusions reached by the Secretariat in relation to those treaties were set out in a note by the Secretariat (A/CN.9/WG.IV/WP.94) that was submitted to the Working Group at its thirty-ninth session, in March 2002.

11. The Working Group took note of the progress that had been made by the Secretariat in connection with the survey, but did not have sufficient time to consider the preliminary conclusions of the survey. The Working Group requested the Secretariat to seek the views of member and observer States on the survey and the preliminary conclusions indicated therein and to prepare a report compiling such comments for consideration by the Working Group at a later stage. The Working Group took note of a statement stressing the importance that the survey being conducted by the Secretariat should reflect trade-related instruments emanating from the various geographical regions represented on the Commission. For that purpose, the Working Group requested the Secretariat to seek the views of other international organizations, including organizations of the United Nations system and other intergovernmental organizations, as to whether there were international trade instruments in respect of which those organizations or their member States acted as depositaries that those organizations would wish to be included in the survey being conducted by the Secretariat.

12. At its thirty-fifth session, in 2002, the Commission considered the report of the Working Group on the work of its thirty-ninth session. The Commission noted with

appreciation that the Working Group had started its consideration of a possible international instrument dealing with selected issues related to electronic contracting. The Commission reaffirmed its belief that an international instrument dealing with certain issues related to electronic contracting might be a useful contribution to facilitate the use of modern means of communication in cross-border commercial transactions. The Commission commended the Working Group for the progress made in that regard. However, the Commission also took note of the varying views that had been expressed within the Working Group concerning the form and scope of the instrument, its underlying principles and some of its main features. The Commission noted, in particular, the proposal that the Working Group's considerations should not be limited to electronic contracts, but should apply to commercial contracts in general, irrespective of the means used in their negotiation. The Commission was of the view that member and observer States participating in the Working Group's deliberations should have ample time for consultations on those important issues. For that purpose, the Commission considered that it might be preferable for the Working Group to postpone its discussions on a possible international instrument dealing with selected issues related to electronic contracting until its forty-first session (New York, 5-9 May 2003).[7]

13. As regards the Working Group's consideration of possible legal obstacles to electronic commerce that might result from trade-related international instruments, the Commission reiterated its support for the efforts of the Working Group and the Secretariat in that respect. The Commission requested the Working Group to devote most of its time at its fortieth session, in October 2002, to a substantive discussion of various issues that had been raised in the Secretariat's initial survey (A/CN.9/WG.IV/WP.94).[8]

14. At its fortieth session (Vienna, 14-18 October 2002), the Working Group reviewed the survey of possible legal barriers to electronic commerce contained in document A/CN.9/WG.IV/WP.94. The Working Group generally agreed with the analysis and endorsed the recommendations that had been made by the Secretariat (see A/CN.9/527, paras. 24-71). The Working Group agreed to recommend that the Secretariat take up the suggestions for expanding the scope of the survey so as to review possible obstacles to electronic commerce in additional instruments that had been proposed for inclusion in the survey by other organizations and explore with those organizations the modalities for carrying out the necessary studies, taking into account the possible constraints put on the Secretariat by its current workload. The Working Group invited member States to assist the Secretariat in that task by identifying appropriate experts or sources of information in respect of the various specific fields of expertise covered by the relevant international instruments.

15. The Working Group used the remaining time at its fortieth session to resume its deliberations on the preliminary draft convention, which it began by a general discussion on the scope of the preliminary draft convention (see A/CN.9/527, paras. 72-81). The Working Group proceeded to consider articles 2-4, dealing with the sphere of application of the draft convention and articles 5 (Definitions) and 6 (Interpretation) (see A/CN.9/527, paras. 82-126). The Working Group requested the Secretariat to prepare a revised text of the preliminary draft convention for consideration at its forty-first session.

16. At its forty-first session (New York, 5-9 May 2003), the Working Group resumed its deliberations on the preliminary draft convention by holding a general discussion on the purpose and nature of the preliminary draft convention (see A/CN.9/528, paras. 28-31). The Working Group noted that a task force that had been established by the International Chamber of Commerce had submitted comments on the scope and purpose of the draft convention (A/CN.9/WG.IV/WP.101, annex). The Working Group generally welcomed the work being undertaken by private sector representatives, such as the International Chamber of Commerce, which was considered to complement usefully the work being undertaken in the Working Group to develop an international convention.

17. The Working Group reviewed articles 1-11 of the revised preliminary draft convention contained in the note by the Secretariat (A/CN.9/WG.IV/WP.100, annex I). The decisions and deliberations of the Working Group with respect to the draft convention are reflected in chapter IV of the report on its forty-first session (see A/CN.9/528, paras. 26-151). The Secretariat was requested to prepare a revised version of the preliminary draft convention, based on those deliberations and decisions, for consideration by the Working Group at its forty-second session (Vienna, 17-21 November 2003).

18. In accordance with a decision taken at its fortieth session (see A/CN.9/527, para. 93), the Working Group also held a preliminary discussion on the question of excluding intellectual property rights from the draft convention (see A/CN.9/528, paras. 55-60). The Working Group agreed that the Secretariat should be requested to seek the specific advice of relevant international organizations, such as the World Intellectual Property Organization (WIPO) and the World Trade Organization, as to whether, in the view of those organizations, including contracts that involved the licensing of intellectual property rights in the scope of the draft convention so as to expressly recognize the use of data messages in the context of those contracts might negatively interfere with rules on the protection of intellectual property rights. It was agreed that whether or not such an exclusion was necessary would ultimately depend on the substantive scope of the convention.

19. The Working Group also exchanged views on the relationship between the draft convention and the Working Group's efforts to remove possible legal obstacles to electronic commerce in existing international instruments relating to international trade within the context of its preliminary review of draft article X, which the Working Group agreed to retain in substance for further consideration.

20. At its thirty-sixth session, in 2003, the Commission took note of the reports of the Working Group on the work of its fortieth (Vienna, 14-18 October 2002) and its forty-first (New York, 5-9 May 2003) sessions (A/CN.9/527 and A/CN.9/528, respectively).

21. The Commission noted the progress made by the Secretariat in connection with a survey of possible legal barriers to the development of electronic commerce in international trade-related instruments. The Commission reiterated its belief in the importance of that project and its support for the efforts of the Working Group and the Secretariat in that respect. The Commission noted that the Working Group had recommended that the Secretariat expand the scope of the survey to review possible obstacles to electronic commerce in additional instruments that had been proposed to be included in the survey by other organizations and to explore with

those organizations the modalities for carrying out the necessary studies, taking into account the possible constraints put on the Secretariat by its current workload. The Commission called on member States to assist the Secretariat in that task by inviting appropriate experts or sources of information in respect of the various specific fields of expertise covered by the relevant international instruments.[9]

22. The Commission further noted with appreciation that the Working Group had continued its consideration of a preliminary draft convention dealing with selected issues related to electronic contracting and reaffirmed its belief that an international instrument dealing with certain issues related to electronic contracting would be a useful contribution that would facilitate the use of modern means of communication in cross-border commercial transactions. The Commission observed that the form of an international convention had been used by the Working Group thus far as a working assumption, but that did not preclude the choice of another form for the instrument at a later stage of the Working Group's deliberations.[10]

23. The Commission was informed that the Working Group had exchanged views on the relationship between the preliminary draft convention and the Working Group's efforts to remove possible legal obstacles to electronic commerce in existing international instruments relating to international trade within the context of its preliminary review of draft article X, which the Working Group had agreed to retain for further consideration (see A/CN.9/528, para. 25). The Commission expressed support for the Working Group's efforts to tackle both lines of work simultaneously.[11]

24. The Commission was informed that the Working Group had, at its forty-first session, held a preliminary discussion on the question of whether intellectual property rights should be excluded from the draft convention (see A/CN.9/528, paras. 55-60). The Commission noted the Working Group's understanding that its work should not be aimed at providing a substantive law framework for transactions involving "virtual goods", nor was it concerned with the question of whether and to what extent "virtual goods" were or should be covered by the United Nations Sales Convention. The question before the Working Group was whether and to what extent the solutions for electronic contracting being considered in the context of the preliminary draft convention could also apply to transactions involving licensing of intellectual property rights and similar arrangements. The Secretariat was requested to seek the views of other international organizations on the question, in particular WIPO.[12]

# II. Organization of the session

25. The Working Group on Electronic Commerce, composed of all States members of the Commission, held its forty-second session in Vienna from 17 to 21 November 2003. The session was attended by representatives of the following States members of the Working Group: Austria, Brazil, Cameroon, Canada, China, Colombia, France, Germany, Hungary, India, Iran (Islamic Republic of), Italy, Japan, Kenya, Lithuania, Mexico, Morocco, Russian Federation, Singapore, Spain, Thailand, Uganda, United States of America and Uruguay.

26. The session was attended by observers from the following States: Algeria, Argentina, Australia, Bahrain, Belgium, Costa Rica, Czech Republic, Denmark,

Finland, Indonesia, Ireland, Libyan Arab Jamahiriya, New Zealand, Nigeria, Philippines, Poland, Qatar, Republic of Korea, Serbia and Montenegro, Switzerland, Trinidad and Tobago, Turkey, Venezuela and Yemen.

27. The session was also attended by observers from the following international organizations: (a) organizations of the United Nations system: Economic Commission for Africa, World Bank and United Nations Educational, Scientific and Cultural Organization; (b) intergovernmental organizations: Asian Clearing Union, European Union and Hague Conference on Private International Law; (c) non-governmental organizations invited by the Commission: American Bar Association, Center for International Legal Studies, International Bar Association and International Chamber of Commerce.

28. The Working Group elected the following officers:

*Chairman*: Jeffrey CHAN Wah Teck (Singapore)
*Rapporteur*: Ligia Claudia González Lozano (Mexico).

29. The Working Group had before it a newly revised version of the preliminary draft convention, which reflected the deliberations of the Working Group at its forty-first session (A/CN.9/WG.IV/WP.103, annex). The Working Group also had before it papers summarizing the research conducted by the Secretariat on some of the main issues that had been discussed by the Working Group in connection with its deliberations on the draft convention (A/CN.9/WG.IV/WP.104 and Add.1-4) and comments received on the draft convention from a task force of the International Chamber of Commerce (A/CN.9/WG.IV/WP.105) and WIPO (A/CN.9/WG.IV/WP.106).

30. The Working Group adopted the following agenda:

1. Opening of the session.
2. Election of officers.
3. Adoption of the agenda.
4. Electronic contracting: provisions for a draft convention.
5. Other business.
6. Adoption of the report.

# III. Summary of deliberations and decisions

31. The Working Group resumed its deliberations on the preliminary draft convention by holding a general discussion on the scope of the preliminary draft convention (see paras. 33-38 below).

32. The Working Group reviewed articles 8 to 15 of the revised preliminary draft convention contained in the annex to the note by the Secretariat (A/CN.9/WG.IV/WP.103). The decisions and deliberations of the Working Group with respect to the draft convention are reflected in chapter IV below.

# IV. Electronic contracting: provisions for a draft convention

## General comments

33. The Working Group began its deliberations by holding a general exchange of views on the purpose and scope of the preliminary draft convention.

34. The Working Group noted that the text of the preliminary draft convention had been extensively revised and restructured to reflect the Working Group's deliberations at its forty-first session (New York, 5-9 May 2003). The Working Group was reminded that when it had first considered the possibility of further work on electronic commerce after the adoption of the Model Law on Electronic Signatures, it had contemplated, among other issues, a topic broadly referred to as "electronic contracting" and measures that might be needed to remove possible legal obstacles to electronic commerce under existing international conventions. After its review of the initial draft of the preliminary draft convention at its thirty-ninth session (see A/CN.9/509, paras. 18-125) and of the Secretariat's survey of possible legal obstacles to electronic commerce under existing international conventions at its fortieth session (see A/CN.9/527, paras. 24-71), the Working Group had agreed that it should attempt to identify the common elements between removing legal barriers to electronic commerce in existing instruments and a possible international convention on electronic contracting (see A/CN.9/527, para. 30). The Working Group reiterated its understanding that both projects should as much as possible be carried out simultaneously, a working assumption that was reflected in the current text of the preliminary draft convention.

35. The Working Group was reminded of the concerns that had been expressed at its thirty-ninth session concerning the risk of establishing a duality of regimes for contract formation: a uniform regime for electronic contracts under the new instrument and a different, not harmonized regime, for contract formation by any other means, except for the very few types of contract that were already currently covered by uniform law, such as sales contracts falling under the United Nations Sales Convention.

36. The Working Group noted that a task force had been established by the International Chamber of Commerce to develop contractual rules and guidance on legal issues related to electronic commerce, tentatively called "E-terms 2004". The Working Group was informed that the expected outcome of that work would be a pragmatic document, reflecting practical problems and solutions, which would also take into account the different needs of large and small companies. E-terms 2004 would be a voluntary instrument not conflicting with party autonomy. The scope of E-terms 2004 was said to be based on a careful assessment of the practices and needs of companies of various sectors and sizes. Underlying that work was the belief that an international instrument might not be the best way to resolve several problems related to electronic commerce, but rather that legal certainty in electronic contracting could be provided by giving users a combination of voluntary rules, model clauses and guidelines. The advantage of that approach would be its flexibility in that business could take up components of the standards or model clauses that could be amended easily if necessary.

37. The Working Group welcomed the work being undertaken by the International Chamber of Commerce, which was considered to complement usefully the work being undertaken in the Working Group to develop an international convention. The Working Group was of the view that the two lines of work were not mutually exclusive, in particular since the draft convention dealt with requirements that were typically found in legislation and legal obstacles, being statutory in nature, could not be overcome by contractual provisions or non-binding standards. The Working Group expressed its appreciation to the International Chamber of Commerce for the interest in carrying out its work in cooperation with UNCITRAL and confirmed its readiness to provide comments on drafts that the International Chamber of Commerce would be preparing.

38. As regards the organization of the work at the current session, the Working Group agreed that it should focus initially on matters that were common to its efforts of both removing legal obstacles in existing instruments and formulating a broader legal framework for electronic contracting, which were contained in chapter III of the preliminary draft convention.

## Article 8 [10]. Legal recognition of data messages

39. The text of the draft article was as follows:

> "1. Any communication, declaration, demand, notice or request that the parties are required to make or choose to make [in connection with an existing or contemplated contract] [in the context of the formation or performance of a contract] [, including an offer and the acceptance of an offer,] may be conveyed by means of data messages and shall not be denied validity or enforceability on the sole ground that data messages were used for that purpose.
>
> "[2. Nothing in this Convention requires a person to use or accept information in the form of data messages, but a person's consent to do so may be inferred from the person's conduct.]
>
> "[3. The provisions of this article do not apply to the following: […] [The provisions of this article do not apply to those matters identified by a Contracting State under a declaration made in accordance with article X.]"

40. As a general comment, it was said that draft article 8 was both ambitious and modest in scope. Ambitious because providing that contract-related communications might be conveyed by means of data messages seemed to create a positive enabling rule that went beyond the principle of functional equivalence. Did that mean, for example, that data messages would always be valid in a contractual context, even though one of the parties might not expect or even wish to entertain data messages? At the same time, however, the draft article was said to be modest in scope, since the last phrase of paragraph 1 was limited to restating the principle of non-discrimination of data messages that had been laid down in article 5 of the UNCITRAL Model Law on Electronic Commerce.[13] The question was asked whether it would not be more useful to go a step further and provide general positive criteria for the validity of data messages.

41. The Working Group agreed that the draft article should not create the impression that it created a substantive rule on the validity of data messages. For that purpose, there was general support for redrafting paragraph 1 in a manner that emphasized more clearly its function as a non-discrimination rule. One possibility to achieve that result might be to replace the phrase "any communication, declaration, demand, notice or request […] may be conveyed by means of data messages" with a phrase such as "where a communication, declaration, demand, notice or request is conveyed by means of data messages". The prevailing view within the Working Group, however, was that, as a whole, the paragraph should be retained as a non-discrimination rule and that it should not venture into providing conditions for the legal validity of data messages. Electronic commerce involved the use of various types of communications and technologies and it would not be advisable to attempt to formulate rules or criteria for their validity. Where the law imposed form requirements, draft article 9 already provided criteria for functional equivalence.

42. In connection with the set of alternative words in square brackets, the general preference was for retaining the reference to "existing or contemplated contract", although there was also support for the alternative reference to "the formation and performance of a contract", which was felt by some to be more technical. As regards the second set of words in square brackets, the Working Group generally accepted to retain in the text the reference to "offer and acceptance". The Working Group noted, however, that the inclusion of that phrase in draft article 8 might render paragraph 1 of draft article 13 redundant and decided that it might revisit its decision once it had reviewed draft article 13 (see paras. 117-121 below).

43. The Working Group noted that the purpose of draft paragraph 2 was to state the principle that parties should not be forced to accept contractual offers or acts of acceptance by electronic means if they do not want to do so (see A/CN.9/527, para. 108). However, as the provision was not intended to require that the parties should always agree beforehand on the use of data messages, the second phrase of the draft paragraph provided that a party's consent might be inferred from its conduct. There was strong support in the Working Group for including a provision such as draft paragraph 2. In that connection, the question was asked whether under the draft article a person that offered goods or services through a letter or a published advertisement would be bound to accept a reply by a data message. In response, it was said that the draft did not affect the way in which the applicable law treated the exchange of communications between the parties. Where the law did not provide a form requirement, it was conceivable that an oral reply to a written offer might constitute a valid reply, in much the same way as a data message would under the draft article. Where a form requirement existed, the draft article was expressing a legislative policy choice to ensure the equivalence between data messages and paper-based writings. It was suggested, however, that the second part of the draft paragraph should be deleted, since the word "consent" might be misunderstood to mean consent to the underlying transaction. The Working Group preferred however to retain the entire draft paragraph subject to rephrasing the second sentence so as to reflect the idea that the "consent" referred to therein related only to the use of data messages.

44. There were varying views within the Working Group regarding draft paragraph 3. While there were expressions of support for excluding specific matters from draft article 8, greater support was expressed for limiting any possibility of

exclusions to declarations submitted by Contracting States under draft article X. The prevailing view within the Working Group, however, was that it was preferable to limit the possibility of exclusions to exclusions from the entire instrument and not from specific provisions. It was agreed that the draft paragraph should be deleted, since both possibilities contemplated therein were found to be undesirable in view of the importance of the principle of non-discrimination and in the interest of ensuring the widest possible uniformity of law.

45. Subject to the above remarks and amendments, the Working Group generally approved the substance of draft article 8 and requested the Secretariat to prepare a revised version for consideration at its forty-third session.

## Article 9 [14]. Form requirements

46. The text of the draft article was as follows:

> "[1. Nothing in this Convention requires a contract or any other communication, declaration, demand, notice or request that the parties are required to make or choose to make [in connection with an existing or contemplated contract] [in the context of the formation or performance of a contract] to be made or evidenced in [a particular form, including written form] [by data messages, writing or any other form] or subjects a contract to any other requirement as to form.]
>
> "2. Where the law requires that a contract or any other communication, declaration, demand, notice or request that the parties are required to make or choose to make in connection with a contract should be in writing, that requirement is met by a data message if the information contained therein is accessible so as to be usable for subsequent reference.
>
> "3. Where the law requires that a contract or any other communication, declaration, demand, notice or request that the parties are required to make or choose to make in connection with a contract should be signed, or provides consequences for the absence of a signature, that requirement is met in relation to a data message if:
>
> "Variant A
>
> "(a) A method is used to identify that person and to indicate that person's approval of the information contained in the data message; and
>
> "(b) That method is as reliable as appropriate to the purpose for which the data message was generated or communicated, in the light of all the circumstances, including any relevant agreement.
>
> "Variant B
>
> "… an electronic signature is used which is as reliable as appropriate to the purpose for which the data message was generated or communicated, in the light of all the circumstances, including any relevant agreement.
>
> "4. An electronic signature is considered to be reliable for the purposes of satisfying the requirements referred to in paragraph 3 of this article if:

"(a) The signature creation data are, within the context in which they are used, linked to the signatory and to no other person;

"(b) The signature creation data were, at the time of signing, under the control of the signatory and of no other person;

"(c) Any alteration to the electronic signature, made after the time of signing, is detectable; and

"(d) Where the purpose of the legal requirement for a signature is to provide assurances as to the integrity of the information to which it relates, any alteration made to that information after the time of signing is detectable.

"5. Paragraph 4 of this article does not limit the ability of any person:

"(a) To establish in any other way, for the purposes of satisfying the requirement referred to in paragraph 3 of this article, the reliability of an electronic signature;

"(b) To adduce evidence of the non-reliability of an electronic signature."

47. The Working Group recalled that, in accordance with a suggestion made at the Working Group's thirty-ninth session (see A/CN.9/509, para. 115), article 9 incorporated the general principle of freedom of form contained in article 11 of the United Nations Sales Convention and restated the essential criteria for functional equivalence between data messages and paper documents, in the same manner as article 6, paragraph 2, in respect of writing and article 7, paragraph 3, in respect of signatures of the UNCITRAL Model Law on Electronic Commerce

48. It was also noted that article 9 contained two variants in paragraph 3. Variant A recited the general criteria for the functional equivalence between hand-written signatures and electronic identification methods referred to in article 7 of the UNCITRAL Model Law on Electronic Commerce, whereas variant B, which was more detailed and also included paragraphs 4 and 5, was based on article 6, paragraph 3, of the UNCITRAL Model Law on Electronic Signatures.

**Paragraph 1**

49. It was suggested that the draft paragraph could be simplified, since some of its substance was already contained in paragraph 2 of draft article 8. It was suggested that the paragraph should be revised to spell out more clearly that the draft article did not impose expressly or implicitly any form requirements that might affect the validity of communications or notices but simply provided rules for meeting those requirements, where imposed by the applicable law. It was suggested that paragraph 1 could be redrafted to provide that nothing in the convention subjected a contract or any communication, declaration, demand, notice or request to any requirement as to form. The Working Group agreed that the draft paragraph could be rephrased as suggested.

**Paragraph 2**

50. The Working Group noted that the draft paragraph set out the criteria for functional equivalence between data messages and paper documents, in the same manner as article 6 of the UNCITRAL Model Law on Electronic Commerce.

51. A suggestion was made that the term "writing" should be defined (see A/CN.9/509, paras. 116 and 117). It was suggested that a possible definition could be taken from the Convention on International Interests in Mobile Equipment and its Protocol on Matters Specific to Aircraft Equipment) adopted on 16 November 2001 by a Diplomatic Conference held in Cape Town, South Africa (the "Cape Town Convention") which provided that writing meant "a record of information (including information communicated by teletransmission) which is in tangible or other form and is capable of being reproduced in tangible form on a subsequent occasion and which indicates by reasonable means a person's approval of the record."

52. That suggestion was objected to on the ground that the technique used in the Cape Town Convention had been to formulate a definition of "writing" that could accommodate the use of data messages. UNCITRAL, by contrast, had chosen to defer to domestic law on the definition of what constituted a "writing" and to provide instead criteria for the functional equivalence between data messages and written documents. That fundamental difference made the definition of writing in the Cape Town Convention unsuitable for being incorporated into the draft Convention.

53. It was suggested that the draft paragraph should include an additional criterion for functional equivalence, namely, that a data message should not be susceptible of being unilaterally altered. In response, it was pointed out that the proposed addition was concerned with ensuring the integrity of the data message and that, as such, it was more akin to the notion of "original" than to the notion of "writing", since writing requirements were typically concerned with ensuring the existence of an accessible record, but were not necessarily concerned with the integrity of such record. It was noted, in that connection, that the Working Group had not thus far felt the need for adding a provision dealing with the functional equivalence between data messages and "original" records to the draft convention. Legal requirements relating to the production or retention of original records were typically in connection with rules on evidence in court proceedings and in exchanges with the public administration. A functional equivalence rule of that type was not felt to be needed in an instrument that dealt only with exchanges of a commercial nature.

**Paragraph 3**

54. With respect to variants A and B, concern was expressed that both variants included a requirement relating to the reliability of a signature. It was noted that both draft variant A and variant B were based on the requirements set out in the UNCITRAL Model Law on Electronic Commerce[13] and the UNCITRAL Model Law on Electronic Signatures[14] respectively. It was noted that some States had not imposed a separate requirement that an electronic signature be reliable provided that it was possible to identify the maker of the signature and the intention by that maker. The Working Group took note of that view.

55. In response to a question concerning the difference between variants A and B, it was pointed out that variant B contained detailed criteria for determining the reliability of an electronic signature. As a result of that, not every electronic signature technique that met the requirements of variant A also met all of the criteria set forth in paragraph 4 of variant B. The reliability of any such signature could however be demonstrated by the interested party under paragraph 5 of variant B.

56. Strong support was expressed for variant A of paragraph 3, which was found to offer simple and technologically neutral criteria for the recognition of electronic signatures.

57. However, the view was expressed that variant A did not ensure a sufficiently high level of security for signature and authentication methods. As it would be preferable to impose higher standards for the security of electronic communications, variant B should be preferred. A suggestion was made to prepare a combination of both variants A and B to accommodate those States that would require a higher degree of specificity as to the requirements of electronic signatures. It was noted that that approach could be accommodated by retaining only variant A as paragraph 3 of article 9 and subsequently including a provision that allowed a declaration to be made by a State under article X that it would not apply paragraph 3 of draft article 9 but would rather apply a higher standard based on a text that reflected variant B. After discussion, however, preference was expressed for retaining variant A only.

58. Subject to the above amendments and comments, the Working Group generally approved the substance of the draft article.

## Article 10 [11]. Time and place of dispatch and receipt of data messages

59. The text of the draft article was as follows:

> "1. The time of dispatch of a data message is deemed to be the time when the data message enters an information system outside the control of the originator or of the person who sent the data message on behalf of the originator.
>
> "2. The time of receipt of a data message is determined as follows:
>
> "(a) If the addressee has designated an information system for the purpose of receiving data messages, the data message is deemed to be received at the time when it enters the designated information system;
>
> "(b) If the addressee has designated an information system for the receipt of the data message, but the data message is sent to another information system of the addressee, the data message is deemed to be received at the time when it is retrieved by the addressee;
>
> "(c) If the addressee has not designated an information system, the message is deemed to be received at the time when the data message enters an information system of the addressee unless …
>
> "[Variant A
>
> "… it was unreasonable for the originator to have chosen that particular information system for sending the data message, having regard to the circumstances of the case and the content of the data message.] [or]

"[Variant B

"… the addressee could not reasonably expect that the data message would be addressed to that particular information system.]

"3. Paragraph 2 of this article applies notwithstanding that the place where the information system is located may be different from the place where the data message is deemed to be received under paragraph 5 of this article.

"4. When the originator and the addressee use the same information system, both the dispatch and the receipt of a data message occur when the data message becomes capable of being retrieved and processed by the addressee.

"5. A data message is deemed to be dispatched at the place where the originator has its place of business and is deemed to be received at the place where the addressee has its place of business, as determined in accordance with article 7."

60. The Working Group recalled that, except for draft paragraph 4, the rules contained in the draft article were based on article 15 of the UNCITRAL Model Law on Electronic Commerce, with some adjustments to harmonize the style of the individual provisions with the style used elsewhere in the draft convention. It was further recalled that draft paragraphs 1 and 2 had been redrafted, as their previous formulation had been felt to be unclear (see A/CN.9/528, paras. 140, 148 and 149). The Working Group also took note of the paper prepared by the Secretariat on, inter alia, the time of receipt and dispatch of data messages and contract formation (A/CN.9/WG.IV/WP.104/Add.2), which considered domestic legislative provisions dealing with the time when a data message should be considered to have been dispatched and received.

**Paragraphs 1 and 2**

61. The Working Group noted that one of the main objectives of the draft convention was to provide guidance that allowed for the application, in the context of electronic contracting, of concepts traditionally used in international conventions and domestic law, such as "dispatch" and "receipt" of communications. To the extent that those traditional concepts were essential for the application of rules on contract formation under domestic and uniform law, the provision of functionally equivalent concepts for an electronic environment was said to be an important objective of the draft convention. There was strong support for that objective and, in general, for the idea that the matter should be addressed in the draft convention.

62. The Working Group was reminded, however, that it had had extensive discussions on draft paragraphs 1 and 2 at its thirty-ninth and forty-first sessions (see A/CN.9/509, paras. 93-98 and A/CN.9/528, paras. 137-151, respectively). The concerns that had been raised in connection with those provisions related mainly to criticism regarding the meaning of the expression "information systems", and the perceived complexity of the draft article, in particular in view of the distinction between "designated" and "non-designated" information systems. The Working Group was invited to consider proposals for addressing those concerns.

63. Pursuant to one view, the main problem posed by the draft article, as had been said in earlier sessions of the Working Group, was its reliance on the notion of

"information system" to determine time of dispatch and receipt of data messages. That solution was said to be inappropriate in an essentially intangible environment since the notion of an information system might be understood to imply the existence of equipment to transmit and process data messages. As an alternative to the notion of an information system, it was proposed that the draft article should focus on the control of a data message to determine the time of dispatch and receipt of data messages.

64. On that basis, it was suggested that paragraphs 1 and 2 of article 10 should provide that a data message was sent when it first left the control of the originator and was sent in a manner to which the addressee had consented. Furthermore, a message should be deemed to have been received when it became capable of being retrieved and processed by the addressee or, if it was sent in a manner other than proposed by the addressee, when the addressee became aware of it.

65. Another proposal put forward to the Working Group was to replace the entirety of draft article 10 with the following text:

> "1. The time of dispatch of a data message shall be deemed to be the time when the data message enters an information system outside the control of the originator or of the person who sent the data message on behalf of the originator.
>
> "2. The time of receipt of a data message shall be deemed to be the time when it becomes capable of being retrieved by the addressee or by any other person named by the addressee.
>
> "[3. The time of receipt of a data message sent to an automated information system shall be deemed to be the time when it becomes capable of being processed by the automated information system.]"

66. The Working Group heard expressions of strong support for those proposals, which were welcomed as a good basis for further discussion by the Working Group. It was said that replacing the various factual situations referred to in draft paragraph 2 with simple general rules that focused on the control over a data message or the capability of retrieving a data message offered a better solution for a uniform law instrument.

67. It was noted that the different criteria for determining receipt of data messages that were used in subparagraphs (b) and (c) of paragraph 2 might lead to conflicting results. For example, if "information system" covered systems that carried data messages to their addressees, including, for instance, an external server, a data message might be deemed to have been received by the addressee under subparagraph (c) even if it was lost prior to retrieval, as long as the loss had occurred after the message had entered the server's system and that system was a "designated information system". Under subparagraph (b), however, the lost message would not be deemed to have been received by the addressee on the grounds that it had not been actually retrieved by the addressee simply because the server's information system had not been "designated" by the addressee. It was said that there was no justification for that discrepancy, which was only due to the complexity of the draft paragraph.

68. Another advantage of formulating alternative rules along the lines of the proposals that had been tabled was to avoid reliance on the notion of "information

system", which was felt to be ambiguous and possibly leading to conflicting results depending on whether it was meant to include, for example, a mailbox, a company's server, an external server, or a closed network or all or only some of those elements. The proposed reference to the moment when a message became capable of being retrieved provided instead sufficient elements for a court or an arbitral tribunal to determine when a message had been effectively received, should there be an argument about that question.

69. In response, it was pointed out that the search for simplicity, a characteristic that, in itself, could appeal to the business community, should not lead those drafting the convention to disregard the need to ensure a high level of predictability and certainty with respect to contract formation. It was strongly felt that, on such important issues as the time and place of contract formation, the need for certainty was paramount. In that respect, the alternatives proposed to draft paragraphs 1 and 2 were found to be vague and insufficient to meet the practical needs of users of electronic commerce. The originator of a data message, it was said, had no means of ascertaining when a message that had entered an information system outside the originator's control became capable of being retrieved from that system. By removing the factual element linked to a message's entry into a given information system, the alternative proposals eliminated the only objective factor available to the parties to establish beforehand the time their messages would become effective. The draft article should aim at avoiding possible doubt and the related potential for litigation, rather than merely offering rules that could be applied a posteriori to solve a dispute resulting from uncertainty as to the time of receipt of a data message. If the notion of "information system" posed problems, it would be preferable to refine the definition contained in subparagraph (e) of draft article 5, rather than to abandon that useful notion.

70. Another objection to the alternative proposals was that they seemed to eliminate the notion of "designated information system". It was important, however, to preserve that notion, since it allowed the parties to choose a specific information system for receiving certain communications, for instance, where an offer expressly specified the address to which acceptance should be sent. Such a possibility was said to be of great practical importance, in particular for large corporations using various communication systems at different places, which could not be expected to pay the same level of attention to all the information systems it had established. It would be unreasonable, for example, to bind a large corporation by the content of data messages sent to just any of its various electronic mailboxes simply because such a message had become "capable of being retrieved" by the corporation.

71. Furthermore, it was pointed out that draft paragraphs 1 and 2 were based on tested solutions contained in article 15 of the UNCITRAL Model Law on Electronic Commerce,[13] which had already been incorporated in the domestic legislation of several jurisdictions. Those solutions were said to protect the interests of the originator, who would otherwise be left to the mercy of the addressee's willingness to become aware of a data message or of the possible malfunctioning of the addressee's system. The alternative proposals under consideration were said to provide the opposite solution, by placing on the originator the entire burden of proof of the receipt of a data message. As a matter of principle, however, the Working Group should not deviate from the policy it had established in earlier texts, with the Commission's approval, without a demonstrated need for a shift in policy.

72. The Working Group considered at length the various views that had been expressed on the draft paragraphs. A widely shared view was that the alternative proposals before the Working Group had positive elements that deserved further consideration and that those proposals might be helpful to address some of the concerns that had been expressed in connection with paragraphs 1 and 2. There was at the same time growing awareness that those proposals lacked positive elements to help determine when a message became effective, which were currently provided by the notion of "entry" into an information system. The Working Group also noted that, however complex the distinction between "designated" and "non-designated" systems appeared to be, that distinction served a useful practical purpose, since an addressee should not be deemed to have received messages that were sent to an information system where the addressee did not reasonably expect to receive them.

73. One possibility for addressing those concerns, it was suggested, might be to combine some of the elements that had been proposed with parts of the existing text in a manner that created a presumption of awareness of a message (in the sense of "accessibility" or "possibility of knowledge") by its entry in an information system of the addressee, provided that the choice of that system by the originator was reasonable. Such a new version of draft paragraph 2, it was said, might read along the following lines:

> "The time of receipt of a data message shall be deemed to be the time when it becomes capable of being retrieved by the addressee or by any other person named by the addressee. A data message is presumed to be capable of being retrieved by an addressee when it enters an information system of the addressee, unless it was unreasonable for the originator to have chosen that particular information system for sending the data message, having regard to the circumstances of the case and the content of the data message."

74. The Working Group generally agreed that the proposed new version of draft paragraph 2 provided a good basis for solving the problems that the Working Group had identified. It was pointed out that the notion of capability of retrieving a data message, when linked to the time when a message entered an information system of the addressee, effectively transposed to an electronic environment the notion that in order to become effective, a contractual communication had to reach the addressee by entering the addressee's sphere of control, a notion that was implicit, for instance, in article 24 of the United Nations Sales Convention. Thus, the new proposal would lead in fact to the same result as the various situations contemplated in article 15, paragraph 2, of the UNCITRAL Model Law on Electronic Commerce,[13] albeit through a different formulation. In response to an objection that the new proposal omitted reference to the parties' agreement to use a particular means of communication, it was pointed out that questions related to a party's consent to conduct transactions electronically was envisaged in draft article 8, paragraph 2. The choice of a particular means of electronic communication, on the other hand, was a possibility implicitly contemplated in the test of reasonableness contained in the last part of the new proposal. In fact, the new proposal preserved the right of the addressee to choose a particular information system for the receipt of data messages, since the addressee would be able, for example, to challenge the choice of a particular electronic address by the originator on the grounds that such a choice disregarded the addressee's designation of another system, being therefore unreasonable.

75. In the light of the above, the Working Group generally agreed that the proposed new formulation could replace the existing draft paragraph 2 and should be retained as a basis for the Working Group's future review of the matter. The Working Group noted, however, that it might still need to revisit the definition of "information system" in draft article 5 with a view to ensuring that it adequately covered the factual situations to which draft article 10 applied.

76. Having accepted in principle the reformulation of draft paragraph 2, the Working Group turned its attention again to paragraph 1. The view was expressed that the criterion used in the draft paragraph for determining the time of dispatch of data messages was inadequate, since the dispatch was defined as the time a data message entered an information system outside the control of the originator. It would be more logical, however, to provide that a message was deemed to be dispatched when it left the originator's sphere of control or, to use the terminology of the draft convention, when it left an information system under the control of the originator. There was strong support for that proposition, which was felt to be more in line with the notion of dispatch than the current formulation.

77. However, there were also strong reservations to changing the criterion currently used in the draft paragraph. It was pointed out that exit from an information system under the control of the originator and entry into another information system not under the originator's control were two sides of the same factual situation, since a message typically left one information system by entering another one. The current formulation, which was also used in article 15, paragraph 1, of the UNCITRAL Model Law on Electronic Commerce,[13] was said to be preferable because it focused on an element in respect of which the parties would have easily accessible evidence, since transmission protocols of data messages typically indicated the time of delivery of messages to the destination information system or to intermediary transmission systems, but did not normally state when messages left their own systems.

78. In the light of the above, the Working Group agreed that paragraph 1 could contain both alternatives, within square brackets, for consideration by the Working Group at a later stage.

79. Subsequently, after having completed its deliberations on draft paragraph 4 (see para. 83 below) the Working Group agreed that paragraph 1 could be reformulated along the following lines, for future consideration:

> "The time of dispatch of a data message is deemed to be the time when the data message [enters an information system outside the control of the originator or of the person who sent the data message on behalf of the originator] [leaves an information system under the control of the originator or of the person who sent the data message on behalf of the originator], or, if the message had not [entered an information system outside the control of the originator or of the person who sent the data message on behalf of the originator] [left an information system under the control of the originator or of the person who sent the data message on behalf of the originator], at the time when the message is received."

80. The Working Group took note, in that connection, of suggestions to improve the drafting of paragraph 1, including the proposal that the words "is deemed to be

the time" should be replaced with the words "is the time". Another suggestion was that those words should be replaced with the words "is presumed to be".

**Paragraph 3**

81. The question was asked whether the draft paragraph was needed in the context of the draft convention, since matters of timing were dealt with in paragraph 2 and the location of the parties was a matter dealt with in paragraph 5. In response, it was observed that the draft article was only intended to clarify that receipt of a data message might occur even if the place where the message was received (that is the place of the information system into which the message had entered) did not coincide with the parties' places of business. Such a clarification was useful in an electronic environment since, unlike the normal situation for postal communications that were usually delivered at a party's premises, data messages could be deemed to be received when delivered to information systems that were located outside of a party's place of business.

82. Subject to a proposal for placing draft paragraph 3 after the current paragraph 5, the Working Group approved the substance of the draft paragraph.

**Paragraph 4**

83. It was suggested that paragraph 4 should be deleted since the notion of receipt of a data message upon its becoming capable of being retrieved was now contained in the new version of paragraph 2 (see para. 73 above). It was pointed out, however, that paragraph 2 only dealt with the receipt of a data message, whereas paragraph 4 also established rules for the dispatch of a message when both parties were within the same information system. Having considered those views, the Working Group agreed that the rules on dispatch contained in paragraph 4 could be incorporated into paragraph 1 (see paras. 76-80 above) and that paragraph 4 could be deleted for the time being. The Working Group did not reach consensus on whether the notion of messages within the same information system was realistic or significant.

**Paragraph 5**

84. No comments were made in connection with the draft paragraph, which was generally approved by the Working Group.

**Proposed additional paragraph**

85. It was suggested that draft article 10 did not provide an appropriate rule for receipt involving communication of data messages using automated information systems. It was suggested that in dealing with that matter, the Working Group should consider that contract negotiations through an automated information system (for example, the sale of aeroplane tickets) largely reflected the pattern of "face to face" or "instantaneous" communications. On that basis, it was suggested that a data message sent to an automated information system should be considered to be received when it became capable of being processed by the automated information system. It was suggested that that proposed amendment covered the situation where a data message was processed without any further interaction of the addressee who administered the automated information system.

86. It was agreed that the question of automated information systems could be deferred until the Working Group considered draft article 14. In that respect, the Working Group was cautioned against creating a different rule in respect of automated information systems from that which applied generally for the receipt of data messages. It was also suggested that the new version of paragraph 2 (see para. 73 above) possibly already covered the receipt of data messages by automated information systems. On that basis, the Working Group agreed to revisit the issue of automated information systems in the context of its discussions on draft article 14.

## Article 11 [15]. General information to be provided by the parties

87. The text of the draft article was as follows:

> "[Data messages used for the advertisement or offer of goods or services shall include the following information:
>
> "(a) The name of the party on whose behalf the advertisement or offer is made and, for legal entities, its full corporate name and place of registration, organization or incorporation;
>
> "(b) The geographic location and address at which that party has its place of business, including its electronic mail address and other contact details.]"

88. The Working Group noted that the draft article, which was inspired by article 5, paragraph 1, of Directive 2000/31/EC of the European Union (the "European Union Directive"), appeared in square brackets, as there was no consensus on the need for the provision within the Working Group (see A/CN.9/509, paras. 61-65). In its current form, the draft article did not contemplate any sanctions or consequences for a party's failure to provide the required information, a matter that still needed to be considered by the Working Group (see A/CN.9/509, para. 123, and A/CN.9/527, para. 103).

89. The Working Group noted that the draft article had given rise to extensive debate at its thirty-ninth session, when it had been found to be highly desirable by a large number of delegations and highly controversial by an equivalent number of delegations (A/CN.9/509, paras. 60-65). That division of views was again evident at the current session.

90. There were strong expressions of support for the draft article, which was said to embody important elements to help the parties determine whether a particular transaction would be regarded as domestic or international and to take measures necessary to protect their rights, in particular in the event of disputes or litigation. The draft article, it was said, could not be seen as excessively intrusive and did not impose an unreasonable burden on business entities, since the information contemplated therein was of a general nature and not concerned with a company's internal affairs. Business entities pursuing legitimate commercial activities should have no reason to fear disclosing their identities or their places of business.

91. Furthermore, the fact that international instruments on uniform commercial law did not contain similar obligations for transactions conducted through traditional means did not impede the creation of specific requirements for

transactions concluded electronically. Electronic commerce was a relatively new phenomenon that might justify new legal rules. In a non-electronic environment, it would be hardly conceivable to have a contract concluded between parties that did not know each other's identities or locations. It was pointed out, however, that certain negotiation techniques, such as web contracting, might allow complete contract performance and payment without the parties having any access to information beyond the data messages they exchanged. Legal certainty, transparency and confidence in electronic commerce would be enhanced by the promotion of good business standards, such as basic disclosure requirements. If the provision was felt to be excessively rigid, it could be rendered more flexible and the sanctions, if any, could be left to the applicable law. The regulatory appearance of the draft article might be further mitigated if the reference to "advertisements", which might seem to impinge upon the domain of consumer protection and publicity regulation, would be eliminated. As a whole, however, the draft article should be retained.

92. The countervailing view, which also received strong support, was that the draft article was regulatory in nature, ill placed in a commercial law instrument, unduly intrusive and potentially harmful to certain existing business practices. Disclosure obligations such as those contemplated by the draft article were typically found in legal texts that were primarily concerned with consumer protection, as was the case in the European Union Directive on which the draft provision was based. In the case of those other instruments, however, the operation of regulatory provisions of that type was supported by a number of administrative and other measures that could not be provided in the draft convention.

93. It was also argued that no similar obligations existed for business transactions in a non-electronic environment and the interest of promoting electronic commerce would not be served by subjecting it to such special obligations. Moreover, in particular situations, such as in certain financial markets or in business models such as Internet auction platforms, it was common for both sellers and buyers to identify themselves only through pseudonyms or codes throughout the negotiating or bidding phase. There were also systems that involved trading intermediaries where the identity of the ultimate supplier would not be disclosed to the potential buyers. The parties in those cases had various legitimate reasons for keeping their identities secret, including their negotiating strategy, rather than being reluctant to disclose their names or places of business for improper motive or out of fear of legal sanctions. Besides, a provision such as the draft article was said to be ineffective, whatever purpose might be attached to it. Under most circumstances, the parties would have a business interest in disclosing their names and places of business, without needing to be required to do so by law. Thus, the draft convention would be innocuous for the purpose of enhancing legal certainty. If, however, the purpose was to curb fraud and create obstacles to illicit use of electronic commerce, the draft convention was not an efficient mechanism, since it could not be accompanied by the types of sanctions that might be a deterrent for wrongdoers. An additional note of caution was that the draft article should not be perceived as attempting to establish rules on jurisdiction, which was a matter outside the scope of the draft convention.

94. The Working Group considered at length the various views that had been expressed. There was general agreement with the overall aim of developing rules or principles that helped enhance legal certainty and foster confidence in electronic

commerce, for instance by promoting transparency and helping the parties obtain the means to determine which law governed their transactions. However, in view of the opposing views on the desirability and usefulness of the draft article, the Working Group was invited to consider possible alternatives that might help achieve a compromise on the matter.

95. One such alternative, it was said, might be to reformulate the draft paragraph as an invitation or exhortation to business parties to disclose the information referred to therein, for example, by replacing the words "shall include the following information" with the words "may include the following information". That proposal was objected to on the ground that it would render the entire article optional, thus defeating the purpose of ensuring a minimum amount of information. Another suggestion was to subject the draft article to the principle of party autonomy in such a manner that a party that proceeded to conduct commercial transactions with another party that had not disclosed its identity or place of business might be deemed to have accepted to waive the requirements of draft article 11. That proposal, too, was criticized since it might lead to conflicts with domestic or regional regulatory regimes that required the disclosure of the information contemplated in the draft article without authorizing the parties to displace those requirements.

96. Further options to address the objections that had been raised to the draft article included proposals for exclusion of particular situations, for instance when the parties negotiated in closed networks to which they had gained access upon initial identification, or when the parties already had a history of previous dealings or were otherwise satisfied that the required information had been made or could be made available to them. In response, however, it was said that it would be difficult to define what those particular situations were and that, in any event, they would not accommodate absolute anonymity. Furthermore, the examples of business models where the parties acted through pseudonyms, such as Internet auction platforms, were most commonly used by consumers, whose interests were otherwise protected through specific regulations.

97. The view was expressed, in that connection, that the problems raised by the draft article stemmed at least in part from its apparently mandatory nature. Those problems, it was said, could be avoided if the article was reformulated as a hortatory provision to the effect that the parties should refrain from making false statements as to their identities or location. Another related proposal was that, to avoid the issues related to the possible sanctions to a party's failure to disclose information, the draft article could include a provision similar to paragraph 2 of articles 8 and 9 of the UNCITRAL Model Law on Electronic Signatures,[14] which provided that the parties bore the legal consequences of their failure to comply with those provisions. There were objections to those proposals, however, on the grounds that a reference to possible sanctions under domestic law was not conducive to enhancing legal certainty and that a hortatory provision against fraudulent misrepresentations was not compatible with the commercial law character of the draft convention.

98. Another problem identified in the draft article in the course of the discussion was that it imposed a disclosure obligation only upon the party offering goods or services, but not on the other contracting partner. That, it was said, was evidence of the original purpose of the provision, which was said to be primarily related to consumer protection. In response, it was noted that the focus on the party offering

goods or services was a logical choice in the draft article, since that was the party that was aiming at reaching a potentially wide number of persons. It would be for the offeror to set up its negotiating system in such a way that it provided means for the interested parties to provide their own information details or required them to do so. In any event, however, as the party acting upon an offer might be prompted, for example, to make immediate payment or disclose personal information, or might have a legitimate interest in obtaining information needed to protect its rights, for instance in the event of litigation, it was reasonable for the draft article to focus on disclosure obligations for the party making the initial offer.

99. The view was expressed that none of the existing proposals was sufficient to solve the problems posed by the draft article, which might need to be extensively restructured or deleted. It was suggested, in that connection, that articles 1 and 7 already offered an acceptable framework for determining the location of the parties and that no additional information would be needed in order to determine the law governing a particular contract.

100. In the interest of rendering the draft article more flexible, it was proposed, at that juncture, to reformulate the draft article as an optional provision along the following lines:

> "1. Before any contract is made final each party shall disclose to each other party:
>
> (a) Its legal name or identity;
>
> (b) The place from which it is contracting; and
>
> (c) A method of contacting the party by electronic means.
>
> "2. The disclosure under paragraph 1 is not required if parties have contracted with each other previously or otherwise can be presumed to know the information referred to in paragraph 1.
>
> "3. If a party fails to comply with the above requirements, this convention does not apply to the contract."

101. The Working Group was appreciative of the efforts made to achieve a workable consensus on the matter. However, the new proposal also attracted criticism both from those who supported draft article 11 and from those who sought its deletion. On the one hand, there were objections to the proposal because it rendered optional the compliance with requirements that should be treated as a matter of public policy and that should, therefore, be mandatory. On the other hand, the proposal was said to defeat the very purpose of the draft convention, as it would automatically exclude from the benefit of enhanced uniformity and legal certainty provided by the draft convention all contracts that were concluded in contravention to article 11.

102. Having regard to the persisting disagreement within the Working Group on the draft article, it was suggested that the matter might be addressed from a different angle, namely by a provision that recognized the possible existence of disclosure requirements under the substantive law governing the contract and reminded the parties of their obligations to comply with such requirements. Such a provision might be placed at an appropriate place in chapter I or II of the draft convention and might read as follows:

"Nothing in this Convention affects the application of any rule of law that may require the parties to disclose their identities, places of business or other information, or relieves a party from the legal consequences of making inaccurate or false statements in that regard."

103. There was wide agreement within the Working Group that the proposed new approach for dealing with disclosure requirements constituted a good basis for establishing a consensus on the matter. It was pointed out that the new proposal had the advantage of highlighting the parties' obligations to comply with domestic law before using data messages for contracting purposes. Although the proposal would entail the deletion of the current draft article 11, it would restate the principle that parties should be reminded of good practices when contracting electronically. It was further pointed out that the new approach would avoid conflicts between mandatory disclosure obligations under domestic law and similar obligations under the convention, in particular if, in the latter case, those obligations could be derogated by the agreement of the parties, as had been suggested earlier in the course of the deliberations, since that right was not always provided under domestic law. The Working Group took note of the view, however, which was not isolated, that it would have been preferable for the draft convention itself, as a uniform law instrument, to provide disclosure obligations, rather than defer completely to domestic law on the issue.

104. In that connection, the Working Group debated at some length the question of whether the new proposed provision would be subject to party autonomy under draft article 4 and whether a specific exception should be included in draft article 4. The general understanding of the Working Group was that, given the nature of the new provision, which deferred to domestic law on disclosure requirements, domestic requirements would remain applicable even if the parties attempted to escape those requirements by excluding the application of the new provision.

105. Subject to a final decision by the Working Group, at a later stage, on a suitable place for inserting the new provision, the Working Group agreed to incorporate the new provision and to delete draft article 11.

## Article 12 [9]. Invitations to make offers

106. The text of the draft article was as follows:

"Variant A

"1. A proposal to conclude a contract made through one or more data messages which is not addressed to one or more specific persons, but is generally accessible to persons making use of information systems is to be regarded merely as an invitation to make offers, unless it indicates the intention of the person making the proposal to be bound in case of acceptance.

"2. Unless otherwise indicated by the person making the proposal, a proposal to conclude a contract that makes use of interactive applications for the [automatic] placement of orders through such information system, is an offer and is presumed to indicate the intention of the offeror to be bound in case of acceptance.

"Variant B

"A proposal to conclude a contract made through one or more data messages which is not addressed to one or more specific persons, but is generally accessible to parties making use of information systems, including proposals that make use of interactive applications for the [automatic] placement of orders through such information system, is to be regarded as an invitation to make offers, unless it clearly indicates the intention of the person making the proposal to be bound in case of acceptance."

**General remarks**

107. The Working Group was invited to begin its deliberations by considering whether there was a need for a default rule to determine when a party that made a proposal to conclude a contract using data messages should be deemed to have made a binding offer and under what circumstances the parties could be deemed to be bound by offers made using automated systems. It was noted that the provision was inspired by article 14, paragraph 1, of the United Nations Sales Convention and resulted from an analogy between offers made by electronic means and offers made through more traditional means (see A/CN.9/509, paras. 76-85). It was recalled that the general rule in paragraph 1 of variant A and in variant B had reflected the principle that a party that offered goods or services through data messages that were not addressed to one or more specific persons should not be deemed to have made a binding offer, unless it clearly indicated otherwise. Underlying that general rule was the concern that attaching a presumption of binding intention to the use of interactive contracting applications would be detrimental for sellers holding a limited stock of certain goods, if the seller were to be liable to fulfil all purchase orders received from a potentially unlimited number of buyers.

108. It was noted that paragraph 1 of variant A simply restated the general principle that offers of goods or services that were accessible to an unlimited number of persons were not binding, but were to be regarded as invitations to make offers, whereas paragraph 2 of that variant provided that, as an exception to the general rule in paragraph 1, when an interactive application was used, that should be regarded as a binding offer. Variant B, which combined paragraphs 1 and 2 into a single provision, treated offers of goods or services, even where an "interactive application" was used, as an invitation to make offers (see A/CN.9/528, paras. 110-119).

109. In examining the draft article, the Working Group was informed of the way in which traditional notions of offer and acceptance had been applied to contract negotiations through electronic means in the context of relevant legal writings and case law. It was noted that there was a strong view in legal writing suggesting that the "invitation to treat" model might not be appropriate for uncritical transposition to an Internet environment and that distinctions should be drawn between web sites offering goods or services using interactive applications and those using non-interactive applications (see A/CN.9/WG.IV/WP.104/Add.1, paras. 4-7). The Working Group also noted that some case law seemed to support the view that offers made by so-called "click-wrap" agreements and in Internet auctions might be interpreted as binding.

**Choice between variants A and B**

110. Some support was expressed that the article should be deleted. It was said that, in attempting to deal with issues of substantive law related to contract formation, the article went beyond the stated aim of the draft convention to facilitate electronic transactions. It was further said that the article did not offer a meaningful supplement to rules already found in the United Nations Sales Convention and was therefore a redundant provision. Notwithstanding that view, the Working Group eventually agreed that it would be useful for the draft convention to offer some clarification on the matter and that the options in the draft article provided a good starting point to achieve that objective. It was observed in that connection that the provision was a default rule that appropriately adapted a rule from the United Nations Sales Convention to the electronic context.

111. As a general comment, it was observed that a proposal to conclude a contract only constituted an offer, in accordance with article 14, paragraph 1, of the United Nations Sales Convention, if a number of conditions were fulfilled, including that the proposal should be sufficiently definite by indicating the goods and expressly or implicitly fixing or making provision for determining the quantity and the price. It was important to review the draft article with a view to ensuring that it did not create the impression that the party's intention to be bound would suffice to constitute an offer in the absence of those other elements. The Working Group took note of that comment and agreed that the comments should be taken into account in a future version of the draft article.

112. Support was expressed for variant A on the basis that it allowed a broad range of possibilities and allowed for the operation of the intention of the parties. However, concern was expressed that paragraph 2 of variant A presumed that persons using interactive applications to make offers always intended to make binding offers, a proposition that did not reflect the prevailing practice in the marketplace. Thus, if variant A was retained, as suggested, paragraph 2 should be deleted. In response to that proposal, however, it was observed that there existed business models based on the rule that offers through interactive applications were binding offers. In those cases, possible concerns about the limited availability of the relevant product or service were addressed by including disclaimers stating that the offers were for a limited quantity only and by the automatic placement of orders according to the time they were received.

113. The prevailing view within the Working Group was contrary to the policy stated in paragraph 2 of variant A. However, since paragraph 1 of variant A alone was felt to provide little help to the interpretation of the relevant rules in the United Nations Sales Convention, the Working Group took the view that working on the basis of variant B would be a preferable option.

114. In respect of variant B, concern was expressed that the use of the term "interactive applications" was too narrow and was not consistent with other provisions of the draft convention, which used the term "automated information systems". In response, it was recalled that at the Working Group's thirty-ninth session, it had been decided that, in the context of the draft article, the expression "automated information system" did not offer meaningful guidance since the party that placed an order might have no means of knowing how the order would be processed and to what extent the information system was automated. The notion of

"interactive applications", in turn, was considered to be an objective term that better described a situation apparent to any person accessing the system, namely that it was prompted to exchange information through that system by means of immediate actions and responses having an appearance of automaticity. It was noted that the term was not a legal term but rather a term of art highlighting that the provision focused on what was apparent to the party activating the system rather than on how the system functioned internally. On that basis, the Working Group agreed that the term "interactive applications" could be retained.

115. A concern was raised that the reference to the term "an invitation to make offers" was not appropriate since it was not familiar to some legal systems. It was proposed that a more neutral approach might be to replace the words "is to be regarded as an invitation to make offers" with words such as "is not to be regarded as making an offer". While some support was expressed for that proposal, it was noted that the draft text mirrored language used in article 14, paragraph 2, of the United Nations Sales Convention and that the Working Group should not depart from that language in the present convention. For the same reason, suggestions that the word "clearly" in variant B should be deleted were withdrawn on the basis that the term was also used in the United Nations Sales Convention.

116. The Working Group concluded its deliberations on the draft article by agreeing to retain variant B as a basis for future consideration.

## Article 13 [8]. Use of data messages in contract formation

117. The text of the draft article was as follows:

> "1. [An offer and the acceptance of an offer may be expressed by means of data messages.] Where data messages are used [in the formation of a contract] [to convey an offer or the acceptance of an offer], [that contract] [the resulting contract] shall not be denied validity or enforceability on the sole ground that data messages were used for that purpose.
>
> "Variant A
>
> "2. When conveyed in the form of a data message, an offer and the acceptance of an offer become effective when they are received by the addressee.
>
> "Variant B
>
> "2. Where the law of a Contracting State attaches consequences to the moment in which an offer or an acceptance of an offer reaches the offeror or the offeree, and a data message is used to convey such offer or acceptance, the data message is deemed to reach the offeror or the offeree when it is received by the offeror or the offeree."

118. The Working Group noted that the draft article contained a number of provisions concerning the effectiveness of data messages used to convey contractual offers or acceptances. Those provisions, it was pointed out, had been originally contained, albeit using a different formulation, in an earlier version of the draft convention. That version reflected the essential rules on contract formation of the

United Nations Sales Convention. The original draft article had been the subject of extensive debate and considerable criticism at the Working Group's thirty-ninth session, when the Working Group agreed that the provision should be reformulated and that any substantive provisions in the draft convention should be limited to those which were strictly required to facilitate the use of data messages in the formation of international contracts (see A/CN.9/509, paras. 87-92). The draft provision had been subsequently reviewed by the Working Group at its forty-first session. At that time, the Working Group had not been able to reach an agreement on whether the draft article should be retained or deleted. Having considered the view that the draft article contained useful provisions to facilitate a determination on the formation of a contract by electronic means, the Working Group agreed to request the Secretariat to reformulate the draft article for consideration at a later stage (see A/CN.9/528, paras. 94-108). The current version of the draft article, in particular paragraph 2, reflected suggestions that had been made at that session (see A/CN.9/528, paras. 105 and 106).

119. At the current session, strong objections were repeated to retaining the draft article as a whole. It was pointed out that the provision did not specifically address the issues of electronic contracting, to which the draft convention should confine itself. Even in its current form, which was meant to be limited in scope to electronic commerce transactions, the draft article should still be deleted. If the purpose of draft paragraph 1, for instance, was to facilitate a determination of the time of contract formation when data messages were used for that purpose, the provision was not necessary, since the new text of draft article 8, paragraph 1, already expressly recognized the possibility of offer and acceptance being communicated by means of data messages.

120. Paragraph 2 should also be deleted, since both variants were felt to deal with matters of substantive contract law, which the draft convention should not affect. In particular, it was said, the draft convention should not attempt to provide a rule on the time of contract formation, in order to avoid the creation of a dual regime where different rules would govern the time of formation of an electronic commerce contract within the draft convention and the time of formation of other types of contract outside the purview of the draft convention.

121. Having considered the various views that were expressed, the Working Group agreed to delete draft article 13.

## Article 14 [12]. Use of automated information systems for contract formation

122. The text of the draft article was as follows:

> "A contract may be formed by the interaction of an automated information system and a person or by the interaction of automated information systems, even if no person reviewed each of the individual actions carried out by such systems or the resulting agreement."

123. The Working Group noted that the draft provision, which the Working Group, at its thirty-ninth session, had decided to retain in substance (see A/CN.9/509,

para. 103), further developed a principle formulated in general terms in article 13, subparagraph 2 (b), of the UNCITRAL Model Law on Electronic Commerce.[13]

124. The Working Group generally agreed that the draft article removed possible doubts concerning the validity of contracts that resulted from the interaction of automated information systems. It was pointed out that a number of jurisdictions had found it necessary or at least useful to enact similar provisions in domestic legislation on electronic commerce.

125. It was pointed out that, although the draft article was inspired by article 13, subparagraph 2 (b), of the UNCITRAL Model Law on Electronic Commerce,[13] the two provisions were not identical in purpose. Article 13, subparagraph 2 (b), of the Model Law was concerned with the attribution of messages sent by an automated information system, whereas the draft article was in the nature of a non-discrimination rule. Regardless of that, however, the provision might not be needed, since it could be regarded as already being covered by draft article 8, paragraph 1. It would, instead, be preferable to complement the draft article with clear provisions on attribution similar to those contained in the Model Law.

126. The Working Group agreed that there was a difference between the draft article and the related provision on attribution of data messages in the Model Law, which was essentially concerned with individual data messages. The current draft, however, went a step further and expressly recognized that data messages exchanged by automated information systems could generate binding obligations even without human intervention or review of those obligations or the actions that led to their creation. That was an important clarification that should be retained in the draft convention. The substance of the draft article was not already covered by draft article 8, paragraph 1, since it dealt with a particular category of data messages.

127. There was some support for the possibility of expanding the draft article to include rules on attribution of data messages that made it clear that a contract resulting from the interaction of a computer with another computer or person was attributable to the person in whose name the contract was entered into. There were, however, strong objections to that suggestion in view of the difficulty of finding an acceptable solution for legal issues related to attribution of data messages, having regard to the wide variety of factual situations that would need to be taken into account, as had been seen during the preparation of article 13 of the Model Law. The Working Group noted that there was no consensus on the need for including rules on attribution in the draft convention and decided that no such rules should be drafted. It was understood, however, that the Working Group might wish to revisit that decision at a later stage.

128. To the extent, however, that the current formulation of the draft article gave rise to doubts as to its purpose and effect, particularly as regards the meaning of the phrase “a contract may be formed”, which was felt to be unclear, it was agreed that the provision could be reformulated. One proposal to recast the draft article as a principle of non-discrimination was to replace it with a provision along the following lines:

> “A contract formed by the interaction of an automated information system and a person, or by the interaction of automated information systems, shall not be denied validity or enforceability on the sole ground that no person

reviewed each of the individual actions carried out by such systems or the resulting agreement."

129. The Working Group agreed that the proposed new version provided a good basis for further deliberations on the matter and decided to substitute it for the current draft. It was agreed that the appropriate place for the new provision should be considered by the Working Group at a later stage.

## Article 15 [16]. Availability of contract terms

130. The text of the draft article was as follows:

"A party offering goods or services through an information system that is generally accessible to persons making use of information systems shall make the data message or messages which contain the contract terms available to the other party [for a reasonable period of time] in a way that allows for its or their storage and reproduction. [A data message is deemed not to be capable of being stored or reproduced if the originator inhibits the printing or storage of the data message or messages by the other party.]"

131. The Working Group noted that the draft article, which was based on article 10, paragraph 3, of Directive 2000/31/EC of the European Union, appeared in square brackets, as there was no consensus on the need for the provision within the Working Group (see A/CN.9/509, paras. 123-125).

132. The Working Group further noted that, if the provision was retained, the Working Group might need to consider whether the draft article should provide consequences for the failure by a party to make available to the other party the contract terms and also what would be the appropriate consequences for a party's failure to do so. It was pointed out that, in some legal systems, the consequences might be that a contractual term that had not been made available to the other party could not be enforced against it.

133. The view was expressed that draft article 15 should be deleted for the same reasons that had been mentioned in connection with draft article 11. It was stated that it was pointless to establish regulatory provisions in the draft instrument, in particular if no sanction was created. In favour of deletion, it was also stated that draft article 15 would result in imposing rules that did not exist in the context of paper-based transactions, thus departing from the policy that the draft convention should not create a duality of regimes governing paper-based contracts on the one hand and electronic transactions on the other. Furthermore, the draft article was based on incorrect assumptions, such as that terms or conditions in electronic commerce always existed in electronic form only, or that contract terms were always under the control of the offeror, which might not be the case, for example when the parties used a negotiating platform provided by an intermediary. Lastly, the draft article embodied a rule clearly aimed at protecting consumers, which was not the concern of the draft convention.

134. The opposing view, however, was that, except for the second sentence, the general policy embodied in the draft article should be retained, since it addressed specifically an element that was particularly important in the context of electronic contracts. In particular when the parties negotiated through open networks, such as

the Internet, there was a concrete risk that the parties would be requested to agree to certain terms and conditions displayed by a vendor, but might not have access to those terms and conditions at a later stage. That situation, which might also happen in negotiations between business entities or professional traders, was clearly unfavourable to the party accepting the contractual terms of the other party. The problem described did not have the same magnitude in the non-electronic environment, since, except for purely oral contracts, the parties would in most cases have access to a tangible record of the terms governing their contract. It was recognized, however, that further consideration might be needed in respect of the consequences of non-compliance with draft article 15.

135. Having considered the views that were expressed and noting the lack of consensus within the Working Group as to the desirability of having a rule along the lines of the draft article, the Working Group agreed that the matter needed to be considered further at a later stage. It was agreed that, for that purpose, the Secretariat should be requested to prepare a revised version of draft article 15, based on the above discussion, to be placed between square brackets for discussion at a future session. The Secretariat was further requested to include, also within square brackets, an alternative version of the draft article that followed the approach that the Working Group had agreed to use in connection with draft article 11 (see para. 102 above). Such an alternative would provide that nothing in the draft convention affected the application of any rule of law that might require a party that negotiated a contract through the exchange of data messages to make available to the other contracting party the data messages that contained the contractual terms in a particular manner, or relieved a party from the legal consequences of its failure to do so.

*Notes*:

[1] United Nations, *Treaty Series*, vol. 1489, No. 25567

[2] *Official Records of the General Assembly, Fifty-fifth Session, Supplement No. 17* (A/55/17), paras. 384-388.

[3] United Nations publication, Sales No. E.95.V.18.

[4] United Nations publication, Sales No. E.77.V.6.

[5] *Official Records of the General Assembly, Fifty-sixth Session, Supplement No.17* (A/56/17), para. 293.

[6] Ibid., para. 295.

[7] Ibid., *Fifty-seventh Session, Supplement No. 17* (A/57/17), para. 206.

[8] Ibid., para. 207.

[9] Ibid., Fifty-*eighth Session, Supplement No. 17* (A/58/17), para. 211.

[10] Ibid., para. 212.

[11] Ibid., para. 213.

[12] Ibid., para. 214.

[13] United Nations publication, Sales No. E.99.V.4.

[14] United Nations publication, Sales No. E.02.V.8.