

be adopted in order to promote the harmonization and unification of the law relating to negotiable instruments, the Commission is of the opinion that the first measure, i.e. securing a wider acceptance of the Geneva Conventions of 1930 and 1931 on negotiable instruments, does not offer a sufficient chance of success in the context of a world-wide unification of negotiable instruments law. The Commission considers, however, that an attempt should be made to obtain acceptance of Geneva Conventions by those countries belonging to the civil law system which have not yet ratified them, or have not yet adapted their internal legislation to them, or else are studying proposals for uniform legislation in the field.

86. As regards the second possible solution, consisting in a revision of the Geneva Conventions with a view to making them more acceptable to countries following the common law system, the Commission is of the opinion that, while a revision of the Geneva Conventions could possibly lead towards unification or harmonization and that solution should therefore not be rejected outright, problems in international transactions arising out of the existence of two major systems of law on negotiable instruments might better be solved by the third solution, consisting of the creation of a new negotiable instrument. The main reason for this conclusion is that the uniform laws forming the annex to the Geneva Conventions apply to both national and international transactions and that it would not be practicable to ask countries to modify well established rules and practices that have been developed over a considerable period of time and which appear to give full satisfaction in domestic transactions.

87. The Commission therefore decides to study further the possibility of creating a new negotiable instrument to be used in international transactions only. To this end, the Commission requests the Secretary-General:

(a) To draw up a questionnaire in consultation with the International Monetary Fund, UNIDROIT, the International Chamber of Commerce and, as appropriate, with other international organizations concerned, taking into consideration the views expressed in the Commission;

(b) To address such a questionnaire to Governments and/or banking and trade institutions as appropriate;

(c) To make the replies to the questionnaire available to the Commission at its third session, together with an analysis thereof, prepared by the Secretary-General in consultation with the organizations mentioned in subparagraph (a) above.

(b) *Studies on negotiable instruments*

88. The Commission notes that, on certain concrete points related to the circulation and effectiveness of negotiable instruments, the commercial practices of the various countries have, in the face of specific difficulties, produced similar solutions despite the differences in legal systems. The Commission is therefore of the opinion that a comparative technical study of those questions on which it may seem possible to realize a substantial uniformity will make it possible to determine the reason

for differences in legislation and may, at the same time, indicate ways of reducing such differences. Moreover, such studies and their distribution could also facilitate the harmonization of judicial practice, including that of countries having similar legislation relating to negotiable instruments, and would undoubtedly be useful also in promoting the progressive harmonization of legislation, at any rate on certain specific questions.

89. The Commission therefore requests the Secretary-General to invite, at the appropriate time, the International Monetary Fund, UNIDROIT, the International Chamber of Commerce and the other organizations concerned to prepare studies on, *inter alia*, the following questions arising in the main legal systems, with a commentary on the solutions that have been adopted on those questions in both commercial and judicial practice:

(a) The problem of forged signatures and endorsements;

(b) The stipulation of protests and the effects of failure to advise in cases of non-payment;

(c) The extent of liability under signature and guarantee endorsement.

B. *Bankers' commercial credits*

90. The subject of bankers' commercial credits was considered by the Commission at its 29th and 31st meetings, on 5 and 6 March 1969, during the general debate and by Committee II in the course of four meetings, on 10, 13 and 14 March 1969. A summary of the observations made by members of the Commission and observers of organizations during those meetings is set out in paragraphs 92 and 93 below.

91. The Commission had before it a study entitled "Documentary credits" (A/CN.9/15, annex I), submitted by ICC for the second session of the Commission. Many representatives expressed their appreciation of the study of ICC and stated that the Uniform Customs and Practice of Documentary Credits (1962 revision), drawn up by ICC, gave full satisfaction in practice.

92. Some representatives drew attention to the fact that, in some instances, difficulties of interpretation in respect of certain articles of the Code had arisen, and suggested that future work in the field of documentary credits should be concentrated on improving the Code.

93. The Commission noted with satisfaction that ICC endeavoured to keep the Code under constant review and that the problem of uniform interpretation was considered, among other matters relating to the Code, at the half-yearly meetings of the ICC's Commission on Banking Techniques and Practice. The view was also expressed that the provisions of the Code should, in due course, take account of the problems that arose in the context of new forms of inter-modal transport, i.e. transport by containers. The Commission was informed by the Observer of ICC that that Organization was at present considering such problems and would be willing to submit a report to the Commission at the appropriate time.

*Decision of the Commission*

94. At the 7th meeting of Committee II, on 13 March 1969, the representative of the United Kingdom

submitted a recommendation for submission to the Commission which was approved by Committee II at the same meeting.

95. At its 38th and 39th meetings, on 21 March 1969, the Commission considered the recommendation of Committee II and, at its 39th meeting, unanimously adopted the following decision:

"The Commission notes with approval the valuable contribution to the development of international trade made by the "Uniform Customs and Practices for Documentary Credits" of the International Chamber of Commerce ("the Code") and expresses its satisfaction with the existing arrangements of the International Chamber of Commerce for reviewing the operation of, and when appropriate revising, the Code.

"The Commission requests the Secretary-General:

"(a) To draw the attention of Governments to the contribution which employment of the Code can make to facilitating international trade;

"(b) To draw the attention of such Governments to the desirability of informing the International Chamber of Commerce of difficulties which arise in connexion with the use of the Code either by reason of divergencies of interpretation or by reason of the inadequacy or unsuitability of any of its provisions in relation to commercial needs;

"(c) To inform such Governments that the Commission commends the use of the Code in relation to transactions involving the establishment of a documentary credit; and

"(d) To inform the third session of the Commission of the steps taken to implement the request set out in sub-paragraphs (a), (b) and (c) above and of any work, in progress or contemplated, on the part of the other organizations which may affect the procedures used in connexion with banker's commercial credits.

"The Commission decides, with a view to facilitating the dispatch of the work of the Commission's third session, that the subject of bankers' commercial credits shall be included in the work programme of that session only to the extent necessary to consider any report of the Secretary-General pursuant to sub-paragraph (d) above.

#### C. Guarantees and securities

96. The subject of guarantees and securities was considered by Committee II at its 4th and 5th meetings, on 10 March 1969, and at its 7th and 8th meetings, on 13 and 14 March 1969.

97. The Commission had before it the report of the Secretary-General on Guarantees and Securities as related to International Payments (A/CN.9/20 and Add.1). Owing to the fact that this report was not available for examination by Governments prior to the second session of the Commission, many representatives, while expressing appreciation for the report, felt that they could not give adequate consideration to it at this stage. The Commission also had before it a proposal submitted by Hungary concerning the preparation of

uniform rules and practice relating to bank guarantees (A/CN.9/L.13) to which, for the same reasons, the Commission was unable to give proper consideration. In addition, the Commission heard a statement by the observer of the International Chamber of Commerce (ICC) on the work of that organization in the field of bank guarantees.

#### Decision of the Commission

98. At its 8th meeting, on 14 March 1969, Committee II approved a proposal for a recommendation for submission to the Commission.

99. The Commission, at its 38th and 39th meetings, on 21 March 1969, considered the proposal of Committee II and, at its 14th meeting, unanimously adopted the following decision:

"The Commission:

"1. Decides to defer consideration of the subject of guarantees and securities until its third session;

"2. Requests the Secretary-General:

"(a) To invite members of the Commission to submit such observations as they might wish to make on the report of the Secretary-General on guarantees and securities (A/CN.9/20 and Add.1);

"(b) To supplement his report on guarantees and securities if additional material should be available which, in his opinion, would be useful to the Commission when it considers the subject at its third session;

"(c) To invite the International Chamber of Commerce to submit to the Commission at its third session a report on its work in the field of certain types of bank guarantees, such as performance guarantees, tender or bid bonds and guarantees for repayment of advances made on account in respect of international supply and construction contracts.

#### D. Co-ordination of the work of organizations in the field of international payments

100. The Commission, at its 28th meeting, on 4 March 1969, requested Committee II to consider the question of co-ordination in respect of each of the three items under international payments, i.e. negotiable instruments, bankers' commercial credits, and guarantees and securities. The Commission was of the opinion that its decisions in respect of each of those items and the working methods contemplated therein would lead to a satisfactory co-ordination of the work of organizations in the field of international payments and that, at the present stage of its work, no further action was required in respect of co-ordination of those items.

#### CHAPTER IV

#### INTERNATIONAL COMMERCIAL ARBITRATION

101. The subject of international commercial arbitration was considered by the Commission at its 29th to 31st meetings, on 5 and 6 March 1969, during the general debate and by Committee I in the course of three meetings, on 19, 20 and 21 March 1969.