noted that such questions were generally regulated by private agreement among the parties to an EFT operation. A question was raised in this connexion as to how much autonomy the law should allow the parties not only as regards their rights *inter se* but also as regards their legal position vis-à-vis third parties. It was suggested that, by analogy to the through-cargo rules proposed by UNCTAD under which the originating carrier remained responsible to the shipper for the safety of the cargo and proper performance of the carriage throughout the entire voyage, regardless of the use of intervening carriers, the originating bank in an EFT transaction should be likewise accountable to the customer-transferor for the proper and timely payment of the sum to the transferee irrespective of the role of any intervening banks.

40. It was also suggested that with respect at least to fraud a rule might be adopted for EFT similar to that followed for the paper-based transfer, namely, that liability should rest on the person who "enabled" the fraud to be committed.

41. The Study Group reached the preliminary conclusion that there was also a *prima facie* case for work in this area with a view to arriving at a common international position with respect to these issues. It was suggested that this could be done by way either of uniform rules or of general conditions regulating bank-customer relations in an EFT transaction.

42. *Privacy with respect to EFT data.* Two aspects of privacy were noted by the Study Group: the protection of a customer's EFT records from access by public authorities or third parties without due process of law, and the need to ensure that only data strictly relevant to the business purpose was gathered and/or stored by operators of EFT systems.

43. No common position emerged in the Study Group as to the proper international response on this issue. Some members would leave this matter to national law whereas others pointed to the ensuing difficulty should individual national laws diverge on the kinds of data which should be protected and the level of protection to be granted them where the data in question could physically be retrieved in any of the countries linked by an EFT network.

44. *Usefulness to the customer of computer-produced records.* Concern was expressed as to the effect which computerization and the consequent elimination of the traditional paper-based record might have on the availability to the customer of adequate and legally admissible records of his transactions. The customer might require such records both as proof of payment and for official (e.g. tax) and other purposes. Apart from the admissibility problem in common law jurisdictions, there was the fact that unlike in the paper-based system where the customer had in his hands a piece of paper evidencing his transactions with a bank, the evidence in an EFT situation was often in the memory of the computer of the same bank against whom the customer may have a dispute. The customer must then depend on his adversary to obtain the evidence he needs.

45. The Study Group again did not arrive at any consensus as to the appropriate international response, if any, on this question and recommended that the question be not pursued at this stage.

46. *"Float" within the EFTS; who is entitled to benefit?* The Study Group noted that under current bank EFT practices, it was customary to draw a distinction between customer-to-customer and interbank transfers: crediting was effected as soon as possible in the latter situation whereas in the former there was generally a time-lag (sometimes of up to two days) between debiting the transferor and crediting the transferee during which the bank took advantage of the interest and "float" of the funds.

47. The Group noted, however, the difficulty of establishing uniform banking rules or practices on this matter. As the experience with regard to the rules on documentary credit had shown, banking practices varied so much from country to country; banking practice in one country might consider 24 hours a reasonable time-lag while in others a period of 10 days or even three weeks would be considered normal. Account had also to be taken of the varying stages of development with respect to electronic technology attained in different countries.

48. The Group did not arrive at any recommendation with respect to this issue.

Conclusions

49. While it is true that most of the existing and operational EFT schemes are still small in scope, seen from the point of view both of the number of participants and the amounts involved as well as of the services offered, and that the more ambitious schemes are still only projections, there appears to be universal agreement that electronic funds transfer could in due course become the principal payments mechanism in and between the most advanced economic systems. Certainly, as the SWIFT project indicates, a major role can be anticipated for EFT in the field of international commercial transactions, not only because of the speed and greater reliability which it would impart to such transactions, but also because of its promise of cost-savings through the standardization of message elements and media and the reduction or elimination of such costly factors as delay, clerical errors, loss or misplacement of items, etc., which seem to be unavoidable features of the paper-based system.

50. The regulatory régime of private contract under which present international EFT operations are carried on may be said to have worked well enough so far and furthermore may be acknowledged to possess features such as flexibility and adaptability which would be desirable in any régime. Even so, its inherent limitations, as, for example, in the matter of third-party rights, as well as the enormous implications for international trade of electronic data processing in all its aspects, would appear to enjoin the elaboration, not perhaps immediately, but at some appropriate point in the future, of an international legal framework to provide certainty and uniformity in this key area of international commercial transactions.

B. Note by the Secretary-General: recommendations of the Asian-African Legal Consultative Committee (A/CN.9/155)*

1. The Asian-African Legal Consultative Committee (AALCC),[1] at its nineteenth session held at Doha, Qatar, from 16 to 23 January 1978, considered the possible composition of the future programme of work of the Commission.

2. At the conclusion of its deliberations, AALCC adopted the resolution concerning the future programme of work of the Commission that is set forth as an annex to this note.

* 4 May 1978.

[1] The membership of AALCC consists of 35 States of the Asian-African region.

ANNEX

Decision by the Asian-African Legal Consultative Committee on the future programme of work of the Commission

(Taken at its nineteenth session, Doha, Qatar, 16-23 January 1978)

The Asian-African Legal Consultative Committee,

Having considered at its nineteenth session the request of the General Assembly of the United Nations that Governments submit their views and suggestions on the long-term programme of work of the United Nations Commission on International Trade Law (UNCITRAL) (resolution A/31/99);

Having noted the views expressed in this respect by its Sub-Committee on International Trade Law Matters;

Being convinced that it is important that UNCITRAL, when drawing up its new programme of work, should give due considera-

tion to the relevant provisions of the resolutions of the sixth and seventh special sessions of the General Assembly of the United Nations that laid down the foundations of the new international economic order;

Recommends that UNCITRAL should include in its programme of work an item entitled "legal implications of the new international economic order on international trade law", and should, in order to deal with this matter expeditiously, establish a special committee or working group on the new international economic order and request it to place before it proposals as to the legal instruments that would be necessary to implement the policies underlying the new international economic order;

Further recommends that UNCITRAL should include in its programme of work the following subject-matters:

(*a*) International commercial arbitration;

(*b*) Barter-contracts;

(*c*) Catalogue of trade terms;

(*d*) Uniform rules or standard contract forms for the supply of goods to be manufactured or for the supply of labour or other services; and

(*e*) Security interests;

Requests its Secretary-General to draw the attention of member States of AALCC, in particular those that are also member States of UNCITRAL, to the desirability of having their representatives or observers, as the case may be, participate in sessions of UNCITRAL and its subordinate bodies;

Decides to consider the action taken by UNCITRAL in response to this resolution at its next session.

C. Note by the Secretary-General: proposal by France (A/CN.9/156)*

A proposal by France for inclusion of an item in the programme of work of the Commission was received during the eleventh session. The proposal, though not identical, is from a technical point of view related to the proposal made by Hungary and Poland in respect of clauses protecting parties against fluctuations in the value of currency.** The proposal is reproduced in an annex to this note.

ANNEX

Proposals by France

At the recent United Nations Conference on the Carriage of Goods by Sea, the question of determining a unit of account which would enable the amounts fixed by the Convention on the Carriage of Goods by Sea to be expressed in national currencies was raised once again.

The abandonment of the reference to gold in transactions between monetary authorities in 1968 and the discontinuance of the convertibility of the dollar into gold in 1971 spelled the end of the system of reference to gold which had been used for decades in international conventions on carriage and liability, whether in the form of the so-called "germinal" franc (10/31 milligrammes of gold of millesimal fineness nine hundred), used principally in conventions on carriage by rail, road and inland waterway, the "Poincaré" franc (65.5 milligrammes of gold of millesimal fineness nine hundred), used mainly in conventions on carriage by air or sea, or the "E.M.A." unit (0.88867088 milligrammes of fine gold) of the European Monetary Agreement and the Paris Convention on Civil Liability in the field of Nuclear Energy.

The most recent conventions have used the International Monetary Fund unit known as "special drawing rights" (SDR). This is only a temporary solution, however, for SDRs, which are made up essentially of a "basket" of currencies, do not guarantee a constant real value. Above all, they pose very serious problems for countries which are not members of IMF, for whom a different system must be established. This difficulty now arises each time a unit of value has to be expressed in an international convention, and none of the solutions proposed so far, however ingenious, has been completely acceptable to everyone.[a]

The French Government suggest that, as part of its long-term programme of work, UNCITRAL should study ways of establishing a system for determining a universal unit of constant value which would serve as a point of reference in international conventions for expressing amounts in monetary terms. UNCITRAL could, for instance, explore the possibility of creating a unit which would be determined and would evolve by reference to the value of a number of goods and services characteristic of international trade.

* 2 June 1978.

** See A/CN.9/149, chap. IV, para. 19 (reproduced in the present volume, part two, IV, A above).

[a] On this point, see document A/CONF.89/C.1/L.109 of the United Nations Conference on the Carriage of Goods by Sea.