

endorsed the recommendations of the Study Group and, pursuant to the instructions of the Council, the Secretariat has transmitted the preliminary draft Convention to Governments and interested organizations with a request for their observations.

XI. FACILITATION OF INTERNATIONAL TRADE

A. Co-operation for expansion of international trade

56. On 2 November 1979 the Conference of Representatives of CMEA Member Countries on Legal Questions approved a draft model agreement concerning scientific-technical co-operation.

57. To assist ESCAP Member Countries in updating existing maritime legislation and to further its uniformity in the region, the ESCAP Secretariat, with the assistance of the Netherlands Government and the CMI, has made the necessary arrangements for undertaking a survey of existing maritime legislation in the region during 1980.

B. Facilitation of international trade procedures

58. The various working groups within ECE made progress on the following topics:

- (i) Data elements and documentary functions—the Working Party on Facilitation of International Trade Procedures is expected to authorize publication of a Trade Data Elements Directory in the autumn of 1980. The terms included in the Directory will cover data elements in trade documents belonging to the following areas: maritime and multimodal transport, customs procedures, air, road and rail transport, forwarding, payments and some commercial documents. The Directory will be computer assisted. It will appear in the joint series of information documents, issued by the Working Party and UNCTAD's Special Programme in Trade Facilitation (FALPRO);
- (ii) Coding of terms of payment—the preparatory work on this subject is still continuing;
- (iii) Recommendation on measures to facilitate maritime transport document procedures—the Recommendation deals with the problem created by the speedier movement of goods, resulting from developments in transport technology and the continued use of the traditional negotiable transport documents. This Recommendation (No. 12) was adopted by the Working Party on Facilitation of International Trade Procedures in March 1979. The text has been published as document TRADE/WP.4/INF.61: TD/B/FAL/INF.61;
- (iv) Recommendation on authentication of trade documents by means other than signature—this Recommendation (No. 14) concerns the requirement for signature which is tied to the use of paper documents. It was adopted by the Working Party on Facilitation of International Trade Procedures in March 1979. The text has been published as document TRADE/WP.4/INF.63: TD/B/FAL/INF.63;
- (v) Recommendation on facilitation of identified legal problems in import clearance procedures—this Recommendation (No. 13) seeks to encourage customs authorities to grant special facilities for the expeditious clearance of goods. This Recommendation was adopted by the Working Party on Facilitation of International Trade Procedures in March 1979. The text has been published as document TRADE/WP.4/INF.62: TD/B/FAL/INF.62;
- (vi) Recommendation on simpler shipping marks—this Recommendation (No. 15) is inspired by the urgent need for concerted action to harmonize shipping marks. It was adopted by the Working Party on Facilitation of International Trade Procedures in September 1979. The text has been published as document TRADE/WP.4/INF.65: TD/B/FAL/INF.65.

C. Information on international trade law developments

59. The International Trade Centre (ITC) is concerned with international trade law to the extent of bringing established rules and practices to the attention of exporters and trade officials in developing countries. Their advisory services include replying to *ad hoc* requests for trade information.

60. A list of primary sources of information for a future system of notification of laws and regulations concerning foreign trade and changes therein (MUNOSYST) in 18 ECE countries has been published and submitted to the twenty-eighth session of the Committee on the Development of Trade (3–7 December 1979).

United Nations Conference on Trade and Development (UNCTAD) and United Nations Industrial Development Organization (UNIDO) (Addendum 1)

I. UNCTAD*

INTERNATIONAL SHIPPING LEGISLATION

A. Charter-parties

1. The UNCTAD Working Group on International Shipping Legislation, at its fourth session held from 27 January to 7 February 1975, considered a report prepared by the UNCTAD Secretariat entitled "Charter-Parties" (ID/C/C.4/ISL/13) and requested the UNCTAD Secretariat to carry out additional studies involving a comparative analysis of the principal clauses in voyage and time charter-parties. Pursuant to this request, the UNCTAD Secretariat embarked upon studies on the main clauses in voyage and time charter-parties that may be amenable to standardization, harmonization and improvement, and areas in chartering activities that may be suitable for international legislative action. Work is still in progress. The Working Group is scheduled to meet in 1981 to consider the new studies which are expected to be completed by then.

B. Marine insurance

2. The UNCTAD Secretariat issued a report entitled "Legal and documentary aspects of the marine insurance contract" (TD/B/C.4/ISL/27 and Add. 1) which was submitted to the sixth session of the

* See also A/CN.9/192, III. New International Economic Order, A. Industrial collaboration; B. Code of conduct on transfer of technology.

UNCTAD Working Group on International Shipping Legislation, which met from 18 to 26 June 1979. The report analysed various legal and documentary aspects of national marine hull and cargo insurance contract forms, identifying problems caused by ambiguities, inequities or lacunae in commonly used national policy forms, and recommended the establishment of an international legal base for marine insurance contracts to be developed by an internationally representative group of marine insurance experts (including representatives of insurers and assured). After consideration of the report, the Working Group recommended the establishment of a subgroup of experts at the next session of the Working Group (tentatively scheduled to be held in December 1980) to examine the existing marine insurance policy conditions and practices used in national markets covering international business; to investigate the different legal systems governing marine insurance contracts; and in the light of these studies draw up a set of standard clauses as a non-mandatory international model.

TRANSPORT BY SEA

A. *Vessel and flag of registry*

3. The UNCTAD Committee on Shipping, at its eighth session held in April 1977, considered a report prepared by the UNCTAD Secretariat on the economic and legal consequences for international shipping as a result of the existence or lack of a genuine link between vessel and flag of registry as explicitly defined in international conventions in force. This report was further considered by an *Ad Hoc* Intergovernmental Working Group in February 1978. This Group recommended a continued review of this subject within UNCTAD, including the examination and, if appropriate, the formulation of the economic elements of a genuine link. The Group concluded, *inter alia*, that the expansion of the open-registry (i.e. "flag of convenience") fleets has adversely affected the development and competitiveness of the merchant fleets of developing countries. The fifth session of UNCTAD (Manila, 6 May-1 June 1979) requested the Secretary-General to reconvene the *Ad Hoc* Intergovernmental Working Group for the purpose of considering studies on phasing out of open-registry operations. These studies are contained in the following Secretariat documents: "The repercussions of phasing out open registries" (TD/B/C.4/AC.1/5) and "Legal mechanisms for regulating the operations of open-registry fleets during the phasing-out periods" (TD/C/C.4/AC.1/6). The *Ad Hoc* Group reconvened in January 1980 but was unable to reach a consensus on the issue. It adopted a decision to annex to its report (TD/B/784) a draft resolution submitted on behalf of members of the Group of 77 and the draft conclusions and recommendations submitted by a majority of States Members of Group B. The UNCTAD Trade and Development Board, in March 1980, transmitted the report of the *Ad Hoc* Intergovernmental Working Group for further consideration to the UNCTAD Committee on Shipping, scheduled to meet from 1 to 12 September 1980.

B. *Implementation of the Convention on a Code of Conduct for Liner Conferences*

4. On 6 April 1974, the United Nations Conferences of Plenipotentiaries on a Code of Conduct for Liner Conferences adopted the Convention on a Code of Conduct for Liner Conferences (TD/CODE/13/Add.1). By March 1980 46 countries had become Contracting Parties to the Convention.

5. The UNCTAD Secretariat, on the basis of information provided by the Office of Legal Affairs of the United Nations, provides on a regular basis to Member States of UNCTAD information on signatures, ratifications, acceptances, approvals of or accessions to the Convention. The UNCTAD Secretariat has also offered its services, if requested, to assist and guide States in ratifying or acceding to the Convention.

6. The status of the Convention was considered at the fifth session of UNCTAD (Manila, 6 May-1 June 1979). The representatives of a number of developed countries announced the intention of their governments of becoming Contracting Parties to the Convention. It

may therefore be expected that the Convention will enter into force this year or early in 1981. The Conference adopted a resolution which calls upon Contracting Parties to the Convention to take all necessary measures towards the early implementation of the Convention; invites States which are not yet Contracting Parties to the Convention to consider becoming Contracting Parties, and in doing so to give full consideration to the interests of the developing countries in the Convention; and requests the Secretary-General of UNCTAD to give guidance and assistance, on request, to the Governments of developing countries in putting the Code into effect.

C. *Model rules for regional associations and joint ventures in the field of maritime transport*

7. The UNCTAD Secretariat continues to study the feasibility of drawing up model rules on regional associations (ports, shippers, shipowners) and joint ventures in the field of maritime transport. The model rules, which later may possibly be published as a handbook, is intended to assist co-operation among developing countries in the field of shipping and ports.

D. *Treatment of foreign merchant vessels in ports*

8. The UNCTAD Committee on Shipping, at its seventh session held in November 1975, considered a report prepared by the UNCTAD Secretariat entitled "Treatment of foreign merchant vessels in ports" (TD/B/C.4/136). The report reviews the international rules and regulations having a bearing on the status of foreign merchant vessels in ports and examines the Convention and Statute on the International Regime of Maritime Ports of 1923. The Committee on Shipping will decide at a later date whether further work on this subject is necessary.

MULTIMODAL TRANSPORT

A. *Proposed Convention on International Multimodal Transport*

9. An Intergovernmental Preparatory Group on a Convention on International Multimodal Transport was established by the UNCTAD Trade and Development Board's decision 96 (XII), in pursuance of the United Nations Economic and Social Council resolution 1734 (LIV), to examine the economic, commercial, technological and social implications of multimodal transport and to prepare a draft of a convention on international multimodal transport, bearing in mind particularly the needs and requirements of developing countries.

10. The Intergovernmental Preparatory Group held six sessions between November 1973 and March 1979. At its sixth and final session the Group approved and adopted the text of a draft convention on international multimodal transport (TD/MT/CONF/1) for submission to a conference of plenipotentiaries.

11. The General Assembly, at its thirty-third session, in resolution 33/160 of 20 December 1978 decided to convene a conference of plenipotentiaries on a convention on international multimodal transport and requested the UNCTAD Trade and Development Board to determine the date of that conference.

12. The United Nations Conference on a Convention on International Multimodal Transport was convened in Geneva from 12 to 30 November 1979 to consider and adopt a convention on international multimodal transport. As it was not found possible to complete its work in the allotted time, the Conference decided that a resumed session should be held in 1980. This resumed session was held from 8 to 23 May 1980. The text of the draft convention as at the adjournment of the Conference on 30 November 1979 is contained in TD/MT/CONF/12.

B. *International agreement on container standards*

13. Pursuant to decision 6 (LVI) of the United Nations Economic and Social Council and decision 118 (XIV) of the UNCTAD Trade and Development Board the *Ad Hoc* Intergovernmental Group on Container Standards was established within UNCTAD with terms of reference which included the examination of the practicability and

desirability of drawing up an international agreement on container standards. The *Ad Hoc* Intergovernmental Group considered this question at its first and second sessions, which were held from 1 to 12 November 1976 and from 20 November to 1 December 1978 respectively.

14. Having considered the reports (TD/B/AC.20/6 and TD/B/AC.20/10) of the *Ad Hoc* Intergovernmental Group and the proposals contained therein, the UNCTAD Trade and Development Board decided in March 1980 to remit to the UNCTAD Committee on Shipping the question of container standards for regular review as well as the decision of drawing up an international agreement on container standards at an appropriate future date.

C. Freight forwarding

15. The UNCTAD Secretariat is circulating a report examining freight forwarding operations and services, including applicable legal régimes, in particular as they relate to the strengthening of freight forwarding in developing countries (UNCTAD/SHIP/193).

SEMINARS ON MARITIME LEGISLATION

16. The Maritime Legislation Section organized a seminar in Alexandria (Egypt) from 17 March to 5 April 1979 on Ocean Transportation Documentation. The Seminar was funded by the Swedish International Development Authority (SIDA) for senior level maritime officials and executives from English-speaking developing countries in Africa and Asia. Secretariat staff lectured at several seminars during the year on maritime legislation and related subjects.

RESTRICTIVE BUSINESS PRACTICES

A. Formulation of a Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices

17. Since 1976, UNCTAD has been engaged in the formulation of a Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices having adverse effects on international trade, particularly that of developing countries and the economic development of these countries. The Third *Ad Hoc* Group of Experts on Restrictive Business Practices, established by UNCTAD at its fourth session, held six sessions and prepared a draft of such a Set of Principles and Rules, which then formed the basis for the negotiations by the United Nations Conference on Restrictive Business Practices, convened by the General Assembly pursuant to resolution 33/153. This Conference held its first session from 19 November to 8 December 1979 but was unable to complete its work at that session on the Set of Principles and Rules. A second session of the Conference was held from 8 to 18 April 1980.

B. Model law on restrictive business practices

18. The third *Ad Hoc* Group of experts on Restrictive Business Practices is engaged in the elaboration of a model law or laws on restrictive business practices. At the fifth session of UNCTAD it was decided that continued action should be taken on the elaboration of the model law or laws. Relevant in this regard was the request by UNCTAD to the United Nations Conference on Restrictive Business Practices that it make recommendations through the General Assembly to the UNCTAD Trade and Development Board in respect of institutional aspects in regard to future work on restrictive business practices within the framework of UNCTAD. A first draft of the model law was prepared by the UNCTAD Secretariat in 1978 (TD/B/C.2/AC.6/16).

MULTILATERAL COMMODITY AGREEMENTS

19. The negotiation and re-negotiation of multilateral commodity agreements is one of UNCTAD's central functions. Its authority in this field stems from General Assembly resolution 1995 (XIX) and from numerous resolutions of the Conference. In particular, Conference resolutions 93 (IV) and 124 (V), on an Integrated Programme for Commodities, call for efforts to negotiate or re-negotiate agree-

ments on up to 18 commodities, as well as for negotiations on a Common Fund to finance buffer stocks and other measures under the Integrated Programme. In 1979, conferences were held under UNCTAD auspices to negotiate agreements on the Common Fund and on cocoa, olive oil, natural rubber and grains. These negotiations resulted in the conclusion of new legal instruments in respect of olive oil and natural rubber. The negotiations on the Common Fund, cocoa and grains were not concluded. A further session of the United Nations Negotiating Conference on a Common Fund under the Integrated Programme for Commodities was held in May and a conference to negotiate a new International Tin Agreement was held in April/May 1980. Other commodity conferences may also be convened if preparatory work reaches a sufficiently advanced stage.

II. UNIDO

A. System of Consultations in industrial sector

20. At the Second General Conference of UNIDO (Lima, March 1975) it was recommended that a System of Consultations be set up to promote harmonious industrial development at the global, regional and sectoral levels. The mechanism of consultations is designed to allow all parties concerned to discuss and agree to facilitate the redeployment of certain productive capacities existing in developed countries and to create new industrial facilities in developing countries. UNIDO is to serve as a forum for negotiation of agreements in the field of industry between developed and developing countries and among developing countries themselves at the request of the countries concerned.

21. At the Third Conference of UNIDO (New Delhi, January/February 1980) the System of Consultations was put on a permanent basis as a continuing and important activity of UNIDO. The scope of the System was widened to cover all industrial sectors including global consultations on industrial financing, industrial technology, manpower development and other major topics. The Conference further decided that UNIDO, through the System must serve as a forum for the negotiation of agreements in the field of industry between developed and developing countries, and among developing countries themselves.

B. Activities pertaining to industrial projects

22. Among the more important activities currently undertaken by UNIDO are:

Preparation of model forms for the following types of contract for the construction of a fertilizer plant: (a) turn-key lump sum; (b) semi-turn-key; (c) cost reimbursable; and (d) design engineering

Preparation of different types of agreements covering long-term arrangements with suppliers of technology that would link the supply of imports of agricultural machinery to the progressive development of its local manufacturer

Examination of the nature and content of long-term contracts for the purchase of iron ore and coking coal

Examination of the form of co-operation agreement in the vegetable oils and fats industry in developing countries

Examination of (a) the licensing of know-how for the manufacture of the active ingredients of 25 selected drugs as well as for their formulation into tablets etc.; and (b) ways to obtain pharmaceutical intermediates and bulk drugs at reasonable prices

Examination of existing contractual agreements in the capital goods industry with a view to identifying those clauses essential to improving such contractual agreements from the viewpoint of the needs of developing countries and relevant to forms of co-operation appropriate to different stages of development of the engineering industry

Examination of trade and trade-related aspects of industrial collaboration arrangements (see A/CN.9/192, III. New International Economic Order, A. *Industrial collaboration*), industrial financing

and training of industrial manpower. Two of the issues on industrial financing are (a) barter-related or buy-back investment arrangements and (b) analyses and possible solutions to problems caused to industrial projects and programmes by currency fluctuations. Preparations are under way for a consultation meeting on industrial manpower training in 1981 and another one on industrial financing in 1982.

Commission of the European Communities (CEC) (Addendum 2)

PRIVATE INTERNATIONAL LAW^a

A. *International contracts*

1. The draft convention establishing uniform rules of conflict of laws in relation to contractual obligations was submitted by CEC to the Council of the European Communities (EC) on 17 March 1979. The Council then requested the governments of the Member States of EC to make their observations on the text. The text was finalised in April 1980 and is expected to be signed by the Member States of EC before the end of 1980.

B. *International payments*

2. A draft proposal for a directive on guarantees and indemnities aimed at harmonisation of the laws of the Member States of EC was presented to the governments of the Member States in 1980 for comment.

3. The Member States of EC are working on the harmonization of laws relating to:

The conditions applicable to the valid creation of a reservation of title in the sale of goods

The consequences of reservation of title in intra-community trade

The consequences of reservation of title in the bankruptcy/insolvency of the buyer before the purchase price has been paid in full

The group of governmental experts of the Member States met in October 1979 to continue their discussions.

PRODUCT LIABILITY

4. CEC submitted to the Council of EC a revised proposal for the harmonization of rules of producers' liability to personal injuries and damage to privately used property.

^a See A/CN.9/192, VII. Private International Law.

OTHER TOPICS OF INTERNATIONAL TRADE LAW^b

A. *Commercial agents*

5. CEC submitted to the Council of EC in January 1979 an amended proposal on the harmonization of the laws of the Member States of EC relating to the contract of commercial agency.

B. *Company law*

6. CEC submitted a revised proposal to the Council of EC on the creation of a new body of company law for cross-frontier mergers of European companies. It also includes rules on taxation and on the representation of employees in the European company.

7. CEC submitted to the Council of EC an amended proposal on a law relating to European Cooperation Grouping which is intended to enable co-operation to take place between firms established under the law of the various Member States of EC.

8. The competent Commission department of CEC completed the text of a proposal for a directive to co-ordinate national laws relating to links between enterprises and in particular to groups. The proposal was submitted to CEC for its approval in 1979.

9. CEC submitted to the Council of EC a second amended proposal on the harmonization of municipal rules on mergers of public limited liability companies incorporated in a single Member State of EC and certain analogous operations. The proposal was adopted by the Council on 9 October 1978. The Member States are given three years in which to enact implementing legislation.

10. CEC published a consultative document entitled "Employee participation and company structure in the European Community". The Economic and Social Committee of the EC gave its opinion on the document in February 1978. The document is now before the Legal Affairs Committee of the European Parliament.

11. CEC presented to the Council of EC an amended proposal on the harmonization of municipal rules on group accounts.

12. The amended proposal of CEC on the harmonization of municipal rules on annual accounts of limited liability companies was adopted by the Council of EC on 25 July 1978. The Member States of EC are given two years in which to enact implementing legislation.

13. CEC presented its proposal on the harmonization of municipal rules on the authorization of persons responsible for carrying out statutory audits of the annual accounts of limited liability companies to the Council of EC in April 1978. The Economic and Social Committee of EC and the European Parliament gave their opinions in April and May 1979 respectively. The competent Commission prepared an amended proposal for a directive which has been submitted to the Council of EC in December 1979.

^b See A/CN.9/192, X. Other Topics of International Trade Law.