

VIII. TRAINING AND ASSISTANCE

Training and assistance: note by the Secretariat (A/CN.9/311) [Original: English]

INTRODUCTION

1. From the first session of the Commission in 1968 when it "noted the special importance of increasing the opportunities for the training of experts in the field of international trade law, particularly in many of the developing countries" (A/7216, para. 67)¹ to the twentieth session in 1987 when it "noted that training and assistance was an important activity of the Commission and should be given a higher priority than it had in the past" (A/42/17, para. 335), the Commission has had on its agenda every year an item entitled "Training and Assistance". Nevertheless, in spite of the reiteration in the report of the Commission and in the annual resolution of the General Assembly on the work of the Commission of the importance of training and assistance activities, only a comparatively small amount has been accomplished.

2. The primary purpose of this report is to make certain proposals for future action. In order to set these proposals in the proper context, it is useful to review briefly the past efforts.

I. Early discussions and activities

3. The earliest activities of the Commission were oriented towards disseminating knowledge about the existing body of international trade law. This was accomplished by such means as endorsing certain texts and encouraging their adoption by States or their use by parties to international trade transactions, preparing a register of texts and planning a programme of training and assistance.²

4. At first the Commission saw itself as a stimulator of training in the field of international trade law rather than as the body to carry out that training. This is best reflected in the decision of the Commission at its second session in 1969 when it adopted a proposal submitted by Brazil, Ghana, the United Republic of Tanzania and the United States of America, as follows:

"In an effort to help meet the need for developing local expertise in international trade law, particularly

¹Report of the United Nations Commission on International Trade Law on the work of its first session, *Official Records of the General Assembly, Twenty-third Session, Supplement No. 16* (A/7216).

²These activities are reviewed in a report of the Secretary-General submitted to the fourteenth session in 1981, A/CN.9/203, paras. 13-16, 65-98.

in the developing countries, and for intensifying and co-ordinating the existing programmes, the Commission requests the Secretary-General:

"(a) To recommend to the bodies concerned that regional seminars and training courses under the United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law should continue to include topics relating to international trade law;

"(b) To recommend that some of the fellowships to be granted under the Programme of Assistance referred to in sub-paragraph (a) above be awarded to candidates having a special interest in international trade law;

"(c) To take the necessary steps to add the names and relevant particulars of experts in international trade law for inclusion in a supplement to the Register of Experts and Scholars in International Law, as described in paragraph 36(ii)(a) of the report of the Secretary-General (A/CN.9/27);

"(d) To complete the information thus far obtained in respect of activities of international organizations in the field of training and assistance in matters of international trade law, as described in paragraph 36(i) of the report of the Secretary-General;

"(e) To consult with the Advisory Committee on the United Nations Programme of Assistance referred to in sub-paragraph (a) above and with United Nations organs, specialized agencies and other organizations and institutions active in the field of international trade law concerning the feasibility of establishing within their programmes at selected universities or other institutions in developing countries:

"(i) Regional institutes or chairs for training in the field of international trade law;

"(ii) Seminars or courses for students, teachers, lawyers and government officials interested or active in this field;

"(f) To report to the third session of the Commission the results of his consultations and the extent to which it has been possible to achieve the foregoing objectives and to inform the Commission of what further measures may be appropriate in the light of this experience" (A/7618, para. 160).

5. By the third session in 1970 the view was expressed by some representatives that the Commission should aim at the establishment of an independent pro-

gramme of training and assistance rather than limiting itself to encouraging the inclusion of such a programme within those already in existence. It was noted, however, that suggestions calling for substantial financial outlays had to take into account the fact that appropriations were limited and that activities could be undertaken only within the limit of available resources (A/8017, paras. 198-199).

6. Beginning with the third session in 1970, the Commission discussed on several occasions proposals to develop teaching materials in this field. It was expected that the materials would be developed by a young scholar from a developing country. However, at the sixth session in 1973 the Secretary of the Commission explained the financial difficulties that had been encountered in securing sufficient voluntary contributions that would enable a young scholar from a developing country to travel to a centre with adequate library facilities where he could develop teaching materials for use in his own university and possibly in universities in his region (A/9017, para. 90). It does not appear that teaching materials were ever produced as a direct outcome of the efforts of the Commission.

7. One activity that did have more success for a period of time was the establishment of internship programmes for young lawyers from developing countries to gain practical experience through secondment to commercial and financial establishments in developed countries. When this suggestion was made at the fourth session in 1971, several representatives said they would see whether such arrangements could be made in their country (A/8417, para. 142). Such arrangements were made in several countries and from the fifth to the eleventh sessions the report of the Commission notes that one or more States had made, or planned to make, available under the auspices of the Commission one or more fellowships for this purpose.

8. Eventually, however, this effort lapsed, probably because it had never become well institutionalized in the Commission, the secretariat or the host countries. Neither the reports of the Secretary-General to the Commission nor the reports of the Commission indicate more than the number of fellowships granted and the country that granted them.

9. Internships have also been available for young scholars and practitioners to serve with the Commission's secretariat. It was mentioned in the report of the Commission's fifth session that some recipients of United Nations/UNITAR fellowships had received training with the Office of Legal Affairs (A/8717, para. 91) and that such funding had been repeated on occasion. However, the last time a UNITAR or similar fellowship was granted for an intern to serve with the Commission's secretariat was in 1984. Since the award of such fellowships is outside the control of the Commission's secretariat, the situation cannot be expected to change. Therefore, while the opportunity for internships with the Commission's secretariat is still available, and on average three or four interns are accepted every year, candidates must have other sources of income for their

travel and subsistence during the period of the internship. This has effectively limited the internships to candidates from developed countries.

II. Symposia and seminars

10. The suggestion that the Commission should itself organize seminars on international trade law was first made at the fifth session in 1972. In keeping with the academic orientation that had characterized the previous discussions of training and assistance, the Secretary-General proposed the organization of an international symposium on the role of universities and research centres in the teaching, development and dissemination of international trade law. The Commission requested the Secretary-General to explore the feasibility of such a symposium (A/8717, para. 96).

11. The following year at the sixth session the decision was made to hold the symposium on the occasion of the eighth session of the Commission in 1975. In order to be sure that the symposium would not be restricted to participants from developed countries, the Secretary-General was requested to seek voluntary contributions from Governments, international organizations and foundations to cover the cost of travel and subsistence of participants from developing countries (A/9017, paras. 104 and 107).

12. The symposium was duly held in connection with the eighth session of the Commission in 1975. Four countries, Austria, Federal Republic of Germany, Norway and Sweden, contributed funds for fellowships that were awarded to participants from 14 developing countries. In addition, 13 professors from nine countries participated in the symposium at their own expense.

13. In view of the general satisfaction with the symposium, there was some discussion about sponsoring a symposium every two years in connection with the Commission's session. However, at that time the Commission decided only to organize a second symposium in connection with its tenth session in 1977 (A/10017, paras. 106-113).

14. The symposium scheduled for the tenth session in 1977 was cancelled for lack of funds. A note was submitted by the Secretary-General setting forth the actions that had been taken to raise the necessary funds and the results (A/CN.9/137). The note went on to question whether the Commission should plan to hold future symposia and, if so, whether it would not be desirable to devise a different, and more reliable, method of financing this activity. It was suggested that the symposia might be financed out of the regular budget of the United Nations.

15. The Commission was agreed that alternative means to the system of total reliance on voluntary contributions from Governments and other sources was necessary and it recommended to the General Assembly that the General Assembly consider the possibility of

providing for the funding of the Commission's symposia, in whole or in part, out of the regular budget of the United Nations. It also decided that, if the funds were available, it would hold the symposium in connection with its twelfth session in 1979 (A/32/17, para. 45 and Annex II, paras. 48-53).

16. The General Assembly was sympathetic to the recommendation of the Commission but, in view of pressures already manifest not to introduce new elements into the budget of the Organization, in its resolution 32/145 of 16 December 1977 it requested the Secretary-General "to study the problem of how adequate financial resources can be provided for the symposia . . .". In view of the resulting uncertainty as to whether and when funding would be available and the fact that six to nine months were necessary after funding was assured in order to organize the symposium, the Commission at its eleventh session in 1978 decided to leave it to the secretariat to propose a suitable date (A/33/17, paras. 77 and 78).

17. By the thirteenth session in 1980 sufficient pledges from Governments had been received to finance the travel and subsistence of approximately 15 participants from developing countries. Consequently, the Commission decided to hold the symposium in connection with the fourteenth session in 1981 (A/35/17, paras. 154-162).

18. The symposium was held as scheduled with 15 participants from developing countries financed by fellowships out of funds contributed by nine States and an additional 43 participants from 24 States who attended the symposium at their own expense. Although no formal evaluation was made at the time, at the twentieth session of the Commission "The great value of such seminars was underscored by one delegate who had participated in the most recent [i.e. 1981] seminar on a fellowship" (A/42/17, para. 340).

19. In spite of the evident success of the symposium once held, the report of the fourteenth session shows that the financial difficulties faced by the secretariat in organizing symposia or seminars had been brought once again to the attention of the Commission:

"105. The Commission was informed that the planning for the Symposium had been greatly hindered by the late payment of pledges. It had not been certain until the final days before the Symposium was held how many fellowships could be awarded. Moreover, some of the pledges had not been received, and, in several cases, it had been necessary to withdraw the expected award of a fellowship because the funds were not available at the necessary time" (A/36/17).

20. In a report of the Secretary-General to that session these administrative concerns were elaborated at some length and it was stated that "In order for the Commission to sponsor an effective programme of training and assistance, it must have an assured source of funds to cover the necessary direct expenses involved . . . [Moreover,] it is vitally important to the success of the programme that the necessary funds be made available

well in advance of its scheduled date" (A/CN.9/206, paras. 23, 26).

21. In the Commission there was agreement that it should continue to sponsor symposia and seminars on international trade law. Following a suggestion in the report of the Secretary-General, the Commission concluded that it was desirable for these seminars to be organized on a regional basis, and that they might be sponsored jointly with regional organizations. Furthermore, for the first time the Commission indicated that one of the purposes of holding seminars would be to "help to promote the adoption of the texts emanating from the work of the Commission" (A/36/17, para. 109). The current role of seminars as a means of promoting the adoption and use of texts emanating from the work of the Commission is discussed in companion reports A/CN.9/305 and A/CN.9/310.

22. So far as the serious problems caused by the uncertain financial resources available for the Commission's programme in training and assistance were concerned and the administrative difficulties caused by the late payment of pledges, the Commission expressed the hope that States would once again make contributions for the purposes of the Commission's programme of training and assistance (A/36/17, para. 110).

23. The indication in the report of the Commission's fourteenth session in 1981 that one of the purposes of the seminars would be the promotion of texts emanating from the work of the Commission was a logical development. By that time the Commission had produced a number of texts on international trade law, three of which were in the form of international conventions that would have no legal effect until they came into force by ratification or accession by 10 or 20 States, depending on the convention. Co-sponsorship of regional seminars and participation by members of the secretariat in other seminars and professional meetings promised to be the most effective means of educating relevant individuals about the work of UNCITRAL and of promoting the texts emanating from its work. By the sixteenth session in 1983 the Secretary of the Commission was able to inform the Commission that the secretariat had intensified its efforts to promote the Conventions, particularly through its activities in co-ordination with other organizations and training and assistance programmes (A/38/17, para. 120).

24. The situation reported by the Secretary of the Commission in 1983 has continued, indeed intensified, throughout the past five years. Co-sponsorship of regional seminars, which has been almost exclusively in developing countries, and participation in other professional seminars and symposia have been viewed by the secretariat primarily with a view to promotion of UNCITRAL and the adoption of its texts. Viewed in this way, these activities appear to have been successful.

25. At the twentieth session of the Commission in 1987 the secretariat presented to the Commission a note on the draft Medium-Term Plan for 1990-1995 (A/CN.9/XX/CRP.2). In accordance with the instructions given by

the General Assembly on the preparation of the Medium-Term Plan, the Commission was called on to determine the relative priorities of the activities to be undertaken by the secretariat during the period of the next Medium-Term Plan. In this note it was stated that, in spite of the fact that the activities actually undertaken in respect of training and assistance were considered to have been successful, for lack of personnel and money, the secretariat had not been able to undertake activities that would significantly contribute to providing "training and assistance in the field of international trade law, taking into account the special interests of developing countries . . ." (*ibid.*, para. 6).

26. The Commission was in agreement that an increased priority should be given to efforts by the secretariat to promote the adoption and use of texts emanating from the work of the Commission. At the same time it was recognized that the secretariat's efforts to date in that regard had been undertaken at the expense of such training and assistance activities as the seminars for young lawyers that had been held in 1975 and 1981. The Commission was of the strong opinion that, in addition to the promotion of its texts, priority should also be given to such training and assistance activities (A/42/17, para. 340).

III. Future activities

27. While the Commission has always been in favour of an active programme of training assistance, especially in respect of developing countries, its decision at the twentieth session was the strongest statement it has made that there should be an increased priority given to training and assistance in the allocation of work, and therefore of resources, of the Commission and its secretariat.

28. Pursuant to that decision of the Commission, the secretariat is currently planning to organize two seminars, one in August 1988 in Lesotho for countries from Southern and Eastern Africa; the second in connection with the Commission's twenty-second session at Vienna in 1989 for young lawyers and scholars. These two seminars are intended to serve two different purposes; consequently, their organization, participation, and level of funding necessary will be different.

29. The seminar in Lesotho in August 1988 will be hosted by the Government of Lesotho and co-sponsored by the Preferential Trade Area for Eastern and Southern African States, a regional organization with a membership of 15 States. The purpose of the seminar will be to acquaint decision makers in the States concerned with UNCITRAL as an institution and with the legal texts that have emanated from its work and to promote the adoption and use of those texts. The number of participants might vary from one State to another and will depend in part on the level of funding available, but it is anticipated that participation would be drawn from the Ministries of Foreign Affairs, Justice, Transportation (for the Hamburg Rules) and from the university, the bar and representatives of the business

community. Lecturers and discussion leaders would come from the secretariat, delegates to the Commission and local participants.

30. The seminar has been organized on the principle that there is an efficiency for the Commission and for the participants in considering all of the UNCITRAL texts at the same time. Although they cover the four distinct fields of sales, carriage of goods by sea, international commercial arbitration and negotiation of industrial works contracts, many of the same people are relevant in each country for the decision whether or not to adopt the text. Furthermore, there was the belief that proper consideration of any of the texts requires both lectures and extensive time for discussion.

31. For the first seminar of this type to be organized by the secretariat it was thought to be desirable that there be participants from a number of States and that the seminar be co-sponsored by a regional organization for economic co-operation and development. In this manner the participants can share with one another their evaluation of the UNCITRAL texts as a means to provide an appropriate, modern and uniform legal infrastructure that would contribute to the economic development of their countries.

32. The seminar to be held in connection with the Commission's twenty-second session in 1989 will be based on the seminar held in 1981. It will take place over a week's period of time. In addition to members of the secretariat, delegates and observers to the Commission will be invited to give lectures on topics relevant to the Commission and its programme of work. Fellowships will be made available to the extent of available funds to young lawyers and scholars from developing countries. Additional qualified participants without fellowship will be accepted to the limit of available space.

33. Other formats for seminars that would fall within the Commission's mandate can easily be imagined, especially for the specific promotion of the *UNCITRAL Legal Guide on Drawing Up International Contracts for the Construction of Industrial Works* (see the note on that subject, A/CN.9/310). If the two seminars that have been planned are successful, the secretariat expects to hold additional ones on a regular basis.

34. As is evident from the review in this report of the Commission's programme of training and assistance, most of the planned activities of significance over the past 20 years have been hampered or cancelled by a shortage of funds. As stated in the report of the Secretary-General submitted to the fourteenth session in 1981, "In order for the Commission to sponsor an effective programme of training and assistance, it must have an assured source of funds to cover the necessary direct expenses involved" (A/CN.9/206, para. 23). Subsequent to that report and the hope expressed by the Commission at that session that "States would once again make contributions for the purposes of the Commission's programme of training and assistance" (A/36/17, para. 110), in each of the resolutions on the

work of the Commission the General Assembly has urged financial support for the Commission's programme of training and assistance. In its most recent formulation, the General Assembly in resolution 42/152 of 7 December 1987, paragraph 5,

"(c) Invites Governments, international organizations and institutions to assist the secretariat of the Commission in financing and organizing regional seminars and symposia, in particular in developing countries;

"(d) Invites Governments, the relevant United Nations organs, organizations, institutions and individuals to make voluntary contributions to allow the resumption of the programme of the Commission for the award of fellowships on a regular basis to candidates from developing countries to enable them to participate in such seminars and symposia;"

35. In spite of the annual repetition of this invitation in the resolutions of the General Assembly, not a single contribution was offered to the secretariat for this purpose from 1981 through 1987. In connection with the seminar planned for August 1988 in Lesotho, the secretariat contacted several Governments believed to be sympathetic to such an appeal and has received varying degrees of oral assurance that a contribution will be made. At the date of writing, no written commitments have been received. However, it is believed that sufficient funds will be available so that it will not be necessary to cancel the seminar, as has happened to several seminars proposed in the past.

36. As has been stated before, an adequate and assured source of funds must be available if the Commission and its secretariat are to carry on a viable programme of training and assistance. Although it has been suggested in the past that the programme might be financed out of the regular budget, no such funding is available or is likely in the current financial situation of the Organization. Furthermore, as was pointed out in the Sixth Committee when this suggestion was debated in 1977, under "the established principles and precedents for the funding of United Nations activities . . . the cost of holding the UNCITRAL symposia appeared to be of the kind that should be met out of voluntary contributions and not out of the regular United Nations budget" (A/32/402, para. 34).³

37. The Commission might wish, therefore, to consider how a programme of voluntary contributions can provide an adequate and assured source of funds that would permit the secretariat to plan and execute a programme of training and assistance, both for the training of young lawyers and scholars from developing countries and to promote the adoption and use of texts emanating from the work of the Commission.

38. In considering this question, the Commission might wish to note that the difficulties in the past have arisen primarily out of the inability to plan on the amount of money that would be available. The secretariat has never had, and does not now have, a source of funds to which it could resort if the expected contributions were not realized, or were not realized in time. This has forced it to be extremely conservative in its planning, thereby refraining from planning training, assistance or promotion activities that it otherwise considered to be desirable.

39. The alternative in the United Nations to planning individual activities and soliciting contributions for each specific activity, which has been the pattern in the Commission with its generally unsatisfactory results, is to establish a trust fund into which voluntary contributions are made on a yearly basis and from which expenditures are made as needed. Such trust funds are common and range in size from some that are quite modest to those that receive and disburse tens of millions of dollars annually.

40. If the Commission were to decide that its training and assistance activities should be financed in this manner, no new administrative actions would be necessary. A trust fund was created in 1981 for the contributions for the symposium held that year. The trust fund is still in existence and will be used as the means of receiving and disbursing funds for the seminar planned for Lesotho in August 1988. All that the Commission would be called on to do at this session would be to recommend to Governments, the relevant United Nations organs, organizations, institutions and individuals that they contribute to the fund on an annual basis.

41. It will be noted that the recommendation of the Commission would echo that made by the General Assembly in its resolution 42/152 of 7 December 1987, set out at paragraph 34 above. However, having been made by the Commission after discussion of the topic, the recommendation could be expected to elicit a favourable response.

42. The Commission might also wish to consider what it would regard as an appropriate goal for annual contributions to the trust fund. It is obvious that any figure is arbitrary, since the level of activities financed from the fund will be adjusted not to exceed the resources. However, it can be safely stated that an initial figure of \$150,000 per year would permit the secretariat to organize seminars of various types that would fulfil the expectations of the Commission. After an initial period the Commission would be in a position to recommend any increase or decrease in the target figure, in the light of the results.

³Report of the Sixth Committee, *Official Records of the General Assembly, Thirty-second Session, Annexes*, agenda item 113.