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LEGAL ASPECTS OF INDUSTRIAL CO-OPERATION BETWEEN THE SOVIET UNION AND OTHER CMEA MEMBER COUNTRIES AND THE DEVELOPING COUNTRIES: CONTRACTS BETWEEN ORGANIZATIONS AND FIRMS*

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I. Introduction

The economic cooperation between the Soviet Union and the other countries, members of the Council for Mutual Economic Assistance (CMEA), on the one hand, and the developing countries on the other, is built on the long-term, stable and mutually advantageous basis, promoting the economic development and economic independence of the developing countries. Cooperation with the socialist countries is as a rule tied in with the young states' programmes of economic and social development and helps involve them in the international division of labour. Some 90% of the Soviet Union's total economic and technical assistance to the developing countries goes to the development of production, of which some 75% to the development of industry and energetics. The contractual-legal mechanism is to play an important role in the organisation of industrial cooperation, its stability and enhanced efficiency. The present paper aims to analyse this mechanism, paying particular attention to the content of contracts concluded at the enterprises' level, this so far being little studied in the literature, and also to show the interaction between contracts and intergovernmental agreements.[1]

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[1] The paper is directly related to the circumstantial work prepared by Doctor of Law L. Zenin, V. Teperman and N. Ushakova, Industrial Cooperation of the Soviet Union and Other CMEA Member-Countries with the Developing States (Moscow, 1978). It elaborates on and adds to the positions of this work dealing with the legal aspects of cooperation.

The paper is based on the relevant Soviet literature and Soviet contractual practices, occasionally using works of authors from other socialist CMEA member-countries.

II. The Institutional and Organizational Mechanism of Cooperation

1. Intergovernmental Agreements.[1]

Types of Intergovernmental Agreements. Relations between the socialist and developing countries are regulated by a system of intergovernmental agreements whose number has been steadily growing. In 1954 the Soviet Union had intergovernmental agreements with two developing countries, while in 1978 it had economic and scientific-technical cooperation agreements with 62 countries. In recent years such agreements have been signed with Angola, Mozambique, San Tome and Principi Islands, Cape Verde Islands, Guiana, Costa-Rica, Jamaica, Bangladesh, and Mexico.

Other CMEA member-countries had agreements on economic, technical and scientific cooperation with 34 developing countries in 1962, and with 78 states in 1978. The German Democratic Republic, for example, signed such agreements with 37 developing countries.

The agreements are titled differently (agreements on economic and technical cooperation, agreements on the development of economic and technical cooperation, cooperation protocols, protocols to agreements, etc.), but depending on their content they can be conventionally broken down

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[1] P. I. Solovyov and Sh. K. Yamalutdinov contributed to this section.

into two groups. The first group comprises general agreements defining the aims and principles of cooperation with the country concerned, establishing the terms of granting credits, pointing to the main spheres of technical assistance, and determining the forms of such assistance (participation in designing, deliveries of equipment, sending specialists, etc.).

Some agreements provide a list of projects (in agreements themselves or in annexes), others provide for the conclusion of supplementary contracts for the construction of certain projects or the performance of respective works. Among the agreements cited in the Appendices to the paper are the Agreement between the USSR and Afghanistan on the development of economic and technical cooperation of February 27, 1975, and the Agreement between the USSR and the Republic of Bangladesh on economic and technical cooperation of April 2, 1975.

An example of general agreements are the Agreement between Poland and Nigeria of October 25, 1977 providing for a broad variety of forms of cooperation (including the setting up of mixed Polish-Nigerian enterprises).

The second group comprises special agreements, i.e. those providing for the construction of or rendering technical assistance in separate industries or individual major projects. Such agreements include in particular the Soviet-Indian Agreement on assistance in the construction of the iron-and-steel works in Bokaro (of February 21, 1961 and January 25, 1975), the Agreement between the USSR and Iran

on cooperation in the extention of the Aria Mehr plant in Isfahan (of March 15, 1973), and the Agreement between the USSR and Algeria on cooperation in the construction of the aluminium plant in M'Sila (of April 27, 1976).

Since general agreements had been concluded earlier with the majority of developing countries, the practices of the seventies witness a growth in the number of special agreements.

It is important to note that general agreements are mostly concluded with countries cooperation with which is only making a start, insofar as they determine the general principles of relations.

Agreements can also be classified according to a different principle.

1. "Classical" economic cooperation agreements, i.e. those providing for a full enumeration of projects, a detailed regulation of the obligations of both parties, granting credits, the order of their use and reimbursement, guarantees, exploitation of projects provided for in the agreement, procedure for signing contracts, etc. The agreement is effective until the cooperation projects it indicates have been completed.

2. General credit agreements providing for granting state credits without indicating specific projects. The list of projects is defined separately on the agreement of the sides, with a simultaneous settlement of questions relating to the types, periods and volumes of assistance in each project. An example of such agreement is the Soviet-

Indian Agreement on granting the Indian Government credits to help fulfil the third five-year plan, signed on September 12, 1959. Later, on February 12, 1960 a supplementary agreement was signed, enumerating the cooperation projects. This agreement was in fact an organic part of the main credit agreement.

3. Mixed credit agreements providing for various heterogeneous terms of granting or reimbursing credits (various periods or forms of reimbursement, etc.). Most characteristic in this respect is the Soviet-Egyptian Agreement of March 16, 1971 providing for a 12-year payment delay in some projects and granting state credits for 8 to 12 years, and also credits detached from specific projects.

From the angle of the content of the Soviet party's commitments, agreements can be grouped into those providing for technical assistance in construction and those providing for the construction of projects "up the key".

Under Soviet legislation international treaties concluded by the USSR, on the parties' understanding of their subsequent ratification, are subject to ratification. Such agreements come into force after an exchange of deeds of ratification. In some cases agreements provide for their provisional effectuation as to the date of signing and final effectuation after the exchange of ratification deeds. The aim is to make a good start in the solution of cooperation matters.

Economic and technical cooperation agreements do not usually mention the possibility of their cancellation. Yet

there are exceptions. Thus the Soviet-Nigerian Agreement of November 21, 1968 provides for the possibility of the termination of its operation any moment by each of the sides, but in this case the construction of the started projects must be completed and all commitments taken by the sides fulfilled in conformity with the provisions of the agreements and separate protocols and contracts providing for the construction of said projects.[1]

2. Long-Term Programmes

The establishment of the public (state) sector in a number of developing countries and its growing role in the economy, as well as the laying of the foundations for the planned economic development enabled the socialist states to make a transition from simple to more complicated and higher forms of economic ties with such countries, to the creation of a stable system of interstate cooperation. This was expressed in the conclusion of economic and technical cooperation agreements with these countries for a long term (15 years). Long-term economic cooperation programmes were worked out and signed with a number of such countries, covering all spheres of economic, technical and

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[1] Sbornik Deistvuyushchikh dogovorov, soglashenii i konventsii zaklyuchennykh SSSR s inostrannymi gosudarstvami (Collection of Effective Treaties, Agreements and Conventions Concluded by the USSR with Foreign States). Issue XXVI, Moscow, 1973, p. 252.

commercial cooperation. Such programmes provide for the cooperation in designing, construction and extension of industrial and agricultural projects, joint industrial cooperation in third countries and the development of foreign trade ties on a long-term basis.

The drafting of such programmes reflects an objective need to build cooperation on the basis of long-term plans taking account of the international division of labour on a broad scale and the economic possibilities of countries on a mutually advantageous basis.

3. Cooperation Agencies

Mention should be made of the enhanced role of bilateral cooperation agencies. The intergovernmental agreements concluded by the USSR and other CMEA member-countries provided for the setting up of standing mixed commissions on economic cooperation. Commissions sit, as a rule, once a year to hear both the prospects and possibilities for the development of cooperation and the actual course of cooperation envisaged in the agreements. The commissions' protocols record the measures adopted by each party to successfully realise the commitments taken and remove the difficulties that might have cropped up in the course of cooperation.

Thus a mixed Polish-Iraqi commission with specialised working groups was set up under the Agreement on the Economic and technical cooperation between Poland and Iraq of 1972. In some cases mixed intergovernmental commissions are set

up to cooperate in individual industries, and agreements are concluded between branch ministries and the corresponding departments in the developing countries. Such practices are adopted, for instance, in the GDR, which set up mixed economic commission for cooperation with Iraq, Syria, Algeria, Iran and India to create the prerequisites for a further long-term stable development of cooperation relations.[1]

Agreements with those countries with which there are no standing mixed commissions as organs of cooperation, stipulate regular meeting between the representatives of the parties to discuss the realisation of the corresponding agreements and the preparation, if necessary, of pertinent recommendations.

Thus a definite system of contractual ties has taken shape in the relations between the socialist CMEA member-countries and the developing countries at the interstate (intergovernmental) level, supplemented in some cases by a standing or provisional organisational mechanism for such cooperation.

By their legal character all these agreements and protocols, including the mixed commissions' protocols, engen-

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[1] F. Klausnitzer. Participation of the German Democratic Republic in the CMEA Member-Countries' Technical Assistance to the Developing Countries. Ekonomicheskoye sotrudnichestvo stran-chlenov SEV (Economic Cooperation of the CMEA Member-Countries), No. 3, 1976, p. 85.

der inter-state legal relations. The USSR and other member-countries, on the one hand, and the developing states on the other take upon themselves property commitments (granting credits, deliveries of equipment, rendering services, etc.). The parties' rights and obligations in such agreements cannot be subject to the regulation of some national legal system and are regulated exclusively by the terms of an international treaty in question.[1]

II.2. Contracts and Their Ties with the Intergovernmental Agreements

Industrial cooperation contracts are concluded by various subjects authorised by the socialist countries' national legislation to engage in foreign commercial activity. The variety of subjects is explained by several objective reasons, above all differences in the systems of industrial and foreign trade management of the socialist countries and the need to observe the rules of domestic legislation on state monopoly, as well as other essential factors.

On the Soviet side the subjects of the civil legal relations in foreign trade contacts are state foreign trade

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[1] See M.M. Boguslavsky. Legal Questions of the USSR's Economic and Technical Assistance to the Countries of Asia, Africa and Latin America. Sovietsky yezhegodnik mezhdunarodnogo prava, 1961 (Soviet Yearbook of International Law, 1961), Moscow, 1962, pp. 118-129.

associations (export, import, and export-import ones) which are subordinate to the USSR State Committee for Foreign Economic Contacts, the USSR Ministry of Foreign Trade and some other agencies. The subject of contractual obligations in the construction of iron-and steel works, for example, is the V/O Chyazhpromexport. Associations are independent juristic persons and are fully liable for their obligations and commitments.

Several Soviet subjects can participate in a project, one of which must be a specialised foreign trade association in the field concerned.

In other CMEA countries the principal participants in contractual relations with foreign partners are also specialised export and import trade organisations existing in all of them. They differ according to their subordination to a specific agency. In the GDR, Bulgaria, Poland and Romania, for example, they are:

foreign trade enterprises subordinated directly to the Ministry of Foreign Economic Contracts;

foreign trade enterprises subordinated to a branch Ministry;

foreign trade enterprises subordinated to a medium-level administrative organ (such as an association of people's enterprises in the GDR);

foreign trade enterprises subordinated directly to corresponding industrial complexes.

In several CMEA countries foreign trade enterprises are united with industrial ones. In Czechoslovakia a por-

tion of such enterprises have been transformed into joint-stock companies with industrial enterprises taking part. Czechoslovakia, Poland, Romania and partly Bulgaria practice inclusion of a foreign trade association into the industrial sphere by its double subordination to an industrial Ministry or association on the one hand, and the Ministry of Foreign Trade on the other. It should be stressed, however, that economic organisations, including foreign trade ones, can in any case enter into direct contact with foreign partners only if they have the requisite powers and are controlled by competent state agencies.

Agreements on technical assistance to developing countries are normally concluded with state organisations or sometimes directly with governments since assistance mainly involves construction of enterprises and other projects in the public sector. Agreements can also be concluded with private firms on the recommendation of the government of the country concerned.

When an agreement is concluded directly with the government of a developping country or on behalf of the President of such country (as was the case, for example, in rendering technical assistance to India) or with ministries which are not juridical persons, the direct subject of the civil legal relations in such a treaty is the state.[1]

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[1] See B. P. Kozintsev. Subjects and the Character of Legal Relations Arising in the Sphere of the USSR's Foreign Economic Ties with the Developing Countries. Sovietskoye gosudarstvo i pravo, No. 4, 1965, pp. 72-82.

Conclusion of contracts is expressly provided for in intergovernmental agreements. For instance, Art. 12 of the Agreement between the USSR and Afghanistan of February 27, 1975 stipulates that:

"Performance of the design and surveying works, deliveries of equipment and other material, vocational training of Afghan citizens and other types of technical assistance under the present Agreement shall be effected on the basis of contracts to be concluded between competent Soviet and Afghan organisations duly authorised by the corresponding Soviet and Afghan agencies, the contracts to be considered and signed by organisations in the shortest time possible.

"The contracts shall define the volume, periods, costs and other detailed terms of technical assistance to Afghan organisations, the costs of equipment and other material delivered from the USSR under the present Agreement to be determined on the basis of world prices. Moreover, the contracts shall determine the obligations of Afghan organisations to collect the initial data, prepare building sites, provide Soviet specialists with dwelling with the requisite living conditions, medical aid and transport for business trips, consider and approve drafts, apportion manpower, etc., and also the specific periods for fulfilling such obligations."

Similar rules are also contained in other agreements.

Thus contracts between organisations are concluded on the basis of respective terms in the intergovernmental ag-

reement. This gives expression above all to the independence between contracts and agreements, which is above all expressed in the fact that agreements often stipulate the period during which the contracts are to be signed. The main thing however is that the content of contracts is largely determined by the content of intergovernmental agreements, the latter usually establishing the principle of price calculations, on which the contracts are based. The delivery terms established in contracts may not exceed the period of using credits defined in the agreements.

At the same time contractual terms to a large measure concretise the terms of an intergovernmental agreement. The latter point to the elements of technical assistance and its volume, types, and periods, while the former specify the periods and types of assistance in each project.

Contracts are also connected with agreements in the liability matters. The party's non-fulfilment of a civil legal obligation in a contract usually means the non-fulfilment by the state of said obligation it took upon itself under the intergovernmental agreement.

Thus from the legal standpoint two types of relations arise in the implementation of industrial cooperation: legal relations between states (international legal relations) and legal relations between organisations and enterprises (civil legal relations). The specifics of legal relations of the second type (civil legal) are largely determined by the first type of relations (international legal). The dependence reflects the growing role of states

carrying out cooperation, and expresses the long-term and stable character of cooperation.

II. 3. The General Terms of Technical Assistance and Standard Contracts

Some intergovernmental agreements provide for the drafting of the General Terms of technical assistance, which contain unified substantive rights. Such General Terms were signed by the USSR State Committee for Foreign Economic Relations with the competent state bodies in Guinea, UAR, Syria, Iraq, Algeria, Sri Lanka, and other countries. Insofar as the General Terms are signed by state bodies entrusted by the respective governments with a practical realisation of intergovernmental agreements on technical assistance, this makes for the terms' obligatory observance in concluding contracts between Soviet organisations and foreign partners.[1]

In their legal nature these General Terms are intergovernmental agreements of normative value as they are concluded by the appropriate bodies of state administration. The General Terms determine the rights and duties of the parties in a contract so far as the performance of various elements and technical assistance are concerned. They also regulate the payment and mutual settlement matters and the

[1] See Export-Import Operations (Legal Regulation), Moscow, 1970, p. 42; L. A. Lunts. A Course of International Private Law. A Special Part, Moscow, 1975, p. 232.

arbitration examination of disputes that can arise from a contract, and some other matters. The General Terms are to be applied to the respective relations regardless of the reference to them in separate agreements.

The character of rules (either imperative or dispositive) differs in different General Terms. Thus the General Terms signed with the state organs of Syria, Iraq and UAR contain obligatory, imperative rules, while the rules established in the General Terms concluded by the appropriate agencies of Sri Lanka and Guinea are dispositive. Article 3 of the Soviet-Ceylonese Agreement of August 6, 1958 stipulates: "In the event of divergence between some term or provision in the present Agreement and some term or provision in the contract the contract's term or provision shall prevail."

The conclusion of the General Terms facilitates the conclusion of specific contracts. The employment of standard contracts in certain cases also serves this purpose.

III. Parties' Obligations to Render Technical Assistance in the Construction of Enterprises and Other Projects

III. 1. The subject-matter of a contract. By technical assistance the present paper means an intricate complex of relations arising in the building of industrial enterprises and other projects in the developing countries with the assistance of the Soviet Union and other socialist states. In practice the volume of such assistance is very

large. It begins with surveying and designing and ends with the commissioning of the enterprise.

Let us consider the rights and duties of the parties on the basis of the Soviet organisations' contractual practices.

In the technical assistance contracts concluded by Soviet foreign trade organisations, the organisations of the countries receiving technical assistance are called "customers" or "clients", while the USSR Association concerned, "suppliers". The latter term is conventional and therefore in the present paper we designate suppliers as "contractors" in accordance with the character of the obligations or commitments taken by the associations. USSR Associations conclude contracts on their own behalf and are liable for them.

Within the general framework of technical assistance defined in intergovernmental agreements the contracts specify the parties' obligations, determine its volume and terms, give guarentees of its proper rendering, provide for the procedure of settlements for the work done, etc.

The Soviet Union's technical assistance implies that a particular project is built with the forces and resources of respective organisations or firms of the country with which a pertinent intergovernmental agreement has been concluded on rendering technical assistance in the construction of specific projects. These organisations and firms act as customers. They are answerable to the organisation for the provision of a land plot free from any encumbrances and intended as a building site, for the organisation and performance of the whole complex of building

and assembly work, and for the provision of construction of the requisite building and technological equipment, material and manpower. The Association, acting as a contractor, shall only give technical assistance within the volume specified in the contracts, being liable to the organisations and firms of the corresponding countries only for a timely and proper assistance and not for the completion of the construction as a whole.

The Soviet Union's technical assistance first of all implies the designing of enterprises and other projects. The Association renders the client technical assistance in selecting the building site, collecting initial data necessary for designing, in appropriate R&D and in preparing the design assignement. On the basis of the latter Soviet designing organisations work out the design assignement and working draughts. The design assignement having been approved the Soviet designing organisations exercise through the Association author's supervision over the conformity of building and assembly works to the approved designs.

Important elements of technical assistance are delivery of equipment and other materials in complete sets for the enterprises or other projects under construction, the Soviet organisations' technical assistance to the client in the assembly and adjustment of this equipment and in commissioning the enterprise or other project, as well as sending Soviet specialists to the project.

Thus technical assistance is an object of a single legal relationship with complex composition, its elements or component parts being designing, delivery of equipment,

sending specialists and training of national cadres. All these elements are closely interrelated, with all or only part of them being present in assisting the construction of a specific project. For instance, technical assistance can be expressed solely in delivering equipment and sending specialists to help in the assembly, adjustment and commissioning of the equipment.

Technical assistance relations can be formalised in a single contract, but in practice such single contracts with appropriate appendices (such as equipment delivery terms, etc.) are not always used. This is explained by the fact that at the initial stages of designing complex and large projects it is sometimes difficult to determine the specific obligations of the parties in the whole complex of technical assistance, such as its volume, cost, etc. This is only possible, as a rule, in the case of small standard projects. Several rather than a single contract are therefore usually concluded: a contract for a performance of designing and sometimes a contract for making the assignement for collecting the initial data, a contract for delivery of equipment, for sending specialists, for vocational training or practice, etc.

Let us deal in more detail with the parties' obligations in some terms of contract or types of work.

Prospecting and geological survey. The Association, as a customer, shall work out a programme for this work which usually comprises delivery of requisite equipment and sending specialists to perform the job.

The works provided in the contract are usually done according to technical designs that must be made by the contractor's specialists with the participation of those of customer. The designs must be approved by the customer.

The customer must supply the contractor's specialists with all the available maps and other materials for the work sites. The customer gives an access to the regions of work provided in the contract to the contractor's specialists.

The customer must also supply the geological prospecting parties with electric power, fuel, raw materials, water, lubricants and transport. It shall also hire manpower from among the local population.

The work specified in the contract having been fulfilled the contractor's specialists make geological reports on the basis of the data obtained.

III. 3. Designing. In most cases designing and surveying involved in technical assistance are performed on the following terms.

Before preparing a design of an industrial or other project the contractor, i.e. a USSR Association, renders the client, i.e. an appropriate organisation or firm of a developing country, technical assistance in selecting the building site, collecting initial data and making the design assignment. For these purposes the Soviet Union sends its specialists to the country concerned, who perform the whole complex of these works together with the customer's specialists, i.e. pinpoint the raw material base,

study the local conditions for the construction, specify the production schedule and specialisation of the enterprise cooperate in production, etc.

The customer drafts the technical design of the project on the basis of the design assignment approved by by the customer and the initial data received from it. The customer is liable for the proper initial data.

The design assignment prepared by Soviet specialists is approved by the customer after which it becomes the main document on the basis of which Soviet design organisations work out the design assignment for the building of a corresponding industrial enterprise or other project.

During the examination of a design assignment some changes and amendments are made in it, on the parties' agreement, of which a bilateral protocol is made up. These changes are taken into consideration by Soviet design organisations in making working draughts sent to the customer as soon as they are ready.

Respective Soviet organisations usually perform designing in two stages. At the first stage they work out a design assignment complete with specifications for equipment andother materials, which enables them to place orders for equipment. The volume of building work to be done is indicated in natural indices to enable the customer to estimate the forthcoming building work. At the second stage working draughts are worked out in the volume agreed by the parties for the whole building and assembly portions of design.

Soviet organisations make complete design assignments and working drafts ensuring the normal performance of building and assembly, correct calculations of production and other premises and of separate aggregates and machines.

In some contracts the Association guarantees that the enterprises will achieve the projected capacity within a specified period, stating the terms under which the guarantees are given. The terms are usually that it will build the project in strict conformity with the design worked out by the contractor, that full sets of equipment provided in the contract will be installed at the enterprise, that the customer will strictly observe production technology and the rules for the exploitation and upkeep of the equipment provided for in the customer's design and technical documentation, that the factory will be manned by qualified workers and engineers and supplied with sufficient quantity of steam, electric power, water, compressed air, raw and other materials in conformity with the design.

In rendering technical assistance to the customer in using a particular project the contractor must also design the project itself. But it is not its duty to design projects or structures situated outside the construction site, as well as access roads, electric power transmission lines, etc. These works, as well as designing dwelling and administrative premises and other structures, both on and outside the building site must be performed by the customer.

Design documentation is worked out in conformity with the current Soviet rates and with account being taken, as

as possible, of the local conditions specified by the customer in the design assignment.

The design assignment having been fulfilled and working draughts transferred to the customer in the amount necessary for carrying on building and assembly work, Soviet design organizations send to the customer's country their specialists for author's supervision over the work carried out by the customer in conformity with the Soviet design.

Payments to the contractor--the USSR Association--for designing are made by the customer usually from the credits granted by the Soviet Union to the customer's country in conformity with the intergovernmental agreement on rendering technical assistance to the customer's country in building a specific project.

In dealing with customers from the developing countries two main forms of settlement are used. In the first the customer authorizes the USSR Foreign Trade Bank, through its own bank, to pay the contractor's accounts complete with the documents provided in the agreement and confirming the actual fulfilment of work. Sometimes the parties agree to make payments in two equal portions so as to facilitate settlements: the first portion is to be paid after the drafting of the design assignment and the second after the working draughts have been made.

The second form of accounts implies that the payments shall be effected from letters of credit on the terms stipulated in the contract.

III. 4. Supplies of equipment. The contract provides

that the quality of the equipment and other materials supplied shall correspond to the USSR state standards or technical specifications at the manufacturing factories of the supplier country.

Equipment shall be supplied in complete sets with spare parts. Sets of spare parts must ensure the equipment's smooth work during the guarantee period.

The supplier may replace separate types of equipment if necessary on the understanding that such replacement should not worsen technology, quality and other technical indices.

Equipment and other materials are supplied on the terms normally accepted in international trade (free of charge, c.i.f., etc.). If cargo is carried in the railway to the country bordering on the USSR the right of property to the goods and also the risk of accidental loss or accidental damage to the goods passes from the supplier to the customer when the goods have been transferred by the Soviet railway to that of the country concerned.

Under the contractual terms the supplier guarantees the quality and smooth work of the equipment during 12 months since its commissioning, but for not more than 18 months from the date of delivery, and in the case of precision and measuring instruments during 9 months from the date of delivery. If the equipment proves defective during the guarantee period the supplier shall be obliged to remove the defects within a period agreed on with the customer by correcting ~~it~~ them or replacing the defective parts.

The supplier supplies equipment to replace the defective one at its own expense. The contracts establish the order of filing the customer's claims against the possible shortage (quantity claims) and quality of equipment (quality claims).

These terms, usually contained in contracts, show that the developing countries' interests are met to a maximal extent possible.

More should be said about the guarantees. As has been mentioned above, the supplier guarantees the quality and smooth performance of the equipment supplied. But its guarantees do not extend to the normal wear and tear of the equipment and to the damage caused by improper transportation, inadeqate or careless storage, incorrect or careless serving or excessive strain, the customer's non-compliance with the supplier's technical instructions for exploitation, and also owing to the customer's incorrect or careless actions in the removal of defects.

III. 5. Supervision of assembly work. In rendering technical assistance to developing countries in building projects the Association usually exercises general supervision and technical advice and consultations relating to the assembly of equipment.

The requisite equipment having been delivered to the customer's country and the confirmation having been received from the customer on the completion of construction of buildings, structures, foundations and communications and also of all the preparatory work for the assembly of the

equipment, the Association sends to the customer's country appropriate specialists for rendering technical assistance in the assembly, setting and commissioning of the equipment.

The assembly of equipment of any independent working group having been completed, representatives of the Association and of the customer jointly specify the date of the working tests of this equipment, which can only be begun after a written consent has been received from the Association's representative. The assembled equipment is tested by the customer in the presence of the Association's specialists, who give the necessary explanations and consultation both in relation to the equipment's performance and as regards the use of instructions on its upkeep and exploitation. Sometimes the working test is made directly by the Association's specialists on the agreement of the parties.

The Association guarantees the correctness of its specialists' technical specifications, consultations and explanations relating to the assembly and commissioning of the equipment. But it is relieved of liability if the customer incompletely or imprecisely fulfils the instructions of the Association's specialists and if the equipment has been commissioned prior to a written consent thereof by the Association's representative.

III. 6. Conditions on which specialist are sent. In some cases relations in sending specialists are formalised in a separate contract concluded between the Association and the foreign partner, in another cases conditions of

[illegible] specialists for performing specific jobs are included in the general contract on rendering technical assistance in the building of enterprises or other projects.

The contracts determine the number of Soviet specialists to be sent to the customer's country to render technical assistance, and specify their speciality, the character and volume of work to be done by them, and the period and conditions of sojourn. Thus the USSR Association's main duty as customer is to send respective specialists for rendering technical assistance in carrying out the work mentioned in the contract.

The customer, on its part, pledges to pay the supplier's expenses involved in the sending to the customer's country of Soviet specialists. The contract provides that the customer reimburses monthly pay rates to the contractor for the work of its specialists in the amount determined in the contract. These rates are paid as of the date of the specialists' leaving the Soviet Union and from the date of their return. The dates of exit from and entry into the USSR are considered the dates when they cross the state border of the USSR.

When specialists are sent for a year or more the customer reimburses to the supplier expenses involved in the payment of the lump sum travel allowance whose amount is determined in the contract. The customer also incurs expenses in the travel of the Soviet specialists to the customer's country and back to the USSR and expenses on the travel of the specialist's family when he is sent together with it.

Under the terms of the contract the customer also reimburses expenses on the Soviet specialists' insurance from production risks and accidents during the period of their mission in the customer's country in the amount stipulated in the contract. Insurance itself is effected by the Association in Soviet insurance organisations.

Contracts usually stipulate that in the case of the specialist's falling ill in the customer's country the customer shall not suspend the payment of remuneration for his work for the period of his illness, albeit for a definite number of days for each year of work. In the case of the specialist's long illness the Association may recall him to the USSR and send another specialist.

The contract also determines the specialist's leave and its time and place.

The contract includes rules on the terms of the specialists' work and sojourn in the customer's country. The country pledges to ensure the normal conditions for their work and for this purpose provides them with office premises and dwellings equipped with furniture, accessories and all communal services, and whenever necessary transport for business purposes. Specialists are also provided with medical aid including hospitalisation whenever necessary.

Thus contracts with clauses relating to the sending of Soviet specialists regulate relations between the contractor and customer but not between the customer and specialists. Soviet specialists working in the customer's country do not enter into labour relations with the customer,

but continue to maintain labour relations with the Soviet organization in which they worked prior to their sending abroad. Their relations are regualted by Soviet labour legislation.

Attention should be paid to the fact that specialists sent to the developing countries for rendering technical assistance are covered by the local legislation in full. The contracts normally provide that the specialists and members of their families shall observe all rules and customs existing at the client's enterprises and "shall respect the customs and traditions existing in the client's country" . Thus, no special regime exists for the Soviet specialists in the developing countries.

III. 7. Conditions of the vocational training of specialists and workers. Training of national cadres for the various industries in the developing countries, in particular for enterprises built with Soviet technical assistance, holds an important place in the economic and technical cooperation between the USSR and the developing countries. The cadres are trained both at educational establishment of the countries concerned and in the Soviet Union. We shall dwell on the contractual terms of the foreign specialists' and workers' training in the USSR in greater detail.

By virtue of a contract concluded with a foreign counter-partner the USSR Association assumes definite obligations in training foreign specialists.

Vocational training is free of charge, the pertinent

Soviet organisations providing the specialists and workers with free medical aid.

The contract defines the number of specialists to be trained and the period and profile of training. The programme for training each specialist is worked out by the Soviet organisation or institution concerned on the basis of data relating to the training profile or speciality, the level of theoretical and practical training and the knowledge of Russian. These data are supplied by the customer, i.e. the organisation of the country to which technical assistance is rendered.

The training programme is agreed with the representative of the organisation of the developing country concerned.

Vocational training is carried on in Russian through an interpreter. The training at the enterprise having been completed a special commission checks on the practical skills and theoretical knowledge acquired.

Foreign specialists are sent to the USSR for training without their families. During the whole period of their training they are provided with dwelling premises with communal services, or hotel rooms, and with free medical aid. Protective outer garments are issued them under the norms in effect at a given enterprise.

The legal status of foreign specialists in the USSR is regulated by the norms of Soviet legislation and also by the rules of the contracts and agreements concluded by the Soviet Union with the country of the specialist's nationality. In particular, the foreign specialists coming

to [illegible] fully covered by the internal order regulations, safety techniques instructions and other rules in effect at the enterprises or institutions where vocational training or production practice is provided.

Thus the rights and duties of the USSR Association and foreign customers are determined by the contract concluded between them, while the Association does not enter into contractual relations with the foreign specialists.

IV. Parties' Obligations Under the Contract of Work, Labour and Material

IV. 1. The Subject-Matter of the Contract.

The contract of work, labour and material is one of the main contracts concluded in relations of economic co-operation between the socialist and developing countries. Its sphere of application is very broad and includes many varied forms.

In this paper, by the contract of work, labour and material (or capital construction contract for short) is meant a contract under which one party (the contractor) pledges to fulfil a definite amount of work at its own risk on the customer's assignment and from the customer's or its own materials, and the customer pledges to accept and pay for the work done.

The contract's subject-matter must have as a rule some material form, though in some cases the concept of contract extends to non-material services, i.e. giving consultations.

The capital construction contract medintes two main groups of relations: those of carrying out work and those of transferring the results.

When the contract results in the completion of an object manufactured by the contractor from its own material and transferred to the customer's ownership the capital construction contract bears resemblance to the purchase and sale contract, the main distinctive features of the former being contractual provisions regulating the performance

by the contractor of the works assigned to it and its counterpartner's right to exercise control over the work, as well as other actions provided for in the contract and relating to the construction of the project. Some authors believe that the basic feature distinguishing the business contract from the delivery contract is the full individualisation of the contract's subject-matter. This individualisation is determined both by general technical indices and the specific conditions of the carrying out of the order.[1]

Inclusion of a particular contract in this or that type depends on the analysis of the parties' rights and duties reinforced in it.

Works specified in capital construction contracts play the major role in building projects in such industries as the hydropower industry, mining, processing of raw materials, above all oil and gas, ferrous metallurgy, and some other industries vital for developing countries.

Capital construction contracts are used on a wide scale in foreign economic relations between the socialist and developing countries, including the rendering of various technical services bearing on the delivery of machines, equipment and instruments, in particular complete sets of equipment for industrial and other projects. Contractor's

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[1] Eksportno-importnye operatsii. Pravovoye regulirovaniye (Export-Import Operations. Legal Regulation). Moscow, 1970, p. 152.

works also include prospecting, geological surveying, designing, assembling, assembly supervision, etc., which were considered above. In this section we shall dwell on the contractual relations arising in the process of cooperation with the developing countries in the construction of industrial and other projects.

Unlike technical assistance relations in which the organisation of the assisting country assumes obligations in carrying out separate types of work, under the business contract the contractor organisation pledges to perform the whole complex of jobs in the construction of a particular project which is then handed over to the customer under the procedure established in the contract. Such construction is performed on the general (or main) contractor's terms or, as is often called in practice, on the "up the key" terms.

The literature has noted[1] that this form of relations between the contractor and customer has become widespread in the relations between the industrialised and developing countries. This especially concerns those developing countries which have large financial resources but lack their own national cadres and experience of construction of modern industrial and other projects.

A positive factor in such form of relations between

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[1] Sergeyev P. K. On the Contractual Costs of Building Enterprises in Sets on the Capital Construction Contract's ("up the Key") Terms. Vneshnyaya torgovlya, 1977, No. 12, p.41.

the customer and performer in time saving and also guarantee that the project will be built in the specified period in accordance with the design.

One negative feature of building enterprises on the capital construction contract's terms is that the future owner of the enterprise, the country where the construction is carried out, does not acquire the requisite experience in the construction, assembly and adjustment of equipment of such an enterprise, dependence on the help without persisting in this field. Nevertheless, the above-mentioned advantages of construction, especially the time factor, with the limited manpower and material resources in the customer country, are often the determining factor in choosing the "up the key" form of construction.

In 1977 general contractor's agreements accounted for 40% of all works carried out by the USSR in the developing countries, in particular 60% in Algeria and Iran and 80% in Iraq.[1]

One organisation, a general contractor, can in principle pledge to perform the whole complex of works. Most typical for the present period is the general contractor's agreements with the use of sub-contractors.

The system of contractual ties is here built in the following way. The Soviet organisation (or that of another

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[1] Geografiya i razvivayushchiyesya strany (Georgaphy and the Developing Countries). Theses on reports at the plenary session of the conference. Moscow, 1978, p. 18.

socialist country) acts as the general contractor, inviting as sub-contractors the national firms of the developing countries or organisations and firms of third countries, both socialist and capitalist.[1] The general contractor concludes pertinent contracts with them.

The pertinent relations are regulated directly by foreign trade contracts concluded at the civil legal level and also by intergovernmental agreements.[2]

Moreover, these relations are regulated by the rules of law recognised as appropriate by the parties to a specific contract. When the Soviet law is recognised as such, law its provisions are applied, namely the norms of civil law, such as the Fundamentals of Civil Legislation of the USSR and Union Republics and the civil codes of the Union Republics.

Soviet foreign trade organisations carrying out capital construction in the developing countries widely use standard contracts which are not obligatory for the cooperating organisations. They contain a model list of contract's terms on capital construction, which largely facilitate the parties' negotiations and the final wording of the contract.

Of such character are also the instructions, General Term and other recomendation documents used in cooperation

[1] On tripartite cooperation see Section VII.

[2] On the correlation of contractor's and intergovernmental agreements see Section II of this report.

and prepared by the UN European Economic Commission.[1]

The conclusion of a contract is preceded by a very important practical activity in selecting the future partners and determining their positions (financial possibilities, qualified personnel, etc.), and also in retrieving other data that are of substantial importance for the successful fulfilment of the commitments. A considerable importance is attached at this stage to the partners' mutual information about each other.

IV. 2. The Basic Elements of Contracts.

Basing ourselves on the established practices we shall dwell on the separate provisions of the capital construction contract.

First of all, the contract names the partners.

By naming the partners is meant the names of the parties concluding the contract, their juristic addresses, and the countries whose juridical persons they are.

The contract also usually establishes the terms subsequently used in its text. This is necessary in order to avoid misunderstandings and facilitate the unambiguous interpretation of the contract.

Capital construction contracts also define the following basic notions: "customer (client)", "contractor",

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[1] E.g., Regulations on making contracts in building large industrial projects, which bear on contractual relations (ECE/Trade/117).

"engineer", "works", "temporary works", "contractual price", "final contractual price", "building equipment", "materials", "customer's materials", "contractor's materials", "drawings", "site", "calculation of time" (months and years), "work schedule (programme)", and some others.

The provision dealing with the subject-matter of the contract is of substantial importance because it explains the essence of cooperation, and the parties are therefore striving to formulate it as precisely as possible, since this determines their rights and duties.

Since capital construction works are often carried on for a long period of time, especially in the "up the key" construction, and include a whole complex of various operations, the contractor often sets up a directorate to manage the jobs in the customer's country. The directorate may assign a competent authorised representative who directly manages the construction.

The directorate guides all construction and assembly works and settles all the relevant questions on behalf of the contractor and jointly with representatives of the customer; in other words, it coordinates the activities of all the interested organisations so as to arrive at the final result.

In accordance with Soviet practices the construction's directorate exercises in the developing country the functions of representative of the foreign trade association concerned that acts as a contractor.

Let us consider the parties' obligations in the capi-

tal construction contract.

Under the contract the contractor is to perform the specified work and pass the results to the customer's consideration.

The contractor's obligations usually include:

performance and completion of works involved in the design, manufacturing equipment, transportation, insurance, delivery, unloading on the building site, building work, assembly, safeguarding, completion of tests, preparation for normal exploitation, and putting into operation;

correction of defects (repairs and replacement of defective parts);

provision of work force and materials (except the customer's materials), of building equipment and so on, in the amounts stipulated in the contract;

training of personnel;

author's supervision.

The contractor can acquire the requisite materials from any seller, including the customer. In the latter case their relations shall be regulated by the puchase and sale contract.

The contractor pledges to fulfil the work stipulated in the contract from its own materials and by its own means. At the same time the contract may provide for the performance of work from the customer's materials, in which case they are accepted, processed an transported by the customer at its own expense.

Some contracts provide for the realization (export

and sale) of the contractor's materials and building equipment, with the reservation that given the price agreement the customer reserves the right to purchase the equipment and unused materials left over after the completion of works.

When the work is carried on the contractor is liable for the safety of all the materials delivered to the construction site both by him and the customer. The contractor shall correct at his own expense all the damages likely to arise during that period, except the force majeure cases.

The contracts stipulate that the material and work quality must correspond to the norms, standards and technical specifications in effect in the supplier's country.

The persons entrusted with quality control can organise quality tests not provided for in the contract. These are paid for by the customer. When the quality is lower than that stipulated in the contract the work shall be paid by the contractor.

The customer's major obligation is to receive the project for payment.

The contract's price is determined when the contract is concluded and is called the "contractual price". Since expenditure can be reallocated between the parties during the performance of work, use is also made of the concept "final contractual price", i.e. the price determined after additions or exemptions from the primary contractual pric have been made.

In Long-term contracts for building large projects by contractor method the parties can envisage the institution of Engineer.

In Soviet practice this means a group of Soviet specialists appointed by the customer and sent to a developing country on special contracts with a foreign trade Association exercising the functions of contractor, for supervising the progress of work. The specialists' duties include supervision and control over the performance of work on behalf of the customer within their rights and powers, which are usually rather broad. The Engineer's main task is to ensure the performance of work in conformity with the contract, and his written instructions are binding on the contractor.

The specialists' functions include, in particular, approval of the programme of work, provided for by the supplier, and carrying out of checks. The Engineer can remove from the construction site materials that do not conform to the contract, replace them by quality mterials, order resumption of work from the very beginning, etc., with concomitant expenditure being incurred by the contractor. One of his major duties is checking on the quality of the finished project and issuance of an appropriate certificate.

Contracts enable the customer, Enginmer and their authorised representatives to come to the construction site and supervise the work done.

Results of performed building operations can be concealed by susequent operations only on their approval by the Engineer who must have the opportunity to inspect any part of the project, as well as the foundations. The contractor is obliged, on the demand of the authorised representatives, to let them

inspect any work performed by the contractor. Depending on the quality of operations the performance of these actions and restoration of the works infringed during checking must be reimbursed by the contractor or customer.

The contracts provide for terms of the contractor's import of stipulated equipment and materials in the volume corresponding to the amount of the work done, with the contractor being the supplier of said equipment and materials.

The supplier shall pay for their transportation from the borders of a developing country concerned or its ports to the building site and back after the work has been finished. Many contracts stipulate that in transporting goods the supplier must take measures against damaging access roads.

Completion of contractor work stipulated in the contract means that the contract has been performed.

Difference is made between completion of work as a whole and in separate parts, and a contract may therefore reserve periods for completion of work in the whole project and in its separate parts.

The contractor having been notified of the completion of work, the finished project is put to test.

The work and tests having been completed, the Engineer, having received from the contractor a written commitment to complete any unifinished works, issues a certificate which states the date of the completion of work and final tests. The certificate thus bears witness to the completion of the project.

If the work programme provides for the project being constructed in parts, the certificate is issued for each of them.

From the moment the certificate has been issued the customer assumes full responsibility for the running of the project.

The guarantee period runs from the date of successful tests, which is determined in the preliminary acceptance Act, and lasts for 12 months, as a rule. When the customer begins to use a part of the project before the appropriate Act has been adopted, the guarantee period begins from the moment it begins to be used. At the Engineer's request the contractor shall prolong the guarantee period in relation to any defective part that must be replaced or set straight.

During a definite period defined in the contract after the end of the guarantee period and termination of all contractor's obligations the customer issued it a final certificate (wholly and in parts). The certificate testifies that the works have been done in sufficient amount and certifies their proper performance.

Obligations are not considered fulfilled until all acts on the final acceptance of works have been issued for which the contract was concluded (i.e. until final certificates have been issued). This provision, the contracts stipulate, does not rule out the customer's actual ownership or use of the projects.

The contracts usually specify that all changes and amendments made in the volume of work and also new contemplated variants must be agreed upon between the contractor and customer, including the relevant financial questions.

At the same time, when the performance of such additional operations does not exceed the cost of work stipulated in the contract, the Engineer may make some changes in the form, quality and quantity of work, namely:

increase or decrease the amounts of any works provided for in the contract;

exclude some works;

change the character, quantity and type of works;

change the level, direction, positions and sizes of parts of work;

perform additional work or change a given work by a different one that is necessary for performing the work as a whole.

Such orders do not annul or change the contract, but their cost is considered in determining the final contractual price. Additional ordered are paid according to the rate and prices indicated in the contract.

The contracts establish periods for removing the existing defects. The period begins to run from the date of the actual acceptance of work (as a whole and in parts).

If the Engineer found defects during that period he has the right to demand that the Contractor shall remove them by repairing, reconstruction, etc. If, in the Engineer's opinion, the material and work quality does not correspond to the contract such activities must be carried out at the csupplier's expense. To correct the defects the contractor must be given a definite period of time.

If the contractor is not liable for the disclosed defects expenditure in their removal is incurred by the customer.

V. TERMS OF TRANSFER OF TECHNOLOGY

V'. Forms of transfer. The practice of industrial co-operation of member-countries of the Council for Mutual Economic Assistance (CMEA) with developing countries involves various forms of transfer of technology, which in the present study is understood as various scientific and technological achievements used both during construction and operation of facilities. These achievements may be handed over to a developing country by transferring technical documentation, licences and know-hows, as well as through transfer of experience by specialists and through other possible means.

From the legal and economic viewpoints, two forms of transfer should be distinguished, namely transfer of technological achievements without compensation and transfer of concomitant licences and know-hows with subsequent compensation.

Large-scale transfer of advance technologies is provided both in the course of developing design documentation, which involves the most progressive, assimilated and reputed projects, and in the course of construction and operation of industrial enterprises in developing countries.

Technical achievements are primarily transferred through documentation.

A series of intergovernmental agreements concluded between the USSR and developing countries stipulate transfer of technical documentation without compensation.[1]

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[1] M. Bogouslavski. Aspects juridiques de l'assistance technique prêtée par l'U.R.S.S. aux pays economiquement sous-développés. Revue de droit contemporain, 1961, °1, p. 47.

These agreements stipulate that transfer of technical documentation to developing countries should entail only payment for the actual expenditures of Soviet organisations connected with preparation of these documents (copying, translation into foreign language, deliveries to given country, etc.). Payment for technical projects contained in the documentation shall not be collected. As a rule, the terms of transfer are formulated in relevant agreements in identical wording. For instance, in the Agreement on Economic and Technical Co-operation with Tanzania dated May 25, 1966, these terms were expressed as follows: "Respective Soviet organisations will provide competent Tanzanian organisations with drawings, blueprints and production processes, and also with other technical documentation for organising production stipulated in the respective projects of units built in accordance with the present Agreement. The above-mentioned documentation will be provided for payment of actual expenditures borne by Soviet organisations in connection with preparation (e.g. copying, translation and inclusion of any essential specifications) and transfer of said documentation to the Tanzanian Side" (Clause 3)[1].

Another example is the Agreement on Economic and Technical Co-operation between the USSR and Algeria dated December 27, 1969. This Agreement stipulated that the Govern-

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[1] Sbornik deistvuyushchikh dogovorov, soglashenii i konventsii..., Issue 24, Moscow, 1971, Items 339-340.

ment of the USSR will "provide transfer by Soviet organisations to the Government of the People's Democratic Republic of Algeria drawings and descriptions of production processes necessary for organising production of respective products at enterprises built, restored or expanded in cooperation with the Union of Soviet Socialist Republics in conformity with the present Agreement. The said documentation will be transferred without any compensation and with payment for only the actual expenses connected with preparation or elaboration and transfer of said documentation".[1]

In such agreements, the words "without compensation" are understood to imply that no special payment is collected for technical projects included in the submitted documentation, particularly for the newest projects which may be regarded as know-hows or inventions. The above-cited terms for transfer of documentation may be regarded as tantamount to providing a kind of general free licence on using technical achievements in a given country.[2]

At the same time, the purposeful character of transfer of documentation required that the agreements include

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[1] Ibid.

[2] G. I. Tytskaya. Forms and Terms of Transfer by the USSR of Major Technological Achievements to Developing Countries. Problemy gosudarstva i prava na sovremennom etape (Current Problems of State and Law), Issue II, Moscow, 1970, p. 303.

certain limitations in regard to utilisation of the technical documentation outside the country to which technical assistance is provided.

Thus, the above-mentioned Agreement with Algeria stipulated that the documentation would be used only inside Algeria and would not be transferred to foreign physical or legal persons without the agreement of the competent Soviet organisations in each specific case.

This limitation was caused by the fact that transfer of documentation is achieved with a stictly specific purpose aimed at rendering assistance to a given developing country so that it could build its own national industry and, primarily in costruction of enterprises in the public sector, which the USSR gives active support.

The above limitation is the sole restriction in transferring Soviet technology; however, in no way does it affect the interests of developing countries with regard to subsequent manufacture of products at enterprises under construction. As had already been noted above, these enterprises are the full property of these countries, and they can freely decide everything relating to manufacture and sale of products both on domestic and foreign markets. All marketed goods bear the trade marks of national enterprises, and no restrictions whatsoever are applied thereto.

In addition to transfer of technology through documentation, current practices also envisage handing over of knowledge and experience by Soviet specialists and workers sent to developing countries for that purpose.

Transfer of technology and know-hows in the course of construction and operation of facilities is achieved without additional compensation. According to the terms of the contracts, Soviet specialists are to receive payment in no way connected with the scope of the knowledge and experience actually transferred to developing countries. As a rule, their salaries and wages equal to actual expenditures borne by Soviet organisations for staffing specialists in a given developing country and also part of the salaries or wages that they had previously received in the USSR.

Transfer of technical knowledge and experience without additional compensation is achieved on a considerable scale also by providing various conclusions and recommendations of Soviet research and designing institutes; these conclusions and/or recommendations are subsequently transferred directly to foreign clients or used in their interests. As a result, developing countries have no need to invite highly paid consultants, something widely practiced in deals with industrially developed capitalist states. However, in case of need for top-level Soviet consultants to come for a short period of time to a given developing country, the latter as a rule does not pay any compensation for their services, and in most cases they are "guests" to whom the host country pays for their meals, hotel and transportation fares (when they travel about the country).

Vi. 2. <u>License Agreements.</u> In addition to transferring technology without compensation, the USSR and other socialist countries have in recent years also expanded the practice of transferring technical achievements through license

agreements not involving compensations and usually termed concomitant licenses.[1] This concerns transfer of rights for utilising in developing countries of data contained in designing- and technical documentation which, in respect to contents, is characterised by absolute or local novelty (invention or know-how).

A characteristic feature of Soviet license agreements concluded with organisations in developing countries is that the terms are directed at creating optimum opportunities for the licentiate to quickly and properly master production of the licensed article. The above agreements stipulate for transfer of a complete set of technical documents, for rendering all necessary technical assistance, etc. At the same time, the license is provided on terms that are economically profitable and not burdensome to the licentiate. In case of need and at the licentiate's option, the license is provided together with machines and equipment without which it would be difficult to start production within a short period of time.

The royalty for the license is often known to increase at the expense of the cost of technical assistance involving training of local specialists, their probation period at the licentiate's enterprises, etc. In Soviet license agee-

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[1] M. Gorodissky. Terms and Forms of Transfer of Soviet Technology and Know-How to Developing Countries. The Importance of the Patent System to Developing Countries. WIPO, Geneva, 1977, 47-49.

ments with licentiates in developing countries, additional royalties for such technical assistance are generally not collected; this is natural and leads to decrease of total royalty.

In concluding license agreements, considerable attention is given to providing opportunities for using local raw materials and manpower when organising production in a given developing country on the basis of a Soviet license.

Thus, licenses provided to developing countries never include reservations regarding so-called "conditioned purchases" of equipment, machines, materials, spare parts and/or half-finished products which the licentiate could obtain from other sources. Such terms, practiced by some companies in capitalist countries, are known to lead to unjustified increase of license costs and unfavourable conditions for the licentiates.

Neither do sales of Soviet licenses involve "comprehensive licensing", when, in addition to the needed technology, the licentiate from a developing country is offered all the technologies that relate to the given production and are protected in the given country by a series of patents.

Agreements concluded by Soviet organisations with licentiates from developing countries do not contain restrictions on purchasing technology in third countries. In other words, the licentiate is not artificially bound to a definite source of technology and is not deprived of any alternatives in choosing the scientific and technical achieve-

ments which for him are economically optimum.

In their agreements with developing countries, Soviet licentiors do not establish unjustifiably lengthy terms during which the agreements would be effective, since this could lead to a situation wherein the licentiate would be bound to a technology which, after a certain period of time, would become obsolete.

Neither do Soviet organisations stipulate terms in license agreements that would oblige the licentiate to sell the licensed product at a definite price and only via the licentiar's sales channels. Trade activity is not restricted, since this could result in highly unfavourable consequences for the economy of the licentiate.

Soviet organisations do not put forward any demands for establishing a specific output rate in the country to which the technology is transferred.

It should also be noted that, in offering licenses on technology to be used by enterprises in developing countries, Soviet organisations do not seek to ensure their own participation either in the ownership or management of these enterprises; nor do they strive to establish any controls over these enterprises or to interfere in managerial activities.

An important factor inherent in Soviet licenses is that the license agreements do not contain restrictions on measures by licentiates from developing countries that would limit their own research and designing work. These agreements do not establish any requirement on free " re-

turn" of any inventions and/or improvements made by the licentiate in regard to the originally received Soviet technology. In turn, Soviet licentiars do not demand that licentiates from developing countries should be obliged to buy Soviet inventions and/or improvements related to the technology originally transferred to them, since application of such terms had in a number of cases forced the licentiates to buy technologies they did not need.

Soviet license agreements with organisations from developing countries never establsih any terms restricting the use of national personnel and do not reserve Soviet technical specialists exclusive rights to occupy specific key managerial or technical posts. On the contrary, Soviet licentiars do everything in their power to promote qualified training of local technicians, using all familiar forms of training national personnel.

The existence in respective developing countries of a patent system makes it necessary, when concluding license agreements (as well as during free transfer of technical documentation), to protect the patent interests of Soviet organisations. With that in view, the respective contracts contain reservations prohibiting transfer of information on the subject of the license to third persons without the permission of a given Soviet organisation, the licentiar. Here is an example of the terms stipulated in such contracts: "The licentiate guarantees that know-hows for designing and producing 'licensed equipment' will be kept in secret by

the licentiate and his client, to whom the respective documentation may have been transferred by the licentiate in the course of production of the equipment, and pledges not to disclose and/or transfer this information, neither partially nor fully, to other sides for use or inspection without written permission therefor from the licentiar".[1] In no way do such terms contradict the interests of countries who receive technology on the basis of concomitant licenses.

Thus, the interests of developing countries, the recipients of technology, are taken into consideration to a maximum extent when concluding license agreements. In connection with transfer of technology stipulated by contracts with organisations and companies from developing countries, mention should also be made of patents granted in those countries to the USSR and other socialist states. The number of such patents is not too great, and the objectives pursued in securing them are entirely different from those pursued by Western nations striving to secure patents there. Speaking to foreign newsmen when he was Prime Minister, Jawaharlal Nehru once noted that socialist countries are prepared to help India study their technological experience and production techniques, which in other countries are protected by a system of patents. Socialist countries, said Nehru, are more inclined to render India such assistance than other states.[2] His re-

[1] Op. cit., p. 308.

[2] Tibor Mende. Conversations with Mr. Nehru. London, 1956, p. 132.

marks also retain their significance to this day in regard to the patenting policies of socialist countries.

When patenting their inventions in developing countries, Soviet organisations do not pursue aims of establishing a monopoly in specific fields of science and technology to the detriment of national projects and research. They do not seek to create conditions in which developing countries would be compelled to import Soviet goods without developing similar domestic production.[1]

On the contrary, the patent policy of the USSR in regard to the countries of Asia, Africa and Latin America is aimed at creating conditions for their national organisations to be able to freely use advanced Soviet production methods in the interests of developing their own national industries. Patenting Soviet inventions in developing countries is important when complete sets of equipment are delivered simultaneously with providing production methods and technical assistance. In this case, national organisations in developing countries are themselves primarily interested in a situation when the products delivered, including a nomenclature of diversified equipment and relevant production processes, would not enter into a controversy with the rights of patent-owners from third countries. In the absence of patents on Soviet inventions, such controversies could seriously complicate operation of industrial facilities built with Soviet assistance.

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[1] L. Gorodissky. Op. cit., pp. 52-53.

The existence of Soviet patents in developing countries serves as a guarantee for interested enterprises there to purchase licenses on Soviet scientific and technical achievements, if they intend to start their own production of different products on the basis of Soviet production processes, without fearing counteraction from foreign companies, the traditional suppliers of these products to those countries.

VI. Conclusion and Implementation of Contracts: General Aspects

VI. 1. Conclusion of Contracts

All contracts relating to industrial co-operation are concluded in written form and signed by representatives of the contracting parties.

Normally, the date of signing of the contract is the date when the contract goes into effect. In some European socialist countries, the contract comes into force when due permission for its conclusion had been received from competent state agencies, or provided the contract would come into effect after said permission had been received. For instance, according to Czechoslovak legislation, permission for signing a contract is granted only in case of preliminary consent by the Federal Ministry for Technical Development and Capital Construction, the Federal Finance Ministry and the State Bank of Czechoslovakia. Contracts signed without due permission are invalid. The Cze-

choslovak Government can establish instances when such permission is not required. The need of due permission is also stipulated by the Law on Currency Operations dated December 21, 1970.

The legislation of a number of countries also provides for definite actions subsequent to signing of contract, but without which it cannot go into force. In Bulgaria, for example, all respective ministries table such contracts for endorsement by the Council of Ministers. After they had been approved, the contracts go into effect for organisations which, in this case, are contracting parties. In the German Democratic Republic, all contracts are subject to registration at the Ministry of Foreign Trade. Moreover, after they had been signed, the contracts are verified, prior to registration, by the Ministry of Foreign Trade (control of competency of contracting parties, instructions on prices, sanctions, dates, etc.).

A review of legislation in socialist countries shows that granting industrial and foreign-trade organisations the right to participate in international industrial cooperation is invariably accompanied by development of a system of strict control by government agencies over the actions of these organisations at all stages of drafting, concluding and implementing contracts.

English is normally the language used for drawing up contracts.

VI. 2. Period During Which Contract Is Valid

Contracts for performing contractor work, especially

construction of large industrial facilities, are normally concluded for a lengthy period of time (five years and more).

If, after this term had expired, there is need to prolong the contract, the period of validity may be extended on agreement between the customer (in case of need, the "engineer") and the contractor.

Some contracts establish a procedure for terminating or postponing contractor work in connection with national interests. As a rule, such measures should be accompanied by a due written notice which should be submitted one month prior to postponement or termination of work.

Some contracts stipulate the possibility of temporary stoppage of work by order of the "engineer". In such cases, the contractor, having received a written order, shall stop further deliveries of materials and operations (completely or partially) for a period desirable to the "engineer".

Additional expenses connected with temporary stoppage of work shall be paid by the customer, except in cases when stoppage is:

(a) stipulated by contract documents;

(b) necessary for fulfilling work or caused by weather conditions, with the exception of forces majeures, or due to contractor's fault;

(c) essential for keeping all or part of contractor work intact.

VI. 3. Forces majeures

All contracts contain regulations relating to forces majeures. In accordance with these regulations, a party is

not considered responsible for non-fulfilment of obligations if caused by forces majeures.

Force majeure signifies any circumstance beyond control of one of the contracting parties, including war, hostile actions, civil war, mutiny, disturbances, strikes, embargo or the elements, though not restricted thereto.

Contracts stipulate that the contractor and customer shall inform one another in case such circumstances arise.

VI. 4. Annulment of Contract

Contracts envisage possibility for the customer to annul them.

In case a contract is nullified, the contractor, after being duly informed by the customer, shall immediately stop all operations and perform only those necessary for preserving materials and construction equipment.

VII. Legal Aspects of Tripartite Cooperation

VII. 1. Expansion and extention of economic co-operation between socialist and developing countries, development of international division of labour, realisation of more complex programmes of industrial development on the basis of latest achievements in science and technology and various other factors have led to the appearance of different forms of tripartite co-operation. Industrial cooperation among socialist countries (joint construction in another country and/or cooperation in delivering equipment), cooperation between socialist and capitalist countries, and joint activity of a socialist and developing country have thus become possible. The forms of such cooperation are varied and are pre-

scntly in their incipient stage. Hence, in this section, attention is given solely to some legal aspects of such tripartite cooperation.

In Soviet contractual practice, the legal basis of such tripartite cooperation is formed by respective clauses of intergovernmental agreements. Back in 1958, for instance, an agreement with Egypt on economic and technical cooperation envisaged the possibility for Soviet organisations to extensively draw in corresponding organisations of socialist countries in order to implement designing projects, deliveries of various equipment, machines and materials, and also for rendering other kinds of technical assistance.

Intergovrnmental agreements concluded in the 1970s by the USSR with developing countries allow for the possibility of cooperation between Soviet organisations and organisations of other countries. Thus, Art. 11 of the Soviet-Afghan Agreement dated February 22, 1975 stipulates that "Soviet organisations can cooperate with their counterparts in other countries in designing work, deliveries of equipment and materials, and other kinds of technical assistance..." The clauses of other agreements concluded by the USSR with the developing countries are formulated similarly.

At the same time, it is stipulated that in case of necessity to send specialists from other countries to the country receiving technical assistance, Soviet organisations will obtain the consent of the respective developing country beforehand.

The practice of recent years affords numerous examples

of such cooperation. For instance, the Czechoslovak enterprise SKODAEXPORT cooperates with the Soviet foreign trade organisation TYAZHPROMEXPORT in supplying equipment to Turkey and manufacturing a rolling-mill for the Isfahan Steel Works in Iran; SKODAEXPORT has also concluded a contract for supplying equipment to the Karachi Steel Plant in Pakistan.[1]

Tripartite industrial cooperation among organisations and companies may involve various versions of contractual ties. The first and simplest version involves ties of subcontractor nature. Thus, when Soviet organisations cooperate with organisations of other socialist countries, the contractor (or supplier), i.e. the respective Soviet foreign trade organisation enters into direct contractual relations with the customer from the respective developing country, while organisations from socialist countries come out as subcontractors to conclude contracts only with the supplier, without entering into relations with the customer. The subcontractors (sub-suppliers) are entrusted with implementing a definite scope or part of work involving technical assistance in building a given enterprise or its part within the framework of a complete production cycle.

In starting negotiations with the customer, the contractor (supplier) coordinates with the subcontractor all the basic terms of the future principal agreement. In the course of the talks, the contractor introduces all necessa-

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[1] Czechoslovak Foreign Trade, 1978, No. 4.

ry amendments in the draft of the principal agreement in agreement with the subcontractor, who is sometimes asked to take direct part in the negotiations.

The principal contract, whose form differs in no way from normal contracts for rendering technical assistance, stipulates an article indicating that different types of work will be performed by organizations from a respective socialist country, or that different equipment will be delivered from that country. However, this article does not necessarily create direct relationships between the customer and subcontractor (sub-supplier).

After the basic contract between the contractor and subcontractor has been signed, another agreement is concluded stipulating for the scope of work to be performed by the subcontractor, as well as the dates, costs, delivery terms, guarantees and other essential terms in conformity with the basic contract.

Payments to the subcontractor for the work he had completed shall be made by the contractor in conformity with the trade and tariff agreements existing between the countries which the contractor and subcontractor represent.

The risks incumbent upon the supplier and related to deliveries to be made by the sub-supplier are all borne by the latter until they had become the customer's responsibility. The sub-supplier cannot enter into direct relations with the customer without preliminary consent of the supplier.

Such is the first possible version of the structure

of contractual relations when rendering technical assistance to other countries in building enterprises and other facilities.

The second version is when the contract simultaneously determines the rights and duties of all three organisations, the organisation of the third country signing the contract together with the supplier (cont actor), and the contract per se contains a clause whereby the organisation of the third country will declare its consent with the terms of the contract that directly concern it.

Lately, socialist countries have started joint implementation of a number of large-scale projects in developing countries, and this has naturally led to complication of concomitant legal relationships. A vivid example of this is the practice of tripartite industrial cooperation between Czechoslovakia, the German Democratic Republic (GDR) and Algeria.[1] Czechoslovakia concluded an agreement with the GDR concerning construction of a plant for manufacturing SIGMA pumps (27 thousand units per annum) in Algeria; the agreement also envisaged that Algeria would be provided with all respective licenses therefore. Czechoslovakia is to cooperate with the GDR in elaborating the project, and also in

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[1] J. Jakubec. Contribution of CZSR to cooperation of CMEA member-countries in the field of Cooperation with the Developing Countries. Ekonomicheskoye sotrudnichestvo stran-chlenov SEV, 1977, No. 2, pp. 54-55.

selling Czech licenses and know-hows and in coordinating the technical aspects of the construction work, delivery and erection of equipment, and commissioning and management of said plant in Algeria. The Algerian personnel is to be trained in Czechoslovakia and the GDR. The contract with the Algerian organisation is to be concluded to the sum of approximately 940 million dollars. The share of STROJEXPORT, the Czechoslovak organisation, and INVESTEXPORT, the foreign trade enterprise of the GDR, is to be 55 and 45%, respectively.

A more complex form of cooperation in third countries involves implementation of transactions stipulating for creation of a consortium.

A consortium is a working amalgamation; legally it is an association which does not possess the rights of a legal person; each participant in the consortium bears independent responsibility before the customer from the third country. One of the participants in the consortium takes on the functions of a supervisor, whose responsibility is to coordinate the participation of the other partners.

Polish organisations successfully use this form of cooperation with Western companies. For instance, POLIMEX-CEKOP, a Polish foreign trade organisation representing several Polish enterprises, participates in a consortium with the West German SIEMENS and LOURTI & FRIEDRICH UHDE, GmbH (head of consortium). The consortium is building a phosphate production centre in Morocco. The construction is carried out on the "up the key" terms. This form of co-

operative ties with Western companies has become especially developed in the practice of Romanian organisations (joint actions on markets of developing countires in cooperation with West German and French companies); cooperation in this field with West German firms has led to the founding of a mixed society in Frankfurt on the Main, the Romanian-West German Engineering and Consultative Society RODEKO. Under a cooperative agreement between Hungarian organisations and the Austrian companies VOGELBUSCH and SCHLIER-BLEICHERT, unitised enterprises for mass production of sugar juice from dates were supplied to Iraq.[1] This form of cooperation is characterised by the fact that the number of joint projects to be implemented in third countries is growing very rapidly. According to a UNCTAD report, 53 of the 132 contracts registered by the secretariat of this organisation were concluded in 1973-74. This fact has drawn attention because such cooperation, both from the technical and legal standpoints, is particularly difficult, since it requires highly efficient coordination and constant ties among all the parties concerned (in order to unite various component parts of the equipment, production processes, etc. into a single whole).

The realisation of such projects requires strict observance of commitments in regard to dates, deliveries and services, as well as observance of guarantees concerning quality of equipment.

In the present report, the above-mentioned type of

[1] Hungarian Foreign Trade, 1976, No. 3, p. 37

cooperation is defined as tripartite industrial cooperation. This name is indicative of the fact that this form of cooperation brings to life interrelated (a) legal relationships among the cooperating organisations and (b) legal relationship of these organisations (or companies) with the company (or companies) of the third country. The former relationships usually develop through several stages. At the first stage, cooperation between the parties is achieved only in the form of scales of items (machines and/or equipment); this is followed by a stage wherein the fields most suitable for achieving cooperation are specified along with general distribution of respective duties and tasks; the final stage involves drafting and signing of the agreement, which must essentially resolve the following problem: (1) distribution of duties among the participating organisations; (2) distribution of risks and responsibilities; (3) determination of shares in remunerations for deliveries and services; and (4) determination of terms under which specialists will be sent to render technical assistance in the third country.[1]

As for the legal relationships with organisations or companies of the third country, the above-said UNCTAD study noted that four types of contracts are used in practice. First, the company of the third country can conclude one

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[1] See EEC Guide, p. 32, and also Industrial Cooperation and Transfer of Technologies Among EEC Member-Nations (Analysis of latest events).

contract with the leading partner responsible for the entire assistance rendered by foreign organisations or firms. Second, it can do so with each of the foreign partners bearing solidary responsibility. Third, it can conclude one contract with both foreign enterprises; thus, one of the contracting parties would include signatories from two cooperating organisations. Four, it can sign a separate contract with each of its foreign partners.

VIII. Settlement of Disputes and Legal Aspects Thereof

VIII. 1. The inter-relationship between intergovernmental agreements and contracts finds vivid expression in settlement of disputes between the contracting parties. Normal contracts used in international trade contain rules for considering possible disputes through arbitration. Disputes are examined either in standing arbitration bodies or in arbitration bodies set up directly by the parties, i.e. the legal persons who had concluded the contract.

However, other systems for examining disputes are applied to the relationships discussed in the present study. One can speak of two most typical versions of resolving this problem in the relationships practised between socialist and developing countries. The first and most frequently encountered case is when intergovernmental agreements do not stipulate for a clause whereby disputes over civil contracts should be submitted to arbitration.

The agreements generally include a clause that, in case of any controversies arising between Soviet economic organisations and organisations of developing countries regarding implementation of the terms of agreements or contracts concluded on the basis of these agreements, the representatives of the Government of the USSR and of the government of the respective country would hold consultations and exert efforts for settligng differences. Thus, the following agreements include the above-mentioned clause: the Soviet-Indian Agreements of February 21, 1961, and January 25, 1965 (factory in Bokaro), the Soviet-Iranian Agreement of January 13, 1966, the Soviet-Guinean

Agreement of November 27, 1969 (bauxite works), the Soviet-Pakistani Agreement of January 22, 1971 (metallurgical plant), and the Soviet-Bangladesh Agreement on Economic and Technical Cooperation dated April 2, 1975.

The second case stipulates for applying of various kinds of conciliatory procedures followed by consideration of the dispute by an arbitrator or arbitrators; if no mutually acceptable decision is reached on the essence of the dispute or an arbitration body cannot be organised, the dispute is settled by government representatives. Thus, some contracts on technical assistance in construction stipulate that all disputes and differences that might arise during implementation of the contract will be settled by mutual agreement between responsible representatives of the contractor and customer. Some other contracts concluded on the basis of intergovernmental agreements also do not stipulate for arbitration, and the parties, having exhausted their possibilities to settle arising differences by means of a conciliatory procedure, can appeal to government representatives, who, in conformity with the Agreement, must find a way for settling the conflict.

Some such contracts, prior to handing over the dispute for settlement in a conciliatory commission (organised on par basis), stipulate a clause that differences should be settled by the Engineer, or a group of specialists who superintend the work; only in case of disagreement with the decision of the Engineer, the dispute shall be settled by the abovementioned conciliatory commission. This, for instance, is the

system established in the contract between the Soviet TEFTECHIMPORTEXPORT and the Iranian National Petroleum Company for cooperation in constructing the Trans-Iranian Gas Pipeline. The contract for constructing and commissioning the North Rumeily oil field (Iraq) between the Soviet TEKHNOEXPORT and the Iraqi National Petroleum Company stipulates that if the disputes arising among the Engineer, Customer and Contractor are not settled in a friendly way they shall be submitted for settlement to an individual arbitrator elected by mutual consent of the parties concerned. Arbitration shall be achieved at the Customer's location, i.e. in Iraq. However, if no agreement is reached regarding selection of an individual arbitrator, the resultant situation would correspond to the one described above, wherein differences shall be settled by plenipotentiary representatives of the USSR and Iraq in accordance with the intergovernmental agreement of July 4, 1969, concluded between the two countries.[1]

The General Terms concluded between the USSR and the Algerian People's Democratic Republic stipulate the following sequence of stages in eleminating differences: if the arbitrators selected by the respective parties do not reach agreement, all disputes shall be settled by representatives empowered therefor by the Government of the USSR and the Government

[1] S. N. Bratus. Arbitration and International Economic Cooperation in the Field of Industrial, Scientific and Technological Development. Transactions of the 4th International Congress on Arbitration (Oct. 3-6, 1972, Moscow). Moscow, ~~1974~~ 1974, p. 76.

of the Algerian People's Democratic Republic, respectively.

On March 25, 1967 a Soviet-Turkish Agreement was signed for deliveries of equipment, materials and services by the USSR to Turkey; the Agreement provided for building certain industrial enterprises in Turkey and for establishing corresponding terms of payment. It was followed by letters dated August 23, 1967, signed by the Soviet and Turkish sides. The letters stipulated for a single system of examining differences in case such differences arise in the course of implementation of contracts concluded on the basis of the above-mentioned agreement; they also agreed upon the wording of a special clause on arbitration to be included in the contracts. This stipulates for quite a complicated system of organising the arbitration body which shall settle disputes between the two sides if the differences are not resolved peacefully (particularly if no agreement is reached between the respresentatives of the Chamber of Commerce of the countries participating in the Agreement regarding the selection of a third arbitrator, who shall then be appointed by Government representatives of the two countries.[1]

The essence of both versions is the same, albeit they include varying modifications: in case of differences and disputes, these shall be settled at an intergovernmental level. This approach permits maximum implementation of the obligations that the contracting parties had assumed, and a provision of effec-

[1] S. N. Bratus. Op. cit., p. 74

tive industrial cooperation. However, if the dispute shall be examined only by way of arbitration, this would at best lead to payment of forfeit or to compensation of losses, and not to fulfilment of an engagement which one of the sides had committed itself to by arbitration.

VIII. 2. The afore-said does not mean that practice is unfamiliar with the application of usual arbitration reservations. When there is an arbitration reservation in contracts concluded by Soviet organisations, the prevalent tendency, in the presence of said reservation, is for arbitrators located at the same place as the respondent to examine the disputes. This way of settling disputes was stipulated in the Contract for manufacturing and erecting reservoirs concluded between the Soviet ENERGOMASHEXPORT and a Syrian State Organisation, and also in the contract for building the Zaula N'Urbaz Hydraulic Power System signed by TECHNOPROMEXPORT and its Moroccan counterpart. It should also be noted that the principle of effective arbitration at the location of the respondent was likewise included in the agreement between the USSR Chamber of Commerce and Industry and Federation of Indian Chambers of Commerce and Industry. However, this agreement is of recommendatory nature, and the contracting parties are at option to resolve the issue otherwise.[1]

VIII. 3. In case of examining a dispute in an arbitration body, the question might arise as to what law should be applied to the given legal relationships between the conflicting parties. Some contracts concluded by Soviet organisations

[1] See M. M. Boguslavsky. Mezhdunarodnoye chastnoye pravo (International Private Law). Moscow, 1974, pp. 257-258.

with organisations and companies from developing countries contain regulations relating to application of law. For instance, the contract concluded by V/O TYAZHPROMEXPORT with the Moroccan Organisation for Building the Hydraulic Power System in Zauia N'Urbaz includes a clause regarding the application of Moroccan legislation, as well as technical and administrative regulations and rules, when concluding state contracts.[1] Some other contracts also stipulate for application of the law of the country to which technical assistance is being rendered, or in which a given facility is being built.

However, an overwhelming majority of contracts contain no instructions whatsoever regarding what legislation should be applied.[2] This means that the arbitration of the country in which the dispute is to be examined shall have to resolve this problem on the basis of so-called collision norms, i.e. norms involving the application of the law that the said arbitration normally applied.

The standing arbitration courts of the CMEA member-states have their own national regulations, which stem from the Uniform Regulations of Arbitration Courts under the Chambers of Commerce of the CMEA member-countries and were approved by the CMEA Executive Committee in February 1974. These uniform regulations stipulate that "the arbitration court settles disputes on the basis of applicable norms of substantive law,

[1] S. N. Bratus. Op. cit., p. 80.

[2] L. A. Lunts. Kurs mezhdunarodnogo chastnogo prava (A Course of International Private Law). Special Part. Moscow, 1975, p. 234.

being guided by the terms of the contract and taking into account existing trade customs" (Art. 12).[1]

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[1] Mnogostoronneye ekonomicheskoye sotrudnichestvo sotsialisticheskikh gosudarstv (Multilateral Economic Cooperation of the Socialist States). A collection of documents for 1972-1975. Moscow, 1976, p. 141

IX. Conclusions

An analysis of the legal aspects of industrial cooperation of CMEA member-countries with developing countries shows that the use of such legal contractual instruments as long-term intergovernmental agreements on cooperation and long-term cooperation programmes provides maximum lengthy and stable cooperation. The respective states fulfil their obligations in accordance with these and other agreements by concluding contracts. The role of these instruments is becoming increasingly important, and they acquire special significance in achieving tripartite cooperation.

Under tripartite cooperation, the interaction between inter governmental agreements and contracts is important because relations are becoming more complex both in connection with a growing number of participants and greater multiformity of content. This should ostensibly entail different approaches to countries that have and do not have agreements with CMEA. In the former case, the respective countries act through the mechanism of CMEA's mixed commissions, whereas in the latter case the future may witness the creation of tripartite intergovernmental commissions and a transition from bilaterlal agreements concluded by CMEA member-countries for cooperation in developing countries to tripartite agreements, on the basis of which respective contracts would be concluded among parties from different countries.

The organising role of intergovernmental agreements in developing industrial cooperation can hardly be overestimated. These agreements express the concrete nature of the signatories' obligations, and this is conducive to implementing obligations both on government level and among respective organisations from cooperating countries.

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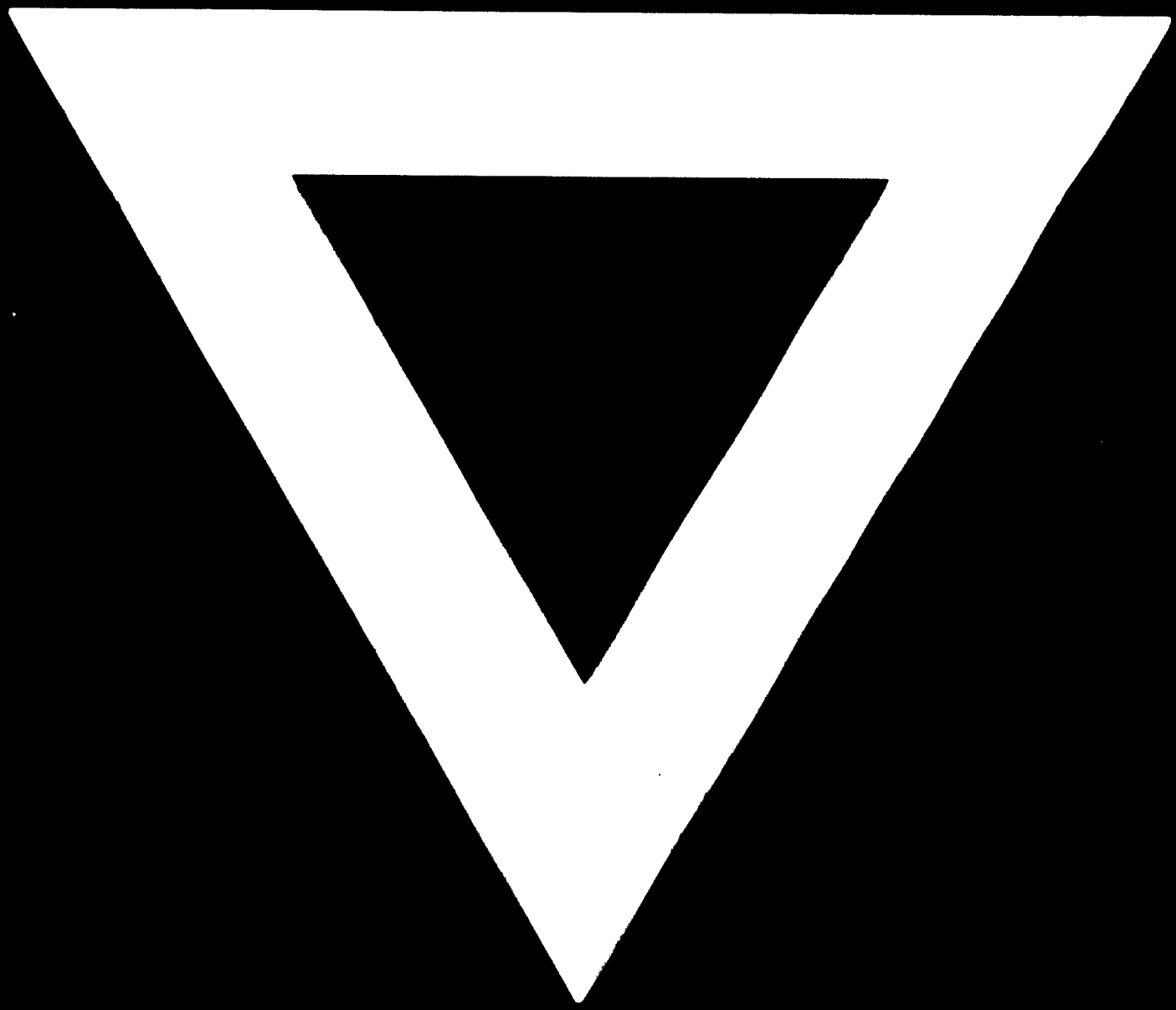

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