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Committee of Experts on International Cooperation in Tax Matters

Report on the eighth session (15-19 October 2012)

Economic and Social Council

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Note

Symbols of United Nations documents are composed of letters combined with figures. Mention of such a symbol indicates a reference to a United Nations document.

[20 February 2013]

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Chapter I
Introduction

1. Pursuant to Economic and Social Council decision 2012/255, the eighth session of the Committee of Experts on International Cooperation in Tax Matters was held in Geneva from 15 to 19 October 2012.

2. The eighth session of the Committee was attended by 24 members of the Committee and 101 observers, including 30 country observers.[1]

3. The provisional agenda and documentation for the eighth session (E/C.18/2012/1) was as follows:

1. Opening of the session by the Chair of the Committee.
2. Adoption of the agenda and organization of work (E/C.18/2012/1 and E/C.18/2012/2).
3. Discussion of substantive issues related to international cooperation in tax matters:
   (a) United Nations Model Tax Convention update (status of the 2011 update, publication, etc.) (E/C.18/2012/3);
   (b) Transfer pricing: practical manual for developing countries (E/C.18/2012/CRP.1);
   (c) Tax treatment of services (E/C.18/2012/4 and E/C.18/2012/CRP.4);
   (d) Revision of the Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries (E/C.18/2012/CRP.3);
   (e) Article 13: capital gains (E/C.18/2012/CRP.10);
   (f) United Nations Model Convention and climate change mechanisms (E/C.18/2012/CRP.6);
   (g) Exchange of information (E/C.18/2012/CRP.2);
   (h) Dispute resolution: proposed mutual agreement procedure guide (E/C.18/2011/CRP.8);
   (i) Capacity-building (E/C.18/2012/CRP.12);
   (j) Taxation and use of mobile technology (E/C.18/2012/CRP.13);
   (k) Taxation of development projects;
   (l) Classification of hybrid entities (E/C.18/2012/CRP.7);
   (m) Article 5: the meaning of "connected projects" (E/C.18/2012/CRP.5);
   (n) Permanent establishment issues in international value-added tax cases (E/C.18/2012/CRP.9);
   (o) Article 8: transportation issues (E/C.18/2012/5);

[1] Additional information on the participants is found at http://www.un.org/esa/ffd/tax/eighthsession/index.htm.

(p) Foreign direct investment issues and corporate taxation (E/CN.18/2012/CRP.11).

4. Dates and agenda for the ninth session of the Committee.

5. Adoption of the report of the Committee on its eighth session.

Chapter II
Organization of the session

Opening of the session and adoption of the agenda

4. On 15 October 2012, the Chair of the Committee of Experts, Armando Lara Yaffar, opened the eighth session. He noted that the most urgent tasks before the Committee were the United Nations Practical Transfer Pricing Manual for Developing Countries and the discussion of taxation of fees for technical services under the United Nations Model Double Taxation Convention between Developed and Developing Countries (the United Nations Model Convention). He also expressed the hope that revisions of the United Nations Model Convention would be undertaken more regularly in the future, while recognizing the resourcing issues involved.

5. Alexander Trepelkov, the Director of the Financing for Development Office, Department of Economic and Social Affairs of the Secretariat, welcomed members of the Committee and observers.

6. Mr. Trepelkov reported on the consideration of the report of the Committee on its seventh annual session (E/2011/45) by the Economic and Social Council. During its substantive session in July 2012, the Council, in its resolution 2012/33, had welcomed the Committee's work in implementing its mandate and encouraged the Committee to continue its efforts in that regard. In addition, the Council took note of the 2011 revised version of the United Nations Model Convention. While the Council did not regard it as necessary to call for countries to present their country positions on the Model, as suggested by the Committee in its previous report, the Secretariat will make public on its website any such positions made available to it by Member States.

7. Mr. Trepelkov noted that, in the same resolution, the Economic and Social Council had recognized the work of the Financing for Development Office in developing, within its mandate, a capacity development programme in international tax cooperation aimed at strengthening developing country capacities to develop more effective and efficient tax systems. Drawing on the 2011 update of the United Nations Model Convention, future capacity-building measures will be aimed at strengthening the capacity of developing countries to negotiate, administer and interpret tax treaties.

8. In its resolution 2012/33, the Economic and Social Council also took note of the report of the Secretary-General on the role and work of the Committee (E/2012/8). The report, prepared in consultation with members of the Committee, as well as relevant international organizations, concluded that the Committee was well placed to make a distinctive, practical and enduring contribution to improving international tax cooperation while exploring further opportunities for creating greater synergies between the United Nations policy development and capacity-building work and that of other international organizations and regional bodies.

9. In view of the widespread agreement among the delegations and the members of the Committee that additional resources were urgently needed to support the work of the Committee and to enable it to fulfil its mandate, the Economic and Social Council, in the same resolution, requested the Secretary-General to "report to the

Council on further progress achieved in strengthening the work of the Committee and its cooperation with concerned multilateral bodies and relevant regional and subregional organizations" and decided to hold a one-day meeting during the first half of 2013 to consider international cooperation in tax matters, including institutional arrangements to promote such cooperation, with participation of national tax authorities.

10. In light of the fact that the four-year terms of the current members of the Committee will conclude at the end of June 2013, Mr. Trepelkov took the opportunity, at the eighth session, to thank those members for their efforts at their last annual session serving in that capacity.

11. The Chair thanked Liselott Kana for agreeing to act as Rapporteur for the session. He submitted the provisional agenda (E/C.18/2012/1) to the Committee, which adopted it. The following summary reflects discussions of the items on the agenda, although not necessarily in the order that they were held.

Chapter III

Discussion and conclusions on substantive issues related to international cooperation in tax matters

A. The United Nations Practical Transfer Pricing Manual for Developing Countries

12. The Coordinator of the Subcommittee on Transfer Pricing-Practical Issues, which was tasked with preparing the United Nations Practical Transfer Pricing Manual for Developing Countries, Stig Sollund, introduced the agenda item and presented a conference room paper on the item (E/C.18/2012/CRP.1) as well as draft chapters of the Manual. The Coordinator sought approval for the adoption and publication of the Manual.

13. Mr. Sollund noted that the Manual's goal, in its various editions over time, is to be a "living document" that will evolve to meet its purpose of giving guidance and advice to developing countries when dealing with the sort of practical transfer pricing issues they are likely to face. He noted that the mandate of the Subcommittee had been to seek broad consistency with the Organization for Economic Cooperation and Development (OECD) Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations, in view of the wide-spread reliance on those guidelines by developed and developing countries alike.

14. Mr. Sollund placed the United Nations Manual in a broader context, grounding it in the spirit of the Monterrey Consensus, in which the international community had committed itself to supporting developing countries in mobilizing their domestic resources. Mr. Sollund noted that the Committee had embarked on the drafting of the Manual not only because it is part of the Committee's mandate to discuss matters arising in the field of international taxation but also because the work is complementary to the 2011 update of the Model giving advice on the implementation of the "arm's length principle" enshrined in its article 9.

15. Mr. Sollund noted that while the first nine chapters of the Manual are based on consensus, chapter 10, on country practices, describes the practices of Brazil, China, India and South Africa, as described by Government officials of those countries. It was not considered appropriate or feasible to seek consensus views on how such officials had described their own national practice. He thanked the Governments of China, India, Japan, Malaysia and South Africa for hosting the five work sessions of the Subcommittee and expressed his gratitude to all those involved in the drafting of the Manual.

16. Following the Coordinator's introductory remarks, members of the Subcommittee presented overviews of each proposed chapter, highlighting the purpose and the approach taken in each case: chapter 1 and chapter 5 on comparability were introduced by T. P. Ostwal; chapter 2 on the business environment and chapter 4 on capacity-building were presented by Michael Kobetsky; chapter 3 on the legal environment was presented by Keiji Aoyama; chapter 6 on methods was presented by Monique van Herksen; chapter 7 on documentation was presented by Kyung Geun Lee; chapter 8 on audits was presented by Julius Bamidele; and chapter 9 on dispute resolution was presented by Carol Dunahoo. The presentation of the overviews was followed by an additional

presentation by Tizhong Liao on China's experience with transfer pricing as an example of the material contained in chapter 10, on country practices.

17. Mr. Sollund, in addressing some specific concerns raised by the United States Council for International Business in relation to the Manual, noted that the Committee was not enacting law, and that the Manual was intended to serve as an explanatory guide. Moreover, he added, the Committee was, in practical terms, not equipped with the time or resources to organize a public consultation. Mr. Sollund described the process used by the Subcommittee in the drafting of the Manual and noted that it was highly inclusive, giving a voice to business, advisers, developed and developing countries alike and thereby achieving a balanced result.

18. There was some discussion on substantive aspects of the Manual and it was agreed that the reference to the OECD Transfer Pricing Guidelines should not refer to any particular edition of those guidelines.

19. The members of the Committee approved and adopted the Manual and also requested that it be made available in printed form as soon as possible; made freely available in downloadable form from the website of the Financing for Development Office of the Secretariat; and translated into all six official languages of the United Nations.

20. The Subcommittee was thanked for its impressive efforts and, with its mandate met, it was dissolved. The Committee requested Mr. Sollund to work with the Secretariat in preparing the Manual for publication, including non-substantial editing and ensuring consistent terminology. It was agreed that comments addressing inconsistencies and errors would be received until 15 November 2012 but that matters of a substantial nature would not be considered for the first version of the Manual. Issues that could not be addressed at the present stage would be collected by Mr. Sollund until 30 June 2013 and included in a catalogue of items to be handed over to the new membership of the Committee for future discussion and possible inclusion in later editions.

21. On a separate but related issue, the secretariat drew attention to a note on transfer pricing: technical assistance and capacity-building resources (E/C.18/2012/CRP.14). The note was mainly the work of a consultant, Joel Cooper, who had surveyed the technical assistance and capacity-building resources made available to developing countries by relevant organizations, as summarized by the organizations themselves. It was proposed that the note would be refined and that it might eventually become a useful annex to the next edition of the United Nations Manual. Comments were sought by 31 December 2012.

B. Update of the United Nations Model Double Taxation Convention between Developed and Developing Countries

22. The Coordinator of the subcommittee mandated to discuss the update of the United Nations Model Convention, Robin Oliver, reported on the successful completion of the update and the publication, in English, of the Model Convention. According to Mr. Oliver, the Committee had not only updated the Model but had also clarified the existing differences between the Model and the OECD Model Tax Convention on Income and on Capital (the OECD Model). The Coordinator, who noted that the different models are not competing but rather complementary, thanked

the members of the subcommittee and the Secretariat for their contributions to the update. In order to keep the United Nations Model relevant, he reminded the Committee that regular and frequent updates are necessary, bearing in mind resourcing issues.

23. Michael Lennard, the Acting Secretary of the Committee, reported that translation of the Model is commencing, and that the English version was available through the United Nations Bookshop. Mr. Lennard clarified that although the final editing and publication of the update took place in 2012, the Model is referred to as the 2011 update owing to the fact that the Committee made the substantive decisions about it and had formally finalized it at their seventh annual session, held in 2011.

24. Mr. Lennard also drew the attention of members and observers to the note by the Secretariat on the United Nations Model Convention, which contained a brief summary of relevant articles (E/C.18/2012/3) and requested comments on the draft, for use on the website, by 31 December 2012.

C. The United Nations Model Convention and climate change mechanisms

25. The Coordinator of the Working Group on Tax Treaty Issues related to Climate Change Mechanisms, Claudine Devillet, introduced the note on tax treaty issues arising from the granting and trading of emission permits and emission credits under the United Nations Model Convention (E/C.18/2012/CRP.6). Ms. Devillet noted that she was presenting a first draft prepared by a small working group, which placed special emphasis on issues about which clarifications and feedback were needed. The draft reflected some divergent views as between different members of the Working Group. The Coordinator expressed her hope that the discussion of the subject would be useful and that comments received could be incorporated into the draft, which would be made publicly available through the Committee’s website. The Working Group would also seek written feedback from the members of the Committee. An updated draft would be presented at the ninth annual session of the Committee in 2013.

26. The substantive issues discussed were based on the market-based mechanisms established under the Kyoto Protocol, such as emissions trading, the Clean Development Mechanism, the Joint Implementation Mechanism and activities related to land use, land use change and forestry. Other cap-and-trade systems would, however, be similar enough to allow for the tax-treaty analysis of the market-based mechanisms to serve as a basis for the analysis of those systems as well.

27. The discussion focused on potential tax treaty issues that could arise in connection with the granting of emission permits by national or regional authorities, the trading of such services across borders and the issuance and trading of certified emission reductions, emission reduction units and removable units. It was noted that such permits might be auctioned, otherwise sold or granted for free, and that there are different ways in which countries might consider activities relating to emissions permits as sources of income.

Granting of emission permits and credits

28. Ms. Devillet noted that when an emission permit is granted for free, a minority of countries considers this to be taxable income at the moment of granting. A majority of countries considers emission permits as income at the specific time when they are sold or used, and they tax them at that point in time.

29. She observed that, in general, article 7 of the United Nations Model Convention (business profits) would apply when an emission permit was granted for business activities. Profits arising at the time of the granting would be taxable on a residence basis unless they were attributable to a permanent establishment situated in the other Contracting State. Consequently, where an enterprise exercises activities generating polluting emissions in the other Contracting State, those activities would generally be exercised through an installation constituting a permanent establishment and the profits from the granting of an emission permit would be attributable to that establishment and would be taxable in the State where it was situated.

30. Ms. Devillet clarified that the granting of emission permits to business for free by Governments was included in the analysis due to the fact that during the initial trial period of the cap-and-trade system of the European Union (the European Union Emissions Trading Scheme) emission permits had been granted for free. This was done to establish an adequate number of emission permits and to grant European businesses time to adapt to a market-based emissions trading system.

31. Ms. Devillet noted that since the beginning of 2012, emissions from all domestic and international flights arriving or departing to or from airports within the European Union have been covered by the trading scheme.[2] According to article 8 of the United Nations Model Convention, a foreign enterprise engaged in such transportation activities would therefore be taxable on any profits that could be recognized as a result of the granting of emission permits by a government free of charge only in the State of its place of effective management, regardless of whether or not such profits might be attributable to a permanent establishment in another State.

32. Theoretically, emission permits could be granted to owners of immovable property, but not because of business activities undertaken. Income arising at the time a permit is granted for free would consequently fall under article 6 of the United Nations Model Convention as income from immovable property. It was agreed that an example should be provided to clarify the issue.

33. Article 6 would also apply to income arising from the granting of a permit in relation to agriculture or forestry activities expressly covered under paragraph 1 of article 6. There was some disagreement with the suggestion in the note that income from mining activities would be treated differently from income from agriculture or forestry activities in article 6. Ms. Devillet agreed to investigate the issue and to suggest appropriate wording for the matter.

34. Ms. Devillet noted the view expressed in the note that articles 12 and 14 of the United Nations Model Convention referring to royalties and independent personal services do not apply to the granting of emission permits.

[2] The application of the scheme to flights into and out of the European Union has since been delayed: see http://ec.europa.eu/clima/news/articles/news_2012111202_en.htm.

35. Income arising at the time a permit is granted for free would generally be covered either by articles 6, 7 or 8 of the United Nations Model Convention. Article 21 would, however, apply in cases where the emissions of greenhouse gases with respect to which permits are granted did not result from the carrying on of a business. Ms. Devillet agreed to research whether this issue is pertinent to the Model, especially in so-called “triangular” cases.

36. The granting of emission credits was not discussed separately from emission permits due to analogies in terms of potential tax treaty issues.

Trading of emission permits and credits

37. There are no internationally recognized definitions of emission permits and credits. Generally, domestic accounting and tax laws have to be consulted to ascertain if emission permits and credits are to be treated as commodities or intangible assets. Agreement was reached that in future the deliberations of the working group should include work on definitions and characterizations of emission permits and credits. In addition, there was agreement that the word “alienation” instead of “sale” should be used in the context of trading in order to capture the fact that there might be circumstances under which emission permits and credits have to be handed over to authorities.

38. The trading of emission permits and credits and the taxation of income, which depend on treatment under domestic law, are covered by articles 6, 7 and 8 of the United Nations Model Convention. Under some circumstances, income from the alienation of emission permits and credits may also be categorized as capital gains from intangible property, in which case article 13 would apply.

39. Income derived by an enterprise of a Contracting State from the alienation of an emission permit or credit directly granted to the enterprise in connection with polluting activities carried out by it through a permanent establishment situated in the other Contracting State would generally be attributable, in whole or in part, to that establishment.

40. Income derived by an enterprise from the alienation of an emissions permit directly granted to that enterprise in connection with polluting activities carried out by it through a permanent establishment would generally be attributable to that establishment even if it had not been involved in the alienation. With respect to permits acquired on secondary markets, there are no specified rules. The taxation thereof would thus depend on circumstances.

41. In cases in which an enterprise of a Contracting State has been granted emission permits in connection with the emissions of a permanent establishment in another Contracting State and transfers those permits to another part of the enterprise, the fair market value of the permit at the time of the transfer might be taken into consideration in order to determine the profits attributable to that permanent establishment.

42. The income derived by a foreign enterprise from the alienation of emissions credits granted to it with respect to a project that it owns (in whole or in part) may be taxed in the host country where the project constitutes a permanent establishment. Such income may also be taxed in the host country where the foreign enterprise has performed services under a project development agreement through a

fixed place of business and the profits from the alienation are attributable to that permanent establishment.

43. Profits related to the alienation of emission credits acquired on the secondary market by an enterprise are not attributable to a permanent establishment constituting part of a Clean Development Mechanism project. In such a case, no direct link exists between the credits and the Clean Development Mechanism project that has generated them. A majority of the members of the Working Group considered emissions credits to be fungible instruments.

44. A bilateral treaty that follows the United Nations Model Convention may contain a "limited force of attraction" rule. The question may therefore arise whether the profits derived from the alienation of emission permits and credits in the other Contracting State that are not attributable to a permanent establishment may be taxed in that State on the basis of that rule. There was general agreement to add the issue of "force of attraction" to the catalogue of issues.

45. Article 6 of the United Nations Model Convention applies to income generated from immovable property, with particular reference to income from agriculture or forestry activities, and thus applies when enterprises trade emission permits and credits relating to their income generated by immovable property and agricultural or forestry activities. The note concluded that it would not apply to profits from subsequent resale of these permits and credits by persons for whom those profits would not constitute income from their agricultural or forestry activities. Ms. Devillet agreed to introduce a clarification or to reflect the fact that various members of the Committee considered that income from mining activities is also covered by article 6.

46. Given that the emissions from shipping activities are not covered under cap-and-trade mechanisms, article 8 of the United Nations Model Convention does not currently apply to the trading of emission permits and credits. There was agreement that the Working Group would consider the application of article 8 in terms of water transportation after the update of the commentary on that article was decided upon.

47. In respect of the definition of immovable property, it was agreed that a note of advice would be added indicating that during treaty negotiations contracting parties should clarify in which cases they would consider emissions permits/credits as immovable property covered by article 6 or by paragraph 1 of article 13.

48. In the case that non-profit establishments would alienate emission permits or credits, paragraph 6 of article 13 would apply, unless paragraph 1 of that article would be applicable.

49. The question of whether leasing of emission permits or credits would fall under article 12 was also discussed. The leasing of permits or credits would not, however, make sense under the cap-and-trade system of the Kyoto Protocol. Ms. Devillet agreed to clarify the issues in the revised note. With regard to transfer pricing, the Working Group asked for guidance from transfer pricing experts in order to complete the note on this issue.

50. Ms. Devillet and others who worked on the paper were thanked for their detailed consideration of the issues.

D. Tax treatment of services

51. Liselott Kana, Coordinator of the Subcommittee on Tax Treatment of Services, stated that the work on services has been ongoing since 2009. She recalled that during the seventh annual session, the Committee decided to start work on fees for technical services with the aim of achieving concrete results for the following session, while having a longer term view of a comprehensive review of services issues in relation to the United Nations Model Convention. She then invited Professor Brian J. Arnold to present his findings based on the papers he had prepared for the Secretariat on behalf of the Subcommittee on the Taxation of Services (E/C.18/2012/4 and E/C.18/2012/CRP.4 and Add.1).

52. Professor Arnold indicated that his overall findings on treatment of services, as indicated in his earlier papers for previous annual sessions (E/C.18/2010/CRP.7 and E/C.18/2011/CRP.7), revealed that there is no coherence or consistency on the topic in either the United Nations Model Convention or the OECD Model. Before describing how technical services are handled through different articles in the United Nations Model, he pointed out the inherent difficulty in seeking to define the term "technical services", a term sometimes used for managerial, consultancy or administrative services.

53. In the United Nations Model Convention, he continued, no specific article deals comprehensively with taxation of income from technical services. It is currently dealt with in several articles, mainly article 7 and article 14, except for specialized services, for example construction and insurance. Under article 7, he said, income or business profits from technical services can be taxed by the source country only if the non-resident taxpayer has a fixed place of business in the source country and the income is attributable to the permanent establishment. According to article 5(3)(b) an establishment is considered permanent if the non-resident furnishes services in the source country for more than 183 days in any 12-month period in connection with the same or connected project. This would result in the source country being able to tax the income from those services. With regard to article 14, if a non-resident has a fixed base regularly available in the source country then income from any profession and independent services attributable to that fixed base is taxable by the source country. In addition, if the non-resident stays in the source country for at least 183 days and furnishes services there, then the income derived from those services is taxable by the source country.

54. Professor Arnold noted how easy it could be for a non-resident enterprise to earn substantial income in a source country without being subjected to tax in that country. That problem is even more apparent when a resident is paying a non-resident for such services, as such a payment is often tax deductible in the source country. Such erosion of the tax base, he said, is often more accentuated in the case of intra-group dealings involving multinationals, where such business practices can be used to reduce taxable income from a source country.

55. Professor Arnold then outlined a number of options to address taxation of services in a more consistent manner. The choice of which option was most appropriate, however, was left to the Committee to decide as the speaker did not forward any preference. The options he outlined are as follows:

(a) Revision of the commentary in the United Nations Model Convention to provide a neutral discussion, with no recommendations, of the arguments for and against any special provision for technical services;

(b) Adding to the first option a number of cases in which specific provisions dealing with technical services have been added to actual bilateral treaties, but without any recommendation;

(c) Revision of the commentary to add a neutral discussion and provide an alternative provision or provisions, which countries would be encouraged to adopt if they decided to include special treatment of technical services in their treaties;

(d) Reduction of the time thresholds in article 5 (3) (b) and in article 14 (1) (b) to less than the current 183 days. The new threshold would apply either to all services or solely to technical services;

(e) Revision of article 12 to include technical services related or connected to the transfer of intellectual property. The change could also be included only in the commentary to article 12 as an alternative provision;

(f) Revision of article 14 to include the base erosion conditions of article 15 (2). The source country would be entitled to tax payments for professional and independent services if payments were made by a resident of the source country or borne by a permanent establishment or fixed base of a non-resident in the source country. This could be limited to technical and other similar services;

(g) Revision of article 21 (3), in which income from technical services could be defined as "other income" to fit the purpose of article 21 (3). Currently there is no limitation on source country tax under article 21 (3) but this could be added;

(h) Adding a new article and commentary dealing with income from technical services. While pointing out that some bilateral treaties include such a provision, Professor Arnold raised a number of questions that may need to be answered before going forward with this option: what are the conditions for source country tax; how is the source country going to tax (gross or net basis); and how technical services are defined. An alternative is to include such provisions in the commentary as an alternative, which is being done by OECD for the provision of technical services related to permanent establishment;

(i) Deeming a subsidiary to be a permanent establishment of its non-resident parent, therefore any income derived by the parent from services rendered to the subsidiary would be attributable to the permanent establishment and subject to tax by the source country. This would deal with intra-group services and could be extended to different kinds of services, not just technical services, but should not apply to "arm's length" services. In this particular case, it would also be necessary to decide on services provided by related entities.

56. Professor Arnold concluded this list of options to deal with fees for technical services by noting the preference of a majority of the members of the Subcommittee for a different and specific article in the United Nations Model Convention to deal with technical services. He also noted that a clear definition of technical services was needed if the Committee chose to draft a new article.

57. After the presentation, a number of participants took the floor to express their views on how to proceed, whether through the drafting of a new article or the

revision of existing ones. Those who did not support the idea of a new article argued that there were other ways to address the shortcomings raised by Professor Arnold without resorting, prematurely, to the drafting of a new article. They pointed out that the issue of tax base erosion is neither limited to technical services nor to services in general. As for the issue of a large amount of income that can be earned in a very short period of time in dealing with services, they suggested that the issue be addressed through the revision of article 5. They considered that the problem was not limited to technical services, and that the best way to solve the problem was to lower the requirements related to the existence of a permanent establishment. Concerning taxation of gross income instead of net income, they observed that technical services are generally highly skilled services involving large amounts of remuneration paid to employees or subcontractors, and that taxation on a gross basis has the potential to result in double taxation. They considered that it should be avoided or that the rate should be kept reasonably low.

58. Some of the reasons given for recommending a new article were: (a) recent changes in the global economy whereby services now represent a bigger share in the gross domestic product (GDP) of most countries — thus warranting a new article to deal with that reality, not only for technical services but for services more generally; (b) developing countries are among the most disadvantaged by the present situation as many multinationals have used intra-group services to shift profits resulting in the declaration of losses by subsidiaries in the source countries. Such situations have led to serious erosion of tax bases in developing countries at a time when they most need revenue to deal with development challenges; (c) the Southern African Development Community has taken the lead and introduced a new article dealing with technical services in their bilateral treaties and have practiced taxation on gross income with a relatively lower rate, which is easier to administer given the scarcity of human resources, while not overtaxing economic activity.

59. Another group of Committee members and observers noted that it would be risky to base any decision on the fact that there are a few treaties that already have a new article on technical services since this does not necessarily mean that both signatories of such a bilateral treaty supported the new article — it could perhaps simply be a compromise to obtain other concessions. They also pointed out that the full economic impact of shifting the tax burden has to be investigated further, and the exact meaning of technical services and their economic relevance to countries determined. In conclusion they recommended that a further study should be undertaken to answer those questions before making a decision on whether to have a new article on technical services or to address the issue otherwise.

60. After extensive discussions it was agreed by a majority of members and observers that there would be a new article dealing with technical services. Some of the issues to be addressed in that provision will be:

(a) A definition or a framework of what could qualify as “technical services”;

(b) Consideration of the modality of how the service is performed, including whether there is a need for physical presence in the source country. If that is the case, the threshold time for such presence must be determined;

(c) Consideration of whether the fact that the payment for services is simply borne by a resident of the source country or a permanent establishment situated therein should warrant the allocation of taxing rights to the source country.

It was also agreed that a more complete study should be carried out with respect to services and its taxation. Jacques Sasseville, Head of the OECD Tax Treaty Unit, and Tizhong Liao, a member of the Committee, agreed to establish liaison in order to undertake this extensive work.

61. The members of the Committee expressed their appreciation to the Subcommittee on Tax Treatment of Services for its useful contribution. The Subcommittee will continue its work until the end of June 2013 in order to work on the above issues and in order to produce a text, which will be published on the United Nations website. Further considerations, if required, will be presented at the next annual session. Professor Arnold was also thanked for his very helpful papers and for his presence at the annual session.

E. Exchange of information

62. Robin Oliver, a member of the Committee, provided an update on the exchange of information. After recalling that the Committee had focused its work in this area on updating article 26 of the United Nations Model Convention, he reported on some relevant developments within OECD. The following three main issues on the exchange of information were highlighted and discussed by the Committee:

(a) The meaning of "foreseeably relevant", in paragraph 1 of the article;

(b) Requests for information regarding groups of taxpayers;

(c) Automatic information exchange, as opposed to information exchange on request.

63. Recognizing that these issues required further analysis, and given that the current members of the Committee will finish their terms on 30 June 2013, the Committee agreed to include the issues in a catalogue of issues recommended for further consideration by the new membership. One Committee member referred, in the context of issue (b) above, to the importance of implementing taxpayer registration in order to take full advantage of the automatic exchange of information. Another Committee member suggested considering the issue of the use of information for purposes other than taxation, and this was added to the list of issues for consideration by the new membership.

F. Article 5: the meaning of "connected projects"

Connected projects

64. The discussion on the topic of connected projects was facilitated by a note prepared by Claudine Devillet (E/C.18/2012/CRP.5), which addressed the provision in article 5 (3) (b), which states that:

"3. The term 'permanent establishment' also encompasses:

…

"(b) The furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only if activities of that nature continue (for the same or a connected project) within a Contracting State for a period or periods aggregating more than 183 days within any 12-month period commencing or ending in the fiscal year concerned."

65. In presenting her note, Ms. Devillet recalled the mandate given by the Committee at its previous session that a note be prepared to clarify the meaning of "connected projects" within the context of article 5 (3) (b). She mentioned that the main finding of the Subcommittee on the Taxation of Services was that the term was used as a criterion to determine whether or not there was a permanent establishment when services are performed in the source country by employees or other personnel of a non-resident entity for a period determined by the threshold, which in this case was a threshold presence of more than 183 days. In this regard, the question whether different projects could be grouped together is vital for the purposes of the "presence test".

66. Ms. Devillet indicated, however, that another member of the Committee and the Subcommittee, Anita Kapur, had a different understanding about the physical presence of personnel rendering services in a source country, and she invited Ms. Kapur to outline her position. Ms. Kapur indicated that she agreed that the service has to be furnished to an entity in the source State, but she disagreed with the fact that the performance of the service had to take place in the source State. Ms. Kapur considered that the physical presence of personnel or employees is not required by the wording of the article, which talks about where the service is furnished and not where it is performed. The requirement that "activities of that nature continue within a Contracting State" did not, in her view, imply "performance" in that State — it would meet this test if the service was furnished to the Contracting State. There was some discussion about these two interpretations, but no conclusion was reached.

67. Ms. Devillet also indicated that article 7 (1) (c) of the United Nations Model Convention, which deals with "force of attraction", might eventually be the appropriate place to resume with Ms. Kapur's concerns. Ms. Devillet further pointed out that the purpose of the paper is to explain the meaning of connected projects in the context of article 5 (3) (b).

68. The nature and forms of providing services has changed over the years. In this context, it is not uncommon for services to be furnished in a country by an entity from outside that country after a physical presence of a short duration of time, sometimes only to ensure the installation of equipment. In such cases, some speakers argued that the wording of the Model text may establish the existence of a permanent establishment if other necessary conditions are met, but other participants expressed the view that such an interpretation could not be supported by the language of article 5 (3) (b) and sound treaty interpretation. Some speakers also explained that they, as treaty negotiators, had agreed to the language of article 5 (3) (b) with the understanding that it required that the services require a physical presence in the source State for a service permanent establishment to exist.

69. In the discussion, a majority of those speaking considered that a physical presence was required by article 5 (3) (b). There were, however, speakers who considered that the text of article 5 (3) (b) was not so clear and who suggested that countries that want to make sure that a physical presence is required should use a text that clearly makes such a requirement, for example the alternative text in the

OECD Model. There were other speakers who did not consider a physical presence as necessary to apply the provision.

70. A member of the Committee suggested that the session should not just try to avoid difficulties or dismiss concerns raised by a number of countries as these diverging views on interpretation may potentially end up in conflicts, or in court, with costly financial implications for taxpayers and national administrations. The work of the Committee ought to be focused on assisting countries by pointing out these diverging views so that when countries enter bilateral tax treaty negotiations these matters can be discussed and resolved. A paper discussing these options was recommended.

71. Following that recommendation, Ms. Devillet explained why the use of the provision "same or connected projects" should be regarded from the point of view of the enterprise furnishing the service and not from the perspective of the consumer, a view which is consistent with the OECD commentary. In fact, she argued, if an enterprise provides services to a consumer for two different projects through two different departments using different personnel, then the two projects are not related and therefore the provision on "same or connected projects" cannot be applicable. She indicated, however, that two members of the Subcommittee disagreed with that understanding.

72. The comment provided by Liselott Kana concerned the fact that in the OECD commentary, the point of view of the enterprise furnishing a service is considered only in the case of the "same" project, therefore the point of view could not automatically be assumed to be valid for the case of "connected projects". The second comment from Ms. Kapur is that both the points of view of the enterprise furnishing the service and of the consumer should be considered in order to determine if "the same or [a] connected" project exists.

73. While some Committee members and other participants held the same view as Ms. Devillet, others thought the purpose of the provision on "same or connected projects" was to avoid a situation where an enterprise that does not want to have a permanent establishment in a country where it provides service would just split projects up into different parts and seek to avoid the threshold of the 183 days in any 12-month period. With this in mind, it seems logical to look at the provision from the consumer's point of view, rather than that of an enterprise that is trying to avoid the provision. Other members argued that the difficulties and restrictions implied by using the wording "the same or a connected project" could be avoided by simply not including such wording in the treaty text and that their view should also be reflected in the paper.

74. Ms. Kapur clarified her position by explaining that when it is obvious that two projects are not connected to each other both from the perspectives of the enterprise and of the consumer there is no problem. However, she continued, in the hypothetical case of a company from a source country buying machinery from a non-resident company and also retaining services from the same company to provide software to run the machinery, this is clearly the same project, or at least the two projects are connected from the perspective of the consumer. However, the machinery and the software may be provided by two different departments of the provider. In this case, she concluded, the provision should apply to determine that there is a permanent establishment once other criteria are met.

75. In the end it was recommended that Ms. Devillet redraft the paper, including the type of situation described by Ms. Kapur and taking into account other comments made. In drafting the paper within the Subcommittee, Ms. Kana agreed to give her contribution so that her comments on separating the cases of "the same project" and "connected projects" would also be dealt with.

G. Dispute resolution: proposed mutual agreement procedure guide

76. A guide to the mutual agreement procedure (E/C.18/2011/CRP.4), prepared by the Subcommittee on Dispute Resolution, was presented to the Committee by the Coordinator, Ms. Devillet, for its approval. Several members of the Committee requested that the Guide be amended to express their view that, in case of audit settlements, taxpayers should be prevented from re-opening their cases through mutual agreement procedures. As a result, Ms. Devillet redrafted the passages in contention to bring them into line with that recommendation.

77. The contentious passages and the resolution were as follows:

(a) In paragraph 25 of the guide, there was agreement to make use of the text of paragraph 3 of the United Nations commentary on article 25;

(b) Concerning audit settlements, in paragraph 81, in order to acknowledge the position of some tax authorities, and after discussions, a new text was agreed upon. It was agreed that a waiver of right to access the mutual agreement procedure in audit settlements should be avoided, especially in cases involving an activity or transaction with potential tax consequences in more than one jurisdiction. However, tax authorities consider that an audit settlement may include in its terms a limit on further recourse to mutual agreement procedure by the taxpayer those tax authorities should make that policy public;

(c) In paragraph 141, there was consent to clarify the application of article 25 in cases where paragraph 3 of article 9 of the United Nations Model Convention is applicable;

(d) In paragraph 142, the following phrase was deleted: "Paragraph 3 of article 9 does not technically preclude access to the mutual agreement procedure but merely removes the requirement that State A make an appropriate correlative adjustment when the conditions of the paragraph are met".

78. Ms. Devillet and the Subcommittee on Dispute Resolution were thanked for their good work and for advancing international dispute resolution.

H. Capacity-building

79. The Coordinator of the Subcommittee on Capacity-building, Ifueko Omoigui Okauru, provided an update on its work (E/C.18/2012/CRP.12), including an update of the website on the South-South Sharing of Successful Tax Practices project and the participation in a side event organized by the African Development Institute and the African Development Bank on the role of South-South cooperation in domestic resource mobilization. She also referred to a plan to expand the website's country correspondent network.

80. Erika Siu of the South-South project, after recalling its scope and goals, detailed the enhancements made to its website. Afterwards, in follow-up to a request addressed by the Committee to the Subcommittee on Capacity-building at the previous session, Richard Gray and Chris Williams delivered a presentation on the use of mobile technology for taxation and government payments and highlighted the relevant threats and opportunities.

81. Finally, the secretariat provided an update on relevant developments within its new capacity development programme in international tax cooperation, aimed at strengthening the capacity of ministries of finance and national tax authorities in developing countries to develop more effective and efficient tax systems, which support the desired levels of investment, and to combat tax evasion. These included: the new mandate contained in Economic and Social Council resolution 2012/33, progress of work on developing the "United Nations Course on Double Tax Treaties" based on the 2011 update of the United Nations Model Convention and other capacity development initiatives.

82. The Subcommittee and the secretariat were thanked for their efforts in this important area of capacity development. In view of its ongoing work, the Subcommittee will remain operational until the end of June 2013.

I. Taxation of development projects

83. Mr. Sasseville, of the OECD Tax Treaty Unit, introduced the issue of taxation of development projects, a subject on which he and Victor Thuronyi of IMF had reported on regularly to the Committee at previous annual sessions. He noted that in 2006, in a discussion paper on the "Tax treatment of donor-financed projects", the presumption that donors should seek complete tax exemption for projects that they finance in developing countries was questioned. Following the discussion of that paper draft guidelines were written on how to regulate the tax treatment of donor-financed projects.

84. A consultation process on this issue ensued, and both donor agencies and the tax administrations of developing countries were contacted and informed of the discussion. From the side of donors, there was unfortunately little interest in the issue. The African Tax Administration Forum has shown interest but it had a very full agenda and, up to this point, there has been no formal consultation or discussion on the matter.

85. Both Mr. Sasseville and Mr. Thuronyi were thanked for their work on the issue. There was some support within the Committee for maintaining the item on the Committee's agenda, and some members undertook to try and raise awareness of the draft guidelines. It was agreed that at the next meeting of the Committee there should be a short discussion on how to raise the awareness of countries of the issue in order to further this work.

J. Classification of hybrid entities

86. Following the request of the Committee, at its seventh session, a note was prepared by Mr. Thuronyi on coordination rules as a solution to tax arbitrage

(E/C.18/2012/CRP.7). As Mr. Thuronyi was unable to attend the eighth session, his paper was introduced by the secretariat.

87. The main finding of the paper was that international arbitrage, based on situations where a transaction, for tax purposes, is treated differently by the countries having an interest in the transaction will become more frequent as the taxpayer(s) seek to take advantage of that inconsistent tax treatment across different tax jurisdictions. In his paper Mr. Thuronyi proposed that even in the case of different tax policies, countries may reduce such arbitrage by instituting harmonization or coordination rules. Such rules would, in particular, seek to eliminate dual residency issues.

88. The participants recognized the issue of arbitrage in relation to hybrid entities as an important one that needs to be studied further. There was caution within the Committee, however, about at addressing the issue too broadly. After some discussion, it was agreed that the immediate way forward was to first tackle the problem within the application of a treaty and country experience, including the experiences of developing countries. Henry Louie, a Vice-Chair of the Committee, offered to produce a paper presenting how treaty provisions are applied in this context, within the United States of America, including examples where benefits are given or denied, and why. Mr. Louie’s offer was accepted. It was decided that Mr. Thuronyi’s paper would also be made available at the ninth session as a useful elaboration of some of the issues. He was thanked for his contribution.

K. Permanent establishment issues in international value-added tax cases

89. As decided by the Committee at its seventh session, Jürg Giraudi presented a paper on the topic of permanent establishment issues in international value-added tax cases (E/2011/45, para. 118). Mr. Giraudi reminded the Committee of its broader mandate, which goes beyond tax treaties. More than 150 countries have a value-added tax (VAT) or goods and service tax (GST) in place. VAT/GST is an important revenue creator for tax administrations, with less distortionary effects on economic growth than income taxes. To date, there is little coordination in terms of indirect taxation: aside from the Ottawa Taxation Framework Conditions (1998), which focus on taxation issues arising from e-commerce, Mr. Giraudi mentioned the OECD International VAT/GST Guidelines (2011) and the first meeting of the OECD Global Forum on VAT, held in November 2012. He expressed the view that international consensus on some VAT issues is lacking and that there is scope for additional work while expressing caution that work carried out by other organizations, such as OECD, must not be duplicated. The focus of the work of OECD has been on VAT on services and intangibles however, rather than VAT on the supply of goods.

90. Mr. Giraudi introduced VAT as an indirect tax on consumption. The financial burden is borne by the final consumer according to the destination principle. Imports of goods are subject to an import VAT, VAT on local supplies underlies local VAT regimes and exports are zero rated.

91. Subsequently, Mr. Giraudi introduced some examples displaying problems that could arise from VAT when companies engage in cross-border trade. He posed some questions concerning VAT, such as whether a VAT registration of a non-resident

seller could trigger a permanent establishment, and thus income taxes. Moreover, he questioned what kind of consequences arise, in terms of VAT, from transfer pricing adjustments. Finally, Mr. Giraudi proposed that a group should be established to study cross-border VAT implications, including different practices, and that the group should ultimately make recommendations for the adoption of best practices.

92. The members of the Committee showed support for further work on the issues raised by Mr. Giraudi. It was agreed, however, that future work in this area should not only focus on goods but also on services. There was agreement that Mr. Giraudi and Marcos Pereira Valadão, as members of the Committee, should work together to produce a note on cross-border VAT issues to be presented at the ninth session of the Committee, drawing upon other expertise, as needed. Mr. Giraudi was thanked for his work and the secretariat remarked that the Committee was now considering VAT and GST for the first time since its establishment — a potentially important development in the history of the Committee.

L. Article 8: transportation issues

93. As requested by the Committee, Ron van der Merwe, with Michael Lennard of the secretariat, introduced a note on auxiliary activities under article 8 (E/C.18/2012/5). It was noted that at the seventh session of the Committee concern had been expressed about updating the commentary on article 8 (Shipping, inland waterways transport and air transport) on the "auxiliary activities" sufficiently closely connected to the direct operation of ships and aircraft to come within the ambit of the article. Some members felt that updating the commentary in a way that was similar to the updates made to the OECD Model could, in effect, broaden the scope of the article and give a greater exception to the normal treatment under articles 5 and 7 than was justified.

94. In his presentation, Mr. Lennard compared the current wording used in both the United Nations Model and the OECD Model commentaries, highlighting that OECD refers to "ancillary" activities rather than "auxiliary" activities, perhaps in order to distinguish these activities from the "preparatory or auxiliary" activities under article 5(4) of its Model. He indicated that some usages in the commentary, such as references to advertising as "propaganda" and single-use hotels, as well as to containerization as a recent phenomenon, clearly needed updating.

95. During the discussion, some Committee members expressed the view that the terms "auxiliary" and "ancillary" are not interchangeable and that referring to the latter would broaden the scope of application of the aforesaid provision, and thus reduce source State taxing rights. In addition, it was stated that "auxiliary", being a more precise word, was easier to interpret than "ancillary". Others expressed support for updating the terminology in the Model commentary along the lines of the current language adopted in the OECD Model commentary, thus referring to "ancillary" activities instead of "auxiliary" activities. As a result, the Committee agreed to ask the secretariat to revise the abovementioned note in order to reflect those views, and to that end it invited comments by the end of 2012. Moreover, as the current membership of the Committee is due to expire on 30 June 2013, it was agreed to include the aforesaid issue of revising the commentary in relation to "auxiliary activities" in the catalogue of issues to be further considered by the

members of the Committee at the next annual session. Mr. van der Merwe and the secretariat were thanked by the Committee for their work on the matter.

M. Foreign direct investment issues and corporate taxation

96. In accordance with the Committee's request at the seventh annual session (E/2011/45, para. 118), Robin Oliver gave a presentation on how tax on foreign capital negatively affects the volume of investment, resulting in lower wages and/or higher unemployment (see E/C.18/2012/CRP.11). Issues of location-specific economic rents and their relevance to articles 5 and 7 on permanent establishment and business profits, article 6 on income from immovable property, article 9 on associated enterprises, article 10 on dividends, article 11 on interest and article 12 on royalties were discussed.

97. The presentation was well received and drew comments on issues such as location-specific rents associated with natural resources and the need for appropriate tax policies for resources exploitation in many developing countries, which were, according to a number of participants, losing out on such revenue. They considered that those exploiting the resources were often provided with tax exemptions that could not be economically justified, while their activities led to externalities, for example environmental damage, that negatively impacted local communities, which, oftentimes, were not appropriately compensated. The Committee thanked Mr. Oliver for the interesting presentation, and agreed that these issues were very relevant to the Committee's mandate. They agreed that foreign direct investment issues and corporate taxation, including resource taxation issues for developing countries, should be kept on the Committee's agenda, that a working group would be formed to work on the specific issues for developing countries of natural resources and tax revenue and that the Chair would consult with Mr. Oliver on how to take the general item forward and on the formation of the working group.

N. Revision of the Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries

98. The topic was presented by Bernell Arrindell together with Tomas Balco, Stephen Crow and Jon Bischel. The documents were re-presented from the seventh annual session and the presentation was mainly based on comments received since that session (see E/C.18/211/CRP.11 and Add.1-7). Mr. Arrindell reiterated the need for as many comments as possible so that the final project would be useful to a large audience.

99. The main topics discussed in the Manual include the identification of the need for a treaty between potential partners, the interpretation of provisions of the treaty in the context of country law, the interpretation of tax avoidance and tax evasion, mutual administrative assistance and exchanges of information.

100. In addition to written comments already received by the Subcommittee on revision of the Manual, the participants also suggested that Manual should address: (a) relevant articles of the Vienna Convention; (b) the need for a treaty and the economic interests of both partners; (c) guidelines for the preliminary evaluation to determine if a treaty is actually needed with a particular country; and (d) the

relevance of investment protection agreements and other agreements, which, along with agreements to avoid double taxation, are often seen as part of a package to attract trade and investment. It was also noted that the draft chapters needed updating to reflect the 2011 update to the Model.

101. In concluding, Mr. Arrindell said that the comments would be taken into account and he invited the Committee members and others to submit their comments by the end of February 2013 so that the Subcommittee would have enough time to produce a final draft, which should be available by the end of June 2013.

102. The Committee agreed that the final draft prepared by the Subcommittee before it is disbanded at the end of June 2013 would be put before the Committee at its ninth session so that it could decide how it wishes to proceed. The Committee asked the secretariat to seek additional resources to advance the work to strengthen the capacity of developing countries to negotiate tax treaties. The Subcommittee was thanked for its work, with particular recognition of Mr. Bischel's more than 40 years of work on United Nations tax cooperation issues.

Chapter IV

Dates and provisional agenda for the ninth session of the Committee

103. The Committee decided to hold its ninth session in Geneva from 21 to 25 October 2013.

104. The Committee decided upon the following provisional agenda for its ninth session. The order of the substantive issues reflects the order of articles addressed in the discussions, with more general discussions following. The order of proceedings will be provisionally set by the Committee prior to the ninth session:

1. Opening of the session by the representative of the Secretary-General.
2. Election of the Chair and other officers (closed meeting).
3. Consideration of rules of procedure and other organizational issues (closed meeting).
4. Introductory remarks by the Chair of the Committee.
5. Adoption of the agenda and organization of work.
6. Discussion of substantive issues related to international cooperation in tax matters:
   - (a) Issues related to update of the United Nations Model Tax Convention:
     - (i) Article 4 (resident): application of treaty rules to hybrid entities;
     - (ii) Article 5 (permanent establishment):
       - (a) the meaning of “connected projects”;
       - (b) whether a satellite in a geostationary orbit could constitute a permanent establishment;
       - (c) permanent establishment issues in international value-added tax cases;
     - (iii) Article 7 (business profits): “force of attraction” — consideration and explanation of its operation;
     - (iv) Article 8 (shipping, inland waterways transport and air transport): the meaning and coverage of the term “auxiliary activities”;
     - (v) Article 9 (associated enterprises): update of its Commentary;
     - (vi) Article 12 (royalties): general consideration, including equipment-related issues;
     - (vii) Article 13 (capital gains): the practical implications of paragraph 4;

(viii) Article 23 (methods for the elimination of double taxation): conflicts of qualification and conflicts of interpretation 2012 as part of the climate change discussion;

(ix) Article 26 (exchange of information);

(x) Various articles: taxation of services — provision on taxation of fees for technical services;

(xi) Various articles: United Nations Model Convention and climate change mechanisms;

(b) Other issues:

(i) Issues for the next update of the Practical Transfer Pricing Manual for Developing Countries;

(ii) Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries;

(iii) Foreign direct investment issues and corporate taxation, including resource taxation issues for developing countries;

(iv) Taxation of development projects;

(v) Capacity-building.

7. Dates and provisional agenda for the tenth session of the Committee.

8. Adoption of the report of the Committee on its ninth session.

105. The Committee recognized that it would not be possible for the new membership of the Committee to address all these issues at the ninth session, and that some prioritization would be needed, but that that was best done by the new membership. It was noted in the discussions that there had been a gathering of many of the new members in an expert capacity prior to the last membership change in 2009, and that this had been useful in ensuring that the new members were acquainted with the issues involved in items listed on the provisional agenda as well as other aspects of their first annual session as members, for example, the procedural requirements for the selection of office holders. The view was expressed that repeating that sort of exercise would be helpful, if external funding could be found, as it would help to ensure that all new members could participate actively in the ninth annual session and that, thus, the momentum of the Committee would not be lost.

Chapter V

Adoption of the report of the Committee on its eighth session

106. The Committee approved and adopted the report on its eighth session for submission to the Economic and Social Council, the final text to be settled after the annual session.

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