

25. The Commission, at its 1980 session, held an exchange of views on the topic "*International liability for injurious consequences arising out of acts not prohibited by international law*" on the basis of a preliminary report submitted by the Special Rapporteur. He pointed out that the distinguishing feature of this topic is that its essential concern is with dangers that arise within the jurisdiction of one State and cause harmful effects beyond the borders of that State. It would appear from the Commission's discussion²⁴ that the acts or activities from which such dangers arise or which cause such harmful effects may be carried out by, *inter alia*, natural and juridical persons, including "transnational corporations", and may be activities having a trading or commercial aspect. Taking into account resolution 35/163, the Commission will continue its work on the topic and may have before it during its present session proposed draft articles which the Special Rapporteur intends to include in his next report.

26. In 1974, the Commission formulated a questionnaire to be communicated to Member States concerning the *law of the non-navigational uses of international watercourses*. Among the questions was one setting forth an outline of fresh water uses suggested as the basis for the Commission's study of the topic. That outline included the following: "(a) Agricultural uses: 1. Irrigation; 2. Drainage; 3. Waste disposal; 4. Aquatic food production. (b) Economic and commercial uses: 1. Energy production (hydroelectric, nuclear and mechanical); 2. Manufacturing; 3. Construction; 4. Transportation other than navigation; 5. Timber floating; 6. Waste disposal; 7. Extractive (mining, oil production, etc.)."²⁵ In provisionally adopting six draft articles on the topic at its 1980 session, the Commission noted that, at a future stage in its work, after having elaborated general principles relating to the non-navigational uses of international watercourse systems and their waters, it intends to examine the advisability of formulating, within the framework of the draft, additional draft articles on specific uses of international watercourse systems and their waters, such as those mentioned in its 1974 questionnaire, as well as on various measures of conservation related to such uses (and abuses such as pollution).²⁶ With regard to "agreements in the field of natural resources" the Commission and its Special Rapporteur in work on this topic have taken into account treaties considered relevant to the law of the non-navigational uses of international watercourses.²⁷ In addition, one article provisionally adopted in 1980 (article 5) concerned "Use of waters which constitute a shared natural resources".²⁸ Resolution 36/163 recommends that the Commission proceed with the preparation of draft articles on this topic, taking into account the replies to the questionnaire addressed to Governments.

27. The Commission also at its 1980 session provisionally adopted two draft articles on the topic of *jurisdictional immunities of States and their property*, one entitled "Scope of the present articles", the other "State immunity".²⁹ The Commission has not directly addressed itself as yet to such questions as the trading or commercial activities of a State which may be considered relevant to the topic, although the Special Rapporteur did allude to such questions in his second report.³⁰ He had proposed in that report a definition of "trading or commercial activity" as well as an interpretative provision for determining the "commercial character of a trading or commercial activity" but the Commission considered it premature at that stage to discuss the substance of definitional problems.³¹ The Commission also noted that controversies had existed in the past concerning the divisibility of the functions of the State or the various distinctions between the activities carried on by modern States in fields of activity formerly undertaken

by individuals, such as trade and finance. The greatest care was called for in the treatment of this particular area of the topic.³² In 1979 and 1980, the Legal Counsel of the United Nations circulated to Member States a questionnaire on the topic drafted by the Special Rapporteur in co-operation with the Secretariat. Included in the questionnaire were the following questions:

"Question 6. Do the laws and regulations . . . or the judicial practice . . . make any distinction, as far as jurisdictional immunities of foreign States and their property are concerned, between 'public acts' and 'non-public acts' of foreign States? . . ."

"Question 7. If the answer to question 6 is 'yes':"

" . . ."

"(b) In a dispute relating to a contract of purchase of goods would courts of your State be expected to grant immunity to a foreign State which establishes that the ultimate object of the contract for a public purpose or the contract was concluded in the exercise of a 'public' or 'sovereign' function?"

"(c) In a dispute relating to a foreign State's breach of a contract of sale, would courts of your State be expected to grant immunity to a foreign State which establishes that its conduct was motivated by public interests?"

"(d) In any dispute concerning a commercial transaction, is the nature of transaction decisive of the question of State immunity, if not, how far is ulterior motive relevant to the question?"

" . . ."

"Question 12. What is the status, under laws and regulations in force or in practice in your State, of ships owned or operated by a foreign State and employed in commercial service?"

The text of the questionnaire and Government replies thereto, as well as of other information and materials relevant to the topic submitted by Governments, are presently before the Commission.³³ In addition, the Commission in 1980 "noted the special nature of the topic . . . which, more than other topics hitherto studied by it, touched on the realm of international law as well as that of private international law".³⁴ At its current session, it has before it a third report submitted by the Special Rapporteur containing five articles entitled as follows: Rules of competence and jurisdictional immunity; Consent of State; Voluntary submission; Counter-claims; and Waiver.³⁵ In connexion with the question of "rules of competence and jurisdictional immunity", the Special Rapporteur in that report included a section entitled "The rules of competence in private international law". The Commission intends as recommended by resolution 35/163 to proceed with the preparation of draft articles on the topic, taking into account replies to the questionnaire addressed to Governments as well as information furnished by them.

[A/CN.9/202/Add.4*]

Current activities of the European communities in the field of international trade law

The information on the current activities in the field of international trade law provided by the Commission of the European Communities (CEC) is contained in this addendum.

* 1 July 1981.

³² *Ibid.*, p. 321, para. 116.

³³ A/CN.4/343 and Add.1-3.

³⁴ *Official Records of the General Assembly, Thirty-fifth Session, Supplement No. 10 (A/35/10)*.

³⁵ A/CN.4/340 and Add.1.

²⁴ See *Official Records of the General Assembly, Thirty-fifth Session, Supplement No. 10 (A/35/10)*, chapter VII.

²⁵ *Ibid.*, p. 240, chapter V, para. 69.

²⁶ *Ibid.*, p. 250, para. 98.

²⁷ See the commentaries to articles 1, 3, 4 and 5, *ibid.*, chapter V.B.

²⁸ *Ibid.*, pp. 275-276.

²⁹ *Ibid.*, pp. 326, 328, chapter VI.B.

³⁰ A/CN.4/311 and Add.1.

³¹ *Official Records of the General Assembly, Thirty-fifth Session, Supplement No. 10 (A/35/10)*, pp. 324-326, paras. 120, 122.

For completeness of the report of the Secretary-General contained in A/CN.9/202 and Add.1-3, this addendum is issued though the meeting of the fourteenth session, which was held from 19 to 26 June 1981, has taken place.

PRIVATE INTERNATIONAL LAW¹

A. *International contracts*

1. The convention establishing uniform rules of conflict of laws in relation to contractual obligations has been signed by eight Member States. Four of these are already in the process of being ratified. Signature by the United Kingdom is expected to take place soon. Greece is considering the matter.

B. *International payments*

2. Work in the field of guarantees and indemnities has been discontinued.

3. Consultation with Member States on reservation of title has proceeded apace. The Commission of the European Communities (CEC) expects to produce during the coming months a further draft proposal for a directive on simple reservation of title. CEC is collaborating very closely with the Council of Europe in this work.²

PRODUCTS LIABILITY³

4. CEC submitted to the Council of the European Communities (EC) a proposal for a directive to harmonize the rules of law on the producer's liability for defective products. The text contemplates strict liability where the defective product causes personal injury or damage to property which is in private use.

OTHER TOPICS OF INTERNATIONAL LAW⁴

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 contract of commercial agency.

B. *Company law*

6. CEC submitted an amended proposal for a Regulation on the Statute for European Companies to the Council of EC in 1975 (Bulletin of the EC Supplement 4/75). The Regulation's uniform legal framework would allow companies established under the various laws of the Member States of EC to reorganize themselves (by merger or the creation of holding companies or joint subsidiaries) at Community level. Being a complete new body of company law, the Statute includes rules on employee representation in the European Company. The proposal is at present under discussion in the Council of EC.

7. CEC submitted an amended proposal for a Regulation on the European Co-operation Grouping to the Council of EC in 1978 (O.J. No. C 103 of 28 April 1978). The Regulation would enable co-operation to take place between undertakings (particularly small and medium-sized) established under the various laws of the Member States of EC. It has yet to be discussed within the Council of EC.

8. The competent department of CEC is finalizing the text of a draft proposal for a directive to co-ordinate national laws relating to links between undertakings and particularly to groups. No text has yet been submitted to CEC for approval.

9. CEC's proposal for a First Council Directive on co-ordination of safeguards which are required concerning disclosure, the validity of obligations and the nullity of companies was adopted on 9 March 1968 (O.J. No. L 65 of 14 March 1968).

10. CEC's proposal for a Second Council Directive on co-ordination of safeguards required in respect of the formation of public limited liability companies and the maintenance and alteration of their capital was adopted on 13 December 1976 (O.J. No. L26 of 31 January 1977).

11. CEC's proposal for a Third Council Directive concerning mergers of public limited liability companies was adopted on 9 October 1978 (O.J. No. L 295 of 20 October 1978).

12. CEC's proposal for a Fourth Council Directive on the annual accounts of limited liability companies was adopted on 25 July 1978 (O.J. No. L 222 of 14 August 1978).

13. CEC has made a proposal for a Fifth Council Directive on the structure of public limited liability companies and the powers and obligations of their organs (O.J. No. C 131 of 13 December 1972). It has also published a consultative document dealing with some of

¹ See A/CN.9/202/Add.2, XI. PRIVATE INTERNATIONAL LAW.

² *Ibid.*, XII. OTHER TOPICS OF INTERNATIONAL LAW, D. *Rights of Creditors*, para. 104.

³ *Ibid.*, X. PRODUCTS LIABILITY.

⁴ *Ibid.*, XII. OTHER TOPICS OF INTERNATIONAL LAW.

the issues raised by its proposal and entitled "Employee Participation and Company Structure in the European Community" (Bulletin of the EC Supplement 8/75). The proposal is at present before the Legal Affairs Committee of the European Parliament.

14. CEC has made an amended proposal for a Seventh Council Directive on consolidated accounts (O.J. No. C 14 of 17 January 1979). It is at present under discussion in the Council of EC.

15. CEC has made an amended proposal for an Eighth Council Directive on the authorization of persons responsible for carrying out statutory audits (O.J. No. C 317 of 18 December 1979). It is at present under discussion in the Council of EC.

16. CEC has prepared a Draft Convention on the international mergers of public limited liability companies (Bulletin of the EC Supplement 13/73). It is at present being discussed by the Member States of EC.

C. Trade marks

17. CEC has made a proposal for a Council Directive to approximate the laws of the Member States relating to trade marks, and a proposal for a Council Regulation on the Community trade mark. These have been discussed by the Economic and Social Committee and have been laid before the European Parliament for debate.

B. Report of the Secretary-General: question of co-ordination: direction of the work of the Commission (A/CN.9/203)*

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* 13 May 1981. Referred to in Report, paras. 39, 88 (part one, A, above).