

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.9/324) [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 nineteenth session in 1986 (A/CN.9/281).

3. This report is another in the series mentioned and has been prepared in order to update and supplement the report submitted at the nineteenth session of the Commission. It is based on information available to the Secretariat about the activities of international organizations covered up to 31 January 1989. Documents referred to in this report and further information may be sought directly from the organizations concerned. After the present report, it is planned to issue reports more frequently. For that purpose the Secretariat would appreciate receiving promptly and regularly information from international and other organizations on their current activities related to the harmonization and unification of international trade law.

4. The activities of UNCITRAL related to the harmonization and unification of international trade law are referred to briefly in this report 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. 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 49-53
ECE:	Economic Commission for Europe paragraphs 13, 124, 126
GATT:	General Agreement on Tariffs and Trade paragraphs 6-7, 124
IBRD:	International Bank for Reconstruction and Development (World Bank) paragraphs 45, 46
IMO:	International Maritime Organization paragraphs 81-85, 95, 96, 99-102, 104, 129, 131

UNCITRAL:	United Nations Commission on International Trade Law paragraphs 8, 12, 41, 42, 67, 68, 70-74, 80, 97, 112, 122, 142
UNCTAD:	United Nations Conference on Trade and Development paragraphs 23-34, 35, 40, 54-59, 76-94, 124, 132-134
UNEP:	United Nations Environmental Programme paragraph 139
UNESCO:	United Nations Educational, Scientific and Cultural Organization paragraphs 62, 65, 66
UNIDO:	United Nations Industrial Development Organization paragraphs 35-39
WIPO:	World Intellectual Property Organization paragraphs 60-64

(b) *Other intergovernmental organizations*

AALCC:	Asian-African Legal Consultative Committee paragraphs 47, 111
CCC:	Customs Co-operation Council paragraph 125
CMEA:	Council for Mutual Economic Assistance paragraphs 9-11, 98, 112
CE:	Council of Europe paragraphs 136-138
EEC:	European Economic Community paragraphs 19, 122, 123
EFTA:	European Free Trade Association paragraphs 122, 123
HAGUE CONFERENCE:	Hague Conference on Private International Law paragraphs 119-121
OTIF:	Intergovernmental Organization for International Carriage by Rail paragraph 106
UNIDROIT:	International Institute for the Unification of Private Law paragraphs 14, 18, 20, 21, 22, 65, 66, 107-110, 135, 140

(c) *International non-governmental organizations*

CMI:	Comité Maritime International paragraphs 81-84, 103
FIDIC:	Federation International des Ingénieurs Conseils paragraphs 43, 44
ICC:	International Chamber of Commerce paragraphs 15-17, 19, 48, 69, 70, 71, 75, 87, 113-116, 124

ICCA:	International Council for Commercial Arbitration paragraphs 117, 118
ISO:	International Organization for Standardization paragraph 130
UIC:	International Union of Railways paragraph 105

I. INTERNATIONAL COMMERCIAL CONTRACTS IN GENERAL

A. Procurement

1. GATT

6. The General Agreement on Trade and Tariffs (GATT) in 1979 elaborated the GATT Agreement on Government Procurement. The Agreement entered into force on 1 January 1981. Its purpose is to open to foreign suppliers contracts awarded by certain government bodies of its signatory countries. It aims to secure greater international competition in the government procurement market. It is designed to make laws, regulations, procedures and practices regarding government procurement more transparent, and to ensure that they do not protect domestic products or suppliers or discriminate among foreign products or suppliers.

7. The Agreement also makes provision for special and differential treatment for developing countries, including the least developed among them, to take into account their particular development, financial and trade needs. The 1981 Agreement has been revised and amended by a Protocol of Amendments done at Geneva on 2 February 1987 which entered into force on 14 February 1988. GATT produced in 1988 a revised text of the Agreement on Government Procurement incorporating all the amendments. In February 1989 GATT produced a revised text of the Practical Guide to the GATT Agreement on Government Procurement.

2. UNCITRAL

8. At its nineteenth session in 1986, the Commission decided to take up the topic of procurement and it entrusted the subject to the Working Group on the New International Economic Order. From 7 to 14 December 1987 the Secretariat of UNCITRAL convened a meeting of a group of experts on procurement at Vienna to advise it on the preparation of the documentation for the Working Group. The Working Group met at Vienna from 17 to 25 October 1988. It had before it a study of national procurement policies, laws and practices prepared by the Secretariat (A/CN.9/WG.II/WP.22). The Working Group, after consideration of the study, requested the Secretariat to prepare a first draft of a model procurement law, together with a commentary, for consideration by the Working Group (A/CN.9/315).

B. CMEA: general conditions

9. During the period 1986 to 1988, the CMEA Conference on Legal Questions has been revising the General Conditions of Delivery of Goods between the Organizations of the Member Countries of the Council for Mutual Economic Assistance as well as legal guides and model contracts. The revision takes into account the practical experience gained in the application of the General Conditions. The Standing Commission has also revised general conditions relating to technical service, assembly, specialization and co-operation. It is preparing new rules on scientific and technological co-operation. The Standing Commission has also undertaken a comparative study of the United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980) and the comparable legal texts enacted within CMEA.

10. The CMEA during the period under review continued to work on a comprehensive programme of scientific and technical progress for the CMEA Member States adopted in December 1985. The programme provides for the creation, as a joint endeavour of the CMEA countries, of new forms of equipment and technology in such priority fields as the application of electronics and comprehensive automation of the economy, new materials and the technology for processing them, atomic energy and biotechnology. The programme is open to other interested States. The CMEA in 1987 adopted proposals on the harmonization of domestic laws on inventions.

11. The Conference on Legal Questions of the CMEA completed a comprehensive study of the legal norms of the CMEA member countries as applied to contracts governed by the CMEA General Conditions. The work has been published as "The Contract Law of the CMEA member countries and the Socialist Federal Republic of Yugoslavia: General Principles". It contains a survey of the national legislation of these countries in respect of the conclusion and execution of contracts, and as regards liability for non-performance.

C. International countertrade practices

1. UNCITRAL

12. At its nineteenth session in 1986, the Commission, in the context of its discussion of a note by the Secretariat entitled "Future work in the area of the new international economic order" (A/CN.9/277), considered its future work on the topic of countertrade. It requested the Secretariat to prepare a preliminary study on the subject. At the twenty-first session in 1988, the Commission considered a preliminary study of legal issues in international countertrade (A/CN.9/302). The Commission decided that it would be desirable to prepare a legal guide on drawing up countertrade contracts. At the current twenty-second session the Commission has before it a draft outline of the possible content and structure of a legal guide on drawing up countertrade contracts (A/CN.9/322).

2. ECE

13. The ECE Committee on the Development of Trade, Working Party on International Contract Practices in Industry held its thirty-third session in Geneva from 28 to 30 November 1988. At that session it considered, *inter alia*, three documents in relation to the topic of countertrade transactions (TRADE/GE.1/R.34; TRADE/GE.1/R.38/Add.3 and TRADE/WP.5/R.3). The Working Party requested the Secretariat to prepare for the thirty-fourth session of the Working Party (June 1989) a new version of the texts on countertrade, reflecting the deliberations of the Working Party at its thirty-third session, and including sample contracts on counterpurchase and buy-back (TRADE/WP.5/28).

D. UNIDROIT: principles for international commercial contracts

14. The UNIDROIT Study Group on progressive codification of international trade law continued its work on general principles applicable to international commercial contracts. The Group held its tenth meeting from 6 to 10 June 1988 and examined the revised draft articles and draft explanatory report of chapter II on the formation of contracts. The eleventh session of the Group was held from 16 to 20 January 1989 at which consideration was given to the revised draft articles and draft explanatory report of chapter IV on the substantive validity of contracts. The Group is due to hold its next session from 3 to 7 July 1989. The session will be devoted to a final reading of chapter V (UNIDROIT 1989 CD-68-Doc.8).

E. ICC: liquidated damages and penalty clauses

15. The ICC Commission on International Commercial Practice is preparing a guide on liquidated damages and penalty clauses. The task has been undertaken by the Working Party on Liquidated Damages and Penalty Clauses. The Working Party has completed a draft of the proposed guide. The draft is being reviewed with a view to finalizing it. The draft guide examines the state of law on liquidated damages and penalty clauses in some of the legal systems most important to international trade. It also provides information and comments to practitioners concerned with the drafting of such clauses. The guide is of a summary nature and the information provided is intended to draw the attention of draftsmen of contracts to the main points in the major legal systems, and particularly to rules of a mandatory nature or otherwise representing pitfalls to an uninformed trader. It is intended to include as an appendix to the main text of the guide a brief survey or description of national penalty clauses (ICC Document No. 460-7/6).

F. ICC: Incoterms

16. An ICC Working Party is updating Incoterms, the ICC standardized trade terms for international sales contracts. The Working Party will propose that ICC remove

certain terms of the 1980 edition which have either fallen into disuse or do not reflect current business practices, and rearrange other terms to take account of changes in transport documents and electronic data interchange. The Working Party also proposes to include charts aimed at helping buyers and sellers select individual Incoterms meeting their contract needs. The new edition of Incoterms is expected to be published shortly (ICC document No. 460/351).

G. ICC: reservation of title

17. The ICC has been preparing a guide on reservation of title. A final version of the draft guide was completed in 1988. The Commission on International Commercial Practice has submitted the draft to the ICC Executive Board for approval and thereafter promulgation as an official ICC publication (Document No. 460/347).

H. Commercial agents and distributorships

1. UNIDROIT: internal relations between principals and agents

18. The Governing Council at its 67th session authorized the Secretariat to commission a study on the subject of internal relations between principals and agents. The study will be considered by the Governing Council at its 68th session (UNIDROIT 1989 Report 1988-CD-68 Doc.2).

2. ICC: commercial agency; distributorship

19. The ICC is working on an explanatory note for commercial agents and their principals on the EEC directive on the co-ordination of member States' laws relating to self-employed commercial agents. The purpose of the note will be to comment on the various national laws applicable in EEC States and in particular on the problem of loss of indemnity. ICC is also working on a guide to distributorship agreements (ICC Annual Report 1987).

I. UNIDROIT: international financial leasing

20. UNIDROIT in 1987 finalized the draft Convention on International Financial Leasing. The Convention was submitted to a diplomatic Conference hosted by the Canadian Government in Ottawa from 9 to 28 May 1988. The diplomatic Conference adopted the Convention and opened it for signature by all States at Ottawa until 31 December 1990 (Final Act of Diplomatic Conference for the Adoption of the Draft UNIDROIT Conventions on International Financial Leasing and International Factoring, Ottawa, 28 May 1988). The Convention is intended to remove legal impediments to the international financial leasing of equipment so that it can become more available. It also adapts the rules of leasing to the distinctive triangular relationship created by the financial leasing transaction. The rules elaborated in the Convention relate

primarily to the civil and commercial law aspects of international leasing.

J. UNIDROIT: international factoring

21. The diplomatic Conference hosted by the Canadian Government in Ottawa from 9 to 28 May 1988 (see above, para. 20) also adopted the draft Convention on International Factoring. The Convention will remain open for signature by all States at Ottawa until 31 December 1990. The Convention is intended to provide a legal framework that will facilitate international factoring. The Convention governs factoring contracts where the supplier may or will assign to the factor receivables arising from contracts for the sale of goods, made between a supplier and its customers (debtors), other than those for the sale of goods bought primarily for personal, family or household use and where the factor is to perform at least two of the following functions: provide finance to the supplier, including loans and advance payments; maintenance of accounts (ledgering) relating to the receivables; collection of receivables; and protection against default in payment of debtors.

K. UNIDROIT: franchising contracts

22. At its 67th session the Governing Council requested the Secretariat to obtain information on the subject of franchising particularly with regard to the actual content of franchising contracts in different countries (UNIDROIT 1989 Report 1988-CD.68 Doc.2).

II. COMMODITIES

A. UNCTAD: Common Fund for Commodities

23. 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 fulfilled the requirements for entry into force. Ratification by the Maldives on 11 July, 1988 has fulfilled the main outstanding condition for entry into force, namely that ratifying countries should represent two thirds of the funds directly contributed to the capital. The Agreement provides for the setting up of a new international financial institution of major importance to international commodity trade and to developing countries. The objectives of the Common Fund are: (a) to serve as a key instrument in attaining the agreed objectives of the Integrated Programme for Commodities as embodied in resolution 93(IV) of UNCTAD and (b) to facilitate the conclusion and functioning of international commodity agreements or arrangements (ICA) particularly concerning commodities of special interest to developing countries (UNCTAD Bulletin No. 245—July 1988).

B. UNCTAD: commodity agreements

24. 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 transport systems. 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.

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

- A new International Natural Rubber Agreement (TD/RUBBER 2/16) was adopted on 20 March 1987, replacing the 1979 International Natural Rubber Agreement.
- The 1984 International Sugar Agreement is to be replaced by a new 1987 Sugar Agreement (TD/SUGAR.11/5) which came into force provisionally on 24 March 1988 (CN.78.1988 Treaties—I (Depositary notification)). The International Sugar Organization Council, however, on 15 February 1988 extended the 1984 International Sugar Agreement until 31 March 1988 or until such time as the International Sugar Agreement, 1987, entered into force definitively.
- The International Agreement on Olive Oil and Table Olives, 1986 (CN.77.1988 Treaties—I (Depositary notification)) replaces the International Olive Oil Agreement, 1979. The International Olive Oil Council, by resolution No. 1/57-IV/87 of 17 December 1987, extended until 5 June 1988 the time-limit for the deposit of instruments of ratification, acceptance or approval.
- The International Agreement on Jute and Jute Products, 1982 (TD/JUTE/II/Rev.1; United Nations publication, Sales No. 83.II.D.3) entered into force provisionally on 1 January 1984. It remained in force until 8 January 1989.
- The United Nations Conference on Cocoa held four rounds of negotiations to replace the 1980 International Cocoa Agreement. The Conference in July 1986 reached agreement on the key issue of the price structure, price level and price adjustment mechanism to be incorporated in a new agreement with economic provisions. The new instrument (TD/COCOA.7/R.2) replaced the 1980 Agreement on 1 October 1986. It will remain in force for three years, with the possibility of further extensions for a total of three years.
- The International Tin Agreement (TD/TIN.6/14) was due to expire on 30 June 1987 but was extended for a period of two years until 30 June 1989. However, buffer stock operations under the Agreement were suspended and the issue of the responsibility for the debts of the Tin Council is

presently under litigation in the United Kingdom. Governments are now seeking a new forum where international co-operation can be maintained. As a result the United Nations Tin Conference met from 21 November to 2 December 1988 to negotiate the establishment of an international producer-consumer group for tin. It is to meet again in 1989.

- The International Tropical Timber Agreement, 1983 (TD/TIMBER/II/Rev.1; United Nations publication, Sales No. 84.II.D.5) 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.

26. Preparatory work, expected to lead to the convening of negotiating conferences for the adoption of other international commodity agreements or establishment of study groups, is continuing on the following commodities: cotton, hard fibres, manganese, bauxite, iron ore, bananas, meat, copper, nickel, phosphates, vegetable oils and seeds.

C. UNCTAD: complementary facility for commodity-related shortfalls in export earnings

27. The Group of Experts on the Compensatory Financing of Export Earnings Shortfalls, established in 1983, held its second session from 14-18 September 1987, which was devoted primarily to consideration of a Secretariat study. This study (TD/B/AC.43/5 and Add.1) sets out calculations of shortfalls according to various formulae, assesses the extent to which such shortfalls have been covered by existing schemes such as the Compensatory Financing Facility of the IMF and the EEC's Stabex, and evaluates the effects of these shortfalls on the economic development of developing countries. The Expert Group decided to defer any final recommendations on the matter until the IMF had completed its current review of its own Compensatory Financing Facility. Meanwhile, it asked that the analytical study as well as the Group's reports be submitted as a contribution to the review by the IMF.

28. Other studies carried out by UNCTAD on this topic include:

- "Compensatory facility for commodity related shortfalls in export earnings" (TD/B/C.1/221, 222 & 234).
- "Review of Stabex and Sysmin" (TD/B/C.1/237).
- "Review of the operation of the compensatory financing facility of the International Monetary Fund" (TD/B/C.1/243).
- "Compensatory financing of export earnings shortfalls" (TD/B/1029/Rev.1).
- "Commodities earnings shortfalls and an additional compensatory financing facility" (TD/B/AC.43/2 and Corr.1, and TD/B/AC.43/5 and Add.1).

D. UNCTAD: Global System of Trade Preferences (GSTP)

29. A Ministerial Meeting of the Negotiating Committee of the Global System of Trade Preferences (GSTP) held in Belgrade from 6 to 13 April 1988 adopted the Agreement on the GSTP and opened it for signature (UNCTAD GSTP/MM/BELGRADE/3). The Global System of Trade Preferences is a new trading system under which members of the Group of 77 will exchange trade concessions among each other on a wide range of products. The Agreement establishes a global framework of rules based on the principle of reciprocity and "most favoured nation treatment" encompassing components of arrangements for the exchange of concessions on tariff, part-tariff and non-tariff measures covering all types of products for direct trade measures including medium and long term contracts, and for sectoral agreements. Attached to the Agreement is the preferential tariff concession that the participants have agreed to extend to each other. The Agreement also contains provisions enabling concrete preferential measures for the least developed countries. It is intended to constitute a major instrument for the promotion of trade among developing countries, members of the Group of 77 (UNCTAD Bulletin No. 243—May 1988).

E. UNCTAD: Generalized System of Preferences (GSP)

30. The UNCTAD Special Committee on Preferences convened for its fifteenth session from 24 May to 1 June 1988. It had before it the "Eleventh General Report on the Implementation of the Generalized System of Preferences" (TD/B/C.5/111 and Add.1). The report gave a factual account of the changes and improvements in the various schemes since the last review and indicated the possibilities of making the GSP a more effective instrument of trade policy. An earlier document (TD/B/C.5/105, chapter III) provided a comprehensive study evaluating the effects of the GSP. The report recommended substantial improvements in the GSP in the form of expansion of the product coverage, in particular agricultural products, as an effective way of increasing the benefits of the less competitive beneficiaries and simplification of the schemes, particularly of Japan and the EEC, so that they can be more easily understood by exporters in the developing countries and administered at lower cost by both preference-giving and recipient countries (UNCTAD Bulletin No. 242—April 1988).

F. UNCTAD: Data Base on Trade Measures

31. The Trade and Development Board in May 1988 decided to give wide access to the UNCTAD Data Base on Trade Measures. The Data Base is a comprehensive inventory of trade control measures in the world which contains information on product-specific trade measures in over 100 developed and developing countries. It can be used for many purposes, such as the analysis of developments in national trade, policies and world trading conditions,

assistance to Governments in analysing conditions of access to external markets for export development, preparation of reference materials which help Governments in preparing their participation in multilateral trade negotiations, and research on non-tariff barriers. The system includes border trade measures which, either in practice or potentially, affect international trade by introducing differential treatment for imported and domestically produced goods. The information is contained in computerized records which can be linked with computerized information on tariffs and trade flows (UNCTAD Bulletin No. 244—June 1988).

Additional studies carried out by UNCTAD

32. The Committee on Transfer of Technology held its seventh session from 18 to 26 October 1988. It discussed the dimension, direction and nature of technology flows, particularly to developing countries, in a changing world economy. It also carried out, in the context of dynamic economic and technological change, an examination of technology-related policy and legislative responses. Two reports were before the session: Document TD/B/C.6/145—Recent trends in international technology and their implications for development, and Document TD/B/C.6/146—Technology-related legislation and technological environment.

33. A United Nations Conference on copper bringing together some 40 producing and consuming countries met from 13 to 24 June 1988 under the auspices of UNCTAD to negotiate the establishment of an international producer-consumer forum or group on copper. The Conference asked the Secretary-General of UNCTAD to reconvene the Conference as early as possible in order to conclude negotiations for the establishment of the new entity which would be an autonomous body. The possible functions identified by the Conference included consultations and exchanges of information among members on the international copper economy; improvement of copper statistics; undertaking of regular assessments of the market situation and outlook for the world copper industry; undertaking of activities related to efforts pursued by other organizations aimed at developing the market and contributing to the demand for copper (UNCTAD Bulletin No. 244—June 1988).

34. The Intergovernmental Group of Experts on Iron Ore met from 7 to 11 March 1988 to consider developments in the world iron ore market in the year 1986 and part of 1987 (CTD/B/IPC/1 IRON ORE/AC.1/8). The report noted that, despite a slight increase in world production and consumption over the previous year, the iron ore market in 1986 saw further falls in the levels of trade and prices. It identified as basic problems, which continued to adversely affect the iron ore industry, the persistent imbalance between supply and demand, the continued erosion of prices and the structural and technological factors behind the gradual contraction of demand (UNCTAD Bulletin No. 240—February 1988).

III. INDUSTRIALIZATION

A. UNIDO: system of consultations

35. 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. 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 thirteen industrial sectors served by the system of consultations.

36. Twenty-seven consultations have been convened since 1977 covering the following industries and topics: capital goods, agricultural machinery, iron and steel, fertilizers, petrochemicals, pharmaceuticals, leather and leather products, vegetable oils and salts, food processing, industrial financing, training of industrial manpower, wool and wool products and building material. In accordance with the recommendations made at these consultations, UNIDO has formulated model contracts and clauses, guides and checklists for contractual arrangements to facilitate individual collaboration in some of these industrial sectors. A list of these model contracts can be found in the previous report (A/CN.9/281).

37. UNIDO has continued to review the documents. The documents as amended were supplied to the third consultation held in 1987 for the various sectors. The following documents have been published as a result of the review:

- Contractual arrangements for the production of pharmaceutical chemicals or intermediates and pharmaceutical formulations (ID/WG.466 (SPEC)—Additional Clauses for Inclusion in Documents ID/WG.393/1 Rev.2 and ID/WG.393/3 Rev.2).
- Items which could be included in contractual arrangements for the setting up of a turn-key plant for the production of bulk drugs (pharmaceutical chemicals) or intermediates included in UNIDO List ID/WG.466/3 (SPEC).
- Items which could be included in Contractual Arrangements for Technical Assistance for the Formulation of Pharmaceutical Dosage Forms (ID/WG.466/4 (SPEC)).

B. Guides and guidelines

1. UNIDO: guide to investors

38. UNIDO has completed a number of booklets called "investors guides". The booklets are designed to meet the special information needs of a potential investor interested in investment prospects in a given developing country. Each of the booklets contains a brief account of the

country, its people and resources, the basic infrastructure, the manner in which its economy has developed over the last few years, its industry, the policies and procedures for industrial licensing and transfer of know-how and the facilities which are available to any one interested to investing in the country.

2 UNIDO: contractual checklist

39. UNIDO is working on a draft contractual checklist for the elaboration of long-term collaboration arrangements in joint ventures, provision of know-how, training, management and marketing in the development of primary and secondary wood-processing industries.

3. UNCTAD: international trade and development statistics

40. The UNCTAD Secretariat published in April 1988 a comprehensive 1987 supplement to the *Handbook of International Trade and Development Statistics* (United Nations publication, Sales No. E/F.87.11.D.10). The handbook provides detailed data on third world issues, especially in such areas as trade and debt. It compliments other United Nations publications such as the *Yearbook of International Trade Statistics* and the *Statistical Yearbook*.

4. UNCITRAL: Legal Guide on Drawing up International Contracts for the Construction of Industrial Works

41. The UNCITRAL Legal Guide on Drawing Up International Contracts for the Construction of Industrial Works was adopted by UNCITRAL at its twentieth session in 1987 and has been published by the United Nations (United Nations publication, Sales No. E.87.V.10). Designed to assist persons involved in the negotiation and drafting of industrial works contracts, the UNCITRAL Legal Guide reviews the full range of issues arising in connection with the construction of industrial works—from the initial stages of a project to its completion—and suggests possible ways in which those issues might be dealt with in the contract. By taking into account international construction and contracting practices, as well as legal rules in national legal systems that may affect the formulation of particular terms of the contract, the UNCITRAL Legal Guide is designed to be of practical benefit to users worldwide. The discussions in the UNCITRAL Legal Guide and the solutions recommended in it are intended to achieve balance with respect to the interests of the parties to the contract and to enable the parties to formulate equitable contractual provisions.

42. The intended audience of the UNCITRAL Legal Guide includes lawyers, engineers, managerial personnel of private and State-owned enterprises and government officials who are involved in the negotiation and implementation of contracts for the construction of industrial works. The UNCITRAL Legal Guide has thus far been published in Arabic, English, French, Russian and Spanish. A Chinese version will be published shortly.

5. FIDIC: conditions of contract

43. FIDIC has published the fourth edition of its Civil Conditions of Contract (Red Book). It appears in two parts. Part I contains general conditions of contract with forms of tender and agreement. Changes have been made to the following clauses: definitions, bonds and guarantees, sufficiency of tender, insurance, extension of time, claims, certificates and payment, disputes and default of the employer. There has also been an attempt to simplify the language used in the document and to bring it in line with modern practice and to clarify areas which had led to misunderstanding in the past. Part II is a comprehensive set of fully developed sample clauses containing conditions of particular application. Guidelines are provided for preparation of part II clauses. The former part III (Dredging and Reclamation) has been incorporated into part II.

44. FIDIC in 1987 prepared the third edition of its Conditions of Contract for Electrical and Mechanical Works (Yellow Book). The conditions are designed to be suitable for use in contracts between employer (owner) and contractor for the supply and erection of plant and machinery. FIDIC also published in 1988 a Guide to the Use of its 1987 third edition.

C. World Bank: Multilateral Investment Guarantee Agency (MIGA)

45. In the previous report (A/CN.9/281) it was reported that the World Bank was elaborating a Convention to establish a Multilateral Investment Guarantee Agency (MIGA). The Convention took effect on 12 April 1988. The Agreement entered into force when its ratification by the United States and the United Kingdom on that day raised subscriptions above the minimum required for it to come into force.

46. The objective of MIGA is to encourage the flow of investments for productive purposes among its member countries—in particular, to developing countries. MIGA is intended to enhance mutual understanding and confidence between host Governments and foreign investors and heighten awareness of investment opportunities. It will also increase information, knowledge, and expertise related to the investment process. To fulfil its purpose, MIGA will guarantee eligible investments against losses resulting from noncommercial risk and carry out research and promotional activities (The World Bank Annual Report 1988).

D. Joint ventures

1. AALCC: industrial joint ventures

47. The Sub-Committee on International Trade Law Matters of the AALCC is continuing its work on the legal framework for industrial joint ventures. At the twenty-seventh session of the AALCC held in Singapore in March 1988 the Committee decided to continue the work started at its Arusha session (1986). The Committee requested the

Secretariat of the AALCC to compile relevant information on joint ventures and, after such information had been collected, to embark on the preparation of a legal guide on joint ventures. In this context, it was suggested that, while making this study, the Secretariat should also examine the common elements between countertrade and joint ventures.

2. ICC: East-West joint ventures

48. The ICC has published a Guide for Joint Ventures Between Soviet State Enterprises and Western Firms. The book was produced by a task force from the ICC and the USSR Chamber of Commerce and Industry. It is a detailed guide on how to set up joint ventures. It contains informed analysis and commentary on a wide range of financial, legal and management issues, recommendations and a complete compendium of all relevant Soviet decrees and official instruments as of which joint venture partners need to know when negotiating a contract (ICC publication No. 456 ISBN No. 92-842-1070-4).

IV. TRANSNATIONAL CORPORATIONS

A. CTC: draft Code of Conduct on Transnational Corporations

49. Work on the draft Code of Conduct on Transnational Corporations being carried out by the Centre on Transnational Corporations (CTC) is continuing. The Commission on Transnational Corporations at its thirteenth regular session from 7 to 16 April 1987 decided to reconvene the Special Session of the Commission on Transnational Corporations, requested the Chairman of the Special Session together with the Bureau of the Special Session and the Secretary-General to hold intensive consultations with the aim of finalizing a draft Code of Conduct on Transnational Corporations taking into account the existing drafts and requested member States to put forward, if appropriate, in the course of the consultations, concrete formulations aimed at resolving the outstanding issues in the draft Code of Conduct (Official Records of the Economic and Social Council, 1987, Supplement No.1 (E/198/87)).

50. The matter of the Code was taken up again at the fourteenth session of the Commission on Transnational Corporations, 6 to 15 April, 1988. The Commission requested the Centre to prepare a report on the subject for the fifteenth session of the Commission. Agreement has now been reached on most of the Code. Some key issues remain to be resolved, including the question of a reference to international law/international obligations, non-interference in internal political affairs, jurisdiction and dispute settlement, nationalization and compensation and national treatment of transnational corporations (TNC's).

B. CTC: studies

51. In the studies of industry prepared by the Centre on Transnational Corporations (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.

52. Special studies recently completed include:

- Transnational Corporations and the Electronics Industries of ASEAN Economies (UNCTC Current Studies, Series A, No.5, Sales No. E.87.11.A.13). This study examines the implications of changes in technology and in the global competitive environment and discusses relevant policy issues.
- Technology Acquisition Under Alternative Arrangements with Transnational Corporations: Selected Industrial Case Studies in Thailand (UNCTC Current Studies, Series A, No. 6, Sales No. E.87.11.A.14). This study analyses the modes and mechanisms whereby technology is acquired through various arrangements with TNC's in manufacturing enterprises in Thailand.
- Foreign Direct Investment, the Service Sector and International Banking (UNCTC Current Studies, Series A, No. 7, Sales No. E.87.11.A.15). This report examines recent trends in foreign direct investment and studies the impact that the service sector and transnational banks have on the world economy.
- Financial and Fiscal Aspects of Petroleum Exploitation (UNCTC Advisory Studies, Series B, No. 3, Sales No. E.87.11.A.10); the study analyses alternative options for taxing petroleum revenue and sharing the take from petroleum operations between Governments and companies.
- National Legislation and Regulations Relating to Transnational Corporations Volume IV (Sales No. E.85.11.A.14), Volume V (Sales No. E.86.11.A.3) and Volume VI (Sales No. E.87.11.A.6).
- License Agreements in Developing Countries; an Analysis of Key Provisions (Sales No. E.87.11.A.21). This report reviews license agreements in several countries.
- Transnational Corporations and non-Fuel Primary Commodities in Developing Countries (Sales No. E.87.11.A.17). This study provides Governments of host developing countries with objectively derived findings with which to evaluate the involvement of TNC'S in primary commodities and to develop policy options for dealing with TNC's.

- Transnational Corporations in the Man-made Fibre, Textile and Clothing Industries (Sales No. E.87.11.A.11). This report identifies the patterns of transnational activity and the strategies of TNC's in the textile and clothing industries, the technological impact on developing countries and the strategies and policy implications for developing countries.
 - Transnational Corporations in the International Semiconductor Industry (Sales No. E.86.11.A.1). This study describes the structure and evolution of the world semiconductor industry and outlines the role of TNC's in this market. It also discusses the relevance of semiconductor TNC's to developing countries.
 - Employment Effects of Multinational Enterprises in Export Processing Zones in the Caribbean: A joint ILO/UNCTC research project, Institute of Social and Economic Research Universities of the West Indies, Trinidad. Working paper No.42 ISBN 92-2-10 5520-5.
 - Transnational Corporations in South Africa and Namibia: United Nations Public Hearings Volume II Statements and Submissions (Sales No. E.86.11.A.8). This volume contains the written statements that were submitted to the Panel of Eminent Persons.
 - Transnational Corporations in South Africa and Namibia: United Nations Public Hearings Volume IV Policy Instruments and Statements (Sales No. E.86.11.A.9). A number of groups of countries as well as individual countries, their subdivisions, municipalities and other organizations have adopted measures relating to the activities of TNC's in South Africa and Namibia. This volume contains the text of a number of such laws, regulations, rules and codes of conduct and policy statements.
 - Analysis of Engineering and Technical Assistance Consultancy Contracts (Sales No. E.86.11.A.4). This publication is divided into three sections. The first section deals with the analysis of engineering consultancy contracts in the industrial sector and technology transfer contracts between TNC's and developing country enterprises. The last section contains an analysis of the legal provisions that are common in the contracts studied in the first two sections.
 - Transnational Corporations in World Development Trends and Prospects (Sales No. E.88.11.A.7). The report identifies the major emerging transnationalization trends and analyses the strategic responses of TNC's to the changing economic environment, evaluates the contributions of TNC's to the process of development, and several aspects related to the employment, environment and socio-cultural impact of the activities of TNC's are analysed.
 - Foreign Direct Investment in the People's Republic of China (Sales No. E.88.11.A.3)
 - Transnational Corporations in Biotechnology (Sales No. E.88.11.A.4).
 - Bilateral Investment Treaties (Sales No. E.88.11.A.1).
 - Joint Ventures as a Form of International Economic Co-operation (Sales No. E.88.11.A.12).
53. The Centre issued in February 1988 a report on international arrangements and agreements related to transnational corporations (E/C.10/1988/5). The report was prepared in response to the Economic and Social Council decision 1987/137. It reviews the main developments that occurred during the 1980s concerning the negotiation, adoption, implementation and follow-up of regional and multilateral agreements relating to foreign direct investment and transnational corporations, and their impact on the elaboration of standards of conduct and treatment for transnational corporations and the treatment of those corporations by host countries. The report examines the issues under the following general headings: principles of treatment of transnational corporations by governments; entry, ownership and financing; employment and labour; transfer of technology; protection of consumers and the environment; jurisdiction and conflicting requirements; settlement of investment disputes and investment insurance; and institutional arrangements for follow-up.
- ## V. TRANSFER OF TECHNOLOGY
- ### A. UNCTAD: proposed international code of conduct on the transfer of technology
54. UNCTAD has continued in its work to negotiate and adopt an international code of conduct on the transfer of technology mandated by the General Assembly by resolution 32/188 of 19 December 1977. The mandate was renewed in December 1986 and the Secretary-General of UNCTAD was invited to report to the General Assembly at its forty-second session on the progress made in the consultations in order that it would take appropriate action on the future of the negotiations (General Assembly resolution 41/166 of 5 December 1986). These consultations have not yet resulted in a concrete outcome which could serve as generally acceptable basis for reconvening the conference. Thus the Secretary-General of UNCTAD, in his report to the forty-third session of the General Assembly (TD/CODE TOT/53) affirmed his intention to pursue these consultations and report again to the General Assembly at its forty-fourth session. In its decision 43/439 of 20 December 1988, the General Assembly took note of the report of the Secretary-General of UNCTAD on an international code of conduct on the transfer of technology (A/43/763)
55. Consultations carried out in 1986 and 1987 with regional groups and interested Governments confirmed the existing divergencies of approaches in the areas of restrictive practices and applicable law. The text for chapter 4 negotiated during the last period of the Conference is no longer generally accepted as a valid approach to the regulation of restrictive practices, particularly by those countries seeking to see a clear recognition of competition as the governing test for the control of restrictive practices in transfer-of-technology transactions.

56. New factors have made a compromise on the issues outstanding more difficult to obtain. Technological changes and innovation in general are being universally recognized as fundamental to economic growth and development and as key factors in international trade and in competitiveness among nations. With that objective in mind and with a view to encouraging technological progress, antitrust legislation dealing with restrictions on technology licensing is being liberalized in key developed countries. Another significant development is the importance being attached to the reinforcement of the legal protection of technological assets particularly in high technology. Related to that factor is the importance attached by a number of countries to trade-related aspects of intellectual property protection.

57. UNCTAD recently published two reports in the area of technology transfer. These are:

- "Recent Trends in International Technology Flows and their Implications" (Document TD/B/C.6/45). This report reviews the main features of the pattern of international flows of technology in the past 25 years and analyses in great detail the incidence of the slow-down in technology flows during the 1980s in different types of developing country economies. It also discusses possible approaches for restoring the flow of technology to developing countries, as well as some of the prerequisites for more effective utilization of technology flows.
- "Technology-Related Legislation in a Changing Economic and Technological Environment" (Document TD/B/C.6/146). This report provides a review of the evolution in policies and legislation affecting the creation and use of, and access to, technology (such as those dealing with innovation, industrial property protection, technology transfer and competition) in the light of rapid economic and technological change. The report is of a more policy-oriented type: issues which might require the future attention of policy-makers are identified and discussed. An annex to the report provides tabulations of recent major policy and legal developments world-wide affecting the creation, protection and transfer of technology.

B. UNCTAD: industrial property system and transfer of technology to developing countries

58. UNCTAD continues to examine the economic, commercial and development aspects of the industrial property system, patents and trade marks and to contribute to the current revision of the Paris Convention for the Protection of Industrial Property. At its fifth session in December 1984 the UNCTAD Committee on Transfer of Technology, by resolution 28(V), requested the Secretary-General of UNCTAD to convene a meeting of governmental experts to examine the economic, commercial and development aspects of industrial property in the transfer of technology to developing countries and to report their findings and recommendations to the sixth session of the Committee. At its sixth session held in October to November 1986, the Committee, by its resolution 31(VI), decided

to convene another meeting of the group of governmental experts as appropriate.

59. The Secretariat has in 1987 and 1988 issued several studies on patents and trade marks including the following:

- "The International Patent System: the Revision of the Paris Convention for the Protection of Industrial Property" (TD/B/C.6/AC.3/2).
- "The Role of the Patent System in the Transfer of Technology to Developing Countries" (TD/B/C.6/AC.3/3 Rev.1).
- "Review of the Recent Trends in Patents in Developing Countries" (TD/B/C.6/AC.5/3).
- "Trade Marks and Generic Names of Pharmaceuticals and Consumer Protection" (TD/B/C.6/AC.5/4).

VI. INDUSTRIAL AND INTELLECTUAL PROPERTY LAW

A. WIPO: intellectual property activities; counterfeiting and piracy

60. During the period 1986 to 1988 the International Bureau of the World Intellectual Property Organization (WIPO) has been engaged in reviewing treaties administered by WIPO to take account of changing circumstances. If they or their implementing regulations seem to be in need of revision, they are submitted, after adequate preparation, to those intergovernmental bodies which are competent to decide on revisions. The Paris Convention is in a process of revision, the seventh since its conclusion more than a hundred years ago in 1883 (WIPO pub. No. 401 (E) (1988)).

61. WIPO is observing all changes in international industrial, trade and cultural relations which seem to call for adaptations not only in the treaties administered by WIPO but also in national laws, regional arrangements and contractual practices in the field of intellectual property. Thus, in the field of industrial property, during the years 1987 and 1988, WIPO was engaged, for example, in considering the possibilities of uniform provisions for national patent laws, in particular concerning the effects on the patentability of an invention of a public disclosure of the invention by the inventor prior to filing a patent application. It was also engaged in advocating laws and treaty provisions which would give more efficient protection to geographical indications (indications of source, appellations of origin) and against the counterfeiting of goods, in recommending provisions for national law and the conclusion of a possible international treaty concerning the protection of the intellectual creators of microchips or integrated circuits, and in studying means of protection of inventions in the field of technology, including genetic engineering (WIPO pub. No. 401 (E) (1988)).

62. WIPO and the United Nations Educational, Scientific and Cultural Organization (UNESCO) are jointly

engaged in a study designed to recommend solutions for national laws for the protection of computer programs, for works created by employee-authors and for expressions of folklore, in considering possibilities of a more efficient protection of authors and performers in connection with cable television, against piratical editions (of books, phonograms, videotapes) and against an excessive measure of unauthorized reproduction. They are also engaged in studying the copyright law aspects of the rental of phonograms and videograms, of direct broadcasting satellites and of electronic libraries, and the possibility of establishing an international register of individual works. When the work is completed WIPO expects to draft model provisions for national copyright legislation based on a consistent and dynamic interpretation of the Berne Convention (WIPO pub. No. 401 (E) (1988)).

63. WIPO has continued to hold seminars in developing countries with the objective of assisting those 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. 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.

64. WIPO is engaged in work on counterfeiting and piracy. Pursuant to a decision taken by the General Assembly of WIPO at its ninth session in September 1987 (paragraphs 88(ii) and 140 of document AB/XVIII/14), the Director General of WIPO convened the Committee of Experts on Measures Against Counterfeiting and Piracy from 25 to 28 April, 1988. Discussions at the meeting were based on two documents, entitled "Model Provisions for National Law" (C and P/CE/2) and "Provisions in the Paris, Berne and Neighbouring Rights Conventions" (C and P/CE/3). Work in this area is continuing (C and P/CE/4).

B. UNIDROIT: international protection of cultural property

65. At the request of UNESCO, UNIDROIT prepared in February 1986 a study on the international protection of cultural property in the light of the draft UNIDROIT Convention Providing a Uniform Law on the Acquisition in Good Faith of Corporeal Movables (draft LUAB 1974) and of the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (UNIDROIT 1986, Study LXX - Doc. 1). The study concentrated on the rules of private law affecting the transfer of title where there has been acquisition in good faith of cultural property from a person other than the one entitled to dispose of it, and was submitted to numerous experts for their opinion. It was revealed that the complexity of the international protection of cultural property does not permit

any one of its different aspects to be dealt with in isolation. Reference is necessary to the rules of law governing the transfer of movable property, which comprises cultural property, in a selected number of legal systems. What is of relevance is not only the diversity of the rules but also the notion of cultural property which has a different value and is defined differently in various countries, the concept of cultural property applicable in all those States which are Parties to the 1970 UNESCO Convention having been formulated for reasons of convenience.

66. Pursuant to decisions by UNESCO and UNIDROIT, another study on the international protection of cultural property has been completed and was submitted to the 67th session of the Governing Council of UNIDROIT held from 14 to 17 June 1988 (UNIDROIT Report 1988-CD.67 Doc.8). The Governing Council decided to constitute a Study Group on the international protection of cultural property and entrusted it with the task of considering the various aspects of the subject. At its first meeting from 12 to 15 December 1988 the Group concentrated on the problems associated with the theft of cultural objects and with the illegal export of such objects. On the basis of the Group's discussion (Study LXX-Doc.10) the UNIDROIT Secretariat has prepared the text of a preliminary draft Convention on the restitution and return of cultural objects (Study LXX-Doc. 11). This text will be considered at the Group's next meeting from 13 to 17 April 1989 (UNIDROIT 1989 Report 1988-CD 68 Doc.2).

VII. INTERNATIONAL PAYMENTS

A. UNCITRAL: Convention on International Bills of Exchange and International Promissory Notes

67. A revised version of the draft Convention on International Bills of Exchange and International Promissory Notes (A/CN.9/274) was considered by the Commission at its nineteenth session (1986). It was decided that the draft Convention as finalized at that session should be transmitted to States and interested international organizations for comment and would be reviewed by the Working Group on International Negotiable Instruments prior to the twentieth session of the Commission. The comments received from Governments and international organizations are contained in documents A/CN.9/WG.IV/WP.32 and Add. 1-10, and the report of the Working Group in document A/CN.9/288. The Commission at its twentieth session (1987) approved a draft Convention on International Bills of Exchange and International Promissory Notes and transmitted it to the General Assembly with a view to its adoption.

68. The General Assembly (resolution 42/153 of 7 December 1987) requested the Secretary-General to ask all States to submit the observations and proposals they wished to make on the draft Convention before 30 April 1988 and decided to consider, at its forty-third session, the draft Convention, with a view to its adoption at that session, and to create to that end, within the framework of the Sixth Committee of the General Assembly, a Working Group that would meet at the beginning of the session in

order to consider the observations and proposals made by States. The Sixth Committee of the General Assembly on 7 October 1988 approved the draft Convention and the General Assembly on 9 December 1988 adopted the Convention by resolution 43/165 and opened it for signature until 30 June 1990.

B. Guarantees and stand-by letters of credit

1. ICC: guarantees

69. A Working Party set up by the ICC is drafting rules to cover all forms of guarantees. At the first two meetings the Working Party worked on the basis of earlier ICC rules on this subject (Publication No. 325) and on a Code of Practice presented by the British Bankers Association (BBA) on Demand Guarantees and Bonds. The draft under preparation is to cover all types of guarantees issued by banks, financial institutions and insurers. It is aimed at the needs of principals, beneficiaries and issuing institutions alike.

2. UNCITRAL: stand-by letters of credit and guarantees

70. At its twenty-first session (1988) the Commission considered the report of the Secretary-General on stand-by letters of credit and guarantees (A/CN.9/301) and, in particular, the conclusions and suggestions as to possible future work of the Commission in this field. The report described in its first part the functions and characteristics of stand-by letters of credit and independent guarantees. In its second part, it provided an overview of the legal framework, comprising statutory provisions of law, case law and uniform rules. In the third part, the report discussed some sample legal issues that may arise in the context of stand-by letters of credit as well as guarantees. The report concluded that there existed considerable disparity and uncertainty in respect of the legal rules governing the two kinds of instruments. The Commission agreed with the report that a greater degree of certainty and uniformity was desirable. Work was envisaged in two stages, the first relating to contractual rules or model terms and the second pertaining to statutory law. The Commission welcomed the work undertaken by the International Chamber of Commerce (ICC) in preparing draft Uniform Rules on Guarantees. The Commission entrusted its Working Group on International Contract Practices with a review of the ICC draft Rules and with a consideration of the desirability and feasibility of any future work relating to the second stage.

71. The Working Group met from 21 to 30 November 1988 at Vienna (A/CN.9/316). The Working Group engaged in a review of the ICC draft Uniform Rules with the understanding that the preparation of the Rules was the responsibility of ICC. The Working Group also examined the desirability or feasibility of the preparation of a uniform law. The Working Group agreed that it was desirable and feasible to undertake work towards greater uniformity at the statutory level and agreed to recommend to the Commission to initiate the preparation of a uniform law,

whether in the form of a model law or in the form of a convention.

C. Electronic funds transfers

1. UNCITRAL: Legal Guide on Electronic Funds Transfers

72. The Commission, at its fifteenth session in 1982, decided to prepare a legal guide on problems arising out of electronic funds transfers and requested the Secretariat to undertake the task. The Secretariat prepared the Guide in co-operation with the UNCITRAL Study Group on International Payments. A completed guide was presented to the nineteenth session of the Commission in 1986. At that session the Commission adopted the Guide and authorized the Secretariat to publish the Legal Guide as a product of the work of the Secretariat. The Guide is oriented towards providing guidance for legislators or lawyers preparing the rules governing particular systems for such transfers. It was published in 1987 (United Nations publication, Sales No. E.87.V.9).

2. UNCITRAL: Model Law on International Credit Transfers

73. The Commission decided, at its nineteenth session in 1986, to begin the preparation of model rules on electronic funds transfers and to entrust this task to the Working Group on International Negotiable Instruments which it renamed the Working Group on International Payments. The Working Group commenced its work at its sixteenth session from 2 to 13 November 1987 by considering a list of legal issues that might be considered for inclusion in the model rules contained in a report prepared by the Secretariat (A/CN.9/WG.IV/WP.35). The Group requested the Secretariat to prepare draft provisions based on the discussions during its sixteenth session for consideration at its seventeenth session (A/CN.9/297).

74. At its seventeenth session, 5 to 15 July 1988, the Working Group considered draft provisions prepared by the Secretariat as submitted in document A/CN.9/WG.IV/WP.37. At the close of the discussions the Working Group requested the Secretariat to prepare a revised draft of the Model Rules taking into account the considerations and the decisions of the Group (A/CN.9/317, para. 10). The Working Group held its eighteenth session from 5 to 16 December 1988 and considered the revised draft of the rules. The report of the session (A/CN.9/318) is before the Commission at the current session.

3. ICC: interbank fund transfers

75. In 1986, a majority of ICC National Committees did not approve a first set of draft ICC Rules aimed at clarifying compensation practice connected with international interbank fund transfers. It became apparent that the real need was to focus rather on interbank transfer instructions; rules to clarify procedures could be most useful for developing countries which had no transfer system of their

own. A draft was prepared at the end of 1987 setting out instructions for sending valid transfer messages covering the liabilities and responsibilities of individual banks involved in a transfer, and outlining compensation procedures for the incorrect execution of funds transfers messages. This draft was circulated to National Committees in early 1988 (ICC Annual Report 1987).

VIII. INTERNATIONAL TRANSPORT

A. Transport by sea and related matters

1. *UNCTAD: United Nations Convention on Conditions for Registration of Ships*

76. The United Nations Conference on Conditions for Registration of Ships on 8 February 1986 adopted an international agreement covering the conditions under which vessels should be accepted on national shipping registers. 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 was opened 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. The Convention introduces new standards of responsibility and accountability for the world shipping industry. The Convention has not yet received the required number of ratifications to enter into force.

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

77. In accordance with provisions of the Convention on a Code of Conduct for Liner Conferences (TC/CODE/13/Add.1, United Nations publication, Sales No. 75.II.D.12) which entered into force on 6 October 1983, a Review Conference was held from 31 October to 18 November 1988 (UNCTAD Bulletin No. 244-1988).

78. 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. 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.

79. UNCTAD at the end of 1986 published Guidelines on the Clarification, Interpretation, and Application of the Provisions of the Convention on a Code of Conduct for Liner Conferences. The principal objective of the guidelines is to assist interested parties, including Governments, shippers organizations, and shipping lines, particularly of developing countries, in understanding and applying the provisions of the Code (UNCTAD/ST/SHIP/1). The report has been prepared by the UNCTAD Secretariat in co-operation with the Registrar appointed under the Code. It

is hoped that the material will not only fulfil the needs of parties but would be used as material for training seminars on the application of the Code which may be conducted in developing countries (UNCTAD/ST/SHIP/1).

3. *UNCTAD/UNCITRAL: Study on the economic and commercial implications of the entry into force of the Hamburg Rules and the Multimodal Transport Convention*

80. In resolution 55(XI), paragraph 8, the Committee on Shipping requested the UNCTAD Secretariat to prepare a study on the economic and commercial implications of the United Nations Convention on the Carriage of Goods by Sea, 1978 (Hamburg Rules) and the United Nations Convention on International Multimodal Transport of Goods (the MT Convention), including present insurance practices, and to submit a brief document in the form of a booklet, explaining the provisions of the Conventions and the implications of becoming contracting parties thereto. In resolution 60 (XII), section I, paragraph 3, the Committee on Shipping further requested the UNCTAD Secretariat to expedite the work and to submit the results to the Committee at its fourteenth session. In 1987 the UNCTAD Secretariat, in collaboration with the UNCITRAL Secretariat, prepared part one of the booklet in question (TD/B/C.4/315 (Part I)). When part two is completed the two documents will be merged and form one booklet. Part one contains a brief historical introduction to the two Conventions, the study on the economic and commercial implications of the entry into force of the Hamburg Rules; and an article by article discussion of the Hamburg Rules.

4. *UNCTAD/IMO/CMI: maritime liens and mortgages*

81. The UNCTAD Working Group on International Shipping Legislation 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.

82. Consultations between UNCTAD and IMO took place in order to decide how best the two organizations could deal with the various aspects of the subject-matter without duplication. It was agreed that IMO would undertake studies on those aspects of maritime mortgages that are essentially ship related, such as the entry and the cancellation of mortgages on national registers. IMO would also carry out studies on maritime liens, particularly in respect of existing practices, including the need and desirability of maintaining the status for claims currently enjoying such status, the ranking of different maritime liens *inter se* and the possibility of extending the lien status to other types of claims. After these consultations, a joint governmental group of experts was established by UNCTAD and IMO entrusted with the task of elaborating a new instrument by taking into account the texts of the 1926 and 1967 Conventions on Maritime Liens and Mortgages and also CMI's draft Convention on the same subject-matter.

83. The Intergovernmental Group of experts at its first session (December 1986) agreed on organizational arrangements for its work and elucidated some of the fundamental issues which would have to be analysed in the review of the existing régime. At its second session in May 1987 the Group proceeded to an examination of a number of issues to be regulated in the new instrument. At its third session from 30 November to 11 December 1987 the Group examined the draft articles for a possible convention on maritime liens and mortgages which had been prepared by the Chairman of the Group of Experts with the assistance of the Secretariats of UNCTAD and IMO (TD/B/C.4/AC.8/10; IMO LEG/MLM/10).

84. The Group of Experts held its fourth session in May 1988 (TD/B/C.4/AC.8/15). It was decided at that session that the fifth session would be devoted to the completion of the work on the preparation of draft provisions on maritime liens and mortgages. It would then determine further work on other aspects of the terms of reference, which include the review of the maritime liens and mortgages Conventions and related enforcement procedures, such as arrest; the preparation of model laws or guidelines on maritime liens and mortgages and related enforcement procedures; and the feasibility of an international registry of maritime liens and mortgages. The fifth session will have before it a report prepared by the Chairman and the Secretariats of IMO and UNCTAD in response to the request made by the Joint Intergovernmental Group during its fourth session. The UNCTAD Committee on Shipping at its thirteenth session in March 1988 urged the joint intergovernmental Group of Experts on Maritime Liens and Mortgages and Related Subjects to complete the work during 1989 and to present its final report for consideration by the Committee on Shipping at its fourteenth session (TD/B/C.4/AC.8/14).

5. IMO/UNCTAD: charter parties

85. The UNCTAD Committee on Shipping at its thirteenth session in March 1988 (resolution 61(XIII) Part III) approved the convening of the twelfth session of the Working Group on International Shipping Legislation (to be scheduled in 1989) to take up the subject of charter parties (TD/B/C.4/AC.8/14).

6. UNCTAD: marine insurance

86. The UNCTAD Working Group on International Shipping Legislation concluded the preparation of Model Clauses on Marine Hull and Cargo Insurance commenced in June 1979. 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 (TD/B/C.4/ISL/50) were circulated to the member States of UNCTAD, drawing their attention to the amendments by the Rapporteur and inviting them to provide comments thereon. The Committee on Shipping at its twelfth session in November 1986 recommended to the Trade and Development Board to endorse the UNCTAD non-mandatory Model Clauses on Marine Hull and Cargo Insurance as proposed by the

Rapporteur (UNCTAD/SHIP/608) and to instruct the UNCTAD Secretariat to circulate this version to the commercial parties concerned. The Trade and Development Board endorsed the model clauses and instructed the Secretariat to promote their use with the commercial parties concerned (TD/B/1123-TD/B/C.4/307).

7. UNCTAD: maritime fraud

87. The UNCTAD Committee on Shipping resolved in 1987 to establish a Maritime Fraud Prevention Exchange (MFPE). It was founded by the Baltic and International Maritime Council (BIMCO), International Chamber of Commerce (ICC), and Lloyd's of London Press Ltd. The operating companies—i.e. companies which provide replies to individual enquiries—include: BIMCO Services, the International Maritime Bureau (IMB) and Lloyd's Maritime Information Services Ltd. (LMIS). The operational activities of the MFPE are conducted by its Secretariat, which acts as a focal point for information requests by clearing and transmitting enquiries to the appropriate operating company, which then deals directly with the enquirer so as to provide the most expeditious service. It will further engage in promotional activities as defined by the Board of Management. It provides the Board of Management with periodic reports.

88. Through the operating companies of the MFPE, the following services are available: (a) information on standing and background of companies or individuals; (b) information on cases of confirmed or suspected fraud and (c) requests for investigations and information on ship characteristics, ship movements, ownership, details and casualties. It is intended to be self financing. The MFPE, is receiving interim financing until its viability is established. The MFPE started operations on 1 March 1988 (UNCTAD Bulletin No. 239—January 1988). At its 13th session the Committee on Shipping recommended to Governments that they urge their commercial parties to make maximum use of the services provided by the MFPE as a means of combating maritime fraud and requested the UNCTAD Secretariat to promote MPFE (UNCTAD Bulletin No. 239—January 1988).

8. UNCTAD: comparative study of standards applied to shipping agents

89. The second session of the *ad hoc* Intergovernmental Group to Consider Means of Combating all Aspects of Maritime Fraud, Including Piracy, requested the Trade and Development Board to instruct the UNCTAD Secretariat to make, in collaboration with the commercial parties concerned, a comparative study of the different minimum standards which are applied, at the national or international level, by professional associations of shipping agents; to consider what scope exists for the development of common guidelines for non-mandatory minimum standards for all those involved in the work of shipping agents and to prepare a draft set of standards, including financial standards if appropriate, in the light of the scope, if any, which may be found to exist. The UNCTAD Secretariat has submitted a report on the matter (UNCTAD Bulletin No. 239—January 1988).

9. UNCTAD: container standards for international multimodal transport

90. The UNCTAD Committee on Shipping at its eleventh session held from 19 to 30 November 1984 requested the UNCTAD Secretary-General to convene a meeting of a Group of Experts to develop, and recommend to the Committee at its twelfth session, model rules for multimodal container tariffs which could be used in establishing the terms and conditions of multimodal transport of containers. The first meeting of this Expert Group was convened in Geneva from 13 to 17 January 1986. The Group examined aspects of container tariff rules and agreed on a number of definitions and developed some model rules with global application for multimodal container tariffs.

91. The Group also designed some model rules to be applicable to both the segmented systems and integrated systems of multimodal transport currently being used by commercial parties. The Expert Group, at its second meeting held in Geneva from 1 to 5 December 1986, compared the model rules formulated by it at its first meeting with the existing point-to-point multimodal transport tariff rules as well as existing rules which were not covered at its first meeting. The final report on the development and recommendation of model rules for multimodal container tariffs was submitted to the Committee on Shipping at its thirteenth session in 1988.

10. UNCTAD: co-operation among developing countries in shipping, ports and multimodal transport

92. Pursuant to UNCTAD-VI resolution 144 and to resolution 53(XI) of the Committee on Shipping, the UNCTAD Secretary-General was invited to convene a meeting of an *ad hoc* intergovernmental group of senior officers to give detailed consideration to the draft programme of action on cooperation among developing countries in shipping, ports and multimodal transport (TD/B/C.4/273). The first meeting of the Intergovernmental Group was convened in Geneva from 21 to 25 September 1987. The main document prepared by the Secretariat for the meeting was "co-operation among developing countries in shipping, ports and multimodal transport" (TD/B/C.4/AC.9/2). The meeting adopted a resolution by consensus which identified eight sectors offering scope for increased co-operation among developing countries in the general field of shipping, ports and multimodal transport.

93. Among the measures that the resolution invited Governments to take were the establishment of joint marketing of shipping services and optimum utilization of existing shipping space through joint services, as well as the formation of shipowners' associations in developing countries to protect and promote their interests. Still another possibility cited was the establishment of commodity groups and shippers' councils where such bodies did not exist. In the realm of ports, port authorities were urged to cooperate with each other. Trans-shipment services in ports should be furthered, related feeder services should be developed and procedures simplified. The

exchange of information on maritime fraud through the recently established UNCTAD Maritime Fraud Prevention Exchange could also be promoted. Finally, the establishment of regional or sub-regional associations of multimodal operators should be facilitated and maritime training institutions should be upgraded on a regional or subregional basis.

94. At the thirteenth session from 14 to 22 March 1988 the Shipping Committee decided to request the Secretary-General of UNCTAD to convene in 1989 a group of experts to propose an appropriate framework and modalities for co-operation between developing countries in the area of shipping, ports and multimodal transport. This would be a follow-up to an intergovernmental meeting on this subject held in 1987 (UNCTAD Bulletin No. 242—April 1988).

11. IMO: revision of the Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea, 1974

95. The IMO Council, at its fourteenth extraordinary session in November 1987, requested the Legal Committee to give priority to the amendment of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974 with a view to the adoption of increased limitation amounts and the inclusion of an accelerated procedure for revising those amounts. The IMO Legal Committee held its fifty-ninth session from 24 to 29 April 1988. At that meeting the Committee began consideration of the revision of the Athens Convention. The Committee decided to limit the revision of the Convention to that of an increase of the limitation amounts and to the introduction of a rapid amendment procedure for the limitation amounts (IMO LEG 59/II). The Committee concluded consideration of the draft articles for the protocol to the Convention. The sixtieth session of the Committee examined the draft protocol (LEG 60/4) with a view to finalizing it for a diplomatic conference. The Committee's text is contained in document LEG 60/12 annex I.

12. IMO: liability for damage caused by the maritime carriage of hazardous and noxious substances

96. The IMO Legal Committee at its fifty-ninth session resumed consideration of the question of liability for damage caused by the maritime carriage of hazardous and noxious substances. The Committee is examining three alternatives: (a) exclusive shipowner liability with a general increase of global limitation amounts in the 1976 Convention on the Limitation of Liability for Maritime Claims (LLMC), (b) exclusive shipowner liability with a supplementary cover under LLMC for hazardous and noxious substances cases, and (c) shipowner liability limited under LLMC supplemented by a fund financed by cargo interests. The Committee used, as the basis for its discussions, document LEG. 59/5/3, submitted by the delegations of Australia, Canada, Cyprus, Denmark, Egypt, Federal Republic of Germany,

Finland, German Democratic Republic, Mauritius, Netherlands, Norway, Poland, Sweden, United Kingdom and United States. Reference was also made to document LEG 59/5, submitted by the Secretariat, document LEG 59/5/1, submitted by the United States, and document LEG 59/5/2, submitted by the International Association of Independent Tanker Owners (INTERTANKO) (IMO LEG/59/II).

13. UNCITRAL: draft Convention on Liability of Operators of Transport Terminals in International Trade

97. The Commission, at its sixteenth session in 1983, decided to include the topic of liability of operators of transport terminals in its programme of work and, at its seventeenth session in 1984, assigned to its Working Group on International Contract Practices the task of preparing uniform legal rules on that subject. The Working Group completed at its eleventh session 1988 its preparation of the draft Convention on the Liability of Operators of Transport Terminals in International Trade and submitted its report (A/CN.9/298) to the twenty-first session of the Commission. The draft Convention was then circulated to Governments and interested international organizations for comments. The Commission will consider at its twenty-second session the draft Convention with a view to its adoption.

14. CMEA: merchant marine

98. The CMEA has prepared an agreement on the standardization of individual legal rules on the merchant marine. The agreement has been opened for signature to interested parties.

15. IMO: Convention on Facilitation of International Maritime Traffic

99. Fifty-seven States have become parties to the Convention on Facilitation of International Maritime Traffic. At its eighteenth session the Facilitation Committee of IMO considered ways and means to encourage acceptance of the Convention. The Committee noted with appreciation information provided on the "African network of seminars on the facilitation of international maritime traffic" a project under the UNDP's fourth cycle designed to encourage acceptance of the Convention (FAL 18/5/1).

100. At its eighteenth session from 12 to 16 December 1988 the Facilitation Committee requested the Secretariat to explore the possibility of harmonized interpretation and implementation of the Convention on Facilitation of International Maritime Traffic, 1965. It has also requested the Secretariat to continue its study on the possible redrafting of the Standards and Recommended Practices where more than six differences had been received so as to remove any ambiguity and to take into account concerns of member States (FAL 18/WP.8).

16. IMO: Convention on Salvage

101. IMO will be holding a diplomatic Conference from 17 to 20 April 1989 to consider the adoption of the Convention on Salvage (LEG 60/12).

17. IMO: Convention on the Prevention of Maritime Pollution by Dumping of Wastes and other Matter

102. The eleventh consultative meeting of contracting parties to the Convention on the Prevention of Maritime Pollution by Dumping of Wastes and other Matter, 1972, convened in accordance with article XVI(3)(a) of the Convention, was held from 3 to 7 October 1988 (IMO LDC.11/14).

18. CMI: sea waybills

103. A sub-committee of the International Maritime Committee (CMI) has been preparing draft uniform rules for incorporation into sea waybills. The final meeting of the sub-committee was held in London on 13 October 1988. A draft set of uniform rules is to be prepared by an *ad hoc* drafting group based on the discussions and decisions taken at that meeting. The draft uniform rules will be presented to the plenary meeting of the CMI in 1990.

19. IMO: suppression of unlawful acts against the safety of navigation

104. An international Conference on the Suppression of Unlawful Acts against the Safety of Maritime Navigation was held from 1 to 10 March 1988. The Conference adopted the Convention on the Suppression of Unlawful Acts against the Safety of Maritime Navigation and the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf. The Convention and the Protocol were prepared by the *ad hoc* Preparatory Committee on the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (LEG 59/II). Both the Convention and the Protocol are open for signature.

B. Transport overland and related issues

1. UIC: Use of CIM Consignment Note as customs document

105. The 4/C Sub-Committee of the International Union of Railways (UIC) has prepared a proposal for the use of the International Consignment Note (CIM) as an international customs document for goods, on which duty is payable, carried by rail under customs seal. This proposal has been sent to the International Rail Transport Committee (CIT) and the ECE Group of Experts on Customs Questions affecting Transport for detailed consideration within their sphere of competence (UIC 87-041).

2. OTIF: Convention concerning international transport by rail (COTIF)

106. The Member States of OTIF are called upon to decide on a possible revision of COTIF and its annexes that entered into force on 1 May 1985. Amongst the issues identified for possible modification are the following: (a) introduction of English as third official language, which could lead to adherence by Southeast Asian States, and certain budgetary and financial matters of the Intergovernmental Organization for International Rail Transport (OTIF); (b) review of the Uniform Rules concerning the international rail transport of passengers and luggage (CCIV), Appendix A, in the light of future developments in the transport of accompanied motor-vehicles; (c) approximation of the Uniform Rules Concerning the International Rail Transport of Goods (CIM), Appendix B, with the Agreement concerning the International Carriage of Goods by Rail (1966; SMGS); (d) review of time-periods for publication of tariffs and for delivery of goods, liability questions and certain other issues governed by CIM.

3. UNIDROIT: civil liability for damage caused during carriage of dangerous goods by road, rail and inland navigation vessels

107. The UNIDROIT Committee of Government Experts has continued its work on the preparation of uniform rules relating to liability and compensation for damages caused during the carriage over land of hazardous substances begun in 1981. It has elaborated a draft Convention which is still under discussion.

108. At its 65th session held in April 1986, the Governing Council authorized the UNIDROIT Secretariat to respond favourably to any request which might be forthcoming from the United Nations Economic Commission for Europe for transmission of the draft articles for a convention on civil liability for damage caused during carriage of dangerous goods by road, rail and inland navigation vessels. The Committee of Government Experts held its seventh and final session from 21 to 29 May 1986, on which occasion it completed its last reading of the draft articles. The text of those draft articles, an explanatory report thereon drawn up by the UNIDROIT Secretariat, an alternative draft submitted by the Swiss delegation in connection with the liability and compulsory insurance provisions and certain proposals and considerations relating to the list of substances to which the future Convention should apply are contained in Study LV—Doc. 80.

109. Following an exchange of letters between the Executive Secretary of the Economic Commission for Europe and the Secretary-General of UNIDROIT, the text of the draft articles was transmitted to the Economic Commission for Europe. At its forty-eighth session, held in February 1987, the Inland Transport Committee of the Economic Commission for Europe decided to entrust to an *ad hoc* meeting the task of studying questions concerning the development of an international régime of civil liability for damage caused during carriage of dangerous goods by road, rail and inland navigation vessels on the basis

both of the UNIDROIT text and of other possible approaches (CD.67—Doc.13).

110. That meeting was held from 6 to 10 July 1987, on which occasion the *ad hoc* committee proceeded to a general discussion of the problems at issue. At its second meeting, held from 14 to 18 December 1987, the committee embarked upon detailed consideration of the texts submitted to it by UNIDROIT in the light of the observations of Governments and of the interested organizations. A revised text of the UNIDROIT draft was submitted to the *ad hoc* committee at its third session, which was held from 4 to 8 July 1988 (CD.67—Doc.13).

IX. INTERNATIONAL COMMERCIAL ARBITRATION

A. AALCC: regional arbitration centres

111. The Asian-African Legal Consultative Committee (AALCC) in 1977 adopted a scheme for the establishment of regional arbitration centres. In 1978 the Kuala Lumpur Centre and in 1979 the Cairo Centre were established. A third centre in Lagos, Nigeria was inaugurated in March 1989. All three centres conduct their arbitrations under the UNCITRAL Arbitration Rules, as supplemented by internal or administrative rules of the centres.

B. CMEA: arbitration of civil law disputes

112. The Council for Mutual Economic Assistance (CMEA) at the end of 1986 completed an evaluation report on the application of the Convention on the Settlement by Arbitration of Civil Law Disputes arising from Economic, Scientific and Technical Co-operation, signed on 26 May 1972, and on the Uniform Rules for the Arbitration Courts of the Chambers of Commerce of CMEA member States, approved in 1974. Those rules have been revised, and a study was carried out in 1987-1988 on the usefulness of formulating a uniform law on arbitration for foreign trade and on the enforcement of foreign arbitral awards. The study took account of the UNCITRAL Model Law on International Commercial Arbitration.

C. ICC: interim and partial awards; dissenting opinions

113. The Working Party on Partial and Interim Awards and Dissenting Opinions established by the ICC Commission on International Arbitration in 1985 is continuing its studies on the use of interim and partial awards in international commercial arbitration with particular emphasis on the practice of the ICC Court of Arbitration and ICC arbitrators. The Working Party has discussed several reports. The second of such reports was discussed at the Commission's meeting of April 21, 1988. At this meeting the Committee determined that in the next phase of its work it would concentrate on three specific practical aspects: (1) which decisions of arbitrators should be called

"awards"; (2) what problems, if any, are created either for the parties or for the Court of Arbitration by the increasing tendency of arbitrators in ICC cases to issue interim or partial awards; and (3) what steps should be taken to harmonize the present divergent practices of arbitrators in ICC cases in classifying their decisions (ICC Document No. 420/305). The Working Party is also continuing its work on dissenting and separate opinions. At its 21 April meeting the Commission discussed the fourth report on the subject by the Working Party (ICC Document No. 420/304).

D. ICC: multiparty arbitration

114. An ICC Working Party has continued to examine the question of multiparty arbitration. The Working Party is considering the issues raised by multiparty arbitration within the context of the 1958 New York Convention, including the possibility that those issues arise only to the extent that no multiparty arbitration agreement exists, and the feasibility of devising new rules for handling the financial aspects of cases with a multiparty ingredient. In its studies the Working Party stresses the importance of avoiding the paralysing effects resulting from the multiplicity of parties inherent to multiparty arbitration. The Commission will hold a seminar from 29 to 30 May 1989 to be hosted by the Swedish National Committee of the ICC in Stockholm, on the subject of multiparty arbitration. After the seminar the Working Party will decide on any future programme (ICC Document No. 420/308).

E. ICC: arbitral referee

115. The Commission on International Arbitration in 1986 adopted a text of Rules on Arbitral Referee Procedure (ICC Document No. 410/289). A Drafting Group has been working on modifications to the 1986 text. An amended text was presented to the ICC Commission at its meeting on 26 October 1988. The amended Arbitral Referee Rules were adopted by the Commission, with the drafting group being authorized to make minor drafting changes and to bring the English and French texts into conformity. The Rules will be printed and enter into effect on a date to be fixed following their adoption by the Executive Board of the ICC and their being notified to the ICC Council. The entry into force would most likely be during the latter half of 1989 (ICC Document No. 420/308). The modifications are designed to enable parties which have so agreed to have rapid recourse to a third party to make an order designed to meet an urgent problem at hand including the power to order the preservation or recording of evidence.

F. ICC: amendments to conciliation and arbitration rules

116. In 1987, the ICC amended its Arbitration Rules, as a follow-up to the 1986 modifications in the Rules and practice related to the costs and payment of arbitration. The amendments, in force since 1 January 1988, affect

provisions related to selection of arbitrators by the ICC Court, the challenge to arbitrators, and the replacement of arbitrators by the Court and rules relating to the responsibility of arbitrators to disclose matters possibly affecting their independence *vis-à-vis* the parties (ICC Annual Report 1987). On 10 February 1987 the Executive Board of ICC adopted an amended version of the Conciliation Rules (ICC Document No. 420/291).

G. ICCA: Publications and Congresses

117. The International Council for Commercial Arbitration (ICCA) continues to publish the *Yearbook Commercial Arbitration*. The *Yearbook* provides comprehensive and up-to-date world-wide information on commercial arbitration. The contents of the *Yearbook* include national reports on arbitration law and practice, court decisions on the application of the 1958 New York Convention, abstracts of arbitral awards from arbitral institutions and *ad hoc* arbitrations, and articles on arbitration rules and practice. The *Yearbook* entered its thirteenth year in 1988; it will no longer cover national reports as these are covered in ICCA's *International Handbook on Commercial Arbitration*, a loose-leaf series of arbitration statutes and national reports.

118. The *ICCA Congress Series*, started in 1983, has continued to be published. In 1987 the proceedings of the ICCA VIIIth International Arbitration Congress held in New York from 6 to 9 May 1986 were published as volume no. 3. The New York Congress discussed two themes: (a) comparative arbitration practice, and (b) public policy in arbitration. The next volume will contain the proceedings of the ICCA Tokyo Conference held from 31 May to 3 June 1988. The themes of the Tokyo Conference were: (a) arbitration in settlement of international commercial disputes involving the Far East and (b) arbitration in combined transportation.

X. PRIVATE INTERNATIONAL LAW

A. Hague Conference: law applicable to negotiable instruments

119. The Hague Conference is working on the preparation of a convention on the law applicable to negotiable instruments. The Secretariat is drawing up a report dealing on the one hand with the revision of the Geneva Conventions of 1930 and 1931 dealing with certain conflicts of laws concerning bills of exchange, promissory notes and cheques, and on the other hand with the specific problems of conflict of laws which may be raised by the United Nations Convention on International Bills of Exchange and International Promissory Notes (Prel. Doc. No. 1 of November 1987). In its discussions on this matter the sixteenth session of the Hague Conference decided that this matter lends itself to application of the decision taken by the fourteenth session for the opening of the Conference to non-member States, possibly in the context of an extraordinary session.

B. Hague Conference: contract practices studies

120. The Hague Conference is working on a number of topics in the area of contract practices. These include: the law applicable to agreements on licensing of technology and on transfer of know-how (Prel. Doc. No. 4 of November 1987), the law applicable to unfair competition. With respect to the topic of the law applicable to unfair competition, the Permanent Bureau of the Hague Conference has completed an exploratory study (Prel. Doc. No. 2 of November 1987). An exploratory study has been completed by the Permanent Bureau with respect also to the extraterritorial application of laws relating to competition and similar laws of economic regulation (Prel. Doc. No. 7 of November 1987).

C. Hague Conference: electronic funds transfers

121. The Hague Conference is currently studying specific problems of private international law in the area of commercial law which may arise from the utilization of electronic processes and the law applicable to protection of privacy in connection with transfrontier data flows and conflicts of law occasioned by transfrontier data flows (Prel. Doc. No. 14 of April 1988). With respect to the topic of transfrontier data flows the Conference invited the Permanent Bureau to enter into contact with interested international organizations, taking especially into account, as regards electronic funds transfers, the work undertaken within UNCITRAL and to submit to Governments of the member States any proposals for joint work with that organization.

XI. TRADE FACILITATION

A. Administrative procedures relating to goods and documents

1. EFTA/EEC: convention to simplify formalities for EFTA-EEC trade in goods

122. Six EFTA countries and the European Economic Community concluded a Convention intended to simplify the paperwork involved in connection with EFTA-EEC trade in goods. The Convention introduces a single administrative document (SAD) for trade between the EFTA countries and the Community and among the EFTA countries. The new document will replace a multitude of national documents for imports, exports and transit. This "Convention on the Simplification of Formalities in Trade in Goods" is the first multilateral agreement between the EFTA countries and the Community. It entered into force on 1 January 1988 (EFTA 87-001).

2. EFTA/EEC: common transit procedures between the EFTA countries and the EEC

123. On 20 May 1987 representatives of six EFTA countries and the EEC Commission signed a Convention that introduces a common procedure for goods sent in transit between the EFTA countries and the EEC, and

between the EFTA countries themselves (EFTA 87-012). The Convention is entitled "Convention on a Common Transit Procedure".

3. ICC: pre-shipment inspection

124. The ICC Committee on regulations and procedures in international trade in June 1987 set up an *ad hoc* Working Party to consider the problems experienced by a growing number of firms with the activities of pre-shipment inspection (PSI) agencies acting on behalf of Governments of some 26 developing countries. The Working Party concentrated on the preparation for Government acceptance of a draft ICC model regulation aimed at governing those activities of PSI agencies which involve price controls and subsequent requests for confidential trade data. The aim is to avoid that PSI activities affect the contents of contracts and restrict international trade in the exporting and importing countries. The ICC proposals should be completed this year (ICC Annual Report 1987). A study by the Secretariat of the ECE of issues raised by pre-shipment inspection of exports by private companies on behalf of importing countries, considered by the ECE Working Party on Facilitation of International Trade Procedures (26th session, September 1987), was forwarded to ICC, GATT, UNCTAD so that the organizations could take into account the points made in the document in their discussions on the pre-shipment inspection issue (88-001, ECE).

B. Automated trade data procedures

1. CCC: draft annex to the Kyoto Convention

125. At its twenty-fifth session, held on 23-27 February 1987 in Brussels, the CCC ADP Sub-Committee agreed to transmit to the Council for adoption the draft annex to the Kyoto Convention concerning customs applications of computers. The main objectives of this annex are to facilitate international trade by encouraging the use of modern techniques to support customs procedures, to promote the use of international standards in the interchange of data among customs administrations and other participants in international trade, and to assist and guide customs administrations in the establishment of new customs systems and the improvement of existing systems (CCC: 87-013).

2. ECE: implementation of the Harmonized Commodity Description and Coding System

126. At its twenty-seventh session (March 1988) the ECE Working Party on Facilitation of International Trade Procedures adopted the following conclusions:

(a) The Harmonized Commodity Description and Coding System (HS), embodied in the Customs Cooperation Council Convention of June 1983, is an important achievement for the facilitation of international trade procedures. The usefulness of the HS is obvious and its structure is not to be questioned as the HS in itself does not create a need for long numerical codes.

(b) Although subdivisions in national tariffs are at the discretion of Governments and depend on national requirements, use of an excessive number of digits and of national subdivisions should be avoided.

(c) Developing countries should be encouraged to apply the HS, and assistance should be given to them to that effect.

(d) It is important that the private sector, e.g. carriers, manufacturers, etc. be made aware of the advantages of the HS (ECE, TRADE/WP.4/163, 1988-04-20).

3. ICC: electronic trade data

127. The ICC Special Joint Committee on Uniform Rules for Communication Agreements completed the preparation of the new ICC Uniform Rules of Conduct for Interchange of Trade Data Teletransmission (UNCID) in June 1987. UNCID were then adopted by the 51st session of the ICC Executive Board (September 1987) and simultaneously by the ECE Working Party on Facilitation of International Trade Procedures. The UNCID Rules were published early in 1988 together with an introductory note outlining both the basic premises of the Committee's work and elements which should be considered in addition to UNCID when formulating a communication agreement (TD/B/FAL/TFN.62; TRADE/WP.4/TFN.62).

4. CCC: trade data elements

128. The Customs Co-operation Council (CCC) has made recommendations concerning the use of Standards for Electronic Data Interchange (EDI), which were adopted by the Council at its seventy-first/seventy-second sessions (21 June 1988). The Standards are designed to facilitate the international exchange of data between customs administrators and trade users. It has recommended that States and autonomous customs territories, whether or not members of the Council, and customs or economic unions should use the data element names, descriptions and character representations contained in the United Nations Trade Data Elements Directory (UNTDDED) and future updated versions of this Directory in trade data exchange between customs administrations and other trade users (FAL 18/INF.7).

5. IMO: data processing

129. The fourteenth extraordinary session of the IMO Council was held on 6 November 1987, immediately prior to the fifteenth regular session of the Assembly, which was held from 9 to 20 November 1987. The Assembly having considered the general purpose of the Convention on Facilitation of International Maritime Traffic, 1965, as amended, and in particular article III, recommended that in applying standard 2.15 the introduction of methods to convey information by the use of non-paper media should be supported and encouraged; where paper documents are required, the presentation of data in any automated data processing (ADP) output should follow the layout of the standardized IMO Model FAL Forms and any substantial deviation from that layout should require prior agreement between the parties concerned (FAL 18/2).

6. ISO: UN/EDIFACT syntax rules issued as ISO 9735

130. The United Nations Syntax Rules for Electronic Data Interchange for Administration, Commerce and Transport (UN/EDIFACT) developed within the ECE Working Party on Facilitation of International Trade Procedures were adopted, under a special "fast-track procedure", by the Technical Committee ISO/TC 154, documents and data elements in administration, commerce and industry. The Syntax Rules have now been issued by ISO as International Standard 9735, dated 15 July 1988 (Trade/WP.4/TFN.65; TD/B/FAL/TFN.65).

7. IMO: Electronic Data Interchange Maritime (EDIMAR)

131. The Facilitation Committee at its eighteenth session from 12 to 16 December 1988 considered a revised version of the Electronic Data Interchange Maritime (EDIMAR) submitted by ICS (FAL 18/614). It also noted recent developments within ECE, especially the adoption of the first United Nations standard for utilizing data elements within message segments. The Committee agreed that the proposals on EDIMAR in document FAL 18/614 could be transmitted to the ECE, for processing under the procedures established for the development of EDIFACT standard messages. As to the EDIMAR version of the Cargo Declaration (IMO FAL Form 2), it was agreed to await the outcome of the work of the EDIFACT Group entrusted with the development of transport messages as that would affect the design of the cargo declaration message. Bearing in mind the current trend towards recognizing the ICS Standard Cargo Manifest as an alternative to the cargo declaration, it was agreed to include the additional data elements of the cargo manifest. Once the EDIMAR messages had been adopted they would be published.

XII. OTHER TOPICS OF INTERNATIONAL TRADE LAW; CONGRESSES AND PUBLICATIONS

A. UNCTAD: restrictive business practices

132. The Intergovernmental Group of Experts on Restrictive Business Practices, at its sixth session 11-14 December 1987, reviewed the operation of and experience arising from the application and implementation of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices adopted by the General Assembly, by its resolution 35/63 of 5 December 1980, studies on restrictive business practices related to the provisions of the Set of Principles and Rules, implementation of technical assistance and advisory and training programmes on restrictive business practices. It also considered instalments of the draft handbook on restrictive business practices legislation and examined the question of a model law or laws for the control of restrictive business practices. The Group decided to continue work in all the above areas and recognized the urgent need for the provision of technical assistance and called for

more financial contributions to enable UNCTAD to meet the needs of technical assistance in the field of restrictive business practices (TD/B/1156; TD/B/RBP/43). At the seventh session held on 30 October 1988 the Group examined further instalments of the handbook on restrictive business practices legislation. To date the compilation has covered 19 countries (TD/B/RBP/49).

133. Recent studies and reports prepared by the UNCTAD Secretariat in this area include:

- "Revised Study on Tied Purchasing" (TD/B/RBP/18/Rev.1).
- "RBPs in the Services Sector by Consulting Firms and other Enterprises" (TD/B/RBP/19)
- "Restrictive Business Practices Terminology: A Handbook" published by the United Nations Office at Geneva (Term/37).
- "Collusive Tendering" (TD/B/RBP/12/Rev.2).

134. UNCTAD is in the process of preparing a number of studies in this field. The following are under preparation (TD/B/RBP/40 and TD/B/RBP/51):

- The concentration of market powers through mergers, take-overs, joint ventures and other acquisitions of control, whether of a horizontal, vertical or conglomerate nature, in particular in the markets of developing countries.
- The relationship of restrictive business practices control with industrialization policies and regional integration in developed and developing countries.
- The interaction of restrictive business practices and trade policy.
- Sectoral studies such as: the international film industry, including videotapes and material for television networks; the book publishing industry; and the food industry.
- Legislative and other developments in developed and developing countries in the control of restrictive business practices (1985-1988).

B. UNIDROIT: hotel keepers contract

135. At its 65th session in 1986 the Governing Council requested the Secretariat to prepare a fully revised text of the draft Convention on the Hotel Keepers Contract. The revision was called for after the Governing Council had examined the text adopted by a UNIDROIT Committee of Government Experts in 1978 (CD.67-Doc.7). The UNIDROIT Secretariat completed the preparation of a revised text which was considered at the 67th session of the Governing Council in June 1988. The revised draft has been sent to Governments for comments. A Committee of Government Experts will meet in 1989 to consider the draft and comments (UNIDROIT 1989 Report 1988 C.D.68 Doc.2).

C. Council of Europe: draft Convention on Certain International Aspects of Bankruptcy

136. The Council of Europe is elaborating a draft Convention on Certain International Aspects of Bankruptcy

(CDCJ (88) 1). With the aim of harmonizing some fundamental principles of member States' law relating to bankruptcy the draft Convention will attempt to regulate certain international aspects of bankruptcy such as the power of administrators and liquidators in bankruptcy to act outside the national territory, the possibility of resorting to the opening of secondary bankruptcies in the territory of other parties and the possibility for creditors to lodge their claims in the bankruptcies opened abroad.

137. The European Committee on Legal Co-operation (CDCJ) at its 50th meeting (28 November to 2 December 1988) noted that a group of countries still firmly supported the draft Convention's idea of liquidation-oriented bankruptcy whilst others were in favour of a broader scope. The CDCJ concluded that it was unable to find a solution acceptable to all delegations and that the question of scope warranted further study and negotiation. The idea was floated of enabling the States concerned to enter a reservation, but the majority were against a system of numerous reservations which would diminish the value of a multilateral convention. The CDCJ agreed to return to this question at its next meeting. There was also divergence of views on rules of competence, powers of foreign liquidators and a number of other provisions. The CDCJ decided that the Secretariat should draft a document with the changes made at the 50th session of the CDCJ and that the text should be circulated to members of the CDCJ. The text would be considered at an extraordinary meeting of the CDCJ from 4 to 7 April, 1989. The text finalized at that extraordinary meeting would be sent to the CDCJ delegations at the end of April 1989. The CDCJ would make a final decision on the draft Convention at its 51st meeting from 5 to 9 June 1989 (CDCJ (88)74).

D. Council of Europe: insider trading

138. The European Committee on Legal Co-operation (CDCJ) at its 50th meeting, from 28 November to 2 December 1988, considered a draft Convention on Insider Trading (CDCJ (88) 74). At this meeting the CDCJ adopted opinions on proposals for amendment of the draft Convention on Insider Trading as requested by the Council of Ministers. The draft Convention has annexed to it an explanatory report on the Convention (CDCJ (88)7). The offence of insider trading is not characterized by the nature of the transaction. The unlawful transaction is identical to a regular transaction. It is because the person who carried out the operation possesses, by virtue of his or her position or by reason of circumstances, information not known to the public that the operation which he or she carries out or causes to be carried out becomes unlawful. The essential aim of the Convention therefore is to create mutual assistance by an exchange of information between contracting parties to enable the supervision of the security market to be carried out effectively and to establish whether persons carrying out certain financial transactions on the stock markets are or are not insiders, which would show the fraudulent or regular nature of their transactions. The draft Convention does not require parties to set up control or supervisory bodies for the stockmarkets. However, the co-operation by the exchange of information assumes the existence at national level of an adequate

structure both in the field of legislation and in the field of institutions capable of ensuring the collection, the examination and the transmission of information. The draft Convention is expected to be finalized and adopted soon.

E. UNEP: control of transboundary movement of hazardous waste

139. The Governing Council of the United Nations Environment Programme, by its resolution 14/30 of 17 June 1987, approved the Cairo Guidelines and Principles for the Environmentally Sound Management of Hazardous Wastes (UNEP/G.C. 14/17, annex II), prepared by an *ad hoc* Working Group of Experts. The Council has called upon Governments and international organizations concerned to use the Guidelines and Principles in the process of developing appropriate bilateral, regional and multi-lateral agreements and national legislation for the environmentally sound management of hazardous wastes. UNEP is also preparing a draft convention on the control of transboundary movements of hazardous wastes. The draft convention would provide for the exchange of information and the control of transboundary movements of hazardous wastes in order to protect human health and the environment against the adverse effects that may result from the generation, management, handling, transport and disposal of hazardous wastes. A diplomatic conference, to be held at Basel from 20 to 22 March 1989, has been convened for the purpose of adopting and signing the convention. Further, on 17 June 1988, the Governing Council of UNEP adopted the London Guidelines for the Exchange of Information on Chemicals in International Trade (decision 14/27 of 1988). The Guidelines are addressed to Governments with a view to assisting them in the process of increasing chemical safety and enhancing the sound management of chemicals in all countries through the exchange of scientific, technical, economic and legal information on chemicals in international trade. UNEP is engaging in further work on ways of incorporating the

principle of prior informed consent into the London Guidelines and on other refinements of the Guidelines.

F. UNIDROIT: Congress on Uniform Law

140. The third UNIDROIT International Congress on Private Law, dedicated to the subject of uniform law in practice, was held in Rome from 7-10 September 1987. The Congress was divided into three general themes, namely uniform law and its introduction into national law, uniform law and its application by judges and arbitrators, and uniform law and its impact on business circles. Each of them was further divided into more specific items devoted to aspects of particular relevance in the framework of the general theme. The Congress was attended by many lawyers representing many parts of the world and different legal systems. The proceedings of the Congress have been published as "International Uniform Law in Practice, Acts and Proceedings of the 3rd Congress on Private Law held by the International Institute for the Unification of Private Law", 1988, UNIDROIT Rome, Oceana Publications, New York.

G. UNIDROIT: Uniform Law Review

141. The 1985 volume of the Uniform Law Review was published in June 1987. It contained the Report on the Activity of the Institute during 1984 as well as studies on the international protection of cultural property and on the franchising contract. The volume was completed by two introductory notes, one on the Hague Convention on the law applicable to trusts and on their recognition and the other on the UNCITRAL Model Law on International Commercial Arbitration. In 1988, the 1986 volume of the Review was published. The volume contains a report of the activities of the Institute during 1985 as well as texts of a number of Conventions elaborated by the Institute.