[A/CN.9/202/Add.2*]

VIII. International transport

A. *Transport by sea and related issues*

1. *International shipping legislation*

1. The UNCTAD Working Group on International Shipping Legislation was established by resolution 7 (III) of the Committee on Shipping pursuant to Conference resolution 14 (II) and resolution 46 (VII) of the Trade and Development Board. Under its terms of reference the Working Group is to review the economic and commercial aspects of international legislation and practices in the field of shipping from the standpoint of their conformity with the needs of economic development, in particular in the developing countries, in order to identify areas where modifications are needed and in the light of such a review, to make recommendations which would serve as a basis for further work in this field.

2. During 1980, the ESCAP secretariat initiated a project aimed at updating and improving existing maritime legislation in ESCAP member countries. Assistance is provided by the Netherlands Government in undertaking a survey in a number of countries. The results of the survey will constitute the basis for further regional discussions on the subject.

2. *Charter-parties*

3. The subject of charter-parties is part of the work programme adopted by the UNCTAD Working Group on International Shipping Legislation at its first session in 1969. The Working Group, at its fourth session held from 27 January to 7 February 1975, considered a report prepared by the UNCTAD secretariat entitled "Charter Parties" (TD/B/C.4/ISL/13). This report examines the principal clauses in voyage and time charter-parties and suggests, *inter alia,* that such clauses be standardized and that the Introduction of mandatory international legislation on certain aspects of the liability of the shipownersand charterer be considered.

4. Having considered this report, the Working Group requested the UNCTAD secretariat to carry out additional studies, which are now in progress in the UNCTAD secretariat, involving a comparative analysis of the principal clauses in voyage and time charter-parties. On the basis of these studies the UNCTAD secretariat will submit additional data to the Working Group that should help it to determine which of the main clauses in voyage and time charter-parties are capable of standardization, harmonization and improvement and to select areas in chartering activities that may be suitable for international legislative action. The Working Group will consider the new studies and decide on future action on the subject of charter-parties.

3. *Marine insurance contracts*

5. Legal problems in marine insurance form part of the work programme of the Working Group. The UNCTAD secretariat issued a report entitled "Legal and Documentary Aspects of the Marine Insurance Contract" (TD/B/C.4/ISL.27 and Corr.1 and Add.1) which was submitted to the sixth session of the Working Group, which met from 18 to 26 June 1979. The report analysed various legal and documentary aspects of national marine hull and cargo insurance contract forms, identifying problems caused by ambiguities, inequities or lacunae in commonly used national policy forms, and recommended the establishment of an international legal basis for marine insurance contracts to be developed by an internationally representative group of marine insurance experts (including representatives of insurers and assureds). After consideration of the report, the Working Group unanimously adopted resolution 3 (VI) recommending the establishment of a subgroup of experts at the seventh session of the Working Group to (i) examine the existing marine insurance policy conditions and practices used in national markets covering international business, (ii) investigate the different legal systems governing marine insurance contracts, and (iii) in the light of these studies and bearing in mind the suggestions contained in the UNCTAD secretariat report, draw up a set of standard clauses as a non-mandatory international model.

6. For the seventh session of the Working Group, the secretariat prepared two studies entitled the "Legal and documentary aspects of the French marine insurance legal regime" (TD/B/C.4/ISL/30) and the "Legal and documentary aspects of Latin American marine insurance legal regimes" (TD/B/C.4/ISL/31), which analysed basic aspects of the marine insurance legal regimes in the countries concerned. The secretariat also prepared an "Informal Working Paper to assist in the drawing up of a set of standard clauses (hull)" (TD/B/C.4/ISL/L.53 and Corr.1), which presented some considerations that the Working Group might wish to bear in mind in organizing its work, and also submitted various draft clauses on selected aspects of the marine hull insurance contractual relationship. As a result of decision 39 (IX), adopted at the ninth session of the Committee on Shipping, the seventh session of the Group dealt with hull insurance.

7. The seventh session of the Working Group, using the Informal Working Paper prepared by the secretariat as a basis for its work, drew up composite texts on a set of risks clauses and on a collision liability clause. At the end of its session the Group decided to continue its work

* 20 May 1981.

on hull insurance for part of its next session, and to commence work on cargo insurance.

8. The ICC's Commission on Insurance Problems has followed UNCTAD's project on clauses of insurance contracts. In a statement, adopted by the ICC Council in November 1980, the ICC Commission stressed that action aimed at producing standard clauses which could be used as a non-mandatory model should be supported, if such clauses will assist developing markets to produce their own clauses in a clear and concise form. However the ICC Commission doubted that standard clauses are really necessary insofar as Marine Cargo and Hull Policies are concerned, since those clauses are already well-known and have been the subject of legal interpretation over so many years.

9. The ICC Commission which regroups users as well as insurers underscored that any standard clauses should remain non-mandatory, since the flexibility at present offered to consumers to select the policy conditions which are best suited to their needs and also to choose which markets to use for the placement of their insurance should not be jeopardized.

10. The ICC Commission emphasizes the need to develop sufficient training and education in the field of marine insurance contracts. As a legal document, the insurance policy cannot be phrased in over-simplified language, because it must as far as possible take into account all those aspects of international transit which could affect the insurance. It is therefore of utmost importance that those engaged in commerce should be conversant with other documents relating to trade, such as contracts of sale, bills of lading etc. With this in mind the Commission decided by the end of 1980 to propose that marine insurance problems should be introduced in training seminars to be held in third-world countries in 1981 and 1982.

4. *Open registry shipping*

11. This subject has been kept under continuous review by the UNCTAD Committee on Shipping since an *Ad Hoc* Intergovernmental Working Group (on the Economic Consequences of the Existence or Lack of a Genuine Link between Vessel and Flag of Registry) on the subject met in February 1978 and concluded, *inter alia,* that the expansion of open registry (i.e. flag of convenience) fleets had adversely affected the development and competitiveness of the merchant fleets of developing countries. The secretariat prepared various studies on relevant legal issues for consideration by the fifth session of UNCTAD (Manila, May 1979), the Committee and the *Ad Hoc* Group. These studies suggested elements which could advisedly be included in the definition of a "genuine link" between a vessel and its country of registry.

12. At its ninth session in September 1980, the Committee on Shipping adopted a resolution 41 (IX) which requested studies on social/economic consequences, accountability of owners, safety and social conditions and fiscal regimes of the open registry fleets. The Trade and Development Board has convened a Special Session of the Shipping Committee in May 1981 to consider the subject further on the basis of the additional studies.

5. *Implementation of the Convention on a Code of Conduct for Liner Conferences*

13. On 6 April 1974 the United Nations Conference of Plenipotentiaries on a Code of Conduct for Liner Conferences, by a vote of 72 to 7 with 5 abstentions, adopted the Convention on a Code of Conduct for Liner Conferences (for the text of the Convention, see TD/CONF/13/Add.1).

14. The status of the Convention was considered at the fifth session of the United Nations Conference on Trade and Development (Manila, 6 May-1 June 1979). The representatives of a number of developed countries announced the intention of their Governments of becoming Contracting Parties to the Convention. It may therefore be expected that the Convention will enter into force at an early date. The Conference adopted without dissent resolution 106 (V), which, *inter alia,* calls upon Contracting Parties to the Convention to take all necessary measures towards the early implementation of the Convention; invites States which are not yet Contracting Parties to the Convention to consider becoming Contracting Parties, and in doing so, to give full consideration to the interests of the developing countries in the Convention; and requests the Secretary-General of UNCTAD to give guidance and assistance, on request, to the Governments of developing countries in putting the Code into effect. Such guidance is being provided by the secretariat.

15. The UNCTAD secretariat, on the basis of information provided by the Office of Legal Affairs of the United Nations, provides on a regular basis to member States of UNCTAD information on signatures, ratifications, acceptances, approvals of or accessions to the Convention. The UNCTAD secretariat has also offered its services, if requested, to assist and guide States in ratifying or acceding to the Convention. By 31 December 1980, 51 countries had become Contracting Parties to the Convention.

6. *Model rules for regional associations and joint ventures in the field of maritime transport*

16. The UNCTAD secretariat is preparing model rules on regional associations (ports, shippers, shipowners) and joint ventures in the field of maritime transport. The model rules, which may later be published as a handbook, is intended to assist co-operation among

developing countries in the field of shipping and ports. This activity has arisen as a result of increasing demands for such rules, which have surfaced during technical assistance projects.

7. *Treatment of foreign merchant vessels in ports*

17. The UNCTAD Committee on Shipping, at its seventh session held in November 1975, considered a report prepared by the UNCTAD secretariat entitled "Treatment of foreign merchant vessels in ports" (TD/B/C.4/136). The report reviews the international rules and regulations having a bearing on the status of foreign merchant vessels in ports and examines the Conventions and Statutes on the International Regime of Maritime Ports of 1923. The Committee has requested the secretariat to monitor international developments in this field, and in the light of this information, it will decide at a later date whether further work on this subject is necessary.

8. *Freight forwarding*

18. The UNCTAD secretariat has circulated a report examining freight forwarding operations and services, including applicable legal regimes, in particular as they relate to the strengthening of freight forwarding in developing countries (document UNCTAD/SHIP/193).

9. *"Baltaim-Konstantsa-78"*

19. The "Baltaim-Konstantsa-78" charter was adopted by the Conference of Freight and Shipping Organizations of CMEA Member Countries in 1980; the text of the stipulation concerning the inclusion of the "Basic conditions for the possible allocation of tonnage and freight to shipping undertakings in CMEA member countries" is included in the *pro formas* of the charters which are agreed between shipping undertakings in the CMEA members countries.

10. *Maritime fraud*

20. At its eleventh regular session the IMCO Assembly requested the Council to provide for a study of "the question of barratry, the unlawful seizure of ships and their cargoes and other forms of maritime fraud with a view to making recommendations as to the action which IMCO should take in the matter". Pursuant to the request of the Assembly, the Council decided to establish an *Ad Hoc* Working Group on Barratry, the Unlawful Seizure of Ships and their Cargoes and other forms of Maritime Fraud.

21. The above Working Group is to consider the subject and report to the Council on:

"(*a*) The nature and prevalence of such acts which threaten the international community;

"(*b*) Legal, administrative and other actions being taken by States, international organizations and other interests concerned to deal with these threats;"

22. The Group is to make recommendations to the Council as to the action IMCO should take in this matter. The Group met in Paris on 24 and 25 November 1980. The Working Group has recommended a resolution on the subject which will be considered by the Council in June 1981 and eventually by the Assembly in November 1981.

23. ICC is preparing a Guide on the Prevention of Maritime Fraud.

11. *Carriage of noxious and hazardous substances by sea: draft convention on liability and compensation*

24. The Legal Committee of IMCO continued its work on the preparation of a draft convention on liability and compensation in connexion with the carriage of noxious and hazardous substances by sea. It is expected that the draft will be submitted to a diplomatic conference in 1982.

12. *"AMOCO CADIZ" disaster: legal questions*

25. This is one of the two subjects assigned high priority on the work programme of the Legal Committee of IMCO. The Committee has currently before it proposals which envisaged the possibility of draft provisions being prepared on some aspects of the subject for consideration at the diplomatic conference planned to be held in 1982.

26. The particular aspects to which special reference has been made in this connexion include:

Draft Protocol to the 1969 Intervention Convention in respect of Reporting

Possible Review of the Limits laid down in the 1969 Civil Liability Convention and the 1971 Fund Convention.

13. *Convention on Civil Liability for Oil Pollution Damage*

27. The Legal Committee of IMCO has already prepared a set of draft articles for a protocol to extend the 1969 Civil Liability Convention to oils not covered by that Convention. The Committee gave further consideration to the draft articles of the proposed protocol at its forty-fourth session in November 1980. Further consideration is expected to be given to the draft articles in the near future, and there is the possibility that the draft articles finally approved by the Legal Committee will be submitted for consideration and adoption by the diplomatic conference scheduled to be held in 1982. It is, therefore, to be assumed that some work on this subject will be undertaken by the Legal Committee at least during the first half of 1982.

14. *Civil liability for damage caused by small craft*

28. The ICC Inland Transport Committee is considering the elaboration of a draft convention on civil liability for damage caused by small craft. Work is to start in 1981. It is to be noted that UNIDROIT has prepared such a draft convention (TRANS/SC.3/GE.33/R.5).

15. *Maritime liens and mortgages*

29. One of the subjects included in the work programme of the IMCO legal Committee for 1982/1983 is "possible review of the CMI Brussels Conventions with a view to their being replaced by up-dated conventions under the auspices of IMCO". One of the Brussels conventions specifically referred to in this connexion is the 1926 Convention for the Unification of Certain Rules Relating to Maritime Liens and Mortgages, and the 1967 revision thereof.

16. *General average*

30. The UNCTAD secretariat, as part of the Work Programme of the Working Group on International Shipping Legislation, will shortly be taking up the study of general average, and other subjects in the maritime field pursuant to UNCTAD resolution 14 (II).

17. *Seminars*

31. The UNCTAD secretariat has organized seminars for participants from developing countries on Ocean Chartering and on Ocean Transport Documentation, dealing with both legal and commercial aspects of these subjects. It expects to hold further seminars on legal aspects of other maritime topics in the future.

18. *Technical assistance*

32. As part of its ongoing work, substantive support is provided by UNCTAD to legal elements in various technical co-operation projects, in particular on maritime legislation in Central America and West Africa.

19. *Carriage of goods by inland waterway*

33. UNIDROIT is preparing a Convention on contract for the carriage of goods by inland waterway. Following initial work by UNIDROIT, ECE sought to implement a Convention aimed at filling the gap in international transport law deriving from the absence of uniform rules governing contracts for the carriage of goods by inland waterway. Efforts to this end resulted in failure in 1960 and, after an offer by UNIDROIT to revise the draft, three sessions of a Committee of Governmental Experts convened by the Institute and chaired by Professor R. Herber (Federal Republic of Germany) were held between 1973 and 1975. At the third session, the Committee completed a first reading of the revised preliminary draft, and a compilation by Professor R. Loewe (Austria), Rapporteur to the Committee, of the texts prepared by the Committee during its first three sessions was then sent to Governments and to interested organizations for their observations so that, after their consultation, a decision might be taken on whether there would be a fourth session for a second and last reading of the preliminary draft which could then be sent to the ECE in accordance with the mandate conferred on UNIDROIT by the latter.

34. The replies of States indicated that the fundamental difference of opinion existing among the Rhine States on the exoneration of the carrier for fault in the navigation of the vessel still subsisted. In view of the deadlock on this point, the Governing Council, at its fifty-fifth session (September 1976), instructed the Secretariat to transmit to the ECE a note outlining the work of the Committee of Experts to date and informing it of the Council's decision temporarily to suspend work on the elaboration of the draft CMN, on the understanding that the UNIDROIT Committee might be convened for a fourth meeting if a change in the attitudes of States were to justify the taking of such a step.

35. Following communications from the President of the Central Commission for the Navigation of the Rhine and of the Chairman of the UNIDROIT Committee of Governmental Experts recommending that the work of the Committee be resumed, as well as a request to the same effect from the ECE, the Governing Council decided at its fifty-ninth session, held in May 1980, that a fourth meeting of the UNIDROIT Committee of Governmental Experts should be convened in 1981.

36. It is to be anticipated that further work on the draft CMN Convention will be directed on the one hand to overcoming the difficulty regarding the exoneration of the carrier for liability for damage caused by fault in the navigation of the vessel and on the other to a general updating of its provisions, taking account of recent developments and in particular of the changes introduced into maritime law by the Hamburg Rules in the carriage of goods by sea.

B. *Transport over land and related issues*

1. *Civil liability for damage caused by hazardous cargoes*

37. The Secretariat of UNIDROIT is preparing a draft Convention relating to liability and compensation for damage caused during the carriage by land of hazardous substances. Increasing concern at the risks caused by the carriage in bulk of hazardous substances over land as witnessed by the tragic accident at Los Alfaquès in Spain in July 1978, led the Governing Council to request the secretariat to undertake a

preliminary report on the feasibility of preparing an international Convention relating to liability and compensation for damage caused during the carriage over land of hazardous substances, which might serve as a parallel to the draft Convention concerning liability for the damage caused by such substances when carried by sea, on which work has reached an advanced stage in the Inter-governmental Maritime Consultative Organization (IMCO).

38. The secretariat prepared the report and, in its conclusions, it set out a number of tentative considerations which it believed could assist those who might be called upon to elaborate a Convention in this field. These considerations are:

The principal aim of the prospective Convention must be to ensure adequate compensation for victims

Such compensation must not be a theoretical possibility but a practical reality

There must be a guarantee that compensation will be paid, which almost certainly presupposes a system of compulsory insurance or alternative security

Any system of compulsory insurance must be devised with the following factors in mind:

(*a*) Available market capacity, which may in the first instance call for a restriction of the prospective Convention to ultra-hazardous substances capable of causing massive or catastrophic damage;

(*b*) The financial capability of the insured to meet the obligation to take out insurance;

(*c*) The extent to which premiums will be affected by the determination of the person who is to be required to obtain insurance cover (i.e. the carrier, owner of the vehicle or vessel concerned, shipper, producer etc.);

(*d*) Possibility of supervision of the system (perhaps by granting licences for the carriage of hazardous substances);

(*e*) Availability to the victim of a direct action against the insurer:

The combination of factors relating to insurance will be preponderant in determining the person or persons to be held liable under the prospective Convention by a process of channelling which should cut down the possibility of recourse actions to a minimum

The imposition of a system of compulsory insurance will almost certainly call for a limitation on the compensation payable by the person or persons to be held liable, although the possibility should not be overlooked of creating a supplementary fund to be financed by the commercial interests involved or by States

In the interest of victims the defences open to the person or persons liable should be extremely limited

The prospective Convention should make the most effective provision for recovery by the victim through the introduction of rules relating to jurisdiction and enforcement of judgements

While practical considerations will probably call for some restriction on the number of substances to be covered by the instrument, its geographical scope should be as wide as possible and in particular all efforts should be made to avoid instituting a regime, based on the fact that the carriage was international, alongside existing national regimes

The prospective Convention should apply the same rules to carriage by road, rail, inland waterway (and possibly pipelines), the only justification for departures from the principle being based on the risk of unification introducing distortions in competition between the different modes of transport and on technical considerations relating to differences in the manner and volume of the carriage of certain substances.

39. The Secretariat study was submitted to the Governing Council at its fifty-ninth session and a decision was taken to convene a Committee of Governmental Experts which would meet in 1981 to consider the feasibility of preparing uniform rules in this connexion. The first session of the Committee took place from 16 to 20 March 1981.

2. *Harmonization of frontier control of goods*

40. The ECE Inland Transport Committee is undertaking a project involving the elaboration of a draft international convention on harmonization of frontier controls of goods. The convention would aim at reducing the requirements for completing formalities as well as the number and duration of customs and other frontier controls of goods (medico-sanitary, veterinary, phytosanitary and quality controls; public safety controls; controls of compliance with technical standards).

41. The legal issues involved in the project concern, *inter alia,* the co-ordination of controls, resources of the control services, international co-operation, documentation and exchange of information.

42. The following international organizations have participated in the work on this project: CCC, EEC, EPPO, FAO, IMCO, INTERPOL, IOE, IRU, ISO, OECD, UIC, UNCTAD, WHO. A final text has not yet been adopted.

3. *Customs transit*

43. The ECE Inland Transport Committee is undertaking a project involving consideration of the possibility of establishing a link between the different existing systems of customs transit. The legal issues involved in the project concern, *inter alia,* mutual recognition of the

validity of the information contained in the transit documents, acceptance of seals, and administrative co-operation. No decision has yet been made as to the establishment of a link between customs transit systems and the form (resolution or convention) that an eventual link would take.

44. The following international organizations are participating in the work on this project: the Customs Co-operation Council (CCC), the European Economic Community (EEC) and the International Road Transport Union (IRU). CCC, having undertaken similar work in the past, resumed consideration of this question in parallel with the work in the ECE; it has however decided to suspend further consideration pending the results of the deliberations within the ECE.

C. *Transport by air*

45. The general work programme of the Legal Committee of ICAO includes the following:

Legal status of the aircraft commander

Liability of air traffic control agencies

Aerial collisions

Consideration of the Report of the Subcommittee on the problem of liability for damage caused by noise and sonic boom

Study of the status of the instruments of the "Warsaw System"

Study of a possible consolidation of international rules contained in the Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface (Rome 1952), the Draft Convention on Aerial Collisions and the subject of Liability of Air Traffic Control Agencies

Lease, Charter and Interchange of Aircraft in International Operations (Resolution 8 of the Guadalajara Conference)—Problems with respect to the Tokyo Convention.

D. *Liability of international terminal operators*

46. UNIDROIT is undertaking the preparation of uniform rules on the liability of persons, other than the carrier and the forwarding agent, who has been given custody of goods during or after international transport operations. In the course of two meetings, held in April 1978 and January 1979, a Study Group chaired by Professor K. Grönfros (Sweden) and composed of members from France, the German Democratic Republic, Germany, Federal Republic of, India and the United Kingdom, worked out a preliminary draft Convention on the liability of international terminal operators.

47. In embarking on the preparation of uniform rules relating to warehousing operations, the Group recognized the complexity of the problems involved. Not only was there the distinction between long-term and transit warehousing but in addition customs and practices differed widely between one warehouseman or terminal operator and another, not only as regards the conduct of their operations but also in respect of the liability regime applied. Unlike carriage operations, warehousing is a sphere of activity which has been left almost exclusively within the province of national regulations.

48. However, there was a general feeling that there was a real need for the introduction of uniform rules on the warehousing contract especially in the context of the international carriage of goods. This latter subject has, to a very large extent, been regulated by international conventions and yet, the most frequent cases of damage to, or loss of, goods could be proved statistically to occur before and after transport operations. In these circumstances it seemed important to try to fill in the gaps in the liability regime left by the existing international transport law conventions and to ensure the availability of a recourse action to the carrier or the multimodal transport operator against non-carrying intermediaries such as the warehouseman or terminal operator, an objective which in the opinion of some members of the Group could only be achieved by insisting upon the issuance of a document acknowledging receipt of the goods. This document, it was further suggested, might be of importance in the facilitation of international trade if it were to be of a negotiable character.

49. Given these premises, the majority of the Group was of the opinion that it would be desirable to limit the application of the future instrument to international warehousing operations as it was felt that unification of domestic law, where there are substantial differences in conceptual approach between different legal systems, might be an unrealistic goal at the present time. A consequence of this conclusion was a decision to deal only with those warehousing operations which are linked to the international carriage of goods as it is this dynamic element alone which would permit the delimitation of the scope of the draft Convention in such a way as to exclude from its application purely domestic warehousing operations. It was further agreed that the future instrument should be applicable irrespective of the mode, or modes, of transport preceding or following the warehousing operations.

50. The regulation of international warehousing operations is, therefore, the main objective of the draft Convention but the Group recognized at the same time that modern terminal operators often undertake a number of services associated with the handling of goods, such as loading, stowage and unloading and while there was little support for the idea of extending the

scope of the instrument to cover the performance of such operations in all cases, and thus to regulate what might be termed the *"contrat de transit"*, it was nevertheless agreed that to the extent that the operator who undertakes the safekeeping of goods also undertakes to perform or to procure the performance of such operations, he should be liable in the same way and on the same basis as he would be in the performance of his obligation to ensure the safekeeping of the goods.

51. Another question which was the subject of discussion by the Group was that of the character of the future instrument. While some members argued in favour of a Convention of a traditional nature, the provisions of which would be of a mandatory character, others considered that it might be difficult to overcome the pressure of the professional interests involved on States not to adopt such a Convention and in consequence a compromise solution was reached. Those States which wished to do so might apply the provisions of the future instrument to all terminals operating on their territory while others should be free in accordance with article 17, to make a declaration to the effect that they would only guarantee their application to authorized international terminal operators who would be designated as such on condition that they voluntarily undertake to observe the minimum rules laid down in the Convention. Those pleading in favour of this latter solution considered that such voluntary acceptance of the minimum rules might be obtained if the Convention were to contain a number of incentives such as a moderate liability regime, based on that of the Hamburg Rules, a limitation on liability which could be broken only in highly exceptional circumstances, the granting of a general lien over the goods and above all the fact that the insertion of those rules in general conditions would be recognized by the courts of Contracting States whereas otherwise such conditions would be exposed to the risk of being struck down in the face of the growing pressure of consumer protection lobbies.

52. As regards the general structure of the draft Convention prepared by the Study Group, it may be stated that it is built around the concept of the "international terminal operator (ITO)", who is defined in article 1 as "any person who undertakes [against payment] the safekeeping of goods before, during or after international carriage, either by agreement or by actually taking in charge such goods from a shipper, carrier, forwarder or any other person with a view to their being handed over to any person entitled to take delivery of them". As mentioned above, the draft is thus concerned with warehousing operations connected with international carriage which, for the purposes of the draft Convention, means "any carriage in which, according to the contract of carriage, the place of departure and the place of destination are situated in two different States".

53. Article 2 of the draft lays down the general statement of the liability of the ITO in respect of the performance of his obligations for the safekeeping of the goods and also indicates the period during which he shall be liable. The article further affirms the liability of the ITO in respect of certain services connected with the handling of the goods which he performs, or the performance of which he procures, in addition to the safekeeping of the goods.

54. Two key articles of the draft are articles 3 and 4. Article 3 is concerned with the issuance by the ITO of a dated document acknowledging receipt of the goods and stating the date on which they were actually taken in charge. Such a document, however, need only be issued if requested by the customer. Article 4, which is closely modelled on a corresponding provision in the UNIDROIT draft Convention on the hotelkeeper's contract, deals with the ITO's rights of retention and sale over goods.

55. Articles 5 to 14 of the draft Convention are based to a very large extent on the corresponding provisions of the Hamburg Rules and this is true especially of the basic liability regime (presumed fault with the burden of proof reversed) and the rules governing limitation of liability, availability of defences, loss of the right to limit liability, notice of loss, prescription, nullity of stipulations contrary to the provisions of the Convention and unit of account. In particular, article 13 provides that the Convention "does not modify the rights or duties of a carrier which may arise under any international Convention relating to the international carriage of goods".

56. Articles 15 to 22 contain a set of draft final clauses and, like the draft preamble, these were not discussed at any length by the Group. The one exception is article 17 which makes provision for a declaration by States excluding the absolute mandatory character of the future instrument, which has been mentioned above in paragraph 15 of this report and which is discussed in detail below in paragraph 86 *et seq.*

57. The Group realized that the draft Convention prepared by it did not deal with a number of important aspects of warehousing contracts. In particular it was silent on the question of the customer's obligations such as those of paying the price for the services and, in the event of his tendering dangerous goods to the ITO for handling or safekeeping, that of giving the necessary instructions. Neither did it deal with the ITO's right to dispose of or sell dangerous goods nor with the obligations of the customer to tender the goods for safekeeping or the ITO to take them in charge when a contract for their safekeeping had been concluded in advance. It was, in effect, an outline draft concerned essentially with establishing a set of minimum rules governing the liability of ITOs and many points of detail have been omitted which might be fitted in at a later stage or alternatively regulated by standard conditions

which, if a need for them were to be recognized, might be prepared by the interested commercial Organizations such as the ICC, the CMI and IAPH. It was noted that other organizations might wish to co-operate in this task but what was above all to be avoided was incompatibility between such conditions and the future Convention on the liability of international terminal operators.

58. In accordance with a decision of the Governing Council of UNIDROIT, the text of the preliminary draft Convention was circulated to Governments and to the interested international organizations for observations. An analysis of these comments will be submitted first to the Governing Council, and then to the Study Group, with a view to a reconsideration of the present text of the draft. These observations are not yet complete but one recurring theme which has been noted by the Secretariat of UNIDROIT so far is a call for adequate regard to be had to the new United Nations Convention on Multimodal Transport.

E. *Multimodal transport*

59. On 24 May 1980, the United Nations Conference on International Multimodal Transport, convened under the auspices of UNCTAD, adopted by consensus of the 83 participating countries the United Nations Convention on International Multimodal Transport of Goods, marking a successful conclusion to more than seven years of negotiations (for the text of the Final Act and the Convention, see TD/MT/CONF/15 and 16).

60. The new Convention is open for signature in New York from 1 September 1980 until 30 August 1981, and can be acceded to thereafter. The Convention will enter into force 12 months after 30 States become Contracting Parties.

61. The UNCTAD secretariat would, as in the case of the Liner Code, respond to requests from developing countries to assist them in implementing the Convention, and is assisting these countries in regard to various legal aspects of multimodal transport and its regulations. Additionally, pursuant to resolution 36 (IX) adopted at the ninth session of the Committee on Shipping in September 1980, the secretariat will prepare reports on legal issues as to designated aspects of multimodal transport.

F. *International agreement on container standards*

62. Pursuant to decision 6 (LVI) of the Economic and Social Council and decision 118 (XIV) of the Trade and Development Board, the *Ad Hoc* Intergovernmental Group on Container Standards was established within UNCTAD with terms of reference which included the examination of the practicability and desirability of drawing up an international agreement on container standards. The *Ad Hoc* Intergovernmental Group considered this question at its first and second sessions, which were held from 1 to 12 November 1976 and from 20 November to 1 December 1978, respectively.

63. Having considered the reports (TD/B/AC.20/6 and TD/B/AC.20/10) of the *Ad Hoc* Intergovernmental Group and the proposals contained therein, the Trade and Development Board decided in March 1980 to remit to the Committee on Shipping the question of container standards for regular review as well as the decision of drawing up an international agreement on container standards at an appropriate future date.

IX. International arbitration

A. *Activities concerning specialized types of arbitration*

1. *Arbitration in the field of international contracts of building construction*

64. An *ad hoc* Working Party on arbitration and building construction, set up in 1981, by the ICC Commission on International Arbitration is preparing a Guide on the settlement of disputes in building construction contracts.

65. The disputes arising in this field appear to be complex owing to technicalities, ever-increasing costs in individual building projects, performance of the contract spread over a specific period and the lapse of time between the signature of the contract, the appearance of the technical difficulties and the appointment of the arbitrators.

66. The project is undertaken in collaboration with representatives of a number of institutions such as the International Bar Association (IBA), the German Institute for Arbitration and the International Working Group on FIDIC Civil set up by the Institute of German and International Construction Law. The target date for completion is the end of 1982.

2. *Arbitration and competition law*

67. In 1978 the *ad hoc* "Arbitration and Competition Law" Working Party, set up by the ICC Commission on International Arbitration, initiated a study aimed at developing arbitration in accordance with economic policies designed to ensure free competition. The arbitrability of disputes involving anti-trust law in national and community laws were analysed and certain recommendations were made. This project should be completed by the end of 1981.

3. *Arbitration and related contracts*

68. An *ad hoc* Working Party, set up in 1978 by the ICC Commission on International Arbitration, is studying the desirability and practicability of guaranteeing unity of arbitral proceedings in cases where performance of the principal contract is dependent on or inseparable from elements provided by third parties as in "turn-key" contracts.

4. *Interlocutory arbitration*

69. An *ad hoc* Working Party on interlocutory arbitration, set up in 1981 by the ICC Commission on International Arbitration, is undertaking the preparation of a system of interlocutory arbitration which would enable the parties to obtain the immediate nomination of an arbitrator to enable this arbitrator to take interim or provisional and possibly conservatory measures pending a substantive arbitration.

70. The course of action contemplated is guide and/or model contractual clauses. The date of completion is expected to be some time in June 1982.

5. *Disputes arising from economic, scientific and technical co-operation*

71. With a view to improving ways and means of settling questions which arise among the economic organizations of CMEA member countries, a Convention on Settlement by Arbitration of Civil Law Disputes Arising from Economic, Scientific and Technical Co-operation was drawn up and signed on 26 May 1972. Parties to the Convention are Bulgaria, Cuba, Czechoslovakia, German Democratic Republic, Hungary, Mongolia, Poland, Romania and the Soviet Union. The Convention has been registered with the United Nations Secretariat. Uniform Rules for Arbitration Tribunals attached to the Chambers of Commerce of CMEA member countries have also been drawn up. The Uniform Rules were drafted by the CMEA Conference on Legal Matters and approved by the CMEA Executive Committee in 1974.

72. In the programme of work of the CMEA Conference on Legal Matters provision has been made for a study of the practical implementation of the Convention and Uniform Rules referred to above with a view to the possible improvement of these documents and/or their application in practice.

B. *Furtherance of arbitration on the regional level*

73. In February 1979 an agreement was signed between AALCC, the Regional Centre for Commercial Arbitration ((Kuala Lumpur), established by AALCC) and ICSID providing for reciprocal assistance in connexion with proceedings conducted under the auspices of ICSID and the Kuala Lumpur Centre respectively.

74. Another agreement was signed in February 1980 between AALCC, the Regional Centre for Commercial Arbitration (Cairo) and ICSID.

75. As a result of the conclusion of the above two agreements parties may now choose Cairo or Kuala Lumpur as the seat of ICSID conciliation or arbitration proceedings.

76. The Tokyo Maritime Arbitration Commission is expected soon to conclude a co-operation arrangement with the Kuala Lumpur Regional Arbitration Centre to administer international maritime arbitration for the Centre under the UNCITRAL Arbitration Rules.

C. *Future work on arbitration*

77. At its fourteenth session in October 1980, the Hague Conference on Private International Law decided to include in the agenda of the future work of the Conference the question of the law applicable to arbitration clauses.

D. *Publication and research*

78. ICC has prepared for publication in 1981 the first volume of the collection entitled *Arbitration Law Throughout the World* as a guide to arbitration law in European countries. The guide will consist of a series of standardized articles summarizing the principal features of relevant legislation in 17 European countries. The second volume will deal with arbitration law in the Far East and the Pacific and will include a description of arbitration law in China, India, Indonesia, Japan, Malaysia, Pakistan, Republic of Korea, the Philippines, Singapore, Sri Lanka, Taiwan and Viet Nam.

79. The Institute of International Business Law and Practice will be publishing an index of arbitration awards *"Lex Mercatoria"*. The first step of this project, which consists of publishing the extracts of awards of the ICC Court of Arbitration from 1975 to 1979, will be completed before the end of 1981.

X. Products liability

80. The Inland Transport Committee of ECE at its thirty-fifth session (ECE/TRANS/18, paragraph 90) in February 1976 requested UNIDROIT to undertake a preliminary study regarding the possibility of preparing a draft Convention on third party liability for damage

caused in the carriage of hazardous substances by road which would aim at establishing "a uniform international application of the principle of third-party responsibility (whether limited or not) of the carrier and possibly the appropriate procedures for compensation". (See VIII. INTERNATIONAL TRANSPORT, B. *Transport over land and related issues,* paragraphs 37-39 above.)

81. For the work of UNIDROIT on the preparation of a Convention relating to liability and compensation for damage caused during the carriage by land of hazardous substances, see paragraphs 37-39 above (VIII. INTERNATIONAL TRANSPORT, B. *Transport over land and related issues*).

82. For the question of liability for damage caused by noise and sonic boom, see paragraph 45 above (VIII. INTERNATIONAL TRANSPORT, C. *Transport by air*).

XI. PRIVATE INTERNATIONAL LAW

A. *Work of EEC*

83. The Convention of the Law Applicable to Contractual Obligations (1980) was concluded by the member States of the European Economic Community on 19 June 1980, at Rome, Italy. It deals with rules applicable "to contractual obligations in any situation involving a choice between the laws of different countries".

B. *Work of the Hague Conference on Private International Law*

84. For the work of the Hague Conference on Private International Law, see A/CN.9/202/Add.1, paragraph 1 (I. INTERNATIONAL CONTRACTS, A. *International sales of goods);** see also paragraph 108 below (XII. OTHER TOPICS OF INTERNATIONAL TRADE LAW, E. *Sales to consumers*).

C. *Work of ICC*

85. An *ad hoc* Working Party set up by the ICC Commission on International Commercial Practice is making recommendations to harmonize the methods that can be utilized in the determination of the law applicable for use of those drawing up contracts and arbitrators. These recommendations define a series of rules governing the general method and designed to establish flexible presumptions suitable for each category of contract (sale, leasing, distribution, agency services, publishing and building enterprises etc.). The draft is expected to be finalized in May 1981, adopted in June and published in January 1982.

D. *Work of OAS*

86. The following are the conventions on conflict of laws signed at Panama, on 30 January 1975 at the Inter-American Specialized Conference on Private International Law.

Inter-American Convention on Conflict of Laws Concerning Bills of Exchange, Promissory Notes and Invoices

Inter-American Convention on Conflict of Laws Concerning Checks

Inter-American Convention on General Rules of Private International Law

Inter-American Convention on Conflicts of Laws Concerning Commercial Companies

E. *Work of UNIDROIT*

87. For the work of UNIDROIT, see A/CN.9/202/Add.1, paragraphs 2-4 (I. INTERNATIONAL CONTRACTS, B. *Codification of international trade law*)* see also paragraphs 88-95 below (XII. OTHER TOPICS OF INTERNATIONAL TRADE LAW, A. *Agency*) and paragraphs 98-103 below (XII. OTHER TOPICS OF INTERNATIONAL TRADE LAW, C. *Protection of the acquisition in good faith of corporeal movables*).

XII. OTHER TOPICS OF INTERNATIONAL TRADE LAW

A. *Agency*

1. *Agency: certain aspects of international agency relations in the context of sale of goods*

88. The origins of work on this subject date back to studies initiated by UNIDROIT in 1935 which led to the publishing in 1961 of two draft Uniform Laws relating respectively to agency in private law relations of international character and to the contract of commission in the international sale or purchase of goods. In view of the difficulties which this distinction entailed for Common Law countries, where it is unknown, a Committee of Governmental Experts convened by UNIDROIT

* Reproduced above.

* Reproduced above.

to end the deadlock suggested narrowing the field in which unification should be attempted and undertook the drafting of a new uniform law dealing with the practical aspects of agency contracts of an international character for the sale and purchase of goods. This Committee met between 1970 and 1972 and adopted the text of the draft uniform law at its fourth and final session. The draft, together with an explanatory report prepared by the Secretariat, was circulated among the member States of UNIDROIT in October 1973, together with a request for information as to whether they would be prepared to take part in a Diplomatic Conference to examine and adopt the draft. Virtually all the replies indicated the willingness of the States in question to participate in such a Conference and in December 1976 the Government of Romania announced its willingness to host the Conference.

89. The draft submitted to the Diplomatic Conference, which was held at Bucharest from 28 May to 13 June 1979, concentrated on a number of questions, namely the sphere of application of the future Convention, the establishment and scope of agency, the relations between the principal and the agent, the legal effects of an act carried out by the agent on behalf of the principal and the termination of agency.

90. One of the principal decisions taken was to extend the scope of application of the draft Convention to cover in principle all intermediaries involved in the conclusion of sales contracts and not just those authorized or purporting to be authorized to conclude such a contract.

91. The chapter of the draft relating to the legal effects of an act carried out by an agent on behalf of the principal, which to some extent sought to reconcile the differences, both conceptual and practical, deriving from the Common Law notion of the undisclosed principal and commission agency as known in countries with a civil law tradition was generally acceptable.

92. The Conference called upon UNIDROIT to take the necessary steps to ensure that the work begun by it be completed as soon as possible and since that time informal consultations have taken place with a view to overcoming the principal outstanding difficulties. With this aim in mind, the Governing Council of UNIDROIT convened a small group of independent experts, representing the Common Law, Civil Law and Socialist systems, to review the progress so far made and to draw conclusions regarding the prospects of future work. This group met in January 1981 and its findings were submitted to the Governing Council of UNIDROIT at its sixtieth session to be held in April 1981. On the basis of the detailed consideration of the conclusions of the group, the Governing Council will take a decision as to the desirability of convening a second Conference to complete work on the agency draft, perhaps in 1982.

2. *Powers of attorney*

93. This subject was placed on the Work Programme of the Institute in 1977 with a view to finding out to what extent differences in the various national laws relating to the forms for granting authority give rise to practical difficulties, in particular in the context of international trade. A detailed study on the existing situation was commissioned by UNIDROIT and an indication of the present position is found in the summary of the report of the consultant expert where he stated the following:

> "It emerges clearly from this study that, in connection with the requirements as to form for the granting of authority to agents, there exists in almost all countries a considerable difference between the provisions of the civil law *stricto sensu* and those of commercial law, and this must be borne in mind when contemplating power of attorney."

94. The purpose of this study is to prepare uniform rules governing the validity of powers of attorney to be exercised abroad and, if possible, of a uniform form of power.

95. The study will be circulated. The observations thereon will be considered by a Study Group which will be set up by the Governing Council later on in the course of the triennial period 1981-1983.

B. *Company law*

96. The CARICOM Working Party on the Harmonization of Company Law has completed its Report which is accompanied by draft legislation for the implementation of the recommendations in the Report. In the course of its deliberations and in making its recommendations, the Working Party drew heavily upon the experience and research in company law in a number of Commonwealth countries.

97. The Working Party's attention was drawn, *inter alia,* to the extensive growth of off-shore companies in the Caribbean region within recent years. These are companies, which although they are registered in a Member State, are not permitted to operate there, but must carry on their activities substantially outside the State. They are granted specific privileges in relation to tax liabilities and the preservation of the confidentiality of information relating to their operations. These companies are established primarily for the benefits to be gained under the tax laws of metropolitan countries with which they are principally associated. The Working Party on the Harmonization of Company Law was concerned at the possible implications for the Caribbean Community of the growth of off-shore companies especially as they are not restricted by the terms of their establishment from trading in other Member States of the Community. The Working Party's Report contains recommendations for

the regulation of the activities of external companies, but nevertheless, was of the view that the difference in operation of the external company and the off-shore company merited a separate study of off-shore companies being undertaken. The proposal for the study has been approved by the Common Market Council of Ministers and a Working Party on Off-Shore Companies has been established by the Secretary-General of the Caribbean Community for that purpose. The Working Party has so far held three meetings, the last of which was held at Montserrat from 9-12 February 1981.

C. *Protection of the acquisition in good faith of corporeal movables*

98. The topic governed by the draft uniform law, on which work was completed by a UNIDROIT Committee of Governmental Experts in 1974, is dealt with very differently in the law of the various countries. While the large majority of continental countries base themselves on the principle of the protection of the transferee in good faith, other legal systems, and in particular the Common Law systems, are, on the contrary, based on the opposing principle of the safeguarding of the rights of the dispossessed owner. However, in neither group is the basic principle rigorously applied. The systems which are based on the principle of the protection of the transferee lay down conditions for this protection which often seriously limit its efficacy. On the other hand, the systems which are based on the principle of maintaining the rights of the dispossessed owner also provide exceptions which considerably limit the scope of the principle. These conditions and exceptions vary from country to country. On the whole, the protection given to the transferee in good faith is sometimes extended to all acquisitions, whatever the reason for the owner's dispossession; apart, however, from a few exceptions, most civil law countries exclude the acquisition of movables of which the owner was dispossessed by loss or theft. As for the legal systems which protect the rights of the dispossessed owner, the transferee in good faith is nevertheless protected in certain well-defined cases. In Common Law countries most of these exceptions to the basic principle have been introduced by legislation. There is a tendency to extend the scope of these exceptions, especially as regards trade, and it has been remarked that the exceptions tend to become the general rule in this field.

99. In view of the differences between the aforementioned legal systems, the UNIDROIT Working Committee of Governmental Experts, did not dry to draw up a uniform law which would apply to all legal relationships but it restricted unification to international relationships. Moreover, it closely linked the draft to the uniform law on the international sales of goods (ULIS). It considered that ULIS provided a favourable legal basis for unification in the field of protection of the transferee in good faith and that unification would have a better chance of success if it appeared as a complementary set of rules to ULIS. That was why the Committee restricted the field of application of its draft to acquisitions brought about by a sale within the meaning of ULIS. Moreover, it appeared to the Committee from a comparative study of legal systems, that there was a tendency to protect the transferee in good faith, especially as regards trade relationships. This finding and the argument that the unification of the law of sale and kindred matters aims at promoting international trade, led the Committee to accord extensive protection to the transferee in good faith, even in the case of the acquisition of movables which were stolen from their original owner. The Committee's first concern was therefore to protect the interests of international trade, the certainty of which requires the protection of the transferee.

100. The Governments of the Member States of UNIDROIT reacted favourably to the draft in general. However, some criticisms were put forward. These mainly concerned the linking of the draft to ULIS. The experts agreed with these criticisms and therefore detached the draft from ULIS. Other criticisms concerned the over-emphasis given to the protection of the transferee. These were also considered as being well-founded by the majority of the experts who therefore tried to strike a balance between the interests of the transferee on the one hand and the interests of the dispossessed owner on the other. As a result, the draft received a new orientation which detaches it from the principles which formed the basis of the initial draft.

101. This new orientation is particularly apparent as regards the following questions:

(*a*) The field of application of the draft is not dependent on that of ULIS. The detachment of the draft from ULIS allowed the experts to extend the application of the draft to acquisitions for value other than those made under an international sale. The acquisitions envisaged do not necessarily refer to the ownership of the movables but may also concern rights *in rem* acquired, for example, by a pledge. Detachment from ULIS led the experts to look for new connecting factors and a territorial connecting factor was chosen, that of the place of the handing over of the movables. However, the field of application of the draft is nevertheless determined by the international character of the relationship in question;

(*b*) The starting point of the draft is no longer to protect first and foremost the transferee in good faith with a view to promoting trade but rather to look for a fair balance between the interests of the parties concerned. This tendency is manifested in a more subtle regime than that of the initial draft concerning proof of the existence or absence of good faith. However, the

desire to create a fair balance mainly appears in the rules on the acquisition of stolen movables. In the text drawn up by the experts, the transferee may in no case invoke his good faith when acquisition concerns movables of which the owner was dispossessed by theft.

102. This new orientation led the experts to change the title of the draft. The title of the original draft emphasized the fact that it was concerned with the protection of the purchaser. Since the draft is no longer predominantly concerned with the protection of the transferee the title has been changed to "Uniform Law on the Acquisition in Good Faith of Corporeal Movables".

103. Consideration is currently being given to the convening of a Diplomatic Conference for the adoption of the draft Convention, after a final review of its provisions by a Committee of Governmental Experts.

D. *Rights of creditors*

104. The CE Working Party of the Committee of experts on the rights of creditors held a meeting in Strasbourg from 28 to 31 January 1980.

105. The Working Party decided to restrict its examination mainly to simple reservation of title. As a basis for its discussions the Working Party agreed that these words should be taken to refer to the agreement concluded between the buyer and the seller of specific (or identifiable goods) whereby the right of property in the goods sold will not pass from the seller to the buyer until the buyer has paid the purchase price of these goods in full.

106. The aim of the Working Party in examining the questions contained in its terms of reference was to find possible and desirable solutions which might be used as a basis for the preparation of an international instrument (Convention or Recommendation). This instrument could have as its aim either a harmonization of national laws in the field of reservation of title or at least the international recognition of reservation of title.

107. In this respect it was agreed that the question of international recognition would arise at least when the goods, which have been sold, are transferred from one Contracting State to another Contracting State.

E. *Sales to consumers*

108. The fourteenth session of the Hague Conference on Private International Law adopted some provisions relating to the law applying to certain sales to consumers but without drafting a convention on this subject. However, because of the decision to undertake a general revision of the Hague Convention of 15 June 1955 on the law applying to sales (see A/CN.9/202/Add.1, paragraph 1), the delegates were of the opinion that no decision should be taken at the present stage concerning the form of the provisions relating to sales to consumers since those provisions could either be included in a special chapter of the future general convention or else be the subject of an independent convention. The delegates to the fourteenth session took the view that it was for the negotiators of the general convention to decide what should be the form of the provisions governing sales to consumers.

109. One of the proposed subjects for inclusion in the CE Medium-Term Plan for 1981-1985 is domestic sale, especially sale to consumers. There is an increasing awareness of the fact that the vendor is at an advantage under the law governing sales as it exists at present in most European States.

110. The various efforts made in a number of States to improve the situation of the purchaser fall into their true perspective at a time when greater social justice is one of the consistent concerns of governments. However, such attempts have been piecemeal and spasmodic. CE hopes to study the problem as a whole, investigating at the European level, a new legal system governing sale that would seek to establish a fairer balance between vendor and purchaser.

F. *Consumer protection*

111. CE is making a study of the collective interests of consumers. This involves a study of measures permitting agencies or associations to ensure the legal protection of the collective interest of consumers in member States of CE.

G. *Contract guarantees, guidelines on simple demand guarantees and surety contracts*

112. The ICC Commissions on Banking Technique and Practice and on International Commercial Practice are preparing model forms for issuing contract guarantees subject to the ICC's Uniform Rules for Contract Guarantees. The aim for these forms is to encourage wider adoption and correct use of the rules. The model forms are intended for voluntary application by banks and other guarantors. An explanatory brochure on use of the forms is also in the course of preparation.

113. The above ICC Commissions are also preparing guidelines on simple demand guarantees. The aim of this work is to establish guiding principles for the use by banks and other institutions called on to issue guarantees payable on the simple or first demand of the beneficiary without proof of loss or of default in the underlying commercial contract. In particular, the purpose is to

minimize the possibilities of abuse of such guarantees, to the detriment, especially, of the principal.

114. The guidelines will deal essentially with practical problems arising in the operation of simple demand guarantees. The publication of the guidelines will be recommended for adoption by guarantors.

115. CE is making a study on surety contracts on a number of problems arising in international relations.

H. *Collections*

116. The ICC Commission on Banking Technique and Practice is preparing standard forms for use by banks carrying out collection operations subject to the ICC's Uniform Rules for Collections. The aim is to facilitate procedures between banks by providing a standard format. An accompanying explanatory brochure is also in the course of preparation.

117. The Commission is authorized to establish draft forms and explanatory brochure for approval by the ICC Council. The information provided in the forms is intended to be used for instructing banks responsible for carrying out collection operations.

I. *International factoring*

118. The growth of factoring in many parts of the world led the Governing Council of UNIDROIT to include in 1974 on the Work Programme a study on the need for seeking harmonization in this area of the law. Factoring is a technique whereby a supplier of goods or services transfers his short-term commercial claims against his clients to a professional, the factor, who, in return for a commission or premium, ensures their immediate and final settlement, their collection while assuming all the risks of this operation, particularly that of non-payment on the due date owing to the debtor's insolvency, and the management of the assets. In most countries the technique employed for the transfer of debts is that of assignment and few problems have arisen in this context apart from that of the validity of reservation of title clauses.

119. UNIDROIT has concentrated its attention on international factoring as considerable difficulties have been encountered in this field. The Group has so far held one session, in February 1979, and after coming to the conclusion that there was a need for a convention dealing with certain aspects of factoring operations, it suggested that the following points should form the core of such a convention:

(*a*) Definition of factoring operations (which should, *inter alia,* clearly indicate that only trade debts are contemplated, that it is irrelevant whether the agreement provides for recourse or non-recourse factoring and that in any event non-notification factoring operations should be excluded);

(*b*) Scope of application (the convention should only apply to international factoring, the international character residing in the fact that the debt arises under a sale contract or a contract for the provision of service concluded between parties whose places of business are situated in different States);

(*c*) Formalities for assignment between the supplier and the factor and perhaps also between the import factor and the export factor (need to distinguish the question of the validity of the assignment between the parties and that of its effectiveness vis-à-vis the debtor: whereas its validity between the parties should be subjected only to the requirement that the assignment be in writing, effectiveness vis-à-vis the debtor should be dependent upon notice);

(*d*) Availability against the factor of defences and rights of set-off which the debtor might have against the supplier (affirmation of the principle that the factor may not have more extensive rights than those of the supplier; determination of the time after which the debtor may no longer set up defences; as regards the substantive rules governing defences, reference to the law applicable to the relations between the supplier and the debtor);

(*e*) Right of the debtor to recover sums which he ought not to have paid;

(*f*) Settling of conflicts which may arise between the factor and creditors of the supplier as regards claims of such creditors (refusal to consider either notification or registration in a public register as a means of resolving the conflict; search for some other form of publicity which would be necessary to make the assignment of the supplier's rights to the factor effective against third parties).

120. The Group further decided that the substantive rules in the future Convention should be accompanied by conflicts rules. In its view this solution would at least have the merit of establishing uniform connecting factors in respect of those matters not covered by the uniform law; in this connexion, the Secretariat was requested to enquire into the possibility of co-operation with the Hague Conference on Private International Law.

121. Apart from the Hague Conference, the Commission of the European Communities, the International Chamber of Commerce and a number of associations representing the factoring profession have contributed to the first stages of UNIDROIT's work in this connection.

J. *International leasing*

122. At three sessions, held between November 1977 and October 1980, a UNIDROIT Study Group composed of members from Brazil, France, Nigeria, Switzer-

land, the United Kingdom and the United States of America, worked out a set of preliminary draft rules relating to certain aspects of leasing operations which as is well known, are assuming ever greater importance at both national and international level.

123. The principal features of the rules are their characterization of the *sui generis* form of leasing transaction in which it is the user rather than the owner who chooses both supplier and equipment and their enshrinement of this *sui generis* character in *sui generis* legal consequences framed with its particular characteristics specifically in mind. Thus the uniform rules confer on the user a direct independent right of action for damages against the supplier in respect of any loss or damage sustained by him as a result of non-delivery, late delivery or the delivery of defective equipment. They establish the lessee's right to reject a tender of the equipment which is not made within a reasonable time after the delivery date stipulated in the supply contract (or, if none within a reasonable time after the making of that contract) or which otherwise fails in a material respect to conform to the terms of the supply contract. Both these rights are novel creations in favour of the lessee, as they would normally inure to the lessor as owner of the equipment; their conferment on the lessee in the *sui generis* leasing situation is justified by the fact that it is the lessee who chooses both supplier and equipment. The uniform rules, subject to certain exceptions, on the other hand give the lessor a general immunity from the contractual and tortious duties that would ordinarily flow from his ownership of the equipment, given that this ownership in the *sui generis* form of leasing is stripped of virtually all the normal attributes of legal ownership and that the technical responsibility for the equipment chosen, and therefore the physical risks associated with its use, cannot reasonably be laid at his door.

124. The uniform rules are in no way intended to be an exhaustive regulation of the legal problems arising in respect of this *sui generis* transaction but merely to provide a basic, largely permissive legal framework to which the parties would then be free to add in accordance with the particular requirements of each transaction. This was felt to be particularly important in the case of a transaction to which all the parties are businessmen, consumer leasing having been excluded from the outset.

125. At its third session, the Study Group agreed to limit the scope of the uniform rules to specifically international leasing situations. As regards the question of which factors should determine whether or not a given leasing transaction would be treated as international for the purposes of the uniform rules, it was decided to exclude the impact of the supplier's principal place of business and rather to take the principal places of business of the lessor and the lessee as the decisive factors for this purpose. However, the fact that the uniform rules are cast in the form of an international Convention and are stated to apply specifically to international leasing situations should not be seen as prejudicing the final form which it may be decided to give the uniform rules. The principal objective of these rules has all along been the establishment of a basic legal framework cast with the particular characteristics of the *sui generis* form of tripartite leasing transaction specifically in mind, so as to distinguish it once and for all from the various classical contractual schemata within the comfortable logic of which it has hitherto in general been the tendency to try to accommodate it. There has been agreement from the outset within the Study Group that, notwithstanding the enormous potential of leasing at the cross-border level, true cross-border leasing will not really take off until such time as there is a greater degree of legal certainty regarding the treatment of leasing transactions at the purely domestic level. Given the dearth of domestic legislation addressed to this problem, it is likely that for some time to come the uniform rules will accordingly have a greater impact as the basis of domestic legislation than as legislation addressed specifically to international leasing.

126. The preliminary draft, illustrated by an explanatory report, was submitted to the UNIDROIT Governing Council scheduled for April 1981, for advice as to the appropriate follow-up action to be taken. On this point it was the feeling of the Study Group that, given the novel nature of the subject-matter, it was perhaps premature to lay this text before Governments at the present time and that it was more important to give it maximum exposure in the world of practice, by the organization of symposia in the various continents.

127. In the meantime, the Study Group has also requested the collaboration of the Hague Conference on Private International Law in revising certain provisions of the preliminary draft which raise questions of private international law.

K. *Restrictive business practices*

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

128. The United Nations Conference on Restrictive Business Practices approved on 22 April 1980 the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices (see document TD/RBP/CONF/10) and transmitted it to the General Assembly at its thirty-fifth session. In resolution 35/63 the General Assembly unanimously adopted the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices and decided to convene, in 1985, under the auspices of UNCTAD, a United Nations Conference to review all aspects of the Set. In addition, it requested the

UNCTAD Trade and Development Board to establish at its twenty-second session (March 1981) an intergovernmental group of experts on restrictive business practices, operating within the framework of a committee of UNCTAD, to provide the ongoing institutional machinery for work in this area.

129. The Set consists, in addition to a Preamble, of seven multilaterally agreed equitable principles for the control of restrictive business practices; principles and rules for enterprises, including transnational corporations; principles and rules for States at national, regional and subregional levels; international measures; and international institutional machinery.

2. *Model law or laws on restrictive business practices*

130. Within UNCTAD work is continuing on the elaboration of a model law or laws on restrictive business practices in order to assist developing countries in devising appropriate legislation. In this connexion the above Set of Principles and Rules calls for States at the national level or through regional groupings to adopt, improve and effectively enforce appropriate legislation and implementing judicial and administrative procedures for the control of restrictive business practices, including those of transnational corporations. Such legislation should be based primarily on the principle of eliminating or effectively dealing with acts or behaviour or enterprises which, through an abuse or acquisition and abuse of a dominant position of market power, limit access to markets or otherwise unduly restrain competition, having or being likely to have adverse effects on their trade or economic development, or which through formal, informal, written or unwritten agreements or arrangements among enterprises have the same impact.

L. *Multinational marketing enterprises*

131. Within the framework of UNCTAD's work programme on economic co-operation among developing countries, studies have been prepared that touch on aspects relative to international trade law. In this context, a number of studies have been made on the juridical aspects of multinational marketing enterprises among developing countries.

132. It is envisaged that the work currently under way in UNCTAD in respect to the Global System of Trade Preferences (GSTP) may in due course lead to the preparation of legal texts bearing on the question of international trade law.

M. *Conventions and schemes to promote trade*

133. The following instruments have been elaborated by EFTA to facilitate trade in the field of non-tariff barriers:

Pharmaceutical Inspection Convention (entered into force on 26 May 1971)

The purpose of the Convention is to facilitate trade in pharmaceutical products, by providing for the recognition of inspections in respect of the manufacture of pharmaceutical products.

The parties to the Convention are the EFTA countries, *viz.* Austria, Finland, Iceland, Norway, Portugal, Sweden, Switzerland and Liechtenstein, and Denmark, Hungary, Ireland and the United Kingdom.

Convention on the Control and Marking of Articles of Precious Metals (entered into force on 27 June 1975)

The purpose of the Convention is to facilitate trade in articles of precious metals (gold, silver and platinum) by providing a Common Control Hallmark.

The parties to the Convention are Austria, Finland, Sweden, Switzerland and the United Kingdom.

Scheme for the Reciprocal Recognition of Tests and Inspections carried out on Ships' Equipment (entered into force on 1 January 1971)

The purpose of the scheme is to facilitate trade in ships' equipment by providing for the recognition of tests and inspections thereof.

Scheme for the Reciprocal Recognition of Tests carried out on Agricultural Machines and Tractors for Operational Safety and Ergonomics and for Road Traffic Safety (entered into force on 1 September 1972)

The purpose of the scheme is to facilitate trade in agricultural machines and tractors by providing for the recognition of tests and inspections thereof.

Scheme for the Reciprocal Recognition of Tests and Inspections carried out on Gas Appliances (entered into force on 1 August 1972)

The purpose of the scheme is to facilitate trade in gas appliances by providing for the recognition of tests and inspections thereof.

Scheme for the Reciprocal Recognition of Tests and Inspections carried out on Pressure Vessels (entered into force on 1 January 1971)

The purpose of the scheme is to facilitate trade in pressure vessels by providing for the recognition of tests and inspections thereof.

Scheme for the Reciprocal Recognition of Tests and Inspections carried out on Lifting Appliances (entered into force on 1 January 1978)

The purpose of the scheme is to facilitate trade in lifting appliances by providing for the recognition of tests and inspections thereof.

Scheme for the Reciprocal Recognition of Tests and Inspections carried out on Heating Equipment using Liquid Fuel (entered into force on 1 January 1978)

The purpose of the scheme is to facilitate trade in heating equipment using liquid fuel by providing for the recognition of tests and inspections thereof.

Scheme for the Mutual Recognition of Evaluation Reports on Pharmaceutical Products (entered into force on 13 June 1979)

The purpose of the scheme is to facilitate trade in pharmaceutical products by providing for the recognition of evaluation reports on such products.

N. *Labour*

134. The activities of ILO pertaining to labour and its related aspects are set forth below:

1. *Work directed at the adoption of international labour conventions or recommendations*

135. The following work is directed at the adoption of international labour conventions or recommendations:

Promotion of Collective Bargaining

It is expected that a Recommendation will be adopted by the International Labour Conference in June 1981.

Equal Opportunities and Equal Treatment for Men and Women Workers: Workers with Family Responsibilities

It is expected that a Convention and a Recommendation will be adopted by the International Labour Conference in June 1981.

Maintenance of Migrant Workers' Rights in Social Security (Revision of Convention No. 48)

Proposed conclusions with a view to a Convention and a supplementary Recommendation, based on the consultation of Governments, will be considered by the International Labour Conference in June 1981.

Termination of Employment at the Initiative of the Employer

Proposed conclusions with a view to a Convention and a supplementary Recommendation, based on the consultation of Governments, will be considered by the International Labour Conference in June 1981.

Vocational Rehabilitation

A general discussion of the subject by the International Labour Conference in June 1982 is expected to lead to the adoption in 1983 of an instrument supplementing the Vocational Rehabilitation (Disabled) Recommendation, 1955.

Revision of the Plantations Convention, 1958

Proposals for a partial revision of the Convention (scope provisions) are to be considered by the International Labour Conference in June 1982.

2. *Preparation of codes of practice, guides and manuals*

136. ILO has prepared the following codes of practice, guides and manuals:

Model Code of Safety Regulations for Industrial Establishments

Preparatory work for revision is to be carried on during the next two biennia.

Code of Practice on Safety in Haulage and Transport Operations in Mines

The draft is completed. It is circulated to Governments for comments.

Code of Practice on Safety and Health in the Iron and Steel Industry

The draft is being prepared. It will be submitted to the Meeting of Experts in December 1981.

Code of Practice on the Safe Use of Diesel-powered Equipment Underground in Mines

The draft is being prepared.

Code of Practice on Safety and Health in the Construction of Fixed Offshore Installations in the Petroleum Industry

The draft was completed at a Meeting of Experts recently. It will be published after the approval of the Governing Body.

Code of Practice on Radiation Protection in the Mining and Milling of Radioactive Ores (Part IV of ILO Manual of Industrial Radiation Protection)

It will be a joint IAEA, ILO and WHO publication.

O. *International standards for foods*

137. The thirty-third World Health Assembly (WHO), in resolution WHA33.32, requested the Director-General, *inter alia,* to "prepare an international code of marketing of breastmilk substitutes" and to "submit the code to the Executive Board for consideration at its sixty-seventh session and for forwarding with its recommendations to the thirty-fourth World

Health Assembly, together with proposals regarding its promotion and implementation, either as a regulation in the sense of Articles 21 and 22 of the Constitution of the World Health Organization or as a recommendation in the sense of Article 23, outlining the legal and other implications of each choice". Document EB67/20 (10 December 1980) describes the process of the development of this draft International Code and outlines the legal and other implications of its promotion as a regulation or as a recommendation. The draft International Code itself is presented in the form of a regulation and a recommendation.

P. *Most-favoured-nation clause*

138. The topic of the most-favoured-nation clause was first raised in 1964. Then at its nineteenth session in 1967 ILC noted that, at the twenty-first session of the General Assembly, several representatives in the Sixth Committee had urged that ILC deal with the most-favoured-nation clause. In view of the interest expressed in the matter and of the fact that clarification of its legal aspects might be of assistance to UNCITRAL, ILC decided to place on its programme of work the topic of "most-favoured-nation clauses in the law of treaties".

139. In 1968, the Commission instructed a Special Rapporteur to explore the major fields of application of the clause. In 1969, the Special Rapporteur presented his first report.

140. Subsequently, from 1970 to 1976 the Special Rapporteur submitted six more reports dealing with various aspects of the subject. At the twenty-eighth session, in 1976, the Commission completed the first reading of the draft articles on the clause in accordance with the General Assembly's recommendation.

141. At the thirty-first session, the General Assembly by resolution 31/97 of 15 December 1976 recommended that the Commission should conclude the second reading of them in the light of comments received from Member States, from organs of the United Nations which had competence on the subject-matter, and from interested inter-governmental organizations.

142. At the thirtieth session in 1978, the Commission re-examined the draft articles on the basis of the first report submitted by the new Special Rapporteur. Having considered the Special Rapporteur's first report and a number of proposals, as well as the reports of its Drafting Committee, the Commission adopted the final text of a thirty-article draft on most-favoured-nation clauses.

143. By resolution 35/161 of 15 December 1980 on the consideration of the draft articles on most-favoured-nation clauses, the General Assembly requested the Secretary-General to reiterate his invitation to Member States, organs of the United Nations and interested intergovernmental organizations to submit, or bring up to date, not later than 30 June 1981, their written comments and observations on the draft articles on most-favoured-nation clauses adopted by the International Law Commission. The General Assembly also requested States to comment on the recommendation of the International Law Commission that those draft articles should be recommended to Member States with a view to the conclusion of a convention on a subject.

Q. *Jurisdictional immunities of States and their property*

144. One of the areas in which the question of jurisdictional immunities of States and their property arises is that of trading immunities. This topic was included in the provisional list of topics selected for codification by ILC in 1949. However, it was only in 1977 that further consideration was given to it. At its thirty-second session held from 5 May to 25 July 1980, the "Second report on the topic of jurisdictional immunities of States and their property" (A/CN.4/331 and Add.1) was before ILC. Part I of the report deals with questions relating to jurisdictional immunities accorded or extended by territorial States to foreign States and their property. Part II examines State practice—judicial, administrative and governmental—relating to the fundamental principles of international law of State immunities. It may be noted that UNCITRAL deferred the consideration of this subject in relation to arbitration pending the outcome of the work by ILC.

R. *Proposed treaty for the establishment of a preferential trade area for eastern and southern African States*

145. ECA has proposed a treaty for the establishment of a preferential trade area for eastern and southern African States. This proposed Treaty was submitted for consideration at the second Extraordinary Conference of Ministers of Trade, Finance and Planning of the eastern and southern African States, Kampala, Uganda, from 27 October to 1 November 1980. This draft Treaty is still the subject of negotiations.

S. *GATT's new programme of work*

146. In 1979 GATT adopted a new programme of work which will be the basis of its activities in the 1980s. The implementation of the Tokyo Round agreements is a major element of this work programme, but in addition

the Contracting Parties have agreed to continue work in the following areas:

Agriculture: Questions relating to trade in agricultural products are to continue to be an important part of the work of GATT

Safeguards: Negotiations on safeguards are to be continued as a matter of urgency

Continuation of the process of trade liberalization

Structural adjustment and trade policy: The Consultative Group of Eighteen, which has been established as a permanent body of GATT, has been requested to pursue the examination of the problems of structural adjustment and trade policy taking into account trade relations between North and South

GATT and developing countries: By giving priority to trade issues of interest to developing countries and by strengthening the role of the GATT Committee on Trade and Development, the Contracting Parties expect to make a contribution to the satisfactory solution of the problems highlighted in the report of the Brandt Commission. In parallel with the establishment of the Safeguards Committee, the Contracting Parties have also established a Sub-Committee on Protective Measures which will examine new measures of protection affecting the trade of developing countries. GATT also intends to continue efforts aimed at promoting further expansion of trade among developing countries. The technical assistance activities of the GATT secretariat are to be continued.

XIII. Facilitation of international trade

A. *Facilitation of international trade procedures*

1. *Trade data elements directory*

147. The ECE Committee on the Development of Trade (Working Party on Facilitation of International Trade Procedures has prepared the Trade Data Elements Directory (TRADE/WP.4/133) which includes agreed sets of standard data elements which are intended to facilitate interchange of data in international trade. These standard data elements can be used with any method for data interchange—on paper documents as well as with other means of data communication.

148. At present, data elements in the following areas have been recommended: maritime and combined transport; commercial invoice and related documents; road transport; customs applications; rail transport; and documentary credits. It is expected that the Directory will be completed in 1981. In March 1981, the ECE Working Party on Facilitation of International Trade Procedures recommended data elements in the following areas: multimodal transport; air transport; and freight forwarding. The Directory will be maintained by the Working Party in accordance with agreed rules.

149. This project comprises the standardization of data elements contained in those documents which have been used in international trade. These elements correspond in substance to proposed ISO International Standards. The legal issues involved in this project therefore are those which generally appear in connexion with trade facilitation, i.e. document form; authentication; negotiability; security; import procedures; trade terms; certificates required by national law; and other documentation.

150. The Directory may be considered as a set of non-mandatory recommendations available for use by participants in international trade. The project is being implemented in co-operation with UNCTAD; International Chamber of Commerce (ICC); International Chamber of Shipping (ICS); International Organization for Standardization (ISO); Inter-governmental Maritime Consultative Organization (IMCO); Customs Co-operation Council (CCC); International Federation of Freight Forwarders Associations (FIATA); International Railway Transport Committee (CIT); European Economic Community (EEC); International Air Transport Association (IATA); International Road Transport Union (IRU); Central Office for International Railway Transport (OCTI); Society for Worldwide Interbank Financial Telecommunication S.C. (SWIFT); United Nations Statistical Commission; International Union of Railways (UIC); national facilitation organs and focal points for trade facilitation work; and other bodies. Such co-operation has proved to be advantageous in the areas of concern (trade facilitation, trade terms, standards, shipping, etc.) to each of the organizations and bodies listed.

151. The Directory was adopted by the Working Party on Facilitation of International Trade Procedures at its twelfth session held from 25 to 26 September 1980. It was adopted by representatives of the following ECE member countries: Austria, Belgium, Bulgaria, Canada, Czechoslovakia, Denmark, Finland, France, German Democratic Republic, Germany, Federal Republic of, Hungary, Netherlands, Norway, Poland, Romania, Spain, Sweden, Switzerland, Turkey, USSR, United Kingdom and the United States.

2. *Trade data interchange*

152. In 1975 the ECE Committee on the Development of Trade (Working Party on Facilitation of International Trade Procedures) set up a task team which prepared "Guidelines for trade data interchange developed within ECE". The Guidelines will be issued shortly. However, in view of current opinion that there will be more than one way of exchanging data and that trading partners will be able to choose between them, the working Party decided—instead of having one single

common message structure system—to register and publish the main message structure systems in actual practice. Rules for the registration of such systems are to be developed, and registered systems will be contained in a future international trade protocol directory. A first draft of the rules for registration of systems in the future international trade protocol directory was discussed in March 1981.

153. The Guidelines for trade data interchange developed within the ECE were approved for publication by the Working Party on Facilitation of International Trade Procedures at its ninth session in 1979 (TRADE/WP.4/127).

3. *Alignment of trade documents*

154. The ECE Committee on the Development of Trade (Working Party on Facilitation of International Trade Procedures) is engaged in a project dealing with the alignment of trade documents. This includes harmonization and simplification of international trade documents such as the multimodal transport document, piggy-back transport note, universal air waybill, universal (multi-purpose) transport document, control certificates, commercial contracts, forwarding instructions, and phytosanitary certificates. Both harmonization and simplification are based on the United Nations Layout Key for Trade Documents. The project embodies the United Nations system of aligned trade documents, work on the completion and maintenance of which is continuing.

155. The project is being carried out in co-operation with the Inter-governmental Maritime Consultative Organization (IMCO); Customs Co-operation Council (CCC); Central Office for International Railway Transport (OCTI); International Monetary Fund (IMF); Council for Mutual Economic Assistance (CMEA); European Economic Community (EEC); International Chamber of Commerce (ICC); International Federation of Freight Forwarders Association (FIATA); International Road Transport Union (IRU); International Union of Railways (UIC); International Organization for Standardization (ISO); International Chamber of Shipping (ICS); International Railway Transport Committee (CIT); International Union of Combined Rail/Road Transport Companies (UIRR). The final text of the recommendation is under preparation.

156. In the framework of the CMEA Standing Commission on Foreign Trade work is continuing on the simplification and standardization of documents in the sphere of foreign trade.

B. *Trade facilitation information*

157. At its eleventh session in March 1980, the Working Party on Facilitation of International Trade Procedures, a subsidiary of the Committee on the Development of Trade of ECE, agreed to issue an information leaflet "Facts about the Working Party on Facilitation of International Trade Procedures" (TRADE/WP.4/INF.68; TD/B/FAL/INF.69).

XIV. Access to justice and validity of foreign judgments and arbitral awards

A. *Mutual judicial assistance*

158. The fourteenth session of the Hague Conference (October 1980) adopted a *Convention for the Purpose of Facilitating International Access to Justice.* This Convention deals with questions of judicial assistance, *cautio judicatum solvi,* copies of writs and court orders, imprisonment for debt and safe-conduct (actually this is a matter of revising chapters III to VI of the 1954 Hague Convention on Civil Procedure). The Convention was immediately opened for signature and is dated 25 October 1980; on that date it had been signed by three States, namely, France, Germany, Federal Republic of, and Greece.

B. *Inter-American Convention on Extraterritorial Validity of Foreign Judgements and Arbitral Awards*

159. The Inter-American Convention on Extraterritorial Validity of Foreign Judgements and Arbitral Awards was signed at Montevideo, Uruguay, on 8 May 1979 at the Second Inter-American Specialized Conference on Private International Law.

XV. Training and research on issues concerning the establishment of the new international economic order

160. Since 1975, in response to the policies adopted by the General Assembly, UNITAR's programme of work has placed special emphasis on issues concerning the establishment of the new international economic order. Some of the documents, based on projects relating to the new international economic order, which have been prepared are:

Third Progress Report on Technology, Domestic Distribution and North-South Relations

Obstacles to the New International Economic Order: an Overview

International Development in the 1980s and Beyond: Essential Requirements and Industrialized Country

Responses (Report of a Task Force on International Development)

Conclusions of the UNITAR-Club of Rome-CEESTEM Conference on Regionalism and the New International Economic Order.

161. Another project examines the structure and pattern of six international commodity markets—in food, energy, raw materials, capital goods, manufactured goods and armaments—to determine how they facilitate or impede the emergence and pursuance of rational policies designed to optimize the use of local resources, human or material. For this purpose the tools of analysis (a model and scenarios) are adjusted to study the impact of the six commodity markets within different regions.

162. The UNITAR Project on the Future has been organizing a series of major regional conferences, the first of which on "Africa and the Problematique of the Future" was held in 1977 at Dakar, Senegal. A second conference on "Alternative Development Strategies and the Future of Asia" was held in March 1980 at New Delhi, India. These conferences have involved scholars, planners and government officials in a dialogue on the evolution of development alternatives rooted in the particular circumstances of the region.

163. In collaboration with CEESTEM, UNITAR has organized and co-ordinated a network of 98 teams of independent researchers in all parts of the world. Each unit of the network has (i) assessed the feasibility of implementing the relevant new international economic order objectives in the researcher's region, or nation, or sector of expertise; (ii) reported on official positions concerning the objectives as well as responses and attitudes by other socio-economic strata (business, labour, media, general population, etc.); and (iii) suggested feasible strategies or modes of implementation.

164. The research findings of the entire network are published in 17 volumes in the UNITAR-CEESTEM Library on the new international economic order. The main issues of the new international economic order covered in this series include:

Aid and assistance targets and the structural and functional parameters of official development assistance (ODA) transfers

International trade, including issues pertaining to tariff and non-tariff barriers, the generalized system of preferences, commodities, agricultural and general trade, and the insertion of developing countries into the world economy

International finance covering such issues as the reform of the voting structure of the International Monetary Fund (IMF), debt renegotiation and servicing, SDRs and private and capital flows

Industrialization, technology transfer and business practices, including developed and developing country perspectives on redeployment of industry, the creation of a code of conduct for transnational corporations, the competitiveness of natural resources vis-à-vis synthetics, and the legal framework required to end restrictive business practices

Social and cultural issues, focusing on the achievement of a more equitable distribution of income, providing health services and education and welfare for children

Political and institutional issues, covering the economic sovereignty of States and the positions of various member nations on the proposals and objectives of the new international economic order.

165. The call for a new international economic order has strained the capacity of the United Nations system and has led to reform efforts to make it a better vehicle for negotiating and implementing the new order. These reform efforts are the focus of this UNITAR project, which will result in two publications. The first is a policy-oriented monograph focusing on institutional adaptations, including the interplay between the substantive agenda and the institutional context within which it is being promoted and negotiated.

166. The second publication will describe and analyse aspects of the new international economic order negotiating process, mainly from the perspectives of participants in that process. It will contain 18 original essays which address some of the issues in the North-South dialogue under the following four themes:

(*a*) Negotiating the new international economic order

Institutional elements in the new diplomacy for development

The confidence factor in multilateral diplomacy

The experience of the Conference on International Economic Co-operation

The United Nations conference system and the quest for the new international economic order

Negotiating the UNCTAD Common Fund

Negotiating the regime of the sea-bed;

(*b*) The new international economic order and the group system

The new international economic order dialogue and the group system

The role of the non-aligned States in creating the new international economic order

Strengthening the negotiating capacity of the Group of 77;

(*c*) Institutional change

Adapting old order institutions to new order diplomacy

Decision-making in UNESCO: experiment with the drafting and negotiating group

Alternatives in multilateral decision-making

The restructuring exercise of the United Nations;

(*d*) The institutional agenda and the new international economic order

UNCTAD and the new international economic order

The Law of the Sea Conference and the new international economic order

The new international economic order and transnational corporations

The new international economic order and technical co-operation among developing countries

The unfinished institutional agenda of the new international economic order.

167. The Centre for Research on the New International Economic Order is engaged in carrying out studies on the legal aspects of NIEO as identified by ILA's Committee on NIEO. A seminar was held at Oxford in March/April 1981. The following topics were discussed:

(*a*) General principles and the Charter of Economic Rights and Duties of States, including conceptual and institutional issues;

(*b*) Subjects referred to in Article 2 of the Charter of Economic Rights and Duties of States relating to permanent sovereignty over natural resources, wealth and economic activities, in particular:

Measures for international co-operation (particularly dispute settlement and bilateral and other treaties of co-operation)

Application of principle (*j*) set out in Chapter 1 ("fulfilment in good faith of international obligations")

Standards for payment of "appropriate compensation";

(*c*) Transnational corporations and in particular codes of conduct and guidelines for transnational corporations;

(*d*) Transfer of technology;

(*e*) Restrictive business practices;

(*f*) International trade with reference to NIEO objectives:

Legal implications of new codes which emerged from the Multilateral Trade Negotiations for developing countries and proposals relating to the promotion of NIEO objectives

Consideration of rule-making, complaint and dispute-settlement procedures in trade codes (existing and proposed)

Legal aspects of proposals for a new International Trade Organization;

(*g*) Legal aspects of the global food distribution and utilization in a new international economic order;

(*h*) Contracts in the field of industrial development;

(*i*) Legal aspects of international monetary and financial reform;

(*j*) Right to development.

[A/CN.9/202/Add.3*]

Recent and current activities of the International Law Commission which may bear upon questions related to the field of international trade law

By resolution 34/142 of 17 December 1979** the General Assembly requested the Secretary-General "to take effective steps to secure a close co-ordination, especially between those parts of the Secretariat which are serving . . . the International Law Commission . . ."

Accordingly, the Secretary of the United Nations Commission on International Trade Law (UNCITRAL) by memorandum LE 133 (1-1) dated 6 November 1980, requested the Secretary of the International Law Commission (ILC) to provide detailed information on its recent and current activities in the field of international trade law for inclusion in the Secretary-General's report to be submitted to the fourteenth session of UNCITRAL in June 1981.

In response to the memorandum, the Enlarged Bureau and the Planning Group of ILC at a meeting in May 1981, authorized the Secretary of ILC to provide information on its recent and current activities which may bear upon questions related to the field of international trade law. This information is reproduced in the annex to this document.

ANNEX

A. *General observations*

1. By resolution 174 (II) of 21 November 1947, the General Assembly of the United Nations established the International Law Commission and approved its Statute. Article 1, paragraph 1, of the Statute[1] states that "The International Law Commission shall have for its object the promotion of the progressive development of international law and its codification". Paragraph 2 of article 1 of the

* 5 June 1981. Incorporates A/CN.9/202/Add.3/Corr.1 (English only) (17 June 1981).

** Yearbook . . . 1980, part one, 1, C.

[1] A/CN.4/1/Rev.1.