

Group that the text being prepared should take the form of a Convention. In view of the divergences in existing legal systems, a convention would provide the appropriate degree of unification, introducing the certainty and predictability needed for credit to be made available on the basis of receivables.

As to the scope of application, it was felt that it should be limited to contractual receivables assigned for the purpose of obtaining financing. Such an approach, it was felt, would be in line with the overall purpose of the project to facilitate receivables financing and thus to increase the availability of lower-cost credit. Besides, this approach has the merit of being accepted by many States, which were prepared to introduce specific legislation to address the needs of modern financing transactions, but not to make an overhaul of their assignment law. Other aspects of the topic discussed by the Commission includes: public policy concerns, prior conflicts and private international law provisions.

While generally acknowledging the progress of work, the Commission noted that a number of issues remained to be resolved, including those relating to the scope of the draft Convention, public policy issues arising in the context of the protection of the debtor, conflicts of priority among several claimants and private international law issues. Expressing appreciation for the work accomplished, the Working Group was requested to proceed expeditiously with its work so as to complete it in 1999 and to submit the draft Convention for adoption by the Commission at its thirty-third session (2000).

V. Secretariat Comments

With the changes ushered by the ongoing process of liberalisation, the economies hitherto marginalised find themselves drawn into the mainstream of international trade. The establishment of the World Trade Organisation has obligated these countries to legislate or review their domestic laws on a whole range of spheres including intellectual

property rights, services sector and investments. On the other hand, the increasing resort to new technologies for data transmission necessitates the formulation of new legal concepts to facilitate commercial transactions. In such a scenario, efforts at development of international trade law while striving to keep pace with the changes required by the evolving technologies, need to strike a balance between adopting the optimum threshold limits so as not to place unduly heavy burdens on developing countries. It is in this context, that the role of UNCITRAL as a focal point for facing the challenges outlined above assumes significance. As with the case of electronic commerce, the Commission in future would be treading on uncharted territories of law-making. In such *de novo* exercises, the Commission besides adopting a cautious and minimalist approach could do well to consult experts from a wide range of legal systems to ensure uniformity and universality in the working of its legal texts.

More specifically, in dealing with such new topics the Commission should guard against the temptation of formulating international conventions. A point in case is the restraint exhibited by the Commission in its work on electronic commerce. The compilation of a legislative guide or model law could serve as a starting point to acquainting States with the legal conceptions involved in the working of any commercial/legal mechanism. The restraint advocated against premature adoption of international conventions is two folds. Firstly, even if a rudimentary legal framework is available in the domestic sphere, the divergent practices among countries may not lend itself to the criteria of uniformity required for an international convention. Secondly, a hasty move to formulate a convention could end in opening up settled issues or upset the fragile consensus evolved by State practice.

The Secretariat welcomes the progress of work achieved by the Commission on the subjects of privately financed infrastructure projects, electronic commerce and assignments in receivables financing. Given the nascent stage of work in these areas, the Secretariat would comment on specific aspects

of the Commission's work, at a future stage when the work has progressed substantially.

II United Nations Conference on Trade and Development (UNCTAD)

The United Nations Conference on Trade and Development (UNCTAD) was established in 1964 to promote international co-operation in trade and development and the economic development of developing countries. It is composed of 187 member States. Its institutional set-up comprises the Conference, the Trade and Development Board (TDB) and a number of subsidiary bodies serviced by a permanent Secretariat.

Held every four years, the Conference is the organisation's highest policy-making body. It formulates policy guidelines and decides on the programme of work. Nine Conferences have been held so far: Geneva (1964), New Delhi (1968), Santiago (1972), Nairobi (1976), Manila (1979), Belgrade (1983), Geneva (1987), Cartagena de Indias, Colombia (1992) and Midrand (1996).

It might be recalled that the Ninth session of the United Nations Conference on Trade and Development (UNCTAD IX) was held at Midrand (South Africa) in 1996. The Conference reiterated the comparative advantages of UNCTAD as a focal point for tackling trade-related development issues, viz., trade, finance, technology, investment and sustainable development. Towards this end, it was agreed that UNCTAD should continue to facilitate the integration of developing countries and countries in transition with the international trading system. Its work should be action-oriented and provide guidance on national policies, with special focus on LDCs. Outlining the priorities for UNCTAD, until the next session, the Conference decided to pay more attention in its analytical and deliberative work on the following areas:

Globalisation and development

- International trade in goods and services, and commodity issues
- Investment, enterprise development and technology
- Services infrastructure for development and trade efficiency.

In the process of restructuring and streamlining the organisation, UNCTAD-IX established the following subsidiary bodies of the Trade and Development Board: (i) the Commission on Trade in Goods and Services, and Commodities; (ii) the Commission on Investment, Technology and Related Financial Issues; and (iii) the Commission on Enterprise, Business Facilitation and Development. These Commissions adopt an integrated approach in their respective areas of competence and meet once a year, unless otherwise decided by the Board. The emphasis of UNCTAD following its Midrand Session is mostly in terms of analysing the impact of the Uruguay Round Agreements on development and working out modalities for enhancing capacities of developing countries for participation in the multilateral trading system.

II. An overview of the Work of the Commissions

This part seeks to provide an overview of the activities of the three Commissions.

A. Commission on Trade in Goods and Services, and Commodities:

It may be recalled that the second session of the Commission held in November 1997, had endorsed recommendations to the effect that three expert level meetings on the following topics be convened in 1998:

- (i) Examination of the effectiveness and usefulness for commodity dependent countries of new tools in commodity markets: risk management and collateralised finance;
- (ii) Strengthening the capacity for expanding the tourism sector in developing countries, with particular focus on tour operators, travel agencies and other suppliers; and
- (iii) Strengthening capacities in developing countries to develop their environmental services sector.

Accordingly, the *Expert Meeting to Examine the Effectiveness and Usefulness for Commodity-dependent Countries of New Tools in Commodity Markets: Risk Management and Collateralised Finance*,¹⁶ was held at Geneva from 4-6 May, 1998. The experts agreed that there was a clear link between exposure to price risk on the one hand, and lower investment and growth, and more income inequality on the other while liberalisation of the commodity sector was considered to be a positive experience, the withdrawal of the government had led to some gaps in the services provided to producers. In this respect, the Expert Meeting recognised the usefulness of commodity price risk management and warehouse receipt finance; the possibilities for structuring medium and longer-term finance around commodity collateral; importance of controls on misuse of price risk management instruments etc. While the Experts Meeting agreed on a comprehensive approach to enhance the use of commodity price risk management and collateralised finance, it stressed the need for co-ordination not only among international organisations but also with the private sector.

An *Expert Meeting on Strengthening the Capacity for Expanding the Tourism Sector in Developing Countries, with Particular Focus on Tour Operators, Travel Agencies and other*

¹⁶ TD/B/COM.1/EM.5/L.1.

Suppliers was convened from 8 to 10 June 1998 at Geneva. The experts, *inter alia* reached the following conclusions and recommendations.¹⁷

Addressed to the international community

- An International agreed definition of the tourism sector shall be universally applied. This would facilitate the acceptance of a uniform system of tourism accounting measures, thus providing a clear measurement of the role of the tourism sector in economic development and trade.
- International organisations and donor countries should increase their efforts in training and capacity building in the field of tourism in developing countries, including the effective use of computer reservation systems, global distribution systems and the Internet to maximise their earnings from tourism and to meet international standards.
- Problems of air access of developing countries, particularly the least developed countries (LDCs) should be addressed.

The Experts further recommended that UNCTAD, with the assistance of appropriate international organisations should conduct a study on the feasibility of alternative modalities for including air transport services in plurilateral or multilateral negotiations on services (including a possible revision of the GATS Annex on Air Transport Services). Given the importance of air transport services for tourism, and taking into account the provisions of Article V of the GATS Annex on Air Transport Services, the Expert Group recommended the Commission should consider convening an expert meeting on air transport services.

The third session of the Commission was held at Geneva in September 1998. Besides taking note of the recommendations by the two above said expert meetings, the

¹⁷ TD/B/COM.1/17 and TD/B/COM.1/EM.6/3.

Commission, *inter alia* adopted certain conclusions and recommendations on the following items:

- (i) Ways and means of Enhancing the Utilisation of Trade Preferences by Developing Countries, in particular LDCs, as well as Further Ways of Expanding Preferences.
- (ii) Scope of Expanding Exports of Developing Countries in Specific Services Sectors through All GATS Modes of Supply, Taking Into Account Their Interrelationship, The Role of Information Technology and of New Business Practices.¹⁸

B. Commission on Investment, Technology and Related Financial Issues:

The Second session of the Commission which met in September-October 1997 recommended the convening of expert group meeting in 1998 on the following aspects:

- (i) Examination and review of existing regional and multilateral investment agreements and their development dimensions;
- (ii) Environmental accounting;
- (iii) Competition law and policy;
- (iv) The Growth of domestic capital markets, particularly in developing countries, and its relationship with foreign portfolio investment.

The *Intergovernmental Working Group of Experts on International Standards of Accounting and Reporting*¹⁹ met at its fifteenth session from 11 to 13 February 1998. The Group, in

¹⁸ TD/B/COM.1/L.9.

¹⁹ TD/B/COM.2/10 and TD/B/COM.2/ISAR/3

its report on the meeting, states that accounting and reporting for the environment has become increasingly relevant to enterprises because, how an enterprise's environmental performance affects its financial health is of increasing concern to investors, creditors, governments and the general public. Some users of financial statements want to know the extent of a company's environmental exposure and how the company is managing its environmental costs and liabilities. In order to improve the quality of accounting and reporting for environmental costs and liabilities. Policy makers and national standard setters need to give more guidance on how the traditional financial accounting framework could be used to produce useful information on environmental transactions and performance. A technical position paper endorsed by the Intergovernmental Working Group of Experts on International Standards of Accounting and Reporting (ISAR) has been forwarded for the consideration of Governments, enterprises and other interested parties, in order to contribute to both the quality of environmental accounting and reporting and its harmonisation.

The *Experts on Existing Regional and Multilateral Investment Agreements and their Development Dimensions*²⁰ met at Geneva from 1 to 3 April 1998. The Expert Meeting reviewed regional and multilateral investment agreements and discussed the advantages and disadvantages for development of broad and narrow definitions of "investment". While agreeing that these provisions raise questions that are both difficult and complex, the Expert Meeting recognised the importance of developing a "knowledge base" concerning countries' experience with different types of definitions and recommended that the UNCTAD Secretariat should prepare an analysis of such provisions in international investment agreements. It was felt that further work could be undertaken to elucidate development dimensions that need to be taken into

²⁰ TD/B/COM.2/11 and TD/B/COM.2/EM.3/3.

consideration when formulating international investment agreements.

The *Intergovernmental Group of Experts on Competition Law and Policy*²¹ met from 29 to 31 July 1998 at Geneva. Keeping in view that the Fourth Review Conference is scheduled to be held in the year 2000, the Group invited the Secretary General of UNCTAD to prepare a preliminary assessment of the operation of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices since the Third Review Conference. It also recommended that the next meeting of the Intergovernmental Group of Experts in 1999 should focus on the following topics:

- (a) The relationship between the competition authority and relevant regulatory agencies, especially in respect of the privatisation and demonopolisation processes;
- (b) International merger controls, in particular where they have effects in developing countries; and
- (c) The creation of a culture of competition.

Besides this, the meeting would also consider a preliminary report, to be prepared by the UNCTAD Secretariat, on how competition policy addresses the exercise of intellectual property rights.

The reports of these experts group meetings were forwarded to the third session of the Commission held in September 1998.

²¹ TD/B/COM.2/CLP/L.2.

C. Commission on Enterprise, Business Facilitation and Development:

Pursuant to the recommendations of the second session of the Commission (December 1997) the following expert level meetings were held:

An *Expert Group Meeting on the Impact of Government Policy and Government/Private Action in Stimulating Inter-Firm Partnerships Regarding Technology, Production and Marketing, with particular emphasis on North-South and South-South Linkages in Promoting Technology Transfers and Trade for SME Development*²² was convened in April 1998. Inter-firm agreements cover a variety of arrangements between small, medium and large enterprises, including licensing and subcontracting relationships, technology, marketing and other forms of strategic partnering. While inter-firm co-operation is relatively widespread in developed economies, developing countries and economies in transition face certain obstacles in participating in such arrangements. The experts discussed the main conditions for successful partnering. These include the identification of the right partner, the need for a common vision, trust and strong motivation, clarity of organisational structures and a thorough preparation based on adequate information.

The discussion resulted in specific recommendations in terms of policy options and guidelines for different actions involved in the process for governments and national organisations in terms of setting the general policy framework and infrastructure, and in terms of providing direct services to SMEs at the local level; for the international community in terms of building bilateral or multilateral technical co-operation programmes fostering inter-firm co-operation.

²² TD/B/COM.3/12 and TD/B/COM.3/EM.4/3.

The *Expert Meeting on Capacity Building in the area of Electronic Commerce: Human Resource Development*²³ held from 29 June to 1 July 1998, stressed that the UNCTAD has a comparative advantage in its ability to combine an analytical and an operational approach to the issues related to electronic commerce. The experts emphasised that enhanced knowledge, experience and awareness on electronic commerce will contribute to increasing the level of interest and the quality of participation of developing countries in international discussions relevant to electronic commerce and the establishment of a framework for global electronic commerce. While recommending UNCTAD to pursue its technical co-operation activities in the area of human resource development for electronic commerce, the Expert Meeting called upon UNCTAD to:

“Organise regional seminars to raise the level of awareness of Member States about the current state of specific debates (proposals for a global framework for electronic commerce), international negotiations and discussions being held in various institutions”.

The experts welcomed the holding of Partners for Development Meeting in Lyon, France (9 to 12 January 1998) as an opportunity to building partnerships with civil society to offer proper training tools in the area of electronic commerce.

An *Expert Meeting on Clustering and Networking for SME Development*²⁴ was held in September 1998. The experts noted that ‘clustering’ is a phenomenon in industrial development and thus over time the number of firms in a given branch and location may restructure and grow. An emerging cluster attracts additional firms since inputs, machinery and qualified workers are easily available. Within a cluster of co-operative firms SMEs have more opportunity to become internationally

²³ TD/B/COM.3/13 and TD/B/COM.3/EM.6/3.

²⁴ TD/B/COM.3/14 and TD/B/COM.3/EM.5/3.

competitive and to penetrate the global market. The experts noted that such clusters are rarely found in developing countries and economics in transition.

Considering the deep economic crisis facing most African countries and taking into account the key importance of SMEs in Africa, the Expert Meeting recommended that special attention and assistance be accorded by local, national and international actors to the promotion and development of SMEs for ensuring the sustainable development of the Continent.

The reports adopted by the expert meetings stated above, were forwarded to the third session of the Commission held in November 1998. As regards the item on ‘Electronic Commerce’, the Commission endorsed the recommendation of the expert meeting and requested UNCTAD to organise regional electronic commerce workshops.²⁵ Such workshops, in the Commission’s view, should aim at stimulating exchanges of experiences among enterprises having a practical knowledge of electronic commerce.

III. Partners for Development – An UNCTAD Initiative

On the initiative of UNCTAD, a Conference on Partners for Development’s was convened at Lyons, France from 9 to 12 November 1998. The Conference which brought together the business community, governments, consumer associations, academia, intergovernmental and non-governmental organisations was aimed at achieving closer involvement of civil society and business in the work of the United Nations.

The programme was scheduled on two tracks: (i) Global Electronic Trade – UN Partnership; (ii) Profit and Development. The subjects covered under these two tracks included: global infrastructure, role of local communities in global competition, Internet for global trade, predictable legal environment for

²⁵ TD/B/COM.3/L.11.

electronic commerce, investment, micro-finance, bio-trade, commodity risk management, etc. The Conference was marked by presentations, panel discussions and conclusion of partnership agreements in the above described areas.

This initiative by UNCTAD is a pragmatic approach to multilateral support for development and constitutes a concrete step towards fulfilling the mandate on 'A Partnership for Growth and Development' as adopted at Midrand (UNCTAD-IX) in 1996. Moreover, the analytical work within the UNCTAD on aspects relating to investments, competition, electronic commerce, etc. could serve as valuable feedbacks in shaping the future course of work within the framework of the World Trade Organisation.

IV. Diplomatic Conference on Arrest of Sea-Going Ships

The Joint UNCTAD/IMO Intergovernmental Group of Experts on Maritime Liens and Mortgages and Related Subjects, had completed the preparation of the draft articles for a convention on arrest of ships at its ninth session in December 1996. The Board's recommendation to proposal to the UN General Assembly for convening a diplomatic conference to consider and adopt a convention on arrest of ships on the basis of the work done by the Joint Group, was endorsed by both UNCTAD and IMO.

The General Assembly, by its resolution 52/182 in 1997 endorsed this proposal, but did not specify the arrangements for the diplomatic conference. Consequently, the sixteenth executive session of UNCTAD's Trade and Development Board (February 1998),²⁶ approved the following arrangements for the Diplomatic Conference:

- (i) The Conference would be held in Geneva for a period of two weeks from 1 to 12 March 1999

²⁶ TD/B/EX (16)/5.

- (ii) The Conference would establish one main Committee to consider the entire substantive work of the Conference.

V. Secretariat Comments

While the work of the UNCTAD spans a wide spectrum of trade aspects that concerns developing countries, the AALCC could benefit in framework. A preliminary check-list of such issues could include: the development dimensions of investment regimes; legal and structural reforms in domestic arena to meet the emerging trends in services sector and intellectual property rights; increasing the understanding on global electronic commerce, etc.

Against this backdrop, it is suggested that the Committee may wish to consider the convening of a seminar/workshop on global electronic commerce. The past few years have witnessed a revolution in electronic interchange (FDI), electronic mail and the Internet are radically affecting the way trade transactions are being conducted. Traders from developing countries are under pressure to adopt the new trading patterns. A recent study prepared by the UNCTAD Secretariat²⁷ cautions that unless appropriate legislative measures to accommodate electronic commerce are taken, the developing countries run the risk of being excluded from participation in international trade in the future.

The Committee may wish to take note of the proposal within UNCTAD for organising regional seminars to raise the level of awareness of States about the current work on global electronic commerce (paragraphs 20 and 24). The AALCC in co-operation with UNCTAD and such other interested organisations, could seek to organise a seminar/workshop on this subject. This exercise besides promoting the understanding of the importance of global electronic commerce, may also help acquaint the AALCC Member States

²⁷ See, *Electronic Commerce: Legal Considerations*, Study prepared by the UNCTAD Secretariat, UNCTAD/SDTE/BFB/1