

## VI. CO-ORDINATION OF WORK

### Current activities of international organizations related to the harmonization and unification of international trade law: report of the Secretary-General (A/CN.9/281)

[Original: English]

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## INTRODUCTION

1. The General Assembly, in resolution 34/142 of 17 December 1979, requested the Secretary-General to place before the United Nations Commission on International Trade Law, at each of its sessions, a report on the legal activities of international organizations in the field of international trade law, together with recommendations as to the steps to be taken by the Commission to fulfil its mandate of co-ordinating the activities of other organizations in the field.

2. In response to that resolution, detailed reports on the current activities of other organizations related to the harmonization and unification of international trade law have been issued at regular intervals, the last one having been submitted at the sixteenth session in 1983 (A/CN.9/237 and Add.1–3).

3. This report is one in the series mentioned and has been prepared in order to update and supplement the report submitted at the sixteenth session of the Commission. The information it contains is that supplied by international and other organizations regarding their activities in the field of international trade law up to 30 June 1985. Developments subsequent to that date have been referred to where this has been possible. Further information is available directly from the organizations concerned.

4. The activities of UNCITRAL related to the harmonization and unification of international trade law are referred to briefly in this document for the sake of completeness. The current work of UNCITRAL is summarized each year in the reports of the Commission's annual sessions. The reports and the background documents are subsequently reprinted in the *Yearbook* of the United Nations Commission on International Trade Law.

5. Two additional reports, which together with this present one have been prepared for the nineteenth session of UNCITRAL, provide more detailed information on the work of international organizations on certain aspects of international trade law. One of these documents, “Legal implications of automatic data processing: report of the Secretary-General” (A/CN.9/279) includes a review of the work of UNCITRAL and other organizations on that subject. The other document describes the activities of international organizations on certain aspects of international commercial arbitration (A/CN.9/280).

6. The work of the following organizations is described in the present report:

(a) *United Nations bodies and specialized agencies*

CTC	Centre on Transnational Corporations
	paragraphs 36, 72–73, 77, 78, 79–83

ECA	Economic Commission for Africa paragraphs 249–250	UNESCO	United Nations Educational, Social and Cultural Organization paragraphs 100, 101–102, 103, 104, 105
ECE	Economic Commission for Europe paragraphs 15–17, 52, 144, 248–250, 251–253, 254–256, 257, 258, 259	UNIDO	United Nations Industrial Development Organization paragraphs 38–39, 40, 41–42, 43–44, 45, 46, 47, 53, 89, 90
ECLAC	Economic Commission for Latin America and the Caribbean paragraphs 249–250, 253	WIPO	World Intellectual Property Organization paragraphs 92–93, 94–96, 99, 101–102, 105, 106–107
ESCAP	Economic and Social Commission for Asia and the Pacific paragraphs 37, 249–250	World Bank	paragraphs 57–60
FAO	Food and Agriculture Organization paragraphs 27, 31–33, 34–35, 75		
GATT	General Agreement on Tariffs and Trade paragraphs 7–12, 245–247	(b) <i>Other international organizations</i>	
ICAO	International Civil Aviation Organization paragraphs 154–157	AALCC	Asian-African Legal Consultative Committee paragraphs 61–65, 70–71, 173, 174–177
ICSID	International Centre for Settlement of Investment Disputes paragraph 66	CCC	Customs Co-operation Council paragraph 252
ILO	International Labour Organisation paragraphs 222–225		Council of Europe paragraphs 203–205, 206, 231–232
IMO	International Maritime Organization paragraphs 123–124, 130–131, 135–139, 261	CMEA	Council for Mutual Economic Assistance paragraphs 19–20, 21, 48, 67–69, 117, 178, 207
ITC	International Trade Centre paragraphs 239–240	EEC	European Economic Community paragraphs 187, 188, 195, 197–201, 202, 208–217
UNCITRAL	United Nations Commission on International Trade Law paragraphs 4–5, 18, 23, 54–56, 91, 110, 111–112, 115–116, 158, 160–163, 170–172, 264–265		The Hague Conference on Private International Law paragraphs 113–114, 180, 189–190, 191–192, 233–235, 236
UNCTAD	United Nations Conference on Trade and Development paragraphs 24–27, 28–30, 74, 84–86, 87–88, 97, 118, 119–122, 125, 126–129, 132–134, 135–139, 140, 141–142, 143, 159, 160–163, 164, 165–166, 168, 227, 241–243, 257	ICPE	International Centre for Public Enterprises in Developing Countries paragraph 89
UNDP	United Nations Development Programme paragraphs 36, 215	LAIA	Latin American Integration Association paragraphs 253, 263
UNEP	United Nations Environment Programme paragraphs 219–221, 226	OTIF	Organisation Intergouvernementale pour les Transports Internationaux Ferroviaires paragraphs 145–149
		UNIDROIT	International Institute for the Unification of Private Law paragraphs 13–14, 150–153, 193–194, 228, 229–230, 237–238

(c) *International non-governmental organizations*

CMI	Comité Maritime International (IMC) paragraphs 135–139, 169
FIDIC	Fédération Internationale des Ingénieurs Conseils paragraphs 49, 50, 51, 76, 177
ICC	International Chamber of Commerce paragraphs 22, 98, 108–109, 177, 181–182, 196, 218, 244, 260, 262
ICCA	International Council for Commercial Arbitration paragraphs 183–186
ISO	International Organization for Standardization paragraph 167

**I. International commercial contracts in general****A. GATT: government procurement**

7. The purpose of the GATT Agreement on Government Procurement 1981 is to open to foreign suppliers contracts awarded by certain government bodies of its signatory countries. The Agreement provided that three years after it came into force negotiations would take place aimed at improving and broadening it. The procedures and a timetable to be adopted during these negotiations were agreed upon at the meeting of the Committee on Government Procurement held in November 1983.

8. During 1983 the Committee carried out a detailed examination of national laws, regulations and procedures relating to the implementation of the Agreement. After considering the adequacy and effectiveness of the Agreement, as requested in the November 1982 Ministerial Declaration, the signatories concluded that the Agreement was a significant first step towards plurality in the area of government procurement. They considered that it had, on the whole, worked satisfactorily, although its commercial impact would be felt only gradually.

9. The re-negotiation provided for in the Agreement continued during 1984. Many detailed technical amendments were put forward for improvements, including a number of suggestions made in the context of the special and differential treatment afforded to developing countries. The Committee also began, as required by the Agreement, to explore the possibility of expanding its scope to include service contracts, without prejudice, however, to the consideration elsewhere of the general position of GATT in relation to services. Pilot studies are being carried out on architectural and consulting engineering services, on insurance services and on management consulting services, as these relate to govern-

ment procurement. Parties wishing to do so are also carrying out pilot studies on the procurement of data processing services and freight forwarding services.

10. In 1984 the Committee on Government Procurement, which supervises the Agreement, continued its examination of national implementing legislation and practices. Many technical issues were considered. Discussions took place, *inter alia*, on the practices related to tendering or negotiating contracts, the frequency of tenders being advertised under the Agreement, problems related to the procedures for the evaluation of the qualification of suppliers; time limits for the submission of bids; delivery deadlines and the treatment of high-priced bids.

11. *A Practical Guide to the GATT Agreement on Government Procurement* was published in March 1985. This *Guide* is intended to inform the business community and officials of the Agreement, how it is applied by its participants and of the manner in which it can help potential suppliers. It also assists in making clearer government practices in this field.

12. The first dispute panel to be set up under the Agreement was established by the Committee on Government Procurement in February 1983 at the request of the United States of America. That panel, the Panel on Value Added Tax and Threshold, was asked to determine whether or not the practice of the EEC of excluding value added tax from the contract price of EEC member State government purchases contravened the Agreement. Previous attempts to solve the dispute, which arose under an EEC Council Directive on public supply contracts, through consultations and conciliation within the Committee had failed. The Panel found the EEC practice to be inconsistent with the Agreement. In May 1984, the Committee on Government Procurement adopted the report of the Panel (see *GATT Focus*, the GATT secretariat's monthly newsletter, No. 29, May-June 1984). In further discussion of the case in 1984, the Committee was told by the EEC that it was expecting to receive from the Council of the European Communities a mandate which would enable it to negotiate a solution to the issue.

**B. UNIDROIT: general principles applicable to international commercial contracts**

13. The UNIDROIT Study Group on the Progressive Codification of International Trade Law at its first session, held at Rome from 10 to 14 September 1979, examined the first two chapters of a code of general principles applicable to international commercial contracts. The chapters thus considered relate to the formulation and interpretation of such contracts. Following the intention expressed by some of the members of the Study Group to co-operate with the UNIDROIT secretariat in the preparatory work on the future chapters of the code,

the President of UNIDROIT set up a small working group that has met six times since 1980. In addition to the first two chapters mentioned on formulation and interpretation (Study L-Doc. 24 and 25), two other chapters dealing with defects in consent that may affect the validity of a contract (mistake, fraud, threat, unequal bargaining power and gross disparity) have been drafted (Study L-Doc. 26) and work on a chapter on performance has been concluded (Study L-Doc. 34).

14. The Governing Council of UNIDROIT discussed this item in detail at its sixty-fourth session. It examined both the state of the work in general and the provisions of the chapters already prepared. The Council renamed the project, replacing the title "progressive codification of international trade law" with "general principles for international commercial contracts". It also set a time limit of three years within which the informal working group, which is elaborating the draft general principles, should conclude its work. The Governing Council will consider any new texts elaborated by the group at its sixty-fifth session. Meanwhile, the seventh meeting of the working group is taking place in April 1986.

### C. Counter-trade practices

#### 1. ECE

15. At its thirty-second and thirty-third sessions, held in December 1983 and December 1984, the ECE Committee on the Development of Trade continued to devote attention to developments in the field of compensation trade. As a further step in the work of the Committee in analysing the development and consequences of compensation trade, it was agreed that the secretariat of ECE should prepare an analytical study of short-term commercial compensation in the ECE region which would focus on the problems encountered in such transactions, in particular those involving such matters as product quality, re-export restrictions, bureaucratic delays and after-sales service. The problems of quantitative restrictions and anti-dumping procedures were also to be examined. The study was discussed at the thirty-fourth session of the Committee on the Development of Trade in December 1985 (ECE/TRADE/153). The thirty-fifth session of the Committee will be held in December 1986.

16. Some differences of opinion in respect of the manner in which compensation trade should be dealt with in the future programme of work of the Committee, whether it should be made a special item in the agenda or whether it should retain its previous position, were expressed at the sessions mentioned above. It was suggested that the problems involved in short-term compensation transactions should be the subject of a future *ad hoc* meeting on compensation trade. The proposal of the Executive Secretary that the Group of Experts on International Contract Practices in Industry should be invited to consider preparing guidelines on compensation transactions, once the *Guide on Drawing Up International*

*Contracts for Services Relating to Maintenance, Repair and Operation of Industrial and Other Works* (see paragraph 52 below) is completed, was endorsed by several delegations.

17. The ECE secretariat has issued two new studies dealing with compensation trade in the ECE region: "Compensation trade in the ECE region: a survey of quantitative estimates" (TRADE/AC.19/R.1) and "Financing of large-scale compensation projects in east-west trade since 1970: mechanisms, patterns and trends" (TRADE/R.484).

### 2. UNCITRAL

18. At its seventeenth session in 1984, UNCITRAL had before it a report of the Secretary-General on the activities of other organizations within and outside the United Nations in respect of legal aspects of barter and barter-like transactions (A/CN.9/253).

### D. CMEA: general conditions governing delivery of goods

19. During the period from 1983 to the present, the CMEA Conference on Legal Questions has continued its work on the preparation of recommendations for the improvement of the "General Conditions of Delivery of Goods Between the Organizations of the Member Countries of the Council for Mutual Economic Assistance" (GCD CMEA, 1968/1975, version of 1979). This revision is to take into account the practical experience gained in the application of the General Conditions, together with proposals for the inclusion of a greater liability for the non-fulfilment or improper fulfilment of obligations, including indemnification for direct losses. The CMEA Standing Commission on Foreign Trade is also developing proposals for tightening the requirements in respect of the technical level and quality of mutually traded goods, including machinery and equipment. It is intended that, once formulated, the proposed amendments and additions to the General Conditions will be adopted into the Conditions by a decision of the CMEA Standing Commission on Foreign Trade and be put into effect by the individual countries on the basis of that Commission's recommendations and in accordance with their national legislation.

20. Work on the comparative study of the national legal norms of the CMEA member countries as applied to contracts governed by the CMEA General Conditions continued under the auspices of the Conference on Legal Questions during 1983 and 1984. A result of this work is the projected publication by the CMEA secretariat, in the first quarter of 1986, of "The Contract Law of the CMEA Member Countries and the Socialist Federal Republic of Yugoslavia: General Principles". This publication is being prepared under the leadership of Professor H. Braginsky of the Union of Soviet Socialist Republics and is financed by contributions from CMEA member



States. It will contain a survey of the national legislation of these countries in respect of the conclusion and execution of contracts, and as regards liability for their non-performance.

### E. CMEA: contractual system

21. In January 1985 the CMEA Council's Executive Committee approved a report, prepared by the CMEA Conference on Legal Questions, aimed at improving the system of contracts for the implementation of measures agreed upon by the CMEA member countries. This report contains an analysis of the system of agreements in effect in the area of economic, scientific and technical cooperation and proposes basic guidelines for the improvement of the contractual system of the CMEA member countries. In accordance with a decision of the Executive Committee, the principles elaborated in this report are intended for use by the CMEA countries and the CMEA branch organs, as they see fit, when drawing up multilateral agreements and civil law contracts.

### F. ICC: force majeure and hardship clauses

22. The ICC Commission on International Commercial Practice has completed its work on model *force majeure* and hardship clauses. The model clauses are accompanied by an explanatory brochure (ICC Publication No. 421).

### G. UNCITRAL: Uniform Rules on Contract Clauses for an Agreed Sum Due Upon a Failure of Performance

23. UNCITRAL adopted the Uniform Rules on Contract Clauses for an Agreed Sum Due Upon a Failure of Performance at its sixteenth session in May-June 1983. By resolution 38/135 of 19 December 1983, the General Assembly recommended that States give serious consideration to the Uniform Rules and, where appropriate, implement them in the form of either a model law or a convention. (For the text of the Uniform Rules, see "Report of the United Nations Commission on International Trade Law on the work of its sixteenth session". *Official Records of the General Assembly, Thirty-eighth Session, Supplement No. 17 (A/38/17)*).

## II. Commodities

### A. UNCTAD: commodity agreements

24. The UNCTAD Agreement establishing the Common Fund for Commodities, concluded on 27 June 1980 (TD/IPC/CF/CONF/25, United Nations publication, Sales No. E.81.II.D.8), has remained open for signature and ratification beyond the deadline prescribed by the Agreement for fulfilling the requirements for entry into force (30 September 1983) until the ratifying countries decide otherwise. By January 1986 the UNCTAD Agree-

ment establishing the Common Fund for Commodities had been ratified by 90 countries, accounting for 57.87 per cent of the Fund's directly contributed capital, and the conditions for entry into force as regards the voluntary contributions to the Second Account of the Fund had been met. Pledges of voluntary contributions announced total \$US 255 million, i.e. 91 per cent of the target (\$US 280 million) (UNCTAD Bulletin No. 218, January 1986).

25. The aims of the international commodity agreements vary from one agreement to another. The principal objectives, however, are price and export earnings stabilization and long-term development. The latter comprises activities related to improved market access and supply reliability, increased diversification and industrialization, augmented competitiveness of national products *vis-à-vis* synthetics and substitutes, improved marketing, and distribution and transportation systems. Two agreements with development provisions, namely the Jute and the Tropical Timber Agreements, 1982 and 1983 respectively, have been concluded. International commodity agreements may have additional objectives, e.g. the increase of consumption, the prevention of unemployment or underemployment, and the alleviation of serious economic difficulties.

26. The following commodity agreements, adopted at various United Nations conferences under the auspices of UNCTAD, are in force. These agreements were prepared pursuant to the objectives adopted by UNCTAD in resolutions 93(IV) and 124(V) on the Integrated Programme for Commodities:

- International Natural Rubber Agreement, 1979 (TD/RUBBER/15/Rev.1, United Nations publication, Sales No. 80.II.D.5): The 1985 United Nations Conference on Natural Rubber was unable to complete negotiations on a new Agreement at its first session. The negotiations were adjourned on 8 May 1985 with a request to the Secretary-General of UNCTAD to make arrangements for reconvening the Conference. The negotiations are to be resumed in April 1986.
- International Cocoa Agreement, 1980 (TD/COCOA/6/7/Rev.1, *United Nations Treaty Series*, No. 15033, vol. 1023): The United Nations Cocoa Conference held four rounds of negotiations (May 1984, October-November 1984, February-March 1985 and February 1986) to replace the 1980 Agreement. The last session of this Conference was unable to reach a consensus on a new Agreement. The Conference has requested a resumption of negotiations in July 1986.
- Negotiations on a new Agreement to replace the Sixth International Tin Agreement, 1981 (TD/TIN.6/14/Rev.1, United Nations publication, Sales No. 82.II.D.16), which is due to remain in force until 30 June 1987, have been expected to start in the first half of 1986. (Note, however, that trading in tin was suspended in the international markets in October 1985 in consequence of which the status of the Agreement may be called into question.)

- International Tropical Timber Agreement, 1983 (TD/TIMBER/11/Rev.1, United Nations publication, Sales No. 84.II.D.5): This Agreement entered into force provisionally on 1 April 1985. It will remain in force until 31 May 1990, unless terminated before that date or extended for not more than two periods of two years each.
- International Sugar Agreement, 1984 (TD/SUGAR.10/11/Rev.1, United Nations publication, Sales No. 85.II.D.9): This replaces the 1977 Agreement. It entered into force provisionally on 1 January 1985. It will remain in force until 31 December 1986, unless terminated earlier or extended on a year-to-year basis.
- International Olive Oil Agreement, 1979 (TD/OLIVE OIL.7/7/Rev.1 United Nations publication, Sales No. 80.II.D.1): This Agreement entered into force provisionally on 1 January 1980 and conclusively on 1 January 1982. It had a basic duration of five years until 31 December 1984 but has been extended for a total of two years. It is now due to remain in force until 31 December 1986.
- International Agreement on Jute and Jute Products, 1982 (TD/JUTE/11/Rev.1, United Nations publication, Sales No. 83.II.D.3): It entered into force provisionally on 1 January 1984. It will remain in force until 8 January 1989, unless terminated before that date or extended for a period not exceeding two years.

27. The International Agreement on Jute and Jute Products, 1982, provides that the International Jute Organization (IJO) shall, to the maximum extent possible, rely upon and fully utilize the facilities, services and expertise of organizations such as FAO. In the period 1983–1985, FAO continued to extend support to the International Jute Organization, which was officially established in January 1984, through the identification of project proposals for research, development and cost reduction in jute agriculture and processing for implementation by the IJO.

#### **B. UNCTAD: complementary facility for commodity-related shortfalls in export earnings**

28. By resolution 157(VI) of 2 July 1983, UNCTAD requested its Secretary-General to convene, after consultation with interested Governments, a Group of Experts on the Compensatory Financing of Export Earnings Shortfalls. The Expert Group was convened and it prepared a report on "Compensatory financing of export earnings shortfalls" (TD/B/1029 and Add.1) which was submitted to the fourteenth special session of the Trade and Development Board, which took place between 10 and 14 June 1985. In that report, the Expert Group identified supply instability as a major cause of commodity export earnings' instability at the country level and considered that a new commodity compensatory financ-

ing facility must be created. The Group of Experts mentioned are expected to meet in June 1986.

29. Furthermore, the fourteenth special session suggested that a special session of the Trade and Development Board be convened in 1986 to decide upon the action to be taken as a follow-up to the fourteenth special session, including the possibility of convening a negotiating conference on an additional complementary facility.

30. Other recent studies carried out by UNCTAD are:
- "Compensatory financing of export earnings shortfalls" (TD/B/1029/Rev.1);
  - *The Processing and Marketing of Tea: Areas for International Co-operation* (TD/B/C.1/PSC/28/Rev.1, United Nations publication, Sales No. E.84.II.D.10);
  - *The Processing and Marketing of Copper: Areas for International Co-operation* (TD/B/C.1/PSC/30/Rev.1, United Nations publication, Sales No. E.84.II.D.24); and
  - *The Processing Before Export of Cocoa: Areas for International Co-operation* (TD/B/C.1/PSC/18/Rev.1, United Nations publication, Sales No. E.84.II.D.16)

#### **C. Informal commodity arrangements**

##### *1. FAO: price arrangements for hard fibres*

31. At its eighteenth session in September 1983, the FAO Intergovernmental Group on Hard Fibres agreed to maintain unchanged the indicative price range for sisal and henequen that had been in force since 1980. It decided that the quota system should continue to be maintained in principle, but that the global and national quotas should remain suspended. In reviewing the informal arrangement for abaca, the Group agreed to maintain the current indicative range, in force since December 1979, and to keep inoperative the mechanism triggering automatic consultations for abaca.

32. The Group also decided to examine at future sessions the possibility of developing, within the framework of the existing informal arrangements for sisal and henequen, an appropriate formula for recommending indicative prices for sisal twines, including differentials between sisal and polypropylene harvest twines, and an associated system of supply management for sisal fibre and twine.

33. At its nineteenth session in December 1984, the Group agreed to reduce the indicative price range for the major African grade and to introduce a differential to Brazilian fibre. It was decided that the quota system should continue to be maintained in principle but that the global and national quotas should remain suspended. However, for the first time the Group, with the exception of two countries, agreed to recommend an indicative

price for sisal and henequen baler twine. In respect of abaca, the Group suspended price recommendations within the informal arrangements in view of the unsettled market situation.

#### 2. *FAO: price arrangements for jute and kenaf*

34. At its nineteenth session in October 1983, the FAO Intergovernmental Group on Jute, Kenaf and Allied Fibres recommended indicative prices for both jute and kenaf fibres. Indicative prices for jute, which had remained almost unchanged since 1978–1979, were increased in view of the diminished supply in prospect for the 1983–1984 season. For kenaf, indicative prices were retained at the previous year's level.

35. At its twentieth session in November 1984, the Group suspended the informal indicative price arrangements for jute and kenaf temporarily for the 1984–1985 season because of an unprecedented shortage of fibre and extremely high prices.

#### D. *CTC: processing and marketing of primary commodities*

36. The CTC and its units, working jointly with the regional commissions and with financial assistance from UNDP, have undertaken an interregional study of the involvement of transnational corporations in the production, processing and marketing of a number of primary commodities. A draft technical paper presenting the conclusions drawn from the various country and commodity case studies undertaken in earlier phases of the project has been prepared.

#### E. *ESCAP: guide on information sources for jute*

37. In August 1983, the ESCAP Trade Promotion Centre was requested by the Intergovernmental Consultation on Jute and Jute Products to compile a comprehensive *Guide to Selected Information Sources for Jute and Jute Products* to assist the jute-producing countries in the region in developing and promoting their jute industry and trade. The *Guide* is an inventory of basic information sources related to jute and jute products as well as a pointer to the information available through secondary sources. It is intended (a) to serve as a reference source for the government Ministries of the jute-producing countries and interested organizations and agencies and (b) to assist the Governments of the jute-producing countries in gaining a better understanding of the jute trade and in developing a systematic methodology to increase the export earnings of their farmers by gathering and analyzing data on jute production in order to formulate a pricing policy. The *Guide* contains background information and an operational frame designed to assist the ESCAP jute producing countries in setting up their country-level market information services for jute and jute products. The *Guide* was published by ESCAP in March 1985.

### III. Industrialization

#### A. *UNIDO: System of Consultations*

38. A report on "Trade and trade-related aspects of industrial collaboration at the enterprise level" (ID/B/348) was submitted to the Industrial Development Board—the governing body of UNIDO—at its nineteenth session as a follow-up to the *Ad Hoc* UNCTAD/UNIDO Group of Experts on Trade and Trade-related Aspects of Industrial Collaboration Arrangements.

39. In accordance with the recommendations of the Industrial Development Board, UNIDO has evolved a set of legal materials, including model contracts and clauses, guidelines and checklists for contractual arrangements, according to the requirements of each of the 13 industrial sectors served by the System of Consultations. A number of these are referred to in sections B and D below.

#### B. *UNIDO: model contracts and contractual arrangements*

##### 1. *Model contracts for the fertilizer industry*

40. In addition to two model contracts for the construction of fertilizer plants completed prior to 1983, namely the turnkey lump-sum contract and the cost-reimbursable contract, UNIDO has completed two additional model contracts, the semi-turnkey contract and the licensing and engineering services agreement. The last two model contracts were presented to the Fourth Consultation on the Fertilizer Industry in January 1984 and were reviewed by an international expert group in July of that year. At present the following draft versions of the model forms of contract are being revised and edited for publication:

(a) "UNIDO model form of turnkey lump-sum contract for the construction of a fertilizer plant including guidelines and technical annexures" (UNIDO/PC.25/Rev.1);

(b) "UNIDO model form of cost-reimbursable contract for the construction of a fertilizer plant including guidelines and technical annexures" (UNIDO/PC.26/Rev.1);

(c) "Second draft of the UNIDO model form of licensing and engineering services agreement for the construction of a fertilizer plant including guidelines and technical annexures" (UNIDO/PC.73);

(d) "UNIDO model form of semi-turnkey contract for the construction of a fertilizer plant including guidelines and technical annexures" (UNIDO/PC.74).

##### 2. *Contractual arrangements in the petrochemical sector*

41. In respect of the petrochemical sector, UNIDO has issued documents as follows:

(a) "UNIDO model form of agreement for licensing of patents and know-how in the petrochemical industry,

including annexures: an integrated commentary and alternative texts of some clauses" (UNIDO/PC.50/Rev.1). The final version of this document was presented to the Third Consultation on the Petrochemical Industry in December 1985;

(b) "Survey and analysis of joint-venture arrangements in the petrochemical industry" (ID/WG.448/4). This paper is based on the information supplied by over 50 joint-venture companies surveyed by UNIDO. The principal elements in joint-venture agreements are discussed in this paper, which was considered by the Third Consultation on the Petrochemical Industry.

42. UNIDO has also prepared terms of reference for "mini-models" of long-term co-operative arrangements in, *inter alia*, financing, marketing, training and long-term supply of raw materials and feedstock. However, only the terms of reference regarding access to technology have been expanded upon, namely in "Approaches to contractual agreements aimed at access to technology and to its improvements in the petrochemical industry with illustrative examples" (ID/WG.448/5).

### 3. Contractual arrangements in the pharmaceutical sector

43. The documents listed below were finalized by UNIDO in co-operation with the Third *Ad Hoc* Panel of Experts on Contractual Arrangements in April 1985 in the light of the comments and suggestions made at the Second Consultation on the Pharmaceutical Industry:

(a) "Items which could be incorporated in contractual arrangements for the transfer of technology for the manufacture of those bulk drugs/intermediates included in UNIDO's illustrative list" (ID/WG.393/1/Rev.2);

(b) "Items which could be included in licensing arrangements for the transfer of technology for the formulation of pharmaceutical dosage forms" (ID/WG.393/3/Rev.2);

(c) "Items which could be included in contractual arrangements for the setting-up of a plant for the production of bulk drugs (or intermediates) included in UNIDO's illustrative list" (ID/WG.393/4/Rev.2).

44. UNIDO is preparing new documents on:

(a) Items that could be included in contractual arrangements for the setting-up of turnkey plants for: (i) the production of pharmaceutical chemicals (bulk drugs) or intermediates included in the UNIDO illustrative list; and for (ii) the production of pharmaceutical formulations;

(b) Arrangements for technical assistance for the formulation of pharmaceutical forms;

(c) Areas not covered in the documents ID/WG.393/1, 3 and 4, Rev.2, referred to above.

The members of the Fourth *Ad Hoc* Panel of Experts are to supply UNIDO with their comments on the drafts of those documents. The drafts, as amended in the light

of those comments, will then be submitted to the Third Consultation on the Pharmaceutical Industry scheduled for March 1987.

### 4. Contractual arrangements in the agricultural machinery sector

45. UNIDO has prepared the following documents:

(a) "Issue paper No. III: Main items to be included in model contracts for the import, assembly and manufacture of agricultural equipment including training; model licensing agreement" (ID/WG.400/4);

(b) "Items to be included in model contracts for the import, assembly and manufacture of agricultural equipment including training; model licensing agreement" (ID/WG.400/2);

(c) "Guidelines to international contracts for the acquisition, assembly and manufacture of agricultural machinery and spare parts therefor" (ID/WG.443/1);

(d) "Comparison of sample clauses for contracts for the initial management of a factory for the assembly or manufacture of agricultural machinery and the rendering of technical assistance ancillary thereto" (ID/WG.443/2);

(e) "Comparison of sample clauses for contracts for the supply of spare parts for agricultural machinery" (ID/WG.443/3);

(f) "Comparison of sample clauses for contracts for the supply and installation of production equipment for the assembly and manufacture of agricultural machinery" (ID/WG.443/4);

(g) "Comparison of sample clauses for contracts for the transfer of know-how, grant of patent/trademark licenses, assignment of technical information and the rendering of technical services ancillary thereto for the manufacture of agricultural machinery" (ID/WG.443/5);

(h) "Comparison of sample clauses for contracts between clients and industrial architects for the design and supervision of the construction of works for the assembly or manufacture of agricultural machinery" (ID/WG.443/6);

(i) "Comparison of sample clauses for contracts for the supply of agricultural machinery" (ID/WG.443/7).

### 5. Contractual arrangements in the food-processing sector

46. In November 1981 UNIDO was asked to prepare a check-list of contractual elements that might be included in agreements in the food-processing industry to promote efficient co-operation between the contracting parties. As a first step towards the preparation of this check-list, a report on "Trends and issues in contractual arrangements in the food-processing industry. Information paper" (ID/WG.427/11) was prepared for the Second Consultation on the Food-processing Industry (October 1984). This paper, which deals with the practice of developing countries entering into contractual arrangements with

foreign partners in this sector, will serve as a basis for the formulation of a check-list directly applicable to this industry.

6. *Contractual arrangements in the leather and leather-products sector*

47. The work initiated in this field by UNIDO in 1981 resulted in the preparation of two documents—a separate check-list each for the tanning industry and the footwear industry—since these subsectors pose individual problems in international co-operation. The check-list for the footwear sector was approved by the fifth session of the UNIDO Leather Panel, held at Vienna from 25 to 27 November 1981, while the one for the tanning sector was approved by the sixth session of that Panel, held at Vienna from 29 November to 1 December 1982. Both documents, i.e. “Check-list for contractual agreements in the footwear sector between enterprises from developed and developing countries. Background paper for issue No. 1” (ID/WG.411/1) and “Check-list for contractual agreements in the tanning sector between enterprises from developed and developing countries. Background paper for issue No. 1” (ID/WG.411/2), were submitted to the Third Consultation on the Leather and Leather-Products Industry which was held at Innsbruck from 16 to 20 April 1984.

**C. General conditions**

1. *CMEA: general conditions governing the technical standards of maintenance of machines, equipment and other goods*

48. In January 1985 the CMEA Executive Committee approved the proposals, formulated by the CMEA Standing Commission on Foreign Trade, for the improvement of the General Principles for the supply of spare parts for machinery and equipment delivered in mutual trading among the CMEA member countries and the Socialist Federal Republic of Yugoslavia. The Executive Committee recommended to the CMEA member countries and to Yugoslavia that they should put into effect from 1 July 1985 the amendments and additions approved by the Committee to the General Principles.

2. *FIDIC: standard conditions of contract for works of civil engineering construction*

49. A task committee comprising representatives of FIDIC and of the Confederation of International Contractors' Associations is currently preparing a fourth edition of the “Conditions of contract (international) for works of civil engineering construction” (the third edition was published in March 1977). Before the document is finally approved for publication by the Executive Committee of FIDIC, comments will be invited from the international funding institutions. Publication of the fourth edition is expected during the second half of 1986.

3. *FIDIC: conditions of contract for electrical and mechanical works*

50. A committee comprising representatives of FIDIC and the European Association of Plant Manufacturers (ORGALIME) is currently engaged in reviewing the FIDIC “Conditions of contract (international) for electrical and mechanical works” (second edition, 1980) in preparation for the publication of a third edition in 1986.

4. *FIDIC: international general rules of agreement between client and consulting engineer (IGRA)*

51. FIDIC commenced publication of standard conditions for client/consultant agreements in 1963. The documents currently in issue are those dealing with pre-investment studies (IGRA 1979 P.I.); design and supervision of construction of works (IGRA 1979 D&S); and project management (IGRA 1980 P.M.). FIDIC has appointed subcommittees to review each of these documents and to make recommendations regarding their amendment.

**D. Guides and guidelines**

1. *ECE: draft Guide on Drawing Up International Contracts for Services Relating to Maintenance, Repair and Operation of Industrial and Other Works*

52. In July 1984 the ECE Group of Experts (twenty-fourth session) began the first reading of the draft Guide on Drawing Up International Contracts for Services Relating to Maintenance, Repair and Operation of Industrial and Other Works (TRADE/GE.1/R.32). At its twenty-sixth session in July 1985, the Group of Experts approved most of the articles dealing with maintenance contracts, these having been revised by the secretariat in the light of the comments made by the twenty-fifth session of the Group of Experts. The remaining paragraphs regarding maintenance contracts were approved at the twenty-seventh meeting in December 1985. The Expert Group also considered and approved the paragraphs of the Guide dealing with repair. The Group requested the secretariat to prepare a revised version of the Guide containing the changes and amendments already agreed and, to the extent that these apply to the text relating to operation contracts, to make changes in that latter part of the Guide. This revised document (TRADE/GE.L/R.32/Rev.4) will be before the twenty-eighth session of the Group of Experts in July 1986.

2. *UNIDO: guidelines for the establishment of industrial joint ventures in developing countries*

53. The UNIDO “Guidelines for the establishment of industrial joint ventures in developing countries” (UNIDO/IS.361) were prepared in 1982. The following topics are dealt with in the Guidelines: the incorporation

of a company and its international structure, negotiating the management of a joint-venture company, negotiating the capital structure of the joint-venture company, and negotiating the transfer of know-how and technology-related services in the joint venture context. On the basis of this document revised guidelines are in preparation for specific issues relating to the acquisition of technology through joint ventures.

3. *UNCITRAL: draft Legal Guide on Drawing Up International Contracts for Construction of Industrial Works*

54. UNCITRAL considered the legal implications of the new international economic order during its twelfth, thirteenth and fourteenth sessions. At its fourteenth session (1981) the Commission decided that a legal guide that would identify the legal issues involved in contracts for the supply and construction of large industrial works and would suggest possible solutions to assist parties, particularly those from developing countries, in their negotiations, should be prepared.

55. This work was assigned to the UNCITRAL Working Group on the New International Economic Order. The Working Group considered clauses to be found in contracts for the supply and construction of large industrial works at its second and third sessions (1981 and 1982) and examined the draft chapters of the Legal Guide at its fourth to eighth sessions (between May 1983 and March 1986) (for the draft chapters see: A/CN.9/WG.V/WP.9/Add.3 and 4; A/CN.9/WG.V/WP.11, Add.1 and 3-8; A/CN.9/WG.V/WP.13/Add.1 and 3-6; A/CN.9/WG.V/WP.15, Add.1 and 2, 4-6, 9 and 10; and A/CN.9/WG.V/WP.17/Add.1-9).

56. It is expected that at its ninth session (1987) the Working Group will consider all the draft chapters of the Legal Guide as revised by the secretariat in the light of the comments by the Working Group. It is anticipated that the draft Legal Guide will be placed before the Commission for approval at its twentieth session (1987).

### E. *Investment protection*

1. *World Bank: Multilateral Investment Guarantee Agency (MIGA)*

57. In May 1984, the management of the World Bank presented to member Governments a concrete proposal for MIGA, and, in October 1984, the Bank submitted a first draft Convention for the establishment of such an Agency to member Governments of the Bank reflecting the comments received on the proposal. The draft Convention served as the basis for wide-ranging discussions held by the Bank with member Governments, business and professional associations and international

organizations. In the light of those discussions, a draft Convention was submitted to the Executive Directors of the Bank in March 1985; that draft was discussed in a Meeting of the Whole in June 1985. Many issues were resolved during the course of those discussions. In September 1985 the Bank approved plans to establish MIGA and it is anticipated that the agency will go into operation before the end of 1986. MIGA will be affiliated to the Bank but will be a separate entity. (See *The World Bank Annual Report 1985*, p. 52.)

58. The object of the MIGA proposal is to encourage the flow of resources to productive enterprises in the participating countries by guaranteeing investments emanating from other participating countries against non-commercial risks. Ancillary to this aim is the furnishing of information about investment opportunities and the giving of advice and technical assistance to interested members on measures useful to attract foreign investment.

59. In its operations, MIGA is expected to respond to the demand for protection that is not being adequately met at present by national investment guarantee schemes or by the private market. MIGA will complement these schemes and will co-operate with them through co-insurance and re-insurance. It will give special attention to guaranteeing investments from countries that do not have a national scheme and in host countries where a national scheme is either unable to operate or is already heavily exposed. It will, together with national schemes, co-insure large investments and will insure and co-insure multinationally financed investments. MIGA may be able to act as re-insurer of national schemes. MIGA will also co-operate with private political risk insurers, mainly by co-insuring large investments and re-insuring part of its portfolio with them.

60. In general terms, four broad categories of non-commercial risks are covered: (a) the transfer risk resulting from host government restrictions on conversion and transfer from local currency into another currency, (b) the risk of loss resulting from the action or inaction of the host Government depriving the foreign investor of substantial rights or reducing the benefits of the investment, (c) the risk of armed conflict and civil unrest, and (d) the repudiation of government contracts resulting in a denial of justice.

2. *AALCC: promotion and protection of investment*

61. At the twenty-first session of the AALCC (Jakarta, April 1980), the question of the promotion and protection of investments on a reciprocal basis was first discussed in the context of the promotion of co-operation in industry in the Asian-African region. The AALCC secretariat prepared a draft model bilateral agreement on investment protection which was considered by the Trade Law Subcommittee at its twenty-second session in May 1981. The report of that Subcommittee was reviewed by a ministerial meeting in Istanbul in September 1981.

62. Extensive consultations followed the Istanbul meeting and through these it became apparent that a uniform approach in the promotion and protection of investments resulting in the formulation of a single model bilateral treaty might not meet the situation. Rather, it was suggested that three different draft agreements should be prepared. Accordingly, the secretariat's study of November 1982 on this question suggested three draft model agreements:

(a) *Model A*: a draft of a bilateral agreement on a similar pattern as the agreements entered into between some of the countries of the region with industrialized States with certain changes and improvements, particularly in the matter of promotion of investments;

(b) *Model B*: a draft agreement whose provisions are somewhat more restrictive than Model A in the matter of the protection of investments and contemplate a greater degree of flexibility; and

(c) *Model C*: a draft agreement on the pattern of Model A but applicable only to certain classes of investments, as determined by the host country.

The texts of these models are to be found in "Promotion and protection of investments (Secretary-General's report)", Doc. No. AALCC XXIII/9.

63. During 1983 and early in 1984 the study was examined by an Expert Group. That Expert Group's recommendations in the form of three draft models were finalized in January-February 1984. The models were submitted to the Governments concerned for their observations and comments.

64. At its twenty-fourth session (February 1985), the Trade Law Subcommittee formally approved the three model agreements and adopted its final report on the topic. The model agreements were submitted to the member Governments so that they could be brought to the notice of the interested authorities and be of assistance to them in negotiating such agreements.

65. The other aspects of investment promotion and protection being considered by the AALCC are:

(a) The World Bank's draft Convention for a Multilateral Investment Guarantee Agency;

(b) The different investment incentives offered by member States; and

(c) The means by which the Secretary-General's good offices can be employed in assisting member Governments in promoting investment by, *inter alia*, arranging meetings between representatives of the member States and foreign investors.

### 3. ICSID: legislation published

66. ICSID has edited a series containing the legislation of 63 developing countries on investments, i.e. texts of the laws. It has also published the texts of some 230 treaties on bilateral investment promotion and protection between developed as well as developing countries.

### F. CMEA: multilateral production specialization and co-operation

67. In 1983 the CMEA Conference on Legal Questions approved the basic principles for the drafting, structure, content and fulfilment of clauses relating to inter-State obligations in the area of multilateral production specialization and co-operation between CMEA member countries. The intention is that these basic principles shall be applied by the countries at their discretion for the purpose of improving contractual practices and of providing for the more effective legal regulation of multilateral inter-State relations in connection with production specialization and co-operation.

68. In this same area, a practical guide is at present being prepared on the drafting of contracts, using the model principles, for individual types of international production co-operation schemes between the economic organizations of the CMEA member countries. This work is scheduled to be completed in 1986.

69. In that same year, 1983, the CMEA Conference on Legal Questions approved a report on the possible content of model agreements and contracts regulating co-operative relationships in the area of science, technology and production. On the basis of that report, the Conference is preparing a multilateral, inter-agency model agreement and the relevant civil law contracts on scientific, technical and production co-operation.

### G. AALCC: regional co-operation in the field of industry

70. A two-day ministerial meeting of the AALCC on regional co-operation in industry was held at Kuala Lumpur in December 1980 with the object of devising a possible framework for regional co-operation in the economic field, particularly in regard to industrialization. The important areas for such co-operation were identified at that meeting. A further ministerial meeting held at Istanbul in September 1981 recommended that medium- and small-scale projects, such as cement, fertilizer and building-material production plants, be brought within the framework of that co-operation. The need for an exchange of information in respect of industrial policies and plans for industrial development, as well as regarding the relevant laws and regulations concerning investments in the region, was emphasized. The preparation of general guidelines for co-operation in industrial projects and for the organization of training programmes in technical and managerial fields was recommended.

71. Some progress has been made in the matter of the exchange of information regarding laws and regulations in the field of industry, investment and training. Fifteen member Governments have furnished information, which has been duly circulated. The preparation of draft guidelines for joint-venture arrangements in the industrial sector has been commenced.

## H. Studies and meetings

### 1. CTC

72. CTC has continued its work of comparative analysis of industrial contracts in specific sectors and contracts related to specific types of activities. In these studies, the financial, economic, legal, institutional and operational aspects of such contracts are analysed, as are their structure and the formulation of specific provisions. The work is intended to aid officials from Governments and enterprises in developing countries in formulating their negotiating strategy in similar projects.

73. In 1984, CTC completed another study in this series entitled "Analysis of engineering consultancy contracts and technical services agreements" (ST/CTC/58). CTC intends to commence the analysis of contracts in other sectors of particular importance to developing countries, taking into account requests from Governments in regard to contractual arrangements.

### 2. UNCTAD

74. UNCTAD co-operated with UNDP on project RAF/83/006 which involved the preparation of documentation for the first Conference of Chambers of Commerce from African and Latin American Countries held from 20 to 25 October 1985 in the Canary Islands. This documentation included the draft outline of an agreement on a legal régime for bi-regional enterprises in Africa and Latin America and a compendium of existing draft bilateral conventions on trade and co-operation between selected developing countries.

### 3. FAO

75. The FAO Legal Office participated in and contributed to the FAO/UNCTC/CECAF Regional Training Workshop on Joint Ventures and other Commercial Arrangements in Fisheries convened at Casablanca, Morocco, from 8 to 17 November 1983. It also provided assistance to Cape Verde on joint ventures.

### 4. FIDIC

76. FIDIC has taken the initiative to arrange meetings, at which the construction industry, the insurance industry, lawyers specializing in construction contracts, bankers and consulting engineers are represented, in order to examine insurance procedures for major construction contracts and to recommend any revisions to such procedures. A core paper was issued by FIDIC in April 1985, and a meeting of those concerned was held at Munich on 21 June 1985.

## IV. Transnational Corporations

### A. CTC: draft Code of Conduct on Transnational Corporations

77. At its thirty-ninth session, the General Assembly (resolution 39/443 of 18 December 1984), decided to reconvene the special session of the Commission in June

1985. To facilitate work at that session, the Assembly requested CTC "...to prepare a report on the outstanding issues in the draft code of conduct [on transnational corporations], including, *inter alia*, the questions of international law and international obligations *vis-à-vis* national legislation...". The report was duly prepared and formed the basis of discussion at the reconvened special session of the Commission in June 1985. Among the issues discussed at that session were the applicability of international law/international obligations to the code of conduct and the acceptable formulation in this regard, specific norms relating to national jurisdiction over transnational corporations (TNCs), non-interference by TNCs in internal political affairs, national treatment to be accorded to TNCs, nationalization and compensation and procedures for the settlement of disputes between Governments and TNCs. The report of the Commission's special session, held in January 1986, will be considered by the twelfth session of the Commission meeting between 9 and 18 April 1986.

### B. CTC: international, regional and bilateral arrangements

78. CTC has continued its earlier work on international, regional and bilateral arrangements on matters relating to transnational corporations. This work has involved the examination of a number of facets of co-operation in this area: the efforts made by various organizations to formulate multilateral instruments for the regulation of the activities of transnational corporations; the initiatives of regional and subregional organizations to harmonize the policies of member countries relating to foreign direct investment and the activities of transnational corporations; and bilateral investment agreements. A technical paper entitled "Bilateral investment agreements" (ST/CTC/65) was finalized in 1984 for publication in 1985. Another technical paper on regional and international arrangements relating to foreign investment was to be finalized in 1985.

### C. CTC: studies

79. In the studies of industry prepared by CTC, an overall description and analysis of the role and impact of transnational corporations in trade in specific natural resources, manufacturing and service sectors is presented. Trends in the participation of transnational corporations in an industry against the background of the structure and characteristics of that industry are examined. In that context, market concentration, competitive structure, intra-firm relationships and the pattern of ownership and control are analysed, as are the investment, technology and marketing practices and policies of host and home countries towards firms in the industry in question. Also examined in the studies are technological changes and their impact on the structure of the industry, on the location of operations, on international competition and trade, on employment and on the future role of transnational corporations in the industry concerned in developing countries.



80. Efforts have been initiated to include, as an annex to each study, a profile of the main transnational corporations active in the industry concerned. Such a presentation should contribute to a better understanding of the industry and of the role of transnational corporations operating in it, and should be useful information for Governments in their endeavours to develop appropriate policies and to strengthen their negotiating capability with transnational corporations.

81. An addition to the existing collection of industry studies, *Transnational Corporations in the Pharmaceutical Industry of Developing Countries* was published in 1984 (United Nations publication, Sales No. E.84.11.A.10). Drafts of three further studies have been completed: "Transnational corporations in the international semiconductor industry" (ST/CTC/39); "Transnational corporations in the international construction and engineering industry" (ST/CTC/60); and "Transnational corporations in the man-made fibre, textile and clothing industries" (ST/CTC/63). In addition, an informal seminar was convened to review a preliminary draft report on the involvement of transnational corporations in the armaments industry and in the transfer of military technology.

82. *Transnational Corporations and International Trade: Selected Issues* was published in 1985 (United Nations publication, Sales No. E.85.11.A.4). This technical study seeks to review the issues of the role of transnational corporations in the exports of manufactures of developing countries, the import propensities of transnational corporations, the behaviour of intra-firm flows, the problem of transfer pricing and the impact of transnational corporations on the trade policies of their home countries.

83. Four other studies were to be completed in 1985 and published as technical papers, namely "Transnational corporations in biotechnology", "Transnational corporations in international data-processing services", "Transnational corporations in the international data-processing equipment industry" and "Transnational corporations and non-fuel minerals". In addition, studies of transnational corporations in the plastics industry and in the telecommunications industry have been initiated.

## V. Transfer of technology

### A. UNCTAD: proposed International Code of Conduct on the Transfer of Technology

84. The General Assembly, by resolution 32/188 of December 1977, convened the United Nations Conference on an International Code of Conduct on the Transfer of Technology to negotiate and adopt such a Code. This Conference has held six sessions since October 1978. The substantive provisions of the present text of the proposed Code as of 5 June 1985 (contained in document TD/CODE TOT/47) fall into two broad groups: those concerning the regulation of transfer of

technology transactions and of the conduct of the parties to them; and those relating to steps to be taken by Governments to meet their commitments to the Code.

85. The fifth session of the Conference, convened in pursuance of General Assembly resolution 37/210, met from 17 October to 4 November 1983. Negotiations on the issues outstanding in the draft Code took place on the basis, *inter alia*, of proposals that had been made by an Interim Committee of the Conference in 1982. Although agreement was reached during the session on virtually all of chapter 5 (responsibilities and obligations of parties), no solution could be found for the other main outstanding issues in chapter 4 (restrictive practices in transfer of technology transactions) and in chapter 9 (applicable law and settlement of disputes).

86. The sixth session of the Conference, convened in consequence of resolution 38/153, met at Geneva from 13 to 31 May 1985. Negotiations concentrated on the resolution of the main issues outstanding in chapters 4 and 9, as the other issues (definition of international transfer of technology transactions, formulation of obligation of confidentiality, international institutional machinery) would most probably have been quickly resolved. However, no satisfactory solution could be found to the issue of the treatment of restrictive practices between parent and subsidiary enterprises. The Conference adopted a decision requesting the General Assembly to take the measures necessary for further action, including the possibility of reconvening negotiations on the International Code of Conduct. The General Assembly, on 3 December 1985, requested the Secretary-General of UNCTAD and the President of the Conference to consult with regional groups and Governments on the question. The Secretary-General of UNCTAD is to report to the forty-first session of the General Assembly which will then decide on the action to be taken in the matter.

### B. UNCTAD: policies on the transfer, acquisition and development of technology

87. In response to resolution 20 (IV), adopted at the fourth session of the Committee on Transfer of Technology (December 1984), the UNCTAD secretariat prepared three reports, namely "Reports on UNCTAD activities in the development and transfer of technology: promotion and encouragement of technological innovation: policies and instruments for the promotion and encouragement of technological innovation", (TD/B/C.6/123) and two documents in the "Restructuring the Legal Environment" series, "Periodic report on policies, laws and regulations conducive to development, transfer and acquisition of technology", (TD/B/C.6/111 and Corr.1); and "Effects of legislation and regulations on transfer of technology: an analysis of the experience of Nigeria and Portugal", (TD/B/C.6/112).

88. Having considered these studies, the Committee at its fifth session requested the UNCTAD secretariat to

continue studies on national laws and regulations relating to the transfer, application and development of technology. By the same resolution, the Committee requested the secretariat, in co-operation with other institutions concerned, to continue its studies of policies and instruments for the promotion and encouragement of technological innovation in all countries, and particularly in developing countries. These studies will be considered at the Committee's sixth session, tentatively scheduled for 27 October to 7 November 1986.

**C. UNIDO/ICPE: guarantee and warranty provisions in transfer of technology contracts**

89. A guide to the guarantee and warranty provisions in transfer of technology contracts, which has been elaborated by UNIDO and ICPE, is being finalized. This guide will take into consideration the developing country recipients' point of view. It will include draft individual guarantee and warranty clauses, reflecting the present legal situation and contractual practices, as well as the main problems and possible solutions.

**D. UNIDO: Technological Information Exchange System (TIES)**

90. Within the framework of TIES and upon the request of the annual meetings of the Heads of Technology Transfer Registries, the following UNIDO documents have been issued to meet the needs in developing countries for guidance on the contractual arrangements in specific sectors where the transfer of technology to developing countries has been expanded considerably:

(a) "Licensing computer software. Basic considerations as to protection and licensing of computer software and its implications for developing countries" (ID/WG.383/3);

(b) "Contractual arrangements for the transfer of technology in the fast food industry" (ID/WG.405/2);

(c) "Contractual arrangements for the transfer of technology in the hotel industry" (ID/WG.405/1); and

(d) "Trends and issues in contractual arrangements in the food-processing industry" (ID/WG.429/6).

**E. UNCITRAL**

91. As part of its report on current activities of international organizations related to the harmonization and unification of international trade law, the secretariat of UNCITRAL prepared a report on the activities of international organizations within the United Nations system relating to the legal aspects of technology transfer (A/CN.9/269).

**VI. Industrial and intellectual property law**

**A. Intellectual property activities**

**1. WIPO**

92. During 1984, the International Bureau of WIPO continued to promote acceptance by States of the Convention Establishing the World Intellectual Property Organization 1967 (WIPO Convention) (WIPO publication number 251) and of the other treaties administered by WIPO. Discussions on such acceptance took place during WIPO missions to States, particularly missions for the purposes of development co-operation, and in other contacts with government representatives. Notes concerning the advantages of acceptance of particular treaties by particular countries were prepared and sent to the competent authorities of the countries concerned.

93. In 1984, Cyprus, New Zealand and Venezuela deposited their instruments of accession to the WIPO Convention, bringing the number of members of WIPO to 109. In addition, 15 States which have not yet become members of WIPO are party to one or more of the treaties administered by WIPO.

**2. WIPO: activities of particular interest to developing countries**

94. WIPO's work in this area has as its objective the assisting of developing countries in the establishment or modernization of their industrial property systems in the areas of specialist training, creating or improving domestic legislation, creating or improving government institutions, stimulating domestic inventive activity, stimulating the acquisition of foreign patented technology, creating a corps of practitioners, and exploiting technological information contained in patent documents. In 1984 WIPO received 486 applications for training in industrial property.

95. WIPO continued to co-operate with Governments or groups of Governments of developing countries in the adoption of new laws and regulations or in the modernization of existing ones in the field of industrial property. WIPO also co-operated with government and regional institutions in the creation or modernization of industrial property institutions, including their patent documentation and information services.

96. A number of training courses and seminars on the development of the effective use of the industrial property system for the benefit of inventors, the industry and the commerce of developing countries were organized by WIPO.

**3. UNCTAD**

97. UNCTAD continues to examine the economic, commercial and development aspects of the industrial property system, patents and trademarks. It is also contributing to the current revision of the Paris Convention for the Protection of Industrial Property (Act of

Stockholm, 1967) (WIPO publication number 201). At its fifth session in December 1984, the Committee on Transfer of Technology, by resolution 28 (V), invited the Secretary-General of UNCTAD, in consultation with regional groups, to convene, as appropriate, a meeting of the Group of Governmental Experts on the Economic, Commercial and Developmental Aspects of Industrial Property in the Transfer of Technology to Developing Countries.

#### 4. ICC: counterfeiting

98. ICC has established a Counterfeiting Intelligence Bureau. Its purpose is to investigate and seek to prevent the counterfeiting of trademarked goods, as well as of patents, copyrights and industrial designs and models. It also conducts seminars on this issue.

### B. Copyright and neighbouring rights

#### 1. WIPO: activities of particular interest to developing countries

99. The aim of WIPO's work in this area is to assist developing countries in the establishment or modernization of their copyright systems, in training specialists, in creating or modernizing domestic legislation and infrastructure for the administration of such legislation, in stimulating domestic creative activity, and in facilitating access to foreign works protected by copyright owned by foreigners. In 1984, WIPO received 123 applications for training in the fields of copyright and neighbouring rights from 53 developing countries.

#### 2. UNESCO: activities in the area of copyright and neighbouring rights

100. UNESCO's activities in the field of copyright and neighbouring rights comprise, *inter alia*, the application and promotion of international instruments on copyright and on the protection of performers, producers of phonograms and broadcasting organizations concluded under UNESCO's sponsorship and the extension of the geographical field of their application. Among these instruments, the most recent is the Multilateral Convention for the Avoidance of Double Taxation of Copyright Royalties 1979 (WIPO publication number 294).

#### 3. UNESCO/WIPO: joint international service for access by developing countries to works protected by copyright

101. Since 1976 some of the activities in WIPO's permanent programme have concerned fields already covered by the activity of the International Copyright Information Centre of UNESCO. This was particularly the case with regard to access to works of foreign origin. In order to lessen the duplication in their work a Joint International UNESCO/WIPO Service for Access by Developing Countries to Works Protected by Copyright with effect

from 1 January 1981 was established. A Joint UNESCO-WIPO Consultative Committee was also convened to advise the Directors-General of those two organizations on the preparation and implementation of the activities of the joint service.

102. The first ordinary session of the Consultative Committee was held at Paris in September 1981. Following the deliberations of that session, UNESCO and WIPO jointly convened a Working Group on Model Contracts in respect of co-publishing and commissioned works (November 1982). The Joint Consultative Committee held its second session at Geneva in July 1983 and considered the report on the activities of the Joint International UNESCO-WIPO Service since the first session of the Committee.

#### 4. UNESCO: creation of a Committee for International Copyright Funds (COFIDA)

103. The International Fund for the Promotion of Culture, an autonomous financial body under UNESCO, adopted at the April 1981 session of its Administrative Council the Rules of Procedure of the Committee for International Copyright Funds (COFIDA). COFIDA is a subsidiary organ of the Fund and provides, *inter alia*, total or partial financing for copyright royalties when a developing country encounters difficulties in paying for the reproduction, translation, adaptation, broadcast or communication to the public by any other means of works of foreign origin of an educational, scientific, technical, technological or cultural nature. The operations of COFIDA may take various forms, such as loans or technical assistance to developing countries for purposes related to access to protected works of foreign origin. A brochure entitled "Committee for International Copyright Funds" (WIPO/CCC/I/4, CP7-81/CONF.502/COL.3) explaining the aims, objectives, constitution and operation of the Fund was published by UNESCO in 1981.

### C. Guides and model contracts

#### 1. UNESCO: model contracts concerning copyright in printed and audio-visual works

104. In the context of its overall activities in the field of facilitating access by developing countries to protected works and to serve as a link between publishers and copyright holders in various countries, both developed and developing, UNESCO's International Copyright Information Centre has established model contracts, accompanied by comments and guidelines, for use by interested parties in the fields of publication and the granting of rights as follows:

(a) "Model contract for the publication of a reproduction of an edition of a work" and "Model contract for the publication of the translation of a work", both to be found in UNESCO 081;

(b) "Model contract for the licensing of rights in a work for the purpose of sound recording";

(c) "Model contract for the licensing of motion picture rights";

(d) "Guidelines for the preparation of contracts for translation, reproduction and other rights required by developing countries".

## 2. UNESCO/WIPO: model provisions for national laws on publishing contracts for literary works

105. UNESCO and WIPO jointly convened a Working Group on Model Provisions for National Laws on Publishing Contracts for Literary Works (Geneva, June 1984). The draft model provisions, as revised by the two secretariats in the light of the recommendations of the Working Group, were to be submitted to a committee of governmental experts in December 1985 for adoption.

## 3. WIPO: guides on industrial property and licensing

106. The WIPO *Guide on the Industrial Property Activities of Enterprises in Developing Countries* (WIPO publication number 659) has been issued as a sales publication. A revised edition of the WIPO *Directory of Associations of Inventors* (1984 edition) (WIPO publication number 622) and a brochure entitled "The problems encountered by inventors" (WIPO publication number 711) were published in May 1984.

107. A Group of Consultants on the Revision of the WIPO *Licensing Guide for Developing Countries* (WIPO publication number 620) met at Geneva in June 1984. The Group consisted of 14 persons either selected by the Director-General of WIPO or designated, upon his invitation, by Governments and international organizations. The meeting of the Group of Consultants discussed the *Guide* in detail and gave advice on how to revise and update it in preparation for a new edition.

## VII. International payments

### A. Documentary credits

#### 1. ICC

108. ICC introduced a revised version of its *Uniform Customs and Practice for Documentary Credits* (1983 Revision, ICC Document No. 400) with effect from 1 October 1984. These rules and guidelines can be applied to letter of credit operations.

109. The ICC Commission on Banking Technique and Practice has published the "Draft ICC publication on documentary credit forms" (Document No. 470/455), for adoption by the ICC Executive Board. The forms are intended for use by banks and credit applicants in documentary credit operations.

## 2. UNCITRAL

110. At its seventeenth session UNCITRAL commended the use of the 1983 revision of the Uniform Customs and Practice for Documentary Credits (UCP), as from 1 October 1984, in transactions involving the establishment of a documentary credit.

### B. UNCITRAL: draft Convention on International Bills of Exchange and International Promissory Notes

111. At its seventeenth session (1984) UNCITRAL had before it an analytical compilation of the comments by Governments and international organizations on the draft Convention on International Bills of Exchange and International Promissory Notes and the draft Convention on International Cheques and a note by the secretariat indicating the major controversial issues in the draft Conventions (A/CN.9/248, 249 and Add. 1). At that session the Commission put the work of revising the draft Convention on International Bills of Exchange and International Promissory Notes in the light of the discussions at the seventeenth session and the comments by Governments and international organizations into the hands of the Working Group of International Negotiable Instruments. Work on the draft Convention on International Cheques was postponed and a decision on future work in its regard will be taken after the work on the draft Convention on International Bills of Exchange and International Promissory Notes is completed.

112. The Working Group concluded its work on the revision of the draft Convention mentioned at its fourteenth session in December 1985 (see report of the session A/CN.9/273). The revised version of the draft Convention on International Bills of Exchange and International Promissory Notes (A/CN.9/274) will be considered by the nineteenth session of UNCITRAL (June-July 1986).

### C. Hague Conference on Private International Law: negotiable instruments

113. The Hague Conference is considering drafting conflict of laws rules on the law applicable to negotiable instruments. The following documents on this topic have been prepared: "Note on the law applicable to negotiable instruments" (prel. doc. No. 1) and "Note on the preparation of a convention on the law applicable to negotiable instruments" (prel. doc. No. 3). They were submitted to the Special Commission on General Matters and Policy of the Hague Conference in January 1984 and to the fifteenth session of the Conference in October 1984.

114. A report on this subject is being prepared; its timing will depend on the progress made in the work of

UNCITRAL. A final decision on whether to open the Conference to non-member States in order to discuss this topic remains to be made by the member States of the Conference.

#### D. UNCITRAL: electronic funds transfers

115. At its fifteenth session in 1982, UNCITRAL requested its secretariat to begin the preparation of a legal guide on electronic funds transfers in co-operation with the UNCITRAL Study Group on International Payments. Several chapters were submitted to the Commission at its seventeenth session in 1984 (A/CN.9/250 and Add. 1 to 4), and the remaining chapters were submitted to the Commission at its eighteenth session in 1985 (A/CN.9/266 and Add. 1 and 2).

116. The Commission, at its eighteenth session, requested the Secretary-General to transmit the legal guide on electronic funds transfers to Governments and interested international organizations in order to obtain their comments. It also requested the secretariat, in co-operation with the UNCITRAL Study Group on International Payments, to revise the draft legal guide in the light of the comments received from Governments and international organizations. The draft legal guide, revised in the light of the aforementioned comments, is being submitted to the nineteenth session of UNCITRAL, June-July 1986 (A/CN.9/278).

#### E. CMEA: model principles for trade and payment

117. The CMEA Executive Committee in 1984 approved the Individual Model Principles for Trade and Payment Agreements (Protocols), worked out by the CMEA Conference on Legal Questions, in order that the CMEA member countries might apply them as they see fit when concluding specific agreements (protocols) on trade and payment. These principles may also be appropriately incorporated into other agreements on economic and scientific-technical co-operation.

### VIII. International transport

#### A. Transport by sea and related matters

##### 1. UNCTAD: United Nations Conference on Conditions for Registration of Ships

118. The United Nations Conference on Conditions for Registration of Ships was convened in 1985 pursuant to General Assembly resolutions 37/209 of 20 December 1982 and 39/213-A of 18 December 1984 in order to consider the adoption of an international agreement covering the conditions under which vessels should be accepted on national shipping registers. Pursuant to

General Assembly resolution 39/213-B of 12 April 1985, a further two-week session of the Conference was held between 8 and 19 July 1985, at the end of which a report containing a draft of an international agreement on conditions for the registration of ships was approved (TD/RS/CONF/19 and Add.1). The Conference met again from 20 January to 7 February 1986. On 8 February 1986, the Final Act of the Conference adopting the Convention was signed by representatives of 86 States ("Final Act of the United Nations Conference on Conditions for Registration of Ships", TD/RS/CONF/22). The Convention will be open for signature from 1 May 1986 to 30 April 1987. The Convention will enter into force when it has been ratified by 40 States representing 25 per cent of relevant gross registered tonnage.

##### 2. UNCTAD: Convention on a Code of Conduct for Liner Conferences

119. The Convention on a Code of Conduct for Liner Conferences (TC/CODE/13/Add.1, United Nations publication, Sales No. 75.II.D.12) entered into force on 6 October 1983. Its fundamental objectives are: (a) to facilitate the orderly expansion of world sea-borne trade; (b) to stimulate the development of regular and efficient liner services adequate to the requirements of the trade concerned; and (c) to ensure a balance of interests between suppliers and users of liner shipping services. In addition, three basic principles are specified in the Convention: (a) that conference practices should not involve any discrimination against the shipowners, shippers or the foreign trade of any country; (b) that conferences should hold consultations with shippers' organizations, shippers' representatives and shippers on matters of common interest, with, upon request, the participation of appropriate authorities; and (c) that conferences should publish and make available to interested parties pertinent information about their activities.

120. In line with these objectives and principles, the Code deals with, *inter alia*, the relationships between member lines of conferences and principles for the participation by member lines in the trade carried by conferences. This it does by establishing equitable principles for the use of loyalty arrangements, as well as requirements that conferences may be compelled to hold consultations with shippers or their representative organizations on matters of concern to shippers, such as changes in freight rates, loyalty arrangements and the imposition of surcharges. The Code also contains provisions dealing with the establishment of pools and other types of trade-sharing arrangements in conferences. Furthermore, it regulates freight rate increases, promotional freight rates, surcharges and currency adjustment factors.

121. To ensure the smooth functioning of the Code, the machinery for a system of dispute settlement based on conciliation is established. The Code requires that a Review Conference be convened five years from the date on which the Convention comes into force in order to

reconsider the Convention, with particular regard to its implementation and in order to adopt any appropriate amendments. Before that Review Conference, any problems encountered with the implementation of the Convention will be considered by the Committee on Shipping of UNCTAD at its twelfth session (in November 1986).

122. As of November 1985, 40 countries had acceded to the Convention, two had approved it, one had accepted and five had given definitive signatures.

### 3. IMO: liability and compensation for oil pollution damage

123. The preparatory work on the revision of the International Convention on Civil Liability for Oil Pollution Damage 1969 (IMO sales number 77.16) and the International Convention for the Establishment of an International Fund for Compensation for Oil Pollution Damage 1971 (IMO sales number 72.10), carried out by the Legal Committee of IMO, culminated in the adoption of an amending Protocol to each of the two Conventions (LEG. 53.6) by a diplomatic conference convened under the auspices of IMO in May 1984 (see also 1976 Protocols, IMO sales number 77.05). The two 1984 Protocols' most important feature is the introduction of substantially higher limits of compensation for oil pollution damage as compared to the limits set out in the two Conventions. A new minimum liability for shipowners has been set at SDR 3 million, and the maximum compensation available to victims from the shipowner and the Fund will be initially SDR 135 million but will reach SDR 200 million when certain conditions are met. Another important change is the adoption of a simplified system for amending the various liability and compensation limits introduced by the two Protocols. The solution chosen is based to a considerable extent upon the provisions of the unit of account and the adjustment of the limit of liability adopted by UNCITRAL at its fifteenth session and recommended by the General Assembly for use in the preparation of future international conventions containing limitations of liability provisions or in revisions of existing ones (General Assembly resolution 37/107 of 16 December 1982). (For the text of the unit of account and limitation of liability provisions see "Report of the United Nations Commission on International Trade Law on the work of its seventeenth session", *Official Records of the General Assembly, Thirty-ninth Session, Supplement No. 17 (A.39/17)*).

124. The diplomatic conference referred to above also had before it a draft Convention on liability in connection with the carriage of noxious and hazardous substances by sea (LEG/CONF.6/3 and LEG.55.5). The conference, while recognizing the need for an international agreement on this question, concluded that it was not feasible in the time available to resolve the many complex issues and decided, accordingly, to refer the draft Convention back to IMO for further consideration. The Council and the Legal Committee of the IMO are currently examining the question of how best to proceed in this matter.

### 4. UNCTAD: charter-parties

125. The report by the UNCTAD secretariat entitled *Charter-parties* (United Nations publication, Sales No. E.74.II.D.12), was discussed by the Working Group on International Shipping Legislation at its fourth session (27 January to 7 February 1975). This document examines the principal clauses in voyage and time charter-parties and suggests, *inter alia*, that such clauses be standardized and that the introduction of mandatory international legislation on certain aspects of the liability of the shipowners and charterer be considered. In accordance with the work programme adopted at its eleventh session (decision 52(XI) of 30 November 1984), the UNCTAD Working Group on International Shipping Legislation will consider the additional studies that are now in progress in the UNCTAD secretariat and will decide what future action on the subject of charter-parties should be taken.

### 5. UNCTAD: marine insurance

126. The Committee on Shipping, at its tenth session in June 1982, gave priority to the subject of marine hull and cargo insurance in the work programme of the Working Group on International Shipping Legislation (resolution 49(X)). By the end of the ninth session of the Working Group, its subgroup of experts, established for the purpose of drawing up a set of standard model marine hull and cargo insurance clauses, had formulated two alternative composite texts for hull insurance. As for cargo insurance, three alternative sets of clauses had been drafted.

127. The UNCTAD secretariat prepared two reports for the tenth session (September 1984) of the Working Group, one entitled "Marine hull insurance: working paper to assist in the drawing up of a set of standard hull clauses" (TD/B/C.4/ISL/41), and the other on marine cargo insurance entitled "Marine cargo insurance: working paper to assist in the drawing up of a set of standard cargo clauses" (TD/B/C.4/ISL/42).

128. At that session of the Working Group, the subgroup completed the drafts of the model clauses both in respect of hull and of cargo insurance. On hull insurance, two alternative sets of clauses were formulated, one on an "all risks minus exception" basis and the other on a "named perils" basis, each containing provisions on basic coverage, general exclusions, period of coverage, duties of the assured, measure of indemnity, claims settlement and extended cover clause. On cargo insurance three sets of clauses have been drafted providing "all risks", "intermediate" and "restricted" coverage, respectively, and each including provisions on basic coverage, general exclusions, additional coverage, period of coverage, measure of indemnity, and insurable interests.

129. The Working Group adopted the texts of the model clauses on marine hull and cargo insurance subject to the corrections to them which were to be communi-

cated in writing to the UNCTAD secretariat and on the understanding that the corrected texts would be examined by the competent experts during the eleventh session (1984) of the Committee on Shipping. The final texts of the model clauses prepared by the Rapporteur of the Working Group on the basis of amendments proposed by various delegations and in consultation with insurance experts ("UNCTAD model clauses on marine hull and cargo insurance", TD/B/C.4/ISL/50) have been circulated to the member States of UNCTAD, drawing their attention to the amendments made by the Rapporteur and inviting them to provide comments thereon, if any. The Committee on Shipping at its twelfth session in November 1986 will consider a report of the comments received and will request the appropriate action of the Board.

#### 6. IMO: salvage

130. The question of salvage and assistance at sea was placed on the agenda of the Legal Committee of IMO in the wake of the *Amoco Cadiz* disaster. In 1984 the Committee began work on this issue, basing its deliberations on the text of a draft Convention prepared by the CMI which was designed to revise and replace the 1910 Convention on Salvage and Assistance at Sea. The revised draft text appears in document LEG 52/3 (see also the "Note by the secretariat" on the revised draft text LEG 54/INF.2).

131. In addition, the Committee is examining various public law aspects arising in connection with salvage, including a possible obligation of ship-masters to notify casualties to coastal States, and the need to grant powers to coastal States to intervene in salvage operations that pose hazards of environmental damage to their coastal and related interests.

#### 7. UNCTAD: maritime fraud

132. The UNCTAD secretariat prepared "International maritime legislation - future work: report by the UNCTAD secretariat" (TD/B/C.4/244), which reviewed the activities of other organizations relevant to the subject of maritime fraud, briefly analysed the nature of the problem and set out possible courses of action to suppress maritime fraud, for the tenth session of the Committee on Shipping. By resolution 49(X), adopted in 1982, the Committee established an *Ad Hoc* Intergovernmental Group to Consider Means of Combating All Aspects of Maritime Fraud, Including Piracy.

133. At its first session held from 6 to 17 February 1984, the *Ad Hoc* Intergovernmental Group had before it a report prepared by the UNCTAD secretariat entitled "Review and analysis of possible measures to minimize the occurrence of maritime fraud and piracy" (TD/B/C.4/AC.4/2). The *Ad Hoc* Intergovernmental Group requested the UNCTAD secretariat, in collaboration with the appropriate intergovernmental and non-govern-

mental organizations and the commercial parties concerned, to carry out studies to be submitted to the second session. Those studies were to focus on the feasibility of improving the effectiveness of the administrative and legal procedures of prosecuting authorities with regard to, *inter alia*, the jurisdiction of States and extradition, the formulation of a set of guidelines for the international banking community, the feasibility of a banking super-service scheme, minimum standards for shipping agents and the availability of shipping information ("Maritime fraud: piracy: the feasibility of improving the administrative and legal procedures of prosecuting authorities in cases of maritime fraud" (TD/B/C.4/AC.4/8), "Maritime fraud: preliminary report on the feasibility of a bank super-service" (TD/B/C.4/AC.4/7)).

134. In addition to the studies mentioned, the UNCTAD secretariat also prepared a report for the second session of the *Ad Hoc* Intergovernmental Group of various studies of the means of combating maritime fraud that have been undertaken by specialized international and commercial organizations, alone or in cooperation with UNCTAD. The second session of the *Ad Hoc* Intergovernmental Group met at Geneva from 23 October to 1 November 1985 (the report appears in TD/B/C.4/296-TD/B/C.4/AC.4/10). It requested the Trade and Development Board to authorize the carrying out of certain studies by the UNCTAD secretariat in preparation for the twelfth session of the Committee on Shipping to be held from 10 to 21 November 1986.

#### 8. UNCTAD/IMO/CMI: maritime liens and mortgages

135. The Committee on Shipping at its tenth session in 1982 decided to give priority to the subject of maritime liens and mortgages priority (resolution 49 (X)). "Analysis of progress in possible reforms in the existing international régime of maritime liens and mortgages" (TD/B/C.4/ISL/52 and Corr.1) was issued by the UNCTAD secretariat pursuant to that resolution and discussed by the Working Group on International Shipping Legislation at its tenth session.

136. The Working Group urged the UNCTAD secretariat to carry out a study of the economic aspects of maritime liens and mortgages and proposed that the International Convention for the Unification of Certain Rules relating to Maritime Liens and Mortgages 1976 (IMO/LEG 55/4) should be taken as the basis for future work and discussion.

137. Consultations between UNCTAD and IMO took place in order to decide how best the organizations could deal with the various aspects of the subject-matter without duplication. It has been agreed that IMO will undertake studies on those aspects of maritime mortgages that are essentially ship-related, such as the entry and the cancellation of mortgages on national shipping registers. IMO will also carry out studies on maritime liens, particularly in respect of the existing practices, including

the need and desirability of maintaining lien status for claims currently enjoying such status, the ranking of different maritime liens *inter se* and the possibility of extending lien status to other types of claims.

138. Draft revisions of the Conventions on maritime liens and mortgages and arrest were considered and adopted by the XXXIII International Conference of CMI held between 19 and 25 May 1985 at Lisbon. CMI has noted, however, that under the Agreement between IMO and UNCTAD a new method of dealing with maritime liens and mortgages and related subjects has been adopted by the two intergovernmental bodies. The two organizations, themselves, have expressly stated that they will take due and full account of the conclusions reached by CMI in their studies to determine the need for international legislation or other appropriate action and the scope of such action. Accordingly, the reports of CMI on the draft Conventions on maritime liens and mortgages and arrest were circulated to the participants of its Working Group on International Shipping Legislation by UNCTAD in October 1985 (the reports are contained in TD/B/C.4/ISL/L.79).

139. The UNCTAD Working Group on International Shipping Legislation, by a resolution adopted at its eleventh session in October 1985, proposed that the Trade and Development Board convene, jointly with IMO, an intergovernmental group of experts to examine the subject of maritime liens and mortgages. The UNCTAD Working Group has proposed that that examination of mortgages and liens include a review of the Conventions in their regard and related enforcement procedures such as arrest and the preparation of model laws or guidelines on maritime liens, mortgages and arrest. The intergovernmental group of experts should also consider the feasibility of an international registry of maritime liens and mortgages. The Legal Committee of IMO is reviewing this proposal. Its views and recommendations will be reported to the IMO Council for consideration and decision at the Council's fifty-sixth session to be held in June 1986.

#### 9. UNCTAD: maritime law

140. On 1 April 1982 the UNCTAD secretariat issued a "Draft outline of a model code for maritime legislation" that can be used as a guide by developing countries in elaborating their own national laws (TD/B/C.4/244, annex II). UNCTAD intends to develop those sections of the model code dealing with the economic and commercial aspects of shipping.

#### 10. UNCTAD: regional associations and joint ventures in the field of maritime transport

141. The UNCTAD secretariat is studying the feasibility of creating and strengthening regional associations of ports, shippers, shipowners and maritime authorities for the purpose of co-operating and harmonizing policies and practices. UNCTAD is also carrying out a study of the

feasibility of projects involving joint ventures or multinational shipping companies in the fields of shipping and port facilities in developing countries. These studies may ultimately result in the preparation of model rules for regional associations and joint ventures.

142. On 26 September 1984 UNCTAD issued the report "Draft programme of action for co-operation among developing countries in the area of shipping, ports and multimodal transport" (TD/B/C.4/273) (see also "Draft report of the *Ad Hoc* Intergovernmental Group of Port Experts on its session from 25 February to 5 March 1986", TD/B/C.4/AC.7/L.1 and Add.1)

#### 11. UNCTAD: treatment of foreign merchant vessels in ports

143. In response to the Committee on Shipping's request in that regard, made at its seventh session, the UNCTAD secretariat prepared a note in 1977 entitled "Economic co-operation in merchant shipping. Treatment of foreign vessels in ports" (TD/B/C.4/158). As a number of developments on some elements of the subject were under consideration in other international organizations, the note suggested that the Committee on Shipping might not wish to make a final decision at that stage as to whether there was a need to revise the 1923 Convention and Statute of the International Régime of Maritime Ports, or to prepare a new international convention on the treatment of foreign merchant vessels in ports. Subsequently, the Committee on Shipping by its resolution 49(X) adopted at the tenth session in 1982, requested that the UNCTAD secretariat submit a report regarding regional arrangements for the treatment of merchant vessels in ports. This was done and the report is entitled "Industrial maritime legislation. Treatment of merchant vessels in ports at the regional level" (TD/B/C.4/275). The report provides a summary of replies to the note verbale of the Secretary-General of UNCTAD requesting Governments to provide information on any arrangements which might be in force in their national ports, or on such arrangements in force in foreign ports, which affect vessels flying their national flag. The report makes reference to the Memorandum of Understanding on Port State Control, 1982, as elaborating the only such existing arrangement. Having considered that report the Committee on Shipping at its eleventh session in November 1984 requested the member States of UNCTAD to inform the secretariat of UNCTAD and the IMO of the consequences they had noted resulting from the Memorandum of Understanding.

#### 12. ECE: carriage of dangerous goods by inland waterway

144. The ECE is undertaking a revision of the European provisions concerning the international carriage of dangerous goods by inland waterway (ADN) so as to provide a basis for national and international regulations, and to bring those provisions into line with the regulations governing other modes of transport.



**B. Transport over land and related issues****1. OTIF: Convention concerning international transport by rail (COTIF)**

145. Participants at a diplomatic conference held at Berne between 15 and 17 February 1984 brought into force on 1 May 1985 the Convention concerning international transport by rail of 8 May 1980 (COTIF), together with its Protocol on the privileges and immunities of the Intergovernmental Organization for International Rail Transport (OTIF). The following were also introduced:

(a) Uniform rules concerning the international rail transport of passengers and luggage (CIV), appendix A, and

(b) Uniform rules concerning the international rail transport of goods (CIM), appendix B, including the following annexes:

*Annex I:* Rules concerning the international rail transport of dangerous goods (RID)

*Annex II:* Rules concerning international rail transport of personal wagons (RIP)

*Annex III:* Rules concerning international rail transport of containers (RICO)

*Annex IV:* Rules concerning international rail transport of express parcels. (RIEX)

146. COTIF and its appendices replace the 1970 International Convention Concerning the Carriage of Goods by Rail (CIM), and the 1970 International Convention Concerning the Carriage of Passengers and Luggage by Rail (CIV) and the additional Convention to CIV of 26 February 1966 relating to the liability of railways for death of and personal injury to passengers.

147. The members of the International Rail Transport Committee (CIT) include some 300 transport enterprises (rail transport, road transport and navigation) from 33 countries in Europe, the Near East, the Middle East and North Africa which are parties to COTIF. The task of CIT is to develop international railway transport law on the basis of COTIF and its appendices A and B, CIV and CIM respectively. The purpose of the CIT is also to provide for the uniform regulation of other issues concerning international rail transport law.

148. Envisaging the coming into force of COTIF, CIT prepared a set of uniform rules for the implementation of the Convention and its appendices A and B (CIV and CIM) for the use of transport enterprises. These rules consist of regulations binding the transport enterprises and their users and of agreements either regulating in a mandatory way the relationships among the transport enterprises or being only of an indicative character.

149. CIT is preparing a study concerning the legal requirements of a substitution of the rail consignment note by another instrument which would enable the use of automatic data processing.

**2. UNIDROIT: civil liability for damage caused by hazardous cargoes**

150. The UNIDROIT Committee of Governmental Experts for the preparation of uniform rules relating to liability and compensation for damage caused during the carriage over land of hazardous substances has held six sessions at Rome since 1981. The Committee decided to restrict the sphere of application of the future uniform rules to liability and compensation for damage caused during the carriage of hazardous substances by road, rail and inland navigation vessels and, in consequence, rejected a suggestion to also cover transmission of hazardous substances by pipelines. It has agreed, for the time being, not to endorse a proposal to broaden its terms of reference to cover liability for damage resulting from the carrying out of dangerous activities in general.

151. Various amendments have been made to the original draft and a series of alternative texts introduced into it. At its sixth session, held in October 1984, the Committee completed its second, and began its third reading of the preliminary draft Convention and also gave further consideration to the question of the list of substances to which the future Convention should apply and which should be annexed to it, in the light especially of the findings of a joint working group of technical and legal experts which met at Rome in March 1984. A revised version of the draft articles for a Convention was prepared in February 1985 (Study LV-DOCs. 61, 62 and 65).

152. With a view to seeking solutions to a number of problems in respect of which differences of opinion have emerged between the UNIDROIT Committee of Governmental Experts and the Inland Transport Committee of ECE, a meeting of experts drawn from the membership of the two committees was held in November 1985. A report of that meeting (Study LV-Doc. 64) will be before the UNIDROIT committee which will reconvene for its seventh session in May 1986. It is hoped that work within UNIDROIT on the prospective Convention will be completed either at that session or at one to be held later on in the year.

153. The Inland Transport Committee of ECE was involved in the initiation of this work and is currently participating in the elaboration of the draft Convention.

**C. ICAO: transport by air and other related matters**

154. At its twenty-fifth session the ICAO Legal Committee, which met at Montreal from 12 to 27 April 1983, reviewed the status of the instruments of the "Warsaw System" (Warsaw Convention 1929) relating to the international carriage of passengers, cargo and mail by air and adopted a decision urging States to ratify the Montreal Protocols of 1975. That session also reviewed the general work programme of ICAO in the legal field. This programme was subsequently approved by the ICAO

Council on 3 June 1983 and confirmed by the twenty-fourth session of the Assembly of ICAO that was held in September and October of 1983. One of the items in the programme was the proposed ICAO secretariat paper entitled "Study of the instruments of the Warsaw System".

155. The purpose of that study is to present an historical background to the item "Study of the status of the instruments of the 'Warsaw System'" in the general work programme of the Legal Committee, to describe briefly the characteristics of the different components of that system and also to outline the outstanding problems in the international carriage of passengers, baggage and cargo.

156. The Panel of Experts on the General Work Programme of the Legal Committee concluded that no further work should be done with respect to this item except that an exchange of information between countries should take place; the Council agreed with that approach. In view of that conclusion, it was suggested that a questionnaire be sent to the appropriate government bodies and international organizations to enable the twenty-sixth session of the Legal Committee, meeting in 1986, to arrange an appropriate exchange of information among States.

157. The questionnaire asked Governments for the reasons, if any, preventing them from becoming parties to the Guatemala City Protocol, 1971, the Additional Protocols Nos. 1, 2, and 3, 1975, and the Montreal Protocol No. 4, 1975. Governments were also asked whether, pending the implementation of those instruments, they had taken any unilateral steps (a) to adjust the limits of liability with respect to air passengers of national and/or foreign carriers and (b) to regulate the conversion of the "gold clause" into national currency. The questionnaire also requested information regarding the action that countries would support in order to remove any practical difficulties experienced with the instruments of the "Warsaw System". Finally, Governments were asked whether they saw a possibility of conflict between the instruments of the "Warsaw System" and the United Nations Convention on International Multimodal Transport of Goods, 1980, and, if so, what the solution to that conflict might be.

#### **D. UNCITRAL: liability of operators of transport terminals**

158. UNCITRAL is currently formulating uniform legal rules on the liability of operators of transport terminals. These rules will be designed to establish a uniform international legal régime governing the liability of terminal operators in respect of goods involved in international transport. They are intended to fill the gaps in the liability régimes left by international transport conventions governing the liability of carriers in respect of such goods. This work, which is based in part on a preliminary draft

Convention on Operators of Transport Terminals, adopted by UNIDROIT in 1983, has been assigned to the UNCITRAL Working Group on International Contract Practices.

#### **E. UNCTAD: rights and duties of container terminal operators**

159. The UNCTAD secretariat has prepared a study on this subject which will be presented to the twelfth session of the UNCTAD Committee on Shipping to be held from 10 to 16 November 1986.

#### **F. UNCTAD/UNCITRAL: promotion of the Multimodal Transport Convention and the Hamburg Rules**

160. With the collaboration of the secretariat of UNCITRAL, the UNCTAD secretariat is preparing a booklet on the United Nations Convention on International Multimodal Transport of Goods (1980) (TD/MT/CONF/16) ("Multimodal Convention"), elaborated by UNCTAD, and the United Nations Convention on the Carriage of Goods by Sea (1978) (A/CONF.89/13) ("Hamburg Rules"), elaborated by UNCITRAL. The booklet will be designed to promote more widespread international acceptance of those two Conventions by explaining their objectives, features and implications.

161. At the twenty-fifth session of AALCC, held from 3 to 10 February 1984, the Trade Law Sub-Committee of AALCC recommended that member States consider ratifying the Hamburg Rules. The Organization of American States, at its Third Interamerican Conference on Private International Law, held from 15 to 24 May 1984, also recommended that its member States ratify or accede to the Hamburg Rules.

162. By 1 February 1985, four States had become contracting parties to the Multimodal Convention and three States had signed it subject to ratification. Thirty States are required for the Convention to come into force. By 31 March 1986, 11 States had ratified or acceded to the Hamburg Rules, while 25 States had signed the Convention. Twenty parties are required for the Hamburg Rules to come into force.

163. In its resolution 40/71 on the report of UNCITRAL on the work of its eighteenth session, the United Nations General Assembly stressed the importance of bringing into effect the Conventions resulting from the work of UNCITRAL, including the Hamburg Rules.

#### **G. UNCTAD: Northern Corridor Transit Agreement**

164. This Agreement was signed by Burundi, Kenya, Rwanda and Uganda on 19 February 1985 and will come into force 31 days after its ratification by those four countries. The "Northern Corridor" is a term used to describe the transport infrastructure in East Africa that is

served by the port of Mombassa in Kenya and that also extends to Sudan and Zaire. It is a major transport system, linking the latter two countries as well as Burundi, Kenya, Rwanda and Uganda with the ocean. The Agreement enables the most effective route to be used for the surface transport of goods amongst the contracting parties. Under the Agreement, these latter grant each other the right of transit in order to facilitate the movement of goods through their respective territories and promise to provide the facilities necessary for traffic in transit among them.

## H. Container standards

### 1. UNCTAD

165. Having considered the reports of the *Ad Hoc* Intergovernmental Group on Container Standards for International Multimodal Transport (TD/B/AC.20/6 and TD/B/AC.20/10) and the proposals contained therein, the Trade and Development Board decided in March 1980 to remit to the Committee on Shipping the question of container standards and that regarding the possibility of drawing up an international agreement on those standards.

166. In response to a request made in that regard by the Committee on Shipping, the UNCTAD secretariat, in cooperation with IMO and ISO, prepared a note entitled "Review of developments in the standardization of containers and related activities" (TD/B/C.4/270 and Corr. I) which was submitted to the Committee on Shipping at its eleventh session (19 to 30 November 1984). In preparing the note the views of regional commissions and of several governmental and non-governmental organizations were also sought. Having considered that note, the Committee on Shipping requested the Secretary-General of UNCTAD to communicate to ISO the concern of many countries with regard to the proposed increase of the tonnage and the height of containers.

### 2. ISO

167. The ISO Committee on Freight Containers (TC 104) is studying the new features in the standardization requirements arising from the increase in the tonnage and height of containers.

## I. UNCTAD: freight forwarding

168. The UNCTAD secretariat has circulated a report examining freight forwarding operations and services, including applicable legal régimes, as they relate to the promotion of freight forwarding in developing countries (document UNCTAD/SHIP/193), and will continue to keep this area of growing activity under review particularly with regard to its legal aspects. UNCTAD is considering means of combating maritime fraud by the regulation of freight forwarders.

## J. CMI: non-negotiable transport documents

169. At its thirty-third International Conference, held from 19 to 25 May 1985, CMI decided to establish a subcommittee to study potential problems flowing from the arrival of cargo at its destination before the arrival of the relevant bill of lading and the use of non-negotiable documents, such as sea waybills, and new techniques such as electronic data processing or the creation of a central bill of lading registry. The subcommittee is to seek solutions to those problems, possibly through uniform rules or an international convention, taking into account, *inter alia*, the development of a paper-less system.

## IX. International arbitration<sup>a</sup>

### A. UNCITRAL

170. The UNCITRAL Working Group on International Commercial Practices prepared a draft model law on international commercial arbitration during its third, fourth, fifth, sixth and seventh sessions. At its seventeenth session (1984) UNCITRAL requested the Secretary-General to transmit the text of the draft model law to Governments and interested international organizations for their comments.

171. The Commission had before it at its eighteenth session (1985) a report prepared by the secretariat containing an analytical compilation of the comments received (A/CN.9/263 and Add.1-3) and a report of the Secretary-General consisting of a commentary on the draft text (A/CN.9/264). The Commission considered the text of the draft model law in detail and, on 21 June 1985, decided to adopt the Model Law on International Commercial Arbitration (for the terms of the text adopted, see "Report of the United Nations Commission on International Trade Law on the work of its eighteenth session", *Official Records of the General Assembly, Fortieth Session, Supplement No. 17 (A/40/17, annex I)*).

172. The General Assembly recommended in its resolution 40/72 of 11 December 1985, that "all States give due consideration to the Model Law on International Commercial Arbitration, in view of the desirability of uniformity of the law of arbitral procedures and the specific needs of international commercial arbitration practice".

### B. AALCC

#### 1. Consideration of UNCITRAL Model Law on International Commercial Arbitration

173. The AALCC Sub-Committee on International Trade Law Matters, at its twenty-fourth session held at Kathmandu (Nepal) in 1985, examined the draft text of a

<sup>a</sup>A fuller description of the work of international organizations in the area of arbitration can be found in "Co-ordination of work: activities of international organizations on certain aspects of arbitration: report of the Secretary-General" (A/CN.9/280).

model law on international commercial arbitration, as adopted by the UNCITRAL Working Group on International Contract Practices. At its seventh-fifth session held at Arusha (United Republic of Tanzania) in 1986, the Sub-Committee considered and recommended the use of the UNCITRAL Model Law on International Commercial Arbitration, as adopted by the Commission on 21 June 1985.

## 2. *Establishment of regional centres of arbitration in the Asian-African region*

174. The AALCC has established two Regional Arbitration Centres, one at Kuala Lumpur and one at Cairo, and has decided to establish further centres, one in Tehran, one in an East-African State and probably one in a West-African State. The rules of procedure applied by these centres in arbitrations held under their auspices are the UNCITRAL Arbitration Rules of 1976 as supplemented by internal or administrative rules of the Centres.

175. The AALCC has concluded agreements with the World Bank's ICSID for co-operation and assistance under which arbitration proceedings under the ICSID Convention can be held at either of these Regional Centres, if the parties so choose. Similarly, the proceedings in arbitrations under the auspices of either of these Centres can be held on the premises of ICSID, particularly that part of such proceedings involving the recording of evidence of witnesses. These arrangements have been made in order to ensure the prompt resolution of cases, to minimize arbitration costs and for the convenience of the parties.

176. The AALCC and its Kuala Lumpur Centre have also concluded a co-operation agreement with the Tokyo Maritime Arbitration Commission to provide specialized institutional facilities for the resolution of disputes arising out of international maritime contracts. Under this agreement it is possible, where the parties so agree, for that Commission to administer maritime arbitrations on behalf of the Kuala Lumpur Centre.

177. The Kuala Lumpur Centre has also concluded mutual co-operation agreements with the Korean Commercial Arbitration Board, the Indian Council of Arbitration, the Japan Commercial Arbitration Association and the Indonesian Commercial Arbitration Board. Each of these agreements carries the commitment to "co-operate in providing assistance in the enforcement of arbitral awards rendered in arbitral proceedings under the auspices of the Regional Centre or the national institution".

### C. CMEA

178. During the period 1983-1985 the CMEA Conference on Legal Questions continued its study into the practical application of the Convention on Settlement by Arbitration of Civil Law Disputes arising from Economic,

Scientific and Technical Co-operation (26 May 1972). The Conference also examined the use made by the CMEA member countries of the Uniform Rules for Arbitration Tribunals (1974). The intention is to prepare a report on the basis of this work on the application of the 1972 Arbitration Convention and on possible improvements to the 1974 Uniform Arbitration Rules to enable the Conference to agree upon the direction of further work.

### D. FIDIC/ICC

179. In collaboration with ICC and the European International Contractors, FIDIC has compiled lists of experts suitable for appointment as arbitrators in cases where technical expertise is required. These lists will be made available to parties in order to help them in their choice of arbitrators.

### E. Hague Conference on Private International Law

180. The Hague Conference is considering the possibility of extending the applicability of the 1970 Convention on the Taking of Evidence Abroad in Civil or Commercial Matters (Evidence Convention) to arbitration proceedings (see paragraph 233 below).

### F. ICC

181. The ICC Commission on International Arbitration, at its meetings held at Paris on 14 May 1985, 25 October 1985 and 13 March 1986, considered, *inter alia*, the following matters, most of which were being studied by special working parties:

- (a) Draft guidelines and model clauses for multi-party arbitration;
- (b) Establishment of an arbitral referee procedure;
- (c) Review of ICC Conciliation Rules; and
- (d) Study of practice of interim and partial awards and dissenting opinions.

182. ICC is preparing a second volume on arbitration laws to follow on the "Guide to Arbitration Law in Europe" (ICC publication No. 353). This second volume will cover the Far East and the Pacific and is expected to be published in 1986.

### G. ICCA

183. The ICCA continues to publish the *Yearbook Commercial Arbitration*. The *Yearbook*, which provides comprehensive and up-to-date world-wide information on commercial arbitration, entered its tenth volume in 1985. The contents of this volume include national reports on arbitration law and practice, national court decisions on the application of the New York Conven-

tion, 1958, arbitral awards from arbitral institutions and *ad hoc* arbitrations.

184. In 1983, the ICCA started its *Congress Series*, publishing the papers of the VIIth Congress, held at Hamburg from 7 to 11 June 1982, and having as its subject "New trends in the development of international commercial arbitration and the role of arbitral and other institutions". In 1984 the papers of ICCA's Interim Meeting on "UNCITRAL's project for a model law on international commercial arbitration", held at Lausanne from 9 to 12 May 1984, were published in *Congress Series No. 2*.

185. In 1984 ICCA launched the *International Handbook on Commercial Arbitration*, a loose-leaf series of national reports on arbitration law and practice, that updates and completes what is already published in the *Yearbook* by including the text of arbitration laws and other basic legal materials. The first issue of the *Handbook* and the two supplements to it published in 1984 cover reports on 20 countries, complete with relevant legal texts. Supplements to the *Handbook*, including updatings of existing basic work, will appear regularly each year until about 60 countries of interest to international commercial arbitration are covered.

186. Under the auspices of ICCA, the VIIIth International Arbitration Congress will be held in New York between 6 and 9 May 1986 and will discuss the following two themes: (a) comparative arbitration practices, and (b) public policy and arbitration. The papers of the meeting will be published by ICCA in *Congress Series No. 3*.

#### X. Products liability: EEC

187. On 26 July 1985 the Council of Ministers of the European Communities adopted a directive on the approximation of the laws, regulations and administrative provisions of the member States relating to liability for defective products (OJ No. L 210, p. 29). This directive aims at removing distortions in the comparison of the competitiveness of products resulting from differences in national rules wherein the re-sale prices of a product are higher in those countries where the rules are stricter. It also seeks to eliminate certain barriers to the free movement of goods and to reinforce consumer protection.

#### XI. Private international law

##### A. EEC

188. The EEC Convention on the Law Applicable to Contractual Obligations 1980 (OJ No. L 266, 9.10.1980, p. 1) constitutes a logical complement to the Brussels Convention on Jurisdiction and Enforcement of Court Decisions in Civil and Commercial Matters 1968 (OJ No. L 304, 30.10.1978, p. 77). Having dealt with conflicts of

jurisdiction it was necessary to deal with conflicts in the applicable law in order to increase legal certainty within the EEC, to facilitate exchanges and to avoid "forum shopping". With this in mind the measures provided for facilitate the determination of the law applicable and seek to ensure that all the courts of EEC member States will apply the same law to identical cases between the same parties.

##### B. Hague Conference on Private International Law

189. The fifteenth session of the Hague Conference, held at The Hague from 18 to 20 October 1984, decided to retain in the agenda for future work of the Conference the question of the law relating to conflict rules in respect of contractual obligations and to leave to the Secretary-General of the Conference the responsibility of deciding whether or not to convene a working group to explore the subject. The same session of the Hague Conference also decided to retain on the agenda for future work of the Conference the study in liaison with the international organizations concerned, in particular WIPO, of conflict rules for licensing and know-how agreements.

190. An exploratory study on the preparation of rules dealing with conflicts of laws occasioned by transfrontier data flows is under preparation by the Hague Conference. This study is to be undertaken in liaison with the international organizations concerned, in particular UNCITRAL. (See also paragraphs 115 and 116.)

##### C. Hague Conference on Private International Law: international sale of goods

191. At its fourteenth session in October 1980, the Hague Conference on Private International Law (Hague Conference) decided to consider the revision of the 1955 Convention on the Law Applicable to International Sales of Goods. A report in this regard was published in September 1982. A first Special Commission meeting on the subject was held in December 1982. At the second meeting of the Special Commission, held in November 1983, the draft Convention on the Law Applicable to Contracts for the International Sale of Goods was adopted. The text of the draft Convention and an accompanying report were published in August 1984.

192. The fourteenth session of the Hague Conference had decided to invite the member States of UNCITRAL to participate in the preparatory work on this subject. Eighteen countries that were not members of the Hague Conference participated in the preparatory work. All States, including non-member States of the Hague Conference, were invited to participate in the diplomatic conference held at The Hague between 14 and 30 October 1985. Fifty-four States participated and eight States attended as observers. The Convention on the Law Applicable to Contracts for the International Sale of Goods, adopted by the final act of the conference on 30 October 1985, was opened for signature or accession at the closing ceremony.

## XII. Other topics of international trade law

### A. Agency

#### 1. UNIDROIT

193. The UNIDROIT diplomatic conference held at Geneva from 31 January to 17 February 1983, which adopted and opened to signature the Convention on Agency in the International Sale of Goods, requested UNIDROIT to "consider the possibility of elaborating rules on a global or regional level governing the relations between principal and agent in the international sale of goods".

194. Accordingly, the Governing Council instructed the secretariat to prepare a report on the possibility of elaborating rules governing the relations between principals and agents, in particular in the international sale of goods, based primarily on a study of existing national legislation and of attempts at harmonization and unification of laws at a universal and a regional level. A progress report on the study was submitted by the secretariat to the Governing Council at its sixty-third session (May 1984) in the light of which the Council decided to adjourn further discussion on this work on the international relations between principals and agents until a later session when it would be possible to assess developments in the field, in particular the outcome of the work by the EEC on a draft directive on commercial agency.

#### 2. EEC

195. The amended proposals for an EEC directive to co-ordinate the laws of the member States relating to commercial agents has, since April 1981, been the subject of discussions in the Council of Ministers by a group of government experts. The aim of the proposals is to harmonize the laws of the member States governing relations between traders and their commercial agents. At present agents enjoy different degrees of protection, depending on the member State involved. As a result, the cost of employing agents varies from one country to another. Harmonization should, to a large extent, remove the cost differences and should render conditions more competitive.

#### 3. ICC

196. The ICC has completed work on a practical business guide to the drafting of international commercial agency agreements (ICC publication No. 410) and has started to work on a companion guide to distributorship agreements.

### B. EEC: accounts of financial institutions

197. On 19 March 1981 the Commission of the European Communities sent the Council of Ministers the proposal for a directive concerning the annual accounts of banks and other financial institutions (OJ No. C 130, p.1).

198. In February 1982 the Economic and Social Committee of the Communities determined that credit institutions have a duty to provide their staff, customers, shareholders and the public at large with all relevant information concerning their activities. The Committee indicated that, although it opposed the proposed directive in the form it was presented, it would welcome specific rules on the annual accounts of banks and other financial establishments instead of additional rules relevant to banks simply being tacked on to the Fourth Directive (78/660/EEC, OJ No. L 222, p. 11) concerning the annual accounts of certain types of companies. On 6 July 1983 the European Parliament welcomed the proposed directive but requested that some amendments be made to it.

199. In May 1984 the Council of Ministers began its consideration of the amended proposal forwarded to it by the Commission (amended proposal of 14 March 1984, OJ C 83, p. 6.)

200. From the viewpoint of harmonization, the proposal for an EEC directive concerning the annual accounts of banks and other financial institutions will be an important complement to the Fourth Directive mentioned. The proposal adapts the provisions of the 1978 Fourth Directive to the particular characteristics of banks and other financial institutions. However, in order to prevent distortions in a comparison of competitiveness in the credit sector, it has been given a wider scope than the earlier directive, so as to include undertakings with a legal structure not covered by the latter.

201. At present credit institutions are not required to publish detailed balance-sheets and profit-and-loss accounts in all member States. Once the directive has been adopted, all banks and all other financial institutions doing business in the EEC will be obliged to publish comparable annual accounts. The proposal also contains such detailed provisions as apply specifically to the accounts of banks and other financial institutions.

### C. Bankruptcy

#### 1. EEC

202. The EEC draft Convention on Bankruptcy, Winding-up, Arrangements, Compositions and Similar Proceedings, was proposed in 1970 and completely renegotiated with the accession of new member States. This draft Convention was transmitted, in June 1980, by the Chairman of the Group of Governmental Experts, to the President of the Council of Ministers and, with a view to obtaining their opinions, to the Permanent Representatives of the member States and the President of the Commission. On 10 December 1981 the Commission communicated to the member States and to the Council its opinion in regard to this draft Convention. Since 1981 the draft Convention has been discussed in the Council by the Group of Governmental Experts.

## 2. Council of Europe

203. The Council of Europe Committee of Experts on Bankruptcy (CJ-DF) held an exchange of views and information on reforms being considered, undertaken or completed in the different member States. At its seventh meeting, from 7 to 10 May 1985, it also adopted a draft Convention and draft Explanatory Report on the exercise abroad of certain powers of a liquidator. The draft Convention provides, *inter alia*, that without the necessity of an enforcement procedure, a liquidator appointed in bankruptcy proceedings in one member State will be entitled to take measures for the disposal of a debtor's property in another member State. Another chapter of the draft Convention provides a system for informing creditors residing in another member State of the bankruptcy proceedings and for the submission of their claims against the bankrupt.

204. This draft was examined by the Committee on Legal Co-operation (CD-CJ) at its meeting in December 1985. The draft was referred back to the Committee of Experts to be redrafted in the light of the discussion in the CD-CJ.

205. The Council of Europe Committee of Experts on Bankruptcy (CJ-DF) has now been given the following terms of reference:

(a) To attempt to harmonize some fundamental principles of member States' laws relating to bankruptcy and other proceedings with the purpose of rehabilitating the debtor and in such a way as to take into account the concepts of bankruptcy/liquidation and bankruptcy/rehabilitation; and

(b) To endeavour to solve the problems arising at an international level when bankruptcy proceedings are instituted in one member State whereas some creditors and assets of the debtor are in the territories of other States.

### D. Council of Europe: creditors

206. The Council of Europe Committee of Experts on the Rights of Creditors has completed its work by adopting a draft Convention on the Reservation of Ownership Clause, the main portions of which relate to the recognition and enforcement of that clause so long as it complies with the Convention's rules in its regard. The draft has been sent to the European Committee on Legal Co-operation for consideration before being sent to the Committee of Ministers for final adoption.

### E. CMEA: combines

207. During 1983-1984 the CMEA Conference on Legal Questions prepared a report on the legal issues involved in the development of direct links between the

combines, enterprises and other economic organizations of the CMEA member countries. This report also deals with the establishment and operation of international economic organizations on the territory of these countries for the purpose of the further expansion of co-operation and direct ties within the CMEA. In this connection, work proceeded during 1985 on a comparative study of the provisions in effect in these countries for the regulation of the establishment and operation of direct links between economic organizations.

### F. EEC: companies

#### *Directives and proposed Directives*

208. During and after 1983, the EEC issued the following Directives or proposed Directives relating to companies:

(a) Amended proposal for a Fifth Directive of 19 August 1983 (OJ C 240, p. 2) concerning the structure of public limited companies, the powers and obligations of their organs and employee participation;

(b) Seventh Directive of 13 June 1983 (83/349/EEC) (Adopted OJ L 193, p. 1) on parent undertakings of groups comprising either a public limited company or a private limited company and relating to consolidated accounts;

(c) Eighth Directive of 10 April 1984 (84/253/EEC) (Adopted O.J. L 126, p. 20) on the approval of persons responsible for carrying out the statutory audits of accounting documents;

(d) Proposal for a Tenth Directive of 8 January 1985 (OJ C 23, p. 11) concerning cross-border mergers of public limited companies;

(e) Draft of a proposed Ninth Directive on public limited companies relating to the links between undertakings. Technical preparatory work has been carried out by the Commission's departments, but the Commission itself has not yet made a decision on the matter. The current draft was sent to Governments, industry and trade unions at the end of 1984 in order to enable them to communicate their reactions to the Commission.

#### *International mergers of public limited liability companies*

209. A preliminary draft European agreement on international mergers of public limited liability companies prepared by a group of experts was presented to the Council of Ministers of the European Communities and the Governments of member States in 1973. Progress on the draft Convention, the technical aspects of which have been completed, is blocked because of problems relating mainly to employee participation. The draft Convention aims at making mergers between companies established under the laws of different States possible. The transactions covered by the Convention are mergers by takeover and by formation of a new company.

*European company statute*

210. A regulation establishing a statute for a European company has been proposed. Such a statute would create a legal structure, available throughout the EEC, which would permit undertakings to establish themselves or reorganize their businesses at a European level under one umbrella of legislation rather than to continue to rely on different national systems operating side by side.

211. A proposal for a regulation on a statute for a European company revised in the light of the opinions of the Economic and Social Committee and the European Parliament was submitted by the Commission to the Council on 13 May 1975 (Bull. EC 4. 1975). The first reading of the proposal has nearly been completed by an *ad hoc* group in Council. Only titles V (employee representation), VI (annual accounts) and VII (groups) still remain to be examined.

*Groups of companies*

212. Some of the issues which it is proposed to resolve in an EEC Directive on this question are: harmonization of municipal rules relating to groups of companies, extension of company law rules to holding-subsidiary relations, notification and publication of shareholdings, reciprocal holdings, subordination of a single company's interests to the interests of a group, and minority and creditor protection in dependent group companies.

213. A working group of governmental experts finished its discussions on this subject early in 1974. The Commission has not yet made any proposal to the Council but the latest draft was transmitted to Governments at the end of 1984 for their information.

*European Economic Interest Grouping (EEIG) (formerly European co-operation grouping).*

214. This is a new legal concept under EEC law intended to foster co-operation between individuals and companies of all sizes from the various member States while observing the rules for competition. The purpose of the new concept is to allow EEC individuals and companies to combine part of their activities or some of their functions so as to enhance the results of their own economic activity. The Grouping is therefore designed as an economic entity separate from its members and living independently but not itself in a dedicated quest for profits. It both amplifies and complements the activity of its members.

215. The purpose of the Regulation is to provide a means whereby undertakings (particularly small- and medium-sized ones) can co-operate across frontiers without being hindered by the territorial limits of national legal systems. The Grouping is intended to be a flexible legal instrument based on a contractual relationship of limited duration, for use by individuals and companies alike. The Regulation establishing such a Grouping prohibits it from aiming for profit as such, but if profit

happens to emerge, this will be taxed on the account of the members. The Grouping is vested with full legal capacity so as to enable it to participate to the full in the economic life of the EEC.

216. The Regulation on forming a European Economic Interest Grouping follows on the proposal concerning the statute for the European company (see paragraph 208 above). The concepts complement each other: the Grouping being primarily intended to facilitate provisional alliances based on joint interests and made through very flexible procedures which can be adapted swiftly to developments in economic conditions, while the European company is intended to bring together much closer groupings, usually irrevocably.

217. On 12 April 1978 the Commission presented to the Council a proposed Regulation amended in the light of the opinions of the Economic and Social Committee and the European Parliament given in respect of a similar, earlier proposal for setting up what was then termed a "European Co-operation Grouping". This proposal has now become the "European Economic Interest Grouping (EEIG) Regulation 1985" (OJ L 199, 25.7.1985, p. 1).

**G. ICC: code of practice for on-demand guarantees**

218. The ICC is studying the desirability of a standard international code of practice for on-demand guarantees.

**H. UNEP: consumer protection**

219. By its decision 12/14, section II, of 28 May 1984, the Governing Council of UNEP expressed its satisfaction at the results of the first session of the *Ad Hoc* Working Group of Experts for the Exchange of Information on Potentially Harmful Chemicals (in particular Pesticides) in International Trade (26 to 30 March 1984) and requested the Executive Director to continue the work initiated by the Group and to take all appropriate steps to expedite the preparation of the guidelines and principles elaborated by the Group with a view to their early adoption by the Governing Council.

220. The second session of the Working Group was accordingly convened at Rome from 28 January to 1 February 1985. The Working Group revised the draft guidelines and considered the implementation of the provisional notification scheme for banned and severely restricted chemicals (see "Report of the Working Group on the Work of its Second Session", UNEP/WG/112/5).

221. The Working Group also considered the following issues: information on the basic data required for the assessment of the hazards to man and the environment, the conditions for the safe use of certain chemicals and various definitions used in the draft guidelines, i.e. "chemical", "pesticide", "potentially harmful chemical", "banned or severely restricted", "trade" and "export", "re-export" and "import".



**I. ILO: employment and labour**

222. At the seventieth session of the International Labour Conference (June 1984), a recommendation was adopted containing a section on "International economic co-operation and employment". The recommendation concerns employment policies relating to, *inter alia*, population, employment of youth and disadvantaged groups and persons, technology, small undertakings, regional development, public investment and special public works programmes and international economic co-operation and employment.

223. The following industrial meetings of ILO held in 1983 and 1984 adopted conclusions touching on international trade questions:

(a) Eleventh session of Metal Trades Committees ("Effect to be given to the conclusions and resolutions of the committee", GB.226/IA/2/1);

(b) Fourth Tripartite Technical Meeting for Mines other than Coal Mines ("Effect to be given to the conclusions and resolutions of the meeting", GB.226/IA/4/2);

(c) First Session of the Food and Drink Industries Committee ("Effect to be given to the conclusions and resolutions of the committee", GB.230/IA/5/7).

224. The ILO's Joint Maritime Commission met in September 1984 and adopted a resolution dealing with the carrying of radioactive nuclear cargoes (report of the twenty-fourth session of the Committee, GB.228/7/8). A tripartite Preparatory Technical Maritime Conference will meet in May 1986 to prepare for a Maritime Session of the International Labour Conference scheduled for 1987. The Conference is likely to adopt conventions or recommendations on the following subjects:

(a) Social security protection for seafarers including those serving in ships flying flags other than those of their own country;

(b) Health protection and medical care for seafarers;

(c) Revision of the Repatriation of Seamen Convention, 1926 (No. 23); and of the Repatriation (Ships Masters and Apprentices) Recommendation, 1926 (No. 27);

(d) Seafarers welfare at sea and in port.

In addition, proposals on the subject of health and safety in construction work are to be considered by the International Labour Conference in 1987.

225. The ILO is preparing a "Code of Practice and Occupational Safety and Health and Working Conditions Specifications in the Transfer of Technology to Developing Countries". A draft of this Code of Practice is to be submitted to a meeting of experts in October 1986.

**J. UNEP: environmentally sound management of hazardous wastes**

226. The *Ad Hoc* Working Group of Experts on the Environmentally Sound Management of Hazardous Wastes, established pursuant to UNEP Governing Council decision 10/24 of 31 May 1982 to consider guidelines and principles on the subject, held its first session at Munich from 28 February to 5 March, 1984. By its decision of 28 May 1984, the Governing Council expressed satisfaction with the results of the first session of the Working Group and requested the Executive Director to continue the work so initiated, in accordance with the recommendations submitted by the Working Group, and to take all necessary measures to expedite the preparation of the guidelines and principles elaborated by the Working Group. The Working Group met three times and at its last meeting in December 1985 it adopted its final report (UNEP/WG.122/3) which comprises, *inter alia*, the text of the guidelines prepared and adopted by it.

**K. UNCTAD: Export Credit Guarantee Facility**

227. The question of establishing an International Export Credit Guarantee Facility (ECGF) to give support to developing countries' exports has been extensively discussed within UNCTAD. At its eighth session the UNCTAD Committee on Invisibles and Financing related to Trade (CIFT) dealt with both policy and technical issues relating to the establishment of a Facility. In its resolution 15 (VIII) of 3 November 1978 and Decision 17 (IX) of 11 July 1980, the Committee requested the secretariat, in consultation with member States and international institutions, and with the assistance of financial experts, to formulate the detailed operational characteristics of a Facility. The secretariat prepared a study on "The operational features of an international export credit guarantee facility" (TD/B/AC.33/2 and Corr. 1) which was considered by an expert group meeting in January 1982 (the report of the Intergovernmental Group of Experts is reproduced in TD/B/889). The Committee at its tenth session in February/March 1983 considered this study as well as the report "Evaluation of the operational features of an export credit guarantee facility" (TD/B/C.3/183/Add.1, 2, 2 Corr. 1, 3, and 3 Corr. 1). The Conference at its sixth session in June-July 1983 considered this question and decided to remit it to the Trade and Development Board in order that the latter might finalize its consideration of the issue. In the event, it was suggested at the Trade and Development Board's thirteenth session (2 to 6 April 1984) that the decision on the proposal for the establishment of an international export credit guarantee facility should be taken by the Committee on Invisibles and Financing Related to Trade.

**L. UNIDROIT: factoring**

228. The preliminary draft of uniform rules on certain aspects of international factoring was approved by the UNIDROIT study group on factoring contracts at the

close of its third session in April, 1982. The Governing Council adopted at its sixty-second session (May 1983) the text of the draft uniform rules as prepared by the study group and instructed the secretariat to communicate that text and the accompanying explanatory report (Study LVIII- Doc. 16) to Governments for their observations with a view to deciding on the next steps to be taken. On the basis of the observations received, the Council decided at its sixty-third session in May 1984 to set up a committee to review certain aspects of international factoring. The first session of the committee took place at Rome, in March 1985, and was attended by representatives from more than 20 States and by observers from a number of international organizations. A revised text of the draft, together with an updated commentary thereon (Study LVIII-Doc. 20) was circulated to Governments in order to obtain their observations on the documents. A summary of these observations will be circulated before the second session of the committee meeting from 21 to 24 April 1986.

#### **M. UNIDROIT: acquisition of corporeal moveables**

229. The UNIDROIT draft Uniform Law on the Acquisition in Good Faith of Corporeal Moveables (LUAB) was the subject of a detailed discussion by the Governing Council at its sixty-first session (April 1982) at which time continuing interest in the draft was expressed. At its sixty-second session (May 1983), the Governing Council decided to retain the subject on its work programme for the triennium 1984–1986 and to take a decision concerning a review of the provisions of the 1974 draft of the Uniform Law at its 1984 session, in the light of information regarding developments in certain aspects of the problem in UNESCO and in the Council of Europe and of the general climate of government opinion regarding the unification of the law of international sales as reflected by acceptance of the existing conventions in that field. At its sixty-third session the Governing Council authorized the secretariat to accept a proposal by UNESCO that UNIDROIT prepare a study focusing on the acquisition of cultural property which should take into account the draft Uniform Law on the Acquisition in Good Faith of Corporeal Moveables and the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property.

230. At its sixty-fourth session held in May 1985, the Governing Council considered the study, on the basis of which it authorized the UNIDROIT secretariat to respond favourably to any future request by UNESCO for a study supplementing that first one. The Council postponed, however, any decision as to whether or not UNIDROIT should at some time in the future become involved in drafting a new instrument to supplement the 1970 UNESCO Convention.

#### **N. Council of Europe: insider trading**

231. The Committee on Legal Co-operation (CD-CJ) established a Committee of Experts on Insider Trading

for the purpose of studying the problems of insider trading with a view to drafting a convention providing for specific international assistance which would cover the administrative, civil, criminal, and, if necessary and appropriate, private international law, aspects. This Committee on Insider Trading started its work in May 1985.

232. Concern in this area has been aroused by the prospect that the principles of equal opportunity and trust in firms, upon which principles the stock market is founded, may be undermined by transactions by insiders attempting to use privileged information not publicly known in order to make profits or avoid losses. Such practices are contrary to the interests of the firms and their shareholders and shake the confidence of prospective investors. This has already prompted some member States of the Council of Europe to take preventative or punitive measures of a criminal, civil or administrative nature. Others have not done so either because it is inexpedient considering the circumstances of the stock exchange or because they are still considering appropriate measures. As a result, insiders can conduct their transactions from countries where this is not punishable through the agency of banks or "straw men". The question is to identify means of thwarting such transactions.

#### **O. Hague Conference on Private International Law: international judicial and administrative co-operation**

233. The fourteenth session of the Hague Conference authorized its Secretary-General to convoke at regular intervals special commissions to study the practical operation of conventions and recommendations in matters of judicial and administrative co-operation, and, where necessary, to propose recommendations in these areas. The fifteenth session instructed the Secretary-General to convene a Special Commission on the operation of the 1970 Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters (Evidence Convention). More particularly, the fifteenth session also decided:

(a) To entrust this Special Commission with the task of proceeding to an exchange of views on the possibility of international co-operation relating to the taking of evidence in fields connected to competition law;

(b) To request this Special Commission to obtain an exchange of views on the possibility of using the 1970 Convention for the Taking of Evidence Abroad in the context of arbitral proceedings, while instructing the Secretary-General to gather any useful information from international organizations or bodies specialized in the field of arbitration.

234. A preliminary document for the Special Commission meeting on the Evidence Convention was issued in March 1985. The Special Commission meeting on the operation of the Evidence Convention was held at The Hague from 28 to 31 May 1985.

235. *A Practical Handbook on the Operation of the Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters* (Hague Convention on Private International Law ISBN 90 6215 073), in loose-leaf form, was published early in 1983. A similar handbook on the operation of the Convention on the Taking of Evidence Abroad was published in 1984, entitled *Practical Handbook on the Operation of the Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters* (ISBN 90 6215 112 4).

#### **P. Hague Conference on Private International Law: jurisdiction**

236. The Hague Conference, at its fifteenth session (1984), invited the Permanent Bureau to undertake exploratory studies on the desirability of revising the 1965 Hague Convention on the Choice of Court, in particular to assure the recognition and enforcement of decisions.

#### **Q. UNIDROIT: leasing**

237. The preliminary draft of uniform rules on international leasing was considered by the UNIDROIT Governing Council at its sixtieth session (April 1981). The Council decided that, given the novelty of leasing, it would be preferable to delay the transmission of the text to a committee of government experts for the elaboration of a final text until such time as the preliminary draft had been given maximum exposure among practitioners. Accordingly symposia were organized in New York (May 1981) and at Zürich (November 1981) to which an audience of bankers, businessmen and lawyers having expertise in international leasing were invited. Both symposia provoked much constructive criticism of the preliminary draft, as too did the First World Leasing Convention, held at Hong Kong in January 1983.

238. The various proposals for amendment of the draft made at the three meetings were considered by the Chairman of the study group convened to draft the uniform rules and by the secretariat. A revised text, taking account of those proposed amendments, was submitted to the study group which, at its fourth session in March 1984, approved the text of the preliminary draft uniform rules on international financial leasing. That text was then adopted by the Governing Council at its sixty-fourth session in May 1984 (C.D. 63. Concls. 4). The Council also decided to set up a Committee of Government Experts for the preparation of a draft Convention on international financial leasing. The first session of the Committee took place at Rome on March 1985. A revised text of the draft, together with an updated commentary thereon, was circulated to Governments with a request for observations (those observations appear in Study LIX-Doc. 26). A second session of the Committee of Governmental Experts in April 1986 will consider these observations and the final draft provisions drawn up by the UNIDROIT secretariat (Study LIX-Doc. 27).

#### **R. ITC: legal aspects of foreign trade**

239. Under the ITC subprogramme "Legal aspects of foreign trade", work in this field started in May 1983, with the preparation of a guide on "Legal aspects of foreign trade — How governmental trade-promotion agencies and business organizations can assist exporters and importers". This guide, financed by UNDP, has been published.

240. The aim of the new ITC subprogramme is to improve the capacity of both government and private trade promotion organizations as advisers to exporters and importers on legal aspects of foreign trade. As this subprogramme is currently in its early stages, it is anticipated that research and development will continue to be an important element of its activities, with the specific aim of producing training and information materials, as follows:

(a) Preparation of sets of specific profiles for individual countries about legal aspects of foreign trade, comprising both developing and developed countries;

(b) Collection, analysis and dissemination of information on legislation, standard contracts and related general conditions governing trade transactions between developing and developed countries, as well as between developing countries. The dissemination of such material to governmental trade promotion and business organizations may be done through a new ITC series of notes on legal aspects of foreign trade;

(c) The advisory services and direct training on export matters for trade promotion and business organizations to be provided will be directed towards the organization of a legal service and training of those responsible for the provision of legal advisory services to exporters and importers.

#### **S. Restrictive business practices**

##### **1. UNCTAD: Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices**

241. The General Assembly, by its resolution 35/63 of 5 December 1980, adopted the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices. The resolution also called for a United Nations Conference to review all aspects of the Set to be convened in 1985. As charged by the Set, the Intergovernmental Group of Experts on Restrictive Business Practices acted as a preparatory body for the Review Conference. The Group considered a number of proposals for the improvement and further development of the Set of Principles and Rules and identified the following elements for further consideration by the Conference: (a) the legal nature of the Set, (b) the establishment of a Special Committee to replace the Intergovernmental Group of Experts, (c) the implementation of technical assistance, as set out in paragraphs 6 and 7 of section F of the Set, (d) the framework for multilateral consultations

in accordance with paragraph 3(a) of section G and paragraph 4 of section C of the Set, and (e) the further Review Conference in 1990. The Group also approved the provisional agenda and rules of procedure for the Conference. The Conference met in November 1985 but was unable to reach agreement. The Conference decided to transmit its report (TD/RBP/CONF.2/8) together with the proposals made by regional groups (annexes II, III and IV to the above-mentioned report) to the General Assembly. The Conference requested the General Assembly to decide, in the light of the information transmitted to it, whether to convene a resumed session of the Conference. The General Assembly, by resolution 40/192 of 17 December 1985, invited the Secretary-General of UNCTAD and the President of the Conference to review all aspects of the Set to undertake consultations with regional groups and Governments on the reconvening of the Conference and to report thereon to the General Assembly at the earliest opportunity.

242. The Intergovernmental Group of Experts has reviewed the implementation and application of the Set and repeatedly expressed concern about the continued resort to restrictive business practices adversely affecting international trade, particularly the trade and development of developing countries, and has called upon all States to implement the Principles and Rules. The Group has expressed regret that the necessary action has not been taken to implement the technical assistance, advisory and training programmes on restrictive business practices, as agreed in section F, paragraph 6 of the Set, and has invited States to consider taking the issue up at the General Assembly. International organizations and financing programmes have been urged to provide the necessary resources, and States have been invited to make voluntary contributions to this effect.

243. The studies and reports prepared by the UNCTAD secretariat in this area include:

(a) "Studies on restrictive business practices related to the provisions of the Set of Principles and Rules: Collusive tendering" (TD/B/RBP/12/Rev.1);

(b) "Restrictive business practices in the services sector by consulting firms and other enterprises in relation to the design and manufacture of plant and equipment: note by the UNCTAD secretariat" (TD/B/RBP/19);

(c) "Tied purchasing: study by the UNCTAD secretariat" (TD/B/RBP/18);

(d) "Consideration of the revised draft of a model law or laws on restrictive business practices" (TD/B/RBP/15/Rev.1 and Corr.1-2);

(e) The Annual Reports for 1982 and 1983-1984 on legislation and other instruments in developed and developing countries for the control of restrictive business practices (TD/B/RBP/11 and 29, respectively).

In addition, the secretariat has circulated quarterly Restrictive Business Practices Information Notes, issues 1 to 15 (TD/B/RBP/INF. series) with a view to keeping

Governments and other international bodies or persons informed of recent major developments in the area of restrictive business practices. At its third session, the Intergovernmental Group of Experts examined the revised draft of the model law referred to above and requested the secretariat to continue work in this area and to proceed with the preparation of a handbook on restrictive business practices legislation, which should contain descriptions supplied by States of their relevant legislation and of court and other decisions.

## 2. ICC

244. The ICC is preparing a business guide on the subject of restrictive business practices.

## T. GATT: technical barriers to trade

245. The GATT Agreement on Technical Barriers to Trade (TBT/W/67/Rev.1), more commonly known as the "Standards Code", entered into force on 1 January 1980. It was designed to ensure that procedures and systems related to standards, certification and testing of products do not act as unnecessary barriers to trade. Some 37 contracting parties have either accepted or signed the Code. By the end of 1984, some 1100 individual notifications by participating countries of measures and regulations had been notified to GATT.

246. During that year, the Committee on Technical Barriers to Trade discussed and adopted a number of recommendations on the application of the Agreement and on procedures for the conduct of its work. The Committee heard representations by regional standards bodies; namely, the European Committee for Electrotechnical Standardization, the Pacific Area Standards Congress and the European Conference of Postal and Telecommunications Administrations.

247. The Committee met on a number of occasions to investigate a complaint concerning procedures for type approval of heating radiators and electrical medical equipment. The third meeting of persons responsible for information exchange took place in 1985. An information meeting was also held with developing country signatories and non-signatories with a view to enabling developing country signatories to make fuller use of the Agreement and to facilitate acceptance by other developing countries.

## XIII. Facilitation of international Trade

### A. Harmonization and facilitation of administrative procedures relating to goods and documents

#### 1. ECE/ECLAC: harmonization of frontier control of goods

248. Accession to and implementation of the 1982 International Convention on the Harmonization of Fron-

tier Controls of Goods (ECE/TRANS/55), which was adopted by the ECE Inland Transport Committee at its thirty-third special session in October 1982, was subject to further promotion. In 1984, 12 ECE member countries and the EEC signed the Convention and two ECE countries have transmitted instruments of approval and accession. Although the Convention is not yet in force, the ECE Group of Experts on Customs Questions Affecting Transport, which elaborated the Convention, has been considering concrete ways and means to implement its provisions, in particular regarding facilitation measures concerning the international transport of perishable foodstuffs and the international transport of goods carried by rail. To that end it is proposed to supplement the Convention by additional protocols.

249. Pursuant to an ECE Resolution concerning technical assistance measures for the implementation of the International Convention on the Harmonization of Frontier Controls of Goods, ECA, ESCAP and ECLAC have taken measures to promote accession to the Convention.

250. At the twelfth Meeting of Ministers of Public Works and Transport of the Southern Cone Countries (Asunción, from 18 to 22 October 1982) the question of delays in passing frontiers was discussed and an agreement was adopted requesting ECLAC to co-operate with the countries in studying the International Convention on the Harmonization of Frontier Control of Goods. In response to this request ECLAC has undertaken the preparation of various studies which seek to highlight, *inter alia*, the difficulties encountered by carriers at frontier crossing points and measures which might be taken to reduce or eliminate these difficulties. As a result of these efforts a growing number of Latin American countries have become aware of the need to harmonize their frontier crossing requirements.

## 2. ECE/ECLAC: customs

251. The ECE Group of Experts on Customs Questions Affecting Transport has continued its work related to the application and updating of various international customs conventions. The Customs Convention on the International Transport of Goods under Cover of TIR Carnets (TIR Convention) 1975 (ECE/TRANS/17 Amend. 4) was modified in 1983 and 1984 by two amendments concerning technical and administrative provisions. The Customs Convention on the Temporary Importation of Private Road Vehicles 1954 (United Nations, *Treaty Series*, vol. 282, p. 249) and the Customs Convention on the Temporary Importation of Commercial Road Vehicles 1956 (United Nations, *Treaty Series*, vol. 327, p. 123) are under consideration for a major revision.

252. The CCC participated in work on customs transit and, having undertaken similar work in the past, resumed consideration of this question at the same time as the ECE and adopted a resolution on the matter as did the Inland Transport Committee of ECE at its forty-fourth session in February 1983.

253. ECLAC has been promoting the application of an international customs transit system such as the TIR Convention (1975) for Latin America. In November 1982 ALADI and ECLAC began to promote the signing of a limited-scope agreement, under the ALADI Montevideo Treaty of 1980, between Argentina, Brazil, Chile, Paraguay and Uruguay concerning adoption of the TIR Convention (1975). A draft agreement was drawn up and discussions were held with the customs authorities of those countries. Following the discussions, a meeting of representatives from the above countries, as well as those from ALADI and ECLAC, was held during 1984 to consider the draft agreement. At that meeting the agreement was accepted by Brazil, Chile, Paraguay and Uruguay, while Argentina indicated the need to complete certain studies related thereto.

## B. Facilitation of international trade procedures

### 1. ECE: Uniform Rules for Communications Agreements (UNCA)

254. Since 1977 work has been continuing within the framework of the ECE Working Party on Facilitation of International Trade Procedures in the study of the problems of a legal nature likely to arise with the replacement of traditional procedures (based on the physical transmission of paper documents) by the exchange of data through ADP and teletransmission.

255. In view of the increasing urgency of the problem, the Rapporteurs on legal questions suggested that, pending progress on legislative solutions at an international level, it might be advisable to develop interim solutions to some of the legal issues in the automatic transfer of trade data. One such solution would be the preparation of a set of uniform rules for communication agreements to which the parties involved in trade data interchange could voluntarily and explicitly agree to be bound. Binding agreements of that sort were admissible in application of the universal principle of the autonomy of the will of the parties in the absence of mandatory provisions.

256. In March 1985 the Rapporteurs on legal questions submitted a draft proposal for Uniform Rules for Communication Agreements (UNCA) (ICC Publication No. 374/2) to the ECE Group of Experts No. 1: Data Elements and Automatic Data Interchange, which agreed to propose to the Working Party that UNCITRAL, CCC, ICC, OECD and other interested organizations be invited to participate actively in the development of the UNCA in an appropriate forum. This view was endorsed by the Working Party at its twenty-first session (March 1985). The ICC convened a committee to consider the preparation of a final text of UNCA. The committee held its first meeting from 16 to 17 January 1986 and further meetings are to be held in May and November 1986.

2. *ECE/UNCTAD: Trade Data Elements Directory (UNTDDED) and Trade Data Interchange Directory (UNTDID)*

257. The ECE Working Party on Facilitation of International Trade Procedures is continuing its work on the development and maintenance of UNTDDED (TD/B/FAL/INF.79) and UNTDID (TD/B/FAL/INF.77) which propound a set of standards for the exchange of international trade data. The "Guidelines for trade data interchange developed within the United Nations Economic Commission for Europe", which form Part 4 of UNTDID, are being revised to enable them to frame a United Nations Recommendation.

3. *ECE: notification of laws and regulations concerning foreign trade and changes therein (MUNOSYST)*

258. The ECE Committee on the Development of Trade is continuing its work aimed at assessing whether the creation of a multilateral system for the notification of laws and regulations concerning foreign trade and changes therein would be practicable and desirable. Taking into account the ever increasing number of trade information systems available either through government initiative or on a commercial basis, the Committee has decided, before proceeding further with its feasibility study, to ascertain the views of the business community regarding the relevance or need of such a project for trade activities and its potential commercial viability.

4. *ECE: PAYTERMS – abbreviations of terms of payment*

259. In September 1983, the ECE Working Party on Facilitation of International Trade Procedures reviewed the position regarding the preparation of further coded representations for the elements constituting the standard terms of payment. It was agreed to revert to this matter when more practical experience in applying these PAYTERMS (comprised in Recommendation 17 adopted by the ECE Working Party on Facilitation of International Trade Procedures (1980 and 1982) and ECE/TRADE/142) has been gained in several countries.

5. *ICC: INCOTERMS – abbreviations of trade terms*

260. The ICC is considering whether more detailed cost units should be added to INCOTERMS (ICC Publication No. 350), an internationally applied set of trade terms for export transactions. Consideration is also being given to the desirability of revising other provisions of the INCOTERMS, particularly in the light of the increased use of electronic communications techniques.

6. *IMO: harmonization of term "documentary requirements"*

261. The Facilitation Committee of IMO at its fifteenth session returned to the question of whether the term "documentary requirements" which appears in a number of articles of the International Convention on Facilitation of International Maritime Traffic 1965 (as amended) (IMO sales number 78.10) covered automatic data processing. The Committee concluded that it would be desirable to provide a harmonized interpretation of the term "documentary requirements" to the effect that the term should be understood to include information not only conveyed on paper but also by way of any other medium that was acceptable to the party concerned. The Council of IMO has approved this harmonized interpretation.

### C. *Studies on trade facilitation*

#### 1. *ICC*

262. The ICC Commission on Computing, Telecommunications and Information Policies and its Working Parties on Telecommunications and Transborder Data Flows, have recently published documents on the following subjects:

- "The liberalization of telecommunication services – needs and limits";
- "An international programme for homologation/certification of equipment attached to telecommunication networks";
- "Privacy legislation, data protection and legal persons";
- "International private leased circuits: the business user's view";
- "Information flows – an international business perspective";
- "ISDN – a future universal telecommunications network: a business user's view";
- "Protection of information in electronic systems – operational; guidelines";
- "Protection of information in electronic systems – management introduction".

#### 2. *LAIA*

263. A regional action programme within the framework of LAIA to facilitate international trade was issued by the general secretariat of LAIA in the form of a study dated 3 March 1983 entitled "The facilitation of international trade" (ALADI/SEC/Estudio 6). The document ALADI/SEC/di 85, issued by the general secretariat on 19 May 1983, describes the studies and activities for facilitating trade and transport which were carried out in 1983.

**D. UNCITRAL: automatic data processing**

264. UNCITRAL, at its eighteenth session in 1985, as part of its work on the subject of the legal implications of automatic data processing in the flow of international trade, received the report prepared by the secretariat on the legal value of computer records (A/CN.9/265). After discussions of the report the Commission adopted a recommendation urging Governments to review legal requirements and rules which inhibit the use of the new technology in trade and advocating that international organizations revise and elaborate legal texts related to

trade in the light of the recommendation to Governments (see "Report of the United Nations Commission on International Trade Law on the work of its eighteenth session" (1985), *Official Records of the General Assembly, Fortieth Session, Supplement No. 17 (A/40/17)*, paragraphs 354-360).

265. A report of the legal implications of automatic data processing, including information regarding the work of international organizations in this area (A/CN.9/279) is being submitted to the nineteenth session of UNCITRAL (16 June-11 July 1986).