

2. Note by the Secretariat: desirability of preparing uniform rules applicable to international cheques (A/CN.9/WG.IV/CRP.5)*

1. The United Nations Commission on International Trade Law, at its fifth session requested its Working Group on International Negotiable Instruments to consider the desirability of preparing uniform rules applicable to international cheques, and to consider whether this can best be achieved by extending the application of the draft uniform law on international bills of exchange and international promissory notes to international cheques or by drawing up a separate uniform law on international cheques. At its first session, the Working Group requested the Secretariat to make inquiries, in consultation with the UNCITRAL Study Group on International Payments, regarding the use of cheques in international payment transactions and the problems presented, under current commercial practice, by divergencies between the rules of the principal legal systems.

2. The Study Group considered these questions at its eighth and ninth meetings, held from 5 to 9 November 1973 and from 30 September to 4 October 1974.**

In order to ascertain the use of cheques for making and receiving international payment, the Study Group, at its eighth meeting, drew up a questionnaire and addressed it to commercial banks and banking institutions.

3. The answers received to the questionnaire and the discussions held in the Study Group, at its ninth meeting, between representatives of various banking and trade institutions indicate that:

- (i) The cheque is widely used for settling international commercial transactions, although the extent of such use may vary from country to country.
- (ii) In a number of countries the use of cheques for the above purpose is tending to increase. However, such use may well decline in the near future as a result of greater reliance on telegraphic transfers and the development of telecommunication systems between banks, such as SWIFT (Society for World Wide Interbank Financial Telecommunications).
- (iii) Cheques used for international payment are usually drawn by a bank on a bank in another country. In part this is due to the existence of exchange control regulations which, in some countries, prohibit nationals from holding a bank account abroad or from opening an account in foreign currency with a bank in their country or which may debar non-residents from

drawing cheques on accounts in foreign currency which they may hold in the country of the bank which opened the account. As a result, international payments are frequently made by cheque in cases where the cheque is drawn on a bank in the payee's country and is payable at that bank, by a drawer-bank abroad which has an account at the drawee-bank in the payee's country.

- (iv) Cheques used for international payment are mostly drawn in the currency of the account. Cheques drawn in a currency other than the currency of the account occur occasionally; unless there are exchange control regulations to the contrary, they are usually paid in the currency of drawing, and, with few exceptions, when there is an express stipulation to that effect on the cheque.
- (v) Cheques are always payable at sight. In the case of post-dated cheques, banks operating under the Geneva system will always pay on the day of presentment and will not incur liability; banks operating under the common law system, if they pay a cheque before its due date, will incur liability for damages suffered by the drawer as a consequence of earlier payment.
- (vi) Few legal problems arise in respect of cheques used for international payment. The most cited problems concern forgery, post-dated [cheques, loss and theft of cheques, stop payment] orders, mechanical endorsements (stamping) and exchange controls.

4. Replies received so far to the questionnaire show substantial support for the establishment of uniform rules applicable to international cheques. However, the Study Group was of the view that further studies and inquiries would be necessary before a more complete and definite view on the matter could be given.

5. The Study Group therefore concluded that an appropriate course of action would be for it to continue work in respect of cheques by making further inquiries into several aspects of the law and practice relating to cheques. This would enable the Working Group, upon termination of its present work in respect of international bills of exchange and international promissory notes, to report to the Commission on the question of international cheques in full knowledge of the problems and issues involved therein.

6. The Secretariat concurs with the views expressed by the UNCITRAL Study Group on International Payments. The Working Group may therefore wish to request the Study Group to make further inquiries regarding cheques used for international payment and to submit to it, at a future session, a report on the practice in this respect and the legal problems arising in that connexion.

* 22 October 1974.

** The following international organizations and banking and trade institutions were represented at these meetings: International Monetary Fund (IMF), Hague Conference on Private International Law, International Institute for the Unification of Private Law (UNIDROIT), International Bank for Economic Co-operation (IBEC), Bank for International Settlements, International Chamber of Commerce (ICC), Fédération bancaire des communautés européennes, and Federal Reserve Bank of New York.