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CURRENT ACTIVITIES OF INTERNATIONAL ORGANIZATIONS RELATED TO THE HARMONIZATION AND UNIFICATION OF INTERNATIONAL TRADE LAW

Report of the Secretary-General

I. INTRODUCTION

1. The United Nations Commission on International Trade Law at its third session requested the Secretary-General "to submit reports to the annual sessions of the Commission on the current work of international organizations in matters included in the programme of work of the Commission."^{1/}
2. In accordance with the decision a questionnaire was sent to a number of international organizations; the questionnaire made enquiries concerning current work in the field of international trade law. This report is based on information submitted by the international organizations concerned.
3. The report supplements earlier reports on the work of international organizations active in the field of harmonization and unification of trade law;^{2/} it includes information on the progress made on projects described in earlier reports and information on projects commenced in the past year.

^{1/} Report of the United Nations Commission on International Trade Law on the work of its third session, Official Records of the General Assembly, Twenty-fifth Session, Supplement No. 17 (A/8017), para. 172 (a).

^{2/} Progressive Development of the Law of International Trade, Report of the Secretary-General, Twenty-first Session, General Assembly, 1966 (A/6396), paras. 26-189, UNCITRAL Yearbook, Vol. I, Part I: IIB; Survey of the Activities of Organizations concerned with Harmonization and Unification of the Law of International Trade; Note by the Secretary-General, 19 January 1968 (A/CN.9/5); Replies from organizations regarding their current activities in the subjects of international trade within the Commission's work programme, Note by the Secretariat, 1 April 1970 (UNCITRAL/III/CRP/2); The Digest of Legal Activities of International Organizations and Other Institutions published by the International Institute for the Unification of Private Law (UNIDROIT).

II. CURRENT ACTIVITIES OF UNITED NATIONS ORGANS AND SPECIALIZED AGENCIES

A. UNITED NATIONS ECONOMIC COMMISSIONS

(1) ECONOMIC COMMISSION FOR AFRICA (ECA)

4. Consideration of ECE General Conditions relating to Plant and Machinery and Sawn Softwood and Hardwood Logs. The purpose of the project is to bring to the surface suggestions for modifications, if any, that may make the relevant ECE General Conditions applicable to inter-African trade and African trade with the outside world. This project was initiated by the Division of Trade, Fiscal and Monetary Affairs. Questionnaires accompanied by copies of relevant ECE General Conditions of Sale have been sent to member States of ECA. A study of relevant existing provisions will be undertaken upon receipt of replies. A conference of buyers and sellers in Africa on the subject of the ECE Conditions of Sale relating to Plant and Machinery, Sawn Softwood, Hardwood Logs and Sawn Hardwood is planned for 1971. The project is being carried out in collaboration with the Economic Commission for Europe and UNCITRAL.

(2) ECONOMIC COMMISSION FOR ASIA AND THE FAR EAST (ECAFE)

5. International Legislation on Shipping. A five-year programme of work is being considered on the economic aspects of shipping and ocean freight rates; consideration is being given to a plan for maritime codification.

6. Taxes on importation: customs valuation. The Economic Commission for Asia and the Far East at its twenty-sixth session in 1970 endorsed the recommendation of the Committee on Trade (13th session) and the Working Party on Customs Administration (fifth session) with regard to customs valuation. The recommendations indicated that although it was desirable to have one single system of customs valuation, the developing ECAFE countries might wish to choose to adopt a different system to suit the existing needs and conditions in the developing countries. The Customs Co-operation Council (CCC) has participated in this aspect of ECAFE's work.

(3) ECONOMIC COMMISSION FOR EUROPE (ECE)

7. International Arbitration. The Arbitration Rules of the United Nations Economic Commission for Europe (E/ECE/625.E/ECE/TRADE/81), published in 1966, were revised in 1970 (E/ECE/625/Rev.1/E/ECE/TRADE/81/Rev.1). They constitute an optional instrument to which traders may resort when drawing up international contracts.

8. General Conditions of Sale. A "Guide for Use in Drawing-up Contracts relating to the International Transfer of Know-How in the Engineering Industry" (TRADE/222:IM/WP.5/83) has been prepared by the Group of Experts on International Contract Practices in Industry. This Group has also prepared a "Draft Guide on Drawing-up Contracts for Large Industrial Works" (TRADE/WP.5/Rev.1). There are also plans to prepare General Conditions of Sale for Dried Fruit and General Conditions of Sale for Potatoes.

B. UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

9. International Shipping Legislation. The UNCTAD Secretariat Report on Bills of Lading (TDB/C.4/ISL.6 and Corr.1) was completed and submitted to the second session of the UNCTAD Working Group on International Shipping Legislation held at Geneva from 15 to 26 February 1971. The Working Group discussed the report and passed a unanimous resolution inviting UNCITRAL to examine the existing rules and practices concerning Bills of Lading with a view to revising and amplifying such rules, as appropriate, and to preparing in draft, texts of new international conventions on the subject which may be appropriate. The resolution further requested that the examination should take into account the report of the Working Group on the work of its second session (TDB/C.4/86) and the report of the Secretariat on bills of lading. It also recommended that the work done by UNCITRAL should aim at the removal of such uncertainties and ambiguities as exist and at establishing a balanced allocation of risks between the cargo owner and the carrier.

10. The Working Group also decided to consider the subject of liner conferences at its third session, to be held in December 1971 or January 1972, and the subject of charter parties at its fourth session. Preparatory work on these subjects is proceeding within the Secretariat.

11. The Chief of the Joint UNCTAD/United Nations Office of Legal Affairs, Joint Shipping Legislation Unit attended the session of the Joint IMCO/ECE meeting to study the draft convention on the combined transport contract, held at Geneva from 16-20 November 1970 as an observer for UNCTAD and UNCITRAL. He also attended the second session of the UNCITRAL Working Group on International Shipping Legislation as the observer for UNCTAD. Members of the Joint Shipping Legislation Unit assisted the UNCITRAL Secretariat in servicing the second session of the UNCITRAL Working Group on International Shipping Legislation. As recommended by the UNCTAD Working Group, the

Secretariat's report on Bills of Lading was also submitted as one of the basic documents for the UNCITRAL Working Group on International Legislation on Shipping at its second session held at Geneva on 22-26 March 1971.

C. INTERGOVERNMENTAL MARITIME CONSULTATIVE ORGANIZATION (IMCO)^{3/}

12. International Convention on Civil Liability for Oil Pollution Damage. This project was authorized by the Assembly of IMCO and was undertaken by the Legal Committee. The Convention was completed in 1969 and has been signed by 20 States subject to ratification.

III. INTERGOVERNMENTAL ORGANIZATIONS

A. ASIAN-AFRICAN LEGAL CONSULTATIVE COMMITTEE

13. International Sale of Goods. The eleventh session of the Committee, held in Accra in 1970, considered detailed studies by its Secretariat on the following subjects:

- (i) the Hague Conventions of 1964 and the 1955 Hague Convention on the Applicable Law;
- (ii) standard contracts and general conditions, including those formulated by the ECE and the CMEA;
- (iii) trade terms, including the work done by ICC, ILA and other organizations;
- (iv) a comparative study of time-limits and limitations (prescription).

14. Discussion of these studies took place in the twelfth session of the Committee held in Colombo from 18 to 27 January 1971. The Standing Sub-Committee on the subject recommended that the Committee should proceed to the formulation of model contracts with respect to the following commodities; rubber, timber, rice, textile, machinery, oil, and coconut products. In connexion with this work the Sub-Committee also recommended convening an international conference of legal and commercial experts in the Afro-Asian region in collaboration with the United Nations agencies.

15. International Legislation on Shipping. The subject was discussed at the eleventh (1970) session of the Committee, which directed its Secretariat to prepare a study on bills of lading. The matter was discussed further at the twelfth (1971) session.

^{3/} See also para.32 concerning IMCO's participation in the preparation of the Convention on the Contract for the International Combined Carriage of Goods (ICM Convention).

16. Negotiable Instruments. After discussion of this topic, it was decided that further consideration should be given to negotiable instruments at an inter-sessional meeting to be held before the next session of the Committee.

17. International Commercial Arbitration. The Secretariat of the Committee has been directed to ascertain what research in the field has been carried out in the Afro-Asian region, and then to seek the views of the member Governments on various problems involved by means of a questionnaire.

B. COMMISSION OF THE EUROPEAN COMMUNITIES

18. Instalment Sales. Work has begun at the level of preliminary studies on the harmonization of rules governing instalment sales in accordance with Article 100 of the Treaty Establishing the European Economic Community (25 March 1957). A decision of the Commission of the European Communities on the appropriateness of preparing a draft is expected. Subsequent plans call for the creation of a working group to prepare such a draft. The draft when approved by the Council of the European Communities would become a regulation and would be incorporated in the legislation of member States by application of Article 189 of the Treaty Establishing the European Economic Community.

19. Bankruptcy. A draft convention on bankruptcy and analogous procedures is to be concluded shortly. This convention has been prepared pursuant to Article 220 of the Treaty Establishing the European Economic Community. Among the matters which are dealt with in this draft convention are: judicial jurisdiction in the area of bankruptcy, enforcement of judgments of bankruptcy in the other member States, the law applicable to conditions of the opening of proceedings, the effects of bankruptcy, privileges and sureties. This draft convention also contains uniform provisions, especially with regard to the responsibility of officers and directors of corporations and other legal persons in cases of bankruptcy, on the pre-bankruptcy period (periode suspecte) and on clauses stipulating retention of title of ownership. The member States will shortly examine the desirability of signing this draft convention.

20. Agency and insurance contracts. A number of directives are being prepared, pursuant to Article 100 of the Treaty Establishing the European Economic Community. Among these directives the following may be mentioned: the directive relating to commercial agency (représentation commerciale) and the draft directive relating to insurance contracts.

C. COUNCIL OF EUROPE

21. Legal protection of the rights of creditors. A study of the international aspects of the legal protection of the rights of creditors was suggested by the Sub-Committee to Review the Legal Programme of the European Committee on Legal Co-operation (CCJ). This topic appears in the work programme of the Council of Europe. It is planned that work on this subject will commence in 1972.

22. Harmonization of certain rules relating to the place of payment of monetary liabilities. A draft Convention on the Place for Payment of Money Liabilities has been prepared by a committee of experts. The draft is under study by the European Committee on Legal Co-operation (CCJ) and will be transmitted to the Committee of Ministers of the Council of Europe for final approval.

23. Uniform rules of "time-limits". The aim of the project is to introduce into the domestic law of member States uniform rules on "time-limits". A study on the subject was proposed by the Sub-Committee on Fundamental Legal Concepts of the European Committee on Legal Co-operation (CCJ); this study is being carried on by the committee of experts for the standardization of the concept of time-limits. The provisions which the committee of experts have adopted can be classified as follows: (a) draft European agreement on the calculation of time limits; (b) draft rules on extinctive prescription, and (c) two draft recommendations concerning clear days and court vacations. No firm decision has been taken on the type of instrument to be prepared on extinctive prescription. Upon completion of its work, the committee of experts will transmit the instruments adopted by it to the CCJ.

24. Recognition and enforcement of foreign decisions in private and commercial law matters. The preparation of a practical guide on the subject was suggested by the Sub-Committee to Review the Legal Programme of the CCJ, and appears in the draft work programme of the Council of Europe. It is planned that work on this subject will commence in 1971.

25. Convention relating to stops on bearer securities in international circulation.

The project was authorized by the European Committee on Legal Co-operation (CCJ); the work on this draft of the Convention was carried out by the committee of experts entrusted with the preparation of a draft Convention concerning lost or stolen bearer securities. The text of the Convention was adopted by the Committee of Ministers of the Council of Europe at its 187th meeting held in Strasbourg from 2 to 7 March 1970. The Convention was opened for signature by the member States of the Council of Europe at The Hague on 28 May 1970. The Convention is printed in European Treaty Series No.72.

26. Harmonization of rules on investment funds. This project is being carried out in collaboration with UNIDROIT whose study and draft articles on the subject were examined at a meeting of CCJ's Committee of Experts on Investment Funds.

D. HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW

27. The law applicable to "Products Liability". The eleventh session of the Conference, held in 1968, authorized work on the law applicable to the liability of manufacturers for damage caused by their product. A questionnaire on the manner in which the subject is treated in national legal systems was distributed. The replies to the questionnaire and a report on conflict provisions were sent to governments; the first meeting of a Special Commission on this subject was held in September 1970. The second meeting of the Special Commission will be held in April 1971. It is expected that a draft Convention on the subject will be submitted in 1972 to the twelfth session of the Hague Conference.

E. INTER-AMERICAN JURIDICAL COMMITTEE (ORGANIZATION OF AMERICAN STATES)

28. Draft Inter-American Conventions on Bills of Exchange and Cheques for international circulation. This project was commenced at the request of the Council of the Organization of American States (OAS). A preliminary report was prepared by the Inter-American Juridical Committee during its 1968 session (document CIJ-96, pp. 35-46). Subsequently, the General Secretariat of the OAS made arrangements for the preparation of background documents on cheques and on bills of exchange. A background document on cheques has been prepared and a document on bills of exchange is now being prepared. It is expected that, at its next session, the Inter-American Juridical Committee will consider a report on the subject.

F. INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW (UNIDROIT)

29. International Sale of Goods: Bona Fide Purchase. In 1968 UNIDROIT published a draft Uniform Law on the Protection of the Bona Fide Purchaser of Corporeal Movable. This draft, which was prepared between 1962 and 1967, was approved by the Governing Council of UNIDROIT in 1968 and sent to member States of the Institute for their observations. By reason of the considerable divergences of the various national systems in this area an attempt was made to establish a new and modern system which satisfies the needs of international trade. This draft was conceived of as a complement to the Uniform Law on International Sale annexed to the 1964 Hague Convention; its scope is the same as that of the 1964 Convention. The Governing Council of UNIDROIT will be requested to decide on this text during its 1971 session.

30. Validity of contracts. The formulation of the draft Law on the Unification of Certain Rules with respect to the Validity of Contracts for the International Sale of Goods was undertaken in 1967 and is likely to be completed in 1971. This draft is also related to the Uniform Law on the International Sale of Goods. It would appear that the Governing Council of UNIDROIT will consider this draft at its 1971 session.

31. Agency. A draft Uniform Law on Agency of International Character in the Sale and Purchase of Goods has been submitted to a Committee of Governmental Experts which will hold its second session in May 1971. A new text of the uniform law was formulated based on two prior drafts. One of these drafts was concerned primarily with agency representation, in a strict sense of the term; the other was concerned with the commission agent (contrat de commission). The Committee of Governmental Experts decided to combine the provisions of these two drafts with the aim of establishing rules in the area of sale and purchase of goods with respect to the effects of the intervention of an intermediary and the latter's legal status whether he acts as a representative or under a contrat de commission within the specialized meaning of this term. This draft, when in its final form, will be submitted to a diplomatic conference.

32. International Legislation on Shipping. Two sessions of a "Round Table" were convened in 1969-1970 on the initiative of UNIDROIT. This discussion resulted in the emergence of a draft of a "Convention on the Contract for the International Combined Carriage of Goods" (TCM Convention). This draft would deal with obligations

under the combined transport document. The draft is presently being examined by a committee of governmental experts convened by IMCO and the United Nations Economic Commission for Europe; it is contemplated that the final draft will be submitted to a United Nations diplomatic conference on containers which will meet in 1972.

33. Forwarding Agents. UNIDROIT has completed work on a draft Convention on the Contract of International Forwarding Agency of Goods. This draft was published in 1967 and has been submitted to Governments. Further action is suspended pending the results of the work on combined transport. A study has also been undertaken regarding warehousing in connexion with the international carriage of goods. Preliminary work has been done with a view to preparing uniform provisions which would follow guidelines to be specified by the Governing Council of the Institute.

G. WORLD INTELLECTUAL PROPERTY ORGANIZATION (WIPO)

34. Patent and Trade Mark Co-operation. The Patent Co-operation Treaty (PCT) was adopted and signed at Washington on 19 June 1970. The Treaty, signed by 35 countries, is not expected to enter into force before 1974. The work preparatory to such entry into force is now being carried out under the direction of Interim Committees of the signatory States.

35. Strasbourg Agreement Concerning International Patent Classification. A diplomatic conference, convened jointly by WIPO and the Council of Europe, was held in Strasbourg from 15 - 24 March 1971. The Conference revised the European Convention on the International Classification of Patents for Invention in order to transfer the administration of that Classification from the Council of Europe to the International Bureau of WIPO and thus to make it possible for all member States of the Paris Union to participate on an equal footing in the development of the Classification. Until that revision comes into force - perhaps in 1973 - the Paris Union and the Council of Europe will continue to sponsor the technical meetings working on improving the Classification.

36. Proposed Patent Licensing Convention. A study of the feasibility of a patent licensing convention designed to facilitate the transfer of technology to developing countries is currently being undertaken and a committee of experts will be convened in 1972.

37. Revision of the Madrid Agreement on the International Registration of Marks.

Preparatory work for the revision of the Madrid Agreement (scheduled for 1973 in Vienna) or for the conclusion of an additional treaty on the international registration of marks with the International Bureau will continue in 1972. This work will include the convening of committees of experts and groups of consultants, both governmental and from the private sector.

38. Protection of Type Faces. It is expected that the Diplomatic Conference in Vienna (scheduled for 1973) will deal with, inter alia, the conclusion of a new agreement on the protection of type faces. Preparations, which have included meetings of committees of governmental experts, will continue in 1972 and will include a further such meeting.

39. Model Laws on Industrial Property. To date, model laws on three main topics (inventions, marks, industrial designs) have been prepared, in consultation with representatives of developing countries. In 1971 work started on a fourth topic, namely, that of appellations of origin. A draft of a model law for developing countries on the protection of appellations of origin, prepared by the International Bureau of WIPO, will be discussed in 1972 in a meeting of a committee composed of experts from developing countries and from various international organizations. The printing and publication of the definitive text of the model law will take place in 1973.

40. Copyright: The Berne Convention. This Convention will be revised in a Diplomatic Conference in Paris (July 1971). The aim of the revision is to satisfy certain needs of the developing countries. The revision will take place at the same time as revision of the Universal Copyright Convention. The two revisions are intended also to find new solutions to the problems of the relationship between the two Conventions.

41. Harmonization: legal protection of computer programmes. Pursuant to a recommendation contained in a report of the Secretary-General of the United Nations on the application of computer technology for development (UN Document E/4800, paragraph 201), the International Bureau will continue the study of the best form of legal protection of computer programmes with due regard to the interests of developing countries. An Advisory Group of Governmental Experts met in March 1971; its report containing suggestions upon the future course of the study has been published in the periodicals of WIPO.

IV. INTERNATIONAL NON-GOVERNMENTAL ORGANIZATION

INTERNATIONAL CHAMBER OF COMMERCE (ICC)

42. International Sale of Goods. The UNCITRAL reports on possible modifications with respect to the two 1964 Hague Conventions and the UNCITRAL draft on prescription are the subject of enquiries being made by the ICC of its national committees.

43. With respect to general conditions of sale and trade terms, the ICC has decided to fill a gap in its "Incoterms 1953" relating to contracts for the sale of goods to be transported by air or in containers. Uniform rules of interpretation especially adapted for these situations are being studied.

44. International Payments. Following the completion of a revised edition of the "Standard Forms for the Issuing of Documentary Credits", a revision of the Customs and Practices for Documentary Credits is being prepared. A new study is to be devoted to the standardization of international payment orders. Finally, a study is being undertaken on the formulation of uniform rules on tender guarantees, performance guarantees and repayment guarantees. Furthermore, payment guarantees will be studied. It is expected that these studies will result in the publication of standard forms. The ICC is also actively participating in the work of UNCITRAL toward uniform rules applicable to an optional international negotiable instrument.

45. Transport. The ICC actively participated in the seventh Conference for the Revision of the International Convention on the Transport of Goods by Rail. In the area of air transport, the ICC was consulted by ICAO on the revision of the 1929 Warsaw Convention, as amended by the 1955 Hague Protocol, in connexion with the Guatemala Conference (February-March 1971). Pursuant to this request, the ICC submitted material to ICAO. The ICC is also following the work of UNCTAD and UNCITRAL on international legislation on shipping.

46. The ICC has taken part in the formulation of a draft convention on the subject of combined transport (Round Tables - June 1969 and January 1970), in co-operation, inter alia, with UNIDROIT (see para. 32 above).

47. International Commercial Arbitration. The International Chamber of Commerce is currently taking part in the organization of international meetings (e.g., Moscow, 1972) with a view to harmonizing and developing arbitration law throughout the world. Further, the revision of the 1955 Rules of Conciliation and Arbitration is under consideration.