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ASIAN-AFRICAN LEGAL CONSULTATIVE ORGANIZATION



**REPORT ON THE WORK OF UNCITRAL AND OTHER INTERNATIONAL
ORGANIZATIONS IN THE FIELD OF INTERNATIONAL TRADE LAW**

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REPORT ON THE WORK OF UNCITRAL AND OTHER INTERNATIONAL ORGANIZATIONS IN THE FIELD OF INTERNATIONAL TRADE LAW

1. AALCO Secretariat has been in the practice of preparing reports to the annual session of the Organization that focus on the work of the UNCITRAL and other International Organizations in the field of international trade law. With the onset of the globalization process and the establishment of the World Trade Organization (WTO), the task of legislating new rules and harmonizing the existing laws relating to international trade has gained momentum.

2. Against this backdrop, this report by the Secretariat is intended to provide an overview of the work of the UNCITRAL and other International Organizations engaged in the international trade law, with particular emphasis on the works of UNCITRAL, namely:

- (a) UNCITRAL (United Nations Commission on International Trade Law)
- (b) UNCTAD (United Nations Conference on Trade and Development)
- (c) UNIDROIT (International Institute for the Unification of Private Law)
- (d) Hague Conference on Private International Law

I. REPORT OF THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW AT ITS THIRTY-EIGHTH SESSION

1. The General Assembly of the United Nations, in the year 1966, by its resolution 2205 (XXI) established the United Nations Commission on International Trade Law (hereinafter referred to as ‘UNCITRAL’ or ‘Commission’) as the primary organ of the United Nations system to harmonize and develop progressive rules in the area of international trade law. A substantial part of the Commission’s work is carried out in meetings of the Working Groups, while the Commission meets annually to review and adopt recommendations towards guiding the progress of work on the various topics on its agenda. The Commission is also mandated to submit an annual report to the General Assembly, as to the tasks accomplished at its sessions.¹

2. The thirty-eighth session of the UNCITRAL was held in Vienna from 4 to 15 July 2005. The Commission had on its agenda, *inter alia*, the following six topics for consideration:

- (i) Finalization and adoption of the UNCITRAL Convention on the Use of Electronic Communications in International Contracts;
- (ii) Public Procurement;
- (iii) Arbitration;
- (iv) Transport Law; and
- (v) Security Interests;

3. This brief report is primarily focused on examining the UNCITRAL’s deliberations at its thirty-eighth session relating to the above topics.

¹ Membership of UNCITRAL: The Commission is composed of 60 Member States elected by the United Nations General Assembly. Membership is structured so as to be representative of the world’s geographic regions and its principal economic and legal systems. Members of the Commission are elected for six-year terms. Current members are: Algeria, Argentina, Australia, Austria, Belarus, Belgium, Benin, Brazil, Cameroon, Canada, Chile, China, Colombia, Croatia, Czech Republic, Ecuador, Fiji, France, Gabon, Germany, Guatemala, India, Iran, Israel, Italy, Japan, Jordan, Kenya, Lebanon, Lithuania, Madagascar, Mexico, Mongolia, Morocco, Nigeria, Pakistan, Paraguay, Poland, Qatar, Republic of Korea, Russian Federation, Rwanda, Serbia and Montenegro, Sierra Leone, Singapore, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Thailand, The former Yugoslav Republic of Macedonia, Tunisia, Turkey, Uganda, United Kingdom, United States, Uruguay, Venezuela and Zimbabwe. 19 Member States of AALCO are members of the Commission.

1. CONVENTION ON THE USE OF ELECTRONIC COMMUNICATIONS IN INTERNATIONAL CONTRACTS

4. It may be recalled that the Commission, at its thirtieth session (1997), entrusted the Working Group on Electronic Commerce with the preparation of uniform rules on the legal issues of digital signatures and certification authorities. Since then the Commission at its successive sessions had considered the progress on this work within the Working Group. The Commission at its thirty-fourth session (2001) adopted the UNCITRAL Model Law in Electronic Signatures, together with a Guide to Enactment of the Model Law. In that session, the Commission also endorsed a set of recommendations for future work by the Working Group on Electronic Commerce, which included the preparation of an international instrument dealing with selected issues on electronic contracting.

5. At its thirty-fourth session, in 2001, the Commission entrusted Working Group IV (Electronic Commerce) with the task of preparing an international instrument dealing with selected issues on electronic contracting and a comprehensive survey of possible legal barriers to the development of electronic commerce in international instruments. The Working Group commenced its work at its thirty-ninth session (2002) begun its deliberation on the preliminary draft Convention² and at its forty-fourth session (2004), it adopted articles of a draft Convention on the use of electronic communications in international contracts.³

6. At its thirty-eighth session (2005), the Commission had before it the report of the forty-fourth session of the Working Group and a note by the Secretariat containing the newly revised version of the draft Convention on the Use of Electronic Communications in International Contracts. After deliberation, the Commission adopted the draft Convention on the Use of Electronic Communications in International Contracts.

7. The Convention on Electronic Contracts was intended to remove obstacles to the use of electronic communications in international contracting, including obstacles that might arise under existing international trade law instruments, most of which were negotiated long before the development of new technology, such as e-mail, electronic data interchange (EDI) and the Internet. The draft Convention complements and builds upon earlier instruments prepared by UNCITRAL, including the UNCITRAL Model Law on Electronic Commerce and the UNCITRAL Model Law on Electronic Signatures.

8. Aimed at enhancing legal certainty and commercial predictability where electronic communications are used in relation to international contracts, the provisions of the draft Convention deal with determining a party's location in an electronic environment; the time and place of dispatch and receipt of electronic communications; and the use of automated message systems for contract formation. Other provisions contain criteria establishing functional equivalence between electronic communications and paper documents -- including "original" paper documents -- as well as between electronic authentication methods and hand-written signatures.

9. The Convention was not intended to establish uniform rules for substantive contractual issues that are not specifically related to the use of electronic communications.

² See Report of the Working Group on Electronic Commerce on the work of its thirty-ninth session A/CN.9/509

³ A/CN.9/571, paras. 13-206

However, given that a strict separation between technology-related and substantive issues in the context of electronic commerce is not always feasible or desirable, the draft Convention contains a few substantive rules that extend beyond merely reaffirming the principle of functional equivalence where substantive rules are needed in order to ensure the effectiveness of electronic communications.⁴ The new Convention will assure companies and traders around the world that contracts negotiated electronically are as valid and enforceable as traditional paper-based transactions.

10. The Commission also recommend to the General Assembly that the final text be adopted as a United Nations Convention by the General Assembly or by a diplomatic conference to be convened by the General Assembly for that purpose. As a follow-up to the adoption of the Convention, the Commission decided that the Working Group on Electronic Commerce could discuss legal issues concerning cross-border recognition of electronic signatures and online dispute resolution. The United Nations General Assembly adopted the Convention on 23 November 2005. The Convention will be open for signature by all States at United Nations Headquarters in New York from 16 January 2006 to 16 January 2008. The Convention will enter into force on the first day of the month following the expiration of six months after the date of deposit of the third instrument of ratification, acceptance, approval or accession.

CONVENTION ON THE USE OF ELECTRONIC COMMUNICATIONS IN INTERNATIONAL CONTRACTS

Scope of Application (Article 1)

11. The Convention adopts an extremely broad scope of application. It will apply to the use of electronic communications related to a contract between parties whose places of business are in different States.⁵ The fact that the parties have their places of business in different States is to be disregarded if it is not disclosed or apparent from the contract.⁶ Further, neither the nationality of the parties nor the civil or commercial character of the parties or of the contract is to be taken into consideration in determining the application of this Convention.⁷

Exclusions (Article 2)

12. Article 2 provides a short list of exclusions. The Convention does not apply to electronic communications exchanged in connection with consumer contracts or contracts for personal, family or household purposes. Other transactions specifically excluded from the scope of the Convention include: transactions on a regulated exchange; foreign exchange transactions; inter-bank payment systems relating to securities or other financial assets or instruments; the transfer of security rights in, sale, loan or holding of or agreement to repurchase securities or other financial assets or instruments held with an intermediary. A State is also able to specify further exemptions.

⁴ A/CN.9/527, para. 81.

⁵ Article 1.1

⁶ Article 1.2

⁷ Article 1.3

Party Autonomy (Article 3)

13. In order to allow contractual freedom, parties are allowed to “exclude the application of the Convention or derogate from or vary the effect of any of its provisions”. No limitation has been placed on this principle of party autonomy.

Definitions (Article 4)

14. Article 4 provides for a number of definitions. Most of the definitions contained in this article were based on the definition used in the UNCITRAL Model Law on Electronic Commerce. For the purpose of the Convention “Communication” means any statement, declaration, demand, notice or request, including an offer and the acceptance of an offer, that the parties are required to make or choose to make in connection with the formation or performance of a contract. “Electronic communication” is defined as any communication that the parties make by means of data messages.

Location of the Parties (Article 6)

15. Article 6 sets out rules to establish the location of the parties. This includes a broad presumption that the place of business⁸ is the location indicated by that party, unless proved otherwise by the other party. The other tests are:

- If no location has been indicated, and has more than one place of business, the location will be the place of business that has ‘the closest relationship to the relevant contract’;
- If a natural person does not have a place of business, the location will be their residential address;
- The location of the equipment and technology supporting an information system used by a party while contracting or the location where the information system may be accessed by other parties, does not necessarily constitute a place of business; and
- The fact that a person makes use of a domain name or email address connected to a specific country does not create a presumption that its place of business is located in that country.

Legal Recognition of Electronic Communications (Article 8)

16. Article 8 is the most important provision in the Convention and it is an ‘enabling’ provision, which allows electronic commerce to succeed. Article 8 provides that a communication,⁹ or a contract shall not be denied validity or enforceability on the sole ground that it is in the form of an electronic communication.¹⁰

17. However, the second part of the Article provides that “nothing in this Convention requires a party to use or accept electronic communications, but a party’s agreement to do

⁸ “Place of business” means any place where a party maintains a non-transitory establishment to pursue an economic activity other than the temporary provision of goods or services out of a specific location (Article 4 (h)).

⁹ “Communication” is broadly defined to include statements, declarations, demands, notices, offers, and acceptance made in connection with the formation or performance of a contract.

¹⁰ “Electronic communication” is defined as any communication that the parties make by means of data messages.

so may be inferred from the party's conduct. This means that, on the one hand the Convention does not force the parties into accepting electronic communications if they do not have the wish or means to do so, and on the other hand, if a party sends a message in electronic form, or responds to a message in electronic form their agreement to accept and use electronic communications can be inferred – no express agreement between the parties is necessary.

Form Requirements (Article 9)

18. The Convention does not require a communication to be a particular form to be valid. If any law requires that a communication or a contract should be in writing, or provides consequences for the absence of a writing, this Convention provides that, that requirement is met by an electronic communication if the information contained therein is accessible so as to be usable for subsequent reference.¹¹

19. If a communication or a contract requires signature by a party, or provides consequences for the absence of a signature, that requirement is met in relation to an electronic communication if the method used to create the signature:

- Identifies a person's identity *and* approval of the information contained in the electronic communication; and
- Is reliable as appropriate to the purpose for which the electronic communication was communicated.¹²

Further, if a communication or a contract should be presented or retained in its original form, or provides consequences for the absence of an original, that requirement is met in relation to an electronic communication if:

- There exists a reliable assurance as to the integrity of the information it contains from the time when it was first generated in its final form, as an electronic communication or otherwise; and
- Where it is required that the information it contains be presented, that information is capable of being displayed to the person to whom it is to be presented.¹³

20. The criteria for assessing integrity shall be whether the information has remained complete and unaltered, and the standard of reliability required shall be assessed in the light of the purpose for which the information was generated and in the light of all the relevant circumstances.

Time and Place of Dispatch and Receipt of Electronic Communications (Article 10)

21. Article 10 provides the following times for the dispatch and receipt of electronic communications:

- The time of dispatch of an electronic communication is when it leaves an information system under the control of the originator.

¹¹ Article 9.2

¹² Article 9.3

¹³ Article 9.4

- If the message is sent and received in the same information system, then the time of dispatch is when the message was received.
- The time an electronic communication is received is when it is capable of being retrieved by the addressee at an electronic address designated by the addressee.

The time of receipt of an electronic communication at another address is when it becomes capable of being retrieved and the addressee becomes aware that the communication has been sent to that address. The place of dispatch is the place of the originator's business, and place of receipt is the addressee's place of business.

Invitations to Make Offers (Article 11)

22. Article 11 provides that proposals to conclude a contract through one or more electronic communications, which are not addressed to one or more specific persons, but are generally accessible to parties using an information system shall be considered an invitation to make an offer, unless the message clearly indicates an intention there will be a binding contract on acceptance.

23. This article is motivated towards consumer protection and aims to protect people from entering into contracts unwittingly through spam or click-through agreements.

Use of Automated Message Systems for Contract Formation (Article 12)

24. Article 12 allows contracts to be validly made even if there was only one, or no human participants. It provides that a contract cannot be denied validity on the ground that one (or both) parties interacted during the contact negotiation process using an automated information system, and the agreement or the actions of the automated system were not reviewed by a person.

Error in Electronic Communications (Article 14)

25. Article 14 provides that where a person has made an input error in an electronic communication with an automated information system belonging to another party, and is not given an opportunity to correct that error, that person has the right to withdraw that electronic communication if:

- The person notifies the other party of the error as soon as practicable after discovering the error;
- The person takes reasonable steps, to return the goods or services received (or destroy the goods or services if instructed to do so by the other party), if any, as a result of the error; and
- The person has not used or received any material benefit or value from the goods or services, if received).

26. It may be noted that the Model Law on Electronic Commerce does not deal with the substantive issues that arise from contract formation, and consequently does not deal with the issue of how to treat contracts where there has been an error made by a person when they have been communicating with an automated information system.

Communications exchanged under other International Conventions (Article 19)

27. Article 19 intends to offer a possible common solution for some of the legal obstacles to electronic commerce under existing international instruments, which had been the object of a study done by the UNCITRAL Secretariat in a manner that obviates the need for amending individual international conventions. Paragraph 1 of article 19 is intended to facilitate electronic transactions in the areas covered by the Conventions listed therein, but is not meant to formally amend any of those conventions. By ratifying the Convention, a State would automatically accept—at the very least—to apply the provisions of the Convention to electronic communications exchanged in connection with any of the Conventions listed in that paragraph.

28. This provision states that this Convention shall apply to the use of electronic communications in connection with the formation or performance of a contract or agreement to which any of the following international Conventions, to which a Contracting State to this Convention is or may become a Contracting State, apply:

Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 10 June 1958);

Convention on the Limitation Period in the International Sale of Goods (New York, 14 June 1974) and Protocol thereto (Vienna, 11 April 1980);

United Nations Convention on Contracts for the International Sale of Goods (Vienna, 11 April 1980);

United Nations Convention on the Liability of Operators of Transport Terminals in International Trade (Vienna, 19 April 1991);

United Nations Convention on Independent Guarantees and Stand-by Letters of Credit (New York, 11 December 1995);

United Nations Convention on the Assignment of Receivables in International Trade (New York, 12 December 2001).

29. In addition to those instruments which, for the avoidance of doubt, are listed in paragraph 1, the provisions of the Convention may also apply, pursuant to paragraph 2, to electronic communications exchanged in connection with contracts covered by other international conventions, treaties or agreements, unless such application has been excluded by a Contracting State. The possibility of excluding this expanded application of the draft convention has been added to take into account possible concerns of States that may wish to ascertain first whether the Convention would be compatible with their existing international obligations.

The Commission asked the Secretariat to prepare the explanatory notes to the text of the Convention and present those notes to the Commission at its thirty-ninth session in 2006.

2. PUBLIC PROCUREMENT

30. It may be recalled that the Commission, at its thirty-sixth and thirty-seventh sessions, in 2003 and 2004, respectively, considered a possible revision of its 1994 Model Law on Procurement of Goods, Construction and Services, on the basis of the notes by the Secretariat.¹⁴ At its thirty-seventh session (2004), the Commission agreed that the Model Law would benefit from being updated to reflect new practices, in particular those resulting from the use of electronic communications in public procurement, and the experience gained in the use of the Model Law as a basis for law reform. It decided to entrust the drafting of proposals for the revision of the Model Law to its Working Group I (Procurement). The Working Group I was given a flexible mandate to identify the issues to be addressed in its considerations.

31. At its thirty-eighth session, the Commission would have before it the reports of the sixth¹⁵ and seventh¹⁶ sessions of the Working Group I respectively. The Working Group I reported on its ongoing revision of the 1994 Model Law on Procurement of Goods, Construction and Services, to reflect new practices, in particular those that resulted from the use of electronic communications in public procurement. The Commission appreciated the Working Group I and directed the Working Group I to complete the work as soon as possible.

3. ARBITRATION

32. The Commission, it may be recalled that, at its thirty-second session (1999), had a note entitled “Possible future work in the area of international commercial arbitration,” which discussed the desirability and feasibility of further development of the law of international commercial arbitration. The Commission had entrusted this task to its Working Group on Arbitration and Conciliation (Working Group II) and had decided that the priority items for the Working Group II should be requirement of written form of the arbitration agreement, enforcement of interim measures of protection and possible enforcement of an award that had been set-aside in the State of Origin. The Working Group II commenced its work at its thirty-second session in March 2000.

33. At its thirty-seventh session, in 2004, the Commission noted that the Working Group II had continued its discussions on a draft text for a revision of article 17 of the 1985 UNCITRAL Model Law on International Commercial Arbitration (“the Model Law”)⁹ on the power of an arbitral tribunal to grant interim measures of protection, and on a draft provision on the recognition and enforcement of interim measures of protection issued by an arbitral tribunal (for insertion as a new article of the Model Law, tentatively numbered 17 bis), including on how to deal with *ex parte* interim measures in the Model Law. The Commission also noted that the Working Group II had yet to complete its work in relation to draft article 17 ter dealing with interim measures issued by State courts in support of arbitration and in relation to the “writing requirement” contained in article 7 (2) of the Model Law and article II (2) of the New York Convention.

¹⁴ A/CN.9/539 and Add.1, and A/CN.9/553

¹⁵ Vienna, 30 August-3 September 2004, A/CN.9/568.

¹⁶ New York, 4-8 April 2005, A/CN.9/575.

Consideration of the topic by the Commission at its present Session

34. The Commission at its current session took note with appreciation of the report of Working Group II on the work at its forty-first¹⁷ and forty-second¹⁸ sessions.¹⁹ The Working Group II reported on its drafting of an article revising the UNCITRAL Model Law on International Commercial Arbitration, with respect to the provision of interim measures, including the question of whether interim measures can be ordered on an ex parte basis. The Commission noted that the Working Group II had yet to finalize its work on draft articles 17, 17 bis and 17 ter, including the issues of the form in which the current and the revised provisions could be presented in the Arbitration Model Law. As a matter of drafting the Commission also took note of the proposal that the revised text of the draft articles should not be included in the body of the Model Law but in an annex. The Commission expects that the Working Group II would complete its work in respect of written form for the arbitration agreement and enforceability of interim measures of protection for presentation to the Commission at its thirty-ninth session, in 2006.

Future work of the Commission

35. As regards that future work the Working Group II at its forty-second session (New York, 10-14 January 2005), had suggested the following issues for possible future work of the Commission: (i) arbitrability of intra-corporate disputes and other issues relating to arbitrability, e.g., arbitrability in the fields of immovable property, insolvency or unfair competition; (ii) issues arising from online dispute resolution; and (iii) the possible revision of the UNCITRAL Arbitration Rules. The Commission agreed that the possible future topics of interest to the Working Group II, could include legal issues relating to arbitrability, online dispute resolution and a review of the UNCITRAL Arbitration Rules, noting that a conference would be held in Vienna on 6-7 April 2006 to mark the 30th anniversary of those Arbitration Rules.

3. TRANSPORT LAW

36. The Commission, at its twenty-ninth session (1996), had considered a proposal to include in its work programme a review of current practices and laws in the area of international carriage of goods by sea, with a view to establishing uniform rules where no such rules existed and achieving greater uniformity in laws. Since then work has been carried out by the UNCITRAL Secretariat with the cooperation of other international organizations representing various industries. The Commission at its thirty-fourth session (2001), decided to entrust the preparation of draft instrument on transport law to the Working Group on Transport Law (Working Group III). As to the mandate of the work, the Commission decided that considerations should cover initially port-to-port transport operations (including liability issues). However, the Working Group III was given free hand to study the desirability and feasibility of dealing with door-to-door transport operations, or certain aspects of those operations.

37. At its thirty-seventh session, in 2004, the Commission reaffirmed its appreciation of the magnitude and complexities of the project, and expressed its support for the efforts

¹⁷ Vienna, 13-17 September 2004

¹⁸ New York, 10-14 January 2005

¹⁹ A/CN.9/569 and A/CN.9/573

of the Working Group III to accelerate the progress of its work, particularly in view of the Commission's agreement that 2006 would be a desirable goal for completion of the project, but that the issue of establishing a deadline for such completion should be revisited at its thirty-eighth session, in 2005. At that session, the Commission authorized the Working Group IV to hold its fourteenth and fifteenth sessions for two-week periods.

Considerations at the current session of the Commission

38. At the current session, the Commission took note of the report of the fourteenth²⁰ and fifteenth sessions²¹ of the Working Group III.²² The Working Group III reported on its development of a new international transport convention with multi-modal application, encompassing innovations such as electronic transport documents. The Commission expected that 2006 would be the desirable time for the completion of the project. The Commission appreciated the Working Group III and directed the Working Group III to complete the work as soon as possible.

5. SECURITY INTERESTS

39. The Commission, at its thirty-third session (2000), had considered a report of the Secretary-General on possible future work in the area of secured credit law.²³ The proposal had argued that the modern secured credit laws could have significant impact on the availability and the cost of credit and thus on international trade. It was also widely felt that modern secured credit laws could alleviate the inequalities in the access to lower-cost credit between parties of the developed countries and developing countries, and in the share such parties had in the benefits of international trade.

40. Reflecting on the note of the Secretariat on security interests in its thirty-fourth session (2001),²⁴ the Commission felt that work should focus on security interests in goods involved in a commercial activity, including inventory. After discussion, the Commission decided to entrust a working group with the task of developing an efficient legal regime for security interests in goods involved in a commercial activity. The Working Group on Security Interests (Working Group IV) held its first meeting in New York from 20 to 24 May 2002.²⁵

41. At its thirty-seventh session (2004), the Commission suggested that Working Group VI should consider covering, in addition to goods, including inventory, certain types of intangible assets, such as trade receivables, letters of credit, deposit accounts and intellectual and industrial property rights, in view of their economic importance for modern financing practices. With respect to the importance of intellectual and industrial property rights, reference was made to equipment financing transactions in which security was also often taken in the trademark relating to such equipment and to transactions in which security was taken over the entirety of a debtor's assets. There was broad support in the Commission for both suggestions. As to the substance of the draft legislative guide, it was stated that, while the guide could discuss the various workable approaches to the

²⁰ Vienna, 29 November-10 December 2004.

²¹ New York, 18-28 April 2005.

²² A/CN.9/572 and A/CN.9/576

²³ A/CN.9/475

²⁴ A/CN.9/496

²⁵ A/CN.9/WG.VI/Wp.2 AND Add 1-5 and 10.

relevant issues, it should also include clear legislative recommendations. It was also observed that, with respect to issues in which alternative recommendations were formulated, the relative merits of each approach, in particular for developing countries and countries with economies in transition, needed to be discussed in detail.

42. The Working Group IV, which is preparing a draft legislative guide on secured transactions, has held until the thirty-eighth session of the Commission, in 2005, seven one-week sessions during which it considered draft chapters of the legislative guide prepared by the Secretariat.

Consideration at the current session of the Commission

43. At its thirty-eighth session, the Commission had before it the reports of the sixth²⁶ and seventh²⁷ sessions of the Working Group IV.²⁸ The Working Group IV reported on its development of a draft legislative guide on secured transactions. The Commission appreciated the Working Group IV. In particular the Commission noted with appreciation that a complete consolidated set of legislative recommendations, which included, in addition to recommendations on inventory, equipment and trade receivables, recommendations on negotiable instruments, negotiable documents, bank accounts and proceeds from independent undertakings would be before the Working Group IV at its eighth session. The Commission requested the Working Group to expedite its work so as to submit the draft legislative guide to the Commission, at least for approval in principle in 2006, and final adoption in 2007.

6. FUTURE WORK ON INSOLVENCY LAW

44. A number of proposals were made for future work to be undertaken by the Commission on the topic of insolvency law, including on the treatment of corporate groups in insolvency and the use of cross-border protocols in transnational insolvency cases. The Commission agreed that in order to obtain the views of international organizations and insolvency experts on the proposed topics, an international colloquium should be held in Vienna from 14-16 November 2005.

THIRTY-NINTH SESSION OF THE COMMISSION

45. The Commission approved the holding of its thirty-ninth session in New York, from 19 June to 7 July 2006. The duration of the session might be shortened, should a shorter session become advisable in view of the draft texts produced by the various working groups.

²⁶ Vienna, 27 September–1 October 2004.

²⁷ New York, 24-28 January 2005.

²⁸ A/CN.9/570 and A/CN.9/574.

II. REPORT ON THE WORK OF THE UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT (UNCTAD)

1. This part of the report aims at highlighting some of the activities carried out in the year 2005 by UNCTAD's three Commissions, which are of special interest to AALCO Member States.

A. NINTH SESSION OF THE COMMISSION ON TRADE IN GOODS AND SERVICES, AND COMMODITIES

2. The ninth session of the Commission on Trade in Goods and Services, and Commodities was held from 14-18 March 2005. The excerpts from the Commissions report are as follows:

3. The Commission in the substantive issues adopted the agreed recommendations on Market access, market entry and competitiveness. The Commission decided that UNCTAD should enhance its work on the interrelationships between market access, market entry and competitiveness factors and their impact on exports of developing countries. UNCTAD should also examine the effects of non-tariff barriers. It should continue to work on the challenges and opportunities of trade liberalization, particularly in the area of preference erosion, as well as utilization and improvement of preferential schemes. Further, UNCTAD should continue to support South-South trade initiatives, including the Globalised System of Trade Preferences (GSTP).

4. The Commission also took note that the Fifth United Nations Conference to Review all Aspects of the UN Set of Principles and Rules for the Control of Restrictive Business Practices that will take place in Antalya (Turkey) in the November 2005 should provide a good opportunity to address anti-competitive practices that affect effective market entry of exports of developing countries.

5. The representative of India appreciated the UNCTAD's assistance to the GSTP and further she said that the third round of GSTP negotiations was expected to entail a package of substantial trade liberalization commitments based on mutual advantage and equitable distribution of benefits to all participants, promote economic complementarities and include concrete preferential measures for Least Developed Countries (LDCs). A Negotiating Committee had been set up, with two Negotiating Groups that met every week (one on rule-making and the other on market access). A timetable had been drawn up with the aim of completing the round by November 2006. The representative also invited the Members of the Group of 77 and China to join the negotiations and had attended the formal and informal sessions of the two working groups. The accession of new members would come together with the ongoing negotiations.

6. As in the case of Commodities, the Commission agreed and adopted recommendations that the UNCTAD should²⁹:

- Continue to implement a comprehensive approach in its efforts to contribute to commodity sector development, diversification and more effective participation in the supply chain, and in this regard implement fully the tasks assigned to it;
- Establish as soon as possible the International Task Force on Commodities, announced at UNCTAD XI in Sao Paulo; interested donors and institutions are invited to contribute to operationalizing the Task Force;
- Enhance its work in the area of commodity finance, in both the conceptual development of innovative schemes and assistance in their implementation, focusing on the contribution of finance to the generation by the commodity sector of overall development gains and benefits, and the dissemination of successful approaches; and
- Implement strong and broad-based capacity and institution building programmes in this area, covering both the public and the private sectors and national and international policies and actions.

7. The representative of Arab Republic of Egypt, speaking on behalf of the African Group, stressed that most African Countries were commodity-dependant. Problems arising from lack of capital, technology and human resources in complying with product standards had to be addressed, including through innovative financial mechanisms. The appropriate role of the state had to be acknowledged. African producers were concerned about trade barriers imposed by adverse international market structures and enterprise-level barriers. So, in this regard, UNCTAD had undertaken important work in this area, and analytical work to assist developing countries on issues related to competition law and policies, including at the regional level, should be strengthened.

8. The representative of People's Republic of China appreciated the UNCTAD's work in this area and emphasized the importance of financing trade in commodities. Developing countries efforts in this area would not be enough and would therefore have to be supported by developed countries and international organizations.

9. The Commission agreed and adopted recommendations on Trade in Services and Development Implications.³⁰ In this regard, UNCTAD should continue to strengthen its policy-oriented analysis, consensus building and capacity-building activities on services, with the support of the donor community, to contribute to assuring development gains for developing countries.

10. The representative of the People's Republic of China stressed the importance of mode 4 for sustainable development and it was very important with regard to services. Since developing countries lacked competitiveness in trade in services, developed countries should focus on liberalizing services sectors of specific interest to them, especially services involving the movement of natural persons. Non-tariff barriers acted

²⁹ As emphasized in the Sao Paulo Consensus paragraphs 64, 74 and 100 and as noted by the Report of the Expert Meeting on Financing commodity-based Trade and Development: Innovative Financing Mechanisms (TD/B/COM.1/EM.24/3).

³⁰ As emphasized in the Sao Paulo Consensus paragraph 99, and noted by the Report of the Expert Meeting on Trade and Development Aspects of Professional Services and Regulatory Frameworks (TD/B/COM.1/EM.25/3).

as major barriers to exports from developing countries and should be addressed in the WTO negotiations. UNCTAD's work in this area had an important role to play. The Indian representative also subscribed to this view and Africa's position was that trade in services provided opportunities for African countries in achieving the Millennium Development Goals. The development of infrastructural services sectors was of crucial importance to economic development, but most African Services suppliers suffered from limited resources and lack of competitiveness. Africa also insisted for a specific recommendation to foster dynamism in domestic services industries, access to technology through modes of supply, and movement of natural persons.

11. With regard to trade, environment and development, the Commission agreed and adopted the recommendations that UNCTAD should continue its policy-oriented analysis, consensus building and capacity building activities, with the support of the donor community in this area, and in particular, to develop the Consultative Task Force(CTF) on Environmental Requirements and Market Access for Developing Countries, strengthen its work under Bio-Trade initiative, assist developing countries to make use of the trade and investment opportunities arising from the Kyoto Protocol, including the Clean Development Mechanism (CDM), to identify tariffs and regulatory measures affecting trade in renewable energy goods and equipment, in ascertaining which developing countries have-or can develop-the capacity to supply components, and in their possible inclusion under the mandate provided for in para.31(iii) of the Doha Ministerial Declaration; and to continue exploring trading opportunities for environmentally preferable products.

B. NINTH SESSION OF THE COMMISSION ON INVESTMENT, TECHNOLOGY AND RELATED FINANCIAL ISSUES

12. The ninth session of the Commission on Investment, Technology and Investment was held 7-11 March 2005. The Commission adopted the agreed recommendations at that level and appreciated the contributions of UNCTAD in research and policy analysis, technical assistance, and capacity and consensus-building.

13. The Commission, in the case of Investment recommended that UNCTAD should continue its analytical work on foreign direct investment (FDI) and transnational corporations (TNCs) and their impact on development, especially its in-depth analysis of the policies and measures that can help developing countries in all regions attract FDI and harness it to the pursuit of their development goals. It encourages the UNCTAD's Secretariat to further its analysis of such trends and their policy implications, especially in the context of South-South cooperation. It should follow up on the work undertaken on FDI in services (tourism related), as most recently presented in the World Investment Report 2004. To enhance the capacity of FDI data collection and analysis in the case of developing countries, especially LDCs, the UNCTAD should intensify its support, in cooperation with other relevant international agencies, of developing countries efforts in this area.

14. In addition, the Commission emphasized the important contribution that investment, technology and enterprise competitiveness in achieving the MDGs, and the UNCTAD should:

- Support country-level processes of policy formulation and implementation, with a view to assuring countries to maximizing the benefits of FDI, through the UNCTAD programmes of investment policy reviews, investment guides, enterprise linkage development and related advisory services and capacity-building;
- Assist Governments of developing countries in their efforts to create an enabling regulatory environment for public-private partnerships and investment enterprises and projects providing basic services to the poor;
- Within its work programme on investment, technology transfer and intellectual property, assess ways in which developing countries can develop their domestic productive capability in the supply of essential drugs in cooperation with pharmaceutical companies;
- Assist Governments of developing countries in promoting the application of science and technology in achieving the international development goals, including those contained in the Millennium Declaration, in particular through the UNCTAD science, technology and innovation policy reviews and the work of the Commission on Science and technology.
- Continue analytical work and the exchange of information and experiences in the area of positive corporate contributions to the social and economic development of host developing countries, as foreseen by the Sao Paulo Consensus;
- Engage stakeholders in action-oriented policy dialogue, including through the UNCTAD/ICC Investment Advisory Council.

15. The representative of the Democratic Republic of Congo, speaking on behalf of the Group of 77 and the People's Republic of China, noted the substantial increase in FDI flows in 2004 and in the share received by developing countries. Further, with regard to investments, the G77 and China were concerned about the impact of investment disputes and great importance attached to the Investment Policy Reviews and support for the implementation of their recommendations. The collaboration between the World Association of Investment Promotion Agencies (WAIPA) and UNCTAD was called for. The representative of Arab Republic of Egypt spoke on behalf of the African Group, expressed appreciation for the activities on the Report of the Division on Investment, Technology and Enterprise Development, 2004. His group requested UNCTAD to review FDI trends and policy issues related to the impact on home and host countries of outward FDI from developing countries, particularly in the South-South context.

16. The representative of Thailand emphasized their interest in the work related to Research and Development (R&D) based FDI and in the activities related to data collection. He said that Thailand was currently engaged in a number of trade negotiations involving investment issues, and UNCTAD support in defining the development aspects of such negotiations was required.

17. The Commission fixed the provisional agenda for the tenth session and topics of the other expert meetings for the year 2005 includes Expert Meeting on Positive Corporate Contributions to the Economic and Social Development of Host Developing Countries and Expert Meeting on Capacity Building in the Area of FDI: Data Compilation and Policy Formulation in Developing Countries.

C. NINTH SESSION OF THE COMMISSION ON ENTERPRISE, BUSINESS FACILITATION AND DEVELOPMENT

18. The ninth session of the Commission on Enterprise, Business Facilitation and Development was held from 22 to 25 February 2005. The Commission adopted the agreed recommendations on improving the competitiveness of SMEs through enhancing productive capacity; efficient transport and trade facilitation to improve participation by developing countries in international trade and electronic commerce strategies for development.

19. With respect to the item on improving the competitiveness of SMEs through enhancing productive capacity, the Commission agreed that the internationalization of enterprises is one of the essential ways for strengthening the competitiveness of developing country firms. It requested UNCTAD to continue its work on policy analysis in the area of enterprise competitiveness. In particular, UNCTAD should further analyse policy options for enhancing the competitiveness of developing country firms through their internationalization, including by developing linkages with larger international firms, integration into global value chains, and engaging in direct outward investment. Further, the Commission agreed that UNCTAD should continue its efforts in the area of technical assistance and capacity building with a view to contributing to the development of a SME-conducive environment and to unleashing the potential of entrepreneurship in developing countries, especially the least developed countries. It also requested to explore the ways in which issues of SME development could be better addressed. It also requested to explore ways of providing assistance to tsunami-affected countries in their rehabilitation efforts in the area of SME competitiveness.

20. The Commission further requested the UNCTAD to undertake a preliminary study on the possible development of a competitiveness analysis framework and relevant indicators to support progress in building a sound SME sector in developing countries and countries with economies in transition.

21. With regard to this Item, the representative of Philippines, speaking on behalf of the Asian Group and People's Republic of China, highlighted the need to explore ways of working towards a more nurturing international environment to improve the competitiveness of SMEs, in particular to enhance good economic governance at the global level and good corporate governance at the domestic level. The representative of Ghana represented on behalf of African Countries observed that there was a strong need to improve the productive and supply capabilities of domestic companies, especially SMEs. UNCTAD's work on enterprise internationalization, as well as on clusters and global value chains, was particularly relevant to the integration of African companies into the global economy, while work on technical assistance and capacity building supported the development of African entrepreneurship.

22. The representative of the Islamic Republic of Iran said that, on the issue of enhancing enterprise competitiveness, SMEs in developing countries did not necessarily

benefit from TNC-SME linkages, mostly because of structural weaknesses in SMEs. A solution might involve strengthening SME capacity to integrate into production and distribution networks and to establish mutually beneficial alliances with other SMEs in developing countries.

23. On the item, efficient transport and trade facilitation to improve participation by developing countries in international trade, the Commission recognized the importance of access to adequate transport and logistics services by developing countries as a prerequisite for the achievement of the international development goals. Given the long-term nature of the problems addressed in the area of transport and trade facilitation and based on the Sao Paulo Consensus, the UNCTAD should continue to:

- Keep under review and monitor developments relating to efficient transport and trade facilitation and examine their implications for developing countries;
- Provide assistance to developing countries in the ongoing negotiations relating to the Doha Development Agenda at the WTO. In particular, UNCTAD, in cooperation with other relevant international organizations, should strengthen assistance to the trade facilitation negotiations process. It should also seek the support of the donor community in expanding its activities within the Global Facilitation Partnership;
- Provide technical assistance and capacity building activities in the area of transport and trade facilitation, including on the use of automated systems to improve international trade and transport management. Special attention should be paid to the improvement of transit arrangements for the landlocked and transit developing countries;
- Monitor developments and disseminate information on security measures affecting the international trade and transport of developing countries and analyse their potential implications;
- Cooperate with other intergovernmental and non-governmental organizations in their work relating to the development of international legal instruments affecting international transport and trade facilitation, including multimodal transport.

24. The representative of Democratic Republic of Congo represented on behalf of Group of 77 countries and People's Republic of China, highlighted the increasing importance of international transport services and trade facilitation for the competitiveness of developing countries, particularly in the context of the "new geography of trade". The representative of Philippines, speaking on behalf of the Asian Group and People's Republic of China emphasized that the landlocked, transit and archipelagic countries in the Asian region faced multiple transport challenges, and insisted the implementation of the Almaty Plan of Action and the Sao Paulo Consensus and the preparation of a legal framework on multimodal transport.

25. On the item of Electronic commerce strategies for development, the Commission adopted and agreed that UNCTAD should:

- Carry out research and policy-oriented analytical work on the implications for trade and development of the different aspects of ICT and e-business that fall within UNCTAD's mandate, with a focus on those sectors of main interest for developing countries. Particular attention should be paid to supporting the consideration of the trade and development dimensions of international discussions

pertaining to ICT and e-business, including in the contexts of the World Summit on the Information Society (WSIS), the high-level plenary meeting of the General Assembly to review the implementation of the Millennium Declaration and WTO;

- Continue with an appropriate implementation strategy, to provide a forum for international discussion and exchange of experiences concerning ICT, e-business and their applications, including dissemination of best practices and standards, in the promotion of trade and development.
- Continue to work in the field of the measurement of ICT, including the development of statistical capacity, to enable developing countries to measure the access, use and impact of ICT and to monitor progress in this field; and
- Contribute to capacity building in the area of ICT for development, particularly in trade sectors of special interest to developing countries or those that can be more profoundly enhanced through the use of ICT, such as tourism SME development and poverty alleviation.

26. The representatives of Group of 77 and Islamic Republic of Iran expressed its appreciation for UNCTAD's work in analyzing the economic implications of ICT for developing countries through the *E-Commerce and Development Report*, and highlighted the economic importance of the e-tourism initiative and the multiple potential benefits of free and open source software, as well as the need to support the development of the necessary capacities in developing countries in order to formulate successful ICT policies, the representative of Islamic Republic of Iran suggested that at the same time, the digital divide, governance of the Internet versus governance on the Internet, the implementation of the WSIS Declaration of Principles and Plan of Action, and digital authentication merited more attention.

27. The Commission also set the provisional agenda for the tenth session to be held in 2006 and it would include, improving the competitiveness of SMEs through enhancing productive capacity, efficient transport and trade facilitation to improve participation by developing countries in international trade and ICT and e-business for development.

III. REPORT ON THE WORK OF INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW (UNIDROIT)

1. This part of the report highlights the UNIDROIT's activities related to its current work programme.³¹

A. INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT

2. It may be recalled that the Convention on International Interests in Mobile Equipment came into force on 1 April 2004. The Convention was opened for signature in Cape Town on 16 November 2001. So far, five Contracting States have ratified the Convention including Ethiopia, Nigeria, Pakistan, Panama and the United States of America. Resolution No. 2 of the Conference invited the International Civil Aviation Organization (ICAO) to accept the functions of the Supervisory Authority of the International Registry, and pending that acceptance established a Preparatory Commission to act as Provisional Supervisory Authority. On 15 June 2005, the ICAO council decided to confirm its acceptance of such functions and would assume the role of Supervisory Authority of the International Registry upon the entry into force of the Convention and Protocol. One of the Convention's central elements is the establishment of an International Registry to enable the registration of international interests, assignments of international interests and other interests and transactions that are capable of registration under the Convention and Protocol.

3. During the year 2005, an important development was that the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment, 2001 would come into force by 1 March 2006 after the entry of Government of Malaysia which deposited its instrument of accession to the Protocol on 2 November 2005. The entry into force of the Protocol would also trigger the entry into force of the Convention on International Interests in Mobile Equipment as regards aircraft equipment, pursuant to Article 49(1) of the Convention, on 1 March 2006. Prior to the deposit of the Government of Malaysia's, the instruments of ratification/accession had been deposited by

³¹ The Working method of the Institute is as follows: Once a subject has been entered on UNIDROIT Work Programme, the Secretariat will draw up a preliminary "Comparative law report" designed to ascertain the desirability and feasibility of Law reform. If the Governing Council is satisfied that the preliminary report has made out a case for taking action, it will ask the Secretariat to convene a study Group or the preparation of a preliminary draft convention or model laws, legal guides, etc. Typically, in the case of a preliminary draft Convention, these will consist in its asking the Secretariat to convene a *committee of governmental experts* for the finalization of a draft convention capable of submission for adoption to a diplomatic conference. In the case of one of the alternatives to a preliminary draft Convention not suitable by virtue of its nature for transmission to a committee of governmental experts, the Council will be called upon to authorize its publication and dissemination by UNIDROIT in the circles for which it has been prepared. The 2002-2004 Triennium Work Programme as approved by the UNIDROIT General Assembly, December 2001 is as follows: International Interests in Mobile Equipment; Principles of International commercial Contracts; Franchising; Principles and Rules of Transnational Civil Procedure; Transactions on Transnational; Model Law on Leasing; and Uniform Rules Applicable to Transport. The 84th Session of the Governing Council adopted for transmission to the General Assembly for approval of the Triennial Work Programme for the period 2006-2008 at Rome from 18-20 April 2005.

seven states namely, Ethiopia, Nigeria, Ireland, Oman, Pakistan, Panama and the United States of America.

4. With regard to the Draft Protocol to the Cape Town Convention on Matters specific to Railway Rolling Stock, the Rail Registry Task Force had been established by the Joint Committee of Governmental Experts at its first session held its fourth session in Rome from 22 to 24 February 2005 and it was preceded by a Cape Town Registry Workshop on 21 February 2005 during which Mr. Jeffrey WOOL, Special Advisor on International Equipment Finance introduced and illustrated the solutions chosen for the international registration system under the Aircraft Protocol. Some of the experts said that for these international registration system could be applied to underpin the future Rail and Space Protocols.

B. PRINCIPLES OF INTERNATIONAL COMMERCIAL CONTRACTS

5. The 84th Session of the Governing Council of UNIDROIT was held in Rome from 18-20 April 2005. The Council observed that, in 2004, UNIDROIT Principles of International Commercial Contracts had been published in three official language versions namely, English, French and Italian. Similarly, a 'Chinese integral version has also been published and translations in Farsi, Greek, Korean, Romanian, Russian, Slovak, Thai and Vietnamese were under preparation. The Council expressed its satisfaction at the completion of a draft Uniform Act on contracts for the *Organisation pour l'Harmonisation en Afrique du Droit des Affaires* (OHADA) by Professor Marcel FONTAINE, Member of the Principles Working Group. The Draft is significantly inspired by the Principles of International Commercial Contracts 2004.

C. PRINCIPLES AND RULES OF TRANSNATIONAL CIVIL PROCEDURE

6. The Council welcomed the adoption of the Civil Procedure Principles by the Annual Meeting of the American Law Institute which followed, in May 2004, the UNIDROIT Governing Council's own decision a month earlier.

D. TRANSACTIONS ON TRANSNATIONAL AND CONNECTED CAPITAL MARKETS

7. The Council was apprised of the preparation of the first session of a Committee of Governmental Experts, convened to discuss the preliminary Draft Convention on Harmonised Substantive Rules regarding Securities Held with an Intermediary, from 9 to 20 May 2005.³² The Secretariat invited the UNIDROIT Member States and several international governmental and non-governmental organizations to consider the preliminary Draft Convention on Harmonised Substantive Rules regarding Securities Held with an Intermediary. Mr. Hans KUKN (Switzerland) was appointed Chairman of the Committee. Mr. Maxime PARE (Canada) and Mr. R.S. LOONA (India) were elected first and second Vice-chairman. The second session of the Committee of Governmental Experts is scheduled for 6 to 17 March 2006.

³² The study group on Harmonised Substantive Rules regarding Securities Held with an Intermediary, after its 5th Session held in Budapest, Hungary from 18 to 22 September 2004, laid the preliminary draft instrument before the UNIDROIT Governing Council in November 2004. the Governing Council approved this text and the accompanying Explanatory Notes by correspondence on 23 December 2004.

IV. REPORT ON THE WORK OF THE HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW

1. This part of the report seeks to provide an overview of the major activities of the Hague Conference during the year 2004.³³

A. SPECIAL COMMISSION ON MAINTENANCE OBLIGATIONS

2. The Working Group on the Law Applicable to Maintenance Obligations (WGAL) established by the Special Commission on the International Recovery of Child Support and Other Forms of Family Maintenance of May 2003 proceeded with its task in accordance with the mandate received from the Special Commission in June 2004. During the first meeting, held in The Hague on 15 June 2004, the WG developed a first sketch of provisions relating to applicable law, and outlined the elaboration of a Questionnaire relating to the law applicable to maintenance obligations. That Questionnaire was then developed by means of an electronic mailing list, with assistance from the Permanent Bureau of the Hague Conference. It was sent to all Member States of the Hague Conference, States Party to the *New York Convention of 20 June 1956 on the Recovery Abroad of Maintenance*, other States invited to attend the Special Commission meeting in June 2004, and to the relevant governmental and non-governmental international organization's in early September 2004. Nearly, 29 jurisdictions had responded to the Questionnaire. The WG met a second time in The Hague on 7 and 8 February 2005. The purpose of that meeting was to analyse the responses to the Questionnaire and to make proposals for the Special Commission meeting to be held in April 2005. The WGAL was able to agree on a number of proposals which are the object of this Report. With a concern for efficiency, the WGAL considered it appropriate to enter some of its proposals in a sketch relating to the applicable law, appended hereto (the "Sketch"). On 15 March 2005, the Administrative Co-operation Working Group of the Special Commission filed its report on the International Recovery of Child Support and Other Forms of Special Maintenance of the Special Commission of April 2005. The Working Committee at The Hague had drafted a tentative Draft Convention on the International Recovery Support and Other Forms of Family Maintenance on 5-9 September 2005.

B. FUTURE HAGUE CONVENTION ON INTERNATIONAL JURISDICTION AND FOREIGN JUDGMENTS IN CIVIL AND COMMERCIAL MATTERS

³³ The principal method used to achieve the purpose of the Conference consists in the negotiation and drafting of multilateral treaties or Conventions in the different fields of private international law. After preparatory research has been done by the secretariat, preliminary drafts of the Conventions are drawn up by the Special Commissions made up of governmental experts. The drafts are then discussed and adopted at a Plenary Session of the Hague Conference, which is a diplomatic conference. The work programme for the period 1996-2004 includes issues relating to: Maintenance Obligations; Legalisation, Service & Evidence; International Child Abduction; Intercountry Adoption; Jurisdiction and foreign judgments in civil and commercial matters Electronic commerce; and Cooperation with UNCITRAL on Insolvency.

The twentieth ordinary session of Hague Conference on Private International Law was held from 14-30 June 2005.³⁴ In this session, the Convention on Choice of Court Agreements was concluded and signed by the Member States of the Conference. The preliminary draft Convention was prepared by the Special Commission on Jurisdiction, Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters (Annex to Prel. Doc. No 26) and in the proposals presented by the Drafting Committee following its meeting held from 18-20 April 2005 (Prel. Doc. No 28).

3. The Convention on Choice of Agreements concluded more than a decade of negotiations that began in 1992 with a request from the United States of America for the negotiation of a Convention on Jurisdiction and the Recognition and Enforcement of Foreign Court Judgments.

4. The Convention was designed to “promote international trade and investment through enhanced judicial co-operation”, and the Convention would govern international business-to-business agreements that designate a single court, or the courts of a single country, for resolution of disputes. It will not apply to agreements that include a consumer as a party.

5. The Convention sets out three basic rules: a) the Court chosen by the parties in an exclusive choice of court agreement has jurisdiction; b) if an exclusive choice of court agreement exists, a court not chosen by the parties does not have jurisdiction, and must decline to hear the case; and a judgment resulting from jurisdiction exercised in accordance with an exclusive choice of court agreement must be recognized and enforced in the courts of other Contracting States.

6. The Convention includes safeguards acknowledging governmental interests that might otherwise be frustrated by the parties choice of court. Of particular concern during the negotiations was the application of the Convention to matters of intellectual property rights. Patent, trademark and other such rights that are often considered to be within the exclusive jurisdiction of the courts of the state granting the right, particularly where registration is involved.

C. INTERCOUNTRY ADOPTION

8. The second meeting of the Special Commission on the practical operation of The Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption was held from 17-23 September 2005. In its recommendations, the Special Commission gave its general endorsement to the draft Guide to Good Practice dealing with Implementation of the 1993 Convention prepared by the Permanent Bureau. It requests the Permanent Bureau, with the assistance of a group of experts appointed by the Special Commission, to review the draft in the light of comments made in the Special Commission on which there was consensus, and in particular by the addition of appropriate references to the situation of children with special needs.

9. The Special Commission stressed the importance of co-operation among Central Authorities with overall supervision responsibilities under the Convention; accreditation of

³⁴ The text of the Final Act of the Twentieth Session available at http://www.hcch.net/index_en.php?act=conventions.text&cid=98

private bodies licensed to work in the field of intercountry adoption; giving preference to in-country family care solutions over intercountry adoption; adoption of special needs children' intercountry adoption among relatives; adequate preparation and counseling of future adoptive parents and financial issues.

10. The Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption, considered to be one of the most successful international treaties drawn up by the Hague conference on Private International Law. Recently, the People's Republic of China ratified the Convention and joined as the 67th State party to the Convention.