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FURTHER WORK OF THE COMMISSION IN THE AREA OF
INTERNATIONAL CONTRACTS FOR CONSTRUCTION OF INDUSTRIAL WORKS

Note by the Secretariat

1. The Commission will have before it at this session the reports of the Working Group on the New International Economic Order on the work of its sixth and seventh sessions (A/CN.9/259 and A/CN.9/262). Considerable progress has been made by the Working Group in its work on the preparation of a draft legal guide on drawing up international contracts for the construction of industrial works, and it is expected that the final instalment of the draft chapters of the legal guide will be considered at the eighth session of the Working Group in the first quarter of 1986. Thereafter, only the revision of the draft chapters by the Secretariat, and the overall consideration of these revised chapters, will be necessary to complete the work. The Secretariat has accordingly been giving consideration to enhancing the value of the legal guide by the preparation of annexes to the legal guide dealing with areas which are closely related to the construction of industrial works, and some suggestions for continued work have already been made at past sessions of the Commission and the Working Group.

2. In this connection the Commission may wish to note that the Asian-African Legal Consultative Committee (AALCC), at its recent session (Kathmandu, Nepal, 6-13 February 1985) reviewed the work of the Commission relating to the new international economic order. After expressing its satisfaction and appreciation of the progress which had thus far been made in the preparation of the legal guide, the AALCC made the following recommendations:

"that UNCITRAL should consider the preparation of an annex to the legal guide, dealing with legal issues related to joint ventures arising in the context of industrial contracts, in view of the practical and legal difficulties that may arise out of these arrangements, particularly for parties in developing countries;

"that UNCITRAL consider taking up concession agreements and other agreements in the field of natural resources in the near future, as that topic had gained a certain urgency for the developing countries on account of the shift in the pattern of mineral exploration from developing to developed countries."

3. The Secretariat is currently examining these suggestions. As regards concession and other agreements, in particular in the field of mineral resources, the Commission may wish to note that several international bodies are already rendering assistance to developing countries. These bodies include the United Nations Department of Technical Co-operation for Development, the United Nations Centre on Transnational Corporations, the United Nations Industrial Development Organisation (UNIDO), and the World Bank. The work undertaken by these bodies covers legal areas (e.g. the assessment and preparation of legislation for investment and taxation, drafting and assistance in the negotiation of contracts, and the re-negotiation of contracts). The undertaking of work by the Commission in the area may therefore lead to the duplication of activity. As regards joint ventures, where the operations of a joint venture included the construction of industrial works, it would have to be carefully assessed in the light of work done on joint ventures by other international bodies, including UNIDO, whether the legal issues which arise in relation to the construction are of such a scope as to justify an annex to the legal guide. Possibilities may also be explored, however, whether some useful well-defined legal work might be undertaken combining the two recommendations of the AALCC.

4. Preliminary consideration has also been given to the preparation of an annex dealing with the area of tendering and procurement in relation to the construction of industrial works. The work undertaken by the Secretariat in the preparation of the draft chapter of the legal guide on the procedure for concluding a contract suggests that further investigation of this area is justified, and that a more detailed examination than is possible in the draft chapter of the issues involved may be a valuable supplement to the legal guide. However, further research needs to be done to ascertain the feasibility and advisability of work, and to formulate concrete proposals.

5. The Commission may therefore wish to note the intention of its Secretariat to submit to a future session of the Commission a report setting forth proposals on how the value of the legal guide may further be enhanced.