

## [A/CN.9/202/Add.1\*]

## I. INTERNATIONAL CONTRACTS

A. *International sales of goods*

1. At its fourteenth session in October 1980, the Hague Conference on Private International Law decided to include in its agenda the revision of the 1955 Convention on the law applicable to international sales of goods. The Secretary-General of the Conference will convoke a special Commission in June 1981 to decide on giving effect to the opening of the Conference for the revision of the Convention to non-member States.

B. *Codification of international trade law*

2. In 1970 UNIDROIT began its work on the elaboration of a code of international trade law. Until now, attention has been concentrated on general principles and a small steering committee prepared the first two chapters of the code dealing with formation and interpretation.

3. These two drafts were submitted to the Study Group on the progressive codification of international trade law at its first session, held in Rome from 10 to 14 September 1979. The attention of the Group was focused principally on the drafts on formation and interpretation in respect of which it was decided that the Secretariat should revise, under the supervision of the Steering Committee, the present text of the two drafts in the light of the proposals for amendment and of the new suggestions made. The Group also agreed that it was opportune to deal in the next chapter of the code with the problem of validity of contracts in general. In this respect it was considered that the work already carried out by the Institute in this field could serve as a starting point and that, in the future draft, specific rules on the validity of general conditions and standard forms of contracts should be added. As to the proposed chapters on performance and non-performance of contracts, it was stressed that these topics, because of their extreme complexity, would need particularly careful preparatory work and the Group requested the President of UNIDROIT to set up special sub-committees for the preparation of the future chapter on performance and non-performance of contracts with which all the interested institutions would be associated.

4. A meeting of an informal working group was accordingly held in Copenhagen on 31 March and 1 April 1980. As regards the future work on validity, the group agreed that this should constitute the third chapter

of the Code and that the basis for the work should be the draft of a law for the unification of certain rules relating to the validity of contracts of international sale of goods approved by the Governing Council of UNIDROIT in 1972 and the comparative study of the Max-Planck Institute on which that draft had been based. The provisions of the 1972 draft would have to be revised so as to render them applicable to commercial contracts in general and the comparative study updated to take account of the latest developments, in particular those in the Socialist countries which had recently adopted special rules for international commercial contracts. The group further decided that some additional rules should be included in the 1972 draft regarding the illegality, immorality and unfairness of contracts, in addition to the classical hypotheses of invalidity of contracts, i.e. mistake, fraud and duress already dealt with therein. In respect of the chapter of the Code relating to performance and non-performance, it was decided that a first study should deal with the topics of performance and specific performance, a second with the question of rescission and damages and a third with other remedies. The group reviewed the progress so far accomplished at a second session held at Hamburg in February 1981.

C. *Counter-trade practices*

5. A notable development in international trade during recent years has been the increasing frequency of transactions based on arrangements through which specific interlinkages are established between sales and purchases. Although counter-trade arrangements are by no means a new phenomenon, difficulties in recent times in financing trade through conventional commercial transactions have prompted increasing recourse to counter-trade for financing purposes and as a means of facilitating access to markets and overcoming trade obstacles. This tendency has taken on special prominence in east-west trade. Counter-trade also occurs, however, in commercial relations between countries belonging to the same economic groupings and in relations between ECE member countries and developing countries.

6. The ECE Committee on the Development of Trade decided at its twenty-seventh session in 1978 to invite the Secretariat to undertake a study that would define and describe the use of counter-trade practices (CTP) in the ECE region for submission to the twenty-eighth session of the Committee in 1979. Its purpose can be defined as follows:

To describe, analyse and, wherever possible, quantify the various kinds of counter-trade practices conducted in the ECE region;

To examine the motives of enterprises' and organizations' participation in the various forms of counter-trade;

\* 6 May 1981.

To analyse the institutional and organizational arrangements whereby these transactions are conducted;

To assess trends.

7. A paper was prepared by the Trade and Technology Division for the Committee on the Development of Trade entitled "Counter-trade practices in the ECE region" (TRADE/R.385 and Add.1, 2 and 3). The study is in two parts: (a) the form and scope of counter-trade in the ECE region; and (b) policies and practices in this field. Part one contains a typology of counter-trade arrangements, a description of the main practices encountered in the ECE region and a brief assessment of trends in various sectors. Part two deals with policies at the national and international levels in the field of counter-trade, and examines the role and the motives of enterprises and organizations engaged in this type of activity. Contractual and financial aspects are also dealt with in the second part of the study.

#### D. *Contract forms, standard and model contracts and general conditions*

##### 1. *Contract form for pepper*

8. The ESCAP International Trade Division's project entitled "Development of common sales contract form for pepper" was approved for implementation in mid-1980. This project is aimed at increasing the stability of the pepper trade and also protecting the interest of pepper producing countries by utilizing a new uniform contract form for pepper. The proposed new contract form will, as a minimum, embody the following clauses or provisions:

Various bases for sales, i.e. CIF, C and F, spot, future delivery;

Weight and quality assessment, inspection and certification at both the shipping and receiving end by government/independent authorities;

Commercial arbitration procedures equitable to both sellers and buyers, including national litigation procedures;

Payment terms, delivery and acceptance;

Relief methods in case of default;

Penalty for presentation of dubious or falsified claims over quality or quantity;

Confiscation, detention and rejection of consignments;

Damage, loss etc., and non-compliance or partial fulfilment of contract;

Fluctuation in exchange rate of the currency used in the contract and also the export duties imposed by exporting countries where applicable;

Rights and liabilities of contracting parties.

9. A consultant was recruited by the ESCAP secretariat early in 1981 to draw up a draft contract form after examining various existing forms and holding discussions with exporters and relevant government agencies involved in the pepper trade in the International Pepper Community member countries in the ESCAP region, namely, India, Indonesia and Malaysia. The study will be undertaken in mid-1981, and the results of the study will be presented to the meeting of the International Pepper Community Permanent Panel on Techno-Economic Studies to be held in late 1981.

##### 2. *Standard contracts/general conditions for tropical hardwood trade*

10. As part of the technical assistance programme for the tropical timber producing developing countries in the region, the International Trade Division of ESCAP has been carrying out a study on the development of standard contracts and general conditions to be used in the tropical timber trade in the region. This study is part of the project entitled "Development of standard contracts/general conditions and formulation of uniform gradings rules and specifications for tropical hardwood trade in the ESCAP region". The study will comprise a comprehensive review of existing trade practices obtained in the business sector regarding tropical logs, sawn timber, veneer and plywood. Fact-finding missions to a number of tropical timber producing and consuming countries within and outside the region were undertaken early in 1979. Consultations were held with government agencies, timber associations, chambers of commerce and other international agencies. The study, along with the draft standard contracts/general conditions, will be presented to an intergovernmental meeting of tropical timber producing countries scheduled to be held in June 1981.

##### 3. *Cost plus fee contracts*

11. The Institute of International Business Law and Practice will undertake a study on "cost plus fee contracts" (Document 400/94a). Under the traditional type of contract for civil engineering, the general contractor agrees to complete works in accordance with the client's specification for a lump sum. It is then up to him to execute the contract and to take the risks of cost escalation.

12. The "cost plus fee" contract alters the relationship between client and general contractor in a number of ways. The general contractor does not take the risk of cost inflation and instead of the profit margin between lump sum and costs he is remunerated by fixed fee. There is a different distribution of responsibilities between client and contractor who becomes much more of a project manager on the client's behalf.

13. The research project aims to study the operation of cost plus fee contracts and to analyse standard clauses. It will make recommendations to assist all those concerned in drafting such contracts. The working party will be made up of lawyers, accountants and engineers.

#### 4. "Standard" contracts

14. One of the proposed subjects for inclusion in the CE Medium-Term Plan 1981-1985 is standard contracts. To some extent, the problems posed by so-called "standard" contracts (*contrats d'adhésion*), i.e. contracts or contract clauses drafted in advance and *ne varietur* by one of the parties, or by a person other than one of the contract parties (e.g. a professional body), and proposed ready-made to any person interested in a given transaction, have already been dealt with in connection with unfair terms in consumer contracts (Resolution (76) 47 of the Committee of Ministers).

15. However, this type of contract raises a number of questions that might well be considered at international level, particularly in view of the increasingly frequent use of such contracts in international transactions. The issues that might be investigated include the legal nature of such contracts, conclusion of such contracts, acceptance and interpretation of standard terms, etc.

#### 5. Publishing contracts

16. One of the proposed subjects for inclusion in the CE Medium-Term Plan 1981-1985 is publishing contracts. Publishing is becoming increasingly international. This entails the need for an effort to bring national laws into line, or at least to seek a common solution to the international problems arising in the field.

17. The Benelux countries have already worked on this problem. Since two different systems of law had to be taken into account in the Benelux countries (Belgium-Netherlands), this work could serve as a model, core and starting point for an attempt to co-operate on a wider scale, through CE.

#### 6. General conditions governing technical standards of maintenance of machines, equipment and other goods

18. These were prepared by the CMEA Executive Committee in 1973. They apply to all contracts for technical maintenance concluded between organizations of CMEA member countries empowered to conduct foreign trade operations. In accordance with a decision of the CMEA Executive Committee, the Standing Commission on Foreign Trade is drafting proposals for improving the General Conditions referred to above.

#### 7. General conditions of delivery of goods

19. The work of the CMEA organs on the standard-

ization of regulations covering foreign trade deliveries has gone through several stages. The first stage of this work in the framework of CMEA involved the preparation of a model document pertaining to "General Standardized Commercial Conditions relating to Contracts for Reciprocal Deliveries of Goods between Countries Participating in the Council" (GCD CMEA 1955). CMEA recommended that member countries should adopt these conditions to govern reciprocal deliveries. Bilateral agreements pertaining to the general conditions to govern deliveries were concluded on the basis of this recommendation between participant countries. The second stage comprised the preparation and implementation of a common multilateral document entitled "General Conditions Governing Delivery of Goods between Foreign Trade Organizations of Countries Participating in the Council (GCD CMEA 1958). The third stage in the work of standardization was the approval by the CMEA Standing Commission on Foreign Trade in June 1968 of the improved "General Conditions Governing Delivery of Goods among Organizations of CMEA Member Countries" (GCD CMEA 1968), which were brought into operation on 1 January 1969.

20. The approval of GCD CMEA by the Standing Commission on Foreign Trade in 1968 made it possible to achieve a high degree of standardization of regulations governing relations between organizations in CMEA member countries in the sphere of foreign trade deliveries. However, several matters relating to contractual obligations have still to undergo standardization.

21. After adoption of the Comprehensive Programme, further work was undertaken within the framework of CMEA on matters which did not achieve uniform settlement in GCD 1968 related to the liability of economic organizations for failure to comply with or inadequate compliance with their mutual obligations. As a result, in 1975 and 1979, on the recommendation of the CMEA Standing Commission on Foreign Trade, changes to GCD 1968 proposed by the CMEA Conference on Legal Matters were approved by the CMEA Executive Committee.

22. GCD CMEA 1968/1975, in the 1979 version, has been applied since 1 January 1980. It serves as the basis for the settlement of practically all questions related to the conclusion and implementation of contracts covering deliveries of goods between organizations in the member countries of CMEA.

23. A study is currently being undertaken within the framework of the CMEA Conference on Legal Matters of practice and experience in the application of GCD CMEA 1968/1975 in the 1979 version. The aim of the study is to draw up possible proposals for the further improvement of GCD CMEA and/or its practical application.

## 8. *General conditions of sale of milk*

24. The ECE Committee on Agricultural Problems (Working Party on Standardization of Perishable Produce) is engaged in a project for the establishment of standard documents for general conditions of sale for milk and milk products with emphasis on current trade practices in Europe but with regard to potential usefulness in other regions. Technical regulations and rules on safety of products and surveillance will be included. Legal issues concern, *inter alia*, responsibility of contracting parties, products liability, payments, trade documents, claims and arbitration. All these relate to private international law. The project is being implemented in co-operation with the International Dairy Federation (IDF-FIL). The general conditions will be available for use by the trade and will have the legal force of a recommendation. The general conditions have not yet been adopted.

### E. *International trade terms and standards*

#### 1. *Incoterms*

25. The revision of Incoterms by the ICC Commission on International Commercial Practice came into force on 15 March 1980 (ICC Publication No. 350). The revision was made following the analysis of the problems resulting from the changes which have occurred in transportation techniques, legal practices and documentary procedures, creation of two new terms "Free carrier" and "Freight (or carriage) and insurance paid to" and revision of the term "Freight (or carriage) paid to".

#### 2. *Terms dealing with containerized and combined transport*

26. ICC is continuing its study of the drafting of terms dealing with containerized and combined transport (Document No. 460/179 and Document No. 460/INT. 106).

#### 3. *Coding terms of payment*

27. The ECE Committee on the Development of Trade (Working Party on Facilitation of International Trade Procedures) is engaged in a project which contains mnemonic acronyms, designed on the same principal as the Incoterms, of main terms of payment relating to a contract of sale. The text of the Recommendation (No. 17) was adopted by representatives of the following ECE countries who attended the twelfth session of the Working Party on Facilitation of International Trade Procedures: Austria, Belgium, Bulgaria, Canada, Czechoslovakia, Denmark, Finland, France, German Democratic Republic, Germany, Federal Republic of,

Hungary, Netherlands, Norway, Poland, Romania, Spain, Sweden, Switzerland, Turkey, USSR, United Kingdom, and the United States. Also present were representatives of the following governmental and non-governmental organizations: Inter-governmental Maritime Consultative Organization (IMCO), European Economic Community (EEC), Customs Co-operation Council (CCC), Central Office for International Railway Transport (OCTI), International Chamber of Commerce (ICC), International Road Transport Union (IRU), International Union of Railways (UIC), International Organization for Standardization (ISO), International Chamber of Shipping (ICS), International Railways Transport Committee (CIT), International Federation of Freight Forwarders Associations (FIATA), and International Union of Combined Rail/Road Transport Companies (UIRR).

28. The Recommendation TRADE/WP.4/R.102 mainly concerns:

Buyers and sellers in their mutual relations regarding a sale contract;

Government bodies responsible for exchange control and statistics.

#### 4. *GATT standards code*

29. At the end of 1979, the GATT standards code was published—giving a strong governmental support for voluntary standardization at the international level. Differences in national laws, regulations and standards are frequently obstacles to a free trade between countries. In order to eliminate those technical barriers to trade, there is a need for more international product standards that can be used as a basis for national laws and regulations. This is the major conclusion drawn in the "Standards Code", now agreed within GATT (the General Agreement on Tariffs and Trade), and which will serve as a guiding rule for governmental standards policy. GATT sees international standardization as a major instrument in the harmonization of what has been done, and what will be done, at the national level. The GATT standards code relates primarily to product standards. ISO is also intensifying its work in the field of product specifications.

#### 5. *International standards*

30. In May 1980, the total number of ISO International Standards reached 4,000. In addition, there are now more than 3,500 draft standards in preparation as international trade has grown considerably. The scope of ISO has widened considerably. Thirty-nine ISO technical committees have been created, over the past ten years, for such new areas as implants for surgery, ergonomics, medical equipment, agricultural products and jewellery.

## F. Model clauses

### 1. Force majeure and hardship clauses

31. The Working Party "Contracts" was set up in 1977 within the ICC Commission on International Commercial Practice with a view to making a comparative analysis of the current conceptions held by national laws regarding the concept of *force majeure* and the hardship theory and to drafting clauses which provide for the adaptation of the contract to changed circumstances for insertion in contracts to be performed by stages concluded on a more or less long-term basis or else contracts with performance deferred for a period of time.

32. A draft model contract clause on release from liability was drawn up on the basis of a revised report by Professor Van Ommeslaghe (Document No. 460/233) and the results of the discussions within the Commission (5 June 1980, Document No. 460/253) and the working party (16 September 1980, 13 November 1980, Document No. 460/262). The clause on release from liability distinguishes between the event of *force majeure* defined according to a strict conception and the circumstances releasing from liability as contractually stipulated by the parties regardless of whether such circumstances had the character of an event of *force majeure*. An indicative enumeration of such circumstances was provided, it being understood that it was up to the parties to adapt this list to their needs.

### 2. Limited liability clauses

33. The ICC Working Party "Contracts" set up within the ICC Commission on International Commercial Practice will be initiating in 1982 a project on model contractual clauses limiting the liability of the parties to a contract in the case of loss to one of them by setting a maximum compensation if the liability is ascertained under the terms of these clauses.

### 3. Penalty clauses

34. A study is undertaken on penalty clauses by the "Contrats internationaux" study group created under the aegis of *droit et pratique du commerce international*; the UNCITRAL Secretariat maintains close contact with the Group in relation to the project on liquidated damages and penalty clauses presently undertaken by the UNCITRAL Working Group on International Contract Practices.

### 4. Terms of avoidance in contracts

35. One of the proposed subjects for inclusion in the CE Medium-Term Plan 1981-1985 is terms of avoidance in contracts. Contracts of a variety of types may contain terms of avoidance (contracts of sale, leases, employment contracts, service contracts etc.).

## G. Trade usages

36. The Institute of International Business Law and Practice is undertaking a project on the interpretation and application of international trade usages (Document 400/94). The essence of international trade usages is that they represent a universal practice adapted to business requirements in a particular trade. The study will examine court decisions affecting international trade usages and will propose by the ICC or other bodies if this is required.

## II. COMMODITIES

### A. Commodity agreements

37. Pursuant to paragraphs 3(e) and 23(a) of General Assembly resolution 1995 (XIX), as amended, and Conference resolutions 93 (IV) and 124 (V) on the integrated programme for commodities, one of the major responsibilities of UNCTAD is the preparation and negotiation of international agreements in the field of commodity trade.

38. In the years 1977-1980 the following international agreements were adopted by United Nations conferences held under the auspices of UNCTAD:

International Sugar Agreement, 1977 (Document TD/SUGAR.9/12)

International Olive Oil Agreement, 1979 (Document TD/OLIVE OIL.7/7/Rev.1)

International Natural Rubber Agreement, 1979 (Document TD/RUBBER.15/Rev.1)

International Cocoa Agreement, 1980 (Document TD/COCOA.6/7)

Agreement Establishing the Common Fund for Commodities (Document TD/IPC/CF/CONF/24).

39. The Agreement Establishing the Common Fund for Commodities, when it enters into force, will establish a new multilateral financial institution of a universal character aimed at facilitating the conclusion and functioning of International Commodity Agreements, particularly concerning commodities of special interest to developing countries. Its functions will include the financing through its first account of commodity stocks and through its second account of commodity development measures.

40. The United Nations Tin Conference has been convened to prepare and adopt the (sixth) International Tin Agreement. The United Nations Conference on Jute and Jute Products has been convened to prepare and adopt an International Agreement on Jute and Jute Products.

41. It is expected that other international instruments will be drawn up pursuant to Conference resolutions 93 (IV) and 124 (V) on the Integrated Programme for Commodities.

#### B. *Informal commodity arrangements and guidelines*

42. The FAO Intergovernmental Commodity Groups generally follow a voluntary consultative approach in seeking solutions to commodity problems. These specialized commodity groups, comprising interested producing and consuming countries have continued to meet in order to identify specific commodity problems and to mitigate them through informal arrangements or guidelines to provide a code of conduct for producing and consuming countries, particularly with reference to international trade. Recently four of the groups have been successful in reaching the agreements set forth below.

##### *Informal price arrangements on hard fibres*

43. The informal price arrangements on hard fibres cover sisal and abaca and aim at the stabilization of prices and trade of these commodities. The arrangements are operated under the FAO Intergovernmental Group on Hard Fibres comprising 60 governments. The Group reviewed the arrangements in February 1980 and agreed to raise the indicative price range of East African U.G. sisal. In the past, the arrangement on sisal has provided also for export quotas but the Group agreed that these should remain suspended. Further, since the prices of abaca in early 1980 were well above the ceiling set by the Group in September 1979, it decided to suspend temporarily the trigger mechanism for the automatic consultation provided for under the informal indicative price arrangement for abaca.

##### *Informal price arrangements on jute, kenaf and allied fibres*

44. Informal price arrangements on jute, kenaf and allied fibres aim at alleviating severe difficulties facing the jute trade because of sharp fluctuations in prices of these commodities. The FAO Intergovernmental Group on Jute, Kenaf and Allied Fibres which has a current membership of 47 Governments, reviewed the arrangements in October 1979 and decided to keep the indicative price range for jute for 1979-1980 at the 1978 level and to raise the price range for Thai kenaf.

##### *International guidelines*

45. As an alternative to formal commodity arrangements, FAO Intergovernmental Groups have evolved International Guidelines to provide a "code of conduct" for the achievement of agreed goals. The following Guidelines have been drawn up recently:

##### *Guidelines on rice*

The FAO Intergovernmental Group on Rice, having a membership of 82 countries, adopted in March 1980 an Informal and Voluntary Framework for International Consultations on Rice. This includes the revised and strengthened Guidelines on National and International Action on Rice adopted by the Group in November 1979. The Framework aims at achieving a balanced situation in production, consumption and trade in rice and at ensuring orderly trading taking into account the interests of developing countries. It contains guidelines for concessional transactions and provides for the review by the Group of rice production programmes and the evaluation of rice stocks for world food security. The text of the Framework is contained in the report of the twenty-third session of the Group (March 1980) and the Revised Guidelines are in the report of the twenty-second session (March 1979).

##### *Guidelines on oilseeds, oils and oilmeals*

The Intergovernmental Group on Oilseeds, Oils and Fats with a membership of 88 countries, adopted in April 1980 the Guidelines for International Cooperation in the Oilseeds, Oils and Oilmeals Sector with the main aim of harmonizing national policies in the light of agreed objectives for the world oilseeds, oils and oilmeals economy. The text of the Guidelines is contained in the report of the fourteenth session of the Group held in April 1980.

### III. INDUSTRIALIZATION

#### A. *UNIDO model contracts for the fertilizer industry*

46. UNIDO is engaged in drafting the following model contracts for the fertilizer industry:

Second Draft of the UNIDO Model Form of Turn-Key Lump-Sum Contract for the Construction of a Fertilizer Plant (ID/WG.318/1)

First Draft of the UNIDO Form of the Semi-Turn-Key Contract for the Construction of a Fertilizer Plant (ID/WG.318/2)

Third Draft of the UNIDO Model Form of Cost Reimbursable Contract for the Construction of a Fertilizer Plant (ID/WG.318/3).

47. The above Drafts were submitted to the Third Consultation on the Fertilizer Industry at São Paulo, Brazil, held from 29 September to 2 October 1980 (there was an earlier meeting in November 1978, see A/CN.9/WG.V/WP.4,\* paragraphs 10 and 11). The Drafts are expected to be finalized at the end of 1981.

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

### B. *Industrial, scientific and technical co-operation*

48. The CMEA Committee on Scientific and Technical Co-operation drafted a document on organizational, methodological, economic and legal principles for scientific and technical co-operation among CMEA member countries and for the activities of CMEA organs in this field. This was approved by the CMEA Executive Committee in 1972. Proposals for changes or additions to the document referred to above are now being drafted on the basis of experience accumulated during its implementation.

49. Model clauses for agreements concerning scientific-technical co-operation and a model agreement covering work of this kind were prepared by the CMEA Conference on Legal Matters in 1975. Model agreements concerning the creation of a temporary international scientific-technical team and the setting up of a joint laboratory (department) were drafted in 1977.

50. The CMEA Conference on Legal Matters has embarked upon the drafting of model rules concerning the liability of organizations for failure to comply with or inadequate compliance with obligations arising from contractual relations in the field of scientific-technical co-operation. Preparation has begun of a model agreement on the execution of commissioned research, design and experimental work.

51. The CMEA Conference on Legal Matters drafted General Conditions for Specialization and Co-operation in Production between CMEA Member Countries. These were approved in 1979 by the CMEA Executive Committee, which recommended the member countries of CMEA to implement the General Conditions mentioned above as of 1 January 1980.

52. In line with the work plan and programme of the CMEA Conference on Legal Matters, a study of the legal questions associated with multilateral inter-State relations in the realm of specialization and co-operation in production is currently being carried out. A study is also envisaged on contractual practice in the field of specialization and co-operation in production between the organizations of CMEA member countries.

53. In the execution of technical assistance projects, UNCTAD has been involved in projects for the preparation of treaties for integration groupings of developing countries and on regimes for multi-national enterprises of such groupings.

54. In the framework of the Joint EFTA-Yugoslavia Committee, a group of legal experts on model contracts for industrial co-operation has been established. Its task is to "seek within the frame of the relevant legislation in the countries concerned and taking into account the realities of industrial co-operation transactions, solutions which are of interest in the present context and which clearly define the right and obligations of the enterprises

participating in such transactions and elaborate models for different forms of contracts". The group held its first meeting in January 1981.

### C. *Draft guide for drawing up international contracts on consulting engineering, including related aspects of technical assistance*

55. At its fifteenth session held from 26 to 28 November 1979, the ECE Group of Experts on International Contract Practices in Industry (Committee on the Development of Trade) requested the Secretariat to prepare for first reading at, and submission to, its sixteenth session, a draft document on drawing up international contracts on consulting engineering, including related aspects of technical assistance, based on an outline of international engineering contracts (TRADE/GE.1/R.21) and List of Topics (TRADE/GE.1/CRP.37/Rev.1); to draw up a list of model contracts, guides and general conditions used in the preparation of the draft document. It was agreed that the draft document should comprise consulting engineering only and should closely resemble the format of a Guide on drawing up international contracts in this field (referred to as the "draft Guide").

56. The objective of this project is to assist clients and their lawyers in the drafting of international contracts on consulting engineering including related aspects of technical assistance.

57. In April 1980 the secretariat completed the first draft of the Guide. During the sixteenth session (14-16 July 1980), it was decided that the draft Guide should be descriptive rather than prescriptive, should include references to general international practice and consequences, and—except in its introduction—should avoid references to complex engineering. In the light of comments, the Group of Experts made suggestions concerning redrafting the existing text by the secretariat. It prepared a revised version of the draft Guide (TRADE/GE.1/R.22/Rev.1) for the seventeenth session held on 15-17 December 1980.

### D. *Publication*

58. A Study on International Industrial Co-operation was launched initially by UNIDO in response to resolution 3362 (S-VII) of the Seventh Special Session of the United Nations General Assembly held in September 1975. Paragraph 7, part IV of resolution 3362 stated: "A joint study should be undertaken by all Governments under the auspices of the United Nations Industrial Development Organization, in consultation with the Secretary General of the United Nations Conference on Trade and Development, making full use of the knowledge, experience and capacity existing in the United Nations

system of methods and mechanisms for diversified financial and technical co-operation which are geared to the special and changing requirements of international industrial co-operation. A progress report on this study should be submitted to the General Assembly at its thirty-first session." A meeting of eminent persons was held by UNIDO at Vienna in June 1979 and at a United Nations Inter-Agency Meeting in July 1979. The final draft of the Study was considered at the Third General Conference of UNIDO held in January and February 1980, at New Delhi, India.

59. The final draft of the Study, renamed "Industry 2000—New Perspectives", is based on the fundamental principle that the restructuring of the world economy must assume, and in fact coincide with, the restructuring of world industry. Specific mechanisms for accelerating international resource flows within and to the South were presented as concrete steps towards reaching the Lima target for industrialization of the third world and building a new international economic order.

60. The Inter-American Juridical Committee of OAS in its session in 1972 included the topic "Treatment of the foreign instruments" in its agenda. Subsequently, the General Secretariat of the OAS prepared some documents on foreign investments, among them was the document issued in 1975, entitled "Comparative Study of Latin-American Legislation on the Regulation and Control of the Private Foreign Investment". The study considers the legislation of the Latin American countries in force on 30 December 1974. Other topics have also been considered in the above study, such as the institutionalization of the mechanisms of control, utilization of internal credit, utilization of external credit; transfer of technology, transfer of profits, reinvestment of profits and repatriation of funds.

61. A supplementary study on foreign investment was prepared in June 1977 by the General Secretariat. This supplement points out the new trends of foreign investment in Latin America in recent years. It refers to the new legislation of Argentina and Chile on this matter, as well as the changes introduced by the Commission of the Cartagena Agreement to the Common Regime of Treatment of Foreign Investment.

#### IV. TRANSNATIONAL CORPORATIONS

##### A. *Role of transnational corporations*

62. CTC in response to General Assembly resolution 33/198 of 29 January 1979 inviting "the governing bodies of the organs and organizations concerned within the United Nations system to assess, within their respective areas of competence, the progress made towards

the establishment of the new international economic order, as well as to indicate the obstacles that impede its establishment, . . . with a view to submitting comprehensive reports to the Assembly at its special session in 1980" prepared a report entitled "Progress made towards the establishment of the new international economic order: the role of transnational corporations" (E/C.10/74 and Corr.1). The report first documents the approach of the programme for the new international economic order towards transnational corporations and relates it to the thrust of that programme to bring about the structural changes that are needed to allow self-sustained development. It then examines progress made in recent years in terms of changing patterns of interactions, in reference to transnational corporations, between the developed and the developing countries and in terms of strengthening the capacity of developing host countries to deal with transnational corporations. In a concluding section, some tentative conclusions are drawn regarding the role of transnational corporations in the establishment of the new international economic order. This report was submitted to the General Assembly at its eleventh special session for consideration.

##### B. *Code of conduct*

63. The Intergovernmental Working Group on a Code of Conduct on Transnational Corporations was established by CTN at its second session held from 1 to 12 March 1976. A first draft of the Code should be completed before the seventh session of the Commission in 1981 (18-28 May 1981).

64. At its eighth session (7-18 January 1980), the Working Group requested the chairman to prepare formulations on the implementation of the Code including relevant aspects of intergovernmental co-operation (E/C.10/AC.2/14). The matters dealt with in the Code include respect for national sovereignty and observance of domestic laws, regulations and administrative practices, adherence to economic goals and development objectives, policies and priorities; adherence to socio-cultural objectives and values, respect for human rights and fundamental freedoms, non-interference in internal political affairs, non-interference in intergovernmental relations, abstention from corrupt practices, ownership and control, balance of payments and financing transfer pricing, taxation, competition and restrictive business practices, and employment and labour (E/C.10/62 Annex) (9 June 1980).

##### C. *Principles concerning multinational enterprises*

65. Subsequent to the examination of the first reports of Governments on the effect given to the Tripartite Declaration of Principles concerning Multi-

national Enterprises and Social Policy (adopted in 1977), the Governing Body of ILO on 19 November 1980 adopted provisions concerning further follow-up procedures. One of the provisions so adopted specifies that ILO should retain sole responsibility for the implementation and interpretation of the Declaration, while ensuring appropriate co-ordination with the United Nations and other organizations. Close working relationships in this area have been established with CTC, CTN and its intergovernmental working group, on the one hand, and with the competent services of OECD on the other.

#### D. *Publication and research*

66. CTC's activities have been principally geared to the development of an infrastructure, within which a comprehensive information system on transnational corporations could be developed. The *User's Guide* provides details of the information available from the system.

67. CTC is revising its publication *National Legislation relating to Transnational Corporations*, which was first published in 1978 and supplemented in 1980. The major areas under review are: main investment legislation and regulations; monitoring and screening investors; ownership, control and investment; foreign exchange control regulations; technology transfer and restrictive business practices; fiscal incentives and taxation; export processing zones; disclosure requirements under corporate laws; investment guarantees; governing law and dispute settlement. Approximately 40 countries, on a global basis, will be covered. It is expected that some 20 of these country profiles will be published in 1981.

68. Other areas of legislation which the CTC is presently covering include fiscal incentive laws and measures, tax haven laws and regulations, corporate disclosure requirements and regulations, divestment and local equity laws, and a special study on the laws and legislation of the People's Republic of China. The last study represents the first of the Centre's attempts to examine and assess in detail the countries whose legislation is covered in a generalized way in the publication on *National Legislation* referred to above. These studies are expected to be completed in early 1982.

69. On 1 May 1974, the General Assembly of OAS adopted resolution 167, according to which it was considered necessary for OAS to compile and make studies on the transnational enterprises operating in the countries of Latin America.

70. In addition, the Inter-American Juridical Committee, in its resolution 25, 8 March 1974, decided to maintain on the agenda the study of multinational commercial companies. Since then a number of reports on various aspects of the subject have been made to the

general secretariat of OAS with a request that they be distributed to all the Governments, organs, entities and groups of experts who are studying the question.

### V. TRANSFER OF TECHNOLOGY

#### A. *International code of conduct on transfer of technology*

71. In pursuance of resolution 89 (IV) adopted by UNCTAD at its fourth session in May 1976 and by relevant General Assembly resolutions, a United Nations Conference on an International Code of Conduct on the Transfer of Technology was convened in October 1978. Since then, the Conference has held four sessions, the last one from 23 March to 10 April 1981.

72. The text of the draft Code (see TD/CODE TOT/25) presented to the fourth session consists of a preamble and 10 chapters. The chapters deal respectively with:

1. Definitions and scope of application;
2. Objectives and principles;
3. National regulation of transfer of technology transactions;
4. Restrictive practices;
5. Guarantees, responsibilities and obligations of parties;
6. Special treatment for developing countries;
7. International collaboration;
8. International institutional machinery;
9. Applicable law and settlement of disputes;
10. Other provisions.

73. The substantive provisions of the draft Code fall into two broad categories: first, those concerning the regulation of transfer of technology transactions and of the conduct of the parties to them, and secondly, those relating to steps to be taken by Governments to meet their commitments under the Code.

74. The first main category of provisions, establishing certain generally agreed and universally applicable standards, covers three areas: (a) determination of practices and arrangements involving transfer of technology which are to be deemed undesirable and under what conditions (chapter 4); (b) identification and clarification of responsibilities, obligations and rights of parties to transfer of technology transactions (chapter 5); and (c) the law and forum to be selected for the settlement of their disputes (chapter 9). The agreed provisions of the draft Code deal with areas (a) and (b) in a concrete

and fairly comprehensive manner. Together, these sets of provisions, which affect the terms on which technology is to be transferred, govern the transactions between parties and may be said to form the core of the regulatory part of the Code.

75. Provisions in the draft Code under the second main category—steps to be taken by Governments to meet their commitments to the Code—can be classified into the following three main types: (a) provisions related to the regulation of transfer of technology transactions by particular States. The draft Code provides indications or recommendations as to what measures States may take and sets forth certain general criteria that States should follow when enacting national legislation (chapter 3); (b) provisions concerning technology and related transactions that will be applied only where the acquiring country is a developing country. The aim of such measures is to facilitate and encourage the strengthening of the scientific and technological capabilities of these countries with a view to accelerating their development and to assist and co-operate with them in their efforts to fulfil their economic and social objectives (chapter 6); (c) provisions relating to international co-operative activities of States, on a bilateral, multilateral, regional or interregional basis, to facilitate the flow of technology and the growth of the technological capabilities of developing countries (chapter 7).

76. The draft Code envisages that the application and implementation of the Code are to be carried out at both the national and international levels. The appropriate steps to be taken at the national level include national policies, laws and regulations on the subject of transfer of technology (chapter 3). At the international level the Code will be implemented by the establishment and operation of an international institutional machinery within UNCTAD (chapter 8).

#### B. *Industrial property system*

77. At its third session, held from 17 to 28 November 1980, the Committee on Transfer of Technology adopted a resolution (14 (III)) on the "Economic, commercial and development aspects of the industrial property system in the context of its on-going revision". In this resolution, the Committee requested the Secretary-General of UNCTAD to convene, in the first quarter of 1982, a group of governmental experts to continue to examine the economic, commercial and development aspects of industrial property in the transfer of technology to developing countries.

#### C. *Technology licence agreements: model law*

78. WIPO, with the assistance of a Working Group of experts selected in consultation with Governments,

prepared a chapter on technology licence agreements in a draft Model Law for Developing Countries on Inventions and Know-how. This chapter, together with certain other parts of the draft model law, was submitted for comments to the intergovernmental body of WIPO concerned (the WIPO Permanent Committee for Development Co-operation Related to Industrial Property) and was published in 1980.

#### D. *Publication*

79. WIPO published a guide entitled *Licensing Guide for Developing Countries*. The Guide deals with the legal aspects of the negotiation and preparation of industrial property licences and technology transfer agreements appropriate to the needs of developing countries. The Guide identifies the legal questions which may be detrimental to the interests of institutions and enterprises in developing countries, and suggests the solutions which are most likely to serve their interests.

80. The Guide has now been published in Arabic, English, French and Spanish. It has been widely distributed, particularly in developing countries. Its publication was the culmination of work in a WIPO Licensing Seminar, meetings of consultants and a Working Group on Guidelines for Industrial Property Licensing in Developing Countries. Altogether, 99 persons from 47 countries contributed to the work as participants in these meetings.

81. One of the topics of the Annual Report of the Inter-American Juridical Committee to the OAS General Assembly of 1980 concerned the "Legal aspects of co-operation in the field of transfer of technology". A resolution of the Committee pointed out some matters that should be considered to systematize an inter-American action for the transfer of technology on the basis of just and equitable principles.

82. For the purpose of arriving at the solution of these matters in its special area of its competence, the Inter-American Juridical Committee recommended:

Broad co-operation, within the scope of its specific competence, with other organs of OAS on legal aspects of transfer of technology. The said co-operation would take into account the results of the United Nations Conference on Science and Technology, the results of the United Nations Conference on an International Code of Conduct for the Transfer of Technology, and others

The development of a glossary of terms commonly used in transfer of technology agreements

Development of a study on essentially legal questions involved in the transfer of technology

The study, within the structure of OAS, of methodologies designed to put these recommendations into practice.

83. In order to co-operate with the studies of the Inter-American Juridical Committee on this matter, the general secretariat prepared a preliminary study on the "international transfer of technology and its juridical aspects".

## VI. INDUSTRIAL AND INTELLECTUAL PROPERTY LAW

### A. Work of WIPO

#### 1. Industrial property and patent information

##### (a) Industrial property and patent information activities of particular interest to developing countries

84. The objective is to be useful to developing countries in seven different respects:

Training specialists

Creating or modernizing domestic legislation

Creating or modernizing governmental institutions

Stimulating inventive activity

Stimulating transfer of technology

Creating a corps of practitioners

Exploiting technological information contained in patent documents.

Pursuant to the above objective WIPO has organized seminars, workshops and training courses in many countries.

##### (b) Revision of the Paris Convention

85. The objective is to revise the Paris Convention for the Protection of Industrial Property in order to introduce in it new provisions and to change certain existing provisions to better meet the needs of developing countries. The first session of the Diplomatic Conference on the Revision of the Paris Convention was held in Geneva from 4 February to 4 March 1980. Delegations from 89 countries participated; 14 intergovernmental organizations and 16 international non-governmental organizations were represented. The revision is still continuing.

##### (c) Promotion of the acceptance of certain industrial property treaties

86. The objective is to ensure that more countries become party to treaties dealing with the international protection of industrial property or certain international classifications (Paris Convention, Trademark Registration Treaty (TRT), Vienna Agreement (Figurative Elements of Marks), Budapest Treaty (Micro-organisms), Geneva Treaty (Scientific Discoveries), Strasbourg Agreement (IPC), Nice Agreement (Trademark Classifi-

cation) and Locarno Agreement (Industrial Designs Classification)).

##### (d) Promotion of industrial property protection through new international arrangements

87. The objective is to explore the need for an international treaty on the protection and/or international registration of computer software in order to institute international protection for software and/or to establish a reliable system for proving the origin and the date of creation of new software.

##### (e) Promotion of industrial property protection outside treaties

88. The objectives are to stimulate better contractual arrangements for the protection of inventions made within the framework of joint enterprises (mainly in East-West relations) and to stimulate new legislative and administrative measures which would enhance, through the judicious use of industrial property, the protection of consumers.

##### (f) Promotion of the practical application of laws and treaties in the field of industrial property

89. The objective is to draw a clear picture, region by region, of the present situation of industrial property law and institutions in the various countries. Surveys will cover the state of legislation, the organization and work of industrial property offices, the number and organization of practitioners, statistics on patents, trademarks etc.

##### (g) Promotion of patent information and development of patent classification

90. The objectives are to continue the improvement of the International Patent Classification, co-operation with INPADOC, and co-operation between patent offices in all aspects of patent documentation and patent information (standardization, modernization of reproduction and dissemination of patent documents etc.).

##### (h) Development of trademark classification

91. The objective is to continue the improvement of the Nice Classification of Goods and Services for the Purposes of the Registration of Marks, an important tool in the orderly registration of trademarks and service marks. "Improvement" means the covering of new products and services and the more precise description and classification of existing ones, in addition to the updating of the Classification in various languages.

##### (i) Maintenance of general industrial property information services

92. The objectives are: to allow, through forecasts based on statistical data, a better planning for industrial property activities in national offices, regional offices and the International Bureau; to inform promptly, by

means of a collection of industrial property laws constantly kept up to date, all those interested in the law of industrial property; to inform, by means of monthly periodicals, governments and interested private circles about the developments in the field of industrial property both on the national and the international levels; to facilitate, by means of a Guide to the Paris Convention, the application of the revised Convention; to inform, through the collection and dissemination of data concerning grants and registrations of industrial property titles, all those interested in the evolution and the trends of industrial property protection in countries in which the systematic publication of such data is lacking.

93. The industrial property statistics for the year 1978 were published in May 1980. The detailed tables of statistics for 1977 (publication "B") were published in January 1980.

94. The collection of laws and treaties on industrial property continued to be kept up to date; several such laws and treaties were published in the legislative series annexed to the review *Industrial Property*, which was published each month.

(j) *Co-operation with states and various institutions in matters concerning industrial property*

95. The objective is to ensure that, through regular contacts between the International Bureau on the one hand and the Governments and other international organizations on the other hand, there should be full awareness of what is being done and planned on either side, in order to inspire mutually more useful activities, to combine forces wherever possible and to avoid all unnecessary duplication.

2. *Copyright and neighbouring rights activities*

(a) *Copyright and neighbouring rights activities of particular interest to developing countries*

96. The objective is to be useful to developing countries in four different respects:

Training specialists

Creating or modernizing domestic legislation

Stimulating creative activity

Facilitating access to foreign works protected by copyright owned by foreigners.

(b) *Promotion of the acceptance of copyright and neighbouring rights treaties*

97. The objective is to ensure that more countries become party to the treaties dealing with the international protection of copyright and neighbouring rights.

(c) *Double taxation of copyright royalties*

98. An International Conference of States on the Double Taxation of Copyright Royalties remitted from

one country to another was held at Madrid from 26 November to 13 December 1979, convened jointly by WIPO and UNESCO. The delegates of 44 States participated, with observers from one intergovernmental and seven international non-governmental organizations.

99. The Conference established in Arabic, English, French, Russian and Spanish the text of a Multilateral Convention for the Avoidance of Double Taxation of Copyright Royalties, to which is attached an optional Model Bilateral Agreement on the subject. The texts are based on drafts prepared by a Committee of Governmental Experts at its third session in June 1978. The new Convention was deposited with the Secretary-General of the United Nations and remained open for signature until 31 October 1980.

(d) *Promotion of the practical application of laws and treaties in the fields of copyright and neighbouring rights*

100. The objectives include:

To draw a clear picture, region by region, of the present situation of copyright and neighbouring rights law and institutions in the various countries, such survey covering the state of legislation, the involvement of the government in the administration of such legislation, the role of authors' societies and other organized interest groups, statistics on works and their use etc.

To establish and disseminate a model statute for authors' societies

To study the relationship between copyright and computers

To expose, and study the practical remedies against, various forms of piracy of intellectual property

To study the best means of protecting works of folklore against abusive exploitation.

(e) *Maintenance of information services in the fields of copyright and neighbouring rights*

101. The objectives are to inform promptly, by means of collections and data bases constantly kept up to date, all those interested in copyright and neighbouring rights; to inform, by means of monthly periodicals, governments and interested private circles about the developments in the fields of copyright and neighbouring rights both on the national and the international levels; to facilitate, by means of the existing Guide to the Berne Convention, a Guide Copyright Glossary, a Guide to the Rome and Geneva Conventions, and various brochures, the understanding and the application of copyright laws and laws on neighbouring rights.

102. WIPO continued to keep up to date its collection of the texts of laws, regulations and treaties dealing with copyright and neighbouring rights.

103. The WIPO *Guide to the Berne Convention* was published in Portuguese in May 1980.

104. A *Copyright Law Survey*, containing summaries of national copyright laws, was published in French in February 1980 and in English in March 1980.

105. The WIPO *Glossary* of terms of law on copyright and neighbouring rights was published in three languages (English, French, Spanish) in March 1980. The Glossary contains 265 terms with their equivalents in the other languages, together with explanations.

(f) *Executive Committee of the Berne Union*

106. The Executive Committee of the Berne Union met in extraordinary session in October 1979. It held joint meetings with the Intergovernmental Copyright Committee set up under the Universal Copyright Convention.

107. The Committees discussed the question of the application of the Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite (*Satellites Convention*) on the basis of the report of the Committee of Governmental Experts which met in Paris in June 1979 to draw up guiding principles for the implementation of the Satellites Convention by national legislators. These guiding principles consisted of two draft model provisions, one granting broadcasting organizations the right to authorize or prohibit the distribution of their programme-carrying signals (system of specific right) and the other prohibiting operations governed by the Convention (system of administrative and penal measures).

108. The Committees noted with approval the recommendations of the Working Group, which met in July 1979, to review all the problems posed for the developing countries by access to protected works, dealing with the application of the revised texts of 1971 of the Berne Convention and of the Universal Convention and with practical arrangements which would assist such application, including the recommendation that they should be kept regularly informed at their joint meetings of relevant projects, activities and achievements. It was also noted that the Directors General of UNESCO and WIPO were nearing conclusion of an agreement for the establishment of a joint international UNESCO/WIPO service for access by developing countries to works protected by copyright. This agreement came into operation on 1 January 1981. In pursuance of the recommendations of the above-mentioned Working Group with regard to the formulation of guiding principles, the respective secretariats of the Committees convened a meeting of a new Working Group in 1980. The results of their deliberations would be taken into account within the context of the joint international service.

109. The Committees noted the report of the Working Group which met in May 1979 in order to study the copyright problems arising from the use of computers for access to protected works or the creation of works. They took the view that, since the question was essentially an evolving one, it needed to be kept under active consideration. They noted in this respect that the secretariats would convene at the end of 1980 a Committee of Governmental Experts in order to analyse further the impact of computer storage and retrieval of works protected by copyright on their protection and the possible need for express recognition of copyright protection for works created with the help of computers, and to formulate tentative recommendations applicable at the national and international levels. The secretariats were asked to undertake studies on the question of copyright ownership when abstracts are prepared within documentation services, with regard to consequences for the relations between employers and employed or salaried authors. It was noted that the International Labour Office wished to be associated in this latter activity.

110. The Committees examined the report of their respective Subcommittees which met in July 1978 to examine the problems arising from the transmission by cable of television programmes.

111. Observing that certain of the problems were still in need of further study, they noted that independent experts would be called upon by the two Secretariats to meet at the beginning of 1980 in order to discuss the question of the impact of cable television in the sphere of copyright, particularly in respect of cinematography, and also to give their advice as regards the preparation of a worldwide forum in 1981 on combating the piracy of phonograms, films and other audiovisual recordings, a question which should be discussed more especially from the point of view of authors, producers of films, performers, producers of phonograms, broadcasting organizations and the general public.

112. The Committees endorsed the main lines of the recommendations adopted by their respective Subcommittees which met in September 1978 to examine the legal problems arising with regard to copyright as a result of the use of audiovisual cassettes and discs. Another meeting is expected in the future.

(g) *Co-operation with states and various institutions in matters concerning copyright and neighbouring rights*

113. The objective is to ensure that, through regular contacts between the International Bureau on the one hand and the governments and other international organizations on the other hand, there should be full awareness of what is being done and planned on either side, in order to inspire mutually more and more useful

activities, to combine forces wherever possible and to avoid all unnecessary duplication.

114. WIPO continued and strengthened its co-operation with UNESCO in the fields of copyright and neighbouring rights and with the ILO in the field of neighbouring rights. In particular, an agreement was concluded by WIPO and UNESCO on the establishment of a joint service to facilitate access to protected works.

### 3. *Registration activities in the field of industrial property*

#### (a) *Promotion of the acceptance of treaties*

115. The objective is to ensure that more countries become party to the Patent Co-operation Treaty, the Madrid Agreement Concerning the International Registration of Marks and the Hague Agreement Concerning the International Deposit of Industrial Designs.

116. Between 1 January and 14 September 1980 three countries (Democratic People's Republic of Korea, Finland, Hungary) deposited instruments of ratification or accession in respect of the PCT.

#### (b) *Registration activities*

117. The objective is to maintain registration and similar activities under the Paris Convention, the Patent Co-operation Treaty, the Madrid Agreement (Trademarks), the Hague Agreement (Industrial Designs) and the Lisbon Agreement (Appellations of Origin).

### B. *Work of CMEA*

118. In the framework of the Conference of Heads of Invention Agencies of CMEA Member Countries, draft agreements are being prepared for a single patenting document to safeguard innovations in CMEA member countries, and for possible legal protection for indications of origin and designation of place of origin of goods.

### C. *Work of EFTA*

#### 1. *Patents*

119. Some EFTA countries (Austria, Liechtenstein, Sweden and Switzerland) are members of the European Patent Organization (EPO) in Munich, together with a number of EC countries (Belgium, France, Germany, Federal Republic of, Italy, Luxembourg, the Netherlands and the United Kingdom). The aim of the EPO is to simplify the filing and granting, on the basis of unified provisions of substantive patent law, of patents valid within the Member States.

120. The EFTA countries above-mentioned also have the possibility of participating in the Community Patent Convention of 1975 which provides for the unitary effect of European patents for the EC countries and for which the preparatory work is still under way.

#### 2. *Trademarks*

121. Work is now being undertaken by an EFTA expert group to examine the possibility of harmonizing substantive trademark law in connection with related work presently carried out within the EC.

### D. *Work of OAS: the Inter-American Juridical Committee*

122. Since 1971, the matter of the revision of the Inter-American conventions on industrial property has been one of the most important topics of the Inter-American Juridical Committee.

123. The General Assembly of OAS, in its Resolution 51 of 1971, decided to convoke a meeting of governmental experts. The experts met at Washington, D.C. within the period from 26 June to 5 July 1973. A working group was established consisting of experts from Brazil, Chile, Guatemala, Mexico and the United States of America.

124. The Inter-American Juridical Committee, during its meeting held in the period July-August 1975, approved a report on the "Revision, Updating and Evaluation of Inter-American Conventions on Industrial Property", and resolved to convoke again a meeting of governmental experts on industrial property and the application of technology to development for the purpose of studying problems of industrial property and their relationship to the development of the countries of the inter-American system.

125. The General Assembly of OAS in its Resolution 234 of 1976, recommended that the Inter-American Juridical Committee prepare a draft convention (or draft conventions) for the revision and updating of the inter-American conventions on industrial property.

126. The Inter-American Juridical Committee at its meeting of July-August 1977, decided to prepare one or more draft conventions concerning patents of invention and industrial drawings and models. It was suggested that, in a latter phase, the Committee prepare a draft convention concerning commercial and industrial trademarks and commercial names.

127. In the meetings held from 9 January to 14 February 1978, the Inter-American Juridical Committee approved the report submitted by the working group formed by a decision of the Committee at its session of

11 August 1977. The conclusions of this report led the Committee to decide upon retaining the topic "Revision of Inter-American Conventions on Industrial Property", with special reference to "patents of invention and industrial drawings and models" as a priority topic for the next regular meeting of the Committee. The Inter-American Juridical Committee considered in its regular meeting from 30 July to 16 August 1979 the draft convention with 13 articles on industrial property.

128. The General Secretariat of the OAS has prepared a number of documents in support of this effort, the most recent of which was on industrial property and the revision of the Paris Convention of 1883 issued in July 1980. This study refers to the proposals suggested by the Ad Hoc Group of Experts of WIPO and the framework presented by the UNCTAD concerning the revision of the Paris Convention of 1883, in order to satisfy the goals of the less developed countries.

#### E. *Work of ECE*

129. The ECE Manual on licensing procedures contains 20 ECE country chapters describing national licensing legislation and policies, and provides legal and bibliographical references and relevant addresses. It also deals with the conditions for the transfer of technology and the rights and duties of licensor and licensee.

130. The Manual was adopted by the ECE Committee on the Development of Trade and the Senior Advisers to ECE Governments on Science and Technology (SC.TECH.AC.15/Rev.1). The Manual was adopted by the following ECE member countries: Belgium, Bulgaria, Canada, Czechoslovakia, Finland, France, German Democratic Republic, Germany, Federal Republic of, Hungary, Netherlands, Norway, Poland, Romania, Spain, Sweden, Switzerland, Turkey, United Kingdom and United States of America. The English version of the Manual was published in November 1980. The French version is expected to appear early in 1981 and the Russian version in late-1981.

### VII. INTERNATIONAL PAYMENTS

#### A. *Documentary credits*

##### 1. *Revision of Uniform Customs and Practice for Documentary Credits (UCP)*

131. The ICC Commission on Banking Technique and Practice is revising UCP. UCP are applied as standard terms to documentary credit operations

throughout the world. The project involves redrafting standard contract terms applied internationally to documentary credit operations.

132. The aim of the current work is to introduce modifications to bring the rules into line with the most current modern practices. In particular, documentary requirements are being re-examined in the light of developments in transport documentation and techniques, and consideration is being given to the desirability of introducing provisions relating to stand-by letters of credit in response to a suggestion by UNCITRAL.

##### 2. *Standard application form for documentary credits*

133. The ICC Commission on Banking Technique and Practice is preparing a standard application form to be used by applicants for documentary credits. The form will include all details required by the bank called on to issue the credit. It will facilitate applications by introducing a standard format (based so far as possible on the ECE layout key) in harmony with the forms already used by banks when issuing documentary credits subject to Uniform Customs and Practice for Documentary Credits. An accompanying explanatory brochure on use of the form is also being prepared. The information provided in the form is incorporated in the documentary credit subsequently issued by the recipient bank.

#### B. *Rules for foreign exchange contracts*

134. The ICC Commission on Banking Technique and Practice in collaboration with representatives of the "Group of Ten" banks in drafting rules governing forward foreign exchange contracts. The rules deal with the formalities on conclusion of a foreign exchange contract, and the consequences between the parties when the contract cannot be carried out.

135. The objective of the above rules is to establish internationally accepted standards applicable to the liquidation of such contracts in cases when one of the parties is unable to perform its contractual obligations. It is intended that these rules be adopted by banks as contractual terms in their foreign exchange contracts.

#### C. *Negotiable instruments*

136. At its fourteenth session in October 1980, the Hague Conference on Private International Law decided to take under consideration the preparation of a convention on the law applicable to negotiable instruments as a subject to be included in the agenda of a future session.