INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW
INSTITUT INTERNATIONAL POUR L'UNIFICATION DU DROIT PRIVE

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UNIDROIT Working Group
on Best Practices for Effective Enforcement

Eleventh Session (hybrid)
13-15 October 2025

UNIDROIT 2025
Study LXXVIB – W.G. 11 – Doc. 6
English only
December 2025

SUMMARY REPORT

1. The eleventh session of the Working Group established to prepare Best Practices for Effective Enforcement (hereinafter "the Working Group") was held in hybrid format – in person in Rome and remotely via Zoom – from 13 to 15 October 2025. The Working Group was attended by 29 participants, including members, observers from intergovernmental and other international and academic organisations, and representatives of the UNIDROIT Secretariat. A full list of participants is available in Annexe II.

Items 1, 2. Opening of the session and welcome by the Chair and the Deputy Secretary-General; Adoption of the agenda (Study LXXVIB – W.G.11 – Doc. 1 rev.) and organisation of the session

2. *The Chair of the Working Group* opened the session, welcoming all participants in person and online and thanking all for their diligent and thoughtful work during the intersessional period, as well as the Secretariat for carrying out the public consultation and organising feedback for the consideration of the Drafting Committee and the wider Working Group. She underscored the importance of the current session, since it was the last one before finalisation and adoption of the instrument. *The Deputy Secretary-General of UNIDROIT* joined the Chair in thanking all participants in the intense preparatory work to the session in which the Chair herself had actively taken part. The agenda for the session was adopted.

Item 3. Update on the status of the project (Study LXXVIB – W.G.11 – Doc. 2)

3. *The Deputy Secretary-General* updated the Working Group on the intersessional work that had been carried out since the tenth session of the project in March 2025 by an "enlarged" Drafting Committee that included additional contributors to some parts of the draft text. First, she explained that, prior to submitting the draft to the Governing Council and prior to launching the public consultation on 1 July 2025, certain key institutional partners had been invited to provide provisional feedback on the draft in a "pre-consultation" phase. She next explained that additional feedback had been received from the Governing Council, that had endorsed, in principle, the draft instrument, as well as authorised the Secretariat to proceed with the public consultation phase.

4. During the public consultation phase, which was held from 1 July to 15 September 2025, comments had been received from Member States and national agencies, intergovernmental and international bodies, civil society organisations, research groups, and individual experts. The Drafting Committee had already considered much of the feedback that had been generated during both phases of the consultation and had already implemented minor non-policy-related changes or clarifications of certain points in the text. The policy issues that had been raised had been set aside for discussion in the Working Group, but a non-binding suggestion of a response by the Drafting Committee had also been included in the relevant table of comments. In relation to comments

received, the Working Group had been sent one document containing the tables organising the comments received according to the provision(s) they referenced (Document 4) and one document containing the comments in order of receipt and in their original form (Document 5).

5. Additionally, the Deputy Secretary-General informed the Working Group that the draft instrument had been presented in various fora during the intersessional period, notably during the recent Transnational Commercial Law Teachers' Meeting held in Tübingen, Germany, on 9-10 October 2025.

6. Further, she noted that after the present session and subsequent work of the Drafting Committee, the draft instrument would be sent to the Working Group for a "fatal flaws" procedure. Then, the finalised draft would be sent to the Governing Council via remote procedure, providing sufficient time for consideration but seeking approval by early 2026.

7. *The Chair* informed the Working Group of a recent decision of the Brazilian Supreme Court upholding the constitutionality of out-of-court enforcement of security rights, noting with appreciation that both the work of this Working Group and a scholarly contribution by one of its members had been cited with approval in the ruling.

Items 4, 5. Consideration of the master copy of draft instrument containing revised draft best practices on enforcement by way of authority, enforcement of security rights, and enforcement on digital assets (Study LXXVIB – W.G.11 – Doc. 3); Consideration of comments received during consultation phase (Study LXXVIB – W.G.11 – Docs. 4 and 5)

8. *The Deputy Secretary-General* noted that the comments were varied in nature, with some sharing the experience of different national systems, others seeking clarifications or asking for formal revisions, and others providing targeted questions or responses to the draft text. Many comments were positive, praising the effectiveness of the best practices. In some instances it was shared that one or a set of recommendations would be helpful in the implementation of reforms in a given legal system (sometimes not only strictly limited to the realm of civil enforcement). *The Chair* clarified that if the Drafting Committee's preliminary proposed modifications or responses to the various comments did not elicit any reaction from the Working Group, it would be deemed that the Working Group endorsed the approach proposed by the Drafting Committee.

(a) General feedback

9. *The Deputy Secretary-General* singled out a few issues identified in the general table of comments. The first issue that had raised concerns among a few commentators was that of measures applying against the debtor personally (*in personam*), when the debtor does not comply with an enforcement order. *The Chair* emphasised that the sanctions envisioned against the debtor in those situations were in the context of enforcement, and were not to be seen as personal sanctions for failure to comply with the underlying obligation. In the ensuing discussion, it was explained that adjustments had already been made to both the introduction and commentary to Chapter VIII of Part I by the Drafting Committee to assuage these concerns and to state more clearly that such measures would in any case be subject to the enacting State's constitutional limits and treaty obligations.

10. Next, *the Deputy Secretary-General* referred to the requirement of registration of the enforceable instrument as a precondition for enforcement and as one of the foundations of the entire system that the draft embodied. She noted that some commentators had remarked that setting up such system could be costly and pose technical difficulties for implementing States, or that States might have already set up case management registries and would not be able to "start from scratch". In the following discussion, it was clarified that the best practices was aspirational in nature but could

also serve as useful benchmarks for evaluating existing systems, and that the commentary contained numerous references to the fact that reforms could be implemented in stages.

11. The third overarching issue raised revolved around artificial intelligence: some commentators had asked for more detailed explanations of the implementation of such technologies, while other comments urged greater caution in the face of rapid developments and unclear consequences. Reference was made, in particular, to Rec. 35 (*Automation of the third-party debt order procedure*) in order to illustrate the approach and technology-neutral policy the draft instrument had pursued.

12. *The representative of the HCCH* congratulated the Working Group on the draft and emphasised the complementarity between this instrument and several HCCH instruments. The *Deputy Secretary-General* informed the Working Group that references to HCCH instruments would be included not only in specific commentary but also in the introduction to the whole instrument, which the Working Group would have an opportunity to consider and provide feedback on before finalisation and submission to the Governing Council.

(b) Part I. Enforcement by public authority

13. *The Deputy Secretary-General* opened the discussion of the comments regarding Part I by noting that the Drafting Committee had already carefully considered most of the points raised. The policy underlying the comments was generally in line with what was being recommended. On the other hand, lack of treatment of certain issues (e.g., special consideration of enforcement in collective procedures such as insolvency) had been the result of a policy decision by the Working Group, which would be clearly explained in the forthcoming introduction to the instrument.

Chapter I. Fundamental principles

14. *The Deputy Secretary-General* noted that several comments had been received on the subject of proportionality (a term, she noted, that was not limited to Part I). She recalled that the Working Group had decided to not delve into a particularly detailed explanation of assessing proportionality and instead referred to the general standard, and that the draft instrument contained multiple recommendations embodying the principle of proportionality in more specific cases. In response to a comment to Rec. 3 (*Party disposition*) urging a reference to the UNIDROIT Principles of International Commercial Contracts, the Drafting Committee had determined to refer to them in the general introduction, as a tool for effective contractual enforcement, and as an example of an instrument that would benefit from these Best Practices. Then, she proceeded to explain that the Drafting Committee had carefully considered the comments regarding Rec. 4 (*Due notice and the right to be heard*) but had decided not to put into effect the drafting changes and specifications proposed.

Chapter II. Organisational principles of enforcement

15. The Working Group addressed next the comment to Rec. 7 (*Use of appropriate technology, including artificial intelligence*) and recalled the earlier, generalised discussion of the draft's treatment of artificial intelligence and similar technologies, underlining what would be added in this regard to the introduction to the instrument.

Chapter III. Enforceable instruments

16. *The Deputy Secretary-General* recalled that the matter of whether private documents could become enforceable instruments in subparagraph (4) of Rec. 10 (*Types of enforceable instruments*) had elicited much debate over the course of the draft instrument's development, but that the policy enshrined in subparagraph (4) represented a compromise, whereby private documents that did not meet the criteria in the earlier subparagraphs of Rec. 10 could be registered as enforceable

instruments following a warning notice procedure and without objection on the part of the debtor. *A member of the Working Group* noted his preference for leaving flexibility to States to determine which kinds of private documents they deemed sufficiently reliable to qualify for this exception. After ample discussion, the Working Group retained the text of Rec. 10 (4), noting that some of the private documents that had been mentioned in the discussion could be considered "notarial" documents under Rec. 10 (3).

17. With regard to the suggestion to add "court rulings" among the list of instruments issued by courts, the Working Group determined that this concept was sufficiently covered by the terms already used in Rec. 10, but the possibility of mentioning "rulings" in the commentary was raised and would be considered.

18. In addition, *the Deputy Secretary-General* explained the comment by the HCCH regarding the references to other instruments in the comments to Rec. 10. Multiple proposals for redrafting were discussed, and *the Working Group* ultimately decided to include reference to foreign judgments, arbitral awards, and mediated settlements in separate paragraph in the comment, to avoid confusion.

19. In relation to a comment on para. 11 to Rec. 10 regarding execution liens, it was clarified that reference to execution liens in this recommendation was an that it was merely an example and was not a proposal on the priority of creditors' rights, and that redrafting would be needed.

20. Regarding the first sentence of comment para. 2 to Rec. 14 (*Challenges to the registration and commencement of enforcement proceedings*), the Working Group deferred redrafting to the Drafting Committee.

Chapter IV. Information regarding the debtor's assets

21. *The Deputy Secretary-General* introduced a comment regretting that the draft instrument did not sufficiently address cross-border situations. *The Chair* recognised that such matters were beyond the scope of this instrument.

22. Regarding Rec. 18 (*Sanctions for non-cooperation*), *the Deputy Secretary-General* pointed out that the titles of the recommendations cross-referenced in the commentary had been added to make it clearer what was meant by the term "adverse consequences" for refusal to cooperate. *The Working Group* agreed that such signalling was sufficient clarification.

Chapter VI. General modes of enforcement

Section 1. Monetary enforcement – Subsection 1.1. Enforcement on tangible movables

23. *The Deputy Secretary-General* acknowledged positive feedback from some commentators noting that the draft instrument could inspire additional, forward-looking reforms. She reiterated that the general introduction would have to clearly explain that the Best Practices did not contain recommendations specifically addressing collective procedures. Next, in relation to a comment regarding Rec. 24 *et seq*. on seizure, it was recognised that the matter of competence was not covered in detail by the best practices, but on the other hand, they did not exclude that the competent authority could be a court. It was emphasised that it was a question of proportionality that depended on the facts of the case.

24. Next, the Working Group that Rec. 26 did not fail to address the issue of ensuring a limited exemption from seizure of bank accounts of individual debtors, as it was to be read in conjunction with Rec. 34 which addressed such matter. In this conjunction, the more general issue of the protection for vulnerable debtors was raised. In response to comments received, it was recognised

that Rec. 26 was written in general terms whereas concrete examples were provided in the comments.

Chapter VI – Section 1 – Subsection 1.2. Third-party debt orders

25. Next, *the Deputy Secretary-General* introduced a comment seeking clarification as to *which* authority a creditor should apply for a third-party debt order in Rec. 30(1). The Working Group decided to insert "to the competent enforcement organ" in the first line of Rec. 30(1).

26. In relation to a comment referring to national legislation which had set up an automated system to issue orders, including provisional orders, reference was made to various recommendations regarding the seizure of future claims and bank account balances, third party debt orders, and freezing orders, but the Working Group, after thorough discussion, expressed doubts as to whether the best practices should include automatic renewal of provisional orders, while automating reminders of formal notices could indeed be an effective measure.

Chapter VI – Section 1 – Subsection 1.4. Monetary enforcement on immovables

27. In response to a comment regarding Rec. 45, the Working Group affirmed its understanding that the execution court functioned as an enforcement organ and not as a deciding court. With reference to Rec. 49, it was noted that the Best Practices had purposely avoided to provide a specific minimum time period afforded to the debtor before eviction, while fundamental rights and public holidays were discussed in comment para. 4 to Rec. 2.

Chapter VI – Section 1 – Subsection 1.6. Priority or equality governing the satisfaction of multiple secured or unsecured creditors of monetary claims

28. On account of two comments that discussed privileged (preferential claims, or claims with legal priority, sometimes even granted at the constitutional level), it was noted that comments diverged on whether more or less protection for preferential claims should be granted. It was acknowledged that Rec. 53 advocated a limited and rationalised number of such privileges, and that the same concept had been added to Part II (Rec. 105, comment para. 23). While these recommendations were more substantive in nature, they were in line with existing international guidance and had relevant impact on enforcement. The Working Group further debated whether to harmonise the terms used in Parts I and II, reaching the conclusion that the expectations of the readers of each part should be considered. It was suggested that, where a legal system maintained priority schemes both for ordinary enforcement and for insolvency liquidation, the commentary might briefly invite legislators to consider avoiding unjustified inconsistencies between the two, as such discrepancies might create incentives for strategic use of insolvency or non-insolvency proceedings. This idea was supported in principle, while stressing that full alignment would not be appropriate in light of the distinct objectives of insolvency (in particular, restructuring). *The Chair* concluded that there was general support for inserting a short reminder in the commentary to Rec. 53, with a corresponding reference in Part II, and that the precise wording and placement should be left to the Drafting Committee.

Chapter VIII. The admissibility and scope of enforcement measures that apply to debtors personally

29. *The Deputy Secretary-General* presented additional feedback regarding enforcement measures applying to the debtor personally, which echoed other comments received earlier on in the consultation process. She explained that the qualms voiced by various commentators revolved around i) seeking a clearer mention of constitutional limitations and international obligations, and ii) underlining that such sanctions were for non-compliance with enforcement orders and were not to be interpreted as sanctions for the non-payment of the debt. It was noted that the provision already

made clear that in person measures were a last-resort sanction in case of non-compliance with an enforcement order when no other measure would work. Several changes had been already provisionally inserted into both the introduction to Chapter VIII and the commentary to Recs. 64-65. *The Working Group* entrusted the Drafting Committee with consideration of these issues.

Chapter X. Challenges to enforcement

30. First, *the Chair* invited the drafters of Part I to address a comment on provisional protection for creditors if enforcement proceedings were stayed. It was explained changes had already been introduced to the text of Rec. 78, following discussions on the same subject earlier during the consultation phase. It was also noted that the text of the provision was general and did not forbid that the debtor could avoid enforcement by posting security in special cases (which was a matter of judicial discretion).

31. Next, *the Deputy Secretary-General* introduced a comment on appeals in Rec. 78(4) and (5). It was explained that that the provision was in fact intended to be quite restrictive, and confirmed that the granting of appeal should not be based on harm but rather success on the merits. In any case, the operative modal verb in the first sentence of 78(5) should be changed from "should be able to" to "may".

32. The Working Group then considered additional suggestions regarding Rec. 80(1) and 81(5).

Chapter XI. Enforcement organs

33. *The Deputy Secretary-General* turned to a comment concerning Rec. 85 suggesting the addition of a paragraph on the legal consequences of non-compliance with mediation agreements. The Working Group noted that, while the proposal did not fall outside the scope of its work, the legal consequences of non-compliance could appropriately be dealt with either in the mediation agreement itself or, where applicable, under specific national legislation on mediation and the enforcement of such agreements. Given the level of detail that would be required to regulate this matter appropriately, the Working Group decided not to address it further in the present draft.

34. Next, *the Deputy Secretary-General* introduced a comment on Rec. 86 suggesting that the bailiff's duties of impartiality and of providing information to all persons involved in the enforcement process should be stated more clearly, in order to avoid creating the impression that the bailiff acted solely on behalf of the creditor. In the discussion, it was noted that these concerns were already addressed by the general requirements on impartiality, independence, and professional conduct set out in Rec. 82(3) and (4).

Chapter XII. Costs

35. Turning to Chapter XII, *the Deputy Secretary-General* informed the Working Group that three comments had been received on the draft provisions. One commentator had expressed general support; another comment raised concerns about the use of the term "negotiability" in relation to costs; and a third comment drew attention to the risk of corruption associated with the possibility of negotiating fees.

36. In relation to Rec. 87 as to the negotiability of costs, in particular as regards public sector enforcement agents and ministerial agents, the Working Group confirmed the approach taken by the draft in not using the term "negotiability". In the discussion, the allocation of differential costs between private and public enforcement was further examined, recalling that Rec. 87(3) and the related commentary provide that any additional costs are to be borne by the creditor and may not be recovered from the debtor, who remains liable only up to the fees applicable to public sector enforcement. It was underlined that any exceptional negotiation of higher fees concerned only the

relationship between the creditor and the private enforcement agent and should not result in additional amounts being imposed on the debtor. The Drafting Committee was asked to consider whether further drafting, possibly in Rec. 87(3) or the related commentary, would be needed to clarify that the debtor cannot be required to pay more than the legal rate and that higher fees may not be charged to the debtor.

37. The discussion then turned to the concern expressed by a commentator that negotiation could entail a high risk of corruption. It was recalled that the Drafting Committee had taken this concern into account by strictly limiting the circumstances in which negotiation was allowed and by expressly referring in the commentary to the need to proceed with caution in view of corruption risks, while maintaining the possibility of negotiation as a matter of policy. As no objections were raised, the Working Group endorsed this approach.

Part II. Enforcement of security rights

38. *The Deputy Secretary-General* opened the discussion on Part II noting that the Drafting Committee had already reviewed several of the comments and already suggested drafting clarifications. The suggestions had been introduced into the draft in tracked changes. These changes remained subject to the Working Group's review and could be further improved or amended. Against this background, *the Deputy Secretary-General* proposed to turn first to general comments, which had led the Drafting Committee to provisionally add text to comment para. 1 to Rec. 92 and to comment para. 7 to Recs. 100-106.

39. A general comment had noted that many domestic laws, including certain model laws, recognised an enterprise pledge/charge that encumbered the business as a whole, whereas the draft instrument did not expressly address enforcement in such cases. The Drafting Committee had considered it useful to acknowledge this type of security and its implications for enforcement. To that end, the Drafting Committee had proposed, first, to introduce a brief clarification in comment para. 1 to Rec. 92. Secondly, the Working Group considered the addition of language to comment para. 7 to Recs. 100–106 acknowledging that, in such cases, specific mechanisms for the management and liquidation of the enterprise as a whole might be required. It was suggested that in some cases it might be commercially reasonable to favour the sale of only one or a limited number of assets, and invited the Drafting Committee to adjust the drafting accordingly. The Working Group agreed that the necessary drafting changes would be left to the Drafting Committee.

40. The Working Group then considered the relationship between the best practices on enforcement in Part II and existing special treaty regimes. It had been proposed to include, in the introduction to Part II (or in another appropriate place), a clarification that, in States party to special treaty regimes providing specific rules on enforcement, those regimes as well as legislation enacted to implement them remain applicable and not displaced by the present best practices, with an express reference in particular to the Cape Town Convention and its Protocols. As no objections were raised, the Working Group confirmed its agreement with this approach.

41. In relation to the *Background and introduction* section, it was suggested that the two principles might appear to be in opposition, and proposed that the law should reflect a preference for the availability of extrajudicial enforcement. In the discussion, it was clarified that the intention was not to favour one enforcement method over the other, but to ensure that extrajudicial enforcement be effectively available alongside judicial enforcement. The Working Group requested the Drafting Committee to review the relevant language in the introduction and the recommendations to ensure a clear and consistent formulation.

42. In response to comments concerning the enforcement of security rights on immovables, the Working Group agreed to retain the paragraph in the introduction in a revised form that acknowledged that some States already allowed extrajudicial enforcement of security rights in

immovables and that the recommendations expressly supported making such mechanisms available. A reference to the WBG Principles was also added.

43. Turning to Rec. 92, *the Deputy Secretary-General* recalled a comment suggesting that the current para. (1) should not remain as the opening paragraph. The Working Group agreed that Rec. 92 (1) should be moved to the comments and that Rec. 92 should instead begin with the current paragraph (2).

44. The Working Group then considered a comment regarding the application of the recommendations on extrajudicial enforcement to true leases and outright sales of receivables. It was recalled that, although some secured transactions systems adopted a functional approach that might apply some of the substantive rules of secured transactions to certain true leases and outright assignments, the Best Practices were limited to the enforcement of assets securing an obligation and did not address transactions where the asset was not used as collateral, nor did they determine when a transaction should be recharacterised as creating a security interest. The Working Group agreed that this approach should be clarified.

45. Attention was drawn to comment para. 6 to Rec. 92. Several experts cautioned that characterising good faith as a subjective test, and commercial reasonableness as an objective one, could be potentially misleading in light of the diversity of approaches found in national laws. The Working Group requested the Drafting Committee to amend the commentary.

Chapter II. Secured Creditor's Right to Obtain Possession of Tangible Collateral after Default

46. *The Working Group* briefly reviewed the comments relating to Chapter II of Part II and noted that, apart from some cross-references to Part I to be dealt with at a later stage, the only substantive point concerned the wording of Rec. 93 ("after default"). It was recalled that this provision had already been redrafted, and the Working Group confirmed that no further changes were required. The Working Group then considered a comment suggesting that Rec. 94 was superfluous or overlapped with the preceding provisions. *The Chair* concluded, after discussion, that the issue was essentially one of drafting structure and that no changes to Recs. 93 or 94 were required.

47. *The Deputy Secretary-General* then introduced a comment on Rec. 95 questioning the use of terms such as "reasonable notice" and "speedy decline in value" and suggesting that notice requirements be left entirely to party autonomy under the security agreement. It was recalled that Rec. 95 largely reproduced the policy choices made in article 77 of the UNCITRAL Model Law on Secured Transactions, and, in order to maintain consistency with that instrument, the Working Group had agreed not to amend the text on this point.

48. Further comments were received on Rec. 95. In order to remain aligned with Article 77 of the UNCITRAL Model Law on Secured Transactions, *the Working Group* confirmed that only notice to the grantor should be required since it was a matter of physical possession, but it was agreed to amend Rec. 95(b). the Drafting Committee was instructed to adjust the black-letter text accordingly..

49. *The Deputy Secretary-General* then considered another comment on para. 4 of the commentary to recommendation 95, suggesting that, in the context of default, the text should refer only to the "debtor", and that the term "obligor" should be used consistently to identify the person who owed payment of a receivable. In the discussion, it was recalled that, in secured transactions practice, it was important to distinguish between the person who owed the secured obligation and the person who provided the collateral, as they would not always be the same, and that in some cases reference to the "grantor or other obligor" was therefore accurate. The Working Group recognised the need for consistent and precise terminology and requested the Drafting Committee

to review the use of "grantor", "obligor" and related terms throughout the text to ensure that they be used correctly in each context.

50. A comment on the final paragraph of the commentary to Rec. 96 was then discussed, concerning the application of standards on the conduct of the secured creditor in cases where extrajudicial repossession was carried out by specialised third parties. It was proposed that para. 5 of the commentary be revised, with an appropriate cross-reference to paragraph 433 of the UNCITRAL Guide to Enactment for the Model Law on Secured Transactions.

51. *The Deputy Secretary-General* turned to a comment on Rec. 96 which questioned the meaning of "aggressive behaviour" and whether actions as different as breaking a lock or threatening legal proceedings would fall within that notion. While some ambiguity was unavoidable and a degree of flexibility in application was desirable, the Drafting Committee had proposed to clarify the commentary by adding language at the end of comment para. 3.

52. *The Deputy Secretary-General* opened the discussion on Rec. 98 (*Limits on taking possession of excess encumbered assets*), noting a concern that the rule might unduly restrict over-collateralisation, especially in enterprise-wide security arrangements. In response, the Working Group recalled that the provision was not meant to limit parties' ability to agree that collateral might exceed the value of the secured obligation, but only to set limits on enforcement against excess collateral. It was agreed that a clarification should be added to the commentary to that effect.

53. In relation to Rec. 98 about the "smaller set" of encumbered assets, the Working Group reaffirmed the policy choice but asked the Drafting Committee to see whether the wording could be clarified to address the concerns.

Chapter III. Secured creditor's right to realise on collateral consisting of movable assets [after default]

54. The *Chair* briefly noted positive comments on the recommendations. *The Chair* also took the opportunity to record the sincere appreciation to all States, organisations, and individuals that had submitted comments, emphasising that every comment – whether or not ultimately accepted – had been carefully read and had helped the Group to reflect on and refine the text. She pointed to several instances where the Drafting Committee had already proposed modifications and asked the Working Group to flag any disagreement with the suggestions.

55. Several members of the Working Group raised the structural issue that the commentary for Recs. 100–106 was grouped after Rec. 106; the Working Group tasked the Drafting Committee to revise the placement.

56. Regarding a comment on Rec. 105(1)(b) which queried whether prioritising "preferential rights" over the enforcing secured creditor was being recommended as a best practice, the Working Group agreed that Rec. 105(1)(b) should be read as applying only to preferential rights, "if any", and that the commentary (notably new para. 23) should more explicitly reflect the policy that excessive preferential claims were detrimental to secured credit and access to credit and therefore should be minimised, with the exact drafting and any cross-references to Rec. 53 left to the Drafting Committee.

57. Next, a comment regarding Rec. 105(1)(d) was discussed, which sought clarification that the failure of a subordinated claimant to provide notification should not extinguish its security interest, and that it should remain entitled to pursue its secured claim by tracing the distributed proceeds against the grantor. It was proposed that the commentary clarify the interrelation between the enforcing creditor's obligations, the discharge of subordinate security interests, and the distinction

between collateral and debt. *The Working Group* requested the Drafting Committee to incorporate the clarification in the commentary.

58. Concerning Rec. 105(2), which addressed the handling of any surplus remaining after the distribution of proceeds following enforcement, such as payment into court or transfer to another authorised entity, it was suggested that the commentary could usefully include practical examples illustrating how such mechanisms operated in practice. *The Chair* concluded that the commentary should be expanded to explain practical mechanisms for depositing surplus proceeds with judicial or other competent authorities and invited the drafters to review the relevant sources accordingly.

59. Rec. 105(2) and its commentary was adjusted to distinguish between the situation where only surplus is deposited and the situation where all or part of the proceeds are deposited to avoid liability or disputes, possibly with illustrative examples. The Working Group left the concrete drafting changes and the formulation of such examples to the Drafting Committee.

60. Several remaining editorial and structural points referred to the Drafting Committee to ensure that comments were correctly linked to their corresponding recommendations and repetitive or misplaced passages were streamlined. One discussion related to acknowledging hybrid methods of asset disposition, which the Drafting Committee was invited to examine for possible inclusion in the revised commentary.

Chapter III – Section 2. Acquisition of collateral in total or partial satisfaction of the secured obligation

61. *The Deputy Secretary-General* introduced a comment that expressed overall support for Sections 1 and 2 on enforcement and disposition of collateral, highlighting their transparency, fairness, and efficiency in avoiding lengthy court procedures. However, potential challenges, including creditor abuse, procedural complexity, limited debtor control, and risks of undervaluation were also noted. Experts agreed that while these concerns were valid, they were already addressed through safeguards such as good faith obligations, remedies against abuse, and notice and valuation requirements. The Working Group expressed its appreciation all the constructive observations and feedback.

62. In relation to Rec. 110, it was agreed to *Group* agreed to revert to the corresponding language from the UNCITRAL Model Law in order to strengthen the provision’s clarity. It was further decided that the commentary should include an additional sentence emphasising that this recommendation served as an important debtor protection mechanism, preventing coercive settlements and ensuring procedural safeguards. The Drafting Committee was invited to make the corresponding revisions.

Chapter IV. Enforcement of security rights over rights to receive payment and credit instruments (including issues on automation)

63. *The Chair* introduced the discussion on para. 1 (third line) of the Introduction to Chapter IV, noting that the proposed adjustments largely reflected technical and terminological refinements suggested by the Drafting Committee.

64. Several other modifications, clarifications, and adjustments throughout the Chapter were accepted by the Working Group or deferred to the Drafting Committee.

65. *The Deputy Secretary-General* introduced Rec. 113 comment para. 2 and a comment questioning whether the examples referred to pre-default situations and the general usefulness of receivables as collateral. It was clarified that the paragraph addressed post-default enforcement, illustrating that receivables could be sold or transferred in the same way as other assets, since their

future cash flows could be valued and disposed of to satisfy the secured obligation. The Working Group agreed to refine the drafting to make this clearer and to remove the word "tangible", as those provisions cover all types of movables. The issue was referred to the Drafting Committee for further consideration.

66. In relation to a comment on Rec. 114(7) that questioned whether the rule implied that proceeds from collection were subject to preferential claims, and how this aligned with the approach in the UNIDROIT Model Law on Factoring on encouraging the limitation of preferential claims, it was recalled that this issue overlapped with Rec. 105 on the order of distribution, noting that the same waterfall structure should apply across the instrument. It was agreed that any discussion on preferential claims and their policy implications would be addressed in the commentary to Rec. 105, potentially with references to both the UNCITRAL Legislative Guide on Secured Transactions and the UNIDROIT Model Law on Factoring. *The Working Group* concluded that no change was needed to the current text.

67. It was further confirmed that these Best Practices were confined to enforcement of security rights where receivables and similar intangibles were used as collateral, and did not purport to govern enforcement by an outright transferee; those topics belonged to substantive law questions of creation, characterisation, and priority, as addressed for example in the UNCITRAL Model Law on Secured Transactions and in sectoral regimes such as the Cape Town Convention. It was suggested that this be clarified with one or two sentences explaining that the enforcement rules in Chapter IV applied only when the receivable or right to payment functioned as collateral and that outright sales fell outside the scope of enforcement even if some jurisdictions treated them similarly for registration or priority. The Working Group asked the Drafting Committee to see to such clarification.

68. The *Deputy Secretary-General* introduced the comment on Rec. 119, para. 7 (last line) that questioned whether the described automation processes, such as automatic listing of receivables, were actual practices or hypothetical illustrations, and how such systems could function without debtor consent. It was clarified that the commentary intentionally provided illustrative rather than technical examples, referring to existing models. These were mentioned to show how automation might enhance monitoring and enforcement, rather than to prescribe implementation methods. This recommendation differed from others in Part II, as it illustrated how parties rather than States could employ technology within existing legal frameworks. The Working Group agreed that the paragraph effectively conveyed automation's potential benefits while avoiding unnecessary technicality. It was decided that the Drafting Committee would ensure that the language clearly communicate this intent and align with related discussions in Rec. 35 on automation.

Chapter V. Expeditious relief to support extrajudicial enforcement

69. Rec. 120 was a provision that had been heavily discussed and represented the best compromise that could be produced. Comments received were in any case useful to consider (and possibly integrate).

70. The first comment was interpreted as an endorsement of the approach of Rec. 120, while the second comment had already resulted in a modification on the part of the Drafting Committee. The aim of Rec. 120, which was limited to trying to "get extrajudicial enforcement back on track", was underlined. *The Deputy Secretary-General* pointed out that the Drafting Committee had also already discussed the comment that voiced concern that the best practices could be interpreted as displacing existing obligations under treaties, such as the Cape Town Convention and Protocols. She explained that the Drafting Committee would opt to clearly address this matter in the introduction to Part II. Next, the Working Group considered the additional comment to Rec. 120(2) regarding the requirement for notice. It was recalled that the notice requirement was already present in the Model Law on Secured Transactions and the Working Group had considered this a fair distribution of risk

among the parties. It was also noted that Rec. 120(2) included a cross-reference to Rec. 103 on excusing pre-disposition notice in certain circumstances.

71. Next, the Working Group considered the comment to Rec. 120(3) on the promotion of mediation. It was underlined that 120(3) set out that the court "may promote settlement endeavours" only failing subparagraphs (a) and (b). *The Chair* surmised that the Working Group wanted to make the promotion of settlement conditioned upon when settlement would be likely to lead to a speedier result or be more efficient; the Drafting Committee would reconsider the wording. The same comment was submitted for Rec. 120(7) as well. It was queried whether more explanation should be added to the commentary as to what was meant by regulatory provisional measures in the cross-reference back to Rec. 73, as some readers might find this terminology, and the nature of what the court can do, unfamiliar. The Working Group considered such a clarification useful. It was also recalled that, as background to the development of Rec. 120, it was often impossible to render a final, expeditious decision, and therefore, the court had here the possibility to balance interests between the parties and third parties, and to order something reasonable under the circumstances.

72. In relation to the comment on Rec. 120(4)'s "short period of time", it was noted that flexible wording was well-suited to a set of best practices (as opposed to a statute or convention), but this should be adequately explained in the commentary. In other parts of the draft instrument, specific time periods were in fact listed, though setting deadlines for private parties' compliance was fundamentally different than setting deadlines for courts. In this situation, however, the concept of speed was extremely case-specific here. *The Working Group* agreed that it was sufficient to refer to a "short period of time".

Chapter VI. Variation of the rules governing the enforcement of security rights

73. Turning to Chapter VI, *The Chair* noted that the Drafting Committee would reconsider both the order of the first two Recommendations and the language used.

74. The question of why Rec. 122 was limited to post-default scenarios was raised. This policy was drawn from the Model Law on Secured Transactions but should be adequately explained in the commentary. It was agreed that the comments could be expanded. It was also important to avoid the implication that the creditor was always the more powerful party.

Chapter VII. Enforcement of security rights in immovables

75. The discussion on Chapter VII opened by considering a comment that certain important types of immovable (e.g., farmland) were not included or referred to in the draft. It was decided that language should be added to the comments to address this issue. The Legal Guide on Agricultural Land Investment Contracts could be usefully referenced, particularly with regard to the protection of third parties.

76. As for the introduction to Chapter VII, the Working Group first considered the comment that the introduction might be oversimplified as to the relevance of the rules on repossession of tangible movables in the context of immovables. Several adjustments were introduced in the text.

77. Turning next to the recommendations themselves, the comments made to Rec. 126 (*Commencement of enforcement upon default*) were noted implemented. *The Working Group* agreed that the Drafting Committee would ensure that the text remain sufficiently ambiguous to cover arrears and the full amount in 126(1), and also revisit the language in 126(3).

78. Several other suggestions contained in comments received were considered and approved by the Working Group, in particular regarding the right to cure, reference to consumer credit. The same was considered applicable to Rec. 126 comment para. 5.

79. It was noted that treatment of tenants would need to be better harmonised with Part I. As for succession of possession, Rec. 127(5) specifically discussed obtaining possession and assumed that, at such point, the secured creditor had a right to immediately take possession. Regarding Rec. 127 more generally, clarification was sought as to what was the meaning of "lease", and whether the text should distinguish between simple rents and rights *in rem*. The Working Group decided that the Drafting Committee would consider these points.

80. Next, the Working Group considered comment para. 2 to Rec. 128 and its relationship with Rec. 130(5)), which should be clarified to avoid internal inconsistency. In relation to comment 6 to Rec. 128, the Working Group agreed that the Drafting Committee would consider how to adapt the language to that effect.

81. Moving on to Rec. 130(4), the Working Group confirmed that the same exception which had been included in Rec. 104 be maintained. In relation to Rec. 130(5), and a comment querying why the failure of proper notification should undermine the rights of the purchaser, it was explained that the provision was attempting to limit to only a very few circumstances the instances where the grantor and the debtor could obtain a stay, or annul the sale, or otherwise prevent the disposition from happening. Here, the policy choice had been made that a lack of notice was one of these very limited circumstances, because if the grantor or debtor was not notified of the enforcement, then essentially all rights of defence would be stripped. An addition to the commentary as to why this rule differed from Rec. 104 for movables was suggested.

(c) Part III. Enforcement on digital assets

82. Finally, the Working Group turned to consideration of the comments received on Part III of the draft instrument. *The Deputy Secretary-General* noted that many of the comments that had been received earlier in the consultation process had already been considered by the Drafting Committee and, as with the earlier Parts, some had already resulted in proposed changes to the text or proposed responses to the commentators, to be confirmed or modified by the wider Working Group.

83. First, it was explained that the Working Group had made the policy choice to not provide excessive details on asset tracing. In light of the comment that the recommendations should be revisited in terms of possible technological developments, it was further explained that the Working Group had sought to keep the draft as technologically neutral as possible, though specific technologies were mentioned in the comments. In response to the comment that Rec. 131 and Part III in general risked oversimplification, it was acknowledged that further thought would be given as to whether the points raised needed to be better clarified in the introduction to Part III and in the comments to Rec. 131. As for the comment suggesting technical compulsion orders, *the Deputy Secretary-General* explained that such terminology was not used in the draft but that the same result could be achieved by other provisions. The Working Group agreed with all the suggestions that the Drafting Committee had provisionally set forth in the table of comments.

84. Several comments had raised issues of terminology and clarification, that were addressed in the present version of the draft.

85. As to the comment on Rec. 133(2) suggesting that it could be more effective to register digital assets in public registries and authorise the enforcement authority to request data therefrom, it was recalled that the Working Group had decided to not include the proposal to register digital assets in public registries as a best practice.

86. In relation to Rec. 137 (*Duty to cooperate of third parties for seizure and transfer*), it was suggested to add a reference to third-party debt orders, which could be also issued against a custodian.

87. Finally, feedback on Recs. 137 and 139 addressed structural limitations depending on the voluntary adherence of digital asset services providers and the state of fragmentation. Such text could be helpful if added to the introduction to Part III, as it would both touch upon these challenges and address the earlier-discussed issue of jurisdiction (which is not covered by the Best Practices).

Items 6-8. French version of the draft instrument; Organisation of final steps; Any other business

88. Given the lack of time, *the Chair* suggested that the Secretariat would communicate proposals for next steps and administrative matters to the Working Group in the weeks following the session. She also confirmed that the Working Group would have another opportunity to consider the draft instrument after the Drafting Committee had implemented all of the changes agreed upon during the session. *The Deputy Secretary-General* reiterated the goal of presenting a finalised text to the Governing Council through a written procedure by the end of 2025. She acknowledged that this feat would require an enormous amount of work by the "enlarged" Drafting Committee, for which she thanked them. She also mentioned that the French version of the instrument would be finalised in a later stage.

89. *The Secretary-General* thanked all participants for all of their efforts in the ongoing work. He mentioned the practice of circulating the final draft to the Working Group for "fatal flaw" review, after revision by the Drafting Committee and ahead of submission to the Governing Council.

Item 9. Closing of the session

90. The *Chair* and the *Secretariat* once again thanked all participants, and *the Chair* declared the session closed.

ANNEXE I

AGENDA

1. Opening of the session and welcome by the Chair of the Working Group and the Secretary-General

2. Adoption of the agenda and organisation of the session

3. Update on status of the project (Study LXXVIB – W.G.11 – Doc. 2)

4. Consideration of the master copy of draft instrument containing revised draft best practices on enforcement by way of authority, enforcement of security rights, and enforcement on digital assets (Study LXXVIB – W.G.11 – Doc. 3)

5. Consideration of comments received during consultation phase (Study LXXVIB – W.G.11 – Docs. 4 and 5)

6. French version of the draft instrument

7. Organisation of final steps

8. Any other business

9. Closing of the session

ANNEXE II

LIST OF PARTICIPANTS

EXPERTS

Ms Kathryn SABO (Chair)	Deputy Director General & General Counsel Constitutional, Administrative and International Law Section Department of Justice (Canada)
Mr Neil COHEN	1901 Distinguished Research Professor of Law Brooklyn Law School (USA)
Ms Valeria CONFORTINI	Full Professor Private Law at Pegaso University, Department of Law (Italy)
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Mr Fábio ROCHA PINTO E SILVA	Pinheiro Neto Advogados (Brazil)
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