CHAPTER 2
RECITALS IN INTERNATIONAL CONTRACTS

I. INTRODUCTION

A large number of contracts, particularly those dealing with international trade, begin with so-called “recitals.” The parties to such contracts use recitals to set out a series of statements that they regard as useful before approaching the body of the contract. Often, the parties introduce themselves and state their respective qualifications. They describe the purposes of their contract and the circumstances that have brought about their collaboration. The history of their negotiations is sometimes given. Recitals record a wide variety of statements and acknowledgements. A transitional formula then leads to the contract itself.

Here is a first example:

“M. is specialised in international Project Managership and contracting in the Turnkey Engineering field and wishes to further expand its activities by means of association with P. to enable both Companies to benefit from the possible introduction of the . . . Filter to the . . . Mining and Metallurgical Industries.

“With this purpose in mind, M. has approached P.

“The P. Group is active in the international engineering design and contracting industry, particularly those concerning plants of a Metallurgical nature and incorporating applications of the . . . Filter.

“Therefore, it would appear that the above-mentioned Groups have a common interest of forming a joint venture in order to promote the P. Filter application in . . .

“Therefore, the following has been agreed upon: . . .”

Although recitals occur widely, their legal implications appear to have been given little attention until now.¹

¹ Subject to what will be said infra, p. 86 regarding English law, another extensive study can be referred to: F.W. Grosheide, De considerans in internationale commerciële contracten, in Molengrafica, Eenvorming en vergelijkend privaatrecht, Lelystad, Vermande, 1991, pp. 295–324. There are however some references to recitals in certain works for
The classical theory of contracts says nothing whatever about recitals. Should this silence be taken to mean that recitals have no legal implications? This would indeed be surprising if one bears in mind the growth since the 19th century in legal literature on the legal status of contract negotiations and the various legal effects that have come to be attributed to them. In the preceding chapter, a variety of situations giving rise to legal implications was discovered concerning letters of intent.\(^2\) In the case of recitals, one reaches the threshold of the contract. There has been a meeting of minds and it is in the very document, which records their agreement, that the parties feel the need to describe some of the circumstances surrounding that agreement. It would be paradoxical if recitals were to be without any legal implications when such implications are recognized in certain aspects of the pre- contractual negotiations.

The study of recitals is made difficult by its novelty. We begin with a description of how recitals occur in practice. The analysis is based on some 200 examples of recitals collected by the Working Group (Section II). The second part of the study attempts to put forward some suggestions on the legal implications of recitals; after drawing parallels with similar but better known legal concepts, we point out the different ways in which the contents of recitals appear capable of affecting the legal position of the parties to the contract (Section III). Finally, we offer some advice to negotiators (Section IV).

II. RECITALS IN PRACTICE

A. Frequency of Occurrence


\(^2\) Cf. supra, pp. 5–30.

\(^3\) Insertion of recitals is characteristic in legal documents with a certain degree of solemnity, such as notarized documents (P. Watelet, *La rédaction des actes notariés*, Brussels, Larcier, 1975, p. 58)) or deeds (Odgers, *Construction of Deeds and Statutes*, 5th ed, 1967, pp. 149–160).