

of non-legal management or other personnel who need to be aware of the principal issues covered by a particular type of contract clause, but who do not require a discussion of the issues in the depth or detail contained in the main text of a chapter. Those readers might obtain information which they require about the settlement of issues arising in the contract as a whole or in particular types of clauses by reading the summaries alone. To assist such readers who find that they would like further information on particular points, cross-references are provided to paragraphs in the main text of the chapter where points referred to in the summary are discussed. Persons directly involved in drawing up works contracts, for whom the main text of each chapter is principally designed, might find that reading the summaries provides a useful overview of the subject-matter and issues covered by each chapter. They might also use the summaries as a check-list of issues to be addressed in negotiating and drawing up contractual provisions.

D. "General remarks"

15. The main text of each chapter begins with a section entitled "General remarks". This is intended to serve as an introduction to the subject-matter of the chapter, and to cover certain matters which are applicable to the chapter as a whole so as to avoid repeating them in each section of the chapter where they are relevant. In some cases, the section also deals with points which do not easily fit elsewhere within the structure of the chapter. The section often refers readers to the other chapters where related issues are discussed.

E. Recommendations made in the Guide

16. Where appropriate, the Guide contains suggestions as to ways in which certain issues in a works contract might be settled. Three levels of suggestion are used. The highest level is indicated by a statement to the effect that the parties "should" take a particular course

of action. It is used only when that course of action is a logical necessity or is legally mandated. This level is used sparingly in the Guide. An intermediate level is used when it is "advisable" or "desirable", but not logically or legally required, that the parties adopt a particular course of action. A formulation such as "the parties may wish to provide", "the parties may wish to consider", or the contract "might" contain a particular provision, is used for the lowest level of suggestion. Occasionally, the wording used to denote a particular level of suggestion is, for editorial reasons, varied somewhat from that just indicated; however, it should be clear from that wording which level is intended.

F. Illustrative provisions

17. Some chapters contain one or more "illustrative provisions" set forth in footnotes. They are included in order to make issues discussed in the text of a chapter easier to understand. They also serve to illustrate how certain solutions discussed in the text might be structured, particularly those that are complex or may otherwise present difficulties in drafting. *It is emphasized, however, that illustrative provisions should not necessarily be regarded as models of provisions which should be included in particular contracts.* The precise content of a clause and language to be used in it may vary with each contract. In addition, there is usually more than one possible solution to an issue, even though only one of those possible solutions is presented in an illustrative provision. The illustrative provisions have been designed to fit within the overall scheme followed and approaches taken in the Guide. It is therefore important that parties who draft a provision for their contract based upon an illustrative provision carefully consider whether the provision fits harmoniously within their own contract. In general, illustrative provisions have not been included where an understanding of an issue and guidance to drafting is clearly obtainable from the text of the chapter, or where a provision dealing with an issue cannot be drafted in isolation from the particular contract in which it is to appear.

4. Draft Legal Guide on Drawing Up International Contracts for Construction of Industrial Works: report of the Secretary-General (A/CN.9/290)^a

1. For the ninth session of the Working Group on the New International Economic Order,¹ the secretariat was requested to prepare an analytical index for the draft Legal Guide on Drawing Up International Contracts for the Construction of Industrial Works. The secretariat prepared the index for that session; however, for technical reasons, it was not possible to issue the index in all six languages of the Working Group. Accordingly, the Working Group had before it the entire index only in

^aThe annex to this document contains the draft index to the *UNCITRAL Legal Guide on Drawing Up International Contracts for the Construction of Industrial Works*. It is not reproduced in this *Yearbook*. The UNCITRAL Legal Guide has been published by the United Nations under Sales No. E.87.V.10, document A/CN.9/SER.B/2.

¹The report of the Working Group on its ninth session is contained in A/CN.9/289.

English, although excerpts of the index were made available in the other five languages.

2. In view of those circumstances, the Working Group requested the secretariat to arrange for the entire index, in its then present form, to be issued and distributed in the other five languages as soon as possible.²

3. The Working Group agreed that certain changes to the index should be made, namely 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, and that references to paragraphs in the

²A/CN.9/289, para. 15.

Guide containing definitions of terms should be included not only under the entry "Meanings of terms" but also under the individual entry for each term. In addition, the Working Group requested the secretariat to reconsider the use of hyphens in the index, and to reconsider certain entries in the index which were unclear.³

³A/CN.9/289, paras. 13 and 14.

4. In accordance with the request of the Working Group the index to the Guide is reproduced as an annex to the present document in the form in which its English version was presented to the Working Group. The decisions of the Working Group with respect to the Guide and any decisions of the Commission will be implemented when the Guide is submitted for publication.

B. International procurement

International procurement: note by the secretariat (A/CN.9/291)

1. At its nineteenth session (1986) the Commission had before it a note by the secretariat (A/CN.9/277) setting forth possible topics that the Commission might undertake in anticipation of the completion of the UNCITRAL Legal Guide on Drawing Up International Contracts for the Construction of Industrial Works. After considering that note, the Commission decided to give priority to work in the area of international procurement.¹ It was implicit in the decision of the Commission that the preparatory work on this topic would be carried out by the Working Group on the New International Economic Order.

2. In order to engage in the necessary research and study the secretariat has been collecting materials on international procurement from a wide variety of sources. These include national procurement laws and regulations, legal texts emanating from international organizations, and guidelines issued by national and international financing institutions. Gratitude is expressed to those sources that have already made materials available to the secretariat. In order to ensure that its collection is as complete and balanced as possible, the secretariat would be grateful to receive any additional materials that Governments or institutions may wish to provide.

3. The secretariat is in the process of analyzing the materials with a view towards preparing for the tenth session of the Working Group a study of the major issues arising in international procurement along the lines set forth in document A/CN.9/277, paragraph 56. The issues to be considered will include the scope of application of national regulations governing international procurement (e.g., with respect to the types of entities and the objects of procurement covered by the regulations), the choice of procurement methods (e.g., tendering, negotiation) and the procedural and other matters involved in implementing a particular method (e.g., solicitation of tenders or offers, prequalification, documentation, specifications and standards, tender guarantees, period of validity of tenders or offers,

opening of tenders, evaluation of tenders or offers, obligations of parties during negotiations, postqualification, entering into contract). The study will include a comparison of how those issues are dealt with in the law and practice of various countries, and will consider the approaches taken by financing institutions. The study will also discuss various possible objectives that might be sought by national procurement laws and ways in which they might be addressed.

4. It is intended that the study will enable the Working Group to determine what further work, if any, would be desirable in the area of international procurement (e.g., the preparation of a model procurement code) and will provide useful background material for carrying out that work. Even if it is decided not to engage in further work for the time being, the study may itself assist parties participating in international procurement as purchasers and as suppliers by clarifying for them the issues and practices in this area. It will also provide a framework within which parties may assess their policies and practices with respect to international procurement and, if desirable, re-formulate those policies and practices, or formulate policies where none presently exist.

5. The field of international procurement is highly specialized, and one in which practice plays a significant role. In order to ensure that the study by the secretariat is sound and complete, both conceptually and practically, the secretariat intends to obtain the assistance of a group of experts in the field of international procurement. The group will be composed of persons who are conversant with the interests of purchasers, suppliers and financing institutions, respectively.

6. A meeting of the group of experts has been scheduled for 7 to 11 December 1987. The task of the group at that meeting will be to assist the secretariat in determining the precise scope of the study and in identifying and analyzing the significant issues in connection with international procurement. The secretariat will then prepare a draft of the study taking into account the discussions at the meeting of the group of experts. A second meeting of the group might be convened during the first half of 1988 in order to review the draft. The study will then be finalized by the secretariat for presentation to the Working Group.

¹Report of the United Nations Commission on International Trade Law on the work of its nineteenth session, *Official Records of the General Assembly, Forty-first Session, Supplement No. 17 (A/41/17)*, para. 243.