

4. *Article 5, paragraph (10)*: With respect to the definition of forged signature it was agreed to re-examine this definition in connexion with articles 22 and 28. In particular, it should be examined whether a signature placed on an instrument by an agent without authority should be assimilated to a forged signature;

5. *Article 5, paragraph (6)*: Opinions were equally divided on the question whether the draft Convention should expressly refer to the possibility of the making of a note made payable at a fixed period after sight. The Working Group, therefore, decided to place the paragraph between brackets for decision by the Commission;

6. *Article 11, paragraph (2) (a)*: This paragraph was modified 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, provided the holder had knowledge of the non-observance of the agreement when he became a holder."

#### DESIRABILITY OF PREPARING UNIFORM RULES APPLICABLE TO INTERNATIONAL CHEQUES

101. The Working Group recalled that the Commission, at its fifth session, had requested the Group to consider the desirability of preparing uniform rules applicable to international cheques, and to consider whether this could best be achieved by extending the application of the draft Convention on International Bills of Exchange and International Promissory Notes to international cheques or by drawing up a separate text on international cheques. The Working Group also noted that the Commission, at its twelfth session, had authorized the Working Group to proceed with the drafting of rules, if the Group was of the view that the formulation of uniform rules for international cheques was desirable and the application of the draft Convention could be extended to include international cheques.

102. The Working Group noted that the UNCITRAL Study Group on International Payments had stated, on the basis of replies received to a questionnaire, that the cheque was widely used for settling international commercial transactions. Moreover, the replies to the questionnaire showed substantial support for the establishment of uniform rules applicable to international cheques. The Group was also of

the view that the fact that the draft Convention on International Bills of Exchange and International Promissory Notes had now been completed by it would considerably facilitate the drawing up of uniform rules on cheques.

103. The Working Group, therefore, requested the Secretariat to commence preparatory work in respect of cheques. It was agreed that it should decide later, in the light of the issues raised by the drafting of uniform rules, whether it would request the Commission to enlarge the mandate of the Working Group so as to enable such rules to be embodied in a separate draft convention or whether the draft Convention on International Bills of Exchange and International Promissory Notes should be modified so as to include international cheques.

104. In respect of the preparatory work to be carried out by the Secretariat, the Working Group was of the view that studies should be prepared showing the difference in substance between the Geneva Uniform Law on Bills of Exchange and Promissory Notes and the Geneva Uniform Law on Cheques, and to carry out similar work in respect of the Bills of Exchange Act and the relevant provisions of the Uniform Commercial Code. Such preparatory work should preferably be made available to the Working Group in time for its ninth session. The Secretariat should consider if, because of the time factor involved, it would be necessary to have recourse to consultants. In addition, the Secretariat should place before the Working Group draft articles applicable to international cheques, taking into account the draft Convention on International Bills of Exchange and International Promissory Notes adopted by the Working Group and the special features of the law on cheques.

#### FUTURE WORK

105. Pursuant to a decision of the Commission at its twelfth session,<sup>10</sup> the Working Group was agreed that it should hold its ninth session at Headquarters in New York from 2 to 11 January 1980.

<sup>10</sup> Report of the United Nations Commission on International Trade Law on the work of its twelfth session, *Official Records of the General Assembly, Thirty-fourth Session, Supplement No. 17 (A/34/17)*, para. 124 (b) (Yearbook . . . 1979, part one, II, A).

### B. Report of the Working Group on International Negotiable Instruments on the work of its ninth session (New York, 2-11 January 1980) (A/CN.9/181)\*

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\* 13 March 1980.

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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).<sup>1</sup> 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.<sup>2</sup>

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 (arts. 12 to 22), the rights and liabilities of signatories (arts. 27 to 40), and the definition and rights of a "holder" and a "protected holder" (arts. 5, 6 and 23 to 26).<sup>3</sup>

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

<sup>1</sup> Report of the United Nations Commission on International Trade Law on the work of its fourth session, *Official Records of the General Assembly, Twenty-sixth Session, Supplement No. 17* (A/8417), 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. See also Report of the United Nations Commission on International Trade Law on the work of its fifth session, *Official Records of the General Assembly, Twenty-seventh Session, Supplement No. 17* (A/8717, para. 61 (2) (c)) (Yearbook ... 1972, part one, II, A).

<sup>2</sup> Report of the United Nations Commission on International Trade Law on the work of its fifth session, *Official Records of the General Assembly, Twenty-seventh Session, Supplement No. 17* (A/8717, para. 61 (1) (a)) (Yearbook ... 1972, part one, II, A).

<sup>3</sup> 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).

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

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 (arts. 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 (arts. 67 and 68) and provisions regarding the circumstances in which a party is discharged of his liability (arts. 69 to 78).<sup>5</sup>

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.<sup>6</sup>

6. At the fifth session of the Working Group, held in New York in July 1977, the Working Group commenced its second reading of the draft uniform law (retitled at that session "draft convention on international bills of exchange and international promissory notes") and considered articles 1 to 24.<sup>7</sup>

7. The sixth session of the Working Group was held in Geneva in January 1978. At that session, the Working Group, continuing its second reading of the text of the Draft Convention on International Bills of Exchange and International Promissory Notes, considered articles 5 and 6 and articles 24 to 53.<sup>8</sup>

8. The seventh session of the Working Group was held in New York in January 1979. At that session, the Working Group, continuing its second reading of the text of the Draft Convention on International Bills of Exchange and

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

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

<sup>7</sup> 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 (Yearbook ... 1978, part two, II, A).

<sup>8</sup> 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 (Yearbook ... 1978, part two, II, B).

International Promissory Notes, considered articles 24 and 53 to 70.<sup>9</sup>

9. The eighth session of the Working Group was held in Geneva in September 1979. At that session, the Working Group, continuing its second reading of the text of the Draft Convention on International Bills of Exchange and International Promissory Notes, considered articles 1, 5, 9, 11 and 70 to 86.<sup>10</sup>

10. The Working Group held its ninth session at the United Nations Headquarters in New York from 2 to 11 January 1980. 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 Nigeria, all the members of the Working Group were represented at the ninth session. The session was also attended by observers of the following states: Argentina, Australia, Bulgaria, Chile, People's Republic of China, Colombia, German Democratic Republic, Ghana, Guyana, Haiti, Hungary, Ireland, Japan, Niger, Philippines, Portugal, Rwanda, Sri Lanka, Trinidad and Tobago and Yugoslavia, and by observers from the International Monetary Fund, the Hague Conference on Private International Law, the European Banking Federation and the International Chamber of Commerce.

11. The Working Group elected the following officers:

Chairman . . . . . Mr. René Roblot (France)

Rapporteur . . . . . Mr. Roberto Luis Mantilla-Molina (Mexico)

12. The Working Group had before it the following documents: provisional agenda (A/CN.9/WG.IV/WP.14); 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); note by the Secretariat: desirability of preparing uniform rules applicable to international cheques (A/CN.9/WG.IV/CRP.5); draft convention on international bills of exchange and international promissory notes (first revision) articles 46 to 68, as reviewed by a drafting party (A/CN.9/WG.IV/WP.10); draft convention on international bills of exchange and international promissory notes (first revision) articles 24 and 68 to 86, as reviewed by a drafting party (A/CN.9/WG.IV/WP.12); 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),\*\*\* fourth (A/CN.9/117),\*\*\*\* fifth (A/CN.9/141),† sixth (A/CN.9/147),††

\* Yearbook . . . 1973, part two, II, 1.

\*\* Yearbook . . . 1974, part two, II, 1.

\*\*\* Yearbook . . . 1975, part two, II, 1.

\*\*\*\* Yearbook . . . 1976, part two, II, 1.

† Yearbook . . . 1978, part two, II, A.

†† Yearbook . . . 1978, part two, II, B.

<sup>9</sup> Report of the Working Group on International Negotiable Instruments on the work of its seventh session (New York, 3–12 January 1979), A/CN.9/157 (Yearbook . . . 1979, part two, II, A).

<sup>10</sup> Report of the Working Group on International Negotiable Instruments on the work of its eighth session (Geneva, 3–14 September 1979), A/CN.9/178 (reproduced in this volume, part two, III, A, above).

seventh (A/CN.9/157)\* and eighth (A/CN.9/178)\*\* sessions; draft convention on international bills of exchange and international promissory notes, articles 5 (8–10), 9 (6), 11 (2), 70 (2, 5), 71, 72 and 74–86 as adopted by the Working Group at its eighth session (A/CN.9/WG.IV/WP.16); text of articles 25 (1) (a), 70, 74 *bis* and 78 as redrafted by the Secretariat (A/CN.9/WG.IV/WP.17) and a note by the Secretariat setting forth uniform rules applicable to international cheques (A/CN.9/WG.IV/WP.15).

### Deliberations and decisions

13. At the present session the Working Group continued consideration of the draft Convention on International Bills of Exchange and International Promissory Notes in third reading. The Group considered articles 13 to 85, and considered article 5 (10) in connection with article 22.

14. The articles of the draft Convention as adopted by the Working Group at the eighth and the present sessions are set forth as an annex to this report.

15. The Working Group also had a preliminary exchange of views on articles 1 to 30 of the uniform rules applicable to international cheques as drafted by the Secretariat (A/CN.9/WG.IV/WP.15).

16. 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.

### I. DRAFT CONVENTION ON INTERNATIONAL BILLS OF EXCHANGE AND INTERNATIONAL PROMISSORY NOTES

#### [PART THREE: TRANSFER, HOLDER (articles 12–22)]<sup>11</sup>

#### Article 13

17. The text of article 13 as considered by the Working Group is as follows:

“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.”

18. The Working Group adopted this paragraph without change.

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

19. The text of a new article considered by the Working Group is as follows:

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

\* Yearbook . . . 1979, part two, II, A.

\*\* Reproduced in this volume, part two, III, A, above.

<sup>11</sup> This and subsequent headings are those provisionally included in the text of the Draft Convention. Articles 2, 12, 14, 17 (1), 31, 32, 33, 35, 40, 52, 69, 73, 75, 76, 77 and 86 had previously been deleted by the Working Group.

- “(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.”

20. The Working Group adopted the article without change.

#### *Article 13 bis*

21. The text of article 13 *bis* as considered by the Working Group is as follows:

- “(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.”

22. The Group adopted this article without change.

#### *Article 15*

23. The text of article 15 as considered by the Working Group is as follows:

- “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.”

24. The Group adopted this article without change.

#### *Article 16*

25. The text of article 16 as considered by the Working Group is as follows:

- “[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.]”

26. The Working Group decided to retain this article subject to the following modification of the opening words of the article: “When the drawer or the maker has inserted in the instrument, or an endorser in his endorsement, such words as . . .”.

27. This modification did not entail any change in substance but was adopted in order to make it clear that the article would not apply if an endorser had inserted in the instrument such words as “not negotiable” etc. In such a case, the provision on material alteration (art. 29) would apply.

#### *Articles 17, 18 and 19*

28. The texts of articles 17, 18 and 19 as considered by the Working Group are as follows:

##### *“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.”

29. The Group adopted these articles without change.

#### *Article 20*

30. The text of article 20 as considered by the Working Group is as follows:

- “(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.”

31. Two questions were raised: (a) whether it was necessary to indicate expressly in article 20 that the endorsee for collection was an agent of the endorser or, instead, a holder in his own right; (b) whether payment made to the endorsee for collection after the termination or revocation of the authority inherent in the endorsement was due payment if the payor knew about such termination or revocation. The example was given of a statutory termination of the authority upon the death of the endorser.

32. As to the first question, the Working Group was of the view that it was not necessary to specify in article 20 that the endorsee for collection was a holder in his own right. The purpose of article 20 was to set forth certain limitations to the rights of such an endorsee as a holder.

33. As to the second question, the Working Group, after discussion, was of the view that the draft Convention should deal with the case where payment was made to the endorsee for collection by a payor with knowledge of the termination or revocation of the authority given by the endorser to the endorsee for collection. In this respect, attention was drawn to article 18 of the Geneva Uniform Law which provided that the mandate contained in an endorsement for collection did not terminate by reason of the death of the party giving the mandate or by reason of his becoming legally incapable.

34. However, the Group was of the view that the draft Convention should not distinguish between termination and revocation of the authority and the bankruptcy and death of the principal and should relate only to the question of discharge by due payment to an endorsee for collection. Such payment in order to be due payment should be in accordance with article 70, paragraph (3). The Group adopted the article without change.

#### *Articles 21 and 21 bis*

35. The texts of articles 21 and 21 *bis* as considered by the Working Group are as follows:

#### *"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."

36. The Working Group adopted these articles without change.

#### *Article 22*

37. The text of article 22 as considered by the Working Group is as follows:

"(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)."

38. The Working Group, after deliberation, was of the view that: (a) article 22 should deal only with cases where an endorsement was forged and not where a signature other than an endorsement was forged; (b) article 22 should also encompass situations where parties other than an endorser suffered damage because of a forged endorsement. Consequently, the Working Group decided to replace in paragraph (1) the words "the person whose endorsement is forged" by the words "any party" and to delete paragraph (2) of this article.

39. The Group discussed the question whether a signature placed on an instrument by an agent without authority should be assimilated to a forged signature. In this connexion, the Group considered the definition of "forged signature" contained in article 5, paragraph (10). This paragraph reads as follows:

"(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."

40. The Working Group was of the view that article 22 should cover not only the cases of forged signature as defined in article 5, paragraph (10), but also the case of a signature by an agent without authority. The Group, accordingly, decided to add a paragraph as follows:

"(2) For the purposes of this article, an endorsement placed on an instrument by a person in a representative capacity without authority has the same effects as a forged endorsement."

41. The Working Group was of the view that paragraph (1) of article 22 applied in the following situations:

(a) A forges the endorsement of B;

(b) A, without authority, endorses an instrument by using a stamp, symbol, facsimile, perforation or other means by which a signature may be made in accordance with article 27;

(c) An agent signs his name in a representative capacity without authority.

The cases under (a) and (b) above were covered by article 5, paragraph (10), and the case under (c) above by article 22, paragraph (2).

#### [PART FOUR: RIGHTS AND LIABILITIES]

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

42. The texts of articles 23 and 24 as considered by the Working Group are as follows:

*"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.

*"Article 24*

"(1) A party may set up against a holder who is not a protected holder:

"(a) Any defence available under this Convention;

"(b) Any defence based on an underlying transaction between himself and the drawer or a previous holder or arising from the circumstances as a result of which he became a party;

"(c) Any defence to contractual liability based on a transaction between himself and the holder;

"(d) Any defence based on incapacity of such party to incur liability on the instrument or on the fact that such party signed without knowledge that his signature made him a party to the instrument, provided that such absence of knowledge was not due to negligence.

"(2) The rights to an instrument of a holder who is not a protected holder are subject to any valid claim to the instrument on the part of any person.

"(3) A party may not raise as a defence against a holder who is not a protected holder the fact that a third person has a claim to the instrument unless:

"(a) Such third person asserted a valid claim to the instrument, or

"(b) Such holder acquired the instrument by theft or forged the signature of the payee or an endorsee, or participated in such theft."

43. The Working Group adopted these articles without change.

*Article 25*

44. The text of article 25 as considered by the Working Group is as follows:

"(1) A party may not set up against a protected holder any defence except:

"(a) Defences under articles 27 (1), 28, 29 (1), 30 (2) and (3), 34 (2), 41 (1) and (2), 43 (4), 54, [55], [58], [60] and 79 of this Convention;

"(b) Defences based on the incapacity of such party to incur liability on the instrument;

"(c) Defences based on the fact that such party signed without knowledge that his signature made him a party to the instrument, provided that such absence of knowledge was not due to his negligence.

"(2) Except as provided in paragraph (3), the rights to an instrument of a protected holder are not subject to any claim to the instrument on the part of any person.

"(3) The rights of a protected holder are not free from any valid claim to, or any defence to liability upon,

the instrument arising from the underlying transaction between himself and the party by whom the claim or defence is raised or arising from any fraudulent act on the part of such holder in obtaining the signature on the instrument of that party.

"(4) The transfer of an instrument by a protected holder vests in any subsequent holder the rights to and upon the instrument which the protected holder had, except where such subsequent holder participated in a transaction which gives rise to a claim to or a defence upon the instrument."

45. The Working Group considered which defences may be set up against a protected holder. The Working Group was of the view that paragraph (1) (a) of this article should not list among such defences those which appeared *ex facie* the instrument. For instance, under article 34, paragraph (2), the drawer, by an express stipulation on the bill, could exclude his liability to the holder thereof. It was evident that the protected holder of such a bill could not overcome the drawer's defence against liability, but since this resulted from the face of the bill it would be superfluous to list it in article 25, paragraph (1) (a).

46. The Working Group agreed to list the following provisions in article 25, paragraph (1) (a): articles 27 (1), 28, 29 (1), 30 (2) and (3), 50, 55, 57, 60 and 79. The Group adopted the article as amended.

*Articles 26, 27, 28, 29, 30, 30 bis*

47. The texts of articles 26, 27, 28, 29, 30, 30 *bis* as considered by the Working Group are as follows:

*"Article 26*

"Every holder is presumed to be protected holder, unless the contrary is proved."

[SECTION 2. LIABILITY OF THE PARTIES]

[A. General]

*"Article 27*

"(1) Subject to the provisions of articles 28 and 30, a person is not liable on an instrument unless he signs it.

"(2) A person who signs in a name which is not his own is liable as if he had signed it in his own name.

"(3) A signature may be in handwriting or by facsimile, perforations, symbols or any other mechanical means.\*

*"Article 28*

"A forged signature on an instrument does not impose any liability thereon on the person whose signature was forged. Nevertheless, such person is liable as if he had signed the instrument himself where he has, expressly or impliedly, accepted to be bound by the forged signature or represented that the signature was his own.

\* *"Article (X)*

"A Contracting State whose legislation requires that a signature on an instrument be handwritten may, at the time of signature, ratification or accession, make a declaration to the effect that a signature placed on an instrument in its territory must be executed in handwriting."

*"Article 29"*

"(1) If an instrument has been materially altered

"(a) Parties who have signed the instrument subsequent to the material alteration are liable thereon according to the terms of the altered text.

"(b) Parties who have signed the instrument before the material alteration are liable thereon according to the terms of the original text. Nevertheless, a party who has himself made, authorized, or assented to, the material alteration is liable on the instrument according to the terms of the altered text.

"(2) Failing proof to the contrary, a signature is deemed to have been placed on the instrument after the material alteration.

"(3) Any alteration is material which modifies the written undertaking on the instrument of any party in any respect.

*"Article 30"*

"(1) An instrument may be signed by an agent.

"(2) The name or signature of a principal placed on the instrument by an agent with his authority imposes liability on the principal and not on the agent.

"(3) The signature of an agent placed by him on an instrument without authority, or with authority to sign but not showing on the instrument that he is signing in a representative capacity for a named person, or showing on the instrument that he is signing in a representative capacity but not naming the person whom he represents, imposes liability thereon on such agent and not on the person whom the agent purports to represent.

"(4) The question whether a signature was placed on the instrument in a representative capacity may be determined only by reference to what appears on the instrument.

"(5) An agent who is liable pursuant to paragraph 3 and who pays the instrument has the same rights as the person for whom he purported to act would have had if that person had paid the instrument.

*"Article 30 bis"*

"The order to pay contained in a bill does not of itself operate as an assignment of a right to payment existing outside of the bill."

48. The Group adopted this article without change.

*[B. The drawer]**Article 34*

49. The text of article 34 as considered by the Working Group is as follows:

"(1) The drawer engages that upon dishonour of the bill by non-acceptance or non-payment, and upon any necessary protest, he will pay to the holder the amount of the bill, and any interest and expenses which may be recovered under articles 67 or 68.

"(2) The drawer may exclude or limit his own liability by an express stipulation on the bill. Such stipulation has effect only with respect to the drawer."

50. The Working Group considered the question whether the undertaking of the drawer to pay the holder should be extended to payment to a party who was not a holder. The Group was agreed that the undertaking of the drawer should extend also to a party who had reacquired the instrument but who, because of not having struck out a subsequent endorsement, did not qualify as a holder under article 13 *bis*.

51. The Working Group, therefore, decided to modify paragraph (1) of article 34 by adding after the words "he will pay to the holder" the words "or to any party who takes up and pays the bill in accordance with article 67". The Group was agreed that a similar modification should be made in the provisions in respect of the undertaking of the maker (art. 34 *bis* (1)), the acceptor (art. 36 (2)), and the endorser (art. 41 (1)).

*[C. The maker]**Article 34 bis*

52. The text of article 34 *bis* as considered by the Working Group is as follows:

"(1) The maker engages that he will pay to the holder the amount of the note, and any interest and expenses which may be recovered under article 67 or 68.

"(2) The maker may not exclude or limit his own liability by a stipulation on the note. Any such stipulation is without effect."

53. The Working Group adopted this article subject to the modification agreed to under article 34 (see above, para. 51).

*[D. The drawee and the acceptor]**Article 36*

54. The text of article 36 as considered by the Working Group is as follows:

"(1) The drawee is not liable on a bill until he accepts it.

"(2) The acceptor engages that he will pay to the holder, or the drawer who has paid the bill, the amount of the bill, and any interest and expenses which may be recovered under article 67 or 68."

55. The Group adopted this article subject to the modification agreed to under article 34 (see above, para. 51).

*Articles 37, 38 and 39*

56. The texts of articles 37, 38 and 39 as considered by the Working Group are as follows:

*"Article 37"*

"An acceptance must be written on the bill and may be effected:

"(a) By the signature of the drawee accompanied by the word "accepted" or by words of similar import, or

"(b) By the signature alone of the drawee.

*"Article 38"*

"(1) An incomplete instrument which satisfies the requirements set out in article 1 (2) (a) may be accepted by the drawee before it has been signed by the drawer, or while otherwise incomplete.

"(2) A bill may be accepted before, at or after maturity, or after it has been dishonoured by non-acceptance or non-payment.

"(3) When a bill drawn payable at a fixed period after sight, or a bill which must be presented for acceptance before a specified date, is accepted, the acceptor must indicate the date of his acceptance; failing such indication by the acceptor, the drawer, before the issue of the bill, or the holder may insert the date of acceptance.

"(4) If a bill drawn payable at a fixed period after sight is dishonoured by non-acceptance and the drawee subsequently accepts it, the holder is entitled to have the acceptance dated as of the date on which the bill was dishonoured.

*"Article 39"*

"(1) An acceptance must be unqualified. An acceptance is qualified if it is conditional or varies the terms of the bill.

"(2) If the drawee stipulates on the bill that his acceptance is subject to qualification:

"(a) He is nevertheless bound according to the terms of his qualified acceptance;

"(b) The bill is dishonoured by non-acceptance, except that the holder may take an acceptance relating to only a part of the amount of the bill. In that case, the bill is dishonoured by non-acceptance as to the remaining part of the amount.

"(3) An acceptance indicating that payment will be made at a particular address or by a particular agent is not a qualified acceptance, provided that:

"(a) The place in which payment is to be made is not changed;

"(b) The bill is not drawn payable by another agent."

57. The Group adopted these articles without change.

## [E. The endorser]

*Article 41*

58. The text of article 41 as considered by the Working Group is as follows:

"(1) The endorser engages that upon dishonour of the instrument by non-acceptance or non-payment, and upon any necessary protest, he will pay to the holder the amount of the instrument, and any interest and expenses which may be recovered under article 67 or 68.

"(2) The endorser may exclude or limit his own liability by an express stipulation on the instrument. Such stipulation has effect only with respect to that endorser."

59. The Group adopted this article subject to adding to paragraph (1) the addition agreed to under article 34 (see para 51 above).

*Article 42*

60. The text of article 42 as considered by the Working Group is as follows:

*(Alternative A)*

"(1) Any person who transfers an instrument by mere delivery is liable to any holder subsequent to himself for any damages that such holder may suffer on account of the fact that prior to such transfer

"(a) A signature on the instrument was forged or unauthorized; or

"(b) The instrument was materially altered; or

"(c) A party has a valid claim or defence against him; or

"(d) The bill is dishonoured by non-acceptance or non-payment or the note is dishonoured by non-payment.

"(2) The damages according to paragraph (1) may not exceed the amount referred to in article 67 or 68.

"(3) Liability on account of any defect mentioned in paragraph (1) is incurred only to a holder who took the instrument without knowledge of such defect."

61. The Group adopted this article without change.

## [F. The guarantor]

*Article 43*

62. The text of article 43 as considered by the Working Group is as follows:

"(1) Payment of an instrument, whether or not it has been accepted, may be guaranteed, as to the whole or part of its amount, for the account of a party or the drawee, by any person, who may or may not have become a party. A guarantee may be given by any person who may or may not be a party.

"(2) A guarantee must be written on the instrument or on a slip affixed thereto ('allonge').

"(3) A guarantee is expressed by the words: 'guaranteed', 'aval', 'good as aval' or words of similar import, accompanied by the signature of the guarantor.

"(4) A guarantee may be effected by a signature alone. Unless the content otherwise requires,

"(a) The signature alone on the front of the instrument, other than that of the drawer or the drawee, is a guarantee;

"(b) The signature alone of the drawee on the front of the instrument is an acceptance; and

"(c) A signature alone on the back of the instrument other than that of the drawee is an endorsement.

"(5) A guarantor may specify the person for whom he has become guarantor. In the absence of such



specification, the person for whom he has become guarantor is the acceptor or the drawee in the case of a bill, and the maker, in the case of a note."

63. As regards paragraph (1), the Working Group decided to add the word "already" after the words "may or may not" in the last line. The Working Group also decided to delete in the first sentence of the paragraph the words "by any person who may or may not have become a party" on the ground that they could give rise to misinterpretation and were unnecessary. The Working Group adopted the article subject to these modifications.

#### *Article 44*

64. The text of article 44 as considered by the Working Group is as follows:

"(1) A guarantor is liable on the instrument to the same extent as the party for whom he has become guarantor, unless the guarantor has stipulated otherwise on the instrument.

"(2) If the person for whom he has become guarantor is the drawee, the guarantor undertakes to pay the bill when due, if the drawee does not pay or does not accept and pay the bill."

65. The question was raised as to what was the meaning of the words "to the same extent as" in paragraph (1) and, in particular, whether these words should be interpreted to mean that a guarantor could raise against the holder the defences which were available to the party for whom he had become guarantor. The Working Group was of the view that the words "to the same extent as" should be interpreted as follows:

"(a) In the absence of any stipulation to the contrary, the guarantor of a party was liable for the amount for which the party guaranteed was liable;

"(b) The nature of the liability of the guarantor was the same as the nature of the liability of the party for whom he became guarantor; thus, a guarantor for an endorser was liable only upon due presentment and protest whilst the guarantor of an acceptor was liable even if the instrument was not presented for payment or protested;

"(c) A guarantor was entitled to raise, in addition to his own defences, those defences available to the party for whom he became guarantor."

66. The Working Group did not accept a proposal that the word "party" in paragraph (1) should be modified to read "party or person" on the ground that the draft Convention set forth special rules as regards the liability of the guarantor for the drawee.

67. As regards paragraph (2) of article 44, it was observed that there might be a contradiction between this paragraph and article 55, paragraph (3), in that paragraph (2) of article 44 appeared to state that the liability of the guarantor for the drawee would crystallize only if the drawee did not pay or did not accept and pay the bill, whereas article 55, paragraph (3) preserved the liability of the guarantor of the drawee in the case where no presentment to the drawee had been made. The Working Group

was of the view that presentment to the drawee should not be necessary in order to make the guarantor of the drawee liable.

68. Consequently, the Working Group decided that article 44, paragraph (2) should be modified to read as follows:

"If the person for whom he has become guarantor is the drawee, the guarantor undertakes to pay the bill when due."

69. The Working Group adopted article 44 as amended.

#### *Article 45*

70. The text of article 45 as considered by the Working Group is as follows:

"The guarantor who pays the instrument has rights thereon against the party for whom he became guarantor and against parties who are liable thereon to that party."

71. The question was raised as to what rights the guarantor who paid the instrument had against the party for whom he became guarantor and against parties who were liable on the instrument to that party. The Group was of the view that the guarantor should have the rights to payment arising out of the instrument as if he were the holder.

72. The further question was raised as to what the rights of the guarantor who had guaranteed and paid only part of the amount of the instrument would be. It was observed that in such a case the holder who had received partial payment would not part with the instrument and that this raised in turn the question of how the guarantor could then exercise his rights on the instrument against prior parties. The Group requested the Secretariat to include a provision in article 71 following the approach of the Geneva Convention (article 51) relating to partial payment.

### [PART FIVE: PRESENTMENT, DISHONOUR AND RECOURSE]

#### [SECTION 1. PRESENTMENT FOR ACCEPTANCE]

#### *Article 46*

73. The text of article 46 as considered by the Working Group is as follows:

"(1) A bill may be presented for acceptance.

"(2) A bill must be presented for acceptance:

"(a) When the drawer has stipulated on the bill that it must be presented for acceptance;

"(b) When the bill is drawn payable at a fixed period after sight; or

"(c) When the bill is drawn payable elsewhere than at the residence or place of business of the drawee, except where such a bill is payable on demand."

74. The Group adopted this article without change.

### Article 47

75. The text of article 47 as considered by the Working Group is as follows:

“(1) The drawer may stipulate on the bill that it must not be presented for acceptance or that it must not be so presented before a specified date or before the occurrence of a specified event.

“(2) If a bill is presented for acceptance notwithstanding a stipulation permitted under paragraph (1) and acceptance is refused, the bill is not thereby dishonoured.

“(3) If the drawee accepts a bill notwithstanding a stipulation that it must not be presented for acceptance, the acceptance is effective.”

76. It was noted that article 47, in that it allowed the drawer to stipulate that the bill was not to be presented for acceptance, could give rise to difficulties of interpretation. In particular, it was not immediately clear whether the drawer was entitled to place such a stipulation on a bill which under article 46 had to be presented for acceptance.

77. The general view was that the drawer should have this faculty also in respect of a bill drawn payable at a fixed period after sight or drawn payable elsewhere than at the residence or place of business of the drawee. It was understood that the purpose of the stipulation under article 47 was to permit the drawer to limit or exclude his liability in case of non-acceptance of a bill by the drawee. Accordingly, the Group decided that paragraph (1) should be preceded by the following words: “Notwithstanding the provisions of article 46”.

### Articles 47 bis and 48

78. The text of article 47 *bis* as considered by the Working Group is as follows:

“(1) Presentment for acceptance must be made to the drawee by or on behalf of the holder or the drawer.

“(2) A bill drawn upon two or more drawees may be presented to any one of them, unless the bill clearly indicates otherwise.

“(3) Presentment for acceptance may be made to a person or authority other than the drawee if that person or authority is entitled under the applicable law to accept the bill.”

79. The Working Group, after deliberation, was of the opinion that the term “presentment for acceptance” as used in the draft Convention should be interpreted as an act to which the Convention attached legal effects. Hence, presentment for acceptance by the drawer, though often occurring in practice, could not be considered as presentment for acceptance under the Convention. The Group, therefore, decided to delete the words “or the drawer” at the end of paragraph (1).

80. The Working Group adopted the substance of article 47 *bis* as amended and decided to incorporate it into article 48 so that the provisions of article 47 *bis* would form part of the concept of due presentment.

81. The text of article 48 as considered by the Working Group is as follows:

“A bill is duly presented for acceptance if it is presented in accordance with the following rules:

“(a) The holder must present the bill to the drawee on a business day at a reasonable hour. Where a place of acceptance is specified in the bill, presentment must be made at that place.

“(b) If a bill is drawn payable on a fixed date, presentment for acceptance must be made before or on the date of maturity.

“(c) A bill drawn payable on demand or at a fixed period after sight must be presented for acceptance within one year of its date.

“(d) A bill in which the drawer has stated a date or time-limit for presentment for acceptance must be presented on the stated date or within the stated time-limit.”

82. The Working Group decided that this article should be modified as noted in paragraph 80 above.

83. The Working Group considered the following revised text which, in accordance with the decision by the Working Group (see para. 80 above) incorporated the provisions of article 47 *bis* and 48:

“A bill is duly presented for acceptance if it is presented in accordance with the following rules:

“(a) The holder must present the bill to the drawee on a business day at a reasonable hour;

“(b) A bill drawn upon two or more drawees may be presented to any one of them, unless the bill clearly indicates otherwise;

“(c) Presentment for acceptance may be made to a person or authority other than the drawee if that person or authority is entitled under the applicable law to accept the bill;

“(d) If a bill is drawn payable on a fixed date, presentment for acceptance must be made before or on the date of maturity;

“(e) A bill drawn payable on demand or at a fixed period after sight must be presented for acceptance within one year of its date;

“(f) A bill in which the drawer has stated a date or time-limit for presentment for acceptance must be presented on the stated date or within the stated time-limit.”

84. The Working Group, after deliberation, adopted this text without change.

85. It was observed by two representatives that the draft Convention should state clearly that presentment of a bill for acceptance could also be made by a person in possession of the bill other than the holder, acting on behalf of the holder. On the other hand, presentment for payment should be made only by the holder. The difference in approach in respect of these two kinds of presentment would lead to the following result: if a person other than the holder presented a bill for payment, payment by

the acceptor to such a person would not constitute due payment and refusal to pay on the part of the acceptor would therefore not constitute dishonour. However, if a bill was presented for acceptance by a person acting on behalf of the holder, refusal by the drawee to accept would constitute dishonour by non-acceptance.

#### Article 49

86. The text of article 49 as considered by the Working Group is as follows:

"Presentment for acceptance is dispensed with

"(a) If the drawee is dead or has no longer the power freely to deal with his assets by reason of his insolvency, or is a fictitious person or a person not having capacity to incur liability on the instrument as an acceptor, or if the drawee is a corporation, partnership, association or other legal entity which has ceased to exist;

"(b) When, with the exercise of reasonable diligence, presentment cannot be effected within the time-limits prescribed for presentment for acceptance."

87. The Group adopted the article without change. It requested the Secretariat to clarify in the commentary that the application of this article was not restricted to those bills which under article 46, paragraph (2) must be presented for acceptance.

#### Article 50

88. The text of article 50 as considered by the Working Group is as follows:

"If a bill which must be presented for acceptance is not so presented, the drawer, the endorser and their guarantors are not liable on the bill."

89. The Group adopted the article without change.

#### Article 51

90. The text of article 51 as considered by the Working Group is as follows:

"(1) A bill is considered to be dishonoured by non-acceptance.

"(a) When the drawee, upon due presentment, expressly refuses to accept the bill or acceptance cannot be obtained with reasonable diligence or when the holder cannot obtain the acceptance to which he is entitled under this Convention;

"(b) If presentment for acceptance is dispensed with pursuant to article 49, unless the bill is in fact accepted.

"(2) If a bill is dishonoured by non-acceptance the holder may, subject to the provisions of article 57, exercise an immediate right of recourse against the drawer, the endorser and their guarantors."

91. The Working Group considered the question whether the holder of a bill was entitled to an immediate right of recourse against the guarantor of the drawee and whether it was necessary for the holder to protest the bill before being able to exercise his right of recourse. The

Group was of the view that the holder should be entitled to such immediate right of recourse and that protest was not necessary in order to preserve his rights against the guarantor of the drawee.

92. Accordingly, the Working Group modified paragraph (2) of article 51 as follows:

"(2) If a bill is dishonoured by non-acceptance the holder may

"(a) Subject to the provisions of article 57, exercise an immediate right of recourse against the drawer, the endorser and their guarantors;

"(b) Exercise an immediate right of recourse against the guarantor of the drawee."

93. The Working Group adopted article 51 as amended.

### [SECTION 2. PRESENTMENT FOR PAYMENT]

#### Article 53

94. The text of article 53 as considered by the Working Group is as follows:

"An instrument is duly presented for payment if it is presented in accordance with the following rules:

"(a) The holder must present the instrument to the drawee or to the acceptor or to the maker on a business day at a reasonable hour;

"(b) A bill drawn upon or accepted by two or more drawees, or a note signed by two or more makers, may be presented to any one of them, unless the bill or note clearly indicates otherwise;

"(c) If the drawee or the acceptor or the maker is dead, presentment must be made to the persons who under the applicable law are his heirs or the persons entitled to administer his estate;

"(d) Presentment for payment may be made to a person or authority other than the drawee, the acceptor or the maker if that person or authority is entitled under the applicable law to pay the instrument;

"(e) An instrument which is not payable on demand must be presented for payment on the date of maturity or on the first business day which follows;

"(f) An instrument which is payable on demand must be presented for payment within one year of its date;

"(g) An instrument must be presented for payment:

"(i) At the place of payment specified on the instrument; or

"(ii) If no place of payment is specified, at the address of the drawee or the acceptor or the maker indicated on the instrument; or

"(iii) If no place of payment is specified and the address of the drawee or the acceptor or the maker is not indicated, at the principal place of business or habitual residence of the drawee or the acceptor or the maker."

95. The question was raised as to the compatibility between paragraph (a) which required that presentment be made to the drawee, the acceptor or the maker and paragraph (g) (i) which required that presentment must be made at the place specified on the instrument, if so specified. It was observed that the place where the drawee, the acceptor or the maker could be found was not necessarily the place where the bill had to be presented for payment. The Group, after discussion, was of the view that there was not necessarily a contradiction between the two provisions since, in a case of a domiciled bill or note, the paying bank would be an agent of the drawee, acceptor or maker.

96. The Working Group adopted the article without change.

#### Article 54

97. The text of article 54 as considered by the Working Group is as follows:

"(1) Delay in making presentment for payment is excused when the delay is caused by circumstances which are beyond the control of the holder and which he could neither avoid nor overcome. When the cause of delay ceases to operate, presentment must be made with reasonable diligence.

"(2) Presentment for payment is dispensed with

"(a) If the drawer, an endorser or guarantor has waived presentment expressly or by implication; such waiver:

"(i) If made on the instrument by the drawer, binds any subsequent party and benefits any holder;

"(ii) If made on the instrument by a party other than the drawer, binds only that party but benefits any holder;

"(iii) If made outside the instrument, binds only the party making it and benefits only a holder in whose favour it was made.

"(b) If an instrument is not payable on demand, and the cause of delay in making presentment continues to operate beyond 30 days after maturity;

"(c) If an instrument is payable on demand, and the cause of delay continues to operate beyond 30 days after the expiration of the time-limit for presentment for payment;

"(d) If the drawee, the maker or the acceptor has no longer the power freely to deal with his assets, or is a fictitious person or a person not having capacity to make payment by reason of his insolvency, or if the drawee, the maker or the acceptor is a corporation, partnership, association or other legal entity which has ceased to exist;

"(e) [See new paragraph 3 below]

"(f) (deleted)

"(g) If there is no place at which the instrument must be presented in accordance with article 53 (g).

"(3) Presentment for payment is also dispensed with as regards a bill, if the bill has been protested for dishonour by non-acceptance."

98. The Working Group adopted this article without change. Two representatives reserved their position in respect of paragraph 2 (a) of this article on the ground that in their view the possibility under the provision of presentment being waived on the instrument by implication was unacceptable.

#### Article 55

99. The text of article 55 as considered by the Working Group is as follows:

"(1) If a bill is not duly presented for payment, the drawer, the endorser and their guarantors are not liable thereon.

"(2) If a note is not duly presented for payment, the endorser and their guarantors are not liable thereon.

"(3) Failure to present an instrument for payment does not discharge the acceptor or the maker or their guarantors or the guarantor of the drawee of liability thereon."

100. The question was raised whether presentment for payment to the guarantor of the drawee was a condition precedent to the liability of parties secondarily liable. The Working Group was of the view that failure to present the bill to the guarantor of the drawee did not deprive the holder of his right of recourse against parties secondarily liable, on the ground that presentment for payment means presentment to the drawee or the acceptor and not presentment to the guarantor of the drawee. The undertaking of the parties secondarily liable was to pay to the holder if the bill was presented to the drawee or to the acceptor and payment was refused. It was not part of their undertaking that the bill should be presented to the guarantor of the drawee if the drawee had not accepted and not paid.

101. The Working Group adopted article 55 without change.

#### Article 56

102. The text of article 56 as considered by the Working Group is as follows:

"(1) An instrument is considered to be dishonoured by non-payment

"(a) When payment is refused upon due presentment or when the holder cannot obtain the payment to which he is entitled under this Convention.

"(b) (deleted)

"(c) If presentment for payment is dispensed with pursuant to article 54 (2) and the instrument is overdue and unpaid.

"(2) If a bill is dishonoured by non-payment, the holder may, subject to the provisions of article 57, exercise a right of recourse against the drawer, the endorser and their guarantors.

"(3) If a note is dishonoured by non-payment, the holder may, subject to the provisions of article 57, exercise a right of recourse against the endorser and their guarantors."

103. The Working Group adopted this article without change.

104. One representative expressed the view that an instrument should be considered as dishonoured by non-payment and, consequently, that there should be an immediate right of recourse in the case of insolvency or bankruptcy of the debtor. In this respect reference was made to article 43 of the Geneva Uniform Law on Bills of Exchange and Promissory Notes according to which the holder may exercise an immediate right of recourse against the endorsers, the drawer and the other parties liable in the event of the bankruptcy of the drawee or the acceptor and in the event of the bankruptcy of the drawer of a non-acceptable bill. In the view of this representative such a provision would be desirable in that it protected the holder.

### [SECTION 3. RECOURSE]

#### *Articles 57, 58, 59 and 60*

105. The texts of articles 57, 58, 59 and 60 as considered by the Working Group are as follows:

#### *"Article 57"*

"If an instrument has been dishonoured by non-acceptance or by non-payment, the holder may exercise a right of recourse only after the instrument has been duly protested for dishonour in accordance with the provisions of articles 58 to 61.

#### *"Article 58"*

"(1) A protest is a statement of dishonour drawn up at the place where the instrument has been dishonoured and signed and dated by a person authorized to certify dishonour of a negotiable instrument by the law of that place. The statement must specify:

"(a) The person at whose request the instrument is protested;

"(b) The place of protest; and

"(c) The demand made and the answer given, if any, or the fact that the drawee or the acceptor or the maker could not be found.

"(2) A protest may be made

"(a) On the instrument itself or on a slip affixed thereto ('allonge'); or

"(b) As a separate document, in which case it must clearly identify the instrument that has been dishonoured.

"(3) Unless the instrument stipulates that protest must be made, a protest may be replaced by a declaration written on the instrument and signed and dated by the drawee or the acceptor or the maker, or, in the case of an instrument domiciled with a named person for payment, by that named person; the declaration must be to the effect that acceptance or payment is refused.

"(4) A declaration made in accordance with paragraph (3) is deemed to be a protest for the purposes of this Convention.

#### *"Article 59"*

"(1) Protest for dishonour of a bill by non-acceptance must be made on the day on which the bill is dishonoured or one of the two business days which follow.

"(2) Protest for dishonour of an instrument by non-payment must be made on the day on which the instrument is dishonoured or on one of the two business days which follow.

#### *"Article 60"*

"(1) If a bill which must be protested for non-acceptance or for non-payment is not duly protested, the drawer, the endorsers and their guarantors are not liable thereon.

"(2) If a note which must be protested for non-payment is not duly protested, the endorsers and their guarantors are not liable thereon.

"(3) Failure to protest an instrument does not discharge the acceptor or the maker or their guarantors or the guarantor of the drawee of liability thereon."

106. The Group adopted these articles without change.

#### *Article 61*

107. The text of article 61 as considered by the Working Group is as follows:

"(1) Delay in protesting an instrument for dishonour is excused when the delay is caused by circumstances which are beyond the control of the holder and which he could neither avoid nor overcome. When the cause of delay ceases to operate, protest must be made with reasonable diligence.

"(2) Protest for dishonour by non-acceptance or by non-payment is dispensed with:

"(a) If the drawer, an endorser or guarantor has waived protest expressly or by implication; such waiver:

"(i) If made on the instrument by the drawer, binds any subsequent party and benefits any holder;

"(ii) If made on the instrument by a party other than the drawer, binds only that party but benefits any holder;

"(iii) If made outside the instrument, binds only the party making it and benefits only a holder in whose favour it was made.

"(b) If the cause of delay in making protest continues to operate beyond 30 days after the date of dishonour;

"(c) As regards the drawer of a bill, if the drawer and the drawee or the acceptor are the same person;

"(d) (deleted)

"(e) If presentment for acceptance or for payment is dispensed with in accordance with article 49 (2) or 54 (2);

"(f) If the person claiming payment under article 80 cannot effect protest by reason of his inability to satisfy the requirements of article 83."

108. The Working Group adopted this article subject to the following modification in paragraph (2), subparagraph (e): replace the reference to "article 49 (2)" by a reference to "article 49".

109. In respect of paragraph 2 (a), two representatives reserved their position on the ground that, in their view, the possibility under that provision of protest being waived on the instrument by implication was unacceptable.

*Articles 62, 63, 64, 65, 66 and 66 bis*

110. The texts of articles 62, 63, 64, 65, 66 and 66 bis considered by the Working Group are as follows:

*"Article 62"*

"(1) The holder, upon dishonour of a bill by non-acceptance or by non-payment, must give due notice of such dishonour to the drawer, the endorsers and their guarantors.

"(2) The holder, upon dishonour of a note by non-payment, must give due notice of such dishonour to the endorsers and their guarantors.

"(3) An endorser or a guarantor who received notice must give notice of dishonour to the party immediately preceding him and liable on the instrument.

"(4) Notice of dishonour operates for the benefit of any party who has a right of recourse on the instrument against the party notified.

*"Article 63"*

"(1) Notice of dishonour may be given in any form whatever and in any terms which identify the instrument and state that it has been dishonoured. The return of the dishonoured instrument is sufficient notice, provided it is accompanied by a statement indicating that it has been dishonoured.

"(2) Notice of dishonour is deemed to have been duly given if it is communicated or sent to the person to be notified by means appropriate in the circumstances, whether or not it is received by that person.

"(3) The burden of proving that notice has been duly given rests upon the person who is required to give such notice.

*"Article 64"*

"Notice of dishonour must be given within the two business days which follow:

"(a) The day of protest or, if protest is dispensed with, the day of dishonour; or

"(b) The receipt of notice given by another party.

*"Article 65"*

"(1) Delay in giving notice of dishonour is excused when the delay is caused by circumstances which are beyond the control of the holder and which he could neither avoid nor overcome. When the cause of delay ceases to operate notice must be given with reasonable diligence.

"(2) Notice of dishonour is dispensed with

"(a) If the drawer, an endorser or guarantor has waived notice of dishonour expressly or by implication; such waiver:

"(i) If made on the instrument by the drawer, binds any subsequent party and benefits any holder;

"(ii) If made on the instrument by a party other than the drawer, binds only that party but benefits any holder;

"(iii) If made outside the instrument, binds only the party making it and benefits only a holder in whose favour it was made.

"(b) If after the exercise of reasonable diligence notice cannot be given;

"(c) As regards the drawer of a bill, if the drawer and the drawee or the acceptor are the same person.

"(d) (deleted).

*"Article 66"*

"Failure to give due notice of dishonour renders a person who is required to give such notice under article 62 to a party who is entitled to receive such notice liable for any damages which that party may suffer directly from such failure, provided that such damages do not exceed the amount due under article 67 or 68.

*"Article 66 bis"*

"The holder may exercise his rights on the instrument against any one party, or several or all parties, liable thereon and is not obliged to observe the order in which the parties have become bound."

111. The Group adopted these articles without change.

*Article 67*

112. The text of article 67 as considered by the Working Group is as follows:

"(1) The holder may recover from any party liable

"(a) At maturity: the amount of the instrument with interest, if interest has been stipulated for;

"(b) After maturity:

"(i) The amount of the instrument with interest, if interest has been stipulated for, to the date of maturity;

"(ii) If interest has been stipulated for after maturity, interest at the rate stipulated, or in the absence of such stipulation interest at the rate specified in paragraph (2), calculated from the date of maturity on the sum specified in paragraph 1 (b) (i);

"(iii) Any expenses of protest and of the notices given by him.

"(c) Before maturity:

"(i) The amount of the bill with interest, if interest has been stipulated for, to the date of payment, subject to a discount from the date of

payment to the date of maturity, calculated in accordance with paragraph (3);

“(ii) Any expenses of protest and of the notices given by him.

“(2) The rate of interest shall be [2] per cent per annum above the official rate (bank rate) or other similar appropriate rate effective in the main domestic centre of the country where the instrument was payable, or if there is no such rate, then at the rate of [ ] per cent per annum, to be calculated on the basis of the number of days in accordance with the custom of that centre.

“(3) The discount shall be at the official rate (discount rate) or other similar appropriate rate effective on the date when recourse is exercised at the place where the holder has his principal place of business, or if he does not have a place of business his habitual residence, or if there is no such rate at the rate then of [ ] per cent per annum, to be calculated on the basis of the number of days and in accordance with the custom of that place.”

113. The Working Group adopted the article without change. The Group was agreed that the determination of the rate of interest in paragraph (2) and of the discount rate in paragraph (3) should be left to the Conference of Plenipotentiaries to be convened to conclude the Convention.

#### Article 68

114. The text of article 68 as considered by the Working Group is as follows:

“(1) A party who takes up and pays an instrument in accordance with article 67 may recover from the parties liable to him

“(a) The entire sum which he was obliged to pay in accordance with article 67 and has paid;

“(b) Interest on that sum at the rate specified in article 67, paragraph (2), from the date on which he made payment;

“(c) Any expenses of the notices given by him.

“(2) Notwithstanding article 25 (4), if a party takes up and pays the instrument in accordance with article 67 and the instrument is transferred to him such transfer does not vest in that party the rights to and upon the instrument which any previous protected holder had.”

115. The Working Group adopted this article without change.

#### [PART SIX: DISCHARGE]

##### [Section 1. General]

##### [SECTION 2. PAYMENT]

#### Article 70

116. The text of article 70 as considered by the Working Group is as follows:

“(1) A party is discharged of his liability on the instrument when he pays the holder or a party subsequent to himself the amount due pursuant to articles 67 and 68:

“(a) At or after maturity, or

“(b) Before maturity, upon dishonour by non-acceptance.

“(2) Payment before maturity other than under paragraph (1) (b) of this article does not discharge the party making the payment of his liability on the instrument except in respect of the person to whom payment was made.

“(3) A party is not discharged of his liability if he knows at the time of payment that a third person has asserted a valid claim to the instrument or that the holder acquired the instrument by theft or forged the signature of the payee or an endorsee, or participated in such theft or forgery.

“(4) (a) A person receiving payment of an instrument under paragraph (1) of this article must, unless agreed otherwise, deliver to the person making such payment the instrument, any protest, and a receipted account.

“(b) The person from whom payment is demanded may withhold payment if the person demanding payment does not deliver the instrument to him. Withholding payment in these circumstances does not constitute dishonour by non-payment.

“(c) If payment is made but the payor fails to obtain the instrument, the payor is discharged but the discharge cannot be set up as a defence against a protected holder.”

117. As to paragraph (1), the Working Group was of the view that a party was not discharged of his liability on the instrument when he paid a party subsequent to himself who was not the holder or who had not taken up and paid the instrument pursuant to articles 67 and 68. The Group, therefore, decided to insert after the words “or a party subsequent to himself” the words “who has taken up and paid the instrument and is in possession thereof.”

118. The Working Group adopted paragraph (2) without change.

119. As to paragraph (3), one observer stated that under this paragraph a party who paid a protected holder was not discharged if a third person had claimed the instrument from such holder and that, consequently, such party should be able to set up against such holder the defence of *ius tertii*. On the other hand, it followed from article 24, paragraph (3) that the defence of *ius tertii* could be raised against a protected holder. It was proposed, therefore, that the words “who is not a protected holder” in article 24, paragraph (3) should be deleted and placed in another article, for instance article 25.

120. The Working Group, after discussion, was of the opinion that paragraph (3) of article 70 should be redrafted so as to achieve the effect that a party who paid a holder who was not a protected holder was not discharged of his liability if he had a defence based on the claim of a third person to the instrument.

121. The Working Group adopted the following text of paragraph (3) of article 70:

“(3) A party is not discharged of his liability if he pays a holder who is not a protected holder and knows at

the time of payment that a third person has asserted a valid claim to the instrument or that the holder acquired the instrument by theft or forged the signature of the payee or an endorsee, or participated in such theft or forgery."

122. Paragraph (4) of article 70 was adopted without change.

#### Article 71

123. The text of article 71 as considered by the Working Group is as follows:

"(1) The holder is not obliged to take partial payment.

"(2) If the holder does not take partial payment, the instrument is dishonoured by non-payment.

"(3) If the holder takes partial payment from the drawee or the acceptor or the maker:

"(a) The acceptor or the maker is discharged of his liability on the instrument to the extent of the amount paid; and

"(b) The instrument is to be considered as dishonoured by non-payment as to the amount unpaid.

"(4) The drawee or the acceptor or the maker making partial payment may require that mention of such payment be made on the instrument and that a receipt therefor be given to him.

"(5) When an instrument has been paid in part, a party who pays the unpaid amount is discharged of his liability thereon. In that case, the person receiving the payment must deliver the receipted instrument and any protest to the party making the payment."

124. The Working Group adopted paragraphs (1), (2) and (3) of this article without change.

125. In respect of paragraph (4), the Working Group decided to replace the words "the acceptor or the maker" by the words "a party" so that the paragraph would apply also to an endorser or guarantor and to an endorser and guarantor who satisfied his obligation to make payment in respect of part only of the amount of the instrument. The Working Group also decided to add a subparagraph (b) to paragraph (4) as follows:

"The holder who takes partial payment must give to the drawee or the party making partial payment a certified copy of the instrument in order to enable subsequent recourse to be exercised."

126. The following texts of paragraphs (4), (5) and (6) as redrafted by the Secretariat were considered by the Working Group.

"(4) If the holder takes partial payment from a party to the instrument other than the drawee, the acceptor or the maker.

"(a) The party making payment is discharged of his liability on the instrument to the extent of the amount paid; and

"(b) The holder must give such party a certified copy of the bill, and of any authenticated protest, in order to enable subsequent recourse to be exercised.

"(5) The drawee or a party making partial payment may require that mention of such payment be made on the instrument and that a receipt therefor be given to him.

"(6) Where a party pays the unpaid amount, the person receiving the unpaid amount who is in possession of the instrument must deliver to him the receipted instrument and any authenticated protest."

127. After deliberation, the Group adopted these paragraphs.

#### Article 72

128. The text of article 72 as considered by the Working Group is as follows:

"(1) The holder may refuse to take payment in a place other than the place where the instrument was duly presented for payment in accordance with article 53 (g).

"(2) If payment is not then made in the place where the instrument was duly presented for payment in accordance with article 53 (g), the instrument is considered as dishonoured by non-payment."

129. The Group adopted this article without change.

#### Article 74

130. The text of article 74 as considered by the Working Group is as follows:

"(1) An instrument must be paid in the currency in which the amount of the instrument is expressed.

"(2) The drawer or the maker may indicate on the instrument that it must be paid in a specified currency other than the currency in which the amount of the instrument is expressed. In that case:

"(a) The instrument must be paid in the currency so specified;

"(b) The amount payable is to be calculated according to the rate of exchange indicated on the instrument. Failing such an indication, the amount payable is to be calculated according to the rate of exchange for sight drafts on the date of maturity:

"(i) Ruling at the place where the instrument must be presented for payment in accordance with article 53 (g), if the specified currency is that of that place (local currency); or

"(ii) If the specified currency is not that of that place, according to the usages of the place where the instrument must be presented for payment in accordance with article 53 (g).

"(c) If such an instrument is dishonoured by non-acceptance, the amount payable is to be calculated:

"(i) If the rate of exchange is indicated on the instrument, according to that rate;

"(ii) If no rate of exchange is indicated on the instrument, at the option of the holder, according to the rate of exchange ruling at the date of dishonour or on the date of actual payment.



“(d) If such an instrument is dishonoured by non-payment, the amount is to be calculated:

“(i) If the rate of exchange is indicated on the instrument, according to that rate;

“(ii) If no rate of exchange is indicated on the instrument, at the option of the holder, according to the rate of exchange ruling on the date of maturity or on the date of actual payment.

“(3) Nothing in this article prevents a court from awarding damages for loss caused to the holder by reason of fluctuations in rates of exchange if such loss is caused by dishonour for non-acceptance or non-payment.

“(4) The rate of exchange ruling at a certain date is the rate of exchange ruling, at the option of the holder, at the place where the instrument must be presented for payment in accordance with article 53 (g) or at the place of actual payment.”

131. The Working Group adopted this article without change.

132. With regard to the possible modification of the article to cover also instruments being drawn or made in units of account (see A/CN.9/178, paras. 37 and 38), the Working Group noted that the Study Group on International Payments, which was to consider this question, had not yet met since the eighth session of the Working Group and that the views of the Study Group would be submitted to it at the next session.

#### *Article 74 bis*

133. The text of article 74 *bis* as considered by the Working Group is as follows:

“Nothing in this Convention prevents a Contracting State from enforcing exchange control regulations applicable in its territory, including regulations which it is bound to apply by virtue of international agreements to which it is a party.”

134. The Group adopted this article without change.

#### *Article 78*

135. The text of article 78 as considered by the Working Group is as follows:

“(1) When a party is discharged wholly or partly of his liability on the instrument, any party who has a right of recourse against him is discharged to the same extent.

“(2) Payment of a bill by the drawee to the holder of the amount due in whole or in part discharges all parties to the bill to the same extent.”

136. The Group adopted this article without change.

#### *Article 79*

137. The text of article 79 as considered by the Working Group is as follows:

“(1) A right of action arising on an instrument can no longer be exercised after four years have elapsed

“(a) Against the acceptor or the maker or their guarantor, after the date of maturity;

“(b) Against the drawer or an endorser or their guarantor, after the date of protest for dishonour or, where protest is dispensed with, the date of dishonour.

“(2) (a) If a party has taken up and paid the instrument in accordance with article 67 or 68 within one year before the expiration of the period referred to in paragraph (1) of this article, such party may exercise his right of action against a party liable to him within one year after the date on which he took up and paid the instrument.

“(b) (Add subparagraph in respect of a party who pays subsequently.)”

138. With respect to paragraph (1), the Working Group was of the view that the limitation period under the article should also run against the guarantor of the drawee. Consequently, the Working Group decided that paragraph 1 (a) should read as follows:

“(1) (a) Against the acceptor or the maker or their guarantor or the guarantor of the drawee, after the date of maturity;”

139. The Working Group adopted paragraph (2) (a) without change.

140. With respect to paragraph (2) (b), it was observed that paragraph (a) only covered the case where a party had taken up and paid the instrument within one year before the expiration of the period of limitation referred to in paragraph (1). Paragraph (2) should therefore contain an additional paragraph which should deal with cases where a party had taken up and paid an instrument after the period of limitation referred to in paragraph (1) had expired.

141. The Working Group considered the desirability of a separate paragraph in respect of the limitation period for statutory rights of action which the draft convention conferred, in certain circumstances, on a party who has suffered loss or damage (articles 22, 42, 66 and 81). Under one view such limitation periods should be left to the applicable national law. Under another view it should first be examined whether there was incompatibility between the limitation periods under article 79 in respect of actions on the instrument and limitation periods in respect of actions related to an instrument but outside the instrument. The Group requested the Secretariat to examine this question and decided that, if there was no incompatibility, an additional paragraph should not be included in the draft convention.

#### *Article 80*

142. The text of article 80 as considered by the Working Group is as follows:

“(1) When an instrument is lost, whether by destruction, theft or otherwise, the person who lost the instrument has, subject to the provisions of paragraphs (2) and (3) of this article, the same right to payment which he would have had if he had been in possession of the instrument. The party from whom payment is claimed cannot set up as a defence against liability on the

instrument the fact that the person claiming payment is not in possession thereof.

“(2) (a) The person claiming payment of a lost instrument must present to the party from whom he claims payment a copy of the instrument or must state in writing to that party:

- “(i) The elements of the lost instrument pertaining to the requirements set out in article 1 (2) or 1 (3);
- “(ii) The facts showing that, if he had been in possession of the instrument, he would have had a right to payment from the party from whom payment is claimed;
- “(iii) The facts which prevent production of the instrument.

“(b) The party from whom payment of a lost instrument is claimed may require the person claiming payment to give security in order to indemnify him for any loss which he may suffer by reason of the subsequent payment of the lost instrument.

“(c) The nature of the security and its terms are to be determined by agreement between the person claiming payment and the party from whom payment is claimed. Failing such an agreement, the Court may determine whether security is called for and, if so, the nature of the security and its terms.

“(d) If the security cannot be given, the Court may order the party from whom payment is claimed to deposit the amount of the lost instrument, and any interest and expenses which may be claimed under articles 67 and 68, with the Court or any other competent authority or institution, and may determine the duration of such deposit. Such deposit is to be considered as payment to the person claiming payment.”

143. The Working Group adopted paragraph (1) of this article without change.

144. With respect to paragraph (2) (a), the Working Group considered that it should be amended to clarify that the requirement of a writing stating the elements of the lost instrument could be satisfied by a copy of the instrument. The Working Group accordingly adopted the following text of paragraph (2) (a) (i):

“(2) (a) The person claiming payment of a lost instrument must state in writing to the party from whom he claims payment:

- “(i) The elements of the lost instrument pertaining to the requirements set forth in article 1 (2) or 1 (3); these elements may be satisfied by presenting to that party a copy of that instrument.”

145. The Working Group adopted paragraph 2 subject to this amendment.

#### Article 81

146. The text of article 81 as considered by the Working Group is as follows:

“(1) A party who has paid a lost instrument and to whom the instrument is subsequently presented for

payment by another person must notify the person to whom he paid of such presentment.

“(2) Such notification must be given on the day the instrument is presented or on one of the two business days which follow and must state the name of the person presenting the instrument and the date and place of presentment.

“(3) Failure to notify renders the party who has paid the lost instrument liable for any damages which the person whom he paid may suffer from such failure, provided that the total amount of the damages does not exceed the amount of the instrument and any interest and expenses which may be claimed under article 67 or 68.

“(4) Delay in giving notice is excused when the delay is caused by circumstances which are beyond the control of the person who has paid the lost instrument and which he could neither avoid nor overcome. When the cause of delay ceases to operate notice must be given with reasonable diligence.

“(5) Notice is dispensed with when the cause of delay in giving notice continues to operate beyond 30 days after the last date on which it should have been given.”

147. The Group adopted this article without change.

#### Article 82

148. The text of article 82 as considered by the Working Group is as follows:

“(1) A party who has paid a lost instrument in accordance with the provisions of article 80 and who is subsequently required to, and does, pay the instrument, or who loses his right to recover from any party liable to him, has the right

“(a) If security was given, to realize the security; or

“(b) If the amount was deposited with the Court or other competent authority, to reclaim the amount so deposited.

“[(2) The person who has given security in accordance with the provisions of paragraph (2) (b) of article 80, may reclaim the security when the party for whose benefit the security was given no longer has the right to realize the security under paragraph (1) and the acceptor or the maker can no longer be sued on the instrument by virtue of article 79, or when he cannot obtain payment from any party liable to him because of that party's raising a valid defence or that party's insolvency.]

“(3) If the amount was deposited with a Court or other competent authority in accordance with paragraph (2) (d) of article 80 and was not reclaimed under paragraph (1) (b) of this article within the period of time provided by article 79 during which the party who has deposited the amount and the acceptor or the maker can be sued on the instrument, the person for whose benefit the amount was deposited may request the Court which ordered the deposit to order that the amount deposited be paid out to him. The Court may grant such request upon such terms and conditions as it may require.”

149. The Working Group modified paragraph 1 of the article as follows:

"(1) A party who has paid a lost instrument in accordance with the provisions of article 80 and who is subsequently required to, and does, pay the instrument, or who loses his right to recover from any party liable to him and such loss of right was due to the fact that the instrument was lost, has the right

"(a) If security was given, to realize the security; or

"(b) If the amount was deposited with the Court or other competent authority, to reclaim the amount so deposited."

150. The modification was made on the ground that a party who had paid a lost instrument under article 80 should be entitled to realize the security not only in the case where he was obliged to pay the instrument a second time but also in the case where he had lost his right to recourse against a party liable to him, and such loss of right was due to the fact that the instrument was lost.

151. The Working Group considered paragraphs (2) and (3) of this article. The paragraphs set forth rules applicable to the situation where a party had paid the lost instrument and was given security under article 80. The question then arose on what ground the person who had given security could reclaim that security. The Group was of the view that the wording of paragraphs (2) and (3) was too complex and did not sufficiently reflect the basic rule according to which security could be reclaimed when the party to whom security had been given no longer ran the risk of suffering loss because of the lost instrument. Accordingly the Working Group adopted the following general rule in replacement of paragraphs (2) and (3):

"The person who has given security in accordance with the provisions of paragraph (2) (b) of article 80 is entitled to reclaim the security when the party for whose benefit the security was given is no longer at risk to suffer loss because of the fact that the instrument is lost."

#### *Article 83*

152. The text of article 83 as considered by the Working Group is as follows:

"A person claiming payment of a lost instrument duly effects protest for dishonour by non-payment by the use of a copy of the lost instrument or a writing that satisfies the requirements of article 80, paragraph (2) (a)."

153. The Working Group deleted the words "a copy of the lost instrument or", as those words were no longer necessary as a consequence of the amendments adopted to article 80, paragraph (2) (a).

#### *Articles 84 and 85*

154. The texts of articles 84 and 85 as considered by the Working Group are as follows:

#### *"Article 84*

"A person receiving payment of a lost instrument in accordance with article 80 must deliver to the party

paying the writing required under paragraph (2) (a) of article 80 received by him and any protest and a receipted account.

#### *"Article 85*

"(a) A party who paid a lost instrument in accordance with article 80 has the same rights which he would have had if he had been in possession of the instrument.

"(b) Such party may exercise his rights only if he is in possession of the receipted writing referred to in article 84."

155. The Group adopted these articles without change.

## II. UNIFORM RULES APPLICABLE TO INTERNATIONAL CHEQUES

156. The Working Group, at its eighth session, requested the Secretariat to commence preparatory work in respect of uniform rules applicable to international cheques. At the present session, the Working Group had before it a note by the Secretariat setting forth proposed draft rules on international cheques (A/CN.9/WG.IV/WP.15). These rules took into account the provisions of the draft Convention on International Bills of Exchange and International Promissory Notes and the special provisions applicable to cheques found in the Geneva Uniform Law on cheques, the United Kingdom Bills of Exchange Act of 1882 and the Uniform Commercial Code.

157. The Working Group considered the draft uniform rules article by article but decided not to take any final decision in respect of these articles and to postpone any decision regarding the question whether these rules should be set forth in a separate draft Convention on International Cheques or whether they should form part of one convention dealing with international bills of exchange, international promissory notes and international cheques.

158. The Working Group, after consideration, also decided that any legal issues arising outside the cheque, such as those relating to the relationship between banks and their clients, the duty of the drawee bank to pay the cheque, and the protection afforded to the paying and collecting banker should be considered at a later stage in order to ascertain whether such issues should be covered by the proposed uniform rules.

159. The Working Group, at the present session, considered articles 1 to 30 *bis* as set forth in document A/CN.9/WG.IV/WP.15.

#### *Article 1<sup>12</sup>*

160. The text of article 1 as considered by the Working Group is as follows:

"(1) This Convention applies to international cheques.

<sup>12</sup> Each draft article of the uniform rules set forth herein is numbered to correspond to the draft article in the draft Convention on International Bills of Exchange and International Promissory Notes which relates to the same or a similar issue covered by the draft article of these uniform rules. Accordingly, when a draft article in the draft Convention has no relation to cheques, there is an interruption in the numbering sequence of the draft articles of these uniform rules, and when a draft article in these uniform rules has no relation to bills of exchange or promissory notes, it is called "Article X".

"(2) An international cheque is a written instrument which

"(a) Contains, in the text thereof, the words 'international cheque (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 or to bearer;

"(c) Is drawn on a banker;

"(d) Is payable on demand;

"(e) Is dated;

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

"(i) The place where the cheque 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;

"(g) Is signed by the drawer.

"(3) Proof that the statement referred to in paragraph (2) (f) of this article are incorrect does not affect the application of this Convention."

#### (2) (c) "drawn on a banker"

161. In respect of paragraph (2) (c), it was observed that under some legal systems a "bank" or a "banker" included institutions assimilated by law to bankers. Accordingly, the Working Group was of the view that article 5 should set forth a paragraph stating that "banker" includes the persons or institutions assimilated by the applicable law to bankers.

#### (2) (d) "payable on demand"

162. In respect of paragraph (2) (d), it was noted that under the Geneva Uniform Law on Cheques the formal requisites of a cheque did not include the requirement that the cheque state on its face that it is payable on demand. In the Geneva Uniform Law the requirement that a cheque be payable on demand is contained in chapter IV on presentment and payment. Article 28 of that law provides that the cheque is payable on sight and that any contrary stipulation shall be disregarded. Therefore, under the Geneva Uniform Law an instrument which satisfied the formal requisites set forth in article 1 but which stated on its face a future date of payment was nevertheless a cheque.

163. The Working Group was of the view that an approach along the lines of the Geneva Uniform Law would be desirable in that it would extend the application of the uniform rules. The Group was, therefore, of the opinion that the requirement that a cheque be payable on demand should not be retained among the formal requisites set forth in paragraph (2) of article 1 but should be included among the rules applicable to presentment and payment.

#### (2) (f) international elements

164. With regard to paragraph (2) (f), the Working Group was of the view that the requirements of internationality applicable in respect of an international bill of exchange or an international promissory note should also apply in respect of an international cheque. It was noted that in the case of a cheque drawn payable to bearer the requirement that at least two of the five places mentioned under paragraph (2) (f) be stated on the face of the cheque might not be met easily.

165. The Working Group was of the view that subparagraph (f) (ii) should provide not only for the place indicated next to the signature of the drawer but also for the place indicated next to the name of the drawer. Such an addition was reasonable in view of the fact that in some countries the name and address of the drawer were printed on cheques.

### Article 3

166. The text of article 3 as considered by the Working Group is as follows:

"This Convention applies without regard to whether the places indicated on an international cheque pursuant to paragraph (2) (f) of article 1 are situated in Contracting States."

167. The view was expressed by an observer that the Convention should apply only when the place of payment was situated in a Contracting State. The Working Group, after discussion, was of the opinion that article 3 should be retained without change. The provision made it clear that the Convention would apply, in a Contracting State, if, for instance, the drawer of a cheque had issued it in a Contracting State and drawn it on a banker in a non-contracting State and the cheque had been dishonoured. In such a case the courts of the Contracting State in an action brought by the payee against the drawer would apply the Convention. Article 3 would also ensure the application of the Convention in a non-contracting State if, because of the application of the rules of private international law, the courts of that State applied the law of a Contracting State.

### Article 4

168. The text of article 4 as considered by the Working Group is as follows:

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

169. No observations were made in respect of this article.

### Article 5

170. The text of article 5 as considered by the Working Group is as follows:

"In this Convention

"(1) 'Cheque' means an international cheque governed by this Convention;

"(2) 'Drawee' means the banker on whom a cheque is drawn;

"(3) 'Payee' means the person in whose favour the drawer directs payment to be made;

"(4) 'Bearer' means a person in possession of a cheque payable to bearer or endorsed in blank;

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

"(6) 'Protected holder' means a holder of a cheque which, when he became a holder, was complete and regular on its face and not overdue [in accordance with article 53 (f)], provided that, at that time, he was without knowledge of any claim to or defence upon the instrument referred to in article 24 [or of the fact that it was dishonoured by non-payment];

"(7) 'Party' means any person who has signed a cheque;

"(8) '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."

(6) "*protected holder*"

171. In respect of paragraph (6) of article 5, one observer stated that the requirement that a cheque, for purposes of making a holder a protected holder, should be complete and "regular" on its face should not be retained. As to a cheque being incomplete on its face, this problem should be left to article 11. As to a cheque being "irregular" on its face, it was not immediately clear for what reasons a cheque would be irregular. However, the general view of the Working Group was that a definition of the protected holder should be identical with the one obtaining under the draft Convention on International Bills of Exchange and International Promissory Notes. The Working Group requested the Secretariat to include in a future commentary examples of cases of irregularity.

172. Objections were raised to the use of the term "overdue". The general view was that the definition should state that a holder was a protected holder if, at the time he became a holder, he did not take the cheque after the expiration of the time-limit within which the cheque must be presented for payment.

173. The Working Group was of the view that, in order to be a protected holder, a holder should also be without knowledge of the fact that the cheque had been dishonoured by non-payment.

(7) "*party*"

174. It was observed that under the proposed rules a cheque could be certified. However, a signature indicating certification should not make the person so signing a party.

*Article 6*

175. The text of article 6 as considered by the Working Group is as follows:

"For the purposes of the Convention, a person is considered to have knowledge of a fact if he has actual knowledge of that fact or could not have been unaware of its existence."

176. No observations were made in respect of this article.

*Article 7*

177. The text of article 7 as considered by the Working Group is as follows:

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

"(a) With interest;

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

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

178. Some representatives expressed the view that, since the cheque was primarily a payment instrument and not an instrument of credit, the proposed Rules should prohibit the stipulation of interest on a cheque. If the drawer wished to stipulate interest he should draw a bill of exchange. A stipulation of interest on a cheque might well induce the holder to hold on to the cheque for as long as the law permitted him.

179. Other representatives expressed the view that, though it was unlikely that the stipulation of interest on a cheque would be a frequent occurrence, the draft Uniform Rules should nevertheless permit such a stipulation. In view of the current high interest rates, such a stipulation could well serve a purpose even in cases where the cheque was presented for payment within a few days after its issue.

*Article 8*

180. The text of article 8 as considered by the Working Group is as follows:

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

"(2) If the amount of the cheque 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 cheque 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 a cheque states that it is to be paid with interest, without specifying the date from which interest is to run, interest runs [from the date on which the cheque is issued].

"(4) A stipulation on a cheque 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."

181. The Working Group placed paragraphs (3) and (4) of article 8 between brackets pending a final decision on the question whether the stipulation of interest on an international cheque should be allowed.

*Article 10*

182. The text of article 10 as considered by the Working Group is as follows:

“(1) A cheque may

“(a) Be drawn by the drawer on himself or be drawn payable to his order;

“(b) Be drawn by two or more drawers;

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

“(2) If a cheque 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 cheque may exercise the rights of a holder. In any other case the cheque is payable to all of them and the rights of a holder can only be exercised by all of them.”

183. Doubts were expressed about the advisability of permitting a bank to draw a cheque payable to bearer on itself. Such a provision might be at variance with national laws governing the issuance of money. However, the general view was that the Uniform Rules should allow for the issuance of such cheques but that countries in which the law would prevent this could prohibit such issuance.

*Articles 11–20*

184. The texts of articles 11–20 as considered by the Working Group are as follows:

*“Article 11*

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

“(2) When such a cheque is completed otherwise than in accordance with agreements entered into

“(a) A party who signed the cheque before the completion may invoke the non-observance of the agreement as a defence against a holder, provided the holder had knowledge of the non-observance of the agreement when he became a holder;

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

*“Article 13*

“A cheque is transferred

“(a) By endorsement and delivery of the cheque by the endorser to the endorsee; or

“(b) By mere delivery of the cheque if it is drawn payable to bearer or if the last endorsement is in blank.

*“New Article*

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

“(2) An endorsement may be made

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

“(b) Special, by a signature accompanied by an indication of the person to whom the cheque is payable.

*“Article 13 bis*

“(1) A person is a holder if he is

“(a) The bearer of a cheque; or

“(b) The payee in possession of the cheque; or

“(c) In possession of a cheque

“(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 cheque 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 cheque.

*“Article 15*

“The holder of a cheque on which the last endorsement is in blank may

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

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

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

*“Article 16*

“[When the drawer or an endorser has inserted in the cheque 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) A conditional endorsement transfers the cheque irrespective of whether the condition is fulfilled.

“(2) A claim to or a defence upon the cheque 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 cheque is ineffective as an endorsement.

*"Article 19"*

"Where 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 cheque.

*"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 cheque (endorsement for collection), the endorsee

"(a) May only endorse the cheque for purposes of collection;

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

"(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 cheque to any subsequent holder."

185. No observations were made in respect of these articles.

*Article 21*

186. The text of article 21 as considered by the Working Group is as follows:

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

"(2) The transfer of a cheque by endorsement to the drawee operates as a receipt [except in the case where the drawee has several establishments and the endorsement is made in favour of an establishment other than that on which the cheque has been drawn]."

187. It was noted that paragraph (2) of article 21 reflected article 15 of the Geneva Uniform Law. However, the view was expressed that the wording did not make it clear that, where a cheque was endorsed to the drawee, the drawee did not become a holder and that the endorser was not liable on the cheque.

188. The Working Group was of the opinion that the provision should be redrafted to make it clear that an endorsement to the drawee constituted only an acknowledgement that the transferor had received from the drawee the sum payable by the cheque.

189. The Working Group left open the question whether the drawee-bank should become a holder where the drawee had several establishments and the endorsement was made in favour of an establishment other than that on which the cheque had been drawn.

*Article 21 bis*

190. The text of article 21 *bis* as considered by the Working Group is as follows:

"[(1) A cheque may be transferred in accordance with article 13 after the expiration of the period of time for presentment.

"(2) The transfer of a cheque in accordance with article 13 after the expiration of the period of time for presentment or after protest operates only as an assignment.]"

191. The Working Group was of the view that paragraph (2) of article 21 *bis* should be deleted.

*Article 22*

192. The text of article 22 as considered by the Working Group is as follows:

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

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

193. No observations were made in respect of this article.

*Article 23*

194. The text of article 23 as considered by the Working Group is as follows:

"(1) The holder of a cheque has all the rights conferred on him by this Convention against the parties to the cheque.

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

195. Reference was made to article 20 of the Geneva Uniform Law under which the endorsement of a bearer cheque did not convert the cheque into a cheque to order. Under one view, this rule was implicit in article 13 (b).

196. It was further observed that under article 20 of the Geneva Uniform Law an endorsement on a bearer cheque rendered the endorser liable in a recourse action against him. The Working Group was of the view that the legal effects of an endorsement on a bearer cheque should be examined further in connexion with signatures on a cheque other than those of an endorser.

197. The Working Group was of the view that the endorsement of a bearer cheque should not convert the cheque into a cheque to order and that the holder of such a cheque could be a protected holder even if the endorsement was not to him.

*Article 24*

198. The text of article 24 as considered by the Working Group is as follows:

"(1) A party may set up against a holder who is not a protected holder:

"(a) Any defence available under this Convention;

"(b) Any defence based on an underlying transaction between himself and the drawer or a previous

holder or arising from the circumstances as a result of which he became a party;

“(c) Any defence to contractual liability based on a transaction between himself and the holder;

“(d) Any defence based on incapacity of such party to incur liability on the cheque or on the fact that such party signed without knowledge that his signature made him a party to the cheque, provided that such absence of knowledge was not due to negligence.

“(2) The rights to a cheque of a holder who is not a protected holder are subject to any valid claim to the cheque on the part of any person.

“(3) A party may not raise as a defence against a holder who is not a protected holder the fact that a third person has a claim to the cheque unless

“(a) Such third person asserted a valid claim to the cheque; or

“(b) Such holder acquired the cheque by theft or forged the signature of the payee or an endorsee, or participated in such theft.”

199. One observer expressed the view that the words “who is not a protected holder” in paragraph (3) should be deleted, and placed in another article, such as article 25 *bis*.

#### Article 25

200. The text of article 25 as considered by the Working Group is as follows:

“(1) A party may not set up against a protected holder any defence except:

“(a) Defences under articles 27 (1), 28, 29 (1), 30 (2) and (3), 34 (2), 41 (1) and (2), 43 (4), 54, [55], [58], [60] and 79 of this Convention;

“(b) Defences based on the incapacity of such party to incur liability on the cheque;

“(c) Defences based on the fact that such party signed without knowledge that his signature made him a party to the cheque, provided that such absence of knowledge was not due to his negligence.

“(2) Except as provided in paragraph (3), the rights to a cheque of a protected holder are not subject to any claim to the cheque on the part of any person.

“(3) The rights of a protected holder are not free from any valid claim to, or any defence to liability upon, the cheque arising from the underlying transaction between himself and the party by whom the claim or defence is raised or arising from any fraudulent act on the part of such holder in obtaining the signature on the cheque of that party.

“(4) The transfer of a cheque by a protected holder vests in any subsequent holder the rights to and upon the cheque which the protected holder had, except where such subsequent holder participated in a transaction which gives rise to a claim to or a defence upon the cheque.”

201. The Working Group decided that the question as to which defences a party could set up against a protected holder should be examined at a later stage.

202. In respect of paragraph (3), the Working Group requested the Secretariat to explain in a future commentary that, since a cheque could not be accepted, the words “or arising from any fraudulent act on the part of such holder in obtaining the signature on the cheque of that party” would apply in the case where the signature was obtained from a guarantor.

#### Articles 26–30

203. The texts of articles 26–30 as considered by the Working Group are as follows:

#### “Article 26

“Every holder is presumed to be a protected holder, unless the contrary is proved.”

#### “Article 27

“(1) Subject to the provisions of articles 28 and 30, a person is not liable on a cheque unless he signs it.

“(2) A person who signs in a name which is not his own is liable as if he had signed it in his own name.

“(3) A signature may be in handwriting or by facsimile, perforations, symbols or any other mechanical means.\*

\*

#### “Article ...

“A Contracting State whose legislation requires that a signature on a cheque be handwritten may, at the time of signature, ratification or accession, make a declaration to the effect that a signature placed on a cheque in its territory must be executed in handwriting.”

#### “Article 28

“A forged signature on a cheque does not impose any liability thereon on the person whose signature was forged. Nevertheless, such person is liable as if he had signed the cheque himself where he has, expressly or impliedly, accepted to be bound by the forged signature or represented that the signature was his own.

#### “Article 29

“(1) If a cheque has been materially altered

“(a) Parties who have signed the cheque subsequent to the material alteration are liable thereon according to the terms of the altered text.

“(b) Parties who have signed the cheque before the material alteration are liable thereon according to the terms of the original text. Nevertheless, a party who has himself made, authorized, or assented to, the material alteration is liable on the cheque according to the terms of the altered text.

“(2) Failing proof to the contrary, a signature is deemed to have been placed on the cheque after the material alteration.

“(3) Any alteration is material which modifies the written undertaking on the cheque of any party in any respect.



*"Article 30*

"(1) A cheque may be signed by an agent.

"(2) The name or signature of a principal placed on the cheque by an agent with his authority imposes liability on the principal and not on the agent.

"(3) The signature of an agent placed by him on a cheque without authority, or with authority to sign but not showing on the cheque that he is signing in a representative capacity for a named person, or showing on the cheque that he is signing in a representative capacity but not naming the person whom he represents, imposes liability thereon on such agent and not on the person whom the agent purports to represent.

"(4) The question whether a signature was placed on the cheque in a representative capacity may be determined only by reference to what appears on the cheque.

"(5) An agent who is liable pursuant to paragraph (3) and who pays the cheque has the same rights as the person for whom he purported to act would have had if that person had paid the cheque."

204. No observations were made in respect of these articles.

*Article 30 bis*

205. The text of article 30 *bis* as considered by the Working Group is as follows:

"The order to pay contained in a cheque does not of itself operate as an assignment of a right to payment existing outside of the cheque."

206. In connexion with this article, one observer alluded to articles 32 and 33 of the Geneva Uniform Law regarding the countermanding of a cheque and the effects of the death or the incapacity of the drawer after the cheque has been drawn. The Working Group decided to take up this question at a future session.

207. The Working Group decided to continue its consideration of the draft uniform rules at its next session.

## III. FUTURE WORK

208. The Working Group noted that the budgetary provisions approved for 1980-1981 authorized the Secretariat to convene a Drafting Group for the purpose of harmonizing the language versions of the draft Convention on International Bills of Exchange and International Promissory Notes. Accordingly, the Group requested the Secretariat to convene such a Group in the summer of 1980.

209. The Working Group requested the Secretariat to establish a commentary on the draft Convention on International Bills of Exchange and International Promissory Notes.

210. The Working Group requested the Secretariat to complete the draft Uniform Rules on International Cheques, including rules on crossed cheques, and to submit a study on legal issues arising outside the cheque.

211. The Working Group decided to recommend to the Commission that the next (tenth) session of the Working Group be held in Vienna from 5 to 16 January 1981.

**C. Draft Convention on International Bills of Exchange and International Promissory Notes as adopted by the Working Group on International Negotiable Instruments at its eighth session (Geneva, 3-14 September 1979) and its ninth session (New York, 2-11 January 1980) (A/CN.9/181, annex)\***

**[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;

\* 13 March 1980.

\*\* Brackets indicate matters which have been reserved for further consideration at a later date.

*"Article 30"*

"(1) A cheque may be signed by an agent.

"(2) The name or signature of a principal placed on the cheque by an agent with his authority imposes liability on the principal and not on the agent.

"(3) The signature of an agent placed by him on a cheque without authority, or with authority to sign but not showing on the cheque that he is signing in a representative capacity for a named person, or showing on the cheque that he is signing in a representative capacity but not naming the person whom he represents, imposes liability thereon on such agent and not on the person whom the agent purports to represent.

"(4) The question whether a signature was placed on the cheque in a representative capacity may be determined only by reference to what appears on the cheque.

"(5) An agent who is liable pursuant to paragraph (3) and who pays the cheque has the same rights as the person for whom he purported to act would have had if that person had paid the cheque."

204. No observations were made in respect of these articles.

*Article 30 bis*

205. The text of article 30 *bis* as considered by the Working Group is as follows:

"The order to pay contained in a cheque does not of itself operate as an assignment of a right to payment existing outside of the cheque."

206. In connexion with this article, one observer alluded to articles 32 and 33 of the Geneva Uniform Law regarding the countermanding of a cheque and the effects of the death or the incapacity of the drawer after the cheque has been drawn. The Working Group decided to take up this question at a future session.

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**[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;

\* 13 March 1980.

\*\* Brackets indicate matters which have been reserved for further consideration at a later date.

- (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.

#### 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.

#### 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 he became a holder, was complete and regular on its face and not overdue, provided that, at that time, he was without knowledge of any claim to or defence upon the instrument referred to in article 24 or of the fact that it was dishonoured by non-acceptance or non-payment;
- (8) "Party" means any party who has signed an instrument;

(9) "Maturity" means the date of payment referred to in article 9 and, in the case of a demand bill, the date on which the instrument is presented 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

For the purposes of this Convention, a person is considered to have knowledge of a fact if he has actual knowledge of that fact or could not have been unaware of its existence.

### [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 any 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; or

(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 right 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, provided the holder had knowledge of the non-observance of the agreement when he became a holder;

(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 circum-

stances, 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, or the maker, has inserted in the instrument, or an endorser in his 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, 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 that he may have suffered because of the forgery.

(2) For the purposes of this article, an endorsement placed on an instrument by a person in a representative capacity without authority has the same effects as a forged endorsement.

### **[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.

#### *Article 24*

(1) A party may set up against a holder who is not a protected holder:

(a) Any defence available under this Convention;

(b) Any defence based on an underlying transaction between himself and the drawer or a previous holder or arising from the circumstances as a result of which he became a party;

(c) Any defence to contractual liability based on a transaction between himself and the holder;

(d) Any defence based on incapacity of such party to incur liability on the instrument or on the fact that such party signed without knowledge that his signature made him a party to the instrument, provided that such absence of knowledge was not due to negligence;

(2) The rights to an instrument of a holder who is not a protected holder are subject to any valid claim to the instrument on the part of any person.

(3) A party may not raise as a defence against a holder who is not a protected holder the fact that a third person has a claim to the instrument unless:

(a) Such third person asserted a valid claim to the instrument; or

(b) Such holder acquired the instrument by theft or forged the signature of the payee or an endorsee, or participated in such theft.

#### Article 25

(1) A party may not set up against a protected holder any defence except:

(a) Defences under articles 27 (1), 28, 29 (1), 30 (2) and (3), 50, 55, 57, 60 and 79 of this Convention;

(b) Defences based on the incapacity of such party to incur liability on the instrument;

(c) Defences based on the fact that such party signed without knowledge that his signature made him a party to the instrument, provided that such absence of knowledge was not due to his negligence.

(2) Except as provided in paragraph (3), the rights to an instrument of a protected holder are not subject to any claim to the instrument on the part of any person.

(3) The rights of a protected holder are not free from any valid claim to, or any defence to liability upon, the instrument arising from the underlying transaction between himself and the party by whom the claim or defence is raised or arising from any fraudulent act on the part of such holder in obtaining the signature on the instrument of that party.

(4) The transfer of an instrument by a protected holder vests in any subsequent holder the rights to and upon the instrument which the protected holder had, except where such subsequent holder participated in a transaction which gives rise to a claim to or a defence upon the instrument.

#### Article 26

Every holder is presumed to be protected holder, unless the contrary is proved.

### [SECTION 2. LIABILITY OF THE PARTIES]

#### [A. General]

#### Article 27

(1) Subject to the provisions of articles 28 and 30, a person is not liable on an instrument unless he signs it.

(2) A person who signs in a name which is not his own is liable as if he had signed it in his own name.

(3) A signature may be in handwriting or by facsimile, perforations, symbols or any other mechanical means.\*

\*

#### "Article (X)

"A Contracting State whose legislation required that a signature on an instrument be handwritten may, at the time of signature, ratification or accession, make a declaration to the effect that a signature placed on an instrument in its territory must be executed in handwriting."

#### Article 28

A forged signature on an instrument does not impose any liability thereon on the person whose signature was

forged. Nevertheless, such person is liable as if he had signed the instrument himself where he has, expressly or impliedly, accepted to be bound by the forged signature or represented that the signature was his own.

#### Article 29

(1) If an instrument has been materially altered

(a) Parties who have signed the instrument subsequent to the material alteration are liable thereon according to the terms of the altered text;

(b) Parties who have signed the instrument before the material alteration are liable thereon according to the terms of the original text. Nevertheless, a party who has himself made, authorized, or assented to, the material alteration is liable on the instrument according to the terms of the altered text.

(2) Failing proof to the contrary, a signature is deemed to have been placed on the instrument after the material alteration.

(3) Any alteration is material which modifies the written undertaking on the instrument of any party in any respect.

#### Article 30

(1) An instrument may be signed by an agent.

(2) The name or signature of a principal placed on the instrument by an agent with his authority imposes liability on the principal and not on the agent.

(3) The signature of an agent placed by him on an instrument without authority, or with authority to sign but not showing on the instrument that he is signing in a representative capacity for a named person, or showing on the instrument that he is signing in a representative capacity but not naming the person whom he represents, imposes liability thereon on such agent and not on the person whom the agent purports to represent.

(4) The question whether a signature was placed on the instrument in a representative capacity may be determined only by reference to what appears on the instrument.

(5) An agent who is liable pursuant to paragraph (3) and who pays the instrument has the same rights as the person for whom he purported to act would have had if that person had paid the instrument.

#### Article 30 bis

The order to pay contained in a bill does not of itself operate as an assignment of a right to payment existing outside of the bill.

#### Article 31

(deleted)

#### Article 32

(deleted)

#### Article 33

(deleted)

## [B. The drawer]

*Article 34*

(1) The drawer engages that upon dishonour of the bill by non-acceptance or non-payment, and upon any necessary protest, he will pay to the holder or to any party who takes up and pays the bill in accordance with article 67 the amount of the bill, and any interest and expenses which may be recovered under article 67 or 68.

(2) The drawer may exclude or limit his own liability by an express stipulation on the bill. Such stipulation has effect only with respect to the drawer.

## [C. The maker]

*Article 34 bis*

(1) The maker engages that he will pay to the holder or to any party who takes up and pays the bill in accordance with article 67 the amount of the bill, and any interest and expenses which may be recovered under article 67 or 68.

(2) The maker may not exclude or limit his own liability by a stipulation on the note. Any such stipulation is without effect.

## [D. The drawee and the acceptor]

*Article 35*

(deleted)

*Article 36*

(1) The drawee is not liable on a bill until he accepts it.

(2) The acceptor engages that he will pay to the holder or, to any party who takes up and pays the bill in accordance with article 67 or the drawer who has paid the bill, the amount of the bill, and any interest and expenses which may be recovered under article 67 or 68.

*Article 37*

An acceptance must be written on the bill and may be effected:

(a) By the signature of the drawee accompanied by the word "accepted" or by words of similar import, or

(b) By the signature alone of the drawee.

*Article 38*

(1) An incomplete instrument which satisfies the requirements set out in article 1 (2) (a) may be accepted by the drawee before it has been signed by the drawer, or while otherwise incomplete.

(2) A bill may be accepted before, at or after maturity, or after it has been dishonoured by non-acceptance or non-payment.

(3) When a bill drawn payable at a fixed period after sight, or a bill which must be presented for acceptance before a specified date, is accepted, the acceptor must indicate the date of his acceptance; failing such indication by the acceptor, the drawer, before the issue of the bill, or the holder may insert the date of acceptance.

(4) If a bill drawn payable at a fixed period after sight is dishonoured by non-acceptance and the drawee subsequently accepts it, the holder is entitled to have the acceptance dated as of the date on which the bill was dishonoured.

*Article 39*

(1) An acceptance must be unqualified. An acceptance is qualified if it is conditional or varies the terms of the bill.

(2) If the drawee stipulates on the bill that his acceptance is subject to qualification:

(a) He is nevertheless bound according to the terms of his qualified acceptance;

(b) The bill is dishonoured by non-acceptance, except that the holder may take an acceptance relating to only a part of the amount of the bill. In that case, the bill is dishonoured by non-acceptance as to the remaining part of the amount.

(3) An acceptance indicating that payment will be made at a particular address or by a particular agent is not a qualified acceptance, provided that:

(a) The place in which payment is to be made is not changed;

(b) The bill is not drawn payable by another agent.

*Article 40*

(deleted)

## [E. The endorser]

*Article 41*

(1) The endorser engages that upon dishonour of the instrument by non-acceptance or non-payment, and upon any necessary protest, he will pay to the holder or to any party who takes up and pays the bill in accordance with article 67 the amount of the instrument, and any interest and expenses which may be recovered under article 67 or 68.

(2) The endorser may exclude or limit his own liability by an express stipulation on the instrument. Such stipulation has effect only with respect to that endorser.

*Article 42*

(1) Any person who transfers an instrument by mere delivery is liable to any holder subsequent to himself for any damages that such holder may suffer on account of the fact that prior to such transfer

(a) A signature on the instrument was forged or unauthorized; or

(b) The instrument was materially altered; or

(c) A party has a valid claim or defence against him; or

(d) The bill is dishonoured by non-acceptance or non-payment or the note is dishonoured by non-payment.

(2) The damages according to paragraph (1) may not exceed the amount referred to in article 67 or 68.

(3) Liability on account of any defect mentioned in paragraph (1) is incurred only to a holder who took the instrument without knowledge of such defect.

## [F. The guarantor]

*Article 43*

(1) Payment of an instrument, whether or not it has been accepted, may be guaranteed, as to the whole or part of its amount, for the account of a party or the drawee. A guarantee may be given by any person who may or may not already be a party.

(2) A guarantee must be written on the instrument or on a slip affixed thereto ("allonge").

(3) A guarantee is expressed by the words: "guaranteed", "*aval*", "good as *aval*" or words of similar import, accompanied by the signature of the guarantor.

(4) A guarantee may be effected by a signature alone. Unless the content otherwise requires

(a) The signature alone on the front of the instrument, other than that of the drawer or the drawee, is a guarantee;

(b) The signature alone of the drawee on the front of the instrument is an acceptance; and

(c) A signature alone on the back of the instrument other than that of the drawee is an endorsement.

(5) A guarantor may specify the person for whom he has become guarantor. In the absence of such specification, the person for whom he has become guarantor is the acceptor or the drawee in the case of a bill, and the maker, in the case of a note.

*Article 44*

(1) A guarantor is liable on the instrument to the same extent as the party for whom he has become guarantor, unless the guarantor has stipulated otherwise on the instrument.

(2) If the person for whom he has become guarantor is the drawee, the guarantor undertakes to pay the bill when due.

*Article 45*

The guarantor who pays the instrument has rights thereon against the party for whom he became guarantor and against parties who are liable thereon to that party.

**[Part Five. Presentment, dishonour and recourse]****[SECTION 1. PRESENTMENT FOR ACCEPTANCE]***Article 46*

(1) A bill may be presented for acceptance.

(2) A bill must be presented for acceptance:

(a) When the drawer has stipulated on the bill that it must be presented for acceptance;

(b) When the bill is drawn payable at a fixed period after sight; or

(c) When the bill is drawn payable elsewhere than at the residence or place of business of the drawee, except where such a bill is payable on demand.

*Article 47*

(1) Notwithstanding the provision of article 46 the drawer may stipulate on the bill that it must not be presented for acceptance or that it must not be so presented before a specified date or before the occurrence of a specified event.

(2) If a bill is presented for acceptance notwithstanding a stipulation permitted under paragraph (1) and acceptance is refused, the bill is not thereby dishonoured.

(3) If the drawee accepts a bill notwithstanding a stipulation that it must not be presented for acceptance, the acceptance is effective.

*Article 47 bis*

(1) Presentment for acceptance must be made to the drawee by or on behalf of the holder.

(2) A bill drawn upon two or more drawees may be presented to any one of them, unless the bill clearly indicates otherwise.

(3) Presentment for acceptance may be made to a person or authority other than the drawee if that person or authority is entitled under the applicable law to accept the bill.

*Article 48*

A bill is duly presented for acceptance if it is presented in accordance with the following rules:

(a) The holder must present the bill to the drawee on a business day at a reasonable hour;

(b) A bill drawn upon two or more drawees may be presented to any one of them, unless the bill clearly indicates otherwise;

(c) Presentment for acceptance may be made to a person or authority other than the drawee if that person or authority is entitled under the applicable law to accept the bill;

(d) If a bill is drawn payable on a fixed date, presentment for acceptance must be made before or on the date of maturity;

(e) A bill drawn payable on demand or at a fixed period after sight must be presented for acceptance within one year of its date;

(f) A bill in which the drawer has stated a date or time-limit for presentment for acceptance must be presented on the stated date or within the stated time-limit.

*Article 49*

Presentment for acceptance is dispensed with

(a) If the drawee is dead or has no longer the power freely to deal with his assets by reason of his insolvency, or is a fictitious person or a person not having capacity to incur liability on the instrument as an acceptor, or if the drawee is a corporation, partnership, association or other legal entity which has ceased to exist;

(b) When, with the exercise of reasonable diligence, presentment cannot be effected within the time-limits prescribed for presentment for acceptance.



*Article 50*

If a bill which must be presented for acceptance is not so presented, the drawer, the endorsers and their guarantors are not liable on the bill.

*Article 51*

(1) A bill is considered to be dishonoured by non-acceptance

(a) When the drawee, upon due presentment, expressly refuses to accept the bill or acceptance cannot be obtained with reasonable diligence or when the holder cannot obtain the acceptance to which he is entitled under this Convention;

(b) If presentment for acceptance is dispensed with pursuant to article 49, unless the bill is in fact accepted.

(2) If a bill is dishonoured by non-acceptance the holder may

(a) Subject to the provisions of article 57, exercise an immediate right of recourse against the drawer, the endorsers and their guarantors;

(b) Exercise an immediate right of recourse against the guarantor of the drawee.

## [SECTION 2. PRESENTMENT FOR PAYMENT]

*Article 52*

(deleted)

*Article 53*

An instrument is duly presented for payment if it is presented in accordance with the following rules:

(a) The holder must present the instrument to the drawee or to the acceptor or to the maker on a business day at a reasonable hour;

(b) A bill drawn upon or accepted by two or more drawees, or a note signed by two or more makers, may be presented to any one of them, unless the bill or note clearly indicates otherwise;

(c) If the drawee or the acceptor or the maker is dead, presentment must be made to a person who under the applicable law are his heirs or the persons entitled to administer his estate;

(d) Presentment for payment may be made to a person or authority other than the drawee, the acceptor or the maker if that person or authority is entitled under the applicable law to pay the instrument;

(e) An instrument which is not payable on demand must be presented for payment on the date of maturity or on one of the two business days which follow;

(f) An instrument which is payable on demand must be presented for payment within one year of its date;

(g) An instrument must be presented for payment:

(i) At the place of payment specified on the instrument; or

(ii) If no place of payment is specified, at the address of the drawee or the acceptor or the maker indicated on the instrument; or

(iii) If no place of payment is specified and the address of the drawee or the acceptor or the maker is not indicated, at the principal place of business or habitual residence of the drawee or the acceptor or the maker.

*Article 54*

(1) Delay in making presentment for payment is excused when the delay is caused by circumstances which are beyond the control of the holder and which he could neither avoid nor overcome. When the cause of delay ceases to operate, presentment must be made with reasonable diligence.

(2) Presentment for payment is dispensed with

(a) If the drawer, an endorser or guarantor has waived presentment expressly or by implication; such waiver;

(i) If made on the instrument by the drawer, binds any subsequent party and benefits any holder;

(ii) If made on the instrument by a party other than the drawer, binds only that party but benefits any holder;

(iii) If made outside the instrument, binds only the party making it and benefits only a holder in whose favour it was made.

(b) If an instrument is not payable on demand, and the cause of delay in making presentment continues to operate beyond 30 days after maturity;

(c) If an instrument is payable on demand, and the cause of delay continues to operate beyond 30 days after the expiration of the time-limit for presentment for payment;

(d) If the drawee, the maker or the acceptor has no longer the power freely to deal with his assets, or is a fictitious person or a person not having capacity to make payment by reason of his insolvency, or if the drawee, the maker or the acceptor is a corporation, partnership, association or other legal entity which has ceased to exist;

(e) [See new paragraph (3) below.]

(f) (deleted)

(g) If there is no place at which the instrument must be presented in accordance with article 53 (g).

(3) Presentment for payment is also dispensed with as regards a bill, if the bill has been protested for dishonour by non-acceptance.

*Article 55*

(1) If a bill is not duly presented for payment, the drawer, the endorsers and their guarantors are not liable thereon.

(2) If a note is not duly presented for payment, the endorsers and their guarantors are not liable thereon.

(3) Failure to present an instrument for payment does not discharge the acceptor or the maker or their guarantors or the guarantor of the drawee of liability thereon.

*Article 56*

(1) An instrument is considered to be dishonoured by non-payment

(a) When payment is refused upon due presentment or when the holder cannot obtain the payment to which he is entitled under this Convention;

(b) (deleted)

(c) If presentment for payment is dispensed with pursuant to article 54 (2) and the instrument is overdue and unpaid.

(2) If a bill is dishonoured by non-payment, the holder may, subject to the provisions of article 57, exercise a right of recourse against the drawer, the endorsers and their guarantors.

(3) If a note is dishonoured by non-payment, the holder may, subject to the provisions of article 57, exercise a right of recourse against the endorsers and their guarantors.

## [SECTION 3. RECOURSE]

*Article 57*

If an instrument has been dishonoured by non-acceptance or by non-payment, the holder may exercise a right of recourse only after the instrument has been duly protested for dishonour in accordance with the provisions of articles 58 to 61.

*Article 58*

(1) A protest is a statement of dishonour drawn up at the place where the instrument has been dishonoured and signed and dated by a person authorized to certify dishonour of a negotiable instrument by the law of that place. The statement must specify:

(a) The person at whose request the instrument is protested;

(b) The place of protest; and

(c) The demand made and the answer given, if any, or the fact that the drawee or the acceptor or the maker could not be found.

(2) A protest may be made

(a) On the instrument itself or on a slip affixed thereto ("allonge"); or

(b) As a separate document, in which case it must clearly identify the instrument that has been dishonoured.

(3) Unless the instrument stipulates that protest must be made, a protest may be replaced by a declaration written on the instrument and signed and dated by the drawee or the acceptor or the maker, or, in the case of an instrument domiciled with a named person for payment, by that named person; the declaration must be to the effect that acceptance or payment is refused.

(4) A declaration made in accordance with paragraph (3) is deemed to be a protest for the purposes of this Convention.

*Article 59*

(1) Protest for dishonour of a bill by non-acceptance must be made on the day on which the bill is dishonoured or one of the two business days which follow.

(2) Protest for dishonour of an instrument by non-payment must be made on the day on which the instrument is dishonoured or on one of the two business days which follow.

*Article 60*

(1) If a bill which must be protested for non-acceptance or for non-payment is not duly protested, the drawer, the endorsers and their guarantors are not liable thereon.

(2) If a note which must be protested for non-payment is not duly protested, the endorsers and their guarantors are not liable thereon.

(3) Failure to protest an instrument does not discharge the acceptor or the maker or their guarantors or the guarantor of the drawee of liability thereon.

*Article 61*

(1) Delay in protesting an instrument for dishonour is excused when the delay is caused by circumstances which are beyond the control of the holder and which he could neither avoid nor overcome. When the cause of delay ceases to operate, protest must be made with reasonable diligence.

(2) Protest for dishonour by non-acceptance or by non-payment is dispensed with:

(a) If the drawer, an endorser or guarantor has waived protest expressly or by implication; such waiver:

(i) If made on the instrument by the drawer, binds any subsequent party and benefits any holder;

(ii) If made on the instrument by a party other than the drawer, binds only that party but benefits any holder;

(iii) If made outside the instrument, binds only the party making it and benefits only a holder in whose favour it was made.

(b) If the cause of delay in making protest continues to operate beyond 30 days after the date of dishonour;

(c) As regards the drawer of a bill, if the drawer and the drawee or the acceptor are the same person;

(d) (deleted)

(e) If presentment for acceptance or for payment is dispensed with in accordance with article 49 or 54 (2);

(f) If the person claiming payment under article 80 cannot effect protest by reason of his inability to satisfy the requirements of article 83.

*Article 62*

(1) The holder, upon dishonour of a bill by non-acceptance or by non-payment, must give due notice of such dishonour to the drawer, the endorsers and their guarantors.

(2) The holder, upon dishonour of a note by non-payment, must give due notice of such dishonour to the endorsers and their guarantors.

(3) An endorser or a guarantor who received notice must give notice of dishonour to the party immediately preceding him and liable on the instrument.

(4) Notice of dishonour operates for the benefit of any party who has a right of recourse on the instrument against the party notified.

#### Article 63

(1) Notice of dishonour may be given in any form whatever and in any terms which identify the instrument and state that it has been dishonoured. The return of the dishonoured instrument is sufficient notice, provided it is accompanied by a statement indicating that it has been dishonoured.

(2) Notice of dishonour is deemed to have been duly given if it is communicated or sent to the person to be notified by means appropriate in the circumstances, whether or not it is received by that person.

(3) The burden of proving that notice has been duly given rests upon the person who is required to give such notice.

#### Article 64

Notice of dishonour must be given within the two business days which follow

(a) The day of protest or, if protest is dispensed with, the day of dishonour; or

(b) The receipt of notice given by another party.

#### Article 65

(1) Delay in giving notice of dishonour is excused when the delay is caused by circumstances which are beyond the control of the holder and which he could neither avoid nor overcome. When the cause of delay ceases to operate, notice must be given with reasonable diligence.

(2) Notice of dishonour is dispensed with

(a) If the drawer, an endorser or guarantor has waived notice of dishonour expressly or by implication; such waiver:

(i) If made on the instrument by the drawer, binds any subsequent party and benefits any holder;

(ii) If made on the instrument by a party other than the drawer, binds only that party but benefits any holder;

(iii) If made outside the instrument, binds only the party making it and benefits only a holder in whose favour it was made.

(b) If after the exercise of reasonable diligence notice cannot be given;

(c) As regards the drawer of a bill, if the drawer and the drawee or the acceptor are the same person;

(d) (deleted)

#### Article 66

Failure to give due notice of dishonour renders a person who is required to give such notice under article 62 to a party who is entitled to receive such notice liable for any damages which that party may suffer directly from such failure, provided that such damages do not exceed the amount due under article 67 or 68.

#### Article 66 bis

The holder may exercise his rights on the instrument against any one party, or several or all parties, liable thereon and is not obliged to observe the order in which the parties have become bound.

#### Article 67

(1) The holder may recover from any party liable

(a) At maturity: the amount of the instrument with interest, if interest has been stipulated for;

(b) After maturity:

(i) The amount of the instrument with interest, if interest has been stipulated for, to the date of maturity;

(ii) If interest has been stipulated for after maturity, interest at the rate stipulated, or in the absence of such stipulation interest at the rate specified in paragraph (2), calculated from the date of maturity on the sum specified in paragraph (1) (b) (i);

(iii) Any expenses of protest and of the notices given by him;

(c) Before maturity;

(i) The amount of the bill with interest, if interest has been stipulated for, to the date of payment, subject to a discount from the date of payment to the date of maturity, calculated in accordance with paragraph (3).

(ii) Any expenses of protest and of the notices given by him.

(2) The rate of interest shall be [2] per cent per annum above the official rate (bank rate) or other similar appropriate rate effective in the main domestic centre of the country where the instrument was payable, or if there is no such rate, then at the rate of [ ] per cent per annum, to be calculated on the basis of the number of days in accordance with the custom of that centre.

(3) The discount shall be at the official rate (discount rate) or other similar appropriate rate effective on the date when recourse is exercised at the place where the holder has his principal place of business, or if he does not have a place of business his habitual residence, or if there is no such rate then at the rate of [ ] per cent per annum, to be calculated on the basis of the number of days and in accordance with the custom of that place.

#### Article 68

(1) A party who takes up and pays an instrument in accordance with article 67 may recover from the parties liable to him

(a) The entire sum which he was obliged to pay in accordance with article 67 and has paid;

(b) Interest on that sum at the rate specified in article 67, paragraph (2), from the date on which he made payment;

(c) Any expenses of the notices given by him.

(2) Notwithstanding article 25 (4), if a party takes up and pays the instrument in accordance with article 67 and the instrument is transferred to him such transfer does not vest in that party the rights to and upon the instrument which any previous protected holder had.

## [Part Six. Discharge]

### [SECTION 1. GENERAL]

#### *Article 69*

(deleted)

### [SECTION 2. PAYMENT]

#### *Article 70*

(1) A party is discharged of his liability on the instrument when he pays the holder or a party subsequent to himself who has taken up and paid the instrument and is in possession thereof the amount due pursuant to articles 67 and 68:

(a) At or after maturity, or

(b) Before maturity, upon dishonour by non-acceptance.

(2) Payment before maturity other than under paragraph (1) (b) of this article does not discharge the party making the payment of his liability on the instrument except in respect of the person to whom payment was made.

(3) A party is not discharged of his liability if he pays a holder who is not a protected holder and knows at the time of payment that a third person has asserted a valid claim to the instrument or that the holder acquired the instrument by theft or forged the signature of the payee or an endorsee, or participated in such theft or forgery.

(4) (a) A person receiving payment of an instrument under paragraph (1) of this article must, unless agreed otherwise, deliver to the person making such payment the instrument, any protest, and a receipted account.

(b) The person from whom payment is demanded may withhold payment if the person demanding payment does not deliver the instrument to him. Withholding payment in these circumstances does not constitute dishonour by non-payment.

(c) If payment is made but the payor fails to obtain the instrument, the payor is discharged but the discharge cannot be set up as a defence against a protected holder.

#### *Article 71*

(1) The holder is not obliged to take partial payment.

(2) If the holder does not take partial payment, the instrument is dishonoured by non-payment.

(3) If the holder takes partial payment from the drawee or the acceptor or the maker:

(a) The acceptor or the maker is discharged of his liability on the instrument to the extent of the amount paid; and

(b) The instrument is to be considered as dishonoured by non-payment as to the amount unpaid.

(4) If the holder takes partial payment from a party to the instrument other than the drawee, the acceptor or the maker:

(a) The party making payment is discharged of his liability on the instrument to the extent of the amount paid; and

(b) The holder must give such party a certified copy of the bill, and of any authenticated protest, in order to enable subsequent recourse to be exercised.

(5) The drawee or a party making partial payment may require that mention of such payment be made on the instrument and that a receipt therefor be given to him.

(6) Where a party pays the unpaid amount, the person receiving the unpaid amount who is in possession of the instrument must deliver to him the receipted instrument and any authenticated protest.

#### *Article 72*

(1) The holder may refuse to take payment in a place other than the place where the instrument was duly presented for payment in accordance with article 53 (g).

(2) If payment is not then made in the place where the instrument was duly presented for payment in accordance with article 53 (g), the instrument is considered as dishonoured by non-payment.

#### *Article 73*

(deleted)

#### *Article 74*

(1) An instrument must be paid in the currency in which the amount of the instrument is expressed.

(2) The drawer or the maker may indicate on the instrument that it must be paid in a specified currency other than the currency in which the amount of the instrument is expressed. In that case:

(a) The instrument must be paid in the currency so specified;

(b) The amount payable is to be calculated according to the rate of exchange indicated on the instrument. Failing such an indication, the amount payable is to be calculated according to the rate of exchange for sight drafts on the date of maturity:

(i) Ruling at the place where the instrument must be presented for payment in accordance with article 53 (g), if the specified currency is that of that place (local currency); or

(ii) If the specified currency is not that of that place, according to the usages of the place where the instrument must be presented for payment in accordance with article 53 (g).

(c) If such an instrument is dishonoured by non-acceptance, the amount payable is to be calculated:

- (i) If the rate of exchange is indicated on the instrument, according to that rate;
- (ii) If no rate of exchange is indicated on the instrument, at the option of the holder, according to the rate of exchange ruling at the date of dishonour or on the date of actual payment.

(d) If such an instrument is dishonoured by non-payment, the amount is to be calculated:

- (i) If the rate of exchange is indicated on the instrument, according to that rate;
- (ii) If no rate of exchange is indicated on the instrument, at the option of the holder, according to the rate of exchange ruling on the date of maturity or on the date of actual payment.

(3) Nothing in this article prevents a court from awarding damages for loss caused to the holder by reason of fluctuations in rates of exchange if such loss is caused by dishonour for non-acceptance or non-payment.

(4) The rate of exchange ruling at a certain date is the rate of exchange ruling, at the option of the holder, at the place where the instrument must be presented for payment in accordance with article 53 (g) or at the place of actual payment.

#### *Article 74 bis*

Nothing in this Convention prevents a Contracting State from enforcing exchange control regulations applicable in its territory, including regulations which it is bound to apply by virtue of international agreements to which it is a party.

#### *Article 75*

(deleted)

#### *Article 76*

(deleted)

#### *Article 77*

(deleted)

#### *Article 78*

(1) When a party is discharged wholly or partly of his liability on the instrument, any party who has a right of recourse against him is discharged to the same extent.

(2) Payment of a bill by the drawee to the holder of the amount due in whole or in part discharges all parties to the bill to the same extent.

#### *Article 79*

(1) A right of action arising on an instrument can no longer be exercised after four years have elapsed

(a) Against the acceptor or the maker or their guarantor or the guarantors of the drawee, after the date of maturity;

(b) Against the drawer or an endorser or their guarantor, after the date of protest for dishonour or, where protest is dispensed with, the date of dishonour.

(2) (a) If a party has taken up and paid the instrument in accordance with article 67 or 68 within one year before the expiration of the period referred to in paragraph (1) of this article, such party may exercise his right of action against a party liable to him within one year after the date on which he took up and paid the instrument.

(b) (for subsequent consideration)

#### *Article 80*

(1) When an instrument is lost, whether by destruction, theft or otherwise, the person who lost the instrument has, subject to the provisions of paragraphs (2) and (3) of this article, the same right to payment which he would have had if he had been in possession of the instrument. The party from whom payment is claimed cannot set up as a defence against liability on the instrument the fact that the person claiming payment is not in possession thereof.

(2) (a) The person claiming payment of a lost instrument must state in writing to the party from whom he claims payment:

- (i) The elements of the lost instrument pertaining to the requirements set forth in article 1 (2) or 1 (3); these elements may be satisfied by presenting to that party a copy of that instrument;
- (ii) The facts showing that, if he had been in possession of the instrument, he would have had a right to payment from the party from whom payment is claimed;
- (iii) The facts which prevent production of the instrument.

(b) The party from whom payment of a lost instrument is claimed may require the person claiming payment to give security in order to indemnify him for any loss which he may suffer by reason of the subsequent payment of the lost instrument.

(c) The nature of the security and its terms are to be determined by agreement between the person claiming payment and the party from whom payment is claimed. Failing such an agreement, the Court may determine whether security is called for and, if so, the nature of the security and its terms.

(d) If the security cannot be given, the Court may order the party from whom payment is claimed to deposit the amount of the lost instrument, and any interest and expenses which may be claimed under article 67 and 68, with the Court or any other competent authority or institution, and may determine the duration of such deposit. Such deposit is to be considered as payment to the person claiming payment.

#### *Article 81*

(1) A party who has paid a lost instrument and to whom the instrument is subsequently presented for payment by another person must notify the person to whom he paid of such presentment.

(2) Such notification must be given on the day the instrument is presented or on one of the two business days which follow and must state the name of the person presenting the instrument and the date and place of presentment.

(3) Failure to notify renders the party who has paid the lost instrument liable for any damages which the person whom he paid may suffer from such failure, provided that the total amount of the damages does not exceed the amount of the instrument and any interest and expenses which may be claimed under article 67 or 68.

(4) Delay in giving notice is excused when the delay is caused by circumstances which are beyond the control of the person who has paid the lost instrument and which he could neither avoid nor overcome. When the cause of delay ceases to operate, notice must be given with reasonable diligence.

(5) Notice is dispensed with when the cause of delay in giving notice continues to operate beyond 30 days after the last date on which it should have been given.

#### Article 82

(1) A party who has paid a lost instrument in accordance with the provisions of article 80 and who is subsequently required to, and does, pay the instrument, or who loses his right to recover from any party liable to him and such loss of right was due to the fact that the instrument was lost, has the right

(a) If security was given, to realize the security; or

(b) If the amount was deposited with the Court or other competent authority, to reclaim the amount so deposited.

(2) The person who has given security in accordance with the provisions of paragraph (2) (b) of article 80 is entitled to reclaim the security when the party for whose benefit the security was given is no longer at risk to suffer loss because of the fact that the instrument is lost.

#### Article 83

A person claiming payment of a lost instrument duly effects protest for dishonour by non-payment by the use of a writing that satisfies the requirements of article 80, paragraph (2) (a).

#### Article 84

A person receiving payment of a lost instrument in accordance with article 80 must deliver to the party paying the writing required under paragraph (2) (a) of article 80 received by him and any protest and a receipted account.

#### Article 85

(a) A party who paid a lost instrument in accordance with article 80 has the same rights which he would have had if he had been in possession of the instrument.

(b) Such party may exercise his rights only if he is in possession of the receipted writing referred to in article 84.

#### Article 86

(deleted)

### D. Report of the Secretary-General: security interests, issues to be considered in the preparation of uniform rules (A/CN.9/186)\*

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#### INTRODUCTION

1. At its tenth session the Commission had before it three reports on security interests.<sup>1</sup> After considering these

\* 16 May 1980.

<sup>1</sup> A study on security interests, based on a study prepared by Professor Ulrich Drobnig of the Max-Planck-Institut für Ausländisches und Internationales Privatrecht (A/CN.9/131) (Yearbook ... 1977, part two, II, A); a note by the Secretariat on article 9 of the Uniform Commercial Code of the United States of America (A/CN.9/132) (Yearbook ... 1977, part two, II, B); and a report of the Secretary-General containing information on proposals for reform and on the conclusions reached by a consultative group convened jointly by the Secretariat of the Commission and the International Chamber of Commerce (A/CN.9/130).

reports the Commission requested the Secretary-General to submit to it at its twelfth session a further report on the feasibility of uniform rules on security interests and on their possible content.<sup>2</sup>

2. At its twelfth session, after considering the report of the Secretary-General,<sup>3</sup> the Commission requested the Secretary-General to prepare a report setting out the issues to be considered in the preparation of uniform rules on

<sup>2</sup> *Official Records of the General Assembly, Thirty-second Session, Supplement No. 17 (A/32/17)*, para. 37 (Yearbook ... 1977, part one, II, A)

<sup>3</sup> A/CN.9/165 (Yearbook ... 1979, part two, II, C).