

The inaugural meeting of the Group was convened in Geneva from 22 to 26 June 1992 and it, *inter alia*, amended paragraphs 13 and 14 of the Terms of Reference. Paragraph 13 authorized the Group to be designated as an International Commodity Body under Article 7(9) of the Common Fund Agreement, for the purpose of sponsoring projects on Copper to be financed by the Common Fund through its Second Account.

**Tin:** The terms of Reference of the International Tin Study Group (TD/TIN/7/15) negotiated under UNCTAD auspices in April 1989 have yet to enter into force as the requirement of an unspecified number of States accounting for at least 70% of trade in tin has not been fulfilled.

**Tungsten:** An exploratory meeting in 1962 culminated in the establishment of the UN *Ad hoc* Committee on Tungsten in 1963. Following the establishment of UNCTAD, Governments agreed in May 1965 that the *Ad hoc* Committee on Tungsten should become a standing body of UNCTAD. It became the Committee on Tungsten which reported to the Committee on Commodities. The terms of reference of the Committee were very general, namely: to provide opportunity for international consultations concerning trade in tungsten; promote the improvement of statistics on tungsten and follow developments in the tungsten market. The fourth session of the Standing Committee on Commodities (30 October 1995), took note of the lack of interest in furtherance of the work of the Intergovernmental Group of Experts on Tungsten, and recommended to the Trade and Development Board to suspend the activities of the Group until the Board could determine that there was adequate support to reinstate it in the future.

**Others:** It should be pointed out that in respect of agricultural products, there are Intergovernmental Groups in the FAO on bananas, citrus fruits, fisheries, forestry, grains, hard fibers, kenaf and allied fibers, meat, oil seeds, oils and fats, rice, tea and wine and in GATT (now WTO) on dairy products and meat. These intergovernmental groups meet at regular intervals to review the market situation and prospects of the commodities in question.

## 2. Transfer of Technology

The UN General Assembly by resolution 32/188, had convened the UN Conference on an International Code of Conduct on Transfer of Technology to negotiate and adopt such a code. The Conference held six sessions between October 1978 and May 1986, but was unable to complete its work due to disagreement on Chapter 4 on restrictive practices and Chapter 9 on applicable law and settlement of disputes of the draft Code (TD/CODE/TOT/47). Since then consultations are being carried out by the Secretary-General of the United Nations. At UNCTAD-VIII (1992), the Conference noted the lack of agreement in recent consultations on this subject and recognized "that the conditions do not currently exist to reach full agreement on all outstanding issues in the Draft Code of Conduct". The General Assembly, in its resolution 48/167 of 21 December 1993, endorsed the above finding of UNCTAD-VIII and invited "the Secretary-General of UNCTAD, based on the relevant provisions of the Cartagena Commitment and taking into account the findings of the *Ad Hoc* Working Group on the Interrelationship between Investment and Technology Transfer, to report to the General Assembly at its fiftieth session on the state of the discussion". The Secretary-General of UNCTAD in its report submitted to the fiftieth session of the General Assembly (TD/CODE/TOT/60) has advised the General Assembly to formally suspend the negotiations on the draft code of conduct.

## 3. Restrictive Business Practices

### *Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices (RBPS)*

The United Nations Conference on Restrictive Business Practices approved in April 1980 a Set of Multilaterally Agreed Equitable Principles and Rules for the Control of RBPs (TD/B/RBP/CONF.10/Rev.1) which the General Assembly adopted by resolution 35/63 in December 1980. The Principles and Rules established, for the first time, international means for the control of RBPS, including those of TNCS, adversely affecting international trade, in particular the trade and economic development of developing countries.

Subsequently, the Trade and Development Board established an Intergovernmental Group of Experts to perform the task of monitoring, implementation and review of the Principles and Rules and to convene periodically Review Conferences for the improvement and further development of Principles and Rules. The first Review Conference was held in Geneva from 4 to 15 November 1985; the second one from 26 November to 7 December 1990, and the third one on 13 November 1995. The Third Review Conference reviewed 15 years of the application and implementation of the Set (TD\RBP\CONF.4\5) and considered RBPs that have an effect in more than one country, in particular developing and other countries (TD\RBP\CONF.4\6), the role of competition policy in economic reforms in developing and other countries (TD\RBP\CONF.4\2) and the scope, coverage and enforcement of competition laws and policies and analysis of the provisions of the Uruguay Round Agreement relevant to competition policy, including their implications for developing and other countries (TD\RBP\CONF.4\8).

In its resolution, (TD\RBP\CONF.4\15) the Third Review Conference established a detailed programme of work in the field of competition law and policy, in particular with respect to technical cooperation and assistance for developing countries and countries in transition, studies and consultations to clarify common ground in this area. It also recommended to the UN General Assembly to change the title of the Intergovernmental Group of Experts (IGE) on Restrictive Business Practices to that of 'IGE on Competition Law and Policy'; and further recommended that the General Assembly convene the Fourth Review Conference at Geneva in the year 2000. In furtherance of the resolution adopted by the Third Review Conference, the Expert Meeting on Competition Law and Policy at its first session in November 1996, has mandated the UNCTAD Secretariat to prepare analytical studies on:

(a) Empirical evidence of the benefits (including benefits for consumers) to be gained by the developing and least developed countries and countries in transition from applying competition law and policy principles to economic development in order to attain greater efficiency in international trade and development;

(b) Ways and means of promoting a competition culture and making transparent the benefits to be derived from competition policy; and

(c) International aspects of competition and the problems for competition law enforcement, including international mergers and industrial concentration which affect other countries and the strengthening of international cooperation.

In this context, it may be recalled that the WTO Ministerial Meeting held at Singapore (11-13 December, 1996) agreed to establish a working group to study the interaction between trade and competition policy, in order to identify any areas that may merit further consideration in the WTO framework. The Singapore Ministerial Declaration welcomed the Midrand Declaration and the contribution it can make to the understanding of issues. It calls for active co-ordination and exchange of views between the Working group and UNCTAD, so as to ensure that the 'development dimension' is fully taken into account.

#### *Model Law on Restrictive Business Practices*

The Intergovernmental Group of Experts on RBPs had asked the UNCTAD Secretariat to prepare the draft of a Model Law on RBPs in accordance with the provisions of the Set of Principles and Rules so as to assist countries or regional groupings not having legislation on RBPs to devise such legislation to strengthen and improve controls over RBPs. The Secretariat had accordingly prepared a text entitled "Draft Possible Elements for Articles of a Model Law or Laws" along with commentaries (TD\B\RBP\Rev.3). The Group of Experts, at its thirteenth session held from 24 to 28 October 1994, considered this text and revised the commentaries. It asked the Secretariat to compile drafting suggestions that the revised draft commentaries and submit the compilation to its fourteenth session with a view to further revising the commentaries.

At its fourteenth session held from 6 to 10 March 1995, the Group of Experts took note of the compilation of the commentaries prepared by the Secretariat (TD\B\RBP\Misc.16) and decided to further revise the commentaries in the light of the comments to be received from State Members before 15 May 1995. The Secretariat document

No. TD\B\BP\Rev.4 accordingly sets forth the revised commentaries taking into account the comments submitted by the Governments and recent trends in competition legislation world wide.

#### 4. Economic Co-operation for Development

##### *Generalized System of Trade Preferences (GSTP)*

The GSTP was adopted by the Negotiating Committee on GSTP at its Ministerial level meeting hosted by Yugoslavia in Belgrade in 1987. It came into force on 19 April 1989. It is aimed at liberalizing trade among developing countries through exchange of trade concessions which would need to be associated with the development of effective clearing and payments arrangements among the developing countries; the strengthening of economic integration and cooperation groupings; and the adoption of direct trade measures, particularly through cooperation between enterprises at sectoral levels among the developing countries.

#### 5. Maritime and Multimodal Transport

##### *UN Convention on a Code of Conduct for Liner Conferences, 1974*

This Convention, which came into force on 6 October 1983, establishes a number of rules concerning the operation of liner shipping, in particular as regards the loading rights of national shipping lines in respect of liner cargoes generated by their countries' foreign trade. As of 30 June 1995, it had 78 Contracting Parties.

##### *UN Convention on Multimodal Transport of Goods, 1980*

This Convention, establishes an international legal regime for the contract for the international multimodal transport of goods. It needs 30 ratifications/accessions for its entry into force. As of 30 June 1995, it had been ratified or acceded to by the following seven States: Chile, Malawi, Mexico, Morocco, Rwanda, Senegal and Zambia. Another two countries - Norway and Venezuela, had signed the Convention subject to ratification.

##### *UN Convention on Conditions for Registration of Ships, 1986*

This Convention contains a set of minimum conditions which should be applied and observed by States when accepting ships on their ship register. It defines the elements of the 'genuine link' that should exist between a ship and the State whose flag it flies and thus contains provisions for participation of the flag State in the ownership, manning and management of ships. The Convention also requires flag States to exercise effectively their jurisdiction and control over ships flying their flag. It also requires flag State to establish a competent and adequate national maritime administration responsible for a number of specific tasks such as ensuring that a ship flying its flag complies with the State's laws and regulations concerning registration of ships and complies with applicable international rules and standards concerned with the safety of ships and persons on board and the prevention of pollution of the maritime environment. The Convention will enter into force 12 months after the date on which no less than 40 States, the combined tonnage of which amounts to at least 25 % of world tonnage as specified in annex III to the Convention, have become Contracting Parties to it. As of 31 December 1995, the following ten States have had ratified/acceded to the Convention: Cote d'Ivoire, Egypt, Georgia, Ghana, Haiti, Hungary, Iraq, Libyan Arab Jamhiriya, Mexico and Oman.

##### *International Convention on Maritime Liens and Mortgages, 1993 (MLM)*

This Convention is intended to improve conditions for ship financing and the development of national merchant fleets and to promote international uniformity in the field of maritime liens and mortgages. It will enter into force six months following the date on which 10 States have expressed their consent to be bound by it. By 15 June 1995, it had been ratified by Monaco and Tunisia. The States which have signed the Convention subject to ratification include Brazil, China, Denmark, Finland, Germany, Guinea, Morocco, Norway, Paraguay and Sweden.

*Review of the International Convention for the Unification of Certain Rules relating to the Arrest of Sea-Going Ships, 1991*

In May 1993, the United Nations IMO Conference of Plenipotentiaries on Maritime Liens and Mortgages, having adopted the International Convention on Maritime Liens and Mortgages, 1993, adopted a resolution in which it recommended that "the relevant bodies of UNCTAD and IMO, in the light of the outcome of the Conference, reconvene the Joint Inter-governmental Group (JIG) with a view to examining the possible review of the International Convention for the Unification of Certain Rules relating to the Arrest of Sea-going Ships 1952". Accordingly the JIG of UNCTAD/IMO held its seventh session from 5 to 9 December 1994 in order to examine the aforesaid 1952 Convention. The JIG, having completed preliminary consideration of the subject, prepared a set of "Draft Articles for a Convention on the Arrest of Ships" (TD/B/CN.4/GE.2/3 Annex 11). The draft articles are based on the Draft Revision of the 1952 Convention prepared by the Comité Maritime International (CMI), the changes required as a result of the adoption of the International Convention on Maritime Liens and Mortgages, 1993 and the views expressed by the delegations during the session.

The JIG of UNCTAD/IMO, at its eighth session from 9-10 October 1995 decided to adopt as a basic text for its deliberations a revised set of articles for a convention on arrest of ships prepared by the Secretariats of IMO and UNCTAD (LEG/MLM/32-JIGE (VIII)/2-TD/B/CN.4/GE.2/5). The Group introduced several amendments to the draft and decided to revert to its consideration at its next session. A small working group was set with the task of ensuring that all claims with maritime lien status under the 1993 MLM Convention are included in the list of maritime claims.

Following its continued deliberations, in December 1996 the JIG has recommended to the International Maritime Organization (IMO) Council and to the Trade and Development Board of UNCTAD, that they consider proposing to the UN General Assembly the convening of a diplomatic conference to adopt a convention on the arrest of ships on the basis of the draft Convention prepared by the Group of Experts.

*Ports: Organization and Management*

In view of the increasing importance of services in the development process, UNCTAD-VIII(1992) decided to establish the Standing Committee on "Developing Services Sectors: Fostering Competitive Services Sectors in Developing Countries", thus consolidating various activities such as shipping, transport, insurance and other related services into a single intergovernmental body. At its first session in November 1992, the Standing Committee on Developing Services-Shipping gave the UNCTAD Secretariat the following mandate in the field of ports: to promote transparency, to foster competitive maritime transport services, to strengthen human resource development, and to strengthen technical cooperation. Owing to the specialized nature of the subjects, the Standing Committee appointed a subsidiary body -the Intergovernmental Group of Experts(IGE) on Ports, which held its first session in October 1993.

The second session of the IGE on Ports (held on 18-22 March 1996) adopted a set of conclusions titled, "Ports - an emerging partnership for development" (TD/B/CN.4/57/Annex 1). The Conclusions highlighted the increasing trend towards separating regulatory and commercial activities in port management and the emerging patterns of privatization in this field. The Conclusions emphasize that a pragmatic approach to port modernization can be effected only by such partnership for development between the government, public and private sectors. To foster privatization of ports, most particularly in developing countries which lack the logistical, legal and financial framework, the Conclusions adopted recommends measures including institutional reforms, trade promotion, strategic port pricing, port cooperation and, training and technical assistance.

**C. United Nations Industrial Development Organization (UNIDO)**

Pursuant to resolution 2152-XXI of the UN General Assembly, the United Nations Industrial Development Organization (UNIDO) was established as its subsidiary body in 1966. Subsequently in 1979, it

became an autonomous organization and started functioning as a specialized agency from August 1985. The primary objective of UNIDO is the promotion and acceleration of the industrial development in the developing countries with a view to assisting in the establishment of a new international economic order.

The work programme of UNIDO in the area of international trade law appears to be focused on the preparation of guidelines, manuals and checklists of contractual clauses so as to assist parties from the developing countries in concluding industrial contracts. These may be enumerated as below:

- (1) Guidelines on the purchase, maintenance and operation of basic insurance coverage for processing plants in developing countries;
- (2) UNIDO Model form of agreement for the licensing of patents and know-how in the petrochemical industry, including annexes, an integrated commentary and alternative texts of some clauses;
- (3) Items which could be included in contractual arrangements for the setting up of a turnkey plant for the production of bulk drugs (pharmaceutical chemicals) or intermediaries included in the UNIDO list;
- (4) UNIDO Model form of licensing and engineering services agreement for the construction of a fertilizer plant;
- (5) UNIDO Model form of turnkey lump-sum contract for the construction of a fertilizer plant;
- (6) UNIDO Model form of semi-turnkey contract for the construction of a fertilizer plant;
- (7) UNIDO Model form of cost-reimbursable contract for the construction of a fertilizer plant;
- (8) Guidelines for Infrastructure through Build-Operate-Transfer (BOT) Projects. The BOT Guidelines prepared by UNIDO cover the entire spectrum

of financial and legal issues faced by government authorities and project managers in the development of BOT projects, while offering developing countries the basic orientation needed to design effective BOT strategies. The Guidelines *inter alia* contain chapters on the following aspects: introduction to the BOT concept; the government's role in providing for successful BOT projects; transfer of technology and capability building; procurement issues and selection of sponsors; financial structuring of BOT projects; and standard forms of agreements relating to construction, operation and maintenance.

- (9) The UNIDO Manual on Technology Transfer Negotiations: This Manual, is primarily intended to serve the purpose of a teaching tool for technology transfer negotiation courses and enhancing the negotiation skills of the developing countries.

#### **D International Institute for the Unification of Private Law (UNIDROIT)**

The 75th session of the Governing Council of Unidroit was held in Rome from 19 to 22 June 1996. At that session, the Governing Council considered the state of progress on the following substantive items in the programme of work of UNIDROIT:

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,

Some brief notes and comments on these items are set out below.

## 1. Principles of International Commercial Contracts

The work on this project was completed in 1994 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). 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. The Principles have been published in the five official languages of Unidroit (English, French, German, Italian and Spanish). At the same time, the Institute has authorised the preparation by leading scholars of translations of the Principles into other language versions such as Arabic, Bulgarian, Chinese, Japanese, Dutch, Russian, Hungarian, Portuguese, Serbian and Slovakian.

With the Unidroit Secretariat beginning to receive information of the extent to which the Principles are being relied upon by countries modernising their civil and commercial law as well as of the first instances of their application by arbitrators, it is quiet clear that the efforts of the Institute to give wide exposure to the Principles has been received with much enthusiasm in scholarly, professional and business circles.

## 2. International Protection of Cultural Property

The Italian Government in 1994, convened in Rome from 7 to 24 June 1995, a diplomatic Conference for the adoption of the draft Unidroit Convention on the International Return of Stolen or Illegally Exported Cultural Objects. The Conference which was attended by representatives of seventy States and observers from eight other States, besides other intergovernmental and non-governmental organisations, adopted and opened for signature the Unidroit Convention on Stolen or Illegally Exported Cultural Objects.

As of 30 June 1996, the closing date for its signature, the Convention had been signed by twenty two States<sup>1</sup>. The Convention will enter into force on the first day of the sixth month following the date of deposit of the fifth instrument of ratification, acceptance, approval or accession.

The Convention comprises of a preamble and 21 articles, the first of which sets out the scope of application of the Convention, namely claims of an international character for the restitution of stolen cultural objects removed from the territory of a Contracting State contrary to its law regulating the export of cultural objects for the purpose of protecting its cultural heritage. Article 2 defines cultural objects for the purposes of the Convention as those which "on religious or secular grounds, are of importance for archaeology, prehistory, history, literature, art or science and belong to one of the categories listed in the Annex to this Convention.

Articles 3 and 4 deal with the question of stolen cultural objects, the general rule being that the possessor of such an object shall return it, subject to its being entitled, at the time of restitution, to payment of fair and reasonable compensation, provided that the possessor neither knew nor ought to have known that the object was stolen and can prove that it exercised due diligence when acquiring the object. Articles 5 to 7 govern the return to a requesting State of objects which have been illegally exported or temporarily exported under a permit from the territory of a requesting State for such purposes as exhibition, research or restoration and which have not been returned in accordance with the terms of the permit.

Article 8 is concerned with grounds of jurisdiction in respect of claims under the convention, with arbitration and with the application of provisional and protective measures available under the law of the Contracting State where the object is located at the time of bringing the claim. Article 9 provides that nothing in the Convention shall prevent a Contracting State from applying any rules more favourable to the restitution or return of a stolen or illegally exported cultural object than those established by the Convention.

<sup>1</sup> Burkina Faso, Cambodia, Ivory Coast, Ci-otia, France, Guinea, Hungary, Italy, Lithuania, Zambia, Finland, Portugal, Paraguay, Switzerland, Romania, Pakistan, the Netherlands, Peru, Bolivia, Senegal and the Russian Federation.