



General Assembly

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United Nations Commission on International Trade Law Resumed fortieth session

Summary record (partial)* of the 863rd meeting

Held at the Vienna International Centre, Vienna, on Friday, 14 December 2007, at 9.30 a.m

Chairperson: Ms. Sabo (Vice-Chairperson) (Canada)

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Adoption of the report of the Commission (*continued*)

* No summary record was prepared for the rest of the meeting.

This record is subject to correction.

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The meeting was called to order at 9.45 a.m.

The discussion covered in the summary record began at 11.35 a.m.

Adoption of the report of the Commission (continued)

1. **The Chairperson** invited the Rapporteur, Mr. Umarji (India), to introduce the draft report of the Commission on the work of its resumed session.

2. **Mr. Umarji** (India), Rapporteur, said that it had been a difficult task to produce a legislative guide that could be applied by the world's many different legal systems. He was confident that the enactment of laws based on the recommendations in the draft Guide in the years ahead would make an important contribution to the harmonization of international trade practices.

Adoption of a draft UNCITRAL Legislative Guide on Secured Transactions (A/CN.9/XL/CRP.9/Add.1-4) (continued)

Draft report on chapters IV to VI (A/CN.9/XL/CRP.9/Add.1 and Add.2)

1. Chapter IV: Creation of a security right (effectiveness as between the parties): (a) Recommendations (A/CN.9/637, recommendations 13-28) and (b) Commentary (A/CN.9/631/Add.1, paras. 142-247)

3. **Mr. Sigman** (United States of America), referring to subparagraph 6 (i) of document A/CN.9/XL/CRP.9/Add.1 concerning the commentary to chapter IV, proposed inserting the phrase "if one did not previously exist" after "agreement" to make it clear that a new written agreement would not be required if one already existed.

4. *It was so decided.*

5. **Ms. McCreath** (United Kingdom) referred to the text in square brackets following paragraph 16 of document A/CN.9/XL/CRP.9/Add.2, which stated that a new subparagraph 6 (vi) would be inserted in document A/CN.9/XL/CRP.9/Add.1 to the effect that paragraph 196 of the commentary should be revised to indicate that a floating charge was indeed a security right and that the difference between a floating charge should be briefly discussed. She requested that when paragraph 196 was revised, the word "so-called" before

"floating charge" should also be deleted because of its negative connotation.

6. *It was so decided.*

7. **Mr. Weise** (Observer for the American Bar Association), referring to paragraph 6 (viii) concerning the reasons why anti-assignment clauses were invalidated with respect to the assignment of some types of receivables and not with respect to others, suggested replacing the word "upheld" by "not invalidated".

8. *It was so decided.*

9. *The section of the draft report on chapter IV, as amended, was adopted.*

2. Chapter V: Effectiveness of a security right against third parties: (a) Recommendations (A/CN.9/637, recommendations 29-53) and (b) Commentary (A/CN.9/631/Add.2)

10. *The section of the draft report on chapter V was adopted.*

3. Chapter VI: The registry system: (a) Recommendations (A/CN.9/637, recommendations 54-72)

11. **Mr. Weise** (Observer for the American Bar Association) suggested inserting small roman numerals in paragraph 9 of document A/CN.9/XL/CRP.9/Add.1, which would then read:

"... it was noted that recommendation 57 required only the information necessary for third parties so as: (i) to avoid unnecessary information that could confuse third parties or lead to errors that might invalidate notices; (ii) to standardize the information required; and (iii) to send the message that, unlike immovable property title registries, movable property security right registries required minimal information."

12. *It was so decided.*

13. **Mr. Weise** (Observer for the American Bar Association) suggested amending the second sentence of paragraph 16 of document A/CN.9/XL/CRP.9/Add.1 to read: "...if the law prescribed a limited duration of registration (...), an erroneous statement would not affect the duration of the registration to the extent permitted by the law".

14. *It was so decided.*
15. *Document A/CN.9/XL/CRP.9/Add.1, as amended, was adopted.*
- Draft report on chapter VI (continued), the introductory chapter, and chapters I, II, X and XI (A/CN.9/XL/CRP.9/Add.2)*
3. *Chapter VI: The registry system: (a) Recommendations (A/CN.9/637, recommendations 54-72) (continued) and (b) Commentary (A/CN.9/631/Add.3)*
16. **Mr. Weise** (Observer for the American Bar Association) suggested replacing the words “reliability of the registry” in the second sentence of paragraph 3 of document A/CN.9/XL/CRP.9/Add.2 by “effectiveness of the registry”.
17. **Ms. Walsh** (Canada) said that she interpreted the reference to reliability as referring to the reliability of the registry records from the point of view of a third-party searcher.
18. **Mr. Weise** (Observer for the American Bar Association) suggested referring in that case to the “ability to rely on a search of the registry”.
19. **Mr. Riffard** (France) proposed covering all eventualities by using the phrase “reliability and effectiveness of the registry”.
20. **Mr. Sigman** (United States of America) cautioned against introducing a casual reference to “effectiveness” in the draft report, since the term might be misinterpreted.
21. **The Chairperson** said she took it that the Commission would prefer to leave the wording unchanged.
22. *It was so decided.*
23. **Mr. Weise** (Observer for the American Bar Association) suggested inserting the words “in effect” before “involved” in the third sentence of paragraph 6 of document A/CN.9/XL/CRP.9/Add.2 because the original grantor would retain its name but the new owner of the encumbered asset would, in effect, have become the grantor.
24. *It was so decided.*
25. *The section of the draft report on chapter VI, as amended, was adopted.*
4. *Reordering of the introduction, chapter I (Key objectives) and section C of chapter II (Scope of application and other general rules) (A/CN.9/631/Add.1, paras 1-12, 20-31 and 55-57; A/CN.9/637, paras. 1-6; A/CN.9/XL/CRP.11/Add.1))*
5. *Chapter II: Scope of application and other general rules; and chapter III: Basic approaches to security: (a) Recommendations (A/CN.9/637, recommendations 2-12) and (b) Commentary (A/CN.9/631/Add.1, paras. 23-56 and 78-141)*
26. **Mr. Macdonald** (Canada) proposed amending subparagraph 14 (iv) of document A/CN.9/XL/CRP.9/Add.2 to read: “Section D should include recommendations 2-12 from document A/CN.9/637 ordered in accordance with subparagraphs (i), (ii) and (iii).”
27. *It was so decided.*
28. *The section of the draft report on the reordering of the introduction, chapter I and section C of chapter II, and the section on chapter II, as amended, were adopted.*
6. *Chapter X: Enforcement of a security right: (a) Recommendations (A/CN.9/637, recommendations 128-173) and (b) Commentary (A/CN.9/637/Add.4)*
7. *Chapter XI: Acquisition financing: (a) Recommendations (A/CN.9/637, recommendations 174-199) and (b) Commentary (A/CN.9/631/Add.5)*
29. **The Chairperson** noted that document A/CN.9/XL/CRP.9/Add.2 contained only part of the draft report on chapter X.
30. *The section of the draft report on chapter XI was adopted.*
31. *Document A/CN.9/XL/CRP.9/Add.2, as amended, was adopted.*

Draft report on chapter X (continued), chapters XII to XIV and proposed amendments to the terminology and recommendations contained in document A/CN.9/XL/CRP.10 (A/CN.9/XL/CRP.9/Add.3)

32. *The section of the draft report on chapter X was adopted.*

8. *Chapter XII: Conflict of laws: (a) Recommendations (A/CN.9/637, recommendations 200-224) and (b) Commentary (A/CN.9/631/Add.6)*

9. *Chapter XIII: Transition: (a) Recommendations (A/CN.9/637, recommendations 225-241) and (b) Commentary (A/CN.9/631/Add.7)*

33. *The sections of the draft report on chapters XII and XIII were adopted.*

10. *Chapter XIV: Insolvency: (a) Recommendations (A/CN.9/637, recommendations 232-239) and (b) Commentary (A/CN.9/631/Add.8)*

34. **Ms. McCreath** (United Kingdom) drew attention to paragraph 21 of document A/CN.9/XL/CRP.9/Add.3, which stated that it had been agreed that the commentary should explain that the term “financial contract” was defined in both the draft Guide and the UNCITRAL Legislative Guide on Insolvency Law in accordance with article 5 (k) of the United Nations Convention on the Assignment of Receivables in International Trade. She proposed specifying at the end of the paragraph that the definition in the draft Guide was contained in paragraph (s) of the “Terminology” section.

35. **The Chairperson** noted that it had been decided to remove the paragraph lettering before the definitions. However, the location of the definition could no doubt be identified by some other means. If she heard no objection, she would take it that the Commission wished to adopt the proposed amendment.

36. *It was so decided.*

37. *The section of the draft report on chapter XIV, as amended, was adopted.*

11. Proposed amendments to the terminology and recommendations contained in document A/CN.9/XL/CRP.10

38. **Mr. Sigman** (United States of America) proposed inserting the phrase “effective against third parties and” after “took the asset subject to a security right” in the second sentence of paragraph 30 of document A/CN.9/XL/CRP.9/Add.3.

39. *It was so decided.*

40. *The section of the draft report dealing with proposed amendments to the terminology and recommendations contained in document A/CN.9/XL/CRP.10 was adopted.*

41. *Document A/CN.9/XL/CRP.9/Add.3, as amended, was adopted.*

The discussion covered in the summary record ended at 12.20 p.m.