Decision-making in UNESCO: experiment with the drafting and negotiating group

Alternatives in multilateral decision-making

The restructuring exercise of the United Nations;

(*d*) The institutional agenda and the new international economic order

UNCTAD and the new international economic order

The Law of the Sea Conference and the new international economic order

The new international economic order and transnational corporations

The new international economic order and technical co-operation among developing countries

The unfinished institutional agenda of the new international economic order.

167. The Centre for Research on the New International Economic Order is engaged in carrying out studies on the legal aspects of NIEO as identified by ILA's Committee on NIEO. A seminar was held at Oxford in March/April 1981. The following topics were discussed:

(*a*) General principles and the Charter of Economic Rights and Duties of States, including conceptual and institutional issues;

(*b*) Subjects referred to in Article 2 of the Charter of Economic Rights and Duties of States relating to permanent sovereignty over natural resources, wealth and economic activities, in particular:

Measures for international co-operation (particularly dispute settlement and bilateral and other treaties of co-operation)

Application of principle (*j*) set out in Chapter 1 ("fulfilment in good faith of international obligations")

Standards for payment of "appropriate compensation";

(*c*) Transnational corporations and in particular codes of conduct and guidelines for transnational corporations;

(*d*) Transfer of technology;

(*e*) Restrictive business practices;

(*f*) International trade with reference to NIEO objectives:

Legal implications of new codes which emerged from the Multilateral Trade Negotiations for developing countries and proposals relating to the promotion of NIEO objectives

Consideration of rule-making, complaint and dispute-settlement procedures in trade codes (existing and proposed)

Legal aspects of proposals for a new International Trade Organization;

(*g*) Legal aspects of the global food distribution and utilization in a new international economic order;

(*h*) Contracts in the field of industrial development;

(*i*) Legal aspects of international monetary and financial reform;

(*j*) Right to development.

[A/CN.9/202/Add.3*]

Recent and current activities of the International Law Commission which may bear upon questions related to the field of international trade law

By resolution 34/142 of 17 December 1979** the General Assembly requested the Secretary-General "to take effective steps to secure a close co-ordination, especially between those parts of the Secretariat which are serving . . . the International Law Commission . . ."

Accordingly, the Secretary of the United Nations Commission on International Trade Law (UNCITRAL) by memorandum LE 133 (1-1) dated 6 November 1980, requested the Secretary of the International Law Commission (ILC) to provide detailed information on its recent and current activities in the field of international trade law for inclusion in the Secretary-General's report to be submitted to the fourteenth session of UNCITRAL in June 1981.

In response to the memorandum, the Enlarged Bureau and the Planning Group of ILC at a meeting in May 1981, authorized the Secretary of ILC to provide information on its recent and current activities which may bear upon questions related to the field of international trade law. This information is reproduced in the annex to this document.

ANNEX

A. *General observations*

1. By resolution 174 (II) of 21 November 1947, the General Assembly of the United Nations established the International Law Commission and approved its Statute. Article 1, paragraph 1, of the Statute[1] states that "The International Law Commission shall have for its object the promotion of the progressive development of international law and its codification". Paragraph 2 of article 1 of the

* 5 June 1981. Incorporates A/CN.9/202/Add.3/Corr.1 (English only) (17 June 1981).

** Yearbook . . . 1980, part one, 1, C.

[1] A/CN.4/1/Rev.1.

Statute stipulates that "The Commission shall concern itself primarily with *public* international law, but is *not* precluded from entering the field of *private* international law" (emphasis supplied).

2. In 1965, in connexion with the examination of an item entitled "Consideration of steps to be taken for progressive development in the field of private international law with a particular view to promoting international trade", the Sixth Committee included in its report to the General Assembly the following passage:

"It was agreed that consultations with the International Law Commission, other United Nations organs and autonomous institutions should be conducted informally by the Secretary-General".[2]

3. The Commission at its 880th meeting, on 29 June 1966, discussed the question[3] of the responsibilities of United Nations organs in furthering co-operation in the development of the law of international trade in promoting its progressive unification and harmonization.[4] At the conclusion of the discussion, the representative of the Secretary-General, the Legal Counsel, "noted that there was clearly a consensus of opinion in the Commission that it should not undertake a responsibility for studying the topic in question."[5]

4. In a report submitted to the twenty-first session of the Assembly, the Secretary-General stated that

". . . the views of the Commission were sought as to whether it would be in a position to undertake additional responsibilities in the area of international trade law. The Secretary-General has been advised that, in the view of its manifold activities and responsibilities and considering its extensive agenda, the Commission does not believe that it would be appropriate for it to become responsible for work in the field of the progressive development of the law of international trade."[6]

This indication from the Commission was also reflected in the report of the Sixth Committee to the General Assembly[7] which recommended the adoption of resolution 2205 (XXI) of 17 December 1966,* establishing the United Nations Commission on International Trade Law (UNCITRAL).

5. The Commission's most recent pronouncement concerning its work in the public and private fields of international law is contained in its observations on the item "Review of the multilateral treaty-making process" approved at its thirty-first (1979) session and submitted to the General Assembly:

"10. . . . Article 1, paragraph 2, of the Statute states that the Commission 'shall concern itself primarily with public international law'.[5] The Commission has, therefore, been invested by the General Assembly with general permanent functions in its own field of activity, as defined by its Statute, occupying in that respect a central position within the United Nations system in the task of assisting the General Assembly in the promotion of the progressive development of international law and its codification.

"11. Other subsidiary organs set up within the United Nations have also been entrusted with functions aimed at or resulting in the promotion of the progressive development of international law and its codification by the United Nations. The United Nations Commission on International Trade Law (UNCITRAL), the Legal Sub-Committee of the Committee on the Peaceful Uses of Outer Space, the Commission on Human Rights could be mentioned as examples of bodies established on a permanent basis and dealing with questions of international law or matters relevant thereto. . . . A point common to all the above-mentioned permanent or *ad hoc* bodies is that their contributions to the progressive development of international law and its codification take place in specific fields as defined in their mandates. Article 18 of the Statute of the Commission provides that it shall survey 'the whole field of international law with a view to selecting topics for codification'. Moreover, the General Assembly has referred, in the course of the years, to the Commission for consideration topics belonging to various fields of international law . . .

"[5] During its first thirty-one sessions, however, the Commission, with the endorsement of the General Assembly, *has worked almost exclusively in the field of public international law.*" (emphasis supplied)"[8]

B. *Recent activity of the Commission*

6. The International Law Commission recently concluded its work on one topic (The most-favoured-nation clause) which may be considered as bearing on questions related to the field of international trade law. That being so, the material that follows with respect to that topic lends itself to being presented, for the most part, within the organizational framework suggested in the letter of 5 November 1980 addressed to various organizations by the Secretary of UNCITRAL. However, the Commission's work as it relates to questions which have a bearing on the field of international trade law is not limited to one area of international law. In section C below, an indication is given of work presently being undertaken with regard to other topics on the Commission's agenda which may be relevant. It may well be that UNCITRAL would be in the best position to ascertain the extent to which the Commission's work on these and other topics has an impact on the questions related to the field of international trade law.

1. *Subject of project*

7. The "project" was work on the topic *"The most-favoured-nation clause"*. That work is described, and the results thereof reflected, in Chapter II of the report of the International Law Commission on the work of its thirtieth (1978) session.[9]

2. *Authorizing or initiating bodies and terms of reference*

8. The topic first appeared on the programme of work of the Commission in 1967 as a result of a Commission decision reflected in its 1978 report as follows:

"At its nineteenth session, in 1967, the Commission noted that, at the twenty-first session of the General Assembly, several representatives in the Sixth Committee had urged that the Commission should deal with the most-favoured-nation clause as an aspect of the general law of treaties. In view of the interest expressed in the matter and of the fact that *clarification of its legal aspects might be of assistance to UNCITRAL,* the Commission decided to place on its programme of work the topic of 'most-favoured-nation clauses in the law of treaties' . . ."[10]

At its 1968 session, the Commission shortened the title of the topic to "The most-favoured-nation clause".

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* Yearbook . . . 1968-1970, part one, II, E.

[2] *Official Records of the General Assembly, Twentieth Session, Annexes,* agenda item 12, doc. A/6206, para. 18.

[3] See ILC (XCIII) MISC.2.

[4] *Yearbook of the International Law Commission, 1966,* vol. I, part II, pp. 249-252, 880th meeting, paras. 38-66. The question is also briefly referred to in the report of the Commission on the work of its eighteenth session, Yearbook . . . 1966, vol. II, p. 173, doc. A/6309/Rev. 1, part II, para. 8.

[5] Yearbook . . . 1966, vol. I, part II, p. 252, 880th meeting, para. 66.

[6] *Official Records of the General Assembly, Twenty-first Session, Annexes,* agenda item 88, doc. A/6396, para. 5.

[7] *Ibid.,* doc. A/6594, para. 5.

[8] A/35/312/Add.2 and Corr.1, to be reproduced in Yearbook . . . 1979, vol. II (Part One), doc. A/CN.4/325.

[9] Yearbook . . . 1978, vol. II (Part Two), doc. A/33/10.

[10] *Ibid.,* p. 8, para. 16 (emphasis added). The topic was first discussed in the Commission in 1964 when one of its members proposed the inclusion of a provision on the most-favoured-nation clause in the draft articles on the law of treaties then under preparation. While the Commission, after examining the proposal, considered that it would not be advisable to deal with the most-favoured-nation clauses in the codification of the general law of treaties, it thought they might at some future time appropriately form the subject of a special study. *Ibid.,* para. 15.

9. The General Assembly, having considered the 1967 report of the Commission, recommended in its resolution 2272 (XXII) of 1 December 1967 that the Commission study the topic. From that time on, the topic was normally inscribed on the Commission's agenda until completion of the project in 1978. The Assembly during that period recommended that the Commission continue its study of the topic (1968 to 1972), proceed with the preparation of draft articles on the topic (1973 and 1974), complete the first reading of those articles (1975) and complete the second reading of those draft articles; in the light of comments received from Member States, from organs of the United Nations which had competence on the subject-matter and from interested inter-governmental organizations (1976 and 1977). By part II of its resolution 33/139 of 19 December 1978 the Assembly expressed its appreciation to the Commission for its valuable work on the most-favoured-nation clause and to the Special Rapporteurs on the topic for their contribution to this work.

10. As to the terms of reference or scope of the project, the Commission explained as follows in its 1978 report:

"60. As already noted, the idea that the Commission should undertake a study of the most-favoured-nation clause arose in the course of its work on the law of treaties. The Commission considered that, although the clause, conceived as a treaty provision, fell entirely under the general law of treaties, it would be desirable to make a special study of it. While recognizing that there was particular interest in taking up that study because of the attention devoted to the clause as a device frequently used in the *economic sphere,* it understood its task as being to deal with the clause as an aspect of the law of treaties. When it first discussed the question on the basis of the preparatory work of the Special Rapporteur in 1968, the Commission had decided to concentrate on the legal character of the clause and the legal conditions of its application, in order that the scope and effect of the clause as a legal institution might be clarified.

"61. The Commission maintains the position it took in 1968 and points out that the fact that the title of the topic was changed from 'most-favoured-nation clauses in the law of treaties' to the 'most-favoured-nation clause' did not indicate any change in its intention to deal with the clause as a legal institution and to explore the rules of law pertaining to the clause. The Commission's approach has remained the same: while recognizing the fundamental importance of the role of the most-favoured-nation clause in the *domain of international trade,* it did not wish to confine its study to the operation of the clause in that sphere but to extend the study to the operation of the clause in as many spheres as possible.

"62. The Commission has been cognizant of matters relating to the operation of the most-favoured-nation clause in the *sphere of international trade,* such as the existence of the General Agreement on Tariffs and Trade, the emergence of State-owned enterprises, the application of the clause vis-à-vis quantitative restrictions and the problem of the so-called 'anti-dumping' and 'countervailing' duties. The Commission has attempted to maintain the line it set for itself between law and economics, so as not to try to resolve questions of a technical economic nature, such as those mentioned above, which pertain to areas specifically assigned to other international organizations.

"63. On the other hand, although it was not the Commission's intention to deal with matters pertaining to areas specifically assigned to other international organizations, it wished to take into consideration all modern developments that might have a bearing upon the codification or progressive development of rules relating to the operation of the clause. In that connexion, the Commission devoted special attention to the question of the manner in which the need of developing countries for preferences in the form of exceptions to the most-favoured-nation clause in the sphere of economic relations could be given expression in legal rules."[11]

[11] *Ibid.*, p. 14, paras. 60-63 (emphasis added).

3. *Legal issues involved in the project*

11. The legal issues addressed are spelled out in general in the paragraphs immediately quoted above. A more detailed indication of the legal issues dealt with in the Commission's draft may be found by examining the titles to the Commission's thirty draft articles on most-favoured-nation clauses as finally adopted in 1978.

4. *Course of action contemplated*

12. At its 1522nd meeting, on 20 July 1970, the International Law Commission decided, in conformity with article 23 of its Statute, to recommend to the General Assembly that the draft articles on most-favoured-nation clauses should be recommended to Member States with a view to the conclusion of a convention on the subject.[12]

5. *Difficulties encountered*

13. While they should not be termed "difficulties", the Commission had before it certain proposals submitted by members which were not included in the final set of draft articles for various reasons. The titles of those proposals suggest their subject-matter:

Article A. The most-favoured-nation clause and treatment extended in accordance with the Charter of Economic Rights and Duties of States[13]

Article 21 *ter.* The most-favoured-nation clause and treatment extended under commodity agreements[14]

Article 23 *bis.* The most-favoured-nation clause in relation to treatment extended by one member of a customs union to another member[15]

Article 28. Settlement of disputes and Annex[16]

14. Note may also be taken of the remark in paragraph (15) of the commentary to article 24 dealing with "The most-favoured-nation clause in relation to arrangements between developing countries" that some Commission members believed that the absence of agreed concepts of developed and developing States, in particular for purposes of international trade, might give rise to enormous difficulties in the application of the provisions of article 24.[17]

6. *Other organizations or bodies in collaboration with which the project was carried out*

15. As indicated in paragraph 9 above, the General Assembly, by resolution 31/97 of 15 December 1976, requested the International Law Commission to complete at its 1978 session the second reading of its draft article on the most-favoured-nation clause, in the light of comments received not only from Member States, but also from organs of the United Nations which had competence on the subject-matter and from interested inter-governmental organizations.

16. At its 1977 session, the Commission instructed the Secretariat to transmit the draft articles to the United Nations bodies, specialized agencies and inter-governmental organizations indicated in the standard list used by UNCTAD.[18] Thus, the Secretariat transmitted the draft articles for comment to some 13 United Nations bodies, 15 specialized or related agencies and 58 other inter-governmental organizations.

17. Comments were received for consideration by the Commission at its 1978 session from the following organs, agencies and organizations: Economic Commission for Europe, Economic Commission for Western Asia, United Nations Conference on Trade and Development, United Nations Educational, Scientific and Cultural Organi-

[12] *Ibid.*, p. 16, para. 73.
[13] See *ibid.*, p. 13, para. 55.
[14] See *ibid.*
[15] See *ibid.*, pp. 13-14, paras. 56-58.
[16] See *ibid.*, p. 15, paras. 68-69.
[17] *Ibid.*, p. 68.
[18] Yearbook . . . 1977, vol. I, p. 237, 1458th meeting, paras. 33-36.

zation, International Atomic Energy Agency, General Agreement on Tariffs and Trade, Board of the Cartegena Agreement, Caribbean Community Secretariat, European Economic Community, European Free Trade Association, Latin American Free Trade Association, League of Arab States and World Tourism Organization.[19]

7. *Work of other organizations engaged in similar projects*

18. While it would appear no inter-governmental organizations were engaged in the preparation of draft articles on most-favoured-nation clauses at the time the Commission was so engaged, such organizations as GATT (multilateral trade negotiations), UNCTAD (including its Special Committee on Preferences), free trade organizations and customs unions were obviously active in fields related to the clause or to its application. These activities were brought to the attention of the Commission by the first Special Rapporteur on the topic in his reports submitted to the Commission[20] as well as by the organizations themselves and Member States in their comments submitted on the Commission's provisional draft articles (see para. 17 above). As far as non-governmental organizations are concerned, the Special Rapporteur in his reports, one Member State and one inter-governmental international organization in their comments, referred to resolutions adopted by the Institute of International Law, as well as to reports and studies undertaken for the Institute.

8. *The final text*

19. The final text of the draft articles on most-favoured-nation clauses was adopted by the International Law Commission at its 1523rd meeting, held on 21 July 1978.

20. As noted above in paragraph 13, the Commission recommended to the General Assembly in 1978 that it recommend the draft articles to Member States with a view to the conclusion of a convention on the subject. By part II of resolution 33/139 of 19 December 1978, all States, organs of the United Nations having competence in the subject-matter and interested inter-governmental organizations were invited to submit their written comments and observations on chapter II of the 1978 Commission report and, in particular, on (i) the draft articles on most-favoured-nation clauses adopted by the Commission; and (ii) those provisions relating to such clauses on which the Commission was unable to take decisions. In addition, States were requested to comment on the recommendation that the draft articles be recommended to Member States with a view to the conclusion of a convention on the subject. At its thirty-fifth (1980) session, the General Assembly had before it in response to that invitation, the comments and observations submitted by eighteen Governments and five inter-governmental organizations, as well as an analytical compilation of those comments and observations (A/35/203 and Add.1-3); A/35/443). On 15 December 1980, the Assembly, aware of the fact that more replies were needed, adopted resolution 35/161 reiterating the invitation contained in resolution 33/139 and including in the provisional agenda of its 1981 session an item entitled "Consideration of the draft articles on most-favoured-nation clauses".

C. *List of matters possibly of interest to UNCITRAL*

21. The Commission's agenda for its present, thirty-third session does not appear to include topics directly related, as such, to the "List of matters of interest to UNCITRAL" attached to the letter of 5 November 1980 referred to earlier.

22. It might be noted, however, that included in the draft articles on *succession of States in respect of matters other than treaties,* adopted on first reading by the Commission at its 1979 session,[21] is a part II relating to the effects of a succession of States in respect of State property and a part III relating to the effects of a succession of States in respect of State debts. A definition of "State debt" is included in the draft (article 16) and provides that for the purposes of the articles in part III of the draft, "'State debt' means: (*a*) any financial obligation of a State towards another State, an international organization or any other subject of international law; (*b*) any other financial obligation chargeable to a State". At its present session the Commission intends to complete the second reading of those draft articles, as recommended by the General Assembly in resolution 35/163 of 15 December 1980.

23. At its 1980 session the Commission adopted on first reading a set of draft articles on *treaties concluded between States and international organizations or between international organizations.*[22] Article 1 provides that the articles apply to (*a*) treaties concluded between one or more States and one or more international organizations, and (*b*) treaties concluded between international organizations. Included in the article on use of terms (article 2) is a provision indicating that for the purposes of the articles, "'treaty' means an international agreement governed by international law and concluded in written form: (i) between one or more States and one or more international organizations, or (ii) between international organizations—whether that agreement is embodied in a single instrument or in two or more related instruments and whatever its particular designation." Thus, treaties as defined by that provision between States and international organizations or between international organizations which concern *inter alia* trade, economic and commercial questions (such as "multilateral commodity agreements") are included within the scope of those draft articles. At its present session, the Commission has commenced, pursuant to resolution 35/163, the second reading of these draft articles.

24. In connexion with the topic of *State responsibility,* it may be noted that in the preparation of draft articles on the responsibility of States for internationally wrongful acts, the Commission has adopted in first reading a draft article (article 31) entitled *"Force majeure* and fortuitous event" as a circumstance precluding wrongfulness, in part one of the draft relating to "the origin of international responsibility". The text of that draft article and commentary thereto are found in the 1979 report of the Commission.[23] As a general matter it might be useful to recall that the draft articles on this topic relate to the international responsibility of a State for *every* internationally wrongful act committed by that State (article 1). This would obviously include internationally wrongful acts committed in breach of an international obligation of a State related to international trade law matters. In accordance with resolution 35/163, the Commission intends to continue its work on the topic with the aim of beginning the preparation of draft articles concerning part two (content, forms and degrees of international responsibility) of the draft, bearing in mind the need for a second reading of the draft articles constituting part one of the draft.

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[19] See Yearbook . . . 1978, vol. II (Part Two), p. 161, document A/33/10, Annex.

[20] In his report (Yearbook . . . 1969, vol. II, doc. A/CN.4/213), the Special Rapporteur reviewed attempts at codification under the aegis and in the era of the League of Nations. In his second report (Yearbook . . . 1970, vol. II, doc. A/CN.4/228 and Add.1), he reviewed the experience of international organizations and interested organizations in the application of the clause. In the field of international trade section, particular attention was paid to the structure, principles or activities of such organizations as UNCTAD, GATT, the Economic Commission for Europe, the Latin American Free Trade Association, and the European Free Trade Association. In later reports containing proposed draft articles, the Special Rapporteur had occasion to refer to the activities of organizations reflected in his first and second report, sometimes up-dated, as well as to the views and practice of the European Economic Community. In preparing his reports, the Special Rapporteur had at his disposal research and other materials furnished by the Secretariat which related, *inter alia,* to the activities of the above-mentioned organizations.

[21] For the text of these articles and commentaries thereto, see Yearbook . . . 1979, vol. II (Part Two), p. 40, chapter II.B.

[22] *Official Records of the General Assembly, Thirty-fifth Session, Supplement No. 10* (A/35/10), p. 139, chapter IV.B.

[23] Yearbook . . . 1979, vol. II (Part Two), p. 122, doc. A/34/10, chapter III.B.2.

25. The Commission, at its 1980 session, held an exchange of views on the topic *"International liability for injurious consequences arising out of acts not prohibited by international law"* on the basis of a preliminary report submitted by the Special Rapporteur. He pointed out that the distinguishing feature of this topic is that its essential concern is with dangers that arise within the jurisdiction of one State and cause harmful effects beyond the borders of that State. It would appear from the Commission's discussion[24] that the acts or activities from which such dangers arise or which cause such harmful effects may be carried out by, *inter alia,* natural and juridical persons, including "transnational corporations", and may be activities having a trading or commercial aspect. Taking into account resolution 35/163, the Commission will continue its work on the topic and may have before it during its present session proposed draft articles which the Special Rapporteur intends to include in his next report.

26. In 1974, the Commission formulated a questionnaire to be communicated to Member States concerning the *law of the non-navigational uses of international watercourses.* Among the questions was one setting forth an outline of fresh water uses suggested as the basis for the Commission's study of the topic. That outline included the following: "(*a*) Agricultural uses: 1. Irrigation; 2. Drainage; 3. Waste disposal; 4. Aquatic food production. (*b*) Economic and commercial uses: 1. Energy production (hydroelectric, nuclear and mechanical); 2. Manufacturing; 3. Construction; 4. Transportation other than navigation; 5. Timber floating; 6. Waste disposal; 7. Extractive (mining, oil production, etc.)."[25] In provisionally adopting six draft articles on the topic at its 1980 session, the Commission noted that, at a future stage in its work, after having elaborated general principles relating to the non-navigational uses of international watercourse systems and their waters, it intends to examine the advisability of formulating, within the framework of the draft, additional draft articles on specific uses of international watercourse systems and their waters, such as those mentioned in its 1974 questionnaire, as well as on various measures of conservation related to such uses (and abuses such as pollution).[26] With regard to "agreements in the field of natural resources" the Commission and its Special Rapporteur in work on this topic have taken into account treaties considered relevant to the law of the non-navigational uses of international watercourses.[27] In addition, one article provisionally adopted in 1980 (article 5) concerned "Use of waters which constitute a shared natural resources".[28] Resolution 36/163 recommends that the Commission proceed with the preparation of draft articles on this topic, taking into account the replies to the questionnaire addressed to Governments.

27. The Commission also at its 1980 session provisionally adopted two draft articles on the topic of *jurisdictional immunities of States and their property,* one entitled "Scope of the present articles", the other "State immunity".[29] The Commission has not directly addressed itself as yet to such questions as the trading or commercial activities of a State which may be considered relevant to the topic, although the Special Rapporteur did allude to such questions in his second report.[30] He had proposed in that report a definition of "trading or commercial activity" as well as an interpretative provision for determining the "commercial character of a trading or commercial activity" but the Commission considered it premature at that stage to discuss the substance of definitional problems.[31] The Commission also noted that controversies had existed in the past concerning the divisibility of the functions of the State or the various distinctions between the activities carried on by modern States in fields of activity formerly undertaken by individuals, such as trade and finance. The greatest care was called for in the treatment of this particular area of the topic.[32] In 1979 and 1980, the Legal Counsel of the United Nations circulated to Member States a questionnaire on the topic drafted by the Special Rapporteur in co-operation with the Secretariat. Included in the questionnaire were the following questions:

"Question 6. Do the laws and regulations . . . or the judicial practice . . . make any distinction, as far as jurisdictional immunities of foreign States and their property are concerned, between 'public acts' and 'non-public acts' of foreign States? . . .

"Question 7. If the answer to question 6 is 'yes':

". . .

"(*b*) In a dispute relating to a contract of purchase of goods would courts of your State be expected to grant immunity to a foreign State which establishes that the ultimate object of the contract for a public purpose or the contract was concluded in the exercise of a 'public' or 'sovereign' function?

"(c) In a dispute relating to a foreign State's breach of a contract of sale, would courts of your State be expected to grant immunity to a foreign State which establishes that its conduct was motivated by public interests?

"(*d*) In any dispute concerning a commercial transaction, is the nature of transaction decisive of the question of State immunity, if not, how far is ulterior motive relevant to the question?

". . .

"Question 12. What is the status, under laws and regulations in force or in practice in your State, of ships owned or operated by a foreign State and employed in commercial service?"

The text of the questionnaire and Government replies thereto, as well as of other information and materials relevant to the topic submitted by Governments, are presently before the Commission.[33] In addition, the Commission in 1980 "noted the special nature of the topic . . . which, more than other topics hitherto studied by it, touched on the realm of international law as well as that of private international law".[34] At its current session, it has before it a third report submitted by the Special Rapporteur containing five articles entitled as follows: Rules of competence and jurisdictional immunity; Consent of State; Voluntary submission; Counter-claims; and Waiver.[35] In connexion with the question of "rules of competence and jurisdictional immunity", the Special Rapporteur in that report included a section entitled "The rules of competence in private international law". The Commission intends as recommended by resolution 35/163 to proceed with the preparation of draft articles on the topic, taking into account replies to the questionnaire addressed to Governments as well as information furnished by them.

[A/CN.9/202/Add.4*]

Current activities of the European communities in the field of international trade law

The information on the current activities in the field of international trade law provided by the Commission of the European Communities (CEC) is contained in this addendum.

[24] See *Official Records of the General Assembly, Thirty-fifth Session, Supplement No. 10* (A/35/10), chapter VII.
[25] *Ibid.*, p. 240, chapter V, para. 69.
[26] *Ibid.*, p. 250, para. 98.
[27] See the commentaries to articles 1, 3, 4 and 5, *ibid.*, chapter V.B.
[28] *Ibid.*, pp. 275-276.
[29] *Ibid.*, pp. 326, 328, chapter VI.B.
[30] A/CN.4/311 and Add.1.
[31] *Official Records of the General Assembly, Thirty-fifth Session, Supplement No. 10* (A/35/10), pp. 324-326, paras. 120, 122.
[32] *Ibid.*, p. 321, para. 116.
[33] A/CN.4/343 and Add.1-3.
[34] *Official Records of the General Assembly, Thirty-fifth Session, Supplement No. 10* (A/35/10).
[35] A/CN.4/340 and Add.1.

* 1 July 1981.