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Insolvency law

Possible future work in the area of insolvency law

Proposal by the International Insolvency Institute (III), Committee on
Cross-Border Communications

Cross-border insolvency protocols in transnational cases

(Background information on the use of cross-border protocols in cross-border insolvency cases and the Guidelines for Court-to-Court Communications that was included with this proposal is contained in a Note by the Secretariat, document A/CN.9/580 paras. 16-54, and for reasons of economy has not been reproduced here.)

1. While a considerable amount has been accomplished in the last 10 years through the use of Cross-Border Insolvency Protocols and the more recent development of the *Guidelines for Court-to-Court Communications*, there remain an enormous number of situations involving comparable issues in which neither Cross-Border Insolvency Protocols nor *Court-to-Court Communications* are available. The value of Cross-Border Insolvency Protocols and of the utilization of *Court-to-Court Communications* however, is now beyond question.
2. The recommendation of the International Insolvency Institute is that UNCITRAL take a position of leadership in developing a higher use of systems such as Cross-Border Insolvency Protocols and *Guidelines for Court-to-Court Communications* in transnational insolvency cases to promote better results for reorganizing debtors, their suppliers, their creditors, their employees and, ultimately, the public interest in the countries involved. There are a number of different approaches that UNCITRAL could consider in assessing the valuable work it could do in this area. UNCITRAL could devise a standard form or

forms of Cross-Border Insolvency Protocol to coordinate administrations that involve different countries. It could adopt, with or without changes, the principles of the *Guidelines for Court-to-Court Communications in Cross-Border Cases* to assist in the coordination of international cases. Both of these initiatives are completely consistent with the principles of the *UNCITRAL Model Law on Cross-Border Insolvency* and the *UNCITRAL Legislative Guide on Insolvency Law*. UNCITRAL, in pursuing this work, would enhance its position of leadership within the international commercial community and could bring the cooperation between countries in international financial reorganizations and insolvencies to entirely new levels.