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## Sixth Committee

### Summary record of the 10th meeting

Held at Headquarters, New York, on Monday, 10 October 2011, at 10 a.m.

*Chair:* Mr. Salinas Burgos..... (Chile)

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Agenda item 79: Report of the United Nations Commission on International Trade Law on the work of its forty-fourth session

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

**Agenda item 79: Report of the United Nations Commission on International Trade Law on the work of its forty-fourth session (A/66/17)**

1. **Mr. Moollan** (Mauritius), Chair of the United Nations Commission on International Trade Law (UNCITRAL), introducing the Commission's report on the work of its forty-fourth session (A/66/17), said that, in a time of recession and declining world trade, with the sharpest drop occurring not in the troubled North Atlantic economies but in the emerging nations, poor populations in developing countries were often the most vulnerable to the devastating effects of economic contraction. The economies of developing countries and countries in transition had the greatest need for and the most to gain from international legal standards that promoted the free flow of trade and commerce. Developing such standards and helping States to put them into practice was the core function of UNCITRAL, which for 45 years had been actively engaged in promoting international trade and commerce by removing legal barriers that impeded private-sector trade and investment. No less significant was the Commission's contribution to strengthening the rule of law in developing countries, where legal certainty in commercial dealings were essential to securing the confidence of trading partners and investors.

2. As a representative of a small State in the African region, he had witnessed at first hand the importance and effectiveness of the Commission's work. Mauritius was currently involved in the development of a world standard platform for international commercial and investment arbitration in Africa, with the aim making international arbitration a truly integrated form of dispute resolution in the legal culture of the region, rather than a foreign construct perceived as being imposed by and for others. That project, like many others throughout the world, would not have been possible without the constant help and supervision of UNCITRAL.

3. UNCITRAL did that work with great efficiency and a remarkably small pool of resources. With an annual budget of a mere \$3 million dollars, the Commission carried out its global mandate with the aid of a small secretariat, based in Vienna, consisting of some 14 lawyers and a half dozen or so support staff. The quality and quantity of the secretariat's work was

consistently praised by the Commission, its member States and observers, its partners in other organizations and the many Governments which it served. UNCITRAL had been referred to as a "global brand" synonymous with excellence and credibility in the field of trade law. The investment required to maintain and develop that brand were minute in the context of the United Nations effort as a whole, but the returns on that small investment were very high. The value of the UNCITRAL "brand" should not be allowed to become diluted, especially at a time when the work could substantially assist economic recovery. He would have more to say on budget matters later in his statement.

4. During its forty-fourth session, the Commission had finalized and adopted the revised UNCITRAL Model Law on Public Procurement, which updated the 1994 Model Law in order to reflect the experience gained in its use and developments in public procurement practices. The 1994 Model Law had proved to be a very successful text as a template for domestic procurement legislation, and one very useful to developing countries in particular; it had been adopted in some 30 States and had been used by multilateral development banks as a tool for procurement reform. While retaining the underlying principles of wide participation, competition, integrity, transparency and objective, fair and equitable treatment of participants in the procurement process, Working Group I (Procurement) had introduced into the revised Model Law procurement tools and techniques that had emerged since 1994, including the use of information and communications technology and framework agreements allowing for significant efficiency gains and administrative cost savings. The Model Law was also more streamlined and user-friendly in presentation and reflected a shift in emphasis from a compliance-driven approach to one more focused on the actual outcome of the procurement process. In order to ensure that the revised Model Law would be as well known and understood as its predecessor, the Model Law would be accompanied by a Guide to Enactment, a draft of which the Commission had asked its secretariat to finalize for consideration at its forty-fifth session.

5. During its session the Commission had adopted another substantive text entitled "The UNCITRAL Model Law on Cross-Border Insolvency: the judicial perspective", which was intended to foster uniform interpretation of the Model Law. The legal certainty and stability offered by the 1997 Model Law, so far

adopted in some 20 jurisdictions, was particularly important at a time when large-scale insolvencies with effects across several jurisdictions could unfortunately be anticipated. To ensure the continuing use of the new text, the Commission had decided that it should be periodically updated by the UNCITRAL secretariat in consultation with judges and other insolvency law experts to reflect the latest developments in jurisprudence.

6. Working Group V (Insolvency Law) had also made progress on two new topics, the interpretation and application of selected concepts in the Model Law on Cross-Border Insolvency relating to the notion of “centre of main interests” and the responsibility and liability of directors and officers of an enterprise in insolvency and pre-insolvency cases. In those areas the Commission, having consulted widely, had agreed that a greater degree of harmonization of national approaches would be beneficial.

7. In the area of arbitration and conciliation, the Commission had considered reports of Working Group II on its progress in the preparation of a legal standard on transparency in treaty-based investor-State arbitration. The Commission had reiterated the importance of ensuring transparency in investor-State arbitration and had noted that providing meaningful opportunities for the public to participate in investment arbitration would promote the rule of law, good governance and the right of access to information. The legal standard currently being developed by the Working Group attempted to balance the public interest inherent in treaty-based investor-State arbitration with the disputing parties’ interest in resolving disputes in a fast and efficient manner. The work was being carried out in close cooperation with relevant arbitral institutions to ensure that the standard of transparency, once adopted, would be widely applied.

8. The Commission had also been informed of various projects undertaken by the UNCITRAL secretariat to assist users of UNCITRAL texts in the field of arbitration, including the preparation of recommendations to assist arbitral institutions conducting arbitration under the revised 2010 UNCITRAL Arbitration Rules, a digest of case law on the UNCITRAL Model Law on Arbitration and a guide to the New York Convention on the Recognition and Enforcement of Foreign Arbitration Awards of 1958.

9. The Commission had heard from Working Group III (Online Dispute Resolution) on its progress on the new topic of online dispute resolution in relation to cross-border electronic commerce transactions, including business-to-business and business-to-consumer transactions. Since the question potentially affected consumers, the Commission had specifically requested the Working Group to report on that aspect at the next session.

10. In the area of security interests, the Commission had taken note of the progress made by Working Group VI in preparing a guide on registration of security rights in movable assets. The significance of the work had been emphasized, particularly in view of the efforts currently under way in several States to establish a general security rights registry and the beneficial effect of such a registry on the availability and cost of credit. Since there was an urgent need for guidance, particularly on the part of developing States, the Commission had requested the Working Group to submit a text for consideration at the next session. The Commission had also requested its secretariat to proceed with the preparation of a joint set of principles on effective secured transactions regimes in cooperation with the World Bank. The secretariat was also urged to cooperate closely with the European Commissions to ensure a coordinated approach to the law applicable to third-party effects of assignment of receivables.

11. In the area of electronic commerce, the Commission had decided to entrust a reconvened Working Group IV with work on issues related to electronic transferable records. The decision had been influenced by the discussions held at a colloquium organized by UNCITRAL in February 2011. The topic of electronic transferable records was viewed as important for many reasons, including implementation of the recently adopted United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea, better known as the Rotterdam Rules. UNCITRAL had been a pioneer in developing legal standards on electronic commerce; UNCITRAL texts had influenced many jurisdictions; and the UNCITRAL secretariat regularly received requests for opinions on the use of electronic means, such as electronic single-window facilities, for the facilitation of cross-border trade.

12. As an area of possible future work, the Commission had reaffirmed the importance of

microfinance as a tool for economic empowerment and poverty alleviation and had stressed the need for a regulatory and legal framework. In some States microfinance represented a significant portion of the national economy, but a colloquium held in Vienna in January 2011 had highlighted the lack of a coherent set of global legal and regulatory standards reflecting international best practice. To assist it in defining areas where work was needed, the Commission had requested its secretariat to circulate a short questionnaire to States regarding their experience with establishing a legislative and regulatory framework for microfinance and would consider the matter further at its next session, taking into account responses from States.

13. With regard to the status and promotion of UNCITRAL legal texts, the Commission had taken note of 27 actions taken by States, in all parts of the globe, in the form of the signing or ratification of a treaty or the adoption of legislation based on a model law. Moreover, many UNCITRAL texts and guides had inspired legislation even in jurisdictions that had not acceded to a particular convention, and they served as tools for private parties and States in their contractual relations.

14. With regard to technical assistance in law reform, current financial constraints had resulted in a shift of emphasis to capacity-building measures. The Commission had endorsed the priority lines of action laid out in the strategic framework for technical assistance put forward by the UNCITRAL secretariat, including emphasis on a regional and subregional approach to complement regional economic integration initiatives; promotion of universal adoption of texts already enjoying wide acceptance, such as the 1958 New York Convention and the United Nations Convention on Contracts for the International Sale of Goods; and special efforts to promote recently adopted texts. Clearly, the benefit of trade law instruments was realized only when those instruments were actually implemented by States; and, equally clearly, implementation required technical assistance, in other words, the active marketing of the brand's products.

15. Although the UNCITRAL secretariat was mandated to provide such assistance, the task was enormous and the resources available for it negligible. UNCITRAL had therefore been actively exploring ways to mobilize extrabudgetary resources to meet the need by seeking partnerships and donors. In that

regard, States had been invited to express their interest in establishing UNCITRAL regional centres in different parts of the world, particularly in Africa, Asia and the Pacific, Eastern Europe and Latin America and the Caribbean. Argentina, the Dominican Republic, El Salvador, Kenya, Malaysia, the Republic of Korea and Singapore had all expressed interest in hosting such a centre, and the Republic of Korea had made a specific proposal, involving considerable financial and in kind assistance, for the establishment of the UNCITRAL Regional Centre for Asia and the Pacific at Incheon, a proposal that the Commission had gratefully accepted.

16. Another area in which the Commission would be grateful for extrabudgetary support from States was in the collection and dissemination of case law on UNCITRAL texts (the CLOUT system), the purpose of which was to facilitate uniform interpretation and application of those texts. Discussions were ongoing with, in particular, the French Republic in that regard.

17. During the reporting period UNCITRAL had also coordinated and cooperated with many other international organizations active in the field of international trade law in order to share information and expertise and avoid duplication of work. In that regard, the Commission had acceded to a request by the International Chamber of Commerce to recommend the use of the 2010 revision of the Uniform Rules for Demand Guarantees.

18. In chapter XVII of its report the Commission discussed its role in promoting the rule of law with a focus on conflict and post-conflict situations. The Commission had heard reports from its partners active in post-conflict societies about real-life examples where the use of UNCITRAL standards had facilitated regaining the trust of the international business community and donors, re-establishing mutual trust between commercial partners and fostering regional and international economic integration. They had stressed the role that UNCITRAL could play in mobilizing legal resources to support economic activity and resolve disputes through the establishment or reactivation of chambers of commerce, bar associations and arbitration and mediation centres. Nevertheless, the Commission recognized that its contribution to post-conflict reconstruction was likely to remain insufficient unless awareness about UNCITRAL and its work could be increased and innovative ways could be found to apply UNCITRAL texts and resources at an

early stage of post-conflict recovery operations — in other words, unless its achievements and potential could be integrated within the broader United Nations rule of law agenda.

19. In the current financial climate, the need to make budget cuts was well understood by the Commission, but careful consideration should be given to how and where necessary cuts were made. The proposal by the Secretary-General to discontinue the long-established practice of holding UNCITRAL plenary and working group meetings alternately in New York and Vienna and to make UNCITRAL a purely Vienna-based organization with no presence in New York would effectively downgrade UNCITRAL from a truly global institution to a regional one. It would put at risk the achievement of important goals set by the Commission, including better integration of UNCITRAL resources in other United Nations activities, such as joint rule of law programmes, development programmes and post-conflict reconstruction. The alternating pattern of meetings, which had been a feature of its organization throughout its existence, achieved a proportionate distribution of travel costs among delegations, maximized the influence and presence of UNCITRAL globally and most importantly, allowed for the participation of developing countries, many of which did not have representation in Vienna.

20. In view of the above, the Commission had expressed its unanimous support for the continuation of the current alternating pattern of meetings. However, the Commission had made an effort to identify alternatives that would achieve an equal amount of savings. Since the cost of conference services support for one week of meetings was approximately the same as the annual cost of staff travel to New York to service the Commission's plenary and working group meetings there, the Commission had agreed that reducing its entitlement to conference services support by one week per year would constitute an acceptable alternative to abolishing its alternating pattern of meetings. As Chair of the Commission, he respectfully urged the Committee to support the alternative proposal.

21. Well aware of the current financial constraints, the Commission had discussed additional ways of achieving savings and had asked its secretariat to prepare a strategic planning note, laying out possible options and their financial implications, for consideration by the Commission at its next session.

22. An incident had occurred which had come close to depriving the Committee of the benefit of any meaningful report from UNCITRAL on the work of its forty-fourth session. During the finalization of the report, UNCITRAL had been informed that the report formally adopted by the Commission at the close of its session was being drastically edited to reduce it by about one third, including through the deletion of the most topical paragraphs concerning the adoption of the revised Model Law on Public Procurement. That decision, taken without consultation with the UNCITRAL secretariat, had apparently been based on a strict interpretation of rules governing page limits for the reports of intergovernmental bodies. The Commission had repeatedly stated its view that regulations on page limits should not apply to its documents, because artificially reducing the length of documents that explained the reasoning that had led to the adoption of legal standards would make it difficult for legal scholars, judges, public authorities and other end-users of those standards to understand and apply them in a satisfactory manner. Accordingly, the Commission respectfully requested the Committee, in its annual resolution on the work of UNCITRAL, to include clear and strong language to the effect that page limitations should not negatively affect the quality of the documentation prepared by UNCITRAL. That said, the Commission was well aware of the need to streamline legal documentation as much as possible.

23. In conclusion, he wished to stress that, if UNCITRAL was to thrive, it required the participation of all States, including those which only had representation in New York. The Member States were the owners of the UNCITRAL “brand”, its “shareholders” with a say and an interest in maximizing the return on their investment in the modernization and harmonization of international trade law for the benefit of all States.

24. **Ms. Enersen** (Norway), speaking on behalf of the Nordic countries (Denmark, Finland, Iceland, Norway and Sweden), said that the Commission was to be commended for its efforts to maintain close cooperation with other international bodies and organizations active in the field of international trade law. Norway participated actively in the Commission's working groups and believed that the open and lively nature of their discussions contributed to their excellent results.

25. The Nordic countries appreciated the hard work that had led to the successful adoption of the revised UNCITRAL Model Law on Public Procurement and noted with approval the plans to use electronic updates to ensure that the related Guide to Enactment being prepared would be a dynamic document. The creation of the blog on developments in relation to the Model Law was a welcome example of the increasing use of new technology by the UNCITRAL secretariat.

26. Norway awaited with interest the outcome of the study on possible future work by the Commission's Working Group I (Procurement) in the area of public-private partnerships and privately financed infrastructure projects. Norway participated in the discussions in Working Group II (Arbitration and Conciliation) concerning transparency in treaty-based investor-State arbitration, since it considered the principles of transparency and public access regarding governmental activity to be of particular importance in that regard. It appreciated the work being done by Working Group VI (Security Interests) on the registration of security rights in movable assets. The topics to be taken up by Working Group V (Insolvency Law) on the responsibility and liability of directors and officers of an enterprise in insolvency and pre-insolvency cases and on selected concepts relating to "centre of main interests" were of current importance, and a greater degree of harmonization of national approaches in that regard would be beneficial. The Nordic countries took note of the work done so far by Working Group III (Online Dispute Resolution) on online dispute resolution in relation to cross-border e-commerce transactions and also noted with interest the Commission's discussions on possible future work in the field of e-commerce and microfinance.

27. **Ms. Quidenus** (Austria) said that among the most important achievements of the Commission's forty-fourth session was the adoption of the text "The UNCITRAL Model Law on Cross-Border Insolvency: the judicial perspective". As individuals and enterprises conducted their business globally and had assets and interests in more than one State, efficient handling of insolvency in such cases required cross-border cooperation. The UNCITRAL Model Law contributed significantly to the establishment of a harmonized legal framework, and the judicial material just adopted provided readily accessible information on interpretation of the Model Law and current practice in that regard, which would be of use to judges in

insolvency proceedings. By promoting wider use and understanding of the Model Law, the material had the potential to facilitate cross-border judicial cooperation, thereby avoiding unnecessary delays and costs.

28. The Commission was also to be commended for the finalization and adoption of the revised UNCITRAL Model Law on Public Procurement, which would contribute significantly to economy, efficiency and competition in procurement as well as integrity, confidence, fairness and transparency in the procurement process. Since the changes had been the subject of extensive consultations, the revised Model Law could be expected to be acceptable to States with a variety of legal, social and economic systems.

29. The Commission had an impressive 40-year track record of contributions to the strengthening of the rule of law in the field of international trade law. No other organization was better equipped to provide internationally acceptable model laws and rules, support for enactment of legislation and education and training in the field of commercial law. It had rightly been emphasized that UNCITRAL instruments and resources could help to expedite the transition from post-conflict recovery to a more stable and inclusive economy, and her delegation would encourage UNCITRAL to intensify its efforts in that field.

30. **Ms. Kakee** (Japan) said that the revised UNCITRAL Model Law on Public Procurement, long awaited, could be widely and effectively used in international procurement practice. In the area of international arbitration and conciliation, it was important for each State to examine carefully how transparency should be ensured in the context of treaty-based investor-State arbitration. Japan hoped to contribute to the current project on that challenging issue in Working Group II.

31. Her delegation would continue to participate actively in the work on online dispute resolution rules for cross-border electronic commerce transactions and looked forward to further progress on that project. It welcomed the completion of the judicial materials on the UNCITRAL Model Law on Cross-Border Insolvency, which should be very useful to practitioners, judges, creditors and other stakeholders in insolvency proceedings. In the area of security interests, Japan was satisfied with the substantive deliberations taking place in Working Group VI on registration of security rights in movable assets and

would work towards finalization of a legal text on that important topic at the next Commission session.

32. Her delegation deeply appreciated the contribution which the Commission had made to the progressive harmonization and unification of international trade law. Japan had been a member of the Commission since its inception and would continue to participate actively in its work. Recommendations regarding UNCITRAL should be given careful consideration, taking into account the need for coordination of national legislation in that area.

33. **Mr. Nikolaichik** (Belarus) said that the work of UNCITRAL was especially important in the light of the current world economic situation. His delegation was pleased with the outcome of the Commission's forty-fourth session, in particular the adoption of the UNCITRAL Model Law on Public Procurement. It supported the decision to reconvene Working Group IV (Electronic Commerce), which could be important for identifying new and promising practices. Also of great interest were the Commission's efforts to develop standards for transparency in treaty-based investor-State arbitration proceedings.

34. Belarus was interested in attracting foreign investment and had therefore created a favourable legal regime for the investor, among other things, by including provisions on dispute resolution through arbitration in its international agreements. It therefore attached great importance to the work of UNCITRAL in promoting international trade and developing common standards to that end. His delegation was following with interest the pilot project on setting up UNCITRAL regional centres. Belarus was particularly interested in cooperating with the Commission in the light of its efforts to join the World Trade Organization and to harmonize its legislation with international standards.

35. Although not currently a member of the Commission, Belarus intended to follow the activities of the working groups closely. In preparation for membership in 2013, it was setting up a mechanism for country-wide consultations among stakeholders so that it could not only participate productively in the work of the Commission but also initiate proposals for enhancing future cooperation.

36. **Mr. Maza Martelli** (El Salvador) commended the Commission on the adoption of the revised Model Law on Public Procurement, which could make a

valuable contribution towards harmonizing national legislation in that area. His delegation congratulated Working Group I (Procurement) for the successful completion of its work and the other working groups for the progress achieved on their topics. El Salvador attached great importance to its membership in UNCITRAL and greatly valued its contribution to the codification and progressive development of international trade law.

37. While his delegation fully endorsed efforts to reduce costs within the United Nations, it believed that the Secretary-General's proposal to reduce the Commission's travel expenses by abolishing the established practice of holding sessions alternately in New York and Vienna could negatively affect the Commission's important work. The alternating pattern of meetings had been a key element in the proper functioning of UNCITRAL by ensuring broad participation and hence broad acceptance of the standards it elaborated. Holding meetings in both New York and Vienna resulted in a more proportionate distribution of travel expenses among delegations, enhanced the global presence and influence of UNCITRAL, facilitated the participation of developing countries without representation in Vienna and allowed for greater coordination and cooperation with other United Nations institutions located in New York. For those reasons his delegation was in favour of continuing the alternating pattern of meetings and instead supported the Commission's suggestion of achieving a roughly equivalent savings in meeting servicing costs by reducing its entitlement by one week.

38. **Mr. Delgado Sánchez** (Cuba) said that the delay in the editing and publication of the Commission's important report was regrettable, since it had made it more difficult for Member States to study its contents carefully. In view of the great importance of the work of UNCITRAL in harmonizing and standardizing the rules of international commerce, Cuba advocated serious consideration of ways and means of promoting greater participation by developing countries. The diverse and highly specialized nature of the topics considered by the Commission and the costs of travel to its meetings entailed a considerable financial burden for such countries. In that light his delegation was in favour of maintaining the alternating pattern of meetings in New York and Vienna.

39. Working Group I (Procurement) was to be commended for completing its work so that the UNCITRAL Model Law on Public Procurement could be adopted. Other working groups had also made considerable progress.

40. With regard to the topic being undertaken by the Working Group on Arbitration and Conciliation on the settlement of disputes between investors and a State, Cuba was firmly in favour of the principle of transparency as an aid to the achievement of justice and equity. However, the principle was realized differently in the judicial and arbitral contexts, and it was important to avoid confusing the two. It was well known that the inappropriate expansion of the scope of bilateral investment treaties by arbitral tribunals beyond the intentions of the States parties had had a negative effect on international arbitration in investment cases by causing the disgruntled States parties to renegotiate such agreements or even to withdraw from them.

41. His delegation had serious concerns about some of the proposals discussed at the past session of Working Group II. A too hasty modification of the UNCITRAL arbitration rules that would run counter to current arbitration practices and the views of the developing countries that were the primary recipients of investment could have the result that UNCITRAL arbitration rules were no longer included by reference in bilateral investment treaties.

42. Developing countries should be wary of the negative impact of arbitration rules which, while supposedly intended to increase transparency, would actually politicize conflicts and foster interference by large transnational corporations and non-governmental organizations acting for their benefit in matters of a private international nature. The flexibility characteristic of arbitration under existing arbitration rules allowed for the participation of third parties when necessary for resolving or clarifying a case. The attempt to open the process to the media would contribute, not to transparency, but to confusion and would favour those who controlled the means of communication and stand in the way of the legitimate development goals of investment-receiving countries. Such rules would foster financial speculation.

43. UNCITRAL arbitration rules could not be a substitute for the responsibility of States to exercise good governance of resources and to account for them

to civil society. Such important issues should be dealt with in domestic legislation. Access to information about an arbitration proceeding, properly regulated by domestic legislation in the national public interest, was the best way to achieve transparency. Moreover, a culture of transparency should work both ways, promoting not only proper public administration but also a sense of social and environmental responsibility among investors.

44. **Ms. Aziz** (Singapore) said that her delegation was extremely pleased to note the finalization and adoption of the UNCITRAL Model Law on Public Procurement. The Commission was to be commended for updating its 1994 Model Law and making it more relevant and useful, incorporating the best practices in modern public procurement law, including electronic reverse auctions, framework agreements and remedies. It was unfortunate that finalization of the Model Law had taken an inordinately long time to complete; it was to be hoped that UNCITRAL and its working groups would bear in mind the need to work efficiently and to optimize limited resources.

45. Her delegation welcomed the reconvening of Working Group IV (Electronic Commerce) to undertake work on electronic transferable records. The Working Group had played a leading role in developing key legal instruments for the harmonization of law relating to electronic commerce. Singapore had been the first country to implement the provisions of the United Nations Convention on the Use of Electronic Communications in International Contracts in its domestic laws and encouraged others to do the same. Her delegation was committed to active involvement in the Working Group.

46. Singapore welcomed the establishment of UNCITRAL regional centres to further its technical assistance work and appreciated the generous offer of the Republic of Korea to host the first UNCITRAL Regional Centre for Asia and the Pacific. Regional centres could function as channels of communication to UNCITRAL, thereby enhancing understanding and adoption of UNCITRAL instruments and fulfilling its mission of removing barriers to trade through harmonization of trade laws. Singapore was exploring the possibility of hosting a regional centre with UNCITRAL.

47. Concerns that non-governmental organizations allowed to participate in UNCITRAL meetings might



hijack its agenda had been addressed during the forty-third session with the adoption of a summary of conclusions on UNCITRAL rules of procedure and methods of work. That important document provided clarity on the responsibilities of member States of UNCITRAL and the extent to which others could be of assistance; it underscored the fact that UNCITRAL was an organization of States, which were responsible for its decision-making. It was important that the Chair of the Commission and the chairs of its working groups should have a clear understanding of the principles to be applied when chairing deliberations and especially when determining the consensus of the meetings.

48. With regard to the proposal to eliminate the holding of meetings in New York as well as Vienna, her delegation, representing a State with a mission in New York but not in Vienna, would be adversely affected if the alternating pattern of meetings were discontinued. Singapore therefore supported the suggestion to continue the current pattern of meetings and to achieve comparable cost savings by reducing the number of weeks of meetings per year from 15 to 14.

49. **Mr. Kalinin** (Russian Federation) said that UNCITRAL was to be congratulated on a productive session. His delegation highly valued the Commission's contribution to harmonizing and unifying international trade law and to promoting the rule of law. Among its functions was that of ensuring uniform interpretation and application of UNCITRAL texts, and an important part of that task was to update the CLOUT system. His delegation considered that the Commission's work was moving in a positive direction and commended the adoption of the revised UNCITRAL Model Law on Public Procurement, which took into account new developments in the field, such as the practice of electronic reverse auctions. His delegation was also very interested in the current efforts of the Working Group on Arbitration and Conciliation with regard to arbitration of investor-State disputes. The Russian Federation would be following with interest the project of establishing an UNCITRAL regional centre in the Republic of Korea.

50. His delegation was in favour of maintaining the current system of holding meetings in Vienna and New York. It wished to stress that it could support proposals intended to improve the Commission's working methods only if those proposals did not undermine its effectiveness.

51. **Mr. Morrill** (Canada) said that his delegation welcomed the adoption of the UNCITRAL Model Law on Public Procurement, which took into account new practices and opportunities offered by electronic commerce; the modernization would enable the Commission's model law in the field to remain a reference tool for Governments around the world. The judicial materials adopted as a complement to the UNCITRAL Model Law on Cross-Border Insolvency would help judges, in particular, to understand the international context in which the Model Law applied and would contribute to consistent interpretation of it. Although concerned about the Commission's decision to set up an additional working group, especially without clearly identifying the issues it would deal with, Canada would nonetheless look forward to seeing progress by the Working Group on Electronic Commerce on the topic of electronic transferable records.

52. Progress was being made on the preparation of a guide on the registration of security rights in movable assets and on the topic of online dispute resolution. Canada reaffirmed its strong support for the treaty-based investor-State arbitration project, which would have an impact on good governance, and was pleased to note the large number of countries and observers participating in that important work.

53. In a context in which State and international organizations were required to manage resources carefully, his delegation recognized the efforts of the UNCITRAL secretariat to limit expenses and control its budget. However, Canada did not support the initiative to change the long-standing tradition of alternating meetings in New York and Vienna. Ending that rotation would result in only limited savings, and the disadvantages would outweigh the financial benefits. Having UNCITRAL close to a large international trade centre such as New York allowed for interactions with stakeholders and other interested groups; observer participation had always contributed to the quality and acceptance of UNCITRAL texts. His delegation noted with interest the proposal put forward by the Commission to achieve other savings by reducing the frequency of its meetings.

54. **Mr. Ahamed** (India) said that the Commission was the core legal body of the United Nations system in the field of international trade law. One of its major recent achievements had been the adoption by the General Assembly of its Convention on Contracts for

the International Carriage of Goods Wholly or Partly by Sea (Rotterdam Rules). During its forty-fourth session the Commission had dealt with a number of important issues, including the adoption of the revised UNCITRAL Model Law on Public Procurement, which prescribed procedures and principles aimed at achieving value for money and avoiding abuses in the procurement process and would be useful to States in updating or formulating their procurement laws and contribute to harmonious international economic relations and increased economic development.

55. Another important topic under consideration by the Commission was the preparation of legal standards on online dispute resolution. The traditional judicial system was complex, costly and time-consuming, particularly when a dispute involved an international element. Online dispute resolution could provide a way of achieving speedy resolution and enforcement of cross-border disputes arising from small value, high volume business-to-business or business-to-consumer transactions.

56. In the area of arbitration, his delegation was hopeful that Working Group II would be able to develop practically applicable legal standards on transparency in treaty-based investor-State arbitration. In the area of electronic commerce, the formulation of uniform legal standards for electronic transferable records would be beneficial both for the general promotion of electronic communications in international trade and for the implementation of legal instruments containing provisions on electronic records, including, for example, the Rotterdam Rules. In the area of insolvency, his delegation welcomed the decision to consider the responsibilities and liabilities of directors and officers of an enterprise solely in the context of insolvency, without venturing to deal with criminal liability or core areas of company law.

57. In conclusion, his delegation reiterated the importance of technical cooperation and assistance to developing countries, particularly in the adoption and use of the Commission's texts, and encouraged the UNCITRAL secretariat to continue to provide such assistance to the broadest possible extent.

58. **Mr. Wilson** (United Kingdom) said that the completed text of the UNCITRAL Model Law on Public Procurement made an important contribution to the assistance available in that area, in particular to developing countries. The work on the Guide to

Enactment, when completed, would greatly enhance the usefulness of the text. The United Kingdom was pleased to participate in Working Group II (Arbitration and Conciliation) on the preparation of a legal standard on transparency in treaty-based investor-State arbitration; it was an important project and good progress had been made. The United Kingdom also actively supported the work on insolvency law and was pleased to have participated in the session of Working Group V that had focused on the interpretation and application of the concept of "centre of main interests", the consideration of director responsibilities in insolvency and pre-insolvency cases and the preparation of the draft text of the document adopted by the Commission under the title "The UNCITRAL Model Law on Cross-Border Insolvency: the judicial perspective", which would be an invaluable aid to practitioners, judges and other stakeholders in insolvency proceedings.

59. While the United Kingdom strongly supported efforts to achieve savings throughout the United Nations and welcomed the significant savings that the Commission had already made in its budget, it also supported the Commission's proposal not to discontinue its alternating pattern of meetings in 2012-2013 but to achieve roughly equivalent savings by reducing its number of meetings from 15 weeks to 14 weeks. That would allow time to conduct a full assessment of the impact of changing current working practices and to identify other possible efficiency savings in time for the discussion of the budget for the following biennium.

60. **Mr. Zhou Lipeng** (China) said that the updated Model Law on Public Procurement, drafted on the basis of the latest practices, would serve as an important reference and contribute greatly to sound national legislation on government procurement. The UNCITRAL secretariat should be commended for its efficient work. Since e-commerce was the new trend in international trade, the Commission's decision to reconvene the Working Group on Electronic Commerce reflected the urgent need for harmonization and coordination in that area. His delegation looked forward to in-depth discussions of that and other items on the agendas of the working groups. China appreciated the work done by UNCITRAL in the harmonization of international trade law and participated fully in the drafting of legal instruments in the various working groups. In formulating domestic

legislation, it had taken as a reference the relevant UNCITRAL model laws or legislative guides and had actively publicized and disseminated them in China.

61. **Mr. Eden Charles** (Trinidad and Tobago) said that the work of UNCITRAL, as the main legal body of the United Nations system in the field of international trade law, was critical to the advancement of good governance, sustainable development and the eradication of poverty and hunger and to the building of stable, prosperous societies, particularly in post-conflict situations. To achieve those objectives, UNCITRAL needed the support of all Member States.

62. Since much time had been spent in reflecting on the core policy issues of the revised Model Law on Public Procurement, the UNCITRAL secretariat should proceed with the preparation of the Guide to Enactment to the Model Law as efficiently as possible, in conjunction with a session of the Working Group, before the next Commission session. His delegation was in favour of efforts aimed at coordination among the various procurement reform agencies and other mechanisms to promote effective implementation and uniform interpretation of the revised Model Law. It also saw the desirability of work in the areas of public-private partnerships and privately financed infrastructure projects.

63. The Commission should also continue its work on rules governing cross-border electronic commerce, including the legal issues relating to electronic transferable records and electronic single-window facilities, as important ingredients of an open, rule-based, predictable and non-discriminatory trading and financial system. Since disputes in international commercial relations were inevitable, Trinidad and Tobago supported the Commission's work on transparency in treaty-based investor-State arbitration and on online dispute resolution.

64. His delegation was in favour of work on modernizing domestic laws and institutions to enable jurisdictions to deal with the risks underlying the natural person insolvency. It also encouraged UNCITRAL and other relevant agencies to develop a legislative and regulatory framework for microfinance and to make recommendations on improving the integration of small and vulnerable economies into the multilateral trading system. Among the issues to be considered were the special needs of the least developed countries and the debt problems of

developing States. Trinidad and Tobago also supported the provision of the full range of technical assistance by UNCITRAL to post-conflict societies to facilitate the transition from post-conflict recovery to more stable and inclusive economies.

65. Trinidad and Tobago intended to continue to participate as an observer State in the activities organized by UNCITRAL.

66. **Mr. Zinsou** (Benin) commended the efforts of the Commission, its working groups and the UNCITRAL secretariat that had led to the adoption of the revised UNCITRAL Model Law on Public Procurement and the judicial materials on the Model Law on Cross-Border Insolvency. Some of the topics considered for future work, such as microfinance and electronic commerce, would undoubtedly be of great interest to developing countries. However, when considering electronic commerce issues, the Commission should bear in mind the great gulf between the developed and the developing countries, in particular the African countries, in terms of access to electronic tools; it should take care to propose fair and balanced rules, so that the goal of modernization should not have as its end result the marginalization of developing countries. It was not always possible, for example, to replace paper documents by electronic documents all at once. That question had already arisen in connection with UNCITRAL rules regarding maritime transport documents.

67. The Commission's work had led to great advances in the use of electronic communications in international contracts, in the transport of goods, in arbitration and in security interests. In his delegation's view, UNCITRAL should not limit itself to developing uniform rules on international trade but should put greater effort into promoting implementation of the rules already adopted by supplying technical and financial assistance to developing States experiencing difficulties in integrating those rules into their own systems.

68. Benin was pleased with the progress so far in the area of microfinance, which could be a powerful tool in developing countries for creating jobs, combating poverty and enhancing social integration, thus achieving some of the Millennium Development Goals. Benin was implementing a microcredit programme targeted at the poorest individuals, with a special emphasis on women and young people; the programme

had helped more than 600,000 women develop income-generating businesses. Benin had a specific ministry devoted to microfinance and would be pleased to share the experience it had gained with UNCITRAL. The colloquium that UNCITRAL had held on the topic in January 2011 had highlighted the importance of microfinance in the current world economy. By analysing detailed information from a number of States, the colloquium had provided a solid basis on which UNCITRAL could develop a harmonized legislative and regulatory framework for microfinance that was modern, balanced and realistic and met the needs of the sector.

69. Although the harmonization and modernization of the rules of international trade deserved the full support of all States, developing countries unfortunately experienced considerable difficulty in participating in that important work because of the costs of travel and accommodation. For many, the only possibility for participation was in New York, where States had permanent missions; discontinuation of the alternating pattern of meetings would effectively bar a large number of States entirely from participating in the work of the Commission. His delegation urged the UNCITRAL secretariat to study further the possibility of drawing on the UNCITRAL Trust Fund to improve developing country participation. In addition, the support of Member States was needed for efforts to disseminate UNCITRAL texts and maintain the compilation of case law on their application.

70. **Mr. Zemet** (Israel) said that Israel had been a member of UNCITRAL for several years and strongly supported its work as the leading legal body within the United Nations system responsible for the harmonization and unification of international trade law. Israeli legal experts had taken an increasingly active role in the discussions in the Commission's working groups and colloquiums and had had the honour of cooperating in the preparation of the 2010 UNCITRAL Arbitration Rules and the instruments produced by the working groups on insolvency law and security interests. The instruments adopted and endorsed by UNCITRAL would undoubtedly continue to facilitate international trade and provide solutions arising from cross-border transactions. His delegation particularly welcomed the progress made by Working Group II on transparency in treaty-based investor-State arbitration and by Working Group III on cross-border online dispute resolution.

71. **Mr. Hameed** (Pakistan) said that the revised UNCITRAL Model Law on Public Procurement just adopted would promote economy, efficiency, integrity, fairness and transparency in the procurement process. However, the social and economic conditions of developing countries must be taken into account in the preparation of the Guide to Enactment of the Model Law; in many developing countries, the aim of public procurement was not only to foster trade but also to build capacity and to promote local small and medium-sized enterprises.

72. His delegation viewed with interest the progress made by Working Group II in the development of a legal standard on transparency in treaty-based investor-State arbitration. However, the issue of submissions by third parties (*amici curiae*), particularly the intervention in the arbitration of a non-disputing State party to the investment treaty, required careful consideration. Confidentiality was also an important aspect of commercial arbitration and should be considered by the Working Group. The use of alternative methods such as mediation and conciliation in managing investor-State disputes offered the advantages of flexibility and simplicity and fostered long-term relationships among the parties. Cooperation between UNCITRAL and the United Nations Conference on Trade and Development (UNCTAD) in creating awareness of the availability of mediation and conciliation as an option for investor-State dispute resolution was both desirable and feasible.

73. With regard to the discussions in Working Group III on online dispute resolution relating to cross-border electronic transactions, Pakistan supported the Commission's decision that, even if the Working Group ventured to elaborate rules for consumer-to-consumer transactions, those rules should not replace consumer protection laws. The Working Group should consider the impact of its work on consumer protection.

74. Microfinance was an important tool for poverty reduction by facilitating the access of the poor to financial services. The need for coherent legal and regulatory rules to serve as global standards had long been felt. However, microfinance did not lend itself to one-size-fits-all formulas. Such issues as the quality of the regulatory environment, limits on interest rates for loans, overindebtedness, overcollateralization and abuse of collective practices should be addressed in context-specific ways in different parts of the world and even in different regions within the same country.

75. In addition to the elaboration of texts and their promotion, the provision of legislative technical assistance to developing countries should be a priority of the Commission. His delegation supported the idea of establishing UNCITRAL regional centres and welcomed the approval of the project to establish the UNCITRAL Regional Centre for Asia and the Pacific. The relevance of the Commission's work for the rule of law, good governance, regional integration, economic and social development and the achievement of the Millennium Development Goals was beyond a doubt. There was thus a need for the Rule of Law Coordination and Resource Group and the Rule of Law Unit to integrate the Commission's work with broader United Nations efforts for the promotion of the rule of law.

76. **Ms. Fernandes** (Malaysia) said that the Commission was to be congratulated on the finalization and adoption of the UNCITRAL Model Law on Public Procurement and the document entitled "The UNCITRAL Model Law on Cross-Border Insolvency: the judicial perspective". She was confident that all Member States would give favourable consideration to both those texts.

77. Her delegation again urged Member States and the various arbitration centres to study the revised UNCITRAL Arbitration Rules adopted in 2010 for implementation within their arbitral systems in order to keep current with developments in dispute resolution. With regard to the current work of Working Group II (Arbitration and Conciliation), her delegation had certain reservations. Any provision on transparency in investor-State arbitration should be subject to the will of the parties or the conditions of the relevant treaty. A concluded investment treaty was the outcome of negotiation between contracting States and comprised matters relating to transparency. The legitimacy of an investor-State dispute settlement mechanism was therefore derived from the consent of the contracting parties, and any rules on transparency developed by UNCITRAL should not automatically apply to existing treaties without the express consent of the contracting parties, nor should they undermine State sovereignty. Moreover, Malaysia was not in favour of admitting *amicus curiae* submissions or intervention by a non-disputing State. A dispute was a private matter between the parties, and any intervention by a third party or State should be subject to the consent of both parties to the dispute.

78. Malaysia followed with great interest the discussions in Working Group III on online dispute resolution for cross-border electronic commerce transactions and supported efforts to enhance the current mechanism to provide parties with options for resolving disputes. Nonetheless, her delegation considered that any new mechanism should only be introduced after a thorough evaluation by Member States to determine its acceptability and advantages.

79. **Mr. Kotze** (South Africa) said that the modernization and harmonization of international trade law by the reduction or removal of legal obstacles to the flow of trade would contribute significantly to universal economic cooperation on a basis of equality, equity, common interest and respect for the rule of law; eliminate discrimination in international trade; and foster peace, stability and the well-being of all. His delegation was concerned that activities undertaken by other bodies in the field of international trade law without adequate coordination with the Commission might lead to undesirable duplication of effort, and it therefore continued to support the mandate of the Commission as the core legal body within the United Nations system in that area.

80. Of particular importance to developing countries was the Commission's work in technical cooperation and assistance. His delegation welcomed the Commission's initiatives to expand such programmes at the country, subregional and regional levels and appealed to other bodies responsible for development assistance to support those programmes and cooperate with the Commission's activities. It also appealed to Governments, the relevant bodies of the United Nations system and other organizations and individuals to make voluntary contributions to provide travel assistance to developing countries that were members of the Commission.

81. South Africa welcomed the UNCITRAL Model Law on Public Procurement and the continuing work on the Guide to Enactment. In the development of the Guide, the Commission should take into account that the Model Law was to be applied in different jurisdictions where different political, legal and socio-economic considerations might be relevant. South Africa, for example, in applying its procurement laws, took account of the need to redress the damage done by decades of apartheid. Article 11, paragraph 3, of the Model Law, it should be noted, allowed for other evaluation criteria provided for in domestic law.

82. His delegation also welcomed the progress in the ongoing project of monitoring the implementation of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958.

83. **Mr. Arbogast** (United States of America) said that his delegation commended UNCITRAL for its hard work, its focus on technical and complex economic and commercial issues and its attention to the concerns of States at all levels of economic development and in all regions. The forty-fourth session had been highly productive. The revised UNCITRAL Model Law on Public Procurement just adopted would be extremely valuable to countries seeking to modernize their government procurement systems and had the support of a number of international financial institutions. His delegation looked forward to early completion of the Guide to Enactment.

84. The adoption of the judicial materials collating prior completed work of the Commission in the economically important area of cross-border insolvency would make the Commission's work readily accessible to officials and practitioners worldwide. The United States had adopted the UNCITRAL Model Law on Cross-Border Insolvency as a new chapter of the United States Bankruptcy Code and recommended such action to other States so as to limit existing cross-border risk.

85. The United States was pleased to support the important ongoing work in the area of investor-State arbitration, online dispute resolution, managing cross-border insolvency cases, liabilities of corporate officers and directors in such cases and a registration system for secured transactions, as well as the new topic of electronic transferability of rights. Moreover, the importance of the Commission's work to broaden United Nations rule of law efforts should be recognized.

86. His delegation strongly supported retaining the existing system of rotation of meetings between New York and Vienna, so as to provide for the necessary exposure to a broader range of commerce and trade interests and to ensure that mission legal officers, often located in permanent missions in New York, were able to participate. While strongly supporting efforts to achieve budget savings, his delegation believed that eliminating UNCITRAL meetings in New York was not the right solution and urged that equivalent savings

should be found in other areas; a number of options for reducing costs were raised in the report, including the possibility of reducing meetings by one week per year.

87. **Mr. Moollan** (Mauritius), Chair of the United Nations Commission on International Trade Law (UNCITRAL), said in conclusion that one of the purposes of the fuller report was to attempt to give a tangible idea of some of the less visible aspects of the work of UNCITRAL. He wished to thank those delegations that had already expressed their support for the Commission's alternative proposal for budget savings and hoped that the Committee as a whole and the Fifth Committee would be able to support it as well. He noted that a number of delegations had stressed the Commission's role as the core legal body within the United Nations system in the field of international trade law. The way the Commission operated was that observer States had a voice in the debates in the working groups equal to that of members, and the aim was to seek consensus; he would therefore encourage non-member States to come with the assurance that they could make a contribution. Of course, the search for consensus could be a slow process in difficult, highly technical areas of work where it was very important that all the various legal cultures should be taken into account; that process was necessary for broad acceptance of the final product. The new rules on non-governmental organizations had had an impact, and non-governmental organizations had less of a voice in the working groups; nonetheless, the Commission continued to feel the need for input from the private sector, which would be affected by its work. He had taken due note of the views expressed concerning the work on transparency rules in investor-State arbitration and would faithfully report back to the Working Group. With regard to the queries about assistance with travel expenses for representatives of developing countries, he was sorry to report that the UNCITRAL Trust Fund was practically empty, and he would take the opportunity to urge States who felt able to do so to contribute to the Fund.

*The meeting rose at 12.50 p.m.*