

50. There are no funds specifically provided in the budget of the Commission's secretariat for promotion of adoption of texts. Activities that require substantial sums of money, such as sponsorship of seminars, must be met by extra-budgetary funds. A separate report will be submitted to the Commission that will discuss the seminars planned by the secretariat and the financial requirements involved (A/CN.9/311). Some promotion activities that call for travel by the secretariat or the use

of consultants have been met out of the regular budget available to the secretariat, and that source of funds can be expected to continue. However, increased levels of funding from the regular budget cannot be expected.

51. The conclusion that would seem to follow is that the promotion activities of the secretariat must be designed to achieve maximum results with the minimum expenditure of resources.

C. Collection and dissemination of information on interpretation of UNCITRAL legal texts:
note by the Secretariat (A/CN.9/312) [Original: English]

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INTRODUCTION

1. At the sixteenth (1983) and seventeenth (1984) sessions of the United Nations Commission on International Trade Law, suggestions were made that means should be explored to disseminate judicial and arbitral decisions concerning legal texts emanating from the work of the Commission (A/38/17, para. 137; A/39/17, para. 155).¹ At its eighteenth session (1985) the Commission had before it a note by the Secretariat (A/CN.9/267) which discussed possible mechanisms for the collection and dissemination of decisions relating to legal texts emanating from the work of the Commission, and various measures to encourage and facilitate the uniform interpretation of such texts. The note suggested that it might at the time be premature for the Commission to formulate concrete mechanisms and measures, and that the Commission might wish to consider doing so after the entry into force of the United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980) (hereafter

referred to as "Sales Convention"). Accordingly, the Commission decided to defer consideration of the matter to an appropriate future session (A/40/17, para. 377).²

2. At its twentieth session (1987), the Commission decided to hold at its twenty-first session a general discussion on its work for the medium term future. In this connection, it was agreed that the Commission should discuss the means by which information on the interpretation of the Sales Convention by courts and arbitral tribunals could be collected and disseminated (A/42/17, para. 343).³

3. The current note summarizes and supplements the earlier note (A/CN.9/267) with a view to assisting the Commission at this session to formulate concrete measures, in the light of the existing need for collection and dissemination of pertinent information. The note focuses on information relating to the Sales Convention, which entered into force on 1 January 1988, and

¹Report of the United Nations Commission on International Trade Law on the work of its sixteenth session, *Official Records of the General Assembly, Thirty-eighth Session, Supplement No. 17* (A/38/17); Report of the United Nations Commission on International Trade Law on the work of its seventeenth session, *Official Records of the General Assembly, Thirty-ninth Session, Supplement No. 17* (A/39/17).

²Report of the United Nations Commission on International Trade Law on the work of its eighteenth session, *Official Records of the General Assembly, Fortieth Session, Supplement No. 17* (A/40/17).

³Report of the United Nations Commission on International Trade Law on the work of its twentieth session, *Official Records of the General Assembly, Forty-second Session, Supplement No. 17* (A/42/17).

to the Convention on the Limitation Period in the International Sale of Goods (New York, 1974, hereafter referred to as "Limitation Convention"), which, together with the 1980 Protocol amending that Convention, will enter into force on 1 August 1988. Any measures the Commission may agree upon might also be applied at a later time to the United Nations Convention on the Carriage of Goods by Sea, 1978 (Hamburg) (hereafter referred to as "Hamburg Rules") after its entry into force. The Commission may wish to consider whether the same, or similar, measures should further be used in respect of other legal texts emanating from its work; for example, the UNCITRAL Model Law on International Commercial Arbitration.

4. Even if limited to the Sales Convention and the Limitation Convention, the number of decisions to be coped with is impossible to predict; the only thing certain is that the volume of materials will increase considerably over the years, not the least because of the expected increase in the number of States parties to these Conventions. The considerations and suggestions in this note had thus to be based on a reasonable guess as to quantity, and any concrete measures the Commission may take at this session will have to be reviewed and possibly adjusted in a few years.

I. Need for collecting and disseminating decisions

5. There are essentially two factors to be taken into account when determining the need for the Commission and its secretariat to collect and disseminate decisions interpreting the Conventions. First, regard should be had to the purpose and value of providing information on the interpretation of the Convention in question. Secondly, any action and its precise scope would depend on the extent to which the desired information was not otherwise available.

A. Purpose and value of information on interpretation

6. The purpose and value most often referred to is the desire to enhance uniformity in the interpretation of uniform law. As suggested in the earlier note (A/CN.9/267, para. 8), the widespread distribution of decisions concerning the Conventions could itself promote a measure of uniformity in their interpretation in that it enables and encourages those called upon to apply them to take into account decisions of foreign judges and arbitrators.

7. The need for uniform interpretation was realised in the drafting of all the UNCITRAL Conventions. For example, the Sales Convention states in article 7(1) the following basic principle for applying the Convention, "(1) In the interpretation of this Convention, regard is to be had to its international character and to the need to promote uniformity in its application . . .". Similar provisions are found in the Limitation Convention

(article 7) and the Hamburg Rules (article 3). In addition, in the Sales Convention, article 7(2) provides, "Questions concerning matters governed by this Convention which are not expressly settled in it are to be settled in conformity with the general principles on which it is based or, in the absence of such principles, in conformity with the law applicable by virtue of the rules of private international law". It would be difficult to carry out the obligations contained in article 7(1) and (2) without having the necessary information on the interpretation given to the texts by others.

8. The need for uniform interpretation has been recognised in many scholarly writings and at various symposia on the Sales Convention, and it was a specific topic at the Twelfth Congress of the International Academy of Comparative Law, Sydney/Melbourne, Australia in August 1986. The exchange of experience and views embodied in the national reports to that Congress showed and emphasized the need for uniform interpretation and a number of suggestions were made as to measures that could be taken to promote it.

9. The value of information on the interpretation of the Conventions goes beyond the idea of uniform interpretation in two respects. First, early and complete dissemination of decisions could help to overcome the objection that a new international text stands on its own and is not embedded in case law, unlike the traditional domestic law it is designed to replace. Especially during the initial phase, dissemination of decisions would thus encourage and enhance the acceptability of the new texts as it will become known that they are being used and that the combined wisdom of judges and arbitrators from many countries contributes to their refinement. Secondly, information on decisions would be helpful to parties and their counsel in planning and executing commercial contracts, as well as to courts, arbitral tribunals and lawyers in dealing with disputes arising from such transactions.

B. Limited availability of information on interpretation

10. In terms of authenticity, the best source for information on interpretation of the Conventions is the *travaux préparatoires*, i.e. the full documentation on the preparatory work, available in the six official languages of the United Nations. The documents provide an authoritative account of the legislative history of the provisions in the Working Group, the Commission and the Diplomatic Conference. However, in spite of the fact that these documents are distributed to all Governments, to United Nations depository libraries and to many other libraries, as a practical matter they are not easily accessible in all countries that are or will be party to the Conventions. Indeed, it is not clear whether the text of the Conventions themselves is easily accessible in all the countries that are a party to them.

11. Furthermore, judges, arbitrators and practitioners faced with a specific issue are not normally keen to embark on an extensive search through the voluminous

documentation tracing the development of a given provision. Even such a search would not always lead to a concrete answer, due to the tremendous variety of fact-situations and the ever-developing commercial practice. Therefore, despite the eminent value of the *travaux préparatoires* in guiding interpretation and application of the text in question, there remains a considerable need for disseminating decisions on that text.

12. As explained in the earlier note (A/CN.9/267, para. 2), there does not now exist a well-established mechanism for ensuring that parties to commercial transactions, lawyers, judges and arbitrators will have access to decisions of foreign courts or of arbitral tribunals relating to UNCITRAL legal texts. A first limitation stems from the fact that not all court decisions are reported, even less so arbitral decisions.

13. In all those cases where a decision has been reported, a second limitation arises from the fact that foreign decisions are available, if at all, only to a limited extent. The situation is aggravated by language barriers since decisions are normally reported only in their original language. Even when collections of decisions or legal journals from other countries are available, it will be difficult to identify the decisions pertaining to UNCITRAL Conventions unless there is an adequate indexing or reference system.

14. The above difficulties appear to be somewhat lessened by the fact that there already exists extensive literature on the UNCITRAL Conventions and there is likely to be even more in the future on both the texts and on judicial decisions emanating from them. However, while the literature is widely available in developed countries, it is not and may not be in the future widely available to courts and arbitral tribunals resolving disputes in many other parts of the world.

II. Possible means of collecting decisions

15. The first task would be to collect all decisions that could be obtained, including unreported ones. While the UNCITRAL secretariat may bear the primary responsibility, it is not in a position to accomplish this task alone. As suggested in the earlier note (A/CN.9/267, para. 5), the Commission might recommend that the General Assembly adopt a resolution calling upon States to provide the secretariat with decisions of their courts. Similarly, arbitral institutions could be invited to transmit arbitral awards involving the interpretation of an UNCITRAL legal text, subject to any required consent of the parties.

16. An alternative or additional proposal would be to establish a network of national correspondents designated by the States parties to the Convention. The national correspondent might, for example, be an official in the Ministry of Justice (Attorney-General's Department), a member of a council of law reporting as

found in many common law jurisdictions, a law professor or any other person competent and sufficiently equipped to perform that task. If the expected work of the national correspondent were to go beyond collecting and forwarding the original decisions (to include, for example, the preparation of abstracts as suggested below, paras. 22-23), organizational implications as well as the financial implications to the States concerned would have to be considered.

17. In order to limit the task of collection in conformity with the above described needs, a degree of selectivity might be employed at this stage. A general criterion could be whether the decision contained an interpretation of a provision of law or in another relevant manner dealt with a point of law, thus excluding decisions where the heart of the dispute involved a straight application of a provision of the Convention to the facts of the case.

18. Whatever information on the collected decisions would be disseminated, it seems desirable for all original decisions in full length to be stored in one place where they would be accessible to any interested person. The Commission may wish to request its secretariat to ensure that the decisions are stored and accessible in this way. At least initially, the secretariat could itself perform this task. Later one could study the feasibility of entrusting this task to another organization with a documentation centre which, in turn, might develop into a focal point for training and research on the relevant UNCITRAL legal text. The secretariat has received preliminary and informal information on such a possibility at Vienna, which would have the advantage of close proximity to the seat of the secretariat. In respect of possible future storage and retrieval via computer, mention should also be made of plans considered by the International Institute for the Unification of Private Law (UNIDROIT) to establish an information system or data bank for uniform law.

III. Possible scope and means of disseminating information on interpretation

19. It would seem ideal if the Commission and its secretariat could establish a system of law reports which would (as, e.g., the Commonwealth commercial law reports) contain the full texts of judgements and a headnote summarizing the ruling or propositions of law and the basic facts. However, realism dictates that this idea must be discarded as not being feasible in view of the tremendous work involved in translating, editing and publishing the considerable volume of materials in the six official languages of the United Nations.

20. While the Commission and its secretariat thus have to take a more modest approach, the publication of full law reports might be undertaken by a commercial publisher, at least in one language. If a publisher were to express interest in this direction, the

secretariat may be entrusted with working out a relationship that would at the same time help the publisher and increase the overall benefit of the commercial publication to the international community. Matters that could be agreed upon include the form and structure of a subject index or other reference system, the furnishing of copies of the decisions gathered by the secretariat and the national correspondents against an arrangement which could enable users in developing countries to purchase the law reports at a reduced price or in local currency.

21. Turning now to the more modest scope of information that the secretariat could disseminate, a minimal solution would be to facilitate the finding of decisions by citing the cases, classified in accordance with a subject index to be established, and giving the source if they had been published. However, it should be possible to do more, especially if one could enlist the assistance of the national correspondents.

22. A feasible and useful solution could be to prepare and publish abstracts of the collected decisions. The abstracts would, along the lines of headnotes, essentially consist of a complete citation of the case and its original source, including its original language, a brief summary of the case, the ruling and the interpretation given to the particular provision of uniform law. If this approach were to be accepted, the precise format and details of the abstracts would have to be worked out, possibly with some examples as models.

23. In view of the considerable amount of work involved in preparing the abstracts, the secretariat would have to rely on the national correspondents for this task. They know the local language, are familiar with the style of the local decisions and would have access to any other legal texts cited in the decisions. The abstracts received from the national correspondents in one of the official languages of the United Nations would then be compiled and edited by the secretariat for publication in the six official languages.

24. Experience in similar contexts suggests that the preparation of abstracts by numerous correspondents may present problems in that there may emerge a diversity of format and style and there might be delays, since correspondents tend to work at different speeds. However, these problems are not regarded as unmanageable by the secretariat. As regards the possible diversity of styles, the above proposal of setting a standard format and structure should go a long way towards mitigating the problem. It might also be appropriate to call a meeting of the national correspondents where this proposal could be implemented and other organizational matters discussed. The Commission may also wish to entrust this group with the elaboration of a subject index or similar reference system, with the assistance of the secretariat.

25. At least until the number of decisions became too large, the publication of the abstracts could be accommodated within the regular documentation programme

of the Commission. This does not mean that only one document per year need be published, on the occasion of the Commission's annual session; one would rather envisage more frequent publications depending on the number of abstracts ready for publication.

26. The documents would be distributed through the regular channels of distribution to all States. In order to ensure that the abstracts reached all interested users, the following two measures might be considered. First, each State party to one of the Conventions might be invited to devise a scheme of further distribution within its jurisdiction so that the abstracts would reach, for example, corporate counsel in business enterprises, members of the bar and commercial law professors. Secondly, where the local language of a State party to one of the Conventions was not one of the official languages of the United Nations, the national correspondent might wish to arrange for translation into the local language. If this additional burden were undertaken by national correspondents, the aggregate work suggested to be done by them would obviously be of such size that considerable organizational and financial implications would ensue.

27. A final point to be considered is whether the Commission should play a more direct role in ensuring uniform interpretation of the texts elaborated by it. Based on the detailed discussion of various possibilities in the earlier note and the conclusions suggested therein (A/CN.9/267, paras. 10-15), the following recommendation may be made. The Commission could request the secretariat to monitor judicial and arbitral decisions relating to the interpretation of the texts, and to report to the Commission on the status of their interpretation when circumstances warrant. In pointing out conflicts in the interpretation of the texts, as well as any gaps in their provisions which came to light, the issuance of the reports could itself assist in promoting their uniform interpretation. Moreover, in the light of these reports the Commission could consider steps to be taken to deal with such conflicting interpretations or gaps.

CONCLUSION

28. Now that the Sales Convention has come into force and the Limitation Convention and its amending Protocol will come into force on 1 August 1988, the Commission may wish to decide on a mechanism to collect and disseminate judicial and arbitral decisions interpreting these and possibly other UNCITRAL legal texts. The Commission may wish to conclude that the focal point of collection of the decisions should be its secretariat, that the collection should be done with the help of States party to the Conventions and national correspondents from those States and that abstracts of the decisions should be prepared and disseminated as a regular Commission document. It may also wish to request the secretariat to ensure that the full texts of the decisions are stored in one place and are made accessible to any interested person.