B. Uniform Rules for Contract Bonds (URCB): Report of the Secretary-General

(A/CN.9/478) [Original: English]

1. At its thirty-second session in 1999, the Commission considered, on the basis of a report of the Secretary-General,[1] a request by the Secretary-General of the International Chamber of Commerce (ICC) to endorse the Uniform Rules for Contract Bonds (URCB) (letter of request of 27 April 1999 is reproduced in annex I). However, owing to the fact that late publication of that report had prevented some delegations from carrying out consultations, the Commission felt obliged to postpone consideration of endorsement until the thirty-third session in 2000.

2. The original text of the URCB in English, which has been issued by the ICC as publication no. 524, is reproduced in annex III. Translations into French and Spanish, prepared by the ICC, are reproduced in annex III to the respective language versions of this document. Translations into Bulgarian, Finnish, Icelandic, Korean, Italian, Japanese and Portuguese have also been prepared and published by the ICC.

3. With regard to the reasons that led to the preparation of the URCB, the Foreword to the URCB states:

> "Due to a need in the insurance industry for a uniform set of rules applicable internationally to contract bonds creating obligations of an accessory nature, the ICC Commission of Insurance undertook to elaborate the ICC Uniform Rules for Contract Bonds."

4. For further background information on the URCB, the introduction and general remarks from the ICC publication are set out in annex II.

[1]A/CN.9/459/Add.1. The present note largely reproduces A/CN.9/459/Add.1, since at the thirty-second session of the Commission only the English and the French versions of URCB were available.

ANNEX I

Letter of Ms. Maria Livanos Cattaui, Secretary-General of the International Chamber of Commerce

As you may be aware, several years ago ICC published a set of Uniform Rules for Contract Bonds (URCB). I write to ask that UNCITRAL give its formal recognition and endorsement to these rules. ICC is seeking similar endorsements from the World Bank, EU and Inter-American Development Bank.

The URCB deal with Conditional Guarantees, so-called accessory bonds, which relate directly to the underlying contract that is being guaranteed for performance purposes.

Today, the URCB exist in several languages (including English, Spanish, French, Italian, Icelandic, Japanese, Chinese and Korean). The Government of Japan, the International Federation of Consulting Engineers (FIDIC), the Institution of Electrical Engineers (IEE), the International Credit Insurance Association (ICIA), the Association of International French Contractors (SEFI), and the Panamerican Surety Association (PASA), among others, have adopted the URCB as a recommended standard for bonds issued by their members.

The use of URCB as a global framework for bonds will provide the desired uniformity in the domain of security forms, and thus help to promote international trade. We firmly believe that this new model form will be of benefit to the entire business community. Its recognition by public institutions will assist private contracting and facilitate the export and freedom of contracting worldwide.

ANNEX II

ICC UNIFORM RULES FOR CONTRACT BONDS

INTRODUCTION

These Uniform Rules have been drawn up by an ICC Working Party of members representing the Commission on Insurance and the building and engineering industry for worldwide application in relation to Contract Bonds, being those bonds creating obligations of an accessory nature, where the liability of the Surety or Guarantor arises and is conditional upon an established default on the part of a Contractor (defined in these Rules as the Principal) under the Contract which is the subject matter of the relevant Bond. The Rules set out below will therefore apply where the intention of the parties is that the obligations of the Guarantor will depend upon the duties or liabilities of the Principal under the relevant Contract.

Bonds governed by the ICC Rules set out below are intended to operate so as to confer upon the Beneficiary in each instance security for the performance or execution of contract obligations or payment of any sums which may fall due to the Beneficiary as a result of any breach of obligation or default by the Principal under the Contract. The Bond is intended to ensure that, subject to its financial limits, either the obligations set out in the Contract will be performed or executed, or that upon default, the Beneficiary will recover any sum properly due notwithstanding the insolvency of the Principal or the Principal's failure for any other reason to satisfy or discharge its liability. Accordingly, where a Bond governed by these Rules is in force, the Beneficiary will have the additional assurance of the Guarantor's accessory obligations to ensure that the judgement or award of any competent court or arbitral tribunal is satisfied.

The relationship of the parties under a Bond governed by these Rules number 524 differs from that arising under the ICC Uniform Rules for Demand Guarantees number 458 (the Demand Rules). Where the intention is that the Beneficiary is to obtain security for the obligations of the Principal arising pursuant to the Contract but that the Guarantor's liability shall only arise in case of an established default under that Contract, these Rules should be selected.

General

These Rules are intended to provide a clear and concise scheme to regulate the nature of obligations arising under Bonds and claims procedure. Because the nature of a Bond regulated by these Rules is that the obligations of the parties are related directly to and depend upon the obligations of the parties arising under the Contract, the Rules do not contain detailed provisions dealing with documentary requirements or the problem of unfair calling. In the event of a dispute arising as to the liability of a Guarantor, the Rules contemplate that such dispute will be determined by reference to the Contract. The Guarantor and the Principal are protected in that liability will arise only where default is established. The Beneficiary is protected by the assurance that any judgement or award will be discharged by the Guarantor if the Principal fails to do so.

The Uniform Rules for Contract Bonds number 524 set out below shall apply where expressly incorporated by the parties in accordance with their detailed provisions. These new Rules depend for their success upon their use by the international business community. The ICC recommends the use of these new Rules which will help to secure uniformity of practice in the operation and enforcement of Bonds.

ANNEX III

ICC UNIFORM RULES FOR CONTRACT BONDS

Issued as ICC publication No. 524,
adopted by the ICC Executive Board on 23 April 1993,
come into effect on 1 January 1994

CONTENTS

Article 1

Scope and application

(a) These Rules shall be known as the "Uniform Rules for Contract Bonds" and shall apply to any Bond which states that these Rules shall apply, or otherwise incorporates these Rules by reference and, for such purposes, it shall suffice that the Bond incorporates a reference to these Rules and the publication number.

(b) If there shall be any conflict in the construction or operation of the obligations of any parties under a Bond between the provisions of these Rules and such Bond, or mandatory provisions of the Applicable Law regulating the same, the provisions of the Bond or, as the case may be, the mandatory provisions of the Applicable Law shall prevail.

Article 2

Definitions

In these Rules, words or expressions shall bear the meanings set out below and be construed accordingly

Advance Payment Bond

A Bond given by the Guarantor in favour of the Beneficiary to secure the repayment of any sum or sums advanced by the Beneficiary to the Principal under or for the purposes of the Contract, where such sum or sums is or are advanced before the carrying out of works, the performance of services or the supply or provision of any goods pursuant to such Contract.

Beneficiary

The party in whose favour a Bond is issued or provided.

Bond

Any bond, guarantee or other instrument in writing issued or executed by the Guarantor in favour of the Beneficiary pursuant to which the Guarantor undertakes on Default, either:

(i) to pay or satisfy any claim or entitlement to payment of damages, compensation or other financial relief up to the Bond Amount; or

(ii) to pay or satisfy such claim or entitlement up to the Bond Amount or at the Guarantor's option to perform or execute the Contract or any Contractual Obligation.

In either case where the liability of the Guarantor shall be accessory to the liability of the Principal under the Contract or such Contractual Obligation and such expression shall without limitation include Advance Payment Bonds, Maintenance Bonds, Performance Bonds, Retention Bonds and Tender Bonds.

Bond Amount

The sum inserted in the Bond as the maximum aggregate liability of the Guarantor as amended, varied or reduced from time to time or, following the payment of any amount in satisfaction or partial satisfaction of a claim under any Bond, such lesser sum as shall be calculated by deducting from the sum inserted in the Bond the amount of any such payment.

Contract

Any written agreement between the Principal and the Beneficiary for the carrying out of works, the performance of services or the supply or provision of any goods.

Contractual Obligation

Any duty, obligation or requirement imposed by a clause, paragraph, section, term, condition, provision or stipulation contained in or forming part of a Contract or tender.

Default

Any breach, default or failure to perform any Contractual Obligation which shall give rise to a claim for performance, damages, compensation or other financial remedy by the Beneficiary and which is established pursuant to paragraph *j* of Article 7.

Expiry Date

Either *(a)* the date fixed or the date of the event on which the obligations of the Guarantor under the Bond are expressed to expire or *(b)* if no such date is stipulated, the date determined in accordance with Article 4.

Guarantor

Any Person who shall issue or execute a Bond on behalf of a Principal.

Maintenance Bond

A Bond to secure Contractual Obligations relating to the maintenance of works or goods following the physical completion or the provision thereof, pursuant to a Contract.

Performance Bond

A Bond to secure the performance of any Contract or Contractual Obligation.

Person

Any company, corporation, firm, association, body, individual or any legal entity whatsoever.

Principal

Any Person who (i) either *(a)* submits a tender for the purpose of entering into a Contract with the Beneficiary or *(b)* enters into a Contract with the Beneficiary and (ii) assumes primary liability for all Contractual Obligations thereunder.

Retention Bond

A Bond to secure the payment of any sum or sums paid or released to the Principal by the Beneficiary before the date for payment or release thereof contained in the Contract.

Tender Bond

A Bond in respect of a tender to secure the payment of any loss or damage suffered or incurred by the Beneficiary arising out of the failure by the Principal to enter into a Contract or provide a Performance Bond or other Bond pursuant to such tender.

Writing and Written

Shall include any authenticated tele-transmissions or tested electronic data interchange (“EDI”) message equivalent thereto.

Article 3

Form of bond and liability of the guarantor to the beneficiary

(a) The Bond should stipulate:

(i) The Principal.

(ii) The Beneficiary.

(iii) The Guarantor.

(iv) The Contract.

(v) Where the Bond does not extend to the whole of the Contract, the precise Contractual Obligation or Obligations to which the Bond relates.

(vi) The Bond Amount.

(vii) Any provisions for the reduction of the Bond Amount.

(viii) The date when the Bond becomes effective (defined in these rules as the “Effective Date”).

(ix) Whether the Guarantor shall be entitled at its option to perform or execute the Contract or any Contractual Obligation.

(x) The Expiry Date.

(xi) The names, addresses, telex and/or telefax numbers and contact references of the Beneficiary, the Guarantor and the Principal.

(xii) Whether sub-paragraph i of Article 7*(j)* is to apply and the name of the third party to be nominated thereunder for the purpose of Article 7 below (claims procedure).

(xiii) How disputes or differences between the Beneficiary, the Principal and the Guarantor in relation to the Bond are to be settled.

(b) The liability of the Guarantor to the Beneficiary under the Bond is accessory to the liability of the Principal to the Beneficiary under the Contract and shall arise upon Default. The Contract is deemed to be incorporated into and form part of the Bond. The liability of the Guarantor shall not exceed the Bond Amount.

(c) Save for any reduction of the Bond Amount under the terms of the Bond or the Contract and subject to Article 4, the liability of the Guarantor shall not be reduced or discharged by reason of any partial performance of the Contract or any Contractual Obligation.

(d) All defences, remedies, cross claims, counter-claims and other rights or entitlements to relief which the Principal may have against the Beneficiary under the Contract, or which may otherwise be available to the Principal in respect of the subject matter thereof, shall be available to the Guarantor in respect of any Default in addition to and without limiting any defence under or arising out of the Bond.

Article 4

Release and discharge of guarantor

(a) Subject to any contrary provision in the Bond and the provisions of paragraph *(b)* of this Article 4, the Expiry Date shall be six months from the latest date for the performance of the Contract or the relevant Contractual Obligations thereunder, as the case may be.

(b) Subject to any contrary provision of the Bond, the Expiry Date for the purposes of an Advance Payment Bond, a Maintenance Bond, a Retention Bond and a Tender Bond shall be as follows:

(i) In the case of an Advance Payment Bond, the date on which the Principal shall have carried out works, supplied goods or services or otherwise performed Contractual Obligations having a value as certified or otherwise determined pursuant to the Contract equal to or exceeding the Bond Amount.

(ii) In the case of a Maintenance Bond, six months after either the date stipulated by the Contract or, if no date has been specified for the termination of the Principal's maintenance obligations, the last day of the applicable warranty period or defects liability period under the Contract.

(iii) In the case of a Retention Bond, six months after the date stipulated by the Contract for the payment, repayment or release of any retention monies.

(iv) In the case of a Tender Bond, six months after the latest date set out in the tender documents or conditions for the submission of tenders.

(c) Where the Expiry Date falls on a day which is not a Business Day, the Expiry Date shall be the first following Business Day. For the purpose of these Rules "Business Day" shall mean any day on which the offices of the Guarantor shall ordinarily be open for business.

(d) A Bond shall terminate and, without prejudice to any term, provision, agreement or stipulation of the Bond, any other agreement or the Applicable Law providing for earlier release or discharge, the liability of the Guarantor shall be discharged absolutely and the Guarantor shall be released upon the Expiry Date whether or not the Bond shall be returned to the Guarantor, save in respect of any claim served in accordance with Article 7.

(e) Notwithstanding the provisions of paragraph *(d)* of this Article 4, the Bond may be cancelled at any time by the return of the Bond itself to the Guarantor or by the service upon and delivery or transmission to the Guarantor of a release in writing duly signed by an authorized representative of the Beneficiary, whether or not accompanied by the Bond and/or any amendment or amendments thereto.

(f) The Guarantor shall promptly inform the Principal of any payment made under or pursuant to the Bond and of the cancellation, release or discharge thereof or any reduction in the Bond Amount where the same shall not already have been communicated.

Article 5

Return of the bond

The Bond shall immediately after release or discharge under these Rules be returned to the Guarantor, and the retention or possession of the Bond following such release or discharge shall not of itself operate to confer any right or entitlement thereunder upon the Beneficiary.

Article 6

Amendments and variations to and of the contract and the bond and extensions of time

(a) The Bond shall, subject to the Bond Amount and the Expiry Date, apply to the Contract as amended or varied by the Principal and the Beneficiary from time to time.

(b) A Tender Bond shall be valid only in respect of the works and contract particulars set out or described in the tender documents at the Effective Date, and shall not apply beyond the Expiry Date or in any case where there shall be any substantial or material variation of or amendment to the original tender after the Effective Date, unless the Guarantor shall confirm, in the same manner as set out in paragraph c of this Article 6, that the Tender Bond so applies or the Expiry Date has been extended.

(c) Any amendment to a Bond, including without limitation the increase of the Bond Amount or the alteration of the Expiry Date, shall be in writing duly signed or executed by authorized representatives of each of the Beneficiary, the Principal and the Guarantor.

Article 7

Submission of claims and claims procedure

(a) A claim under a Bond shall be in writing and shall be served upon the Guarantor on or before the Expiry Date and by no later than the close of the Business Day at the Guarantor's principal place of business set out in the Bond, on the Expiry Date.

(b) A claim submitted by authenticated tele-transmission, EDI, telex or other means of telefax facsimile or electronic transmission shall be deemed to be received on the arrival of such transmission.

(c) A claim delivered to the Guarantor's principal place of business set out in the Bond shall, subject to proof of delivery, be deemed to be served on the date of such delivery.

(d) A claim served or transmitted by post shall, subject to satisfactory proof of delivery by the Beneficiary, be deemed to be served upon actual receipt thereof by the Guarantor.

(e) The Beneficiary shall, when giving notice of any claim by telefax or other tele-transmission or EDI, also send a copy of such claim by post.

(f) Any claim shall state brief details of the Contract to identify the same, state that there has been a breach or default and set out the circumstances of such breach or default and any request for payment, performance or execution.

(g) Upon receipt of a claim from the Beneficiary, the Guarantor shall send notice in writing to the Principal of such claim as soon as reasonably practicable and before either *(a)* making any payment in satisfaction or partial satisfaction of the same or *(b)* performing the Contract or any part thereof pursuant to a Contractual Obligation.

(h) The Beneficiary shall, upon written request by the Guarantor, supply to the Guarantor such further information as the Guarantor may reasonably request to enable it to consider the claim, and shall provide copies of any correspondence or other documents relating to the Contract or the performance of any Contractual Obligations and allow the Guarantor, its employees, agents or representatives to inspect any works, goods or services carried out or supplied by the Principal.

(i) A claim shall not be honoured unless

(i) A Default has occurred; and

(ii) The claim has been made and served in accordance with the provisions of paragraphs *(a)* to *(f)* of Article 7 on or before the Expiry Date.

(j) Notwithstanding any dispute or difference between the Principal and the Beneficiary in relation to the performance of the Contract or any Contractual Obligation, a Default shall be deemed to be established for the purposes of these Rules:

(i) upon issue of a certificate of Default by a third party (who may without limitation be an independent architect or engineer or a Pre-Arbitral referee of the ICC) if the Bond so provides and the service of such certificate or a certified copy thereof upon the Guarantor, or

(ii) if the Bond does not provide for the issue of a certificate by a third party, upon the issue of a certificate of Default by the Guarantor, or

(iii) by the final judgement, order or award of a court or tribunal of competent jurisdiction, and the issue of a certificate of Default under paragraph (i) or (ii) shall not restrict the rights of the parties to seek or require the determination of any dispute or difference arising under the Contract or the Bond or the review of any certificate of Default or payment made pursuant thereto by a court or tribunal of competent jurisdiction.

(k) A copy of any certificate of Default issued under *(j)* (i) or (ii) shall be given by the Guarantor to the Principal and the Beneficiary forthwith.

(l) The Guarantor shall consider any claim expeditiously and, if such claim is rejected, shall immediately give notice thereof to the Beneficiary by authenticated tele-transmission or other telefax, facsimile transmission, telex, cable or EDI, confirming the same by letter, setting out the grounds for such refusal including any defences or other matters raised under paragraph *(d)* of Article 3.

Article 8

Jurisdiction and settlement of disputes

(a) The Applicable Law shall be the law of the country selected by the parties to govern the operation of the Bond and, in the absence of any express choice of law, shall be the law governing the Contract and any dispute or difference arising under these Rules in relation to a Bond shall be determined in accordance with the Applicable Law.

(b) All disputes arising between the Beneficiary, the Principal and the Guarantor or any of them in relation to a Bond governed by these Rules shall, unless otherwise agreed, be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules.

(c) If the Bond shall exclude the operation of the arbitration provisions of this Article 8, any dispute between the parties to the Bond shall be determined by the courts of the country nominated in the Bond, or, if there is no such nomination, the competent court of the Guarantor's principal place of business or, at the option of the Beneficiary, the competent court of the country in which the branch of the Guarantor which issued the Bond is situated.

C. ICC INCOTERMS 2000: Report of the Secretary-General (A/CN.9/479) [Original: English]

1. By letter of 28 February 2000 (reproduced in annex I), the Secretary-General of the International Chamber of Commerce (ICC) requested the Commission to consider endorsing Incoterms 2000 for worldwide use. This report gives the background to the previous actions of the Commission in respect of Incoterms 1953 and Incoterms 1990 and a short summary of the reasons for the preparation of the current revision. The original English text of Incoterms 2000 is reproduced in annex II to this document. Translations into Arabic, Chinese, French, Spanish or Russian are reproduced in annex II to the respective language versions of this document.

2. At the Commission's first session in 1968, in deciding on its programme of work, the Commission identified Incoterms 1953 as an international instrument of special importance with regard to the harmonization and unification of the law of the international sale of goods.[1] At its second session in 1969, with a view to encouraging the worldwide use of Incoterms 1953, the Commission, requested the Secretary-General to inform the ICC that Incoterms 1953 should be given the widest possible dissemination and to bring the views of the Commission to the attention of the United Nations regional economic commissions.[2]

3. Amendments to Incoterms were made and additional terms were added in 1976 and 1980. However, those changes in Incoterms were not officially brought to the attention of the Commission and the Commission took no action leading towards endorsing the revision. By the late 1980s ICC decided to completely revise Incoterms 1953 in order to adapt them to contemporary commercial practice. Incoterms 1990 was adopted by the ICC with a date of entry into force on 1 July 1990 and became available as ICC publication no. 460.

4. At its twenty-fifth session in 1992, the Commission considered a request of the Acting Secretary-General of the ICC to endorse Incoterms 1990 for worldwide use. At that session, the Commission was agreed that Incoterms 1990 succeeded in providing a modern set of international rules for the interpretation of the most commonly used trade terms in international trade and took the following decision endorsing Incoterms 1990:

> "The United Nations Commission on International Trade Law,
>
> "Expressing its appreciation to the International Chamber of Commerce for having transmitted to it the revised text of Incoterms, which was approved by the Commercial Practices Commission of the International Chamber of Commerce and entered into force on 1 July 1990, and for requesting the Commission to consider endorsing Incoterms 1990 for worldwide use,
>
> "Congratulating the International Chamber of Commerce on having made a further contribution to the facilitation of international trade by revising Incoterms to take

[1]Report of the United Nations Commission on International Trade Law on the work of its first session, *Official Records of the General Assembly, Twenty-third Session, Supplement No. 16* (A/7216), para. 48.

[2]Report of the United Nations Commission on International Trade Law on the work of its second session, *Official Records of the General Assembly, Twenty-fourth Session, Supplement No. 16* (A/7218), para. 60.