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Chairman: Mr. Tulbure. (Moldova)
later: Ms. Orina (Vice-Chairman). (Kenya)

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The meeting was called to order at 10.05 a.m.

Agenda item 81: Report of the United Nations Commission on International Trade Law on the work of its fortieth session (A/61/17, Part I)

1. **Ms. Sabo** (Vice-Chairperson of the United Nations Commission on International Trade Law (UNCITRAL)), introducing the Commission's report on the work of its fortieth session (A/62/17, Part I), said that the Commission had approved part of the draft UNCITRAL Legislative Guide on Secured Transactions. That had been made possible by its substantive work in the area of receivables financing, which had been concluded with the adoption in 2002 of the United Nations Convention on the Assignment of Receivables in International Trade. In order to complete its adoption of the Legislative Guide, the Commission had decided to hold its fortieth session in two parts; it would resume that session in December 2007.

2. The Commission had considered that future work in the field of secured transactions law should be undertaken with a view to preparing an annex to the draft Guide, dealing specifically with security rights in intellectual property. It would take into account the fact that in many countries secured transactions law and intellectual property law were not yet sufficiently developed to accommodate financing practices under which intellectual property rights were used as security.

3. Working Group I (Procurement) had continued to discuss proposals for the revision of the 1994 UNCITRAL Model Law on Procurement of Goods, Construction and Services to reflect new practices, in particular those resulting from the use of electronic communications and e-commerce practices in procurement, and had decided to add the issue of conflicts of interest to the list of topics to be considered. Another increasingly used procurement technique to which it would soon be giving attention was the framework agreement or indefinite-delivery-indefinite-quantity contract. The Working Group would seek to distil the best practice from the many varieties of that technique in use, and make proposals to reflect it in the text of the Model Law. The Commission had reaffirmed its support for the work of the Working Group and recommended that it agree on a concrete agenda for its forthcoming sessions.

4. Working Group II (Arbitration and Conciliation) had nearly completed its first reading of the revised UNCITRAL Arbitration Rules. In view of the success of those Rules, the Commission had felt that revision should not alter the structure, spirit or style of the text, whose flexibility should be maintained. Broad support had been expressed in the Working Group for a generic approach applicable to all types of arbitration irrespective of the subject matter of the dispute. However, the focus of the revision would be on mainstream commercial disputes. Future work in the field of settlement of commercial disputes should include the issue of arbitrability. Online dispute resolution and the implications of electronic communications should be considered, at least initially, in the context of the revision of the UNCITRAL Arbitration Rules.

5. She drew attention to the fiftieth anniversary, in 2008, of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention), which would provide a good opportunity for the UNCITRAL secretariat to promote the Convention, in particular through a conference to be held in cooperation with the United Nations in New York, on 1 February 2008. It was an ongoing concern of the Commission to monitor the legislative implementation of that Convention, to which end it had undertaken jointly with the International Bar Association a project geared to the development of a legislative guide to promote uniform interpretation of that instrument. The secretariat would be presenting a written report on the subject at the Commission's forty-first session, in 2008; to that end, as well as to guard against duplication of effort, it had been encouraged to cooperate with the International Chamber of Commerce, which had set up a task force to examine national procedures in regard to foreign arbitral awards.

6. Working Group III (Transport Law) had completed its second reading of the draft Convention on the Carriage of Goods [Wholly or Partly] [by Sea] and had commenced its third reading. It hoped to complete its final reading and to circulate it to Governments for comments prior to the forty-first session of the Commission, in 2008. While good progress had been made, there remained serious concerns regarding the treatment of certain substantive issues in the draft Convention, such as freedom of

contract in volume contracts, which were expected to be solved before finalization of the draft instrument.

7. Working Group V (Insolvency Law) had agreed that the UNCITRAL Legislative Guide on Insolvency Law and the UNCITRAL Model Law on Cross-Border Insolvency provided a sound basis for the modernization of insolvency law. Its current work on corporate groups was intended to complement those texts, not to replace them. Concerns had been expressed regarding some aspects of that work, especially substantive consolidation of assets or liabilities of different entities, its effect on the separate identity of individual members of a corporate group and the possibility of submitting a solvent member of a corporate group to collective insolvency procedures. The Working Group would bear those concerns in mind in its deliberations. On the subject of facilitation of cooperation, including direct communication and coordination in cross-border insolvency proceedings, the Working Group would continue to compile practical experience in the negotiation and use of cross-border protocols.

8. In the area of electronic commerce, the secretariat had identified a number of topics for inclusion in a comprehensive reference document that would enable developing country legislators and policy makers, in particular, to establish a favourable legal framework. The secretariat had prepared a useful sample portion of the comprehensive document dealing specifically with issues related to authentication and cross-border recognition of electronic signatures, whose publication on a stand-alone basis had been requested by the Commission. With regard to commercial fraud, which was a growing obstacle to the growth of international trade, the Commission had been requested to use its unique ability to marshal the necessary public and private interests in order to further efforts to combat it effectively. The Commission had therefore called on the secretariat to identify and to prepare lists of common features present in typical fraudulent schemes, with a view to using such materials in a very broad sense for education, training and prevention. The secretariat had completed that task and had prepared a note on indicators of commercial fraud, which would be circulated to Governments for comment prior to the Commission's next session. The Commission had also requested the secretariat to assist the United Nations Office on Drugs and Crime (UNODC) in its work on

fraud, the criminal misuse and falsification of identity and related crimes.

9. Technical assistance activities continued to form an indispensable element of the work undertaken by the Commission. It was therefore deeply troubling to learn that, beyond 2007, requests for technical cooperation and assistance would have to be declined unless new donations were received or other alternative sources of funds could be found. She urged all Member States to ensure the maintenance of the Commission's technical assistance for law reform, if possible through multi-year contributions, or as specific-purpose contributions, so as to facilitate planning and enable the secretariat to meet the increasing requests from developing countries and countries in transition.

10. The overall technical assistance activities undertaken by the Commission continued to include case law on UNCITRAL texts (CLOUT). As at 18 April 2007, 63 issues of CLOUT had been prepared for publication, dealing with 686 cases, relating mainly to the United Nations Sales Convention and the Model Law on International Commercial Arbitration. The digest of case law on the United Nations Sales Convention, published in December 2004, had been reviewed and edited and presented to the CLOUT National Correspondents meeting on 5 July 2007. The digest of case law on the UNCITRAL Model Law on International Commercial Arbitration was being further updated and would be published once finalized. Moreover, the UNCITRAL website, one of the few United Nations websites to be maintained in the six official languages, constituted, along with the UNCITRAL law library and UNCITRAL publications, an important information source and tool for technical assistance activities.

11. The harmonization and unification of international trade law required active cooperation and coordination amongst rule-formulating organizations. The General Assembly had accordingly endorsed the Commission's view that the secretariat should adopt a more proactive approach to the coordination role to be performed by the Commission, in its capacity as the core legal body in the United Nations system in the field of international trade law. In that spirit, the secretariat had taken steps to engage in a dialogue on both legislative and technical assistance activities with a number of interested organizations.

12. Another issue considered at the session in 2007 concerned the Commission's methods of work. It had been widely felt that, while the current working methods had demonstrated their effectiveness and led to satisfactory results, a review might be timely, particularly in view of the increase in the number of States members of the Commission. The secretariat had accordingly been asked to prepare a compilation of procedural rules and practices established by UNCITRAL itself or by the General Assembly, and the issue had been included as a specific item in the agenda of the Commission at the second part of its fortieth session.

13. She recalled that the UNCITRAL Congress on the theme "Modern Law for Global Commerce" had been held in Vienna in July 2007 and had provided an opportunity for an informal exchange of views among trade law experts from ministries, professional associations and academics on current issues in international commercial law as well as providing inspiration for future work of the Commission and other rule-formulating agencies within and outside the United Nations. Most of the speeches made at the Congress were already available online.

14. The Commission welcomed the Sixth Committee's continued consideration of the rule of law at the national and international levels and hoped that it would lead to comprehensive and coherent approaches within the United Nations system to building and promoting the rule of law. The current sporadic and fragmented approaches did not achieve sustained results. With their primary focus on criminal and transitional justice, and judicial and police reforms, they overlooked long-term measures and the economic dimension. To build a culture based on the rule of law, it was essential to lay down the foundations for long-term stability, development, empowerment and good governance. For that reason, commercial law reforms and UNCITRAL activities and resources were relevant.

15. The information about UNCITRAL rule of law activities submitted for inclusion in the inventory referred to in paragraph 2 of General Assembly resolution 61/39 on the rule of law at the national and international levels identified problems encountered by the Commission in the implementation of its rule of law activities and actions and resources needed to overcome those problems. That information would be reflected in a report to be submitted to the General

Assembly at its next session, pursuant to paragraph 3 of that resolution.

16. **Ms. Holten** (Norway), speaking on behalf of the Nordic countries (Denmark, Finland, Iceland, Norway and Sweden), said that it was clear from the report of UNCITRAL on the work of its fortieth session that extensive cooperation in the field of international trade law was crucial to the success of global trade and economic development. She commended the Commission's achievement in adopting a major part of the draft UNCITRAL Legislative Guide on Secured Transactions, which would have significant economic benefits for States. The Nordic countries anxiously awaited the adoption of the rest of the draft Legislative Guide.

17. The Nordic countries fully supported the modernization of the UNCITRAL Arbitration Rules, which had not been amended since their adoption in 1976. Important work had also been done on the revision of the UNCITRAL Model Law on Procurement of Goods, Construction and Services and its Guide to Enactment. It was essential that the Model Law should reflect new procurement practices and techniques, especially those resulting from the use of electronic communications in public procurement. Working Group III (Transport Law) had also made good progress on the development of a new international transport convention with multi-modal application.

18. The Nordic countries noted with appreciation the progress made with regard to consideration of the treatment of corporate groups in insolvency. Since the Insolvency Guide and the UNCITRAL Model Law on Cross-Border Insolvency worked well, however, it would be wise to focus on supplementing rather than replacing the two texts. Lastly, the Congress on the theme "Modern Law for Global Commerce", held in celebration of the Commission's fortieth anniversary, had shown a modern and innovative approach to international law-making. The discussion on general topics such as international rule-making or more specific topics such as secured transactions, corporate governance, insolvency, the future of contract law harmonization, electronic commerce, procurement techniques and commercial dispute settlements would undoubtedly prove useful for the Commission's future work.

19. **Mr. Maharia** (India) said that his delegation welcomed the Commission's efforts to promote the application of modern private law standards to international trade and the completion of its work on the draft Legislative Guide on Secured Transactions. He likewise supported the efforts to harmonize the UNCITRAL and UNIDROIT model laws and the preparation of an annex in that regard on the subject. A second annex to the draft Guide, dealing with security rights in intellectual property, would be useful, and he hoped that competent international organizations would be involved in its preparation.

20. He agreed that Working Group II (Arbitration and Conciliation) should take care not to alter the structure of the UNCITRAL Arbitration Rules and should adopt a generic approach in that area. He welcomed the comprehensive review being undertaken of the Commission's working methods and emphasized the importance of inclusiveness and transparency. Lastly, he noted that CLOUT remained one of the Commission's most important technical assistance activities.

21. **Mr. Song** (Singapore) said that his delegation strongly supported the work done by UNCITRAL to facilitate international trade. Its fortieth session had clearly been busy and fruitful, with work proceeding apace on instruments that would make a welcome contribution, notably the draft UNCITRAL Legislative Guide on Secured Transactions and the draft Convention on the Carriage of Goods [Wholly or Partly] [by Sea]. Other topics of great interest at the session were the Commission's review of its working methods and its coordination with other international organizations.

22. His delegation wished to reiterate its view that the important work being done by the UNCITRAL secretariat through its technical assistance programmes deserved more help and support. As the Commission's report indicated (A/62/17, para. 216), Singapore and Mexico were the only countries that had contributed to the UNCITRAL Trust Fund for Symposia since the Commission's thirty-ninth session.

23. His delegation also wished to express its appreciation for the key role played by the UNCITRAL secretariat in providing legal research services to the Commission and assisting other United Nations organs, bodies and conferences in matters relating to international trade law. Thanks in part to the able

direction of the current Director of the UNCITRAL secretariat, the Commission had many achievements to its credit in recent years, notably the successful completion of the United Nations Convention on the Use of Electronic Communications in International Contracts, which was attracting an increasing number of signatories.

24. **Mr. Bühler** (Austria) said that, although his delegation actively supported the laudable emphasis in recent years on the rule of law as part of the United Nations agenda, the contribution of UNCITRAL to strengthening the rule of law in the field of international trade law was of long standing. For more than 40 years UNCITRAL had furthered the harmonization of international trade law in coordination with other international organizations by preparing new instruments, promoting wider acceptance of existing instruments, ensuring uniform interpretation of international conventions and uniform laws, disseminating information on national legislation and providing technical assistance.

25. His delegation commended the Commission on the progress made towards the adoption of the draft UNCITRAL Legislative Guide on Secured Transactions and looked forward to its finalization during the resumed fortieth session of the Commission in December 2007. The Guide would provide a legal framework that facilitated secured financing and would thus promote access to low-cost credit and enhance national and international trade.

26. Although his delegation supported a review of the working methods of the Commission and its working groups in view of the recent increases in membership and in the number of topics being dealt with, it would caution the Commission not to compromise its traditional principles of efficiency, flexibility and equality, including the principle of consensus. Moreover, the review of working methods should not interfere with a focus on the draft Legislative Guide during the resumed session.

27. The highly successful Congress on the theme "Modern Law for Global Commerce" held in Vienna in July 2007 had reviewed the past work of UNCITRAL and other organizations active in the field of international trade law, assessed current work programmes and considered topics and areas for future work. To make the results of the Congress broadly available, his delegation supported the Commission's

request to have the proceedings published in the official languages of the United Nations to the extent permitted by available resources.

28. Lastly, in view of the upcoming fiftieth anniversary of the adoption of the New York Convention, his delegation called upon all States not yet parties to the Convention to consider acceding to it. The Convention, to which 142 States, including all the major trading nations, were currently parties, was one of the most successful treaties in the area of commercial law.

29. **Mr. Medrek** (Morocco) said that his country, as a member of UNCITRAL, had a particular interest in the Commission's efforts to develop equitable rules and practices for international trade. His delegation welcomed the adoption of a portion of the draft Legislative Guide on Secured Transactions at the Commission's fortieth session. Considerable progress had been made on the question of the scope of the draft Legislative Guide as to intellectual property, securities and financial contracts. His delegation was generally satisfied with the terminology of the draft Guide and hoped that the outstanding issues could be dealt with and the Guide finalized at the resumed fortieth session in December 2007. The usefulness of the Guide would depend on its being sufficiently flexible to take into account legal regimes and practices that were already well established.

30. Although the UNCITRAL Model Law on the Procurement of Goods, Construction and Services had been a milestone in the development of procurement law, it could benefit from revision to reflect new practices, in particular those resulting from the use of electronic communications and the experience gained by applying national legislation modelled on it. His delegation would encourage Working Group I to adopt a concrete agenda for its forthcoming sessions.

31. Similarly, the UNCITRAL Arbitration Rules, adopted by so many arbitration centres, could benefit from modernization to promote greater efficiency, provided that any revision did not alter the structure or the spirit of the text. His delegation noted with satisfaction that Working Group II had opted for a generic approach that sought to identify common denominators that applied to all types of arbitration, regardless of the subject matter, in preference to dealing with specific situations. His delegation hoped

that a revised version of the Arbitration Rules could be adopted by the Commission no later than 2009.

32. His Government was organizing a series of seminars and meetings in Morocco to celebrate the fiftieth anniversary of the New York Convention. His delegation looked forward to the conference organized jointly by the United Nations and the International Bar Association to be held in New York in February 2008 to commemorate the anniversary.

33. With regard to the elaboration of a legislative instrument on issues relating to the international carriage of goods by sea, his delegation welcomed the progress made on third reading of the draft convention with respect, among other things, to the scope of application, electronic transport records, the period of responsibility of the carrier and the relationship of the draft Convention to other conventions. It was to be hoped that Working Group III could address the concerns expressed by some delegations in order to be able to present a text to the Commission in 2008.

34. On the topic of commercial fraud, his delegation welcomed the work done in collaboration with other interested organizations, in particular the United Nations Office on Drugs and Crime (UNODC), to develop indicators of commercial fraud and present them in a document that could be of educational and preventive value. Since commercial fraud was primarily a matter of criminal law, cooperation between UNCITRAL and UNODC was to be encouraged.

35. To preserve the role of UNCITRAL as an effective rule-making body and one of the great successes of the United Nations system, serious consideration should be given to all the proposals for improving its working methods, particularly in view of the recent increase in its membership and in the number of topics addressed. His delegation believed that decision-making by consensus remained the most appropriate procedure for the Commission, but minority views must also be taken into account and reflected in order to ensure universal acceptance of the instruments adopted. In addition, greater use of all the official languages of the United Nations, particularly in documents circulated informally, would lead to better reflection of the diversity of legal systems. His delegation commended the UNCITRAL secretariat on the excellence of its improved website, which was regularly updated and provided speedy access to the

Commission's working documents in all the official languages.

36. Technical assistance in drafting legislation was of great importance. His delegation reiterated its appeal to all States, international organizations and other interested entities to make an extra effort to enable the UNCITRAL secretariat to meet the increasing requests from developing countries and countries with economies in transition for training and technical assistance.

37. **Ms. Bolaños-Pérez** (Guatemala) said that her country was a member of the Commission and considered its work to be of great importance for economic development. Her delegation welcomed the adoption of portions of the draft UNCITRAL Legislative Guide on Secured Transactions. The draft was timely and relevant to Guatemala, which was in the process of making major changes in its legislation, along the lines developed by UNCITRAL. With regard to security rights in intellectual property, more information was needed, and her delegation looked forward to the annex to be prepared on the subject. In many countries coordination between secured transaction law and intellectual property law was not sufficiently developed to allow for financing secured by intellectual property rights.

38. Guatemala was one of the countries that had put into effect the UNCITRAL Model Law on International Commercial Arbitration. Her delegation therefore felt strongly that any revision of the UNCITRAL Arbitration Rules, which were used by Guatemalan arbitration centres, should be approached with caution in order to preserve the structure and flexibility of the text.

39. The Working Group III (Transport Law) had made significant progress on a number of difficult issues. However, her delegation had concerns about the treatment of the shipper's liability for delay, limitation of the carrier's liability and freedom of contract in volume contracts. It regretted that the Working Group's twenty-first session would not be held in New York.

40. In view of the need for better coordination and consistency between the Commission and other bodies on issues that overlapped mandates, the Commission was to be commended for its efforts to maintain a constructive dialogue and exchange information with UNODC on the topic of commercial fraud.

41. Her delegation was concerned that the existing trust funds lacked resources to meet the requests of developing countries for cooperation and opportunities to participate in UNCITRAL activities and appealed to all Member States to contribute. Since the Commission was the core legal body in the United Nations system in the field of international trade law, broader participation, particularly by developing countries, was essential in order to accomplish the difficult task of harmonizing diverse legal traditions. Her delegation therefore also supported the proposals presented by France (A/CN.9/635) on the working methods of the Commission.

42. **Mr. Wang** Chen (China) said that his delegation was satisfied with the progress achieved by UNCITRAL at its fortieth session. The major tasks facing the Commission were to complete work on the Legislative Guide on Security Transactions by the end of 2007 and to finish the third reading of the draft Convention on the Carriage of Goods [Wholly or Partly] [by Sea] with a view to its adoption in 2008. His delegation was in favour of the early adoption of those two instruments.

43. His delegation also commended UNCITRAL for holding the Congress on the theme "Modern Law for Global Commerce" following its fortieth session. Convening such meetings on a regular basis would facilitate the exchange of views and enhance the implementation of legal instruments on international commerce.

44. UNCITRAL played an increasingly important role in the formulation of legal rules on international trade, ably supported by its secretariat, which devoted itself to studying the latest developments in international trade and formulating generally applicable rules. His delegation attached great importance to the work of UNCITRAL and participated fully in the work of drafting conventions, model laws and legislative guides. China was a party to the relevant conventions and benefited from the UNCITRAL model laws and legislative guides in its domestic legislation. It also made efforts to raise awareness at home of the achievements of UNCITRAL. The fiftieth anniversary of the adoption of the New York Convention would highlight the indispensable role that UNCITRAL had played in unifying legal rules on international trade and its impact around the globe. China intended to take part in

the international commemoration and to organize commemorative events at home.

45. **Mr. Mongkolnavin** (Thailand) said that, as an active member of UNCITRAL for many years, his delegation pledged its continued support and cooperation. Trade was fundamental to economic prosperity and sustainable peace and development. In recent decades globalization had brought about an unprecedented increase in international trade and commerce, free movement of persons and commodities and a proliferation of borderless commercial transactions, necessitating not only bilateral and multilateral agreements but also the harmonization of national laws. Thailand was therefore committed to supporting the endeavour by UNCITRAL and other organizations such as the Hague Conference on Private International Law and the International Institute for the Unification of Private Law (UNIDROIT) to develop, codify and modernize international law. Over the years Thailand had benefited from the work of UNCITRAL, especially the model laws, in drafting its domestic legislation in such areas as electronic commerce and arbitration, and the compilations of case law on UNCITRAL texts (CLOUT) had proved to be useful tools.

46. At its fortieth session the Commission had once again made great strides, especially in its progress towards the adoption of the draft UNCITRAL Legislative Guide on Secured Transactions, an innovative and useful development that would enhance access to affordable credit by building confidence on the part of financial institutions through systematic registration of rights and effective enforcement of financial claims. Affordable credit would allow enterprises to expand and realize their full potential, and that in turn would lead to economic growth, increased competitiveness and international trade. The Legislative Guide would be very useful in the drafting of the Thai business securities bill. His delegation looked forward with confidence to the results of Working Group VI's efforts to prepare an annex to the Guide specific to security rights in intellectual property. Thailand was also closely following the work of UNIDROIT on its draft Convention on Substantive Rules regarding Intermediated Securities.

47. On the issue of procurement, his delegation welcomed the progress made on the revision of the UNCITRAL Model Law on Procurement of Goods, Construction and Services to encompass the use of

electronic communications and new practices such as electronic reverse auctions. In Thailand electronic media were widely used for the publication of procurement-related information; regulations required all information related to procurement to be kept for 10 years.

48. As the fiftieth anniversary of the New York Convention approached, his delegation commended the efforts to prepare the revised UNCITRAL Arbitration Rules in time for the celebration of that landmark convention. The revision was timely for Thailand, which was currently modernizing its arbitration legislation. However, the revised Rules should not be formulated in such a way that the universal appeal of the Arbitration Rules was affected.

49. In the area of transport law, Working Group III's commencement of the third reading of the draft Convention on the Carriage of Goods [Wholly or Partly] [by Sea] was a significant step forward, one that should make it possible to complete the draft Convention in 2008. His delegation was also encouraged to see good progress being made with regard to insolvency law, since Thailand was currently developing a comprehensive new insolvency law regime and had set up a committee to bring its legislation into line with the UNCITRAL Legislative Guide on Insolvency Law and the UNCITRAL Model Law on Cross-Border Insolvency and a subcommittee to study post-commencement finance.

50. **Mr. Tugio** (Indonesia) said that his delegation was pleased to note the substantial progress made by the Commission at its latest session and in particular its timely focus and excellent work on the increasing use of the Internet in international trade transactions, a subject of particular relevance for developing countries. It was evident that e-commerce had quickly become a necessity for increasing the scale and efficiency of commercial transactions and had the potential to radically alter economic activities and the social environment, but it was regrettable that the global digital divide continued to thwart equitable development. Alongside the many beneficial aspects of e-commerce there were some negatives, such as cyberfraud, unsolicited electronic communications (spam) and cybercrime. It was therefore important that the study on the indicators of commercial fraud should include the element of electronic business transactions and that the Commission should strengthen its cooperation with UNODC on that subject.

51. Many conventions emanating from the work of the Commission had gained broad recognition in the international community, notably the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention) and the United Nations Convention on Contracts for the International Sale of Goods. It was important that any revision of the UNCITRAL Arbitration Rules should be consistent with the New York Convention. The Commission's model laws were also used as legal references in many countries; to promote uniform interpretation, his delegation hoped that the Commission would be able to increase its technical assistance to developing countries, in addition to its dissemination of case law on UNCITRAL instruments.

52. His delegation supported the effort to review the Commission's working methods to increase its efficiency, as robust and flexible methods of work would enhance the contribution the Commission could make to international trade law. However, caution should be exercised when reviewing the practice of decision-making by consensus. Some of the factors to be considered were the slow process of ratification by Member States of the hard law emanating from the work of UNCITRAL; the need for expert input from professional associations and the private sector; and the challenges developing countries faced in participating in the Commission's work due to their lack of resources. Some of those factors were interrelated: lack of resources, capacity constraints and restricted transfer of knowledge from developed countries were the main reasons why developing countries were slow to ratify UNCITRAL instruments and harmonize their national laws with UNCITRAL model laws. It was crucial for developing countries to be helped to participate on an equal footing in the Commission's work. In sum, inclusiveness and transparency in the Commission's deliberation process needed to be strengthened.

53. **Ms. Mohd-Nurdin** (Malaysia) said that Malaysia currently traded with 234 economies, compared to fewer than 100 two decades earlier. Countries such as hers, which relied substantially on external trade for their future growth and progress, attached great importance to processes that would enable the multilateral trading system to function with minimum impediments, so that all countries, whether developed or developing, would be able to benefit from international trade. Her delegation therefore fully

supported the efforts of UNCITRAL to further the harmonization and unification of international trade law. As a new member of the Commission, Malaysia looked forward to contributing actively to those efforts.

54. Malaysia had been following the activities of Working Group II (Arbitration and Conciliation) closely, in particular with respect to the incorporation of the legislative provisions on interim measures of protection into the UNCITRAL Model Law on International Commercial Arbitration. Malaysia had recently revised its arbitration law to make it more consistent with the UNCITRAL Model Law and, as part of that exercise, was considering incorporating the model legislative provisions on interim measures of protection adopted by the Commission in 2006. In the area of electronic commerce, certain principles of Malaysia's Electronic Commerce Act 2006, such as the concepts of "writing" and "original", followed the "functional equivalent approach" of the UNCITRAL Model Law on Electronic Commerce.

55. Her delegation reiterated its commitment to UNCITRAL as the core legal body of the United Nations system in the field of international trade law and looked forward to working closely with other members to fulfil the Commission's mandate.

56. **Mr. Shautsou** (Belarus) said that the mechanisms contained in the draft UNCITRAL Legislative Guide on Secured Transactions would enable enterprises from developing countries to gain access to inexpensive credit resources on the same terms as those from developed countries. The adoption of the draft Legislative Guide would also help Belarus to attract external finance, since the interest rates currently offered to Belarusian enterprises by both national and foreign financial institutions considerably exceeded those enjoyed by European enterprises. His Government would use the draft Legislative Suite as a model when amending its national legislation to establish an up-to-date secured-transactions regime.

57. His Government was updating national legislation on procurement transactions. The presidential decree "On State procurement" had been adopted in 2006, based on the UNCITRAL Model Law on Procurement of Goods, Construction and Services with Guide to Enactment and an electronic tender system providing information on all State procurement had been introduced. The work of Working Group I on

updating the Model Law was therefore of considerable practical value to Belarus.

58. Extrajudicial dispute settlement procedures enabled both parties to find an acceptable way of settling disputes while observing confidentiality and timeliness requirements and reducing legal costs. At the same time, they carried certain risks, in that disputes could be considered outside a legal setting, and the use of such procedures in preference to State judicial proceedings or the international arbitration system put small enterprises at a disadvantage vis-à-vis large corporations. The review by Working Group II of the UNCITRAL Arbitration Rules, under which parties made ad hoc arrangements to settle external economic disputes and disputes between investors and States, should not only take into account the progressive advances in information technology over the past few years but should maintain the spirit and high quality of the Rules.

59. His delegation supported the work of Working Group III (Transport Law), which was elaborating new international standards relating to the responsibility of the carrier and the shipper. The issue was of particular importance for Belarus because it was establishing its own merchant fleet and diversifying its exports. There was also a need to ensure the timely delivery of goods on the door-to-door principle, including that to individual wholesale customers.

60. As for Working Group V (Insolvency Law), its discussions would doubtless result in balanced decisions on how best to guarantee the interests of the State, the owners of enterprises and the workforce in the event of insolvency, at the same time providing for an integrated system to meet the needs of creditors and removing obstacles to business activity. Every effort was being made in Belarus to create favourable business conditions, including the elaboration of practical forms of protection for the rights and lawful interests of enterprises and, in particular, the prevention of bankruptcy. On the basis of the experience acquired over the past five years of the workings of the Law on Economic Insolvency and Bankruptcy, it had been decided to amend and supplement the Law with a view to creating a single comprehensive bankruptcy mechanism.

61. Growing competitiveness on the world market meant that there was an urgent need for new methods of selling goods, services and construction. A popular

tool for such trade was electronic commerce, which made it possible to make significant cuts in expenditure on premises and salaries and, in some cases, to cut out the middleman. The effective functioning of electronic commerce was, however, impossible without the proper legal basis and infrastructure in respect of banking, insurance and centres for authentication of signatures and operational security. His delegation therefore fully supported the Commission's work on the elimination of legal barriers to effective international trade. Belarus was currently preparing regulations on electronic wholesale commerce, drawing on the United Nations Convention on the Use of Electronic Communications in International Contracts.

62. **Ms. Gunaratne** (Sri Lanka) said that Sri Lanka was privileged to serve as a member of UNCITRAL and would endeavour to pursue the Commission's goals of furthering the harmonization of international trade. Her delegation welcomed the progress made during the fortieth session of UNCITRAL with regard to procurement of goods, construction and services, arbitration, insolvency, electronic commerce, commercial fraud, and technical assistance. It also welcomed the adoption of the part of the draft UNCITRAL Legislative Guide on Secured Transactions.

63. Sri Lanka had ratified the United Nations Convention on the Use of Electronic Communications in International Contracts in 2006 and firmly believed that it enhanced legal certainty and commercial predictability in international contracts transacted through electronic communications. Her country's Electronic Transaction Act of 2006 gave effect to the provisions of the Convention at the national level. That legislation was based on the UNCITRAL Model Law on Electronic Commerce and the Model Law on Electronic Signatures. It facilitated domestic and international e-commerce by eliminating existing barriers and it promoted public confidence in the authenticity, integrity and reliability of electronic transactions. Through the new legislation, Sri Lanka intended to harness the potential of information and communication technology to benefit rural populations. An electronic communications programme currently being implemented by the Information and Communication Technology Agency of Sri Lanka aimed to foster economic growth, alleviate poverty, and promote social integration and peace.

64. Her delegation firmly believed that ensuring the continued ability of the Commission to provide technical cooperation and assistance in response to requests by States was essential in order to attain its harmonization goals and bridge the gaps in technical and legal capabilities between developed and developing nations. Sri Lanka was therefore deeply concerned by the shortage of funding for the UNCITRAL Trust Fund for Symposia and appealed to Member States to take action on that issue with the utmost urgency.

65. Sri Lanka had noted with interest the proposal to revise the UNCITRAL Arbitration Rules, which formed the basis for the Sri Lankan arbitration law. Her delegation recognized that the UNCITRAL Rules had not been modified since their adoption in 1976 and saw the need for modernization, but agreed with the Commission's view that any changes should not alter the structure of the text, its spirit or its drafting style, and should respect its flexibility and simplicity. Sri Lanka particularly looked forward to the Commission's work on the application of arbitration rules to investor-State disputes. Sri Lanka offered investors the choice of either institutional or ad hoc arbitration, with the latter providing recourse to the UNCITRAL Rules.

66. Her delegation welcomed the initiative to monitor the implementation of the New York Convention. Sri Lanka, through its Arbitration Act, had provided for the effective implementation of the Convention's provisions at the domestic level. Her delegation also commended the William C. Vis International Commercial Arbitration Moot Competition and the UNCITRAL internship programme, and supported the Commission's suggestion to establish the financial means to encourage greater participation in the latter by young lawyers from the developing world.

67. Sri Lanka noted with satisfaction that the various UNCITRAL conventions and model laws were being applied in many countries, which was an indication that UNCITRAL was succeeding in harmonizing and unifying international trade law and thereby promoting a conducive environment for international trade. The Commission's fortieth anniversary was a prudent time to re-evaluate its work, and any proposal aimed at furthering the success of the Commission deserved the serious consideration and support of Member States.

68. **Mr. Leghari** (Pakistan) said that Pakistan supported the role of UNCITRAL and recognized it as the core legal body within the United Nations system in the field of international trade law. However, the Commission needed to address the duplication of work in that field through enhanced cooperation, coordination and coherence with other international organizations. Progressive modernization and harmonization of international trade law would contribute significantly to economic cooperation among all States; however, such cooperation must be based on the principles of equality, equity, common interest and respect for the rule of law. It should serve to eliminate discrimination in international trade and remove legal difficulties affecting developing countries. The existing structural imbalances in the international trade regime also needed to be addressed.

69. Pakistan supported the Commission's plans to conduct a comprehensive review of its working methods. His delegation believed that the work of the Commission could be greatly enhanced through participation by observers from relevant intergovernmental and non-governmental organizations. It also supported participation by all Member States in the Commission's sessions, an objective that could not be realized until adequate travel assistance was provided to those in need.

70. UNCITRAL played an important role in capacity-building for developing countries in the field of international trade law reform, but more needed to be done. Member States and non-State actors, including the United Nations Secretariat and international and regional organizations, could help by providing funding in order to enhance the Commission's capacity to provide such assistance.

71. His delegation had carefully studied the recommendations on the UNCITRAL draft Legislative Guide on Secured Transactions and supported the key objectives of the exercise, including the promotion of secured credit. However, Pakistan saw an inherent imbalance between promoting and enforcing creditors' rights and protecting the rights of other parties. His delegation was also evaluating the advisability of requiring a notice in a general security rights registry as a means of enhancing predictability and transparency. He understood that the registry would serve as a source of information and as an efficient point of reference. However, whether or not it would prove a workable method by which an existing or

future security right in a grantor's existing or future assets might be made effective against a third party remained open to scrutiny.

72. The recommendations concerning priority of a security right as against the rights of competing claims would provide a basis for an efficient and predictable regime to determine the priority of security rights and would facilitate transactions involving more than one security right. Pakistan was still evaluating the part of the guidelines which established precedence for security rights created through registration over those created through other means. He believed that contractual obligation should be the basis for creating a security right and that it should take precedence over any other limiting factor. He agreed that in the case of property to which the grantor acquired rights or power to encumber at some point in the future, the security right in that asset was created when the grantor acquired those rights or that power. However, he had questions about the efficacy and authenticity of oral agreements, which might be accompanied by transfer of possession of a movable encumbered asset, but might fall short of a reliable criterion for the creation of security rights if it were not accompanied by written or electronic evidence.

73. Pakistan appreciated the progress made in the area of insolvency law and supported the view that the current work on corporate groups was intended to complement the Insolvency Guide and the UNCITRAL Model Law on Cross-Border Insolvency, not to replace them. It was to be hoped that future work on the topic would provide solutions for the legal problems in international insolvency law.

74. His delegation had taken note of the work done in the fields of procurement, arbitration and conciliation, and transport law and appreciated the Commission's identification of the challenges in the field of electronic commerce and commercial fraud. Pakistan especially commended the work on indicators of commercial fraud, which would be of immense educational and preventive value.

75. *Ms. Orina (Kenya) (Vice-Chairman) took the chair.*

76. **Mr. Pettigrove** (Australia) said that Australia had been involved in the work of UNCITRAL since its inception and continued to support the Commission's role in modernizing and harmonizing the rules of international trade. As an island continent, Australia

was particularly affected by new developments in the law on carriage of goods by sea and it was therefore a strong supporter of the efforts of Working Group III (Transport Law) to produce a new instrument on the subject. The draft convention before UNCITRAL was admittedly complex and ambitious, covering many legal issues. A major one for Australia was the volume contract exemption in the draft convention, which allowed a potentially wide scope for parties to derogate from the mandatory liability regime. Australia noted that one of the Working Group's main aims had originally been to establish uniform international law and regretted to see a departure from that aim. His Government remained of the opinion that allowing parties to derogate from the mandatory provisions of the draft instrument would undermine its uniform implementation. Overall, however, Australia was optimistic that the Working Group would be able to finalize a practical and modern international instrument on the carriage of goods by sea and that it would be widely supported.

77. The Commission's work on secured transaction law was timely for Australia, which was currently undertaking a reform of its personal property securities law. Australia encouraged the Commission to approve the Legislative Guide on Secured Transactions when it resumed its fortieth session in December 2007. Australia also strongly encouraged the Commission to explore the application of secured transactions law to intellectual property rights and financial assets, which were important as a source of credit and should not be excluded from a modern law on the subject. However, the work on intellectual property rights and financial assets should not delay approval of the Guide by the Commission in December 2007. It might be undertaken as a separate exercise, with a view to a later amendment of the Guide.

78. With regard to the Commission's activities in the area of arbitration and conciliation, Australia welcomed the revision of the UNCITRAL Arbitration Rules. It had some concerns, however, about the provisions relating to interim measures presented recently to Working Group II and questioned whether their incorporation into the Model Law on International Commercial Arbitration would lead to greater uniformity in the implementation of the Law. His delegation looked forward to the final review and adoption of the revised UNCITRAL Model Law at the Commission's forty-second session, in 2009.

79. Australia appreciated the Commission's work on the treatment of corporate groups in insolvency and supported further development of the UNCITRAL Legislative Guide on Insolvency Law to address the issue. Lastly, Australia commended UNCITRAL for coordinating and cooperating with other international organizations. It particularly welcomed the Commission's decision to commend the use of the Unidroit Principles of International Commercial Contracts adopted by the International Institute for the Unification of Private Law.

80. **Mr. Ayua** (Nigeria) commended UNCITRAL on its adoption of the recommendations concerning the treatment of intellectual property, securities and financial contracts in the draft Legislative Guide on Secured Transactions. He also commended the Commission's progress in the areas of procurement, arbitration and conciliation, transport law and insolvency law, noting in particular the revision of the UNCITRAL Model Law on Procurement to reflect new practices, especially the use of electronic communications in public procurement, and the revision of the UNCITRAL Arbitration Rules. In regard to the Arbitration Rules, Nigeria supported the Commission's view that any revision should not alter the structure of the text, its spirit or its drafting style, and should respect its flexibility, without making it more complex. Rather, an effort should be made to simplify the rules and reduce their highly technical nature. The work on a legislative instrument on issues relating to the international carriage of goods by sea and on the treatment of corporate groups in insolvency was also commendable.

81. His delegation encouraged the Commission to take up deliberations on chapters I to VI of the draft Legislative Guide on Secured Transactions during its resumed fortieth session and to undertake other future work as planned. In order to avoid duplication of effort, which could undermine efficiency, consistency and coherence, Nigeria urged all other bodies involved in the field of international law to work in coordination with the Commission. His delegation appealed to Governments, organizations and individuals with the ability to do so to make voluntary contributions to the Commission's trust fund in order to enable it to continue providing technical assistance to developing countries.

82. **Mr. Yokota** (Japan) said his delegation believed that the UNCITRAL Model Law on Procurement of

Goods, Construction and Services must be adjusted in response to changes in circumstances. With regard to arbitration and conciliation, Japan considered it important to modernize the UNCITRAL Arbitration Rules and looked forward to further progress in that endeavour. The Commission's efforts to produce new uniform laws on the international carriage of goods by sea were also of great importance. Once completed, the draft Convention on the subject would establish clear rules which would facilitate the resolution of problems not addressed by existing legal frameworks. Concerning insolvency law, Japan expected that Working Group V would continue its efforts towards ensuring the smooth and efficient disposition of insolvency and promoting its legal predictability through a careful examination of the treatment of corporate groups in insolvency.

83. The formulation of a legislative guide for security interests in goods, including legislative recommendations concerning security rights pertaining to movable property, would promote the provision of credit and enhance economic growth and international trade through the creation of a flexible and effective legal framework for security interests. His Government welcomed the adoption of many valuable recommendations on the draft UNCITRAL Legislative Guide on Secured Transactions during the first part of the Commission's fortieth session and hoped that the remaining recommendations would be adopted during the resumed session.

84. **Mr. Alday** (Mexico) welcomed the outstanding progress made towards the adoption of the draft Legislative Guide on Secured Transactions. His delegation was confident that similar progress would be made during the resumed fortieth session and that a final text would be ready to present to the Commission soon.

85. Mexico also welcomed the progress in identifying issues and formulating proposals for the revision of the UNCITRAL Model Law on Procurement of Goods, Construction and Services. It was important to take account of novel procurement practices and techniques that addressed current needs, while maintaining traditional approaches that would enable developing countries to continue benefiting from a legal framework that provided transparency and legal certainty and contributed to more efficient use of resources. His delegation was therefore pleased that basic principles such as functional equivalence,

information security, authenticity and confidentiality had been retained. Mexico supported the Commission's recommendation with regard to the incorporation of provisions on conflict of interest into the Model Law.

86. Concerning the revision of the UNCITRAL Arbitration Rules, his Government was of the view that respecting the structure, spirit, drafting style and flexibility of the text would help to ensure that the Rules continued to be applied and would also further the development of arbitration as a desirable means of dispute resolution. His delegation commended Working Group III for its rapid progress and encouraged it to continue examining the issues of arbitrability and the implications of electronic communications in online dispute resolution during its next session. Mexico welcomed the events planned to celebrate the fiftieth anniversary of the New York Convention, which would surely help to promote a greater understanding of that instrument.

87. Considerable headway had been made in addressing a number of difficult issues relating to the draft Convention on the Carriage of Goods [wholly or partly] [by Sea] and it appeared likely that the goal of presenting the draft Convention to the Commission for consideration in 2008 would be achieved. Nevertheless, some delegations had raised serious concerns about the issue of volume contracts. His delegation advocated a regime that would ensure greater legal certainty for shippers and allow explicit negotiation between the parties on the text of contracts. He encouraged Working Group III to take those views into consideration when it resumed its discussion of the issue.

88. In the area of insolvency law, Mexico supported the work on treatment of corporate groups in insolvency, which was intended to complement the Insolvency Guide and the UNCITRAL Model Law on Cross-Border Insolvency.

89. Regarding possible future work in the area of electronic commerce, work on the comprehensive reference document should continue with a view to establishing a favourable legal framework for e-commerce, which would be of enormous help in bringing clarity and certainty to such complex issues as electronic invoicing and authentication and cross-border recognition of electronic signatures. It would also facilitate the application of the United Nations Convention on the Use of Electronic Communications

in International Contracts. As for future work in the area of commercial fraud, Mexico applauded the Commission's collaboration with the United Nations Office on Drugs and Crime on the study on fraud and the criminal misuse and falsification of identity, and was pleased that the Commission on Crime Prevention and Criminal Justice had submitted a draft resolution to the Economic and Social Council drawing attention to the problems identified by the study and encouraging Member States to take measures to address them. His Government pledged its collaboration in those efforts.

90. Lastly, his delegation looked forward to the report to be presented to the Commission in connection with the fiftieth anniversary of the New York Convention concerning the possibility of drafting a legislative guide to facilitate uniform interpretation of the Convention. That work was vital in order to preserve the efficiency of arbitration and develop a legal framework to ensure the enforcement of arbitral awards and decisions.

91. **Mr. Donovan** (United States of America) commended the Commission and its working groups for their continued recognition that, despite the liberalization of trade through international agreements, the failure to upgrade commercial law had meant that trade liberalization was less effective than it might be. The Commission's work helped to close the gap and reflected the practical achievements possible within the United Nations system. The Commission's principal achievement at its fortieth session had been the partial approval of the draft Legislative Guide on Secured Transactions. The Guide would eventually have over 200 legislative recommendations, which was a very significant achievement in an area considered by many international financial institutions to be crucial to reforms that would boost economic development in less developed and emerging states.

92. Progress had also been made on other topics. Working Group III (Transport Law) was moving towards the finalization of a multilateral treaty on the carriage of goods, which introduced harmonization to an area of trade law that had been lacking for over 80 years. In that connection, his delegation considered it important that the Working Group should stand by its decision to allow certain parties the right to negotiate terms of carriage freely, which would reflect existing maritime practices and modern commercial law.

93. He welcomed the fact that more States had signed the United Nations Convention on the Use of Electronic Communications in International Contracts, which would encourage the introduction of model laws that would facilitate electronic commerce without over-regulating it. His delegation also supported the continuing work on merging cross-border business insolvency law, with the recommendations on insolvency legislation approved by the General Assembly. In that connection, his delegation supported the parallel recommendations prepared by the World Bank with a view to producing a single standard for the Bank and the International Monetary Fund.

94. His delegation welcomed the Commission's continued efforts to tackle the growing problem of commercial fraud in such sectors as banking and finance, cross-border bankruptcy and maritime cargo documentation. The work, which did not fall conveniently into the core area of activity of any existing United Nations body, should continue to be undertaken in coordination with the United Nations Office on Drugs and Crime and other United Nations bodies, as appropriate.

95. Lastly, he commended the efficiency and the management approach that had enabled the Commission to double the number of its active working groups and projects, enhance its outreach through innovative websites and upgrade its technical assistance programmes, while remaining within its existing budget. In that connection, his delegation welcomed the discussion on ways of clarifying the Commission's working methods and supported the substantial majority that welcomed guidelines but wished to avoid excessively detailed rules.

96. **Mr. Brown** (United Kingdom) said that his delegation supported the work of the Committee of the Whole on amendments to the draft UNCITRAL Legislative Guide on Secured Transactions, in which it had participated, and of Working Group I (Procurement). As for Working Group II (Arbitration and Conciliation), which was currently working on a revision of the UNCITRAL Arbitration Rules, it was to be hoped that the Working Group would continue to focus on updating only those elements of the Rules that required amendment, in the light of experience, and that the work would be taken forward in a timely manner. His delegation, which was committed to representing the interests of United Kingdom shipping and other related industries, would continue to attend

the meetings of Working Group III (Transport Law). His delegation also actively supported the work of Working Group V (Insolvency Law), which aimed to establish international guidelines and best practice on the treatment of corporate groups in insolvency. Lastly, he commended the Congress held after the fortieth session of the Commission; it had been an interesting and thought-provoking event that had led to lively debate.

97. **Ms. Vyas Millington** (Canada) said that the adoption of a large part of the draft UNCITRAL Legislative Guide on Secured Transactions represented an important step in the development of a global model for a modern secured-financing regime. Her delegation supported the Commission's decision to continue to focus on security rights in intellectual property and on certain types of securities; both aspects of the topic would be useful components of the draft Guide. Her delegation also noted the progress made on procurement issues, in the context of the revision of the UNCITRAL Model Law on Procurement, on insolvency issues and on transport law. With regard to the revision of the UNCITRAL Arbitration Rules, Canada remained interested in pursuing the issue of increased transparency in the arbitral process where one of the parties was a State.

98. It was to be hoped that some of the ideas put forward at the Congress following the fortieth session would become topics for consideration by the Commission. In that connection, she wished to comment on the proposals put forward by France with regard to the Commission's working methods. The success of UNCITRAL over the past 40 years could be attributed to its consensus-based methods of work. At the same time, since the Commission's membership had grown to 60, it would be worthwhile to introduce greater transparency and inclusiveness, particularly for the benefit of new member States. The Commission should not, however, be burdened with a rigid set of rules that would impede its role as the primary United Nations legal body in the field of international trade law. The secretariat, too, should be given some discretion. While some reform would be useful, therefore, a degree of caution was called for.

99. **Mr. Butel** (France), after commending the activities of the Commission at its fortieth session, said that it was important to clarify the rules of procedure in the interests of transparency at a time when the Commission's membership had grown. It was therefore

gratifying that his delegation's proposal in that regard had been warmly welcomed by the Commission.

100. His delegation commended the progress made on the draft UNCITRAL Legislative Guide on Secured Transactions, which struck a successful balance between common law and civil law. Since it was crucial, however, that UNCITRAL should be able to reconcile the two traditions, the Commission might do well to call on the services of independent experts, who could find the necessary compromise solutions.

101. His delegation also attached importance to the progress made on the draft Convention on the Carriage of Goods [Wholly or Partly] [by Sea], although it continued to have concerns about some aspects of the text. The carrier should surely be allowed greater freedom of contract in volume contracts than the current text provided.

102. The Commission's work on insolvency procedures as applied to corporations also had the potential to make a useful contribution to international trade law. His delegation was, however, concerned at how work on the topic was developing. The procedures under consideration should under no circumstances apply to a company that was solvent.

103. **Mr. Muchemi** (Kenya) noted that the Commission had been unable to finalize the draft UNCITRAL Legislative Guide on Secured Transactions and welcomed its decision to complete its work in December 2007. His delegation commended the progress made by Working Group I (Procurement) in updating the UNCITRAL Model Law on Procurement of Goods, Construction and Services and its Guide to Enactment to reflect new practices, in particular those resulting from the use of electronic communications in public procurement. Similar progress had been made by Working Group II (Arbitration and Conciliation) in reviewing the UNCITRAL Arbitration Rules in the interests of modernization and efficiency in arbitral proceedings.

104. Working Group III (Transport Law), which was preparing the draft Convention on the Carriage of Goods [Wholly or Partially] [by Sea], had successfully tackled such difficult issues as transport documents, shipper's liability for delay, time for suit, limitation of carrier's liability, the relationship of the draft instrument with other instruments and jurisdictional issues. Other substantive issues, such as freedom of contract in volume contracts, required further

examination before the draft instrument was finalized, however, and his delegation hoped that the Commission would be in a position to complete its work by early 2008.

105. His delegation requested Working Group IV (Insolvency Law) to give further consideration to certain aspects of insolvency law, in particular substantive consolidation and its effect on the separate identity of individual members of a corporate group. He also urged the Commission to intensify informal consultations with judges and insolvency practitioners with a view to facilitating cross-border cooperation in insolvency cases.

106. He commended the work done on issues arising out of the Convention on the Use of Electronic Communications in International Contracts, particularly cross-border recognition of electronic signatures, cybercrime and commercial fraud. His delegation also commended the secretariat for its intensified dialogue with other organizations in the area of international trade law. Lastly, his delegation supported the proposal to undertake a comprehensive review of the Commission's working methods, especially with regard to the rules of procedure and participation by non-governmental organizations, as was the norm in other subsidiary organs of the General Assembly.

107. **Mr. Kuzmin** (Russian Federation) commended the results achieved during the first part of its fortieth session by UNCITRAL, which carried out its mandate most effectively. His delegation looked forward to the completion of the draft UNCITRAL Legislative Guide on Secured Transactions during the resumed session. It also commended the work of the other Working Groups.

108. **Mr. Zappala** (Italy) said that his delegation had closely followed the progress made by Working Group VI (Security Interests) in developing the draft UNCITRAL Legislative Guide on Secured Transactions, which could be an important step towards creating a global standard for modern secured-transaction laws and facilitating the availability of low-cost secured credit. In the interests of achieving the best possible results, he drew attention to the concerns expressed by the member States of the European Union in document A/CN.9/633 concerning the possibility of an overlap with other international instruments, such as the International Institute for the Unification of Private

Law (Unidroit) draft convention on harmonized substantive rules regarding intermediated securities. The draft convention would probably be finalized in September 2008 and it was of the utmost importance that the two instruments were fully compatible. By the same token, it was to be hoped that further study could be devoted to conflict-of-law rules applicable to security assignments and title transfer arrangements. Consideration should also be given to security interests in intellectual property rights.

109. The proposals by France on the Commission's working methods (A/CN.9/635) deserved careful attention, since they went to the heart of the question of how domestic legislation on trade should be harmonized and to what extent all the relevant parties should be involved. The Commission's enlargement called for a global reconsideration of all its procedures so that commonly agreed solutions that could be implemented by any legal system could be reached. Technical assistance on law reform would also benefit from reconsideration of basic issues relating to the introduction of trade-law instruments. Relevant commercial interests should participate in the Commission's work, in the form of non-governmental organizations, which should be transparently selected. A general debate on the issue should be held.

110. Lastly, his delegation congratulated the secretariat on the improvements made to the Case Law on UNCITRAL Texts (CLOUT) database, which was extremely useful for monitoring developments in the implementation of UNCITRAL instruments. Member States should continue to contribute information to the database in the interests of greater consistency in the implementation of UNCITRAL instruments.

The meeting rose at 1 p.m.