
ELSA Delegation to UNCITRAL

Working Group VI

on Security Interests, New York

21st Session

May 14th to 18th 2012



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1. Introduction

From May 14th to 18th 2012, a Delegation consisting of the Head of Delegation Ann-Katrin Schmücker (ELSA Germany), Eugenio Di Agosta (ELSA Italy), Helena Krüger (ELSA Germany) and Barbara Sandfuchs (ELSA Germany) had the privilege to be joining as an observer the semi-annual session of the United Nations Commission on International Trade Law (UNCITRAL, Working Group VI: Security Interests) in New York City.

Working Group VI is one of the six Working Groups of UNCITRAL. It performs substantive preparatory work on security rights for the Commission (UNCITRAL).

The 21st session of the Working Group was held at the United Nations Headquarters in New York from May 14th to 18th 2012. The aim of the Working Group was to continue the work on a draft Codex on the registration of security rights in movable assets. The draft text was used as a starting point and background of the discussions that took place.

The Working Group had been entrusted to prepare the text in July 2010 and had started drafting it at its 18th session in November 2010.

The Delegation's general task was to represent ELSA in a professional way at UNCITRAL. We participated in the meetings of the Working Group and worked with the relevant materials. At UNCITRAL, we established contacts to delegations of other NGOs, states, experts and other participants.

It was an invaluable experience for all members of the Delegation not only to participate in the Working Group's sessions themselves and get an impression of how (in part) very complex and conflicting issues of international law are dealt with, but also to find that we, as law students, were met with great interest and openness by members of national delegations as well as other NGOs.

There is, in general, no difficulty in making first acquaintances with national delegates and observers from other NGOs, particularly as many of them consist of only one person. We discovered that ELSA is generally well known by other delegations and that ELSA Delegations are very welcome to join UNCITRAL's meetings as well as to participate in the "informal consultations" (coffee breaks).

We were surprised to find that it seems to be common for other (affluent) NGOs, such as the Commercial Finance Association, to invite all members and observers of the Working Group to informal receptions and dinner parties after the meetings. In light of the fact that most networking is done during such informal events (as well as during lunch and coffee breaks), we can only recommend that ELSA-delegates follow such invitations.

We can therefore only recommend applying for a place in one of the ELSA Delegations to everyone, despite the considerable amount of preparation and time (and money) such an undertaking, of course, requires. There are few chances for students to get this kind of first hand impression of how legal decision-making works on an international level. Besides, the networking potential for members of the Delegation is considerable, both as a representative of ELSA and, more personally, as a law student possibly interested in internships, for example.

The participation in a Delegation to an international body and in particular to UNCITRAL is an experience you will probably never forget. It enriches the academic studies and provides practical insights you can find nowhere else.

2. General notes

UN grounds passes

In order to enter the UN-Complex, all members of the Delegation have to get their personalized grounds passes (the necessary data will be sent to the Identification Office in advance). The Identification Office is across the street from the visitors' entrance (44th St / 1st Av) and opens at 9am. As it is usually very busy on Monday mornings, it might be worth getting there a few minutes before 9am. It is also necessary to bring identification in order to get the pass.

Delegates must then use the visitors' entrance, not the entrance for permanent cardholders a few blocks further south.

Wi-Fi

It is actually worth bringing your laptop to the UN as there is free Wi-Fi throughout the building.

ELSA Marketing Material

Unfortunately, it seems to not have been common for Delegations to be provided with marketing material designed for their purpose by ELSA International. As far as our experience goes, it would be very helpful for the members of the Delegation to have some kind of material that they could give out to people they are in contact with. This may be a flyer containing information about ELSA and its activities or even a specially designed business card (stating some kind of contact address and ELSA's web address). Without such material, it is much harder to get people to actually remember ELSA and establish lasting relations to people.

3. Agenda

1. Opening of the session and scheduling of meetings
2. Election of officers
3. Adoption of the agenda
4. Registration of security rights on movable assets
5. Other business
6. Adoption of the report

4. Discussion

4.1 Opening of the session and election of officers

Mr. Rodrigo Labardini Flores, the representative of Mexico, was nominated by the delegate of El Salvador as Chairperson and seconded by Canada, Japan and USA. He has been serving as chairperson of Working Group VI for several sessions. He was unanimously elected. There were no nominations for Vice-Chairs.

4.2 Registration of security rights on movable assets.

4.2.1 Adoption of the agenda

The Provisional Agenda (WG.VI/WP.49) was unanimously approved. The Working Group was expected to take substantial decisions during the session. However, it should be underlined that the discussion was held on merely procedural issues (e.g., see document WG.VI/WP.50/Add.2).

4.2.2 Presentation of documents by the Secretary

The discussion was based on the Draft Technical Legislative Guide on the Implementation of a Security Rights Registry (“Draft”: WG.VI/WP.50), which was handed out to the delegates.

In the precedent WG VI meeting, held in Vienna between 12 and 16 December 2011, the Working Group agreed on a final document (WG.VI/WorkingPaper.49/Annex.6), which declared to submit to the 21th session a comprehensive text in order to obtain a “Technical Legislative Guide”. Moreover, the Working Group agreed on the form that such text should present. In fact, consistently with the Legislative Guide, the text was written using a list of Recommendations in order to grant a certain range of flexibility to the States. These conclusions are available on the UNCITRAL website at the document WG.VI.WP.50/Add.2.

4.2.3 Discussion

During the week, the Working Group discussed the “Draft” and its Addenda 1 and 2. As the Draft was elaborated during the earlier sessions, the basic work of the 21st session contained in improving the Draft by making technical changes and changes relating to the wording of some sentences.

The session started on the basis of the commentary as in WG.VI/WP.50/Add.1, where the discussion was centred on the correct use of terminology in the Technical Legislative Guide. The major part of the first round of negotiations was focused, de facto, on the accurate interpretations and meanings of central definitions like “grantor”, “secured creditor” and “registration”. It is very important to underline that the Working Group easily achieved the agreement.

The Working Group stated that it agreed on the use of the Recommendations included in document WG.VI/WP.50. All these Recommendations must be intended only for an indicative list and not as a complete and exhaustive set of duties.

The Member States discussed the type of medium to use for the Registry; several delegations welcomed the possibility to have a complete electronic Registry instead of paper-based Registry. Finally, the Working Group was able to decide that the issue on the medium was a

merely political matter. The agreement was found on the unique use of the electronic format. The meaningful reason to take this decision was that, otherwise, a hybrid format (paper plus electronic format) could bring numberless synchronization problems.

Discussions continued again on very procedural issues, for instance, which kind of criteria should be adopted in order to identify properly the active and the passive subjects in the registration process. Many options were discussed by the Member States (e.g., biometric identification, personal ID number, social providence number) in fact, there were a numbers of different views and each one was related to the effective experience gained from every different Country.

4.2.4 Adoption of the report of the 21th session

The ELSA-Delegates were impressed to see that the work of the Working Group seemed to be very efficient and without larger discussions. As all political decisions had been taken before, the Working Group now was united in trying to correct last mistakes. The adopted changes can be found in the draft reports, which were handed out to the delegates and are soon to be published on UNCITRAL's website

(http://www.uncitral.org/uncitral/en/commission/working_groups/6Security_Interests.html).

In preparation to the 22nd session, the Secretariat will implement the adopted changes in the Draft in order for the Working Group to be able to complete the Technical Legislative Guide by 2013.

5. Side Events

5.1 UN Slavery Memorial 2012 – An International Day of Remembrance

Tuesday, 15 May, 7 p.m., General Assembly Hall

In support of a permanent memorial to the victims of slavery and the transatlantic slave trade, the United Nations presented the musical heritage of the diaspora. The memorial was set to remember a huge part of American history – slavery. In ancient America, slaves were held against their will from the time of their capture and deprived of the right to leave, to refuse to work, or to demand compensation. Historically, slavery was institutionally recognized by many societies. Slavery in the Americas had a contentious history and played a major role in the history and evolution of the country, triggering at least one revolution and one civil war, as well as numerous rebellions.

An estimated 12 million Africans arrived in the Americas from the 16th to the 19th centuries. Of these, an estimated 645,000 were brought to what is now the United States. The usual estimate is that about 15 per cent of slaves died during the voyage, with mortality rates considerably higher in Africa itself in the process of capturing and transporting indigenous peoples to the ships. Approximately 6 million black Africans were killed by others in tribal wars.

On this occasion, even Secretary-General Ban Ki Moon gave his speech via video.

The Master of ceremonies, April Sutton guided through the concert. Artists were: singer Rachelle Jeanty from Haiti/Canada, the “Third World Band” from Jamaica, Mbaye Dieye

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Faye from Senegal and “Chen Lo and the Lo Frequency” from the USA. Every kind of “black music” was presented: starting from hip-hop, jazz, reggae, ending in drums and dancing.

Remembering Slavery is very important to make an important contribution to the global understanding of the African side of the Atlantic slave trade.

It was a very emotional event: Listening to the music... everyone physically taking part in the event. The audience was all standing up and dancing, moving to the music, clapping hands, having fun. General assembly hall was full of people, all honouring the “heroes, resisters and survivors”.

5.2 Dinner/Get-together, Millenium Hotel, United Nations Plaza

On our third day (Wednesday, 16 May, 6.15 p.m.) there was a Dinner and Get-together at the Millenium Hotel, United Nations Plaza taking place which was organized by the Commercial Finance Association. . We took this opportunity to get in closer contact to the delegates from the different countries and also to those ones from other organizations. In the famous Riverview Room we were served tasty appetizers as well as having some wine while talking to the distinguished delegates and getting to know them, before sitting down for delicious dinner. Everyone enjoyed the successful and fulfilling evening.

6. Contact list

6.1 Delegates of States that are members of UNCITRAL

Germany

Dr. Leif Böttcher

Expert

Federal Ministry of Justice

Italy

Andrea Tosato

Lecturer in Law

Bournemouth University

Italy

Giuliano Castellano

Adjunct Professor and Research Fellow

Bocconi University, École Polytechnique

Italy

Marco Ghia

Expert Ghia Law Firm

Ministry of Foreign Affairs

Marconi University

Rome

Mexico

Jan Roberto Boker Regens
Director General de Normatividad Mercantil
Secretaría Economía

6.2 Delegates of International Organizations

European Union

Evgeniy Efimov
Legal Adviser

The World Bank

José M. Garrido
Senior Counsel
Legal Vice President

6.3 Delegates of Non-Governmental Organizations

International Insolvency Institute

Samuel L. Bufford
Professor of Law
Pennsylvania State University Law School

National Law Centre for Inter-American Free Trade (NLCIFT)

Marek Dubovec
Project Coordinator

New York State Bar Association

Albert L. Bloomsbury
Attorney-at-Law
Law Office of Albert L. Bloomsbury

7. Our Delegation

Ann-Katrin Schmücker, Head of Delegation

ELSA Berlin (Germany)

- *Law student at the Free University Berlin*
- *ELSA member since 2007*
- *Previous Secretary General of ELSA Berlin in 2010/2011, Director of Human Rights and Delegation ELSA Berlin in 2009/2010*
- *ELSA Delegate to the 17th session of the Human Rights Council in Geneva*

Eugenio Di Agosta

ELSA Florence (Italy)

- *Law graduate at University of Pisa (Italy)*
- *ELSA member since 2011*

Helena Krüger

ELSA Passau (Germany)

- *Law student at University of Passau*
- *ELSA member since 2010*
- *Director for Human Rights & Delegations, ELSA Passau*
- *ELSA Delegate to the 18th session of the UN Human Rights Council in Geneva*

Barbara Sandfuchs

ELSA Munich (Germany)

- *PhD Researcher at University of Passau (Germany)*
- *ELSA member since 2006*
- *previous President ELSA Germany, Director for Human Rights and Delegations ELSA Germany, President ELSA Munich, Treasurer ELSA Munich, Auditor ELSA Munich; Representative ELSA Alumni Germany*
- *ELSA Delegate to the 15th session of UNCITRAL WG VI*

Should there be any questions about the work of the Delegation, please do not hesitate to contact any of the Delegates. Our address is delegationuncitralwgvi21@googlegroups.com.

8. Final note from the Delegation

All members of the ELSA Delegation are grateful for the opportunity to attend the 21st session of the Working Group VI of UNCITRAL.

Our special thanks go to ELSA International and especially to the Director for Delegations, Oleksandr Bulayenko, and the Academic Coordinator for UNCITRAL, André Reis e Silva. Your constant work and your support provide the ELSA Delegates with the opportunity to seek great experiences that we will never forget!

On behalf of the whole Delegation,

Ann-Katrin Schmücker
Head of Delegation