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COMMITTEE FOR TRADE, INDUSTRY AND
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Working Party on International Legal
and Commercial Practice

Fifty-first session, 17-19 November 2003

REPORT OF THE FIFTY-FIRST SESSION

Highlights

The Working Party highlights the importance of good governance in Public-Private Partnerships and the need for guidelines to assist member states. It approves the terms of reference of the High Level Panel on Property Rights for the Poor. It initiates a process to review the name, mandates and terms of reference for the Working Party and it renews the mandates of its Expert Advisory Subgroups, the Real Estate Advisory Group and the IP Advisory Group. It continues to cooperate with other agencies in the implementation of its mandates. It elects a new Chairman.

The proposals contained in this report will be submitted to the CTIED for discussion and endorsement.

Introduction

1. The Working Party on International Legal and Commercial Practice held its fifty-first session in Geneva, Switzerland from 18 to 19 November 2003. The session was preceded by a Forum on “Good Governance in Public- Private Partnerships for Infrastructure Development “ on Monday 17 November 2003.
2. Representatives attended the fifty-first session from Bosnia and Herzegovina, Bulgaria, Croatia, Czech Republic, Serbia and Montenegro, France, Georgia, Germany, Hungary, Ireland, Israel, Italy, Latvia, Netherlands, Norway, Poland, Romania, Russian Federation, Slovenia, Spain, Sweden, Switzerland, Turkey, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America.
3. A representative of the European Community attended the session.
4. Representatives of South Africa participated under article 11 of the Commission’s terms of reference.
5. Representatives of the UN- Habitat, and the following specialized agencies and intergovernmental organizations were in attendance: International Telecommunications Union (ITU), World Intellectual Property Organisation (WIPO), Public Services International (PSI), World Bank (WB), European Investment Bank (EIB) and European Bank for Reconstruction and Development (EBRD).
6. Representatives attended the session from the Stability Pact, Transparency International and Eurostat.

Item 1: Adoption of agenda

Documentation: (TRADE/WP.5/2002/1). Provisional Agenda

7. The Working Party adopted its agenda.

Item 2: Election of Officers

8. Mr. Robert Hall (United Kingdom) was elected Chairman. Mr. Dorel Colodeiciuc (Romania) was re-elected Vice-Chairman. The new chairman identified some important objectives, which, in his view, of his Government, the Working Party should pursue, namely that steps must be taken to make UNECE Member States more aware of the work of the Working Party and to establish the Working Party as a recognised means of dealing with issues of concern to Member Governments. There should, he said, be a greater take up of places on the Working Party by governmental representatives. The Working Party should increase its support to its Expert Advisory Sub-Groups. The Working Party should continue to assist member states and the private sector to conduct business on the basis of good governance and the rule of law. Finally, the Working Party and its Expert Advisory Sub-Groups must pay attention to the need to cooperate with other Working Parties and organisations within the UN family and develop joint work with other international agencies in the UNECE region and avoid duplication.

Item 3: Forum on Good Governance in Public-Private Partnerships in Infrastructure Development

Documentation: TRADE /WP.5/2003/2 and TRADE/WP.5/2003/7

9. A Forum was held on 17 November 2003, attracting over 140 participants from 27 countries, from both the public and private sectors. The Executive Secretary of the UNECE, opening the Forum, argued that good governance should not be ignored in PPPs and that it was important to introduce another 'P' into PPPs, representing the 'people', as their interests needed to be protected in the design and implementation of projects. Representatives of the Government of Spain, NGOs, EIC, trade unions and a representative of Transparency International also described the importance of good governance for economic success. Speakers and participants identified five key aspects of good governance in PPPs, namely: transparency and openness in procurement, public accountability; social development as an objective of PPPs, efficient and fair resolution of disputes; and the enhancement of safety and security in the delivery of services under PPPs.

10. The participants, in view of the fact that poor governance constituted a barrier to the application of PPPs, recommended that more attention be given to the principles of good governance. They commended the secretariat for its document (TRADE/WP.5/2003/7) and recommended that these draft Guidelines be further developed. In addition, they proposed that a declaration in support of good governance in PPPs be prepared and that the Public-Private Partnership Alliance should promote this declaration and accompanying Guidelines.

11. The Working Party agreed that good governance in PPPs deserves more attention and that the guidelines on good governance should be further developed and finalised. Accordingly, it asked the secretariat to establish a task force to develop the guidelines further; to finalise these within six months and then to convene a meeting of the bureau of WP 5 to review and approve the guidelines for their eventual publication.

Item 4: Second Meeting of the UNECE PPP Alliance in cooperation with the Working Party

Documentation: TRADE/WP.5/2003/2 and TRADE/WP.5/2003/7

12. The second meeting of the PPP Alliance was jointly held with the fifty-first session of the Working Party. Representatives from over 20 countries and senior representatives of the EBRD, the EIB, and the EU participated. The meeting re-elected Mr. Eamonn Kearns, Head of the PPP Unit of Ireland and Ms. Corinne Namblard, Chairwoman of the UNECE BOT Group as co-Chairpersons of the UNECE PPP Alliance programme. Professor Wim Timmermans (Netherlands) was re-elected as Chair of the group on legal issues and Mr. Michael Dymacek (Czech Republic) was re-elected chair of the group on financing.

13. Noting the upsurge of interest in PPPs in Europe and the demand for information on PPPs, the UNECE PPP Alliance agreed that the priority of the Alliance was educating and informing the public sector, exchanging best practice, and assisting governments with establishing PPP Units and task forces. The Alliance requested the secretariat to send out the report of the meeting to other members of the Alliance, inviting them to send to the Alliance their proposals for cooperation.

14. In order to meet the requests for assistance, the participants noted that extra budgetary resources would be required and they thus requested the secretariat to send proposals to donors to raise these resources. Several delegates also suggested that the UNECE should give a higher priority to the work of the PPP Alliance. The participants noted the need to improve the legislation for PPPs and requested the secretariat to work with the PPP Alliance Working Group of legal experts in cooperation with USAID and EBRD, to develop a programme of assistance in this regard and to report back as soon as possible. The Working Party and Alliance agreed that the presentations to the Forum had been interesting and requested the secretariat to publish these as soon as possible.

Item 5: Work of the Advisory Groups (established under Working Party 5)

(a) Public-Private Partnership Alliance

Documentation: TRADE/WP.5/2003/3

15. Mission. The PPP Alliance was established in 2001, following the conclusion of the work of the Build Operate Transfer (BOT) Group (originally established in 1996 by WP.5 to develop the now-completed “Build Operate Transfer Guidelines”). The principal objective of the PPP Alliance is to promote a better understanding of PPPs amongst public and private sectors and establish a more conducive environment for PPPs, and their application in the UNECE region in accord with UN mandates for poverty alleviation and sustainable development.

16. A representative of the PPP alliance presented the report (TRADE/WP.5/20003/3) on behalf of the Chairpersons of the Alliance. Amongst the invitations that the secretariat had received from governments for support, he mentioned an invitation from the Mayor of Barcelona to hold a meeting of the PPP Alliance at their main event this year and UN-Habitat World Urban Forum. The Working Party welcomed the invitation from the Mayor of Barcelona and the cooperation with the Second World Urban Forum organised by UN-Habitat, and asked the secretariat to provide details of this event as soon as possible.

17. The secretariat informed the Working Party that after holding discussions with the representatives of UN-Habitat, a forum on the role of PPPs in urban regeneration will take place on Wednesday, 15 September 2004 in Barcelona, Spain followed the next day by the third meeting of the PPP Alliance. The Secretariat further informed the Working Party that UN Habitat has offered to provide a limited amount of funding to pay the travel of representatives from those countries, which do not have resources to send delegates, in order that they can attend the event.

(b) Real Estate Advisory Group (REAG)

Documentation: TRADE/WP.5/2003/4

18. Mission: REAG was established in 1997 as a network of representatives from the public and private sectors to promote the development of viable markets in real estate in Central and Eastern Europe and the CIS so that the benefit and value realized which results from the trading of interests in land can contribute to economic development and poverty alleviation, in accordance with UN Global Mandates and the Millennium Declaration. Its annual Forums are held in Rome with support of Tecnoborsa, an Italian NGO.

19. The chairman of REAG, Mr. Robert Hall presented the report (TRADE/WP.5/2003/4) on the activities of REAG and the results of the second Land for Development Programme (LFDP) Forum on October 30-31 2003. He mentioned that the Conference had recommended that a High-Level Panel under the chairmanship of Professor Hernando De Soto and comprising leading international experts, government and industry leaders, should be established to prepare a Report on the priorities and the implementing mechanisms for national land development policies, including addressing issues concerning the development of formal property rights systems and land rights for the poor. The intention is that the main output from the Panel will be a "Tool Kit for Policy Makers" on how governments, with partners from civil society and business, can help in this process. The chairman of REAG also reported on the invitations it has received from Ministries of the Russian Federal Government to cooperate in establishing programmes to help the Russian Government achieve the policy directives with respect to house building and the migration of workers.

20. The representative of UN-Habitat declared the full support of her organization for the High Level Panel and committed to assisting the UNECE in achieving its important goals. The UNECE secretariat informed the Working Party that offers of support for the Panel had been received from Norway, Canada and the UK.

21. The Working Party, having considered the matter carefully and in view of the evident importance of the issue accorded to it by the Italian Government, Mr Hernando De Soto and the attendees at the Second Rome Forum (30 and 31 October 2003), and mindful that the activity would depend on the raising of extra-budgetary resources, agreed that the High-Level Panel under Professor De Soto be established, REAG being urged to make early progress in putting the appropriate arrangements in hand. It further agreed that the Panel should be supported on an inter-agency and cross-sectoral basis, bearing in mind the potential for the work of the Panel to have relevance to developing countries around the World. It recommended that cooperation should be continued with the Working Party on Land Administration. (The procedures for constituting the Panel are listed as an annex to this report).

22. The Working Party asked the secretariat to contact donors and supporters, including UN-Habitat which has done important work in this area, to raise the necessary resources to achieve the goals of the Panel. In accordance with the procedural requirements of UNECE, it agreed that the mandate of REAG be renewed for a further two years.

(c) Advisory Group on the Protection and Implementation of Intellectual Property Rights for Investment

Documentation: TRADE/WP.5/2003/5

23. Mission: The Group was established in 1998 to promote a greater understanding of IP issues in transition economies, and to help establish a legal and commercial environment across Central and Eastern Europe and the CIS in which IP rights will be respected and remedies against breaches of IP rights will be enforced. The IP Group is funded substantially by western companies with an interest in encouraging Central and Eastern Europe to recognise the importance of IP rights and the benefit to an economy, which can accrue from preventing piracy and fraud in this area. The US Patent and Trademark Office has also provided valuable substantive support.

24. A representative of the Group on behalf of its co-Chairmen reported on the progress of the IPR Group in meeting its objectives in improving enforcement and access of IPR rights in transition economies as a result of recent activities in Kyrgyzstan, Ukraine, the Russian Federation and others countries. He informed the Working Party that in order to address the new challenge of piracy on the Internet, the IP Group will hold a conference in Warsaw in April 1-2 2004 on Intellectual Property Exploitation in the Internet Era, to be hosted by the Polish Ministry of Culture. The conference will be attended by government and private sector representatives from central and Eastern European countries that are joining the European Union.

25. The secretariat informed the Working Party that the UNECE has received a number of letters of appreciation on the quality of meetings in several countries, including a letter from the World Intellectual Property Organization. The secretariat further informed the Working Party that it has received confirmation from the UK Patent Office that it will provide support for the Advisory Group.

26. The Working Party agreed that the work of the IP Group continued to make a valuable contribution as a public-private sector partnership in the field of IP rights. The country focus of the work of the Group was a practical and effective way of providing advice and assistance. Cooperation with other organisations and national patent offices was useful and should be further encouraged. In accordance with procedural requirements of UNECE, the Working Party agreed to extend the mandate of the IP Group for a further 2 years.

(d) Expert Advisory Group to consider Possible Revisions to the European Convention on International Commercial Arbitration of 1961

27. Mission: The Expert Advisory Group was established to identify the possible revisions to the 1961 Convention on International commercial Arbitration.

28. A representative of the UNECE secretariat on behalf of Mr William Pissoort, chairman of the Advisory Group presented the progress of the Group in revising the Convention and informed the WP 5 that a meeting would be held in Moscow with a view to finalising the recommendations for revising the Convention. The Working party took note of the report provided by the UNECE secretariat, with respect to steps being taken concerning revisions to the 1961 Convention.

Item 6: Programme of work

Documentation: TRADE/WP.5/2003/9

29. The Working Party reaffirmed the key part which it should play in relation to issues concerning legal and commercial practice within the context of UNECE's role in international trade (the facilitation and strengthening of the integration of UNECE Member States, and especially countries in transition, into the European and global economy, and the prevention of the establishment of new barriers to trade within the Region). It identified WP.5's primary role as to promote reform and capacity building in new legal, institutional and regulatory frameworks in the transition economies. In this regard it reconfirmed its work in preparing guidelines on best practice and undertaking technical assistance programmes to assist countries in implementing these guidelines. Since 1989/1990, WP.5 has accordingly evolved its activities from purely producing standards and recommendations on international trade, to establishing Expert Advisory Groups (involving substantial participation of the private sector) which provide advice and tailored recommendations for action to Member Governments which request such support.

30. The Working Party adopted its draft Programme of Work for the period 2003/4. It agreed that it is necessary to be mindful of the substantial changes taking place in the UNECE Region, including the impact of EU enlargement, which would require new adjustments and closer cooperation between the EU and UNECE. For the purpose of ensuring that its work programme and existing arrangements are up to date and organised to respond to change effectively, it asked the secretariat to convene a task force to review the name, mandate and its terms of reference, to consider what revisions may be necessary and to report back to the next session of WP.5.

Item 7: Cooperation with other UNECE bodies and international organisations

31. The secretariat informed the Working Party of cooperation with the OSCE in the elaboration of its New Strategy Document in the economic and environmental dimension. The representative of UNIDIR presented a proposal on preparing instruments for promoting public private cooperation in the field of conflict prevention. A representative of Confindustria (Italy) outlined some preliminary ideas for a seminar to be hosted in Rome on the role of the private sector in meeting new security challenges. The representative of Turkey while appreciating the valuable work of the Working Party reminded the delegates that some members of the UNECE were reluctant to see UNECE take on an active role in security matters. The Working Party agreed to take this view into consideration.

32. The Working Party took no decision for the time being on these proposals. It asked the secretariat to keep it informed about the decisions on cooperation between the OSCE and the UNECE that would be discussed at the UNECE's forthcoming annual session and to record in the report that the Working Party will fully comply with the decision of the CTIED (May 2002) that it should NOT establish any new group on security and conflict prevention issues with the OSCE or any other body.

Item 8: Other business

(a) Future topics

33. The Working Party agreed that the topic for its next Forum and Guide will be on new approaches to resolving commercial disputes and improving the judicial processes, especially for those with few resources and with limited access to legal services. It further agreed that such an initiative should be carried out in cooperation with UNCITRAL and other international experts and organisations.

(b) Date for next meeting

34. It was agreed that the next session of WP.5 will place at UNCITRAL, in Vienna.

(c) Sincere tribute

35. The Working Party paid tribute to Mr David Winter who had been the chairman of WP 5 over many years. It unanimously requested the secretariat to send a letter to David Winter appointing him as a Special Adviser to WP.5 in recognition of his outstanding contribution to its work.

Item 9: Adoption of the report

36. The Working Party adopted the report of its fifty-first session, subject to approval of the final text by the Chairman.

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ANNEX

A High Level Panel on Property Rights for the Poor

The WP.5 having agreed the terms of reference of the High level Panel on Property Rights for the Poor and with the approval of Mr. De Soto, recommended the following as a means of proceeding:

1. A time-table for the work of the Panel should be set, for which some suggestions are:
 - (i) The Final report from the Panel should be delivered by not later than December 2005
 - (ii) The first meeting of the Panel should be held not later than June 2004, at which directions/requests of work for the Sub-Groups (see below) should be specified
 - (iii) The second meeting of the Panel should be held to coincide with the intended Third UNECE REAG Land for Development Rome Forum (anticipated to be held in November 2004), or ensure that a full progress report is made to that meeting.
2. It is suggested that Mrs. Brigita Schmögnerová, Executive Secretary, UNECE, and Mr. Hernando De Soto be requested to be responsible for the appointment of the Panel on the basis of discussions with the Chairman of REAG.
3. The UNECE Secretariat should finalise the proposal to be submitted to Donors seeking the extra-budgetary funding which will be required to achieve the objectives of the Panel, and thereafter submit it to potential donors to obtain funding. Such funding, when received, shall be held by and administered by the UNECE. The Support from bilateral donors as well as other UN bodies such as UN Habitat will be critical for the success of this project.
4. The Chairman of REAG, in consultation with the UNECE Secretariat, should, as soon as possible, organise the establishment of five Sub-Groups comprising representatives drawn from sectors (i) the Governments of countries which may benefit from the findings of the Panel, (ii) NGO's, (iii) Professional Bodies, (iv) Donors, and (v) legal and organizational matters. The Sub-Groups will act in accordance with the arrangements to be developed in the discretion of the Chairman of REAG in consultation with the UNECE Secretariat, including (but not limited to) providing relevant evidence and information to the Panel in connection with the Panel's objectives, and, as appropriate, reviewing and commenting on the draft proposals to be put to the Panel for consideration.
5. Make appropriate secretariat arrangements to enable the needs of the Panel to be adequately serviced by the raising of extra-budgetary resources, and ensure that appropriately frequent information is disseminated to all interested parties with respect to the establishment and working of the Panel.

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