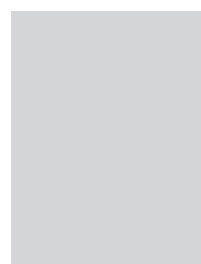
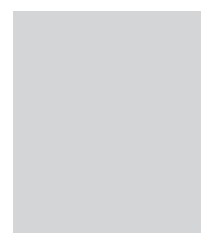


## UNCITRAL's work in promoting sound insolvency regimes

Efficient and effective insolvency regimes are key to successful international trade. As part of its effort to modernise and harmonise insolvency regimes around the world, the United Nations Commission on International Trade Law (UNCITRAL) published two texts: a Model Law on Cross-Border Insolvency in 1997 and a Legislative Guide on Insolvency Law in 2004. This article looks at why these two texts came about, their aims, and work UNCITRAL has since undertaken to elaborate on them.



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The focus of this article, making an insolvency system work, goes to the heart, at least in so far as it relates to establishing an effective and efficient legal framework, of UNCITRAL's work on insolvency since the early 1990s.

UNCITRAL was established by the United Nations General Assembly in 1966 with a general mandate to promote the progressive harmonisation and unification of international trade law – it had become evident that divergences in the laws of different states regarding international trade constituted one of the obstacles to the development of world trade. UNCITRAL's early work on international trade law covered topics such as the sale of goods, dispute resolution and transport, and it was not until the early 1990s that insolvency was suggested as a topic for possible future work.<sup>1</sup>

Since that time, UNCITRAL has completed two texts on insolvency, the UNCITRAL Model Law on Cross-Border Insolvency in 1997 and the UNCITRAL Legislative Guide on Insolvency Law in 2004, and is currently working on two further insolvency projects dealing with corporate groups and facilitating cooperation, direct communication and coordination of cross-border insolvency proceedings, including the use of protocols.

### Proposing a topic for work by UNCITRAL

A range of factors can trigger a proposal for work by UNCITRAL, for example developments in technology, changes in business practices, international trends and developments, economic and financial crises and other forces affecting international trade.

A proposal can originate in a number of ways, for example by a government approaching the Commission directly, as a result of consultation with various international organisations or of special colloquiums and seminars, or because a topic that is related to a subject is already under discussion in the working groups.

Before UNCITRAL can decide whether to undertake work on a particular topic, there must be an examination of the relevant laws, whether domestic or international, with emphasis on the efficiency and effectiveness of those laws for achieving certain policy objectives.

Depending on the topic, that examination might reveal the absence of the necessary legislative frameworks or a wide divergence of approaches in different

jurisdictions. Some jurisdictions might have well developed laws on the topic while others have no laws addressing the issue at all. For example, preparatory studies on cross-border insolvency regimes undertaken before starting work on the Model Law indicated the absence of legislative frameworks that would enable the quick, coordinated response required to ensure that cross-border insolvency proceedings could be conducted effectively and efficiently.

The question of whether a particular topic should be added to UNCITRAL's work programme involves the consideration of a number of factors and how they affect that particular area, for example: its global significance; whether it is of special interest to developing countries; and the desirability of responding to developments in technology and changing trends in commercial practice. The decision to undertake work also depends on the Commission agreeing that work on that particular topic can be successfully completed and a widely accepted and adopted text developed.

## The UNCITRAL Model Law on Cross-Border Insolvency

### Background

As trade and investment expanded globally, the number of cross-border insolvency cases increased. However, this global expansion was not accompanied by the development of legal regimes that were equipped to address insolvency cases of a cross-border nature. Therefore the suggestion<sup>2</sup> to consider insolvency law duly noted the lack of harmonisation in insolvency proceedings in general, as well as problems encountered in international insolvency proceedings, such as clashes over jurisdiction and unequal treatment of foreign and domestic creditors.

There were (and still are, in many cases) numerous obstacles to judicial cooperation, access to courts and recognition of foreign proceedings. This is mainly due to the diversity of approaches taken in different jurisdictions and the lack of satisfactory legal frameworks. These obstacles frequently result in inadequate and uncoordinated approaches that not only hamper the rescue of financially troubled businesses and the fair and efficient administration of cross-border insolvencies, but also impede the protection and maximisation of the value of the assets of insolvent debtors and are unpredictable in their application.<sup>3</sup>

### Development of the text

The focus of UNCITRAL's work was to develop a text establishing basic principles and threshold rules that would enable a quick and efficient response to cross-border insolvency cases, while respecting national procedural and judicial systems. The Model Law on Cross-Border Insolvency does not suggest material changes to national insolvency laws, but rather focuses on the coordination of insolvency proceedings in different jurisdictions, providing an interface between those different laws. A model law does not bind states, but gives them the opportunity to fit the text into their national laws, its flexibility and non-binding character often making it easier for states to accept.

Throughout the preparatory work, the drafters assumed that the final text would be a model law rather than a convention. One reason for this was the close relationship between insolvency law and national judicial and civil procedure laws. When international negotiations, of the type conducted by UNCITRAL on a range of legal topics, implicate issues related to national laws and procedures, experience has shown that it is often difficult to agree on solutions.

### What is a model law?

A model law is a legislative text that states are recommended to enact as part of their national law. It is an appropriate vehicle for modernising and harmonising national laws when it is expected that states will wish or need to adjust the text of the model law to accommodate local requirements, or where strict uniformity is not necessary or desirable.

It is this flexibility that makes a model law potentially easier to negotiate than a text containing obligations that cannot be altered. It also promotes greater acceptance of a model law than a convention dealing with the same subject.

Despite this flexibility, states are encouraged to make as few changes as possible when incorporating a model law into their legal system so as to increase the likelihood of achieving a satisfactory degree of unification and to provide certainty about the extent of unification (The UNCITRAL Guide, 2007, paras 34-35, United Nations publication, ISBN 978-92-1-133768-6).

Moreover, the working group's desire to finalise and adopt a text in 1997 was accompanied by recognition that negotiating a treaty would require more work and the resulting text would likely prove difficult to accept. Noting the lack of success in achieving treaties on cross-border insolvency, the International Bar Association was of the view that "prospects for adopting legislation that would genuinely improve the real world of cross-border insolvency lay in model legislative provisions".<sup>4</sup> Other delegates felt model provisions should be adopted before any feasibility of preparing a treaty was considered; because the procedure for ratifying and adopting a treaty is often complex and protracted, a treaty could not improve the situation regarding cross-border insolvency in the short term.

### The main thrust of the Model Law

The Model Law focuses on what is important for insolvency proceedings – quick action to avoid dissipation of assets.<sup>5</sup> The text is organised around four key elements:

- access to local courts for representatives of foreign insolvency proceedings and for creditors
- according recognition to foreign insolvency proceedings, where those proceedings meet the definition contained in the Model Law
- providing relief to assist those recognised foreign proceedings
- facilitating cooperation among the courts of states where the debtor's assets are located.

To enable a quick response, the court may grant provisional relief to protect the assets of the debtor as soon as the foreign representative has applied for recognition. The decision to recognise the foreign proceedings should be taken quickly, and should be accompanied by an automatic relief of a kind specified in the law. In this respect, the Model Law applies neither the law of the recognising jurisdiction nor the law of the foreign proceedings, specifying the types of relief that should be available to assist those foreign proceedings. In some cases, the relief available under the Model Law might be broader than the relief available under local law.

The Model Law also aims to further the cooperation between courts involved in different insolvency proceedings by calling on them to cooperate and permitting them to communicate freely with foreign counterparts or the foreign insolvency representatives, in order to prevent dissipation, fraudulent concealment of assets or liquidation without reference to other more advantageous solutions.

Cooperation between courts in cross-border insolvency gives creditors better protection and enhances the debtor's interests. Cooperation allows courts to act in concert, treating the debtor's assets as a whole while considering the rights of all creditors when decisions are made. It prevents courts from working at cross-purposes and it allows all courts and participants to have full knowledge of all of the proceedings. As the idea of courts cooperating and communicating is fairly new to some jurisdictions, the Model Law includes a list of possible forms of cooperation.

### Countries that have adopted the UNCITRAL Model Law

Country	Year
Eritrea	1998
Japan	2000
Mexico	2000
South Africa	2000
Montenegro	2002
Poland	2003
Romania	2003
Serbia	2004
British Virgin Islands, overseas territory of the United Kingdom of Great Britain and Northern Ireland	2005
United States	2005
Columbia	2006
United Kingdom	2006

## The UNCITRAL Legislative Guide on Insolvency Law

### Background

The various financial crises of the mid to late 1990s exposed weaknesses in not only the insolvency and debtor-creditor laws of the affected countries but also in the structure of the international financial system. In Asia, for example, "the crisis brought to the fore the failings of the insolvency regimes of the region, such as the lack of frameworks for the systematic restructuring of debt or the efficient liquidation of businesses incapable of being restructured, which posed impediments to economic recovery, complicated the rehabilitation of financial sector institutions, stifled foreign investment and inhibited the growth of the region's domestic debt markets".<sup>6</sup>

The efficacy of insolvency laws and practices became a recurring theme in a number of international forums and

it was increasingly recognised that there was a serious and urgent need to strengthen national insolvency regimes, not only as a means of crisis prevention but also of crisis management. A number of international groups and organisations started working in the late 1990s on ways of improving national insolvency regimes, including the G22,<sup>7</sup> the Asian Development Bank (ADB),<sup>8</sup> the European Bank for Reconstruction and Development (EBRD),<sup>9</sup> the International Monetary Fund (IMF)<sup>10</sup> and the World Bank.<sup>11</sup>

At the same time, UNCITRAL received a proposal from Australia to undertake work on harmonising substantive insolvency law.<sup>12</sup> The proposal recognised that past efforts to address insolvency laws and policies through forums at the global and even the regional level had met with mixed results.<sup>13</sup>

Harmonising insolvency laws is problematic; those laws must be in harmony with the relevant local legal, business and cultural frameworks, and as such reflect a diversity of functions, national purposes and public policy objectives. Insolvency laws interact with other national laws and policies, are closely related to other legal rules and statutory provisions governing, for example, property, contracts, companies, financial transactions, partnerships and secured transactions. To be effective they must be supported by an appropriate institutional framework, including, for example, courts and tribunals, a profession of insolvency practitioners and insolvency regulators. A consequence of the interaction of these domestic factors is that an insolvency regime that is successful in one jurisdiction will not necessarily work effectively in another, particularly where different weight or priority is attached to the different factors.

The essence of the Australian proposal was, however, that notwithstanding these difficulties, it should be possible to crystallise from successful insolvency regimes basic essential principles that should be reflected in a country's insolvency laws and that assist in giving effect to the public and international policy objectives that countries sought to achieve through such laws.<sup>14</sup>

The proposal was directed to UNCITRAL because it successfully concluded the UNCITRAL Model Law on Cross-border Insolvency and is consequently familiar with national policy issues connected with insolvency, and because UNCITRAL working methods offer the opportunity for broad participation and discussion. It was also suggested that taking on such work would not only advance agreement on the technical content of national approaches to insolvency systems, but the very existence of a working group, and its resultant

product (i.e. the Legislative Guide), would also heighten awareness in developing economies of the importance of insolvency law, thereby raise the national priority given to implementing insolvency law reforms.<sup>15</sup>

The first draft of the UNCITRAL Legislative Guide on Insolvency Law was considered by an UNCITRAL working group in July 2001 and the final text was adopted by UNCITRAL in June 2004.

### **The aim of the Guide**

The purpose of the Guide is to help establish an efficient and effective legal framework to address the financial difficulty of debtors. It is intended as a reference tool for national authorities and legislative bodies when preparing new laws and regulations or reviewing the adequacy of existing ones. The advice in the Guide aims to strike a balance between public policy concerns, addressing the debtor's financial difficulty as quickly and efficiently as possible and the interests of the various parties directly concerned with that financial difficulty, principally creditors and other parties with a stake in the debtor's business.

The Guide identifies a number of key objectives of an effective and efficient insolvency law and discusses issues central to the design of that law. These issues range from the types of procedures available to address insolvency (for example the increasing use and importance of tools other than formal court proceedings, such as restructuring negotiations entered into voluntarily between a debtor and its key creditors, which are not regulated by the insolvency law) through the commencement of proceedings; the participants in those proceedings and their respective rights and duties; the effects of commencement of proceedings, including application of a stay; treatment of assets and contracts; management of the proceedings, including claims and priorities; to the conclusion of the proceedings. Despite numerous differences in policy and legislative treatment, those objectives and key issues are recognised in many legal systems.<sup>16</sup>

The Guide does not provide a single set of model solutions to address the issues central to an effective and efficient insolvency law, but helps the reader to evaluate the different approaches available and to choose the one most suitable in the national or local context. The first section of each chapter contains a commentary identifying the key issues on a particular topic and analyses the various approaches adopted by insolvency laws. The second part contains a set of recommended legal principles dealing more specifically with how those key issues should be addressed in an insolvency law. It also includes a statement

of the purpose of provisions on a particular topic in an insolvency law and an outline of the content recommended for inclusion in those provisions.

These recommendations are intended to help establish a legal framework for insolvency that reflects modern developments and trends. They are not meant to be enacted as part of national law. Rather, they outline the core issues that it would be desirable to address in that law, with some recommendations offering guidance on how certain provisions might be drafted.

The recommendations adopt different levels of specificity, depending on the issue. Some use legal language to detail how a particular issue should be addressed in an insolvency law, reflecting a high degree of consensus regarding the approach to be adopted. Others identify key points to be addressed by an insolvency law on a particular topic and offer other approaches, indicating the existence of different policy and procedural concerns that might need to be considered. By adopting this flexible, soft law approach, the Guide can address issues on which, at the time the work was started, it was thought impossible to agree.

The Guide recognises that other areas of law affect both the design of an insolvency law and the conduct of insolvency proceedings commenced under that law. It also recognises that for an insolvency regime to be successfully implemented, various measures beyond the establishment of an appropriate legal framework are required, in particular an adequate institutional infrastructure, organisational capacity, technical professional expertise and appropriate human and financial resources.

Although these matters are discussed in the commentary, they are not generally addressed in the recommendations, except where they relate to the insolvency professional appointed to administer an insolvency estate. This is because UNCITRAL's mandate covers the harmonisation of law but does not extend to the detail of institutional and regulatory frameworks required to make the implementation of those laws effective.

Those issues are, however, addressed by the World Bank's Principles and UNCITRAL has worked closely with the World Bank to develop a unified standard that the Bank and the IMF can use when assessing a country's institutional practices against an internationally recognised standard and, if needed, provide recommendations for improvement. That standard ensures that the complementary perspectives of these two publications can serve as important reference points for countries to evaluate and strengthen their

insolvency and creditor rights systems in line with generally recognised standards of good practice that cover not only the legislative but also the institutional and regulatory frameworks.

## Extending the legislative framework

The successful completion of the Model Law and the Legislative Guide led in 2006 to a series of proposals for further work in insolvency. These proposals included:

- treatment of corporate groups in insolvency
- cross-border insolvency protocols in transnational cases
- post-commencement financing in international reorganisations
- directors' and officers' responsibilities and liabilities in insolvency and pre-insolvency cases
- commercial fraud and insolvency.<sup>17</sup>

While the Guide was being developed, the topics of treatment of corporate groups in insolvency and post-commencement financing arose. Recognising the magnitude and complexity of the first topic and its potential to overwhelm the deliberations on the Guide, treatment of the subject was limited to a brief introduction of some of the issues.<sup>18</sup> Post-commencement financing, however, was addressed in some detail, but only regarding an individual debtor in the domestic context;<sup>19</sup> issues arising specifically from post-commencement financing in a corporate group context involving cross-border proceedings were not taken into account. Both topics raise issues increasingly encountered in insolvency proceedings, but generally not addressed in national laws.

In considering the proposal for work on these topics, the Commission acknowledged that further work would build on and complement what had already been completed. It was also noted that the proposal on cross-border insolvency protocols was closely related to and complemented the promotion and use of the Model Law on Cross-Border Insolvency, Article 27 of which refers to "agreements concerning the coordination of proceedings" as being one possible means of implementing the cooperation referred to in chapter IV of the Model Law. At the time of that discussion in 2006, the Model Law had been enacted by 11 jurisdictions and was the subject of increasing interest and discussion. It was therefore considered appropriate to see how the implementation of the Model Law's coordination and cooperation provisions could be facilitated by making the legal and judicial experience with respect to the negotiation, use and content of

protocols available, in some form, to the international legal community.<sup>20</sup>

A working group is now developing a text on corporate groups, both in the domestic and cross-border contexts, which includes post-commencement financing. Two working group meetings have so far been held, the first in December 2006 and the second in May 2007.<sup>21</sup>

The proposal to consider this work noted that the great majority of domestic insolvency and corporate law regimes do not address the treatment of corporate groups in specific legislation, or at all. In some other regimes, the issues that arise in insolvencies within corporate groups are dealt with by somewhat “creative” practices that rely heavily on a pragmatic approach by the courts for their legitimacy.<sup>22</sup> Accordingly, there is little existing law that could be the subject of harmonisation in the sense in which that term has traditionally been used in UNCITRAL.

The work is therefore based on the Legislative Guide and, taking its recommendations as a starting point, the working group is examining whether those recommendations are equally applicable in the context of a corporate group. If they are not, the working group will look at changes that might need to be made to ensure the efficient and effective conduct of insolvency proceedings involving members of a corporate group. The final form of that work has yet to be decided.

Some difficult issues being considered include:

- arriving at a clear working definition of “a corporate group” to consider and determine the scope of the substantive issues
- the interaction, in insolvency proceedings, of solvent and insolvent members of a group and, in particular, protection of their respective creditors
- the concept of a corporate group and the extent to which the group, as opposed to individual members of the group, should be recognised in insolvency and the purpose and effect of that recognition
- addressing these issues in the context of cross-border insolvency.

The working group will meet again in November this year.

## Cross-border protocols

Cross-border protocols provide a kind of ad hoc solution on a case-by-case basis to a number of issues that might arise in cross-border insolvency proceedings, which individual courts work out in the absence of a treaty or legislation.<sup>23</sup>

Protocols constitute agreements between courts that have jurisdiction over the same debtor in cross-border insolvency proceedings in different countries<sup>24</sup> and which see the need to coordinate the different insolvency proceedings. Courts can thus determine in a protocol how to coordinate and harmonise the different insolvency proceedings, resolving procedural issues, avoiding potential conflicts on both substantive and procedural issues and additionally addressing issues that may not have been addressed in either national laws or the Model Law. Many protocols have been entered into by courts of both common law jurisdictions such as the United States, England and Canada,<sup>25</sup> and civil law jurisdictions, such as Switzerland<sup>26</sup> and Israel.<sup>27</sup>

Initial work to compile practical experience of negotiating and using cross-border insolvency protocols is being conducted informally through consultation with judges and insolvency practitioners, most recently at the Seventh Multinational Judicial Colloquium held in Cape Town, South Africa.<sup>28</sup> Participants with experience of protocols – both from the judicial side in approving them and the practitioner side in drafting them – emphasised the usefulness of protocols in facilitating coordination and cooperation and how a well-drafted protocol could greatly assist judges involved in cross-border cases, including cases involving groups of companies.

Those participants not familiar with the use of protocols expressed some reservations, particularly with regard to procedural and substantive differences between jurisdictions and how they could be addressed. The discussion emphasised the practical need, in any consideration of how to facilitate cross-border cooperation in insolvency cases, to address those substantive and procedural differences and to take account of the diversity of local legal conditions and traditions that might affect cross-border cooperation, and in particular the use of protocols.

Text on the drafting and use of protocols and cross-border cooperation has been outlined and the UNCITRAL Secretariat is currently preparing the first draft. This draft will study cross-border protocols, their advantages and the circumstances in which they can help facilitate cross-border cooperation and coordination of proceedings, identify common issues and examine how they have been addressed. The draft’s aim is to provide guidance to judges who may have to consider and possibly approve protocols in cross-border cases and the professionals who may be involved in their drafting.

## Technical cooperation and assistance in implementing legislative texts

The work described above has focused on the development of harmonised texts and has, to date, accounted for the principal part of UNCITRAL's work. UNCITRAL has developed a succession of such texts in the many different areas of law touched on in this article. But while obtaining a global consensus on the technical content of a text is a signal achievement, in a sense concluding that text is just the beginning of the work. Without implementation by states, the text may simply remain an interesting volume on the shelf.

The first step to successful implementation is a text being accepted by states. The composition of the Commission and its working groups, their working methods and UNCITRAL's past successes hopefully increase the probability that each text will be widely acceptable to national law and policy makers as a basis for modernising trade laws. With a convention, acceptability is relatively easy to judge by reference

to the number of countries that have deposited instruments of accession or ratification. With model laws, and more particularly with legislative guides, acceptance is a little more difficult to gauge. Legislative reform based on an UNCITRAL model law may go unreported or the reform may make such fundamental changes to the model law that it becomes unrecognisable from the original text. Use of a legislative guide is typically discovered purely by word of mouth; examining the content of a new law may suggest that a particular guide has been considered, but many other factors may be in play.

The second step is disseminating information on the text and highlighting its benefits and advantages. Unfortunately, it is not enough to assume that, since UNCITRAL is an intergovernmental body with 60 member states, all of those states will necessarily know about a particular text and if they do, that they will see the advantages of adopting or otherwise using it.

## Insolvency activities linked to EBRD countries of operations

- At the invitation of the United States Agency for International Development (USAID), a joint regional training workshop was held on the theoretical and practical aspects of jurisdiction and the recognition of insolvency proceedings. The workshop was attended by judges and government officials from Albania, Bosnia and Herzegovina, Croatia, FYR Macedonia, Montenegro, Romania and Serbia. The workshop discussion included the UNCITRAL Model Law on Cross-Border Insolvency, adopted by Montenegro, Serbia and Romania, as well as the intersection between the Model Law and the European Council (EC) Regulation No. 1346/2000 of 29 May 2000 on insolvency proceedings (EC Regulation). The workshop was organised by USAID/Commercial Courts Administration Strengthening Activity (CCASA)/Community Assistance for Reconstruction Development and Stabilization (CARDS) Regional Project 2003 (European Union and Council of Europe) (Belgrade, Serbia, 17-20 April 2006).
- Further adoptions of the UNCITRAL Model Law on Cross-Border Insolvency in 2006, in particular by the United States and the United Kingdom, raised interest in the text and its interaction with the EC Regulation within the European Union. The UNCITRAL Secretariat participated in a number of seminars and conferences in Europe with the aim of promoting adoption of the text by EU member states as a framework for facilitating coordination of cross-border insolvency proceedings between EU member states and non-member states. Participants included officials from some EBRD countries of operations, for example the Czech Republic, Estonia, Latvia, Lithuania, Poland, Romania, Russia and Slovenia.
- UNCITRAL co-sponsored the Seventh UNCITRAL/INSOL/World Bank Multinational Judicial Colloquium (Cape Town, South Africa, 17-18 March 2007) with 65 judges and officials attending from 42 countries. The colloquium focused on issues of cross-border cooperation in insolvency cases, including adoption of the UNCITRAL Model Law on Cross-Border Insolvency, and implementing cross-border cooperation and coordination, in particular through the use of cross-border protocols. Informal work is being undertaken by the Secretariat to compile practical experience of negotiating and using cross-border insolvency protocols. Participants included judges and officials from Azerbaijan, Hungary, Latvia and Poland.

## Promoting UNCITRAL texts

For those reasons, UNCITRAL is giving more attention to promoting the adoption of texts and providing the technical assistance that states often need. Technical cooperation and assistance<sup>29</sup> covers a variety of activities on subjects ranging from promoting regional harmonisation of trade law based on relevant UNCITRAL texts to reviewing the drafting of specific laws that enact UNCITRAL model laws or draw on UNCITRAL legislative guides. Although this work is recognised as a core activity of the Commission, it suffers from a lack of funding. As one commentator recently observed, resources available to the UNCITRAL Secretariat remain far below what would be necessary for it to make a global impact.<sup>30</sup>

To some extent, that lack of funding can be overcome by forming strategic relationships with other bodies responsible for, or interested in, law reform, whether nationally, regionally or internationally, and these relationships may provide opportunities for promoting the use of UNCITRAL texts. The World Bank and regional development banks such as the EBRD are examples of such bodies, as are bilateral development and technical assistance agencies. Non-governmental organisations and their members may also have a role to play in promoting UNCITRAL texts, particularly where those same organisations were represented in the working groups that developed those texts. All of these organisations tend to have, to a greater or lesser extent, the resources that UNCITRAL lacks and the potential to promote national, regional and international convergence around UNCITRAL norms.

## Endnotes

1. See *Uniform Commercial Law in the Twenty-First Century: the Proceedings of the Congress*, 18-22 May 2002, United Nations publication, sales no. E94.V.14.
2. A/CN.9/378/Add.4 (23 June 1993); *UNCITRAL Yearbook*, Vol. XXIV: 1993 (United Nations publication, sales no. E.94.V.16). UNCITRAL documents are available on the UNCITRAL website at [www.uncitral.org](http://www.uncitral.org) under the relevant working group or Commission session.
3. *UNCITRAL Model Law on Cross-Border Insolvency with Guide to Enactment*, Part II, 1999, para 13, United Nations publication, ISBN 92-133608-2.
4. *UNCITRAL Yearbook*, Vol. XXVIII: 1997 (United Nations publication, sales no. E.99.V.6), p. 341, para 41.
5. Andre J. Berends (1998), "The UNCITRAL Model Law on Cross-Border Insolvency: A Comprehensive Overview", *Tulane Journal of International and Comparative Law*, p. 321.
6. *Law and Development at the Asian Development Bank*, 1999 edition, April 1999, p. 7.
7. Argentina, Australia, Brazil, Canada, China, France, Germany, Hong Kong, India, Indonesia, Italy, Japan, Malaysia, Mexico, Poland, Russia, Singapore, South Africa, South Korea, Thailand, the United Kingdom and the United States.
8. *Law and Policy at the Asian Development Bank*, 2000 edition, Vol. 1, Report on RETA 5795: "Insolvency Law Reforms in the Asian and Pacific Region".
9. *Law in transition - Spring 2000: Insolvency law and practice*, European Bank for Reconstruction and Development.
10. *Orderly and Effective Insolvency Procedures: Key Issues*, 1999, International Monetary Fund.
11. *Principles for Effective Insolvency and Creditor Rights Systems*, the World Bank, 2005.
12. The proposal is set out in United Nations document A/CN.9/462/Add.1 (13 April 1999).
13. *Ibid.* para 9.
14. *Ibid.* para 11.
15. *Ibid.* para 16.
16. *The UNCITRAL Legislative Guide on Insolvency Law*, United Nations publication, 2005 (ISBN 92-1-133736-4), introduction, para 1, available at [www.uncitral.org](http://www.uncitral.org).
17. These proposals were made by the International Association of Restructuring, Insolvency and Bankruptcy Professionals (INSOL) and the International Insolvency Institute (IIL). The substance of these proposals is set out in United Nations document A/CN.9/582 and Add.1-7 (15 April 2005).
18. See the *UNCITRAL Legislative Guide on Insolvency Law*, part two, chapter V, paras 82-92.
19. *Ibid.* part two, chapter II, paras 94-107 and recommendations 63-68.
20. See United Nations document A/61/17, Report of the United Nations Commission on International Trade Law on the work of its 39th session, July 2006, paras 207-210.
21. Reports of these meetings can be found in United Nations documents A/CN.9/618 (8 January 2007) and A/CN.9/622 (25 May 2007) respectively; working papers prepared for the meetings include A/CN.9/WG.V/WP.74 and Add.1-2 (4 October 2006) and A/CN.9/WG.V/WP.76 and Add.1-2 (2 March 2007).
22. Proposal by INSOL: Treatment of corporate groups in insolvency, A/CN.9/582/Add.1, para 4 (April 2005).
23. Sean Dargan (2001), "Comment: The Emergence of Mechanisms for Cross-Border Insolvencies in Canadian Law", *Connecticut Journal of International Law*, Vol. 17, p. 119.
24. Evan D. Flaschen, Anthony J. Smits, Leo Plank (2001), "Case Study: Foreign Representatives in U.S. Chapter 11 Cases: Filling the Void in the Law of Multinational Insolvencies", *Connecticut Journal of International Law*, Vol. 17, p. 14.

25. See, for example, in *Re Olympia & York Realty Corp.*, involving the United States and Canada, available at [www.iiiglobal.org/country/protocols/examiner.pdf](http://www.iiiglobal.org/country/protocols/examiner.pdf); and *Cross-Border Insolvency Protocol and Order Approving Protocol in Re Maxwell Communication plc*, involving the United Kingdom and the United States, available at [www.iiiglobal.org/international/protocols/maxwell.pdf](http://www.iiiglobal.org/international/protocols/maxwell.pdf).
26. See, for example, *AIOC Resources, AG, et al.*, involving the United States and Switzerland, available at [www.iiiglobal.org/international/protocols/AIOC%20Resources%20AG%20Protocol.pdf](http://www.iiiglobal.org/international/protocols/AIOC%20Resources%20AG%20Protocol.pdf), which achieved a successful coordination between the different insolvency proceedings.
27. See, for example, in *Re Nakash*, involving the United States and Israel, available at [www.iiiglobal.org/country/protocols/nakash.pdf](http://www.iiiglobal.org/country/protocols/nakash.pdf).
28. 17-18 March 2006, jointly sponsored by UNCITRAL, INSOL and, for the first time, the World Bank. For a report of the colloquium see United Nations document A/CN.9/629: "Facilitation or cooperation, direct communication and coordination in cross-border proceedings" (3 April 2007); and materials on the respective INSOL and World Bank websites: [www.insol.org](http://www.insol.org) and [www.worldbank.org](http://www.worldbank.org).
29. See, for example, United Nations document A/CN.9/627 (18 April 2007), a report of technical cooperation and assistance activities undertaken in 2006-07.
30. Terence C. Halliday (2006), *Legitimacy, technology, and leverage: the building blocks of insolvency architecture in the decade past and the decade ahead*.

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