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REPORT OF THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW ON THE WORK OF ITS TWENTY-FIRST SESSION

Draft Convention on International Bills of Exchange and International Promissory Notes

Report of the Secretary-General

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I. INTRODUCTION

1. On 7 December 1987, the General Assembly adopted resolution 42/153 entitled "Draft Convention on International Bills of Exchange and International Promissory Notes". Paragraphs 2 to 3 of the resolution read as follows:

> "The General Assembly,
>
> "...
>
> "2. Requests the Secretary-General to draw the attention of all States to the draft Convention, to ask them to submit the observations and proposals they wish to make on the draft Convention before 30 April 1988 and to circulate these observations and proposals to all Member States before 30 June 1988;
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> "3. Decides to consider, at its forty-third session, the draft Convention on International Bills of Exchange and International Promissory Notes, with a view to its adoption at that session, and to create to this end, in the framework of the Sixth Committee, a working group that will meet for a maximum period of two weeks at the beginning of the session, in order to consider the observations and proposals made by States."

2. By a note dated 25 February 1988, the Secretary-General, in accordance with the resolution, asked States to submit any observations and proposals that they might have on the draft Convention.

3. Section II of the present report contains, with minimal editorial modifications, the observations and proposals that had been received as of 3 June 1988.

4. Any further communications received from States will be circulated in addenda to the present report.

II. OBSERVATIONS AND PROPOSALS RECEIVED FROM GOVERNMENTS

AUSTRIA

[Original: English]

1. The draft Convention on International Bills of Exchange and International Promissory Notes, which UNCITRAL was able to adopt by consensus at its twentieth session in 1987, is the result of intensive work undertaken by the Commission in 15 sessions during the period from 1973 to 1987. Twice, in 1982 and 1986, all States were given the opportunity to submit written observations and proposals. At three UNCITRAL plenary sessions the draft articles were considered in great detail in the light of the numerous proposals submitted by member States.

2. The draft, in the view of Austria, represents a balanced compromise between different legal systems applicable to international bills of exchange and promissory notes. Austria believes that the draft constitutes the best possible solution to the various problems that had to be solved in connection with the subject matter it proposes to regulate and that no further improvements can be realistically expected. Therefore, the draft Convention that was before the General Assembly at its forty-second session could have been adopted by Austria - as well as by a number of other States - at that session without any further consideration. Austria sees no compelling reason to reopen the discussion about a draft that already had been considered for almost 15 years and that is not likely to be improved any further. Austria hopes that the General Assembly at its forty-third session will be able to pass a decision on the adoption of the draft and to submit it to States for signature and ratification.

CHILE

[Original: Spanish]

1. Chilean Law No. 18.092, of 14 January 1982, which governs the subject matter in question, is based essentially on certain points of the Geneva Uniform Law of 1930 on Bills of Exchange and Promissory Notes, and, as regards certain points, on the Negotiable Instruments Law of the United States of America, as well as on the Colombian Commercial Code of 1971 and other modern legal documents.

2. Consequently, the text of the draft Convention on International Bills of Exchange and International Promissory Notes causes certain difficulties for Chile inasmuch as it represents a combination of the common law and Geneva systems that will apply to international transactions; it is our understanding that, if Chile were a party to the new Convention, this would not entail any amendment of our domestic laws, which have been thoroughly studied and meet the present requirements of national negotiations that make use of negotiable instruments such as the bill of exchange and promissory note.

3. Although Chile appreciates that the draft Convention is a compromise solution the aim of which is co-existence between the institutions of the Geneva system and the solutions and practices of common law, it is none the less certain, in the opinion of the Government of Chile, that it will lead to difficulties in the application of its provisions and to various problems of interpretation by the competent courts where claims and defences may derive from both negotiable instruments.

4. As a consequence, it has to be kept very much in mind, in the opinion of the Government of Chile, that there is a lack of compatibility between the international obligations that the new Convention may generate and various international conventions, such as the Inter-American Convention on Conflict of Laws Concerning Bills of Exchange, Promissory Notes and Invoices and the 1930 Geneva Convention already mentioned.

5. Chile feels that the text of the draft Convention under consideration is complicated, dense, highly regulatory and difficult in terms of comprehension and practical application.

6. Accordingly, Chile wishes to state, without prejudice to the general points already mentioned, that it might not accept article 4 of the draft in question and might make use of the possibility of reservation referred to in article 89 of the text.

7. Similarly, Chile wishes to point out that the Chilean legislation, like the Geneva Convention of 1930, does not recognize the validity of bills of exchange payable by instalments.

8. Nor does Chilean law recognize the distinction drawn in the draft Convention under consideration between "holder" and "protected holder", which gives rise to a set of complicated regulations, difficult to understand, that will cause problems of interpretation for the competent courts.

9. Chile believes it inappropriate, furthermore, to introduce regulations relating to agency in a bill of exchange or promissory note since, although, on the one hand, it recognizes the importance of the principal and the agent in any legal act, it considers, on the other hand, that such a contract is alien to the strictly exchange-related effects and functioning of negotiable documents, whether the party to the instruments is acting or not under an agency contract or another figure of civil or commercial law, which gives rise to enforceable claims and defences.

10. To the above Chile should like to add that in the draft Convention there is a series of provisions not envisaged in Chilean law, in particular, nor in continental Latin law, but which are considered justified inasmuch as we are dealing with a compromise draft that combines and incorporates regulations from the common law and Geneva systems; in so doing it produces a mixture of highly regulatory provisions that do not make for the clarity and simplicity that there should be in regulations governing negotiable documents of such importance for the validity and efficacy of international trade transactions.

11. Finally, the regulations governing discharge of liability seem to the Government of Chile equally complex and highly regulatory, and the period of limitation of four years seems very long, since Chilean law lays down periods of one year for direct claims by the holder and six months for claims for repayment. Nevertheless, in view of the fact that we are dealing with international bills of exchange and promissory notes, a longer period might be justified, especially if the said period of general limitation coincides with the period fixed by other international conventions, such as the one relating to the international sale of goods.

CZECHOSLOVAKIA

[Original: English]

The Government of Czechoslovakia has no comments to make.

ECUADOR

[Original: Spanish]

1. It is necessary to make it clear in article 1 that the terms "international bill of exchange" and "international promissory note" should be in the same language as that in which such instruments are drafted. Furthermore, the text of the draft Convention should refer to international promissory notes drawn to order, instead of "international promissory notes", since it is well known that there are various types of promissory notes but that the only ones that are instruments of exchange are promissory notes drawn to order.

2. Subsections 1 and 2 of article 2 should be amended in order to avoid the occurrence of the term that is defined as part of the definition itself e.g. "(1) An international bill of exchange is a bill of exchange ...", "(2) An international promissory note is a promissory note ...".

3. Article 3 lays it down that bills of exchange and promissory notes are instruments payable "on demand or at a definite time". However, article 10 states the possibility that they shall also be payable at a fixed period after sight and at a fixed period after a certain date. Furthermore, article 8 hints at the probability that instruments may be paid "(c) by instalments at successive dates", which is forbidden by the Hague Convention concerning bills of exchange and promissory notes drawn to order, because it is considered to be contrary to the nature of these instruments of exchange intended for circulation. Consequently, the provisions of articles 3, 8 and 10 should be harmonized.

4. Since the acceptor is mentioned in article 41, the definition of that term should be included in article 6.

5. It would be desirable for the Convention to refer to the competent law for determining the capacity of contracting of the parties.

6. Also, the text of the Convention should provide for the possibility of there being several identical parts or copies of bills of exchange and international promissory notes drawn to order.

7. There should also be a thorough revision of the language, spelling and drafting used in the Spanish version.

8. Accordingly, the Government of Ecuador considers it advisable to leave a prudent margin of time in order to produce a better text before the Convention is adopted.

FINLAND

[Original: English]

1. The Government of Finland considers the draft Convention on International Bills of Exchange and International Promissory Notes, which was adopted by UNCITRAL

at its twentieth session, an acceptable solution to the problems arising in connection with international transactions. The draft text is a valuable end product of lengthy endeavours to overcome the divergencies arising out of the existence of different legal systems governing negotiable instruments. Finland, being a party to the 1930 Geneva Conventions on bills of exchange and promissory notes, considers the draft Convention a well balanced compromise between the Geneva system and the other legal régimes.

2. The Government of Finland, therefore, supports the submission of the draft Convention to the General Assembly at its forty-third session for adoption by the Assembly.

FRANCE

[Original: French]

Comments of the French Government on the field of application of the draft Convention on International Bills of Exchange and International Promissory Notes (articles 1-4)

1. In view of the incompatibility of the draft with the Geneva Conventions of 1930, which concern 19 States parties and around 20 countries that have modelled their domestic legislation on the rules contained in these Conventions, as well as with the Inter-American Convention on Conflict of Laws Concerning Bills of Exchange, Promissory Notes, and Invoices, signed at Panama in 1975, to which some 10 States are parties, the future Convention should not be allowed to produce legal effects in States that have decided not to ratify it.

2. It is therefore essential to limit the field of application of the Convention as far as possible to States which are parties to it.

3. This limitation is imperative.

4. For example, looking at bills of exchange, the drawer need only, having so decided by an act of his sole volition, enter in the heading and in the text of the bill of exchange that he is drawing the magic words "International bill of exchange (Convention of ...)", and in addition indicate two of the five places mentioned in article 2, 1/ to render the Convention applicable to the instrument, even if

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1/ Place where the bill is drawn;

Place indicated next to the signature of the drawer;

Place indicated next to the name of the drawee;

Place indicated next to the name of the payee;

Place of payment.

neither of the two places indicated is located in the territory of a contracting State (article 4 of the draft Convention).

5. The same would hold true for promissory notes.

6. Thus, it is intended that the draft should confer on the drawer or maker, as a consequence of his sole, unilateral and discretionary choice, the power to bring into play application of the eight chapters of the Convention to the instrument he has drawn, and to remove it from the purview of the law that would normally be applicable, ratione loci, disregarding the fact that this law normally applicable to a given exchange relation might well be the law of a State which has not ratified the Convention.

7. It is not even required that the country in whose territory the bill of exchange is issued should have ratified the Convention.

8. Example: assume a country A that has not ratified the Convention. A resident of this country enters on the bill of exchange that he is drawing the ritual words indicated above and gives as the place where his bill is drawn a city in this country A and as the place of payment a city in a country B that has also not ratified the Convention. The Convention will none the less be applicable. Consequently, if we imagine, on the one hand, that this bill of exchange has been covered by a guarantee such as the one provided for by articles 47 ff. (aval) and that this guarantee has been given in the territory of a State that has ratified the UNCITRAL Convention and, on the other hand, that a dispute arises between the bearer (a discounting banker) and the guarantor and is brought before a court in a State which is the place of residence of the guarantor and that has not ratified the UNCITRAL Convention, 2/ this court - in particular if the State to which it belongs has ratified the Inter-American Convention - must, in application of one of these two Conventions 3/ (Geneva, article 4, paragraph 2, Panama, article 3) apply the UNCITRAL Convention, 4/ while, once again, the State it belongs to has not ratified this Convention. The provisions of this State's law and those of the UNCITRAL Convention may differ as regards determination of the guarantor's obligations and in particular as regards knowing to whom the guarantee is given and in what degree, as well as what defences may be set up by the guarantor against the

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2/ For example, State A, which is at the same time that of the drawer and that of the guarantor.

3/ Article 4, paragraph 2, of the Geneva Convention provides that "The effects of the signatures of the other parties liable [other than the acceptor of a bill of exchange or the maker of a promissory note] ... are determined by the law of the country in which is situated the place where the signatures were affixed". Article 3 of the Panama Convention states that "All obligations arising from a bill of exchange shall be governed by the law of the place where they are contracted."

4/ "A treaty to which a State is not party is to be looked upon as a foreign law" (French Court of Cassation, 1 February 1972, Dalloz 1973, p. 59).

bearer. Furthermore, there is no reason why the fact of the drawer placing the bill of exchange under the UNCITRAL Convention, and the guarantor (avaliste) then giving his guarantee in the territory of a country that has ratified the Convention, should not be constitutive of an evasion of the national law of State A perpetrated by means of the drawer's guile in removing the bill of exchange he is issuing from the purview of the law normally applicable. An international convention prepared under the auspices of the United Nations should not be an instrument inciting to fraud to the detriment of the rights of the weaker party in the transaction.

9. The example given above is not at all far-fetched.

10. It is all the more unacceptable that the drawer should be allowed to remove a bill of exchange from the purview of the legislation normally applicable ratione loci, to place it as a whole under that of the Convention, which is not accepted by States not having ratified it, and to place it, possibly with fraudulent intentions, under the purview of the law of these States, in that according to article 2, paragraph (3), even proofs that the statements of place entered on bills of exchange and promissory notes are incorrect would not render the Convention inapplicable.

11. Example: assume a bill of exchange drawn by a drawer resident in a State A, which has not ratified the Convention, and drawn on a drawee of this same State A. This drawer would need only to engage in a deception (which under French law and without a doubt under other legal systems would constitute the offence of falsification of a commercial document and be punishable under criminal law) 5/ by mentioning fraudulently (and all too easily) as the place where the bill was drawn a city in a State B, which might or might not have ratified the UNCITRAL Convention, for the Convention to be applicable to this purely domestic bill of exchange. According to the draft Convention, application of the law of the State would be avoided completely legally, whereas it alone would have a claim to be applicable.

12. It is therefore absolutely necessary that article 2, paragraph (3), should be deleted and that it should be established that the different places mentioned on the bill must be places in contracting countries that actually are different.

13. It is equally necessary that article 4, which provides that the Convention is applicable "without regard to whether the places indicated ... pursuant to paragraph (1) or (2) of article 2 are situated in Contracting States", be substantially amended.

14. It is true that, at the suggestion of the representative of the Hague Conference on Private International Law, article 89 permits a reservation intended to limit application of the Convention by the courts of a State strictly to the case where both the place where the bill is drawn or the note is made and the place

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5/ After having entered on the bill the ritual words indicated above.

of payment are situated in Contracting States. However, the reservation presumably concerns only a Contracting State; it affords no relief to non-contracting States. More seriously, to the extent that it permits a Contracting State to avoid, as far as it is itself concerned, the indirect extraterritorial effect of the Convention, it institutionalizes this extraterritorial effect for non-contracting States.

15. Therefore, not only article 4, but also article 2, must be amended and it must be provided that the Convention is applicable only on the condition that the actual place where the bill is drawn and the actual place of payment are situated in different contracting States.

16. Similarly, as regards promissory notes, the Convention should be applicable only on the condition that the actual place where the note is made and the place of payment are situated in different Contracting States.

17. In this way, the field of application of the Convention would be limited in a reasonable way. All indirect extraterritorial effects of the Convention for a State that has not ratified it would not be avoided, but this would result from normal application of the rules for determining which court is competent in objective situations involving a foreign factor.

Comments of the French Government on the concepts of a protected holder and a non-protected holder in the draft Convention on International Bills of Exchange and International Promissory Notes

18. The provisions concerning protected holders and holders who are not protected holders constitute a characteristic example of the complexity of the Convention both as regards the definitions and as regards the status of each category of holder.

19. Not all holders have the same status. The draft makes a distinction between a so-called protected holder and a holder "who is not a protected holder". The distinction and the terminology employed are directly copied from the United States Uniform Commercial Code.

20. It remains to determine who is a protected holder and who is a holder who is not a protected holder.

21. Subparagraphs (f) and (g) of article 6 appear to define a holder and a protected holder; in reality they do not define these terms, because article 6 (f) merely refers the reader to article 16 and article 6 (g) refers to article 30.

22. First, therefore, one has to read article 16, which defines a holder.

23. With regard to a protected holder, as defined by article 30, he is "the holder of an instrument which was complete when he took it or which was incomplete within the meaning of paragraph (1) of article 13 and was completed in accordance with authority given", if the conditions to be indicated later are satisfied. It is therefore important to go back to article 13, which itself refers the reader to

paragraph (2) of article 1 and subparagraph (d) of paragraph (2) of article 3 and, more generally, to articles 2 and 3.

24. After this first stage has been completed, one notes that a holder is a protected holder only if several conditions are satisfied. One of these, set forth in article 30 (a), is that he must have been without knowledge of a defence against liability on the instrument (aucune des exceptions relatives à l'effet). What kind of defence? One of the defences referred to in subparagraphs (a), (b), (c) and (e) of paragraph (1) of article 29, which, for its part, refers to non-protected holders. The rules governing the two types of holder are thus clearly intertwined. One is obliged to turn to article 29 and, in particular, to paragraph (1) (a); it emerges that a protected holder is one who is without knowledge of a defence (moyen de défense) that may be set up against a protected holder in accordance with paragraph (1) of article 31. Thus article 30 has referred us to article 29, which refers us to paragraph (1) of article 31, which itself contains three subparagraphs, of which subparagraph (a) itself refers to eight articles (articles 34, 35, 36, 37, 54, 58, 64 and 85).

25. That is not all: a protected holder - under article 30, supposedly defining him - must know that, in order to count as "protected", he must have observed the time-limit provided by article 56 for presentment for payment. Now the rules concerning the time-limit for presentment for payment are distributed among eight subparagraphs.

26. Thus, simply to ascertain the definition of a protected holder, reference has to be made to 14 articles of the Convention, or more than 16 per cent of the substantive articles of the Convention, of which there are 85.

27. It still remains to determine the legal situation of a protected holder. Article 31 proceeds to describe this, but in two paragraphs it enumerates all the defences that may nevertheless be set up against a so-called protected holder. Paragraph (1) (a), with the purpose of indicating a first group of defences that may be set up, is the subparagraph mentioned above that refers to eight articles of the Convention. To this first batch of defences at least five other defences are then added. One must further add the defence resulting from article 35, from which it emerges that, even vis-à-vis a protected holder, a person whose signature has been forged is not liable. Further reference is made by other articles to protected holders (article 73 (4) (e)) and to holders who are not protected holders (article 73 (3); article 78).

28. Despite all this, the description of the legal situation of a protected holder is still not complete. Even though article 31 does not warn him of this, a holder would be well advised to refer to article 48 in order to discover what defences may be set up against him by a guarantor (avaliste); article 48 (4) itself refers the reader to several articles.

29. In addition, the term "knowledge", which is found in articles 30 and 31, is defined by article 7.

30. Account should also be taken of article 32, from which it emerges that any holder who receives an instrument from a protected holder is himself, in principle, a protected holder.

31. Ultimately, however, all these particular provisions do not constitute the main point. It is only in article 33 - as a kind of side issue, whereas in fact a basic rule is being stated - that it is set forth that "every holder is presumed to be a protected holder unless the contrary is proved".

32. It might be supposed that, as a result of the effects of all the provisions cited, the concepts of a so-called protected holder and a "holder who is not a protected holder" rest on a clear cut distinction between these two categories of holder. However, attention has already been drawn to the fact that there are many defences that can be set up against a so-called protected holder. At the same time, it must be noted that certain defences cannot be set up against a holder who is not a protected holder - that is to say, a holder against whom all defences can, in principle, be set up - if he took the instrument without knowledge of such defences.

33. In short, a so-called protected holder is far from being protected under all circumstances and a holder who is not a protected holder is protected under certain circumstances. The distinction thus loses some of its force. The legal situations of the categories of holders are ultimately intermingled, making it impossible to establish a clear and distinct profile of a holder.

34. In this regard, the draft Convention is open to grave criticism; it is unintelligible. But the holder is the central figure in law on bills of exchange and promissory notes.

35. His situation must therefore be clearly defined. A person to whom an instrument is presented and who has to decide promptly either to take the instrument or to refuse it must be in a position to make up his mind on the spot. The Convention is not intended to be applied by university professors or specialists, but by staff of banks or enterprises, who must know where they stand at first glance. The draft Convention does not meet this need.

Comments of the French Government on the distinct concepts of guarantee and aval in the draft Convention on International Bills of Exchange and International Promissory Notes (articles 47-49)

36. The very principle of a dual guarantee system is highly questionable. Its implementation in the draft Convention gives rise to serious problems of understanding and to complexities that bank clerks will not be in a position to cope with.

37. Just one example, relating to "the guarantor" (article 47 ff.). This article, under the pretext of meeting the requirements of the proponents of the common law system and the Geneva system, establishes a two-tiered guarantee system. The first guarantee system, using the words "guaranteed", "payment guaranteed" etc., would

make the guarantor responsible, making him into a kind of surety able to set up a large number of defences, even against a protected holder, as is the practice under the common law system.

38. The second system, closer to the Geneva system, using the words "good as aval" would permit the guarantor (avaliste) to set up fewer defences against the protected holder, whose position would thus be stronger. However, the guarantor may also express his guarantee through a simple signature.

39. In this case, a distinction must be made as to whether or not the guarantor is "a bank or financial institution". The defences that can be set up against the protected holder are not the same.

40. The "guarantee" rules are completely incomprehensible. Apart from the fact that it is hard to imagine that, in a so-called "unifying" convention, there should be two sets of rules based on the two different legal systems that are to be unified, these two sets of rules, which are brought into play as a result of the magic words used or of "words of similar import", by their very nature and the way they are brought into play completely undermine the holder's security.

41. No legal system provides for so complex a system of rules concerning guarantees. The articles of the Convention should therefore be completely rewritten, especially since "guarantee" is a current practice.

HUNGARY

[Original: English]

1. The Government of the Hungarian People's Republic always supported the efforts aimed at the unification and harmonization of the law of international trade. For this reason, the Hungarian Government also welcomed the work relating to establishing a draft Convention on International Bills of Exchange and International Promissory Notes.

2. The Hungarian Government considers that existing national laws and regulations relating to negotiable instruments do not correspond to the needs of international trade as well as international payment and credit transactions. From the point of view of the promotion and development of international economic and trade relations the unification of law in this field would be desirable.

3. The Hungarian Government is of the opinion that the draft Convention as adopted by UNCITRAL is a well-balanced compromise between the two principal systems of law regulating bills of exchange and promissory notes: the system of the Geneva Conventions of 1930, on the one hand, and the system that is represented by the English Bills of Exchange Act and the United States Negotiable Instruments Law, on the other hand.

4. Therefore, the Hungarian Government considers the draft Convention suitable to be recommended by the General Assembly for signature, in the form adopted by UNCITRAL.

ITALY

[Original: French]

General comments

1. The Italian Government is appreciative of the remarkable efforts made by the United Nations Commission on International Trade Law (UNCITRAL) with a view to improving the draft under discussion, but considers that the results aimed at have not yet been achieved; it may be recalled that the idea was essentially to make available to financial and commercial operators an instrument that would be reliable and easy to use, capable of overcoming the obstacles that may derive, in such a delicate matter, from diversity in national legislations.

2. In the light of these aims, the Italian Government considers that the draft in question should be evaluated not only by comparing it with particular legal traditions, but above all in terms of its capacity to eliminate uncertainties of application; and it considers that, at the present time, there are still grounds for perplexity in this regard.

3. Firstly, with reference to the drafting, the Italian Government is bound to stress its dissatisfaction with a method which makes exaggerated use of the technique of cross-references: a method which makes the reading of the text extremely difficult and which inevitably entails the danger of contradictions and uncertainties in interpretation.

4. It must be added that this danger is accentuated by the attempt evident in the draft to provide rules covering all the practices followed in the most diverse national contexts. This leads to considerable complication and almost insurmountable difficulties when one is trying to meet the requirement, essential for the interpreter, for the construction of a unitary system. As an example one may note the provision made for a concept, known only in some systems, of a guarantee for the drawee, even a non-accepting drawee, a concept which, moreover, is regulated in terms remarkably different from the general guarantee of a negotiable instrument; this leads, to say the least, to considerable inconsistency within the system and consequently to serious dangers of uncertainty in application.

5. It seems clear that in a unifying excercise one should, rather than seeking a specific solution for each problem, identify the essential elements which can become common to the different legal systems.

6. In general terms, the Italian Government also considers that these uncertainties are further aggravated by the way in which the draft Convention determines its own field of application.

7. It seems clear - and this has been observed for a long time - that the "universalist" solution adopted in articles 2(3) and 4 may create great difficulties where the rules on conflicts of laws of the lex fori would lead to the application of a different law from that of a contracting State: in this case, it

seems very difficult, to say the least, to foresee the solution that a judge would adopt in a concrete situation.

8. It need not be stressed that this problem, obviously of decisive importance, is further aggravated by the fact that these rules on conflicts of laws are the subject of an obligation under public international law for several States (in particular, those that are parties to the Geneva Convention).

9. It is realized that the principle of formalism in relation to negotiable instruments may lead to solutions that leave aside the question of an actual relationship with the territory of a contracting State. It seems important, however, that the considerations set out above, involving matters of public policy, should prevail and it therefore appears necessary to remove the uncertainties indicated and to reconsider the solution adopted in the draft.

Particular comments

10. The Italian Government proposes to limit itself here to drawing attention to a limited number of points that give rise to perplexity and that seem of decisive importance in the evaluation of the draft.

11. The Italian Government would like, in the first place, to see a thorough re-examination of the concept of "holder" and of "protected holder". Such concepts, which should constitute the centre of the whole system of the Convention, are defined by resorting in an extreme degree to the technique of the cross-reference. Their comprehension requires the reading of a very large number of provisions (for example, giving a list that is doubtless not exhaustive, articles 6, 7, 16, 29, 30 and 33). Consequently, the utilization of this approach, rather than easing problems of application, seems to make their solution even more difficult.

12. It is therefore considered highly desirable for the whole problem to be reconsidered. This would be possible by abandoning the attempt to define the legal position of the holder of the instrument in terms of status and, in a manner doubtless more consistent with the "functional approach" that is being sought, by directly regulating the concrete situations that can arise. In any event, it is essential that, if the status of the holder is to be defined, the formulation of the rules should be made much clearer and their reading made much easier than is the case with the text under consideration.

13. The Italian Government has been drawing attention for a long time to its dissatisfaction at the inadequate protection given by the draft to the holder of the instrument, considering that such protection represents the bedrock of all negotiable instruments law and that the need for adequate protection is still greater in the case of instruments that are to circulate internationally. For this reason, the desired reconsideration of the concepts of "holder" and "protected holder" should be aimed at strengthening the position of the holder of the instrument (particularly with reference to articles 7, 13, 30 and 31).

14. As a minimal requirement for the strengthening of such protection, the Italian Government considers it absolutely necessary, in particular, to reconsider the solution adopted in article 27 of the draft. This provision contains, for the hypothesis of an endorsement made by an agent without authority (falsus procurator), a rule identical with that for a forged endorsement: it thus ignores the clear difference between the two situations and, in particular, the fact that, while it may be reasonable to expect the person negotiating the instrument to assume the risks of a material forgery, the situation is different in the case of an endorsement made by an agent without the necessary authority or power: in the latter case, one is not dealing with a factual circumstance which is more or less easy to verify, but rather with a legal situation that often requires very delicate and sometimes debatable assessments; this difficulty is aggravated in an international context, where the problem is further complicated by the often radical difference in national legislations. It therefore seems unreasonable and highly contradictory with the requirement to protect the circulation of the instrument to make the person who acquires the instrument assume even this latter risk.

15. Another important point which, in the view of the Italian Government, needs to be reconsidered in detail is that concerning the rules on guarantees, which present several inconsistencies and contradictions.

16. In the first place, as indicated above, the Italian Government is caused considerable perplexity by the concept of a guarantee for the drawee. Firstly, it seems clear that, if additional liability on an instrument is needed, the parties could in any case meet this need by other means (for example, by an endorsement), without resorting to an abnormal solution such as that of a guarantee for a person (like the drawee) who is not liable as such.

17. Secondly, the oppressive treatment of the guarantor of the drawee, to the point where he is considered liable even in the event of failure to present a bill for acceptance (article 54(2)) or to present an instrument for payment (article 58(2)) seems undoubtedly inconsistent with a system that, in general, regulates the position of the guarantor in terms that are certainly less onerous than those found, for example, in the Geneva Convention. In substance, a guarantor of this type is denied even the benefit of a guaranteed debt and the possibility of a right of recourse, which, it seems clear, permits abuses at his expense (it is possible even to conceive of fraudulent collusion between the holder of the instrument and the drawee).

18. In addition, there are serious reasons for perplexity in relation to the rules in article 48 concerning the defences that may be set up by the guarantor: an extremely complicated set of rules that are of very doubtful practicability.

19. In particular, not only is the provision of different rules depending on the literal formulations adopted by the parties questionable (a differentiation which presupposes, contrary to reality, a clear perception by practitioners of the difference between these formulations - which are now used in an undifferentiated manner), but the presumptions juris and de jure adopted in subparagraphs (d) and (e) of article 48(4) regarding the possibility of a guarantee expressed by the

guarantor's signature alone seem unjustified and liable to cause confusion. This for at least two types of reason: because it does not seem appropriate to adopt here subjective criteria that do not necessarily reflect differences of economic capacity, and because a distinction of the kind made could inevitably cause serious uncertainties of interpretation (one need only consider the absence of a definition not only of the concept of a "bank" but also, and above all, of that of a "financial institution" - the latter a concept which it would certainly be risky to consider homogeneous under all legal systems).

20. Still in the interests of reducing uncertainties of interpretation to the maximum, the Italian Government considers, lastly, that it would be highly desirable to limit still further the situations freeing the holder from the obligation to present the instrument for acceptance or payment (see articles 53, 56 and 57). In particular, it is considered that, at least in the majority of such cases (some of which involve very delicate problems of law and of fact, such as, for example, the hypothesis of a "corporation, partnership, association or other legal entity which has ceased to exist"), there are no difficulties and it would be highly advisable to provide for a procedure such as a protest officially establishing the non-acceptance or non-payment, thus eliminating a potential ground for dispute.

21. In conclusion, the Italian Government, while reaffirming its appreciation of the work done so far, considers that the draft under consideration needs to be further improved, and would like to see a simplification of the text that will remove the uncertainties to which it now gives rise, and a strengthening of the protection afforded for the circulation of the instrument and for its holder.

JAPAN

[Original: English]

1. The United Nations Commission on International Trade Law (UNCITRAL) devoted itself to the formulation of a new convention on international negotiable instruments for nearly 15 years and finally succeeded in adopting the draft Convention on International Bills of Exchange and International Promissory Notes by consensus at its twentieth session, held at Vienna, from 20 July to 14 August 1987.

2. From the outset to the final stage of this work, a number of experts from all corners of the earth (not only from member States of UNCITRAL but also from non-member States and various interested circles) actively participated in the discussions to prepare a satisfactory text of a future convention. Lengthy discussions in UNCITRAL were marked by conflicting opinions on various issues, reflecting the divergent legal systems. These opinions were thoroughly debated and, as a result, a wise compromise has been worked out in respect of each of the controversial issues.

3. The draft Convention adopted by UNCITRAL thus embodies a careful compromise among different legal systems, inter alia, between the Anglo-American system and the Geneva system.

4. Having said above, the Government of Japan considers the draft Convention adopted by UNCITRAL to be acceptable for many States and therefore supports its adoption by the General Assembly at its forty-third session in its present form. Due regard should be paid to the fact that even one amendment to the draft Convention, if it affects the substance, would necessitate a review of the whole provisions thereof and this would postpone unification of laws in the field of negotiable instruments, one of the most important goals since the establishment of UNCITRAL, to some future date.

5. With respect to minor points of drafting nature, the Government of Japan proposes to amend an incorrect cross-reference to paragraphs (3) and (4) of article 76 in subparagraph (b) (iii) of paragraph 2 of article 77, i.e., the words "Paragraphs (3) and (4) of article 76" should be replaced by the words "Paragraphs (4) and (5) of Article 76".

MALAYSIA

[Original: English]

1. The Government of Malaysia notes with appreciation that the United Nations Commission on International Trade Law, which was formed in 1966 with the object of promoting the progressive harmonisation and unification of the law on international trade with a view to reduce or remove legal obstacles to the flow of international trade, especially those affecting the developing countries, has prepared and drafted the draft Convention on International Bills of Exchange and International Promissory Notes (hereinafter "draft Convention") over 14 years of extensive review and deliberations.

2. Since bills and notes are important instruments in international trade and banking, the draft Convention marks a milestone in clarifying, simplifying, modernising and unifying the law relating to bills and notes in international trade and banking transactions. In Malaysia, the law relating to bills and notes (as well as cheques) is contained in the Bills of Exchange Act 1949 (Act 204). It is based substantially on the United Kingdom Bills of Exchange Act 1882 and the Cheques Act 1957. As such the Malaysian law is substantially a codification of the English common law.

3. Section 72 of the Malaysian Bills of Exchange Act 1949 sets out the law on the question of which country's law should apply to an international bill or note. Section 72 states:

> "72. Where a bill drawn in one country is negotiated, accepted or payable in another, the rights, duties and liabilities of the parties thereto are determined as follows:
>
> "(a) the validity of a bill as regards requisites in form is determined by the law of the place of issue, and the validity as regards requisites in form of the supervening contracts, such as acceptance, or indorsement, or acceptance supra protest, is determined by the law of the place where such contract was made:

Provided that -

(i) where a bill is issued out of Malaysia it is not invalid by reason only that it is not stamped in accordance with the law of the place of issue;

(ii) where a bill, issued out of Malaysia, conforms, as regards requisites in form, to the law of Malaysia, it may, for the purpose of enforcing payment thereof, be treated as valid as between all persons who negotiate, hold or become parties to it in Malaysia;

"(b) subject to the provisions of this Act, the interpretation of the drawing, indorsement, acceptance, or acceptance supra protest of a bill, is determined by the law of the place where such contract is made:

Provided that where an inland bill is indorsed in a foreign country, the indorsement shall, as regards the payer, be interpreted according to the law of Malaysia;

"(c) the duties of the holder with respect to presentment for acceptance or payment and the necessity for or sufficiency of a protest or notice of dishonour, or otherwise, are determined by the law of the place where the act is done or the bill is dishonoured;

"(d) where the bill is drawn out of but payable in Malaysia and the sum payable is not expressed in the currency of Malaysia, the amount shall, in the absence of some express stipulation, be calculated according to the rate of exchange for sight drafts at the place of payment on the day the bill is payable;

"(e) where a bill is drawn in one country and is payable in another, the due date thereof is determined according to the law of the place where it is payable."

Where section 72 does not apply, any question as to the conflict of laws relating to bills and notes shall be resolved in accordance with the common law. In the face of the express stipulations as to the governing law in section 72, it would be necessary for Malaysia to amend our Bills of Exchange Act 1949 in order to give effect to the draft Convention.

4. Basically, the text of the draft Convention consists of a set of global uniform rules, applicable to special negotiable instruments (i.e. the international bill of exchange and the international promissory note) for optional use in international transactions in order to overcome the different practices and customs arising out of the existence of the various systems of law governing negotiable instruments. International efforts in the past to resolve difficulties arising from differences in the various systems resulted in the Geneva Conventions of 1930

and 1931 on the unification of the law relating to bills of exchange and cheques and the 1975 Panama Inter-American Convention on Conflict of Laws concerning Bills of Exchange, Promissory Notes and Invoices.

5. The Committee on Rules and Regulations of the Association of Banks in Malaysia has perused the draft Convention and was of the opinion "that the draft appears to be an improvement on the existing convention". In addition, the Exchange Control Department was pleased to note that article 77 of the draft Convention provides that nothing in the draft Convention will prevent the Contracting State from enforcing exchange control regulations applicable in its territory.

6. The following are our views and comments on the drafting of the draft Convention:

(a) Article 1 - Rearrange as follows:

(1) This Convention applies to -

(a) An international bill of exchange when it contains the heading "International bill of exchange (Convention of ....)" and also contains in its text the words "International bill of exchange (Convention of ....); and

(b) An international promissory note when it contains the heading "International promissory note (Convention of ....)" and also contains in its text the words "International promissory note (Convention of ....)".

(2) This Convention does not apply to cheques.

(b) Article 2, paragraph (3) - Reword as follows:

(3) This Convention shall apply notwithstanding proof that the statements referred to in paragraph (1) or (2) of this article are incorrect.

(c) Article 4 - Delete the words "applies without regard to whether" and substitute therefor "shall apply regardless whether or not".

(d) Article 5 - Too vague to be of any practical use in interpreting the Convention.

(e) Article 6 - The definitions are not in alphabetical order.

(f) Article 6, interpretation of "Maturity" - Reword as follows -

(j) "Maturity" means the time of payment referred to in paragraphs (4), (5), (6) or (7), as may be applicable, of article 10;

(g) Article 6, interpretation of "Money" or "Currency"

It is not clear whether the words "without prejudice to" in this subparagraph (1) mean "notwithstanding" or "subject to".

(h) Article 7 - Insert the words ", having regard to the circumstances," immediately after the words "if he has actual knowledge of that fact or".

(i) Article 9, paragraph (6) - The words "unless the person is named only in the reference rate provisions" are not clear.

(j) Article 15, paragraph (1) - Delete the fullstop after "("allonge")" and the words "It be signed" and substitute therefor the words "and it must be signed by the person making the endorsement.".

(k) Article 27, paragraph (1) - Insert immediately after the words "has the right" the words ", subject to paragraphs (2) and (3) of this article,".

(l) Article 32 - Rearrange as follows:

The transfer of an instrument by a protected holder vests in any subsequent holder the rights to and on the instrument which the protected holder had, except where the subsequent holder:

(a) Participated in a transaction which gives rise to a claim to, or a defence against liability on, the instrument; or

(b) Has previously been a holder, but not a protected holder.

(m) Article 37, paragraph (4) - Delete the words "may be determined only" and substitute therefor the words "shall be determined solely".

(n) Article 48, paragraph (4), subparagraph (d) - The phrase "financial institution" is not defined.

(o) Article 53, paragraph (3) - Delete the fullstop and the last sentence and substitute therefor the words ", provided that when the cause of the delay ceases to operate, presentment is made with reasonable diligence.".

(p) Article 57, paragraph (1) - Delete the fullstop and the last sentence and substitute therefor the words ", provided presentment is made with reasonable diligence when the cause of the delay ceases to operate.".

(q) Article 63, paragraph (1) - Delete the fullstop and the last sentence and substitute therefor the words ", provided that when the cause of the delay ceases to operate, protest is made with reasonable diligence.".

(r) Article 66, paragraph (2) - The words "by means appropriate in the circumstances" are uncertain in meaning.

(s) Article 68, paragraph (1) - Delete the fullstop and the last sentence and substitute therefor the words ", provided that when the cause of the delay ceases to operate, notice is given with reasonable diligence.".

(t) Article 80, paragraph (4) - Delete the fullstop and the last sentence and substitute therefor the words ", provided that when the cause of the delay ceases to operate, notice is given with reasonable diligence.".

(u) Article 85, paragraph (1) - The period of 4 years is shorter than the 6 years under the Malaysian Limitation Act.

7. The above are Bank Negara Malaysia's observations and proposals.

SAUDI ARABIA

[Original: English]

It is the Government of Saudi Arabia's view that the Convention will help unify and standardize the international promissory notes, a situation which will strengthen the confidence between the contracting parties and improve its legal power. The draft Convention is to a large extent similar to that of the International Chambers of Commerce law.

SINGAPORE

[Original: English]

1. Singapore expresses its appreciation for the work carried out by the United Nations Commission on International Trade Law in the preparation of the draft Convention on International Bills of Exchange and International Promissory Notes.

2. Singapore notes that the draft Convention seeks to provide uniform rules of laws governing the use of negotiable instruments and promissory notes in international payments. Singapore notes that the draft Convention adopts rules that are common to both the Anglo-American and the Geneva systems of law governing the use of negotiable instruments for payment in international trade and where the rules in the Anglo-American and the Geneva law systems differ, the Convention will adopt the rules from either of the two systems or a new rule that is a compromise of the two systems.

3. While Singapore sees the draft Convention as a positive step towards the harmonization of rules of law in international payments, it feels that the business community in Singapore or elsewhere which have been familiar with existing systems of law may be reluctant to accept a new system governing the use of negotiable instruments. The success of the draft Convention ultimately depends upon the acceptance of the draft Convention by the international business community.

SPAIN

[Original: Spanish]

1. Since the beginning of the work on the preparation of the draft Convention now under consideration, the Spanish Government has taken the view that what in its 1983 and 1986 comments it repeatedly referred to as the "spirit of compromise" is to be regarded as an essential instrument of legal and technical methodology.

2. This "spirit of compromise" characterized the first steps taken in the work on the preparation of the draft Convention, and during this initial stage it produced very good results. However, as the deliberations of the Working Group neared completion, this "spirit" became less and less apparent in the method of proceeding and in the approach adopted to the drafting of the legal text that is being considered today.

3. The idea of compromise guided the initial work on the draft in which an attempt was made to bring together the two major groups of countries adhering respectively to the two main legal doctrinal systems in relation to negotiable instruments existing in the world: on one side, the countries subscribing to the common law system and, on the other, those adhering to or influenced by the doctrinal solutions enshrined in the Geneva Conventions. The search for an intermediate, balanced formula between the two legal systems appears to have been dangerously abandoned since the most recent sessions of the Commission meeting in plenary. This search has been replaced by a process of constant adjustments to the draft text which have strongly inclined it, in an unbalanced manner, towards solutions reflecting common law systems: in the new text, not only have the Geneva formulae supported by Spain been disregarded but, more seriously, the "spirit of compromise" that, as has been repeatedly pointed out, guided the initial approach and the original work on the draft Convention has been given up. Manifestations of this phenomenon and of the consequent rupture of the internal equilibrium between the solutions proposed include the following:

(a) Complete disappearance of the basic, fundamental concepts historically underlying securities and commercial documents in general, and letters of exchange and promissory notes in particular;

(b) Replacement of the rule of concepts by a casuistic approach, with prolix enumerations of hypotheses and assumptions;

(c) The abuse, to a point that cannot be accepted, of cross-references from one rule to another;

(d) Establishment of "dualistic" rules, in conflict with the unifying purpose of the draft Convention, regarding concepts of decisive importance. Such is the case with the "holder" - with the distinction between a mere holder and a "protected holder" - and with the guarantor - with the distinction between a mere guarantor and the giver of an "aval";

(e) The abuse of interpretative or normative methods proper to common law -

in particular, the principle of "reasonableness" - which are inappropriate for a strict, rigorous discipline such as the rules governing commercial documents, and bills and promissory notes in particular;

(f) As a consequence of all the above, the Convention in its present form represents an extremely violent rupture with the continental juridical legacy in regard to negotiable instruments. Moreover, as a result of the casuistic approach, cross-references, the duality of rules on certain concepts, the utilization of elements alien to the Spanish doctrinal patrimony and the disappearance of basic concepts in this field, the draft Convention is difficult to understand and interpret. It is difficult for experts and is bound to be much more difficult for the practitioners such as traders, industrialists and bankers. It is easy to see that the consequences of this in the field of legal security are serious and must be rejected - particularly in a sector of legal regulation like the rules on bills of exchange and promissory notes, in which the immediate relationship between the document and the right or obligation in respect of the payment of sums of money is vital and can be subject only to the postponement freely agreed on between the parties. Under the conditions described, the Government of Spain views the proposed text with very grave reservations. The reservations expressed, furthermore, are aggravated in the light of the scope of application of the Convention as now contemplated.

4. The points indicated are discussed in detail below.

5. Regarding the sphere of application of the Convention, the Spanish Government cannot agree to the Convention's producing extraterritorial effects, beyond the limits of sovereignty of the countries that have ratified it. Such extraterritorial effects are judged particularly grave in view of the legal and financial insecurity that would result from the solutions proposed.

6. Article 4 of the draft Convention, referring to paragraphs (1) and (2) of article 2, provide the positive basis for these extraterritoral effects.

7. For its part, article 89 of the draft, which permits reservations on the matter, does not provide an adequate remedy: it would require, when the Convention is applied and international instruments handled, continuous attention to the list of reservations, with not only the resulting imprecision but also a loss of unifying efficiency.

8. The Spanish Government does not therefore consider that it would be appropriate to adopt provisions regarding the sphere of application of the future Convention that would presuppose the application of the Convention by courts of countries that have not ratified it.

9. The absence in the text of concepts and doctrinal categories that are traditional in continental negotiable instruments law is patent. The most marked expression of this is the silence maintained by the draft on the transaction underlying the drawing of the instrument and the influence of the underlying relationship on the documentary relationship. The ignoring of this type of fundamental concept is the cause of subsequent complexities in the Convention such

as the very notable complexity caused by the distinction between a protected holder and a holder who is not a protected holder.

10. In any event, it is paradoxical that an allusion to underlying relationships has found its way into the text at one or two points - for example, article 31, paragraph (1) (b), of the draft, where the "underlying transaction" is mentioned. This mention, however, has not been accompanied by any more determined effort on the part of the Commission to use categories such as this in a more extensive and decisive way throughout the text.

11. The casuistic approach resulting from the absence of concepts and doctrinal categories leads to complete inefficiency in articles 29 and 30, where an attempt is made to specify what constitutes a protected holder and a holder who is not a protected holder: whether a holder is defined in one way or the other depends on a list of unconnected circumstances without it being possible for the average expert reader, after a careful reading of the draft, to guess at the reasons or motives behind the definitions.

12. Here there is an unacceptable manifestation of defective legislative technique, in an extreme degree.

13. The same consideration applies to another vice of legislative technique which affects the draft in a high degree: this relates to the abundant, complex cross-references from some articles to others. These cross-references make the Convention difficult to read for an average interpreter and make its rules very difficult to understand. In short, clarity in this text is conspicuous by its almost complete absence. When this is combined with the casuistic approach referred to earlier, the only conclusion can be that certain significant provisions must be rejected. This is the case, inter alia, with articles 4, 13, 29, 30 and 48 of the draft, where an effort to synthesize and clarify is required.

14. Mention has already been made of the appearance in the proposed text of a "non-unifying dualism" in relation to some important aspects of international negotiable instruments law. This anti-unifying phenomenon concerns, in the first place, the concept of a "holder", who can be a protected holder or a holder who is not a protected holder, depending on the cases and circumstances explicitly established by the draft, mainly in articles 29, 30 and 31.

15. The existence of this duality creates a certain insecurity in the legal position of any holder, who can obtain certainty as to his status in this regard only by a meticulous study of the Convention and his personal circumstances in relation to each specific bill or promissory note. This type of detailed study is contrary to the traditional security of the status of holders of negotiable instruments and the no less traditional protection of the evident right created by the drawer and acceptor.

16. The presumption referred to in article 33 does not reduce the disadvantages of the proposed duality; in short, this duality will mean that in any legal proceeding occasioned by non-payment of a bill of exchange there will be a discussion, as a kind of preliminary question, of the status of the holder of the bill, the creditor

and plaintiff: this is a factor of uncertainty to which the Spanish Government cannot agree.

17. These considerations apply also to the guarantor. The "non-unifying duality" is also reflected in the provisions on this point, where uniform systems are traditionally provided in the earlier texts. In the present draft, article 47 and the subsequent articles distinguish, on the basis of a striking accumulation of cross-references, between a simple guarantor and the giver of an "aval": nor will it be easy for the holder to ascertain the true status of each guarantor or giver of an "aval" who has signed the instrument, and insecurity will result from this.

18. When it is borne in mind that the use of particular words or expressions on the part of the guarantor determines the extent to which he is liable and the rights of the holder against him, the situation becomes aggravated in view of the fact that the instruments concerned are international and it is logical to suppose that their text will contain statements in various languages and even in various writing systems.

19. The loss of the traditional rigour associated with negotiable instruments is manifested in the use by the Convention of imprecise criteria in relation to interpretation or applicability. This applies to the criterion of "reasonableness" proposed in regard to the care that the parties must exercise (articles 26(2), 26(3), 27(2)(b), 27(3), 53(3), 55(1)(a), 57(1), 63(1), 68(1) and 68(2)(a)), the hour at which the instrument is to be presented (articles 52 and 56(a)) and the rate of discount (article 71(4)).

20. The Spanish Government continues to regret that the draft contains no rules of a procedural kind to safeguard a rigorous approach within the sphere of judicial procedures.

21. Access by the holder not satisfied by the acceptor in due time and form to summary enforcement proceedings should be provided for by the Convention, without prejudice to this being regulated in detail by national law in accordance with the practices of the country concerned. The ultimate need for such procedures is the basic reason for the appearance of a "non-unifying dualism", for the diversified system in regard to defences which can be set up by the various parties, for the different positions of the various creditors, etc. The recognition of such a right would be a reinforcement, even if somewhat tenuous, of the rigour in relation to negotiable instruments which has been so seriously weakened.

SWEDEN

[Original: English]

1. The Swedish Government is of the opinion that the draft Convention on International Bills of Exchange and International Promissory Notes, as adopted by the United Nations Commission on International Trade Law (UNCITRAL) at its twentieth session, constitutes an acceptable compromise between the principles of the Geneva Uniform Law and those of the Anglo-American legal system. With regard

to substance, the Swedish Government has no additional observations or proposals to submit.

2. UNCITRAL has been working on the draft Convention for a long time. The Swedish Government now strongly urges Member States to support the draft Convention with a view to its consideration and adoption by the General Assembly at its forty-third session.

SWITZERLAND

[Original: French]

General remarks

1. The draft Convention concerns only international bills of exchange and international promissory notes. The adoption of a particular system for international instruments has the disadvantage of placing a new system alongside those that already coexist. However, as it does not seem feasible to reach a consensus on a revision of the Geneva Conventions which would enable them to be adopted also by countries influenced by the Anglo-Saxon tradition, it would seem fruitless to revert to the question of the merits of a particular system for international instruments.

2. There is no doubt that a revision of the existing Geneva Conventions by the members of UNCITRAL and the participating observers would have constituted a much simpler solution for Switzerland, but that course was not followed.

3. In spite of the disadvantages of the establishment of a new system of negotiable instruments law, certain positive aspects must be noted. Thus contacts with the countries not really belonging either to the Anglo-Saxon system or to the Geneva system may have been simplified, because the application of the UNCITRAL Convention would replace laborious research on the relevant national legislation.

Sphere of application (articles 1-4)

4. The field of application seems at the same time too extensive and too restricted.

5. The proposal to subject negotiable instruments to the new law on the basis of simple labelling is hardly desirable as long as additional, objective elements do not confirm its international character (see article 4). It must also be noted that the international connection required by article 2 is limited to the starting point and the end point of the circulation. Thus an instrument drawn on one's own bank, but subsequently circulating abroad, will not come under the terms of the Convention.

6. In addition, it is important to know whether the term "promissory note" in article 1, paragraph (2), in the English text also includes notes in the sense of private investment securities. In the view of the Government of Switzerland, it

would be desirable for the committee of experts that will be set up to state that an extension of the concept of a negotiable instrument is not intended. Contrary to "notes", which consist of standardized loan certificates and which must meet particular requirements to this end, negotiable instruments respond to individual needs.

Article 6

7. The presence in the Convention of a detailed catalogue of legal definitions is an excellent feature.

8. Regarding subparagraph (k), it may be asked whether the very nature of a bill of exchange should not exclude recourse to signatures reproduced by facsimile. The fact that bills of exchange are not intended for mass use, the rigorous treatment required for negotiable instruments and the security factor linked to this are important arguments for the rejection of such a solution.

Article 8

9. It would be desirable to eliminate the possibility, provided for in subparagraph (c), of instalments at successive dates, because this unnecessarily complicates the transactions. Its consequence is that partial claims, whose enforcement requires that they should be treated on their own, remain incorporated in a single document. The debtor has the option of issuing instruments for lower amounts.

10. Subparagraphs (d) and (e) allow the possibility for the debt under an instrument to be paid in foreign currency. This makes the liability under the instrument less transparent and more complicated. This possibility should therefore also be eliminated.

Article 9

11. The variable rate of interest provided for in paragraph (6) may give rise to problems of a practical nature and should therefore be eliminated.

Articles 26 and 27

12. In spite of the improvements made in the draft Convention, the Swiss Government feels that it must maintain its criticism expressed in its earlier comments. Although it notes with satisfaction that liability is limited to the amount of the commitment entered into, interest included, the proposed solution is hardly convincing. The justification given for articles 26 and 27, namely that the person receiving the instrument directly from the forger or the agent without authority or power to bind his principal in the matter is in the best position to check the validity of the signature or of the agent's authority, is not in conformity with business experience, particularly as regards international trade or, in many cases, signatures of bodies corporate. The system adopted has the disadvantage of permitting supplementary recourses, either by the person whose endorsement has been forged or by endorsers prior to the forgery, against the

forger or the person who received the instrument directly from the forger. This solution will hinder the circulation of instruments; it is likely to harm their role as credit instruments, notably vis-à-vis banks that can legitimately consider that it is impossible for them to verify the authenticity of the signatures submitted to them or the powers of agents who transmit instruments to them. The possibility given them by article 26, paragraph (2), and article 27, paragraph (2), of protecting themselves by being only endorsees for collection does not seem sufficient to counterbalance the disadvantages of the system in general.

Articles 28-31

13. The distinction between two categories of holders - holders and protected holders - continues to appear questionable to the Swiss Government and, in its view, would seriously jeopardize the proper operation of the Convention. The idea on which negotiable instruments are based - namely their abstract character in relation to the underlying liability - would be a reality only as far as the protected holder is concerned.

Article 35

14. That no liability can be imposed on anyone by the forging of his signature seems to us self-evident. In the interests of logic, clarity and simplicity, the Swiss Government proposes that the second sentence of this article should be deleted.

Article 46

15. At first sight, this article may seem difficult to understand and therefore difficult for the parties to the Geneva Convention to accept. After studying it in detail, the Swiss Government has reached the conclusion that it is admittedly unusual from our point of view but that it deserves consideration. The fact that mere delivery of the instrument even without endorsement implies a guarantee for the recipient may follow from the underlying transaction (for example, a sale). One cannot deny all justification for the incorporation of the guarantee following from the underlying transaction, in view of the close correlation between the two matters, even though the Geneva Convention system provides otherwise. One starts out from the idea that what is involved is in no way an extension of the guarantee under the instrument. The Swiss Government notes, moreover, that the amount guaranteed is limited to the sum that the transferor received, including interest.

Article 48

16. The differing rules for ordinary guarantees of an instrument on the one hand and for aval on the other hand, to be based on the terms and form of the guarantee, are complex and not in line with the practical importance of aval, which is limited. The desirability of this solution may therefore be doubted.

17. As far as substance is concerned, the Swiss Government notes that the solutions adopted, although differing from those in the Geneva Convention, do facilitate the circulation of instruments. It is not very important whether a

guarantee which does not specify its beneficiary is presumed to be for the acceptor (or the drawee) or the drawer, to the extent that the scope of this presumption is clear. What is important is to know whether the presumption is absolute or relative. It would therefore be desirable expressly to specify its nature.

Article 57

18. According to paragraph (2) (a) of this article, the bearer of the instrument may be freed of the obligation to present it for payment by the drawer, the endorser or the guarantor. What is the purpose of this? Firstly, it is to be noted that a bill of exchange is not used for regular, customary payments which are made by electronic means; thus the solution is hardly required by practical considerations. Secondly, the proposed solution is in contradiction with the very nature of a negotiable instrument as a security for money.

Article 61

19. In paragraph (3), the draft adopts a solution that is contrary to the Geneva Convention. The divergency here is not likely to make the circulation of the instrument more difficult; on the contrary, one may even assume that it will facilitate its circulation.

Article 65

20. The Swiss Government notes with satisfaction that the text of the draft has been improved and that the holder must give notice of dishonour only to all those endorsers whose addresses he can ascertain on the basis of information contained in the instrument. This means that the holder has an obligation to give notice only on the basis of the addresses appearing in the instrument itself and that he is not bound to undertake more extensive research.

Article 76

21. This article is not particularly easy to read, but provides appropriate solutions where an instrument cannot or may not be paid in a stipulated currency.

Article 77

22. The Swiss Government fully agrees with the provisions to safeguard the legislation of States on exchange control and the protection of currencies.

Article 79

23. The Swiss Government also welcomes the absence in the draft of a procedure for cancellation, in view of the complications associated with this in international trade.

UNITED STATES OF AMERICA

[Original: English]

1. The United States of America supports the UNCITRAL prepared draft Convention on International Bills of Exchange and International Promissory Notes. It believes that this draft should be approved by the Sixth Committee without change or amendment, and should thereafter be opened by the General Assembly for signature and ratification by States.

2. The draft Convention is the product of 19 years of consideration of the subject by experts from a very broad range of countries. The support of the UNCITRAL process is at least of equal importance to consideration of any particular substantive points.

3. During UNCITRAL's work on this project, the points presented to the Sixth Committee had been fully considered by the Commission and its Working Group. Thus, the objections now made to articles 2 and 4 on the scope of the Convention were raised in 1984, and rejected after a thorough discussion. See the report of the Commission on the work of its seventeenth session (A/39/17), paragraph 69, which states that "There was opposition to the idea of introducing further pre-conditions to the application of the Convention, on the ground that this would narrow the scope of application of the Convention. While it was recognized that difficulties might arise if a dispute in regard to an instrument to which the Convention applied arose in a non-contracting State, it was observed that this problem would inevitably occur in the process of the adoption of uniform rules until the Convention containing the uniform rules was widely adopted."

4. Likewise, the objections now made to articles 29 to 31 on the status of the protected holder were raised in 1984, thoroughly discussed, and rejected by UNCITRAL. See the report of the Commission on the work of its seventeenth session (A/39/17), paragraph 30, which states that "the draft Convention used the double concept of holder and protected holder ..." and paragraph 31, which adds "After discussion, the prevailing view in the Commission was that the concept of holder and protected holder should be retained ...".

5. While the Convention as a compromise between two principal legal systems makes some concessions to Common Law concepts, it is not correct to suggest that it favors the Common Law at the expense of the Geneva System. This is documented in the appendix to the observations. Thus, as described more fully in the appendix, the non-protected holder under the Convention has significantly greater protection than that given to the Common Law holder who is not a holder in due course.

6. As to the objection relating to "guarantors" and "avals", France was a member of the Committee that redrafted articles 47 and 48 and had the opportunity to make its views known both in the plenary session study group and in the plenary session itself.

7. Approval of the Convention would further UNCITRAL's programme to seek harmonization and unification of international commercial law and provide a new

type of negotiable instrument for optional use in international trade. This instrument would be governed by rules with greater flexibility than available under the current domestic negotiable instruments law of any country. Instruments issued under the Convention could use such commercially desirable terms as provisions for repayment in units of account (ECUs and SDRs) in installments and with interest at a variable rate, and the instrument would still be negotiable. Thus, the instrument could be used to allocate risks of currency and interest rate fluctuation according to present commercial needs.

8. In addition, instruments issued under the Convention would obtain a certainty concerning the identity of the law governing them, even as they were transferred from one jurisdiction to another. Use of international law principles and a multilateral convention would obviate disputes concerning mandatory law, party autonomy and other choice of law doctrines.

9. The combination of flexibility of commercial terms and certainty of applicable law in a negotiable instrument assist in the development of new secondary market opportunities for international credit instruments. Instruments issued under the Convention would be freely transferable and would avoid the application of unsuitable domestic law concerning commercially desirable terms. Because further negotiation at a reasonable discount in a secondary market will be facilitated, there would be less danger that a creditor, feeling "locked into" very large amounts of debt to a particular debtor, would decline to extend further credit or charge a higher rate to the debtor.

10. For the above reason, the United States urges the Sixth Committee to approve the draft Convention without amendment and urges the General Assembly to approve the draft Convention without amendment and to open it for signature and ratification as of 1 January 1989.

APPENDIX

Some background on technical provisions

1. There have been suggestions made to the Sixth Committee and to the General Assembly that the present draft is one-sided - that it too closely resembles "American law" or "Common Law". This is a misconception, and does not take account of the compromises between different legal systems reflected throughout the final draft. The technical experts who have worked with this Convention for many years are aware of the compromises and balances that have been struck in drafting these provisions, but others may not be aware of them. Since 1982, certain ambiguities have been resolved by compromises moving some substantive rules of the draft Convention toward Geneva system concepts. Those same compromises and their complexity have moved the language of the affected provisions more toward the Common Law style of drafting statutes.

2. This appendix is included with the United States observations to give brief examples in three areas of the way the Commission worked and the balances it struck.

A. Protected and non-protected holders

3. At Common Law, the "holder in due course" is a holder who is also a good faith purchaser for value without notice. This "holder in due course" concept does not exist under the Geneva system, but holders will receive more protection or less, depending upon whether, in acquiring the instrument, the holder "has knowingly acted to the detriment of the debtor".

4. Under the Geneva system, a "holder" receives greater protection in cutting off defenses of prior parties than does the "holder in due course". Also, under the Geneva system the holder who "has knowingly acted to the detriment of the debtor" receives significantly greater protection in cutting off defenses of prior parties than does the Common Law "holder" who is not a holder in due course.

5. The Working Group decided very early not to adopt the Common Law concept of "holder in due course". But it did need to distinguish between those holders who would receive more and those who would receive less protection. Ex-UNCITRAL Secretary Professor John Honnold suggested the term "protected holder" for the person who receives more protection. Unlike the "holder in due course", who must be a good faith purchaser for value without notice, the "protected holder" is basically defined as a purchaser without knowledge of a claim or defense upon the instrument at the time of purchase. In contrast to the Common Law rule, neither good faith nor value is a requisite.

6. In addition, the protected holder is free of all defenses against remote parties except for incapacity, fraud in the factum, forgery, alteration, non-presentment and the statute of limitations. This list of defenses available against a protected holder is longer than the list of defenses available against a holder under the Geneva system, but is much shorter than the list of "real defenses" available against a "holder in due course" in all Common Law systems.

7. Finally, the Common Law holder who is not a "holder in due course" is subject to all claims and contract defenses. Under the Geneva system, even a holder who "has knowingly acted to the detriment of the debtor" a/ is subject only to those claims and defenses of which he had knowledge. The 1982 draft of the Convention made the holder who was not a protected holder, i.e., a holder who took with knowledge of a defect or defense, subject to all claims and contract defenses. This has been subject to intense redrafting, however, and the final draft of the Convention makes this non-protected holder subject primarily only to (1) defenses raised by his immediate transferor, (2) defenses he knew about when he took the instrument, (3) the defense of fraud if he used fraud to obtain the instrument, and (4) defenses available against a "protected holder". b/ This non-protected holder

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a/ There are significant differences between Geneva Convention signatories as to what this language means. See, e.g., Greene, "Personal Defenses Under the Geneva Uniform Law of Bills of Exchange and Promissory Notes: A Comparison," 46 Marquette Law Review 281 (1963).

b/ A/42/17, annex 1 (hereafter referred to as the Convention), article 32.

therefore has greater protection than is available to the Common Law holder and the substance of this provision has shifted toward the Geneva system concepts.

B. Forged endorsements

8. Under the Geneva system, a signing of the payee's name by a person who is not the payee is an effective endorsement, and subsequent transferees are holders - entitled to payment and cutting off of defenses. Under Common Law systems a signature by anyone who is not the payee (or an authorized agent) is not effective, and no subsequent transferee can be a holder - or be entitled to receive payment.

9. The 1982 draft of the Convention adopted a "grand compromise". First, it adopted the Civil Law concept that an "endorsement" in the name of the payee (or special endorsee) by a person who was not the payee (or endorser) would be effective to pass rights in the instrument to subsequent parties, including the right to payment. In addition, representatives of major legal systems agreed that the person whose signature had been forged had a cause of action against the forger, and therefore the principle was incorporated into the draft Convention. In addition, the 1982 draft provided that the person whose signature was forged had a cause of action against the person who took the instrument from the forger, i.e., the first transferee who accepted the forgery as valid. This incorporated part of the relevant Common Law concept that every transferee should "know your endorser", without also adopting the remainder of the Common Law concept which imposes liability on every endorser for all prior signatures. This compromise may be preferable to any present domestic law.

10. The 1982 draft side-stepped several issues, however, and relegated the liability of the drawee and collecting banks to local law. Further discussion showed that these concepts would not work, and in fact might make all of the forged endorsement provisions unworkable. The final draft makes drawees and collecting banks liable only if they took the instrument directly from the forger. Even then, a drawee or collecting bank is not liable unless either it knew of the forgery before it paid the forger or received reimbursement, or it failed to discover the forgery. c/ Again, the substance of the post-1982 changes tends toward the Geneva system because the drawee and collecting banks are now less likely to incur liability.

C. The "Guarantor" and the "Aval"

11. An offshoot of the difference concerning forged signatures is the difference between the risks taken by a guarantor under the different legal systems. A Common Law "guarantor" undertakes the risks related to the creditworthiness of his principal, but is not necessarily deprived of any defenses concerning the authority of his principal or the authenticity of his signature. In other words, the Common

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c/ Convention, articles 26 and 27.

Law "guarantor" is entitled to the actual signature of his principal or of an authorized agent. Under the Geneva system, the maker of an "aval" undertakes not only creditworthiness risks, but also risks related to authority to sign and the authenticity of the principal's signature, even if he signs the aval before the principal signs. At the twenty-first session of the Commission, an ambiguity was discovered in the article on "guarantors" which necessitated a further compromise between the Common Law and the Geneva systems. Everyone thought that the convention language referred to the type of "guarantor" or "aval" which arose under his domestic law. A study group of Canada, France, the Federal Republic of Germany, Italy, the United Kingdom and the United States was appointed to redraft the provision. That group had three basic choices: (1) adopt only one system's liability standard making the Convention unworkable in the other system; (2) create a new and unfamiliar hybrid resulting in disadvantages from the perspective of both systems; or (3) preserve both the "guarantor" and the "aval", letting the parties choose which type of liability they desire according to commercial needs, customs and practice. The Group chose the last option and, after a thorough discussion, UNCITRAL agreed.

12. Under the compromise in articles 47 and 48, the parties may use either the Geneva system "aval", guaranteeing the principal's creditworthiness, authority and authenticity of signature, or the Common Law "guarantor" guaranteeing only the principal's creditworthiness. Either type can be chosen by indicating the words "aval" or "guarantor". When those words are used on the instrument the rules can be expressed quite simply. However, the rules applicable to the party who signs without using those or similar words are quite complex and cannot be stated simply.

YUGOSLAVIA

[Original: English]

1. Yugoslavia considers that the current international banking practice deviates in many respects from the two existing legal systems concerning bills of exchange (the Geneva and the Anglo-American systems) and it therefore welcomes the efforts of UNCITRAL to have this practice reflected in a new international convention. This is in the interest of all States, particularly the developing ones, since the UNCITRAL Convention could help bring about new regulations concerning bills of exchange or introduce novelties into the existing ones to make them better suited to the needs of the contemporary international business transactions.

2. The UNCITRAL draft Convention took over some solutions from the Anglo-American system and others from the Geneva system; however, it also includes a number of original solutions that are the result of the work of experts over a number of years and of the exchange of views effected within the working group and at plenary sessions of UNCITRAL, including also consultations with numerous international organizations.

3. The draft Convention adopted by UNCITRAL at its twentieth session includes some new solutions significantly improving the previous text of the draft Convention. It is felt, however, that the draft Convention would be more practical

if reference to other articles, wherever possible, could be avoided. Repeated reference to numerous other articles of the Convention makes comprehension of the text and its simple application rather difficult.

4. The draft Convention also includes new provisions in article 89 representing a reservation the introduction of which has changed the basic approach of the Convention. Although the reservation will enable ratification of the Convention by some States (viewed from this angle it should be supported), introduction of reservations in texts of this kind is not desirable since it weakens the power of unification and may be conducive to legal insecurity.

5. It is certainly possible to give arguments in support of the previous (broader) conception, as well as those in support of the present (narrower) one, but in this case it is also necessary to harmonize the other provisions (in particular the provisions of article 1 concerning the sphere of application). The 10 ratifications stipulated in article 90 for the entering into force of the Convention should be retained if the reservation is to remain, or the number should be increased to 20, if the reservation is to be deleted.

6. Yugoslavia considers that the General Assembly was right in deciding at its forty-second session to have the draft Convention distributed to all the States Members of the United Nations for their comments, because the new draft Convention also seems to contain certain deficiencies that should be eliminated in the text of the Convention. In addition, this would reduce the negative effects which the adoption of such an important text of the Convention without holding an international diplomatic conference could produce.

Comments on some articles of the draft Convention

Article 1 (including the reservation in article 89)

7. Article 1 of the draft Convention should be considered in relation to the reservation contained in article 89 providing for a possibility that States "at the time of signature, ratification, acceptance, approval or accession" may narrow the sphere of application of the Convention and apply it only to cases "if both the place indicated in the instrument where the bill is drawn, or the note is made, and the place of payment indicated in the instrument are situated in Contracting States".

8. There are many reasons why it would have been better not to accept this reservation, most of which were voiced at the twentieth session of UNCITRAL. However, if this reservation is going to facilitate ratification of the Convention by some States, efforts should be made to retain article 89 of the Convention.

9. However, if the provisions of article 89 are to remain (in the same or modified form), it is felt that the provisions of article 1 should also be harmonized with the wording of article 89. Namely, article 2 stipulates five different places, two of which must be indicated in the bill. Hence the following questions:

What happens if neither the place where the bill is drawn nor the place of payment are indicated in the bill?

Will the places indicated next to the drawer's or the drawee's signatures be considered as the relevant places?

What happens if the place where the bill is drawn is not indicated and no place next to the drawer's signature is specified and as a result, it is not possible to establish the place where the bill is drawn on the basis of the data appearing in the bill?

What procedure is to be followed if the place of payment is not indicated in the instrument and pursuant to the provisions of article 56, it is presented for payment in a place situated in a State which is not a contracting State? Will the courts of the State that has used the reservation in relation to such an instrument apply or refuse to apply the provisions of the Convention?

Does the reservation refer to the endorser as well?

10. Some of those difficulties could be eliminated if the terms relating to the place of drawing (making) and the place of payment were defined, since various interpretations in this respect are possible. The place of drawing or of making of the instrument constitutes a particular problem, and it would be better if these terms were substituted by the term issuing of an instrument, which is legally more relevant. One of the suggestions is that the place of drawing and the place of making be defined as places where the instrument is signed. This would facilitate the interpretation of these terms which may cause difficulties, particularly when translated into languages that are not the official languages of the United Nations.

11. Assumptions concerning the place of drawing and the place of payment could perhaps be included in the Convention, as has been done in the Geneva Uniform Law on Bills of Exchange and Promissory Notes, which would help eliminate some of the mentioned difficulties.

Article 9

12. Paragraph (6) of article 9 has been modified in the new draft so as to stipulate that reference rates of interest must not be subject to unilateral determination by a person who is named in the instrument at the time the bill is drawn or the note is made, unless the person is named only in the reference rate provisions. This stipulation is not good and unilateral determination of reference rates of interest should not be allowed (except to a person who is named in the reference rate provisions) and if that is the case not only concerning the drawee and the remitter, but the person who signed the instrument as well.

Article 10

13. At the end of paragraph (1), subparagraph (a), the words "or if it contains words of similar import" should be deleted. This addition could be to the

detriment of, rather than useful for, the safe circulation of the instrument. As far as the instrument payable at sight or on demand or at presentment is concerned, nothing that could be to the detriment of the preciseness of rules should be allowed because it could lead to legal insecurity. Moreover, different interpretations of the phrase "words of similar import" would weaken the uniform application of the Convention.

14. Paragraph (2) of article 10 should be deleted because it tends to create vague and inconsistent relations. For example, if the instrument is payable after 13 months or later from the date of the instrument, it is stipulated that the person endorsing such instrument after its maturity would not be liable on this instrument, since in relation to him it would be deemed as the instrument payable on demand and such instruments should be presented for payment within one year, which is impossible with the instruments payable after 13 months or later.

Article 11

15. A provision that the instrument can be drawn on a number of drawees has been left out in article 11. Since such instruments exist, it would be useful if these provisions were retained in the draft and if the relations thus created were defined more precisely.

Article 15

16. New paragraph (3) of article 15 contains a useful addition that states that "a signature alone, other than that of the drawee, is an endorsement only if placed on the back of the instrument". This provision would be even more helpful if a sentence would be added to the effect that the signature must fit in a series of endorsements. It would be important from a practical point of view if the Convention also contained provisions detailing legal consequences in case of the signature not fitting in a series of endorsements.

Articles 26 and 27

17. The solution in article 26 is the result of compromise between the Geneva system, in which the person to whom the instrument is endorsed becomes a holder of the instrument even if some of the endorsements are forged or signed by an unauthorized person, and the rule of the common law system to the effect that a forged endorsement is no endorsement enabling the instrument to be negotiated.

18. Although it is common knowledge that this compromise solution has been reached within the working group of UNCITRAL with difficulty, it should be noted that it is not a good solution and that it will adversely affect safe and secure circulation of the instrument in business transactions. Furthermore, it can be said that this solution places the person who obtained the instrument from a forger or an unauthorized person in a more inconvenient position not only in relation to the Geneva Uniform Law on Bills of Exchange and Promissory Notes, but also to the Anglo-American system (the institute of estoppel plays an important corrective role in the latter).

19. In order to improve the provisions of these two important articles and make them better suited to the needs of international banking transactions, it is proposed that they be complemented by the provisions contained in the Anglo-American system dealing with forged and unauthorized endorsement.

Article 32

20. On the basis of the provisions of article 32, a party who signs the instrument could lodge a complaint arising from the original transaction vis-à-vis the holder to whom the instrument has been transferred by the protected holder. The party who signs the instrument could not do so if the holder is not a protected holder (unless he took the instrument knowing of such claims). This stipulation does not seem to be satisfactory, since it jeopardizes the secure, quick and easy circulation of the instrument, which is the basic characteristic of negotiable securities.

Article 36

21. The assumption in paragraph (2) of article 36 according to which, unless the contrary is proved, "a signature is presumed to have been placed on the instrument after the material alteration", should be re-examined since the provision, as formulated in paragraph (2) of this article, may affect the acceptability of the instrument in business transactions. The assumption that each signature has been placed on the instrument after its alteration seems exaggerated. If a bill of exchange is to exist at all, it has to have at least one signature (for example, the signature of the drawer). How can it then be assumed that all the signatures were placed after alteration of an instrument? If that is the case, an original instrument is involved, not an altered one; moreover, the original unsigned text of the instrument is not a bill of exchange at all.

22. In dealing with this question it is of great importance to ascertain whether the alteration of the instrument is visible or not. The assumption in the sense of article 36, paragraph (2), could be applicable only if the alteration of the instrument is not visible. If the alteration is visible, the costs incurred for proving it should be borne by the person who accepted it.

Article 46

23. It would be useful to divide the provisions relating to the liability of the endorser from the provisions regulating the liability of the person who transfers the instrument by mere delivery. This is due to the fact that the endorser takes over the liability on the instrument and the person who transfers it by mere delivery is not liable on the instrument, because he did not sign it. The question is posed whether the Convention should at all regulate liability which is not on the instrument.

24. The words at the beginning of paragraph (1), article 46, "unless otherwise agreed" should, as far as the endorser is concerned, be replaced by the words "unless otherwise determined in the endorsement", since the agreement apart from the instrument should not be relevant to liabilities of the signers of the instrument.

Article 48

25. The provision in paragraph (1) of article 48 stipulating that "the liability of a guarantor on the instrument is of the same nature as that of the party for whom he has become guarantor," is vague. (What does "of the same nature" imply?) It is therefore proposed that the provisions of paragraph (1) be rephrased so as to make them clearer and more precise.

Article 55

26. The new provision contained in paragraph (2), subparagraph (c) of article 55, stipulates that dishonouring of bills by non-acceptance must be proved by protest before the holder of the instrument could exercise rights against the guarantor of the drawee. However, this provision is not in compliance with the provisions of article 54, paragraph (2), in which it is spelt out that "failure to present a bill for acceptance does not discharge the guarantor of the drawee of liability on the bill". If presentment for acceptance is not obligatory, then how can protest for refusing acceptance be obligatory?

Title in front of article 68

27. Instead of the previous title of paragraph (2), which read "discharge of liabilities of the previous signers of the bills", the new formulation is "notice is dispensed with", which is not good either, especially because it is not in logical correlation with the title of the first paragraph. It is proposed that these titles be harmonized. The title of paragraph (2) could perhaps be "other ways of dispensing with liabilities of the signers of the bill", since precisely these provisions are contained in the said paragraph.
