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## United Nations Commission on International Trade Law

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### Current activities of international organizations related to the harmonization and unification of international trade law

#### Note by the Secretariat

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\* This document was submitted late because of the need to undertake consultations on the content with relevant international organizations.



## I. Introduction

1. In resolution 34/142 of 17 December 1979, the General Assembly requested the Secretary-General to place before the United Nations Commission on International Trade Law a report on the legal activities of international organizations in the field of international trade law, together with recommendations as to the steps to be taken by the Commission to fulfil its mandate of coordinating the activities of other organizations in the field.

2. In resolution 36/32 of 13 November 1981, the General Assembly endorsed various suggestions by the Commission to implement further its coordinating role in the field of international trade law.<sup>1</sup> Those suggestions included presenting, in addition to a general report of activities of international organizations, reports on specific areas of activity focusing on work already underway and areas where unification work was not underway but could appropriately be undertaken.<sup>2</sup> Two reports of that nature have been prepared for consideration by the Commission at its thirty-eighth session in 2005 on electronic commerce and insolvency, contained in documents A/CN.9/579 and A/CN.9/580/Add.1, respectively. Accordingly, those two topics are not addressed in this note.

3. This general report, prepared in response to resolution 34/142, is the first in a new series which the Secretariat proposes to update and revise on an annual basis for the information of the Commission. It focuses on activities of international organizations primarily undertaken since 2000 to develop harmonized and unified international trade law instruments and is based upon publicly available material and consultations undertaken with the listed organizations.

The work of the following organizations is described in this report:

(a) United Nations bodies and specialized agencies

UNECE	United Nations Economic Commission for Europe
IMO	International Maritime Organization
UNCTAD	United Nations Conference on Trade and Development
UNIDO	United Nations Industrial Development Organization
WIPO	World Intellectual Property Organization

(b) Other intergovernmental organizations

ADB	Asian Development Bank
AfDB	African Development Bank
ASEAN	Association of South East Asian Nations
CARICOM	Caribbean Community
COMESA	Common Market for Eastern and Southern Africa Commonwealth Secretariat
EBRD	European Bank for Reconstruction and Development
Hague Conference	Hague Conference on Private International Law
OTIF	Intergovernmental Organization for International Carriage by Rail

IADB	Inter-American Development Bank
OAS	Organization of American States
OECD	Organization for Economic Cooperation and Development
OHADA	Organization for the Harmonization of Business Law in Africa
SADC	Southern African Development Community
Unidroit	International Institute for the Unification of Private Law
World Bank	International Bank for Reconstruction and Development
WCO	World Customs Organization

(c) International non-governmental organizations

CEELI	Central European and Eurasian Law Initiative
CMI	Comité Maritime International
FIATA	International Federation of Freight Forwarders Associations
IIDM	Instituto Iberoamericano de Derecho Marítimo
ICC	International Chamber of Commerce
ICN	International Competition Network
ITC	International Trade Centre UNCTAD/WTO
PECC	Pacific Economic Cooperation Council
WAEMU	West African Economic and Monetary Union

## II. Harmonization and unification of international trade law

### A. International commercial contracts

#### Hague Conference

4. In a meeting of the Special Commission on Jurisdiction and the Recognition and Enforcement of Judgment in Civil and Commercial Matters of the Hague Conference (“the Judgments Project”) held from 21-27 April 2004, a preliminary draft convention (“the preliminary draft convention”) on exclusive choice of court clauses was finalized. Following that meeting an explanatory report of that draft convention was prepared by two rapporteurs of that Special Commission. From 18-20 April 2005 the drafting committee of the Judgments Project met in the Hague to discuss a number of matters with regard to the preliminary draft convention, including: obligations of a court not chosen in the original agreement; inconsistent judgments; application and enforcement by courts of agreements concluded before and after entry into force of the preliminary draft convention; party autonomy; and the effect of national and international laws containing provisions contrary to the preliminary draft convention.<sup>3</sup> A Diplomatic Session is to be convened from 14-30 June 2005 in respect of the draft convention.

#### ICC<sup>4</sup>

5. The ICC Commission on Commercial Law and Practice (CLP)<sup>5</sup> is in the process of developing the following model contracts and agreements: Mergers and

Acquisitions Model Contracts I: Share Purchase Agreement; Mergers and Acquisitions Model Contracts II: Business and Assets Agreement; Model Turnkey Supply of an Industrial Plant Contract; Model Major Project Turnkey Contract; Model Selective Distributorship Contract; Model Clauses on Electronic Contracting; Business Guidance on Electronic Contracting; Model Technology Transfer Contract; Model Trademark Licensing Contract; Model Confidentiality Agreement; and a legal handbook on global sourcing contracts. CLP also works with UNCITRAL on electronic contracting; on the European Commission's initiative to harmonize European contract law; with the European Commission on the revision of the Rome Convention; and with the Hague Conference on its Judgments project (see above, para. 4).

#### **ITC<sup>6</sup>**

6. ITC administers a multilingual collection of legal information on international trade—Juris International ([www.jurisint.org](http://www.jurisint.org))—that provides users with some 160 model contracts selected in light of their practical interest for international commercial transactions (licensing, joint ventures, publishing, procurement, subcontracting, etc.). Model contracts and users' guidelines are publicly available on the ITC web site and on CD ROMs. In 2005, ITC launched LegaCarta—a multilingual web-based system on multilateral trade treaties and instruments designed to assist policy makers and trade promotion organizations in optimizing their country's legal framework on international trade. The system provides information on a core group of some 250 instruments, plus an additional group of approximately 450 referenced amendments and protocols (ratification maps, full texts and abstracts, status of ratifications, relevance of each instrument with regard to its impact on international trade, country analysis).

7. In 2004, an ITC pro bono Committee (comprising experienced practitioners from some fifty countries representing a wide spectrum of economic backgrounds and legal cultures)<sup>7</sup> drafted two international contractual joint venture model agreements for three-or-more-party joint ventures and for two-party joint ventures. The model contracts are intended for joint ventures where the parties organize their cooperation on a contractual basis without forming a corporate body. In 2005, model agreements for incorporated joint ventures are expected to be published.

8. In 2005, ITC jointly published with WIPO a training manual on negotiating technology licensing agreements.<sup>8</sup> The focus of the manual is on the identification and acquisition, or transfer, through licensing, of technology that is owned by virtue of an intellectual property right.

#### **OHADA<sup>9</sup>**

9. OHADA works, inter alia, in the area of commercial contracts.<sup>10</sup> The OHADA Council of Ministers entrusted Unidroit<sup>11</sup> with the preparation of a draft OHADA Uniform Act on Contracts on the basis of the Unidroit Principles of International Commercial Contracts (PICC). The proposed Uniform Act will deal primarily with commercial contracts.<sup>12</sup> In early 2005 Unidroit was also entrusted with the preparation of a draft OHADA Uniform Act on evidence of contractual obligations.

10. The UNCITRAL secretariat, in cooperation with the Ministry of Justice of Canada, has assisted OHADA with the production of a draft uniform act on consumer transactions.

#### **Unidroit**<sup>13</sup>

11. Pursuant to the recommendation of the Governing Council of Unidroit, the Principles of International Commercial Contracts (PICC) are included as an on-going project in the work programme of the Institute.<sup>14</sup> The 2004 edition of the PICC was adopted at the eighty-third session of the Unidroit Governing Council (Rome, 19-21 May 2004). Unidroit is currently soliciting comments and suggestions with respect to additional topics to be dealt with in a future edition of the PICC. The Governing Council, at its eighty-fourth session (18-20 April 2005), considered the following topics for inclusion in that future edition: unwinding of failed contracts, illegality, plurality of creditors and debtors, conditions and suretyship and guarantees. A final decision will be taken after a new working group to review the PICC is constituted in 2006.

#### **WIPO**<sup>15</sup>

12. The WIPO Copyright and Related Rights Sector hosted a seminar in April 2005 on copyright and Internet intermediaries with the main focus being to address various ways to approach issues relating to copyright liability of those who act as online intermediaries such as Internet service providers (ISPs), providers of file-sharing services, auction sites and portals. As part of the WIPO Intergovernmental Committee on Genetic Resources, Traditional Knowledge and Folklore (IGC), WIPO is currently compiling an on-line, searchable database of contractual practices, guidelines, and model intellectual property clauses for contractual agreements on access to genetic resources and benefit-sharing ('the Contracts Database')<sup>16</sup> with a particular emphasis on the intellectual property aspects of such agreements.

## **B. International transport of goods**

### **1. Transport by sea**

#### **CMI**<sup>17</sup>

13. CMI participates regularly in the activities of UNCITRAL Working Group III (Transport Law), which is preparing a draft instrument on carriage of goods [wholly or partly] [by sea] (the UNCITRAL draft instrument on carriage of goods) intended to govern liability arising from the carriage of goods. The text of the UNCITRAL draft instrument on carriage of goods originated largely from considerations and suggestions provided by an ad hoc CMI International Subcommittee and was also the subject of work undertaken by the CMI Committee A at the 38th CMI Conference, held in Vancouver from 30 May-4 June 2004.

14. In 2004, the CMI completed a revision of the York-Antwerp Rules 1994 which are concerned with issues such as salvage remuneration, expenses at port of refuge, temporary repairs, provision of funds, interest on losses and time bar.<sup>18</sup>

**FIATA**<sup>19</sup>

15. FIATA has created several documents and forms for use by freight forwarders to establish a uniform standard in the practice of freight forwarding. Also, FIATA participates regularly in the activities of UNCITRAL Working Group III and has paid particular regard to the multimodal aspects of the UNCITRAL draft instrument on carriage of goods.

**ICC**

16. The ICC Commission on Transport and Logistics,<sup>20</sup> with its two sector-based Committees (for maritime and air transport), provide fora for discussion of specific maritime and air issues. They mostly monitor legislative and regulatory developments affecting shipping worldwide and focus, inter alia, on the modernization of maritime and multimodal transport regimes, including documentary credit issues relating to transport documents and the use of information technology for the facilitation of transport. The Committee on Maritime Transport also runs the ICC Bill of Lading Review Committee, which issues decisions on the conformity of transport documents with the UNCTAD/ICC Rules for Multimodal Transport Documents. The ICC Commission on Banking Technique and Practice (see below, para. 35) is currently reviewing and revising the UCP, including article 30 on port-to-port bills of lading.

**IMO**<sup>21</sup>

17. The objectives of the International Convention on Maritime Liens and Mortgages (Geneva, 6 May 1993)<sup>22</sup> are: (i) to provide a generally acceptable legal framework governing the recognition and enforcement of maritime liens and mortgages and thus to promote international uniformity, and (ii) to strengthen the international position of the mortgagees and financiers of shipbuilders and ship purchasers and thereby improve conditions for ship financing at the international level. The Convention replaces the 1926 and 1967 Conventions for the unification of certain rules relating to maritime liens and mortgages.

18. In 2002, a Diplomatic Conference adopted the third Protocol to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974.<sup>23</sup> The Protocol introduces mechanisms to assist passengers in obtaining compensation and, in particular, replaces the fault-based liability system with a strict liability system for shipping-related incidents. The Protocol also mandates compulsory insurance to cover passengers on ships and raises the limits of liability. An “opt-out” clause enables State Parties to retain or introduce higher limits of liability.

19. The amendments to Chapter VII of the International Convention for the Safety of Life at Sea (1 November, 1974) (SOLAS), approved in May 2002, made the International Maritime Dangerous Goods (IMDG) Code contained therein mandatory from 1 January 2004. The IMDG Code provides uniform rules for the safe transport by sea of dangerous goods and marine pollutants in packaged form.

**OECD**<sup>24</sup>

20. The OECD has issued reports on the following maritime and inland transport issues:<sup>25</sup> removal of insurance from substandard shipping; maritime security—

ownership and controls of ships: options to improve transparency; and container transport security across modes.<sup>26</sup> On 12 September 2002, the OECD Council agreed that negotiations should commence on a new Shipbuilding Agreement to review and address factors distorting normal competitive conditions in the shipbuilding industry, in particular government support measures, particularly subsidies, pricing and other related practices. The target date for finalizing the negotiations is the end of 2005.<sup>27</sup>

#### **UNCTAD**

21. UNCTAD participates actively in the work of UNCITRAL Working Group III, and submitted comments on the various provisions of the UNCITRAL draft instrument on carriage of goods to the UNCITRAL Working Group III at its fourteenth session.<sup>28</sup> These comments focused on freedom of contract questions, in particular, which contracts may be exempt from the mandatory application of the draft instrument and liability of the carrier for cargo loss, damage and delay.

## **2. Transport by land**

#### **UNECE<sup>29</sup>**

22. The UNECE is drafting a protocol to the Convention on the Contract for the International Carriage of Goods by Road<sup>30</sup> (Geneva, 19 May, 1956) (CMR), aimed, in particular, at the introduction of electronic consignment notes. The draft protocol is being prepared with the assistance of Unidroit.

#### **OAS<sup>31</sup>**

23. The OAS, through its sixth Inter-American Specialized Conference on Private International Law (CIDIP VI),<sup>32</sup> held in 2002, adopted the Negotiable Inter-American Uniform Through Bill of Lading for the International Carriage of Goods by Road<sup>33</sup> and the Non-Negotiable Inter-American Uniform Through Bill of Lading for the International Carriage of Goods by Road.<sup>34</sup>

#### **OHADA**

24. The UNCITRAL secretariat, in cooperation with the Ministry of Justice of Canada, has assisted OHADA with the production of a draft uniform act on contracts for the carriage of goods by road, which entered into force in January 2004.

#### **OTIF**

25. OTIF is currently seeking to widen the scope of the Convention concerning International Carriage by Rail (9 May 1980)<sup>35</sup> and harmonize it with other transport legislation in order to make possible, in the longer term, through-carriage by rail under a single legal system regime from the Atlantic to the Pacific. In addition, OTIF updates, on an ongoing basis, regulations concerning the carriage of dangerous goods and seeks the removal of obstacles to the crossing of frontiers in international rail transport.<sup>36</sup>

### **3. Inland waterway transport**

#### **UNECE**

26. The Budapest Convention on the Contract for the Carriage of Goods by Inland Waterway (CMNI Convention)<sup>37</sup> was adopted at a Diplomatic Conference organized jointly by CCNR, Danube Commission and UNECE (Budapest, 25 September-3 October 2000). The CMNI Convention governs the contractual liability of parties to the contract for the carriage of goods by inland waterway and provides for the limitation of the carrier's liability. The CMNI Convention entered into force on 1 April 2005.

27. The UNECE Working Party on Inland Water Transport has been considering whether two former additional Protocols to the CMNI Convention, originally annexed to a draft of that Convention but not finally included, should be adopted in another form. The protocols relate to loading and discharge times, demurrage and the calculation of freight and distribution of shipping charges in inland water transport. With no consensus for such adoption, it was agreed to invite Governments and private entities that might be interested in the texts of the two former Protocols to use the texts reflected in document TRANS/SC.3/2003/6.<sup>38</sup>

28. A Group of Volunteers on Legislative Obstacles set up by the UNECE Working Party on Inland Water Transport prepared, as a follow-up to the Rotterdam Conference on Inland Waterway Transportation of 2001, a draft "Inventory of existing legislative obstacles that hamper the establishment of a harmonized and competitive Pan-European inland navigation market together with recommendations as to how to overcome those obstacles". The inventory contains a succinct analysis of existing legislative obstacles that hamper the establishment of a harmonized and competitive Pan-European inland navigation market and proposals on possible solutions to the problems identified.<sup>39</sup>

### **4. Intermodal transport**

#### **UNECE**

29. The UNECE Working Party on Intermodal Transport and Logistics had postponed, as a result of the current work of UNCITRAL on international transport instruments, work on the preparation of a civil liability regime applicable to European intermodal transport extending to all contracts of carriage involving a sea leg, irrespective of their length or economic importance. Given the interest in establishing such a regime applicable to European intermodal transport, covering road, rail, inland water and short sea shipping, the UNECE Inland Transport Committee in February 2005 requested the Working Party to continue to closely monitor and evaluate all pertinent activities in this field, particularly those by UNCITRAL and to prepare, if appropriate, proposals for solutions at the Pan-European level.<sup>40</sup>

## **C. Commercial arbitration and conciliation**

### **CARICOM**

30. Following the 2001 revision of the Treaty of Chaguaramas establishing CARICOM, art. 74(2) of the Treaty mandates member States of CARICOM to harmonize, inter alia, their laws and administrative practices relating to commercial arbitration.

### **UNECE**

31. In the framework of the UNECE Working Party on International Legal and Commercial Practice, the Expert Advisory Group to Consider Possible Revisions to the European Convention on International Commercial Arbitration of 1961 has been established. The fifty-second session of the Working Party on International Legal and Commercial Practice will take place in September 2005 in Vienna.

### **ICC**

32. The ICC Commission on Arbitration<sup>41</sup> currently comprises the following groups: task force on criminal law and arbitration; task force on arbitrating competition law issues; task force on guidelines for ICC expertise proceedings; ad hoc group on drafting arbitral awards; forum on ADR; forum on the ICC Rules/Court; and forum on arbitration issues and new fields. The current projects include: (i) a study on the impact of criminal law on arbitration proceedings (jurisdictional, procedural and substantive problems that may arise); (ii) preparation of a report setting forth certain issues that could be considered when drafting an arbitral award; (iii) a study on the jurisdictional, procedural and substantive problems arising in arbitrating competition law issues; and (iv) preparation of explanatory notes for the use of experts in the conduct of expertise proceedings.

### **ITC**

33. In September 2004, ITC organized an international symposium on the administration of arbitration and mediation services exclusively for managers of arbitration and mediation centres. More than 60 directors of alternative dispute resolution centres from 50 developing and developed economies participated in the symposium. A network has been created through which offers and requests for technical assistance regarding the administration of dispute resolution services are channelled.

34. In 2001, ITC produced and published a training handbook on arbitration and alternative dispute resolution mechanisms. The handbook—which sets out the different alternatives to State proceedings that can be used to prevent or settle business disputes in an international context—aims at creating greater awareness of the various dispute resolution mechanisms and contributing to more effective relationships between partners in international trade. Several national versions—adapted to the national regulatory framework—were subsequently published by Chambers of Commerce and arbitration centres, inter alia, in Argentina, Bolivia, Bangladesh, Croatia, Egypt, India, Mexico, the Philippines and Viet Nam.

## **D. International payments**

### **ICC**

35. The ICC Commission on Banking Technique and Practice<sup>42</sup> is in the process of revising UCP 500, its universally used rules on letters of credit. It is also exploring the possibility of developing common practices in forfaiting. Other current activities include targeting the European Commission and multinational development banks to urge them to make use of the ICC Uniform Rules for Demand Guarantees (URDG), in view of the World Bank's incorporation of these rules into its unconditional guarantee forms, and promoting the recent publication on International Standard Banking Practice (ISBP), which describes how the UCP should be applied in day-to-day practice.

## **E. Security interests**

36. The Commission may recall that at its thirty-third session in 2000 and its thirty-seventh session in 2004, notes by the Secretariat entitled "Coordination of work: activities of international organizations in the area of security interests" (A/CN.9/475 and 565 respectively) were considered. The following paragraphs update the information included in those notes.

### **Unidroit**

37. Unidroit, jointly with the Intergovernmental Organization for International Carriage by Rail (OTIF),<sup>43</sup> is finalizing the second Protocol to the Convention on International Interests in Mobile Equipment (Cape Town, 16 November 2001),<sup>44</sup> that deals with matters specific to railway rolling stock (the draft Rail Protocol). The draft Rail Protocol was submitted to the Unidroit Governing Council in April 2005, and will be submitted for adoption by a diplomatic conference to be convened in 2006. The Rail Registry Task Force has been established to prepare an international registry system and related aspects under the draft Rail Protocol. Unidroit is also elaborating a third protocol to the Cape Town Convention that will deal with matters specific to space assets (a preliminary draft Protocol to the Cape Town Convention on International Interests in Mobile Equipment on Matters specific to Space Assets) and is considering elaborating additional protocols that may cover agricultural and construction equipment.

38. Unidroit is also preparing a draft convention on harmonized substantive rules regarding securities held with an intermediary. The first meeting of governmental experts was held in Rome from 9-20 May 2005.

### **Hague Conference**

39. The Explanatory Report on the Hague Convention on the Law Applicable to Certain Rights in respect of Securities held with an Intermediary, adopted on 13 December 2002, has recently been published.<sup>45</sup> The Hague Conference is working closely with UNCITRAL on the conflict-of-laws chapter of the draft UNCITRAL Legislative Guide on Secured Transactions.

**EBRD**

40. In 2004, the European Bank for Reconstruction and Development (“EBRD”), in the context of its work on the modernization of secured transactions legislation, published the EBRD Guiding Principles for the Development of a Charges Registry.

**European Union**

41. Consultations continue between the Justice and Home Affairs Directorate of the European Commission responsible for Rome I (revision of the Rome Convention on the Law Applicable to Contractual Obligations) and the UNCITRAL secretariat with a view to: (a) ensuring that the new European Union instrument will be consistent with the United Nations Convention on the Assignment of Receivables in International Trade (“the United Nations Assignment Convention”); and (b) facilitating adoption of the United Nations Assignment Convention by European Union Member States. The Secretariat informed the European Commission about UNCITRAL’s request at its thirty-seventh session in 2004 (see A/59/17, para. 165) for a coordination meeting. It appears that the European Commission is in the process of consulting European Union Member States, based on a draft text, as to the approach to be followed on the issue of the law applicable to third-party effects of assignments.

**OAS**

42. The OAS, through its sixth Inter-American Specialized Conference on Private International Law (CIDIP VI),<sup>46</sup> held in 2002, adopted the Model Inter-American Law on Secured Transactions.<sup>47</sup> The scope of application of the Model Law is the regulation of consensual security interests in movable property securing the performance of any present or future obligations. The aim of the Model Law is to modernize secured transactions laws in OAS member States with a view to significantly increasing the availability and reducing the cost of credit, in particular to small and medium-sized borrowers. The thirty-fifth regular session of the OAS General Assembly, scheduled to meet in June 2005,<sup>48</sup> is expected to approve the agenda items for CIDIP VII, which will include further work on the creation of an electronic secured transactions registry for implementation in conjunction with the Model Inter-American Law on Secured Transactions.<sup>49</sup>

**WIPO**

43. The Copyright and Related Rights Sector of WIPO held a meeting in May 2005 to seek the input of concerned stakeholders on the impact of the draft UNCITRAL Legislative Guide on Secured Transactions on intellectual property rights and on a proposal for future work in the field of security interests in intellectual property rights.

**World Bank**

44. Consultations between the World Bank, the UNCITRAL secretariat and the International Monetary Fund continue towards achieving (a) consistency between the World Bank Principles and Guidelines for Effective Insolvency and Creditor Rights Systems, on the one hand, and the UNCITRAL Legislative Guide on Insolvency Law and the draft UNCITRAL Legislative Guide on Secured

Transactions, on the other hand, and (b) the development of a unified international standard in the area of insolvency and creditor rights.

## **F. Competition law**

### **Commonwealth Secretariat**

45. In December 2004, a meeting of experts was held in the Pacific region to consider the draft Commonwealth model bill on competition currently being prepared by the Commonwealth Secretariat Law Development Section. This was the second of such meetings, the first taking place in Singapore in early 2004. The meeting discussed the salient features of a competition law, including: abuse of a dominant position; identifying cartel activities; the significance of transparency, particularly when granting exemptions from the ambit of a competition law; and the importance of consumer protection. The model bill creates a separate body with powers to administer the law.

### **UNCTAD**

46. Consistent with its mandate to assist developing countries, including least developed countries, in formulating, drafting or reviewing competition policies and legislation (as provided in its Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices (“the Equitable Principles”),<sup>50</sup> UNCTAD held the sixth session of the Intergovernmental Group of Experts on Competition Law and Policy (IGE on CLP) in Geneva in November 2004.<sup>51</sup> UNCTAD will hold its Fifth Review Conference in November 2005,<sup>52</sup> which will, inter alia, assess the application and implementation of the Equitable Principles in the twenty-five years since their adoption, and discuss proposals for their improvement. It will also consider: techniques for gathering evidence on cartels; the role of economic analysis on competition law and policy enforcement; the role of the judiciary in competition law enforcement; the application of competition law and policy to the informal sector; and how to operationalize special and differential treatment for developing countries in competition law and policy.

### **WTO**

47. The Working Group on the Interaction between Trade and Competition Policy (WGTCPP) was established at the WTO Singapore Ministerial Conference in December 1996 and handles the work and development of competition<sup>53</sup> matters in the WTO, focusing on specific trade policy issues. The Doha Ministerial Declaration,<sup>54</sup> adopted on 14 November, 2001, deals, in paragraphs 23-25, with the interaction between trade and competition policy and sets up possible negotiations for a WTO agreement on competition.

### **OECD**

48. The OECD Competition Law and Policy Committee (CLP)<sup>55</sup> works to build consensus among OECD members on antitrust and competition policy issues and to promote convergence in competition laws among members by promoting similarity in competition laws and enforcement cultures. Issues addressed by the CLP include: capacity-building with non-OECD countries; competition analysis; economic issues;

country reviews; and law enforcement and cooperation. Originally adopted on 21 June 1976, the OECD Declaration and Decisions on International Investment and Multinational Enterprises “constitutes a policy commitment to improve the investment climate of OECD members countries and encourage the positive contribution multinational enterprises can make to economic and social progress.” The Declaration, which is subject to periodical review, was reviewed in 1979, 1984, 1991 and 2000.<sup>56</sup>

49. The OECD Guidelines for Multinational Enterprises<sup>57</sup> adopted on 21 June 1976 and most recently revised on 27 June 2000 are a voluntary, multilateral framework of standards and principles on good business conduct.

## **G. Public procurement**

### **ADB/IADB/World Bank**

50. At the beginning of 2003, the ADB, the IADB, and the World Bank set up a joint working group on Harmonization of Electronic Government Procurement (e-GP), which was subsequently joined by the AfDB, EBRD and Nordic Development Fund and which is also cooperating with the European Commission in its work on public procurement.<sup>58</sup> The Working Group has been elaborating a number of documents aimed at harmonizing e-GP strategies and solutions of the aforementioned banks in countries of their operation.<sup>59</sup> In March 2005, the Working Group held a joint workshop with representatives of the European Commission and the UNCITRAL secretariat. The UNCITRAL secretariat was advised that the following documents are currently being considered by the Working Group: (i) requirements for the use of e-GP tendering systems for multilateral development banks’ loans, grants and credits (outstanding issues under consideration are the use of authentication techniques and charging fees in e-tendering);<sup>60</sup> (ii) guidelines for electronic reverse auctions; (iii) guidelines on e-purchasing; and (iv) guidelines on buyer-supplier activation. The Working Group is also at the stage of assessing the first report on electronic reverse auctions in Brazil and a study is being prepared under its auspices on the costs of setting up an e-GP system.

### **COMESA**

51. The secretariat of COMESA<sup>61</sup> is implementing, with support from the African Development Bank, the COMESA Public Procurement Reform Project that aims to harmonize public procurement rules and regulations, as well as to build the capacity of national procurement systems in the region. At the seventeenth meeting of the COMESA Council of Ministers (Kampala, 4-5 June 2004), the Council decided that the 1994 UNCITRAL Model Law on Procurement of Goods, Construction and Service should be used by member States undertaking legislative reform, taking account of the COMESA directives. It also decided that the COMESA secretariat should develop a successor project in the area of public procurement, to be supported by an appropriate donor, which should include capacity-building needs and development of training models and operational syllabi.<sup>62</sup> In December 2004, COMESA launched the COMESA Public Procurement Information System,<sup>63</sup> a centralized regional website<sup>64</sup> for collection and dissemination to relevant

stakeholders of procurement information, including information on procurement opportunities and procurement regulations in the COMESA member States.

#### **UNECE**

52. In the framework of the UNECE Working Party on International Legal and Commercial Practice, the PPP Alliance Programme promotes public-private partnerships (PPP), PPP Units and task forces to improve infrastructural development in countries in transition and organized the third PPP Alliance Meeting in Barcelona, Spain, on 14 September 2004. The Working Party has prepared draft guidelines on good governance in PPP in infrastructure and will hold its fifty-second session in September 2005 in Vienna, Austria.

#### **PECC**

53. PECC held a public-private sector partnership workshop in December 2004 with the aim of contributing to the understanding, in the PECC region, of the function, design and impact of partnerships between government and the business sector in the provision of infrastructure services.

#### **WAEMU**

54. The WAEMU has embarked on a programme of modernization and reform in public procurement, in cooperation with other regional organizations and national governments, and with the support of UNDP and the World Bank. The reforms aim to harmonize procurement regimes and to promote best practices as provided for in international legislation, so as to reinforce competency, efficiency and transparency in procurement. The programme has two phases: the first is to establish the tools necessary for the reforms, and the second to implement them. Implementation is scheduled for 2005 and 2006.

#### **WTO**

55. The WTO is currently revising its plurilateral Agreement on Government Procurement, which is designed to ensure that the procurement laws, regulations, procedures and practices of Parties to the Agreement are open, transparent and non-discriminatory in respect of procurement, to take account of electronic procurement techniques, expand its coverage and eliminate remaining discriminatory aspects.

### **H. Trade facilitation**

#### **CARICOM**

56. At the thirteenth Inter-Sessional Meeting of CARICOM in February 2002, a programme for the removal of restrictions on the establishment and movement of services and capital that would facilitate the core task of creating a Single Market for, inter alia, free movement of and trade in goods and services was agreed. This programme is scheduled to be completed by December 2005.

## PECC

57. PECC undertook a study for the Asia Pacific Economic Cooperation (APEC) forum on “The Mutually Supportive Advancement of APEC’s Trade Facilitation and Secure Trade Goals post September 11.”<sup>65</sup>

## UNCTAD

58. At UNCTAD’s eleventh session (São Paulo, 13-18 June 2004), trade and transport facilitation was addressed in the context of the Global Facilitation Partnership for Transportation and Trade (GFP). The GFP was launched by the World Bank with UNCTAD and other development partners, and is aimed at fostering export-led growth and poverty reduction by promoting trade facilitation, and by bringing together all interested parties, both public and private as well as national and international, to help achieve significant improvements in transport and trade facilitation in developing countries and countries in transition. Concrete activities of the partnership include the preparation of trade and transport facilitation audits with related action plans, development of performance indicators, designing software to measure customs clearance time, a number of distance-learning programmes, support for dissemination efforts, and researching the cost and impact of trade and transport facilitation measures.

## UNECE

59. In the framework of the UNECE Working Party 6 on Regulatory Cooperation and Standardization Policies (WP.6), the UNECE adopted in 2001 a new recommendation, the “International model for technical harmonization” (Recommendation “L” in the set of UNECE Recommendations of Standardization Policies). The International Model comprises a set of voluntary mechanisms and principles for good regulatory practices for countries wishing to align their regulatory regimes in specific sectors or product areas. The basic principle of this model is that the technical content of regulations should be drafted in terms of broad, common objectives (addressing safety, environmental and other governmental concerns) and should refer to international standards for more detailed performance-based technical requirements. In 2003, this recommendation was used as the basis for an agreement on the preparation of uniform technical regulations between the twelve member states of the Commonwealth of Independent States. This agreement is expected to enter into force shortly.

60. Industry representatives have expressed their interest in using the international model for technical harmonization as a tool and a format for initiating a regulatory dialogue with interested public authorities. As a result, WP.6 has sponsored pilot projects in two sectors (telecommunications and earth-moving machinery). Draft regulatory objectives have already been drafted for the telecommunications project.<sup>66</sup>

## UNIDO

61. UNIDO’s work in trade facilitation<sup>67</sup> is characterized by a broader trade capacity-building (TCB) approach. In conformity with its mission,<sup>68</sup> the strategy adopted by UNIDO to facilitate trade, overcome barriers to trade, foster export capacity and increase access to markets has been adopted to respond to the Doha Development Agenda and the Millennium Declaration goals. It consists of three-

pronged coordinated and integrated Technical Assistance and Capacity Building actions: “the 3Cs Approach”: Compete: to increase the competitiveness of the industrial sector (supply-side) with a focus on priority sub-sectors; Conform: to enable products to conform with market requirements (standards, regulations and conformity assessment practices) and overcome barriers to trade; and Connect: to enable industrial firms to be connected with and access export markets. To implement its approach UNIDO has strengthened strategic and operational alliances with international organizations including: WTO, UNCTAD, ITC, World Bank.

62. Current year technical assistance in the field of TCB amounts to some \$38 million originating from different bilateral and multilateral funding sources. Country-specific TCB projects are under implementation in some 60 countries and some large-scale regional projects are under implementation such as West Africa-UEMOA (8 countries), Mekong Delta Countries (3 countries), South Asian least-developed countries (LDCs) (4 countries), Central America (6 countries). These projects address the needs to enhance conformity with market requirements through upgrading standards, certification and accreditation bodies and metrology and testing laboratories, to boost competitiveness and market access. Furthermore, TCB global forum functions are performed covering development of software, research and publications and holding of expert group meetings.

### **WCO**

63. In 2003, the WCO adopted the International Convention on Mutual Administrative Assistance in Customs Matters. The goal of the Convention is to foster mutual administrative assistance among Contracting Parties to support the proper application of customs law, to facilitate the prevention, investigation and combating of customs offences and to ensure the security of the international trade supply chain.

### **WTO**

64. Trade Facilitation was added to the WTO agenda in December 1996, when the Singapore Ministerial Declaration directed the Council for Trade in Goods “to undertake exploratory and analytical work, drawing on the work of other relevant organizations, on the simplification of trade procedures in order to assess the scope for WTO rules in this area”. In July 2004, members agreed to launch negotiations on trade facilitation that should “aim to clarify and improve relevant aspects of articles V, VIII and X of the GATT 1994 with a view to further expediting the movement, release and clearance of goods, including goods in transit”. The negotiations are ongoing, with the IMF, OECD, UNCTAD, WCO and the World Bank attending on an ad hoc basis, and are focused on enhancement of technical assistance and support for capacity-building; effective cooperation between authorities on trade facilitation and customs compliance issues; the treatment of developing and least-developed countries; the identification of trade facilitation needs and priorities; and the cost implications of proposed measures.

### *Notes*

<sup>1</sup> *Official Records of the General Assembly, Thirty-sixth Session, Supplement No. 17 (A/36/17)*, paras. 93-101.

- <sup>2</sup> Ibid., para. 100.
- <sup>3</sup> Report on the Meeting of the Drafting Committee of 18-20 April 2005 in Preparation of the Twentieth Session of June 2005: see: [http://hcch.e-vision.nl/upload/wop/jdgm\\_pd28e.pdf](http://hcch.e-vision.nl/upload/wop/jdgm_pd28e.pdf).
- <sup>4</sup> <http://www.iccwbo.org/>.
- <sup>5</sup> CLP, among others, sets global business rules and standards applicable to business-to-business (B2B) transactions (e.g. Incoterms) and creates model contracts. It is comprised of task forces on: mergers and acquisitions, turnkey transactions on force majeure and hardship, agency and distributorship, Incoterms, licensing, electronic contracting, and on jurisdiction and applicable law. The CLP Commission and its task forces consist of 550 members from over 42 countries, including partners in international law firms, in-house counsels, law professors and trade executives in member companies and international organizations. For more information, see <http://www.iccwbo.org/law/commission/>.
- <sup>6</sup> <http://www.intracen.org/index.htm>.
- <sup>7</sup> Information regarding the agreements may be found at: [http://www.tradeforum.org/news/fullstory.php/aid/506/International\\_Joint\\_Ventures.html](http://www.tradeforum.org/news/fullstory.php/aid/506/International_Joint_Ventures.html). The Agreements will be published at: <http://www.juris.int.org>.
- <sup>8</sup> For more information, see <http://www.wipo.int/wilma/pressinfo-en/200502/msg00000.html>.
- <sup>9</sup> Established by the Treaty on the Harmonization of Business Law in Africa of 17 October 1993. The treaty is available at <http://www.ohada.org/>.
- <sup>10</sup> For the programme of harmonization of business law, see article 2 of the Treaty, *ibid* and OHADA's decision (document Dec. 002/2001/CM), adopted by the OHADA Council of Ministers in Bangui in March 2001, available at <http://www.ohada.org/>. The programme includes competition law, banking law, intellectual property law, non-trading company law, the law of mutual societies and cooperative societies, contract law, and the law of evidence. OHADA has completed the following legislative instruments: Uniform Act relating to General Commercial Law of 17 April 1997, Uniform Act relating to Commercial Companies and Economic Group Partnerships of 17 April 1997, Uniform Act organizing Securities of 17 April 1997, Uniform Act organizing Summary Debt Collection Procedures and Measures of Execution of 10 April 1998, Uniform Act organizing Insolvency and Liquidation Proceedings of 4 April 1998, Uniform Act on Arbitration Law of 11 June 1999, Uniform Act organizing and harmonizing the Undertakings' Account in OHADA Member States of March 2000, and the Uniform Act relating to the Transportation of Goods by Road of March 2003, all of which are available at <http://www.ohada.org/>.
- <sup>11</sup> For information about the Institute, see <http://www.UNIDROIT.org>.
- <sup>12</sup> For further information, see Marcel Fontaine, "The Draft OHADA Uniform Act on Contracts and the UNIDROIT Principles of International Commercial Contracts", available at <http://www.UNIDROIT.org/english/legalcooperation/ohada/2004-3-fontaine-e.pdf>. In September 2004, Professor Fontaine, member of the Working Group for the preparation of the UNIDROIT Principles, submitted a draft for consideration by the competent organs of OHADA.
- <sup>13</sup> <http://www.unidroit.org/>.
- <sup>14</sup> For further information, see <http://www.unidroit.org/english/workprogramme/study050/main.htm>.
- <sup>15</sup> <http://www.wipo.int/portal/index.html.en>.
- <sup>16</sup> The updated version of the Contracts Database is available on the WIPO web site: <http://www.wipo.int/tk/en/databases/contracts/index.html>.
- <sup>17</sup> <http://www.comitemaritime.org/home.htm>.
- <sup>18</sup> For more information, see <http://www.comitemaritime.org/cmidsocs/yar.html>.

- <sup>19</sup> [www.fiata.com](http://www.fiata.com).
- <sup>20</sup> For more information, see [http://www.iccwbo.org/home/menu\\_transport.asp](http://www.iccwbo.org/home/menu_transport.asp).
- <sup>21</sup> <http://www.imo.org/index.htm>.
- <sup>22</sup> Entered into force, 5 September 2004, document A/CONF.162/.
- <sup>23</sup> The Protocol, adopted on 1 November 2002, has not yet entered into force.
- <sup>24</sup> For information about the organization, see <http://www.oecd.org/home/>.
- <sup>25</sup> In accordance with the decision made in 2003, a joint Transport Research Centre with the European Conference of Ministers of Transport (ECMT) was created from 1 January 2004.
- <sup>26</sup> A discussion paper on “Ownership and Control of Ships”, which was published for public comment in December 2003, looked at how governments could change ship registers to make it easier to identify who owns a vessel. Furthermore, OECD and ECMT launched a joint project to examine effective ways of tracking goods along the transport chain from dispatch to final delivery, even if that chain involved several different countries and means of transport. OECD also looked at how states that register ships under their flags could more effectively identify and remove substandard ships, as well as possible ways of creating incentives for ship-owners to be more responsible in this area.
- <sup>27</sup> OECD set up a Special Negotiating Group in 2002 to draw up a new Shipbuilding Agreement, with support from all OECD members and major world shipbuilding economies outside OECD. Source: 2004 OECD annual report, available at: <http://www.oecd.org/dataoecd/28/49/31621929.pdf>.
- <sup>28</sup> See A/CN.9/WG.III/WP.41.
- <sup>29</sup> <http://www.unece.org/>.
- <sup>30</sup> Entry into force: 2 July 1961, United Nations Treaty Series, Vol. 399, p. 189. Source: <http://www.untreaty.org>.
- <sup>31</sup> For further information, see <http://www.oas.org>.
- <sup>32</sup> For information on the Inter-American Specialized Conferences on Private International Law, see [http://www.oas.org/dil/private\\_international\\_law.htm](http://www.oas.org/dil/private_international_law.htm). For information on the CIDIP-VI, see [http://www.oas.org/dil/CIDIPVI\\_home.htm](http://www.oas.org/dil/CIDIPVI_home.htm).
- <sup>33</sup> For a copy of the negotiable bill of lading, see <http://www.oas.org/dil/negotiable%20bill%20of%20lading-eng.pdf>. For a copy of the text accompanying the bill of lading, see <http://www.oas.org/dil/CIDIP-VI-billoflading-Eng.htm>.
- <sup>34</sup> For a copy of the non-negotiable bill of lading, see <http://www.oas.org/dil/non-negotiable%20bill%20of%20lading-eng.pdf>. For a copy of the text accompanying the bill of lading, see [http://www.oas.org/dil/CIDIP-VI-NON-NEGOTIABLE\\_billoflading-Eng.htm](http://www.oas.org/dil/CIDIP-VI-NON-NEGOTIABLE_billoflading-Eng.htm).
- <sup>35</sup> Entered into force on 1 May 1985.
- <sup>36</sup> For more information, see [www.otif.org](http://www.otif.org).
- <sup>37</sup> Budapest, 22 June, 2001. Entered into force 1 April 2005.
- <sup>38</sup> Available at <http://www.unece.org/trans/main/sc3/sc3.html>.
- <sup>39</sup> See, further, document TRANS/SC.3/2005/1, <http://www.unece.org/trans/main/sc3/sc3.html>.
- <sup>40</sup> See, further, documents ECE/TRANS/162, para. 104 and TRANS/WP24/101, paras. 24-28, available at <http://www.unece.org/trans/main/sc3/sc3.html>.

- <sup>41</sup> Consists of more than 400 international legal specialists named by ICC national committees in some 82 countries. For more information, see [http://www.iccwbo.org/home/international\\_arbitration/commission.asp](http://www.iccwbo.org/home/international_arbitration/commission.asp).
- <sup>42</sup> For more information, see <http://www.iccwbo.org/home/banking/commission.asp>.
- <sup>43</sup> <http://www.otif.org/>.
- <sup>44</sup> The Convention entered into force on 1 April 2004. UNIDROIT performs depositary functions under the Cape Town Convention and its Protocol on Matters Specific to Aircraft Equipment Instruments (Cape Town, 16 November 2001) (the "Aircraft Protocol"). In such capacity, it oversees the development of an International Registry for aircraft objects as provided by the Aircraft Protocol.
- <sup>45</sup> The report is available at: [http://www.hcch.net/index\\_en.php?act=publications.details&pid=2955&dtid=3](http://www.hcch.net/index_en.php?act=publications.details&pid=2955&dtid=3)
- <sup>46</sup> For information on CIDIP-VI, see [http://www.oas.org/dil/CIDIPVI\\_home.htm](http://www.oas.org/dil/CIDIPVI_home.htm).
- <sup>47</sup> For a copy of the text of the Model Inter-American Law on Secured Transactions Law, see: [http://www.oas.org/dil/CIDIP-VI-securedtransactions\\_Eng.htm](http://www.oas.org/dil/CIDIP-VI-securedtransactions_Eng.htm).
- <sup>48</sup> See: <http://www.oas.org/xxxvga/english>.
- <sup>49</sup> For the agenda for CIDIP-VII, see [http://scm.oas.org/doc\\_public/ENGLISH.HIST\\_05/CP14025E07.doc](http://scm.oas.org/doc_public/ENGLISH.HIST_05/CP14025E07.doc).
- <sup>50</sup> These principles were unanimously adopted by the United Nations General Assembly in Resolution 35/63 (December 1980) and constitute the only fully multilateral code in existence on competition law and policy.
- <sup>51</sup> <http://r0.unctad.org/en/subsites/cpolicy/english/cptech.htm>.
- <sup>52</sup> A Conference which takes place every five years and reviews all aspect of the Principles.
- <sup>53</sup> [http://www.wto.org/english/tratop\\_e/comp\\_e/comp\\_e.htm](http://www.wto.org/english/tratop_e/comp_e/comp_e.htm)
- <sup>54</sup> WT/MIN(01)/DEC/1; see also [http://www.wto.org/english/thewto\\_e/minist\\_e/min01\\_e/mindecl\\_e.htm#interaction](http://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_e.htm#interaction).
- <sup>55</sup> <http://www.oecd.org/daf/clp/>.
- <sup>56</sup> DAF/IME(2000) 20 (November 9, 2000); see also [http://www.olis.oecd.org/olis/2000doc.nsf/LinkTo/daffe-ime\(2000\)20](http://www.olis.oecd.org/olis/2000doc.nsf/LinkTo/daffe-ime(2000)20).
- <sup>57</sup> <http://www.oecd.org/dataoecd/56/36/1922428.pdf>.
- <sup>58</sup> For their joint e-GP portal, see <http://www.mdb-egp.org/data/default.asp>.
- <sup>59</sup> Among the documents that have already been prepared are "*Guide for Legislators and Managers, Authentication & Digital Signatures in E-Law and Security*" and "*E-GP Strategic Planning Guide*." These and other documents can be accessed through the EGP Tool Kit at <http://www.mdb-egp.org/data/default.asp>.
- <sup>60</sup> The draft is available at [http://www.mdb-egp.org/data/docs/Requirements\\_for\\_the\\_use\\_of\\_e-GP\\_Tendering\\_systems.pdf](http://www.mdb-egp.org/data/docs/Requirements_for_the_use_of_e-GP_Tendering_systems.pdf).
- <sup>61</sup> For information about the organization, see <http://www.comesa.int>.
- <sup>62</sup> See Report and Decisions: 17th Meeting of the COMESA Council of Ministers Report, 4-5 June 2004, Nile International Conference Centre, Kampala, Uganda, para. 111, available at [http://www.iss.co.za/AF/RegOrg/unity\\_to\\_union/pdfs/comesa/17comjun04.pdf](http://www.iss.co.za/AF/RegOrg/unity_to_union/pdfs/comesa/17comjun04.pdf).

- <sup>63</sup> See the Report of the Procurement Information System Seminar (Lusaka, 15-16 December 2004) (COMESA document COM/PPRP/CPIS/I), <http://simba.comesa.int:90/cpis/uploads/reports/en/Report%20-%20PPRP%20CPIS%20SEMINAR%2015-16%20DEC%202004%20em.doc>.
- <sup>64</sup> <http://simba.comesa.int:90/cpis/>.
- <sup>65</sup> See <http://www.pecc.org/trade/facilitation-and-secure-trade.pdf>.
- <sup>66</sup> These are available from the UNECE secretariat.
- <sup>67</sup> In the context of the WTO, Trade Facilitation is often defined as “the simplification and harmonization of international trade procedures” with trade procedures being the “activities, practices and formalities involved in collecting, presenting, communicating and processing data required for the movement of goods in international trade”. This definition relates to a wide range of activities such as import and export procedures (e.g. customs or licensing procedures); transport formalities; and payments, insurance, and other financial requirements. UNIDO is not specifically involved in trade facilitation in this strict sense.
- <sup>68</sup> UNIDO’s mission is to contribute to the achievement of a considerable increase in the share, volume and amount of the Manufacturing Value Added (MVA) and exports of developing countries and countries with economies in transition, with a special focus on LDCs.
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