

declare the contract avoided only in respect of the part not performed or the contract as a whole under certain conditions?

147. Would it be advisable to give the purchaser the right to terminate the contract under certain conditions even before the time when the works are to be completed (e.g. if the contractor intimates he will not supply and erect the plant)?

148. Should the right of the purchaser to terminate the contract be limited to certain cases (e.g. fundamental breach of contract)?

149. Should the contractor be entitled to terminate the contract under certain conditions in case of the purchaser's failure to perform his obligation?

150. If the previous question is answered in the affirmative, should such a right of the contractor be limited to:

- (a) Fundamental breach of contract;
- (b) Failure to take over the works;
- (c) Failure to make payment to the contractor in accordance with the contract?

151. If the contractor is entitled to declare the contract avoided, should the principles applicable in respect of right of the purchaser to terminate the contract apply *mutatis mutandis* to such a right of the contractor?

152. What procedure is to be followed as to declaring the contract avoided?

153. Should the contract be terminated in some cases *ipso iure* and if so, under what conditions?

154. Would it be advisable to deal with consequences of termination of the contract?

155. If the previous question is answered in the affirmative, should such consequences be dealt with generally (e.g. to release parties from their obligations to return what has been performed) or in detail?

156. Would it be preferable to maintain the principle that termination of the contract does not affect any contractual provision for the settlement of disputes or any other provision of the contract governing the right and obligations of the parties consequent upon termination of the contract?

157. Should avoidance of the contract exclude the right to claim damages or should it affect the extent to which damages may be claimed?

XVIII. *Applicable law*

158. Should there be a provision concerning the applicable law?

159. If the previous question is answered in the affirmative and the applicable law is not chosen by the parties, should the applicable law be that:

- (a) Of the country in which plant is to be erected;
 - (b) Of the country in which the contractor has his place of business (or his habitual residence);
 - (c) Of the country in which the purchaser has his place of business (or his habitual residence);
 - (d) Of the country where the contract was concluded;
- or
- (e) Of another country?

160. If the local administrative regulations of the country in which the plant is to be erected or in which the purchaser has his place of business (or his habitual residence), are applicable, should the purchaser be obliged to inform the contractor of such rules?

161. If the previous question is answered in the affirmative, what are to be the legal consequences if the purchaser fails to perform his obligation?

162. If the contractor is obliged to comply with the applicable local administrative regulations amended after conclusion of the contract, who is to bear the higher costs?

2. NOTE BY THE SECRETARIAT: CLAUSES RELATED TO INDUSTRIAL CO-OPERATION (A/CN.9/WG.V/WP.5)*

1. The Commission, at its thirteenth session, agreed to accord priority to work related to contracts in the field of industrial development and requested the Secretary-General to carry out preparatory work in respect of contracts on the supply and construction of large industrial works and on industrial co-operation.¹

2. The Secretariat was not in a position to deal with both subjects at the same time. All the resources available were concentrated on the study related to contracts for the supply and construction of large industrial works.²

3. This was, however, not the only reason for not complying with the request of the Commission. The main difficulty for the Secretariat was the fact that it has not a single contract on industrial co-operation in its

* 7 May 1981. Referred to in Report, para. 75 (part one, A, above).

¹ Report of the United Nations Commission on International Trade Law on the work of its thirteenth session, *Official Records of the General Assembly, Thirty-fifth session, Supplement No. 17 (A/35/17)*, para. 143 (Yearbook . . . 1980, part one, II, A).

² A/CN.9/WG.V/WP.4.

possession, and could not, consequentially, analyse international contract practices in this field.

4. At the thirteenth session of the Commission it was noted that the work of the Secretariat would be facilitated if members of the Commission provided the Secretariat with copies of such contracts. By a note-verbale dated 31 October 1980 the Secretary-General solicited the Member States of the Commission to provide copies of such contracts and other relevant materials assuring to keep confidential all materials that are of a confidential nature when received. At the time of the preparation of this note no contract on industrial co-operation has been received by the Secretariat.

5. The main characteristics and contents of an industrial co-operation contract have been described already in a previous study by the Secretary-General.³ In that study as possible work to be done by UNCITRAL the following was suggested:

"139. In view of the importance of international industrial co-operation and the lack of legal rules the Commission might decide to begin work on industrial co-operation contracts. Elements to be considered could possibly include:

"Interdependence of the constituent parts of industrial co-operation complexes

"Interdependence of the mutual obligations of the parties

"Effects of non-fulfillment of parts of the contract on the matching obligations of the other party

³ A/CN.9/191, paras. 106-127 (Yearbook . . . 1980, part two, V, B).

"Plurality and change of parties to a contract

"Effects of *force majeure*

"Effects of changed circumstances

"Revision of contracts

"Termination and rescission

"Limitation of damages

"Applicable law

"Settlement of disputes.

"140. The results of the work of the Commission could take the form of model clauses for inclusion in contracts. Also conceivable would be the elaboration of general conditions on international industrial co-operation to be recommended for use by parties to such contracts."

6. As the study of the Secretary-General (A/CN.9/WG.V/WP.4 and Add.1-8)* reveals, many of the elements noted above can also be found in contracts for the supply and construction of large industrial works. The Working Group, therefore, may wish to consider to concentrate its work for the time being on examination of clauses related to contracts for the supply and construction of large industrial works, and to request the Secretariat to submit, at a future session, a preliminary study on specific features of industrial co-operation contracts when the time appears adequate in the light of progress made by the Working Group on construction contracts.

* Reproduced in this volume, part two, IV, B, 1.