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JOINT STUDY ON INTERNATIONAL INDUSTRIAL CO-OPERATION ^{1/}

A NOTE ON SOME SPECIFIC ISSUES

Prepared by the UNIDO Secretariat

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1. INTRODUCTION

The joint study on international industrial co-operation has been initiated in pursuance of the provisions of General Assembly resolution 3362 (S-VII) of 16 September 1975 in which the Assembly, inter alia, called for a study on international industrial co-operation to be undertaken jointly by all Governments under the auspices of the United Nations Industrial Development Organization (UNIDO) and in consultation with the United Nations Conference on Trade and Development (UNCTAD). The relevant paragraph of the resolution reads:

" A joint study should be undertaken by all Governments under the auspices of the United Nations Industrial Development Organization, in consultation with the Secretary-General of the United Nations Conference on Trade and Development, making full use of the knowledge, experience and capacity existing in the United Nations system of methods and mechanisms for diversified financial and technical co-operation which are geared to the special and changing requirements of international industrial co-operation, as well as of a general set of guidelines for bilateral industrial co-operation. A progress report on this study should be submitted to the General Assembly at its thirty-first session" (section IV, paragraph 7).

As a first substantive step the UNIDO Secretariat prepared a note outlining the framework within which future international co-operation could be viewed after the sixth and seventh special sessions of the General Assembly. It recalled in particular that the role of industrialization was particularly emphasized by the Second General Conference of UNIDO at Lima, which determined that the establishment of a new and just international economic order

based on the common interests and co-operation of all States could only be achieved through the equitable participation of the developing countries in the production and exchange of goods and services^{1/}, and stressed the importance of industry as a dynamic instrument of growth essential to rapid economic and social development^{2/}. While bearing in mind that the industrialization process cannot proceed effectively without growth in such fields as agriculture, transport, power and energy, education, housing, health, infrastructure and general administration, it is recognized that the industrialization process constitutes a major instrument in accelerating growth and providing, directly and indirectly, employment to the growing urban and rural populations. For instance, while the recurrent food problems in many developing countries can be solved, in the long run, only through increased agricultural production, the latter requires improvement of production techniques, including essential industrial inputs (such as fertilizers and pesticides, tools and equipment) as well as improved infrastructure (transport, irrigation, storage facilities) and better facilities for industrial processing and distribution of agricultural products. The development of infrastructures, as well as the satisfaction of the basic needs of the populations for consumption also points to rapid industrialization.

Active co-operation among developing countries as well as between developed and developing countries is certainly necessary for the achievement of the long-term target fixed by the Lima Declaration and Plan of Action, which specifies that at least 25 per cent of world industrial production should originate in developing countries by the year 2000 as compared to about 7 per cent currently in 1975.

1/ Lima Declaration and Plan of Action (see A/10112, chapter IV), para. 20

2/ Idem, para. 23

Even if trade in manufactures with developed countries grows at a sustained high rate, the necessary application of complementarity and specialization principles will require a vigorous expansion of trade and industrial co-operation among developing countries themselves. **To this effect, the Lima Plan of Action calls upon the developing countries** to increase their co-operation at the subregional, regional and inter-regional levels through a broad range of actions, in particular in the fields of trade, technology, economic and industrial co-operation, financial co-operation, technical co-operation and maritime transport.

At the same time, co-operation between developed and developing countries would also appear essential. This co-operation should take fully into account the fact that developed countries on the whole, and more particularly Europe and Japan, are large net importers of many important basic materials, including energy, ores and metals, agricultural commodities and tend to have a considerable need for immigrant workers. On the other hand, the situation is basically different in developing countries taken together, which benefit from ample supplies of mineral resources and agricultural raw materials as well as large reserves of labour, but which are generally short of capital resources and, even more important, know-how and technology which are in ample supply in most developed countries.

In the context of global economic interdependence and the role of industry in the development process, including the need for restructuring of world industry, it is clear that a system of consultations covering a broad front of interrelated issues could be instrumental in improving the climate for co-operation in various industrial sectors such as fertilizers, iron and steel, petro-chemicals, leather, agro-industrial products, capital goods, pharmaceuticals, agricultural machinery. Of particular relevance for

the joint study is the fact that the sectoral consultations currently being organized by UNIDO^{1/} recommended the study of appropriate mechanisms to permit foreign enterprises to become increasingly involved in the industrialization process of developing countries; these mechanisms would be related, inter alia, to the questions of guarantees and assurances, on both sides, with regard to foreign investment and participation, as well as to the procedures for solving differences between industrial co-operation partners. In addition, it would appear natural to envisage in the long run a broad movement towards transferring progressively to developing countries industrial activities for which the economic conditions in developing countries are potentially better. In this connexion, it should be noted that the developing countries would in many cases seem to have a comparative advantage in the processing of indigenous raw materials of agricultural or mineral origin, as well as in the production of certain intermediate materials and consumer goods.

The Secretariat note also indicated possible issues that might be covered in the joint study.^{2/} This note was presented to a Meeting of Eminent Persons on International Industrial Co-operation convened by the Executive Director to seek their views on those issues and on procedures for conducting the study. The Meeting of Eminent Persons, 1 - 3 September 1976 in Vienna, identified issues on which the joint study could focus and outlined procedures for carrying it out. A progress report^{2/} summarizing the conclusions of the Meeting was submitted to the thirty-first session of the General Assembly, as

1/ UNIDO "The establishment of a system of consultations in the field of industry; progress made between April 1976 and March 1977; the experience thus acquired in this area of activity and suggestions for the further development of the system", Report by the Executive Director, ID/B/179, 23 March 1977. The Report of the Industrial Development Board on the work of its 11th Session ID/B/193.

2/ See "Development and international economic co-operation: implementation of the decisions adopted by the General Assembly at its seventh special session", Report of the Executive Director of UNIDO to the United Nations General Assembly at its thirty-first session (A/31/230), annex 1.

requested by the Assembly in its resolution 3362 (S-VII). In December 1976 the United Nations General Assembly took note of this progress report. UNIDO then informed Governments of the status of the joint study and approached interested agencies of the United Nations system for consultations.

The considerable deterioration of the financial situation of many Third World countries during recent years and the rapidly increasing burden of debt servicing has had a considerable impact on their economic development and tends to lower the possibilities to expand production capacity especially in the industrial sector. It is thus particularly important to examine the means of both improving the foreign exchange earnings of developing countries and increasing the flows of financial resources available to them. In this connexion, the problems related to the prices of basic commodities and to the access to markets in developed countries for manufactures and semi-manufactures are of particular concern to developing countries. At the same time the issues related to the volume and terms of official financial transfers of developed countries are under continuing consideration in various fora. It would seem, however, that even when official development assistance will reach levels well above those obtaining in recent years, as agreed in the Seventh Special Session of the General Assembly, such additional resources would continue to be assigned to a large extent to the improvement of economic and social infrastructure as well as to rural development and agriculture.

As envisaged by the Meeting of Eminent Persons mentioned above, it would thus appear that the question of an appropriate participation of foreign enterprises and investors in the industrialization process is likely to remain of crucial significance in facilitating the financing of industrial development of the developing countries. The participation of foreign enterprises, under adequate conditions, may also continue to be particularly relevant in the transfer of technology and managerial know-how. At the same time, it would seem that the necessary expansion of international interdependence and co-operation for industrialization of the Third World implies considerable new developments not only in the co-operation among the interested enterprises but also in the participation of Governments in industrial co-operation arrangements as well as in proper procedures for solving differences among partners in industrial co-operation.

While the more general aspects of financial and technical co-operation have to be considered in connexion with the joint study, this paper draws

attention to some of the specific issues just mentioned, because it is felt that discussions on such issues may be conducive to concrete arrangements promoting diversified forms of co-operation.

2. PARTICIPATION OF FOREIGN ENTERPRISES IN THE INDUSTRIALIZATION PROCESS

As mentioned above, private investment from market economy developed countries is likely to continue to play a predominant role in financial transfers to a number of developing countries, especially for industrial development. At present, Governments of market economy countries generally consider that their action can only be a limited one in industrial co-operation arrangements, since industrial investment is primarily the responsibility of private enterprises. In this connexion, developed countries stress that a number of conditions can facilitate and accelerate the transfer of resources to the Third World, including a stable investment and business climate and sufficient guarantees regarding industrial property protection. It is frequently mentioned in particular that host countries might provide foreign investors with sufficient information on the laws and regulations to be applied to their investments, prescribing clearly and for long enough ahead the investor's rights and obligations, particularly as regards taxation, profit-sharing and treatment in the event of nationalization and providing in the latter's case for swift and effective payment of adequate compensation. Developed countries also stress the usefulness of investment protection agreements.

Certain developing countries, especially among those which permit foreigners to own production facilities on their territory, have taken steps to provide guarantees along these lines in certain industrial activities through codes of investments. In some instances, such as in several African countries, for example, these codes provide for, inter alia, stability during a long period in the taxes payable by enterprises, definition of the administrative bodies formulating decisions concerning industrial enterprises and arbitration of differences^{1/}. It would seem that such codes, adopted unilaterally by the developing countries concerned, may to a certain extent correspond to the requests of foreign investors.

Other developing countries, however, are not inclined to fix for a long period of time the conditions under which private foreign enterprises are involved. Indeed, the sovereignty over natural resources and the organization of economic activities makes it entirely the prerogative of the Governments concerned to choose their development models; and in particular to fix the framework and the priorities of industrial development and to determine to what extent foreign interests can operate in the industrial field. Furthermore, under rapidly changing conditions, due to economic development itself, as well as evolutions in the over-all world situation, many developing countries may consider that it is not possible or advisable to enter into specific long-term arrangements with foreign enterprises, especially under general conditions as those provided by certain codes of investments. This applies in particular to countries which do not allow foreign enterprises to be the owners of production facilities (or parties in joint ventures), at least in certain industrial sectors. Such countries have nevertheless as great a need as other developing countries for foreign enterprises ready to participate in building plants, transferring their know-how and their management abilities, etc.

1/ CEE: Code des investissements des Etats africains, malgache, et mauricien associés, Ref. VIII/1119/74-F, December 1974.

The developing countries in general consider that foreign enterprises should make a substantial contribution towards development as a whole through a genuine involvement in the host country's industrialization process, in particular by increasing output and employment, strengthening the balance of payments, providing transfer of technology, as well as managerial and other associated skills. Many developing countries also consider that it is necessary to derive ways of safeguarding their interests against the malpractices of foreign enterprises and compelling them to fulfil their contractual obligations and to fully compensate for any damage or prejudice caused to the host country.

International industrial co-operation frequently implies a relatively long-term relationship between competent organizations, enterprises and firms of different countries. Such a relationship is defined and elaborated upon in industrialization contracts: these cover a number of forms of economic relations going beyond the framework of international trade and determining the appropriate forms and conditions of co-operation taking into account the mutual interests and capabilities of respective partners.^{1/} For simple manufacturing operations, where, for instance, the purchase of capital equipment, and possibly the right to utilize licenses of trademarks may be considered sufficient, the types of arrangements required may also be relatively simple. But in other cases, which are likely to become more and more frequent in the future, co-operation contracts may go well beyond turnkey arrangements and cover production operations at specified quantity and quality output levels over several years, as well as management, training and marketing arrangements.

^{1/} For definition of industrial co-operation, see, for instance, "Final Act of the Conference on Security and Co-operation in Europe, Helsinki, 1975", and in particular Basket 2: "Co-operation in the field of economics, of science and technology and of the environment" and ECE: Analytical report on industrial co-operation between European countries, E/ECE/844.Rev.1

The context within which interfirm contracts are negotiated and conducted is for many developing countries a very imperfect one due to the inherent inequalities between potential partners in so far as experience and knowledge are concerned. Improvement in this context is envisaged through adoption of codes of conduct such as for technology transfer or for transnational corporations. However, certain qualifications can be made with regard to the potential effectiveness of such general codes of conduct whether they are of a voluntary or binding nature.

The negotiating capabilities of developing countries in the fields of turnkey contracts, licensing and joint venture agreements could be strengthened through the elaboration of guidelines^{1/} for the negotiation of industrial contracts. The preparation of standard clauses for inclusion in industrialization contracts and a code for industrial co-operation, on the basis of work done by such agencies as the United Nations Commission on International Trade Law (UNCITRAL) and various public and private institutions on the harmonization of commercial law may prove extremely useful as a reference for partners when they determine their contractual relationship. Standardization could be achieved, in particular, in the cases of consultancy agreements and agreements for deliveries of goods and equipment. Such standardization would promote mutual understanding and reduce bureaucratic and time consuming procedures. At the same time, it would appear important to explore further the possibilities of strengthening the negotiating capabilities of developing countries through the provision of independent advisory services in the field of contract elaboration and negotiation.

1/ See in particular UNIDO: Guidelines for Contracting Industrial Projects in Developing Countries, ID/149, 1975.
See also, ECE: Guide for use in drawing up contracts relating to the international transfer of know-how in the engineering industry; and Guide on drawing up contracts for large industrial works; ECE guides are more directly concerned with the conditions prevailing in East-West industrial co-operation.

3. THE POSSIBLE ROLE OF INTERGOVERNMENTAL FRAMEWORK AGREEMENTS

Intergovernmental agreements play an important role in industrial co-operation between centrally-planned countries and developing countries. Such agreements usually indicate the sectors of co-operation, taking account of the plans and programmes of the developing countries concerned, and attempt to provide for a mutually advantageous division of labour, including in certain cases provisions related to the creation of markets for the production envisaged. The agreements frequently contain provisions on financial as well as on technology and training arrangements. Joint commissions may be established in order to facilitate the implementation of the agreements.

More satisfactory answers to the questions mentioned in Section 2 might possibly be found through the conclusion of bilateral framework agreements on economic and industrial co-operation between Governments in a more widespread manner between market economy and developing countries. In the past, this type of framework agreements has been adopted in several instances by market economy countries in their relations with East European countries and in certain cases with developing countries.

Most western countries now have some sort of agreement with Eastern European countries on economic, technical and scientific co-operation. These mainly enunciate the intentions of both parties on co-operation matters and sometimes identify individual industrial branches which will be the object of special attention. At the same time such agreements provide for the establishment of bilateral institutions, such as joint commissions, which may themselves count on the support of working groups, whenever specific economic sectors or projects are included in the agreement or in a corresponding protocol. The role of such commissions would appear to be effective, especially for medium and small-size firms, in facilitating contacts between enterprises, whether in the form of exchange of economic and technological information or in the conclusion of specific industrial co-operation contracts. With regard to the

settlement of disputes, experience has shown that the joint mixed commissions only rarely have had to intervene directly and that in the majority of cases the partners solve the problems by themselves. Provisions are generally made for dispute settlement through arbitration either in the host country or, at the request of one of the parties concerned, in a third country.

The Lomé Convention ^{1/} is an example of an agreement between Governments of developed and developing countries which provides, inter alia, a framework for industrial co-operation amongst its signatories. The corresponding Chapter of the Convention covers a broad range of activities such as infrastructure for industry, industrial undertakings, training, technology transfer and development, assistance to small and medium-scale firms, industrial information and promotion, trade co-operation. It is characterized particularly by the non-reciprocity of its clauses, this imbalance being justified by the different levels of economic development of the partners. The implementation of the Convention follows the guidelines laid down by the Council of Ministers, assisted by the Committee of Ambassadors, and has the power of taking decisions which are binding on the signatories of the Convention. As regards the settlement of disputes, it should be noted that the Convention provides an arbitration procedure in cases in which direct arrangements or consultations between the Governments concerned cannot be arrived at.

A number of other intergovernmental agreements on a North-South basis have been concluded. Many of these agreements are essentially concerned with investment protection ^{2/}, often at the request of the developed countries concerned. In certain cases, the Government of the investing enterprise provides investment insurance only if it has

1/ See for instance EEC The Courier, special issue, no. 31, Brussels, March 1975.

2/ See ICSID: "Investment Laws of the World", Washington, D.C., 7 volumes.

previously concluded an intergovernmental agreement with the host country, such as for example the USA's treaties of "friendship, commerce and navigation" or the Federal Republic of Germany's "Investitionsschutzverträge". These agreements usually contain clauses specifying the arbitration procedures which are to be adopted in order to settle disputes.

It may thus be seen that developed countries are already engaged in many instances in intergovernmental agreements providing a framework for their industrial co-operation with many countries. This applies in particular to the relations between developed market countries and centrally-planned countries. But, as mentioned above, market economy countries are also inclined to enter into intergovernmental agreements with developing countries, especially as a way of protecting investments of their nationals. However, as in the case of the Lomé Convention, it appears that developed market countries are also in a position to conclude broad intergovernmental agreements with developing countries covering many important aspects of industrial co-operation.

It is suggested here that broad bilateral intergovernmental agreements may be well suited to the specific requirements and capacities of the developed and developing countries in the general area of international industrial co-operation. They would permit to ensure that the package contained in industrialization contracts conforms with Governments' strategies, plans and policies for development and provide general guidelines and principles for co-operation with regard to technology, research and development, training. Furthermore, they would tend to increasingly involve the Governments of developed countries in the interfirm contracts signed within the framework of such intergovernmental agreements, thereby providing a guarantee against malpractices on the part of their nationals and ensuring that such contracts are properly executed.

It is worth referring in this connexion to the meeting of the Club of Dakar which was held in Abidjan in December 1976^{1/} and adopted a declaration on global co-operation between developed and developing countries, as well as a proposal for a Charter on International Industrial Co-operation. Amongst the issues discussed, it was emphasized that arrangements should be made between Governments in the interest of concerting the development and distribution of various industries in the industrialized and the developing worlds. The Charter outlines various types of measures such as the guarantee of access to markets which could be taken by the developed countries in order to promote the establishment in the Third World of several industries which they would be prepared to support on a concerted basis with the developing countries. It was also envisaged that private firms should obtain appropriate guarantees against non-commercial risks and that joint commissions should be set up to supervise the implementation of industrial co-operation agreements and thereby forestall any disputes. The Club of Dakar also suggests the creation of a Joint Guarantee Fund in order to provide compensation in a relatively short space of time to an injured party.^{2/}

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- 1/ Club of Dakar, Third Plenary Meeting, Final Documents (Abidjan, 29 November to 2 December 1976). The Final Documents contain, inter alia, the proposed Charter on Industrial Co-operation. See also: Actuel développement, no.17, 1977. J. Florenzano "Le Club de Dakar: une approche nouvelle dans les relations entre pays industriels et pays en voie de développement" in Futuribles, no.10, 1977.
- 2/ In this connexion, it might be worth considering the experience of institutions such as the Inter-Arab Investment Guarantee Corporation. See in particular Kuwait Fund for Arab Economic Development: "Convention Establishing the Inter-Arab Investment Guarantee Corporation".

4. PROCEDURES FOR SOLVING DIFFERENCES

While in many cases differences in the implementation of industrial co-operation contracts are settled through negotiation between the partners concerned, it would seem that the provision for legal procedures for solving differences, such as through arbitration, may be conducive to the creation of a climate of confidence between the partners concerned. Most countries generally consider that their national institutions should be the only competent ones to deal with differences which may occur between their nationals and foreign enterprises. However, intergovernmental agreements on industrial co-operation, and more particularly on investment protection, mentioned in the previous sections of this paper, generally contain clauses relating to arbitration procedures which do not necessarily take place in accordance with the national jurisdiction of either country. Cases such as that of the Lomé Convention, which includes a broad range of subjects, would seem of particular interest in this connexion. It should also be noted that international arbitration is envisaged within the framework of East-West industrial co-operation agreements.

The field of international commercial arbitration is at present the domain of a relatively small group of specialists which is even more so the case of arbitration of disputes in international industrial co-operation. Specialists are generally found in the industrialized countries, so that it is not so frequent to find a national of a developing country as an arbitrator or as a counsel in arbitration proceedings to which a developing country is a party.

Existing arbitration institutions are in themselves quite numerous^{1/},

^{1/} 113 in 1958 according to the UN Economic Commission for Europe.

the most important being the American Arbitration Association, the Foreign Trade Arbitration Commission of the Chambers of Commerce and Industry of the CMEA countries, as well as the Court of Arbitration of the of the International Chamber of Commerce in Paris, which is involved in both East-West and North-South dispute settlement. The International Centre for the Settlement of Industrial Disputes (ICSID), set up under the Washington Convention of 1963^{1/}, is specialized in certain aspects of international industrial co-operation.

It would be useful to recall at this point that current international law has emerged out of practice and custom between the developed countries. The existing arbitration institutions, with the exception of ICSID, were also established to solve the problems arising out of co-operation between enterprises in the developed countries. The problems arising between partners of the industrialized and the developing countries, with their basic unequal levels of development, may not always be appropriately dealt with under such conditions. This is reflected in the initiatives taken by certain institutions, such as the International Chamber of Commerce, with a view to promote more contacts and interest amongst lawyers of developing countries. As for ICSID, it may be noted that the Convention has not been signed by a number of developing countries.

It would thus appear that, although a more systematic recourse to international arbitration procedures might facilitate the participation of foreign enterprises in the industrialization process of developing countries, such procedures should be viewed as only one element in broader arrangements covering the various aspects of industrial co-operation. It would also seem that the existing arbitration mechanisms and procedures, which are not adequate to take fully into account the conditions prevailing in industrial co-operation between developed and developing countries, should be reviewed and improved if they are to constitute a more appropriate instrument of co-operation. Efforts have also to be intensified to train lawyers of developing countries in international arbitration procedures so that they can be recognized as arbitrators and counsel in disputes arising in the implementation of international or bilateral contracts or agreements.

1/ Convention for the Settlement of Investment Disputes between States and Nationals of other States, Washington, 1965.

5. CONCLUSIONS

This paper attempted to discuss certain issues related to financial and technical co-operation in the field of industrialization which emerged as of particular relevance within the framework of the study requested by Resolution 3362 (S VII) of the General Assembly on the establishment of a new international economic order.

In the field of financial co-operation, the volume and quality of official transfers, the access to capital markets, the burden of debt servicing, monetary problems and effects of inflation are important elements determining the flows of financial resources available to developing countries, especially in their industrialization effort. At the same time, access to markets of developed countries for manufactured and semi-manufactured products, measures related to the purchasing power of exports from developing countries and other trade and adjustment policies in developed countries are major elements determining the foreign exchange earnings of developing countries and the capacity of their industry to enter the markets of developed countries.

In the field of technical co-operation, the conditions of access to technology and the development of technological capacity in developing countries as well as the questions of training and other forms of technical co-operation should be mentioned. In addition, co-operation among developing countries (e.g. through joint investment schemes, complementarity schemes, location in a single country based on a joint market, trade liberalization, etc.) and the special problems of the least developed countries are of considerable importance.

However, following the terms of the General Assembly's resolution, it was considered appropriate in this paper to consider more specifically certain possibilities of developing new and diversified forms of co-operation geared to the changing requirements of such co-operation. In this connexion, it may be important to explore further the possibilities of concluding intergovernmental agreements, which might provide a framework within which the firms of the countries concerned would be able to negotiate and conclude specific contracts, and clarify the conditions to be applied to interfirm industrial co-operation, including mutual guarantees regarding the execution of contracts and agreed procedures for solving differences arising between industrial co-operation partners.

It would seem appropriate to consider further the possible procedures for settling differences, including international arbitration, which are viewed as an important issue in many developed countries. Especially within the framework of intergovernmental agreements covering not only financial but also technical and technological co-operation as well as trade arrangements, it might prove mutually advantageous at least in certain cases to examine the possibilities of elaborating appropriate mechanisms and procedures for solving differences without necessarily using institutions existing in the countries concerned. This may mean the creation of new institutions, or the adaptation of existing ones, as well as the adoption of appropriate principles and codes to be used as references in solving differences. At the same time, the possibility of systematic consultations between the governments engaged in co-operation arrangements may facilitate the smooth operation of such arrangements without resort to arbitration.

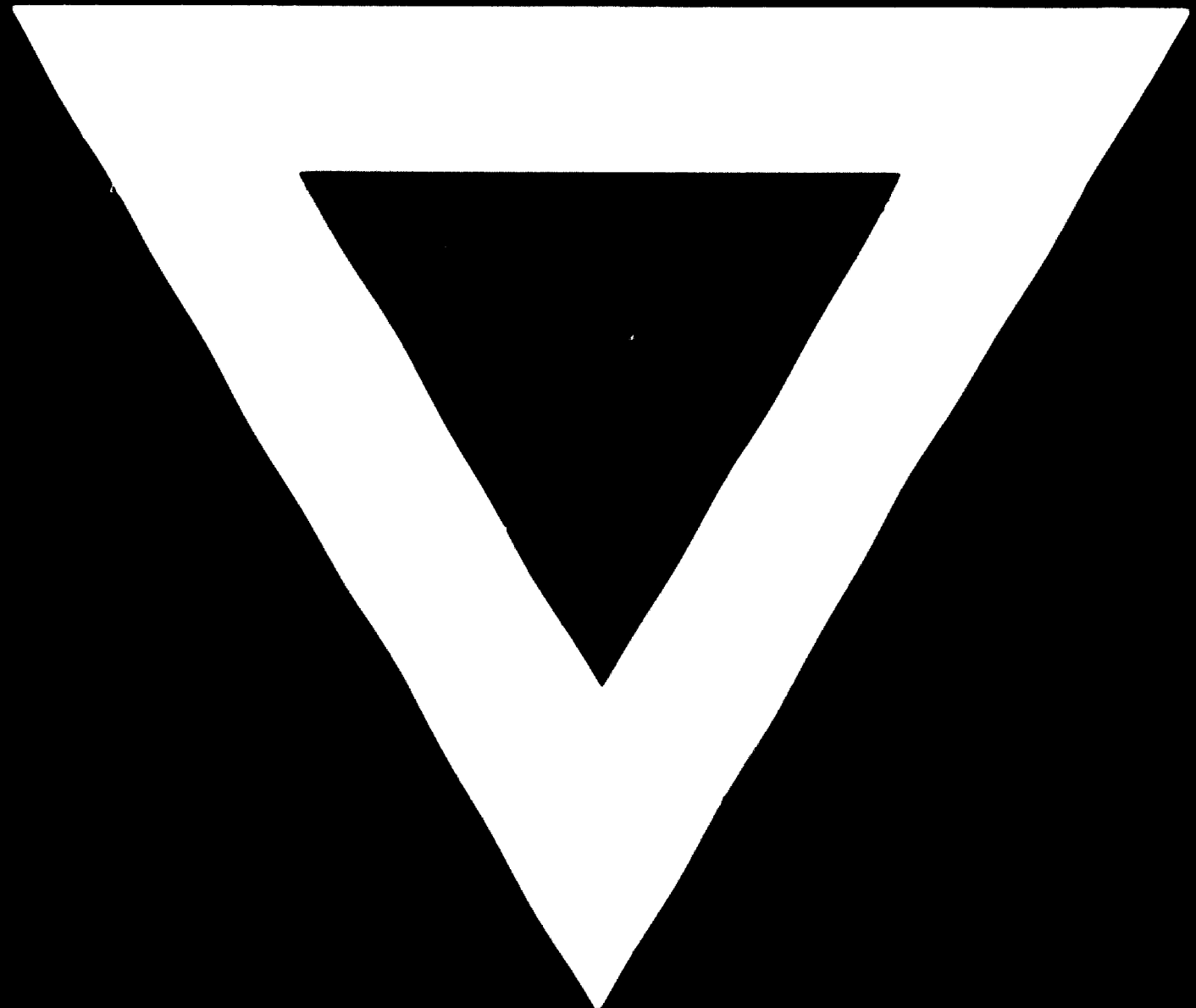
However necessary the provision of procedures to solve differences may be, the frequent inequalities between the partners concerned points to the importance of the questions related to the negotiation of co-operation contracts between enterprises, and accordingly to the need for codes of conduct and possibly for the establishment of new or improved advisory services in this field. Although technical co-operation institutions exist at the national and international level, it might be useful to examine the possibilities to reinforce the capacity of developing countries to benefit from independent expertise in the field of contract negotiation.

As the industrial situation of the countries and regions constituting the Third World are diversified, discussions at the regional level of the issues related to international industrial co-operation will constitute important guidelines for the study undertaken under the auspices of UNIDO. These discussions, including the priorities to be attached to the various issues related to industrial co-operation, would be reflected in the draft version of the study to be submitted by UNIDO to governments by the end of 1978, before a final version is presented at the General Conference in 1979.



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