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UNITED NATIONS INDUSTRIAL
DEVELOPMENT ORGANIZATION

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7 March 1979
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Meeting of Heads of Technology Transfer
Registries and Similar Institutions
Caracas, Venezuela, 19-22 February 1979

REPORT

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14 May 1979
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REPORT
Corrigendum

Page 17

Delete entry Democratic People's Republic of Korea

Page 18

After entry Portugal insert

Republic of Korea

Young Hwan Choi, Director of Program Management, Ministry of
Science and Technology, Seoul 10

INTRODUCTION

The second Meeting of Heads of National Technology Transfer Registries and Similar Institutions was held at Caracas from 19 to 22 February 1979, under the joint sponsorship of the United Nations Industrial Development Organization (UNIDO) and the Government of Venezuela.

The purpose of the Meeting was primarily to review progress in implementing the recommendations of the first meeting, held at Vienna from 6 to 10 March 1978, concerning technological co-operation between developing countries, in particular, co-operation between national technology registries or similar offices. More specifically, the purpose was to review the functioning of the technological information exchange system (TIES) and to seek recommendations for the future development of the system. Additionally, the Meeting was to review in detail the experience of national Governments in regard to transfer of technology and foreign investment.

Annex I gives a list of participants.

I. ORGANIZATION OF THE MEETING

In his opening statement, Rafael Soto Alvarez, Head of the Superintendency of Foreign Investments (SIEF) of Venezuela, noted that most of the developing countries had accorded high priority to strengthening their national technological capacities. In this connection, the member Governments of the TIES system had attached special importance to acquiring technologies on equitable terms and to improving their negotiating capacity.

The Deputy Director of the Industrial Operations Division of UNIDO, speaking on behalf of the Executive Director of UNIDO, reviewed the progress achieved since the March meeting with regard to the exchange of information among the participating technology registries through the TIES system. He referred to the activities of UNIDO in co-operation with the United Nations Centre for Transnational Corporations, particularly in organizing training workshops relating to transfer of technology problems in general and the negotiation of technology contracts in particular.

The Meeting elected Mr. Alvarez, Chairman and R.S. Paguio (Philippines) Rapporteur and adopted the following agenda:

Item

1. Review of TIES project since March 1978, including discussion of computer reports - further development of TIES system
2. Review of "Guidelines for transfer of technology agreements" - discussion of selected substantive issues
3. Review of progress made in co-operation between transfer of technology registries - follow-up of June Meeting on Surveys of Regulatory Agencies in Selected Countries - programme for next Meeting
4. Preparation of documentation for UNIDO III

Annex II contains a list of documents presented to the Meeting.

II. REVIEW OF TIES PROJECT

A representative of UNIDO presented a progress report on TIES, giving particular emphasis to the Coding Manual and the computer reports from 1 to 24. These reports were prepared on the basis of the information provided by the participating agencies through Schedule I (TIES I) and Schedule II (TIES II). These schedules were drawn up by the first Meeting. The objective of the computer report was to illustrate the value of the two types of data received and, more particularly, to indicate the versatility and broad range of use to which such data could be put once a more comprehensive data base was established. The presentation of a wide range of computer reports was considered necessary, since not all data, particularly those requested under TIES II, were readily available, owing to certain national constraints on the provision of relevant material. While not all countries attending the first meeting at Vienna had been able to meet the deadline for providing information, data from seven countries, three of which had provided detailed information on contracts, had been processed. The codification and computerization of data were explained in detail, including the possibility of providing quick, specific information stored in the computers upon the request of the participating organizations.

The Meeting expressed appreciation of the efforts made by the secretariat of UNIDO in handling obviously a very complex task within a short period. The Meeting was of the opinion that TIES provided a sound basis on which to build an effective system for the benefit of the developing countries. The results of the work of UNIDO in handling and presenting data showed considerable promise. With further improvement and extended participation, including provision of detailed information on contracts, the TIES system could well develop into a very useful tool in assisting developing countries in their negotiation of technology contracts.

It was felt that in spite of the efforts of UNIDO, the TIES system had certain deficiencies. It lacked, for instance, a proper and comprehensive coding system on the suppliers of technology, including transnational corporations and their affiliates, and on companies in developing countries who were able to supply technology and know-how in specific industrial fields.

It was agreed that data pertaining to royalty payments (ROY%1) had to be complemented by other elements of information (i.e., other royalty payment terms, base, sales volume, size of domestic and export markets, priority given to the sector in economic policy) so that this information could serve a useful purpose. The collaboration type code should also be enlarged to include the important element of training.

It was emphasized that TIES was to play a supplementary but important role in producing the information required for negotiating technological transactions. In a sense, the data contained in TIES provided indicators and ranges reflecting the varied experiences of countries. It was emphasized that TIES was not a substitute for the detailed analysis necessary for evaluating and negotiating technology contracts. However, it was agreed that the TIES data did provide, within the framework of national objectives and policies, and in specific situations, a tool that negotiators could use to obtain the maximum benefit for their countries.

The Meeting was unanimous in recommending that the TIES system should continue and improvements be made as more data and more experience were acquired. Several participants, who so far had been unable to submit any information, indicated their Governments' willingness to provide data and to participate in the system as soon as they could organize this information in accordance with TIES requirements and when internal procedures, such as the use of electronic data processing had been streamlined. It was further suggested that in view of the great potential benefit the system could provide negotiators, UNIDO should consider classifying the information contained in TIES II in terms of minimum and maximum information so that countries unable to provide the detailed TIES II type data could still receive data on individual contracts. It was felt that since the information was provided on a reciprocal and confidential basis, only the participants providing information on TIES II would obtain access to detailed and specific information provided by others.

It was further noted that in special cases it was advisable to promote bilateral exchanges of information, even if the countries concerned could not submit it in such a manner to the total system of TIES. This aspect had to be encouraged, since the objective was to develop effective means of co-operation.

It was further suggested that a fourfold classification be adopted, as follows:

Countries that had information and could make it available

Countries that had information but were unable to provide it, owing to internal constraints

Countries that did not have information but needed it

Countries that had neither the information nor the capacity to utilize it

UNIDO was requested particularly to devise ways to cater to the needs of countries in the last two categories, since they most needed data for use in evaluating and negotiating technological transactions.

It was thus recommended that UNIDO improve and further develop TIES and prepare reports on the general type of information (TIES I) and specific contract information (TIES II) every six months. The participating countries accordingly agreed to provide data to UNIDO for further processing and dissemination. In this task, UNIDO was asked to take into account the various suggestions contained in earlier paragraphs. It was agreed that the progress of the TIES system would be reviewed again at the next meeting.

The Meeting accepted the Coding Manual, in principle, as the guide for preparing data for submission to the system. The UNIDO secretariat was requested to revise, translate and distribute the new Coding Manual by 30 April 1979. Various items in the Coding Manual should be expanded, particularly those relating to the definition of the royalty base, use of the exchange rate for conversion to United States dollars and, if available, the addition of the supplier company codes that were being prepared by the United Nations Centre on Transnational Corporations. The revision of the Manual should also take into account the written suggestions for improvements provided by the participants.

It was agreed that the formats to be used in producing reports would be those submitted for consideration (TIES phase I, results part II). The reports would, of course, always be subject to further improvements.

The computer reports to be produced in phase II of the project could take the following three forms:

TIES I or aggregate information on industrial sectors

TIES II basic data, which would include the recipient and supplier names (and addresses), industry and product codes, and the level of foreign investment in individual contracts and other non-proprietary data

TIES II detailed data, which would contain the full scope of data items identified in the Coding Manual

It was felt that TIES should be updated every six months. UNIDO would process the data received and produce a package of computer reports within one month of the receipt of all the data at a given level. The UNIDO secretariat should receive all data as soon as possible.

The terms used in the Coding Manual should be defined by UNIDO. Any deviations from the definitions in providing data should be noted.

UNIDO should make every effort to prepare a short analysis of the computer-generated reports that would attempt to draw the main conclusions from the data.

Written confirmation of the willingness of each registry to provide data and the type to be provided should be sent to UNIDO.

III. REVIEW OF "GUIDELINES FOR TRANSFER OF TECHNOLOGY AGREEMENTS"

In accordance with the recommendations to UNIDO made in the earlier meetings (6-10 March and 29 May - 2 June 1978), the secretariat presented a draft document entitled "Guidelines for evaluation of transfer of technology contracts".

General remarks

The Meeting expressed the view that the draft document provided the basis for further analysis and compilation of country experience in evaluating and screening technology contracts. Furthermore, it was felt that the preparation of guidelines in this field had to be a continuing effort, in view of various changes taking place within countries in dealing with specific aspects of these transactions.

In this connection, it was suggested that each of the participating government agencies provide UNIDO, at a later date, written comments on the draft presented to them. These could refer to specific chapters contained in the document and to their own policies and internal criteria governing the acquisition of foreign technology.

As previously agreed, these guidelines were to serve all developing countries, including those not represented at the Meeting, as an effective tool for strengthening their negotiating position vis-à-vis suppliers of technology.

As a means of improving the document, the participants explained practices followed in their countries concerning the contract, duration, confidentiality, guarantees and remuneration.

The discussion indicated clearly that the way the issues were treated in each country was closely related not only to the level of development of that country but also to the type of its economy - state-owned, mixed and open systems. There was also a relationship to the specific industrial strategies followed, namely, export oriented, import substituting and technological innovations and other development-oriented strategies. Consequently, it was noted that a wide range of practices existed. It was up to the country concerned to examine its approach to each of the items, bearing in mind its relationship to technology regulation as a whole. The guideline therefore should contain information on a broad spectrum of practices so as to enable countries to choose parameters appropriate to their requirements. The discussion brought out information on

the most recent policy and criteria followed by the participating agencies in evaluating technology contracts. It was agreed that UNIDO should endeavour to collect further material and submit the amended document for discussion at the next meeting.

The comments on basic issues are summarized below.

Basic issues dealt with in the "Guidelines"

Object of contract

Most technology contracts fall into two categories:

Contracts involving industrial property rights

Contracts related to various kinds of technical services, managerial assistance and non-patented know-how

With respect to the legislative framework, most countries consider that industrial property rights acquired under national law should also be viewed within the context of other legal provisions affecting technological transactions.

Agreements covering industrial property rights relate to a specific process or to the manufacture of a given product. Furthermore, other considerations related to the scope and duration of a given contract are closely associated with the criteria that a government agency will follow in examining and approving specific transactions.

The scope and nature of technological requirements of developing countries extend beyond the specific transfer of patented technologies, which in turn implies a greater involvement of the supplier of technology in the planning and implementation of industrial projects. The establishment of modern manufacturing facilities in developing countries usually requires foreign technological expertise at various levels. The degree of involvement of the suppliers of technology affects critical aspects of project implementation and in particular the responsibility to be assumed by the foreign licensor.

As for the legislative framework of each participating country, despite certain differences industrial property rights and technical know-how are treated in a similar manner. On the basis of research undertaken by UNIDO on this matter, government agencies should accord careful consideration to the definition of know-how in the technology contract.

Duration of contracts

An issue closely linked with the object of the contract and the remuneration for technology is that of the duration of the contract that a government agency may grant in specific cases.

Most countries permit an initial contract duration of five years. On the other hand, some countries consider that a technology contract covering industrial property rights, and in particular patents, ought to be related to the duration of a patent granted under national law. Similarly, the policy government agencies frequently follow is to permit a contract to be renewed.

Most countries take the position that the duration of a contract should be as short as possible but long enough for the recipient company to absorb the know-how under consideration fully; in other words, the duration of a contract is closely related to the type of process or technological know-how in question.

The experience of several developing countries reveals the need for monitoring the execution of a contract during the period granted. Several participating agencies are already in a position to follow up the implementation of a given transaction.

Confidentiality

Contractual obligations for the recipient enterprise should be limited to the duration of the technology contract, although a few countries have found it difficult to enforce such a limit on the suppliers of technology. Some countries would be prepared to authorize a confidentiality obligation after contract termination, but only with respect to non-disclosure to third parties. Such authorization, however, deserves a case-by-case appraisal.

The work of UNIDO has also resulted in a better understanding of the implications that derive from excessive confidentiality obligations in agreements entered into with developing countries. Study of this issue has two aspects:

Confidentiality obligations for the recipient enterprise in the developing country

Confidentiality obligations that might affect the national interests of the recipient country

A confidentiality provision of concern to the recipient enterprise could imply that the technological know-how and information obtained through a contract

would continue to be the property of the foreign supplier, even to the extent that the know-how under consideration could not be exploited after the termination of the agreement. Similarly, confidentiality could also imply that the know-how in question could not be freely communicated to third parties.

A confidentiality provision having implications for the recipient developing country relates primarily to sharing the experience gained through technological transactions, with the objective of broadening the area of technological choice, know-how and expertise in acquiring foreign technologies.

Government agencies should devote further attention to the definition of the scope and duration as well as to the status and protection that non-patented know-how deserve, particularly because non-patented know-how can not obtain legal monopoly protection.

Confidentiality provisions may hinder co-operation among developing countries, including efforts to achieve regional integration. A co-ordinated approach among government agencies in dealing with this critical subject is needed.

Guarantee provisions

By and large, guarantee provisions in technology contracts entered into with developing countries are not only inadequate, but have failed to ensure the achievement of objectives for priority industrial activities. Through the continuing exchange of information among government agencies, guidelines on this important subject could be formulated.

The following points emerged from the discussion:

(a) The nature of a guarantee will differ considerably from contract to contract, depending on the technical responsibilities to be assumed contractually by the foreign enterprise;

(b) A technology contract should ensure that the technology to be acquired shall be suitable for the manufacture of products covered by the agreement, that it can achieve a specified level of production, that the technological content shall be transferred fully, and that all documents pertaining to a given transaction shall be delivered within an agreed period;

(c) With respect to technological transactions in which the foreign enterprise is to supply the process technology and project engineering, specific provisions covering performance guarantees and provisions for compensation for non-fulfilment should be secured;

(d) Of particular importance to government agencies responsible for the evaluation and approval of technological transactions is the minimum financial liability of the foreign enterprise that should be secured in specific technological agreements.

Remuneration

The issue of remuneration for technology was covered only partially. The Meeting learned about the criteria and negotiating strategy for dealing with this issue of the host country.

A continuing exchange of views among government agencies would be beneficial to all participating countries. The question of remuneration very much depends on the nature of the technological know-how and the contribution expected from the foreign enterprise. Accordingly, to evaluate payments requires the capability for assessing the technological content of a particular transaction.

As for royalty payments, it is not sufficient to know the level of royalties in a given case, but rather it is necessary to be able to determine the worth of the technology or know-how to the recipient company and to the national economy. Therefore, the emphasis should be on ensuring the maximum benefit to be derived from a particular transaction, rather than the percentage of royalty.

IV. REVIEW OF PROGRESS MADE IN CO-OPERATION BETWEEN TRANSFER OF TECHNOLOGY
REGISTRIES - FOLLOW-UP OF MEETING ON SURVEYS OF REGULATORY
AGENCIES IN SELECTED COUNTRIES (JUNE 1978)

The Meeting was informed that UNDP had welcomed the initiative of UNIDO in proposing country-based reviews of the effectiveness of national regulatory agencies. Such reviews would enable the countries concerned to examine their own experience in the light of the experience of others. In addition, developing countries interested in establishing regulatory machinery could benefit from the experience of those countries that had already set up such machinery. UNDP had therefore agreed in principle to support the project, provided that the countries themselves indicated their interest in reviewing experience gained and their willingness to take the lead in directing the project in their countries with the assistance of UNIDO and other interested agencies.

The Meeting noted that UNIDO would have to select countries and ascertain their willingness to evaluate their experience in regulating transfers of technology. The Meeting noted that such a project, if undertaken with the full co-operation of the participating Governments, would provide important material for the benefit of all countries. UNIDO had already begun to tackle certain elements of such work. The UNDP project would bring together all information and current experience on the subject.

Some countries expressed interest in participating in this programme. It was agreed that the participants would, after appropriate consultations, send an official communication to UNIDO. It was hoped that UNIDO would pursue the matter with UNDP as soon as possible.

V. PREPARATION OF DOCUMENTATION FOR UNIDO III

The Meeting considered the preparation of two documents for UNIDO III, the first, on the progress achieved in co-operation among developing countries in evolving common approaches to the work of national technology registries or similar national regulatory bodies, and the second, to be prepared, at the request of UNIDO, by the United Nations Centre on Transnational Corporations, on the role of transnational corporations in industrial development.

In discussing the first document, the Meeting was unanimous that UNIDO should report to the Third General Conference regarding the work initiated under the co-operative arrangements entered into by the national technology registries of the 14 participating countries. The work undertaken by UNIDO at the request of the heads of national technology registries was in response to the Lima Declaration and Plan of Action for Industrial Development and Co-operation (PI/38). The Meeting also considered the work accomplished by UNIDO, particularly in developing TIES, compiling national laws on the regulation of transfer of technology, and preparing guidelines for evaluating and screening transfer of technology agreements. It felt that UNIDO had been instrumental in developing effective bilateral and multilateral co-operation as well as making the combined experience and assistance of participating countries available for the benefit of other developing countries that were considering establishing national regulatory bodies and drafting legal provisions for their effective operation.

In discussing the second document, the Meeting noted that the role of transnational corporations in industrial development was a complex issue that was being discussed in several international forums. Traditionally, the transnationals had been the vehicle for transferring capital, technology, management and marketing methods from one country to another. However, their contribution had been the subject of intense discussion, particularly in view of the disparity between the objectives of these corporations and national objectives. It was pointed out that the developing countries were in a weak bargaining position vis-à-vis the transnationals. As a result, certain measures had been undertaken to strengthen the negotiating capacities of developing countries.

While the participants felt that they could not officially state the position of their Governments, they could offer some comments on the treatment of the material in the document to be prepared by the United Nations Centre on Transnational Corporations. Taking note of the fact that a code of conduct for the transnational corporations was under consideration, the Meeting was of the

opinion that it would nevertheless be useful to provide information on the latest developments to UNIDO III, to enable UNIDO III to make its own observations. It was also suggested that the paper should make a distinction, if possible, between technology transfers and foreign investment. So far, the work of the transnationals had hindered or inhibited indigenous technological capacities and local innovations. Consequently, the reconciliation of the national goals, particularly the development of national technological capacities with the co-operation of the transnationals, should be emphasized. It was felt that the paper should emphasize the need for strengthening the national regulatory machinery, that the most effective way to deal with the transnationals was to clarify one's own requirements and adopt the necessary regulatory and monitoring machinery to ensure that the transnationals operated within the system. In this connection, experience with regulatory agencies should be considered and possible suggestions made for their improvement. Suggestions were also made regarding the role of international organizations in assisting in the development of regional and national institutions, so as to promote and develop technologies considered appropriate for strengthening technological capacities, and particularly development of technologies locally to reduce dependence on the transnationals.

Concluding observations

The Meeting unanimously agreed that the progress achieved in promoting co-operation among the participating national registries and similar institutions under the auspices of UNIDO had been satisfactory. The two meetings had also served to make the participants aware of the need, not only to co-operate among themselves, but also to extend their experience and direct assistance, through UNIDO, to registries in other countries. It was noted, for instance, that the participating registries would provide facilities for training, furnish information on request and assist developing countries, through visits and consultations, in establishing and operating offices to facilitate technology transfer. UNIDO was requested to promote this co-operation and help to seek resources for this important work.

The Meeting took note of the offer of the Government of Portugal to host the next meeting at a time convenient to the participating countries, and expressed the wish that other developing countries would participate in the meeting. UNIDO was requested to take the necessary steps to make the meeting possible.

Annex I

LIST OF PARTICIPANTS

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United Nations Secretariat

United Nations Centre on Transnational Corporations

Sydney Dell, Special Adviser, Assistant Secretary General

Annex II

LIST OF DOCUMENTS

Meeting documents

Agenda item 1

Aide-Mémoire

TIES phase I, results part I

TIES phase I, results part II

Report on Meeting of Senior Officials and Heads of National
Technology Registries or Similar Offices in Selected
Developing Countries, Vienna, Austria, 6-10 March 1978

(ID/WG.272/4)

Explanatory note on TIES

(ID/WG.272/5)

TIES progress report, 16 October 1978

TIES Coding Manual

Agenda item 2

"Guidelines for evaluation of transfer of technology
agreements"

Agenda item 3

Report on Meeting of Government Experts on Regulatory
Functions in Transfer of Technology, Vienna, Austria,
29 May - 2 June 1978

(ID/WG.275/9)

Recent developments in regulation of foreign technology
in selected developing countries

(ID/WG.275/8)

Background documents

Basic considerations for the evaluation of technology
contracts in developing countries

(ID/WG.275/6)

Conceptual and policy framework for appropriate
industrial technology

(ID/WG.282/112)

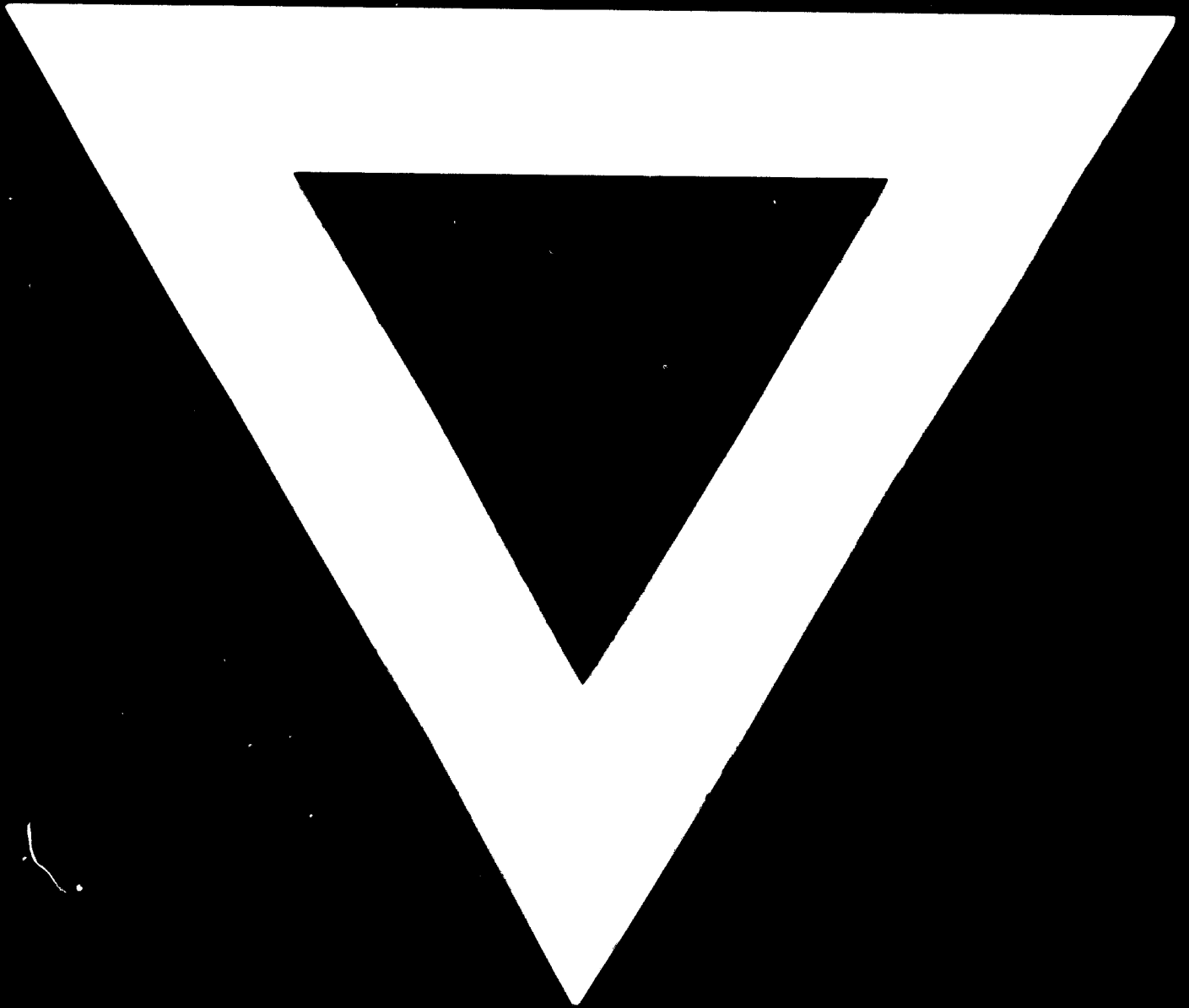
Establishment of an Industrial and Technological
Information Bank (INTIB)

(ID/B/183)

Report of the Ministerial Level Meeting, Anand, India,
28-30 November 1978

(ID/WG.282/123)

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