

UNITED NATIONS  
GENERAL  
ASSEMBLY



Distr.  
GENERAL  
A/CN.9/210  
12 February 1982  
ENGLISH  
ORIGINAL: ENGLISH



UNITED NATIONS COMMISSION ON  
INTERNATIONAL TRADE LAW  
Fifteenth Session  
New York, 26 July - 6 August 1982

INTERNATIONAL PAYMENTS  
REPORT OF THE WORKING GROUP ON INTERNATIONAL NEGOTIABLE INSTRUMENTS  
ON THE WORK OF ITS ELEVENTH SESSION  
(New York, 3-14 August 1981)

CONTENTS

	<u>Paragraphs</u>
Introduction . . . . .	1 - 14
Deliberations and decisions . . . . .	15 - 20
I. Draft Convention on International Cheques: draft articles 1-85, A - F, $\alpha$ and $\beta$ . . . . .	21 - 184
II. Draft Convention on International Bills of Exchange and International Promissory Notes: draft articles 1, 5(7), 17(3), 22(1), new (1 bis), 25, X appended to 27(3), 30 bis, 34 bis (1), 36(2), 44, 49, 53(h), 58 (3 bis), (4), 61(2)(f), 66, 67(1)(b), (2), 70(4), 71(2), (6), 74(2)(b), 74 bis new (2), 79 and 82(1) . . . . .	185 - 221
III. Consideration of two matters relevant to both Conventions . . . . .	222 - 233
A. Instruments and cheques payable in, or denominated in, units of account . . . . .	222 - 229
B. Provision on rules applicable to questions governed by the Conventions but not expressly settled therein . . . . .	230 - 233
IV. Adoption of draft Convention on International Bills of Exchange and International Promissory Notes as revised by Drafting Group . . . . .	234 - 237
V. Adoption of draft Convention on International Cheques as revised by Drafting Group . . . . .	238 - 241

## INTRODUCTION

1. In response to decisions by the United Nations Commission on International Trade Law (UNCITRAL), the Secretary-General prepared a draft Uniform Law on International Bills of Exchange and International Promissory Notes, with commentary (A/CN.9/WG.IV/WP.2). 1/ At its fifth session (1972), the Commission established a Working Group on International Negotiable Instruments. The Commission requested that the above draft Uniform Law be submitted to the Working Group and entrusted the Working Group with the preparation of a final draft. 2/
2. The Working Group held its first session in Geneva in January 1973. At the session the Working Group considered articles of the draft Uniform Law relating to transfer and negotiation (arts. 12-22), the rights and liabilities of signatories (arts. 27-40), and the definition and rights of a "holder" and a "protected holder" (arts. 5-6 and 23-26). 3/
3. The second session of the Working Group was held in New York in January 1974. At that session the Working Group continued consideration of articles of the draft Uniform Law relating to the rights and liabilities of signatories (arts. 41-45) and considered articles in respect of presentment, dishonour and recourse, including the legal effects of protest and notice of dishonour (arts. 46-62). 4/
4. The third session was held in Geneva in January 1975. At that session the Working Group continued its consideration of the articles concerning notice of dishonour (arts. 63-66). 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. 67-68) and provisions regarding the circumstances in which a party is discharged of his liability (arts. 69-78). 5/

---

1/ 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. 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).

2/ 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).

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

4/ 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.

5/ 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.

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

6. 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. 7/

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. 8/

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

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. 10/ In response to a decision by the Commission at its twelfth session, 11/ the Working Group, at its eighth session, requested the Secretariat to commence preparatory work in respect of uniform rules applicable to international cheques.

10. The ninth session of the Working Group was held in New York in January 1980. At that session the Working Group, continuing its third reading of the text of the draft Convention on International Bills of Exchange and International Promissory

---

6/ 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.

7/ 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.

8/ 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.

9/ 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.

10/ 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.

11/ 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. 44.

Notes, considered articles 13 to 85 and article 5 (10) in connexion with article 22. 12/ The Working Group also considered articles 1 to 30 of the uniform rules applicable to international cheques as drafted by the Secretariat (A/CN.9/WG.IV/WP.15).

11. The tenth session of the Working Group was held at Vienna from 5 to 16 January 1981. At that session the Working Group continued its consideration of the Uniform Rules applicable to International Cheques as drafted by the Secretariat, and considered draft articles 34, X, 41 to 45, 53 to 66 bis, 67 to 68, 70, 70 bis, 71 to 72, 74, 74 bis, 74 ter, 74 quater, 78 to 85 and A to F (crossed cheques). It also considered legal issues arising outside the cheque, post-dated cheques and certain other issues. 13/

12. The Working Group held its eleventh session in New York from 3 to 14 August 1981. The Working Group consists of the following eight members of the Commission: Chile, Egypt, France, India, Nigeria, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland and United States of America. All members of the Working Group were represented at the eleventh session. The session was also attended by observers of the following States: Argentina, Australia, Austria, Brazil, China, Colombia, Cuba, Czechoslovakia, El Salvador, Gabon, Italy, Japan, Kenya, Malaysia, Philippines, Portugal, Republic of Korea, Romania, Suriname, Sweden, Switzerland, Trinidad and Tobago, Turkey and Venezuela, and by observers from the following international organizations: International Monetary Fund, Hague Conference on Private International Law, European Banking Federation and International Chamber of Commerce.

13. The Working Group elected the following officers:

Chairman: Mr. René Roblot (France)

Rapporteur: Mr. Ibrahim Youssri (Egypt)

14. The Working Group had before it the following documents: provisional agenda (A/CN.9/WG.IV/WP.20), two notes by the Secretariat setting forth draft articles of the Uniform Rules applicable to International Cheques (A/CN.9/WG.IV/WP.15 and 19), a note by the Secretariat setting forth certain revised draft articles of the Uniform Rules applicable to International Cheques (A/CN.9/WG.IV/WP.21), a note by the Secretariat setting forth certain revised draft articles of the draft Convention on International Bills of Exchange and International Promissory Notes (A/CN.9/WG.IV/WP.22), a note by the observer of the Hague Conference on Private International Law on questions not dealt with in the draft Convention (A/CN.9/WG.IV/WP.23), the text of draft articles of the draft Convention on International Bills of Exchange and International Promissory Notes as prepared by a Drafting Group convened by the Secretariat (A/CN.9/WG.IV/WP.24 and Add.1), the text of draft articles of the Uniform Rules applicable to International Cheques as prepared by the same Drafting Group (A/CN.9/WG.IV/WP.25 and Add. 1-2), and the reports of the ninth and tenth sessions of the Working Group (A/CN.9/181 and 196).

---

12/ 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.

13/ Report of the Working Group on International Negotiable Instruments on the work of its tenth session (Vienna, 5-16 January 1981), A/CN.9/196.

DELIBERATIONS AND DECISIONS

15. The Working Group continued its consideration of the draft Uniform Rules applicable to International Cheques as set forth in documents A/CN.9/WG.IV/WP.15, 19 and 21. The Group decided to change the title of the draft text to "Draft Convention on International Cheques". At the present session the Working Group also considered certain articles of the draft Convention on International Bills of Exchange and International Promissory Notes.
16. The Working Group considered and adopted with some modifications the complete text of the draft Convention on International Cheques and of the draft Convention on International Bills of Exchange and International Promissory Notes, as revised by the Drafting Group (A/CN.9/WG.IV/WP.24 and Add.1-2 and WP.25 and Add.1). The final text of the draft Convention on International Cheques is set forth in document A/CN.9/212 and of the draft Convention on International Bills of Exchange and International Promissory Notes in A/CN.9/211.
17. The Working Group thereby completed the task entrusted to it by the Commission to prepare a draft Convention on International Bills of Exchange and International Promissory Notes, and a draft Convention on International Cheques. The Working Group took note of the decision of the Commission, at its fourteenth session, to request the Secretary-General to circulate the texts, together with a commentary, to all Governments and interested international organizations for their comments.<sup>14/</sup>
18. The Working Group took note of the decision of the Commission, at its fourteenth session, to request the Working Group to consider various possibilities in regard to the formulation of a unit of account of constant value, which would serve as a point of reference in international conventions for expressing amounts in monetary terms, and to prepare a text if possible. <sup>15/</sup>
19. The Working Group decided to hold its next session (the twelfth session) at Vienna from 4 to 15 January 1982.
20. At the close of its session, the Working Group expressed its appreciation to the observers of States and to representatives of international organizations who attended the session.

---

<sup>14/</sup> Report of the United Nations Commission on International Trade Law on the work of its fourteenth session, Official Records of the General Assembly, Thirty-sixth Session, Supplement No. 17 (A/36/17), para. 22.

<sup>15/</sup> Ibid., para. 32.

I. DRAFT CONVENTION ON INTERNATIONAL CHEQUES

Draft articles 1 to 85, A to F,  $\alpha$  and  $\beta$  <sup>16/</sup>

21. The Working Group decided to examine in second reading draft articles 1 to 85, A to F,  $\alpha$  and  $\beta$  of the draft Convention on International Cheques.

Article 1, paragraph (1)

22. The text of article 1, paragraph (1), as considered by the Working Group, is as follows:

"This Convention applies to international cheques."

23. The Working Group adopted this paragraph.

Article 1, paragraph (2)

24. The text of article 1, paragraph (2), as considered by the Working Group, is as follows:

"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 or on a person or institution assimilated by the applicable law to 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 name or the signature of the drawer;

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

---

<sup>16/</sup> Each draft article 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. Accordingly, when a draft article in that draft Convention has no relation to cheques, there is an interruption in the numbering sequence of the draft articles set forth here and when a draft article here has no relation to bills of exchange or promissory notes, it is identified by a letter (e.g. articles A to F on crossed cheques).

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

"(v) The place of payment;

"(g) Is signed by the drawer."

25. The Working Group adopted subparagraphs (a) and (b).

26. As regards subparagraph (c), it was observed that the words "by the applicable law" introduced an element of uncertainty, in that it was not immediately clear which test should be used to determine that law. The Working Group decided to delete these words since they were superfluous.

27. As regards subparagraph (d), the Working Group reconsidered whether the requirement should be retained. After deliberation, the Group decided to maintain its decision taken at its ninth session (A/CN.9/181, paras. 162-163), and therefore to delete as a formal requisite the reference to a cheque being payable on demand. Instead, the Group decided that the rule that a cheque be payable on demand should be dealt with in article 9 of the draft Convention on International Cheques.

28. The Working Group adopted subparagraphs (e), (f) and (g).

#### Article 1, paragraph (3)

29. The text of article 1, paragraph (3), as considered by the Working Group, is as follows:

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

30. The Working Group adopted this paragraph.

#### Article 3

31. 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."

32. The Observer of the Hague Conference on Private International Law expressed the view that the Convention should apply only when the place of payment was situated in a Contracting State. The Working Group, after discussion, adopted article 3 without change.

Article 4

33. 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."

34. The Working Group adopted this article.

Article 5, paragraphs (1), (2), (3), (4) and (5)

35. The text of article 5, paragraphs (1), (2), (3), (4) and (5), as considered by the Working Group, is as follows:

"(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."

36. The Working Group adopted these paragraphs.

Article 5, paragraph (6)

37. The text of article 5, paragraph (6), as considered by the Working Group, is as follows:

"'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 cheque referred to in article 24 or of the fact that it was dishonoured by non-payment."

38. The Working Group noted that the Drafting Group had prepared a modified draft text of the definition of the term "protected holder" for the draft Convention on International Bills of Exchange and International Promissory Notes. This text was as follows:

"'Protected holder' means the holder of an instrument which, when he became a holder, was completed and regular on its face, provided that:



"(a) He was, at that time, without knowledge of circumstances giving rise to a 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;

"(b) The time-limit provided by article 53 for presentment of that instrument for payment had not then expired."

39. It was observed that the words "without knowledge of circumstances giving rise to a claim to or defence upon the instrument" might be interpreted too widely. It was suggested that mere knowledge of such circumstances should not necessarily prevent a holder from being a protected holder. The Working Group, after discussion, agreed with this observation, and decided to replace the above-quoted words by the words "without knowledge of a claim to or defence upon the instrument".

40. As a result of this decision, the Working Group adopted the following text of paragraph (6) of the draft Convention on International Cheques:

"'Protected holder' means the holder of a cheque which, when he became a holder, was complete and regular on its face, provided that:

"(a) He was, at that time, without knowledge of a claim to or defence upon the cheque referred to in article 24 or of the fact that it was dishonoured by non-payment;

"(b) The time-limit provided by article 53 for presentment of that cheque for payment had not then expired."

#### Article 5, paragraph (7)

41. The text of article 5, paragraph (7), as considered by the Working Group, is as follows:

"'Party' means a person who has signed a cheque:"

42. The Working Group noted that the Drafting Group had proposed a modified draft text of the definition of the term "party" for the draft Convention on International Bills of Exchange and International Promissory Notes, which reads as follows:

"'Party' means any person who has signed an instrument as drawer, maker, acceptor, endorser or guarantor/."

43. The Working Group decided to use a similar approach to the definition of the term "party" in the draft Convention on International Cheques and adopted the following text:

"'Party' means any person who has signed a cheque as drawer, endorser or guarantor."

Article 5, paragraph (8)

44. The text of article 5, paragraph (8), as considered by the Working Group, is as follows:

"'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."

45. The Working Group adopted this paragraph.17/

Article 6

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

"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."

47. The Working Group adopted this article.

Article 7

48. 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."

49. The Working Group re-affirmed its view that a stipulation on a cheque that it is to be paid with interest should be without any legal effect on the cheque. Accordingly, the Working Group decided to delete paragraph (a), and to add a new article 7 bis worded as follows:

"Any stipulation on a cheque that it is to be paid with interest is deemed not to have been written on the cheque."

Article 8

50. 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

---

17/ As to new paragraph (9) of article 5, see discussion and decision below, paras. 222-229.

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 of the cheque/ 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."

51. As a consequence of the decision reached under article 7, the Working Group decided to delete paragraphs (3) and (4), and to adopt paragraphs (1) and (2).

#### Article 9

52. The text of article 9, as considered by the Working Group, is as follows:

"A cheque is 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 of payment is expressed."

53. Pursuant to its decision taken in respect of article 1 (2) (d), deleting the reference to the requirement that a cheque "is payable on demand", the Working Group decided to revise article 9 to read as follows:

"A cheque is always payable on demand. It is so payable:

"(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 of payment is expressed, or

"(c) Even though it is stated on the cheque that it is payable at a definite time."

#### Articles 10, 11, 13, new article, 13 bis and 15

54. The text of articles 10, 11, 13, new article, 13 bis and 15, as considered by the Working Group, is as follows:

Article 10

"(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."

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."

55. The Working Group adopted these articles.

Article 16

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

"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/."

57. After deliberation, the Working Group decided to insert after the words "the drawer" the words "of a cheque payable to a payee or his order", in order to make clear that this provision did not apply to a cheque made payable to bearer.

58. The Working Group noted that the Drafting Group had proposed the following draft text of article 16 of the draft Convention on International Bills of Exchange and International Promissory Notes:

"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."

59. The Working Group decided to use similar wording for the draft Convention on International Cheques, and adopted the following text:

"When the drawer of a cheque payable to a payee or to his order has inserted in the cheque, 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."

Articles 17, 18, 19 and 20

60. The text of articles 17, 18, 19 and 20, as considered by the Working Group, is as follows:

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."

61. The Working Group adopted these articles. 18/

Article 21

62. 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 endorsement to the drawee operates only as an acknowledgement that the endorser has received from the drawee the sum payable by the cheque /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/."

63. The Working Group decided to delete the square brackets from paragraph (2) and adopted this article.

---

18/ See, however, later amendment of article 17(3) below, paras. 189-192.

Article 21 bis, paragraph (1)

64. The text of article 21 bis, paragraph (1), 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."/"

65. The Working Group noted that one justification for the rule contained in this paragraph was that under article 34 (1 bis) the drawer of a cheque remained liable on the cheque though the time-limit for due presentment had expired. The Working Group adopted paragraph (1).

Article 21 bis, paragraph (2)

66. The text of article 21 bis, paragraph (2), as considered by the Working Group is as follows:

"/(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."/"

67. The Working Group considered that the transferee under paragraph (1) of this article was a holder, and for this reason paragraph (2) should not be retained.

Article 22, paragraph (1)

68. The Working Group had before it two variant texts of this paragraph which had been drafted by the Secretariat in response to a decision taken by the Working Group at its tenth session (A/CN.9/196, para. 118). The texts were directed towards the question whether article 22 should impose upon the drawee of a cheque who had paid the cheque to a forger a liability for damages to the person who had suffered loss because of the forged endorsement. These variant texts are as follows:

Variant A

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

Variant B

"If an endorsement is forged, any party has against the forger, against the person who took the cheque directly from the forger and against the drawee who paid the cheque to the forger with knowledge of the forgery the right to recover compensation for any damage that he may have suffered because of the forgery."



69. Opinions were divided on this issue. Under one view, the drawee should be subject to such liability whether he paid with or without knowledge of such forgery (variant A). Under another view, such liability should exist only where the drawee had paid with knowledge of the forged endorsement (variant B). The Working Group, after deliberation, decided that the article should not deal with the liability of the payor bank, and that the article should expressly state that this liability did not fall within the coverage of the draft Convention.

70. The question was raised whether any liability should be imposed upon an endorsee to whom the cheque had been transferred by the forger for collection. The prevailing view was that article 22 should not deal with this aspect but that the person who had suffered loss because of the forgery could rely on such rights or remedies as he was entitled to under national law.

71. As a result of these decisions, the Working Group adopted the following text:

"(1) If an endorsement is forged, any party has against the forger, and against the person to whom the cheque was directly transferred by the forger, the right to recover compensation for any damage that he may have suffered because of the forgery.

"(1 bis) Except to the extent provided in articles C and F, the liability of a drawee who pays, or of an endorsee for collection who collects, a cheque on which there is a forged endorsement is not regulated by this Convention." 19/

Article 22, paragraph (2)

72. The text of article 22, paragraph (2), as considered by the Working Group, is as follows:

"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." 7/

73. The Working Group deleted the square brackets from this paragraph and adopted it.

Article 22, new paragraph (3)

74. In accordance with a decision taken at its ninth session (A/CN.9/181, para. 40), the Working Group decided to add the following paragraph, to be numbered as paragraph (3):

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

---

19/ See, however, later amendment below, para. 239.

Article 23

75. 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."

76. The Working Group adopted this article.

Articles 24 and 25

77. The text of articles 24 and 25, as considered by the Working Group, is as follows:

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 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."

#### 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) (3), 34 (2),  
41 (1) (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."

78. The Working Group decided to delete the reference to articles 58 and 60 in article 25(1)(a). The reason for this deletion was that where a cheque had been presented for payment within the period of 120 days provided for in article 53(f) and had not been protested upon dishonour, the defence of failure to protest which under article 60 discharges the drawer, the endorsers and their guarantors could not be raised against a protected holder to whom the instrument had been transferred after the dishonour.

79. The Working Group noted that the Drafting Group had proposed a modified draft text of articles 24 and 25 of the draft Convention on International Bills of Exchange and International Promissory Notes, which is as follows:

#### 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 his 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, 3), 50, 55, 57, 60 and 79 of this Convention;

"(b) Defences based on the underlying transaction between himself and such holder or arising from any fraudulent act on the part of such holder in obtaining the signature on the instrument of that party;

"(c) Defences based on the 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 his negligence.

"(2) The rights to an instrument of a protected holder are not subject to any claim to the instrument on the part of any person, except a valid claim arising from the underlying transaction between himself and the person by whom the claim is raised or arising from any fraudulent act on the part of such holder in obtaining the signature on the instrument of that person."

Article 25 bis

"(1) 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.

"(2) If a party 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." 20/

80. The Working Group decided to follow a similar approach, and adopted the following text:

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 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 his 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.

---

20/ Paragraph (2) sets forth a provision previously contained in article 68(2).

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, 3), 41 (1) (2), 43 (4), 54, 55 and 79 of this Convention;

"(b) Defences based on the underlying transaction between himself and such holder or arising from any fraudulent act on the part of such holder in obtaining the signature on the cheque of that party;

"(c) Defences based on the 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 his negligence.

"(2) The rights to a cheque of a protected holder are not subject to any claim to the cheque on the part of any person, except a valid claim arising from the underlying transaction between himself and the person by whom the claim is raised or arising from any fraudulent act on the part of such holder in obtaining the signature on the cheque of that person.

Article 25 bis

"(1) 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.

"(2) If a party pays the cheque in accordance with article 67 and the cheque is transferred to him, such transfer does not vest in that party the rights to and upon the cheque which any previous protected holder had."

Article 26

81. The text of article 26, as considered by the Working Group, is as follows:

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

82. The Working Group adopted this article.

Article 27 and the article appended thereto

83. The text of article 27 and the article appended thereto, as considered by the Working Group, reads as follows:

"(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."

84. The Working Group adopted article 27.

85. As regards the article appended to article 27, the principal question raised was the effect of a non-handwritten signature, made in the territory of a State having made the declaration, in the territory of a State in which article 27, paragraph (3) applied. The Working Group was agreed that in actions brought in the courts of the State having made the declaration, signatures on a cheque that were not in handwriting should not be given legal effect. On the other hand, there was no unanimity as to whether the courts of a State not having made the declaration would have to give effect to such signatures. Accordingly, the Working Group decided to retain the article, but to place it between square brackets.

Articles 28 and 29

86. The text of articles 28 and 29, as considered by the Working Group, is as follows:

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."

87. The Working Group adopted these articles.

Article 30

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

"(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."

89. The Working Group noted that the Drafting Group had proposed a modified draft text of article 30 of the draft Convention on International Bills of Exchange and International Promissory Notes, which is as follows:



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

"(2) The signature of an agent placed by him on an instrument in a representative capacity for a named principal and with the authority of that principal, or the 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) A signature placed on an instrument by a person as agent but without authority to sign or exceeding his authority or by an agent 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 the person signing and not on the person whom he 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) A person 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."

90. The Working Group decided to follow a similar approach in the present article and adopted the following text:

#### Article 30

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

"(2) The signature of an agent placed by him on a cheque in a representative capacity for a named principal and with the authority of that principal, or the 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) A signature placed on a cheque by a person as agent but without authority to sign or exceeding his authority or by an agent 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 the person signing and not on the person whom he 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) A person 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."

Article 30 bis

91. 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 the cheque."

92. The Working Group noted that the Drafting Group had proposed a modified draft text of article 30 bis of the draft Convention on International Bills of Exchange and International Cheques, which is as follows:

"The order to pay contained in a bill does not of itself operate as an assignment to the payee of funds made available for payment by the drawer with the drawee outside the bill."

93. The Working Group decided to follow a similar approach in the present article subject to the deletion of the last three words of that text, and adopted the following text:

"The order to pay contained in a cheque does not of itself operate as an assignment to the payee of funds made available for payment by the drawer with the drawee."

Article 34, paragraphs (1), (1 bis) and (1 ter)

94. The text of article 34, paragraphs (1), (1 bis) and (1 ter), as considered by the Working Group, is as follows:

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

"(1 bis) Delay in making presentment does not discharge the drawer of liability except to the extent of the loss suffered because of the delay.

"(1 ter) Delay in protesting a cheque for dishonour does not discharge the drawer of liability except to the extent of the loss suffered because of the delay."

95. The Working Group was agreed that it was inherent in paragraphs (1 bis) and (1 ter) that the liability of a drawer on a cheque would be liability for the amount of the cheque less the amount which he suffered as a loss because of delay in presentment. Thus, a drawer, whose liability on a cheque is for, say, SwF 1,000 and who, because of the delay in presentment, suffers a loss of say SwF 250 would be liable for SwF 750. The Working Group adopted these paragraphs. 21/

---

21/ See, however, later decision to delete paragraphs (1 bis) and (1 ter) below, para. 201.

Article 34, paragraph (2)

96. The text of article 34, paragraph (2), as considered by the Working Group, is as follows:

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

97. The Working Group adopted this paragraph.

Article X, paragraph (1)

98. The text of article X, paragraph (1), as considered by the Working Group, is as follows:

"(1) Any statement written on a cheque indicating certification, confirmation, acceptance, visa or any other equivalent expression has only the effect to ascertain the existence of funds and prevents the withdrawal of such funds by the drawer, or the use of such funds by the drawee for purposes other than payment of the cheque bearing such a statement, before the expiration of the time limit for presentment."

99. The Working Group adopted this paragraph.

Article X, paragraphs (2) and (3)

100. The text of article X, paragraphs (2) and (3), as considered by the Working Group, is as follows:

"(2) However, a Contracting State may:

"(a) Provide that a drawee may accept a cheque; and

"(b) Determine the legal effects thereof.

"(3) An acceptance must be effected by the signature of the drawee accompanied by the word 'accepted' or words of similar import."

101. The Working Group adopted these paragraphs subject to redrafting them to form a single paragraph (2) as follows:

"(2) However, a Contracting State may provide that a drawee may accept a cheque and determine the legal effects thereof. Such acceptance must be effected by the signature of the drawee accompanied by the word 'accepted' or words of similar import." 22/

102. The Working Group was of the view that the provisions of article X (2) should eventually be placed in that part of the Convention dealing with declarations and reservations and be drafted in the form of a declaration which a State upon ratifying or acceding to the Convention was permitted to make.

---

22/ See, however, later decision concerning paragraph (2) below, para. 239.

Articles 41, 42, 43, 44, 45 and 53

103. The text of articles 41, 42, 43, 44, 45 and 53, as considered by the Working Group, is as follows:

Article 41

"(1) The endorser engages that upon dishonour of the cheque by non-payment, and upon any necessary protest, he will pay to the holder the amount of the cheque, 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 cheque. Such stipulation has effect only with respect to that endorser."

Article 42

"(1) Any person who transfers a cheque 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 cheque was forged or unauthorized; or

"(b) The cheque was materially altered; or

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

"(d) The cheque 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 cheque without knowledge of such defect."

Article 43

"(1) Payment of a cheque may be guaranteed, as to the whole or part of its amount, for the account of a party by any person, who may or may not have become a party.

"(2) A guarantee must be written on the cheque 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 cheque, other than that of the drawer, is a guarantee;

"(b) A signature alone on the back of a cheque is an endorsement. A special endorsement of a cheque made payable to bearer does not convert the cheque into an order instrument.

"(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 drawer."

#### Article 44

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

#### Article 45

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

#### Article 53

"A cheque is duly presented for payment if it is presented in accordance with the following rules:

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

"(f) A cheque must be presented for payment within 120 days of its stated date;

"(g) A cheque must be presented for payment:

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

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

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

"(h) A cheque may be presented for payment at a clearing-house of which the drawee is a member."

104. The Working Group adopted these articles. 23/

23/ See, however, later amendment of article 53(h) below, para. 206.

Article 54

105. 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 cheque by the drawer, binds any subsequent party and benefits any holder;

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

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

"(c) If the cause of delay continues to operate beyond 30 days after the expiration of the time-limit for presentment for payment."

106. The Working Group deleted the square brackets from paragraph (2), subparagraph (a), and, subject to this deletion, adopted the article.

Articles 55 and 56

107. The text of articles 55 and 56, as considered by the Working Group, is as follows:

Article 55

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

"(2) Delay in making [due] presentment does not discharge the drawer or his guarantor of liability except to the extent of the loss suffered because of the delay."

Article 56

"(1) A cheque 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;

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

"(2) If a cheque 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."

108. It was noted that one of the requirements for there to be due presentment was that the cheque must be presented within 120 days of its stated date. It was also noted that in the absence of due presentment the drawer, endorsees and their guarantors were not liable on the cheque. However, under article 34 (1 bis) a late presentment of the cheque for payment did not discharge the drawer. Consequently, article 55 (1) as currently drafted was incorrect in that it did not reflect the provisions of article 34 (1 bis).

109. Furthermore, under article 56 (1) (a) a cheque was considered to be dishonoured when payment was refused upon due presentment, although as a result of article 34 (1 bis) a cheque should also be considered dishonoured by non-payment in respect of the drawer if payment was refused upon late presentment.

110. Accordingly, the Working Group decided: to retain paragraphs (1) and (2) of article 55, but to amalgamate their provisions, to delete the word "due" in paragraph (2), and to modify article 56 to make clear that non-payment of a cheque on a delayed presentment constituted dishonour by the drawee in respect of the drawer.

111. The text of articles 55 and 56 as adopted by the Working Group is as follows:

Article 55

"If a cheque is not duly presented for payment, the drawer, the endorsers and their guarantors are not liable thereon. However, if a cheque is not duly presented because of delay in making presentment, the drawer is not discharged of liability except to the extent of the loss suffered because of the delay."

Article 56

"(1) A cheque 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, or, as regards the drawer only, if presentment of the cheque, otherwise duly made, is delayed and payment is refused;

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

"(2) If a cheque 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."

Article 57

112. The text of article 57, as considered by the Working Group, is as follows:

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

113. The Working Group adopted this article.

Article 58, paragraphs (1) (2) and (3)

114. The text of article 58, paragraphs (1), (2) and (3), as considered by the Working Group, is as follows:

"(1) A protest is a statement of dishonour drawn up at the place where the cheque 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 cheque is protested;

"(b) The place of protest; and

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

"(2) A protest may be made

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

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

"(3) Unless the cheque stipulates that protest must be made, a protest may be replaced by a declaration written on the cheque and signed and dated by the drawee; the declaration must be to the effect that payment is refused."

115. The Working Group adopted these paragraphs.

Article 58, paragraph (3 bis)

116. The text of article 58, paragraph (3 bis), as considered by the Working Group, is as follows:

"Where a cheque is presented to a clearing-house, protest may be replaced by a dated declaration by the clearing-house to the effect that the cheque had been presented to it and has not been paid."

117. The Working Group decided to delete this paragraph on the ground that it had no practical application.

Article 58, paragraph (4)

118. The text of article 58, paragraph (4), as considered by the Working Group, is as follows:

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

119. Consequent upon the deletion of paragraph (3 bis) of the article, the Working Group deleted the words "or (3 bis)" in paragraph (4), and adopted the paragraph subject to this deletion.



Articles 59, 60, 61, 62, 63, 64 and 65

120. The text of articles 59, 60, 61, 62, 63, 64 and 65, as considered by the Working Group, is as follows:

Article 59

"Protest for dishonour of a cheque by non-payment must be made on the day on which the cheque is dishonoured or on one of the two business days which follow."

Article 60

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

"(2) Delay in protesting a cheque for non-payment does not discharge the drawer or his guarantor of liability except to the extent of the loss suffered by the delay."

Article 61

"(1) Delay in protesting a cheque 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-payment is dispensed with:

"(a) If the cause of delay under paragraph (1) in making protest continues to operate beyond 30 days after the date of dishonour;

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

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

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

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

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

"(e) If presentment for payment is dispensed with in accordance with article 54 (2)."

Article 62

"(1) The holder, upon dishonour of a cheque by non-payment, must give due notice of such dishonour to the drawer, 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 cheque.

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

Article 63

"(1) Notice of dishonour may be given in any form whatever and in any terms which identify the cheque and state that it has been dishonoured. The return of the dishonoured cheque 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 after the exercise of reasonable diligence notice cannot be given;

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

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

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

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

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

121. The Working Group adopted these articles.

#### Article 66

122. The text of article 66, as considered by the Working Group, is as follows:

"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."

123. The Working Group deleted the word "directly" appearing in the article in order to align the text with that of articles 22 and 42 and, subject to this deletion, adopted the article.

#### Article 66 bis

124. The text of article 66 bis, as considered by the Working Group, is as follows:

"The holder may exercise his rights on the cheque 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."

125. The Working Group adopted this article.

#### Article 67, paragraphs (1) and (2)

126. The text of article 67, paragraphs (1) and (2), as considered by the Working Group, is as follows:

"(1) The holder may recover from any party liable the amount of the cheque.

"(2) When payment is made after the cheque has been dishonoured, the holder may recover from any party liable the amount of the cheque with interest at the rate specified in paragraph (4) calculated from the date of presentment to the date of payment and any expenses of protest and of the notices given by him."

127. The Working Group adopted these paragraphs.

Article 67, paragraph (4)

128. The text of article 67, paragraph (4), as considered by the Working Group, is as follows:

"(4) 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 cheque was payable, or if there is no such rate, then at the rate of 2 per cent per annum, to be calculated on the basis of the number of days in accordance with the custom of that centre."

129. There was no unanimity in the Working Group as to an acceptable formulation of the rate at which interest should be calculated in the case of dishonour. Nevertheless, the Working Group decided to maintain the present text, and expressed the hope that an acceptable formulation might be agreed upon during the deliberations in the Commission. However, the Working Group deleted the word "domestic" in the phrase "main domestic centre" as it was unnecessary.

Article 68

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

"(1) A party who takes up and pays a cheque 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 (4) 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 cheque in accordance with article 67 and the cheque is transferred to him such transfer does not vest in that party the rights to and upon the cheque which any previous protected holder had."

131. The Working Group adopted this article. 24/

---

24/ The provision contained in paragraph (2) has subsequently been incorporated in article 25 bis (as new paragraph (2)).

Article 70, paragraph (1)

132. The text of article 70, paragraph (1), as considered by the Working Group, is as follows:

"A party is discharged of liability on the cheque when he pays the holder or a party subsequent to himself who has taken up and paid the cheque and is in possession thereof the amount due pursuant to articles 67 and 68."

133. It was noted that article 70 did not deal with the discharge of the liability of parties on a cheque as a result of payment by the drawee. While it was true that article 78, paragraph (2), provided that payment by the drawee discharged all parties to the cheque, it was considered whether such payment should discharge in all cases. Under one view, as regards payment by the drawee, the draft Convention should not make a distinction between proper and improper payment. Under another view, payment by the drawee under circumstances where a third party had asserted a valid claim to the cheque, or where the holder had acquired the cheque by theft or had forged the signature of a payee or endorsee, or where the holder had participated in the theft, should not lead to a discharge of liability of parties to the instrument. Under this view, the same conditions would apply where payment was made by a party. Under a third view, payment by the drawee with knowledge that an endorsement was forged was not proper payment and therefore should not discharge the drawer irrespective of whether the payment was to the forger, to the person who took it from the forger or to a remote person.

134. The Working Group, after deliberation, adopted the view that payment, even with knowledge of the forged endorsement, and even if payment was made to the forger himself, was a proper payment and discharged the drawer. Consequently this rule imposed the risk of forgery on the person whose signature was forged. However, that person had, under article 22, a statutory right for damages suffered by him because of the forgery against the person who forged his signature and the person to whom the instrument was transferred by the forger. Furthermore, under article 22, paragraph (2), he may, under national law, have such a right against the drawee.

135. The Working Group accordingly decided not to supplement the provisions of this paragraph, since the desired result already obtained under article 78, paragraph (2), which provides that payment by the drawee discharges all parties, whether or not the drawee paid to the forger, and whether or not the drawee paid with knowledge of the forgery.

136. The Working Group was of the view that the provisions of article 78, paragraph (2), should apply also to payment by the drawee of a bearer instrument which was stolen from the owner.

Article 70, paragraph (3)

137. The text of article 70, paragraph (3), as considered by the Working Group, is as follows:

"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 cheque or that the holder acquired the cheque by theft or forged the signature of the payee or an endorsee, or participated in such theft or forgery."

138. The Working Group adopted this paragraph.

Article 70, paragraph (4)

139. The text of article 70, paragraph (4), as considered by the Working Group, is as follows:

"(a) A person receiving payment of a cheque must, unless agreed otherwise, deliver:

"(i) To the drawee making such payment the cheque and a receipted account/;

"(ii) To any other person making such payment, the cheque, a receipted account and any protest.

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

"(c) If payment is made but the person paying, other than the drawee, fails to obtain the cheque, such person is discharged but the discharge cannot be set up as a defence against a protected holder."

140. The Working Group deleted the words in square brackets appearing in subparagraph (a) (i) and, subject to this deletion, adopted this paragraph.

New article 70 bis

141. The text of new article 70 bis, as considered by the Working Group, is as follows:

"If the drawee without knowledge that an endorsement is forged or is made by a person in a representative capacity without authority or that a third person has asserted a valid claim to the cheque/ pays a cheque drawn on him to the holder, he does not, in doing so, incur any liability by reason only of such forged or unauthorized endorsement or the assertion of such claim/."

142. The Working Group decided to delete this article, as it was unnecessary because the rule contained therein was already covered by articles 22, 70 and 78 (2).

Article 71

143. 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 who is offered partial payment does not take it, the cheque is dishonoured by non-payment.

"(3) If the holder takes partial payment from the drawee, the cheque 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 cheque

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

"(b) The holder must give such party a certified copy of the cheque, 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 cheque and that a receipt therefor be given to him.

"(6) The person receiving the unpaid amount who is in possession of the cheque must deliver to the payer the receipted cheque and any authenticated protest."

144. The Working Group adopted this article.

Article 72

145. 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 cheque was duly presented for payment in accordance with article 53 (g).

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

146. The Working Group decided that it was more appropriate that the reference in paragraphs (1) and (2) of this article to article 53 should not be restricted to subparagraph (g) of article 53. It accordingly deleted the reference to subparagraph (g). The Group, as a consequence of its decision on articles 55 and 56 (above paras. 107-111), deleted the word "duly" in paragraphs (1) and (2) and, subject to these deletions, adopted the article.

Article 74, paragraph (1)

147. The text of article 74, paragraph (1), as considered by the Working Group, is as follows:

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

148. The Working Group adopted this paragraph.

Article 74, paragraph (2)

149. The text of article 74, paragraph (2), as considered by the Working Group, is as follows:

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

"(a) The cheque 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 cheque. Failing such an indication, the amount payable is to be calculated according to the rate of exchange for sight drafts on the date of presentment:

"(i) Ruling at the place where the cheque 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 cheque must be presented for payment in accordance with article 53 (g);

"(c) If such a cheque is dishonoured by non-payment, the amount is to be calculated:

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

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

150. The Working Group adopted subparagraph (a).

151. As regards subparagraph (b), it was observed that not every country made provision for a rate of exchange for sight drafts. It was suggested that this subparagraph should state according to which rate of exchange the amount payable was to be calculated in the absence of a rate for sight drafts. The Working Group, after deliberation, accepted the suggestion, and adopted the following words for the opening words of this subparagraph:



"(b) The amount payable is to be calculated according to the rate of exchange indicated on the cheque. Failing such an indication, the amount payable is to be calculated according to the rate of exchange for sight drafts, or if there is no such rate, according to the appropriate established rate of exchange on the date of presentment."

152. The Working Group adopted the opening words of subparagraph (c), and the text of subparagraph (c) (i).

153. As regards subparagraph (c) (ii), the Working Group accepted a suggestion that the provisions of paragraph (4) of this article should be incorporated in the subparagraph, and adopted the following text of the subparagraph:

"(ii) If no rate of exchange is indicated on the cheque, at the option of the holder, according to the rate of exchange ruling on the date of presentment or on the date of actual payment at the place where the cheque must be presented for payment in accordance with article 53 (g) or at the place of actual payment."

Article 74, paragraph (3)

154. The text of article 74, paragraph (3) as considered by the Working Group, is as follows:

"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-payment."

155. The Working Group adopted this paragraph.

Article 74, paragraph (4)

156. The text of article 74, paragraph (4), as considered by the Working Group, is as follows:

"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 cheque must be presented for payment in accordance with article 53 (g) or at the place of actual payment."

157. Pursuant to its decision to incorporate the provisions of this paragraph in paragraph (2), subparagraph (c) (ii), of this article, the Working Group deleted this paragraph.

Article 74 bis, paragraph (1)

158. The text of article 74 bis, paragraph (1), 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."

159. The Working Group adopted this paragraph.

Article 74 bis, paragraph (2)

160. The text of article 74 bis, paragraph (2), as considered by the Working Group, is as follows:

"(a) If, by virtue of the application of paragraph (1) of this article, a cheque drawn in a currency which is not that of the place of payment must be paid in local currency, the amount payable is to be calculated according to the rate of exchange for sight drafts on the date of presentment ruling at the place where the cheque must be presented for payment in accordance with article 53 (g);

"(b) If such a cheque is dishonoured by non-payment:

"(i) The amount is to be calculated, at the option of the holder, according to the rate of exchange ruling at the date of presentment or at the date of actual payment;

"(ii) Paragraphs (3) and (4) of article 74 are applicable where appropriate."

161. The Working Group decided to align subparagraph (a) of this paragraph with the new wording of the opening words of subparagraph (b) of paragraph (2) of article 74, and adopted the following text:

"(a) If, by virtue of the application of paragraph (1) of this article, a cheque drawn in a currency which is not that of the place of payment must be paid in local currency, the amount payable is to be calculated according to the rate of exchange for sight drafts or, if there is no such rate, according to the appropriate established rate of exchange on the date of presentment ruling at the place where the cheque must be presented for payment in accordance with article 53 (g);"

162. Pursuant to its decision to delete paragraph (4) of article 74, the Working Group adopted the following text of subparagraph (b) (ii) of this paragraph:

"(ii) Paragraph (3) of article 74 is applicable where appropriate."

Article 74 ter

163. The text of article 74 ter, as considered by the Working Group, is as follows:

"If the drawer countermands the order to the drawee to pay a cheque drawn on him, the drawee is under a duty not to pay."

164. The Working Group adopted this paragraph.

165. One observer was of the view that the provisions of this article would not always be commercially acceptable and gave the following example: A buys goods from B, and receives them from the carrier against delivery to the carrier of a bank cheque. The issuing bank has issued the cheque on the instructions of A, with whom it has an agency relationship. Afterwards, A requests the bank to stop payment on the cheque pretending that the goods are defective, and the bank has to comply with this request because of the agency relationship. The drawee bank must not pay the cheque. Recourse is possible against the issuing bank. Because of alleged knowledge of defects of goods when receiving the cheque, B is not a protected holder. The bank can, in accordance with article 24 (3), rely on non-conformity of goods. In order to avoid long litigation, B (who would be the plaintiff) agrees to a reduction of the price. There would be no danger of such an occurrence if the drawee bank would, within a certain limited time (e.g. 8 days), be allowed to pay, since then A would be the plaintiff.

Article 78

166. 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 cheque, any party who has a right of recourse against him is discharged to the same extent.

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

167. The Working Group noted that the Drafting Group had proposed a modified draft text of article 78 of the draft Convention on International Bills of Exchange and International Promissory Notes, which 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 by the drawee of the whole or a part of the amount of a bill to the holder, or to any party who has paid the bill in accordance with article 67, discharges all parties of their liability to the same extent."

168. The Working Group decided to follow a similar approach, and adopted the following text:

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

"(2) Payment by the drawee of the whole or a part of the amount of the cheque to the holder, or to any party who has paid the cheque in accordance with article 67, discharges all parties of their liability to the same extent."

Article 79

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

"(1) A right of action arising on a cheque can no longer be exercised after four years have elapsed:

"(a) Against the drawer or his guarantor, after the date of the cheque;

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

"(2) If a party has taken up and paid the cheque 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 cheque."

170. The Working Group adopted this article.

Articles 80, 81, 82, 83, 84 and 85

171. The text of articles 80, 81, 82, 83, 84 and 85, as considered by the Working Group, is as follows:

Article 80

"(1) When a cheque is lost, whether by destruction, theft or otherwise, the person who lost the cheque 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 cheque. The party from whom payment is claimed cannot set up as a defence against liability on the cheque the fact that the person claiming payment is not in possession thereof.

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

"(i) The elements of the lost cheque pertaining to the requirements set forth in article 1 (2); these elements may be satisfied by presenting to that party a copy of that cheque;

"(ii) The facts showing that, if he had been in possession of the cheque, he would have had a right to payment from the party from whom payment is claimed;

"(iii) The facts which prevent production of the cheque.

"(b) The party from whom payment of a lost cheque 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 cheque.

"(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 cheque, 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.

"New (3) The person claiming payment of a lost cheque in accordance with the provisions of this article need not give security to the drawer who has inserted in the cheque, or to an endorser who has inserted in his endorsement, such words as 'not negotiable', 'not transferable', 'not to order', 'pay (X) only', or words of similar import."

#### Article 81

"(1) A party who has paid a lost cheque and to whom the cheque 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 cheque is presented for payment or on one of the two business days which follow and must state the name of the person presenting the cheque and the date and place of presentment.

"(3) Failure to notify renders the party who has paid the lost cheque 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 cheque 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 cheque 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 cheque in accordance with the provisions of article 80 and who is subsequently required to, and does, pay the cheque, or who then loses his right to recover from any party liable to him and such loss of right was due to the fact that the cheque was lost, has the right:

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

"(b) If the amount was desposited 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 cheque is lost."

#### Article 83

"A person claiming payment of a lost cheque 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 cheque in accordance with article 80 must deliver to the party paying the writing required under paragraph (2) (a) of article 80 receipted by him and any protest and a receipted account."

#### Article 85

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

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

172. The Working Group adopted these articles.

Articles A and B

173. The text of articles A and B, as considered by the Working Group, is as follows:

Article A

"(a) A cheque is crossed when it bears across its face two parallel transverse lines.

"(b) A crossing is general if it consists of the two lines only or if between the two lines the word 'banker' or an equivalent term or the words 'and Company' or any abbreviation thereof is inserted; it is special if the name of a banker is so inserted.

"(c) A cheque may be crossed generally or specially by the drawer or the holder.

"(d) The holder may convert a general crossing into a special crossing.

"(e) A special crossing may not be converted into a general crossing.

"(f) The banker to whom a cheque is crossed specially may again cross it specially to another banker for collection."

Article B

"If a cheque shows on its face the obliteration either of a crossing or of the name of the banker to whom it is crossed, the obliteration is regarded as not having taken place."

174. The Working Group adopted these articles.

Article C

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

"(1) (a) A cheque which is crossed generally is payable only to a banker or to a customer of the drawee.

"(b) A cheque which is crossed specially is payable only to the banker to whom it is crossed or, if such banker is the drawee, to his customer.

"(c) A banker may take a crossed cheque only from his customer or from another banker.

"(2) The drawee who pays or the banker who takes a crossed cheque in violation of the provisions of paragraph (1) of this article incurs liability for any damages which a person may have suffered as a result of such violation, provided that such damages do not exceed the amount of the cheque."

176. It was suggested that the word "take" used in paragraphs (1) (c) and (2) did not make it immediately clear whether the provision covered the situations where a banker takes a cheque for payment and also where he takes it for collection. The Working Group agreed with the suggestion, and decided to modify these paragraphs and adopted the following text:

"(1) (c) A banker may not take a crossed cheque except from his customer or from another banker and may not collect such a cheque except for such a person.

"(2) The drawee who pays or the banker who takes or collects a crossed cheque in violation of the provisions of paragraph (1) of this article incurs liability for any damages which a person may have suffered as a result of such violation, provided that such damages do not exceed the amount of the cheque."

#### Article D

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

"If a banker without knowledge that an endorsement is forged or is made by a person in a representative capacity without authority or that a third person has asserted a valid claim to the cheque takes a crossed cheque, he does not, in doing so, incur any liability by reason only of such forged or unauthorized endorsement or the assertion of such claimor."

178. As a consequence of its decision relating to article 70 bis, the Working Group decided not to retain this article.

#### Articles E, F, and ~~α~~

179. The text of articles E, F, and ~~α~~, as considered by the Working Group, is as follows:

#### Article E

"If the crossing on a cheque contains the words 'not negotiable' the transferee becomes a holder but cannot become a protected holder in his own right."

#### Article F

"(1) (a) The drawer or the holder of a cheque may prohibit its payment in cash by writing transversally across the face of the cheque the words 'payable in account' or words of similar import.

"(b) In such a case the cheque can only be paid by the drawee by means of a book-entry.



"(2) The drawee who pays such a cheque other than by means of a book-entry incurs liability for any damages which a person may have suffered as a result thereof, provided that such damages do not exceed the amount of the cheque.

"(3) If a cheque shows on its face the obliteration of the words 'payable in account', the obliteration is regarded as not having taken place."

Article  $\alpha$

"If a cheque is drawn against insufficient funds, it is nevertheless valid as a cheque."

180. The Working Group adopted these articles.

Article  $\beta$ , paragraph (1)

181. The text of article  $\beta$ , paragraph (1), as considered by the Working Group, is as follows:

"A cheque which bears a date other than the date on which it was drawn is nevertheless valid as a cheque."

182. The Working Group adopted this paragraph.

Article  $\beta$ , paragraph (2)

183. The text of article  $\beta$ , paragraph (2), as considered by the Working Group, is as follows:

"If a cheque is presented before its stated date:

Variant A

"(a) Payment discharges parties liable on the cheque;

"(b) Refusal by the drawee to pay constitutes dishonour.

Variant B

"(a) Payment does not discharge parties liable on the cheque;

"(b) Refusal by the drawee to pay does not constitute dishonour."

184. The Working Group considered the two variants prepared by the Secretariat. The Working Group favoured variant B, but was of the view that it was not necessary to retain subparagraph (a), as the result achieved by this subparagraph already followed from other provisions in the draft Convention. The Working Group adopted the following text:

"If a cheque is presented before its stated date, refusal by the drawee to pay does not constitute dishonour."

II. DRAFT CONVENTION ON INTERNATIONAL BILLS OF EXCHANGE  
AND INTERNATIONAL PROMISSORY NOTES

Draft articles 1, 5(7), 17(3), 22(1) and new (1 bis)  
25, X appended to 27(3), 30 bis, 34 bis (1), 36(2),  
44, 49, 53(h), 58 (3 bis) and (4), 61(2)(f), 66, 67  
(1)(b) and (2), 70(4), 71(2) and (6), 74(2)(b), 74 bis  
new (2), 79 and 82(1)

185. The Working Group reconsidered certain articles of the draft Convention on International Bills of Exchange and International Promissory Notes (as set forth in the annex to document A/CN.9/181) in the light of the following:

- (a) Modifications made by it to draft articles of the draft Convention on International Cheques;
- (b) Revised draft articles prepared by the Secretariat and set forth in document A/CN.9/WG.IV/WP.22;
- (c) Issues of substance which arose during the deliberations of the Drafting Group.

Article 1

186. One observer expressed the view that the Convention, in particular its article 1, did not make it sufficiently clear that the use of the international instrument governed by this Convention was optional and that parties in international transactions were free to choose an instrument governed by another legal régime. It was observed in reply that the optional nature could be inferred, for example in the case of a bill of exchange, from article 1, paragraph (2) (a), which required, for the Convention to apply, that the instrument used by the parties contain in its text the words "International Bill of Exchange (Convention of ...)".

187. The Group, after deliberation, was agreed that the Secretariat should consider expressing this optional nature in the draft articles on final clauses of the draft Convention to be prepared by the Secretariat for submission to a diplomatic conference.

Article 5, paragraph (7) <sup>25/</sup>

188. The Working Group decided to align this paragraph with article 5, paragraph (6), of the draft Convention on International Cheques (above, para. 40), and adopted the following text:

"'Protected holder' means the holder of an instrument which, when he became a holder, was complete and regular on its face, provided that:

"(a) He was, at that time, without knowledge of a 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;

"(b) The time-limit provided by article 53 for presentment of that instrument for payment had not then expired."

Article 17, paragraph (3)

189. It was noted that there was a certain contradiction between the provisions of article 17, paragraph (3) and article 24, paragraph (1) (b), in that, under article 17, paragraph (3), the non-fulfilment of a condition could not be raised as a defence against a remote holder, while in the same circumstances non-fulfilment of a condition could be raised as a defence under article 24, paragraph (1 bis).

190. The Working Group was agreed that a party to the instrument should be entitled to raise the non-fulfilment of his condition against a remote holder who is not a protected holder. Consequently, the Working Group decided to delete paragraph (3) of article 17.

191. In this context, the Working Group reconsidered its position as regards conditional endorsements, and was agreed that an endorsement should be unconditional, but that if, none the less, a conditional endorsement was made, such endorsement transfers the instrument whether or not such condition is fulfilled. Accordingly, the Working Group decided to retain paragraph (2) of this article, and to adopt the following new paragraph (1) to read as follows:

"(1) An endorsement must be unconditional."

192. The Working Group decided to adopt the same text for article 17 of the draft Convention on International Cheques.

Article 22, paragraph (1) and new paragraph (1 bis)

193. The Working Group considered the two variants of paragraph (1) set forth in document A/CN.9/WG.IV/WP.22 in the light of its decisions taken in regard to article 22 of the draft Convention on International Cheques (above, paras. 68-71).

---

<sup>25/</sup> As to a new paragraph (11) of article 5, see discussion and decision below, paras. 222-229.

The Group, while recognizing that different considerations might apply to international bills of exchange and notes on the one hand, and international cheques on the other, decided to adopt the same rule for both draft Conventions.

194. Consequently, the Working Group adopted the following text:

"(1) If an endorsement is forged, any party has against the forger and against the person to whom the instrument was directly transferred by the forger, the right to recover compensation for any damage that he may have suffered because of the forgery;

"(1 bis) The liability of an acceptor, drawee, or maker who pays, or of an endorsee for collection who collects, an instrument on which there is a forged endorsement is not regulated by this Convention." 26/

195. It was understood that the provisions of paragraph (1 bis) did not set forth an exhaustive list of persons paying the instrument whose liability was not governed by this Convention and that therefore, for example, the liability of a bank at which an instrument was domiciled would also be left to national law.

#### Article 25

196. The Working Group decided to align article 25, paragraph (1) (a), with the corresponding provision in the draft Convention on International Cheques, and to delete the reference to articles 57 and 60 in that paragraph.

#### Article X appended to article 27, paragraph (3)

197. The Working Group, in accordance with its decision relating to the corresponding article in the draft Convention on International Cheques (above, para. 85), decided to place the appended article between square brackets.

#### Article 30 bis

198. The Working Group decided to align article 30 bis with the corresponding article in the draft Convention on International Cheques (above, para. 93).

#### Article 34 bis, paragraph (1)

199. It was noted that the article did not state at what time the maker was to pay the note. The Working Group agreed with this observation and decided that the provision should specify that the maker engaged to pay the amount of the note in accordance with the terms of the note. The Group adopted the following text:

---

26/ See, however, later amendment of paragraph (1 bis) below, para. 235.

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

200. The question was raised whether, in the case of a delay in making presentment of a domiciled note, the liability of the maker should be reduced by the extent of the loss he suffered because of such delay. The Working Group, after deliberation, was agreed that the maker, as a party primarily liable, should not be discharged in such a case. However, it was understood that he may, under national law, have a right to recover any damages which he may have suffered because of the delay.

201. In this connexion, the Working Group reconsidered the provisions of article 34, paragraphs (1 bis) and (1 ter) of the draft Convention on International Cheques and decided to delete these two paragraphs in the light of the fact that the rule contained therein was already stated in article 55, paragraph (2), and article 60, paragraph (2).

#### Article 36, paragraph (2)

202. The Working Group adopted a similar modification as made in article 34 bis, paragraph (1) (see above, para.199), and adopted the following text of paragraph (2):

"(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 in accordance with the terms of his acceptance, and any interest and expenses which may be recovered under article 67 or 68."

#### Article 44

203. As regards paragraph (1) of this article, the question was raised whether the term "to the same extent" referred only to the amount of the instrument or also to other matters, and if it referred only to the amount, whether the words "unless the guarantor has stipulated otherwise on the instrument" would apply only to a stipulation to reduce the amount, or whether it also covered a stipulation to increase the amount. The Group, after deliberation, was agreed that the provision was not limited to the question of amount but covered other elements as well (e.g., time or place of payment) and that a stipulation by the guarantor could relate to any possible element of the guarantor's liability in any possible way, including reduction and increase of the amount. The Group requested the Secretariat to reflect this understanding in the commentary.

204. As regards paragraph (2) of article 44, the Working Group decided to replace the words "when due" by the words "at maturity".

#### Article 49

205. It was observed that the opening words of article 49 ("Presentment for acceptance is dispensed with") did not make it immediately clear whether this article applied only to cases where presentment for acceptance was mandatory, or whether it would also cover those cases where presentment was optional. The Working Group concurred with this observation and considered the substantive question whether article 49 should also cover the cases of optional presentment. The Group, after deliberation, decided in the affirmative for the reason that the provision on dispensation was also appropriate in cases of optional presentment which constituted the large majority of cases which occurred in practice. For example, in the circumstances envisaged in paragraph (a), where the drawee was dead, no acceptance by him could be obtained, and it would be futile to require the holder to present the instrument for acceptance. Consequently the Group decided, in order to make the scope of application of article 49 abundantly clear, to modify the opening words of article 49 as follows:

"A necessary or optional presentment for acceptance is dispensed with:"

#### Article 53, paragraph (h)

206. It was noted that article 53, paragraph (h), only covered the case of presentment to a clearing-house of which the drawee was a member but did not include presentment to a clearing-house in the case of a domiciled instrument. The Working Group concurred with this observation and, in order to enlarge the scope of this provision, decided to delete the words "of which the drawee is a member". The Group adopted the same change for the corresponding article in the draft Convention on International Cheques.

#### Article 58, paragraphs (3 bis) and (4)

207. The Working Group considered paragraphs (3 bis) and (4), as set forth in document A/CN.9/WG.IV/WP.22, in the light of its decision on article 58, paragraphs (3 bis) and (4), of the draft Convention on International Cheques (above, paras. 116-119). The Group decided to delete paragraph (3 bis) and, in paragraph (4), to delete the reference to article (3 bis).

#### Article 61, paragraph (2) (f)

208. The Working Group reaffirmed its decision to delete this subparagraph (A/CN.9/196, para. 159).

#### Article 66

209. The Working Group made the same change in article 66 as in the corresponding article of the draft Convention on International Cheques (above, paras. 122-123) and deleted the word "directly".

Article 67, paragraph (1)(b)

210. The Working Group considered the draft text of paragraph (1)(b) which reads as follows:

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

"(a) . . .

"(b) After maturity:

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

"(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;"

211. The Working Group, after deliberation, was agreed that under subparagraph (b)(i) the interest to be paid should be on the amount of the instrument to the date of maturity and that the interest to be paid under subparagraph (b)(ii) should be calculated from the date of presentment. Accordingly, the Group adopted the following text.

"(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 presentment on the sum specified in paragraph (1) (b) (i);

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

Article 67, paragraphs (2) and (3)

212. It was noted that paragraph (2) of article 67 referred to the official rate (bank rate) or other similar appropriate rate effective in the main centre of the country where the instrument was payable, and that in some countries no such rate existed. The suggestion was made, therefore, in such instances, to apply the official rate (bank rate) or other similar appropriate rate effective in the main centre of the country in the currency of which the instrument was payable.

213. The Working Group, after deliberation, adopted this suggestion and decided to modify paragraph (2) as follows:

"(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 centre of the country where the instrument is payable, or if there is no such rate, then in the main centre of the country in the currency of which the instrument is payable. In the absence of any such rate, the rate of interest shall be    per cent per annum."

214. The Working Group decided to delete the words "to be calculated on the basis of the number of days and in accordance with the custom of that place" at the end of paragraph (3).

Article 70, paragraph (4)

215. The Working Group considered article 70, paragraph (4)(a) and (c) as redrafted by the Secretariat:

"(4) (a) A person receiving payment of an instrument must, unless agreed otherwise, deliver:

"(i) to the drawee making such payment the instrument    and a receipted account   ;

"(ii) to any other person making such payment, the instrument, a receipted account and any protest.

"(b) . . .

"(c) If payment is made but the person paying, other than the drawee, fails to obtain the instrument, such person is discharged but the discharge cannot be set up as a defence against a protected holder."

216. The Group adopted the text, subject to the deletion of the words "   and a receipted account   " in sub-paragraph (i).

Article 71, paragraphs (2) and (6)

217. The Working Group considered and adopted paragraphs (2) and (6) of article 71 as redrafted by the Secretariat:

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

"(6) The person receiving the unpaid amount who is in possession of the instrument must deliver to the payor the receipted instrument and any authenticated protest."



Article 74, paragraph (2) (b)

218. The Working Group decided to align the opening words of paragraph (2) (b) with the revised wording of the corresponding subparagraph in the draft Convention on International Cheques (above, para. 151) and adopted the following text:

"(b) The amount payable is to be calculated according to the rate of exchange indicated on the instrument. Failing such indication, the amount payable is to be calculated according to the rate of exchange for sight drafts (or, if there is no such rate, according to the appropriate rate of exchange) on the date of maturity:"

Article 74 bis, new paragraph (2)

219. The Working Group decided to align subparagraph (a) of this paragraph with the revised wording of paragraph (2)(b) of article 74 (above, para. 218) and, subject to this modification, adopted paragraph (2) as follows:

"(a) If, by virtue of the application of paragraph (1) of this article, an instrument drawn in a currency which is not that of the place of payment must be paid in local currency, the amount payable is to be calculated according to the rate of exchange for sight drafts or, if there is no such rate, according to the appropriate established rate of exchange on the date of presentment ruling at the place where the instrument must be presented for payment in accordance with article 53 (g);

"(b) (i) If such an instrument is dishonoured by non-acceptance, the amount payable is to be calculated, at the option of the holder, at the rate of exchange ruling at the date of dishonour, or at the date of actual payment;

(ii) If such an instrument is dishonoured by non-payment, the amount is to be calculated, at the option of the holder, according to the rate of exchange ruling at the date of presentment or at the date of actual payment;

(iii) Paragraphs (3) and (4) of article 74 are applicable where appropriate.

Article 79

220. The Working Group considered article 79, paragraphs (1) (a) to (d) and (2), as redrafted by the Secretariat, and adopted this text without change:

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

"(a) Against the maker, or his guarantor, of a note payable on demand, after the date of the note;

"(b) against the acceptor or the maker or their guarantor of an instrument payable at a definite time, after the date of maturity;

"(c) against the acceptor of a bill payable on demand, after the date on which it was accepted;

"(d) 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) 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."

Article 82, paragraph (1)

221. The Working Group considered, and adopted, the opening words of article 82, paragraph (1), as redrafted by the Secretariat:

"(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 then 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:"

## III. CONSIDERATION OF TWO MATTERS RELEVANT TO BOTH CONVENTIONS

A. Instruments and cheques payable in, or denominated in, units of account

222. The observer of the International Monetary Fund (IMF) made a statement on this issue, with particular reference to the special drawing right (SDR) of IMF. He noted that the SDR was an international reserve asset created by IMF and allocated by it to its members as a supplement to existing reserve assets. Only a limited class could hold SDRs. All 141 States members of IMF were participants in its SDR Department and were eligible to hold SDRs. These member States could use SDRs in transactions with other member States, with certain other authorized holders of SDRs, and with the General Resources Account of IMF, which also held SDRs. The SDR was also the IMF unit of account.

223. The SDR was being increasingly used for a variety of transactions. Members with a balance-of-payments need may use SDRs to acquire foreign exchange in a transaction in which another member designated by IMF provided currency in exchange for SDRs. Members may also use SDRs in a variety of voluntary transactions and operations by agreement with other members. They may engage in "swap" arrangements and forward operations involving SDRs. They may make loans of SDRs, and settle financial obligations in SDRs. They may use SDRs as security for the performance of financial obligations and in donations. Authorized holders who were not members also engaged in certain financial transactions with SDRs. In some instances the transactions might not be subject to a particular governing law.

224. As regards coverage by the draft Conventions of relevant transactions involving SDRs, the observer noted that two questions arose: (a) whether an instrument covered by the Conventions could call for payment in SDRs, or another unit of account, and (b) whether an instrument covered by the Conventions might call for payment in a particular currency but be denominated in SDRs or another unit of account. As regards the first issue, he noted that there would appear to be no special reason not to permit the Conventions to apply to an instrument payable in SDRs should the maker or drawer (which must belong to the limited class) decide to opt at its inception to make the instrument subject to the rules of the Conventions. While it was not possible to estimate the frequency of use that might develop in respect of such instruments, permitting an official holder to utilize the rules of the draft Conventions could only serve to extend the usefulness of the Conventions. Similar considerations applied as regards the second issue. The denomination in SDRs could be used by private parties as a safeguard against currency fluctuations. He noted that the valuation of an SDR against a national currency would be provided by IMF in regard to the currencies of member States, and could also be determined for other currencies.

225. Various methods might be used to extend the coverage of the draft Conventions to instruments payable in, or denominating a currency in, units of account. The method favoured by the UNCITRAL Study Group on International Payments, which had considered this question, was to add a definition of "money" to the draft Conventions, which might cover monetary units such as the SDR, the ECU and the transferable rouble. This definition was as follows:

"'Money' means a medium of exchange:

"(a) Which is authorized or adopted by a Government (or several Governments) as its (or their) official currency or part thereof; or

"(b) Which is established by an intergovernmental institution and intended by it to be transferable in its records and only between it and among persons designated by it."

Consideration by the Working Group

226. The views expressed in the Working Group showed that there was little doubt that if the draft Conventions were to offer the possibility of drawing an instrument in a unit of account which was a monetary unit, and payable in that unit, the usefulness of the Conventions would in principle be increased. However, such an extension of the application of the Conventions would, in the last resort, depend on the desire of Governments to use the Conventions for that purpose. Consequently, the Working Group concluded that it would suffice to draw the attention of Governments to this issue through a definition of money to be inserted in article 5 of the draft Conventions, and to be placed between square brackets. The commentary should make clear that the definition was of a tentative nature, and solely for the purpose of eliciting the views of Governments. The commentary should also indicate that, if the views of Governments were of a positive nature, certain provisions of the draft Conventions would have to be amended accordingly.

227. As regards denominating the sum payable in a unit of account, the Working Group was of the view that using a unit of account as a point of reference for the purpose of calculating the amount payable in an instrument in money was already implicit in the provisions of articles 7 and 74. However this possibility could, if need be, be made more explicit.

228. The tentative definition of money adopted by the Working Group is as follows:

/"'Money' or 'currency' include a monetary unit of account which is established by an intergovernmental institution, and includes such unit of account even if intended by it to be transferable in its records and only between it and among persons designated by it."/

229. The Working Group decided to add this tentative definition to the definitions set forth in article 5, as a new paragraph (9) in the draft Convention on International Cheques and as a new paragraph (11) in the draft Convention on International Bills of Exchange and International Promissory Notes.

B. Provision on rules applicable to questions governed by the Conventions but not expressly settled therein

230. The Working Group considered a note submitted by the observer of the Hague Conference on Private International Law (Hague Conference). In this note (A/CN.9/WG.IV/WP.23), the observer of the Hague Conference suggested to the Working Group to adopt, in both draft Conventions, an article X which might be placed in the chapter on General Provisions and which would read as follows:

Article X

"Questions concerning matters governed by this Convention which are not expressly settled in it are to be settled in conformity with the law applicable by virtue of the rules of private international law.

"If the State, the law of which is found to be applicable under the rules of private international law, has, independently of its general rules of law, provisions which are specific [to cheques] [to bills of exchange and promissory notes] for the settlement of the questions referred to in the preceding paragraph, these provisions will be applied with priority over those general rules."

231. Different views were expressed about the desirability of including in the draft Conventions provisions regarding the application of municipal law to questions concerning matters covered by the draft Convention but not expressly settled in it. Under one view, it was stated that such provisions were not strictly necessary. Under another view, while it was true that the provisions might state the obvious, it would be useful if the draft Convention would indicate to the courts the proper direction to be taken. Under yet another view, the implications of the proposal by the observer should be carefully considered, since it was by no means immediately clear whether the authors of the draft Convention wished to settle a question by not dealing with it, or whether the fact that the question was not regulated was by oversight.

232. It was observed that in the latter case, the proposed solution of the observer of the Hague Conference would lead to the result that, since the question was not expressly settled in the Convention, a court would have to apply rules of the conflict of laws determining the applicable law, which would prevent a court from deciding the question by analogy to a provision of the draft Convention.

233. The Working Group, after deliberation, was agreed that a provision as suggested by the observer of the Hague Conference was not necessary.

IV. ADOPTION OF DRAFT CONVENTION ON INTERNATIONAL BILLS OF EXCHANGE  
AND INTERNATIONAL PROMISSORY NOTES AS REVISED BY DRAFTING GROUP

234. The Working Group considered the articles of the draft Convention on International Bills of Exchange and International Promissory Notes as revised by the Drafting Group and set forth in document A/CN.9/WG.IV/WP.24 and Add.1-2.

235. The Working Group approved this text subject to the following modifications:

Article 9, paragraph (6): Delete the square brackets

Article 22, paragraph (1 bis): Replace the words  
"an acceptor, drawee, or maker"  
by the words  
"a party or of the drawee"

236. The Working Group also considered, and adopted with minor modifications, the suggestions of the Drafting Group relating to headings, subheadings and structure of the draft Convention (A/CN.9/WG.IV/WP.24/Add.1 and 2).

237. The Working Group noted that the Drafting Group had continued its work until the last but one day of the session of the Working Group and that, therefore, lack of time had prevented the establishment of a complete text in final form. For example, a number of changes had been expressed only in the form of corrigenda, the headings and subheadings had not been inserted at their proper place, and the draft articles had not been renumbered consecutively. It was understood that the Secretariat would compile the complete text. 27/

V. ADOPTION OF DRAFT CONVENTION ON INTERNATIONAL CHEQUES  
AS REVISED BY DRAFTING GROUP

238. The Working Group considered the articles of the draft Convention on International Cheques as revised by the Drafting Group and set forth in document A/CN.9/WG.IV/WP.25 and Add.1.

239. The Working Group approved this text subject to the following modifications:

Article 22, paragraph (1 bis): Replace the words  
"the liability of a drawee"  
by the words  
"the liability of a party or of the drawee"

Article X (following art. 34): Place the text of paragraph (2) between square brackets

---

27/ The complete text of the draft Convention is contained in A/CN.9/211. A commentary on this draft Convention will be published as document A/CN.9/213.

Article 78: Insert (erroneously omitted) text:

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

"(2) Payment by the drawee of the whole or a part of the amount of the cheque to the holder, or to any party who has paid the cheque in accordance with article 67, discharges all parties of their liability to the same extent."

240. The Working Group also considered, and adopted with minor modifications, the suggestions of the Drafting Group relating to headings, subheadings and structure of the draft Convention (A/CN.9/WG.IV/WP.25/Add.1).

241. The Working Group noted that the Drafting Group had continued its work until the last but one day of the session of the Working Group and that, therefore, lack of time had prevented the establishment of a complete text in final form. For example, a number of changes had been expressed only in the form of corrigenda, the headings and subheadings had not been inserted at their proper place, and the draft articles had not been renumbered consecutively. It was understood that the Secretariat would compile the complete text. 28/

- - -

---

28/ The complete text of the draft Convention is contained in A/CN.9/212. A commentary on this draft Convention will be published as document A/CN.9/214.