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SUMMARY REPORT
OF THE SECOND SESSION
(Videoconference, 14 – 16 December 2020)

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1. The second session of the Working Group to prepare a Model Law on Factoring (hereafter the “Working Group”) took place via videoconference between 14-16 December 2020. The Working Group was attended by 30 participants, comprising of (i) 8 Working Group Members, (ii) 18 observers from six international, regional and intergovernmental organisations, four industry associations and academia and (iii) 4 members of the Unidroit Secretariat (the List of Participants is available in Annex II).

Item 1: Opening of the meeting by the Chair

2. The Chair of the Working Group and Member of the UNIDROIT Governing Council *Mr Henry Gabriel* (hereafter the “Chair”) welcomed all participants to the second session.

3. The Chair declared the session open.

Item 2: Adoption of the agenda and organisation of the session

4. The Working Group adopted the draft Agenda (UNIDROIT 2020 – Study LVIII A – W.G.2 – Doc. 1, available in Annex I).

Item 3: Adoption the Summary Report of the First Session (Study LVIII A – W.G.1 – Doc. 4 rev. 1)

5. The Working Group adopted the draft Summary Report of the First Session (Study LVIII A – W.G.1 – Doc. 4 rev. 1).

Item 4: Consideration of substantive matters

1. Matters identified in the Issues Paper (Study LVIII A – W.G.2 – Doc. 2)

6. The *Chair* summarised the outcomes of the first meeting of the Working Group. With regard to the scope of the Model Law on Factoring (hereinafter MLF), the Working Group had agreed to a general definition which would be narrowed as the project progressed. It was agreed that this would include contractual rights to payments, whereas the possible inclusion of other types of receivables would be given consideration at a later time. The issue of including negotiable instruments in the scope also required further consideration, keeping in mind that these had different definitions and treatment across different jurisdictions.

7. The Chair noted that the Working Group had decided not to exclude all assignments for collection. However, certain categories of assignments might need to be excluded at a later stage, including, perhaps, assignments related to the sale of a business. Additionally, the Working Group had decided to cover both outright assignment and security interests over receivables, as well as to cover both recourse factoring and non-recourse factoring. These items would need to be defined further. He added that while the inclusion of the issue of consumers as assignors and assignees still needed to be examined, the Working Group had agreed that consumer as debtors would be part of the scope of the MLF, noting that additional consideration needed to be given to domestic consumer protection laws.

8. The Chair noted that the Working Group had decided that the MLF would not require factors to perform additional functions beyond traditional assignments. It was also decided that future assignments would be part of the scope, while noting that items such as notifications and powers to

encumber assets in insolvency needed additional consideration. Additionally, it was agreed that the MLF would provide for anti-assignment clauses within contractual relationships to be overridden, with additional consideration to be given to statutory assignments.

9. The Chair noted that additional items which the Working Group had decided included keeping discounting within the scope of the MLF; not to use the term forfeiting as it lacked a universal definition; and that reverse factoring would also be part of the scope. Additionally, the Working Group had agreed that no specific formalities should be required in creating and transferring receivables, and that the MLF would instil a registry-based priority system. Furthermore, the Working Group had broadly agreed to include the issue of proceeds, with several issues within the matter still requiring further discussion. Lastly, several issues relating to conflict of laws also needed to be explored further.

(a) Issues of Scope

10. *The Chair* drew the Working Group's attention to the questions posed in the Issues Paper (Study LVIII A – W.G.2 – Doc. 2), starting with the issues raised in Paragraph 23-26. He queried whether there was any reason not to follow the approach of Article 9(1-2) of the UNCITRAL Model Law on Secured Transactions (hereinafter "UNCITRAL Model Law") and Article 8(1) of the Convention on the Assignment of Receivables in International Trade (hereinafter "Receivables Convention") with respect to the standards for describing receivables in a factoring agreement, noting that there was a possibility that the MLF could define receivables in a general manner, which would include items such as bulk receivables, future receivables, partial transfers etc.

11. *Ms Louise Gullifer* sought clarification as to whether the definition of future receivables had been considered, and whether all types of future receivables would be within the scope of the MLF. She noted that the Receivables Convention covered two categories, one which related to future receivables arising out of an existing contract, and the other which referred to future receivables arising out of future contracts.

12. *Mr Ulrich Brink (FCI)* recommended including both types of future receivables in the MLF, noting that in one type, a contract had not been concluded and the parties could not be identified, whereas in the other type, the contract had already been concluded and the receivables came into existence at a later date.

13. *Mr Marek Dubovec (NatLaw)* agreed with the need to include both types of future receivables in the MLF, adding that additional clarity would be useful on this matter. He added that the possibility of making changes in contractual conditions was often the major difference between different types of future receivables. He added that the considerations in Paragraph 25 of the Issues Paper relating to assignability of a part, or of an undivided interest in a receivable, was important and had been explicitly addressed in the Receivables Convention. This was an area which was the subject of reform in many jurisdictions implementing domestic factoring laws. Additionally, it was noted that the definition of a factoring contract was also important to include in the MLF, as this was often part of domestic laws on factoring, particularly in civil law jurisdictions. This would include a consideration of formalities, description of the receivables, identification of the assignee or the assignor, etc.

14. *Mr Michel Deschamps* noted that should the model law also cover receivables not arising from the sale of goods or supply of services, using factoring in the title of the law would be misleading.

15. The Chair summarised that part-assignments of receivables would be covered under the scope of the MLF, as well as both types of future receivables noted.

(b) Proceeds

16. With regard to proceeds, *the Chair* drew attention to paragraphs 27-28 of the Issues Paper and noted that they would be part of the scope of the MLF. He queried whether the MLF should incorporate the equivalent of Article 10 of the UNCITRAL Model Law. He also queried whether application to proceeds was automatically extended from the assignment of receivables, or if a specific agreement to the same was necessary.

17. *Mr Marek Dubovec (NatLaw)* noted that there should be an automatic extension to proceeds, and that the assignee should not need to undertake any action or have an agreement. This was important for third-party effectiveness. *The Chair* noted that the Working Group would discuss the issue of proceeds with regard to third parties at a later point.

18. *Ms Louise Gullifer* queried whether the Working Group should define proceeds, keeping in mind that the UNCITRAL Model Law included a comprehensive definition for the same. She also queried if the group could assume that proceeds meant only monetary payment obligations from the sale of a receivable, rather than non-monetary items (including proceeds of proceeds).

19. *Mr Jin Saibo (FCI)* noted that it was important to define proceeds clearly and precisely, recalling that the concept was not found in the Chinese legal system, and knowledge of the term in China was as a result of ICC and FCI documents. In Chinese law, the concept was largely covered through assignment of receivables or factoring generally. *Mr Alejandro Garro and Mr Orkun Akseli* supported the proposition to clearly define proceeds in order for the implementation of the MLF to be adequate in legal systems which did not recognise the concept.

20. *The Chair* summarised that the Working Group agreed on the necessity of defining proceeds in the MLF. He queried whether the definition in the UNCITRAL Model Law was a useful starting point for the Working Group in this regard.

21. *Mr Bruce Whittaker* noted that while the UNCITRAL Model Law definition was a useful starting point, consideration should be given to whether the Working Group would prefer a broad or narrow definition. He noted that extending the application to proceeds of proceeds could create issues.

22. *Ms Xu Jun (ICC)* recommended adopting the definition used in the practice of supply chain financing. She noted that the industry used several different terms to refer to money which was received or transferred. One of these terms included proceeds. She queried whether the MLF would exclusively use the term proceeds for money received or transferred. *The Chair* noted that guidance on this matter could be drafted into the Commentary to the MLF.

23. *Ms Louise Gullifer* agreed that the definition within the UNCITRAL Model Law was very broad and included references to several encumbered assets which were not relevant to the MLF. As such, the definition in the Receivables Convention should be considered as a better starting point for the MLF. However, she noted that this definition extended to proceeds of proceeds, which would need to be excluded.

24. *Ms Catherine Walsh* agreed with the need to not define proceeds as broadly as done in the UNCITRAL Model Law, noting that consideration should be given to third-party effectiveness for assignment of non-monetary proceeds in domestic system which only had a limited registry system which did not go beyond receivables. She added that proceeds of proceeds should not be excluded entirely as this would result in an inflexible and rigid system which would be inapplicable to common situations, citing the example where a negotiable instrument as the means of payment was deposited in a bank account, thereby losing its original form, and becoming a proceed to a proceed. *Mr Michel*

Deschamps agreed with this proposition, noting that bank deposits as proceeds needed to be covered by the MLF and were the most common form of proceeds.

25. *Mr Marek Dubovec (NatLaw)* agreed that bank deposits should be covered under the MLF. He noted that proceeds were also an important element outside factoring, whereby security interests in proceeds were considered more beneficial than security interests in some other items (such as future receivables). He noted the need to achieve a balance between the definition of proceeds in the UNCITRAL Model Law and the Receivables Convention, adding that some ICC instruments used the terms proceeds for assignments of rights to payment, which was more colloquial, rather than conceptual. As such, he reiterated the importance of having a clear and precise definition for proceeds in the MLF.

26. *Mr Jin Saibo (FCI)* reminded the Working Group that Chinese Law did not include the concept of proceeds, which was a Common Law doctrine. He suggested that should the Working Group decide to define proceeds in the MLF, it would be important to have a clear and precise definition to facilitate courts in jurisdictions which were not familiar with the concept or applied it differently. *Ms Xu Jun (ICC)* added that proceeds were commonly used in China as part of the banking system, including in cross-border remittances. She added that in Chinese, proceeds was translated directly into “money received” as part of many ICC documents. As such, the judges and lawyers in China were aware of the concept. *Mr Peter Mulroy (FCI)* added that generally, proceeds were referred to as payments.

27. The Chair summarised the discussion noting that the Working Group agreed on the need to include a definition of proceeds, which should be a middle-ground approach between the UNCITRAL Model Law and the Receivables Convention. He added that additional consideration needed to be given to whether non-monetary proceeds needed to be covered, while noting that bank deposits would need to be included.

(c) Anti-assignment Clauses

28. *The Chair* drew the Working Group’s attention to paragraphs 29-30 of the Issues Paper, noting that the Working Group had agreed that the MLF should completely override the effect of anti-assignment clauses without preserving the debtor’s right to sue for breach of contract. The Chair queried if the Working Group had a preference for how restrictions on anti-assignments clauses could be drafted, with Article 13 of the UNCITRAL Model Law possibly being a useful starting point.

29. *Mr Michel Deschamps* noted that the consideration of anti-assignment clauses related to the scope of the MLF, noting that should the MLF only apply to receivables arising from the supply of goods and services, a general anti-assignment clause provision without exception would be sufficient. However, should the MLF also apply to any kind of receivables (as opposed to only those which could be subject to factoring), exceptions would be necessary in the provision. *The Chair* noted that the intention of the MLF was not to be a model law for receivables in general.

30. *Mr Marek Dubovec* noted that different jurisdictions had different definitions of what was covered under a factoring transaction. For example, it was noted that some jurisdictions considered factoring as only outright transfers of receivables, whereas other would also include transfers of receivables for security purposes. He added that it was important to be precise in what the MLF would cover, while at the same time noting that a broader coverage would not necessarily mean the MLF would not be relevant to factoring, but only that it would be practically applied in different jurisdictions in different manners.

31. *Ms Louise Gullifer* noted that the main issue regarding anti-assignment clauses was to ensure that loan contracts (which could also be referred to as receivables from financial services) were not subjected to the MLF. She noted that additional consideration needed to be given to what types of

transactions would be covered by the anti-assignment clause provision, as well as if securitisation (related to financial receivables) was to be part of the MLF. She noted that should securitisation be covered, anti-assignment clauses related to securitisation would need to be discussed further.

32. *Mr Jin Saibo (FCI)* noted that the Chinese Civil Code covered the issue of assignment of receivables in the same section as where it covered a factoring contract. He noted that the People's Bank of China had also done work towards developing rules in this regard, and that the MLF should seek to achieve as much consistency as possible.

33. *Ms Catherine Walsh* noted that it would be beneficial to keep a broad scope in terms of receivables covered under the MLF in order to maintain consistency and coherence in different types of contracts – this would necessarily go beyond the factoring purview, keeping in mind the different definitions of what was covered under factoring laws in different jurisdictions. She added that with regard to the anti-assignment clause provision, a narrower set of receivables should be covered and that Article 10(2) of the Receivables Convention could be a useful starting point, with a subset of contract receivables to be listed to which the provision would apply. *Mr Michel Deschamps* agreed and noted that in such a case, the MLF would presumably apply to every type of receivable, rather than only those arising from the sale of goods or services.

34. *Mr Ulrich Brink (FCI)* agreed that while it would be beneficial to have the same set of assignment rules for a broad number of receivables, the anti-assignment clause provision should only be applicable to certain contract arrangements which were typically important to factors. As an example, he suggested that bank accounts should not be allowed to be assigned without prior agreement from the bank. He also agreed that the Receivables Convention would be a useful starting point in this regard.

35. *Mr Marek Dubovec (NatLaw)* noted that the Preliminary Drafting Suggestions for the MLF (Study LVIII A – W.G.2 – Doc. 3) already used the Receivables Convention as a starting point and had already reflected some of the concerns raised by the Members of the Working Group.

36. *The Chair* queried if the appropriate approach would be to follow the anti-assignment clause model from the Receivables Convention, or the UNCITRAL Model Law, in terms of terminologies and exceptions. It was noted that the list of transactions for which an anti-assignment clause applied was directly tied to the types of transactions which fell within the scope of the MLF.

37. *Mr Giuliano Castellano* noted that different types of transactions had different regulatory elements to be addressed, depending upon their treatment in different jurisdictions. This could be elaborated further in the Commentary to the MLF. *The Chair* noted that certain assignments related to regulated activities and needed to be excluded from the scope of the anti-assignment clause. This was so that the MLF's anti-assignment clause did not violate any government or regulatory policies. The list or extent of such activities needed additional consideration.

38. *Mr Marek Dubovec (NatLaw)* noted that one of the differences between the approach of the Receivables Convention and the UNCITRAL Model Law was that it indicated a list of types of transactions to be excluded, and what a State would be expected to do in this regard. He added that in the MLF it would be better to offer general guidance on the issue of where anti-assignment clauses could be overridden. Additional guidance could then be provided in implementational documents. *Ms Louise Gullifer* agreed with this proposition, noting that flexibility was important in this regard, and that guidance should be offered in this regard in the additional implementation documents to the MLF. *The Chair* also agreed with the importance of flexibility in this regard.

39. *The Chair* queried whether the scope of the MLF should be set out within the anti-assignment clause, or more generally. The latter approach would result in the anti-assignment clause only

applicable to situations within the scope of the MLF, whereas the former approach would allow for exclusions to be made specifically through the anti-assignment clause.

40. *Mr Ulrich Brink (FCI)* noted that limiting the scope of the MLF would result in limiting the application of its priority and registration related rules. This would result in factoring transactions outside the scope of the MLF being subject to different rules. The main distinction to be addressed was whether the MLF should have assignment rules which applied to more than just factoring transactions, and whether anti-assignment clauses would apply to such rules.

41. *Ms Catherine Walsh* reiterated the importance of leaving the scope broad, in order to ensure that there was consistency between the rules for factoring transactions and general laws relating to the assignment of receivables. She agreed with Mr Brink with regard to ensuring applicability of the MLF across a broad set of transactions. She noted that the approach of the Receivables Convention of listing transactions to which an anti-assignment provision did not apply was suitable for the MLF. *The Chair* agreed with this approach and queried if Article 10(4) of the Receivables Convention was a suitable starting point for the drafting of the MLF on this matter.

42. *Mr Marek Dubovec (NatLaw)* noted that the MLF was intended to be used by countries which had a rudimentary system of secured transactions law and were looking to adopt the MLF as a stepping-stone towards broader secured transactions law reform. As such, it would be beneficial to keep the scope of the MLF broad, so that more types of financing can become available for such countries. He noted that at the same time, other countries which already had basic systems of secured transactions law that already addressed the issue of scope would have issues if the MLF included a specific list of exclusions, rather than just policy recommendations. Such items should be dealt with by additional implementation documents to the MLF which would explain to countries how they could adapt the MLF with their existing laws. He noted that the list within the Receivables Convention would be a useful starting point as an example to allow countries to understand the policy objectives of this matter, and to allow them to expand/reduce the exclusions as domestically necessary.

43. *Ms Louise Gullifer* agreed with the usefulness of Article 10(4) of the Receivables Convention as a starting point to provide examples to countries on what would be covered under the anti-assignment clause. She noted that it should be mentioned that countries may change this list as they deemed domestically fit. At the same time, the language from the UNCITRAL Model Law could be used in order to ensure that those countries who would adopt a comprehensive system of secured transactions law after the MLF would already have a certain degree of consistency with regard to scope.

44. The Working Group agreed that Article 10(4) of the Receivables Convention could be a useful starting point to prepare the scope of the anti-assignment clause of the MLF.

45. *The Chair* queried if the Working Group wished to confirm that the override of anti-assignment clauses was to apply not only to receivables, but also any “supporting rights”.

46. *Ms Catherine Walsh* noted that consideration had to be given to what type of supporting rights were being examined, and that such an override would likely only be important in the case of a third-party guarantor who had made a guarantee contingent upon the anti-assignment clause.

47. The Working Group agreed to return to this matter after discussing the types of supporting rights being considered.

(d) Registration

48. *The Chair* drew the Working Group's attention to paragraphs 32-36 of the Issues Paper and queried how much guidance the MLF should give regarding registries and registration systems.

49. *Ms Catherine Walsh* suggested that a discussion of registry systems would be better suited alongside a substantive discussion of third-party effectiveness and priority rules. *The Chair* agreed – however, it was noted that it would be useful to ascertain the extent to which guidance should be given on this matter before delving into substance. *Mr Marek Dubovec (NatLaw)* noted that it was not possible to discuss priority rules before ascertaining the scope of the MLF. As such, the discussion in paragraphs 32-36 of the Issues Paper was procedural and general, rather than examining specific legal effects of registration.

50. *Mr Jin Saibo (FCI)* noted that it was fundamental to include details regarding a registry system in the MLF, as registries were best practice. This would be very useful to ensure third-party effectiveness and priority rules. Such a system could also be adopted by countries looking to set up domestic registries. *Ms Xu Jun (ICC)* agreed with the importance of including guidance on a registry system in the MLF. This was especially important to allow courts to understand the legal effect of a registration of transfer of receivables in a registry, which was not commonplace in all jurisdictions.

51. *Ms Catherine Walsh* noted that importance of having a precise and clear structure with regard to the registry provisions in the MLF, noting that third party effectiveness against different parties needed to be put in different sections of the MLF, in order to ensure the effects of registration were properly understood. Noting the nature of the instrument,

52. *Mr Bruce Whittaker* agreed on the need for detailed guidance of a registry system in the MLF, similar to that found in the Model Law on Secured Transactions. *Mr Peter Mulroy (FCI)* also agreed with including detailed guidance on a registry system in the MLF, especially keeping in mind that the target of the MLF was emerging economies which could greatly benefit from a toolkit to establish a registry. He also noted the importance of a registry which was compatible with future technologies such as blockchain.

53. *Mr Alejandro Garro* also agreed with the importance of having detailed guidance on a registry system in the MLF, including rules on the registration of receivables, especially keeping in mind that the priority system would be a registration based system. He added that the 5 issues listed in paragraph 35 of the Issues Paper with regard to a registry system were very important, as well as the issue of identification of third parties to a transaction.

54. *Mr Ulrich Brink (FCI)* noted that if priority rules were to be based on registration, then details on a registry system were important to include. He suggested that the approach of the UNCITRAL Model Law should be followed in this regard, but only specifically with regard to receivables.

55. *Mr Murat Sultanov (IFC)* noted that one of the reasons behind the MLF project was to assist jurisdictions willing to adopt a factoring law, but not yet ready to fully adopt the UNCITRAL Model Law. It would be likely that in these countries, the registry under the MLF would be the first notice-based registry of its kind. This was similar to the situation which had occurred in China, where the central bank had first introduced a receivables registry, but had subsequently expanded it. As such, it would be beneficial for the MLF to have detailed guidance on setting up a notice-based registry, which could be a first step for countries looking to broadly adopt the UNCITRAL Model Law. He noted that consideration should be given to several sources in providing this guidance, including the Cape Town Convention Academic Project's working paper on Best Practices in the Design and Operation of Electronic Registries.

56. The Working Group agreed on the importance of giving guidance on setting up a notice-based registry, to the extent practicable.

57. *Mr Marek Dubovec (NatLaw)* reiterated the usefulness of having guidance on the importance and structure of a notice-based factoring registry in the MLF, keeping in mind that many countries had different approaches to this, and that the MLF could strive to become a best practice in this area. He noted that it was important to follow already existing best practices, such as the one found in the UNCITRAL Model Law, but at the same time, only include relevant provisions, rather than developing a comprehensive registry guide.

58. *Ms Megumi Hara* noted the need to clarify that the registration system would relate to priority, rather than third-party effectiveness of transfers of receivables, as the latter could include transfers of future receivables (which the Working Group had already agreed about), which was considered in some civil law jurisdictions as different from a transfer of receivables. She agreed with the proposal to recommend a registry which could be a baseline for other types of registries – however, the negative consequences of such should also be considered as creating links between different registries could have unintended consequences.

59. *Mr Jin Saibo (FCI)* noted that priority rules and rules on third-party effectiveness already existed in China as part of the Chinese Civil Code. He noted that there were several problems in the implementation of rules regarding assignments of receivables, including entering false dates and false information. As such, notices of assignments through a registration system would be very valuable.

60. *Mr Peter Mulroy (FCI)* noted that industry in different markets required different types of registries, such as invoice-by-invoice registries, or bulk-invoice registries. As such, the MLF guidance must be able to be tailored for the culture of a particular market. *The Chair* agreed that flexibility in this regard was important.

61. The Chair summarised, noting that the Working Group had agreed to include guidance on a registry system within the MLF, and that the five points mentioned in paragraph 35 of the Issues Paper were important to include. Additional consideration needed to be given to how detailed this guidance should be, keeping in mind the existence of existing documentation on registry design. Additionally, priority rules would be addressed at a later point in time.

(e) Rights and obligations

62. *The Chair* drew the attention of the Working Group to section J of the Issues Paper focussing on rights and obligations. He queried the extent to which the MLF should retain the general principles found in Article 11 of the Receivables Convention.

63. *Mr Marek Dubovec (NatLaw)* noted that factoring reforms in countries generally had three components to address: i) regulatory – which set out the body which would run the system, such as a central bank; ii) the issue of property – whereby perfection and priority achieved through registration was addressed; and iii) contractual – which regulated rights and obligations as between the parties, including debtors of the receivables. He noted that regarding contractual issues, these were a matter of agreement between the parties, and party autonomy was available. At the same time, having rules regarding rights and obligations was useful in countries where the market was immature, especially to give confidence and incentives to financial institutions. As such, he expressed support for including articles on rights and obligations in the MLF.

64. *The Chair* added that rules on rights and obligations were also useful for courts in handling disputes. It was noted that at present, the discussion was limited to rights and obligations of assignors and assignees, rather than debtors.

65. *Ms Catherine Walsh* agreed with Mr Dubovec insofar as noting the usefulness of such rules. She also noted that allowing for party autonomy would be useful, and as such, drafting in the form where it was noted “unless otherwise specified, the following terms would be assumed” could be beneficial for the MLF. Regarding trade usages, she expressed indifference to its inclusion.

66. *The Chair* queried the usefulness of adopting the model of Article 52 of the UNCITRAL Model Law, or Article 11 of the Receivables Convention as a starting point for the MLF on this matter. He noted that with regard to representations, there was a difference between the approach taken in the UNCITRAL Model Law and the Receivables Convention, whereby the Receivables Convention noted in Article 12(a) that an assignor had the right to assign receivables, which was not found in the UNCITRAL Model Law.

67. *Mr Ulrich Brink (FCI)* supported the approach of the Receivables Convention, as this type of representation was common practice in most factoring contracts. *Ms Catherine Walsh* agreed with the proposition to adopt the approach of the Receivables Convention on this matter.

68. *Mr Alejandro Garro* noted that Article 11(3) of the Receivables Convention indicated that international trade usages were binding as long as they were well known. Such an indication should also be reflected in the Commentary to the MLF.

69. The Chair summarised that the Working Group agreed to use Article 11 of the Receivables Convention as a starting point of its provisions on rights and obligations of the assignor and the assignee in the MLF, while excluding language specific to international assignments (as such referring to domestic trade usages).

70. *Mr Bruce Whittaker* noted that in the Receivables Convention, representation was one which was given at the time of the conclusion of the contract of assignment. As such, he queried how such representation would apply to future receivables, which were part of the scope of the MLF. *Ms Louise Gullifer* also queried the application of articles related to representation in relation to future receivables, noting that in common law it would either be a continuing promise or a representation of the future.

71. *Mr Michel Deschamps* noted that in a factoring agreement, representations were made at the time of the assignment. With respect future receivables, representations were made when the receivable was assigned or just before.

72. *Mr Ulrich Brink (FCI)* noted that commercially it was important for factors when purchasing receivables and future receivables to be sure that the debtor would have no defences and that an assignor has the right to assign the receivables at the time when the assignment became effective. He added that it was important for risk of non-compliance to be with the assignor and not the assignee. As such, in the case that a debtor had a defence, it would be the assignor’s responsibility to reimburse the assignee. *Ms Louise Gullifer* noted that this commercial reasoning should be outlined in the Commentary to the MLF.

73. The Chair summarised that the Working Group had agreed to adopt the approach of the Receivables Convention on this matter, including Article 12(a) which was not found in the UNCITRAL Model Law.

(f) Notification and payment instruction

74. *The Chair* drew the Working Group's attention to the issue of notification and payment instructions. He queried whether Article 13(1) of the Receivables Convention was a useful starting point for the MLF on this matter.

75. Noting no comments, the Chair summarised that the Working Group had agreed to use Article 13 of the Receivables Convention as a starting point, with the exception of 13(2), for the MLF for this issue.

(g) Rights of payment

76. *The Chair* drew the Working Group's attention to the issue of rights to payments and queried if Article 14 of the Receivables Convention was a useful starting point for the MLF.

77. Noting no comments, the Chair summarised that the Working Group had agreed to use Article 14 of the Receivables Convention as a starting point in the MLF for this issue.

(h) Debtor protection

78. *The Chair* drew the Working Group's attention to the issue of the principle of debtor protection and queried if Article 15 of the Receivables Convention was a useful starting point for the MLF.

79. *Ms Megumi Hara* made a reference to Article 62 of the UNCITRAL Model Law which referred to public depository systems. She queried if the MLF should make a note on who collected the monies once they had been deposited by a debtor. This matter could be left to the depository rules in each country. She noted that in Japan, where a debtor was unclear on who it owed a debt to, it could go to the public depository system and discharge the debt; thereafter, the priority rules would decide who the monies went to. However, in the case where priority rules were unclear, the parties in dispute for that payment would get equal shares of the payment. *The Chair* queried if this issue should be addressed in the MLF.

80. *Mr Marek Dubovec (NatLaw)* noted that this was a relevant discussion when considering discharge rules for debtors. He suggested that Article 63(10) of the UNCITRAL Model Law indicated a law to be in place obligating an account debtor to discharge an obligation with the court in cases where it was unsure about the payee, rather than allowing for this on a voluntary basis. He suggested that should the MLF system be applicable, it would be unlikely for a situation to arise where an account debtor was unsure as to the payee. *Ms Louise Gullifer* agreed with *Mr Dubovec*, noting that Article 63 (which was similar Article 17 of the Receivables Convention) referred to debtor discharge, and that after discharging a debt, the priority rules would determine who received the monies. As such, articles related to discharge simply absolved the debtor of their obligation to discharge in all circumstances. *Mr Alejandro Garro* noted that this issue should not be addressed in the MLF, as it was a general issue in common law and civil law which was addressed by other types of legislations. *The Chair* suggested this matter could be mentioned in the Commentary.

81. Noting no comments, the Chair summarised that the Working Group had agreed to use Article 15 of the Receivables Convention as a starting point in the MLF for this issue.

(i) Notification of the debtor

82. *The Chair* drew the Working Group's attention to the issue of notification of the debtor and queried if Article 16 of the Receivables Convention was a useful starting point for the MLF.

83. *Ms Louise Gullifer* queried the types of future receivables which Article 16(2) of the Receivables Convention applied to. She detailed situations where a future receivable had arisen from an existing contract (for which notification would be given when the contract was entered into), and where a notification was given for all future receivables to account debtors, even those which did not, at the time of notification, have a contract.

84. *Mr Ulrich Brink (FCI)* noted that Article 16(2) would apply to both situations. Future account debtors which an assignee was not aware of could be notified at the time they arose.

85. *Mr Marek Dubovec (NatLaw)* noted that the legal effect of a notification on future account debtors was not settled in the UNCITRAL instruments. At the same time, he suggested that this could be left open to other elements of a domestic legal system, rather than need to be prescribed in the MLF. He noted that it was important to understand what point in time future account debtors were notified.

86. *Ms Louise Gullifer* noted that similar issues existed in relation to legal effects of notifications with regard to set-off, defences, and modification, for future account debtors.

87. *Mr Ulrich Brink (FCI)* noted that in practice, the notification was on the invoice issued to the account debtor, indicating that a payment had been assigned and which factor needed to be paid. Additionally, in some countries, it was common practice to notify all existing debtors of the assignment of future receivables, whenever a factoring contract had been signed, so that any existing debtor, who did not owe anything at that particular time but would have future business relationships with the assignor, is informed that in the future all payments must be made to a particular factor. As such, when the next supply contract would be created, the debtor would already be aware of the assignment of the receivable, and the debtor would not be able to set-off any other receivable against the assigned receivable.

88. Noting no objections, the Chair summarised that the Working Group had agreed to use Article 16, and in particular Article 16(2) of the Receivables Convention as a starting point in the MLF for this issue.

89. *Mr Jae Sung-Lee (UNCITRAL)* queried whether, concerning the guidance on registration, the MLF would recommend a separate or a centralised registry. *Ms Catherine Walsh* noted that the guidance should not recommend States who already had secured transactions registries to set up a separate registry for receivables. She also noted that the guidance should recommend that where a State does not have any registry and decides to set up a receivables registry, this should be designed in a manner that it could be expanded to a secured transactions registry at a later point in time. *Mr Murat Sultanov (IFC)* agreed with the need to provide guidance on registries based on the level of development of secured transactions laws in a particular jurisdiction. Additional guidance could be given on this matter in the Commentary.

(j) Debtor's discharge by payment

90. *The Chair* drew the Working Group's attention to debtor's discharge by payment and queried if Article 17 of the Receivables Convention was a useful starting point for the MLF.

91. *Ms Catherine Walsh* noted that Article 17(5) of the Receivables Convention had a reference to a notification of a subsequent assignment, which was a concept which needed further consideration by the Working Group.

92. *The Chair* queried if it was useful to include a provision similar to Article 17(8) of the Receivables Convention in the MLF as it had been drafted in the context of an international convention, rather than a model law.

93. *Mr Alejandro Garro* noted that it was useful to include a provision similar to Article 17(8) in the MLF in order to avoid the MLF impinging onto other areas of law where a debtor may also find discharge.

94. *Mr Ole Boeger* queried if some of the provisions of Article 17 of the Receivables Convention were appropriate for inclusion in the MLF. He noted that the Receivables Convention had been drafted in the context of international trade, and as such, some of its provisions would not be useful in a domestic instrument such as the MLF. He highlighted that non-commercial debtors might be put in confusing situations if notifications were allowed to be sent before the receivables came into existence and if the debtors had to consider every notification they received and be bound by those notifications even when they came from an assignee whom the debtor was not aware of. He suggested that additional consideration needed to be given to this matter.

95. *Mr Marek Dubovec (NatLaw)* agreed with Mr Garro regarding Article 17(8) of the Receivables Convention. With regard to the importance of such provisions also in a domestic law instrument, he noted that Article 63 of the UNCITRAL Model Law also included similar provisions, which showcased their relevance in the domestic context. He added that notification was important even when a receivable had not arisen, as in most cases, notifications related to both existing receivables and future receivables. He added that a notification played an important role in allowing a debtor to understand their obligations at a particular time. He noted that the definition of notification of an assignment was an important consideration, keeping in mind that in the Receivables Convention, the definition of notification included a requirement to reasonably identify the assignee, whereas the definition in the UNCITRAL Model Law did not explicitly require necessary identification of the assignee. He noted that notification was very important, especially when dealing with discharge and set-off, adding that the definition of notification in the Receivables Convention was a more suitable starting point for the MLF.

96. *Mr Bruce Whittaker* noted that notification to the debtor about the assignment of a receivable to another secured party was important to ensure that a secured party was able to collect their debt when due. As such, the onus would likely be on the debtor to understand its obligations upon receiving a notification. He added that both the Receivables Convention and the UNCITRAL Model Law provided a mechanism for the debtor to make further inquiries when it received a notification. He noted that the MLF would need a similar mechanism.

97. *The Chair* queried if any specific alterations needed to be made to the notification principle found in Article 17 of the Receivables Convention.

98. *Mr Ole Boeger* noted that additional consideration needed to be given to debtors who had, despite having received a notification of an assignment, in good faith, discharged a payment to an incorrect creditor. He noted that in such a situation, the onus should be on the debtor to prove good faith.

99. *Mr Ulrich Brink (FCI)* reminded the Group that there were principles relating to commercial reasonableness, debtor protection, and consumer protection which regulated such issues. Moreover, he noted that such issues did not occur often in practice.

100. *Mr Bruce Whittaker* noted that in common law systems, when the debtor did not know who to pay, the debtor would likely pay the court and let the court decide who the receivable belonged to. Such guidance could be included in the Commentary.

101. The Chair summarised that the Working Group would discuss this issue further at its next meeting. It was also agreed that the good faith principle in this regard would be mentioned in the Commentary.

(k) Notification

102. *The Chair* welcomed comments on the principle and definition of notification more broadly.

103. *Mr Marek Dubovec (NatLaw)* explained that there were some minor differences in the definition of notification in the Receivables Convention and in the UNCITRAL Model Law. In the Receivables Convention, a notification required reasonable identification of the assigned receivable and assignee, whereas notification in the UNCITRAL Model Law meant a notice by the grantor or the secured creditor informing the debtor of the receivable that a security right has been created in the receivable, thereby not directly requiring a description of the receivable or identification of the assignee. It was important for a debtor to know who the payee was, especially when the receivables were assigned multiple times. The debtor had to pay according to the last notification that it had received, therefore notification of subsequent assignments should necessarily contain language to identify the subsequent assignee. He suggested that while it would be acceptable to start working on the definition of notification based on the Receivables Convention and the UNCITRAL Model Law, additional consideration should be given to items such as having specific rules for notifications of subsequent assignments.

104. *Mr Ulrich Brink (FCI)* noted that that the notifications needed to be sent to the debtor who owed the payment. With regard to the identification of the assignee, he noted that it was imperative for the debtor to know who the assignee was for all assignments. For subsequent assignments of the same receivable, there were two different ideas in practice: i) in international factoring, the supplier who exported goods to another country would work with another export factor located in their own country. The export factor would then cooperate with an import factor in the debtors' country. The receivable would be transferred from the supplier to the export factor, then from the export factor to the import factor. The import factor would usually take the default risk of the debtor and consequently must have the right to collect receivables. The debtor would only be informed that it had to pay to the import factor. The first assignment to the export factor was not relevant to the debtor as the debtor did not pay to the export factor. As such, one notification covered both assignments and the debtor was discharged by paying the import factor according to the payment instruction. ii) When a factor assigned a receivable to a bank for refinancing. In this case, receivables were assigned by way of security, and usually the bank would not inform the debtors of the subsequent assignment. It would only revert to a notification in the unlikely case where a factor became insolvent, which was a rare occurrence. In that case, the bank, as a security holder, would inform the account debtor to collect payment. It was suggested that the Receivables Convention covered both scenarios and there was no reason to deviate from it.

105. The Chair summarised that the Working Group had expressed agreement towards including provisions along the lines of Article 17 of the Receivables Convention. He noted that the definition of notification in the Receivables Convention was also more suitable for the purposes of the MLF. He noted that one of the issues to consider was that the Receivables Convention was drafted more to cater to international transactions. As such, additional consideration would need to be given to the various types of transactions the MLF intended to facilitate.

106. *Mr John Wilson (IFC)* highlighted certain new practices which were being followed with regard to notifications: he noted that in Chile, even though the registry did not provide a notification to the debtor, a new law required the debtor of a receivable to consult that registry (almost on a daily basis) to inquire who it was obligated to pay the receivable to, which also naturally related to the rules of discharge – and he conveyed that this system seemed to be working well. Alternatively, he noted that some countries had practices with heavy involvement by notaries and registrars concerning notifications. He added that in the law reform presently being developed in Paraguay, for example, the electronic registry would send electronic notifications to the account debtor when a receivable was assigned – this presented some operational issues such as the email address of the debtor needing to be correct and sometimes it would be problematic if the debtor was not a user of that registry. He noted that these practices, as well as other formalities of notifications should be elaborated upon in the Commentary.

107. *Mr Ulrich Brink (FCI)* highlighted the importance of not overburdening the account debtor to search any registries before making payment, as this would likely cause delays and complications. He noted the importance of notifications to the account debtors and added that the registration system conceived by the UNCITRAL Model Law ensured effectiveness and priority against third parties rather than the debtor. Effectiveness against the debtor was ensured by the notification. It was noted that in some countries it was also common practice for an original creditor to collect payment and then remit to the assignee (allowing for undisclosed factoring to take place). Regarding formalities for notifications, he encouraged against these, noting that these added unnecessary complexities. He also noted that notifications sent by a registry office should not be considered equivalent to notifications sent by the creditors.

108. *Ms Xu Jun (ICC)* noted that, according to the new Chinese Civil Code, if a debtor of the receivable was notified of an assignment, the factor in good faith would be protected against any unfavourable effects, should the debtor and the assignor change or terminate the underlying contract without reasonable cause. Moreover, if the parties to the agreement agreed that non-monetary debts could not be assigned, these debts could not be held against a bona fide holder. She also mentioned that in China, a large amount of caution was used with regard to undisclosed factoring. Therefore, if a creditor transferred a receivable and did not notify the debtor, the assignment had no effect on the debtor. She added that some debtors in China often refused to receive notifications – as such, many measures had to be taken to prevent this. She suggested that guidance should be included on formalities for notification in the MLF.

109. *The Chair* noted that it would be beneficial for the MLF to remain open ended on the issue of formalities for notifications in order to ensure that the MLF did not become irrelevant as practices and technologies developed. He noted that present day practices and formalities could be showcased in the Commentary.

110. *Mr Marek Dubovec (NatLaw)* agreed with the suggestion by the Chair to provide for practices and formalities (relating to notifications as well as other items in the MLF) in the Commentary and other implementation documents.

111. *Ms Megumi Hara* noted that in Japan the registration system was strictly separated from notifications as it could potentially signal that the assignor was facing economic difficulties when a notification was sent to the debtor. In order to prevent these issues, the parties could agree when to send a notification. She queried Mr Wilson whether those countries where the notification system was linked with the registry faced similar issues. She added that there was still a link to the registry, such that the information sent in a notification was that which was generated through registration in the registry, however, this was always done manually. She also noted that the system described for Chile, which had discharge rules which were parallel to the priority rules, was similar to the system in Japan. Therefore, after notification, which was mandatory, the priority was decided based upon

registration. If the debtor was not clear on who it should pay, then it had the right to deposit its payment to the court and obtain discharge. This was a beneficial system as it ensured that the insolvency risk was not dealt with between the assignees, and that priority rules in the registry determined who the payee.

112. *Mr John Wilson (IFC)* acknowledged that there was a stigma attached to factoring in various parts of the world which led to assumptions that an assignor was facing economic difficulties if they assigned their receivables. The World Bank Group had been conducting various capacity building and awareness related programs to address this. He then clarified that the primary purpose of notifications issued by registries was to ensure priority against third parties, and that an electronic notification directly to the debtor was an added functionality. He agreed with the importance of highlighting practices (including Chile, Paraguay, and Brazil) from different parts of the world in the Commentary and other implementation material.

113. *Mr Michel Deschamps* noted that the content of the notification in certain civil codes must include a copy or evidence of the assignment to bind the debtor. Notification made through the invoice would also be sufficient. However, the Receivables Convention and the UNCITRAL Model Law did not include too much guidance on the content of the notification. The only provision related was where it stated that if the notification was generated by the assignee, the debtor was entitled to require evidence of the notification.

114. *Mr Giuliano Castellano* noted the Italian experience where the form of notification changed depending on who the debtor was. With respect to government receivables, debts towards Italian public administrations had to follow special formalities related to notification. He noted that this issue should be flagged for the Commentary. *Mr Ole Boeger* agreed with this recommendation, noting that similar problems existed in Greece, particularly regarding who was capable of receiving notifications.

115. *Mr Peter Mulroy (FCI)* noted that Latin America was a leader in electronic invoicing, which was being picked up by countries in other parts of the world. Sometimes, reforms in this area did not consider factoring. As such, the MLF could remind States of the relevance of electronic invoicing in factoring transactions.

116. The Chair summarised the discussion noting that Article 17 of the Receivables Convention was a useful starting point for the rules on notification in the MLF. He added that the Working Group had agreed to give further consideration to the good faith principle, different modes and mechanisms or issuing notification, as well as the content of a notification, all of which could potentially be addressed in the Commentary. It was concluded that the MLF would deal with notification at a factual and conceptual level, rather than a granular one.

117. *Ms Catherine Walsh* suggested to including guidance on who must receive the notification in the MLF. The Chair agreed that the Working Group should consider this matter further.

118. *Ms Louise Gullifer* suggested that the MLF should ensure that electronic notifications are provided for. The Chair agreed, noting that the entire MLF would be drafted in a manner so as to provide from electronic transmission and notification at all stages.

(I) Defences and set-off

119. *The Chair* introduced the topic and queried whether to Article 18(1) and (2) of the Receivables Convention were a useful starting point for the MLF.

120. *Ms Louise Gullifer* queried if Article 18(2) included notifications of future receivables. *The Chair* noted that the Working Group had agreed to a broader application of the MLF to future

receivables. As such, this would be no different. He acknowledged that the language in Article 18(2) of the Receivables Convention was ambiguous and could be clarified. He also added that explanatory text in this context could be included in the Commentary.

121. *The Chair* welcomed comments on the necessity of Article 18(3) of the Receivables Convention in the MLF, keeping in mind the Working Group's earlier decision that an anti-assignment clause did not leave any residual claim for breach between the account debtor and the assignor. *Ms Catherine Walsh* suggested that the MLF retain the concept of Article 18(3), as a way of reconfirming the rule.

122. The Chair summarised that the Working Group agreed that a version of Article 18 of the Receivables Convention should appear in the MLF and that it would be applicable to future receivables. With regard to set-off, the ambiguity it exposed should be dealt in the Commentary. The MLF would keep Article 18(1) and (2) of the Receivables Convention and would also retain the concept in Article 18(3).

(m) Agreement not to raise defences

123. *The Chair* introduced the topic and queried whether Article 19 of the Receivables Convention was a useful starting point for the MLF. It was added that references to 'writing' would need to be replaced with more technologically appropriate language.

124. *Ms Catherine Walsh* reminded the Working Group that the UNCITRAL Model Law addressed the issue of electronic communication precisely through the definition of "writing", which included electronic transmission. This could be an approach the Working Group could consider.

125. *Mr Ulrich Brink (FCI)* noted that Article 19 of the Receivables Convention included a signature requirement, which implied some form of paper-based agreement. He suggested to eliminate this from the MLF. He noted the importance of waiver of defences in reverse factoring transactions where the debtor usually waived all the defences against the factor as the factoring agreement was usually primarily prepared by the debtor. The debtor requested the factor to purchase receivables from its supplier – in return, the debtor promised not to raise any defences and ensure payment by the due date. This debtor-centric business model had augmented the importance of an agreement not to raise defences.

126. While recognising the difficulties created by physical signatures, and of ensuring the recognition of electronic and digital means of signature, *the Chair* queried if the Working Group would support removing the concept of authentication in this regard completely.

127. *Ms Xu Jun (ICC)* suggested defining 'signing' in the MLF, as consistent with other ICC instruments such as Uniform Customs and Practice for Documentary Credits (UCP) and the Uniform Rules for Demand Guarantees (URDG). This should include electronic signatures. She added that this was particularly important as some jurisdictions had form requirements for signature. *The Chair* confirmed that should the MLF retain the signing requirement in Article 19(1) and (3), it would include its electronic equivalence.

128. *Mr Jae Sung Lee (UNCITRAL)* noted that the UNCITRAL approach was to exclude any writing or signing requirement to the extent possible. However, should there be such a requirement, it should be functional. It was added that most States had separate applicable rules for signatures, and those could be referenced by the MLF. *The Chair* noted that the definition of signature in the MLF could have a qualifier that it should only be adopted if the domestic rules on signing did not encompass electronic signatures.

129. *Ms Catherine Walsh* suggested to retain the concept of signature, noting that it would also occur in other parts of the MLF, including for the assignment agreement. She added that guidance was available on the recognition of electronic means of communication and electronic signatures in various UNCITRAL documents which could be relied upon. She also expressed agreement on giving guidance to States to only adopt the definition of signature in the absence of already existing domestic rules which covered electronic signatures.

130. *Mr Bruce Whittaker* supported the proposal made by Mr Brink and Mr Lee, noting that signature was not particularly useful under this context.

131. *Mr Alejandro Garro* suggested the inclusion of some flexible guidelines on this matter similar to Article 5(c) of the Receivables Convention which included a broad definition of 'writing', including signature.

132. *Mr Ulrich Brink (FCI)* noted the importance of having the same formality rules applicable to factoring and reverse factoring transactions, and that the requirement for signature was not a major concern as long as it was consistent and flexible.

133. *Mr Marek Dubovec (NatLaw)* recommended that the writing requirement should be retained keeping in mind that a signature of the debtor was important when any changes took place with regard to the assignee in the contract, either by waiver or by notification.

134. The Chair summarised that the Working Group had agreed to retain the concepts of writing and signature in the MLF, while accommodating their electronic equivalents.

(n) Substance of agreement on waiver and defences

135. With regard to the substance of the agreement on waiver and defences, *Ms Megumi Hara* raised a query on how a party would agree to waive defences, asking whether it had to specify what rights were being waived or if an abstract waiver of all rights under a provision similar to Article 18 of the Receivables Convention could be issued. She noted that in Japan, specific rights needed to be identified following a recent reform of the Civil Code. She suggested that this issue should be noted in the Commentary. *The Chair* agreed that this should be reflected in the Commentary. *Ms Louise Gullifer* also noted that it would be beneficial to clarify what was meant by a waiver, in the case that a domestic legal system contained a different meaning.

136. *Mr Ole Boeger* noted that items such as consumer protection and other mandatory domestic law provisions could not be waived in advance. He added that the list in Article 19(2) of the Receivables Convention was not exhaustive and should be given further consideration, especially in the Commentary. He added that rather than putting a limited waiver, the MLF could indicate exactly what rights were covered.

137. *Mr Ulrich Brink (FCI)* explained the reverse factoring business model and noted the importance of waivers of future defences and rights of set-off to it. He noted that the MLF should seek to facilitate the business model, rather than hinder it. *Mr Peter Mulroy (FCI)* agreed with this notion and added that the reverse factoring industry relied upon showing such transactions as payables, rather than debts on their balance sheets, and this was only possible through waivers. As such, it was important for the MLF to facilitate this.

138. *Mr Alejandro Garro* noted that the MLF was not intended to impact mandatory rules, and that such clarification could be provided in the Commentary.

139. *Ms Louise Gullifer* noted that keeping in mind industry practices, it should be specified in the MLF that waived defences and rights of set-off included those that arose in the future. The Commentary should state that if national law stipulated that a waiver could not be for the future, then the factoring law would override this restriction.

140. *Mr John Wilson (IFC)* reiterated the significance of provisions relating to waivers of defences and rights of set-off. He noted the difficulties faced in some jurisdiction to waive future contractual rights, particularly in reverse factoring transactions. To resolve this, several jurisdictions had started converting receivables into negotiable instruments. It was noted that when a receivable was confirmed by the payer, the debtor was deemed to waive any future rights and defences. For this, the receivable or invoice became a negotiable instrument. Additionally, there were some legislations which provided a tacit acceptance of payment, which allowed the receivable to become a negotiable instrument unless the payment was repudiated in a certain period of time and the period of tacit acceptance had expired. He noted that while this practice was not endorsed, it was often recommended by the factoring industry as it made the receivable an irrevocable promise to pay, which made financing easier. He also added that there were some jurisdictions which did not practice factoring of receivables but more factoring of negotiable instruments (such as Argentina where post-dated cheques were factored). He recommended a specific approach to the issue of waiver of future defences and rights of set-off.

141. *Mr John Wilson (IFC)* further added that should the MLF take a similar approach whereby receivables effectively became irrevocable promises to pay, thus making the factor a holder in due course, consideration would need to be given to interoperability with the UNCITRAL Model Law. This was because such would result in a situation where, on the one hand, a creditor had a security right in a future receivable, and on the other, a factoring company (as a holder in course) had a “super-priority” over the previously acquired receivables. These types of situations with regard to security rights and outright transfers of receivables needed to be given further consideration.

142. *Mr Jin Saibo (FCI)* noted that issues existed in China with regard to mixing receivable financing with negotiable instruments. Additionally, issues also existed with regard to discounting businesses being operated by factoring companies, which was contrary to Chinese domestic banking regulations and other laws. He urged caution and advised against any notion of merging receivables with negotiable instruments.

143. *Mr Marek Dubovec (NatLaw)* also reiterated the importance of including in the MLF that waived defences and rights of set-off included those that would arise in the future. He emphasised that this was crucial in order to incentivise practitioners to move from negotiable instruments to more modern forms of receivable financing. He added that in practice waiver of defences and rights of set-off were actioned differently in different parts of the world, and that the provisions in the MLF should capture and facilitate these types of practices.

144. The Chair summarised that the Working Group agreed that specific rules should be prescribed in the MLF on the types of rights which could be waived, rather than general rules. He added that the Working Group also agreed to include in the MLF provisions relating to waivers in future receivables. Additionally, it would be specified in the Commentary that this would not override mandatory law, but would override any national law definition of waiver.

145. *Mr Peter Mulroy (FCI)* agreed with Mr Wilson and Mr Dubovec. He noted that the MLF should help markets clearly define factoring and allow them to transition into more modern systems of receivable financing. He added that instruments such as post-dated cheques, bills of exchange, etc, were often used in developing markets keeping in mind the added security they offered. However, he noted that these slowed down the development towards a modern factoring market. *The Chair*

reemphasised the importance of striking a balance between specific and general rules to enable this outcome.

146. *Ms Xu Jun (ICC)* noted that in China, future receivables were excluded in the factoring business when conducted by commercial banks, however, not when conducted by commercial factors. She noted that these rules were presently being revised.

147. *Mr John Wilson (IFC)* noted that the MLF was intended to serve as a tool to enable countries to develop a framework for factoring in a more fundamental manner. He explained that many countries had developed practices which were labelled factoring but did not encompass transactions which would typically be classified as factoring transactions. This included the use of post-dated cheques and other negotiable instruments. He added that IFC was assisting many governments and banks in different parts of the world to offer more asset-based financing and the MLF would facilitate this. He also noted that the MLF would be a steppingstone towards broader secured-transactions law reform for a jurisdiction by means of adopting the UNCITRAL Model Law. It was also added that the MLF should capture as many factoring practices as possible, while at the same time incentivise factoring in a more traditional manner.

148. *Mr Jin Saibo (FCI)* explained that in China negotiable instruments law and factoring law were based on different principles. Factoring followed assignability whereas negotiable instrument followed negotiability. The latter meant that the holders in due course may have better positions than the previous holder and may have defences against third parties. Assignability meant the next holder of the receivable got the same position as that of the previous assignor and therefore the assignee would not have a better position than the assignor. He noted that the MLF must respect this distinction.

149. *Mr Giuliano Castellano* explained that in a healthy and functioning regulatory environment, posted cheques from a regulatory/accounting perspective, were not considered the same way as a functional and systematic factoring transaction. He added that post-dated cheques had emerged because a lack of clarity in the treatment of other form of receivables. He noted that while the MLF would not immediately change market practices, if implemented properly, it should enable a system to become fully functional. This would eventually ensure that banks avoid transactions with post-dated cheques and other similar instruments due to risks such as prudential regulation and money laundering. He queried if it was necessary to distinguish or to separate factoring from those transactions in the MLF. He echoed Mr Saibo's intervention that the Chinese approach where regulators separated such transaction from factoring was generally common in a licensing environment.

150. The Chair summarised and noted that the Working Group had agreed that it was important for the MLF to incentivise typical factoring transactions, rather than forcing jurisdictions to practice types of transactions which closely resembled factoring but were of a different nature. The Working Group had also agreed to reflect mandatory rules in the Commentary. It was noted that additional consideration needed to be given to the issue of whether the exclusions in Article 19(2) of the Receivables Convention were enough or others should also be included.

(o) Modification

151. *The Chair* introduced the topic and queried whether Article 20 of the Receivables Convention could be a starting point for provisions relating to modification of the original contract in the MLF.

152. *Ms Megumi Hara* noted two examples of modifications arising from two different instances which presented different questions: i) When the modification of the original contract arose from a change of ownership of immovable property where the assigned receivable was the rent on that

property. In this situation, after the assignment, there was a change of the ownership, and, as such, she queried if the assignment of future receivables would be restricted or it would prevail and have priority; additionally, she enquired if the new owner of the immovable property would have an obligation to pay; ii) When the modification of the original contract arose from changes in ownership of the business. She further explained that these aspects related to the how future receivables were treated under insolvency procedures, which are also interrelated with the limitations of the effect of future receivables and their assignment.

153. *Ms Louise Gullifer* noted the importance of notifications with regard to modifications and recommended that this importance be emphasised in the Commentary. She noted that it was important for parties to understand that modifications to contracts might not be possible after the first notification. This was particularly relevant regarding future receivables.

154. *Mr Ole Boeger* queried if this provision prevented modifications to contracts after the first notification and how this would operate regarding future receivables. He suggested that additional consideration be given to this matter.

155. *Mr Ulrich Brink (FCI)* explained the commercial reasons behind Article 20 of the Receivables Convention, noting that it existed to offer protection to factors. It was added that reasonable factors would allow for minor inconsequential modifications to contracts as necessary. Additionally, regarding future receivables, he explained that if a notification related to future receivables, the contract for these would not have been concluded at that time, and parties were free to agree on any supply terms as they saw fit. As such, modifications were not a real issue in future receivables.

156. *Ms Louise Gullifer* noted that when notification related to a contract in which receivables had not yet arisen, problems could occur. It would be useful for the Commentary to clarify this matter.

157. *Mr Jin Saibo (FCI)* explained that in the Chinese Civil Code, after a notice of the assignment of future receivables had been delivered to the assignee, the rights of the assignee would not be affected if the debtor and creditor modified or terminated the underlying transaction without reasonable cause.

158. *Ms Xu Jun (ICC)* queried whether the MLF would cover “refactoring” transactions. She explained that in China many commercial companies would sign a factoring contract with the creditor and then “refactor” the receivable to a bank. As a result, the creditor would be financed by the factor, i.e. the bank. There was only one transactional contract among the parties adjacent a refactoring contract between the company and the bank. She recommended that the MLF should consider this kind of transaction.

159. The Chair summarised that additional consideration needed to be given to these matters depending upon the relevance of these issues to the industry. It was also noted that explanations needed to be provided for the application of Article 20(2) of the Receivables Convention in the Commentary for the MLF, including examples.

(p) Recovery of payment

160. *The Chair* introduced the topic and queried whether to Article 21 of the Receivables Convention, and Article 67 of the UNCITRAL Model Law could be useful starting points for provisions relating to recovery of payment in the MLF.

161. *Mr Peter Mulroy (FCI)* queried how the failure to perform the original contract related to the discussion on set-off and defences. *Mr Ulrich Brink (FCI)* explained that under Article 21 of the Receivables Convention, recovery referred to a situation where the debtor had already made a

payment to the assignee, and thereafter circumstances arose which would entitle the debtor to recover that money from its original creditor. Alternatively, set-off was when the debtor had not yet made a payment or had a defence and could object to paying.

162. The Working Group agreed that Article 21 of the Receivables Convention was a useful starting point for the MLF, keeping in mind that it already had language similar to that which the MLF would use.

(q) Extrajudicial remedies and enforcement of rights

163. *The Chair* drew attention of the Working Group's to Paragraph 56-63 of the Issues Paper which posed questions regarding extrajudicial remedies. He queried if the MLF should provide a basic remedial structure starting with Article 74 of the UNCITRAL Model Law.

164. *Ms Catherine Walsh* suggested that the MLF should provide for extrajudicial sale with regard to security assignments, and collection with regard to security and outright assignments of receivables.

165. *The Chair* queried if Article 74 of the UNCITRAL Model Law provided a useful concept for the MLF to follow. He further queried whether expeditious proceedings should be built in the MLF and its various possible forms which should be included.

166. *Mr Marek Dubovec (NatLaw)* agreed with the importance of extrajudicial enforcement. He noted that both disposal and collection should be able to be effectuated extrajudicially, particularly for post-default situations. He referred to Page 26-28 of the Background Paper (Study LVIII A – W.G.1 – Doc. 3 rev. 1) and noted how certain platforms could be used to dispose receivables post-default. Regarding expeditious proceedings and remedies, he recommended that the Commentary include guidance for States to provide for expeditious judicial enforcement and remedies for secured transactions in general, as this would incentivise the growth of the factoring industry.

167. *Mr Bruce Whittaker* reminded the Group that enforcement in this context only applied to security rights rather than outright transfers of receivables. In these situations, the creditors always had the right to collect the receivables when they were due, regardless of default. Any remedies of enforcement under consideration related to disposal of receivables and using the proceeds of the disposal for recovery. *Mr Michel Deschamps* agreed and added that there was no need to distinguish between pre-default and post-default scenarios in an outright transfer of receivables. He suggested that the MLF should not contain much substantive guidance on remedies.

168. *Mr Ole Boeger* agreed and added that as the owner of the receivable, the factor's rights to sell or dispose the receivable stemmed from its ownership of the same. As such, much guidance on enforcement or remedies in this regard was not necessary in the MLF. However, he suggested that guidance could be given as to the items which could not prohibit a factor from exercising these rights, such as lack of consent from the original creditor.

169. *Ms Catherine Walsh* noted that Articles 82 and 83 of the UNCITRAL Model Law confirmed the right of collection of the assignee in relation to a security assignment and an outright transfer. She noted that this should also be confirmed in the MLF. She agreed on the need not to detail general secured transactions related remedies in the MLF. She added that the MLF should address the right of a debtor to any surplus collected in the case of a security assignment.

170. *Mr Steven Geerlings (WOA)* suggested that the MLF should also defer to local applicable law in addition to providing specific remedies, as several jurisdictions treated security assignments differently from others. This would also prevent issues of recharacterisation.

171. *Mr Bruce Whittaker* recalled that the MLF would also apply to non-ownership security interests in receivables, where inherent rights to deal with the assets did not exist. He suggested to give consideration to including enforcement provisions relating to factoring and receivable financing in the MLF as these would be important in many jurisdictions which did not have general enforcement provisions relating to secured transactions. *Ms Louise Gullifer* agreed with this proposition and noted that consideration should also be given to the inclusion of specific provisions from Article 78 of the UNCITRAL Model Law. She noted that Articles 82 and 83 only dealt with collection, rather than disposal.

172. *The Chair* noted that additional guidance needed to be collected on disposal with regard to outright sale/transfer of receivables and disposal in the case of security interests. The Chair requested guidance on a list of potential remedies items and queried whether these provisions should cover receivables from public entities.

173. *Mr Michel Deschamps* noted that, in the outright transfer of receivables, the provision only needed to cover the rights of the assignee to collect, dispose, and the obligation to remit the surplus.

174. *Mr Marek Dubovec (NatLaw)* proposed two generally applicable provisions in this regard: i) that there should be a provision indicating to act in a commercially reasonable manner; and ii) that there should also be general provisions relating to consumer debtors. With regard to specific provisions, he agreed that enforcement rules should be provided along the lines of Articles 82 and 83 of the UNCITRAL Model Law on collection; and also a simplified version of Article 78 on disposal relating to sale of receivables by public or private auction.

175. *Mr Jae Sung Lee (UNCITRAL)* noted that Article 14 of the Receivables Convention covered that an assignee may not retain more than the value of its right in the receivable. Regarding enforcement related options the MLF should provide in the case of a security assignment, he suggested that all four options provided in the UNCITRAL Model Law should be included. *Mr Bruce Whittaker* agreed with this proposition.

176. *Ms Catherine Walsh* noted that Article 78 of the UNCITRAL Model Law should be simplified only to relate to disposal extrajudicially. She queried whether the MLF would tackle the issue of how proceeds were to be distributed.

177. *Mr Alejandro Garro* noted that alongside Articles 78 and 79 on the UNCITRAL Model Law relating to collection, the MLF could also consider examining Article 72 as a general. He also recommended the inclusion of the provisions relating to extension of the rights of collection found in Articles 82 and 83 of the UNCITRAL Model Law.

178. Regarding enforcement as applicable to proceeds mentioned in Paragraph 60 of the Issues Paper, *Ms Louise Gullifer* noted that it would be important to first define proceeds before moving towards drafting provisions related to their enforcement.

179. *Mr Ole Boeger* suggested that a provision similar to Article 79(3) of the UNCITRAL Model Law should be included in the MLF to cover for the question of the liability of an assignor in the case of a shortfall.

180. *Ms Catherine Walsh* noted that the MLF should not include the remedy of the creditor proposing to take the collateral in satisfaction of an obligation. This was because such should only be possible when the value of a collateral was not predetermined, which was never the case with receivables. She added that while consideration could be given to the option of allowing the creditor to purchase the collateral, this would not normally take place. *Mr Deschamps and Mr Boeger* agreed

with this proposition not to include any such provisions in the MLF, as most circumstances of this sort would be dealt with by agreements between the parties.

181. *Mr Michel Deschamps* noted the obligation of the assignees to remit the surplus in a security assignment would apply not only in the event of a sale or disposition of receivables by the creditor, but also in the case of the secured creditor collecting the receivable.

182. The Chair summarised that the Working Group had agreed to use the provisions in Articles 82 and 83 of the UNCITRAL Model Law as a starting point for provisions relating to remedies and enforcement in the MLF. It was also agreed that consideration would be given to provisions similar to Articles 78 and 79 of the UNCITRAL Model Law, as well as Article 72. The Working Group also agreed that the remedy of the creditor proposing to take the collateral in satisfaction of an obligation should not be included in the MLF.

(r) Non-receivable assets

183. *The Chair* opened the floor for a discussion on non-receivable assets and queried whether they could be treated as proceeds over which rights could be given.

184. *Mr Bruce Whittaker* recalled the importance of defining proceeds. He added that enforcement would work well for proceeds, as well as proceeds of proceeds, if these were of a monetary character. However, enforcement would be problematic if proceeds were non-monetary, such as returned products.

185. *Ms Catherine Walsh* noted that Article 14 and others of the Receivables Convention was related to proceeds in the context of receivables and suggested to give it consideration in drafting the relevant provisions of the MLF.

186. *The Chair* queried if the Working Group agreed to include or exclude non-monetary proceeds from the MLF. *Mr Ulrich Brink (FCI)* suggested that this matter should be considered further once a definition of proceeds has been agreed upon.

187. *Mr Marek Dubovec (NatLaw)* noted that Paragraph 60 of the Issues Paper listed three sets of assets in which factors may enforce their rights against: proceeds; returned goods; and supporting obligations and rights. It was noted that Articles 82 and 83 of the UNCITRAL Model Law dealt with supporting rights in a general sense. This could be a useful starting point for the MLF to deal with all three categories of assets. *Ms Catherine Walsh* agreed with this proposition and noted that the MLF could simply note generally that the assignor acquired the benefits of the rights in question.

188. *Ms Catherine Walsh* added that the MLF should not consider proceeds of proceeds, and in particular, non-monetary proceeds of proceeds noting the issues this would create with a registry for factoring which might form part of the MLF.

189. *Mr Michel Deschamps* noted that the legal basis for an assignee claiming an interest in returned goods was unclear under several circumstances. As such, different types of situations should be considered when preparing the relevant provisions of the MLF as the assignees rights to returned goods would often be governed by specific statutes or laws. With regard to proceeds of proceeds, he noted that there was significant overlap between proceeds generally, and proceeds of proceeds, particularly in civil law jurisdictions where these concepts were not clearly defined. He recommended additional consideration be given to this matter.

190. *Ms Louise Gullifer* recommended further consideration to be given to the different types of monetary proceeds available. She noted that the most common type of monetary proceeds were

those found in the form of bank accounts and cheques. However, the MLF might also need to consider physical money (bank notes and coins), as well as digital assets (such as bitcoin and cryptocurrencies), for which enforcement might be different as they might not constitute rights against other persons.

191. *Mr John Wilson (IFC)* queried whether an assignee could acquire an interest in underlying income-producing assets. It was noted that IFC had encountered several situations where in recovery of distressed assets or in securitisation, an assignee had the right to the receivables being produced by the underlying assets. However, it was unclear what would happen if the receivables were stopped from being produced and the assets continued to generate other types of income.

192. *Mr Alejandro Garro* noted that the MLF could follow the approach of Article 27 of the Receivables Convention with regard to proceeds. He added that it should not delve into the distinction between monetary and non-monetary proceeds as this was a complicated matter often best addressed by other domestic rules. With regard to returned goods in particular, he suggested that the MLF should note that the right of the assignee in this context was limited to certain circumstances where the returned goods were given as payment for a contract, and not when the contract was terminated.

193. *Ms Xu Jun (ICC)* noted that the definition of proceeds in Article 5(j) of the Receivables Convention did not include returned good. Additionally, in practice, proceeds did not normally take the form of returned goods. She also recommended to simplify the wording of Article 34 of the Receivables Convention when including it into the MLF, keeping in mind difficulties of translating the provision into Chinese.

194. The Chair noted that the Working Group would reconsider this matter after defining proceeds. It was also summarised that the Working Group had agreed to follow the approach of supporting rights and obligations of the assignee as that found in the Receivables Convention.

195. *The Chair* queried the extent to which the MLF should include a provision similar to Article 75 of the UNCITRAL Model Law which covered the rights of affected persons to terminate enforcement.

196. *Ms Louise Gullifer* explained that article 75(2) specifically dealt with what happened when the right to termination came to an end. This specified that the right of termination could not be used once enforcement had reached a certain stage. She noted that this was largely a secured transactions law concept and was not directly applicable to factoring transactions.

197. *Mr Marek Dubovec (NatLaw)* noted that Articles 78, 82 and 83 should be the basis for the enforcement chapter in the MLF without elaborating upon details too deeply on disposal.

198. *Mr Bruce Whittaker and Ms Catherine Walsh* suggested that at an early stage of the drafting of the MLF, detailed provisions on enforcement should be included as these would help the Working Group later determine exactly what was practically relevant.

199. The Chair summarised that it would be beneficial to take an overinclusive approach to drafting the MLF at this stage.

(s) Conflict of laws

200. *The Chair* noted that intersessional work had been done on the issue of conflict of laws in the MLF by a small subgroup. He thanked all the members of the subgroup for their support and drew the attention of the Working Group to paragraphs 64-70 of the Issues Paper. It was noted that the UNCITRAL Model Law Articles 84-100 had been considered for inclusion in the MLF. The

recommendations of the subgroup in this regard could be found in the Issues Paper. He noted that these issues were particularly relevant when parties from multiple jurisdictions were involved in a transaction. *Mr Marek Dubovec (NatLaw)* provided a summary of the discussion of the subgroup and invited the Working Group to give feedback.

201. *Mr Alejandro Garro* noted that paragraph 64 of the Issues Paper indicated three different choices whenever there was an issue which involved the laws of more than one jurisdiction – with regard to first one of these choices which dealt with characterisation of a transaction by a court, he noted that many jurisdictions did not have specific codified rules relating to factoring contracts. As such, characterisation by courts of whether this type of transaction was an assignment of rights or a sale, could raise various issues. He queried if the subgroup had given consideration to the issue of which law applied to characterisation.

202. *Mr Michel Deschamps* explained that in Canadian and American practice, a true sale opinion was required under the laws of the jurisdictions that governed the agreement and also under the law that applied to the validity, perfection, or priority of an assignment. *Ms Catherine Walsh* noted that American practice in this regard was the result of a statement in the Commentary to the UCC on this matter. While this statement had been criticised on several occasions, it would be important to include guidance in the MLF with regard to the law applicable to characterisation. She added that the law determining third-party effectiveness and priority normally determined characterisation under various international instruments. *Mr Marek Dubovec (NatLaw)* added that characterisation was dealt with in the definition of priority in the Receivables Convention. He suggested that this approach should be followed by the MLF.

203. The Chair summarised that the Working Group agreed with the conclusion to include guidance on characterisation in the MLF based on the Receivables Convention.

204. *Ms Catherine Walsh* recalled that the subgroup had not addressed the issue of change in location of the assignor which allowed a State to recognise third party effectiveness. She noted that characterisation in such a situation would be using the law of the forum. *Mr Marek Dubovec (NatLaw)* agreed with this proposition and noted that this issue needed additional consideration, especially once matters related to registration had been addressed.

205. *The Chair* queried using Article 86 of the UNCITRAL Model Law as a starting point for the MLF to address the issue of law applicable to various aspects of security rights in intangible assets, including receivables.

206. *Mr Michel Deschamps* queried if there were any substantive reasons why the Working Group should depart from the approach adopted by the UNCITRAL Model Law on this matter.

207. *Mr Alejandro Garro* agreed with using Article 86 of the UNCITRAL Model Law as a starting point in this regard. With regard to using Article 84 of the UNCITRAL Model Law in the MLF, he noted that on the issue of the law applicable to the mutual rights and obligations of the grantor and the secured creditor arising from their security agreement, Article 28(2) of the Receivables Conventions introduced a choice of law rule rather than referring to the law applicable to the agreement. He queried why the subgroup choose the approach in Article 84 of the UNCITRAL Model Law rather than Article 28(2) of the Receivables Conventions.

208. *Mr Michel Deschamps and Ms Catherine Walsh* explained that the MLF was intended to have basic and general principles with regard to conflict rules. For this reason, it was considered to rely on Article 84 of the UNCITRAL Model Law rather than the approach taken by the Receivables Convention. It was added that the general private international law rules of a domestic jurisdiction should be used in this regard.

209. *Mr Jin Saibo (FCI)* noted the importance of having clear rules on conflict of laws in the MLF, particularly for e-commerce.

210. The Chair summarised that the Working Group had agreed to use the relevant provisions of the UNCITRAL Model Law as a starting point for the provisions in the MLF on this matter.

211. *The Chair* welcomed input from the Working Group on using Articles 88-92 of the UNCITRAL Model Law as the basis of the corresponding provisions in the MLF.

212. The Working Group agreed on relying on Articles 88-92 of the UNCITRAL Model Law as the basis of the corresponding provisions in the MLF.

213. *Mr Jae Sung Lee (UNCITRAL)* agreed with the analysis presented by the subgroup on conflicts of law, subject to clarification of policy issues such as the definition of proceeds. It was noted that the subgroup's recommendation to draft the provisions on conflicts in a more concise manner was also suitable for the MLF. He queried if the MLF would have a substantive rule on characterisation of a transaction as an outright transfer or a transfer for security purposes (other than a conflicts rule).

214. *Mr Michel Deschamps, Mr Bruce Whittaker, Ms Louise Gullifer, Mr Alejandro Garro, and Mr Marek Dubovec (NatLaw)* recommended that the MLF should not include a substantive provision distinguishing between an outright assignment and a security assignment.

215. The Chair summarised that the Working Group agreed that while a rule on conflicts would be necessary with regard to characterisation, any substantive rule would not be consistent with the UNCITRAL Model Law. It was noted that the MLF would define a security right, as consistent with the UNCITRAL Model Law.

216. *The Chair* queried if Article 93 (1) and (6) of the UNCITRAL Model Law were an appropriate starting point with regard to the corresponding articles in the MLF. Additionally, the Chair queried if both options found within Article 97 of the UNCITRAL Model Law should be included in the MLF.

217. The Working Group agreed to use Article 93 (1) and (6) of the UNCITRAL Model Law as a starting point for the corresponding provisions in the MLF.

218. *Mr Michel Deschamps* recommended that the MLF should not deal with priority of competing claimants in a bank deposit. He also noted that Article 97 should be discussed once the Working Group had defined proceeds.

219. The Chair thanked the subgroup for its work and summarised that the Working Group agreed with the recommendations provided. It was noted that the subgroup would present a draft of its provisions at the next session of the Working Group.

(t) Structure of the MLF and general comments

220. *The Chair* welcomed comments on the format and structure of the MLF.

221. *Mr Bruce Whittaker* recommended following the structure of the UNCITRAL Model Law rather than the Receivables Convention, keeping in mind that it was more recently adopted and was of a similar nature to the MLF. Additionally, keeping in mind that the MLF was to be a stepping-stone to allow States to adopt the full UNCITRAL Model Law, following the same structure would allow for an easier transition for States who would later adopt that instrument. *Ms Catherine Walsh* agreed with

this recommendation and noted that the UNCITRAL Model Law provided better rules relating to creation, third-party effectiveness and priority provisions.

222. *Mr Marek Dubovec (NatLaw)* agreed with this proposition. He also suggested that the 'final provisions' chapter in the MLF should be changed to a chapter containing provisions relating to how a State could transition into the MLF. He recommended that this should be discussed at the next session of the Working Group.

223. The Chair summarised that the Working Group had agreed to follow the structure of the UNCITRAL Model Law. It had also agreed to include a chapter of transition provisions. Thereafter, the Chair invited comments on the general drafting of the MLF.

224. *The Secretariat* noted that the 1988 UNIDROIT Convention on International Factoring (Ottawa Convention) could also be given consideration in this regard.

225. *Ms Xu Jun (ICC)* suggested that the MLF also consider digitalisation efforts in the factoring and banking sectors. She noted that recently, companies and banks in China had created electronic vouchers on blockchains which they had set up on supply chain finance platforms. These were now often used in the financing of receivables. She elaborated the process of assignments on such platforms based on blockchain and noted the importance of the MLF to address the issues these new forms of factoring created.

226. *Mr Ulrich Brink (FCI)* underscored that factoring practices had evolved significantly since the adoption of the 1988 Ottawa Convention. As such, its relevance should be considered when relying upon it. He added that the MLF should cover current and newer practices of factoring and should seek to avoid over-regulating the industry.

227. *Mr Marek Dubovec (NatLaw)* noted that the MLF should be drafted in a manner to address the current and future needs of the factoring industry. This would include ensuring that it covers practices such as reverse factoring, supply chain financing, and recourse factoring, as well as other modern and evolving types of factoring transactions practiced by the industry. He noted the importance of including language directly in the MLF that facilitated these types of transactions, without going as far as defining these transactions in the provisions.

228. *Mr Alejandro Garro* agreed on the importance of referring to the Ottawa Convention, as this would allow readers to understand the evolution of the factoring industry. Of particular relevance were the terms and definitions used in the 80s, and the terms used in the modern era. Additionally, he agreed with the importance of considering modern technologies, as well as developing terminologies that recognised universally used concepts within the factoring industry. He also queried if the MLF should offer any substantive guidance to factoring transactions of an international nature.

229. *Mr Jin Saibo (FCI)* recommended that fake transactions and documents could be addressed in the MLF. It was noted by the Working Group that these issues were likely addressed in misrepresentation and fraud legislation at a domestic level. However, consideration may be given to this matter in the Commentary.

230. *Mr Bruce Whittaker* agreed with the need to ensure that the MLF applied to transactions such as reverse factoring, supply chain finance, and recourse factoring. He suggested that this could be accomplished by references to relevant ICC definitions of these concepts in the Commentary, rather than including these items in the MLF itself. *Ms Louise Gullifer* agreed with this proposition, noting the risks associated with trying to define various types of transactions. With regard to scope, she supported that the MLF should have a wide scope in terms of the present and future types of factoring

it would apply to. The Commentary would need to give additional guidance on this matter. *Ms Catherine Walsh and Mr Michel Deschamps* agreed with these propositions.

231. *The Secretariat* reminded the Working Group that the original proposal for the project included thorough consideration of factoring, reverse factoring, and supply chain financing. Additionally, the project was also expected to cover the use of modern technologies in factoring transactions. At the same time, it was also important to develop a simple and easy to adopt instrument for governments. The Working Group has thus the mandate to cover all those items in a manner which is not overly complicated for law-makers and other potential users of the instrument.

232. *Ms Xu Jun (ICC)* agreed that the language of the MLF should be simple. She noted that the Commentary could give additional guidance on interpretation and understanding of the rules. Additionally, she also supported the inclusion of cross references from other instruments.

233. *Mr Ulrich Brink (FCI)* suggested to provide a preamble to the MLF indicating the target audience for the instrument.

234. The Chair summarised that while the issue of technology was considered in the Background Paper for the first meeting of the Working Group, several participants had noted that additional discussion needed to take place, with particular relevance to the use of blockchain technology in factoring, as well as for defining terms such as 'platform' and 'receivables'.

235. *The Secretariat* noted that the MLF should provide a legal framework for the use of modern technologies in the factoring industry. It was noted that rules within the MLF should not limit the use of modern technology, and consideration should be given to these aspects during the drafting process of the rules. It was also suggested that the Commentary to the MLF could be considered to be made part of the document itself, rather than be prepared as a separate document at a later point in time.

236. The Chair summarised that the Working Group had agreed to consider modern technologies as part of its work. Additionally, cross-references to other instruments should also be made part of the Commentary to the MLF and that the MLF should be drafted using simple language to ensure large-scale adoption.

Item 5: Closing of the session

237. The Chair thanked all participants for their contributions to what had been a friendly, constructive and productive second session.

238. It was noted that the third session of the Working Group would take place on 26-28 May 2021.

ANNEX I

AGENDA

1. Opening of the session by the Chair
2. Adoption of the agenda and organisation of the session
3. Adoption the Summary Report of the First Session ([Study LVIII A – W.G.1 – Doc. 4 rev. 1](#))
4. Consideration of substantive matters:
 - (a) Matters identified in the Issues Paper (Study LVIII A – W.G.2 – Doc. 2)
 - (b) Preliminary drafts for the Factoring Model Law (Study LVIII A – W.G.2 – Doc. 3)
5. Organisation of future work
6. Any other business
7. Closing of the session

ANNEX II**LIST OF PARTICIPANTS****EXPERTS**

Mr Henry GABRIEL (Chair)
Professor of Law
Elon University
United States of America

Mr Giuliano CASTELLANO
Associate Professor
Asian Institute of International Finance Law (AIIFL)
Hong Kong

Mr Michel DESCHAMPS
Université de Montreal
McCarthy Tetrault
Canada

Mr Alejandro GARRO
Adjunct Professor of Law
Columbia Law School
United States of America

Ms Louise GULLIFER
Rouse Ball Professor of English Law
University of Cambridge
United Kingdom

Ms Megumi HARA
Professor of Law
Gakushuin University
Japan

Ms Catherine WALSH
Professor of Law
McGill University
Canada

Mr Bruce WHITTAKER
Senior Fellow
University of Melbourne
Australia

INTERGOVERNMENTAL ORGANISATIONS

EUROPEAN BANK FOR RECONSTRUCTION AND
DEVELOPMENT (EBRD)

Mr Ammar AL-SALEH
Senior Counsel - Access to Finance
Financial Law Unit, Legal Transition Team

UNITED NATIONS COMMISSION ON
INTERNATIONAL TRADE LAW (UNCITRAL)

Mr Jae SUNG LEE
Legal Officer
International Trade Law Division

WORLD BANK GROUP

Mr Murat SULTANOV
Senior Operations Officer, Financial Access,
Finance, Competitiveness & Innovation Global
Practice

Mr John WILSON
Senior Financial Sector Specialist

INTERNATIONAL NON-GOVERNMENTAL ORGANISATION

INTERNATIONAL CHAMBER OF COMMERCE

Mr Krishnan RAMADURAI
HSBC Global Head of Capital Management for
Trade and Receivable Finance

Mr XU Jun
Bank of China Deputy General Manager
Global Transaction Banking Department

KOZOLCHYK NATIONAL LAW CENTER (NatLaw)

Mr Marek DUBOVEC
Executive Director
United States of America
Advisor to UNIDROIT Secretariat

Mr Thomas M. JOHNSON
Research Attorney
United States of America

Mr Bob TROJAN
Senior Advisor
United States of America

PRIVATE SECTOR REPRESENTATIVES

APEC FINANCIAL INFRASTRUCTURE
DEVELOPMENT NETWORK

Mr Chris WOLHERT
Business Leader
Commercial Distribution Finance Asia
Wells Fargo Bank

FACTOR CHAIN INTERNATIONAL (FCI)	Mr Peter MULROY Secretary General
	Mr Ulrich BRINK FCI Legal Committee Germany
	Mr Saibo JIN FCI Legal Committee China
SECURED FINANCE NETWORK	Mr Richard KOHN Co-General Counsel
WORLD OF OPEN ACCOUNT	Mr Steven GEERLINGS Strategic Advisor

OTHER OBSERVERS

Mr Orkun AKSELI
Associate Professor of Commercial Law
Durham University Law School

Mr Ole BÖGER
District Court Judge
Hanseatic Court of Appeal
Bremen

SECRETARIAT

INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW (UNIDROIT)	Mr Ignacio TIRADO Secretary-General
	Ms Anna VENEZIANO Deputy Secretary-General
	Ms Philine WEHLING Legal Officer
	Mr Hamza HAMEED Legal Consultant
	Ms Tian Shu Liu Legal Assistant