

sion 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 (reproduced in this volume, part two, A, 5). A commentary on this draft Convention will be published as document A/CN.9/214 (reproduced in this volume, part two, A, 6).

2. WORKING PAPERS SUBMITTED TO THE WORKING GROUP ON INTERNATIONAL NEGOTIABLE INSTRUMENTS AT ITS ELEVENTH SESSION (NEW YORK, 3-14 AUGUST):

(a) *Note by the Secretariat: uniform rules applicable to international cheques: text of articles as redrafted by consultants to the Secretariat and by the Working Group at its ninth and tenth sessions (A/CN.9/WG.IV/WP.21)**

Article 1

- (1) ...
- (2) ...
- (a) ...
- (b) ...
- (c) Is drawn on a banker or on a person or institution assimilated by the applicable law to a banker,¹
- (d) ...
- (e) ...
- (f) ...
- (i) ...
- (ii) The place indicated next to the name or the signature of the drawer,²
- (iii) ...
- (iv) ...
- (v) ...
- (g) ...
- (3) ...

Article 5

- ...
- (1) ...
- (2) ...
- (3) ...
- (4) ...
- (5) ...
- (6) "Protected holder" means a holder of a cheque which, when he became a holder, was complete and regular on its face and not overdue [in accordance with article 53 (f)], provided that, at that time, he was without knowledge of any claim to or defence upon the cheque referred to in article 24 or of the fact that it was dishonoured by non-payment,³
- (7) ...
- (8) ...

Article 8⁴

- (1) ...
- (2) ...
- [(3) ...]
- (4) ...]

Article 9⁵

A cheque is payable on demand:

* 12 June 1981. The text of the articles set forth herein is of the following kinds: (a) text as re-drafted by Professors A. Barak and W. Vis, consultants to the Secretariat, in accordance with requests of the Working Group made at its ninth and tenth sessions, and (b) text as amended by the Working Group at its ninth and tenth sessions. References are given to relevant paragraphs in the reports of the ninth session of the Working Group (A/CN.9/181) (Yearbook ... 1980, part two, III, B) and the tenth session of the Working Group (A/CN.9/196) (Yearbook ... 1981, part two, II, A) and to the articles of the draft Convention on International Bills of Exchange and International Promissory Notes as re-drafted or amended (A/CN.9/WG.IV/WP.22) (reproduced in this volume, part two, II, A, 2, (b)). Points of ellipsis against a paragraph or subparagraph indicate that no change has been made to the text of that paragraph or subparagraph. (Footnote in original).

¹ The Working Group's request for amendment related to article 5 (A/CN.9/181, para. 161) (Yearbook ... 1980, part two, III, B). However, it was considered that the amendment in question could more appropriately be made in this article.

² *Ibid.*, para. 165.

³ Although the term "overdue" was objected to (*ibid.*, para. 172) it was considered difficult to avoid the use of this term. In response to the view contained, *ibid.*, at para. 173, the square brackets around the last phrase have been deleted.

⁴ The only amendment is the placing of paragraphs (3) and (4) between square brackets. *Ibid.*, para. 181.

⁵ The Working Group was of the opinion that the requirement that a cheque be payable on demand should not be retained among the formal requisites set forth in paragraph (2) of article 1 but should be included among the rules applicable to presentment and payment (*ibid.*, para. 163). However it was considered more appropriate to retain paragraph (2) (d) of article 1, and add the present article.

(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.

Article 21

(1) ...

(2) The endorsement to the drawee operates only as an acknowledgment 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].⁶

Article 22

Variant A

(1) 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.⁷

(2) ...

Note. The effect of the above rule would be that, for purposes of the drawee's liability to pay compensation to the person who suffered loss because of a forged endorsement, it is immaterial whether the drawee paid with or without knowledge of the forgery.

Variant B

(1) 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.⁸

(2) ...

Note. The effect of the above rule would be that an action for damages would not lie against a drawee who paid without knowledge of the forgery.⁹

⁶ *Ibid.*, paras. 188-189.

⁷ A/CN.9/196, paras. 113-118 (Yearbook ... 1981, part two, II, A); A/CN.9/WG.IV/WP.22, article 22, Variant A (reproduced in this volume, part two, II, A, 2, (b)).

⁸ A/CN.9/196, paras. 113-118; (Yearbook ... 1981, part two, II, A); A/CN.9/WG.IV/WP.22, article 22, Variant B (reproduced in this volume, part two, II, A, 2, (b)).

⁹ One of these Variants could be adopted in both the draft Convention on International Bills of Exchange and International Promissory Notes and the draft Uniform Rules applicable to International Cheques. A further possibility would be that Variant A is adopted in the draft Convention and Variant B in the draft Uniform Rules. If one of these Variants were to be adopted, article 70 *bis* would not be required.

Article 34

(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.

(2) ...

Note 1. The Working Group decided that the drawer would be discharged of liability upon failure of the holder to make presentment or protest. However, delay in making presentment or protest would not discharge the drawer except to the extent of the loss suffered because of the delay (A/CN.9/196, paras. 17 and 18).

2. One question which arises in this respect is to determine when there is failure to present and when there is delay. Under article 53, a cheque is duly presented if, *inter alia*, it is presented within 120 days of its stated date. Therefore, it would follow that there is no delay in presentment if the holder presented the cheque, say, within 119 days of its stated date.

Query: if the cheque is not presented within 120 days, does this constitute failure to present or delay?

3. A second question is whether the drawer whose liability on the cheque is for, say, SwF 1000 and who, because of the delay in presentment, suffers a loss of, say, SwF 250, should now be liable on the cheque for SwF 750, or whether he should be liable for SwF 1000 (the amount of the cheque) but have an action for damages outside the cheque for SwF 250?

Article X¹⁰

(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.

(2) However, a Contracting State may:

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

(b) Determine the legal effects thereof.

¹⁰ A/CN.9/181, para. 174 (Yearbook ... 1980, part two, II, B), and A/CN.9/196, paras. 23-25 and 38 (Yearbook ... 1981, part two, II, A).

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

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.¹¹

(2) ...

(3) ...

(4) ...

(a) ...

(c) 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.¹²

(5) ...

Article 53

...

(a) The holder must present the cheque to the drawee on a business day at a reasonable hour;¹³

(f) A cheque must be presented for payment within 120 days of its stated date;¹⁴

(g) ...

(i) ...

(ii) ...

(iii) ...

(h) A cheque may be presented for payment at a clearing-house of which the drawee is a member.¹⁵

Article 54

(1) ...

(2) ...

[(a) ...

(i) ...

(ii) ...

(iii) ...]

(c) If the cause of delay continues to operate beyond 30 days after the expiration of the time limit for presentment for payment.¹⁶

¹¹ A/CN.9/196, para. 34 (Yearbook ... 1981, part two, II, A).

¹² *Ibid.*, para. 39.

¹³ *Ibid.*, para. 47.

¹⁴ *Ibid.*, para. 49.

¹⁵ This is a re-draft of subparagraph (h) adopted by the Working Group to accord with the style of the preceding subparagraphs. *Ibid.*, para. 47, and A/CN.9/WG.IV/WP.22, article 53 (h) (reproduced in this volume, part two, II, A, 2, (b)).

¹⁶ A/CN.9/196, para. 56 (Yearbook ... 1981, part two, II, A).

Article 55¹⁷

(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.

Note. The rule stated in paragraph (2) is already stated in article 34 (1 *bis*) (see above). Rules as to failure or delay in protest are also stated in article 34.

Article 57

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 61.¹⁸

Article 58

(1) ...

(a) ...

(b) ...

(c) ...

(2) ...

(a) ...

(b) ...

(3) ...

(3 *bis*) 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.¹⁹

(4) A declaration made in accordance with paragraph (3) or (3 *bis*) is deemed to be a protest for the purposes of this Convention.²⁰

Article 60²¹

(1) If a cheque which must be protested for non-payment is not duly protested, the drawer, the endorsers 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.

¹⁷ *Ibid.*, paras. 58-62.

¹⁸ *Ibid.*, para. 66. Alignment of the provisions relating to protest for dishonour with the decisions taken in respect of article 55 has been done in the re-drafting of article 34.

¹⁹ *Ibid.*, para. 70; A/CN.9/WG.IV/WP.22, article 58 (3 *bis*) (reproduced in this volume, part two, II, A, 2, (b)).

²⁰ A/CN.9/196, para. 72 (Yearbook ... 1981, part two, II, A); A/CN.9/WG.IV/WP.22, article 58 (4) (reproduced in this volume, part two, II, A, 2 (b)).

²¹ A/CN.9/196, para. 76 (Yearbook ... 1981, part two, II, A).

Note. The rule stated in paragraph (2) is already stated as to the drawer in article 34 (1 *ter*) (see above).

Article 61²²

(1) ...

(2) ...

(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 65²³

(1) ...

(2) ...

(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.

Article 67

(1) The holder may recover from any party liable the amount of the cheque.²⁴

(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.²⁵

(4) ...

Article 68

(1) ...

(a) ...

(b) ...

(c) ...

(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.²⁶

Article 70

(1) 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 68.²⁷

(3) A party is not discharged of his liability if he pays a holder who is not a protected holder and knows at the time of payment that a third person has asserted a valid claim to the 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.²⁸

(4) (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.²⁹

(b) ...

(c) If payment is made but the person paying, other than the drawee, fails to obtain the cheque, such person

²⁴ *Ibid.*, para. 97.

²⁵ *Ibid.*, para. 99.

²⁶ *Ibid.*, para. 105.

²⁷ *Ibid.*, para. 107, with the addition of the words "and is in possession thereof" to the text contained therein.

²⁸ *Ibid.*, para. 107.

²⁹ *Ibid.*, para. 109 (Yearbook . . . 1981, part two, II, A); A/CN.9/WG.IV/WP.22, article 70 (4) (a) (reproduced in this volume, part two, II, A, 2, (b)).

²² *Ibid.*, paras. 80 and 159. Subparagraph 2 (f) has been deleted (A/CN.9/WG.IV/WP.22, article 61) (reproduced in this volume, part two, II, A, 2, (b)).

²³ (A/CN.9/196, paras. 87-90 (Yearbook . . . 1981, part two, II, A)).

is discharged but the discharge cannot be set up as a defence against a protected holder.³⁰

Article 71

- (1) ...
- (2) If the holder who is offered partial payment does not take it, the cheque is dishonoured by non-payment.³¹
- (3) ...
- (4) If the holder takes partial payment from a party to the cheque.³²
- (a) ...
- (b) ...
- (5) ...
- (6) The person receiving the unpaid amount who is in possession of the cheque must deliver to the payor the receipted cheque and any authenticated protest.³³

Article 74 bis

- (1) ...³⁴
- (2) (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).³⁵
- (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.³⁶
 - (ii) Paragraphs (3) and (4) of article 74 are applicable where appropriate.³⁷

³⁰ A/CN.9/196, para. 111 (Yearbook ... 1981, part two, II, A). The Secretariat was of the view that a provision on these lines was not superfluous because the results in question did not clearly emerge from the wording of articles 24 and 25.

³¹ *Ibid.*, para. 122; A/CN.9/WG.IV/WP.22, article 71 (2) (reproduced in this volume, part two, II, A, 2 (b)).

³² A/CN.9/196, para. 126 (Yearbook ... 1981, part two, II, A).

³³ *Ibid.*, para. 131; A/CN.9/WG.IV/WP.22, article 71 (6) (reproduced in this volume, part two, II, A, 2 (b)).

³⁴ Paragraph 1 consists of the text of article 74 bis as appearing, *ibid.*, at para. 138.

³⁵ A/CN.9/196, paras. 135-139 (Yearbook ... 1981, part two, II, A); A/CN.9/WG.IV/WP.22, article 74 bis (2) (a) (reproduced in this volume, part two, II, A, 2, (b)).

³⁶ A/CN.9/196, paras. 135-139 (Yearbook ... 1981, part two, II, A); A/CN.9/WG.IV/WP.22, article 74 bis (2) (b) (ii) (reproduced in this volume, part two, II, A, 2, (b)).

³⁷ A/CN.9/196, paras. 135-139 (Yearbook ... 1981, part two, II, A); A/CN.9/WG.IV/WP.22, article 74 bis (2) (b) (iii) (reproduced in this volume, part two, II, A, 2, (b)).

Article 74 ter

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.³⁸

Article 79

(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;³⁹

(b) Against an endorser or his guarantor, after the date of protest for dishonour or, where protest is dispensed with, the date of dishonour.⁴⁰

(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.⁴¹

Article 80⁴²

(Paragraph (3) deleted)

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.⁴³

(a) ...

(b) ...

(2) ...

Article A

(a) A cheque is crossed when it bears across its face two parallel transverse lines.⁴⁴

(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.⁴⁵

³⁸ A/CN.9/196, para. 142 (Yearbook ... 1981, part two, II, A). Article 74 *quater* previously contained in the Uniform Rules has been deleted. *Ibid.*, para. 144.

³⁹ *Ibid.*, para. 149.

⁴⁰ *Ibid.*, para. 150.

⁴¹ *Ibid.*, para. 151; A/CN.9/WG.IV/WP.22, article 79 (2) (reproduced in this volume, part two, II, A, 2, (b)).

⁴² A/CN.9/196, para. 153 (Yearbook ... 1981, part two, II, A).

⁴³ *Ibid.*, para. 157; A/CN.9/WG.IV/WP.22, article 82 (1) (reproduced in this volume, part two, II, A, 2, (b)).

⁴⁴ A/CN.9/196, para. 166 (Yearbook ... 1981, part two, II, A).

⁴⁵ *Ibid.*, para. 168.

- (c) ...
- (d) ...
- (e) ...
- (f) ...

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.⁴⁶

Article C

- (1) (a) ...
- (b) ...
- (c) ...

(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.⁴⁷

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.⁴⁸

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.

⁴⁶ *Ibid.*, para. 176.

⁴⁷ *Ibid.*, para. 180.

⁴⁸ *Ibid.*, para. 183.

(b) In such a case the cheque can only be paid by the drawee by means of a book-entry.⁴⁹

(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.⁵⁰

(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.⁵¹

Article a

If a cheque is drawn against insufficient funds, it is nevertheless valid as a cheque.⁵²

Article β⁵³

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

(2) 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.

⁴⁹ *Ibid.*, para. 187.

⁵⁰ *Ibid.*, para. 189.

⁵¹ *Ibid.*, para. 190.

⁵² *Ibid.*, para. 196.

⁵³ *Ibid.*, paras. 200-203.

(b) *Note by the Secretariat: draft Convention on International Bills of Exchange and International Promissory Notes: text of articles as redrafted by consultants to the Secretariat and by the Working Group at its tenth session (A/CN.9/WG.IV/WP.22)**

Article 22

Variant A

(1) If an endorsement is forged, any person has against the forger, against the person who took the instrument directly from the forger and against the drawee

who paid the instrument to the forger the right to recover compensation for any damage that he may have suffered because of the forgery.¹

* 12 June 1981. The text of the articles set forth herein is of the following kinds: (a) text as re-drafted by Professors A. Barak and W. Vis, consultants to the Secretariat, in accordance with requests of the Working Group made at its tenth session (b) text as amended by the Working Group at its tenth session and (c) text aligned with amended text of the draft Uniform Rules applicable to International Cheques. References are given to relevant paragraphs in the report

of the tenth session (A/CN.9/196) (Yearbook . . . 1981, part two, II, A) and to the articles of the draft Uniform Rules applicable to International Cheques as re-drafted or amended (A/CN.9/WG.IV/WP.21) (reproduced in this volume, part two, II, A, 2, (a)). Points of ellipsis against a paragraph or subparagraph indicate that no change has been made to the text of that paragraph or subparagraph. (Footnote in original).

¹ A/CN.9/196, paras. 113-118 (Yearbook . . . 1981, part two, II, A); A/CN.9/WG.IV/WP.21, article 22, Variant A (reproduced in this volume, part two, II, A, 2, (a)).