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Regional and International Activities

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REGIONAL AND INTERNATIONAL ACTIVITIES**

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ORGANIZATION OF AMERICAN STATES
INTER-AMERICAN JURIDICAL COMMITTEE

Draft convention on conflict of laws concerning checks

During its meeting in July-August 1977, the Inter-American Juridical Committee approved, among other documents, a draft Inter-American Convention on conflicts of laws concerning checks. The draft will be submitted to the Second Inter-American Specialized Conference on Private International Law (CIDIP-II) to be held in Uruguay in 1978.

According to this document, the capacity to enter into an obligation by means of a check shall be governed by the law of the place where the obligation was contracted. However, if such an obligation is contracted by a person who is incompetent according to local law, such obligation shall not be valid in the territory of any other State party to the Convention, even if the obligation is valid under the law of that State.

The forms of the draft, endorsement, guarantee, protest and other legal acts which may appear on a check shall be governed by the law of the place where they were contracted. If an obligation arising from a check is invalid due to a defect in form, such invalidity shall not affect other obligations arising from the same check which are validly contracted in accordance with the law of the place where they arose.

The procedures and time limits for the protest of a check or other equivalent act, for the preservation of rights against the endorsers, the drawer or other obligated parties, shall be governed by the law of the jurisdiction where the protest or other equivalent act takes place or should take place.

The law of the place in which the check is to be paid shall determine:

(a) Its nature;

(b) its modal attributes;

(c) the time of presentation;

(d) the persons against whom the check may be drawn;

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**The opinions expressed in this report are those of the author in his personal capacity -Editor.

(e) whether or not it may be drawn as payment on account, or be certified or confirmed, and the effects of these acts;

(f) the rights of the holder in regard to remittance of funds and the nature of such funds;

(g) whether or not the holder may demand or is obliged to accept partial payment;

(h) the rights of the drawer to revoke the check or oppose payment;

(i) the necessity of protest or other equivalent act for the preservation of rights against endorsers, the drawer, or other obligated parties;

(j) the measures to be taken in case of theft, larceny, forgery, loss, destruction, or the document being rendered materially useless; and

(k) in general, all the circumstances that relate to the payment of the check.

According to the draft, this Convention would be open for signature and ratification by the Member States of the OAS. It would be open for accession by any other State.

Draft convention on general standards on Private International Law

Also at its July-August 1977 meeting, the Inter-American Juridical Committee prepared a draft Inter-American Convention on general standards of Private International Law. This draft will be considered by the Committee at its next meeting in January-February 1978. The draft that the Committee will approve on this subject will be submitted to the Second Inter-American Specialized Conference on Private International Law (CIDIP-II).

The Committee's draft contains 17 articles of a substantive nature. This document deals with a variety of topics pertaining to problems of a general nature in the field of Private International Law.

The first two articles of the draft, dealing with the rights of foreigners, provide that foreigners belonging to States parties to this Convention shall receive in the territory of other party States individual guarantees identical with those of nationals, except as limited by the Constitution and the laws in each respective State. Such individual guarantees do not include, unless specially provided in the domestic legislation, the exercise of public functions, the right of suffrage and other political rights.

The question of public policy or public order is dealt with in articles 5 and 6. These provisions stipulate that the law applicable in accordance with a Convention on Private International Law may be refused application in the territory of the party State which considers it manifestly contrary to its

public policy, as expressed in its constitution. Domestic laws on expropriation and nationalization of foreign owned property are also of an imperative application. All rules of individual and collective protection must be taken to express public policy, except in case of express provisions therein enacted to the contrary. Articles 7 and 8 stipulate that rights acquired in good faith in a foreign country by virtue of juridical acts or judicial decisions shall be recognized in other party States, unless the State which is asked to recognize such act or decision claims exclusive jurisdiction in the matter, or unless such act contravenes its principles of public policy. Foreign law shall not be applied, nor shall the rights acquired in accordance with such law be recognized, when the laws of the receiving State have been fraudulently evaded.

Provisions on domicile are contained in articles 9 to 16 of the draft. The existence, status and legal capacity of natural persons are governed by the law of their domicile. No incapacity of a penal nature, nor incapacity based upon considerations of religion, race, nationality or opinion, shall be recognized. The change of domicile does not restrict the capacity acquired.

In those cases which are not especially provided for in this Convention, the civil domicile of a natural person, insofar as international juridical relations are concerned, shall be determined by the following circumstances:

1. Habitual residence in a given place with the intention to remain there;

2. in the absence of this element, habitual residence in a single place of the family group composed of the spouse and the minor or incompetent children, or that of the spouse with whom the said person lives, or in the absence of a spouse, that of the minor children with whom the person lives;

3. the place of his principal seat of business;

4. in the absence of all these circumstances, mere residence shall be deemed to constitute domicile.

No person may lack a domicile nor have two domiciles simultaneously. The domicile of persons subject to *patria potestas*, guardianship or curatorship, is that of their legal representatives, and the domicile of the latter is that of the place where they exercise such legal representation.

The domicile of married persons is the place where they live together. A woman who is legally separated or divorced retains her previous domicile as long as she does not establish another domicile. A married woman who is abandoned by her husband retains the conjugal domicile, unless it is proven that she has established her own domicile separately.

According to the final clauses of the draft, the Convention would be open for signature and ratification by the Member States of the OAS. It would also be open for accession by any other State.

Fourth Course on International Law

The Course on International Law, an activity organized by the Inter-American Juridical Committee, is held in Rió de Janeiro with the cooperation of the OAS Department of Legal Affairs, the General Secretariat's Fellowship Program and the Getulio Vargas Foundation. The Fourth Course was held from July 25 to August 19, 1977.

Twenty-nine fellowships were awarded to persons from twenty Member States through the OAS Fellowship Program. Fifteen persons were selected for course participation by the Getulio Vargas Foundation, and four were admitted by the Director of the Court. Total participation: Forty-eight. Included in these participants were diplomats and other high government officials, law professors, judges, practicing attorneys and other highly qualified individuals.

Members of the Inter-American Juridical Committee, high officials of the OAS and distinguished professors from several American countries delivered lectures and conducted seminars and round tables. The major topics were: Inter-American System, the Law of Treaties; and aspects of the Second Inter-American Specialized Conference on Private International Law. These main subjects were subdivided into several sub-topics.

The Director of the Course, Dr. Isidoro Zanotti, Deputy Director of the Department of Legal Affairs of the OAS General Secretariat, organized four working groups among the participants to consider some specific aspects of the following subjects:

(a) Law of Treaties: The contribution of America to the Law of Treaties; observance and non-retroactivity of treaties.

(b) Conclusion and entry into force of treaties in accordance with the Constitutions of some American countries; reservations to treaties.

(c) Inter-American System: American Convention on human rights; amendments to the OAS Charter; extradition.

(d) Private International Law: Study of the draft conventions that the Inter-American Juridical Committee prepared on recognition of foreign judgments and precautionary measures.

The reports of these four working groups were appended to the report on the Fourth Course prepared by the Director and published as a document of the OAS Permanent Council (CP/INF. 1195/77, October 21, 1977).

STRENGTHENING OF ECONOMIC AND COMMERCIAL INTER-AMERICAN RELATIONS

Several mechanisms in the Inter-American context can contribute to strengthening of economic and commercial relations among American countries, as well as among American countries and countries of other regions.

Specifically, the following legal instruments are of special importance:

(1) Inter-American Convention on conflict of laws concerning bills of exchange, promissory notes and invoices.

Recently, the Dominican Republic deposited with the OAS General Secretariat its instrument of ratification of this Convention, which was approved by the Inter-American Specialized Conference on Private International Law (CIDIP-I) held in Panama in January 1975.

This Convention has been ratified by, and is in force among, the following American countries: Chile, Dominican Republic, Ecuador, Guatemala, Panama, Paraguay, Perú and Uruguay. It is hoped that other American countries will ratify this Convention in the near future, as this instrument is a positive factor in the strengthening and facilitating inter-American commercial relations.

The Convention contains basic and important principles on conflict of laws. For example, it provides that the capacity to enter into an obligation by means of a bill of exchange shall be governed by the law of the place where the obligation is contracted. The form of the drawing, endorsement, guaranty, intervention, acceptance or protest of a bill of exchange shall be governed by the law of the place in which each one of those acts is performed.

All obligations arising from a bill of exchange shall be governed by the law of the place where they are contracted. For the purpose of the Convention, should a bill of exchange not specify the place in which the obligation was entered into, it shall be governed by the law of the place where the bill is payable, and should that place not be specified, by the law of the place where it is drawn.

The courts of the State party to the Convention in which the obligation is to be honored or the courts of the State party in which the defendant is domiciled, at the option of the plaintiff, shall have jurisdiction over disputes arising from the negotiation of a bill of exchange.

The provisions of this Convention are applicable to promissory notes in matters pertaining to conflict of laws and to invoices between those State parties that consider invoices to be negotiable instruments under their laws.

The Convention is open for signature and ratification by all members of the OAS. It is also open for accession by any other State.

(2) Inter-American Convention on international commercial arbitration.

This Convention was also adopted by CIDIP-I in January 1975.

Recently, Mexico signed this Convention, which has already been ratified by, and is in force among, the following American countries: Chile, Panama, Uruguay and Paraguay. It is expected that Mexico will ratify it in the near future. The United States may also ratify this Convention. The American Bar Association is in the final stages of recommending the ratification of the Convention.

The Convention provides that arbitration clauses are valid. Such a clause should be set forth in an instrument signed by the parties, or in the form of an exchange of letters, telegrams, or telex communications.

Arbitrators shall be appointed in the manner agreed upon by the parties. They may be nationals or foreigners. In the absence of an express agreement between the parties, the arbitration shall be conducted in accordance with the rules of procedure of the Inter-American Commercial Arbitration Commission.

An arbitral decision or award that is not appealable under the applicable law of procedural rules shall have the force of a final judicial judgment. Its execution or recognition may be ordered in the same manner as that of decisions handed down by ordinary national or foreign courts, in accordance with the procedural laws of the country where it is to be executed and the provisions of international treaties.

The recognition and execution of the decision may be refused at the request of the party against which it is made, only if such party is able to prove to the competent authority of the State in which recognition and execution are requested:

(a) That the parties to the agreement were subject to some incapacity under the applicable law or that the agreement is not valid under the law to which the parties have submitted it, or, if such law is not specified, under the law of the State in which the decisions was made; or

(b) that the party against which the arbitral decision has been made was not duly notified of the appointment of the arbitrator or of the arbitration procedure to be followed, or was unable, for any other reason, to present his defense; or

(c) that the decision concerned dispute not envisaged in the agreement between the parties to submit to arbitration; nevertheless, if the provisions of the decision that refer to issues submitted to arbitration can be separated

from those not submitted to arbitration, the former may be recognized and executed; or

(d) that the constitution of the arbitral tribunal or the arbitration procedure has not been carried out in accordance with the terms of the agreement signed by the parties or, in the absence of such agreement, that the constitution of the arbitral tribunal or the arbitration procedure has not been carried out in accordance with the law of the State where the arbitration took place; or

(e) that the decision is not yet binding on the parties or has been annulled or suspended by a competent authority of the State in which, or according to the law of which, the decision has been made.

Furthermore, the recognition and execution of an arbitral decision may also be refused if the competent authority of the State in which the recognition and execution is requested finds:

(i) That the subject of the dispute cannot be settled by arbitration under the law of that State, or

(ii) that the recognition or execution of the decision would be contrary to the public policy of that State.

This Convention is open for signature and ratification by all American countries which are members of the OAS, and it is also open for accession by any other country.

(3) *Other inter-American conventions*

Four other inter-American conventions were also adopted by CIDIP-I in January 1975. These are:

Inter-American convention on conflict of laws concerning checks; inter-American convention on letters rogatory; inter-American convention on the taking of evidence abroad; and the inter-American convention on the legal regime of powers of attorney to be used abroad.

The first three conventions have been ratified by, and are in force among, the following American countries: Chile, Ecuador, Panama, Perú, Paraguay and Uruguay. The last one, on powers of attorney, has been ratified by, and is in force in, the Dominican Republic as well.

Situation between Costa Rica and Nicaragua

At a special meeting of the Permanent Council of the OAS held on October 21, 1977, the Representative of Costa Rica requested that an Ad Hoc Committee of Observers of the Permanent Council be appointed to verify alleged events that had occurred in recent days in the border section of Costa Rica and Nicaragua. The Permanent Council heard the statements of

the representatives of Costa Rica, Nicaragua and other Member States of the OAS on these events.

At the same meeting, the permanent Council decided by resolution CP/RES. 223 (302/77) to form an Ad Hoc Committee to verify the events brought to the attention of the Permanent Council by the Governments of Costa Rica and Nicaragua. The Council also authorized its Chairman to designate the three member states that would make up the said Committee. Furthermore, the Council requested that the governments of Costa Rica and Nicaragua provide the guarantees and facilities necessary for the performance of the Committee's job. The Council requested that governments of the Member States and the General Secretariat cooperate in facilitating the work of the Committee.

The Chairman of the Council designated Argentina, Paraguay and the United States as forming the Ad Hoc Committee.

During the deliberations of this matter, several legal provisions were mentioned by the representatives of the member states. It was felt that the provisions to be applied in this particular situation would be articles 82 to 85 of the OAS Charter.

Article 82 provides that the Permanent Council shall keep vigilance over the maintenance of friendly relations among the Member States, and for that purpose shall effectively assist them in the peaceful settlement of their disputes, in accordance with the following provisions (articles 83 to 90). Article 83 established an Inter-American Committee on Peaceful Settlement, as a subsidiary organ of the Permanent Council.

Article 85 states that the Permanent Council, through the Inter-American Committee on Peaceful Settlement or by any other means, may ascertain the facts in the dispute, and may do so in the territory of any of the parties with the consent of the governments concerned.

In the above-mentioned situation between Costa Rica and Nicaragua, the Permanent Council decided, under the provisions of article 85 of the Charter, to apply the part of this article stating "or by any other means." The "other means" used was the appointment of an Ad Hoc Committee instead of referring the matter to the Inter-American Committee on Peaceful Settlement.

This is the first time that articles 82 to 85 of the OAS Charter are being applied.

Both the Governments of Costa Rica and Nicaragua agreed with the Permanent Council in the use of the procedure of appointing an Ad Hoc Committee to verify the events brought to the attention of the Council.

The members of the Ad Hoc Committee, with a small staff of the General Secretariat, travelled to Nicaragua and Costa Rica on October 25, 1977, to fulfill their tasks.

SPECIAL LEGAL COMMITTEE OF THE INTER-AMERICAN NUCLEAR ENERGY COMMISSION (CIEN)

Program of work

The Inter-American Nuclear Energy Commission (CIEN) is an agency of the OAS.

At its tenth meeting held in Lima in July 11 to 15, 1977, the Commission took up, *inter alia*, the work of its Special Legal Committee. During its deliberations, the Commission considered that the Committee should continue with its studies of comparative nuclear energy legislation, radiological protection and civil liability for nuclear damage. The Commission also felt that the Committee should conduct studies on other topics of special interest, in view of present developments and prospects of peaceful uses of nuclear energy.

As a result of its deliberations, the Commission entrusted the Special Legal Committee with the preparation of studies on the following topics:

(a) Topics of preferential treatment:

(1) studies on comparative nuclear energy legislation, especially of the American countries;

(2) the legal measures pertaining to radiological protection and safety in matters of nuclear energy and the transportation of radioactive materials;

(3) legal measures on physical protection in nuclear matters.

(b) other topics:

The Commission recommended that the Special Legal Committee study other topics on the legal aspects of nuclear energy, in accordance with the results of discussions at its next meeting, taking into account those problems that may require preferential attention as nuclear energy is developed. Some delegations stated that the work program of the Committee should also include the following topics:

(1) Study of measures regarding construction of nuclear installations in border zones;

(2) study of legal and institutional framework of the transfer of

technology; patent laws; capital investment systems; creation of joint ventures; and, in general, national, and regional developments in nuclear energy;

(3) establishment of a regional mechanism to finance the construction of nuclear installations; prospecting; mining and uses of nuclear minerals; as well as financial protection against nuclear damage.

On the other hand, the Commission recommended to the Special Legal Committee that it maintain and develop cooperative relations with the legal sectors of the International Atomic Energy Agency (IAEA) and the Nuclear Energy Agency of the Organization for Economic Cooperation and Development (OECD). Moreover, the Committee should maintain an exchange of information with legal sectors of the regional and subregional agencies existing in the Western Hemisphere, in particular: OPANAL (Organización para la Proscripción de Armas Nucleares en América Latina); the Board of the Cartagena Agreement (the so-called Andean Group); LAFTA (Latin American Free Trade Association); the Central American Common Market; OLADE (Organización Latinoamericana de Energía), and the Institute for Latin American Integration (INTAL).

To move ahead with its work program, the Commission recommended to the Committee to hold a meeting during the second half of 1977. At that meeting the Committee in addition to examining the papers or studies that have been prepared and distributed to the national nuclear energy commissions on some of the topics that should receive preferential attention should assign to its members the topics included in part A of the work program, so that these members may act as rapporteurs.

It was also recommended that the Committee should hold another meeting during the second half of 1978 to continue to examine the topics on its work program, prepare draft standards or norms, receive papers or reports produced by the members of the Committee and any other documentation it may deem pertinent, and give due consideration to these reports and documents.

The Commission requested its Executive Secretariat to promote the administrative procedures necessary to allocate to the Special Legal Committee the funds necessary to hold these meetings, to cover the expenses in contracting technicians for the preparation of studies and documents, and to provide for their translation and publication.

Moreover, the Commission requested that the General Secretariat of the OAS continue lending its valuable support to the Committee through its Department of Legal Affairs and the Technical Secretary of the Special Legal Committee.

The national energy commission of Venezuela has invited the Special Legal Committee to hold a meeting in Caracas at the end of November 1977. This invitation was transmitted to the Chairman of the Committee and to the other Member States of the Committee for their consideration.

The Chairman of the Committee is Dr. Carlos Alberto Dunshee de Albranches, and the Technical Secretary of the Committee is Dr. Isidoro Zanotti. Both are Brazilian jurists. The Member States of the Committee are: Argentina, Brazil, Colombia, Chile, Mexico, United States, Uruguay and Venezuela.

Guidelines for technical cooperation in the area of CIEN

During its tenth meeting held in Lima in July 1977, the Inter-American Nuclear Energy Commission (CIEN) examined several other matters, as it is stated in the Final Report of the said meeting (OEA/SER. L/IV.2.10, CIEN/doc.28 rev. 1).

One chapter of this Report deals with principles, objectives and goals in inter-American cooperation in the area of CIEN. This chapter contains the following important statements on policies:

Viewed in perspective, the field of nuclear energy in Latin America consists of activities and programs that are conducted in nuclear centers, laboratories, hospitals, universities, or industries in which radioisotopes and nuclear reactors are used to increase human potential and improve socioeconomic conditions of the region, and where the first nuclear plants to generate electricity are being planned, built and operated.

In some cases, the degree of development of the activities is still incipient, but, there are plans and programs under way that include the training of skilled personnel, utilization of natural resources, such as thorium and uranium, and learning from experience and advanced technologies.

In other cases there has been a greater degree of development, including the utilization of nuclear power plants, with a tendency to progress in improving technologies, extending their applications, and, in general, increasing human and material resources.

In this perspective, it seems feasible to establish technical cooperation with a direct exchange of information among the Latin American countries that will serve to accelerate the development of applications of nuclear energy in each country and promote joint execution of large industrial projects, whose products and benefits may be shared regionally.

Inter-American technical cooperation should be developed for the purpose of transferring experience, training specialized personnel, and exchanging information on applications of nuclear energy.

The basic principles for technical cooperation in the area of CIEN for the attainment of satisfactory results are:

(1) That the development plans and goals of the countries are freely defined to meet their own interests;

(2) That there exist an inter-American forum in which the countries may determine the terms of technical cooperation to meet their own interests;

(3) That the decisions taken in the inter-American forum are substantially implemented.

United States Copyright Act of 1976, effective January 1, 1978

Public Law 94-553 of October 19, 1976, adopted a general revision of the Copyright Law of the United States. This law which makes fundamental changes in the copyright rules, came into force on January 1, 1978.

It is an extensive and complex document and requires careful study.

According to Circular R-99 of the Copyright Office, Library of Congress, "instead of the present dual system of protecting works under the common law before they are published and under the Federal statute after publication, the new law will establish a single system of statutory protection for all copyrightable works, whether published or unpublished."

For works created after January 1, 1978, the new law provides a term lasting for the author's life, plus an additional 50 years after the author's death.

The new law continues the prohibition in the present statute against copyrighting publications of the United States Government. However, the new law explains its scope by defining works covered by the prohibition as those which are prepared by an employee of the United States Government as part of his official duties.

An innovation of the new law relates to "fair use" as a limitation on the exclusive rights of copyright owners, but certain factors should be considered in determining whether particular uses fall within this category. In addition to this provision, the new law indicates the circumstances under which the making or distribution of single copies of works by libraries for noncommercial purposes does not constitute copyright violation.

The above-mentioned circular R-99 also states that "The new law makes a number of changes in the present system providing compulsory licensing for recording of music. . . . Under the new Act, noncommercial transmissions by public broadcasters of published musical and graphic works will be subject to a compulsory license."

Copyright Royalty Tribunal

Section 801 of the new Act creates "an independent Copyright Royalty Tribunal in the legislative branch."

The purposes of the Tribunal shall be, as provided in Section 801 of the new law:

(1) To make determinations concerning the adjustment of reasonable copyright royalty rates as provided in sections 115 and 116, and to make determinations as to reasonable terms and rates of royalty payments as provided in section 118. The rates applicable under sections 115 and 116 shall be calculated to achieve the following objectives:

(a) to maximize the availability of creative works to the public;

(b) to afford the copyright owner a fair return for his creative work and the copyright user a fair income under existing economic conditions;

(c) to reflect the relative roles of the copyright owner and the copyright user in the product made available to the public with respect to relative creative contribution, technological contribution, capital investment, cost, risk, and contribution to the opening of new markets for creative expression and media for their communication;

(d) to minimize any disruptive impact on the structure of the industries involved and on generally prevailing industry practices.

(2) to make determinations concerning the adjustment of the copyright royalty rates in section 111 solely in accordance with several provisions mentioned in the Act.

This is a very important innovation and this new organ can make significant contributions in the field of copyright royalty.

As provided in Section 802 of the new Act the Tribunal shall be composed of "five commissioners" appointed by the President with the advice and consent of the Senate for a term of seven years each. Of the first five members appointed, three shall be designated to serve for seven years, and two shall be designated to serve for five years.

The author of the present report suggests that the use of the word "Tribunal" for this new organ is not adequate. First, the functions of this new body are characteristic of those of a Commission, not those of a Tribunal. Second, it is peculiar that a Tribunal would be located "in the legislative branch", as stated in Section 801 (a) of the new Act.

This raises a question concerning the separation of Powers. A Tribunal should be part of the Judiciary, and not of the Legislative or the Executive Branches. Therefore, if this new Tribunal would have real judicial functions, it should be located in the Judicial Branch of the Federal Government.

UNITED NATIONS: (UNCITRAL)

Products liability law

Products liability law is a most important matter, generating a great deal of interest in recent years.

The United Nations Commission on International Trade Law (UNCITRAL) has been concerned with this topic. The Hague Conference on Private International Law has also dealt with this matter from the point of view of conflicts of law, and adopted a Convention on the law applicable to products liability at the Conference's Twelfth Session in 1972.

At its eighth session held in 1975, UNCITRAL considered a report prepared by the U.N. Secretariat concerning liability for damage caused by products intended for or involved in international trade. UNCITRAL decided to continue its work on this matter and requested that the U.N. Secretariat prepare another report to be studied by the Commission at its tenth session.

According to the decision by UNCITRAL this report should examine the following issues:

(a) The extent to which the absence of unified rules on products liability affects international trade;

(b) the practicability and advantages of unification at a global level, as opposed to unification at a regional level;

(c) the relationship between this subject and schemes of insurance which have been or may be developed in relation thereto;

(d) the extent to which and the manner in which liability may be limited, and the possible effects of different techniques of limitation;

(e) the types of product in regard to which liability should be imposed;

(f) the classes of persons on whom liability may be imposed and the classes of persons in whose favor liability may be imposed, with particular reference to the protection of consumers;

(g) the kinds of damage for which compensation may be recoverable;

(h) the kinds of transaction falling within the scope of the proposed uniform rules;

(i) the relationship between any proposed uniform rules and standards of safety in relation to products which are mandatorily imposed in many States by national legislation.

The Commission recommended that the Secretariat should also consider the advisability of circulating a questionnaire in order to get information on statutory rules, case law and governmental positions concerning the issues involved.

The Secretariat circulated a questionnaire to Governments in March 1976. The replies received until March 1977 were published in the United Nations document A/CN.9/139.

The Report of the U.N. Secretry-General on "Liability for damage caused by products involved in international trade" was published in April 1977 (U.N. doc. A/CN.9/133). This is a very well-prepared, informative and useful document on products liability. (The information contained in this chapter is taken from this last document of the United Nations.)

In the Introduction of this Report it is stated that the consumption or use of a product sometimes leads to injury or damage, and therefore, questions arise as to whether, from whom, under what circumstances, and to what extent the victim can get compensation. It is also expressed that:

> Civil liability for damage caused by products can be considered as a conventional subject of the law and as a new legal development. Traditionally, the liability for damage caused by goods with harmful qualities has primarily been viewed in the context of the contractual relationship between the seller and the buyer. . . . The new development is characterized by an awareness of the unique features of product hazards and by particular policy considerations that suggest the treatment of products liability as an independent subject of the law. Reflecting a growing concern for consumer protection, the new approach tends to be more embracing in that it extends to persons other than immediate contractual parties and somehow eases the victim's burden of proving fault.
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> "This evolution of products liability law is stimulated by such factors as: the considerable increase in production and consumption; the appearance on the market of new and complex goods which are often made in large-scale manufacture and complicated machine processes; the handing down of ready-made consumer goods to the ultimate buyers via long distribution chains; the use of containers and packages which minimize the possibility of exer-

> cising intermediate control; and the use of advertisements inducing consumer reliance. These and other contributing factors are primarily found in industrialized countries. . . It is in the context of world trade that the diversity in the law pertaining to products liability is most troublesome and gives rise to certain problems that could be mitigated by adoption of a uniform liability scheme.

The U.N. Report is divided into four major Parts which are subdivided into several chapters, as follows. Part I: The evolution of products liability law, general policy considerations; consumer reliance on producer; risk creation and control; cost allocation and loss spreading. Part II: Basis of liability under uniform scheme; contractual promise (including warranty); negligence; strict liability. Part III: Elements and scope of uniform liability; persons incurring liability; scope of application of uniform rules; types of product covered by uniform liability scheme; persons in whose favor liability is imposed; consequential damages covered and burden of proof; maximum amounts as absolute limits; prescription period; relationship of uniform scheme to other liability rules. Part IV: Insurance aspects of products liability scheme; current coverage practices relating to products liability insurance; products liability insurance rating; insurance implications of channelling; insurance implications of basis of liability; monetary limits, prescription and defenses.

UNCITRAL concludes that in the international movement of goods, where increasingly goods produced in some countries are used or consumed in other countries, the lack of harmony in the laws dealing with products liability has resulted in uncertainty for both the consumer and the producer.

If UNCITRAL decides that there are sufficient reasons or grounds that will justify a continuation of the work on products liability, it is suggested in the Report that further work should be concentrated on the preparation of a preliminary draft set of rules of a uniform liability scheme. This draft should present alternative solutions, especially in respect of the legal basis of liability and the persons incurring liability.

On the other hand, the Report states that if UNCITRAL should conclude that work towards the preparation of uniform rules should proceed, the U.N. Secretariat suggests that such work should be guided by the following considerations:

(a) The scheme should be inspired by the general policy considerations underlying the evolution of products liability law;

(b) as to the legal basis of the scheme, for the reasons stated in the Report, the contract approach, including warranty, is not thought to constitute a suitable basis for a uniform liability scheme. The scheme should in-

stead focus, by means of alternative sets of draft rules, on the following alternatives:

(i) The traditional negligence concept under which the burden of proving fault would be on the plaintiff;

(ii) the modified negligence concept under which negligence on the part of the defendant is presumed; in other words, under which the defendant has the burden of rebutting that presumption of proving absence of fault;

(iii) the strict liability concept, based on the defective, dangerous condition of the product.

(c) as to the persons incurring liability, as it is expressed in Part III of the Report, the producers (including suppliers of competent parts and commercial distributors) could be regarded as potential defendants. However, the Report favored limiting the number of potential defendants so as to provide greater certainty as to who is liable and to avoid increasing insurance costs;

(d) the preliminary draft rules would also be concerned with such issues as the types of product covered by the scheme, the persons who could claim compensation, the interests to be protected, what damages are recoverable, defenses available to the person liable, periods of limitation, maximum amounts, the scope of the application of the uniform scheme and its relationship to other liability rules.

THE HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW

Law applicable to agency

A Convention on the law applicable to agency was adopted by The Hague Conference on Private International Law on June 16, 1977. The document was drafted by a Special Commission of The Hague Conference.

The scope of the Convention is established in Article 1, as follows: The present Convention determines the law applicable to relationships of an international character where a person, the agent, has the authority to act, acts or purports to act on behalf of another person, the principal, in dealing with a third party. It shall extend to cases where the function of the agent is to receive and communicate proposals or to conduct notifications on behalf of other persons.

Article 2 provides that the Convention shall not apply to: The capacity

of the parties; requirements as to form; agency by operation of law in family law, in matrimonial property regimes, or in the law of succession; agency by virtue of a decision of a judicial or quasi-judicial authority or subject to the direct control of such an authority; representation in connection with proceedings of a judicial character; the agency of a shipmaster acting in the exercise of his functions as such.

Article 4 states that the law specified in this Convention shall apply whether or not it is the law of a Contracting State.

The relations between principal and agent are stipulated in articles 5 to 10. They provide, among other things, that the internal law chosen by the principal and the agent shall govern the agency relationship between them. If it has not been chosen, the applicable law shall be the internal law of the State where, at the time of formation of the agency relationship, the agent has his business establishment or, if he has none, his habitual residence. The law applicable according to these provisions shall govern the formation and validity of the agency relationship, the obligations of the parties, the conditions of performance, the consequences of non-performance, and the extinction of those obligations.

The relations with third parties are specified in articles 11 to 15 of the Convention. As between the principal and the third party, the existence and extent of the agent's authority and the effects of the agent's exercise or purported exercise of his authority shall be governed by the internal law of the State in which the agent had his business establishment at the time of his relevant acts.

The general provisions are contained in articles 16 to 22. It is provided in these articles that in the application of the Convention, effect may be given to the mandatory rules of any State with which the situation has a significant connection if and in so far as, under the law of that State, those rules must be applied according to its own choice of law rules. The application of a law specified by the Convention may be refused only where such application would be manifestly incompatible with public policy or public order.

Any Contracting State, at the time of signature, ratification, acceptance, approval or accession, may reserve the right not to apply this Convention to: The agency of a bank or group of banks in the course of banking transactions; agency in matters of insurance; the acts of a public servant in the exercise of his functions as such on behalf of a private person. No other reservation shall be permitted.

Article 21 of the Convention contains a provision of a general nature which appears, with some differences in the drafting, in the OAS Conventions on Private International Law. The said article provides that if a Con-

tracting State has two or more territorial units which have their own rules of law in respect of agency, it may, at the time of signature, ratification, acceptance, approval or accession, declare that the Convention shall extend to all its territorial units or to one or more of them, and may modify its declaration by submitting another declaration at any time. In the case of the Western Hemisphere, this rule would be most convenient for Canada in accepting or acceding to conventions dealing with private International Law topics.

The Convention is open for signature by the states which were members of The Hague Conference on Private International Law at the time of its Thirteenth Session. When ratified, accepted or approved, the instruments of ratification, acceptance or approval shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands. Any other State may accede to the Convention, and the instrument of accession shall also be deposited with the same Ministry of Foreign Affairs. The Convention shall enter into force on the first day of the third calendar month after the deposit of the third instrument of ratification, acceptance, approval or accession.

CONFERENCE ON INTERNATIONAL ECONOMIC COOPERATION

Final communique on energy, raw materials and trade, development and finance.

The final meeting of the Conference on International Economic Cooperation was held in Paris on May 30 through June 2, 1977. A final communique was issued on June 3, 1977.

According to this communique, the participants in the Conference recalled their agreement that the Conference should lead to concrete proposals for an equitable and comprehensive program for international economic cooperation including agreements, decisions, commitments and recommendations.

The communique also stated that the participants were able to agree on a number of issues and measures relating to:

Energy: (1) Conclusion and recommendation on availability and supply in a commercial sense, except for purchasing power constraint; (2) recognition of the depletable nature of oil and gas; The transition from oil-based energy mix to more permanent and renewable sources of energy; (3) conservation and increased efficiency of energy utilization; (4) need to develop all forms of energy; (5) general conclusions and recommendations for national action and international cooperation in the energy field.

Raw materials and trade: (1) Establishment of a common fund with purposes, objectives and other constituent elements to be further negotiated in UNCTAD; (2) research and development and some other measures for natural products competing with synthetics. (3) measures for international cooperation in the field of marketing and distribution of raw materials. . .

Development: (1) Volume and quality of official development assistance; (2) provision by developed countries of $1 billion in special action program for individual low-income countries facing general problems of transfer of resources; (3) food and agriculture; (4) assistance to infrastructure development in developing countries with particular reference to Africa; (5) several aspects of the industrialization of developing countries; (6) industrial property, implementation of relevant UNCTAD resolutions on transfer of technology and on UN Conference on Science and Technology.

The communique indicated that the participants were not able to agree on other issues. The communique mentions sixteen such issues. Examples of issues about which no agreement was reached: Price of energy and purchasing power of energy export earnings; accumulated revenues from oil exports; purchasing power of developing countries; measures related to compensatory financing; production control and other measures concerning synthetics; investment in the field of raw materials; transnational corporations; measures against inflation; financial assets of oil exporting developing countries.