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Centre for Trade Facilitation and Electronic Business (UN/CEFACT)

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Item 7 of the provisional agenda

**REPORT OF THE UN/CEFACT LEGAL GROUP TO THE PLENARY**

This document is **for endorsement**

**Introduction**

This report outlines key activities and decisions by UN/CEFACT's Legal Group as they relate to the key priorities of its work programme, as well as liaison with the work of other UN/CEFACT groups and some additional information for the UN/CEFACT Plenary.

## **Introduction**

1. In 2004, the UN/CEFACT Legal Group (LG) met five times: in March in Bonn (Germany); in May and June in Geneva (Switzerland); in September in Washington, McLean (USA); and in October in Leidshendam (Netherlands), hosted by ECP.NL. It also held a Symposium on On-line Dispute Resolution in Geneva, in May 2004.

## **Personnel**

2. At the May meeting, David Marsh, officially announced his resignation as chair of the Group and recommended that the LG approve Klaus Brisch (Germany) and Phil Nichols (USA) as the Joint Chairs of the Group in his stead. The LG approved both nominees for the post as well as the nomination of Mr. Marsh as Vice-Chairman of the Group. Mr. Marsh retained his role as Legal Rapporteur to UN/CEFACT.

## **Projects**

3. **Legal issues in ebXML**: Regarding the joint project between the Techniques and Methodologies Group (TMG)/UBAC Subgroup and the LG on legal issues in ebXML, a series of deliverables for enforcing e-business solutions through common legal understanding was suggested. LG and TMB/UBAC discussed various aspects of the process, including an information system of the sending place, boundaries of envelope/ message, authentication of origin and signature. Suggestions were made concerning the use of a model international law as an example and to consider those possible specifications, on which basis a Trading Partner Agreement (TPA) could be built in order to turn it into a similar technology-stable model such as EDIFACT or ebXML. The model TPA addresses the contractual issues of the trading partners in the same way as UN/CEFACT Recommendation No. 31.

4. **Legal issues in trade facilitation**: LG endorsed a draft discussion paper on “Typical Trade Transactions with reference to legal or regulatory issues that discourage trade with or among developing or transition economies”. The LG offered this paper to ITPWG for its consideration as a starting point for a potential joint project on legal issues in trade facilitation. ITPWG expressed its interest in the paper for the future elaboration.

5. **On-line Dispute Resolution (ODR)**: With the aim of revitalizing a work of LG on ODR and to clarify some commonalities and overlaps on this issue between the UN/CEFACT LG and UNCITRAL, the Group held a one-day Symposium on ODR. It took place back-to-back with the regular meeting of the LG in May 2004 with the participation of representatives of UNCITRAL, WIPO and ICC.

6. Topics discussed included:

- Definition of ODR
- Types of ODR
- Type of conflicts that may be solved by an ODR system
- Advantages and challenges of ODR
- Expectations from ODR.

7. The Symposium concluded that the LG could significantly contribute to ODR through UN/CEFACT's technical approach. A solution between technical standardization (ebXML) and ODR could be found, if some general issues regarding ebXML *vis-à-vis* UN/EDIFACT could be solved. It was also suggested that LG refocus its ODR work on problems relating to contract formation under ebXML. The LG decided to organize a similar brainstorming in 2005 involving ODR experts from international organizations and arbitration.

8. **Memorandum of Understanding (MoU) with UNCITRAL:** The LG suggested concluding a Memorandum of Understanding between UNECE and UNCITRAL aimed at enhancing their cooperation. The draft MoU is currently being prepared by the LG.

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