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UNITED NATIONS COMMISSION ON
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INTERNATIONAL PAYMENTS

POSSIBLE COURSES OF ACTION CONCERNING THE DRAFT CONVENTION
ON INTERNATIONAL BILLS OF EXCHANGE AND INTERNATIONAL PROMISSORY
NOTES AND THE DRAFT CONVENTION ON INTERNATIONAL CHEQUES

Note by the Secretariat

Introduction

1. The United Nations Commission on International Trade Law, at its fourteenth session, requested the Working Group on International Negotiable Instruments to complete expeditiously its work on the preparation of a draft Convention on International Bills of Exchange and International Promissory Notes and on a draft Convention on International Cheques. 1/ The Commission further requested the Secretary-General, after the completion of the texts by the Working Group, to circulate them, together with a commentary, to all Governments and interested international organizations for their comments. 2/

1/ Report of the United Nations Commission on International Trade Law on the work of its fourteenth session, Official Records of the General Assembly, Thirty-sixth session, Supplement No. 17 (A/36/17), para. 22 (2).

2/ Ibid., para. 22 (5).

2. The Working Group, at its eleventh session, completed its work and adopted the two draft Conventions, after a Drafting Group had reviewed both drafts and established corresponding language versions (in Chinese, English, French, Russian and Spanish). ^{3/} The text of the draft Convention on International Bills of Exchange and International Promissory Notes (A/CN.9/211) and the text of the draft Convention on International Cheques (A/CN.9/212) were published and distributed in March 1982.

3. The commentary on the draft Convention on International Bills of Exchange and International Promissory Notes (A/CN.9/213), which has now been translated, will be circulated at the end of June and the commentary on the draft Convention on International Cheques (A/CN.9/214) soon thereafter. In the covering note verbale, Governments and interested international organizations are invited to transmit their comments on the draft Conventions before 16 February 1983.

Discussion at fourteenth session on future course of action

4. The question which exact procedure should be followed after receiving these comments was considered by the Commission at its fourteenth session; the Commission agreed to defer its decision on this question and to revert to it at its fifteenth session. ^{4/} In order to facilitate the deliberations and decision at this session, the discussion during the fourteenth session shall be recalled here, ^{5/} followed by some additional points which the Commission may wish to take into account.

5. During the discussion at the fourteenth session "different views were expressed as to the proper procedure to be followed after the comments were received. Under one view, the comments should be referred for consideration to the Working Group, which should revise the texts, if appropriate, in the light of the comments. Thereafter the revised texts, with a report by the Working Group on the action taken by it, should be submitted to the Commission, and the Commission could thereafter devote some time during a session to examine and approve the texts. In this context, a view was expressed that if the comments were made available to members of the Commission that were not members of the Working Group, before the Working Group commenced the review, it would assist those non-members of the Working Group in assessing the need to send observers to the Working Group session.

6. Under another view, the comments should be referred to the Commission, which should examine the texts in detail in the light of the comments, and revise them as appropriate.

7. In support of the former view it was noted that a revision of the draft texts in the light of the comments received could more expeditiously be undertaken by the Working Group than by the Commission. Furthermore, the prior

^{3/} A/CN.9/210: Report of the Working Group on International Negotiable Instruments on the work of its eleventh session (New York, 3-14 August 1981), paras. 234-241.

^{4/} Report of the United Nations Commission on International Trade Law on the work of its fourteenth session, Official Records of the General Assembly, Thirty-sixth Session, Supplement No. 17 (A/36/17), para. 21.

^{5/} Ibid., paras. 17-20.

revision of the texts by the Working Group would considerably expedite the work when the Commission came to consider the texts. It was suggested that a detailed examination of the two texts without such a prior review might result in the Commission having to devote an inordinate length of time to this work because of the highly complex and technical nature of the subjects. Accordingly, thought should be given at least to the advisability of adopting appropriate procedures which would, whilst not affecting the quality of the work, reduce the period of time needed for the conclusion of such a convention or conventions. It was noted that all States were free to attend sessions of the Working Group as observers, and that several States did so attend, and as a result the approval of the texts by the Working Group was one whose scope extended beyond the membership of the Working Group. Another suggestion in this context was for an enlargement of the membership of the Working Group for the purposes of revising the texts after the comments had been received.

8. In support of the latter view, it was noted that texts submitted by the Commission to the General Assembly, and later to a Diplomatic Conference, should carry the full approval of the Commission. Such approval could only be secured by a careful examination of the texts by the Commission itself. Furthermore, time would not be saved by a prior revision of the texts by the Working Group in the light of the comments received, as it would be difficult to prevent questions settled by the Working Group from being re-opened during the deliberations of the Commission. It was also observed that, although States not members of the Working Group could attend sessions of the Working Group as observers, many States, particularly the developing States, were unable due to budgetary constraints to send representatives as observers. Moreover, the apprehension that a careful examination of the texts by the Commission might take an inordinate length of time was unjustified." 6/

Further considerations

9. As indicated in the above discussion, one important factor is the amount of time needed for considering in detail the draft Conventions in the light of the comments if that were done by the Commission itself without prior review by the Working Group. In order to determine whether this traditional approach would be feasible, the Commission may wish to consider how much time it would probably have to devote to this work. While an accurate forecast is impossible, it is submitted that at least five weeks will be needed for the consideration of both draft Conventions together.

10. Whether this work could be undertaken during the sixteenth session of the Commission, would in large measure depend on how much time will be needed for all the other items on the agenda of that session, assuming that these items would be considered before or after the review of the draft Conventions but not concurrently. Inclusion of the work on negotiable instruments would appear to be feasible if, as is not unlikely, only one week or at the most two weeks are needed for the other items. Of course, this depends on the decisions which the Commission will take at its fifteenth session in respect of a number of topics.

11. To mention another possibility, the Commission might devote three to four weeks of its sixteenth session to the review of the draft Convention on International Bills of Exchange and International Promissory Notes and then about two weeks of its seventeenth session to the review of the draft Convention on International Cheques. Should this approach be taken, it would seem desirable, in view of the similarity of large parts of both Conventions, to reach an understanding that questions settled at the sixteenth session would not be re-opened at the seventeenth session.