

II. NEW INTERNATIONAL ECONOMIC ORDER

A. UNCITRAL Legal Guide on Drawing Up International Contracts for the Construction of Industrial Works

1. Report of the Working Group on the New International Economic Order on the work of its ninth session (New York, 30 March-16 April 1987) (A/CN.9/289)^a

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INTRODUCTION

1. At its eleventh session (1978) the United Nations Commission on International Trade Law decided to include in its work programme a topic entitled "The legal implications of the new international economic order" and established a Working Group to deal with this subject.¹ The Working Group is composed of all States members of the Commission.² Its present composition is, therefore: Algeria, Argentina, Australia, Austria, Brazil, Central African Republic, Chile, China, Cuba, Cyprus, Czechoslovakia, Egypt, France, German

Democratic Republic, Hungary, India, Iran (Islamic Republic of), Iraq, Italy, Japan, Kenya, Lesotho, Libyan Arab Jamahiriya, Mexico, Netherlands, Nigeria, Sierra Leone, Singapore, Spain, Sweden, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, Uruguay and Yugoslavia.

2. At its first session, in 1980, the Working Group recommended to the Commission for possible inclusion in its programme of work the harmonization, unification and review of contractual provisions commonly occurring in international contracts in the field of industrial development.³ The Commission, at its thirteenth session agreed to accord priority to work related to those contracts and requested the Secretary-General to undertake a study concerning contracts for the supply and construction of large industrial works.⁴

3. The study prepared by the secretariat⁵ was examined by the Working Group at its second and third sessions, in 1981 and 1982 respectively.⁶ At its third

^aThe Report of the Working Group contains the changes, additions to and deletions from the draft chapters of the *UNCITRAL Legal Guide on Drawing Up International Contracts for the Construction of Industrial Works* (A/CN.9/WG.V/WP.20 and Add. 1-29) agreed to by the Working Group at its ninth session. Due to the length of these draft chapters, neither they nor the changes, additions or deletions agreed to by the Working Group are reproduced in this *Yearbook*. The *UNCITRAL Legal Guide* has been published by the United Nations under sales number E.87.V.10, document A/CN.9/SER.B/2.

¹Report of the United Nations Commission on International Trade Law on the work of its eleventh session, *Official Records of the General Assembly, Thirty-third Session, Supplement No. 17* (A/33/17), para. 71.

²See Report of the United Nations Commission on International Trade Law on the work of its thirteenth session, *Official Records of the General Assembly, Thirty-fifth Session, Supplement No. 17* (A/35/17), para. 143.

³A/CN.9/176, para. 31.

⁴See footnote 2, above.

⁵A/CN.9/WG.V/WP.4 and Add.1-8, and A/CN.9/WG.V/WP.7 and Add.1-6.

⁶A/CN.9/198 and A/CN.9/217.

session, the Working Group requested the secretariat, pursuant to a decision of the Commission at its fourteenth session,⁷ to commence the drafting of a legal guide on contractual provisions relating to contracts for the supply and construction of large industrial works.⁸ The Legal Guide was to identify the legal issues involved in such contracts and to suggest possible solutions to assist parties, in particular from developing countries, in their negotiations.⁹

4. The secretariat prepared draft chapters of the Legal Guide and submitted them for the consideration of the Working Group.¹⁰ The Working Group considered the draft chapters at its fourth¹¹, fifth¹², sixth¹³, seventh¹⁴, and eighth¹⁵ sessions.

5. The Working Group held its ninth session in New York from 30 March to 16 April 1987. All members of the Working Group were represented with the exception of Iraq, Kenya, Libyan Arab Jamahiriya, Sierra Leone, Singapore and United Republic of Tanzania.

6. The session was attended by observers from the following States: Barbados, Bulgaria, Burma, Cameroon, Canada, Democratic People's Republic of Korea, Ecuador, Finland, Germany, Federal Republic of, Guatemala, Holy See, Honduras, Jordan, Mozambique, Oman, Panama, Philippines, Poland, Republic of Korea, Saudi Arabia, Switzerland, Syrian Arab Republic, Trinidad and Tobago, Turkey, Venezuela and Yemen.

7. The session was also attended by observers from the following international organizations:

(a) *Specialized agency*

United Nations Industrial Development Organization

(b) *International non-governmental organizations*

International Bar Association
International Chamber of Commerce
International Federation of Consulting Engineers

8. The Working Group elected the following officers:

Chairman: Mr. Leif Sevon (Finland)*

Rapporteur: Mr. Fabio Konder Comparato (Brazil)

*The Chairman was elected in his personal capacity.

⁷Report of the United Nations Commission on International Trade Law on the work of its fourteenth session *Official Records of the General Assembly, Thirty-sixth Session, Supplement No. 17 (A/36/17)*, para. 84.

⁸A/CN.9/217, para. 130.

⁹See footnote 7, above.

¹⁰A/CN.9/WG.V/WP.9 and Add.1-8; A/CN.9/WG.V/WP.11 and Add.1-9; A/CN.9/WG.V/WP.13 and Add.1-6; A/CN.9/WG.V/WP.15 and Add.1-10; A/CN.9/WG.V/WP.17 and Add.1-9.

¹¹A/CN.9/234.

¹²A/CN.9/247.

¹³A/CN.9/259.

¹⁴A/CN.9/262.

¹⁵A/CN.9/276.

9. The Working Group had before it the following documents:

(a) Provisional agenda (A/CN.9/WG.V/WP.18);

(b) Draft chapters of the Legal Guide on Drawing Up International Contracts for the Construction of Industrial Works, as revised by the secretariat in the light of the discussions and decisions of the Working Group at its previous sessions (A/CN.9/WG.V/WP.19; A/CN.9/WG.V/WP.20 and Add.1-29);

(c) Proposals of the secretariat concerning changes and additions to the draft Legal Guide (A/CN.9/WG.V/IX/CRP.1);

(d) Index to the draft Legal Guide (A/CN.9/WG.V/IX/CRP.2).¹⁶

10. The Working Group decided to proceed in accordance with the policy established at its eighth session that, in examining the draft chapters at its present session, it would restrict itself to determining whether decisions taken by it during its previous sessions had been reflected in the draft chapters.¹⁷

11. After considering document A/CN.9/WG.V/IX/CRP.1, the Working Group agreed that, in preparing the final text of the Legal Guide for publication, the secretariat should be authorized to correct typographical errors, to make any corrections in terminology needed to ensure consistency of usage throughout the Guide (e.g. "installation of equipment" instead of "erection of equipment") and to make minor changes and additions to the text to improve the clarity of the presentation without changing its substance. The Working Group also requested the secretariat to make any changes to the summaries of the draft chapters necessitated by changes and additions to and deletions from the text of the draft chapters agreed to at the present session.

I. AGREED CHANGES, ADDITIONS TO AND DELETIONS FROM THE DRAFT GUIDE

12. The Working Group agreed to the changes, additions to and deletions from the draft Legal Guide set forth below.^b

* * *

Index to the Guide

13. The index was found to be generally satisfactory. The Working Group agreed that a statement should be inserted at the beginning of the index that the references given therein were to chapters and paragraphs of the Guide. It also agreed that references to paragraphs containing definitions of terms should be included not only under the entry "Meaning of terms" but also under the individual entry for each term.

^bSee footnote a/ above.

¹⁶For technical reasons, only excerpts of this document could be presented to the Working Group in Arabic, Chinese, French, Russian and Spanish.

¹⁷A/CN.9/276, para. 210.

14. The Working Group requested the secretariat to reconsider the present use of hyphens in the index. In addition, it was noted that the distinction between certain entries in the index was unclear (e.g. "arbitration" and "arbitral proceedings"), and the secretariat was requested to reconsider such entries.

15. It was observed that, for technical reasons, it had not been possible to issue the index for the current session in all six working languages of the Working Group; accordingly, the Working Group had before it the entire index only in English, although excerpts of the index had been made available in the other five working languages. In view of those circumstances, the Working Group requested the secretariat to arrange for the entire index, in its current form, to be issued and distributed in the other five working languages as soon as possible. Member States and observers were requested to submit to the secretariat any comments they might have on the index in sufficient time to enable the secretariat to inform the Commission what changes, if any, it recommended be made to the index in the light of the comments. In addition, the Working Group requested the secretariat to consider, after receiving those comments, whether it was desirable or feasible to prepare for the Commission a document setting forth the comments received.

II. PRINTING, DISTRIBUTION, PROMOTION AND POSSIBLE REVISION OF THE LEGAL GUIDE

16. The Working Group requested delegates and observers to communicate to the secretariat any errors in the translation of the draft chapters of the Guide in the various language versions.

17. The Working Group stressed that, given the nature of the footnotes in the Guide, nearly all of which

contained illustrative provisions, it was important for the understanding and use of the Guide that, in the final printed text, the footnotes appear at the bottom of the relevant pages, rather than at the end of each chapter.

18. The secretariat was urged to take whatever actions were possible to assure that the Legal Guide would be published in all languages as soon as possible after its adoption by the Commission. The Working Group noted that timely publication would be an important factor in the eventual impact the Legal Guide would have. The Working Group also urged its publication in sufficient quantities to ensure its availability to all interested readers.

19. The Working Group stressed the importance of achieving a widespread distribution of the Guide, and recommended that the Commission seek the co-operation of all States in that regard. In particular, it was desirable for the Guide to be distributed to relevant government officials, libraries and trade associations. The support of interested organizations might also be enlisted to promote distribution. It was further noted that the potential readership of the Guide included not only lawyers, but also persons interested in the construction of industrial works and in industrial development, and it was suggested that activities promoting the Guide should be directed to those categories of readers. The secretariat was requested to consider whether it would be useful to submit to the Commission a document setting forth proposals for the distribution and promotion of the Legal Guide.

20. The Working Group recommended to the Commission that it consider the desirability of revising the Legal Guide at an appropriate time in the future, and possible procedures in that regard. A suggestion was made to include in the Guide an invitation to readers to communicate to the secretariat suggestions for revising the Guide.

2. Revised draft Legal Guide on Drawing Up International Contracts for Construction of Industrial Works: report of the Secretary-General (A/CN.9/WG.V/WP.19)

1. At its second session the Working Group on the New International Economic Order decided to request the secretariat to commence the preparation of a legal guide on contracts for the supply and construction of large industrial works.¹ The Commission at its fourteenth session approved this decision by the Working Group and decided that the guide should identify the legal issues involved in such contracts and suggest possible solutions to assist parties, in particular from developing countries, in their negotiations.²

¹A/CN.9/198, para. 92.

² Report of the United Nations Commission on International Trade Law on the work of its fourteenth session, *Official Records of the General Assembly Thirty-sixth session, Supplement No. 17 (A/36/17)*, para. 84.

2. The secretariat prepared two studies on clauses related to contracts for the supply and construction of large industrial works³ and the Working Group considered these studies at its second and third sessions.⁴ In its second session the Working Group agreed to request the secretariat to commence drafting the legal guide.

3. In the light of the discussion on the studies the secretariat prepared draft chapters of the guide and submitted them for the consideration of the Working

³A/CN.9/WG.V/WP.4 and Add. 1-8 and A/CN.9/WG.V/WP.7 and Add. 1-6.

⁴A/CN.9/198 and A/CN.9/217.