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CURRENT ACTIVITIES OF INTERNATIONAL ORGANIZATIONS
RELATED TO THE HARMONIZATION AND UNIFICATION OF
INTERNATIONAL TRADE LAW

Report of the Secretary-General
(continued)

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VIII. INTERNATIONAL TRANSPORT

A. Transport by sea and related issues

1. International shipping legislation

1. In response to resolution 43 (S-III) - adopted by the UNCTAD Committee on Shipping at its third special session, in June 1981 - and resolution 49 (X) - adopted at its tenth session, in June 1982 - the UNCTAD secretariat is preparing model maritime legislation, dealing in particular with the commercial aspects of maritime transport, for use by developing countries in the formulation of their national legislation. An outline of the proposed model legislation is found in a secretariat report "International maritime legislation: future work" (TD/B/C.4/244).

2. A Technical Committee, established by the Secretary-General of CARICOM completed its examination of the draft Maritime Code for the CARICOM States and is in the process of revising the draft legislation in the light of its deliberations and recommendations. It is intended that the revised shipping legislation will, in due course, be circulated to the Governments of the CARICOM States for consideration and will eventually replace the United Kingdom Merchant Shipping Act 1894, which still applies to the CARICOM States.

2. Marine insurance

3. For the work of UNCTAD, see report on co-ordination of work: some recent developments in the field of international transport of goods, A/CN.9/236, paragraphs 5-6 (I. MARINE INSURANCE).

3. Open registry shipping

4. The UNCTAD Committee on Shipping, by resolution 43 (S-III) adopted at its third special session, in June 1981 (TD/B/C.4/S-III/Misc.2, Annex.I), established the Intergovernmental Preparatory Group on Conditions for Registration of Ships which it entrusted with the task of formulating proposals for a set of basic principles concerning the conditions upon which vessels should be accepted on national shipping registers, with a view to their consideration and adoption as an international agreement by a United Nations Conference. The Group met in April 1982 (TD/B/904) and in November 1982 (TD/B/935). In accordance with General Assembly resolution 37/209, a United Nations Conference on the Registration of Ships will be convened in early 1984. A preparatory committee is scheduled to meet in late 1983.

5. The UNCTAD secretariat has prepared several studies on open registry shipping including "Beneficial ownership of open-registry fleets" (TD/222/Supp.1), "Open-registry fleets", 1981 (TD/B/C.4/220) and "Beneficial ownership of open-registry fleets - 1981", 1981 (TD/B/C.4/223).

4. Convention on a Code of Conduct for Liner Conferences

6. This Convention will enter into force 6 months after the date on which not less than 24 States, with a combined tonnage of at least 25 per cent of world liner tonnage, have become parties to it. By February 1983, 56 States with a combined tonnage of 20.81 per cent, had become parties to the Convention. The Council of Ministers of CEC by regulation 954/79 of 15 May 1979, decided that the States members of the Community should become parties to the Convention.

Finland, Japan, Norway, Spain and Sweden also have announced their intention of becoming parties to the Convention (TD/B/C.4(X)/Misc. 4)(16 July 1982).

5. Treatment of foreign merchant vessels in ports

7. The UNCTAD Committee on Shipping has requested the secretariat to monitor developments in this field, and in the light of this information, the Committee will decide at its eleventh session, to be held in 1984, what further work is necessary on this subject.

6. Freight forwarding

8. For the work of FIATA, see A/CN.9/236, paragraph 13; for the work of UNCTAD, see ibid., paragraph 14 (III. FREIGHT FORWARDING).

7. Maritime fraud

9. At its twelfth regular session in November 1981 the Assembly of IMO adopted resolution A. 504 (XII) relating to barratry, unlawful seizure of ships and their cargoes and other forms of maritime fraud. This resolution was adopted following a study undertaken by an Ad Hoc Working Group appointed by the IMO Council to examine the matter on the basis of information provided by Governments and interested organizations, and to submit proposals aimed at promoting concerted action by all relevant parties and interests for the prevention and suppression of fraudulent acts which gravely endanger the international sea-borne trade.

10. The UNCTAD Committee on Shipping by resolution 49 (X) established an inter-governmental group to examine, with the assistance of a report to be prepared by the secretariat, maritime fraud connected with bills of lading, charter parties, marine insurance and general average, and submit recommendations on means of combating such fraud to the Trade and Development Board (TD/B/C.4/254). This group is expected to meet in October 1983.

11. ICC prepared a Guide to the Prevention of Maritime Fraud, which was published in October 1980 as ICC publication No. 370. The Guide discusses the general characteristics of current fraud situations and gives examples of recent frauds. It addresses itself to the ways fraud can be prevented by Chambers of Commerce, buyers and sellers, foreign forwarders, banks, vessel owners and charterers, and insurers. It also deals with the question of what to do when a vessel does not arrive as scheduled.

12. The work of ICC in the prevention of maritime fraud culminated with the establishment of the International Maritime Bureau (IMB) in London on 1 January 1981. The objectives of the IMB are to act as a clearing house for information on fraudulent and suspect practices; to suggest procedures and remedies to those involved in a transaction which they suspect may be fraudulent to provide advice in setting up or improving operational and commercial systems to reduce their vulnerability to fraud; and to provide educational services for fraud prevention.

13. The IMB provides full investigation services in cases of maritime fraud or malpractice. The IMB also offers one or two day seminars throughout the world, at the request of interested parties, based on the Guide to the Prevention of Maritime Fraud.

8. Carriage of noxious and hazardous substances by sea: draft Convention on liability and compensation

14. The Legal Committee of IMO continued its work on the preparation of a draft Convention on liability and compensation in connexion with the carriage of noxious and hazardous substances at sea. The Committee completed its work on the draft articles at the beginning of 1982. It is expected that a diplomatic conference will be convened by IMO in 1984 to consider the adoption of the Convention.

9. "Amoco Cadiz" disaster: legal questions

15. The Legal Committee of IMO has agreed to consider at an early date a draft convention on salvage and assistance at sea designed to revise and replace the 1910 Convention for the Unification of Certain rules of Law with respect to assistance and Salvage at Sea. The Council of IMO has expressed the view that top priority should be accorded to this new convention. It is therefore envisaged that the Legal Committee will give priority attention to that subject after completion of work on the subjects for the 1984 diplomatic conference.

10. Convention on civil liability for oil pollution damage

16. The Legal Committee of IMO has undertaken a review of the limits of liability contained in the International Convention on Civil Liability for Oil Pollution Damage, 1969 and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971. The results of this review, in the form of two Protocols to amend the 1969 and 1971 Conventions, are expected to be considered at the diplomatic conference scheduled to be held in 1984.

11. Facilitation of international maritime traffic

17. The Facilitation Committee of IMO established an Ad Hoc Working Group on Automatic Data Processing with the mandate to scrutinize the 1965 Convention on Facilitation of International Maritime Traffic with a view to proposing measures to remove unnecessary obstacles to the use of teletransmitted data in maritime transport. The Group has emphasized the desirability of moving away from the concept of a "document" as being necessarily "a piece of paper". It has made a number of suggestions for a more flexible approach in this regard. One of these suggestions was the proposal that the following definitions (elaborated by ECE) be inserted in section 1 A of the Annex to the 1965 Convention:

"Document" - data carrier with data entries

"Data Carrier" - medium designed to carry records of data entries

(See also report on co-ordination of work: legal aspects of automatic data processing A/CN.9/238).

18. The proposals by the Ad Hoc Working Group to remove obstacles to automatic data processing in the Convention are contained in Annex 3 to document FAL/7, which have been approved (with the exception of a few) by the Facilitation Committee. (See also report on co-ordination of work: international transport documents, A/CN.9/225, paragraphs 31-32; see also A/CN.9/238.)

12. Carriage of goods by inland waterway

19. Following communications from the President of the Central Commission for the Navigation of the Rhine and of the Chairman of the UNIDROIT Committee of Governmental Experts recommending that the work on a draft Convention on the Contract for the Carriage of Goods by Inland Waterway (CMN) of the Committee be

resumed, as well as a request to the same effect from ECE, the Governing Council of UNIDROIT gave consideration to a possible resumption of work on the draft CMN. At its sixty-first session (April 1982), it decided that only in the event of prior agreement being reached regarding the exoneration of the carrier for fault in the navigation of the vessel should the secretariat proceed to the convening of a fourth session of the Committee of Governmental Experts for the revision of the draft CMN. If, however, the necessary condition for holding the meeting were to be met, then the Committee should be empowered to proceed to a total revision of the draft Convention.

20. Since the session of the Governing Council the secretariat has been informed of the failure of the Rhine States to reach agreement on the problem of the carrier's exoneration for fault in the navigation of the vessel and in these circumstances it would propose the deletion of this item from the Work Programme.

13. Other subjects

21. The UNCTAD Committee on Shipping at its tenth session in June 1982 reviewed the work programme which it established in 1969 for the Working Group, and decided by resolution 49 (X) that the Group should, in addition to general average, examine maritime liens and mortgages, arrest of vessels, and the registration of rights in vessels under construction. The consideration of these subjects will call for the examination of several international legal instruments, i.e. the 1926 Convention and the 1967 Convention for the Unification of certain Rules relating to Maritime Liens and Mortgages, and the 1952 International Convention for the Unification of certain Rules relating to the Arrest of Sea-Going Ships (TD/B/C.4/254). The same resolution requests the secretariat to update its earlier report "Terms of shipment" (TD/B/C.4/36/Rev.1).

22. A maritime session of the ILO International Labour Conference is due to be held before the end of the decade. Preparatory work will begin with a session of the Joint Maritime Commission in 1984 whose agenda includes the following items which may form the subject of new standards at the planned maritime session: social security and employment conditions of seafarers serving in ships flying flags other than those of their own country (including flags of convenience); medical care on board ships; review and possible revision of the Wages, Hours of Work and Manning (Sea) Recommendation, 1958 (No. 109); revision of the Placing of Seamen Convention, 1920 (No. 9); and revision of the Repatriation of Seamen Convention, 1926 (No. 23) and of the Repatriation (Ship Masters and Apprentices) Recommendation, 1926 (No. 27).

B. Transport over land and related issues

1. Civil liability for damage caused by hazardous cargoes

23. The UNIDROIT Committee of Governmental Experts for the preparation of uniform rules relating to liability and compensation for damage caused during the carriage over land of hazardous substances held two sessions at the headquarters of the Institute in Rome from 16 to 19 March 1981, and from 1 to 4 February 1982.

24. The Committee has decided to restrict the sphere of application of the future uniform rules to liability for damage caused during the carriage of hazardous substances by road, rail and inland waterway and in consequence it rejected a suggestion to cover also transmission of hazardous substances by pipelines. It has also agreed for the time being not to endorse a proposal to broaden its terms of reference to cover liability for damage resulting from the carrying out of dangerous activities in general.

25. The first session of the Committee was devoted to consideration of a list of questions prepared by the secretariat intended to focus discussion on a number of points of special importance and on the basis of these discussions a preliminary set of draft articles was prepared for a Convention on liability and compensation for damage caused during the carriage over land of hazardous substances (Study LV - Doc. 8). The Committee also agreed at its first session that a list of substances to which the future Convention should apply should be annexed to it together with a series of questions, permitting the appropriate technical bodies of the United Nations to give advice on the lists of substances.

26. At its second session the Committee began its consideration of the draft articles and although some comments of a general character were made on those provisions, the Committee concentrated its attention on a number of key areas such as scope of application, the person or persons to be held liable under the future Conventions (sole carrier liability or joint carrier-shipper liability), the nature of the liability regime, limitation of liability, compulsory insurance, claims and actions and definitions. While the work continues, a strong trend in favour of establishing a scheme of compulsory insurance is also emerging.

2. Rail/road transport contract: alignment of documents

27. A draft contract of the International Union of Combined Rail/Road Transport Enterprises (UIRR) has been drawn up by the Union's Data Processing Commission on the basis of the new CIM consignment note. UIRR had noted that many of the elements contained in the CIM consignment note linking enterprises in the Union and railways were identical to the elements contained in the UIRR contract linking road transporters and enterprises in UIRR. UIRR has therefore prepared a contract based on the CIM consignment note; this avoids the repetition of certain information and prevents discrepancies between the documents. The draft contract has not yet been finalized.

3. Formation of the railway co-operation group within ESCAP

28. The establishment of an Asian railway union was first discussed at the fifth Meeting of Top Railway Executives in Asia and the Middle East, in 1979, and considered by the ESCAP Committee on Shipping, and Transport and Communications at its third session. Since then, this proposal has been examined in depth and considered at various ESCAP and allied forums. Eventually, a consensus was reached at the sixth meeting of Top Railway Executives of Asia and the Middle East, in October 1981, which urged the Executive Secretary of ESCAP, inter alia, to take appropriate measures for the establishment of a project within the union.

29. The Committee on Shipping, and Transport and Communications at its fifth session endorsed this recommendation, which was finally endorsed by the Commission at its thirty-eighth session. It urged the secretariat to take all appropriate measures in that regard and requested UNDP and interested countries to provide ESCAP with the necessary resources. The proposed railway co-operation group is expected to provide a regional framework for closer co-operation and collaboration arrangements among railways of the region and for fostering collective self-reliance among them.

30. In pursuance of the mandate of ESCAP, the ESCAP secretariat has drawn up a work plan for the implementation of a project on the formulation of the railway co-operation group (RCG). The secretariat has also prepared a draft memorandum of understanding for adoption and acceptance at this meeting on behalf of the concerned railways. The RCG will be established after the adoption of the memorandum of understanding, and its first meeting will be convened as soon as possible for the formulation of its rules of procedures and work programme.

31. For the work of the Central Office for International Railway Transport, see A/CN.9/225.

C. Transport by air and other related matters

1. Civil aviation legislation

32. The CARICOM secretariat prepared harmonized up-to-date civil aviation legislation for the CARICOM member States which was circulated to the Governments of member States in December 1981 for examination and comments. The draft legislation, when enacted, will replace the application to the CARICOM States of the United Kingdom civil aviation legislation, for example, the Civil Aviation Act 1949, and will also give the force of law in the CARICOM States of international conventions on civil aviation to which they are parties, for example, the Tokyo Convention 1967, the Montreal Convention 1971 and the Convention for the Suppression of Unlawful Seizure of Aircraft 1970 (the Hijacking Convention). Some CARICOM States already have legislation in force in their territories on some of the matters provided for in the draft legislation prepared by the CARICOM secretariat.

2. International standards and recommended practices

33. The eighth edition of the International Standards and Recommended Practices (annex 9 to the Convention on International Civil Aviation) incorporates, inter alia, provisions arising from recommendations of the ninth session of the Facilitation Division (Montreal, April-May 1979) which again resulted in a comprehensive expansion and amendment of annex 9. This edition became effective on 15 July 1980, and applicable on 15 October 1980.

34. The Standards and Recommended Practices on Facilitation are the outcome of article 37 of the Convention, which provides, inter alia, that the "International Civil Aviation Organization shall adopt and amend from time to time, as may be necessary, international standards and recommended practices and procedures dealing with ... customs and immigration procedures ... and such other matters concerned with the safety, regularity and efficiency of air navigation as may from time to time appear appropriate". The policy with respect to the implementation by States of the Standards and Recommended Practices on Facilitation is strengthened by article 22 of the Convention, which expresses the obligation accepted by each Contracting State "to adopt all practicable measures, through the issuance of special regulations or otherwise, to facilitate and expedite navigation by aircraft between the territories of Contracting States, and to prevent unnecessary delays to aircraft, crews, passengers, and cargo, especially in the administration of the laws relating to immigration, quarantine, customs and clearance", and by article 23 of the Convention, which expresses the undertaking of each Contracting State "so far as it may find practicable, to establish customs and immigration procedures affecting international air navigation in accordance with the practices which may be established or recommended from time to time pursuant to this Convention".

D. Liability of international terminal operators

35. For the work of UNIDROIT on the liability of international terminal operators (the warehousing contract) see A/CN.9/236, paragraphs 15-18 (IV. LIABILITY OF INTERNATIONAL TERMINAL OPERATORS) and paragraphs 33-39 (IV., D. The UNIDROIT preliminary draft Convention).

E. United Nations Convention on International Multimodal Transport of Goods 1/

36. The United Nations Conference on International Multimodal Transport, in May 1980, adopted by consensus the United Nations Convention on International Multimodal Transport of Goods (TD/MT/CONF/17). The Convention establishes an international legal regime for the contract for the international multimodal transport of goods.

37. The Convention will enter into force 12 months after 30 States become parties to it. By 1 February 1983, 2 States had become parties to the Convention and 4 States had signed it subject to ratification. The entry into force of this Convention, however, is linked to the entry into force of the United Nations Convention on the Carriage of Goods by Sea (A/CONF.89/13), adopted in March 1978, which was prepared by UNCITRAL at the initiative of UNCTAD. By 7 April 1983, the latter Convention had been ratified or acceded to by 9 States (signature only - 25 States).

F. Transport by container

38. For the work of UNCTAD in this field, see A/CN.9/236, paragraphs 7-8; for the work of ISO, see ibid., paragraphs 9-10; for the work of IMO, see ibid., paragraphs 11-12, (II. TRANSPORT BY CONTAINER).

G. Carriage of heavy and bulky nuclear power equipment in international transit

39. On 11 March 1982 the CMEA Agreement on provision for the carriage of particularly heavy and bulky nuclear power equipment in international transit came into force. The aim of this Agreement is to promote the more efficient use of all types of transport (rail, road, river and sea) with a view to providing for the international carriage of goods and speeding up the delivery of particularly heavy and bulky nuclear power equipment. The parties to the Agreement are the Governments of Bulgaria, Hungary, German Democratic Republic, Poland, Romania, USSR and Czechoslovakia.

H. Harmonization of frontier control of goods

40. For the work of ECE in this field, see paragraphs 120-122 below, (XIII. FACILITATION OF INTERNATIONAL TRADE, A. Harmonization and facilitation of administrative procedures relating to goods and documents).

1/ See also A/CN.9/225, paragraphs 11, 18-20.

I. Customs transit

41. For the work of ECE, CCC and ECLA in this field, see paragraphs 123-124 below, (XIII. FACILITATION OF INTERNATIONAL TRADE, A. Harmonization and facilitation of administrative procedures relating to goods and documents).

IX. INTERNATIONAL ARBITRATION

A. Activities concerning specialized types of arbitration

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

42. In 1982, the ICC's Commission on International Arbitration adopted a report outlining suggested principles to be followed in the settlement of disputes involving building construction contracts. The report has been forwarded to the ICC Court of Arbitration for implementation. A final report is expected to be issued from the ICC Court of Arbitration before the end of 1983.

2. Arbitration and competition law

43. The Ad Hoc Arbitration and Competition Law Working Party, set up jointly by the ICC's Commission on International Arbitration, and Commission on Law and Practices affecting Competition, has been working since 1978, on the elaboration of a study aimed at developing rules for arbitration in accordance with economic policies designed to ensure free competition. The arbitrability of disputes involving anti-trust law in national and community laws is being analyzed, particularly in the light of recent court decisions.

3. Arbitral referee proceedings

44. The ICC continues its work on this project which is intended to promulgate rules for referee procedures in the field of arbitration, which would enable interim or preliminary decisions to be taken at an early stage in the arbitration proceedings.

4. Arbitration and State enterprises

45. The Institute of International Business Law and Practice has undertaken a study on the special problems of arbitration involving State enterprises which are increasingly involved in international trade, as it was thought that rules governing commercial disputes differ for State enterprises from those applicable in the private sector. The study, which will be published in 1983, will analyze the complications this implies for arbitration, as the most widely used technique for settling international commercial disputes.

B. Publication, research and other developments ^{2/}

46. The Guide to Arbitration Law in Europe was published by ICC in June 1981 (ICC Publication 353). The book features a series of standardized articles

^{2/} With regard to other developments in the field of international commercial arbitration, see report on co-ordination in general (A/CN.9/239) and report on training and assistance (A/CN.9/240).

summarizing the principal features of arbitration law in 17 European countries. In September 1982, the ICC published a Guide to Multi-party Arbitration (ICC Publication No. 404).

47. In 1982 the CMEA Conference on Legal Matters embarked upon a study of the practical application of the Convention on Settlement by Arbitration of Civil Law Disputes arising from Economic, Scientific and Technical Co-operation (26 May 1972), and also of the application by CMEA member countries of the Uniform Rules for Arbitration Tribunals (1974) on the basis of which the CMEA member countries approved national regulations for arbitration tribunals attached to their Chambers of Commerce. It is planned to prepare a report based on this work for examination in the CMEA member countries and to co-ordinate future work in this area.

48. ICCA continues to publish, annually, the Yearbook Commercial Arbitration. The publication entered its seventh volume in 1982. The contents of this volume includes national reports on arbitration law and practice, up-dating of national reports, national court decisions on the application of the New York Convention 1958 and extracts of arbitral awards from arbitral institutions and ad hoc arbitrations.

49. Under the auspices of ICCA, the VIIth International Arbitration Congress (Hamburg, 7-11 June 1982) dealt with "New Trends in the Development of International Commercial Arbitration and the Role of Arbitral and Other Institutions". The following topics were discussed in various working groups: (a) Contributions which Conventions, Treaties and Agreements can make to the Development of Arbitration; (b) Resolving Disputes Involving Commodities and Raw Materials; (c) New Methods for Resolving International Commercial Disputes; (d) Developments in Maritime Arbitration. The reports and resolutions of this Congress will be published in May 1983.

X. PRODUCTS LIABILITY

50. CE has prepared the European Convention on Products Liability in Regard to Personal Injury and Death. This Convention was opened to signature in 1977, and has not yet come into force.

51. The Convention grants a supplementary right of action for damage causing death or personal injury where a product, by not providing the safety a person is entitled to expect, is considered to be defective.

52. For the work of UNIDROIT on the preparation of a Convention on the civil liability for damage caused by hazardous cargoes, see paragraphs 23-26, above (VIII. INTERNATIONAL TRANSPORT, B. Transport over land and related issues).

XI. PRIVATE INTERNATIONAL LAW

A. Work of the Hague Conference on Private International Law

53. At its fourteenth session in October 1980, the Hague Conference on Private International Law decided that a feasibility study should be undertaken on the law applicable to contractual obligations, to see whether a convention on this subject should be prepared. A report on this point is to be submitted at the Conference's fifteenth session, in October 1984. (See also A/CN.9/237/Add.1, I. INTERNATIONAL CONTRACTS, A. International sales of goods.)

B. Work of UNIDROIT

54. For the work of UNIDROIT, see A/CN.9/237, Add. 1, I. INTERNATIONAL CONTRACTS, B. Progressive codification of international trade law; see also paragraphs 55-56, below (XII. OTHER TOPICS OF INTERNATIONAL TRADE LAW, A. Agency) and ibid., paragraphs 66-71, below (C. Protection of the acquisition in good faith of corporeal movables).

XII. OTHER TOPICS OF INTERNATIONAL TRADE LAW

A. Agency

1. Convention on agency in the international sale of goods

55. At the invitation of the Swiss Government a diplomatic conference was convened from 31 January to 17 February 1983, in Geneva, and the Convention on Agency in the International Sale of Goods was adopted on the basis of a draft text prepared by UNIDROIT's Committee of Governmental Experts held in Rome from 2 to 13 November 1981. At UNIDROIT's invitation, States members of UNCITRAL that are not members of UNIDROIT attended this meeting to consider the draft.

56. Since the Convention does not cover rules relating to the internal relations between principals and agents involved in the international sale of goods and because of some concerns expressed by some members of the Governing Council of UNIDROIT this question may be considered at some future session of the Governing Council.

2. Powers of attorney

57. UNIDROIT has undertaken the preparation of uniform rules governing the validity of powers of attorney to be exercised abroad and, if possible, of a uniform form of power along the lines of the uniform international will established by the Washington Convention of 1973. At its sixtieth session, held in April 1981, the Governing Council decided that the preliminary comparative law study (Study LXIII - Doc. 1) should be circulated, with a questionnaire, to the interested circles. On the basis of the replies, a decision will be taken by the Council of UNIDROIT at its sixty-second session in May 1983 regarding the next steps to be taken in this connexion.

3. Commercial agency

58. The ICC's Commission on International Commercial Practice is updating its existing Guide relating to commercial agency contracts. The Guide will serve as a check-list for agents and principals in the drafting and negotiating of contracts. It is anticipated that work on this project will be completed in the course of 1983.

B. Bankruptcy

59. At the end of 1980 a meeting was held jointly by CEC and CE to exchange information on the reforms in respect of bankruptcy which were contemplated by member States. As CEC had drawn up a draft Convention on bankruptcy, it was thought useful that a Committee of experts of CE should examine not only what was being done nationally in the way of reform in Europe, but also what supplementary action should be taken in this field of law which could be of interest

to the 21 member States of CE. The Committee of Ministers of CE therefore decided to set up a committee of experts to deal with this question.

60. The Committee of experts on bankruptcy law (CJ-DF), a committee responsible to the European Committee on Legal Co-operation (CD-CJ) of CE, has been given the following terms of reference by the Committee of Ministers:

"Examination of the following items with a view to drawing up appropriate international instruments (for instance, conventions or recommendations):

- i. Allowing the administrator in bankruptcy, for example, liquidator, official receiver or trustee, appointed according to a procedure opened abroad (list of procedures to be established) to act on behalf of the body of creditors and to recognise, inter alia, the possibility of the administrator taking protection measures and instituting legal proceedings.
- ii. Ensuring the right of foreign creditors to prove their claims in the national proceedings, and to this effect, ensure as far as possible the provision of adequate information and further to provide for the introduction of a standard form for the submission of claims by foreign creditors.

Exchange of views and information:

- i. on reforms in the field of bankruptcy;
- ii. on measures intended to facilitate co-operation among member States in this field, such as the setting-up of a system of information concerning national bankruptcy proceedings likely to have effects abroad".

61. The CJ-DF, at its third meeting in December 1982 gave a first examination to a draft Convention which, inter alia, would establish the right of the receiver to exercise abroad exclusive rights over the goods of a debtor if he was recognized as possessing those rights under the law of the State in which the voluntary bankruptcy proceedings were opened. The fourth meeting of the CJ-DF will take place in June 1983.

C. Bearer securities

62. The Convention relating to stops on bearer securities in international circulation came into force in 1979 between Austria, Belgium, France and Luxembourg. The "Office national des valeurs mobilières" in Brussels has been designated by the Committee of Ministers of CE as the Central Office responsible for performing the functions prescribed by the Convention. Lists of bearer securities deemed to be in international circulation are published by the Secretariat General of the Council of Europe.

D. Business trusts

63. The subject of business trusts, as well as trust deeds and indentures used for securing the payment of indebtedness has been included in the programme of work of the Hague Conference on Private International Law. The decision to include these topics was made at the Special Commission's first meeting, in June 1982.

E. Company law

64. The CARICOM Working Party on Off-Shore Companies completed its deliberations after holding four meetings, and circulated its Report to the Governments of Member States of CARICOM in January 1982. The Report recommends a number of legislative and administrative measures for the better regulation of off-shore companies operating within CARICOM.

65. Revised up-to-date company legislation was enacted by the Parliament of Barbados in 1982 - The Companies Act 1982. The legislation adopts substantially recommendations for company law reform contained in the CARICOM Working Party's Report on the Harmonization of Company Law in the Caribbean Community. Proposals for company law reform adopting some of the Working Party's recommendations have been published by the Government of Trinidad and Tobago for public comment.

F. Protection of the acquisition in good faith
of corporeal movables

66. Following the completion by the UNIDROIT Committee of Governmental Experts of its work on the draft Uniform Law on the protection of the bona fide purchaser of corporeal movables the UNIDROIT secretariat engaged in consultations for the convening of a Diplomatic Conference for its adoption.

67. It was the subject of detailed discussion by the Governing Council of UNIDROIT at its sixty-first session (April 1982) on which occasion differing opinions were expressed. In the view of some members of the Council, the draft, touched upon extremely delicate problems relating to third party rights which experience had shown to be a less fruitful terrain for unification than was the case with contractual relations. There was in addition considerable doubt in their minds as to whether solutions could be found which would satisfy a sufficiently large number of States, given the wide divergencies at present existing between the various national laws in this field. The question was also raised as to whether the scope of application of the draft, which laid down the same rules for cultural property as for industrial goods and agricultural products, was not too ambitious.

68. A majority of members of the Council however expressed continuing interest in the draft and while admitting that some of the solutions contained in it might not be suited to all types of property, they considered that a resumption of work on it should be contemplated at some time in the future. Attention was in particular drawn to the work currently in progress in UNESCO on the return of cultural property and to the fact that the responsible committee had shown interest in UNIDROIT's draft.

69. In these circumstances the Council agreed that enquiries should be conducted with the appropriate officials in UNESCO into the possibility of co-operation between UNIDROIT and UNESCO in this regard and that the secretariat should report back to the Council at its next session on the outcome of consultations and on the prospects of collaboration between the two organizations on the basis of the draft uniform law on the acquisition in good faith of corporeal movables. In the light of this information a decision could then be taken by the Council as to the form which any future work on the draft might assume.

70. In accordance with these instructions the secretariat contacted the Secretariat of UNESCO's Cultural Heritage Division and the possibility was discussed of the Uniform Law on the acquisition in good faith of corporeal movables being revised either as a separate instrument or in the form of a Protocol to the 1970 UNESCO Convention on the means of prohibiting and preventing the illicit import, export and transfer of ownership of cultural property, in respect of which Convention considerable difficulties had been encountered in connexion with the interpretation of the terms "innocent purchaser" and "person who has valid title to the property" (article 7, paragraph (b)(ii)).

71. It was agreed that the two secretariats would raise the question of including this item on the Work Programmes of their respective organizations with the competent bodies for the preparation of those programmes as soon as possible and that in the meantime thought might be given to the form which co-operation between the two organizations could assume.

G. Rights of creditors

72. The CE/Committee of Experts on the Rights of Creditors (CJ-DC) has completed its work and adopted a draft Convention and explanatory report on simple reservation of title. These texts will be submitted to the CD-CJ at its next meeting which is to be held from 27 June to 1 July 1983 and then sent to the Committee of Ministers of CE for adoption. This draft Convention was prepared by CE in close co-operation with CEC.

73. After noting the difficulty in harmonizing all the different types of creditors rights the CJ-DC decided to limit the Convention to simple reservation of title which was one of the most widespread means of guaranteeing creditors rights.

74. This draft lays down the conditions for recognition and enforcement of simple reservation of title, and aims at safeguarding the rights of creditors internationally, so facilitating commercial relations in Europe. It also aims at setting up a relatively simple recognition system to meet practical needs.

75. The most important provision in the draft concerns the scope of the Convention (ships and aircraft being excluded); the definition of "reservation of title"; the goods subject to this reservation; the time and conditions of transfer of title; the formal conditions governing the reservation which must be in writing; and the effects of the Convention, which allow goods to be recovered even in case of bankruptcy.

H. Consumer protection

76. By Decision 10/24, the Governing Council of UNEP at its tenth session (Nairobi, 31 May 1982) authorized the Executive Director to convene in 1983/84, after consultations with Governments and the international agencies concerned, a meeting of government experts to consider guidelines or principles on the exchange of information relating to trade in, and use and handling of potentially harmful chemicals in particular pesticides. Decision 10/24 was based on the recommendations of the Ad Hoc Meeting of Senior Government Officials Expert in Environmental Law (Montevideo, 28 October to 6 November 1981), the report of which was approved by the Governing Council of UNEP in Decision 10/21. The programme for the development and periodic review of environmental law, as adopted by this decision, includes as an objective "to control international trade in hazardous or inadequately tested chemicals, particularly where the sale of such substances has already been banned or restricted in the producing country". The strategy for

this objective includes the "preparation of guidelines at the global level as a first step towards a global convention; development and implementation of internationally harmonized practices, in particular for the gathering and dissemination of information".

77. The Montevideo programme suggested the following first steps in this subject area:

" UNEP should consider convening an intergovernmental meeting of experts for the development of principles or guidelines on the exchange of information in relation to the trade in potentially harmful chemicals, drawing upon, inter alia, the results of the discussions on the subject, in the General Assembly".

78. The General Assembly, by Resolution 34/173 (17 December 1979), had urged Member States to exchange information on hazardous chemicals and unsafe pharmaceutical products that had been banned in their territories and to discourage, in consultation with importing countries, the exportation of such products to other countries. The General Assembly further specified the action to be taken by Member States and by the UN Secretariat in Resolutions 35/186 (15 December 1980); 36/166 (16 December 1981); and 37/137 (17 December 1982) on "Protection against products harmful to health and the environment".

79. It is noted that an earlier UNEP Governing Council Decision 85/V (25 May 1977) had urged Governments "to take steps to ensure that potentially harmful chemicals, in whatever form or commodity, which are unacceptable for domestic purposes in the exporting country, are not permitted to be exported without the knowledge and consent of appropriate authorities in the importing country". The Governing Council had further specified the action to be taken by Governments and by the Executive Director in Decision 6/4 (24 May 1978), which in turn was communicated to the UN General Assembly in the Report of the Economic and Social Council on "Exchange of information on banned hazardous chemicals and unsafe pharmaceutical products" (A/36/255, 22 May 1981).

80. In order to implement Decision 10/24, the Executive Director has initiated a follow-up project (FP/1002-82-02) for the preparation of ad hoc intergovernmental expert meetings, in consultation with the competent international organizations. Phase I of the follow-up project provides for the preparation of background and working documents by July 1983, to be reviewed by an Advisory Panel on Toxic and Dangerous Wastes and Harmful Chemicals and by specialized agencies for technical input as appropriate.

81. In 1981 the Committee of Ministers of CE adopted Recommendation No. R (81) 2 on the legal protection of the collective interests of consumers by consumer agencies. The principles in the Recommendation deal with the provision of information and assistance to consumers, requests to suppliers, conciliation or arbitration, negotiation with trade and industry, participation in the preparation of legislation, stopping suppliers acting contrary to the law, institution or participation in proceedings and co-operation between agencies.

I. Code of marketing for breast-milk substitutes

82. The WHO International Code of Marketing of Breast-Milk Substitutes was adopted as a recommendation by the thirty-fourth World Health Assembly in May 1981. The aim of this Code is to contribute to the provision of safe and adequate nutrition for infants, by the protection and promotion of breast-feeding, and by ensuring the proper use of breast-milk substitutes, when these are necessary, on the basis of adequate information and through appropriate marketing and distribution.

83. The Code applies to the marketing, and practices related thereto, of the following products: breast-milk substitutes, including infant formula; other milk products, foods and beverages, including bottled complementary foods, when marketed or otherwise represented to be suitable, with or without modification, for use as a partial or total replacement of breast-milk; feeding bottles and teats. It also applies to their quality and availability, and to information concerning their use.

J. Multilateral agreement for combating customs frauds and smuggling

84. ESCAP in co-operation with UNCTAD, has initiated work towards evolving a mutual co-operative arrangement among countries of the ESCAP region in combating customs fraud and smuggling which have caused a serious threat to the revenue collection and economic controls in the developing countries of the ESCAP region. In this regard, an ESCAP/UNCTAD Seminar on Anti-fraud and Anti-smuggling Measures was convened at Bangkok in April 1981 to bring about greater awareness of the problems involved in controlling customs frauds and smuggling and to consider possible solutions to those problems.

85. The seminar formulated a set of recommendations for mutual administrative assistance and co-operation among customs administrations for action against customs fraud and smuggling. It requested the Executive Secretary of ESCAP to convene a high-level expert group meeting to consider those recommendations. Based on the recommendations, the ESCAP secretariat prepared a tentative draft of multilateral agreement on mutual administrative assistance for the prevention, investigation and repression of customs offences and presented it to the UNCTAD/ESCAP Expert Group Meeting on Arrangements for Mutual Administrative Assistance and Co-operation among Customs Administrations of ESCAP Countries for Action against Customs Fraud and Smuggling which was held at Kathmandu in January 1982, for consideration. The draft multilateral agreement was examined and finalized by the experts, and transmitted to the member and associate member countries of ESCAP, for consideration. A number of countries have expressed their intention to endorse the agreement while others have informed that they would need more time to examine it in detail before they would be able to endorse it.

86. A Follow-up Meeting to the UNCTAD/ESCAP Expert Group Meeting on Arrangements for Mutual Administrative Assistance and Co-operation among Customs Administrations of ESCAP Countries for Action against Customs Fraud and Smuggling was held at Bangkok from 29 March to 1 April 1983, to consider the draft multilateral agreement and finalize it for possible adoption by the member and associate member countries of ESCAP.

K. Contract guarantees, guidelines on simple demand guarantees and surety guarantees

87. Work has recently been completed on the preparation of model forms for issuing contract guarantees subject to the ICC's Uniform Rules for Contract Guarantees.

88. The ICC's Commission on Banking Technique and Practice, and the Commission on International Commercial Practice are currently preparing a Code of Practice on simple demand guarantees. The aim of this work is to give guidance to banks and other guarantors called on to issue guarantees payable on the simple or first demand of the beneficiary without proof of loss or of default in the underlying commercial contract. In particular, the purpose is to minimize the possibilities of abuse of such guarantees, especially to the detriment of the principal.

L. Export credit guarantee facility

89. The question of establishing an International Export Credit Guarantee Facility (ECGF), to give support to developing countries' exports, has been extensively discussed within UNCTAD. At its eighth session, the UNCTAD Committee on Invisibles and Financing related to Trade (CIFT) dealt with both policy and technical issues relating to the establishment of a Facility. In its resolution 15 (VIII) and decision 17 (IX) the Committee requested the secretariat, in consultation with member States and international institutions and with the assistance of financial experts, to formulate detailed operational features of a Facility. The secretariat prepared a study on "The Operational Characteristics of an Export Credit Guarantee Facility" (TD/B/AC.33/2 and Corr. 1) which was considered by a group of experts meeting in January 1982 (TD/B/889). The Committee on Invisibles and Financing related to Trade, at the second part of its tenth session in February/March 1983, will further consider this study as well as a recent report "Evaluation of the operational features of an export credit guarantee facility" (TD/B/C.3/183/Add.1, 2 and 3).

M. International leasing

90. The preliminary draft uniform rules on international leasing (Study LIX - Doc. 13 rev.) was considered by the Governing Council of UNIDROIT at its 60th session, held in Rome from 22 to 24 April 1981. Two decisions were taken in its regard on that occasion. First, the Council endorsed the recommendation of the Study Group that, given the novelty of leasing, it would be preferable to delay the eventual transmission of the text to a Committee of Governmental Experts for the hammering out of a final text until such time as the preliminary draft has been given maximum exposure among practitioners by the organization of symposia in the different parts of the world. The Council's second decision was, pursuant to the offer made by the Deputy Secretary General of the Hague Conference on Private International Law on the occasion of the third session of the Study Group, to agree that the assistance of the Hague Conference should be sought in revising article 2 of the preliminary draft, given its private international law ramifications.

91. Pursuant to the Council's first decision, symposia have been organized in New York (May 1981) and in Zürich (November 1981), addressed to an audience of bankers, businessmen and lawyers having expertise in international leasing.

92. Further to the Council's second decision, the UNIDROIT secretariat in April 1981 formally requested the assistance of the Hague Conference in revising article 2 of the preliminary draft. At the meeting of the Special Commission of the Conference in June 1981 this request was favourably received and the Permanent Bureau of the Conference is now looking into the problems of private international law raised by article 2 of the preliminary draft, with a view in due course to proposing a new wording of this provision.

N. International factoring

93. The preliminary draft uniform rules on certain aspects of international factoring (Study LVIII - Doc. 12) were approved by a UNIDROIT Study Group at its third session held from 19 to 21 April 1982.

94. One of the principal features of the draft rules is the affirmation of the commercial or professional character of the receivables which the supplier undertakes to assign to the factor on a continuing basis by way of sale or security. As consideration for the assignment, the factor provides certain services such as financing, the maintenance of accounts, collection of receivables and protection against credit risks. The international character of the factoring contract is based on the fact that it relates to receivables arising from a contract for the sale of goods or provision of services between parties whose places of business are situated in different States, with the rider that if a party has more than one place of business, his place of business for the purpose of the provision is that having the closest relationship to the contract of sale and its performance. Since it is the original sales contract which confers on the contract of factoring its international character, the proposed rules also apply to successive assignments between several factors, even though their places of business are situated in the same State.

95. With a view to encouraging factoring operations, the assignment of receivables by the supplier to the factor, including in certain circumstances future receivables, will be effective notwithstanding any agreement between the supplier and the debtor prohibiting such assignment. The factoring contract or any assignment made pursuant to it may validly provide for the transfer to the factor of all or any of the supplier's rights under the contract of sale, including any provision in such contracts reserving title to the supplier.

96. The factor is further protected by a provision to the effect that he shall not, by reason only of transfer of title to goods to him, incur liability to a third party for loss, injury or damage caused by the goods. On the other hand, he may be held liable if he sells or otherwise disposes of the goods to a person who is not the supplier or another factor or the debtor.

97. Another important feature of the rules is that they are intended to apply only in relation to factoring contracts pursuant to which notice of assignment of the receivables is to be given to the debtor. It is also provided that for the assignment to be effective against the debtor the notice must be given to the debtor in writing and reasonably identify the receivables which have been assigned and the person to whom the debtor is required to make payment. The notice must contain a statement that the assignment is governed by the uniform rules. Furthermore the notice is effective only in relation to a receivable arising under a contract concluded at or before the time the notice is given.

98. On the other hand, when the factor claims payment of a receivable arising under a contract of sale, the debtor may set up against the factor all defences of which the debtor could have availed himself under the contract if such claim had been made by the supplier. The debtor may also exercise against the factor any right of set-off, in respect of claims existing and available to the debtor at the time the debtor received notice of the assignment, against the supplier in whose favour the receivable arose. However, non-performance or defective or late performance of the contract of sale by the supplier does not entitle the debtor to recover money paid by the debtor to the factor except in the cases mentioned above.

99. Finally a debtor in good faith who has no reason to know of any other person's right to payment of a receivable and who pays the factor pursuant to a notice of assignment given by the supplier or by the factor with the supplier's actual or apparent authority will be discharged pro tanto of his liability even though the receivable had not been validly assigned to the factor by the supplier or the right to payment of the receivable was vested in a third party.

100. The Group was, in addition, of the opinion that it was not advisable at the present time to attempt to regulate the content of contracts between factors and suppliers or to lay down rules governing contracts between factors as these appeared to be areas where the contracts which are used by the practitioners and their customers seemed to give satisfaction. Nor does the draft seek to determine the validity of the factoring contract which is to be decided by the law applicable to that contract.

101. Similarly the Group ultimately abstained from providing in the rules a solution to the problem of priorities, i.e. competing claims of a factor and of a third party, both of whom have rights over the receivables assigned by the supplier, since it did not seem possible to lay down a substantive uniform rule, given the wide differences in national law. Moreover, the search for a conflicts rule led to fairly clear solutions, but on detailed examination each of these was shown to present drawbacks.

102. The preliminary draft rules approved by the Group will now be distributed among circles interested in factoring so as to obtain the greatest number of reactions and observations. Thereafter the criticisms and suggestions made with regard to the text will be analysed and the Study Group perhaps reconvened to see whether the draft should be enlarged or amended or, if it is deemed to be sufficiently complete, pass on to a new state, such as its submission to Governments for observations or even to a Committee of Governmental Experts for consideration.

O. Multinational marketing enterprises

103. The Committee on Economic Co-operation among Developing Countries in resolution 1 (I), establishing the UNCTAD work programme on economic co-operation among developing countries, decided that multinational marketing enterprises among developing countries would be one of the priorities for further work. In response to this resolution, the secretariat prepared studies dealing with the legal and institutional aspects of this subject, including "Juridical aspect of the establishment of multinational marketing enterprises among developing countries", 1982 (TD/B/C.7/28/Rev.1); "Individual aspects of the establishment of multinational marketing enterprises among developing countries - selection of constituent instruments of multinational enterprises compiled by the UNCTAD secretariat" (TD/B/C.7/28/Rev.1/Annex I); "Selection of juridical texts" (TD/B/C.7/28/Rev.1/Annex II); Juridical regimes for the establishment of multinational enterprises among developing countries organized in integration and economic co-operation groupings" (TD/B/C.7/30); and "Latin American multinational enterprises: an analytical compendium" (TD/B/C.7/50).

P. Restrictive business practices

1. Set of multilaterally agreed equitable principles and rules for the control of restrictive business practices

104. The Trade and Development Board of UNCTAD at its twenty-second session, in March 1981, established by resolution 228 (XXII) an Intergovernmental Group of Experts on Restrictive Business Practices to perform the functions described in Section G of the Principles and Rules for the Control of Restrictive Business Practices, which form a comprehensive programme of work on the monitoring, implementation and review of the Principles and Rules. This Group at its first

session, in November 1981, by resolution 1 (I) invited all countries to take appropriate steps at the national or regional levels to meet their commitments under the Principles and Rules and to communicate annually to the Secretary-General of UNCTAD appropriate information in that regard (TD/B/884, Annex I).

2. Model law on restrictive business practices

105. The UNCTAD Intergovernmental Group of Experts by the same resolution 1 (I) decided to continue its work on a model law on restrictive business practices. The Group requested the secretariat to submit to it at its second session, in October 1983, a draft of a model law or laws, in accordance with the provisions of the Principles and Rules.

106. Recent reports on restrictive business practices issued by the secretariat include: "Marketing and distribution arrangements in respect of export and import transactions: structure of international trading channels, 1981" (UNCTAD/ST/MD/25), and "Annual report, 1981, on legislative and other developments in developed and developing countries in the control of restrictive business practices"(TD/B/RBP/9).

Q. Labour

107. The activities of ILO pertaining to labour and its related aspects are: Collective Bargaining Convention, 1981 (No. 154); Collective Bargaining Recommendation, 1981 (No. 163); Occupational Safety and Health Convention, 1981 (No. 155); Occupational Safety and Health Recommendation, 1981 (No. 164); Workers with Family Responsibilities Convention, 1981 (No. 156); Workers with Family Responsibilities Recommendation, 1981 (No. 165); Maintenance of Social Security Rights Convention, 1982 (No. 157); Termination of Employment Convention, 1982 (No. 158); and Termination of Employment Recommendation, 1982 (No. 166).

108. ILO also prepared the following Codes of Practice, Guides and Manuals: Model Code of Safety Regulations for Industrial Establishments (revision expected to be completed during the next two biennia); Code of Practice on Safety in Haulage and Transport Operations in Mines (draft of Code completed in French and English); Code of Practice on Safety and Health in the Iron and Steel Industry (in print); Code of Practice on Radiation Protection of Workers in Mining and Milling of Radioactive Ores (Part VI of ILO Manual of Industrial Radiation Protection) (a joint IAEA/ILO/WHO publication. The draft, approved by the Governing Body in November 1982, will be published by IAEA); and Code of Practice for the Safe Use of Asbestos (the draft will be submitted to a meeting of experts in September 1983).

109. In 1980 the CMEA secretariat issued a model statute on the working conditions of workers in international enterprises. This model statute was approved by the CMEA Conference on Legal Matters for use by CMEA member countries and CMEA bodies at their discretion. The document is intended to apply in those cases where an international enterprise is established by international agreement and the rules governing the working conditions of its staff are approved by the parties to the agreement.

R. Customs and tariffs

1. The GATT Valuation Agreement

110. On 1 January 1981 the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade entered into force. It is a new international customs valuation system, which resulted from the Multilateral Trade Negotiations in GATT. Most of the major trading countries of the world have already adopted or undertaken to adopt this system.

111. Under the provisions of the Agreement a Technical Committee on Customs Valuation is established, under the auspices of CCC, to be responsible for uniformity in interpretation and application of the Agreement at the technical level. This Committee is composed of representatives of the Contracting Parties to the Agreement: the remaining Council Members, and other countries, may be represented by observers.

112. The Committee has commenced the issue of instruments to clarify the treatment of various questions arising from the Agreement. The instruments take the form of advisory opinions, commentaries, explanatory notes and case studies, and they are published by the Council in a loose-leaf compendium. The Committee may also make recommendations to a GATT Committee on Customs Valuation for amendment or modification to the Agreement. Under the Plan for the 1980's CCC is preparing a model training course on the Agreement.

2. UNESCO sponsored Agreements on abolition of customs duties on educational, scientific and cultural materials

113. The following UNESCO sponsored agreements serve to free educational, scientific and cultural materials from customs duties:

- Agreement for Facilitating the International Circulation of Visual and Auditory Materials of an Educational, Scientific and Cultural Character (the Beirut Agreement) 10 December 1948;

- Agreement on the Importation of Educational, Scientific and Cultural Materials and Protocol (the Florence Agreement) 17 June 1950; this Protocol to the Florence Agreement adopted on 26 November 1976 by UNESCO General Conference, entered into force on 2 January 1982. It extends customs-duty exemption to various groups of materials not covered by the Florence Agreement, such as sports equipment, musical instruments, materials and machines for book production.

3. Standardized regulations on preferential tariffs

114. The CMEA Agreement on standardized regulations governing the origin of goods from developing countries in the awarding of preferential tariffs under the General System of Preferences entered into force on 24 March 1981 between Bulgaria, Czechoslovakia, Hungary, Poland and USSR. The purpose of this Agreement is to guarantee the most favourable conditions possible for access to goods coming from developing countries and standardizing the regulations governing the origin of such goods in the awarding of preferential tariffs, while at the same time taking into account resolutions 21 and 24 of the second session of UNCTAD and resolution 96 of this Conference's fourth session.

S. Taxation1. CMEA Agreements on abolition of double taxation on income and property

115. On 1 January 1979 the CMEA Agreement on the abolition of the double taxation on income and property of juristic persons and the Agreement on the abolition of the double taxation on income and property of physical persons entered into force between Bulgaria, Hungary, German Democratic Republic, Mongolia, Poland, Romania, USSR and Czechoslovakia. These Agreements are designed to create more favourable conditions for the development of economic, scientific and technical co-operation and cultural exchange. They are based on the principle that juristic and physical persons should not be liable at the same time to taxation on the same income and property in two or more States parties to the Agreement.

2. Proposals for the resolution of international tax conflicts arising under conventions for the avoidance of double taxation

116. The ICC Taxation Commission is examining problems involved in the mutual agreement procedure, the principal method for the resolution of international tax conflicts at present. The Commission will consider proposing amendments which could ameliorate the mutual agreement procedure and will examine the possibility and/or advisability of the use of arbitration or the creation of an international fiscal jurisdiction to dispose of cases not adequately resolved under the mutual agreement procedure.

3. Tax treatment of interest in international economic transactions

117. The ICC's Commission on Taxation is elaborating proposals for a uniform fiscal approach to the treatment of interest in international economic transactions.

T. Recommendations to promote trade

118. At its 57th/58th session in June 1981, CCC adopted the following Recommendations:

(a) Recommendation concerning the transmission and authentication of goods declarations which are processed by computer

This Recommendation provides that customs administrations allow declarants to use electronic or other automatic means to transmit goods declarations to customs for automatic processing and that Customs accept that goods declarations so transmitted can be authenticated by means other than handwritten signature.

(b) Recommendation concerning time tolerance in the application of Interpretative Note 5 to Article I of the Definition of Value

This Recommendation provides that when goods are being valued on the basis of the price paid or payable, under the Brussels Definition of Value, no adjustment should be made to take account of price fluctuations occurring between the date of the contract of sale and the time of valuation, provided that the contract of sale is executed within a period consistent with normal practice in the trade concerned.

(c) Recommendation concerning the overriding application of Interpretative Note 5 to Article I of the Definition of Value

This Recommendation provides that when it is possible to determine dutiable value, under the Brussels Definition, on the basis of the price paid or payable, no other method of valuation should be used.

119. At its 59th/60th sessions in June 1982, CCC adopted the following Recommendations:

(a) Recommendation concerning the production of goods declarations by means of computer or other automatic printers

This Recommendation provides that customs administrations authorized declarants to produce their goods declarations by means of computer or other automatic printers on preprinted forms or on plain paper.

(b) Recommendation concerning the use of the ISO alpha-2 country code for the representation of names of countries

This Recommendation provides that customs administrations use the two-letter alphabetic code referred to in international Standard ISO 3166 as the "ISO alpha-2 country code" for the representation of names of countries in international data exchange.

(c) Recommendation concerning the use of a code for the representation of modes of transport

This Recommendation provides that customs administrations use the one-digit numeric code structure contained in Recommendation No. 19 of the Working Party on Facilitation of International Trade (UN/ECE) for the representation of modes of transport in international data exchange.

Recommendation concerning the establishment of links between customs transit systems

- (d) This Recommendation, which was developed in close co-operation with ECE, provides that States and Customs or Economic Unions attempt to establish a link between the customs transit systems in force in their respective territories and, to this end, to conclude bilateral and multilateral agreements if required for this purpose.

XIII. FACILITATION OF INTERNATIONAL TRADE

A. Harmonization and facilitation of administrative procedures relating to goods and documents

1. Harmonization of frontier control of goods

120. The ECE Inland Transport Committee adopted an International Convention on the Harmonization of Frontier Control of Goods at its thirty-third (special) session in October 1982. Article 9 of the Convention provides that the Contracting Parties must endeavour to further the use, between themselves and with the competent international bodies, of documents aligned on the United Nations Layout Key. The United Nations Layout Key for trade documents was issued as a United Nations Sales publication in 1981 (E.81.II.E.19). (See also A/CN.9/225, paragraphs 8-9.)

121. In connexion with the draft international convention on the harmonization of frontier control of goods, ECLA took part in the forty-sixth special session of the ECE group of experts on customs questions relating to transport, and in view of the importance of this convention in facilitating international transport in the countries of the region, it has circulated the contents of the draft and the steps taken within ECE to negotiate the convention.

122. At the twelfth meeting of ministers of public works and transport of the Southern Cone countries (Asunción, 18-22 October 1982) the question of delays in passing frontiers was discussed and an agreement was adopted asking ECLA to co-operate with the countries in studying the international convention on harmonization of frontier checking goods. ECLA will carry out this task during 1983 on the basis of information provided by ECE in connexion with the final draft approved for the convention.

2. Customs

(a) Customs transit

123. The ECE Inland Transport Committee is continuing its project involving consideration of the possibility of establishing a link between the different existing systems of customs transit. The legal issues involved in the project concern, inter alia, mutual recognition of the validity of the information contained in the transit documents, acceptance of seals, and administrative co-operation. No decision has yet been made as to the establishment of a link between customs transit systems and the form (resolution or convention) that an eventual link would take.

124. The following international organizations participated in work on this project: CEC, CCC and IRU. CCC, having undertaken similar work in the past, resumed consideration of this question parallel with the work of ECE and adopted a resolution on the matter as did the Inland Transport Committee of ECE at its forty-fourth session in February 1983. ECLA has been promoting the application of an international customs transit system such as the TIR Convention of 1975. In November 1982 an agreement was formalized with LAIA for jointly promoting the signing of a partial agreement, under the LAIA Montevideo Treaty of 1980, for the application of an international customs transit system based on the provisions of the 1975 TIR Convention. A draft agreement has been drawn up which has been discussed with the customs authorities of Chile, Uruguay, Paraguay, Brazil and Argentina. Once the process of consultation with the different national customs authorities is completed, negotiations on the draft agreement will be conducted.

(b) Promotion of the International Convention on the Simplification and Harmonization of Customs Procedures (Kyoto Convention)

125. CCC has undertaken a programme to promote the widest possible adoption and implementation of the Kyoto Convention, which CCC completed in June 1980 when it adopted the last four of the Convention's Annexes. The Convention is made up of a body of rules for its implementation and thirty Annexes, each dealing with a separate Customs procedure. The Convention and nineteen of its Annexes have entered into force. Thirty-eight countries and EEC have become Contracting Parties to the Convention by accepting at least one of its Annexes.

126. In co-operation with national Customs administrations, CCC has undertaken a series of seminars to explain the Convention and its practical application. Seminars have been held in Vienna, Austria, in November 1981; in Ouagadougou, Upper Volta with the assistance of the West African Economic Community (CEAO),

in June 1982; and in Blantyre, Malawi, in December 1982. Seminars are scheduled to be held in the United States with the assistance of CARICOM, in April 1983, and in France on a date still to be set.

127. In addition, CCC has published the Convention in a brochure entitled "Introducing the Kyoto Convention" which sets out the benefits of the Convention and the procedure for acceding to it. The Council has also undertaken a series of detailed studies in selected areas within the Convention of which five have been completed and an additional six are being prepared for consideration by the Council at its June 1983 sessions.

3. Commodity classification for requirements of customs, statisticians and carriers

128. CCC's plan for the 1980's gives first priority to the completion of the Harmonized System in 1983. This will be a new and expanded international commodity description and coding system for use in customs classification, international trade statistics and transportation. There has been regular liaison on the development of the System between the CCC secretariat and the secretariats of the United Nations Statistical Office and the UNSO/SOEC-Joint Working Group on World Level Classifications. A paper which will be submitted to the Council in June 1983 sets 1 January 1985 as the earliest date for implementation of the System.

129. In 1983, CCC will publish the first brochures setting out the essential features of the Harmonized System, its advantages and the obligations involved in joining it. In 1984, CCC and ECA will jointly organize a training course aimed at preparing Eastern, Central and Southern African countries for the introduction of the System; and in 1985, CCC will hold a training course on the System at its Headquarters in Brussels.

130. The main objective of the System is to provide simultaneously, at a developed and internationally agreed level of detail, for the major needs of authorities, statisticians, carriers and producers. To the maximum extent possible, all these interests, together with organizations involved in trade facilitation, are represented on the Harmonized System Committee (HSC) or its Working Party, charged with the development and implementation of the System. More than fifty countries, groups of countries and national or international organizations have taken part in the work of the HSC and its Working Party.

131. In preparing the System the HSC has taken into account a wide range of classification systems (including certain important systems not based on the CCCN), chosen as being representative of the requirements of customs, statisticians and carriers.

132. The complete package of proposals will be submitted to CCC in June 1983. The System, as a new Convention, will be introduced concurrently with the new version of the CCCN, and a submission to CCC in June 1983 sets 1 January 1985 as the earliest date for implementation. Following a period of transition the System will replace the CCCN.

133. From the outset it has been the intention that the System should be a multi-purpose international system. In the area of statistics, the external trade aspect was covered by terms of reference which required that the provisions of the Standard International Trade Classification (SITC, Rev.2) should, wherever possible, be respected. The need for a better correlation with production statistics was also stressed in 1973 in the study group report to CCC.

134. Concerning the SITC there has never been any question but that there should continue to be a correlation between the CCN (and the subheadings of the System) and the SITC. It was, however, inevitable that the major review of the CCN which is now nearing completion would result in the need for a third revision of the SITC. For wholly practical reasons, SITC (Rev.3), the new CCN and the System will enter into operation on the same date.

135. CCC will undertake its own training programmes on CCC and CCC-administered instruments, specifically the International Convention on the Simplification and Harmonization of Customs Procedures (Kyoto Convention), the GATT Valuation Code and the Harmonized System.

4. Rules of origin of goods

136. At its 59/60th sessions in June 1982, CCC decided with regard to rules of origin of goods that, as a first step, it should identify and assist countries to remove from their systems those rules of origin which were particularly difficult to apply and to control.

137. An initial study of the subject has been completed by the secretariat with the assistance of fourteen Member countries and the following international organizations: ECLA, GATT, Cartagena Agreement, EFTA, CARICOM, CEAO, ECOWAS, CEC and UNICE. The study has been circulated for comments by Member countries and interested international organizations and will be considered by CCC Permanent Technical Committee at its May 1983 meetings.

138. The question of what kind of international instrument might be developed to implement this project has not been decided. However, CCC's Policy Commission has this question and the question of further involvement of CCC in the field of rules of origin under consideration and will make recommendations to CCC for its consideration at its sessions in June 1983.

B. Measures designed to facilitate transportation

139. CCC's activities involve the following measures designed to facilitate transportation:

- organization of meetings of the Administrative Committee for the Customs Convention on Containers (next meeting to be held at the end of 1983);
- co-operation with ECE in the preparation of a Recommendation establishing a link between transit systems (1982) and eventual development of further international instruments in this field (1983);
- co-operation with ECE in the elaboration of an international Convention for facilitation of road traffic (similar to the instruments developed by IMO for maritime traffic, ICAO for air traffic)
- co-operation with the ECE in connexion with the TEM (Trans-European Motorway) programme;
- participation with the ECE and the ECA in the ten-year development project for road traffic in Africa.

C. Facilitation of international trade procedures

1. ECE/UNCTAD Trade Data Elements Directory (TDED) and the rules for its maintenance

140. The ECE/UNCTAD Trade Data Elements Directory (TDED) was published in 1981 and at the same time it was proposed that it should become an International Standard (ISO DP 7372) by the competent Technical Committee of the International Organization for Standardization (ISO), ISO/TC 154 "Documents and data elements in administration, commerce and industry". A number of international bodies took an active part in the preparation of the Directory, their members being potential users of the standardized data elements in their specific areas of application. An updated version of the Directory was issued in English, French and Russian versions at the beginning of 1983.

141. The data elements included in the Directory are intended for use, for example, in trade data interchange and in documents and data banks for national as well as international applications. The contents of the Directory are described in document TRADE/WP.4/INF.76: TD/B/FAL/INF.76, which also contains information on its distribution.

142. An organized maintenance function is required to keep the Directory up to date. Taking into account the decision by ISO/TC 154 that the Directory should be established as an ISO standard and that its maintenance should be entrusted to the ECE/UNCTAD secretariats, it was agreed that the maintenance function should be established in such a way that it could be recognized as a Maintenance Agency in accordance with the relevant parts of ISO Directives.

143. At its sixteenth session in September 1982, the ECE Working Party on Facilitation of International Trade Procedures agreed on rules for the maintenance of the Trade Data Elements Directory. These rules form part of the TDED; it has been proposed that the same text should be included in ISO DP 7372. The rules have been published in document TRADE/WP.4/INF.86: TD/B/FAL/INF.86.

144. In order to keep the ECE/UNCTAD Trade Data Elements Directory up to date to meet changing or new requirements in trade, a Maintenance Agency has been established and entrusted with the maintenance of the Directory, as set out below.

145. The secretariats of ECE and UNCTAD jointly provide the secretariat for the Maintenance Machinery through the ECE Trade and Technology Division and the UNCTAD Special Programme on Trade Facilitation (FALPRO).

146. In addition to the secretariats of ECE/UNCTAD and ISO/TC 154, and the ISO Central Secretariat, which will be represented in the Maintenance Agency, the following bodies have indicated their interest in being associated with the work of the Maintenance Agency, and each may appoint a participant: IMO; CCC; IATA; IRU; UIC; ICS and FIATA.

2. ECE/UNCTAD Trade Data Interchange Directory (TDID)

147. The ECE/UNCTAD Working Party on Facilitation of International Trade Procedures initiated work in 1976 to develop "a set of standards for data exchange between international trade partners over data communication links and for computer exchange using various media...". In 1979 Guidelines for trade

data interchange developed within the Working Party were approved, and it was agreed to issue them as Part 4 of a new publication to be issued in a loose-leaf presentation in instalments: the ECE/UNCTAD Trade Data Interchange Directory.

148. Part 1 "Introduction" and Part 4 "Guidelines for trade data interchange developed within the ECE" of the TDID were published in 1981; Part 2 presenting "Rules for registration of application level protocols" for trade data interchange was agreed in 1982 and published in 1983.

149. In the "Introduction" to TDID it is stated that the work on the Guidelines had demonstrated that it would be unrealistic to recommend only one world standard for trade data interchange. For this reason, application level protocols fulfilling the requirements of the Rules for registration will be made available to interested users through the TDID; in this way, it is hoped that protocols of this type may be less numerous and more harmonized than they would have been without publication of the TDID. The contents of Part 4, i.e. the Guidelines, are described in document TRADE/WP.4/INF.77: TD/B/FAL/INF.77.

150. For the work of ECE on the legal aspects of automatic trade data interchange, see A/CN.9/238.

151. For the work of ECE on a universal (multipurpose) transport document, see A/CN.9/225, paragraphs 64-65.

152. A list of titles of trade documents with numeric identifiers and descriptions of their functions was adopted by the ECE Working Party on Facilitation of International Trade Procedures and published in the joint ECE/UNCTAD series of information documents (TRADE/WP.4/INF/84: TD/B/FAL/INF.84).

153. Phytosanitary certificates aligned with the United Nations Layout Key for trade documents, for use with the FAO International Plant Protection Convention as revised in 1979, were adopted in 1982.

D. Notification of laws and regulations concerning
foreign trade and changes therein (MUNOSYST)

154. The ECE Committee on the Development of Trade is examining the possible scope and functioning of the possibilities of creating a multilateral system of notification of laws and regulations concerning foreign trade and changes therein (MUNOSYST) in order to assess whether its creation would be practicable and desirable. The line of action suggested in documents TRADE/R.426 (1981) and TRADE/R.427 (1981) will be followed. The questionnaire agreed upon by the Committee at its thirtieth session will be circulated to ECE member countries for completion. In 1982 the secretariat prepared an inventory of primary and secondary sources of information on the basis of information provided by Governments (TRADE/R.447). The interim results of research into potential user information, inquiry, access and retrieval requirements were presented in a secretariat Note (TRADE/R.448).