

III. RESTRICTIVE BUSINESS PRACTICES

The Intergovernmental Group of Experts on Restrictive Business Practices held its ninth and tenth sessions from 23 to 27 April 1990 and 21 to 25 October 1991. The ninth session was devoted to preparations for the second United Nations Conference to review all aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices. During that session, it was recommended that a third Review Conference be convened in 1995. Pursuant to General Assembly Resolution 41/167, the Second UN Conference to Review all Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices was convened from 26 November to 7 December 1990. The Conference adopted a resolution entitled "Strengthening the implementation of the Set"¹⁷ which *inter alia* calls upon States to implement fully all provisions of the Set in order to ensure its effective application by adopting and effectively enforcing national restrictive business practices legislation and calling upon them to adopt, improve and effectively enforce appropriate legislation and to implement judicial and administrative procedures. During its tenth Session, the Intergovernmental Group of Experts reviewed the operation and implementation of the Set of Principles and Rules on Restrictive Business Practices.¹⁸

IV. MARITIME AND MULTIMODAL TRANSPORT

The United Nations Convention on Conditions for Registration of Ships was signed by 16 countries. As of 31 December 1992 eight countries had become contracting parties to the Convention. This Convention contains a set of minimum conditions which should be applied and observed by States when accepting ships on their shipping registers.

Guidelines on the UN Convention on a Code of Conduct for Linear Conferences

The resumed session of the Review Conference on the UN Convention on a Code of Conduct for Linear Conferences was convened from 21 May to 7 June 1991 and adopted a resolution¹⁹ that sets forth a number of Guidelines relating to the working and implementation of the Convention. The Guidelines deal with issues such as membership of container slot/space-charter operators in conferences, sea leg of multimodal transport services, transshipment operations, participation of national shippers or shipper's organizations in the consultation machinery,

and measures necessary to ensure implementation of the Convention, Resolution II calls upon all parties, including the governmental authorities at the two ends of trade to which the Code applies, to hold consultations in order to find mutually acceptable solutions to problems relating to the working and implementation of the Convention.

UNCTAD/UNCITRAL JOINT STUDY

A joint study was conducted by UNCITRAL/UNCTAD, entitled "Study on the economic and commercial implication of the entry into force and the Hamburg Rules and the Multimodal Transport Convention"²⁰. This study discusses the background of the Hamburg Rules, the economic and commercial implications of the entry into force of the Hamburg Rules and contains an article-by-article commentary on the Hamburg Rules.

UNCTAD/ICC: Rules for Multimodal Transport Documents:

Pending the entry into force of the 1980 United Nations Convention on International Multimodal Transport of Goods and pursuant to Resolution 60 (XII) of the former UNCTAD Committee on Shipping, the UNCTAD Secretariat and ICC jointly prepared a set of Rules for Multimodal Transport Documents which came into effect on 1 January 1992. The Rules follow the network liability principle. The multimodal transport operator (MTO) and the consignor may invoke the mandatory liability rules of international conventions and national law, which would have applied if a separate and direct contract had been made for the particular stage of the transport where the loss, damage or delay occurred. The general basis of liability is expressed in Rule 5.1 as a liability for "presumed fault or neglect". The MTO is also liable for acts or omissions on the part of its servants or agents or any other person whose service he makes use of for the performance of the contract (Rule 4.2).

Charter-Parties:

The twelfth Session of the UNCTAD Working Group on International Shipping Legislation (WGISL) was held in October 1990 and considered the subject of charter-parties. The Working Group had before it the report prepared by the Secretariat entitled "Charter-Parties—A Comparative Analysis"²¹. The report highlighted some of the problems and disputes arising from the use of outdated charter-party forms; the interpretation of their wording; the application of different liability regimes to the charter-party and to bills of lading, as well as

17. TD/RPB/CONF.3/9

18. A/CN.9/380

19. TD/CODE.2/13-Res.II

20. UN Publication, Sales No. E.91.II.D.8

21. TD/B/C.4/ISL/55

problems caused by contractual incorporation of the Hague-Visby Rules into the charter-party through a paramount clause.

General Average

The Thirteenth Session of the UNCTAD Working Group on International Shipping Legislation was held in November 1991 to examine the subject of general average. The report prepared by the UNCTAD Secretariat reviewed, *inter alia*, the arguments for and against the general average system.²² It concluded that in view of a long history of calls for abolition of the system going back to 1877, it would seem premature to consider questions of reform until the technical problems had been thoroughly discussed by the insurance interests concerned. The Working Group decided to request the Secretariat, in close collaboration with CMI, to approach the insurance industry and other interested organizations in order to study the extent to which insurance arrangements could simplify the operation of the general average system. Investigations are presently under way for the preparation of the requested report.

Presently, the UNCTAD Secretariat is involved in updating and harmonizing the maritime legislation of various countries at the regional level (Western and Central African States and Central American Countries) and at national level (Ethiopia) with the aim of providing a legal framework for more effective maritime transport. Training of nationals of these States forms an integral part of the project.

(iv) UNITED NATIONS INDUSTRIAL DEVELOPMENT ORGANIZATION (UNIDO)

The major work programme of UNIDO relates to its preparation of guidelines so as to assist countries in their industrial development. Accordingly since 1990 UNIDO has published two investor's guides, one for Tanzania and another for Hungary. It has also completed a study on the trends in international product standards and the implications for developing countries ("*International Product Standards: Trends and Issues*" UNIDO/PPD.182, 7 January 1991). As regards its work on "*Guides on industrial subcontracting*". It has surveyed legal, tax and custom aspects related to industrial subcontracting operations in the Arab region and a Guide is presently being prepared.

The Manual on Technology Transfer Negotiations under preparation by

22. TD/B/C.4/ISL/58, General Average—A Preliminary Review

UNIDO is intended to serve the purpose as a teaching tool for technology transfer negotiation courses, for developing the skills of trainers of negotiators and as a working tool for negotiators. It is pointed out that this study covered, in a comprehensive manner, the range of subjects that entrepreneurs, decision-makers and government officials dealing with technology acquisition were likely to be confronted within the various phases of the technology transfer process. It is further pointed out that these subjects included not only those directly related to the evaluation and negotiation of contracts but also the aspects that influence technology options, the behaviour of parties and the results of negotiations.

The other guidelines under preparation by UNIDO were intended to impart to users as potential users of the BOT (build-operate-transfer) scheme for project implementation with guiding principles on issues such as the legislative framework, tendering, basic and essential contractual features, the risk structure of parties involved, financing, insurance, period of operation and transfer of ownership. In addition, it is pointed out, the Guidelines would outline the methods of meeting the new risks and differentiating between the risks which should be decreased or minimized and the risks which were unavoidable.

(v) HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW

The Hague Conference on Private International Law has been working for a number of years on several topics in the area of contract practices. The Special Commission which met in June 1992 recommended that the Seventeenth Session should strike from the agenda the topic of the Law Applicable to Licensing Agreements and Transfer of Technology because of continuing doubts about the viability of this topic. The Special Commission had recommended to the Seventeenth session that the topic of the "Law Applicable to Unfair Competition" be retained because of its inherent and continuing interest, but without priority, as there was doubt as to whether there was a pressing need for a convention, especially in view of the growing trend in case law and legislation towards uniformity of conflicts treatment. The Special Commission considered a report prepared by the Permanent Bureau and recommended that the topic relating to "Law Applicable to Contractual Obligations" be deleted from the agenda for future work.

The topic, "Law Applicable to Negotiable Instruments" was considered by the Permanent Bureau identifying the problems arising with regard to the revision of the Geneva Conventions of 1930 and 1931 and the specific conflict of law issues that the UN Convention on International Bills of Exchange and International Promissory Notes might raise. The Special Commission decided to maintain the

topic on the agenda for the Conference's work, but without any priority. The topic concerning the "Law Applicable to Multimodal Transport" was deleted on the recommendation of the Special Commission. The Commission had noted that the work that UNCTAD and ICC had undertaken on this topic had minimized its interest from a conflict of laws view.

The Permanent Bureau of the Hague Conference had prepared and submitted to the Special Commission a report analysing the conflict of laws problems arising in connection with credit transfer. A questionnaire was circulated to banks and international payment systems and it is expected that the Conference will consider it at its Seventeenth Session the question whether a Convention on the Law Application to Credit Transfers should be prepared.

The Hague Conference is considering under the heading "Conventions on Civil Procedure and on International Judicial and Administrative Cooperation", a number of Conventions, such as the Conventions on Service of Documents Abroad and on Taking of Evidence Abroad. In particular, attention was drawn to the Convention of 15 November 1965 on the "Service Abroad of Judicial and Extra Judicial Documents in Civil and Commercial Matters" and "Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters."

In view of the UNCITRAL work on bank guarantees and stand-by letters of credit the Permanent Bureau of the Hague Conference had prepared a report dealing with the conflict of laws problems arising with regard to bank guarantees. The Permanent Bureau submitted also a report on the "Law Applicable to Civil Liability for Environmental Damages." The Special Commission had decided to recommend to the Seventeenth Session that both topics be included in the agenda for future work, the latter with high priority. The attention of the Special Commission was also drawn to the possible drafting of a convention on recognition and enforcement of decisions in civil and commercial matters. The Special Commission had decided that a Working Group would be set up, which would meet before the Seventeenth Session and submit its conclusions about the possibility and feasibility of drafting a convention on this topic and report to the Seventeenth Session. The Working Group unanimously concluded that negotiating through the Hague Conference a general convention on jurisdiction and enforcement of judgements was both desirable and feasible.