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DEVELOPMENT AND INTERNATIONAL ECONOMIC CO-OPERATION:  
TRADE AND DEVELOPMENT

Negotiations on a draft international code of conduct  
on the transfer of technology

Report of the Secretary-General of the United Nations  
Conference on Trade and Development

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## I. INTRODUCTION

1. The United Nations Conference on an International Code of Conduct on the Transfer of Technology was convened, under the auspices of the United Nations Conference on Trade and Development (UNCTAD), pursuant to General Assembly resolution 32/188 of 19 December 1977, with the mandate of negotiating on the Code of Conduct and taking all decisions necessary for its adoption. Since 1978, six sessions of the Conference have been held, as well as three sessions of an Interim Committee established between the fourth and fifth sessions of the Conference to seek solutions to the outstanding issues and to make proposals thereon to the Conference. The sixth session, which was held from 13 May to 5 June 1985, concentrated on the main issues outstanding in chapters 4 and 9. However, it was ultimately unable to reach agreement on those issues.
2. Pursuant to General Assembly resolution 40/184 of 17 December 1985, later followed by resolutions 41/166 of 5 December 1986 and 42/172 of 11 December 1987 and decision 43/439 of 20 December 1988, the Secretary-General of UNCTAD and the President of the United Nations Conference on an International Code of Conduct on the Transfer of Technology have held consultations with regional groups and interested Governments with the objective of delineating the scope of the issues outstanding in the draft code and undertaking a quest for appropriate solutions.
3. The approach adopted so far in the consultations has consisted of a search for appropriate solutions to the issues outstanding in the draft code of conduct. Significant efforts have been made by all regional groups and interested Governments to overcome the differences in their respective approaches to the issues outstanding in the code, in particular in chapters 4 and 9. However, despite all efforts, no concrete results enjoying general consensus have so far emerged. With regard to chapter 4 on restrictive practices, the consultations have revealed that divergences on conceptual questions continue to prevail regarding the manner in which restrictive practices in transfer of technology transactions should be treated in an international code. In respect of chapter 9, on applicable law and settlement of disputes, different approaches have persisted between those countries favouring a clearer recognition of the contractual relations and those wishing to stress the observance by the parties, in choosing the law applicable to their relations, of the mandatory rules of the laws of their countries, which cannot be derogated from by contract.

## II. CONSULTATIONS CARRIED OUT IN 1989

4. As pointed out in the report of the Secretary-General of UNCTAD to the General Assembly at its forty-third session (A/43/763), all regional groups had agreed that consultations on the draft code of conduct could continue with a view to exploring and identifying further avenues of action for the future. During 1989, therefore, pursuant to General Assembly decision 43/439, the Secretary-General and the President of the United Nations Conference have continued their consultations with regional groups and interested Governments, with a view to identifying and exploring possible approaches to the continuation of the consultations on the draft Code of Conduct.

5. Consultations were held during the seventh session of the Committee on Transfer of Technology (23 January-2 February 1989), in view of the presence in Geneva of a number of experts who had long been associated with the negotiations on the Code of Conduct. Following these consultations, and taking into consideration the views expressed, the UNCTAD secretariat on 9 February 1989 communicated to all member States of UNCTAD the way in which the Secretary-General of UNCTAD, in collaboration with the President of the Conference, intended to proceed with further consultations, including the practical steps to be taken in this framework.

6. The said communication suggested that, in continuing the consultations, consideration could also be given to the relevance to the Code negotiations of the rapidly changing patterns of trade, production and innovation in the area of technology and the policy and legislative responses adopted by Governments to these changes. To this end, the communication suggested the following steps: (a) the undertaking by the UNCTAD secretariat of a study on the relevance of recent policy and legislative developments in the area of technology to the draft Code of Conduct, particularly the issues outstanding in the negotiation, and the circulation of this study to Governments for comments; (b) based on the outcome of (a), and with the assistance, where appropriate, of experts in the field of technology, an assessment of the situation by the Secretary-General of UNCTAD and the President of the Conference, and its consideration through consultations with regional groups and Governments; and (c) a report by the Secretary-General of UNCTAD based on (a) and (b) to the General Assembly at its forty-fifth session, so as to enable the General Assembly to take appropriate action.

### III. CONCLUSIONS

7. Pursuant to the above-mentioned General Assembly resolutions, the Secretary-General of UNCTAD and the President of the United Nations Conference on an International Code of Conduct on the Transfer of Technology wish to continue their efforts, in the manner proposed in the above-mentioned communication, with a view to bringing the ongoing consultations to a successful outcome. To this end, the Secretary-General of UNCTAD and the President of the Conference intend to proceed with further consultations on the draft Code of Conduct in the manner proposed in the above-mentioned communication. The Secretary-General of UNCTAD will then make a complete report to the General Assembly, based on the above process, to enable the General Assembly at its forty-fifth session to take appropriate action on the negotiations on the draft Code of Conduct.

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