

IV. NEW INTERNATIONAL ECONOMIC ORDER

Report of the Secretary-General: possible work programme of the Commission (A/CN.9/171)*

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Introduction

1. The General Assembly, in resolutions 3494 (XXX) of 15 December 1975, 31/99 of 15 December 1976 and 32/145 of 16 December 1977, called on the Commission "to take account of the relevant provisions of the resolutions of the sixth and seventh special sessions of the Assembly that laid down the foundations of the new international economic order, bearing in mind the need for United Nations organs to participate in the implementation of those resolutions".

2. The Commission, in a decision taken at its eleventh session,¹ expressed the view that "in order to implement the mandate given to it by the General Assembly in the above resolutions, it (was) necessary ...

* 2 May 1979.

¹ Report of the United Nations Commission on International Trade Law on the work of its eleventh session, *Official Records of the General Assembly, Thirty-third Session, Supplement No. 17 (A/33/17)*, para. 71 (Yearbook ... 1978, part one, II, A).

to determine the legal implications of the new international economic order". By that decision, the Commission requested the Secretary-General to place before it at the present session a report setting forth

"subject-matters that are relevant in the context of the development of a new international economic order and that would be suitable for consideration by the Commission, accompanied, where appropriate, with background reports and recommendations as to the action that could be taken by the Commission;".

This report is submitted in compliance with that request.

3. In accordance with the Commission's request, the Secretary-General, by a note verbale dated 6 October 1978, invited Governments to submit their views and proposals as to subject-matters that are relevant in the context of the development of a new international economic order and that would be suitable for consideration by the Commission. As at 16 April 1979, 13 replies of Governments had been received.

4. The Commission, at its eleventh session, also established a working group but deferred the designation of the States members of that Group until its present session.

5. This report, divided in two chapters, is based on:

(a) The views expressed and proposals submitted at the eleventh session of the United Nations Commission on International Trade Law (UNCITRAL);

(b) The discussions in the Sixth Committee on the Commission's report on the work of its eleventh session, and

(c) The suggestions contained in the replies of Governments to the note verbale mentioned in paragraph 3.

6. Chapter I of the report follows the order of the Programme of Action on the Establishment of a New International Economic Order, which is contained in General Assembly resolution 3202 (S-VI). This, it is thought, facilitates the consideration of those aspects of the new international economic order which might have a legal bearing.

I. Review of subject-matters of possible relevance to international trade

A. GENERAL PRINCIPLES OF INTERNATIONAL ECONOMIC DEVELOPMENT

1. General principles

7. The resolutions of the sixth and seventh special sessions of the General Assembly and the Charter of Economic Rights and Duties of States set forth general principles which should govern international economic relations.² The General Assembly declared as the fundamental purpose of the Charter of Economic Rights and Duties of States that of promoting the establishment of the new international economic order, based on equity, sovereign equality, interdependence, common interest and co-operation among all States, irrespective of their economic and social systems.³

8. In respect of these general principles a proposal was submitted by the Philippines at the thirty-first session of the General Assembly, entitled "Draft convention on the principles and norms of international economic development law".⁴ At its thirty-third session, the General Assembly adopted a recommendation⁵ by the Sixth Committee to include in the provisional agenda of the thirty-fourth session (1979) an item entitled "Consolidation and progressive development of the principles and norms of international economic law relating in particular to the legal aspects of the new international economic order".⁶

² General Assembly resolution 3201 (S-VI), "Declaration on the Establishment of a New International Economic Order", para. 4.

³ General Assembly resolution 3281 (XXIX), "Charter of Economic Rights and Duties of States" (hereinafter referred to as the Charter), Preamble.

⁴ A/C.6/31/L.7.

⁵ *Official Records of the General Assembly, Thirty-third Session, Plenary Meetings*, 86th meeting, para. 64.

⁶ *Ibid.*, *Thirty-third Session, Annexes*, agenda item 123, document A/33/484, para. 5.

9. So far, the general principles of international economic law have been the subject of discussion mainly in the Sixth Committee. It was there stated that international law should be codified in such a way as to make it an instrument of justice in international relations by facilitating the regulation and development of equitable and mutually beneficial co-operation among States not only in the political and legal fields but also in trade and other economic matters.⁷ The fifth session of the United Nations Conference on Trade and Development (UNCTAD) will also deal with the further development of the rules and principles governing international economic relations.⁸

2. Non-discrimination

10. In the Sixth Committee, reference was made to the need for elimination of discrimination in international trade⁹ (Algeria, Chad, Cuba, Czechoslovakia, Democratic Yemen, Iran, Pakistan, Ukrainian SSR, USSR). The view was expressed that the application of discriminatory measures constituted one of the basic obstacles to the development of international trade. The Commission may recall that at its second session it considered but did not accept, a proposal that work should be started on the preparation of a draft convention on the elimination of discrimination in laws affecting international trade.

B. COMMODITIES

1. Commodity agreements

11. The Programme of Action on the Establishment of a New International Economic Order lists as one important measure the expeditious formulation of commodity agreements, where appropriate, in order to regulate and to stabilize the world markets for raw materials and primary commodities.¹⁰ The subject of commodity agreements was also included among the proposals of several Governments (Colombia, New Zealand, Togo) for the work of UNCITRAL.

12. In the view of one Government (New Zealand), the Commission's legal expertise might be of considerable value in facilitating the preparation, *inter alia*, of the draft of the Third International Cocoa Agreement, in the negotiating of an international arrangement to replace the International Wheat Agreement of 1971¹¹ and in the preparation of the draft International Rubber Agreement.

2. Producers' associations

13. According to the Programme of Action, all efforts should be made to facilitate the functioning of producers' associations, including their joint marketing arrangements.¹² In the course of the last 20 years about

⁷ A/33/419, report of the Sixth Committee.

⁸ General Assembly resolution 33/154, para. 3 (c).

⁹ See article 4 of the Charter.

¹⁰ General Assembly resolution 3202 (S-VI), "Programme of Action on the Establishment of a New International Economic Order", I, 3 (a) (iii). See also article 6 of the Charter.

¹¹ See also General Assembly resolution 33/156.

¹² General Assembly resolution 3202 (S-VI), I, 1 (c). See also article 5 of the Charter.

20 interregional and regional producers' associations have been created.¹³ Within the framework of work on economic co-operation among developing countries, UNCTAD has prepared two studies on the legal aspects of multinational marketing enterprises.¹⁴ This subject has also been proposed by Governments for the work of UNCITRAL (Colombia, Togo).

C. TRADE

1. Generalized system of preferences

14. According to General Assembly resolutions 3202 (S-VI)¹⁵ and 3362 (S-VII)¹⁶ a generalized system of preferences for their exports is of fundamental interest to developing countries.¹⁷ UNCTAD has set up a Special Committee on Preferences which has reviewed the existing arrangements for consultations on the system since 1973 and has made suggestions for the improvement of such procedures.¹⁸ Consultations on the system have also taken place within the framework of the General Agreement on Tariffs and Trade (GATT).¹⁹ Proposals for codification of a generalized system of preferences have been made in the Sixth Committee (Pakistan) and in reply to the note of the Secretary-General (Togo).

2. Most-favoured-nation treatment

15. Apart from, and without prejudice to, generalized non-discriminatory and non-reciprocal preferences in favour of developing countries, international trade should, according to article 26 of the Charter, be conducted on the basis of most-favoured-nation treatment.

16. The International Law Commission (ILC) included the most-favoured-nation clause in its programme of work in 1967, because it felt that clarification of its legal aspects might be of assistance to UNCITRAL. ILC has now elaborated a set of draft articles on most-favoured-nation clauses, which will be considered by the thirty-fifth session (1980) of the General Assembly.²⁰

3. Trade obstacles

17. The above-mentioned resolutions call for the progressive removal of tariff and non-tariff trade barriers and of restrictive business practices.²¹ This item has also been proposed for the work of UNCITRAL during the debate in the Sixth Committee (Nigeria) and by one Government (Togo) in its reply. The removal of

tariff and non-tariff barriers to trade is included in the programmes of work of UNCTAD and GATT as well as of the Economic Commission for Europe (ECE). In its resolution 33/196 on protectionism, the General Assembly urged the developed countries to eliminate speedily all forms of protectionist measures and practices against the exports of developing countries.

18. Within ECE, the Committee on the Development of Trade deals with trade obstacles of all kinds. ECE has published inventories of trade obstacles²² and encouraged practical action aiming at the reduction or progressive elimination of all kinds of obstacles to the development of trade.²³ Some countries have concluded bilateral agreements on the reciprocal elimination of obstacles to trade.²⁴

4. Restrictive business practices and unfair competition

19. As far as the elimination of restrictive business practices is concerned, the resolution of the seventh special session of the General Assembly called for a set of equitable principles and rules.²⁵ Within UNCTAD, a Group of Experts on Restrictive Business Practices has been established which has so far held five sessions.²⁶ As a result of the work of this Group a first draft of a model law or laws on restrictive business practices to assist developing countries in devising appropriate legislation has been prepared by the UNCTAD secretariat.²⁷ On the recommendation of the UNCTAD Trade and Development Board²⁸ the General Assembly decided to convene between September 1979 and April 1980 at Geneva a United Nations Conference on Restrictive Business Practices to negotiate and to adopt a set of multilaterally agreed equitable principles and rules for the control of restrictive business practices having adverse effects on international trade, particularly that of developing countries, and on the economic development of those countries.²⁹

20. Work on the limitation of restrictive business practices has been carried out also in connexion with the preparation of an international code on transfer of technology and a code of conduct of transnational corporations. Other organizations like the World Intellectual Property Organization (WIPO) and the United Nations Industrial Development Organization (UNIDO) are also dealing with the problem of restrictive business practices.

21. It has been proposed by one Government (Yugoslavia), that UNCITRAL should also take up this item. In the view of this Government, UNCITRAL should analyse whether all aspects of the problem of restrictive business practices have been included in the work done so far and should moreover function as a co-

¹³ See "Progress achieved by Governments in the implementation of the Charter of Economic Rights and Duties of States" (E/5999).

¹⁴ TD/B/C.7/28 and TD/B/C.7/30.

¹⁵ I, 3 (a) (x).

¹⁶ I, 8.

¹⁷ See also articles 18 and 19 of the Charter.

¹⁸ TD/B/713; see also decision 179 (XVIII) of the Trade and Development Board (*Official Records of the General Assembly, Thirty-third Session, Supplement No. 15 (A/33/15)*, vol. II, p. 157).

¹⁹ See also General Assembly resolution 33/199, "Multilateral trade negotiations".

²⁰ General Assembly resolution 33/139.

²¹ General Assembly resolutions 3202 (S-VI), I, 3 (a) (ii), and 3362 (S-VII), I, 8.

²² "Consolidated inventory of administrative restrictions in East-West trade" (TRADE/R.336); see also a note of the secretariat, TRADE/R.353.

²³ See article 14 of the Charter.

²⁴ This new type of agreement has been concluded by Finland and five socialist countries, see ECE/TRADE/128, p. 9.

²⁵ General Assembly resolution 3362 (S-VII), I, 10.

²⁶ See A/33/15, p. 80; see also TD/B/717 (TD/B/C.2/AC.6/10; TD/B/C.2/AC.6/13, TD/B/C.2/AC.6/18).

²⁷ TD/B/C.2/AC.6/16.

²⁸ General Assembly resolution 178 (XVIII).

²⁹ General Assembly resolution 33/153.

ordinating body which should ensure conformity between the various drafts.

22. Closely related with the problem of restrictive business practices are questions of unfair competition. The Programme of Action deals with them under a special aspect. It calls for efforts to eliminate such protective and other measures of state as constitute unfair competition.³⁰ So far, unfair competition is dealt with mainly in national legislation, while existing international conventions, which do not cover all aspects of the problem, are not adhered to by all States.

5. Code on international trade law

23. Trade obstacles in a wider sense also arise because of differences in the legal régime of international trade applied by the various countries. The General Assembly has time and again reaffirmed

"its conviction that the progressive harmonization and unification of international trade law, in reducing or removing legal obstacles to the flow of international trade, especially those affecting the developing countries, would significantly contribute to universal economic co-operation among all States on a basis of equality and to the elimination of discrimination in international trade and, thereby, to the well-being of all peoples".³¹

It is on this ground that the General Assembly justified the convening of a United Nations Conference on Contracts for the International Sale of Goods.³²

24. The preparation of a code of international trade law was proposed as a topic for the first programme of work of the Commission and was mentioned again as a possible subject for inclusion in the new work programme of UNCITRAL.

25. In support of the inclusion of this topic, it was noted that the current method of unifying special areas of trade law might eventually produce lack of harmony between the various instruments, both because the instruments might contain conflicting rules and because the same problems might be resolved differently in different instruments.

26. The importance of this topic was also stressed during the discussion in the Sixth Committee on the report of the eleventh session of the Commission (Brazil, Hungary, Iran). A unified international trade law free from any discrimination was called a vital necessity for all States (Afghanistan; similar views were expressed by Sierra Leone and Trinidad and Tobago).

27. In underlining the relation between the establishment of the new international economic order and the legal regulation of international trade, the view was expressed that the principles of the new international economic order should form the general part of a future code of international trade law (Poland).

28. The progressive codification of international trade law is included in the programme of work of the International Institute for the Unification of Private Law

³⁰ General Assembly resolution 3202 (S-VI), I, 2 (h).

³¹ General Assembly resolution 33/93.

³² A/CONF.97/2.

(UNIDROIT), which so far has drafted, within a proposed general part of a future code, the chapters on the formation and interpretation of contracts.³³

6. Uniform conflict of law rules

29. Another means of removing legal uncertainties is the elaboration of uniform conflict of law rules. This topic has been included, though without priority, into the new programme of work of the Commission.³⁴ Governments have, in their proposals, especially referred to questions of the applicable law in respect of the transfer of technology (New Zealand) and the activities of transnational corporations (Nigeria).

30. The Hague Conference on Private International Law has dealt with conflict of law rules regarding international sale of goods and other types of contracts. One Government (Senegal), in its reply, suggested that the Commission should, as it did in respect of the unification of substantive rules of law, also undertake work on uniform conflict of law rules for all international commercial contracts.

7. General conditions, standard clauses and model rules

31. In addition to the drafting of conventions and similar legal instruments, general conditions, standard clauses, and model rules for various types of contracts could be prepared; this would be of special interest to developing countries. The study of international contract practices has already been included into the programme of work of the Commission.³⁵

32. In so far as special contractual clauses are concerned, proposals have been made in respect of clauses concerning the effect of change of circumstances on contracts (Poland, Senegal), *force majeure* clauses (Poland, Senegal), clauses in respect of contractual compensation and contractual penalties (Poland), and good faith (Senegal).

33. Additional proposals have been made regarding the preparation of general terms of auctions (Poland) and the elaboration of a legal instrument guaranteeing rules of honest conduct in negotiations of trade contracts (Poland).

8. Arbitration

34. Another proposal in the context of the new international economic order deals with international arbitration, especially the composition of the arbitration court and the effects of the arbitral awards (Senegal). Arbitration has already been included into the programme of work of UNCITRAL as a matter of priority.³⁶

9. Recognition and enforcement of judgements

35. In reply to the note of the Secretary-General it has been proposed that the Commission study questions

³³ UNIDROIT 1979, Study L, document 15.

³⁴ A/33/17, paras. 41 and 46.

³⁵ See A/CN.9/159 to 161 (reproduced in this volume, part two, I, A to C), and 162.

³⁶ See A/CN.9/166 to 170 (reproduced in this volume, part two, III).

related to the recognition and the enforcement of judgments in commercial matters (Madagascar). This topic is included in the list of possible items for the programme of work of the Commission,⁸⁷ but was not given priority.

D. MONETARY SYSTEM

1. Monetary system in general

36. The Programme of Action attaches great importance to the international monetary system and to the financing of the development of developing countries. Related subjects have been proposed for the work of the Commission by some Governments (Colombia, Togo). These proposals include:

The renegotiation of debts of developing countries;⁸⁸

Measures against the impact of the inflation on the economies of developing countries;⁸⁹

Measures to eliminate the instability of the international monetary system;⁹⁰

The maintenance of the real value of the financial resources of the developing countries.

2. Exchange rates

37. As far as the uncertainty of exchange rates is concerned, UNCITRAL has taken up this matter in the context of the contractual relations of commercial parties.⁴¹

3. Tax treaties

38. In this context it may be mentioned that another legal aspect of the international financial relations has been dealt with by a group of experts on tax treaties⁴² between developed and developing countries,⁴³ and that a model bilateral convention for the avoidance of double taxation and the prevention of tax evasion is under preparation.⁴⁴

E. INDUSTRIALIZATION

1. Investment law

39. The Programme of Action on the Establishment of a New International Economic Order asks for all efforts on the part of the developed countries to encourage investors to finance industrial production projects, particularly export-oriented production, in developing countries, in agreement with the latter and

within the context of their laws and regulations.⁴⁵ It has been proposed by one Government (Togo) that UNCITRAL should deal with the industrial development of developing countries.

2. Investment contracts

40. Investment itself, the importation and installation of industrial units require various commercial contracts, most of which have not been the subject of appropriate legal regulation, whether on the national or international level. To assist developing countries in this field, UNIDO has prepared various manuals and guidelines.⁴⁶ ECE drafted guides⁴⁷ and general conditions⁴⁸ which could be used by developing countries.

41. In the view of one Government (Yugoslavia), the establishment of uniform rules for consulting contracts⁴⁹ and engineering contracts would constitute a significant contribution to the regulation of this important matter, since these types of contracts are insufficiently regulated.

3. Economic co-operation agreements

42. The setting up of new industrial capacities including raw materials and commodity-transforming facilities in the developing countries requires a close co-operation between these countries and the developed countries, as well as among developing countries themselves.⁵⁰ International economic co-operation will be a major item on the agenda for the special session of the General Assembly in 1980.⁵¹

43. One Government (Czechoslovakia) has proposed to regulate, perhaps in the form of a convention, the obligation of the States to co-operate mutually in their international economic relations.⁵² The co-operation between States was also proposed by another Government (Togo).

44. In its resolution entitled "Development and international economic co-operation", the seventh special session of the General Assembly entrusted UNIDO, in consultation with UNCTAD, with the work on a general

⁴⁵ General Assembly resolution 3202 (S-VI), III (b). Article 2, para. 2 (a), of the Charter provides that each State has the right to regulate and exercise authority over *foreign* investment within its national jurisdiction in accordance with its laws and regulations and in conformity with its national objectives and priorities and that no State shall be compelled to grant preferential treatment to foreign investment.

⁴⁶ "A guide to industrial purchasing" (ID/82); "Subcontracting for modernizing economies" (ID/129); "Guidelines for contracting for industrial projects in developing countries" (ID/149).

⁴⁷ "Guide on drawing up contracts for large industrial works" (ECE/TRADE/117).

⁴⁸ General Conditions for the Supply of and Plant Machinery for Export, No. 188; General Conditions for the Supply and Erection of Plant and Machinery for Import and Export, No. 188A; Additional Clauses for Supervision of Erection of Plant and Machinery Abroad, No. 188B; General Conditions for the Erection of Plant and Machinery Abroad, No. 188D.

⁴⁹ See also ID/3/Rev.1, "Manual on the use of consultants in developing countries".

⁵⁰ The United Nations Conference on Technical Co-operation among Developing Countries was held at Buenos Aires in 1978; see also General Assembly resolution 33/134.

⁵¹ General Assembly resolution 33/198.

⁵² The duty of States to co-operate is included in articles 7, 8 and 9 of the Charter.

⁸⁷ A/33/17, para. 42.

⁸⁸ See also General Assembly resolution 33/159, "Debt problems of the developing countries".

⁸⁹ See also General Assembly resolution 33/155, "Effects of the world inflationary phenomenon on the development process".

⁹⁰ This problem is dealt with by the International Monetary Fund.

⁴¹ See the study on clauses protecting parties against the effects of currency fluctuations (A/CN.9/164; reproduced in this volume, part two, I, D).

⁴² The work of the group of experts on tax treaties is also relevant to the formulation of a code of conduct for transnational corporations; see E/C.10/AC.2/10.

⁴³ See ST/ESA/11, "Guidelines for tax treaties between developed and developing countries".

⁴⁴ E/1978/36.

set of guidelines for bilateral industrial co-operation.⁵⁸ Both secretariats have dealt jointly with trade and trade-related aspects of industrial collaboration arrangements.⁵⁴ UNCTAD has emphasized the role of inter-governmental framework agreements in promoting industrial collaboration arrangements,⁵⁵ whereas UNIDO has examined the ways in which the instrument of inter-governmental agreements might be used as a framework for international industrial co-operation.⁵⁶

45. On a regional level, the Committee for Trade and Development of ECE has analysed co-operation and co-operation agreements for several years⁵⁷ and keeps a register of trade and co-operation agreements.⁵⁸

4. *Contracts on industrial co-operation*

46. The Committee for Trade and Development of ECE has formulated a guide on drawing up international contracts on industrial co-operation.⁵⁹ This guide is mainly, but not exclusively, concerned with co-operation arrangements between socialist and capitalist countries in Europe.

47. UNIDO has dealt with another type of contract which is used in the context of industrialization and investment, i.e., the contract to set up joint ventures.⁶⁰

F. TRANSFER OF TECHNOLOGY

1. *Importance of technology*

48. The transfer of technology has been singled out in the Programme of Action as an especially important item. It was advocated that not only an international code of conduct for the transfer of technology be formulated but also that commercial practices governing transfer of technology be adapted to the requirements of the developing countries.⁶¹ It may be noted that the resolution of the seventh special session contains a chapter on science and technology.⁶²

49. An over-all review of the application of science and technology in the developing countries and the international co-operation in this field will be undertaken by the United Nations Conference on Science and Technology for Development which will be convened in Vienna from 20 to 31 August 1979.⁶³

50. Questions of transfer of technology are also on the agenda of the third General Conference of UNIDO, to be convened at New Delhi from 21 January to 8 February 1980. Item 5 (b) (iii) of this agenda is formulated

⁵⁸ General Assembly resolution 3362 (S-VII), IV, 7.

⁵⁴ TD/B/C.2/188/Rev.1.

⁵⁵ UNCTAD/ST/MD/12, TD/B/C.2/179.

⁵⁶ ID/B/C.3/68.

⁵⁷ "Analytical report on industrial co-operation among ECE countries" (E/ECE/844/Rev.1).

⁵⁸ TRADE/R.334/Rev.2.

⁵⁹ ECE/TRADE/124.

⁶⁰ "Manual on the establishment of industrial joint-venture agreements in developing countries" (ID/68).

⁶¹ General Assembly resolution 3202 (S-VI), IV (a) and (d).

⁶² General Assembly resolution 3362 (S-VII), III.

⁶³ In this connexion, see especially A/CONF.81/PC.19, "Overview of activities of organs, organizations and programmes of the United Nations system", and A/CONF.81/PC.21, "Preliminary draft programme of action, target area III: transfer of technology for the benefit of development".

as "International co-operation in the field of transfer and development of industrial technologies with a view to increasing the technological capabilities of the developing countries".⁶⁴

2. *Code of conduct for the transfer of technology*

51. Several Governments, in their proposals for the work of UNCITRAL, have referred to the transfer of technology (Chad, Colombia, New Zealand, Togo, Yugoslavia). In the view of one Government (New Zealand), UNCITRAL should consider the code of conduct for the transfer of technology in relation to the most appropriate applicable law and to the settlement of disputes. Another Government (Yugoslavia) stresses the need of co-ordination in this field because several bodies currently deal with the transfer of technology.

52. Work on the code is being carried out in the United Nations Conference on an International Code of Conduct on the Transfer of Technology, which held its first session⁶⁵ from 16 October to 11 November 1978, on the basis of preparatory work by UNCTAD.⁶⁶ A resumed session took place during the first quarter of 1979. There will be a subsequent session if necessary.⁶⁷ Transfer of technology has been considered also in connexion with the activities of multinational corporations.⁶⁸

3. *Contracts for the transfer of technology*

53. The transfer of technology was one of the subjects suggested for examination by the Commission.⁶⁹ Apart from the work on an international code of conduct on the transfer of technology, UNCITRAL, in the view of one Government (Yugoslavia), should elaborate general terms or a standard contract on the transfer of technology among industrial and developing countries.

54. So far there exists no international unified law on licensing contracts (patents, trade marks, know-how) and most national legal systems do not regulate these contracts adequately. There are, however, studies, manuals and guidelines prepared by UNCTAD,⁷⁰ UNIDO,⁷¹ WIPO,⁷² and ECE.⁷³

⁶⁴ General Assembly resolution 33/77.

⁶⁵ TD/CODE TOT/10, report; TD/CODE TOT/9, draft code.

⁶⁶ TD/CODE TOT/1 and 4.

⁶⁷ General Assembly resolution 33/157.

⁶⁸ ST/ESA/12.

⁶⁹ A/33/17, para. 41, II (c), and para. 59.

⁷⁰ UNCTAD is preparing a handbook entitled "Transfer of technology"; see A/CONF.81/PC.19, p. 30.

⁷¹ See ID/98, "Guidelines for the acquisition of foreign technology in developing countries with special reference to technology licence agreements"; ID/187, "Development and transfer of technology series No. 1. National approaches to the acquisition of technology"; ID/189, "Development and transfer of technology series No. 2. UNIDO abstracts on technology transfer. Studies and reports on the development and transfer of technology (1970-1976)".

⁷² WIPO published a licensing guide for developing countries in 1977.

⁷³ ECE has elaborated a "Guide for use in drawing up contracts relating to the international transfer of know-how in the engineering industry" (TRADE/222/Rev.1); see also "Licensing and leasing" (TRADE/INF.2); further, ECE is preparing a manual on licensing procedures and related aspects of technology transfer (TRADE/R.374).

4. Industrial property rights

55. Some Governments (Colombia, Yugoslavia) have proposed that UNCITRAL deal with industrial property rights. In this field, UNCTAD has analysed the role of the patent system in the transfer of technology to developing countries⁷⁴ and WIPO has prepared various model laws for developing countries, notably on inventions, marks, trade names, acts of unfair competition, industrial designs, appellations of origin and indications of source.⁷⁵ Model laws for developing countries on inventions and know-how and on trade marks are to be issued by WIPO in 1979.⁷⁶

G. TRANSNATIONAL CORPORATIONS

1. Activities of transnational corporations

56. Chapter V of the Programme of Action deals with regulations of and control over the activities of transnational corporations.⁷⁷ In the course of discussions in the Sixth Committee (Colombia, Democratic Yemen, Kuwait, Nigeria, Syria, Yugoslavia), and in reply to the note of the Secretary-General (Colombia, Czechoslovakia, Poland, Senegal, Togo, Yugoslavia), many Governments have proposed that UNCITRAL should deal with transnational corporations.⁷⁸ It may be recalled that the past and current programmes of work of the Commission contain an item entitled "Multinational enterprises", but that the Commission did not accord priority to it.⁷⁹

57. It may be recalled that the Commission, at its eighth session, had before it a report of the Secretary-General⁸⁰ on multinational enterprises. The Commission decided to maintain this item on its agenda but not, for the time being, to undertake itself work on the subject.⁸¹ This decision was taken in view of the establishment by the Economic and Social Council of the Commission on Transnational Corporations and of the Information and Research Centre on Transnational Corporations.

58. The Commission on Transnational Corporations established an Intergovernmental Working Group on a Code of Conduct, which held seven sessions so far (the eighth session will be in May 1979) and which will forward a draft Code of Conduct on Transnational Corporations⁸² to that Commission. The Commission on Transnational Corporations will consider the work related to the formulation of a code of conduct at its fifth session in May 1979.⁸³

⁷⁴ TD/B/AC.11/19.

⁷⁵ These model laws are available in English, French and Spanish.

⁷⁶ A/CONF.81/PC/19, p. 27.

⁷⁷ See also ST/ESA/15, "Summary of the hearings before the Group of Eminent Persons to Study the Impact of Multinational Corporations on Development and on International Relations".

⁷⁸ See Article 2, para. 2 (b), of the Charter.

⁷⁹ A/33/17, para. 41, II (b), and para. 59.

⁸⁰ A/CN.9/104 (Yearbook . . . 1975, part two, VI).

⁸¹ UNCITRAL, report on the eighth session (A/10017), para. 94 (Yearbook . . . 1975, part one, II, A).

⁸² E/C.10/AC.2/8 and 9. The report of the latest session of the Intergovernmental Working Group is not yet available.

⁸³ E/C.10/44.

59. One Government (Yugoslavia) considers as a very significant question of the law of the new international economic order the legal status of branch offices of transnational corporations in developing countries relative to head offices.

2. Illicit payments

60. In the context of transnational corporations, the Economic and Social Council established the *Ad Hoc* Intergovernmental Working Group on the Problem of Corrupt Practices, and requested United Nations agencies and bodies, especially UNCITRAL, to render such assistance to the *Ad Hoc* Intergovernmental Working Group as it may request.⁸⁴

61. After preparatory work by the *Ad Hoc* Intergovernmental Working Group,⁸⁵ the Economic and Social Council established a committee to prepare an international agreement on illicit payments. This committee held its first session from 29 January to 3 February 1979 and discussed a draft convention⁸⁶ which it is intended should be finalized at a second session in May 1979⁸⁷ and will eventually form the basis for consideration by a conference of plenipotentiaries in 1980.⁸⁸

H. PERMANENT SOVEREIGNTY OF STATES OVER NATURAL RESOURCES

1. Natural resources

62. Another item in the Programme of Action relates to assistance in the exercise of permanent sovereignty of States over natural resources.⁸⁹ The exploration and exploitation of natural resources is of great importance for development.⁹⁰ The General Assembly deals frequently with multilateral development assistance for the exploration of natural resources⁹¹ and the Economic and Social Council has established a Committee on Natural Resources.⁹² Several proposals of Governments for the work of UNCITRAL deal with the permanent sovereignty of States over natural resources (Colombia, Nigeria, Senegal, Yugoslavia).

2. Nationalization

63. Several proposals (Nigeria, Senegal, Yugoslavia) are concerned with compensation in cases of nationalization, expropriation and other aspects of transfer of ownership. These questions are considered as important and of universal significance and have been the centre of attention during the elaboration and discussion of the Charter of Economic Rights and Duties of States.⁹³ These questions have also been discussed in the Committee on Natural Resources⁹⁴ and in connexion with

⁸⁴ Economic and Social Council resolution 2041 (LXI).

⁸⁵ For the reports of this Working Group, see E/1978/39 and E/1978/115.

⁸⁶ E/AC.67/L.1 and L.2.

⁸⁷ E/AC.67/2.

⁸⁸ Economic and Social Council resolution 1978/71.

⁸⁹ General Assembly resolution 3202 (S-VI), VIII.

⁹⁰ *Ibid.*, IV (e).

⁹¹ General Assembly resolution 33/194.

⁹² Economic and Social Council resolution 1535 (XLIX).

⁹³ Controversy arose especially regarding the notion of "appropriate" compensation. See article 2, para. 2 (c), of the Charter.

⁹⁴ E/C.7/76, para. 73.

the elaboration of a code of conduct for transnational corporations.⁹⁵

3. Environment

64. One special aspect of natural resources is the environment. Proposals of Governments (Colombia, Poland) relate to the co-operation of States in evolving international norms and regulations in the field of the environment.⁹⁶ The United Nations Conference on the Law of the Sea deals with environmental questions in connexion with sea-bed resources and their protection. As regards the environment in general valuable work is being rendered by the United Nations Environment Programme (UNEP).⁹⁷

II. Issues for consideration

A. SCOPE OF LAW OF INTERNATIONAL TRADE

65. It would appear that the basic question which confronts the Commission is not whether the Commission should deal with the key issues of and general policies underlying the new international economic order as such. These issues and policies are to a great extent of a political and economic nature and cannot be dealt with by a legal body such as the Commission. Therefore, it would seem to follow that the Commission, in considering in what manner it could best implement the mandate conferred upon it by the General Assembly, should focus its attention on subject-matters in the area of international trade law that are relevant in the context of the new international economic order.

66. In this connexion it may be noted that the view has been expressed, during discussions in the Sixth Committee and in replies from Governments, that the preparation of legal instruments such as the UNCITRAL Arbitration Rules, the draft Convention on the Carriage of Goods by Sea and the draft Convention on Contracts for the International Sale of Goods, constitutes a significant contribution to the implementation of the new international economic order. This view was reiterated by the Asian-African Legal Consultative Committee (AALCC), at its twentieth session held at Seoul in February 1979, when it evaluated the action taken by the Commission at the latter's eleventh session "with regard to the recommendation by AALCC concerning UNCITRAL's future programme of work with particular emphasis on the aspect of legal implications arising from the new international economic order". The relevant part of the report⁹⁸ of the AALCC Standing Sub-Committee on International Trade Law Matters reads as follows:

"The discussion in the Sub-Committee revealed that, because of the specific nature of UNCITRAL's work and of the mandate given to it by the United

Nations General Assembly, it was first of all important that UNCITRAL gave due consideration to the policies underlying the new international economic order in each of the subject-matters under consideration by it, as appropriate. In this connexion, reference was made to the important work carried out by UNCITRAL in respect of the United Nations Convention on the Carriage of Goods by Sea (Hamburg Rules), adopted by a United Nations conference of plenipotentiaries in 1978. That Convention had taken into account the interests of developing nations in this important mode of transport and had achieved a more equitable balance between the interests of the shipper and carrier.

"... The Sub-Committee was, therefore, of the view that the aims which the new international economic order sought to achieve would, in respect of UNCITRAL, best be served if an approach similar to that taken in respect of the new Hamburg Rules would permeate the other work of UNCITRAL."

67. Accordingly, the Commission, in considering its tasks and functions in respect of the new international economic order, may wish to conclude that the establishment of legal rules on several topics included in the past and current programmes of work is of direct relevance to the new international economic order.

68. Chapter I of this report sets forth a list of subject-matters which, in different degrees, may be said to bear upon international trade and to have legal implications. In this respect several points may be noted. First, if the Commission's traditional approach to the unification and harmonization of international trade law is used as a yardstick, the majority of subject-matters listed there could be considered as falling outside the scope of its work. Secondly, if by another interpretation of its mandate, the Commission would take up certain of the subject-matters listed in respect of which economic aspects are preponderant, it would probably be necessary for it to organize its working methods in such a way that the necessary consensus in respect of the broad content of the legal rules to be drafted is reached before the actual preparation of legal texts.

69. Therefore, it seems that the essential question is not so much whether the Commission has the mandate to deal with a given topic, but rather whether the Commission can realistically deal with such topic without losing its effectiveness as a legislative body. Past experience has shown that consensus and a high standard of expertise in matters under consideration are important elements of such effectiveness.

B. CO-ORDINATION AND CO-OPERATION

70. A second important issue, which was also raised by several Governments (Argentina, Germany, Federal Republic of, United Kingdom, Yugoslavia), concerns the co-ordination or work between international organizations and bodies within and without the United Nations system. This issue does not arise solely in the context of the new international economic order, though problems of co-ordination may be aggravated by the

⁹⁵ See art. 52 of the draft code.

⁹⁶ See article 30 of the Charter.

⁹⁷ See also Economic and Social Council resolution 1978/62, "International co-operation on the environment".

⁹⁸ Report of the Standing Sub-Committee on International Trade Law Matters of the Asian-African Legal Consultative Committee (twentieth session, Seoul, 20-26 February 1979), para. 9.

fact that the General Assembly called upon all organs of the United Nations to implement the new international economic order.

71. The terms of reference of the Commission expressly include the task of co-ordinating the work of organizations active in the field of international trade law and of encouraging co-operation among them. Adequate working relationships have been established with some international organizations, principally with those outside the United Nations system, but not as yet with others.

72. The purpose of co-ordination is not only to avoid duplication of efforts. More important is that the legal texts drafted by various organs and organizations in the international trade law field should reflect a common approach and constitute a coherent system. Also, there are indications that the legislative activity on the international level has now reached such proportions that, without effective co-ordination, a stage of conflicting rules, and therefore non-ratification by States, or, simply, non-application by the courts. Hence, there is justification for a co-ordinating and, perhaps, supervisory body.

73. The Commission, at its eleventh session, considered a number of suggestions as to machinery for more effective co-ordination:

(a) Co-ordination by the secretariat, through inter-secretariat meetings;

(b) The establishment of a co-ordinating committee consisting of members of the Commission;

(c) The establishment of a steering committee composed of members of bodies engaged in the unification of international trade law.

While the procedure under (a) has led to positive results with organizations outside the United Nations system, it has proved inadequate within that system. It is submitted that a committee of the kind referred to under (b) or (c) above might be an appropriate procedure if it were given by the General Assembly express terms of reference.

74. It may be noted that, in the economic field, the General Assembly emphasized the need to oversee and monitor the implementation of the decisions and agreements reached in various appropriate fora of the United Nations and, to this end, decided to convene in 1980 a special session of the General Assembly in order to

ascertain the progress made in the establishment of the new international economic order and to take appropriate action for the promotion of the development of developing countries and international economic co-operation.⁹⁹ In this context, one Government (Argentina) suggested that the work of the Commission be co-ordinated with the work of the Committee of the Whole which was established by General Assembly resolution 32/174.

75. In the view of another Government (Yugoslavia), the fact that codification of international and uniform norms is performed by many organizations imposes the need for co-ordination of common and general matters; this would be in the interest of all those involved in the codification and the establishment of the new international economic order. In the view of that Government, as long as there is no co-ordinating centre for general legal issues, there will be not only the risk of duplication of work but also the danger of contradictory legislation.

76. It is clear that the Commission has no power to oblige other organizations to take up an item of work or cease to deal with an item. One course of action therefore would be to wait till other organizations refer certain subjects of a general legal nature to the Commission. One Government (United Kingdom) has suggested that UNCITRAL could assume on an agency basis the examination of certain aspects of a new international economic order referred to it by other United Nations bodies, which were appropriate to its expertise.

C. WORKING GROUP ON THE NEW INTERNATIONAL ECONOMIC ORDER

77. The Commission, at its eleventh session, established a Working Group on the New International Economic Order but deferred the designation of the States members of this Group until the present session.

78. Under the decision taken at the eleventh session, the Working Group would have as mandate to examine the present report in order to make recommendations as to specific topics that could appropriately form part of the programme of work of the Commission. It is thought that a general discussion in the Commission on the issues set forth in sections A and B of this chapter of the report would assist the Working Group in its task.

⁹⁹ General Assembly resolution 32/174.