

II. INTERNATIONAL PAYMENTS

A. Report of the Working Group on International Negotiable Instruments on the work of its fifth session (New York, 18-29 July 1977) (A/CN.9/141)*

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INTRODUCTION

1. In response to decisions by the United Nations Commission on International Trade Law (UNCITRAL), the Secretary-General prepared a "Draft Uniform Law on International Bills of Exchange and International Promissory Notes, with commentary" (A/CN.9/WG.IV/WP.2).¹ At its fifth session (1972), the Commission established a Working Group on International Negotiable Instruments. The Commission requested that the above draft uniform law be submitted to the Working Group and entrusted the Working Group with the preparation of a final draft.²

2. The Working Group held its first session in Geneva in January 1973. At that session the Working Group considered articles of the draft uniform law relating to transfer and negotiation (articles 12 to 22), the rights and liabilities of signatories (articles 27 to 40), and the definition and rights of a "holder" and a "protected holder" (articles 5, 6 and 23 to 26).³

3. The second session of the Working Group was held in New York in January 1974. At that session the Working Group continued consideration of articles of the draft uniform law relating to the rights and liabilities of signatories (articles 41 to 45) and considered articles in respect of presentment, dishonour and recourse, including the legal effects of protest and notice of dishonour (articles 46 to 62).⁴

4. The third session was held in Geneva in January 1975. At that session the Working Group continued its consideration of the articles concerning notice of dishonour (articles 63 to 66). The Group also considered provisions regarding the sum due to a holder and to a party secondarily liable who takes up and pays the instrument (articles 67 and 68) and provisions regarding the circumstances in which a party is discharged of his liability (articles 69 to 78).⁵

5. The fourth session of the Working Group was held in New York in February 1976. At that session the Working Group considered articles 79 to 86 and articles 1 to 11 of the draft uniform law, thereby completing its first reading of the draft text of that law.⁶

6. The Working Group held its fifth session at United Nations Headquarters in New York from 18 to 29 July 1977. The Working Group consists of the following eight members of the Commission: Egypt, France, India, Mexico, Nigeria, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland and United States of America. With the exception of Egypt and Nigeria, all the members of the Working Group were represented at the fifth session. The session was also attended by observers of the following States: Argentina, Austria, Brazil, Burundi, Chad, Chile, Germany, Federal Republic of, Liberia, Malaysia, Philippines, Thailand and Turkey, and by observers from the International Monetary Fund, the European Communities, the Hague Conference on Private International Law and the European Banking Federation.

* 10 August 1977.

¹ UNCITRAL, report on the fourth session (1971), para. 35 (Yearbook . . . 1971, part one, II, A). For a brief history of the subject up to the fourth session of the Commission, see A/CN.9/53, paras. 1 to 7; UNCITRAL, report on the fifth session (1972), para. 61 (2) (c) (Yearbook . . . 1972, part one, II, A).

² UNCITRAL, report on the fifth session (1972), para. 61 (1) (a).

³ Report of the Working Group on International Negotiable Instruments on the work of its first session (Geneva, 8-19 January 1973), A/CN.9/77 (Yearbook . . . 1973, part two, II, 1).

⁴ Report of the Working Group on the work of its second session (New York, 7-18 January 1974), A/CN.9/86 (Yearbook . . . 1974, part two, II, 1).

⁵ Report of the Working Group on the work of its third session (Geneva, 6-17 January 1975), A/CN.9/99 (Yearbook . . . 1975, part two, II, 1).

⁶ Report of the Working Group on the work of its fourth session (New York, 2-12 February 1976), A/CN.9/117 (Yearbook . . . 1976, part two, II, 1).

7. The Working Group elected the following officers:

Chairman Mr. René Roblot (France)
Rapporteur Mr. Roberto Luis Mantilla-Molina (Mexico)

8. The Working Group had before it the following documents: provisional agenda (A/CN.9/WG.IV/WP.7); draft uniform law on international bills of exchange and international promissory notes, with commentary (A/CN.9/WG.IV/WP.2); draft uniform law on international bills of exchange and international promissory notes (first revision) (A/CN.9/WG.IV/WP.6 and Add. 1 and 2); and the respective reports of the Working Group on the work of its first (A/CN.9/77), second (A/CN.9/86), third (A/CN.9/99) and fourth (A/CN.9/117) sessions.

DELIBERATIONS AND DECISIONS

9. At the present session the Working Group began consideration of the revised text of the draft uniform law on international bills of exchange and international promissory notes, prepared by the Secretariat on the basis of the deliberations and decisions of the Working Group as recorded in its reports on the work of its four previous sessions.

10. The text of each article as revised appears at the beginning of the report on the deliberations with respect to that article.

11. In the course of its session, the Working Group considered articles 1 to 23 of the revised draft uniform law and commenced consideration of article 24. The text of the articles as approved, or deferred for further consideration, by the Working Group is set forth in the annex to this report.

12. At the close of its session, the Working Group expressed its appreciation to the observers of Member States of the United Nations and to representatives of international organizations who had attended the session. The Group also expressed its appreciation to the representatives of international banking and trade organizations that are members of the UNCITRAL Study Group on International Payments for the assistance they had given to the Group and the Secretariat. The Working Group expressed the hope that the members of the Study Group would continue to make their experience and services available during the remaining phases of the current project.

Draft uniform law on international bills of exchange and international promissory notes

13. The Working Group decided to propose to the Commission that the uniform provisions governing international bills of exchange and international promissory notes should be set forth in the form of a convention rather than in the form of a uniform law. The Group requested the Secretariat to amend the proposed text accordingly.

Titles and subtitles

14. The Working Group decided to review the titles and subtitles of the draft convention upon completion of its consideration of the revised text.

A. Articles 1 to 3 (*sphere of application; form*)

"Article 1

"(1) This Law applies to international bills of exchange and to international promissory notes.

"(2) An international bill of exchange is a written instrument which

"(a) Contains, in the text thereof, the words 'Pay against this international bill of exchange, governed by [the Convention of . . .]';

"(b) Contains an unconditional order whereby one person (the drawer) directs another person (the drawee) to pay a definite sum of money to a specified person (the payee) or to his order;

"(c) Is payable on demand or at a definite time;

"(d) Is signed by the drawer;

"(e) Is dated;

"(f) Shows that at least two of the following places are situated in different States:

"(i) The place indicated next to the signature of the drawer;

"(ii) The place indicated next to the name of the drawee;

"(iii) The place indicated next to the name of the payee;

"(iv) The place of payment.

"(3) An international promissory note is a written instrument which

"(a) Contains, in the text thereof, the words 'Against this international promissory note, governed by [the Convention of . . .]';

"(b) Contains an unconditional promise whereby one person (the maker) undertakes to pay a definite sum of money to a specified person (the payee) or to his order;

"(c) Is payable on demand or at a definite time;

"(d) Is signed by the maker;

"(e) Is dated;

"(f) Shows that at least two of the following places are situated in different States:

"(i) The place where the instrument was made;

"(ii) The place indicated next to the signature of the maker;

"(iii) The place indicated next to the name of the payee;

"(iv) The place of payment.

"(4) Proof that the statements referred to in paragraph (2)(f) or (3)(f) of this article are incorrect does not affect the application of this Law."

15. The Working Group recalled that, at its fourth session, it had noted that States having ratified the Geneva Convention of 1930 for the Settlement of Certain Conflicts of Laws in connexion with Bills of Exchange and Promissory Notes might be prevented from ratifying a convention such as the one now under consideration. The Group noted that the Hague Confer-

ence on Private International Law had included the preparation of a new convention on conflicts of law in respect of negotiable instruments in its programme of work. It was suggested that the Hague Conference might wish to give priority to the consideration of the relationship between the 1930 Geneva Convention on conflicts of laws and the proposed Convention and report its conclusions to the Working Group at a future session. Several representatives stated that linking the solution of the problem of compatibility of the proposed Convention to work on conflict rules might slow down or even postpone the work on the proposed Convention.

Paragraph (1)

16. The Working Group approved the text of this paragraph.

Paragraph (2), subparagraph (a)

17. The Working Group decided to amend this subparagraph as follows:

Contains, in the text thereof, the words "international bill of exchange [Convention of . . .]".

18. The amendment was made on the following grounds:

(a) Under at least one legal system, an order to pay would not be unconditional if the instrument stated that it was subject to or governed by any other agreement, and the reference in the text of an instrument that it was "governed by the Convention of . . ." could possibly be construed as a reference to an agreement;

(b) The words "Pay against this international bill of exchange" could be interpreted in a restrictive sense so as to exclude from the application of the Convention a bill which contained, e.g., the words "Please pay against this international bill of exchange", or other direction to pay couched in courteous terms.

19. It was noted that subparagraph (a) was a formal requisite.

Paragraph (2), subparagraph (b)

20. The Working Group was of the view that this subparagraph could be construed in such a way as to exclude the possibility of the drawer and the drawee being the same person since the latter is referred to as "another person". The Group was of the opinion that this might be too restrictive since it was not unknown in commercial practice for the drawer to draw a bill on himself (e.g. a bill drawn by one branch of a bank on another branch of the same bank). Accordingly, the Group decided to redraft subparagraph (b) in a way that would not exclude the possibility of the drawer and the drawee of a bill being the same person, i.e. by eliminating the word "person" and the words "another person" from the subparagraph and substituting therefor the words "drawer", "drawee" or "payee" as appropriate. However, some representatives noted their preference for the term "person" with its well-settled connotation of someone having legal capacity.

21. One representative stated that, in her opinion, the words "or to his order" were not necessary. Another representative, however, whilst noting that, under the proposed Convention, the words "to the

order of" or "to his order" were irrelevant to the negotiability of the international instrument in that its omission would not prevent transfer under article 13, was of the view that the words "or to his order" should be maintained since under the Uniform Commercial Code their omission did prevent negotiation and a drawer in the United States would thus follow the well-established practice in the United States to draw a bill "to the order of . . .".

22. The Working Group approved the following text of subparagraph (b):

"(b) Contains an unconditional order whereby the drawer directs the drawee to pay a definite sum of money to the payee or to his order."

Paragraph (2), subparagraphs (c), (d), and (e)

23. The Working Group approved the present text of these subparagraphs. However, the Group decided to renumber subparagraphs (d) to (f) in such a way that the substance of what is now subparagraph (d) would appear as the last item on the list of criteria enumerated under paragraph (2). Under this new numbering, therefore, the present subparagraph (e) would become subparagraph (d), the present subparagraph (f) would become subparagraph (e) and the present subparagraph (d) would become subparagraph (f).

Paragraph (2), subparagraph (f)

24. The view was expressed that the present text of subparagraph (f) might be too restrictive in its listing of the places relevant to the determination of the international nature of a bill and, hence, of the application of the Convention. It was noted that the list did not include the place of drawing of the bill which in commercial practice was often the main indicator of the international character of a bill. The result would be that a substantial number of bills of exchange currently in use in international payments would not qualify as international bills under the Convention.

25. The Working Group considered various suggestions. Under one suggestion, the opening words of subparagraph (f) should be reformulated as follows: "Does not show that all of the following places are situated in the same State". In support of this suggestion it was argued that this rule would make the Convention inclusionary rather than exclusionary and bring within the scope of the Convention as many types of bills of exchange encountered in commercial practice as reasonably possible. The effect of the formulation was thus that if a bill was silent as to the places enumerated under subparagraph (f), it could nevertheless qualify as an international bill of exchange under the Convention by virtue only of compliance with the provision of paragraph (2) (b) of article 1. The Working Group did not retain this suggestion.

26. The Working Group decided to amend subparagraph (f) by inserting the additional criterion of "the place where the bill was drawn".

Paragraph (3)

27. The Working Group decided to adapt the text to conform with the changes made in the preceding paragraph.

Paragraph (4)

28. The Working Group approved the text of this paragraph, making only appropriate changes in subparagraph letter references to conform to the decisions taken in paragraphs 23 and 27 above.

Article 2

(deleted)

29. The Working Group noted that, in the revised text, this article had been deleted. The Group concurred with the deletion on the ground that the article was unnecessary.

"Article 3"

"This Law applies (in a contracting State) without regard to whether the places indicated on an international bill of exchange or on an international promissory note pursuant to paragraph (2) (f) or (3) (f) of article 1 are situated in contracting States."

30. The Working Group approved the text of this article as currently drafted subject to deletion of the words "(in a contracting State)" appearing in the first line of the article.

31. One representative stated that she would have preferred retention of these words and removal of the brackets.

*B. Articles 4 to 11 (interpretation)**"Article 4"*

"In the interpretation and application of this Law, regard is to be had to its international character and to the need to promote uniformity."

32. The Working Group approved the text of this article without change.

"Article 5"

"In this Law:

"(1) 'Bill' means an international bill of exchange governed by this Law;

"(2) 'Note' means an international promissory note governed by this Law;

"(3) 'Instrument' means an international bill of exchange or an international promissory note governed by this Law;

"(4) 'Drawee' means the person on whom a bill is drawn but who has not accepted it;

"(5) 'Payee' means the person in whose favour the drawer directs payment to be made or the maker promises to pay;

"(6) 'Holder' means the person referred to in article 13 *bis*;

"(7) 'Protected holder' means a holder of an instrument which, when it came into his possession, was complete and regular on its face and not overdue, provided that, at that time, he was without actual knowledge of any claim to or defence upon the instrument or of the fact that it was dishonoured for non-acceptance or non-payment;

"(8) 'Party' means a party to an instrument;

"(9) 'Maturity' means the date of payment indicated on the instrument and, in the case of a demand bill, the date on which the instrument is first presented for acceptance or for payment;

"(10) 'Forged signature' includes a signature which is forged by the wrongful or unauthorized use of a stamp, symbol, facsimile, perforation or other means by which a signature may be made in accordance with article 27."

Paragraphs (1), (2), (3), (4), (5), (6) and (10)

33. The Working Group approved the text of these paragraphs.

34. The Working Group considered, but did not retain, a suggestion to insert between paragraphs (3) and (4) a definition of "drawer", on the ground that such a definition would serve no purpose beyond that already served by the provision of paragraph (2) (a) of article 1.

35. The Working Group considered, but did not retain, the suggestion that the definition of "drawee" be deleted. The Group noted that, in the Geneva Uniform Law on Bills of Exchange and Promissory Notes, the term "drawee" was also used for the acceptor. The draft Convention, however, distinguished explicitly between drawee and acceptor, and it was thus necessary to define clearly the term "drawee" as the person on whom the bill is drawn but who has not accepted it.

Paragraphs (7), (8) and (9)

36. The Working Group decided to consider the definitions of "protected holder", "party" and "maturity" in connexion with its consideration of the substantive provisions embodying these concepts.

Article 6

(deleted)

37. The Working Group noted that article 6 of the original draft had been deleted because the concept of "knowledge" had been dealt with in the context of "protected holder" in article 5.

"Article 7"

"The sum payable by an instrument is deemed to be a definite sum although the instrument states that it is to be paid

"(a) With interest;

"(b) By instalments at successive dates;

"(c) By instalments at successive dates with the stipulation on the instrument that upon default in payment of any instalment the unpaid balance becomes due;

"(d) According to a rate of exchange indicated on the instrument or to be determined as directed by the instrument; or

"(e) In a currency other than the currency in which the amount of the instrument is expressed."

Paragraphs (a), (b) and (c)

38. The Working Group approved the text of these paragraphs.

Paragraph (d)

39. The Working Group noted that this paragraph was designed to cover the case of a bill drawn as follows: "Pay \$US 5,000 in Swiss francs at the rate of exchange of 2.50 Swiss francs to the dollar" or "pay \$US 5,000 in Swiss francs at the rate of exchange prevailing at maturity".

40. The question was raised whether paragraph (d) should be expanded to cover not just cases of the above type, but such other cases as, for example, where the order calls for the payment of "such amount of Swiss francs as is equivalent to 1000 United States dollars of 1934 value". The Working Group, having considered this question, was of the opinion that it was not desirable to extend the range of application of paragraph (d) in the manner suggested, not only because of the uncertainty which might result from such a provision but also because inquiry among banking circles had revealed very little practical need for such a provision. It was noted in this connexion that paragraph (d) was itself already a significant extension of the law currently in force in many States, including States adhering to the Geneva Convention of 1930 providing a Uniform Law for Bills of Exchange and Promissory Notes. Accordingly, the Group decided to maintain the text of this paragraph.

41. The Working Group was agreed that, in the context of paragraph (d), the sum payable by an instrument could be deemed to be a definite sum if at any time of payment the holder was able to determine the amount then payable from the instrument itself with any necessary computation.

Paragraph (e)

42. The Working Group approved the text of this paragraph without change.

43. The Working Group further considered the question whether multicurrency clauses could be used in an international instrument. It was noted that such clauses might be devised in the future. The Group, after deliberation, decided to submit this question to the Commission for further consideration.

44. The Working Group took note of a proposal to insert into article 7 a new paragraph which would provide as follows:

"The appearance in the instrument of clauses: 'issued under Contract No. . . .', 'issued under Letter of Credit No. . . .', 'in debit of account No. . . .', and other equivalent clauses, not included in the body of the instrument and merely referring either to the transaction which gave rise to the instrument, or to the source out of which payment is to be made, does not make the order or the promise to pay conditional, if it is unconditional in all other respects."

"Article 8"

"(1) If there is a discrepancy between the amount of the instrument expressed in words and the amount expressed in figures, the sum payable is the amount expressed in words.

"(2) If the sum payable by an instrument is specified in a currency having the same denomination in at least one other State than the State where payment is to be made as indicated on the instrument and the specified currency is not identified as the currency of any State, the instrument is payable in the currency of the State where payment is to be made.

"(3) If an instrument states that it is to be paid with interest, without specifying the date from which interest is to run, interest runs from the date of the instrument.

"(4) A stipulation on an instrument stating that it is to be paid with interest is to be disregarded unless it indicates the rate at which interest is to be paid."

Paragraph (1)

45. The Working Group approved the text of this paragraph.

Paragraph (2)

46. The Working Group adopted, with slight revision, the present text of this paragraph. The paragraph as revised reads as follows:

"(2) If the amount of the instrument is expressed in a currency having the same description as that of at least one other State than the State where payment is to be made as indicated on the instrument and the specified currency is not identified as the currency of any State, the currency is to be considered as the currency of the State where payment is to be made."

47. The question was raised whether the words "as indicated on the instrument" were not too restrictive and, if so, should not be deleted. The following example was given: "Pay 1,000 francs to Mr. Rossi in Rome" and the bill is drawn by a bank in Zurich. Under one view, since the bill was drawn by a bank in Switzerland the reference to "francs" should be interpreted as a reference to Swiss francs. The Working Group did not reach a consensus on such an interpretation and requested the Secretariat to consult banking and trade institutions on whether such instruments were found in practice and, if so, how they were interpreted.

Paragraphs (3) and (4)

48. The Working Group approved the text of these two paragraphs.

"Article 9"

"(1) An instrument is deemed to be payable on demand

"(a) If it states that it is payable on demand or at sight or on presentment or if it contains words of similar import; or

"(b) If no time for payment is expressed.

"(2) [An instrument payable at a definite time which is accepted or endorsed or guaranteed after maturity is an instrument payable on demand as regards the acceptor, the endorser or the guarantor.]

"(3) An instrument is deemed to be payable at a definite time if it states that it is payable

"(a) On a stated date or at a fixed period after a

stated date or at a fixed period after the date of the instrument; or

“(b) At a fixed period after sight; or

“(c) By instalments at successive dates; or

“(d) By instalments at successive dates with the stipulation on the instrument that upon default in payment of any instalment the unpaid balance becomes due.

“(4) The time of payment of an instrument payable at a fixed period after date is determined by reference to the date of the instrument.”

Paragraph (1), subparagraphs (a) and (b)

49. The Working Group approved the text of these two subparagraphs.

Paragraph (2)

50. The Working Group approved the text of this paragraph and decided also to remove the brackets around the text.

Paragraph (3), subparagraph (a)

51. The Working Group decided to maintain the present text of this subparagraph, although the view was expressed that there was a certain redundancy in the two expressions “stated date” and “fixed period after a stated date”, as the latter was itself a “stated date”. It was felt that such a redundancy, if any, could be tolerated in the interest of clarity since bills were often drawn in practice along the lines suggested by the text.

Paragraph (4)

52. The Working Group approved the text of paragraph (4).

53. The Working Group adopted a proposal to supplement the present text of this paragraph with a provision designed, like article 35 of the Geneva Uniform Law, to regulate maturity in the case of an instrument payable at a fixed period after sight. The provision reads as follows:

“The maturity of a bill payable at a fixed period after sight is determined by the date of the acceptance.”

54. The question was raised as to how the maturity of a note payable at a fixed period after sight should be determined. It was noted that article 78 of the Geneva Uniform Law provided that such notes must be presented for the visa of the maker and that the period of time would run from the date of the visa signed by the maker on the note. If the maker refused to give his visa with the date thereon, the refusal must be authenticated by a protest and the date of such protest would mark the commencement of the period of time after sight.

55. The Working Group concluded that the draft Convention should likewise recognize this practice and adopted provisionally the following new paragraph, which would be placed in brackets:

“[The maturity of a note payable at a fixed period after sight is determined by the date of the visa signed by the maker on the note or, if signature is refused, from the date of presentment.]”

56. The Working Group requested the Secretariat to review the draft text, to ascertain the extent to which this practice was in operation and to make appropriate recommendations on how the practice might best be accommodated, with due regard to any other relevant provisions in the draft Convention.

New paragraph

57. The Working Group also adopted a proposal to insert as a new paragraph of article 9 the following text designed, like article 36 of the Geneva Uniform Law on Bills of Exchange, to resolve the ambiguity caused by the unevenness in the number of days which make up calendar months:

“Where an instrument is drawn, or made, payable at one or more months after a stated date or after the date of the instrument or after sight, the instrument matures on the corresponding date of the month when payment must be made. If there is no corresponding date, the instrument matures on the last day of that month.”

“Article 10

“(1) A bill may

“(a) Be drawn upon two or more drawees,

“(b) Be drawn by two or more drawers,

“(c) Be payable to two or more payees.

“(2) A note may

“(a) Be made by two or more makers,

“(b) Be payable to two or more payees.

“(3) If an instrument is payable to two or more payees in the alternative, it is payable to any one of them and any one of them in possession of the instrument may exercise the rights of a holder. In any other case the instrument is payable to all of them and the rights of a holder can only be exercised by all of them.”

Paragraphs (1) and (2)

58. The Working Group approved the text of these paragraphs.

Paragraph (3)

59. The question was considered whether the present text permitted the drawing of a bill in the form “Pay to A and/or B the sum of . . .” and, if so, what the effect of such an order was. Under one view, the text of the paragraph covered this situation and, under the second sentence of that paragraph, such an order would be treated as an order to pay to A and B. Under another view, paragraph (3) still left doubtful the question whether the use of the “and/or” device in an instrument precluded the validity of the instrument on the ground of indefiniteness of payee.

60. The Working Group decided to retain the text of paragraph (3) as at present drafted and requested the Secretariat to explain in the Commentary that the effect under paragraph (3) of the use of the “and/or” formula in an instrument is to bring the instrument within the second sentence of that paragraph, and thus make the instrument payable not in the alternative.

Drawer and drawee as one

61. The Working Group considered whether the draft Convention should expressly provide that a bill may be drawn by the drawer on himself. It was suggested that such a provision would conform to established practice and that the draft Convention should set forth a rule based on article 6 of the Geneva Uniform Law on Cheques which provides that a cheque may not be drawn on the drawer himself unless it is drawn by the establishment on another establishment belonging to the same drawer. The further suggestion was made that these two establishments should be situated in different States. According to a third suggestion the provision contemplated should be based on article 3 of the Geneva Uniform Law on Bills of Exchange and Promissory Notes.

62. The Working Group, after deliberation, adopted the following text as article 10 *bis*:

"A bill may be drawn by the drawer on himself or be drawn payable to his order."

"Article 11

"(1) An incomplete instrument containing the words 'Pay against this international bill of exchange governed by [the Convention of . . .]' or the words 'Against this international promissory note governed by [the Convention of . . .]' which is signed by the drawer or the maker but which lacks elements pertaining to one or more of the requirements set out in paragraphs 2 or 3 of article 1 may be completed and the instrument so completed is effective as a bill or a note.

"(2) When such an instrument is completed otherwise than in accordance with agreements entered into

"(a) Parties who signed the instrument before the completion may invoke the absence of agreement as a defence against a holder with knowledge of the absence of agreement;

"(b) Parties who signed the instrument after the completion are liable according to the terms of the instrument so completed."

Paragraph (1)

63. The Working Group approved the substance of this paragraph and requested the Secretariat to adapt the text of the paragraph to conform with the change made with respect to the words "Pay against this international bill of exchange governed by [the Convention of . . .]" in article 1 (2) (a). The paragraph as adopted reads as follows:

"An incomplete instrument which satisfies the requirements set out in subparagraphs (a) and (f) of paragraph (2) or (a) and (f) of paragraph (3) of article 1 but which lacks other elements pertaining to one or more of the requirements set out in paragraphs (2) or (3) of article 1 may be completed and the instrument so completed is effective as a bill or a note."

Paragraph (2), subparagraph (a)

64. With respect to this subparagraph, the Working Group adopted a proposal to incorporate a reference to

article 68 so as to clarify the legal relation between a party who takes up and pays an instrument under that article and one who signed the instrument before it was completed otherwise than in accordance with applicable agreements. The Group also decided to substitute the words "non-observance of the agreement" for the words "absence of agreement" wherever the latter occurred in the subparagraph.

65. The subparagraph as adopted reads as follows:

"A party who signed the instrument before the completion may invoke the non-observance of the agreement as a defence against a holder or against any other person who exercises a right of recourse in accordance with article 68, provided such a person or holder has knowledge of the non-observance of the agreement."

66. Two views were expressed with regard to this subparagraph. Doubts were expressed regarding the requirement of knowledge, since the required proof of actual knowledge was extremely difficult to establish. According to another view, it might be useful to specify in the subparagraphs, as done in the Geneva Uniform Law on Bills of Exchange, at what point the party concerned had to have the requisite knowledge. The Working Group decided to revert to this question when it would consider the concept of "knowledge" in the context of other provisions of the draft Convention, in particular in the context of a definition of "protected holder".

Subparagraph (b)

67. The Working Group approved the text of this subparagraph, subject to changing the word "Parties" to "A party", and the word "are" to "is".

*C. Articles 12 to 22 (transfer; holder)**Article 12*

(deleted)

68. The Working Group noted that it had deleted this article at its first session (see A/CN.9/77, paras. 10-13; Yearbook . . . 1973, part two, II, 1).

"Article 13

"An instrument is transferred

"(a) By endorsement and delivery of the instrument by the endorser to the endorsee; or

"(b) By mere delivery of the instrument if the last endorsement is in blank."

69. The Working Group approved the text of this article.

New article

(to be inserted between article 13 and article 13 *bis*)

"(a) An endorsement must be written on the instrument or on a slip affixed thereto ('allonge'). It must be signed.

"(b) An endorsement may be made

"(i) In blank, that is, by a signature alone or by a signature accompanied by a statement to the effect that the instrument is payable to any person in possession thereof;

“(ii) Special, that is, by a signature accompanied by an indication of the person to whom the instrument is payable.”

70. The Working Group decided that it would be useful to include in the draft Convention provisions relating to the means by which an endorsement may be effected, and which specifically would make clear that the endorser's signature alone is sufficient. Accordingly, the Group approved the text appearing above as a new article to be inserted between article 13 and article 13 *bis*.

71. Two issues were raised with regard to that text. Firstly, with regard to paragraph (a), the question was raised whether it did not unduly complicate matters to expressly recognize the making of endorsements on a separate slip affixed to the instrument (“allonge”), especially in view of the provision of article 19 respecting the determination of the order of endorsements on an instrument. It was pointed out, however, that the concept of the “allonge” was well known and widely used in practice and could not, therefore, be ignored. Furthermore, the draft Convention itself already recognized the device in other provisions, as for example, in article 43 (2) with respect to the guarantee of payment.

72. Secondly, with regard to paragraph (b) (i) of the article, one representative doubted the correctness, as a matter of law, of equating the endorsement in blank with “a signature accompanied by a statement to the effect that the instrument is payable to any person in possession thereof” as that subparagraph appears to do. This representative would, therefore, delete the part of the subparagraph just quoted.

“Article 13 bis

“(1) A person is a holder if he is

“(a) The payee in possession of the instrument;
or

“(b) In possession of an instrument

“(i) Which has been endorsed to him; or

“(ii) On which the last endorsement is in blank and on which there appears an uninterrupted series of endorsements, even if any of the endorsements was forged or was signed by an agent without authority.

“(2) When an endorsement in blank is followed by another endorsement, the person who signed this last endorsement is deemed to be an endorsee by the endorsement in blank.

“(3) A person is not prevented from being a holder by the fact that the instrument was obtained under circumstances, including incapacity or fraud, duress or mistake of any kind, that would give rise to a claim to, or to a defence upon the instrument.”

73. The Working Group approved the text of this article.

“Article 14

“If the transfer under paragraph (a) of article 13 is incomplete because the endorsement is lacking, the transferee is entitled to require the transfer or to endorse the instrument to him, unless otherwise agreed.”

74. The Working Group decided to delete this article on the ground that it stated the obvious and was thus unnecessary.

“Article 15

“The holder of an instrument on which the last endorsement is in blank may

“(a) Further endorse the instrument either in blank or to a specified person; or

“(b) Convert the blank endorsement into a special endorsement by indicating therein that the instrument is payable to himself or to some other specified person; or

“(c) Transfer the instrument in accordance with paragraph (b) of article 13.”

75. The Working Group approved the text of this article.

76. The question was raised whether the holder of an instrument on which the last endorsement is in blank who transfers the instrument by mere delivery (cf. article 13 (b)), would be liable on the instrument to subsequent parties. The Working Group was agreed that such a transferor, since he had not signed the instrument, was not a party to the instrument and thus had no liability thereon.

“Article 16

“When the drawer, the maker or an endorser has inserted in the instrument or in the endorsement such words as ‘not negotiable’, ‘not transferable’, ‘not to order’, ‘pay (X) only’, or words of similar import, the transferee does not become a holder except for purposes of collection.”

77. The Working Group discussed this article at some length with many divergent views expressed as to the content and effect of the article and the purpose which it meant to serve. Thus, according to one view the article was concerned primarily with attempts by parties to exclude or limit their liability on the instrument which it was the policy of the draft Convention to permit. Consequently, the same result would be reached by virtue of other provisions in the draft even should article 16 be deleted. According to another view, the article was not concerned with limitation of liability but with restriction of circulation of an instrument. Accordingly, there was need for this specific article to remain in the Convention.

78. Among the proposals made with regard to article 16 were: to retain the article without change; to delete the provision altogether; to make separate provision for the effect of “not negotiable” clauses added by the drawer or the maker, and by an endorser or to have a separate provision along the lines of article 15 of the Geneva Uniform Law on Bills of Exchange which states that the effect of an endorsement containing a non-negotiability clause is to render the endorser's guarantee ineffectual. The proposal was also made that the drawer or the maker should be able to partially limit the transferability of the instrument.⁷

⁷ The following substitute text was therefore proposed for article 16:

“Article 16

“(a) When the drawer or the maker has inserted in the instrument

79. The view was also expressed that it was awkward to state, as the present draft does, that "the transferee does not become a holder except for purposes of collection". Since the transferee in such a case would in fact become a "holder", preference was voiced for the positive formulation to the effect that the transferee was a holder but only for purposes of collection. Another representative favoured the maintenance of the negative formulation in the text, observing that the content of both formulations was the same.

80. The Working Group retained the text of this article as at present drafted but decided to place the entire text in brackets for further consideration at a future session at which time the Secretariat should have sought the opinion of banking and other commercial interests as to which solution was the soundest.

"Article 17"

"(1) An endorsement must be unconditional.

"(2) A conditional endorsement transfers the instrument irrespective of whether the condition is fulfilled.

"(3) A claim to or a defence upon the instrument based on the fact that the condition was not fulfilled may not be raised except by the party who endorsed conditionally against his immediate endorsee."

Paragraph (1)

81. The Working Group decided to delete this paragraph on the ground that there was a certain incompatibility between it and paragraphs (2) and (3) which give some effect to a conditional endorsement.

Paragraph (2)

82. The Working Group approved the text of this paragraph without change.

Paragraph (3)

83. The Working Group considered a proposal to delete this paragraph on the ground that it dealt with merely personal defences.

84. As to the relationship between paragraph (3) and the definition of "protected holder" in article 5 (7), it was pointed out that a holder other than the immediate transferee of a conditional endorser, if he took with knowledge of the fact that the condition had not been fulfilled, might be precluded from becoming a "protected holder" under that definition since he would have taken with "actual knowledge of a claim to or defence upon the instrument". Retaining paragraph

such words as "not negotiable", "not transferable", "not to order", "pay (X) only", or words of similar import, the transferee becomes a holder only for purposes of collection.

"(b) When the drawer or the maker has inserted in the instrument such words as "negotiable (transferable, to order) only once (twice and so on)" or "negotiable (transferable, to order) only to a bank (specified bank or any bank and so on), an endorsee who has acquired the instrument otherwise than indicated in the instrument becomes a holder only for purposes of collection.

"(c) When the endorser has inserted in the endorsement words (clauses) implying prohibition, fully or partially, or a limitation of further transfer of the instrument, he gives no guarantee to persons to whom the instrument is subsequently endorsed."

(3) would make it clear that this special rule was being created for this case, whereas its deletion would leave no clear solution to the problem.

85. The Working Group decided to retain this paragraph subject to substitution of the word "transferee" for the word "endorsee" in the last line of the paragraph, so that the paragraph would now read:

"(3) A claim to or a defence upon the instrument based on the fact that the condition was not fulfilled may not be raised except by the party who endorsed conditionally against his immediate transferee."

The purpose of substituting the word "transferee" for the word "endorsee" was to deal with a transfer under a blank endorsement.

86. The Working Group was agreed that the purpose of paragraph (3) was to confer absolute protection on a remote holder, even if such holder knew about the non-fulfilment of the condition, and that such holder should have the status of a protected holder if he otherwise so qualified.

"Article 18"

"An endorsement in respect of a part of the sum due under the instrument is ineffective as an endorsement."

87. The proposal was made to delete the words "as an endorsement" at the end of the article on the ground that it was redundant and might create the impression that such an endorsement was effective in some other way. In response, it was pointed out that a partial endorsement could still be effective for some other purpose under national law, for instance, as an assignment. Consequently, it was only necessary for purposes of the Convention to say that such an endorsement was not effective as an endorsement under the Convention.

88. The Working Group decided to retain the text of this article.

"Article 19"

"When there are two or more endorsements, it is presumed, unless the contrary is established, that each endorsement was made in the order in which it appears on the instrument."

89. The Working Group noted that the primary purpose of this article was to establish a presumption of fact as to the time sequence amongst endorsements appearing on an instrument, namely, that each endorsement was made in the order in which it appears. In the event of a dishonour by non-acceptance or by non-payment, upon payment by a party to the holder, those parties who had a right of recourse against the payer are discharged.

90. The question was raised whether a rebuttal of the presumption could only be made by deducing proof from within the instrument or whether such proof could also be deduced from outside the instrument. The Group was of the view that proof could also be brought from outside the instrument, but that such a need would mainly arise in the case of endorsements in blank.

91. The Working Group approved the text of article 19 as set out above.

"Article 20"

"(1) When an endorsement contains the words 'for collection', 'for deposit', 'value in collection', 'by procuration', or words of similar import, authorizing the endorsee to collect the instrument (endorsement for collection), the endorsee

"(a) May only endorse the instrument on the same terms;

"(b) May exercise all the rights arising out of the instrument;

"(c) Is subject to all claims and defences which may be set up against the endorser.

"(2) The endorser for collection is not liable upon the instrument to any subsequent holder."

92. The Working Group approved this article, subject to adding, in paragraph (1), the words "pay any bank" after the words "by procuration", and replacing in paragraph (1) (a) the words "on the same terms" by the words "for purposes of collection".

93. It was noted that an endorsement reading "pay any bank" was, under the Uniform Commercial Code of the United States, treated like an endorsement for deposit or collection.

94. The question was raised whether the endorsee for collection, in addition to being subject to all claims and defences which may be set up against the endorser, was also subject to claims and defences which may be set up against him. Under one view, the endorsee for collection should not be considered as a holder in his own right and, therefore, the word "all" in paragraph (1) (c) should be replaced by "only those", so as to make it clear that the only claims and defences that could be set up against the endorsee were those that could be set up against his endorser. One representative was of the opinion that the Working Group should state explicitly that an obligor could not raise against the endorsee for collection claims or defences that were based on his personal relationship with the endorsee.

95. The suggestion was made that article 20 should make provision for the situation envisaged in article 18 of the Geneva Uniform Law on Bills of Exchange and Promissory Notes. Under that article, "the mandate contained in an endorsement by procuration does not terminate by reason of the death of the party giving the mandate or by reason of his becoming legally incapable".

96. Various issues were raised during the discussion of this suggestion:

(a) Is the endorsee for collection an agent of the endorser or a holder in his own right?

(b) Is payment to the endorsee for collection a good discharge if the authority was terminated or revoked and the person paying the instrument had notice of such termination or revocation?

(c) Should the endorsement remain effective in the case of:

- (i) Death of the endorser;
- (ii) Legal incapacity;
- (iii) Bankruptcy;
- (iv) Dissolution?

97. The Working Group considered various pro-

posals in respect of the above issues.⁸ The Group decided not to take a decision on these issues at the present session but to request the Secretariat to study the problems involved, in particular the status of the endorsee for collection, and to submit draft proposals to it at its next session.

"Article 21"

"The holder of an instrument may transfer it to a prior party or the drawee in accordance with article 13; nevertheless, in the case where the transferee was a prior holder of the instrument, no endorsement is required and any endorsement which would prevent him from qualifying as a holder may be struck out."

98. The Working Group approved this article.

99. The proposal was made, but not retained, that article 21 should be drafted on the lines of article 20 of the Geneva Uniform Law on Bills of Exchange and Promissory Notes.⁹

"Article 21 bis"

"An instrument may be transferred in accordance with article 13 after maturity, except by the drawee, the acceptor or the maker."

100. The Working Group approved this article.

"Article 22"

"(1) If an endorsement is forged the person whose endorsement is forged has against the forger and against the person who took the instrument directly from the forger the right to recover compensation for any damage that he may have suffered because of the forgery.

"(2) The drawer or maker of the instrument has a similar right to compensation in circumstances where damage is caused to him by the forgery of the signature of the payee.

"(3) For the purposes of this article a signature placed on the instrument by an agent without authority has the same consequences as a forgery."

⁸ One representative submitted the following alternatives:

Alternative A

The endorsement for collection remains effective after the death of the endorser or any modification in his legal capacity.

The revocation of the mandate is effective against third persons only if such revocation results from the instrument itself.

Alternative B

The endorsement for collection remains in effect in the case of the death, incapacity or bankruptcy of the endorser, or, in the case of an entity, dissolution.

The revocation of a mandate is effective against third persons only if such revocation results from the instrument itself.

Another representative submitted the following proposal in relation to article 70:

"Payment to an endorsee for collection is effective under this article notwithstanding the termination or revocation of the authority of the endorsee."

⁹ "An endorsement after maturity has the same effects as an endorsement before maturity. Nevertheless, an endorsement after protest for non-payment, or after the expiration of the limit of time fixed for drawing up the protest, operates only as an ordinary assignment...."

Paragraph (1)

101. The Working Group approved this paragraph. The Group was agreed that the provision would apply in situations illustrated by the following example: the drawer, D, issues a bill, accepted by the drawee, A, to the payee, P. X steals the bill from P, forges his signature and transfers the bill to B. A pays the bill to B. A is discharged since he paid to a holder (cf. article 70 (1)) and may debit the account of D. Under article 22 (1), P has the right to recover compensation from X and from B.

Paragraph (2)

102. The Working Group noted that this paragraph was intended to cover situations where the payee had never been in the possession of the instrument as illustrated in the following example. The drawer, D, sends a bill, accepted by A, by post to the payee, P. Before the bill reaches P, it is stolen from the post. The thief, X, forges P's signature, and transfers the bill to B. A pays the bill to B. A is discharged and may debit the account of D. However, D's debt to P is not extinguished since P did not receive the bill. D, who still must pay P, suffers damage and has a right to compensation, outside the bill, against X and B.

103. The question was raised whether the provision of paragraph (2) was wide enough to embrace all cases where damage was suffered because of a forged signature. The following example was given: A sells goods to B and draws a bill on B in favour of himself. B accepts and sends the bill accepted by him to A. Before the bill reaches A, it is stolen from the post. The thief, X, forges A's signature and transfers the bill to C. C receives payment from B. The view was expressed that, although B was discharged on the bill, he might not be allowed to debit the account of A since the price of the goods had not been paid to A. If B cannot debit the account of A, he suffers damages and should therefore be able to recover compensation by exercising a cause of action against X and C. Therefore, the provision set forth in paragraph (2) should be broadened along the following lines:

"If a signature on the instrument is forged, any party has against the forger and against the person who took the instrument directly from the forger the right to recover compensation for any damage he may have suffered because of the forgery."

104. Under another view, the rule should not be of a general nature; the acceptor and the drawee should be included in paragraph (2) only if it could be demonstrated that there were situations where the acceptor and the drawee suffered damages because of the forgery of the payee's signature.

105. The Working Group, whilst agreed on the principle underlying paragraph (2), did not reach consensus on the scope of the provision and decided therefore to approve paragraph (2) provisionally.

Paragraph (3)

106. The question was raised whether a signature placed on the instrument by an agent without authority should be assimilated to a forged signature. The Working Group was generally agreed that an endorsee to whom the instrument had been endorsed by an agent

without authority should not in all circumstances be liable in the same way as an endorsee who took the instrument from a forger. However, the Group did not reach agreement on the kind of circumstances in which the person who sustained loss because of an unauthorized signature should be given a right to compensation.

107. The view was expressed that the issues which paragraph (3) sought to deal with were part of the general law of agency and could not satisfactorily be dealt with in a convention on negotiable instruments.

108. The Working Group, after discussion, decided to delete paragraph (3) provisionally. The Group requested the Secretariat to consider a redefinition of "forged signature" in article 5 (10) so as to include situations where a signature is placed on an instrument by a person without authority to sign who is not an employee or agent of the person he purports to represent. This redefinition should lead to the result, *inter alia*, that article 22 would apply in cases of actual forgery and in cases where a stranger who purported to be an agent signed without authority. On the other hand, article 22 should not apply where the signature is by an agent with general authority, but not with particular authority to sign the instrument.

109. The suggestion was made that the Secretariat, in considering these questions, should consult with the UNCITRAL Study Group on International Payments.

*D. Articles 23 and 24 (rights and liabilities)**"Article 23"*

"(1) The holder of an instrument has all the rights conferred on him by this law against any party to the instrument.

"(2) The holder is entitled to transfer the instrument in accordance with article 13."

110. The question was raised whether the words "any party", in paragraph (1), could be misconstrued in that there could be situations in which a party was not liable to the holder, e.g. when the bill had been paid and taken up by a prior party.

111. The Working Group decided that, in order to avoid any misunderstanding, the words "any party" should be replaced by "the parties".

112. Subject to this modification, the Working Group approved article 23.

"Article 24"

"(1) The rights to and upon an instrument of a holder who is not a protected holder are subject to:

"(a) Any valid claim to the instrument on the part of any person;

"(b) Any defence of any party which would be available as a defence to contractual liability or available under this law.

"(2) A party may not raise as a defence against a remote holder the fact that he has a defence against his immediate party if such defence is unrelated to the circumstances under which he became a party.

"(3) A party may not raise as a defence against a

holder the fact that a third person has a valid claim to the instrument unless such third person has himself claimed the instrument from the holder and informed such party of his claim.”

Paragraph (1)

113. During the discussion of article 24 (1) the question was raised whether the drawer who draws a bill to himself can be a “protected holder”. It was noted that under article 13 *bis* the drawer payee was a holder but that the definition of “protected holder” in the revised draft would prevent him from qualifying as a “protected holder”.

114. The view was expressed that, if the payee was not capable of being a “protected holder”, article 24 (1) should not preclude the application of a procedural law in a legal system under which a defence of the type mentioned in paragraph (1) (b) would not be available in an application for summary judgement. The Working Group expressed agreement with this view.

115. With respect to paragraph (1) (b), the Working Group considered the meaning of a “defence to contractual liability”. The Working Group was agreed that such a defence referred to a defence available in a contractual relationship under the applicable law. Thus, if under such law the defence of fraud, duress, incapacity, mistake, etc., was available as a defence against contractual liability, such defence could also be set up against liability on the instrument against a holder who is not a protected holder. However, the view was expressed that the present wording of paragraph (1) (b) could give rise to misinterpretation and should be redrafted with greater clarity.

116. The proposal was made that the draft Convention should contain a provision under which, as between immediate parties, no distinction should be made between a holder and a protected holder: both should be subject to any defence set up by the immediate party. The status of protected holder would only become relevant where the defence against liability was set up by a remote party.

117. The Working Group decided to postpone a decision on this proposal until after it had considered the definition of “protected holder” and article 25 concerning the rights of a protected holder.

118. One observer expressed the view that paragraphs (2) and (3) of article 24 constituted exceptions to paragraph (1) (b) of that article and that, consequently, the article should be redrafted in order to achieve greater clarity.

FUTURE WORK

119. The Working Group requested the Secretariat to prepare a commentary to the revised text of the draft convention as amended and approved by the Working Group.

120. The Working Group decided to hold its sixth session at Geneva from 3 to 13 January 1978. The Working Group noted in this connexion that the Commission had approved these dates at its tenth session held at Vienna from 23 May to 17 June 1977.

ANNEX

Draft Convention on International Bills of Exchange and International Promissory Notes

(as adopted by the Working Group on International Negotiable Instruments at its fifth session, New York, 18-29 July 1977)

[PART ONE. SPHERE OF APPLICATION; FORM]*

Article 1

(1) This Convention applies to international bills of exchange and to international promissory notes.

(2) An international bill of exchange is a written instrument which (a) Contains, in the text thereof, the words “international bill of exchange [Convention of . . .]”;

(b) Contains an unconditional order whereby the drawer directs the drawee to pay a definite sum of money to the payee or to his order;

(c) Is payable on demand or at a definite time;

(d) Is dated;

(e) Shows that at least two of the following places are situated in different States

(i) The place where the bill is drawn;

(ii) The place indicated next to the signature of the drawer;

(iii) The place indicated next to the name of the drawee;

(iv) The place indicated next to the name of the payee;

(v) The place of payment;

(f) Is signed by the drawer.

(3) An international promissory note is a written instrument which

(a) Contains, in the text thereof, the words “international promissory note [Convention of . . .]”;

(b) Contains an unconditional promise whereby the maker undertakes to pay a definite sum of money to the payee or to his order;

(c) Is payable on demand or at a definite time;

(d) Is dated;

(e) Shows that at least two of the following places are situated in different States

(i) The place where the instrument was made;

(ii) The place indicated next to the signature of the maker;

(iii) The place indicated next to the name of the payee;

(iv) The place of payment;

(f) Is signed by the maker.

(4) Proof that the statements referred to in paragraph (2) (e) or (3) (e) of this article are incorrect does not affect the application of this Convention.

Article 2

(deleted)

Article 3

This Convention applies without regard to whether the places indicated on an international bill of exchange or on an international promissory note pursuant to paragraph (2) (e) or (3) (e) of article 1 are situated in contracting States.

[PART TWO. INTERPRETATION]

Article 4

In the interpretation and application of this Convention, regard is to be had to its international character and to the need to promote uniformity.

* Brackets indicate matters which the Working Group has reserved for further consideration at a later date.

Article 5

In this Convention

- (1) "Bill" means an international bill of exchange governed by this Convention;
- (2) "Note" means an international promissory note governed by this Convention;
- (3) "Instrument" means an international bill of exchange or an international promissory note governed by this Convention;
- (4) "Drawee" means the person on whom a bill is drawn but who has not accepted it;
- (5) "Payee" means the person in whose favour the drawer directs payment to be made or the maker promises to pay;
- (6) "Holder" means the person referred to in article 13 *bis*;
- (7) ["Protected holder" means a holder of an instrument which, when it came into his possession, was complete and regular on its face and not overdue, provided that, at that time, he was without actual knowledge of any claim to or defence upon the instrument or of the fact that it was dishonoured for non-acceptance or non-payment;]
- (8) ["Party" means a party to an instrument;]
- (9) ["Maturity" means the date of payment indicated on the instrument and, in the case of a demand bill, the date on which the instrument is first presented for acceptance or for payment;]
- (10) "Forged signature" includes a signature which is forged by the wrongful or unauthorized use of a stamp, symbol, facsimile, perforation or other means by which a signature may be made in accordance with article 27.

Article 6

(deleted)

[SECTION 2. INTERPRETATION OF FORMAL REQUIREMENTS]

Article 7

The sum payable by an instrument is deemed to be a definite sum although the instrument states that it is to be paid

- (a) With interest;
- (b) By instalments at successive dates;
- (c) By instalments at successive dates with the stipulation on the instrument that upon default in payment of any instalment the unpaid balance becomes due;
- (d) According to a rate of exchange indicated on the instrument or to be determined as directed by the instrument; or
- (e) In a currency other than the currency in which the amount of the instrument is expressed.

Article 8

(1) If there is a discrepancy between the amount of the instrument expressed in words and the amount expressed in figures, the sum payable is the amount expressed in words.

(2) If the amount of the instrument is expressed in a currency having the same description as that of at least one other State than the State where payment is to be made as indicated on the instrument and the specified currency is not identified as the currency of any State, the currency is to be considered as the currency of the State where payment is to be made.

(3) If an instrument states that it is to be paid with interest, without specifying the date from which interest is to run, interest runs from the date of the instrument.

(4) A stipulation on an instrument stating that it is to be paid with interest is to be disregarded unless it indicates the rate at which interest is to be paid.

Article 9

- (1) An instrument is deemed to be payable on demand
 - (a) If it states that it is payable on demand or at sight or on presentment or if it contains words of similar import; or
 - (b) If no time for payment is expressed.
- (2) An instrument payable at a definite time which is accepted or

endorsed or guaranteed after maturity is an instrument payable on demand as regards the acceptor, the endorser or the guarantor.

(3) An instrument is deemed to be payable at a definite time if it states that it is payable

- (a) On a stated date or at a fixed period after a stated date or at a fixed period after the date of the instrument; or
- (b) At a fixed period after sight, or
- (c) By instalments at successive dates; or
- (d) By instalments at successive dates with the stipulation on the instrument that upon default in payment of any instalment the unpaid balance becomes due.

(4) The time of payment of an instrument payable at a fixed period after date is determined by reference to the date of the instrument;

(5) The maturity of a bill payable at a fixed period after sight is determined by the date of the acceptance.

(6) [The maturity of a note payable at a fixed period after sight is determined by the date of the visa signed by the maker on the note or, if signature is refused, from the date of presentment.]

(7) Where an instrument is drawn, or made, payable at one or more months after a stated date or after the date of the instrument or after sight, the instrument matures on the corresponding date of the month when payment must be made. If there is no corresponding date, the instrument matures on the last day of that month.

Article 10

- (1) A bill may
 - (a) Be drawn upon two or more drawees,
 - (b) Be drawn by two or more drawers,
 - (c) Be payable to two or more payees.
- (2) A note may
 - (a) Be made by two or more makers,
 - (b) Be payable to two or more payees.

(3) If an instrument is payable to two or more payees in the alternative, it is payable to any one of them and any one of them in possession of the instrument may exercise the rights of a holder. In any other case the instrument is payable to all of them and the rights of a holder can only be exercised by all of "them".

Article 10 bis

A bill may be drawn by the drawer on himself or be drawn payable to his order.

[SECTION 3. COMPLETION OF AN INCOMPLETE INSTRUMENT]

Article 11

(1) An incomplete instrument which satisfies the requirements set out in subparagraphs (a) and (f) of paragraph (2) or (a) and (f) of paragraph (3) but which lacks other elements pertaining to one or more of the requirements set out in paragraphs (2) or (3) of article 1 may be completed and the instrument so completed is effective as a bill or a note.

(2) When such an instrument is completed otherwise than in accordance with agreements entered into

(a) A party who signed the instrument before the completion may invoke the non-observance of the agreement as a defence against a holder or against any other person who exercises a right of recourse in accordance with article 68, provided such a person or holder has knowledge of the non-observance of the agreement.

(b) A party who signed the instrument after the completion is liable according to the terms of the instrument so completed.

[PART THREE. TRANSFER; HOLDER]

Article 12

(deleted)

Article 13

An instrument is transferred

- (a) By endorsement and delivery of the instrument by the endorser to the endorsee; or
- (b) By mere delivery of the instrument if the last endorsement is in blank.

New article

(to be inserted between article 13 and article 13 bis)

“(a) An endorsement must be written on the instrument or on a slip affixed thereto (‘allonge’). It must be signed.

“(b) An endorsement may be made

- (i) In blank, that is, by a signature alone or by a signature accompanied by a statement to the effect that the instrument is payable to any person in possession thereof;
- (ii) Special, by a signature accompanied by an indication of the person to whom the instrument is payable.”

Article 13 bis

- (1) A person is a holder if he is
 - (a) The payee in possession of the instrument; or
 - (b) In possession of an instrument
 - (i) Which has been endorsed to him; or
 - (ii) On which the last endorsement is in blank

and on which there appears an uninterrupted series of endorsements, even if any of the endorsements was forged or was signed by an agent without authority.

(2) When an endorsement in blank is followed by another endorsement, the person who signed this last endorsement is deemed to be an endorsee by the endorsement in blank.

(3) A person is not prevented from being a holder by the fact that the instrument was obtained under circumstances, including incapacity or fraud, duress or mistake of any kind, that would give rise to a claim to, or to a defence upon the instrument.

Article 14

(deleted)

Article 15

The holder of an instrument on which the last endorsement is in blank may

- (a) Further endorse the instrument either in blank or to a specified person; or
- (b) Convert the blank endorsement into a special endorsement by indicating therein that the instrument is payable to himself or to some other specified person; or
- (c) Transfer the instrument in accordance with paragraph (b) of article 13.

Article 16

[When the drawer, the maker or an endorser has inserted in the instrument or in the endorsement such words as “not negotiable”, “not transferable”, “not to order”, “pay (X) only”, or words of similar import, the transferee does not become a holder except for purposes of collection.]

Article 17

- (1) (Deleted)
- (2) A conditional endorsement transfers the instrument irrespective of whether the condition is fulfilled.
- (3) A claim to or a defence upon the instrument based on the fact

that the condition was not fulfilled may not be raised except by the party who endorsed conditionally against his immediate transferee.

Article 18

An endorsement in respect of a part of the sum due under the instrument is ineffective as an endorsement.

Article 19

When there are two or more endorsements, it is presumed, unless the contrary is established, that each endorsement was made in the order in which it appears on the instrument.

Article 20

(1) When an endorsement contains the words “for collection”, “for deposit”, “value in collection”, “by procuration”, “pay any bank”, or words of similar import, authorizing the endorsee to collect the instrument (endorsement for collection), the endorsee

- (a) May only endorse the instrument for purposes of collection;
- (b) May exercise all the rights arising out of the instrument;
- (c) Is subject to all claims and defences which may be set up against the endorser.

(2) The endorser for collection is not liable upon the instrument to any subsequent holder.

Article 21

The holder of an instrument may transfer it to a prior party or the drawee in accordance with article 13; nevertheless, in the case where the transferee was a prior holder of the instrument, no endorsement is required and any endorsement which would prevent him from qualifying as a holder may be struck out.

Article 21 bis

An instrument may be transferred in accordance with article 13 after maturity, except by the drawee, the acceptor or the maker.

Article 22

(1) If an endorsement is forged the person whose endorsement is forged has against the forger and against the person who took the instrument directly from the forger the right to recover compensation for any damage that he may have suffered because of the forgery.

(2) [The drawer or maker of the instrument has a similar right to compensation in circumstances where damage is caused to him by the forgery of the signature of the payee.]

(3) (Deleted provisionally)

[PART FOUR. RIGHTS AND LIABILITIES]

[SECTION 1. THE RIGHTS OF A HOLDER AND A PROTECTED HOLDER]

Article 23

- (1) The holder of an instrument has all the rights conferred on him by this Convention against the parties to the instrument.
- (2) The holder is entitled to transfer the instrument in accordance with article 13.

B. Report of the Working Group on International Negotiable Instruments on the work of its sixth session (Geneva, 3-13 January 1978) (A/CN.9/147)*

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