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INTERNATIONAL PAYMENTS

NEGOTIABLE INSTRUMENTS

Suggestions as to future work on negotiable instruments:  
report of the Secretary-General

I. Brief history of the subject

1. At its first session (1968), the United Nations Commission on International Trade Law decided to include the subject of the harmonization and unification of the law of negotiable instruments in its programme of work and to give it priority.<sup>1/</sup>
2. At its second session (1969), the Commission considered alternative methods that could promote unification in this field.<sup>2/</sup> The Commission decided "to study further the possibility of creating a new negotiable instrument to be used in international transactions only", and to base its study upon an inquiry aimed at securing the views and suggestions of Governments and banking and trade institutions.<sup>3/</sup> The Commission requested the Secretary-General to make this study in consultation with other international organizations concerned.<sup>4/</sup>

- <sup>1/</sup> Report of the United Nations Commission on International Trade Law on the work of its first session, Official Records of the General Assembly, Twenty-third Session, Supplement No. 16 A (A/7216), p. 22, para. 48, sub-para. 26.
- <sup>2/</sup> Report of the United Nations Commission on International Trade Law on the work of its second session, Official Records of the General Assembly, Twenty-fourth Session, Supplement No. 18 A (A/7618), pp. 20-24, paras. 69-86.
- <sup>3/</sup> Ibid., p. 22, paras. 75 and 79; p. 24, para. 87.
- <sup>4/</sup> Ibid., p. 24, para. 87.

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3. In compliance with the Commission's request, the Secretariat prepared a questionnaire which was addressed to Governments and banking and trade institutions. The questionnaire was concerned with the following: (a) the present methods and practice for making and receiving international payments; (b) problems encountered in settling international transactions by means of negotiable instruments, and (c) the possible content of new uniform rules applicable to negotiable instruments to be used in international transactions.

4. Governments and banking and trade institutions responded to this questionnaire with replies setting forth detailed and helpful information. The Secretariat prepared an analysis of the replies received as at 31 January 1970 regarding present methods and practices in international payments and problems encountered in the use of negotiable instruments.<sup>5/</sup> This analysis (A/CN.9/38) was submitted to the Commission at its third session (1970).

5. At that session, the Commission, after further consideration of alternative approaches to the unification of the law of negotiable instruments,<sup>6/</sup> confirmed the conclusion reached by it at its second session. The report of the Commission on the work of its third session states in this respect the following:

"The Commission was unanimous in considering that the only viable approach at the current stage was for it to focus its work on a convention setting forth rules that would be applicable to a special negotiable instrument for use in international transactions. The uniform rules set forth in such a convention would only be applicable to an instrument bearing a heading indicating that it was subject to the rules of the Convention. The use of the instrument would be optional." <sup>7/</sup>

6. To carry forward the work initiated at the second session, the Commission, at its third session, requested the Secretary-General:

"(a) to complete the analysis of the comments made by Governments and banking and trade institutions regarding problems encountered in settling international transactions by means of negotiable instruments, by including

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<sup>5/</sup> A/CN.9/38, Report of the Secretary-General: Analysis of the replies received from Governments and banking and trade institutions to the questionnaire on negotiable instruments used for making international payments.

<sup>6/</sup> Report of the United Nations Commission on International Trade Law on the work of its third session, Official Records of the General Assembly, Twenty-fifth Session, Supplement No. 17 (A/8017), p. 27, para. 111. And see A/CN.9/38, pp. 41-43, para. 75, setting out possible alternative approaches.

<sup>7/</sup> Ibid., p. 27, para. 112.

the replies that were received after the report of the Secretary-General had been drawn up;

"(b) to prepare a detailed analysis of the comments made by Governments and banking and trade institutions, in response to the questions set out in the annex to the Secretary-General's questionnaire, regarding the possible content of new rules applicable to a special negotiable instrument for optional use in international transactions and to address, if deemed necessary, supplementary questions to Governments and banking and trade institutions;

"(c) to submit these analyses to the fourth session of the Commission;

"(d) to hold further consultations with interested international organizations in carrying out the work." 8/

7. In compliance with the Commission's request, the Secretariat prepared an analysis of the replies regarding the possible content of uniform rules applicable to a special negotiable instrument for optional use in international transactions (A/CN.9/48) and completed the analysis of replies regarding problems encountered in the use of negotiable instruments (A/CN.9/38, Add.1). These analyses are submitted to the Commission at its present session.

## II. Future work

8. The Commission may wish to consider whether the preparatory work carried out at its direction is now sufficiently advanced to enable it to decide on the following:

(a) The continuation of its work in respect of the unification of the law of negotiable instruments;

(b) The methods of work.

### A. Continuation of work

9. The evidence in the replies shows that there are several grounds that would justify a conclusion that work in respect of negotiable instruments should continue along the lines laid down by the Commission at its third session. Analysis of the replies indicates that the existing rules give rise to the following types of problems:

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8/ Ibid., p. 28, para. 118.

(a) As was indicated in the report of the Secretary-General on problems encountered in settling international transactions by means of negotiable instruments (A/CN.9/38), a significant number of replies report the existence of various problems resulting from divergencies among the rules of the principal legal system.<sup>9/</sup> The scope of these divergencies is further indicated in the report of the Secretary-General, submitted to the present session of the Commission, on the possible content of uniform rules (A/CN.9/48). There is a basis for concluding, for example, that a greater degree of legal certainty in respect of the liability of the various parties on an instrument would facilitate the discounting of instruments and the settlement of international transactions.

(b) The need for uniform rules is also shown by replies evidencing the existence of widely prevailing rules that have become unsuited to the practices and requirements of modern international commerce. Areas stressed in numerous replies include burdensome rules as to the form of protest and the time-limits within which protest should be made or notice of dishonour be given.

(c) A third type of problem under existing rules is the difficulty encountered by bankers and lawyers familiar with their own legal system in understanding the rules and requirements of different legal systems. For example, certain applicable legal concepts familiar in some countries are not used or understood in others.<sup>10/</sup> A related problem is the significant degree of difference in the comprehensiveness of national enactments concerning negotiable instruments: certain aspects of negotiable instruments that are dealt with in the Bills of Exchange Act, 1882, of the United Kingdom and the laws based on or related to this Act are considered to be part of the general law in countries following the Geneva system, and vice versa.<sup>11/</sup>

<sup>9/</sup> A/CN.9/38, pp. 24-37, paras. 42-62.

<sup>10/</sup> For instance, the Geneva Uniform Law on Bills of Exchange and Promissory Notes contains rules concerning the "aval" (articles 30-32) which is unknown in Anglo-American law.

<sup>11/</sup> By way of illustration, the UCC provides rules concerning the effect of a negotiable instrument on the obligation for which it is given (s. 3-802), or concerning the impact of a party's negligence on his liability where such negligence contributed to the alteration or forgery of an instrument (s. 3-406). No such rules are found in the ULB or BEA. Again, the BEA provides rules, not found in the ULB, in respect of the rights of a holder who lost the instrument (sections 69 and 70), or in respect of the rights of a person, not himself a bona fide holder, who takes an instrument from a bona fide holder (s. 29). The ULB, on its part, sets out special rules, not found in the UCC or BEA, concerning limitation of actions (articles 70 and 71).

The above sub-paragraph does not, of course, suggest that uniform rules should be so comprehensive as to exclude completely the application of national law.

10. As to the feasibility of the preparation of new uniform rules applicable to a special negotiable instrument used in international transactions, the Commission has before it at the present session the analysis of replies concerning the possible content of such rules (A/CN.9/48). A significant feature of these replies is that they show receptivity to the re-examination of national rules in the light of the needs of present-day international trade, or a willingness to consider favourably the possible adoption, in certain cases, of rules similar to those obtaining in other legal systems.

11. The above conclusions are supported by the consultations which the Secretariat has had with representatives of international organizations and by the positive response of banking and trade institutions to further inquiries conducted in the course of the preparatory work.

12. Thus there are strong grounds that would justify a conclusion that work towards the preparation of uniform rules should proceed.

#### B. Methods of work

##### Establishment of a working group

13. The Commission may wish to establish a working group and request it to prepare uniform rules applicable to a special negotiable instrument for optional use in international transactions.

14. The Commission may also wish to decide that the membership of the working group, in addition to being representative of the principal economic systems of the world and of developed and developing countries, should reflect the main legal systems of negotiable instruments law. Of the present member States of the Commission, ten States either follow or derive their rules from the "common law" approach<sup>12/</sup> and fifteen States follow the Geneva system.<sup>13/</sup> Four States do not belong to either of these systems.<sup>14/</sup>

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<sup>12/</sup> Australia, Ghana, Guyana, India, Kenya, Nigeria, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania and United States of America.

<sup>13/</sup> Argentina, Austria, Belgium, Brazil, Congo (Democratic Republic of), France, Hungary, Mexico, Japan, Norway, Poland, Romania, Syria, Tunisia and Union of Soviet Socialist Republics.

<sup>14/</sup> Chile, Iran, Spain and United Arab Republic.

Co-operation with other interested international organizations

15. At its second and third sessions, the Commission directed the Secretariat to carry out the work on negotiable instruments in consultation with other international organizations concerned. The working method followed by the Secretariat has been to arrange for meetings with specialists provided by various international organizations having an interest and competence in the field of international payments.<sup>15/</sup> In addition to the work carried out in connexion with the preparation of the questionnaire and the analyses of the replies received thereto, two meetings were devoted to a feasibility study of practicable alternative solutions for some of the major legal divergencies. In order to obtain information on practices considered relevant in the context of that study, a supplementary questionnaire was addressed informally by participants in the meeting held in July 1970 to banking and trade institutions in their country or region. An analysis of the replies received to the supplementary questionnaire was prepared by the Secretariat as a working paper for the meeting held in Vienna in January 1971.<sup>16/</sup>

16. The Commission may wish to decide that co-operation with international organizations should continue with respect to its future work on negotiable instruments. This would also assist the Secretariat to respond effectively to requests for further information and studies that the Working Group may wish to make.

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<sup>15/</sup> The following international organizations have been represented at these meetings: International Monetary Fund, Organization of American States, International Institute for the Unification of Private Law, Hague Conference on Private International Law, International Bank for Economic Development, Bank for International Settlements, and International Chamber of Commerce. Four meetings were held: 20 June-4 July 1969 (Paris), 19-23 January 1970 (Paris), 16-22 July 1970 (London), and 18-22 January 1971 (Vienna).

<sup>16/</sup> Copies of that working paper and of the paper prepared by the Secretariat as a result of the discussions at the Vienna meeting will be available at the fourth session for consultation by members of the Commission (English only). If the Commission establishes a working group, it is intended to embody the material resulting from the meetings with interested international organizations in a document that would be presented to such a working group.