

## V. ACTIVITIES OF OTHER ORGANIZATIONS

### Report of the Secretary-General: current activities of international organizations related to the harmonization and unification of international trade law (A/CN.9/151)\*

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#### INTRODUCTION

1. The United Nations Commission on International Trade Law, at its third session, requested the Secretary-General "to submit reports to the annual session of the Commission on the current work of international organizations in matters included in the programme of work of the Commission".<sup>1</sup>

2. In accordance with the above decision reports were submitted to the Commission at the fourth session

in 1971 (A/CN.9/59), at the fifth session in 1972 (A/CN.9/71), at the sixth session in 1973 (A/CN.9/82), at the seventh session in 1974 (A/CN.9/94 and Add. 1 and 2),\*\* at the eighth session in 1975 (A/CN.9/106),\*\*\* at the ninth session in 1976 (A/CN.9/119)\*\*\*\* and at the tenth session in 1977 (A/CN.9/129 and Add. 1).†

\* 9 May 1978.

\*\* Yearbook...1974, part two, V.

\*\*\* Yearbook...1975, part two, V.

\*\*\*\* Yearbook...1976, part two, VI.

† Yearbook...1977, part two, VI.

<sup>1</sup> UNCITRAL, report on the third session (A/8017), para. 172 (Yearbook... 1968-1970, part two, III, A).

3. The present report, prepared for the eleventh session (1978), is based on information submitted by international organizations concerning their current work. In some cases, this report includes information on progress with respect to projects for which background material is included in earlier reports.<sup>2</sup> The current activities of the following international organizations are described in the present report:

(a) *United Nations bodies and specialized agencies*: United Nations Conference on Trade and Development (UNCTAD) (paras. 21, 39-42, 58-59, 129-130, 132); United Nations Economic and Social Commission for Asia and the Pacific (ESCAP) (paras. 6, 18, 51, 72, 126, 139); United Nations Economic Commission for Europe (ECE) (paras. 10, 17, 34, 43, 49-50, 61, 75, 81, 87, 123-125, 138); United Nations Economic Commission for Latin America (ECLA) (para. 52); United Nations Industrial Development Organization (UNIDO) (paras. 131-132); Food and Agriculture Organization of the United Nations (FAO) (paras. 11, 127); World Health Organization (WHO) (paras. 11, 127); International Civil Aviation Organization (ICAO) (paras. 53-54, 76); International Monetary Fund (IMF) (para. 29); Inter-Governmental Maritime Consultative Organization (IMCO) (paras. 37-38, 55); and World Intellectual Property Organization (WIPO) (paras. 83-86, 89-96, 99-100, 102-109, 115).

(b) *Other international organizations*: Asian-African Legal Consultative Committee (AALCC) (paras. 5, 15-16, 71, 135-136); Asian Development Bank (para. 35); Central Office for International Transport by Rail (OCTI) (paras. 48, 56); Commission of the European Communities (CEC) (paras. 23, 73, 101, 110, 112, 114); Council for Mutual Economic Assistance (CMEA) (paras. 9, 45-47, 97-98, 122, 133-134, 137); Council of Europe (paras. 22, 24, 74, 113, 117); Hague Conference on Private International Law (paras. 7, 30, 78-80, 88); International Bank for Economic Co-operation (para. 31); and International Institute for the Unification of Private Law (UNIDROIT) (paras. 8, 44, 55, 111, 116, 118-121).

(c) *International non-governmental organizations*: Inter-American Commercial Arbitration Commission (IACAC) (para. 69); International Chamber of Commerce (ICC) (paras. 12, 19, 25-28, 57, 62-68, 70, 77, 82); International Chamber of Shipping (ICS) (paras. 36, 60, 128); International Maritime Committee (CMI) (paras. 13, 20, 33, 38, 63); and International Organization for Standardization (ISO) (para. 14, 32).

4. This report is arranged according to major subjects in international trade law. Under each subject the relevant activities of the international organizations are discussed in turn.

## I. INTERNATIONAL SALE OF GOODS

5. The International Trade Law Sub-Committee of AALCC considered in January 1978 the text of the draft Convention on the International Sale of Goods that had been prepared by UNCITRAL.

6. The International Trade Division of ESCAP is now engaged in identifying possible areas of co-

operation with both international and national organizations with a view to the harmonization and unification, on the regional level, of the law on the international sale of goods.

7. For the work of the Hague Conference on Private International Law (the Hague Conference) on a Protocol to the 1955 Convention on the Law Applicable to International Sale of Goods, see paragraph 78 below (VII. Private international law; B. *International Sale of Goods*).

## II. INTERNATIONAL CONTRACTS

### A. Formation of international contracts

8. In April 1977 the Steering Committee of UNIDROIT adopted the text of the revised draft Uniform Law on the Formation of Contracts in General. The Steering Committee is also considering a draft Uniform Law on the Interpretation of Contracts which, together with a questionnaire, has been sent for comments to a large number of individuals and organizations engaged in the study of international trade law. Based on the replies to this questionnaire, the Steering Committee is preparing the final text of the draft Uniform Law on the Interpretation of Contracts in General.

### B. General conditions for international contracts

9. The General Conditions of Delivery of Goods, currently in force among trading organizations in the member States of CMEA, were approved in 1968 and modified in 1975. Work within CMEA is continuing, aimed at improving further the provisions of the General Conditions of Delivery and of other common terms within the CMEA system.

### C. International trade terms and standards

10. Under the auspices of the Economic Commission for Europe (ECE), the Working Party on Facilitation of International Trade Procedures has identified a list of about 130 documents used in international trade (TRADE/WP.4/GE.2/R.50). The Working Party is now engaged in the preparation of descriptions of the functions performed by each of these documents, with a view to establishing internationally agreed descriptions of their functions. Within the Working Party agreement has already been reached on data elements, i.e. groups of words carrying information, used in maritime and combined transport, and on descriptions of the functions of the sea waybill, the bill of lading, the combined transport document, the through bill of lading and the cargo declaration (TRADE/WP.4/123, annex).

11. Under the Joint FAO/WHO Food Standards Programme, the intergovernmental *Codex Alimentarius Commission* and its subsidiary bodies elaborated comprehensive international food standards and international maximum limits for pesticide residues in food. These standards were then adopted by the *Codex Alimentarius Commission* and circulated to Governments for acceptance and implementation by national legislation. The implementation by Governments of these international food standards and maximum limits for pesticide residues in their national legislation serves as a means of reducing some of the technical, non-tariff obstacles to the free flow of international trade in food.

12. ICC is continuing its work aimed at a general

<sup>2</sup> Background material may be found in the reports referred to in paragraph 2 above and in the *Digest of legal activities of international organizations and other international institutions*, published under the auspices of the International Institute for the Unification of Private Law (UNIDROIT).

revision of the existing INCOTERMS with a view to adapting these trade terms to recent developments in transport and documentation and facilitating their acceptance by all countries. The ICC is also engaged in completing its INCOTERMS 1953 by trade terms to be applied to sales involving air, containerized and combined transport.

13. A working group of CMI is engaged in the preparation of draft Charter Party (Laytime) Definitions.

14. The Sub-Committee on Banking Terminology of ISO is preparing an ISO banking glossary, covering the scope of the work of the ISO Technical Committee 68 on Banking Procedures, and related subjects and abbreviations.

#### D. Model contracts and contractual clauses

15. AALCC prepared standard forms of FOB and FAS contracts for sales transactions in certain types of commodities (e.g. grain, rubber, oil, coconut products, spices). A group of experts is expected to finalize shortly a standard form contract for CIF (Maritime) transactions and corresponding general conditions applicable in respect of light machinery and durable consumer goods. Member Governments, the secretariat of AALCC and the regional arbitration centres established by AALCC were asked to publicize these standard forms and to encourage their use in international transactions.

16. AALCC has also begun work on the formulation of standard contract forms in respect of:

- (i) Consultancy agreements, particularly those relating to the preparation of feasibility studies, engineering design and supervision of execution of projects;
- (ii) Construction contracts, particularly those relating to plant and machinery;
- (iii) The transfer of technology and know-how by means of licensing agreements; and
- (iv) Concession contracts in regard to the exploitation of natural resources and mineral deposits.

17. ECE, through its Group of Experts on International Contract Practices in Industry, is preparing a draft "Guide for Drawing up International Contracts between Parties Associated for the Purpose of Executing a Specific Project" (TRADE/GE.1/39). The secretariat of ECE will prepare a revised version of the draft Guide for the fourteenth session (October 1978) of the Group of Experts. At that session the Group of Experts will also consider its future programme of work.

18. The International Trade Division of ESCAP is engaged in the preparation of standard contracts and general conditions for use in the tropical hardwood trade in the region. Similar projects are also planned for such commodities as pepper, rubber and coconuts.

19. The Commission on International Commercial Practice of ICC is engaged in drafting model contractual clauses dealing with *force majeure* and hardship, particularly for long-term contracts and contracts that are to be performed in stages. This work is motivated by the fact that market instability, primarily due to inflation and the increasing cost of raw materials, poses serious difficulties in the performance of long-term contracts. These difficulties relate, *inter alia*, to the adaptation of such contracts to changing economic circum-

stances and to the computation of damages for breach of contract.

20. CMI is engaged in a comparative study of ship-building contracts, including the contract forms commonly used throughout the world. It is expected that the final report on the subject will be completed by the spring of 1979.

21. The secretariat of UNCTAD is studying the feasibility of drawing up model rules for regional associations (ports, shippers, shipowners) and joint ventures in the field of maritime transport. The model rules, which might then be published as a handbook, would be designed to assist co-operation among developing countries concerning shipping and ports.

#### E. Penalty clauses

22. On 20 January 1978 the Committee of Ministers of the Council of Europe adopted resolution (78) 3 concerning penal clauses in civil law. The resolution is particularly directed at penal clauses applicable in cases of breach of contract and includes, in an appendix, general principles that States should take into consideration when preparing new legislation on this subject.

### III. INTERNATIONAL PAYMENTS

#### A. Work on conventions and uniform rules on international payments

23. The Commission of the European Communities is engaged in work aimed at the harmonization of the laws of member States of EEC concerning the law of surety and contract guarantees. A draft directive on the subject, revised on the basis of observations submitted by national administrations and professional bodies, is being prepared by the Commission.

24. Within the Council of Europe a committee of experts considered the international aspects of the legal protection accorded to creditors. The secretariat of the Council of Europe has been asked, based on the report presented by the committee of experts, to ascertain the particular topics in the area of creditors' rights that could be taken up by the Council of Europe with a view to finding common solutions for all of its member States.

25. ICC, in close co-operation with UNCITRAL, has drawn up Uniform Rules for Contract Guarantees (Tender, Performance and Repayment Guarantees). Draft uniform rules, accepted in principle by the ICC Commissions on International Commercial Practice and on Banking Technique and Practice, were circulated in 1976 to the ICC National Committees and, through UNCITRAL, to circles not represented within ICC. The Study Group on Contract Guarantees, in which the UNCITRAL secretariat is represented as observer, studied the comments received and the ICC Working Party on Contract Guarantees then approved a final draft of the uniform rules. The final draft, together with an introductory brochure, will be submitted for adoption to the ICC Council in June 1978.

26. ICC is co-operating with the UNCITRAL secretariat in work directed at the possible creation of a new type of security interest corresponding to the needs of international trade. This work is based on the exchange of views which took place in the ICC/

UNCITRAL Consultative Committee in December 1976.

27. ICC will publish in 1978 revised ICC Standard Forms for the Issuing of Documentary Credits. These forms are adapted to the revised text of the Uniform Customs and Practice for Documentary Credits and, in addition, their use by banks is made more simple.

28. ICC is continuing the revision of its Uniform Rules for the Collection of Commercial Paper.

29. Members of the staff of IMF are participating in the work of UNCITRAL directed at the preparation of a draft uniform law creating a new negotiable instrument for optional use in international transactions. IMF staff members have attended meetings under UNCITRAL auspices which were concerned with the preparation of questionnaires on the subject, the analysis of replies, and the consideration and drafting of provisions of the draft uniform law.

30. For the work of the Hague Convention on an international convention on the law applicable to negotiable instruments, see paragraph 79 below (VII. Private International Law; C. *International payments*).

#### B. *Banking procedures*

31. The International Bank for Economic Co-operation has established rules and conditions of participation for settlements in transferable rubles, both for international trade between member countries of the Bank and for international trade of these countries with non-member countries of the Bank. Further, in order to improve the system of settlements in transferable rubles, in 1977 certain amendments relating primarily to improvement of the accounting systems were approved to the Statutes of the International Bank for Economic Co-operation and to the Agreement of 22 October 1963 concerning multilateral settlements in transferable rubles and the organization of the International Bank for Economic Co-operation.

32. A Technical Committee (TC 68) of ISO continued its work on banking procedures. The Subcommittee on Bank Data Interchange dealt with the documents used for international information interchange, bank telecommunication messages and transactions involving the use of bank cards. The Subcommittee on Bank Operations considered the use of codes and algorithms, record retention and retrieval of information images, and questions concerning the international processing of securities. The Subcommittee on Terminology was particularly concerned with issues involving foreign exchange operations and fund transactions, bill and documentary operations and operations of account, and loan (credit) operations.

#### C. *Value clauses in international conventions*

33. CMI has prepared a draft Protocol to Amend the 1957 Brussels Convention on Limitation of Liability of Owners of Sea-Going Ships, substituting for the reference therein to Poincaré francs the unit of account adopted by the 1976 London Convention on Limitation of Maritime Claims. The CMI has prepared a similar Protocol to the 1924 Brussels Convention for the Unification of Certain Rules of Law relating to Bills of Lading.

34. From 28 February to 2 March 1977 an *ad hoc* meeting under the auspices of ECE examined the "unit

of account" provisions in ECE transport conventions and adopted draft protocols (TRANS/R.58-61) concerning the "unit of account" in the following conventions: Convention on the Contract for the International Carriage of Goods by Road (CMR) of 19 May 1956; Convention on the Contract for the International Carriage of Passengers and Luggage by Road (CVR) of 1 March 1973; Convention relating to the Limitation of the Liability of Owners of Inland Navigation Vessels (CLN) of 1 March 1973; and Convention on the Contract for the International Carriage of Passengers and Luggage by Inland Waterway (CVN) of 6 February 1976. The solution proposed in the draft protocols called for the use of the Special Drawing Rights of the International Monetary Fund as the "unit of account"; Contracting States who were not members of IMF or whose law did not permit the use of the Special Drawing Rights as a "unit of account" could however continue to rely on the value of gold as the "unit of account". At the thirty-seventh session of the Inland Transport Committee of ECE (30 January to 3 February 1978) the solution proposed in the draft protocols did not find general acceptance and the Committee decided to re-submit the problem to the *ad hoc* meeting (2-3 May 1978) in order to arrive at a solution acceptable to as many countries as possible.

#### D. *Research on security arrangements*

35. The Asian Development Bank has been associated with the Law Association for Asia and the Western Pacific (LAWASIA) in an extensive credit and security research project. This project involves the study of security arrangements available to national development banks and similar financial institutions situated in the region.

### IV. INTERNATIONAL TRANSPORT

#### A. *Transport by sea*

36. ICS follows closely the work of the IMCO, and ICS has often submitted papers for consideration at various IMCO meetings.

37. In the long-term programme of IMCO, these items are included for consideration by the legal Committee:

- (i) Possible review of the 1926 Brussels Convention the Unification of Certain Rules Relating to Maritime Liens and Mortgages, and the 1967 revision thereof;
- (ii) Possible review of the Brussels Conventions on Maritime Law with a view to their being replaced by updated Conventions under the auspices of IMCO.

38. CMI submitted to IMCO for consideration the draft Convention on Offshore Mobile Craft and the draft Convention for the Unification of Certain Rules concerning Civil Jurisdiction, Choice of Law and Recognition and Enforcement of Judgements in Matters of Collision. Both these subjects are included in the future work programme of the IMCO Legal Committee.

39. The Committee on Shipping of UNCTAD considered in April 1977 a report prepared by the UNCTAD secretariat concerning the legal and economic consequences for international shipping of the existence or absence of a genuine link, as defined in inter-

national conventions that are in force, between a vessel and its flag of registry. This report will be reviewed by a group of experts in 1978 with a view to making recommendations for future action.

40. The UNCTAD Working Group on International Shipping Legislation met during the two parts of its fifth session to consider the work of UNCITRAL on the draft Convention on the Carriage of Goods by Sea. The UNCTAD secretariat prepared studies for the Working Group, analysing the draft provisions and suggesting modifications of the draft text where such were considered desirable (documents TD/B/C.4/ISL/19 and Suppl. 1 and 2; TD/B/C.4/ISL/23). The UNCTAD Working Group concluded that, taken as a whole, the draft convention adopted by UNCITRAL at its ninth session was generally acceptable and recommended to the General Assembly that an international conference of plenipotentiaries be convened under the joint auspices of UNCITRAL and UNCTAD to conclude a Convention on the Carriage of Goods by Sea. This recommendation was adopted by the Trade and Development Board of UNCTAD.

41. The subject of charter-parties forms part of the work programme of the UNCTAD Working Group on International Shipping Legislation. The Working Group in 1975 requested the UNCTAD secretariat to undertake, in addition to its report on "Charter-parties" (TD/B/C.4/ISL/13), two major studies which are now in progress: a comparative analysis of clauses in time-charter contracts, and a comparative analysis of clauses in voyage-charter contracts. Based on these studies and additional background material, the UNCTAD Working Group will seek to identify the clauses in time- and voyage-charter parties that are susceptible to standardization, harmonization and improvement. It will also explore areas in maritime chartering activities that may be regulated by international legislation. The Working Group is expected to consider these studies in 1979.

42. The UNCTAD Working Group on International Shipping Legislation is also to consider the legal problems of marine insurance at its 1978 session. In preparation, the UNCTAD secretariat is preparing a study analysing the existing legal problems in marine hull and cargo insurance, caused e.g. by ambiguities, inequities or lacunae in standard policy clauses and unsatisfactory procedures for the settlement of claims.

#### B. Transport by inland waterway

43. The Working Party on Inland Water Transport, a subsidiary body of the Inland Transport Committee of ECE, considered at its twenty-first session (14-18 November 1977) three draft conventions concerning the legal status of air-cushion vehicles, which had been prepared by UNIDROIT and transmitted to IMCO. The Working Party advised IMCO that in its view these conventions should not apply *expressis verbis* to inland waterways, but should include a clause to the effect that each Contracting State could extend the scope of application of these conventions to its inland waterways.<sup>3</sup>

44. The subject of the carriage of goods by inland waterway is on the work programme of UNIDROIT, although work on a draft Convention on the Contract

<sup>3</sup> For the work of UNIDROIT on the subject of air-cushion vehicles, see para. 55 below (IV. International transport; F. Transport by air-cushion vehicles).

for the Carriage of Goods by Inland Waterway has been suspended.

#### C. Transport of nuclear waste material

45. In November 1977, the Executive Committee of CMEA approved rules governing the transportation by rail aiming CMEA member States of waste material from nuclear fuel.

46. CMEA is now engaged in the preparation of rules that will govern the water transport among CMEA member States of waste material from nuclear fuel.

#### D. Transport over land

47. In 1977, the Standing Commission on Transport of CMEA completed a new transit tariff for international railways and new rates for the use of freight cars within the system of the common rolling stock. On 27 July 1977 representatives of the ministries in charge of railways in Bulgaria, Hungary, the German Democratic Republic, Mongolia, Poland, Romania, the Union of Soviet Socialist Republics and Czechoslovakia signed an Agreement to bring into effect the above-mentioned international railways transit tariff.

48. OCTI will convene in 1980 the 8th Ordinary Revision Conference, which will consider the restructuring and modification of the CIM Convention (concerning the contract for the international carriage of goods by rail) and the CIV Convention (concerning the contract for the international carriage of passengers and baggage by rail). This Revision Conference will have the opportunity to consider also the possible harmonization of the transport law concerning international railway carriage with the transport laws governing other modes of international transport.

49. The Group of Experts on the Transport of Perishable Foodstuffs, a subsidiary body of the Inland Transport Committee of the United Nations Economic Commission for Europe, is continuing its work to amend the technical annexes of the Agreement on the International Carriage of Perishable Foodstuffs and on the Special Equipment to be Used for such Carriage.

50. The Inland Transport Committee of ECE has completed its work on the substantive provisions of a draft agreement on the introduction of automatic coupling of railway cars (TRANS/SC.2/146, annex 1). However, certain basic decisions concerning, e.g., the date of introduction and the apportionment of the necessary commitments among Governments and railway administrations, still remain to be taken.

51. The Transport and Communications Division of ESCAP recently prepared a preliminary draft of an Asian-Pacific Agreement concerning Compulsory Insurance against Civil Liability in respect of Motor Vehicles. The draft Agreement, which is intended to ensure the regulated, smooth flow of international vehicular traffic in the region, has been circulated widely for comments and suggestions.

52. At a meeting convened by ECLA a group of experts prepared a draft Latin American Convention on Civil Responsibilities and International Land-based Carriers.

#### E. Transport by air

53. The general work programme of the Legal Committee of ICAO includes the item "Consolidation of the

instruments of the 'Warsaw System' into a single convention". After the Legal Committee concluded that the preparation of such a consolidated text was premature the Council of ICAO on 10 December 1976 referred to the ICAO Legal Bureau the task of preparing two draft "texts of convenience": one consolidating the provisions of the instruments of the "Warsaw System" that are in force, and the other consolidating all the instruments of that system. The Legal Bureau was asked to send these draft texts to States for their comments.

54. ICAO is concerned with the lease, charter and interchange of aircraft in international operations because of the legal problems affecting the regulation and enforcement of air safety when an aircraft registered in one State is operated by an operator belonging to another State. The Legal Committee of ICAO had concluded in 1964 that the best way of solving these problems would be to delegate, on the basis of model bilateral agreements, the functions of the State of registry to the State of the operator of the aircraft concerned. In April 1976 the Council of ICAO established an expert panel which prepared a report on the problems arising from the lease, charter and interchange of aircraft in international operations and explored alternative solutions to the problems. In spring 1977 a special sub-committee of the ICAO Legal Committee met to consider this matter.

#### F. *Transport by air-cushion vehicles*

55. Three UNIDROIT draft Conventions concerning the legal status of air-cushion vehicles, the draft Convention on the Registration and Nationality of Air-Cushion Vehicles, the draft Convention relating to the International Carriage of Passengers and their Luggage by Sea and by Inland Waterway in Air-Cushion Vehicles and the draft Convention on the Civil Liability of Owners of Air-Cushion Vehicles for Damage Caused to Third Parties, were transmitted to IMCO. Consideration of these draft Conventions is included in the work programme of the Legal Committee of IMCO.<sup>4</sup>

#### G. *Multimodal transport*

56. The Central Office for International Transport by Rail (OCTI) has noted that harmonization of the transport laws governing the various modes of international transport would be helpful to the development of an international legal régime concerning multimodal transport. In 1980, the 8th Ordinary Revision Conference, which will review the CIM and CIV Conventions, will have the opportunity to consider the possible harmonization of these transport laws.

57. In July 1975 ICC revised its Uniform Rules for a Combined Transport Document, mainly in order to make liability for delay in delivery subject to the "network" system. Since that time these Uniform Rules have been implemented widely. The ICC has been working with several international trade organizations on the alignment of the combined transport documents issued by these organizations with the ICC Uniform Rules. The ICC already approved a combined

transport document called "COMBIDOC", issued jointly by the Baltic and International Maritime Conference (BIMCO) and the International Shipowners Association (INSA).

58. An UNCTAD Intergovernmental Preparatory Group is charged with the elaboration of a preliminary draft of a Convention on International Multimodal Transport. To assist the Intergovernmental Preparatory Group, the UNCTAD secretariat has prepared studies on various economic, social, technical and financial aspects of multimodal transport operations. In February 1977 the Group tentatively adopted a number of draft provisions on the scope of application of the draft Convention and of the multimodal transport document. In November 1977 the Group adopted, also tentatively, draft provisions on customs questions related to international intermodal transport and considered the principles that should govern consultations between providers and users of multimodal transport services.

59. In Autumn 1978 the UNCTAD Intergovernmental Preparatory Group is expected to consider alternative draft provisions prepared by the UNCTAD secretariat on the liability of multimodal transport operator and on claims and actions arising under the draft Convention. At that time the Group will also examine, *inter alia*, questions concerning general average, conflicts with other conventions, the scope of application and the final clauses of the draft Convention. It is expected that the General Assembly will convene in 1979 a diplomatic conference to consider the adoption of a Convention on International Multimodal Transport.

60. ICS sends representatives to the sessions of the UNCTAD Intergovernmental Preparatory Group on a Convention on International Multimodal Transport and assists in the intersessional work of preparing papers on issues under review by the Preparatory Group.

### V. INTERNATIONAL COMMERCIAL ARBITRATION

#### A. *Activities concerning specialized types of arbitration*

61. It is expected that, during 1978, the United Nations ECE Arbitration Rules for Certain Categories of Perishable Agricultural Products (AGRI/WP.1/GE.7/60) will be adopted by the Committee on Agricultural Problems ECE. In accordance with these rules, the Committee on Agricultural Problems will then cast lots to decide whether the presidency of the United Nations ECE Chamber for Arbitral Procedure in Agriculture, which is to be held alternatively for two-year terms by persons representing the designated trade groups in Eastern Europe and the corresponding groups in Western Europe, should be held by a person from Eastern or from Western Europe for the initial two-year period. The members of the United Nations/ECE Chamber for Arbitral Procedure in Agriculture will be elected by the ECE Working Party on Standardization of Perishable Produce at its annual session in July 1978 and the rules will then become operational.

62. The International Centre for Technical Expertise, established by ICC in December 1976, provides the parties to a contract with the means of calling upon the assistance of an expert when disagreements of a technical nature occur concerning the performance of the contract. The ICC Rules for Technical Expertise

<sup>4</sup> For the comment of the Working Party on Inland Water Transport of ECE on these three UNIDROIT draft conventions, see para. 43 above (IV. International transport; B. *Transport by inland waterway*).

contain specific procedures for choosing experts and establish the conditions under which experts may hear disputes. For parties wishing to have the possibility of utilizing the services of the Centre, ICC recommends a model clause that can be included in international contracts.

63. ICC, in close co-operation with CMI, is studying the possibility of establishing a joint centre for international maritime arbitration.

64. ICC has noted that the ICC Rules of Arbitration are too general for use in the settlement of disputes that are on the borderline between arbitration and joint power of attorney. This occurs where arbitrators are to serve as a regulating influence during the performance of long-term contracts, either by filling gaps in such contracts or by adapting the contracts to changed circumstances. To meet this particular need, the ICC Working Party on Specialized Types of Arbitration drafted a set of Rules on the Regulation of Contractual Relations.

#### B. *Information on arbitration laws and practice*

65. ICC has recognized that the persons involved in international trade need easily accessible and reliable sources of knowledge concerning the arbitration laws in various countries. ICC is therefore preparing a new publication on the law relating to arbitration throughout the world, replacing the outdated document 11 that had been published in 1955.

66. The ICC/UNCITRAL Consultative Committee will undertake a study of the difficulties arising from article V (1) (e) of the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards and of the problems connected with applications to set aside arbitral awards made in the countries where the awards were rendered.

67. ICC conducts a series of arbitration seminars, designed to inform international and company lawyers about international arbitration techniques. In addition, these seminars provide a forum where specialists from all over the world and ICC can exchange ideas and thus contribute to the continuous evolution of international arbitration techniques.

68. While preserving the confidentiality of arbitral awards rendered by the ICC Court of Arbitration, the International Chamber of Commerce is preparing a compilation of excerpts from awards which contain legal solutions of general interest. This will be a semi-annual publication by ICC.

69. As of 1 January 1978, IACAC has adopted as its Rules the UNCITRAL Arbitration Rules, amended however to allow for administration of the arbitration proceedings by IACAC. IACAC is named in the 1975 Inter-American Convention on International Commercial Arbitration as the administering institution for international commercial arbitration in the Western hemisphere in all cases in which the parties have not provided otherwise.

70. For the work of ICC on drafting guidelines for use by arbitrators in determining the law applicable to the substance of a dispute, see paragraph 77 below (VII. Private international law; A. Arbitration).

#### C. *Furtherance of arbitration on the regional level*

71. AALCC is in the process of establishing re-

gional arbitration centres in Cairo, Kuala Lumpur and in either West or East Africa. Member Governments of AALCC were invited to avail themselves of the facilities provided by these centres.

72. The International Trade Division of ESCAP is now engaged in identifying possible areas of co-operation with both international and national organizations with a view to the harmonization and unification, on the regional level, of the law applicable to international commercial arbitration.

### VI. PRODUCTS LIABILITY

73. The Commission of the European Communities has commenced work on the harmonization of the laws of member States of EEC concerning liability for damage resulting from the use of defective products (products liability). A draft directive on the subject was submitted by the Commission to the Council of Ministers of the EEC on 9 July 1976.

74. The European Convention on the Liability of Producers for Bodily Injury or Death, prepared by a committee of experts under the auspices of the Council of Europe, was opened for signature on 27 January 1977. The Convention has so far been signed by Austria, Belgium, France and Luxembourg and it will enter into force when ratified by three member States of the Council of Europe.

75. The Working Party on Road Transport of the United Nations Economic Commission for Europe is interested in the possible elaboration of an international instrument concerning third party liability for damage caused by the carriage of hazardous substances and has invited UNIDROIT to give a higher priority to the study of this subject.

76. The Legal Committee of ICAO is considering the preparation of a new international instrument on the question of liability for damage caused by noise and sonic boom.

### VII. PRIVATE INTERNATIONAL LAW

#### A. *Arbitration*

77. Within ICC, the Working Party on Conflict of Laws established by the Commission on International Commercial Practice is engaged in the drafting of guidelines to be used by arbitrators when determining the law applicable to the merits of the dispute.

#### B. *International sale of goods*

78. The Hague Conference is considering the preparation of a Protocol to the 1955 Convention on the Law Applicable to International Sale of Goods, that would either permit States Parties to that Convention not to apply it to consumer sales or would exclude consumer sales from the scope of application of that Convention. It is expected that a draft Protocol to the 1955 Convention will be submitted to the fourteenth session of the Hague Conference in 1980.

#### C. *International payments*

79. The Hague Conference is considering the possibility of preparing an international convention on the law applicable to negotiable instruments. The Permanent Bureau of the Hague Conference will take into

account, in the course of preparing preliminary studies on the conflict of laws concerning negotiable instruments, the work of other organizations on the subject, particularly that of UNCITRAL.

#### D. Licensing agreements and know-how

80. The Hague Conference is examining the possibility of drafting an international convention on the law applicable to licensing agreements and know-how. In this work the Hague Conference is in contact with other interested international organizations, particularly with WIPO. The Permanent Bureau of the Hague Conference is now engaged in the collection of information and documentation on the subject.

### VIII. AUTOMATIC DATA PROCESSING

81. Within ECE, an informal team established by the Working Party on Facilitation of International Trade Procedures is examining the elimination of legal obstacles to the introduction of electronic data processing systems for the transport of goods (TRADE/WP.4/GE.2/R.103). This team is also engaged in analysing the replies to a request by the Customs Co-operation Council for information on national customs requirements in respect of facsimile signatures on documents (TRADE/WP.4/GE.2/R.81).

82. In the view of ICC, the growing reliance on automatic data processing in international commercial transactions has created a situation in which uniform rules standardizing international practice which apply only to transactions that involve actual paper documents are no longer sufficient. Developments in transport technology, such as high speed aircraft and containerized transport of cargo, call for a matching acceleration in data flow. The long-term solution for speeding up the data flow in international trade calls for advanced automatic data processing techniques. Such techniques may range from simply transmitting data by telex to the sophisticated use of computers. Automatic data processing can replace—and in some areas is already replacing—the traditional documentary flow of information in international trade. However, at present automatic data processing cannot satisfy all the requirements for data flow that exist either under international conventions, under various national laws or under international commercial and financial practices. Problems arise, e.g. when the data flow is necessary for authentication to meet legal or commercial requirements, for controlling the transfer of ownership of goods, or for determining whether payment is justified. The ICC has set up a Working Party charged with identifying the banking and commercial problems involved in the use of automatic data processing in international trade, working in close co-operation with interested intergovernmental organizations, particularly ECE and UNCITRAL.

83. For the work of WIPO on the protection of computer programmes and computer software, see A/CN.9/129/Add.1 (Yearbook . . . 1977, part two, VI, B), paragraphs 25-26.<sup>5</sup>

<sup>5</sup> The information furnished by the secretariat of WIPO in 1977 regarding the current work of that organization in the field of international trade law was reproduced *verbatim* in document A/CN.9/129/Add.1. In 1978 the secretariat of WIPO advised the United Nations Secretariat that the description of the current work of WIPO given in A/CN.9/129/Add.1 remained accurate and therefore needed no bringing up to date.

## IX. INDUSTRIAL AND INTELLECTUAL PROPERTY LAW

### A. Industrial property

#### (a) Industrial property in general

84. For the work of WIPO on revision of the Paris Convention for the Protection of Industrial Property, see A/CN.9/129/Add.1, paragraphs 4-5.

85. For the work of WIPO regarding the implementation of international treaties in the field of industrial property, see *ibid.*, paragraph 11.

86. For the work of WIPO aimed at the promotion of domestic inventive and innovative capacity, see *ibid.*, paragraph 48.

87. The Committee on the Development of Trade of ECE is engaged in drawing up a manual on licensing procedures and related aspects of technology transfer. An *ad hoc* meeting is scheduled to take place in November 1978 to consider information on the practice at the national level in the member States of ECE.

88. For the work of the Hague Conference on the law applicable to licensing agreements and know-how, see paragraph 80 above (VII. Private international law; D. *Licensing agreements and know-how*).

#### (b) Industrial designs

89. For the work of WIPO concerning regulations for implementation of the Hague Agreement and the 1975 Geneva Protocol thereto, see A/CN.9/129/Add.1, paragraph 9.

#### (c) Standard classification, forms and documentation for industrial property (work by WIPO)

90. For the work of WIPO on standard documentation and forms, administrative instructions, and international classifications, see *ibid.*, paragraphs 12-17.

#### (d) Legal publications and legislative texts (work by WIPO)

91. For the work of WIPO concerning the publication of records of diplomatic conferences, see *ibid.*, paragraphs 50-51.

92. For the work of WIPO concerning the publication of legislative texts on industrial property, trademarks and copyright, see *ibid.*, paragraphs 52-55.

93. For other legal publications by WIPO, such as periodic reviews, authentic texts of international treaties, and various surveys and studies, see *ibid.*, paragraphs 28-29, 49, 56-57.

### B. Copyright

94. Concerning the servicing by WIPO of the meetings of various intergovernmental bodies established under international treaties in the field of copyright, see *ibid.*, paragraphs 3, 22-24.

### C. Patents

95. For the work of WIPO aimed at the establishment of a system for the international recording of scientific discoveries, see *ibid.*, paragraph 1.

96. For information on the 1977 Diplomatic Conference for the Adoption of a Treaty on the International

Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure, see *ibid.*, paragraph 2.

97. The heads of the patent offices of the member States of CMEA completed in 1977 the preparation of a standard bilateral agreement on patent retrieval and examination of applications for patents within the framework of scientific and technological co-operation among the member States of CMEA. Also in 1977, the intergovernmental agreement on mutual acceptance of author's certificates and other documents protecting patents and inventions, which had been signed on 18 December 1976, came into force.

98. Work is continuing with CMEA on an intergovernmental agreement establishing a single unified document designed to protect inventions.

#### D. Trademarks

99. For the work of WIPO on revision of the Nice Agreement concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks, see A/CN.9/129/Add.1, paragraph 6. For the work of WIPO aimed at revision of other international agreements dealing with trademarks, see *ibid.*, paragraphs 7-8.

100. For information on the trademark searches conducted by WIPO with respect to common names for pesticides proposed by the International Organization for Standardization, see *ibid.*, paragraph 19.

101. The Commission of the European Communities is engaged in work aimed at the creation of a community-wide law concerning trademarks for products and for services. In particular, the Commission is preparing a draft regulation relating to the establishment of a community trademark.

#### E. New varieties of plants (work by WIPO)

102. For the work of WIPO relating to the International Convention for Protection of New Varieties of Plants, see A/CN.9/129/Add.1, paragraphs 10, 20-21.

#### F. Industrial and intellectual property matters of particular relevance to developing countries (work by WIPO)

##### (a) Model laws for developing countries

103. For the work of WIPO on model laws, intended primarily for developing countries, in the field of industrial and intellectual property, see A/CN.9/129/Add.1, paragraphs 30-41.

##### (b) Glossaries and manuals for developing countries

104. For information on the preparation by WIPO of glossaries and manuals for developing countries in the fields of industrial property and copyright, see *ibid.*, paragraphs 46-47.

##### (c) Guidelines on industrial property utilization (work by WIPO)

105. For the work of WIPO on a Guide on the Legal Aspects of the Negotiation and Preparation of Industrial Property Licenses and Technology Transfer Agreements Appropriate to the Needs of Developing Countries, see *ibid.*, paragraphs 42-43.

106. For information concerning a study by WIPO of the problems of national publication and dissemination of foreign works protected by copyright, see *ibid.*, paragraph 44.

107. For the preparation by WIPO of a commentary to the Berne Convention on the Protection of Literary and Artistic Works, see *ibid.*, paragraph 45.

##### (d) Training and assistance in the field of industrial and intellectual property

108. WIPO has fulfilled requests from developing countries for technical co-operation relating to revision of industrial property or copyright legislation, modernization of industrial property or copyright administrations and training of staff of such administrations. WIPO has also provided technical assistance to regional organizations such as the African Intellectual Property Organization.

109. WIPO has also provided a number of traineeships and conducted regional seminars and training courses in developing countries.

## X. OTHER TOPICS OF INTERNATIONAL TRADE LAW

### A. Law of agency

110. The Commission of the European Communities has commenced work toward harmonization of the laws of member States of EEC concerning the practice of the profession of "commercial agent". A draft directive on the subject was prepared and submitted by the Commission to the Council of Ministers of EEC in December 1976.

111. In December 1976 Romania, informed UNIDROIT of its readiness to host a diplomatic conference that would consider the adoption of the draft Convention providing a Uniform Law on Agency of an International Character in the Sale and Purchase of Goods which had been completed by a Committee of Government Experts under UNIDROIT auspices. UNIDROIT has accepted the invitation extended by the Government of Romania and the diplomatic conference will be held in Bucharest, Romania, in May-June 1979.

### B. Company law

112. The Commission of the European Communities will continue in 1978 its work directed at the harmonization of the company laws of member States of EEC. The Commission will be engaged in the preparation of draft directives on the merger of companies (*sociétés anonymes*), the contents and dissemination of prospectus containing stock offerings, and the consolidated accounting by groups of related companies (*comptes du groupe*). In addition, an *ad hoc* working group of the Council of Ministers of the EEC will examine the draft Statute for European Companies (*le Statut des sociétés anonymes européennes*), which is aimed at the creation of a community-wide law on companies (*un droit communautaire des sociétés anonymes*).

### C. Consumer protection

113. On 16 November 1976 the Committee of Ministers of the Council of Europe adopted resolution (76) 47 concerning unjust clauses in contracts con-

cluded by consumers. The resolution, *inter alia*, recommends that States create effective legal instruments to protect consumers against unjust clauses in contracts relating to the furnishing of goods and services, particularly in contracts concluded on the basis of standard contract forms or under circumstances where the consumer had no real opportunity to negotiate the terms of the contract. The Council of Europe is now considering the role of public and private organizations in defending the collective interests of consumers by judicial and other means.

114. The Commission of the European Communities is continuing its work on a programme of consumer protection, which includes the subject of consumer credit. The Commission has prepared and submitted to the Council of Ministers of EEC as at 1 December 1977 five draft directives concerning the protection of consumers.

115. For information concerning an examination by WIPO of unfair competition, particularly as it affects the interests of consumers, see A/CN.9/129/Add.1, paragraph 27.

#### D. Acquisition of movable goods

116. UNIDROIT is engaged in negotiations with a view to convening a diplomatic conference that would consider the adoption of the draft Convention Providing a Uniform Law on the Acquisition in Good Faith of Corporeal Movables which had been prepared by UNIDROIT.

#### E. Law of evidence

117. The European Committee on Legal Cooperation of the Council of Europe has recommended that in 1978 consideration be given to the effects on the law of evidence of the new document-reproduction and information-storage procedures. A committee of experts will meet in 1978 to consider the preparation of one or more international instruments on the subject.

#### F. International factoring

118. A restricted exploratory group established by UNIDROIT considered in February 1978 the necessity or usefulness of preparing uniform rules for the contract of factoring. The exploratory group was of the view that a uniform law applicable to international factoring should be drawn up. The conclusions of the exploratory group will be placed before the Governing Council of UNIDROIT, which will decide upon the method of future work on the subject.

#### G. International leasing

119. In March 1977 a working group established by UNIDROIT considered the feasibility of preparing uniform rules for contracts of leasing, in the light of the fiscal aspects of such contracts and their relationship with the law of security interests. Based on a recommendation by this working group, UNIDROIT decided in May 1977 to set up a Study Group charged with the preparation of uniform rules for the contract of leasing. At its first session in Rome, 17-19 November 1977, the Study Group decided to concentrate on the form of equipment leasing generally referred to as financial leasing and drew up a provisional draft definition of the

financial leasing operation. For the next session of the Study Group, scheduled for autumn 1978, the secretariat of UNIDROIT will prepare a draft set of rules on various aspects of the financial leasing operation.

#### H. Law relating to pipelines

120. UNIDROIT circulated a questionnaire to Governments to ascertain their interest in unifying or harmonizing certain aspects of the law relating to pipelines. The UNIDROIT secretariat has prepared an analysis of the replies and the analysis will be placed before the Governing Council of UNIDROIT.

#### I. Warehousing

121. Dr. Hill (United Kingdom) prepared a preliminary report on the warehousing contract for UNIDROIT. In the light of observations by Governments and interested organizations on this report, UNIDROIT established a Study Group which will consider the drawing up of uniform provisions concerning the warehousing contract.

### XI. FACILITATION OF INTERNATIONAL TRADE

#### A. Co-operation for expansion of international trade

122. Within CMEA work is continuing on the preparation of a draft model agreement and statute for an international economic union and of draft regulations concerning the working conditions of the employees of this economic union.

123. Within ECE, an informal team established by the Working Party on Facilitation of International Trade Procedures is examining the legal problems of trade facilitation (TRADE/WP.4/GE.2/R.102).

124. Within ECE, in February 1978 the Working Party on Facilitation of International Trade Procedures agreed on recommendations concerning documentation for dangerous goods and the content and type of information that should appear in documents for the transport of dangerous goods. The Working Group also agreed on recommendations concerning documentation practices and techniques and developed a form, aligned with the United Nations/ECE Layout Key, for use when special forms are required in the transport of dangerous goods (TRADE/WP.4/GD.2/R.99).

125. The Group of Experts on Customs Questions affecting Transport, a subsidiary body of the Inland Transport Committee of ECE, is continuing to consider the extension of the territorial scope of application of the Customs Convention on the International Transport of Goods under Cover of TIR Carnets (TIR Convention), including the possibility of establishing a link among the different existing customs transit systems. The ECE Committee on Inland Transport, through its subsidiary bodies, is studying the question of harmonizing the conditions for Customs and other controls at frontiers, including the possibility of an international agreement on the subject.

126. At its thirty-fourth session (7-17 March 1978), ESCAP decided to maintain close contacts both with international and national organizations dealing with matters related to international trade law. ESCAP intends to co-operate with such organizations at the regional level in order to identify appropriate areas for

co-operation. In addition, the Transport and Communications Division of ESCAP is preparing documents detailing the main points of important international instruments and the steps States need to take to implement these international instruments at the national level.

127. The Joint FAO/WHO Food Standards Programme is intended to protect consumers against possible health hazards in food, to ensure fair practices in the food trade and to facilitate international trade in food. These international standards reduce the technical, non-tariff obstacles to international trade in food and can be used as a means of promoting the food industry of developing countries by increasing their ability to export to countries with detailed legislation on food standards.

128. ICS is actively involved in the work of ECE on trade facilitation. ICS regularly submits papers and sends representatives to sessions of the ECE Working Party on the Facilitation of International Trade Procedures, the ECE Group on Automatic Data Processing and Coding and the ECE Group on Data Requirements and Documentation. The ECE Working Party on the Facilitation of International Trade Procedures has issued several ECE Recommendations which the ICS secretariat has promoted among its members.

129. An *Ad Hoc* Group of Experts established by UNCTAD is engaged in formulating a set of equitable, multilaterally agreed-upon principles and rules for the control of restrictive business practices that have adverse effects on international trade, particularly on trade by developing countries. The *Ad Hoc* Group is scheduled to hold two sessions during 1978. Furthermore, the Trade and Development Board of UNCTAD was requested to facilitate institutional arrangements with regard to the negotiations on multilaterally agreed equitable principles and rules concerning restrictive business practices.

130. An *Ad Hoc* Group of Experts established by UNCTAD is engaged in the elaboration of a model law or laws on restrictive business practices in order to assist developing countries in devising appropriate legislation on the subject.

131. UNIDO is concerned with the general area of international contractual arrangements in the industrial development field, with particular reference to transfers of technology, sale or leasing of industrial equipment and comprehensive industrial co-operation agreements. The work by UNIDO involves both sectoral consultations and global studies.

132. UNIDO and UNCTAD collaborate in the area of trade and trade-related aspects of industrial development. In that context UNIDO participates in the activities of UNCTAD concerning law and contractual practices.

#### B. *Facilitation of co-operation in production*

133. The Legal Conference of representatives of member States of CMEA is continuing its work aimed at assisting the development of general terms of specialization and co-operation in production by the CMEA member States.

134. In 1977, at a meeting of the representatives on

legal affairs of the member States of CMEA, draft model treaties and agreements were prepared on the establishment of an international scientific and technological organization and of a joint laboratory supported by the CMEA member States.

#### C. *Transfer of technology*

135. The international transfer of technology is included in the work programme of AALCC. At the 1979 session of AALCC there will be a preliminary exchange of views, aimed at identifying the relevant issues on the basis of the work of UNCTAD on a Code of Conduct for the Transfer of Technology.

#### D. *Economic offences*

136. AALCC has included in its work programme the subject of reciprocal assistance in regard to prevention, investigation and prosecution of economic offences, with a view to preparing a draft convention. Information on the subject is now being collected from Governments on the basis of a questionnaire. A meeting of a special working group will be convened when sufficient information becomes available from Governments in the AALCC region.

#### E. *Elimination of double taxation*

137. To promote the future development of economic, scientific, technological and cultural co-operation between member States of CMEA, its Standing Commission on Monetary and Financial Questions prepared an intergovernmental agreement on the elimination of double income and property taxation of physical persons. The CMEA member States signed this Agreement on 27 May 1977. An agreement to eliminate double income and property taxation of juridical persons of the CMEA member States is now under preparation.

#### F. *Information on international trade law developments*

138. The Committee on the Development of Trade of ECE is continuing its examination of the feasibility of a possible future multilateral system of notification of laws and regulations concerning foreign trade and changes therein (MUNOSYST). In 1978 the Committee will continue the experiment initiated in 1977 of notifications, covering a limited scope of activities, by those Governments that offered to send such notifications. The ECE secretariat has been requested to draw up and circulate a questionnaire aimed at identifying primary and secondary sources of information in member States of ECE. Based on the replies to the questionnaire and experience gained through the experimental voluntary notifications, the ECE secretariat will submit a further study on MUNOSYST to the twenty-seventh session of the Committee on the Development of Trade (November 1978).

139. The Trade Promotion Centre of the International Trade Division of ESCAP has been concerned with the dissemination, and training directed to explaining the existing law in the field of international trade.