## C. Note by the Secretariat: legal implications of the new international economic order (A/CN.9/193)*

Subsequent to the meeting of the Working Group on the New International Economic Order in New York, 14–25 January 1980, the Secretariat invited the United Nations Conference on Trade and Development to comment on the recommendations of the Working Group concerning subject-matters for inclusion into UNCITRAL's work programme.[1]

Attached to this note is the reply of the UNCTAD Secretariat concerning the legal aspects of international commodity agreements for the information of the Commission.

### ANNEX

#### Legal aspects of international commodity agreements

The extent of the work, or rather the competence, of UNCTAD in the area of international commodity agreements is limited to preparatory work for, and the convening of, negotiating or re-negotiating conferences on particular commodities for the purpose of concluding international commodity agreements. The provisions of the Vienna Convention on the Law of Treaties relating to the conclusion of treaties, including the establishment of the text of a treaty and expression of consent to be bound by a treaty, generally govern the treaty-making process involved in the conclusion and entry into force of international commodity agreements. The issues involved at this stage are essentially procedural. The rights and obligations of the States, and in some instances intergovernmental organizations, are those of participants in treaty negotiating conferences.

After the entry into force and during the life-span of international commodity agreements concluded under its auspices, UNCTAD, in consultation with the Office of Legal Affairs, helps the international commodity organizations established by such agreements, in interpreting the provisions of the agreements. The involvement of UNCTAD and the Office of Legal Affairs is, of course, only in an advisory capacity. The final authority for the interpretation of the provisions of the agreements resides in the international commodity organizations themselves.

Although certain administrative and final clauses of international commodity agreements are similar in wording if not in substance, these agreements differ in their objectives and structure. The difference can be attributed to the peculiar nature of the problems of the individual commodities which induces consumers and producers to take joint action to tackle those problems. To solve the problem of persistent and chronic instability in the price of a particular commodity may require a buffer stocking arrangement to keep the price within an agreed range. This type of arrangement might not be the answer for the problems of another commodity. Consumers and producers of the latter commodity may prefer the institution of a system based on export and import quotas; or simply a system of consultation between the two sides. The internal legal aspects of such international commodity agreements will no doubt differ. The rights and obligations of the parties to an international commodity agreement based on a sophisticated buffer stocking arrangement (with all its attendant legal issues) would be very different from those of a consultative agreement. A clear understanding of the reasons for preferring one approach to the other would require a study of the problems affecting the commodity concerned.

Notwithstanding the above difficulties, a few words can be said about the following:

(i) Establishment of international organizations endowed with legal personality;

(ii) Equality of States principle;

(iii) Headquarters Agreements;

(iv) Dispute settlement clauses;

(v) *Force majeure* clauses;

(vi) Fair labour standards clauses.

##### (i) *Establishment of international organizations*

International commodity agreements invariably provide in their articles of agreement for the establishment of an international body responsible for their administration. This practice was given added weight in article 64 of the 1948 Havana Charter for an International Trade Organization. The "commodity councils" envisaged under the Havana Charter were not (had the Charter entered into force) to be wholly independent international organizations. They were designed to be a part of the international trade order that the Charter was intended to establish and would have come under the umbrella of the International Trade Organization.

Since the collapse of the Havana Charter, numerous international commodity organizations (they were referred to as commodity councils in the Charter) came into being. The parties to the agreements establishing these organizations endowed them with legal personality, i.e. the capacity to contract, to acquire and dispose of movable and immovable property, and to institute legal proceedings. They also granted them such privileges and immunities as are provided for in the clauses of their agreements relating to such matters. The rapidly changing nature of privileges and immunities of not only States but international organizations in public international law is gradually creeping into privileges and immunities clauses in international commodity agreements as one constantly hears States in commodity negotiating conferences speaking in favour of limited privileges and immunities.

##### (ii) *Equality of States principle*

The framers of the Havana Charter enshrined in that instrument (article 63 (*b*)) the principle of equality of States participating as producers and consumers in an international commodity agreement. It provided that producers and consumers as two groups shall have equal votes. It did not, however, lay down any formula for the distribution of the votes in each group. The commodity organizations which later came into existence adopted this principle of equal weighted voting power for the producers on the one hand and the consumers on the other. There is no standard formula for the distribution of the votes or their redistribution. Participation in international commodity agreements is generally governed by the principle of universality.[a]

##### (iii) *Headquarters Agreements*

International commodity agreements generally entrust the bodies administering them to conclude headquarters agreements with the governments of the host countries relating to the privileges and immunities of the international commodity organizations and their staff. These agreements, which have the status of treaties in international law, indeed form a part of the body of laws relating to, or emanating from international commodity agreements.

##### (iv) *Dispute settlement clauses*

Under the provisions of the Havana Charter the ultimate arbiter of disputes within the "commodity councils" is the International Trade Organization. This is understandable given the integrated relationship the councils had with the Organization. The articles of agreement of existing international commodity organisations, however, provide for no such arbiter. They generally provide for referral of a dispute

* 3 June 1980.

[1] See A/CN.9/176, para. 31.

[a] When the "Vienna formula" was in currency, international commodity agreements limited their participation to those entities included in that formula. They now generally contain an "all States" clause.

relating either to the interpretation or application of the agreement to the council. In some instances the council would set up an advisory panel which would report its findings to the council. The council would thereafter decide on the dispute. That decision is binding on the parties.

On matters of interpretation of the provisions of the commodity agreements, especially for those negotiated under the auspices of UNCTAD, the organizations would normally seek the assistance of the legal services of the United Nations before taking any final decision. It is worth recalling that there is not and never has been any clause in any commodity agreement obligating the commodity organization to seek and accept the legal opinions of the United Nations concerning the interpretation of its constituent instrument.

(v) Force majeure *clauses*

Some international commodity agreements provide relief from certain or all obligations for reasons of *force majeure,* emergency or exceptional circumstances. The terms, conditions and duration of relief are stated by the Council when it is granting relief to a member which has applied for it.

(vi) *Fair labour standards clauses*

The Havana Charter in its chapter on employment and economic activity provided an article on fair labour standards which, *inter alia,* recognized as a common interest of all countries to achieve and maintain fair labour standards. This principle subsequently found its way into international commodity agreements. As in the Havana Charter, the fair labour standards clause in international commodity agreements does not create any binding obligations on the part of the parties to the agreements. Its quality is no more than declaratory. This does not, however, alter the fact that, if such a principle is binding under the ILO conventions to which the parties to the various international commodity agreements containing fair labour standards clauses are also parties, workers in industries related to the commodities in question will be beneficiaries of such clauses. The clauses contained in commodity agreements do not (unlike the Havana Charter) make it mandatory for their members which are also members of the ILO to co-operate with that organization in giving effect to a fair labour standards clause, albeit non-binding, in the commodity agreements. Nor do international commodity organizations provide for a system of consultations with the ILO, as the Havana Charter intended, in matters relating to labour standards referred to them. It is not even clear under the various fair labour standards clauses who, if anyone, can bring a question of non-observance of the principle before the commodity organization.

The above summarizes very briefly what in our opinion would constitute the legal aspects of international commodity agreements. It does not seem useful to us for UNCITRAL to include this aspect of international law in its work programme. It seems to us also that the "drawing up of model clauses or guidelines on some legal aspects of commodity agreements"[b] will serve very little purpose. We thought about such an approach in order to make the task of conferences negotiating or re-negotiating commodity agreements easier. Experience has shown that delegates are not too keen on following examples which are fairly common in other commodity agreements. Where a commodity organization is already in existence, they prefer to rely on the practice established in that organization. One hears the refrain "natural rubber is different from sugar". If there is a general reluctance to accept a uniform approach in this area, it is probably better not to have any uniform approach at all.

[b] See document A/CN.9/176, para. 12, reproduced as A, above.

## D. Note by the Secretariat: legal implications of the new international economic order (A/CN.9/194)*

The Asian-African Legal Consultative Committee at its twenty-first session in Jakarta (Indonesia) adopted, on 1 May 1980, a resolution concerning the work of UNCITRAL in respect of the new international economic order. The text of this resolution is reproduced below.

*The Asian-African Legal Consultative Committee,*

*Having considered* the work of the United Nations Commission on International Trade Law (UNCITRAL) at its twelfth session and the report of the UNCITRAL Working Group on the New International Economic Order;

*Notes* with satisfaction and appreciation the progress UNCITRAL has made in considering the legal implications of the new international economic order in response to the recommendation of the Committee; and

*Recommends* that UNCITRAL should adopt the recommendations of its Working Group and implement them in all practicable ways as soon as possible.

* 17 July 1980.