

Environment and Development is entrusted with the examination of the effects of environmental policies, standards and regulations on market access and competitiveness; market opportunities arising from the demand for environment-friendly products and eco-labelling schemes.

Trade Efficiency

UNCTAD VIII decided to make trade efficiency a new priority task. The initiative's aims are to lower the cost of international trade transactions, enhance participation in international trade especially by small and medium-sized enterprises and promote efficient trade practices. The first United Nations International Symposium on Trade Efficiency held at the ministerial level in Columbus (Ohio) on 17-21 October 1994 considered concrete actions to enhance trade efficiency at the national and international levels. The Symposium adopted a Ministerial Declaration and trade efficiency guidelines and recommendations.

Resources for Development

Since UNCTAD VIII, there is fresh emphasis on investment and financial flows, acquiring finance without creating foreign debt, and setting up new mechanisms to increase foreign direct investment. The report of the *Ad Hoc* Working Group on Investment and Financial Flows which concluded in March 1994 made recommendations on foreign direct investment (FDI), foreign portfolio equity investment (FPEI) and build-operate-transfer (BOT) arrangements.

Transnational Corporations and Investment

The UN Programme on Transnational Corporation (TNCs) has been transferred to UNCTAD. At its 20th Annual session in May 1994, the Commission on Transnational Corporations, which reports to the ECOSOC, recommended that it should be renamed the UNCTAD Commission on International Investment and Transnational Corporations and be made a subsidiary body of the TDB.

Privatization and Enterprise Development

With both developed and developing countries turning increasingly to privatization, UNCTAD VIII established a new programme on privatization and enterprise development and set up an *Ad Hoc* Working Group on Comparative Experiences with Privatization. That provided governments with the opportunity to exchange privatization experiences and to formulate guiding principles for the design and implementation of privatization programmes. At its fourth and final session in April 1994, the *Ad Hoc* Working Group adopted a set of "Indicative Elements for

Consideration in Formulating Privatization Programmes" which includes guidelines and options for the formulation of privatization policies.

Commodities

UNCTAD IV in 1976 adopted an Integrated Programme for Commodities (IPC) which became an umbrella for specific International Commodities (ICAs) and the Common Fund, designed to underpin the ICAs with financial backing. The Common Fund, an autonomous institution, is widely recognized as a significant instrument of international commodity policy. Its first account, designed to finance the creation and operation of buffer stocks to help stabilise prices is not currently used, but its Second Account which finances commodity development projects is operating successfully. UNCTAD has played a central role in assisting the negotiation or renegotiation of ICAs which have been established for several commodities, including cocoa, jute and jute products, natural rubber, olive oil, sugar, tin, tropical timber and wheat. It also promotes regular consultations among commodity market and industry operators. It has also set up Expert Groups for Iron Ore and Tungsten and autonomous intergovernmental bodies for minerals and metals, including the International Nickel Study Group and the International Copper Study Group.

The Standing Committee on Commodities, set up by UNCTAD VIII, conducted a review at its January 1994 Session of market-based management instruments and associated risks, national experiences of diversification, and the needs for financial and technical assistance to developing countries. The Committee is also assisting the TDB on the question of convening a World Conference on Commodities under UNCTAD auspices.

A new International Cocoa Agreement was negotiated in 1993 under UNCTAD auspices and entered into force in February 1994. Its production policy mechanism represents a new contribution to commodity policy.

At its fourth session in January 1994, the United Nations Conference on Tropical Timber adopted the International Tropical Timber Agreement 1994 which brings together an economic and ecological partnership.

The second session of the UN Conference on Natural Rubber was held in October 1994 to negotiate a successor agreement to the International Natural Rubber Agreement of 1987.

Services Sectors

UNCTAD has been involved since its inception in such specific sectors as transport, insurance, tourism and trade financing. This work has led to

the negotiation of various instruments, particularly concerning maritime transport, as well as resolutions and guidelines. The current focus is on enabling developing countries to benefit from liberalisation of trade in services. The chief change in orientation after UNCTAD VIII is the emphasis on matters of national concern rather than global issues.

Shipping : UNCTAD has played a leading role in the area of international shipping legislation. A Committee on Shipping set up in 1965 focussed on international shipping legislation and such developmental issues as the establishment and expansion of national merchant marines. It was later expanded to include multimodal transport, bulk cargo markets and registration of ships. The international conventions adopted as on date include the UN Convention on a Code of Conduct for Liner Conferences (1974), the UN Convention on International Multimodal Transport of Goods (1980); the UN Convention on Conditions for Registration of Ships (1986); and the UN Convention on Maritime Liens and Mortgages (1993).

In 1993, the TDB approved the terms of reference of an Intergovernmental Group of Experts on Ports with the following mandates:

- (i) Port organisation, including issues relating to privatization, commercialization, deregulation and legislation;
- (ii) Port management, including issues relating to human resources development, strategic planning, marketing, sustainable development and investment.

Insurance : UNCTAD's insurance programme provides support to the developing countries in their efforts to build a viable domestic insurance industry and establish an appropriate regulatory and supervisory framework.

Prior to UNCTAD VIII, the work on each of the service sectors was entrusted to separate governing bodies. Since UNCTAD-VIII, a single body, the Committee on Developing Services Sectors has been charged with services in general, insurance and shipping.

Economic Cooperation Among Developing Countries (ECDC)

UNCTAD has been the first UN agency to make ECDC a part of its regular programme since 1968 aiming at promoting regional economic integration in developing countries and South-South trade. It has helped to establish ECDC programmes and institutions and implement cooperation activities in Africa, Asia, Latin America and the Caribbean. At the inter-regional level, it was instrumental in promoting the agreement on the Global System of Trade Preferences among Developing Countries (GSTP)

which entered into force in 1989 in about 40 countries. A second round of GSTP negotiations was launched in 1991.

UNCTAD has also contributed to strengthening monetary and financial cooperation among developing countries by supporting such multilateral clearing and payments arrangements as the Asian Clearing Union, and such trade financing institutions as the Arab Trade Financing Programme. The feasibility of establishing an inter-regional trade financing facility has also been under the consideration of UNCTAD since 1991.

UNCTAD also promotes South-South trade by encouraging and facilitating cooperation among developing country enterprises, including joint ventures, the setting up of enterprise associations and promotion of joint meetings of chambers of commerce and industry. Both the Association of Latin American Trading Enterprises (ALAT) and the Association of African Trading Enterprises (ASATRADE) were set up under UNCTAD auspices.

Poverty Alleviation

Since UNCTAD-VIII, poverty alleviation has become a central issue within UNCTAD and its Standing Committee on Poverty Alleviation. The main issues studied by the Standing Committee so far include social funds and safety nets, mobilization of domestic and external resources for poverty alleviation, effects of structural adjustment programmes on poverty, job-creation policies, means for the participation of small-scale and micro-enterprises in international trade and social mobilization and organisation of the poor.

At its second session in July 1994, the Standing Committee adopted a set of recommendations for the World Summit on Social Development (Copenhagen, March 1995). The recommendations covered international trade, debt relief, Official Development Assistance (ODA), and structural adjustment programmes in terms of their relationship to poverty.

Least Developed Countries (LDCs)

LDCs have been a focal point of UNCTAD's work since its inception. A list of LDCs and criteria prepared by the UNCTAD Secretariat to define LDC status were approved by the UN General Assembly in 1971.

UNCTAD has played a leading role in mobilizing support for LDCs by providing the organizational framework and substantive support for two UN Conferences on LDCs held in Paris in 1981 and 1990. The first adopted a Substantial New Programme of Action (SNPS) for LDCs for the 1980s while the second reviewed the SNPS and adopted a strengthened

Programme of Action for LDCs for the 1990s. A High-Level Intergovernmental Meeting on the mid-term Global Review of the Action Programme is expected to be held in autumn 1995.

III. UNITED NATIONS INDUSTRIAL DEVELOPMENT ORGANISATION (UNIDO)

The major work programme of UNIDO in the area of international trade law appears to be focussed on the preparation of guidelines and manuals so as to assist developing countries in their industrial development. For the last few years, UNIDO is engaged in the preparation of Guidelines for Development, Negotiation and Contracting of Build-Operate-Transfer (BOT) Projects and a Manual on Technology Transfer Negotiations.

Guidelines for Development, Negotiation and Contracting of BOT Projects

Under a BOT scheme, private investors, both local and foreign are invited to build an infrastructure facility, operate the same on a commercial basis for a certain period of time, during which fees may be charged to cover the project and operating costs, to achieve a return on equity investments and to repay the financing. Since the early 1980s, the BOT strategy is being employed in a number of developing countries as an alternative way to implement and finance large infrastructure and industrial projects. The scheme is particularly useful for developing countries which lack development finance for infrastructure projects.

The main objectives of the UNIDO Guidelines, which are due to be published during the course of this year, are:

- (i) To give developing countries basic and strategic orientation so as to strengthen their capabilities in introducing, promoting and implementing BOT strategy and projects;
- (ii) To provide practical information on the structure, procedures and basic issues of BOT arrangements;
- (iii) To support dissemination and the learning process of BOT strategy; and
- (iv) To contribute towards reducing the time and expenses of BOT bidding, negotiation and contracting through the preparation of standard procedures and model documentation.

The *Guidelines* will be structured into the following chapters:

- 1) Introduction to the BOT concept and strategy;
- 2) Development phases of BOT arrangements;
- 3) Major issues on designing, implementing and executing BOT strategies and projects:
 - 3.1 Economic viability;
 - 3.2 Financial aspects and engineering;
 - 3.3 Risk allocation;
 - 3.4 Governmental role and support—legal and political environment;
 - 3.5 Selection of sponsors and procurement issues;
 - 3.6 Transfer of Technology and capability building;
 - 3.7 Operation, maintenance and transfer of ownership;
 - 3.8 Structuring and drafting of the contract package;

Standard Project Agreement and standard provisions for BOT Contracts.

The scope of the proposed Guidelines, it is stated, will not be limited to large infrastructure projects, but will address the widest possible range of suitable projects for promotion on the BOT basis. It is also intended to cover small-scale social infrastructure, such as water treatment, facilities, hospitals, etc. and takeover of inefficient projects by the private sectors. Other areas to be addressed include : infrastructure (water, electricity, communications, transport etc.), industrial estates and complexes, commercial and trade centres, storage and distributions centres.

The Guidelines are intended to be addressed to decision-makers at high government and political levels in the developing countries. They will be balanced and acceptable to banks and financial institutions, as well as investors and contractors. They will also be directed towards the planning and operational professionals engaged in BOT arrangements and projects, especially in the areas of finance, insurance and engineering and related legal aspects.

Manual on Technology Transfer Negotiations

This *Manual*, expected to be published during the course of this year, is intended to serve the purpose of a teaching tool for technology transfer negotiation courses, for developing the skills of trainers of negotiators

and as a working tool for negotiators. The *Manual* will cover, in a comprehensive manner, the range of subjects that entrepreneurs, decision-makers and government officials dealing with technology acquisition are likely to be confronted within the various phases of the technology transfer process. The contents of the *Manual* include subjects not only those directly related to the evaluation and negotiation of contracts but also the aspects that influence technology options, the behaviour of parties and the results of negotiations.

IV INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW (UNIDROIT)

The 73rd session of the Governing Council of UNIDROIT was held in Rome from 9 to 13 May 1994. At that session, the Governing Council considered the state of implementation of the work programme for the triennial 1993-95 which included the following substantive items:

- 1) Principles for international commercial contracts;
- 2) International protection of cultural property;
- 3) International aspects of security interests in mobile equipment;
- 4) Franchising;
- 5) Inspection agency contracts;
- 6) Civil liability connected with the carrying out of dangerous activities;
- 7) Legal issues connected with software.

Principles of International Commercial Contracts

1994 saw the culmination of the work on this project with the adoption of the final text of the Unidroit Principles of International Commercial Contracts. The Principles consist of a preamble and 119 articles divided into seven chapters (General provisions; Formation; Validity; Interpretation; Content; Performance; and Non-Performance). The chapter on performance contains a special section on hardship, while the chapter on non-performance deals with such questions as the right to performance, termination and damages. Each article is accompanied by a commentary, including illustrations, which form an integral part of the Principles. As such, the Principles constitute a system of rules of contract law specifically adapted to the special requirements of modern commercial practice and which may in a number of important ways be of service to the international

community. They may in particular be chosen by the parties as the law governing their contract or referred to by arbitrators in the settlement of disputes, be used as a means of interpreting or supplementing existing international uniform law instruments and also serve as a model for international legislators when drafting new legal instruments or for national law-makers when adapting domestic law to meet modern requirements.

The English version of the Principles was published in June 1994 and the French version in July 1994. Spanish and Italian versions are scheduled to be published early in 1995 while German, Arabic, Chinese, Russian, Dutch and Hungarian versions are in the course of preparation.

International protection of cultural property

The committee of governmental experts on the international protection of cultural property approved, at its fourth session held in Rome from 29 September to 8 October 1993, the text of the draft Unidroit Convention on the International Return of Stolen or Illegally Exported Cultural Objects. This would be the subject-matter of a diplomatic conference being convened by the Italian Government in Rome from 7 to 24 June 1995.

International aspects of security interests in mobile equipment

This item is under consideration of a study group designated by the Governing Council. The first session of the sub-committee of the study-group, set up pursuant to a decision taken by the Governing Council at its 72nd session, to prepare a first draft of the proposed Convention in this area was held in Rome from 14 to 16 February 1994. The sub-committee was able to reach a number of conclusions, which, while provisional insofar as they might need to be revised in the light of the sub-committee's consideration of the issues of enforcement and priorities, were nevertheless seen as providing a basis for the preparation of a first draft. The areas encompassed by these conclusions were the sphere of application of the proposed Convention, the setting up of an international registry and the conditions that should govern the recognition by the courts of Contracting States of international interests in mobile equipment created in accordance with the proposed Convention. The sub-committee recognized that henceforth it would be better to refer to the subject-matter of the proposed Convention in terms of international interests in mobile equipment rather than, as hitherto, in terms of certain international aspects of security interests in mobile equipment. This change of direction was felt necessary in view of the sub-committee's desire to embrace in the same instrument both interests arising under security agreements and those arising under either a retention of title agreement or a leasing

agreement with or without an option to purchase, for a term, say, three years.

Subsequently, a small drafting group, made up of one representative each of the English and French-speaking members of the sub-committee, met in Paris on 11 July 1994 in order to prepare a first set of draft articles designed to reflect the provisional conclusions reached by the sub-committee at its first session. The drafting group's efforts resulted in proposals for a first set of draft articles of a future Unidroit Convention on International Interests in Mobile Equipment. These were subsequently circulated for comment *inter alia* among all members of both the Study Group and the Sub-committee.

The second session of the sub-committee was held in Rome from 29 November to 1 December 1994. It has before it the proposals for a first set of draft articles prepared by the drafting group as also the comments made by members of the study group/sub-committee and concerned international organizations. After dealing with the issues raised by the comments, which concerned the first test of internationality to be employed in the proposed Convention, the effect of making registration a condition for the application of the proposed Convention, the definition of mobile equipment for the purposes of the proposed Convention and the question of whether the proposed Convention should apply not only to the recognition and enforcement of international interests in mobile equipment but also to their creation, the sub-committee considered those elements still missing from the broad framework which it had embarked upon at its previous session, namely the shape of the rules on enforcement and priorities to be included in the future Convention. It was agreed that the question of whether supplementary rules should be prepared specifically for aircraft, should be deferred pending the submission of a paper by the aircraft industry.

The drafting group is to reconvene, probably in May 1995 to endeavour to complete the framework begun in 1994 in the light of the provisional conclusions reached by the sub-committee at its second session and the report to be submitted by the aircraft industry.

Franchising

The Unidroit study group on franchising met in Rome from 16 to 18 May 1994. The terms of reference of the study group includes : to examine different aspects of franchising and in particular disclosure of information between parties before and after the conclusion of a franchise agreement and the effects of master franchise agreements on sub-franchise agreements,

to make proposals to the Council and to indicate the form of any instrument or instruments that might be envisaged.

With reference to international franchising, the study group focussed on master franchise agreements. It considered in particular the nature of the relationship between the master-franchise agreement and the sub-franchise agreements, applicable law and jurisdiction, the settlement of disputes, problems associated with the tripartite nature of the relationship between franchisor, sub-franchisor and sub-franchisees, particularly in relation to termination, and disclosure.

In relation to domestic franchising, the study group concentrated on disclosure and examined the experiences of countries which have attempted some form of regulation in this area, the role of franchise associations and the importance of the codes of ethics adopted by these associations.

The study group reached the conclusion that none of these areas would lend itself to being dealt with by means of an international convention. However, there emerged a general consensus on the desirability of preparing a legal guide to international franchising, and in particular to master-franchise agreements which are most commonly used in international franchising. The study group accordingly, decided to recommend to the Governing Council at its 74th session (scheduled for March 1995) that it agree to the preparation of a Legal Guide to Master-Franchise Agreements.

Inspection agency contracts

In pursuance of a decision by the Governing Council at its 72nd session, in June 1993, the secretariat of Unidroit had circulated a study on inspection agency contracts in the international sale of goods commissioned from Ms. Jelena Vilus. A paper analysing the comments and reactions received was drawn up by the secretariat for submission to the 73rd session of the Governing Council scheduled for March 1994. The Council requested the secretariat to engage in a further round of consultations with the interested circles to enable it to decide on the prospects of any useful working being carried out in connection with this topic.

Civil liability connected with the carrying out of dangerous activities

This topic was included in the programme of work of Unidroit following upon a reference from the Government of India in the wake of the Bhopal disaster. The Governing Council at its 73rd session (1994) asked the Secretariat to prepare a study designed to identify issues that might serve as a basis for possible measures designed to ensure compensation for personal injury to the victims of industrial accidents. The study was to