

2. *Requests* the Working Group to continue its work under the terms of reference set forth by the Commission in the decision adopted in respect of negotiable instruments at its fifth session and to complete that work expeditiously;

3. *Requests* the Secretary-General to carry out, in accordance with the directives of the Working Group on International Negotiable Instruments, further work in connexion with the draft uniform law on international bills of exchange and with the inquiries regarding the use of cheques for settling international payments, in consultation with the Commission's Study Group on International Payments, composed of experts provided by interested international organizations and banking and trade institutions, and for these purposes to convene meetings as required.

#### B. *Bankers' commercial credits*<sup>20</sup>

33. This subject is concerned with the revision by the International Chamber of Commerce (ICC) of "Uniform Customs and Practice for Documentary Credits", drawn up by ICC in 1933 and subsequently revised by it in 1951 and 1962. At previous sessions,<sup>21</sup> the Commission stressed the importance of commercial letters of credit in ensuring payment for international trade transactions and expressed the opinion that it would be in the interest of international trade if the views of countries not represented in ICC were taken into account by ICC in the revision of "Uniform Customs". In order to achieve this, the Commission, at its third session, requested the Secretary-General to invite Governments and interested bank and trade institutions to communicate to him, for transmission to ICC, their observations on the operation of "Uniform Customs and Practice for Documentary Credits", so that these observations could be taken into account by the Commission on Banking Technique and Practice of ICC entrusted with the revision.

34. At the present session, the Commission had before it a note by the Secretary-General, setting forth, in annex I, the observations of ICC in respect of its work and, in annex II, the text of the 1974 revision of "Uniform Customs and Practice for Documentary Credits" (A/CN.9/101). The Commission also had before it a report of the Secretary-General, setting forth an analysis of the observations received in respect of the 1962 version of "Uniform Customs and Practice

for Documentary Credits" and its revision by ICC (A/CN.9/101/Add.1).

35. There was general agreement among representatives that, while the Commission could not adopt the 1974 revision of "Uniform Customs", it should consider the desirability of commending the use of "Uniform Customs" in transactions involving the establishment of a documentary credit.

36. The observer of ICC, in commenting on the 1974 text of "Uniform Customs", expressed his appreciation for the valuable assistance which the Commission and its secretariat had given to ICC in the work of revision and commended the secretariat for the depth and accuracy of its analysis of the observations and comments submitted in respect of the 1962 text. That analysis indicated the changes that had been made in the 1962 text and listed the proposals that had been rejected. The observer of ICC stated that the rejection of certain proposals was due to a variety of reasons, but mainly because these proposals related to special cases and were therefore not a suitable basis on which to frame a general rule.

37. Representatives who spoke on the subject emphasized the importance of the rules contained in "Uniform Customs" in that they promoted international trade through the facilitation of payment. Several representatives commended ICC for the efficient manner in which it had promoted co-operation between ICC and those countries whose Chambers of Commerce were not members of ICC. As a result of that approach, the 1974 revision of "Uniform Customs" was a much more acceptable text than the 1962 version.

38. Some representatives, while expressing general agreement with the 1974 revision of "Uniform Customs", drew attention to the fact that "Uniform Customs" were not a set of legal rules. Because of this, they had doubts about the language used in paragraph (a) of the General Provisions and Definitions, according to which the provisions, definitions and articles of "Uniform Customs" were "binding upon all parties thereto unless otherwise expressly agreed" (A/CN.9/101, annex II). In the view of these representatives, that language was more suited to a statutory legal provision than to a rule expressive of usage or practices. The rules of "Uniform Customs" were in the nature of general conditions and were binding upon parties only if expressly accepted by them. These representatives hoped that ICC, in a future revision, would modify the formulation of the paragraph in question. The observer of ICC stated in reply that the rules contained in "Uniform Customs" were actually written into every documentary letter of credit and every application for a letter of credit; the forms used for letters of credit and for applications contained an express clause to the effect that the credit was subject to the provisions of "Uniform Customs". It was against that factual background that paragraph (a) of the General Provisions and Definitions had been formulated.

39. With regard to what action the Commission should take in respect of the 1974 revision of "Uniform Customs", most representatives expressed the opinion that, in view of the practical importance of "Uniform Customs" for international trade and of the successful collaboration between the Commission and ICC in

<sup>20</sup> The Commission considered this subject at its 155th meeting on 3 April 1975, and at its 171st meeting on 17 April 1975.

<sup>21</sup> *Official Records of the General Assembly, Twenty-third Session, Supplement No. 16 (A/7216)*, para. 48, subparas. 23 and 28 (UNCITRAL Yearbook, vol. I: 1968-1970, part two, I, A); *ibid.*, *Twenty-fourth Session, Supplement No. 18 (A/7618)*, paras. 90-95 (UNCITRAL Yearbook, vol. I: 1968-1970, part two, II, A); *ibid.*, *Twenty-fifth Session, Supplement No. 17 (A/8017)*, paras. 119-126 (UNCITRAL Yearbook, vol. I: 1968-1970, part two, III, A); *ibid.*, *Twenty-sixth Session, Supplement No. 17 (A/8417)*, paras. 36-43 (UNCITRAL Yearbook, vol. II: 1971, part one, II, A); *ibid.*, *Twenty-seventh Session, Supplement No. 17 (A/8717)*, paras. 63-66 (UNCITRAL Yearbook, vol. III: 1972, part one, II, A); *ibid.*, *Twenty-eighth Session, Supplement No. 17 (A/9017)*, paras. 37-45 (UNCITRAL Yearbook, vol. IV: 1973, part one, II, A); and *ibid.*, *Twenty-ninth Session, Supplement No. 17 (A/9617)*, paras. 30-35 (UNCITRAL Yearbook, vol. V: 1974, para. one, II, A).

respect of the subject, the Commission should recommend the use of the revised rules. One representative expressed doubts whether the Commission was authorized to commend a document emanating from another source. It was noted that the Commission, at its second session, had commended the use of "Uniform Customs" and of "Incoterms".

40. The Commission, at its 155th meeting on 3 April 1975, established a drafting group, composed of the representatives of Australia, Brazil, Egypt, Hungary and Japan, under the chairmanship of the representative of Brazil, to prepare a draft decision in respect of the item entitled "Bankers' commercial credits".

*Decision of the Commission*

41. After consideration of the draft decision, the Commission, at its 171st meeting on 17 April 1975, adopted unanimously the following decision:

*The United Nations Commission on International Trade Law,*

*Expressing its appreciation* to the International Chamber of Commerce for having transmitted to it the revised text of "Uniform Customs and Practice for Documentary Credits", which was approved by the Commission on Banking Technique and Practice of the International Chamber of Commerce on 14 October 1974 and adopted by the Executive Committee of the International Chamber of Commerce on 3 December 1974,

*Congratulating* the International Chamber of Commerce on having made a further contribution to the facilitation of international trade by bringing up to date its rules on documentary credit practice to allow for developments in transport technology and changes in commercial practice,

*Having regard to the fact* that, in revising the 1962 text of "Uniform Customs", the International Chamber of Commerce has taken into account the observations made by Governments and banking and trade institutions of countries not represented within it and transmitted to it through the Commission,

*Noting* that "Uniform Customs" constitutes a valuable contribution to the facilitation of international trade,

*Commends* the use of the 1974 revision, as from 1 October 1975, in transactions involving the establishment of a documentary credit.

*C. Bank guarantees*<sup>22</sup>

42. The Commission had before it a note by the Secretary-General setting forth the observations of ICC in respect of its work on contract guarantees and payment guarantees (A/CN.9/101).

43. The Commission was informed that ICC had encountered in its work on bank guarantees a number of fundamental problems, partly because it had attempted to prepare one set of rules applicable to several different types of guarantee. The observer of ICC stated that ICC was now carrying out a fundamental re-examination of the problem and of the working methods that should be used to carry the work to a

successful conclusion. In this connexion, he stated that ICC hoped that the Commission's participation in the work might be enhanced and that this might be achieved either by the Commission nominating a representative to attend the meetings of ICC on the subject or by the establishment of a study group, similar to the one on international payments, that would be consulted by ICC in connexion with its work on bank guarantees.

44. Representatives who spoke on the subject expressed their appreciation to ICC for wishing to strengthen its collaboration with the Commission in the field of bank guarantees. However, they were of the view that no one representative of the Commission would be able to attend the meetings of ICC and express the views of the Commission as a whole when the Commission had not yet decided what its views were.

45. Following consultations among representatives of the Commission, the Secretariat and the observer of ICC, the observer of ICC informed the Commission that ICC would not press for the participation of representatives of the Commission in the work of its Working Group, and that instead it would establish a study group on contract guarantees, in which representatives of the Commission who were interested in the question could participate in their personal capacity, together with representatives of the Commission's secretariat and of other international organizations. The Commission took note, with satisfaction, of the suggestions of the observer of ICC.

*Decision of the Commission*

46. The Commission, at its 156th meeting on 4 April 1975, adopted unanimously the following decision:

*The United Nations Commission on International Trade Law,*

1. *Takes note of:*

(a) The progress made by the International Chamber of Commerce in respect of the preparation of uniform rules on contract guarantees and payment guarantees;

(b) The suggestions made by the International Chamber of Commerce in respect of methods of work that would ensure a closer co-operation between it and the Commission in the field of bank guarantees;

(c) The intention of the International Chamber of Commerce to establish a study group on contract guarantees and to invite representatives of the Commission to participate in meetings of this study in a personal capacity;

2. *Invites* the International Chamber of Commerce to submit progress reports on its work on contract and payment guarantees to the Commission at future sessions.

*D. Security interests in goods*

47. At its third session, the Commission requested the Secretary-General to make a study of the rules on security interests in goods under the principal legal

<sup>22</sup> The Commission considered this subject at its 155th and 156th meetings on 3 and 4 April 1975.