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UNIDO/REMLAC PREPARATORY REPORT ON THE ELABORATION OF  
A PROGRAMME OF ACTION AIMED AT STRENGTHENING THE  
NEGOTIATING CAPABILITIES IN THE ACQUISITION OF HARDWARE AND SOFTWARE

by

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4 March 1986

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CHAPTER I.

Introduction:

During the first meeting for the initiation of a Regional Network for Microelectronics in the Latin and Central American countries /REMLAC/, held at Caracas, Venezuela from June 3-7, 1985, the participants expressed the desire to strengthen their capabilities in negotiating hardware and software transactions. While the essential function of the system consists of creating an institutional framework for joint research and development of technology, the organisation is also responsible for internodal exchange of scientific, economic, and legal experience relevant to the expansion of microelectronics industries in the countries of the region. Along these lines, the founders of the network have proposed that one of the specific aims of the system should be "to strengthen negotiating capabilities in the acquisition of hardware and software, in particular through co-operation in conducting training workshops; the collection and consolidation of training material; identification of institutional facilities and training in participating countries; and training of trainers."

Responding to this recommendation, UNCTAD requested Professor S. Sołtysiński of Adam Mickiewicz University, Poland, to investigate the problem in collaboration with the focal points, government institutions and other interested parties in the region, with the aim of preparing a concrete plan of action.

The expert's mission to the eight member states took place in November and December 1985 and included, apart from all national nodal points, relevant government ministries,

associations of producers and users of software/hardware, and various industrial ventures in the field of informatics. The scope of the coverage was most extensive in Mexico, Venezuela, and Brazil while in Argentina and Cuba, due to the short time of those visits, it embraced mainly the two national focal points and key R and D centres.

1. National policies and activities aimed at strengthening the negotiating capabilities of the REMLAC countries in acquisition of hardware and software.

1.1. Background

The majority of the persons contacted during the mission agree that while bridging the technological gap in the field of microelectronics, including hardware and software, remains the main objective of the newly established network, it is almost equally important to narrow the existing marketing gap between the countries of the Region and the developed countries. To achieve these objectives, some countries in the region have adopted appropriate legal, fiscal, and educational measures.

The purpose of this report is not to describe all aspects of national policies in the field of informatics. Rather, it is aimed at identification of those measures and activities which are designed to improve the bargaining position of the domestic importers of hardware and software vis-à-vis foreign suppliers.

1.2. Control of acquisition of hardware and software through national Registers of technology

One of the principal objectives of the national transfer

of technology regulations adopted by many Latin American countries during the 1960s and 1970s was to increase the bargaining power of local importers and to improve the quality of imported technology, thus diminishing the dominant position of the foreign suppliers and changing the structure of the market in favour of the domestic purchasers.<sup>2/</sup> A typical mechanism of government control involves a system of registration of technology imports, followed by a screening procedure during which the administering authority reviews terms and conditions of the agreement. As a rule, the controlling agency has wider or narrower powers to file objections in cases where the transaction contains prohibited clauses, lacks required guarantees, information, etc. In some countries /i.e. in Brasil/, the entry into force and legality of the transaction depends upon an express approval granted by the administering authority. In others, for instance in Argentina, the rejection of a legal instrument or a failure to submit it to the Registering Authority does not affect its validity.<sup>3/</sup>

One of the purposes of the mission was to find to what extent, if at all, the transfer of technology control systems apply to acquisition of computer programs /software/. The definition of "technology" usually embraces technology protected by patents or other forms of industrial property rights, know-how, and services. Despite their broad coverage, the statutory denominations of "technology" have not removed considerable doubts relating to the legal status of software. Thus, for instance in Venezuela, it was not clear in the past

whether the sale or lease of a computer program is subject to approval or even notification to the proper authority.<sup>4/</sup> However, it has been explained recently that transfer of software accompanied by an obligation to provide technical assistance within the country of importation would be classified as "specific and occasional services", a privileged category of technology transfers, which is subject to a lesser scrutiny and fewer prohibitions.<sup>5/</sup>

These and other factors have prompted governments to clarify the status of software transactions within the framework of their national transfer of technology control systems. The most sweeping set of regulations on importation of software has been promulgated in Brazil. In carrying out recommendations of the special Commission on software and services, the special Secretariat for Informatics /SEI/ and the National Institute of Industrial Property /INPI/ have established a special software registry<sup>6/</sup> and issued guidelines concerning software requirements for importation of equipment and industrial projects,<sup>7/</sup> mandatory conditions required for "pure" software acquisition contracts, etc.<sup>8/</sup> The latter agreements may be approved only if they are indispensable for the national economy, there are no local alternatives available, and the right to use, update, and improve a program is vested with a Brazilian entity. One specific requirement calls for the transfer of the source-code, thus enabling the importer to obtain access to the program's structure and content, which is a precondition of its proper maintenance and adaptation. Apart from these specific requirements software contracts are subject to the same rules as know-how contracts.

Similar adaptation measures, although on a smaller scale, have been introduced in Mexico. In an effort to clarify the status of software under transfer of technology legislation, the Law of December 29, 1981,<sup>9/</sup> states that contracts relating to the transfer /sale, licensing or leasing/ of computer programs shall be submitted to the Transfer of Technology Registry. The Mexican Transfer of Technology Law does not apply to certain categories of software of minor importance and except for certain technical guarantee requirements, it does not introduce specific statutory criteria for evaluation of computer program imports. The general rules governing importation of "hardware" technology apply *m u t a t i s m u t a n d i s* to these transactions. It is worth mentioning, however, that while evaluating software contracts, the Registry authorities cooperate with the Secretaria de Programacion y Presupuesto, a government agency responsible for the coordination of the informatics policy.

In the remaining countries of the Region possessing similar systems of transfer of technology<sup>10/</sup> controls, there are neither special registries for software acquisitions nor specific legal guidelines relating to the evaluation of such transactions. And although the proper government authorities represent the opinion that computer programs are subject to registration and/or approval procedures, this view is contested by some lawyers and businessmen. As a result a majority of software acquisitions is imported without an official approval. In those countries that do not have specific guidelines on importation of software, it is doubtful whether certain general prohibitions,



such as those against tie-in-agreements, apply to sales covering a package consisting of hardware equipment, systems software, and application programs.<sup>11/</sup>

### 1.3. The use of public purchasing power

Governments intervene in support of local firms using a variety of measures of direct economic impact upon the market and its structure /i.e. tariffs and trade policies, pro- or anti - mergers policies, anti-trust enforcements etc./. The Governments of the Region spend substantial amount of money for buying hardware equipment and software from abroad. Government departments and public utilities, not to mention the defensive sectors, rank among major computer users.<sup>12/</sup>

The purchasing power of Governments and of such publicly held entities as nationalized banks, telecommunication systems, petrochemical concerns etc. gives them substantial leverage in international transactions even vis-à-vis multinationals not to mention smaller software houses.

Our observation confirms the view that successful public purchasing policies require "enlightened" procurement practices including, *i n t e r a l i a*, the purchaser's overall competence.<sup>13/</sup> Although the evidence gathered during this mission is patchy, we have found examples demonstrating that failures of some government procurement practices in the field of acquisition of hardware and software resulted from lack of competence of purchasing personnel. Thus, upgrading the qualifications of the procurement staff in the field of technology,

management and law of transnational transactions is of equal importance for the public and private sector.

The Guatemalan Executive Order No.1063-85 of 1985<sup>14/</sup> is an interesting example of a legislative effort aimed at curing the deficiencies of the past government acquisition practices in the field of purchasing hardware equipment, software and related services.

In an effort to adopt a single, coherent policy by all government departments and government controlled institutions, the new law has set up an interdepartmental commission to negotiate the prices of purchasing and renting computer equipment, the terms of payments for licensing software, and contracting services rendered by the providers of these commodities. To remedy the mistakes committed in the past, the new Law empowers the Commission to negotiate binding standard contracts<sup>15/</sup> applicable to future acquisitions of computer equipment and software by all government controlled entities. Although the newly established Commission does not seem to have the power to set arbitrarily the level of purchase prices or royalties, it has been given a clear mandate to negotiate binding model contracts and renegotiate the existing agreements.

#### 1.4. Creating new legal patterns for commercialization of software imported from abroad

While the foreign exporters of computer programs treat them as a form of intangible property and use a licensing contract as the principal vehicle of commercialization of those technologies in Latin American countries, some governments in the region are reluctant

to bestow industrial property or copyright monopolies upon the innovators in this field. According to this view, conferring patents or similar grants on the inventor or investor would amount to further strengthening the already dominant position of multinationals in this field. Since the form of protection accorded to the developer of software defines, to a large extent, the ways of commercialization and dissemination of technology, the Government of Brazil has been considering the enactment of binding administrative guidelines of general application which, if promulgated, would change the new prevailing patterns of marketing computer programs.

Apart from the present requirements of registration and screening procedures described above /1.2./, the new guidelines to be elaborated jointly by the INPI and SEI will treat software contracts as agreements whereby the supplier of software gives the recipient access to the program.<sup>16/</sup> Such characterization of the legal nature of the transaction strengthens the position of the recipient since, unlike in a licensing contract, the supplier has no basis for imposing post-contractual obligations or depriving the importer the right to use the technology after the expiration of the contract.

The enforcement of the Brazilian law on importation of software is backed by a system of sanctions and incentives. Thus, for instance the public agencies and entities controlled directly or indirectly by the federal administration may acquire only software products for which a registration certificate has been issued. Granting of import licenses for hardware equipment is tied to the registration of the accompanying software by INPI.

The Central Bank is obliged to ensure that foreign-exchange remittances are not permitted for copyrights computer programs, including those printed in manuals. Incentives for buyers of legally imported software consists mainly of tax incentives /the purchase price is treated as operating expenses/. Software producers are promised to obtain some form of protection.<sup>17/</sup>

It remains to be seen whether these measures will enhance the bargaining position of the local recipients without endangering their access to more advanced forms of software controlled by foreign firms. It is worth mentioning, however, that until now other Latin American countries have been avoiding such measures.

The recommendations of the Brazilian Special Commission on Software also call for the publication of standard terms and conditions for the contracting of software and services. The purpose of this instruction is promotion of "a reasonable and just relationship" between the parties. Unlike, the Guatemalan Hardware and Software Procurement Executive Order, it seems to apply to domestic transactions. It is also unclear whether such contractual standards would be of a mandatory character.

Guidelines on computer software contracts are also formulated in Mexican Direccion General de Politica Informatica to protect the licensee. They introduce the concept of "standard contract" /contrato tipo/.

### 1.5. Human resources training

Although the findings established during the mission are not conclusive, the available data suggest that there are relatively few initiatives aimed directly at integrating training of human resources in the field of international negotiation and marketing into national plans of rationalization of import and stimulation of exports of computer products. It is characteristic that even the Recommendations of the Special Commission on Software and Services in Brazil, the most comprehensive national program in the Region, discuss the issues of personnel training and improving the quality of already existing courses only with respect to program concerning R and D, engineering and management of software production. The mission has not found examples of post-graduate courses in the broadest sense, offered either by universities or other specialized centers of professional excellence, that would offer courses in international marketing and/or negotiation of hardware and software transactions.

Some of the national focal points and professional associations organize courses on transfer of technology transactions in the broadest sense and seminars on industrial property protection during which issues of commercialization of computer programs are also discussed. Such activities have been conducted *i n t e r a l i a* by the REMIAC nodal points in Argentina, Peru, Venezuela, and Mexico. The most active role in this area, however, is played by two Brazilian government agencies, namely, INPI /Patent Office/ and SEI. Only last Fall, they sponsored conferences and panel discussions on legal regime of software transactions with special emphasis on relations between private and public sectors, recent trends in software

protection abroad, transfer of computer technology without royalties /piracy/, etc.

Some forms of an in-house training in the discussed areas are offered by professional associations /i.e. Associacao Brasileira des Industrias de Computadores e Perifericos, Sociedade das Usuarios de Computadores e subsidiaria, etc./ and large state owned companies. In Venezuela, for instance, seminars are sponsored by the Instituto de Ingenieria, and the Oil Industry Research Center /INTEVEP/.

Problems concerning protection and commercialization of computer programs are often integrated into broader agenda of regional international conferences sponsored jointly by the proper government institutions in the host's country and such organisations as the Conference of Latin American Informatics Authorities, WIPO, SELA, CALAI, JUNAC, IBI, etc. Recently international seminars devoted to various aspects of protection and marketing of software were held in Bogota and Brasilia. Again, none of those dealt exclusively or primarily with the problem of upgrading the qualifications of local cadres in the area of marketing or negotiation of hardware and software transactions.<sup>19/</sup>

## 2. Regional Cooperation

Except for joint seminars and conferences devoted to permanent exchange of information on national policies and experiences in the field of informatics, the countries of the Region do not sponsor bilateral or multilateral programs devoted to sistematically upgrading qualifications of their cadres in marketing or negotiation of software/hardware acquisitions.

Close relations permitting regular consultations between national informatics and transfer of technology supervising agencies exist between Brazil and Argentina. Peru and Venezuela have special relations with the other JUNAC countries, while Guatemala and Cuba have developed close ties with Mexico. Some of these sub-regional groups have adopted similar transfer of technology regulations /i.e. the countries of the Andean Pact/, but as of today, there are no unified interpretations of these rules with respect to software and hardware acquisitions.

Considering the cost of investment in electronics and informatics industries, as well as the dominance of the foreign based multinationals in the market, several regional meetings have recently advocated examination of intraregional cooperation in regard to public purchases and establishing joint purchasing ventures so as to avoid duplication of efforts. Such and similar proposals were spelled out *i n t e r a l i a* by a Regional Meeting for the Initiation of a Regional Network for Microelectronics in the ECLAC Region,<sup>20/</sup> the second Meeting of high-level governmental Experts in the field of Science and Technology sponsored by SELA in May 1984, and by the 8th Congress of CALAI held in Mexico /1985/. The mission has not found any example of joint acquisition of hardware or software by REMIAC countries and the majority of experts interviewed were sceptical in this respect stressing differences in national priorities and difficulties associated with the proposed coordination of public purchasing policies.

3. Identification of mechanisms to strengthen negotiating capabilities and of potential institutional framework of cooperation<sup>21/</sup>

More or less the same activities were identified as elements of the programmes of various government agencies, including REMLAC focal points, trade associations, and intergovernmental organisations. The most important economic mechanism of strengthening the negotiating capabilities of the local entities are those established and enforced by the governments. As indicated above/1.5./, they include national systems of registration of computer hardware and software, model software and software services contracts, guidelines on commercialization of these commodities, public purchasing program, and, possibly, future bilateral and multi-lateral joint-ventures.

Most of these activities cannot be duplicated by the network. However, REMLAC meetings seem to be excellent fora for exchange of experiences and formulating recommendations or improvement proposals with respect to existing mechanisms that are operated by specialized government agencies in the countries of the network.

On the other hand, taking into account the recommendations of the First Expert Group Meeting, almost all focal points visited, have expressed their continued interest in regional cooperation in the following areas:

/a/ organising regular regional and/or subregional courses at a post-graduate level in international marketing of hardware and software, including negotiation and contracting import transactions;

/b/ publishing practical handbooks and other materials in the same field;



/c/ sponsoring interdisciplinary regional workshops with the aim of upgrading the negotiating capabilities of scientists, managers, businessmen, and lawyers employed by governments and private industries of the Region in major acquisitions or exportation of hardware and software technologies;

/d/ using REMLAC fora for discussion and studies of various aspects of legislative policies /i.e. implications of competing, schemes of software protection for its future commercialization/;

/e/ setting up a regional data bank collecting information on microelectronics equipment, including software and hardware.

Since there is a genuine demand for satisfactory level courses and seminars in the discussed areas of specialization, the proposals listed above and elaborated further in Ch. 2 /i n f r a/, are timely and of significant practical importance. Likewise, the idea of a regional data bank is consistent with the Regional and national policies of exploring intraregional possibilities of trade.

The implementation of the programmes sketched above does not require creating of a new institutional framework. Except for the proposed data bank /center/, it can be achieved by linking together, hitherto dispersed, activities and capabilities of the national focal points supported by UNIDO/UNDP. At the same time, to avoid duplication of efforts within the Region, certain elements of the programmes should be coordinated with SELA, ECLAC, JUNAC, other international organisations, and proper government institutions. Thus, for instance, SELA<sup>22/</sup> and several government agencies<sup>23/</sup> consulted during the mission have expressed their support for the objectives of the tentative plan of action described in Ch.II i n f r a.

4: The problem of expert personnel to undertake  
the planned educational activities

Although almost each REMIAC focal point has its own legal department, sometimes staffed with excellent specialists in the field of intellectual property and transfer of technology transactions, the implementation of the proposed plan of upgrading the qualifications of top personnel, will require participation of the best specialist in the region /i.e. government experts, university professors, and practitioners from the private sector/. The list of experts contained in Ann. No.5 cannot be treated as exhaustive.

For this and other reasons, members of concrete committees to be set up by the next REMIAC meeting preparatory to the implementation of the forthcoming project should be free to propose collaborators from outside the list.

Subject to few exceptions, the proposed list contains experts from the region. Although the majority of institutions interviewed during the mission expressed preference for specialists from Latin America, they also emphasized the need for expert advisory services from other regions.

Not all persons listed were personally consulted by the author of this report and, consistently with his mandate, none of them was formally invited to participate in the project.

5. Information on training material

A list of practical handbooks, articles, papers, etc., which may be consolidated, refined and disseminated during the forthcoming project, consists mainly of U.S. and European sources. Indeed, as it is rightly stressed by the often quoted Recommendations of the Brazilian Special Commission on Software and Services

"there exists a near total lack of knowledge of the studies, research and theses in the area of software..." This opinion is largely true also with respect to marketing and international contracting of software and hardware. In the 1980s the situation has improved as far as publications concerning legal protection for computer programs are concerned, but this aspect of software, notwithstanding its relevance in the context of relations between importers and exporters of technology, is not of critical importance while marketing software in many countries of the Region today. However, the Latin American experience presented against the U.S. and European legal background is well analysed in C.M. Correa's report prepared for UNIDO.<sup>24/</sup> The report will be of great help during the preparation of a practical handbook on hardware and software acquisition.<sup>25/</sup> It can also be used as a useful reference book for seminar purposes.

The list of compiled materials lacks two types of source information which could not have been gathered during the mission: /1/ a selection of court and administrative decisions dealing with the enforcement of transfer of technology laws applicable to commercialization of software and hardware in the countries of the Region and /2/ a compilation of general conditions, standard contracts, etc. used by major purchasers of software/hardware in developed countries. The former materials can be easily gathered by Latin American lawyers entrusted with the task of preparing a practical handbook and other training materials. The author of this report has requested several institutions in Europe and North America to send him copies of materials belonging to the second group, and hopes to be able to obtain and compile them in the near future.

## 6. Facilities for conducting workshops and other activities

All focal points visited during the mission have suitable facilities to conduct workshops and seminars. All national nodes have agreed to participate in the forthcoming project. However, the best material facilities and supporting staff cadres for the envisaged activities are at the Fundacion Instituto de Ingenieria, Caracas, which can also count on the logistical support of the SELA headquarters there, and at the Instituto de Investigaciones Electricas, Mexico City, which has ample facilities both in the capital and in Cuernavaca. The latter institute has excellent foreign relations and legal departments. Both institutes have larger and smaller conference rooms furnished with modern audiovisual equipment, communication systems, etc. These two focal points expressed their willingness to host the next REMLAC meeting preparatory to the acceptance of the discussed programme.

Almost equally good conference facilities are those of Argentina's INTE, which cooperates closely with Subsecretaria de Informatica y Desarrollo, Brazil's Instituto de Microelectronica do Centro Tecnologico para Informatica in Campinas, and Peru's ITINTEC in Lima.<sup>26/</sup> Brazil has the advantage of a high number of top-notch specialists in such fields as computer science, marketing and law, but the otherwise very competent and energetic management of the local focal point is more interested in science and technology oriented activities. This seems to be also true with respect to Centro Cientifico Tecnico in Pinar del Rio, Cuba. The leaders of the two remaining national coordinating centers in Guatemala and Jamaica are very interested in the forthcoming project and they are ready to organize local seminars with the help of UNIDO and other REMLAC countries.

The Fundacion Instituto de Ingenieria of Venezuela is also furnished with computer hardware which can be used to set up the proposed regional data bank for collection and dissemination of information on hardware, software, and microelectronic equipment available in the REMIAC countries.<sup>27/</sup>

Notes

- 1/ A report, Regional Meeting for the Initiation of a Regional Network for Microelectronics in the RCLAC Region, UNIDO, ID/WG 440/12, dated July 1, 1985, at 10.
- 2/ See C. Correa, Transfer of Technology in Latin America: A Decade of Control, 15 Journal of World Trade Law, 388/1981/.
- 3/ Art. 9 of the Law No. 22426 on Transfer of Technology of March 12 1981. The sanction is of a purely fiscal character.
- 4/ Compare Art. of the Law No. 22426 /Argentina/, Art. 68 of the Venezuelan Decree No. 2442 which defines as registrable "technology" any supply, sale, rental, or assignment of industrial property rights, technical and commercial know-how "and whatever other goods or services of a similar nature, which SIEEX, in its opinion, treats as technological contribution". F. Roland Matthies, Transfer of Technology and Licensing in Venezuela, Council of Americas /1980/, 2.
- 5/ Ib.id. at 10.
- 6/ SEI Normative Act No. 027/82.
- 7/ SEI Normative Acts No. 001/80 and 016/81.
- 8/ SEI Normative Act No. 027/82
- 9/ Hereinafter referred to as Mexican Transfer of Technology Law.
- 10/ For instance, in Argentina, Peru, and Venezuela.
- 11/ See my further remarks in Ch.III.
- 12/ This is true with respect to both large and smaller countries of the Region /i.e. Guatemala and Jamaica/. In the former out of 20 medium-size computers installed in the country, twelve are employed by the public sector.
- 13/ Compare E. Lalor, The Use of Public Purchasing as a Tool to Develop Technological Competence in Microelectronics, UNIDO ID/WG. 440/1 /1985/, at 40-42.
- 14/ As published in Diario de Centro America No. 60 of November 21, 1985. Hereinafter cited as Guatemalan Hardware and Software

Procurement Order. See Annex No. 7. The background of the legislative action is described in Ch. III.

- 15/ The law uses the term "contrato-marco", which can also be translated as "sample contract".
- 16/ By the same token, the INPI and SEI do not recognize the trade secrets concept as a justification for any proprietary right of the owner of program. This seems to be a dominant view among Latin American scholars. Compare C. Correa, Legal Nature and Contractual Conditions in Know-How Transactions, 11 Georgia Journal of Int. and Comp. Law, 449.
- 17/ The recommendations of the Brazilian Special Commission on Software and Services of 1981 calls for rejection of both patent and copyright protection for computer programs. Instead, they emphasize that "it should be up to the informatics community itself to identify infringers, exposing irregularities to the trade associations". In addition, the document recommends that SEI, INPI, and the professional associations should study alternative ways of protection.
- 18/ Compare, for instance, a copy of the program of an International Seminar on Legal Treatment of Software held on June 29, 1984 in Brasilia /end. No.2/. See also Ann. No. 3.
- 19/ Compare a copy of the agenda of an international seminar sponsored jointly by INPI and WIPO in Brazil in October 1985. Ann. No.4.
- 20/ Caracas, 3-7 June, 1985, INIDO, ID/WG.440/3 at 2-3 /1985/.
- 21/ This sub-title addresses two related issues described under c/ and g/ of the Terms of Reference for this mission.
- 22/ Mr Jayr Dezolt, Director of Regional Cooperation of SELA indicated that his organization could participate in selected activities of the first REMLAC programme.
- 23/ These include i n t e r a l i a Secretaria de Ciencia y Tecnica

/Argentina/, SEI and INPI /Brazil/, ITINTEC /Peru/, Presidencia de la Republica, Oficina Central de Informatica /Venezuela/, SECOFI and SEMIP /Mexico/, Ministerio de Finanzas /Guatemala/, Ministry of Finance /Jamaica/, SELA, etc.

24/ C.M. Correa, The Commercialization of Software. Main Issues and Contractual Terms and Conditions. UNIDO 1985 /second draft/.

25/ The idea is further elaborated in Ch.III i n f r a.

26/ The leadership ITINTEC's Division de Electronica has the support of other branches of this organisation /i.e. the Industrial Property and Legal Departments/. In addition, good conference facilities are found at the national telecommunication center /INICTEL/, the management of which is also interested to co-sponsor future REMIAC activities in Peru.

27/ The proposal is further elaborated in Ch.II i n f r a.



CHAPTER II.

PROPOSALS CONCERNING A CONCRETE PROGRAM OF ACTION

Introduction

Responding to the recommendations adopted during the first Regional Meeting for the Initiation of REMLAC <sup>1/</sup> and further proposals made by national focal points, <sup>2/</sup> UNIDO has submitted tentative proposals aimed at strengthening negotiating capabilities in the acquisition of hardware and software. During the present mission this concrete programme of joint activities was discussed with representatives of all REMLAC focal points, proper government agencies and intergovernment organisations, as well as other interested parties in the countries concerned. All elements of the proposed programme have been tentatively accepted by the institutions visited. Many elements of the plan have been added during the mission by participants of the REMLAC network.

It is assumed that the parties may join all or some of the activities proposed and cooperate within the project on bilateral, sub-regional or regional basis.

1. Training oriented activities

- 1.1. Preparation of a manual on commercialization and negotiation of hardware and software acquisitions from abroad

The principal aim of this project is to equip purchasing officers in state institutions and private companies with a practical handbook how to buy and sell computer hardware, software, and services. The manual should address relevant technical, marketing, and legal aspects of transnational transfer of technology transactions in the relevant field. However, it would be also useful for domestic practice.

The handbook should be modelled after similar manuals elaborated under the auspices of the Practicing Law Institute in the United States and materials published by Van Nostrand Reinhold Co. or Bender Co.<sup>3/</sup> However, while the U.S. publications stress the point of view of the exporter, the proposed manual should, by contrast, emphasize the Latin American buyer's objectives. Yet it should not overlook the need to instruct a potential seller of computer technology and services operating in a foreign market, especially in the United States and other countries of the Region. The mission has found examples of Brazilian and Mexican corporations that have just started marketing software and mini-computers abroad.

As far as the content of the handbook is concerned, it should include, inter alia, basic information concerning marketing techniques, packaging and pricing technology, legal and extralegal means of protecting software in Latin American countries and outside the Region, specific contracting suggestions,

export and import procedures, model agreements and standard clauses, check-lists helpful for evaluation of different types of contracts and typical problems found in acquisition of hardware, applications software, package software, and technical services contracts. The materials should also cover choice-of-law and choice-of-forum problems and alternative mechanisms of dispute resolution. Finally, since the manual will be used as a principal pedagogical tool during seminars sponsored by the network, the editorial team should consider preparing a chapter containing materials enabling future lecturers to conduct simulated negotiation exercises.

The manual will be prepared in Spanish and English, with a view of the bilingual nature of the REMLAC organization as well as to permit the Latin American student to master the English technical and legal terminology.

The preparation of the handbook will be entrusted to a team of three or four top experts from the region. Participation of one or two UNIDO experts from outside the region was also suggested by Latin American specialists in the field.<sup>4/</sup> It is estimated that the book would be a one volume publication consisting of 250-300 pages.

As far as funding of the handbook is concerned, its estimated costs, excluding expenditures for printing, would amount to forty thousand US dollars. These include payments to the team of four or five authors, the fee for an editor-in-chief for the elaboration of a specific outline of the

project, coordination, and his own part of the joint project, the remuneration to be paid to two independent reviewers, the costs of two two-days author meetings, typing, and other expenses.

1.2. Training of trainers

Establishment of successful long-term training programmes at satisfactory level requires the creation of a regional team of first-rate trainers. The task of upgrading the qualifications of such cadres could be achieved by two complementary measures:

- /a/ establishment of a system of fellowships for trainers and
- /b/ regional or sub-regional refresher courses.

Fellowships

This UNIDO proposed programme assumes funding of fellowships, mainly for top government lawyers, who are already involved in advising public and/or private importers of computer technology or administering national informatics policies. The recipients of such grants, selected through the REMLAC focal points in consultation with UNIDO, will be offered a "package" of specialized training opportunities such as /1/ apprenticeships in sales departments of leading software/hardware exporters based in developed countries; /2/ apprenticeships programmes offered by proper government agencies entrusted with the task of controlling importation of computer technology in Latin American or other developing countries; /3/ participation in post-graduate courses or seminars combined with a period of independent research at such centers of excellence in the field of transfer of technology as Georgetown University International Law Institute, Washington D.C. or Max Planck

Institute, Munich.

Each fellowship will enable a grantee to choose, after consultation with his/her employer and the proper REMLAC focal point, any combination of the training opportunities offered by the "package". The term of fellowship should not exceed three months. The recipient will be obliged to complete an approved program within a period of 18 months starting from the day of obtaining the grant. UNIDO will extend its good offices to place the grantees in foreign based centers of research /training/ and computer firms that would be willing to provide apprenticeship opportunities. REMLAC focal points would choose appropriate centers of practical training in Latin American countries /i.e. SEI and INPI in Brazil/.

The proposed centers of training and research are the following:

- 1/ Max Planck Institut für Ausländisches und Internationales Patent-, Urheber- und Wettbewerbsrecht, Siebertstrasse 3, D-8000 München 80, F.R.G., TLX: /05/ 23965 MAPAT, contact person: Professor F.K. Beier, Managing Director, tel.089-92461.

The institute is a leading world center research in transfer of technology transactions. It offers research and training opportunities for specialists from developing countries.

- 2/ International Law Institute, Washington D.C.

1920 N Street, N.W. Washington D.C. 20036, USA  
tel. /202/ 463-7979, contact persons: Prof. Don Wallace, Jr.,  
Director; Mr. Frank Loftus, Administrative Director  
TLX: 64551

The III is a non-profit research and training center specializing in organising seminars and courses in foreign investment, transfer of technology, etc.

3/ Georgetown University Transfer of Technology Center,  
Washington D.C.

contact person: Professor Milton R. Wessel, 2346 S. Queen Str.  
tel. /703/ 521-6167  
Arlington, Virginia

4/ Practicing Law Institute,

810 7th Avenue  
New York 10019-5818, USA

Each year the Institute offers courses in such fields as  
Computer Litigation, Computer Contract, Software Licensing  
Transactions, etc. Courses are conducted by best members of  
the U.S. Bar. Participants are offered updated course materials.

The alumni of the fellowships programmes described above would  
constitute the core of a Regional Team of Trainers and be obliged  
to conduct courses in their countries of domicile.

Distribution of fellowships and estimated costs.

Argentina : 3  
Brazil : 3  
Mexico : 3  
Venezuela : 2  
Peru : 2  
Cuba : 2  
Guatemala: 1  
Jamaica : 1

The value of an average fellowship will be not less than \$ 6.000.  
/transportation \$ 1.500, admission fees \$ 900, basic grants 3.600/  
Total costs: \$ 102.000.

Refresher courses for trainers

The creation of a system of periodic refresher courses for trainers at selected centers of excellence in the Region should be integrated into the REMIAC's efforts to upgrade the level of already existing post-graduate programmes. Some respondents have indicated that such educational activities would be cheaper and more effective than the fellowship programme described above. The majority, however, was of the opinion that the two initiatives should be treated as complementary actions. If necessary, the number of grants financed by UNIDO could be reduced and national focal points, as well as other interested institutions, should participate financially in the costs of the fellowship programme.<sup>6/</sup> Accordingly, it is hereby proposed that there will be two refresher courses aimed at upgrading the qualifications of forty to fifty trainers. The first course could be held in autumn 1986, the second in summer or autumn 1987. As mentioned in Ch. I, the best administrative support and seminar facilities are those of Instituto de Investigaciones Electricas /Mexico/ and of Fundacion Instituto de Ingenieria /Venezuela/ but the remaining focal points, especially those of Argentina, Brazil, and Peru are also well equipped to host such programmes. In the author's opinion the first session should take place at the Fundacion Instituto de Ingenieria, Mexico, and the second one in Caracas where the F.I.I could count on logistic support of SELA.

The c o s t s per session are estimated as follows:

- |  |          |
|--|----------|
| 1/ remuneration for lectures and seminars including<br>two experts from outside the Region | \$ 4.000 |
| plus:  |          |
| 2/ their costs of transportation and   | \$ 6.000 |

|                                      |           |
|--------------------------------------|-----------|
| 3/ per diems for five lecturers plus | \$ 2.400  |
| 4/ administrative costs, including   |           |
| photocopying of teaching materials   | \$ 3.000  |
|                                      | <hr/>     |
|                                      | \$ 15.400 |

It is assumed that each course would last four days. Thus, the total costs of the two sessions would be \$ 30.800. There will be no admission fees but each participant would have to pay his/her transportation and other costs. It would be desirable, however, to increase the proposed budget by a margin of \$ 20.000 to pay for transportation costs of at least one participant from each of these REMIAC countries which, due to austerity measures, could not participate in this programme without financial support. Thus, the total costs of this project would amount to \$ 50.800.

1.3. Grants for books, periodicals, etc.

Small grants for foreign books and periodicals on legal and economic aspects of commercialization of hardware and software should also be considered. Each of the eight

REMIAC focal points is equipped with library facilities and is often consulted by government and private institutions on issues concerning various aspects of acquisition of computer technology. The estimated costs:  $8 \times \$ 2.000 = \$ 16.000$ .

2. Other Activities

2.1. Workshops and special task forces

These may deal with exchange of experience and knowledge among focal points and broader issues of interdisciplinary nature. It is suggested that some regular annual meetings of the network



should be combined with workshops. This would enable representatives of national focal points to participate therein and to reduce costs. Each consecutive host institution would be responsible for the preparation of a chosen topic for discussion. The task of preparing a workshop could be implemented by two, three or more nodal points.

Among the workshop topics proposed and discussed during the mission were: "Technical, Legal, and Marketing Aspects of Commercialization of Computer Programs", /2/ "Model Contracts and Standard Clauses in Hardware and Software Acquisition Contracts", 3/ "Evaluation of Software Import Control Systems and Software Export Promotion Strategies in Selected Developing Countries", 4/ "Prospects of Coordination of Regional Commercial Policies with Respect to Hardware/Software Acquisitions", 5/ "Interregional Cooperation in Regard to Joint Procurement of Computer Technology,<sup>6/</sup> Choice-of-Law and Choice-of-Forum Problems in Transnational Software Transactions", etc.

It is proposed that these meetings should be of interdisciplinary nature gathering scientists, economists, lawyers, etc. It is further assumed that proper government and inter-government organisations, as well as professional societies, will be invited to join these activities.<sup>7/</sup> The selection of three or four workshop topics and the nodal points responsible for their preparation should take place during the next REMIAC meeting preparatory to the implementation of the whole project.

An amount of \$ 5.000 is envisaged for each workshop held in the years 1987-90. The rest would be paid by each institution participating in the programme.

2.2. A Regional Task Force on Commercial Aspects of Legal  
Protection for Software

Because the majority of the focal points are software developers and users, they are vitally interested in the resolution of the issue of legal protection for computer programs. Despite conflicting views on the best model and scope of protection for these intangibles, there is a consensus among representatives of the REMLAC network that the proliferation of new schemes of protection in Latin America and outside the region requires an in-depth study of the problem. Indeed, although technicalities of intellectual property are outside the scope of our mandate, the emerging legislative solutions will have direct impact upon the patterns of marketing and exploitation of software. Therefore, the principal goal of the proposed task force would be to study these and other commercial consequences of already existing and emerging legislative solutions with the aim of presenting its findings to governments and legislators in the region. The task force appointed by the REMLAC network would be composed of 5-6 experts from the Region and would commence its 12-15 months research programme as soon as possible.

The part of the task force budget would not exceed \$ 15.000. It would include remuneration to be paid to four rapporteurs, including one expert from outside to be paid to four rapporteurs, including one expert from outside the region, in the amount of \$ 6.000 /4 x \$ 1.500/, collection of necessary books and other materials /\$ 2.000/, and costs of two meetings /\$ 7.000/. It is hoped that the other outlays will be covered by the network or other organisations.

### 2.3. A Regional Data Bank

The idea of creation of a Regional Data Bank that would serve as an instrument of advertising of locally made microelectronic equipment, hardware and software products, and computer services, was first proposed by the management of the F.I.I., Caracas. Therefore, this project was not consulted in those countries which were visited during the first part of the mission.<sup>8/</sup> However, the proposed initiative was enthusiastically received in the remaining REMLAC countries. Thus, for instance, in Mexico a representative of Consejo Nacional de Ciencia y Tecnologia /CONACYT/ has declared that his government may offer its financial support to the project.

An important function of the data bank would be to enable small and medium firms within the region to market their products thus strengthening intra-regional trade and diminishing the advertising edge of the multinationals. In addition, sponsors of major public procurement bids could place some of their orders with local producers.

The idea of the data bank will be elaborated by the F.I.I., the focal point which is willing to implement this programme, and then presented for discussion during the next REMLAC meeting. It is hereby proposed that external contribution would be in the amount of \$ 25.000. This sum would be paid in instalments in accordance with a schedule linked to the fulfilment of agreed stages of implementation of the project.

3. Total costs

|                    |                   |
|--------------------|-------------------|
| handbook :         | 40.000            |
| fellowships:       | 120.000           |
| 2 seminars:        | 50.800            |
| 3 workshops:       | 15.000            |
| grants for books : | 16.000            |
| task force:        | 15.000            |
| data bank :        | 25.000            |
|                    | <hr/>             |
|                    | 263.800           |
| plus inflation     |                   |
| reserve            | 27.000            |
|                    | <hr/>             |
|                    | <u>\$ 300.000</u> |

Suggestions concerning the implementation of the forthcoming project

Considering that the first REMIAC project has aroused serious expectations in the region and in order not to lose momentum, it is crucial that the first concrete plan of actions should be implemented as soon as possible.

Two national focal points, namely those of Venezuela and Mexico, have expressed their willingness to host a preparatory conference. Mr G. Fernandez de la Garza, Executive Director of Instituto de Investigaciones Electricas, Mexico, has recently presented the idea of a regional seminar on legal aspects of technology transfer which could be combined with the proposed REMIAC meeting. The agenda of such conference could include not only the issue of implementation of the first project but also other outstanding administrative items.

Once concrete programmes are accepted, UNIDO may contact each of the appointed coordinating focal point to agree upon the amount and procedure of funding. In general, the focal points visited to obtain appropriated funds through UNIDO/UNDP offices based in their countries. Such payments should be also linked to the fulfilment of agreed stages of each project.

Notes

- 1/ Report 1D/WG 440/12 of July 1, 1985, at 10.
- 2/ Such proposals were made, for instance, by Dr Paul Esqueda, the head of the Venezuelan focal point, in a memorandum dated September 30, 1985 outlining a programme of action for the years 1987-1990.
- 3/ See publications listed in Ann. 6 *i n f r a*.
- 4/ See item 4 *i n f r a*.
- 5/ The mission has established that in almost every country visited, there are qualified candidates to participate in the fellowship programme /i.e. Dr. D. Barbosa, INPI, Brasil, Dr. S. Marquez T., Fondo de Inversiones de Venezuela, Dr. Sotelo Bambaren, ITINTEC, Peru, etc/.
- 6/ This opinion was expressed *i n t e r a l i a* by the management of Instituto de Investigaciones Electricas, Mexico.
- 7/ Thus, for instance, the President of the ABICOMP of Brazil has promised to elaborate an alternative list of proposals for workshop topics.
- 8/ They include Argentina, Brazil and Peru.
- 9/ A statement made by Mr Enzo Molino, Director de Servicios Informaticos.

List of persons contacted and institutions visited

**ARGENTINA**

- \* 1. Secretaria de Ciencia y Technica, Dr. Carlos M. CORREA,  
Cordoba 831, Buenos Aires, deputy secretary for  
TLX: 25272 Ceytar informatics and development
2. Instituto Nacional de Tecnologia - Dr. Enrique GRUNHUT,  
Industrial /INTI/, AU.L.N.ALEM 1067, executive secretary for  
1001 Buenos Aires, international relations  
TLX: 021859 - Andreas E. DMITRIUK Eng.  
coordinator of the  
Division of Electronics  
and Informatics  
- Mr Louis RAVIZZEINT,  
Registro de Transferencia  
de Tecnologia, INTI
3. Florida 537 - Piso 4<sup>o</sup> Dr. Salvador D. BERGEL,  
Galeria Jardin, legal consultant to  
1005 Buenos Aires Secretaria de Ciencia  
y Technica, member of the  
Bar
4. UNIDO/UNDP Office Mr. Jean-François DELAHAUT  
/j.p.o./

\* REMLAC FOCAL POINTS in each country are indicated by an asterisk \*

BRAZIL

- \* 1. Instituto de Microelectronica de Centro Tecnologico para Informatica,  
Campinas 13100, Rodovia SP 340  
TLX: /019/-2076

Professor Carlos I. MAMMANA,  
Executive director
2. Ministerio de Ciencia e Tecnologia, Secretaria Especial de Informatica,  
Brasilia-DF, CX.  
Postal 04-0390, SAS-Q.5 -BL.H  
TLX: /061/-2212

Mr. Arthur P. NUNES  
Deputy Secretary for Services
3. Sociedade Brasileira de Computeros /SBC/  
Sao Paulo

Mr. Claudio Z. MAMMANA
4. Associacao Brasileira da Industria de Computadores e Perifericos,  
Rua S. Jose, 90, Gr.1805,  
Centro, Rio de Janeiro  
CEP 20010  
TLX: /021/-33338 ABIP

Mr. Antonio L. MESQUITA  
President
5. Instituto de National Propriedad (INPI) Industrial /Patent Office/  
Rio de Janeiro,  
Praça Maua 7

Dr. Denis BARBOSA  
general counsel
6. Cardiobras LTDA, 8034  
Sao Paulo, Av. Morumbi 04703  
TLX: /011/-31398 CDIO BR

Mr. Alvaro A. FERREIRA  
Executive director



7. "Avilla-Pereira, Torres-Advogados". Av. Graca Aranha, 145-Gr. 902, Rio de Janeiro, Brazil  
TLX: /021/ 30338
- Ms. Regina TORRES  
advocate
- Mr. KLEBER AVILLA-FEREIRA  
advocate
8. UNDE/UNIDO  
Office in Brasilia
- Soto-Krebs

PERU

- \* 1. Instituto Nacional de Investigacion Tecnologia y Normas Tecnicas /ITINTEC/ Guardia Civil 400, Lima 41  
TLX: 20496 PE
- Mr. J. SUCCAR  
Director General
- Dr. J. V. LAZO  
Director de Tecnologia
- Mr. R. GONZALES  
Electronics Division
- Mr. R. VALDIVIA  
Electronics Division
- Mr. F.L. CLIMACHI  
chief of a project,  
Electronics Division
- Dr. Louis LOPEZ  
Head of Legal Office
2. Instituto Nacional de Investigacion y Capacitation de Telecomunicaciones /INICTEL/ Av. Juan Pezet 1905, San Isidro Lima  
TLX: 25007 PESUPR
- Mr. Carlos A. SANJINES  
Director General
3. Producciones Panamericana, SA Av. Arequipa 1110,  
TLX: 25679
- Mr. Belisario B. MURGIA  
chief of legal advisor
4. UNIDO/UNDP Office
- Mr. Marino A. DIZY  
SIDFA

VENEZUELA

- \* 1. Fundacion Instituto de Ingenieria - Dr. Paul ESQUEDA  
Apartado 40.200 President  
Caracas 1040-A, - Ms. Francisca A. De DUMITRE  
TLX: 21685 INING senior technical advisor
  
- 2. Presidencia de la Republica - Ms. Z. ESTRADA DIAZ  
Oficina Central de Informatica chief legal advisor  
Caracas  
  
Ministerio de Fomento - Mr. Miguel A. MEGIAS  
/Ministry of Development/ Director General of  
Caracas Technology Department
  
- 3. Fondo de Inversiones de Venezuela - Ms. Sylvia E. MARQUEZ  
Torre Financiera del B.C.V. TAMI,  
Caracas 1010, Ap.Postal 2041 Gerente de Tecnologia  
TLX: FIVEN 26529
  
- 4. Camara Venezolana de Artefactos - Mr. Hernan S. FLAMERICH  
Domesticos y de la Industria President  
Electronica, Edif. Camara de  
Industriales,  
Pte. Anauco, Caracas
  
- 5. Centro Nacional de Telecomunica- - Dr. NURIA RAMOS  
ciones, Edif. Administrativo, Jefe Coordinacion de  
Piso 19, Av. Libertador, Caracas Telefonía Rural y Movil  
TLX: 27230
  
- 6. Sistema Economic Latinoamericano - Dr. Jayr DEZOLT  
Ap.Postal 17035, Caracas 1010-A, Director de Cooperacion  
Av.F.Miranda, Torre Europa, Regional  
TLX: 23294-24015 SEIA, Venezuela

7. Law Offices of

"Matthies and Klahr Zighelboim"  
Edif. Miranda Torre A, PISO 7,  
CHACAO, Av. Libertador, Caracas  
TLX: 28412

Dr. F. BOLAND MATTHIES  
attorney-at-law

MEXICO

- \* 1. Instituto de Investigaciones Electricas, Leibnits 14,  
Ap. Postal 5-849  
11590 Mexico, D.F.  
TLX: 17-76352 - IIEEMME
- Mr. Guillermo de la GARZA,  
executive director
  - Mr. Eduardo LOBATON G.  
director of the Equipment  
Division
  - Mr. Hector L. VALENZUELA  
Director of International  
Transactions Division
  - Dr. Andres ROTHHIRSCH  
Director
  - Dr. Rolando NIEVA  
Software Development  
Energy Management Systems
  - Mr. Jose L. RINCON  
Technology Promotion Division
  - Mr. Ismael CERVANTES  
Computation Department
  - Mr. Jorge ZAUALA  
Electronics Department
  - Mr. Mario J. MEHLING  
legal counsel
2. Secretaria de Comercio  
y Fomento Industrial  
/SECOFI/  
Ensenada No.90, Col. Condesa  
Mexico City, D.F.  
TLX: 515-2542
- Dr. Jose BARMAN  
Deputy Director  
of the Electronics Industry

3. Ministry of Energy, Mining and Industry, Centro de Valuacion y Proyectos /SEMIIP/, Mexico City, D.F. - Mr. CARILLO  
Director General
4. Consejo Nacional de Ciencia y Tecnologia /CONACYT/ Ciudad Universitaria - 04515 Mexico, D.F.,  
TLX: 017-74-521 - Mr. Enzo MOLINO  
Director of the Department of Informatics  
- Mr. Juan C. CABADA  
Technological Projects Director
5. Nacional Financiera , NAFINSA Patriotismo 711, Edif.C. Mexico, D.F. - Mr. Gabriel IBARRA  
Director
6. Fundacion Arturo Rosenbluech S. Francisco 1514, Col.Del. Valle, Mexico, D.F. 03100 - Dr. Enrique C. ALZATI  
Director General
7. Grupo Mexel S.A. Calle Diagonal 27, Mexico, D.F. C.P. 03100,  
TLX: 01771038 FAIRME - Mr. Alfredo PATRON  
Executive Vicepresident
8. SIMEX S.A. Av. Cauhtemoc 1230 Mexico, D.F. - Mr. Pablo HERRAN  
Director General

**GUATEMALA**

- \* 1. Banco de Guatemala  
7A, Av. 22-01, ZONA 1  
Guatemala,  
TLX: 5431 Guaban Gu
  - Mr. Fabian B. PIRA  
general counsel
  
- 2. Ministerio de Finanzas
  - Mr. Lizardo SOSA  
Vice-Minister  
of the Ministry of Finances
  - Mr. Romeo O. VILLATORO  
Comision Nacional de  
Computacion,  
representative
  - Mr. Roberto BATRES
  
- 3. Empresa de Telecomunicaciones  
Guatel, 7A, Av. y 12 Calle,  
Zona 1, Ciudad de Guatemala
  - Mr. Enrique RUIZ
  
- 4. Instituto Guatemalteco de  
Seguridad Social /IGSS/  
Centro Civico,  
Ciudad de Guatemala
  - Mr. Alexander PAZ,  
counsel
  
- 5. UNIDO/UNDP
  - Mr. Eric PERRIN  
resident representative
  - Ms. Magdalena F. de SAVARAIN  
SIDFA representative  
for Central America

CUBA

- \* 1. Centro Cientifico Tecnico      - Mr. Guillermo LOPEZ  
    Empresa de Componentes      Deputy Director  
    Electronicos, Cor. Aeropuerto      and his colliaborators  
    Alvara Barba  
    Pinar del Rio, 5531  
    TLX: 53216, tel. 5659
  
- 2. Instituto Central de Investi-      Mr. Ruben Lopez SANTANA  
    gacion Digital,      Executive Director  
    La Habana, Calle 198 No.1713      and members of the Institute  
    Siboney  
    TLX: 511258

JAMAICA

- \* 1. National Computer Center      - Dr. Winston OLIVER  
    50 Knutsford Blvd.      Executive Director  
    New Kingston, Kingston 5  
    tel. 809-92-9547018
  
- 2. Ministry of Finance      - Mr. Horace TOMLINSON  
    National Heroes Circle      Special Projects Manager  
    New Kingston,      - Mr. Hugh POTTER  
    Kingston 6      World Bank Consultant,  
                                    Administrative Reform Programme
  
- 3. The Planning Institute      - Dr. Clement JACKSON  
    of Jamaica      Director General  
    New Kingston, Kingston 5
  
- 4. The Revenue Board      - Mr. Dudley SMITH  
    New Kingston, Kingston 5      Commissioner  
                                    - Mr. Dennis LAMONT  
                                    Consultant

Annex II.

International Seminar on the Juridical Treatment of Software

SEMINARIO INTERNACIONAL SOBRE O TRATAMENTO JURIDICO DO SOFTWARE

PAINEL 2

O DIREITO BRASILEIRO E A PROTECAO DE SOFTWARE

Expositores:

DENIS BARBOSA - INPI (Patent Office)

"Bases para um Regime de Protecao Juridica do Software"

REGINA TORRES - Advogada

"O Regime de Patentes ea Protecao de Software"

Coordenador:

RAYMUNDO NONATO BOTELHO DE NORONHA

SEI

DEBATES

(Continuacao da Apresentacao do Conferencista Húngaro)

Coordenadora:

ZAZI CORREA COSTA

SEI

Dia:

29/06/84

Hora:

11:30 horas

Local:

Auditoria do Palacio Itamaraty

Brasília-DF - Brasil

Programme

**PROGRAMA**

**DIA 26 NOV. 85 - 3<sup>a</sup> feira**

**HORA: 08:30 - ABERTURA SOLENE DO SEGUNDO SIAP**

**HORA: 09:30 - PAINEL: REGULAMENTAÇÃO DE SOFTWARE E VENDA DE SERVIÇOS  
AO SETOR PÚBLICO**

**OBJETIVOS:** Promover amplo debate acerca das questões que tratam da transferência de tecnologia e regulamentação de Software; implicações Sócio-Econômicas e Políticas na contratação de serviços; relacionamento Governo e iniciativa privada.

**COORDENADORA:** TANIA MARA BOTELHO - ASSESPRO/DF

**CONFERENCISTAS:** SEN. VIRGÍLIO TÁVORA

**TEMA-** Regulamentação do Software

**DEP.** CRISTINA TAVARES

**TEMA-** Implicações Sócio-Econômicas e Políticas oriundas de contratação de serviços da iniciativa privada pelo Governo.

**DEBATEDORES:** CEZAR RÔMULO DA SILVEIRA NETO - INFORMENTO

HELIO SANTOS OLIVEIRA - POLITEC

ARTHUR MILHOMEM NETO - MIS

JOFFRE LELLIS - LELLIS PD-DF

MANOELITO DE AZEVEDO FERREIRA - SERPRO

MARCOS DE MESQUITA FILHO - CODEPLAN



**HORA: 14:30 - PAINEL: PRÁTICAS COMERCIAIS**

**OBJETIVO:** Promover amplo debate sobre as facilidades e restrições que regulam a área de informática na Administração Pública, visando colher subsídios para uma análise crítica e formulação de proposições quanto a alternativas de ação.

**COORDENADOR:** LETÍCIO DE CAMPOS DANTAS FILHO - SEST/SEPLAN-PR

**CONFERENCISTAS:** HENRI PHILIPPE REICHSTUL - SEST/SEPLAN

**TEMA - O Controle Orçamentário**

**ALCYR AUGUSTINHO CALLIARI - B. BRASIL**

**TEMA - Impasses e Soluções**

**RAIMUNDO NONATO BOTELHO DE NORONHA - PR**

**TEMA - Transferência de Tecnologia sem "Royalties"  
(pirataria)**

**DEBATEDORES:** REYNALDO ARCYRIC - SEST/SEPLAN

**ARTHUR PEREIRA NUNES - SEI**

**ANTONIO NESTAREZ - SEPLAN**

**HUGO DANTAS PEREIRA - BACEN**

**PROGRAMA**

**DIA 27 NOV. 85 - 4ªfeira**

**HORA: 09:00 - PAINEL: PLANO NACIONAL DE INFORMÁTICA E AUTOMAÇÃO -  
PLANIN**

**OBJETIVO:** - Discutir com os diversos segmentos da sociedade a importância do PLANIN no processo de elaboração e execução da política nacional de informática.

**COORDENADOR:** - ARTHUR PEREIRA NUNES - SEI

**CONFERENCISTA:** JOSÉ RUBENS DORIA PORTO - SEI

**DEBATEDORES:** PARLAMENTARES  
REPRESENTANTES - ABIMCOP  
SBC  
SUCESU-NAC

**HORA: 14:30 - PAINEL: A INFORMÁTICA NA EXECUÇÃO E NO CONTROLE  
ORÇAMENTÁRIO**

**OBJETIVO:** - Colocar em debate o processo de informatização do controle interno na administração pública, os ganhos proporcionais por este processo e as implicações nos sistemas dos órgãos públicos.

**COORDENADOR:** DR. FERNANDO MEJDALANI NEVES - SECIN/SEPLAN-PR

**CONFERENCISTA:** Representantes  
Delegacia do Ministério da Fazenda/la Região Fiscal  
Secretaria de Controle Interno do MF  
Secretaria Central de Controle Interno

**DEBATEDORES:** Representantes  
Tribunal de Contas da União  
Comissão de Programação Financeira

**PROGRAMA**

**DIA 28 NOV. 85 - 5 feira**

**HORA: 09:00 - PAINEL: CENTRO DE INFORMAÇÕES DA ADMINISTRAÇÃO PÚBLICA**

**OBJETIVO:** - Promover debate entre Empresas da Administração Pública que estão trabalhando dentro da filosofia de Centro Informações. Cada órgão participante apresentará sua experiência em relação ao tema, focado as dificuldades na implementação de tal centro, bem como dos benefícios/ inconvenientes daí advindas.

**COORDENADOR:** BRAULIO CARSALEDE HEBSTER DE GUSMÃO - SERPRO

**CONFERENCISTAS:** CARLOS SILBERMAN - SERPRO

JOÃO GOULART JR - BACEN

JOSÉ UBALDO BAIÃO - IBGE

MARTINHO MIRANDA EVANGELISTA -TELEMIG

**HORA: 14:30 - PAINEL: PESSOAL DE PROCESSAMENTO DE DADOS DO SETOR PÚBLICO**

**OBJETIVOS:** - Debater a situação funcional dos Técnicos de Processamento de Dados que prestam serviços ao Setor Público, a questão das condições estratégicas do trabalho desses profissionais, o reconhecimento da profissão e as tendências futuras para evolução do quadro.

**COORDENADOR:** MARCOS ALMEIDA - APPD/DF

**CONFERENCISTAS:** Representantes da Área de Recursos Humanos em Informática

SERPRO

CEF

FUNCEP

FSB

UNB

SENALBA

**PROGRAMA**

**DIA 29 NOV. 85 - 6ª feira**

**HORA: 09:00 - PAINEL: OS SUPERMINIS NACIONAIS**

**OBJETIVO:** - Apresentação dos modelos, nacionais de supermini computadores disponíveis no mercado, abordando os seguintes aspectos: características do produto, Software disponível, formas de comercialização, integração com periferia nacional, evolução, comunicação de dados entre outros.

**COORDENADOR:** -RAIMUNDO NONATO DA COSTA - SEI

**CONFERENCISTAS:** AMÉRICO RODRIGUES FILHO . SEI

PAULO MORAIS - ITAUTEC

JEAN PAUL HABRAN - ABC

BLORIBERTO MARELLA - EPISA

RONALDO ROENICK - ELEBRA

SERGIO STANIS LAUSRAS - COBRA

-ADEMAR RAVAGNAN - LABO

Seminar on Industrial Property for Developing Countries

SEMINARIO DE PROPRIEDADE INDUSTRIAL PARA PAISES EM DESENVOLVIMENTO

PROGRAMA

OUTUBRO/85

14 - segunda-feira

Tarde

Solenidade de abertura

Dr. Mauro Fernando Maria Arruda

Presidente do INPI

A Cooperacao Técnica no Ambito da América Latina

Dr. Helio Marco Dutra

15 - terça-feira

Manha

A Evolucao do Sistema de Propriedade Industrial no Brasil - Uma

Retrospectiva Histórica

Dr. Denis Borges Barbosa

Tarde

A Formacao dos Sistemas Nacionais de Propriedade Industrial

Dr. Murillo Florindo Cruz Filho

16 - quarta-feira

Manha

A Protecao de Novas Tecnologias - Evolucao no Brasil

Dra. Nelida Jazbik Jessen

Tarde

Propriedade Industrial: A Experiência da USIMINAS

Dr. Nuno Tomaz Pires de Carvalho

17 - quinta-feira

Manha

Ciência e Tecnologia no Brasil: Políticas Governamentais e Experiência

Recente

Dra. Ecilia M. Ford

Tarde

Propriedade Industrial: Tendências Recentes no Contexto Internacional

Dr. Peter Dirk Siemen

18 - sexta-feira

Manha

Propriedade Industrial e Transferência de Tecnologia: A Experiência do  
Instituto de Pesquisa Tecnológica do Estado de Sao Paulo

Dr. Cecílio Lopes Garcia

Tarde

Evolução Histórica da Propriedade Industrial: O Papel da OMPI  
O Processo de Revisão da Convenção de Paris em sua Fase Atual

Dr. Ernesto Rubio

19 e 20 - sábado e domingo

21 - segunda-feira

Manha

A Experiência Mexicana e o Desenvolvimento do Sistema de Propriedade  
Industrial

Dr. Rubén Beltrán Guerrero

Tarde

Estímulo à Invenção e Inovação: Apoio Institucional ao Inventor

Dra. Dalva Lúcia Maffia Nobre

22 - terça-feira

Manha

A Directoria de Patente do INPI: Estrutura e Organizacao

Dra. Maria Margarida Rodrigues Mittelbach

Tarde

A Documentacao de Patentes como Fonte de Informacao Tecnologica

Dr. Claudio Rosenberg Treiguer

Dr. Marcos Malagríci

23 - quarta-feira

Manha

Características Gerais do Sistema de Patente no Brasil

Dr. Carlos Pazos Rodrigues

Meios de Acesso à Informação contida no Documento de Patente

Dra. Suely Mary Fernandes Serpa

Tarde

A Organização de um Centro de Documentação de Patente

Dr. Gastão Roberto Coaracy

24 - quinta-feira

Manha

O Uso do Documento de Patente para Exame do Pedido de Privilégio

Dra. Suzana de Souza Borba Cruz

Tarde

Características e Aspectos Históricos de Marca

Dra. Sonia Ribeiro Maia

25 - sexta-feira

Manha

O Atual Código da Propriedade Industrial e Regulamentos Administrativos  
na Area de Marcas

Dr. Dilson António da Costa Lobo

Tarde

O Papel do Agente da Propriedade Industrial

Dr. Oscar-José Werneck Alves

26 e 27 - sabado e domingo

28 - FERIADO

29 - terca-feira

Manha

Comercio de Tecnologia: A Ação do INPI

Dr. Luiz Gonzaga M. de Mendonca

Tarde

Comercio de Tecnologia: Aspectos Processuais e Institucionais

Dr. Luiz Gonzaga M. de Mendonca

Dr. Arthur Camara Cardoso

30 - quarta-feira

Manha

Análise de Contratos de Tecnologia

Dr. Arthur Camara Cardoso

Tarde

Exposicao dos participantes

31 - quinta-feira

Manha

Exposicao dos participantes

Tarde

Avaliação Final e distribuição de certificados aos participantes

Noite

Jantar de encerramento



Co-ordinating Committee

COMITE DE COORDENACAO

1. **Manuel Emilson do Nascimento**  
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7. Oscar-José Werneck Alves  
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8. Peter Dirk Siemen  
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List of Periodicals, Practical Handbooks and Other Materials

A list of periodicals, practical handbooks, and other materials concerning the legal protection and commercialization of software and hardware /part I/.

Part II embraces publications discussing general problems of technology transactions and specific issues arising in connection with licensing technology and intellectual property rights in Latin America and other developing countries.

P a r t I

- D. Andrews, Licensing Computer Software,  
Les Nouvelles, March 1981
- J. Auer, Ch.E.Harris, Computer Contract Negotiations,  
Van Nostrand Reinhold Co.,/1981/
- D. Bender, Computer Law: Evidence and Procedure,  
ed. Bender and Co. /1984/
- D. Brooks, Computer Programs and Data Bases: Acquisition of  
Rights by Vendors from Independent Developers and  
Users from Custom Designers, 2 Software Protection  
and Marketing, /Practising Law Institute, /1983/
- C.M. Correa, The Commercialization of Software, UNIDO /1985/  
Comment, Softright: A legislative Solution to the Problem  
of Users' and Producers' Rights in  
Software, 44 L.L. Rev. 1413 /1984/  
Computer Litigation, Practising Law Institute /1984/  
Domestic and Foreign Technology Licensing 1984/86,  
T. Arnold ed., G.4-3756, Practising Law Institute /chapters  
6 and 7 deal with the commercialization of software/.
- M. Gilburne, R. Johnston, Trade Secret Protection for  
Software, 3 Computer and Law  
Journal, 211/1983/
- P. Hoffman, The Software Legal Book, Carnegie Press
- Ch. Martine, Software Protection and Licensing from the  
User's Perspective, Les Nouvelles, Feb. /1983/



- R. Morgan, Computer Contracts, OYBZ Publishing Ltd. /1979/  
Pierre et Yves Poulet, Les Contrats Informatique,  
Les Obligations des parties pendant  
l'exécution du contrat, Droit et  
Pratique du Droit International, vol.8,  
No. 1-2 /1982/, at 87-108, 237-309  
Reiling and Lester, Marketing Software Products, 8 Am.Pat.Law  
Quarterly Journal /1980/  
S. Sołtysiński, Computer Programs and Patent Law: A Comparative  
Study, Rutgers Journal of Computers and the Law  
at 1-83 /1973/  
R. Stern, Another Look at Copyright Protection of Software,  
Computer and Law Journal, p. 1 /1981/  
E. Ulmer, G. Kollé, Copyright Protection of Computer Programs,  
International Review of Patent and  
Copyright Law /IIC/, Ed. Max-Planck-  
Institute, 8000 München 80, Siebertstr. 3

P a r t II

- J. Baranson, Technology and the Multinationals,  
Lexington Books, Lexington Mass. /chapter 4 is  
devoted to the computer industry/  
H. Boger, R. Sing, Technology: Management and Acquisition,  
vol. 1-3, edited by International Law  
Institute, Washington D.C. /1984/  
G. Cabanellas, Applicable Law Under International Transfer  
of Technology Regulations, 15 IIC, 39-67 /1984/  
C.M. Correa, Transfer of Technology in Latin America: A Decade  
of Control, 15 Journal of Trade Law, 388 /1981/  
Guidelines for Evaluation of Transfer of Technology Agreements,  
UNIDO /1979/  
A. Kumar, Technology Acquisition: Some Aspects of Indian  
Policy and Legislation, 11 Int. Bus. Lawyer 123 /1983/

Pravin Anand, Licensing of Technology and Intellectual  
Property Rights to Developing Countries,  
9 Int.Bus.Lawyer /1983/

G. Wilner, The Transfer of Technology to Latin America,  
14 Vanderbilt Journal of Trade Law, 269

P a r t III

Documents, legal acts, etc.

Direccion General de Politica Informatica, Contrato tipo  
de arrendamiento de programas de computacion, MEXICO

BRAZIL

Recommendations of the Special Commission on Software and  
Services /1980/

- SEI Normative Act 005/81
- SEI Normative Act 027/82

GUATEMALA

Executive Order 10063/8

USA

Final Report of the National Commission on New Technological  
Uses of Copyrighted Works, 3 Computer and Law Journal  
/1981/, pp. 53-104

Guatemalan Decree

Diario de Centro América No. 60  
21 noviembre 1986

ANEXO No. 12

1404

**EL JEFE DE ESTADO  
CONSIDERANDO:**

Que entre dependencias y entidades del Sector Público que para el cumplimiento de sus funciones utilizan equipos de computación, que se han visto seriamente afectadas por los incrementos en las tarifas de arrendamiento y mantenimiento de equipos y programas de computación, así como por el alza en los precios de compra de los mismos;

**CONSIDERANDO:**

Que es conveniente integrar una Comisión Interinstitucional para negociar los precios de compra y las tarifas de arrendamiento y mantenimiento de equipo y programas, así como formular un contrato-marco aplicable a toda el Sector Público, ajustado a la Ley de Compras y Contrataciones y su Reglamento.

**POR TANTO:**

En el ejercicio de las facultades que le confiere el Artículo 99 del Estatuto Fundamental de Gobierno, modificado por los Decretos Leyes números 26-82 y 57-83.

**ACUERDA:**

Artículo 1º—Integrar una Comisión Interinstitucional para negociar con las empresas proveedoras de equipos y programas de computación, los precios de adquisición, así como las tarifas de arrendamiento y mantenimiento de los mismos, y formular un contrato-marco aplicable a las instituciones y dependencias del Estado, que se ajuste a la Ley de Compras y Contrataciones y su Reglamento.

Artículo 2º—La Comisión a que se refiere el artículo anterior, se integra por un representante de la Comisión Nacional de Computación (CONACO), y por un representante de cada una de las siguientes instituciones:

Ministerio de Finanzas Públicas.

Contraloría de Cuentas.

Empresa Guatemalteca de Telecomunicaciones (QUATEL).

Instituto Nacional de Electrificación (INDE).

Instituto Guatemalteco de Seguridad Social (IGSS).

Instituto Nacional de Estadística (INE).

Finco de Guatemala.

Las autoridades superiores de las instituciones mencionadas deben designar a su representante y comunicarlo al Ministerio de Finanzas Públicas, para que la Comisión integrada dentro de los diez (10) días posteriores al inicio de la vigencia del presente Acuerdo.

Artículo 3º—La Comisión Interinstitucional será presidida por el representante de la Comisión Nacional de Computación (CONACO), quien será el encargado de convocar a sesiones. En caso de ausencia del Presidente de la Comisión, actuará como tal, el representante del Ministerio de Finanzas Públicas. Los resultados de las deliberaciones deberán hacerse constar en actas que servirán de base para las decisiones finales. Los miembros de la Comisión Interinstitucional des...

Artículo 4º—La Comisión Interinstitucional queda facultada para negociar separadamente con las empresas proveedoras. Las instituciones o dependencias no representadas en la Comisión, deberán participar en las sesiones que ésta celebre, cuando se trata de la renovación de sus contratos, para lo cual serán convocadas oportunamente.

Artículo 5º—Se faculta al Ministerio de Finanzas Públicas, para disolver la Comisión Interinstitucional cuando su representante le informe oficialmente que han sido alcanzados los objetivos para los cuales fue creada.

Artículo 6º—Los aspectos no considerados dentro del presente Acuerdo, así como la política a seguir por la Comisión Interinstitucional, serán fijados por el Ministerio de Finanzas Públicas, con opinión de la Comisión Nacional de Computación.

Artículo 7º—El presente Acuerdo entra en vigor inmediatamente y debe ser publicado en el Diario Oficial.

Comuníquese:

General de División  
**OSCAR HUMBERTO MEJIA VICTORES**

El Ministro de Finanzas,  
**ARIEL RIVERA IRIAS.**

El Ministro de Comunicaciones,  
Transporte y Obras Públicas,  
**LUIS JUGO SOLARES AGUILAR.**

El Ministro de Trabajo  
y Previsión Social,  
**CARLOS PADILLA NATARENO.**

El Ministro de Economía,  
**DANIEL ARRUOLA GALINDO.**