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Expert Group Meeting on
International Industrial Joint Ventures
Tallinn, USSR, 21-26 March 1988

Report*

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Industrial Investment Division
Department for Industrial Promotion,
Consultations and Technology

* This document has not been edited.

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INTRODUCTION

1. The Expert Group Meeting on International Industrial Joint Ventures was held in Tallinn, USSR, from 21-26 March 1988. The meeting was organized jointly by the USSR State Committee for Science and Technology (GKNT), UNIDO and the Estonian Chamber of Commerce and Industry, and was attended by approximately 150 participants from some 20 countries.

Background to the Expert Group Meeting

2. In recent years, an increasing number of international industrial investments have been made in the form of joint ventures involving shared ownership between local and foreign partners. Governments and entrepreneurs in developing as well as industrialized countries have become aware of the benefits they may derive from joint venture agreements which not only include the transfer of capital and technology, but also the training of personnel in technical as well as managerial fields and in the opening of new markets.

3. Negotiating and drafting joint venture agreements is, however, a complex undertaking, involving an extensive knowledge of economic and legal aspects of such agreements. It followed therefore that an exchange of ideas and viewpoints concerning the vital aspects of joint venture contracts would be of great value to officials concerned with negotiating such contracts in order to provide them with guidance in properly establishing and managing joint ventures in their respective countries.

4. With this in mind, an Interregional Expert Group Meeting was organized to make available to member States UNIDO's many years of experience in this field.

Objectives and description of the meeting

5. The Expert Group Meeting was designed to provide participants with a better understanding of what can be expected of joint venture agreements with firms of market economies, a better ability to negotiate such contracts with potential foreign partners, and also a clearer understanding of the points of view of the partners.

6. The task of the experts recruited by UNIDO and GKNT was accordingly to discuss the application of business and legal concepts to actual problems, the decision-making process and the presentation of viable courses of action with regard to negotiating international joint venture agreements. In particular, it was intended that participants would:

- Acquire detailed knowledge of the main issues relevant to the establishment of international joint ventures between enterprises in countries with centrally planned and market oriented economies, both developing and developed.

- Obtain better insights into the legal, financial and organizational aspects of establishing and operating international joint ventures.

- Obtain information from Soviet experts on a new law regulating foreign economic relations in the USSR, especially joint ventures with foreign enterprises, which may serve as a model for other centrally-planned economy countries.

- Enter in direct contact with entrepreneurs and officials of governmental and other agencies with a view to discussing the establishment of specific international industrial joint ventures.

7. The meeting, which lasted for five and a half days, was composed of the following main elements:

a. An introduction to joint ventures which included definitions of the term, details of forms of joint venture partnership agreements, types of joint venture partners, motives for establishing joint ventures.

b. Details of UNIDO's approach to promoting international joint ventures between enterprises in developing and developed countries.

c. The "Investment Climate" and its relevance to international joint ventures.

d. Legal aspects of drafting joint venture agreements and related contracts

e. The UNIDO methodology for the preparation of joint venture projects, and the related financial computation and analysis.

f. The main principles for evaluating the profitability of international joint ventures in centrally planned economy countries, with special reference to experience gained in the USSR.

g. Issues relevant to the implementation phase of international industrial joint ventures.

h. Issues concerned with the management of joint ventures in centrally planned developing countries involving a partner from a market oriented economy country.

In addition to the formal presentation of papers by members of the Panel (see Annex xx), case studies were presented in which specific aspects of international industrial joint ventures were highlighted.

Proceedings of the meeting

8. The conference room in which the EGM was held at the Olympic Centre in Tallinn, contained a U-shaped rostrum to accommodate the members of the Panel - the experts recruited by UNIDO and the GKNT and their staff members. The other participants were seated around three sides of the U. After the speaker of each session had finished his presentation the floor was opened to the members of the Panel for their comments, and then to the participants at large. Simultaneous translation into English and Russian was provided by the Soviet organizers, and a verbatim transcript of the proceedings was prepared by the UNIDO rapporteur. At the closing session, members of the Panel had an opportunity of giving their views on the achievements of the meeting, and making proposals for appropriate follow-up activities.

9. Thanks to the availability of computer hardware provided by the Estonian Representation of the USSR Foreign Trade Ministry, participants had an opportunity between sessions of witnessing demonstrations of UNIDO software: COMFAR (Computer Model for Feasibility Study Analysis and Reporting) and PROPSPIN (Investment Project Pre-appraisal and Screening Information System).

CONSENSUS BY THE MEMBERS OF THE PANEL

Although no formal resolutions were passed by the Panel, a broad consensus was reached regarding the following matters:

(1) The experience of entrepreneurs seeking joint venture opportunities in the USSR has shown that a central source of texts of legislation relevant to international joint ventures is needed. Such a central source is not yet available in some countries where joint ventures with foreign partners are still a recent phenomenon. There is also a need for commentaries on joint venture legislation, reflecting the interpretation of the courts in specific cases.

(2) Meetings for the identification and promotion of international joint ventures opportunities such as the one organized by UNIDO in Warsaw should be held so that prospective partners from countries with differing economic systems may discuss specific opportunities for co-operating in a business venture.

(3) There is a need for future EGMs on international joint ventures in which the experts would deal in greater depth with specific issues such as marketing, transfer of technology and legal matters, and would endeavour to identify the professional skills needed to achieve success in joint venture establishment and operation.

(4) Future seminars on international joint ventures might report in more detail on practical difficulties encountered at the operating phase.

(4) There is a need for a glossary of legal and technical terms used in connection with international joint ventures. This would be useful to Soviet lawyers, who are not always familiar with legal systems of other countries. Such a glossary could be prepared under the auspices of UNIDO.

(5) It would be helpful to obtain the comments of lawyers in market economy countries on joint venture legislation in Socialist countries, with a view to incorporating them in future amendments.

(6) In view of the relatively small number of international joint ventures in developing countries where the foreign partner is from a Socialist countries, meetings between entrepreneurs from these groups of countries should be held to encourage business co-operation between them.

SUMMARY OF ADDRESS BY THE DIRECTOR OF THE INDUSTRIAL INVESTMENT DIVISION, UNIDO, TO THE OPENING SESSION OF THE EXPERT GROUP MEETING

The Director of the Industrial Investment Division thanked the co-sponsors of the meeting, the USSR State Committee for Science and Technology and the Estonian Chamber of Commerce and Industry on behalf of the Director-General of UNIDO for their assistance and co-operation and welcomed the other participants, expressing special satisfaction that eight developing countries - China, Cuba, Ecuador, India, Mongolia, Uganda and Vietnam were represented.

He noted that this meeting was the first dealing specifically with joint ventures between enterprises in countries with differing socio-economic systems.

He then proceeded to introduce individually the UNIDO experts and staff members who would serve on the Panel of the EGM.

The Director of the Industrial Investment Division pointed out that the vast majority of joint ventures existing today are in market-economy countries. The interest in joint ventures now being shown by centrally-planned economy countries, both developed and developing, has drawn attention to the fact that the commercial and legal systems in these countries makes the establishment of international joint ventures a more complex undertaking.

In order to provide clarification of these issues and encourage joint ventures between enterprises operating in difference economic systems, UNIDO and its co-sponsors resolved to organize the EGM. Because of its specific mandate, UNIDO hoped that the meeting would also encourage firms in centrally planned economies to seek joint venture opportunities in developing countries.

Since becoming a specialized agency, the Director noted, UNIDO, recognizing the benefits of international joint ventures in terms of resource flows to the developing countries, has intensified its efforts to promote business co-operation between enterprises operating in widely different socio-economic and developmental environments. It has been helped in this endeavour by its global network of nine Investment Promotion Services and their success in finding foreign partners for investment project sponsors in developing countries.

The Director expressed his satisfaction that Ecuador and Uganda were represented at the EGM by delegates of their countries to the on-the-job orientation programme operated by the UNIDO Investment Promotion Services, and hoped they would be able to use the knowledge gained during the meeting for industrial promotion activities after their return home.

In closing, the Director of the Industrial Investment Division appealed to all participants to contribute to the success of the EGM, so that its lessons would be of interest to an audience far wider than could be accommodated in the confines of the conference room.

PROGRAMME OF THE EXPERT GROUP MEETING

Monday, 21 March

09.30 - 10.30	Registration
10.30 - 11.30	Opening session
11.30 - 12.30	Introduction to Joint Ventures: definitions, forms of joint venture partnerships agreements (C. Newman, J. Radon))
14.30 - 15.30	Types of joint venture partners (C. Newman, J. Radon)
15.30 - 16.30	Motives for Establishing Joint Ventures (C. Newman)
16.45 - 17.30	International Joint Ventures in Developing Countries - the UNIDO Approach (J. Watts)

Tuesday, 22 March

09.00 - 12.30	The "Investment Climate" and its effect on the establishment of international joint ventures (C. Newman, B. Vukmir)
14.30 - 17.15	An international industrial joint venture - presentation of a case study (C. Walker-Brosio)
17.30 - 18.30	Practical aspects of operating and managing joint ventures in the USSR - a Soviet viewpoint (L. Vainberg)

Wednesday, 23 March

09.00 - 11.45	Drafting joint venture agreements and related contracts (J.-J. Lecat)
11.45 - 12.30	Experience of establishing and operating joint ventures between Estonian and foreign enterprises (T. Sildmae, P. Tammoja)
14.30 - 17.30	Methodology for the preparation of joint venture projects (W. Behrens, V. Klykov)
17.30 - 18.30	Main principles of evaluating profitability of joint ventures in the USSR (V. Ranenko)

Thursday, 24 March

09.00 - 11.30	Implementation of international joint venture projects (N. Scott)
11.30 - 12.30	Financial and currency exchange issues relevant to joint ventures in the USSR (Y. Grevtsev)
14.30 - 16.15	USSR joint venture legislation (N. Voznesenskaya)
16.30 - 17.30	Financial analysis of joint ventures in the USSR (A. Rubtsov)
17.45 - 18.30	Forthcoming changes in Polish joint venture legislation (J. Kozinski)

Friday, 25 March

09.00 - 11.00	Practical experience with the implementation of East-West joint ventures contracts (W. von Lingelsheim-Seibicke)
11.15 - 12.30	Joint ventures of Socialist countries in developing countries (V. Teperman)
14.30 - 16.15	An international industrial joint venture in Africa (presentation of a case study) (J. Radon)
16.30 - 17.30	Designing and implementing international joint ventures in the USSR - a case study (J. Nyrola)
17.30 - 18.30	Panel discussion

Saturday, 26 March

09.00 - 10.30	Joint venture opportunities in Estonia (E. Lohk, N. Stainberg)
10.30 - 11.00	The Interkvadra international joint venture (A. Borisik)
11.00 - 13.00	Experts' conclusions and summing up, acknowledgements and valedictory remarks

SUMMARY OF THE PROCEEDINGS OF THE EXPERT GROUP MEETING

This summary is based on a verbatim account of the proceedings of the expert group meeting prepared by the UNIDO rapporteur. In view of the comprehensive treatment of the topic provided in the documents submitted to the expert group meeting by members of the EGM's panel and discussed both by panel members and other participants, the contents of the report deal mainly with those items not fully covered in these documents.

PART I. TOPICS COVERED DURING THE DELIBERATIONS

DEFINITION AND STRUCTURE: International joint ventures are commercial undertakings in which two or more partners from different countries share the responsibility of operating a business venture by providing risk capital in previously agreed proportions, technical know-how, and management skills.

A joint venture can be structured so as to require a relatively small cash outlay by the foreign investor with increased participation through later capitalization schemes. The foreign investor may also bring in technology as his stake in the capital of the joint venture. A joint venture can provide an opportunity of redeploying reconditioned plant and equipment at more than its book value. Where a foreign investor is unwilling to guarantee loans to the venture, the domestic partner can provide such guarantees, thus reducing the foreign partner's risk. The loan can then be repaid out of the joint venture's earnings. The foreign partner's share of the capital may increase substantially during its life.

MOTIVES: Joint ventures must clearly yield some benefit to all parties concerned and therefore take due account of their interests and expectations. In some countries, joint ventures are the only legally permissible vehicle for foreign investment.

The motives of firms in centrally planned economies for entering joint ventures are numerous: earning foreign exchange, acquiring more advanced technology and production methods, gaining access to new markets, and import substitution.

Enterprises in market economy countries view joint ventures in centrally planned economies as a means of gaining access to untapped markets, sourcing raw materials, or developing tourism which can relatively easily generate foreign exchange. They may be able to use existing know-how as their stake in the capital of the joint venture, or they may be able to licence a process which will generate income, regardless of whether the joint venture itself is profitable.

Disadvantages include the fact that the production inputs required by joint ventures are usually not included in the central economic plans, and difficulties may therefore arise in obtaining raw materials and intermediate inputs from State corporations. Joint ventures should therefore be as well integrated as possible into the economic planning system of the host country.

INVESTMENT CLIMATE: The main elements of the investment climate are: political stability, relations between ethnic and religious communities, the state of the economy (balance of payments, growth rate, inflation, convertibility of local currency, etc.), procedures for remitting profits and repatriating capital, rules regarding foreign equity participation, protection of foreign investment against expropriation and other non-commercial risks, import licenses, and the taxation system.

Naturally the host country laws must be respected by all, including foreign investors. However, countries wishing to attract foreign investment must be aware of the impact of their laws on prospective investors.

The investment climate of a given country is not attractive merely because it grants generous incentives to foreign investors. Economic or political instability may lead investors to prefer other locations, regardless of the fiscal or other benefits offered them.

A company which is satisfied with the way it has been treated by the host country will tend to keep this fact to itself. Reports of unsatisfactory treatment will on the other hand spread throughout the world business community much faster.

PARTNERS: Potential joint venture partners may be identified through:

- organizations such as Chambers of Commerce and Industry.

- investors forums organized by development agencies such as UNIDO and by commercial firms.

- existing trade relationships

In centrally planned economies, it may be difficult to obtain complete financial data about a potential partner partly because of differences in accounting principles and practices. As a general rule, it seems prudent for the prospective partner first to try some less closely integrated form of cooperation. Only after becoming fully conversant with each other's strengths and weaknesses and developing mutual confidence - e.g. through a trading relationship - should the partners attempt to conclude a joint venture arrangement.

DRAFTING JOINT VENTURE AGREEMENTS: The drafting of a joint venture agreement is a matter of the utmost importance and must as far as possible provide for all eventualities. It is not appropriate to include a feasibility study as an integral part of joint venture agreements because such studies are projections of future events, not facts. However, the question of how the partners will share the cost of any feasibility study required should be settled in the main body of the agreement.

The use of model clauses is not recommended since they are unlikely to fit the requirements of a specific case. General guidelines are preferable which have the flexibility needed to fit an infinite range of individual cases.

PRODUCTION: One of the main problems in operating joint ventures in centrally planned economies is that because joint ventures are not normally included in the State central plan, there is no provision to supply them with raw materials and other production inputs. However, one can now witness the transition from a system of central allocation to a system of wholesale supply so that joint ventures may obtain needed items both through the central supply mechanisms and from regional distribution agencies. In the Soviet Union joint ventures have a legal right to purchase direct from State enterprises, but not all such enterprises are prepared to do business with them.

PRICES: In centrally planned economies, joint ventures are subject to a system of government price regulation. There are three principal scenarios :

(1) transactions with central or wholesale supply agencies for the acquisition of equipment and other inputs: prices are set by the government at a relatively low level, there being often an element of subsidy;

(2) dealings with domestic consumers: prices may be freely negotiated on the basis of supply and demand;

(3) overseas trade: world market prices are used.

Joint ventures can also purchase for convertible currency through foreign trade corporations goods that are either not produced in the country or are produced there but earmarked for export.

STAFF POLICIES: As a general rule the managers of enterprises in market economies have greater autonomy in day-to-day decision-making than their counterparts in centrally planned economies, and due allowance must be made for this fact in defining the responsibilities of managerial staff of joint ventures, whose performance will be stimulated by greater freedom of action.

Where performance related rewards and incentives are introduced, eg. training abroad, flexible salary scales, and bonuses, these should apply not only to foreign managerial but also to local staff.

It may be desirable to introduce performance-related remuneration and disciplinary practices for local staff of joint ventures even if these are not entirely compatible with those obtaining in other types of enterprise, since foreign investors will be guided by their own business environment in deciding whether operating conditions in the host country allow them to earn an acceptable return on their investment.

SETTLEMENT OF DISPUTES: Joint venture agreements normally provide for arbitration in the case of disputes which can not be settled by the partners themselves. The inclusion in the joint venture agreement of procedures to settle disputes which fall short of requiring arbitration is widespread, since once the partners reach the stage of formal arbitration, to all intents and purposes the joint venture has failed. The arbitration provision thus has the function of an ultimate deterrent that should never be used.

Major causes of disputes are:

- Dilatory performance of his obligations by one of the partners.
- Differences in opinion as to how the joint venture should develop. For example one partner may wish to introduce a new product line that the other partner does not regard as profitable.
- Problems of valuing the shares in a joint venture upon its termination,
- Dividend policy,
- Capital investment decisions,
- Representation on the board of management,
- Sale of shares in the venture to new partners.

It is therefore important to preempt situations of potential conflict, e.g. selection of host country personnel, host country partner's role in operational management, remuneration of employees, purchases of production inputs, etc. No completely satisfactory solution to these problems has been found in any of the centrally planned economy countries that are currently seeking to promote international joint ventures.

FINANCING: It is a requirement of joint ventures in centrally planned economies that they operate on a self-financing basis, and that their foreign exchange income must at least be enough to cover their foreign exchange expenditures. Thus, joint ventures must earn sufficient foreign exchange to cover the cost of raw material and other production inputs pruchased from abroad, expatriate workers' remuneration and dividends payable to foreign partners. Any foreign currency remaining after meeting these costs may be used in payment of the local partner's dividend.

In assessing risks and granting loans, the initial capital is not the main criterion but is of great significance. Any feasibility study should therefore include an analysis of the joint venture's foreign currency earning capacity.

JOINT VENTURES IN THE SOVIET UNION: At present there are some 35 registered joint ventures in the Soviet Union with a total capital of 200 million roubles, of which the share of foreign investment is about 80 million roubles. A further 50-60 projects are in process of finalization while negotiations have begun on a further 100 joint venture projects.

Obtaining supplies: One of the problems faced by USSR joint ventures is obtaining production inputs, since the needs of joint ventures are not normally provided for in the country's central economic planning system. Although a transition from central allocation to a wholesale distribution system has begun, joint ventures may still find themselves compelled to acquire production inputs produced in the Soviet Union through foreign trade corporations, paying nearly twice the domestic price. The decree which makes joint ventures with foreign companies possible has only recently been promulgated, and does not define the various possible types of co-operation, so that initially arrangements which stop short of a joint venture such as subcontracting, licences and export processing arrangements may be more appropriate.

Currency of investment: Prospective foreign partners may be allowed to use roubles acquired legitimately as their contribution to the initial capital of a joint venture with a Soviet partner.

Currency of disbursements: The basic rule is that Soviet joint ventures should cover all disbursements in convertible currency, e.g. raw materials purchased abroad, expatriate workers' salaries and dividends paid to the foreign partner, from his original capital contribution or from convertible currency earnings. Local expenses should be payable in local currency. However, sometimes Soviet business partners, such as Aeroflot, may attempt to obtain payment for services rendered in convertible currency, owing to a misapprehension regarding the status of joint ventures.

Any remaining convertible currency balance may used to pay all or part of the Soviet partner's dividend. Sometimes a foreign partner may wish to receive part of his dividend in roubles to meet local currency costs. The question of how a foreign joint venture partner may use roubles acquired through the payment of dividends has however yet to be finally resolved.

Joint ventures may obtain loans from Soviet banks, provided the gearing ratio is reasonable. Foreign assets may be used as security.

The Soviet accounting system is different from that of Western countries, so it may be necessary to run two accounting systems to ensure the requirements of both partners are met.

Transactions with Soviet enterprises: A joint venture may carry out transactions with Soviet customers and suppliers in convertible currency. This means that the joint venture can earn hard currency through dealings with Soviet business partners who have foreign currency at their disposal.

Loans from Soviet banks: In the USSR, a joint venture that has experienced a loss in one financial year, but expects to make a profit in the following year, may be able to get a bridging loan from the State Bank of the USSR. However, if such losses are envisaged by the feasibility study, the initial capital should be sufficient to cover this shortfall.

Training and orientation: There is a pressing need to provide Soviet managerial staff with knowledge of conditions in other countries - through seminars, on-the-job orientation, publications, etc. There is also a need for comparisons between Soviet legal provisions and those in Western countries.

Remuneration: One of the problems with which joint ventures in the Soviet Union have been confronted is that the Soviet engineers and managers employed by joint ventures are paid the same as those in the state-owned enterprises, whereas staff at lower levels may receive higher pay than in Soviet enterprises if qualifications and experience, e.g. knowledge of a West European language, justify this. Therefore, one change which would further foster the development of the joint venture is the removal of the restriction on the payment of higher wages to Soviet managerial staff.

Travel arrangements: Staff of joint ventures may travel freely within the USSR in performance of their official duties. The period for issuing an entry visa has been reduced from ten to two days. Multiple visas can also be obtained. The USSR is hoping for reciprocity with respect to movement of Soviet personnel of joint ventures in market economy countries, since difficulties are still being encountered in this respect.

USSR joint venture law: All joint ventures are of the equity type. The concept of limited liability is not yet known to Soviet law, although a comprehensive companies' act which may include limited liability is in the process of being drafted. In the USSR, only legal persons are entitled to form joint ventures with foreign companies. Individuals do not yet have this right. The Soviet partner must own at least 51% of the equity capital in a joint venture, while both the chairman of the board and the director general must be Soviet citizens. In practice, day-to-day operational management, and particularly marketing and production, will be in the hands of the expatriate Deputy Director General, while the Soviet Director General will concern himself more with administrative matters and contact with the local authorities. Joint ventures are required to transfer a portion of profits to a reserve until it reaches 25% of the paid-up capital. They are also required to create a depreciation reserve. These are the only mandatory reserves. International joint ventures qualify for a two-year tax holiday after which they are subject to taxes on profits at 30% and a further 20% on dividends remitted out of the USSR. Where profits are reinvested they are exempt from taxation.

Disclosure: Joint ventures are prohibited from disclosing accounting or other information to outsiders, which may include the country in which the foreign partner is domiciled. In practice, this clause is interpreted liberally to permit the disclosure of information required under the laws of the foreign partners home country.

Tax exemptions: Any contribution in kind by the foreign partner (eg. machinery) is not subject to import duties nor export duties if subsequently repatriated. Items purchased by the joint ventures abroad are not so exempted.

Disputes: Disputes may be settled either through the Soviet courts of law or by means of arbitration.

Information on joint ventures: Further clarification of certain matters in the USSR joint venture law would facilitate joint venture operations, and wider publicity should be given to this legislation in potential partner countries. Several participants mentioned the difficulty of obtaining legal texts relating to joint ventures in the USSR. The Soviet Council of Ministers and the Consultative Centre of the Chamber of Commerce and Industry were mentioned as leading sources, however the situation is not the same as in Western countries where laws and decrees cannot enter into force until published in an official gazette. While some USSR decrees are published in the "Economic Gazette", this usually occurs after they have come into force.

The advantages of international joint ventures must also be more widely disseminated to potential Soviet partners. There is a need for information about joint ventures in other countries to be made available to Soviet personnel at all levels up to the top management echelons. This could be achieved by means of seminars, training and specialized publications.

Locating potential Soviet partners: A foreign company seeking a partner in the USSR may contact the Consultative Centre of the USSR Chamber of Commerce. There may also be contacts between regions of the USSR and foreign countries, e.g. Estonia and the Scandinavian countries, which can lead to the identification of potential partners on both sides.

JOINT VENTURES IN CHINA: Several models for industrial co-operation with or without equity participation have been tried, e.g. export processing, barter and buy-back, international leasing. There are fewer equity than contractual joint ventures, which are considered more flexible. The average negotiation for the former type is 15 months, as compared with two years for the latter.

1986-87 saw a substantial increase in the number of joint ventures. This was partly due to changes in the 1979 joint venture law which made China a more attractive venue for Western firms, but also to the participation of Hong Kong Chinese in joint ventures with small co-operatives which themselves lacked the resources to purchase machinery. Three types of joint venture are available to foreign investors: equity joint ventures, contractual joint ventures and wholly foreign-owned ventures. Between 1979 and 1986 some 10,000 ventures of these types were formed, of which 600 were of the equity type and 5,000 contractual. The total investment was US$28 billion, with US$8.5 billion contributed by foreigners. One key question remains to be resolved: how to successfully operate joint ventures in countries with planned economies with partners from market economy countries.

There are still complaints about undue interference by the authorities in the affairs of businesses, including joint ventures. However, a new law is in preparation which will strengthen the hand of the management vis-à-vis Government officials.

Meanwhile, the foreign currency balancing requirements have been relaxed somewhat so that now local currency obtained by joint ventures through sales on the domestic market may be used to purchase locally produced goods for export by the foreign partner through his international sales network. Alternatively, joint ventures with a convertible currency surplus may sell this to a joint venture with a convertible currency deficit and use the local currency thus acquired to expand the business or for some other legitimate purpose.

JOINT VENTURES IN POLAND: Forthcoming changes in Polish law will end the requirement that a minimum of 51% be owned by the Polish partner. Thus in theory the joint venture would be permissible with a 1% Polish participation. However, the provision which permits the Polish partner to terminate the joint venture will continue in force. There are no priority or pioneer industries recognized under Polish law. Any potentially viable investment project is welcomed.

Poland has developed a system of auctioning part of the foreign exchange earned by exporters to companies whose need for hard currency is so great, e.g. to purchase essential spare parts, that they are prepared to pay three to four times the official rate.

JOINT VENTURES IN HUNGARY: In Hungary there is an association of joint ventures to assist its members in their dealings with the authorities. The association has been able to resist tax increases and to obtain privileged treatment for joint ventures in the issue of licences for the import of needed production inputs.

JOINT VENTURES IN OTHER CMEA COUNTRIES: Of some 170 joint ventures that have been formed between enterprises in CMEA and in countries of Western Europe, more than half were formed between partners with a previous, non-equity type of co-operation. There are some 1,700 industrial co-operation agreements without joint equity stakes. This indicates a preference for non-equity arrangements for reasons of risk-avoidance or because of incompatibility of objectives.

CONCLUDING REMARKS: There is a need for further meetings on topics relevant to international joint venture at which industrialists from centrally planned and market economy countries can meet and discuss the opportunities for business partnership. The establishment and operation of international joint ventures would be greatly facilitated by the publication of a glossary to standardize the terminology relevant to the topic. Such a glossary would be useful not only to foreign and local venture partners, but also to Soviet lawyers who are now being confronted for the first time with some of the concepts of commercial law in the market economy countries. It is essential that such legal terms be defined clearly and unambiguously so as to be used consistently by all parties involved.

PART II. SUMMING UP OF THE PROCEEDINGS BY MEMBERS OF THE PANEL

Mr. YURI AFANASYEV (USSR Ministry of Foreign Trade Relations):

The main objectives of the meeting were achieved. We shall ask other UN agencies to play as active a role as UNIDO in this area. A seminar on joint ventures will be organized in Moscow together with UNCTAD. Participants from developing countries as well as participants from international organizations are expected to attend. Other international organizations are invited to consider organizing seminars on this topic.

Head of Feasibility Studies Branch, Industrial Operations Support Division, UNIDO:

Since the work programme covered too many topics it is not possible to cover all subjects in sufficient depth. One subject I want to draw to the meeting's attention is the UNIDO methodology for the preparation and analysis of joint venture projects which puts emphasis on the need to prepare a feasibility study for each project under consideration. The investment law of the USSR rightly points in this direction. The foreign and joint venture partners, commercial banks and promotional bodies should be interested in obtaining dependable data on markets, technology, raw material and labour inputs, commercial profitability and national economic impact of the joint venture project. Areas for future co-operation are manifold. The need for training in the preparation and analysis of joint venture projects is apparent. UNIDO has wide experience in this field. Such seminars should also focus on joint ventures with developing countries, negotiation techniques, market analysis as well as technical, financial and economic analysis. In carrying out such seminars it will become clearer what joint ventures are about. In my view the discussion of legal issues should not dominate the discussion of the joint venture issue.

Ms. LUCIA ESPINOSA (Participant in the UNIDO Delegates Programme):

The meeting has helped increase participants' understanding of matters related to the investment climate such as tax incentives in developing countries. A specific meeting for Latin America is desirable in the near future.

Industrial Development Officer, Industrial Operations Support Division:

The meeting has made it possible to assemble experts from many different countries, including the Soviet Union. There is a need to study joint ventures in greater depth and to have the information generated by the meeting made available to the developing countries. UNIDO should publish the papers of the experts and the summary of discussions and provide the report and papers to developing countries. The final report might recommend the use of the UNIDO methodology for financial and economic analysis of joint venture projects. It is necessary to continue UNIDO/USSR co-operation in conducting expert group meetings or seminars on joint ventures as the country has very good infrastructure and personnel capacities for such activities.

Mr. JANUSZ KOZINSKI (UNIDO Expert):

The meeting tried to cover all aspects of joint ventures in socialist markets and developing countries, and this goal has been achieved, although too many issues were broached and the discussion on several topics could not be concluded. In establishing joint ventures, both parties' needs and expectations as well as government policies towards foreign investment must be well understood. In addition to the needs and expectations of the partners, there is a political dimension - the government decision to permit foreign investment. This must be recognized if the joint venture is to succeed. Local manufacturers need to be convinced that joining forces with foreign investors is worthwhile and may be encouraged if offered a set of incentives favoring joint ventures over other options.

Feasibility studies should be used to reduce the uncertainty involved in a venture; they can never however guarantee commercial success.

As regards future activities, the report on the meeting should be disseminated with suggestions for further follow up. The USSR joint venture decree needs further clarification and must be publicized abroad more extensively, being little known among potential investors. Consideration should be given to organizing meetings between project sponsors and potential foreign partners like last year's successful meeting in Warsaw. The almost complete absence from the meeting of Soviet industrialists was surprising, since they are the direct counterparts of potential foreign investors.

Mr. BORIS KUROTCHENKO (USSR State Committee for Science and Technology):

The Soviet Union is willing to participate in the process of developing joint venture opportunities and organizing meetings, both on its territory and in other countries. This will make it possible to ascertain which specific measures are needed to encourage the establishment of joint ventures. We support the proposal that UNIDO should continue its work in this area in the future.

Mr. JEAN-JACQUES LECAT (UNIDO Expert):

One of the most important tools for evaluating the investment climate of a country is the legal framework and its application in practice. It is important to have the full text of new legislation. New forms of enterprise to enterprise cooperation through the transfer of technology and contractual joint ventures should be devised while maintaining the flexibility which characterizes the existing Soviet laws.

Mr. CHRISTIAN NEWMAN (UNIDO Senior Industrial Development Field Advisor):

Establishing a joint venture is like putting up a plant on a green field. It is important to define the problems involved as the best route to their solution. There is a need for careful planning through feasibility studies at all stages.

Mr. JENIK RADON (UNIDO Expert):

There is a need for a central point from which all documentation relevant to joint ventures in the USSR can be readily obtained. The USSR joint venture law must be clarified and modified so as to make it an instrument for encouraging joint ventures.

There is interest among American firms. Now is the time to begin negotiations and draw up contracts.

Mr. V. V. RANENKO (Soviet Expert):

Specialists should help prepare the program for future seminars. They should speak about substantive future developments and report on differences emerging from the practical difficulties of operating and organizing joint ventures. Feasibility studies are the cornerstone of joint venture agreements and more time should be given to discussing them than was the case at this conference.

Ms. L.A. RODINA (Soviet Expert):

The problems of terminology should be taken into consideration. It would foster mutual understanding between all our countries if a glossary could be prepared with the help of UNIDO explaining the terminology used in relation to joint ventures. Further seminars to cover certain topics in greater detail would be valuable.

Mr. A.I. RUBTSOFF (Soviet Expert):

It would be useful to divide the topic into sections so that the experts could explore in greater depth problems in which they specialize. Representatives of industry, potential partners and investors from both developed and developing countries should be invited to future meetings. In this way practical results may emerge: prospective partners can meet and joint ventures will be created. In the Soviet Union there is need for meetings like the one organized by UNIDO in Poland where potential partners can meet and discuss opportunities for cooperation.

Mr. NORMAN SCOTT (UNIDO Expert):

Joint ventures between firms in planned and market economies are still far from numerous - altogether some 170. Investment flows from market to centrally planned economy countries are correspondingly small. It is evident that subjects such as product quality, consistency of prices, and planning and administrative mechanisms have to match the requirement of a venture which is to make a profit in a competitive environment, nationally or, if it is going to generate foreign exchange, internationally.

This meeting demonstrated the will to co-operate and the good relations existing between UNIDO and the ECE. Further meetings are however needed in order to focus more closely on issues such as the regulatory environment, the interface of domestic suppliers and foreign partners, the drafting of contracts and similar topics. It is also important that UNIDO and ECE (UN Economic Commission for Europe) remain in close contact and follow up this meeting. By the end of next year, a guide to drawing up joint venture agreements will be published by ECE reflecting the advice of legal experts.

Mr. ARISTARH TROFIMOV (President of the Estonian Chamber of Commerce and Industry):

In the Soviet Union we are only at the early stages, and work is just beginning on the important area of external economic relations with other countries. Greater emphasis on feasibility studies will permit more certainty at the preparatory stages. A manual for the preparation of feasibility studies using personal computers would also be useful.

Prof. NINA VOZNESENSKAYA (Soviet Expert, Co-Chairman):

It would be useful in planning future meetings to set up working groups for discussion of specific topics. There is an urgent need for a glossary not only to communicate with foreign participants in a clearer way, but also for Soviet lawyers, very few of whom have a full grasp of certain legal concepts relevant to joint ventures, particularly as regards their application in other countries, simply because they have not been exposed to such problems. It is necessary to have a clear understanding of legal terms, as otherwise problems and misapprehension may arise. The critical evaluation of Soviet joint venture legislation by lawyers and other participatnts and the pin-pointing by them of areas of possible misapprehensions will help us better to understand the problems and gradually perfect our legislation.

Ms. CYNTHIA WALKER-BROSIO (UNIDO Expert):

It would be preferable to have smaller working groups where experts could pursue their areas of special knowledge with the other participants. There is a need for a glossary of legal terms, especially those in the area of corporate law, to give individuals from different countries and legal backgrounds involved in setting up joint ventures a clearer understanding of the meaning of such terms.

Industrial Development Officer, Industrial Investment Division:

There is a need for comprehensive informative legislation to be available. There should be a commentary on the law and perhaps in time a publication giving details of cases heard and verdicts handed down so that promoters of new joint ventures can learn from those already implemented. There are many opportunities for joint ventures between planned and market economy countries and thus a need for future meetings. UNIDO is willing to contribute to this process.

Mr. PETER ZAVIALOV (UNIDO Expert):

There should be more seminars, conferences and meetings but more carefully focussed. Soviet experts would participate in such meetings and in seminars on joint ventures in developing countries, either in those countries or in the Soviet Union with adequate representation from the developing countries. It would be desirable to define a programme of activities for 3-5 years into the future.

PAPERS PRESENTED AT THE EXPERT GROUP MEETING

1. The USSR Joint Venture Law of 1987 (J. Radon)

2. Joint Venture Financing in Developing Countries (J. Radon)

3. Joint Venture Summary Outline (J. Radon)

4. International Industrial Joint Ventures
   A Synopsis for Presentation at the Tallinn Expert Group Meeting
   (C. Newman)

5. International Joint Ventures in Developing Countries.
   The UNIDO Approach (J. Watts)

6. List of General Managers of USSR Joint Ventures and Details of the
   Ventures (in Russian)

7. General Problems Proceeding from the Experience in Establishing Joint
   Ventures in the Estonian SSR (E. Lohk)

8. Major Issues in Negotiating Joint Venture Agreements (J.J. Lecat)

9. Methodology for the Preparation of Joint Venture Projects (UNIDO)
   - Introductory Presentation (W. Behrens, V. Klykov)

10. Legal, Commercial and Socio Economic Aspects of a Joint Venture Company
    - A Case Study (C. Walker Brosio)

11. Model Joint Venture Agreement (C. Walker Brosio)

12. Main Principles of Evaluating the Profitability of International Joint
    Ventures in the USSR (V. Ranenko)

13. Practical Problems and Experience with the Implementation of East-West
    Joint Venture Contracts (W. v. Lingelsheim-Seibicke)

14. East-West Joint Ventures: Economic, Business and Legal Aspects.
    (N. Scott)

15. Experience in Planning, Establishing and Operating Joint Ventures
    in Poland (J. Kozinski)

16. Legal Aspects of Joint Ventures in the Soviet Union (N. Voznesenskaya)

17. Foreign Exchange and Credit Servicing of Joint Enterprises in the
    USSR (E. Grevtsev)

18. Short Information about the Establishment of Joint Ventures in the
    Estonian SSR (T. Sildmäe)

19. Financial Analysis of Joint Ventures in the USSR (A. Rubtsov)

20. Problems and Prospects for International Joint Ventures between Firms in
    Socialist and Developing Countries (V. Teperman)

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