

**REPORT
OF THE
UNITED NATIONS COMMISSION
ON
INTERNATIONAL TRADE LAW
on the work of its nineteenth session**

23 June-11 July 1986

GENERAL ASSEMBLY

OFFICIAL RECORDS: FORTY-FIRST SESSION

SUPPLEMENT No. 17 (A/41/17)



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NOTE

Symbols of United Nations documents are composed of capital letters combined with figures. Mention of such a symbol indicates a reference to a United Nations document.

[11 August 1986]

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INTRODUCTION

1. The present report of the United Nations Commission on International Trade Law covers the Commission's nineteenth session, held in New York, from 23 June to 11 July 1986.
2. Pursuant to General Assembly resolution 2205 (XXI) of 17 December 1966, this report is submitted to the Assembly and is also submitted for comments to the United Nations Conference on Trade and Development.

CHAPTER I

ORGANIZATION OF THE SESSION

A. Opening

3. The United Nations Commission on International Trade Law (UNCITRAL) commenced its nineteenth session on 23 June 1986. The session was opened on behalf of the Secretary-General by Mr. Carl-August Fleischhauer, Under-Secretary-General, the Legal Counsel.

B. Membership and attendance

4. General Assembly resolution 2205 (XXI) established the Commission with a membership of 29 States, elected by the Assembly. By resolution 3108 (XXVIII), the General Assembly increased the membership of the Commission from 29 to 36 States. The present members of the Commission, elected on 15 November 1982 and 10 December 1985, are the following States: 1/

Algeria,* Argentina,** Australia,* Austria,* Brazil,* Central African Republic,* Chile,** China,* Cuba,** Cyprus,** Czechoslovakia,** Egypt,* France,* German Democratic Republic,* Hungary,** India,** Iraq,** Iran (Islamic Republic of),** Italy,** Japan,* Kenya,** Lesotho,** Libyan Arab Jamahiriya,** Mexico,* Netherlands,** Nigeria,* Sierra Leone,** Singapore,* Spain,** Sweden,* Union of Soviet Socialist Republics,* United Kingdom of Great Britain and Northern Ireland,* United Republic of Tanzania,* United States of America,** Uruguay** and Yugoslavia.**

* Term of office expires on the last day prior to the beginning of the twenty-second session of the Commission in 1989.

** Term of office expires on the last day prior to the beginning of the twenty-fifth session of the Commission in 1992.

5. With the exception of the Central African Republic and the Libyan Arab Jamahiriya, all members of the Commission were represented at the session.

6. The session was also attended by observers from the following States: Bangladesh, Bulgaria, Burma, Cameroon, Canada, Colombia, Côte d'Ivoire, Finland, Germany, Federal Republic of, Ghana, Greece, Guatemala, Holy See, Honduras, Indonesia, Oman, Panama, Peru, Philippines, Poland, Republic of Korea, Sudan, Switzerland, Syrian Arab Republic, Turkey and Venezuela.

7. The following specialized agency, intergovernmental organizations and international non-governmental organizations were represented by observers:

(a) Specialized agency

International Monetary Fund

(b) Intergovernmental organizations

Asian-African Legal Consultative Committee
Hague Conference on Private International Law
Organization of American States

(c) International non-governmental organizations

Chartered Institute of Arbitrators
European Banking Federation
Inter-American Bar Association
International Bar Association
International Chamber of Commerce
International Federation of Consulting Engineers
Latin American Banking Federation

C. Election of officers 2/

8. The Commission elected the following officers:

Chairman: Mr. P. K. Kartha (India)

Vice-Chairmen: Mrs. G. O. Adebajo (Nigeria)
Mr. Luis A. Delfino-Cazet (Uruguay)
Mr. Hellmut Wagner (German Democratic Republic)

Rapporteur: Mr. Alfred Duchek (Austria)

D. Agenda

9. The agenda of the session, as adopted by the Commission at its 335th meeting, on 23 June 1986, was as follows:

1. Opening of the session.
2. Election of officers.
3. Adoption of the agenda.
4. International payments.
5. New international economic order.
6. Operators of transport terminals.
7. Co-ordination of work.
8. Status of conventions.
9. Training and assistance.
10. General Assembly resolutions on the work of the Commission.

11. Future work.
12. Other business.
13. Adoption of the report of the Commission.

E. Adoption of the report

10. The Commission adopted the present report at its 357th meeting, on 11 July 1986, by consensus.

INTERNATIONAL PAYMENTS

A. Draft Convention on International Bills of Exchange and International Promissory Notes 3/

11. The United Nations Commission on International Trade Law, at its seventeenth session in 1984, considered over a three-week period the draft Convention on International Bills of Exchange and International Promissory Notes, which had been prepared by the Working Group on International Negotiable Instruments. The Commission decided that further work should be undertaken with a view to improving the draft Convention and entrusted that work to the Working Group on International Negotiable Instruments. 4/ At its eighteenth session in 1985, the Commission requested the Working Group to complete its work with a view to submitting a draft Convention to the Commission in a form suitable for consideration at its nineteenth session. 5/ The Working Group on International Negotiable Instruments held its fourteenth session at Vienna from 9 to 20 December 1985, at which it completed its deliberations on and revision of the draft Convention on International Bills of Exchange and International Promissory Notes.

12. At its current session, the Commission had before it the report of the Working Group on International Negotiable Instruments on the work of its fourteenth session (A/CN.9/273), a note by the secretariat containing the text of the draft Convention on International Bills of Exchange and International Promissory Notes as revised by the Commission at its seventeenth session and by the Working Group at its thirteenth and fourteenth sessions (A/CN.9/274), and a note by the secretariat in response to requests of the Working Group to undertake certain inquiries or to prepare certain draft provisions in implementation of decisions made by it (A/CN.9/285).

13. The Commission elected Mr. Willem Vis (Netherlands) as Chairman of the Committee of the Whole for the discussion of the draft Convention.

14. The Commission commenced its deliberations on the draft Convention on International Bills of Exchange and International Promissory Notes by discussing the draft articles that had been considered by the Working Group and the decisions taken by the Working Group concerning those articles, as reflected in the provisions of the draft Convention set forth in document A/CN.9/274. It then discussed other articles of the draft Convention. The Commission entrusted a drafting group with the implementation of its decisions and with the establishment of corresponding language versions in the six official languages of the Commission.

1. Review of decisions of the Working Group on International Negotiable Instruments on issues previously identified as major controversial issues

Forged endorsements (article 23)

15. In connection with article 23 (1), it was generally agreed that, in addition to a person whose endorsement was forged, any party who signed the instrument before the forgery should have the right to recover compensation for damage that he might have suffered because of the forgery. As an example of damage suffered by a party who signed the instrument before the forgery, a drawer or maker of an

instrument could be liable to pay a holder who took the instrument after a forgery of the payee's signature (by virtue of article 14 (1) (b), a transferee of an instrument could be a holder even if a prior endorsement was forged) and also to pay the debt to the payee. Such a maker or drawer should be able to recover compensation under article 23 (1).

16. In connection with article 23 (1) (c), the Commission noted that payment to a forger through a collecting bank might be considered as not having been made "directly to the forger", and thus not covered by subparagraph (c). It was generally agreed that a party or the drawee should be liable to pay compensation under subparagraph (c) not only when he paid the forger in person, but also when he paid the forger through one or a series of collecting banks. Accordingly, the Commission adopted a proposal of the drafting group to amend article 23 (1) (c) to read as follows:

"(c) A party or the drawee who paid the instrument to the forger directly or through one or more endorsees for collection."

17. Based on a proposal of the drafting group, the Commission decided that, in order to facilitate drafting in languages other than English, article 23 (2) should be amended to read as follows:

"(2) However, an endorsee for collection shall not be liable under paragraph (1) if at the time at which:

"(a) He pays the principal or advises the principal of the receipt of the proceeds of the instrument, or

"(b) He receives the proceeds of the instrument,

whichever comes later, he is without knowledge of the forgery, provided that such absence of knowledge is not due to his negligence."

18. With respect to article 23 (3), it was agreed in principle that the liability of a party or the drawee to pay compensation should depend upon whether or not he knew of the forgery. However, the view was expressed that there was an inconsistency between article 23 (3) and article 68 (3). It was noted that under article 23 (3) a party or the drawee who paid an instrument to a forger was not liable to pay compensation if he was without knowledge of the forgery, provided that the absence of knowledge was not due to negligence. Under article 68 (3) a party paying an instrument to a holder who had acquired the instrument by theft or forged the signature of the payee or an endorsee or participated in such theft or forgery was discharged of liability on the instrument if he did not know of the theft or forgery whether or not the absence of knowledge was due to negligence. As an example of the inconsistency between the two provisions, it was stated that an acceptor who paid an instrument to a forger and who was negligent in not knowing of the forgery would be discharged of liability on the instrument under article 68 (3), but would be liable to pay compensation under article 23 (3).

19. According to another view, there was no inconsistency between articles 23 (3) and 68 (3), since the concept of knowledge in article 68 (3) must be construed in the light of article 5, which, by providing that a person was considered to have knowledge of a fact if he could not have been unaware of its existence, incorporated the element of negligence. A further view was expressed, however, that the concept contained in article 5 differed from the concept of negligence in that it covered, in addition to actual knowledge, only the case of wilful ignorance.

20. In order to deal with the question raised in connection with articles 23 (3) and 68 (3), a suggestion was made that the reference to negligence in article 23 (3) - and also in article 23 (2) - should be deleted and that the concept of knowledge in that provision should be construed in the light of article 5. It was noted, however, that the substance of article 5 had not yet been settled by the Commission. Accordingly, it was generally agreed that a decision on the question should be considered after the substance of article 5 had been settled (see paras. 63-70 below).

21. With respect to article 23 (4), a view was expressed that the reference in that provision to articles 66 and 67 was meaningless, since the latter articles did not establish a means for determining the amount recoverable. It was pointed out, however, that articles 66 and 67 established a ceiling to the amount recoverable and that article 23 (4) provided that the amount of damages could not exceed that ceiling. Article 23 (4) was adopted.

Endorsement by agent without authority (article 23 bis)

22. The discussion in respect of article 23 (1) (c), (2) and (3) (see paras. 16 to 20 above) related also to article 23 bis (1) (c), (2) and (3). Accordingly, the Commission decided that article 23 bis (1) (c) and (2) should read as follows:

"... (c) A party or the drawee who paid the instrument to the agent directly or through one or more endorsees for collection.

"(2) However, an endorsee for collection shall not be liable under paragraph (1) if at the time at which:

"(a) He pays the principal or advises the principal of the receipt of the proceeds of the instrument, or

"(b) He receives the proceeds of the instrument,

whichever comes later, he is without knowledge that the endorsement does not bind the principal, provided that such absence of knowledge is not due to his negligence."

23. It was noted that the provisions of article 23 bis, relating to endorsement by an agent without authority, paralleled those of article 23, relating to forged endorsements. A view was expressed that an endorsement by an agent without authority should be treated differently from a forged endorsement. In particular, a transferee in good faith of an instrument endorsed by an agent of the transferor should not have the burden of ascertaining the authority of the agent and should not be strictly liable to pay compensation if the agent signed without authority. A view was expressed that, in most cases, there would exist some kind of relationship between the purported principal and the unauthorized agent; it was, therefore, more equitable and better public policy for the purported principal, and not the transferee in good faith, to bear the risk of unauthorized transfers by a purported agent.

24. It was accordingly proposed that article 23 bis (3) should be amended to read as follows:

"(3) Also, any person against whom compensation is sought, other than the agent, shall not be liable under paragraph (1) if, at the time he paid the instrument, he was without knowledge that the endorsement did not bind the principal, provided that such absence of knowledge was not due to his negligence."

25. After deliberation, the Commission did not adopt this proposal.

Definition of protected holder (article 4 (7))

26. A view was expressed that the reference in article 4 (7) to completion of an incomplete instrument was superfluous and should be deleted. It was pointed out, however, that while a person who took an incomplete instrument could not be a holder, article 4 (7) provided that he could become a holder if the instrument met the requirements of article 11 (1) and if the instrument was completed in accordance with authority given. The reference in article 4 (7) to completion of an incomplete instrument was therefore useful and necessary.

27. According to a further view, the reference in article 4 (7) to completion of an instrument "in accordance with authority given" implied that a transferee of an instrument which had been completed by his transferor would have to inquire into whether the transferor had authority to complete the instrument; that would impede the international circulation of instruments covered by the Convention. It was pointed out, however, that article 4 (7) dealt only with the question of whether a person who took an incomplete instrument could become a protected holder upon completing it. It did not deal with the question whether a transferee of an instrument which had been completed by his transferor could be a protected holder. Such a transferee could be a protected holder, even though the transferor completed the instrument without authority, if the transferee did not know of the lack of authority.

28. A suggestion was made that in order to clarify article 4 (7) so as to reflect its intended meaning, the words "by him" should be added, so as to refer to an instrument "completed by him in accordance with authority given". The prevailing view, however, was that the decision taken at the fourteenth session of the Working Group to delete the words "by him" should be maintained (see A/CN.9/273, para. 22), since the instrument might not be completed by the holder himself but by a person acting under the authority of the holder, such as an escrow agent who took an instrument before the amount of a transaction was known and who was authorized to fill in the amount on that instrument. The Commission agreed upon the substance of article 4 (7), but referred to the drafting group the task of devising appropriate wording to clarify the intended meaning of the article (see also later decision on article 4 (7) (a), para. 57 below).

Defences and claims that may be set up against a holder (article 25)

29. In order to clarify that the right of a party to set up against a holder a defence under paragraph (1) (b) of article 25 or a claim under paragraph (2) of article 25 was subject to the provisions of paragraph (2 bis) of that article, the Commission requested the drafting group to consider incorporating the substance of paragraph (2 bis) in both paragraph (1) (b) and paragraph (2). In addition, it was noted that paragraph (3) (b) referred to the acquisition of the instrument by the holder by theft or forgery or by participation in the theft or forgery, but that paragraph (2 bis) did not contain a comparable reference. It was agreed that the substance of paragraph (2 bis) should include a comparable reference to theft.

30. Based upon a proposal of the drafting group, the Commission adopted article 25 (1) (b) as follows:

"(b) Except as provided in paragraph (2 bis) of this article, any defence based on the underlying transaction between himself and the drawer or between himself and the party subsequent to himself or arising from the circumstances as a result of which he became a party;"

31. The drafting group proposed to amend article 25 (2) to read as follows:

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

32. An objection was raised to the omission from that wording of the reference to a "valid" claim, which appeared in the text of article 25 (2) in document A/CN.9/274. The decision of the Commission in respect of that point is reflected in paragraph 41 below.

33. As regards the rule contained in paragraph (2 bis), it was proposed to make an exception for overdue instruments by adding wording along the following lines, "except that a holder who takes the instrument after the expiration of the time limit for presentment for payment is subject to any claim to or defence upon the instrument to which his transferor is subject". It was stated in support of that proposal that the addition was necessary to further the intention underlying article 4 (7) (b) and the philosophy of the draft Convention to discourage negotiation of overdue instruments. Specific reference was made to article 53, according to which certain parties were discharged of liability if an instrument was not duly presented for payment. While some doubt was expressed as to the appropriateness of the proposed addition, the Commission, after deliberation, adopted the proposal.

34. The drafting group proposed that article 25 (2 bis) should be amended to read as follows:

"(2 bis) A holder who is not a protected holder and who took the instrument before maturity is subject to a defence under paragraph (1) (b) or to a claim under paragraph (2) of this article only if he took the instrument with knowledge of such defence or claim or if he obtained the instrument by fraud or theft or participated at any time in a fraud or theft concerning it."

35. It was noted that under this amendment the exposure of a non-protected holder to a defence or claim would be restricted to the cases set forth in paragraph (2 bis) only if he took the instrument before maturity. However, the intention of the original proposal as adopted by the Commission was to expose the holder who took an overdue instrument only to those defences and claims which may be set up against his transferor. Accordingly, the Commission decided that article 25 (2 bis) should read as set forth in document A/CN.9/274, with the following additional sentence:

"However, a holder who takes the instrument after the expiration of the time-limit for presentment for payment is subject to any claim to or defence upon the instrument to which his transferor is subject."

36. A view was expressed that paragraph (1) (c) of article 25 should be changed to correspond with paragraph (1) (b) of article 26 (see paras. 44-48 below). In support of that view, it was suggested that, in view of the decision that article 26 (1) (b) was not intended to restrict the availability of set-off or counterclaim which might be available under national law (see para. 48 below), article 25 (1) (c) and article 26 (1) (b) in essence made the non-protected holder and the protected holder subject to the same defences. Thus, the wording of the two provisions should be consistent. It was noted that that had been the view of the Working Group at its fourteenth session (see A/CN.9/273, para. 20).

37. According to another view, however, such a change would be one of substance. A protected holder should be treated differently from a non-protected holder. Under most legal systems the equivalent of a non-protected holder was subject to all defences vis-à-vis his immediate transferor, and that was reflected in article 25 (1) (c). With respect to a protected holder, however, the situation was different. In some legal systems the equivalent of a protected holder was subject to a broad range of defences vis-à-vis his immediate transferor, while in other systems he was subject only to very limited defences. Article 26 (1) (b) reflected a compromise between those systems. Accordingly, it was generally agreed that the difference between articles 25 (1) (c) and 26 (1) (b) should be maintained.

38. In connection with paragraph (3) of article 25, a question was raised concerning the meaning of the phrase "asserted a valid claim" appearing in subparagraph (a), e.g., whether, in order for a party to be able to raise a ius tertii defence, the third person must have instituted legal proceedings to establish his claim to the instrument, or whether he must merely have notified the party of his claim to the instrument. A view was expressed that the word "valid" should be deleted, since that word implied that a party could not raise a ius tertii defence unless the third person's claim to the instrument had been finally adjudicated as valid in legal proceedings. Such a result could not have been intended by the provision. Moreover, by virtue of the word "valid", a party faced with a demand for payment of the instrument by a holder would face difficulty in deciding whether to pay the instrument if he had to evaluate whether a claim by a third person was valid. On the other hand, it was pointed out that the inclusion of the word "valid" would not require a party to delay deciding whether to pay the instrument until the validity of a claim to the instrument by a third person had been finally adjudicated. The effect of the word "valid" was that the party could decide either to pay or not to pay the instrument, but that such a decision would be at his peril if the claim to the instrument by the third person were subsequently adjudicated to be valid or invalid, as the case may be. A view was expressed that the word "valid" should be retained in order to prevent a party from raising a ius tertii defence that was palpably false.

39. According to a further view, article 25 (3) should be read in conjunction with article 68 (3), under which a party who paid an instrument without knowledge of a valid claim to the instrument by a third person was discharged. The intent of article 25 (3) (b) was to establish the circumstances under which the party could invoke the claim to the instrument by a third person as a defence against a holder.

40. The Commission decided to refer to the drafting group the task of clarifying the language of subparagraph (a) of article 25 (3) in the light of the questions raised concerning the word "valid".

41. The drafting group proposed that the word "valid" should be deleted from article 25 (3) (a). However, in view of the differing views expressed with respect to the use of that word, the Commission decided to retain, for the time being, the

word "valid" in that article and also in articles 25 (2), 26 (2) and 68 (3), and to refer the questions concerning the use of the word to the Working Group and the Commission when they considered the draft Convention further.

42. Subject to the drafting decisions referred to in the foregoing paragraphs, the Commission adopted article 25 (see, however, later decision on article 25 (1) (c), paras. 50-57 below).

Defences and claims that may be set up against a protected holder (article 26)

43. The Commission agreed with the decision of the Working Group at its fourteenth session to add to article 26 (1) (a) a reference to article 59 (see A/CN.9/273, para. 10).

44. In connection with article 26 (1) (b), a view was expressed that the defences that could be asserted against a protected holder should be restricted in order to promote the usefulness and acceptability of an international negotiable instrument. In accordance with that view, the formulation of subparagraph (b) as it appeared in document A/CN.9/274 was preferable to the formulation considered by the Working Group at its fourteenth session (see A/CN.9/273, para. 16). The defences to which a protected holder was subject under subparagraph (b) should be limited to defences based on an underlying transaction between the protected holder and the party from whom payment was demanded, or arising from any fraudulent act on the part of the protected holder in obtaining the signature of that party on the instrument. A party should not be able to assert a defence arising out of a transaction between himself and the protected holder unrelated to the instrument. According to an additional view, a protected holder should be subject not only to defences arising out of the underlying transaction, but also to defences arising out of situations related to the underlying transaction, such as a prolongation agreement.

45. The Commission considered whether the defences to which a protected holder was subject under subparagraph (b) of article 26 (1) should be exclusive or whether the protected holder should also be subject to additional defences that might be available under national law. In that connection, the Commission considered whether or not subparagraph (b) should affect defences such as set-off or counterclaim, which might be available under national law to a party facing a claim on an instrument by a protected holder. A view was expressed that if defences other than those referred to in subparagraph (b) were to remain available under national law, the subparagraph should expressly so provide in order to promote certainty as to the defences to which a protected holder was subject.

46. It was noted that, generally, set-off and counterclaim were matters of procedural law. However, it was also pointed out that in some legal systems such rights were regarded as matters of substance.

47. It was observed that the question of whether or not a protected holder should be subject to defences under national law in addition to those specified in subparagraph (b) was particularly important in some common law systems, where a protected holder was subject to very limited defences vis-à-vis his immediate party. It would be of concern to those legal systems if a protected holder were to be subject to defences under national law in addition to those referred to in subparagraph (b). It was noted that subparagraph (b) was a compromise between those legal systems in which a protected holder was subject to a broad range of defences vis-à-vis his immediate party and those systems in which the protected

holder was subject only to very limited defences. Accordingly, the view was expressed that a protected holder should not be subject to additional defences under national law.

48. It was generally agreed that subparagraph (b) was not intended to interfere with defences such as set-off and counterclaim that might be available under national law. It was also generally agreed that the wording of the subparagraph should remain as it stood, subject to the use of the word "transaction", which was referred to the drafting group.

49. Subparagraph (c) of article 26 (1) was adopted.

Reference to article 25 in article 4 (7) (a)

50. It was suggested that in the light of the text of article 25 (1) as adopted, the definition of protected holder in article 4 (7) might need amendment. In its present wording article 4 (7) precluded a holder from qualifying as a protected holder if, when he became a holder, he had knowledge of any defence upon the instrument referred to in article 25. Accordingly, he would be precluded from qualifying as a protected holder if he had knowledge of a defence to contractual liability based on a transaction between himself and a party even though that transaction was unrelated to the issue or transfer of the instrument (article 25 (1) (c)). It was suggested that the denial of the status of protected holder in those circumstances was undesirable and that article 4 (7) might therefore be amended to avoid that result (e.g. by providing that a holder was precluded from qualifying as a protected holder if he had knowledge of a defence referred to in article 25 (1) (a), (b) or (d)).

51. There was considerable support for this suggestion. The view was expressed, however, that the result of such an amendment might be that a holder would qualify as a protected holder even when he had knowledge of a defence to contractual liability that was available to the immediate party from whom he took the instrument on the basis of the underlying transaction between the holder and that party.

52. It was noted in reply that while the holder might in such circumstances qualify as a protected holder, an immediate party could set up as against the protected holder the defence based on the underlying transaction (article 26 (1) (b)). It was observed, however, that while an action against the immediate party might not be available by reason of article 26 (1) (b), the fact that the holder obtained the status of protected holder might have other consequences (e.g. a transfer by the protected holder might vest in a subsequent holder the rights of a protected holder: article 27 (1)).

53. The view was also expressed that the phrase "a defence upon the instrument referred to in article 25" contained in article 4 (7) needed further consideration. Article 25 (1) referred to a range of defences that any party, immediate or remote, might set up against a holder who was not a protected holder, and it was unclear whether knowledge of any of those defences would preclude a holder from becoming a protected holder.

54. After deliberation, the Commission decided that article 4 (7) needed modification in the light of the difficulties noted above and entrusted this task to an ad hoc working party. The ad hoc working party concluded that the reference to article 25, as contained in article 4 (7) (a), was appropriate, except for those

defences arising from a transaction or relationship between the immediate party and the holder that was not related to the issue or transfer of the instrument. In order to express this exception, it was proposed that a distinction should be made in article 25 (1) (c) between defences resulting from the underlying transaction and defences resulting from other transactions and to exclude this latter part of the provision from the reference contained in article 4 (7) (a).

55. The Commission considered the following proposal of the ad hoc working party:

(a) To modify article 4 (7) (a) as follows:

"(a) He was without knowledge of a claim to or defence upon the instrument referred to in article 25, other than in paragraph (i) (c) (ii), or of the fact that it was dishonoured by non-acceptance or non-payment; and"

(b) To modify article 25 (1) (c) as follows:

"Any defence resulting from

"(i) the underlying transaction between himself and the holder;

"(ii) any other transaction between himself and the holder that would be available as a defence against contractual liability."

56. It was observed that the proposed new text maintained in article 4 (7) the words "a claim to or defence upon the instrument referred to in article 25". In the earlier deliberations in the Commission, it had been noted that the reference to article 25 gave rise to difficulties in identifying the parties mentioned in article 4 (7) within the context of article 25, although such identification was necessary to give effect to the reference.

57. It was observed in reply that any attempt to draft article 4 (7) without such a reference led to extreme complexity of language in article 4 (7). After deliberation, the Commission adopted the proposed text of articles 4 (7) and 25 (1) (c) that had been proposed by the ad hoc working party with a drafting amendment to article 4 (7) proposed by the drafting group.

Shelter rule (article 27)

58. A view was expressed that under the present wording of article 27, its intended effect might not be clear. After deliberation, it was agreed that the effect of article 27 was that a transferee of an instrument from a protected holder acquired the rights that the protected holder had at the time of the transfer; it did not confer protected holder status upon the transferee.

59. The Commission, after deliberation, adopted article 27.

Presumption of protected holder status (article 28)

60. A proposal was made to delete article 28 on the grounds that a person raising a defence should not have to prove knowledge by the claimant of facts that would prevent the claimant from being a protected holder. In opposition to the proposal, it was stated that the rule expressed in article 28 was contained in many legal systems and that the rule strengthened the transferability of an instrument. The proposal was not adopted.

61. The Commission, after deliberation, adopted article 28.

Liability of transferor by endorsement or by mere delivery (article 41)

62. The Commission approved of the approach taken in article 41 under which its provisions applied both to a transfer by mere delivery and to a transfer by endorsement and delivery. It was suggested that the opening language of the article needed amendment to make it clear that the article applied to both those categories of transfer. The Commission agreed that because the article applied to both categories of transfer, it should not be placed under the heading "The endorser" but should be placed under an independent heading. The Commission also agreed that the interest rate referred to in paragraph (3) of article 41 should be calculated in accordance with article 66. Subject to those agreed changes, the Commission adopted article 41.

Article 5 (and its relationship to other articles)

63. The Commission considered the definition contained in article 5 as to when a person is considered to have knowledge of a fact.

64. The view was expressed that while under the article a person is considered to have knowledge of a fact if he either has actual knowledge of a fact or could not have been unaware of its existence, the second element was in fact superfluous. If a person could not have been unaware of the existence of a fact, he would appear to have actual knowledge of the fact. The view was also expressed that the meaning of the phrase "could not have been unaware of its existence" was unclear, and that the phrase might therefore be interpreted differently in different jurisdictions. It was observed in reply that in some legal systems the term "actual knowledge" was given a very restricted meaning, and that a wider meaning was required in the contexts in which the word "knowledge" was used in the draft Convention. For example, where a person deliberately chose to ignore a fact, knowledge of the fact should be imputed to him even though he could not be said to have actual knowledge of it. It was also noted that the phrase "could not have been unaware of its existence" had been used in the United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980), and that the phrase had been found to be widely acceptable during the deliberations leading to the adoption of that Convention.

65. The Commission noted that where the words "without knowledge" were used in articles 23 (2), 23 bis (2), 25 (1) (d) and 26 (1) (c), those articles also contained the following proviso: "provided that such absence of knowledge was not due to his negligence". The Commission first considered the relationship of the definition contained in article 5 to the proviso as contained in articles 25 (1) (d) and 26 (1) (c). The view was expressed that, in view of the definition contained in article 5, the proviso might be deleted. Where the absence of knowledge of a fact by a person was due to his negligence, knowledge of the fact might be imputed to that person by the application of the phrase "could not have been unaware of its existence" contained in article 5. Retaining both this phrase in article 5 and the proviso in articles 25 (1) (d) and 26 (1) (c) might lead to duplication of or inconsistency in language. The difficulty might be resolved either by deleting the proviso from articles 25 (1) (d) and 26 (1) (c) or by deleting article 5. Another approach to resolving the difficulty might be to add at the commencement of article 5 the words "unless otherwise stated in this Convention". It was also noted that use of the term "negligence" might lead to difficulties of interpretation in some legal systems.

66. Under another view, however, it was desirable to retain the words "provided that such absence of knowledge was not due to his negligence" in articles 25 (1) (d) and 26 (1) (c). It was possible to envisage situations where it could not be held that a person could not have been unaware of the existence of a fact (article 5), but where that person might be held to be negligent. For example, if a promissory note was placed before a person by a trusted employee with the nature of the document concealed and it was therefore signed by that person as maker, the circumstances might make it difficult to find that he could not have been unaware of the nature of the document that he was signing. Nevertheless, those circumstances might have imposed on that person a duty to make inquiry about the document he was signing and his signing without inquiry might have constituted negligence. It was also observed that if use of the term "negligence" might lead to difficulties of interpretation, a different term of equivalent meaning might be used. Furthermore, the addition of the words "unless otherwise stated in this Convention" to article 5 was undesirable because that addition would reduce the certainty of meaning that the definition as presently drafted gave to the term "knowledge".

67. After deliberation, the Commission decided that the proviso should be retained in articles 25 (1) (d) and 26 (1) (c).

68. The Commission recognized that the arguments advanced in respect of the relationship of the definition contained in article 5 and the proviso as contained in articles 25 (1) (d) and 26 (1) (c) also applied in regard to the proviso in articles 23 (2) and 23 bis (2). It was noted that the following additional consideration was relevant in regard to the latter articles. Those articles covered the possible liability of a collecting banker when the instrument contained a forged endorsement. While different approaches were possible as to the extent of liability of a banker collecting such an instrument, the present text reflected a compromise solution that appeared to be acceptable to bankers. Deletion of the proviso, which would eliminate the compromise solution, was therefore undesirable.

69. After deliberation, the Commission decided that the proviso should be retained in articles 23 (2) and 23 bis (2).

70. The Commission considered the definition contained in article 5 in relation to the word "knowledge" as used in articles 4 (7), 11 (2) (a), 41 (1) (c), 41 (2) and 68 (3) and decided that the definition was satisfactory in the context of those articles.

2. Review of other issues and draft articles considered by the Working Group

Article 1

71. It was proposed that a new subparagraph reading "is domiciled with a bank;" should be added after subparagraph (c) of article 1 (2) and (3) and that article 51 (d) should be deleted.

72. After deliberation, the Commission was of the view that the proposed amendment would unduly restrict the scope of the instruments to which the draft Convention would apply, and accordingly did not adopt the proposal.

73. The view was expressed that the provisions of article 1 defining when an instrument was to be regarded as international so as to attract the application of the Convention were unsatisfactory. An instrument in respect of which the places specified in article 1 (2) (e) were exclusively within a single State would not attract the application of the Convention. However, the application of the Convention would continue to be excluded even if the instrument thereafter circulated in a different State (e.g. was endorsed in a different State). It was observed in reply that the provisions of article 1 gave autonomy to the parties to attract the application of the Convention at the time the instrument was issued by, inter alia, specifying that at least two of the places mentioned in article 1 (2) (e) were situated in different States.

74. It was recognized that article 1 (2) (e), which determined when an instrument was international so as to attract the application of the Convention, was the result of decisions taken by the Commission at earlier sessions after extensive deliberation. Accordingly, the Commission decided to maintain the approach reflected in article 1.

75. The view was expressed that article 1 combined two different sets of requirements, namely, the international elements necessary for the application of the Convention and the conditions for the validity of an instrument. A proposal was therefore made to separate those two sets of requirements by dividing article 1 into two articles. The Commission noted that the same proposal had been placed before the Working Group on International Negotiable Instruments at its fourteenth session, but had not been adopted by the Working Group (see A/CN.9/273, paras. 61 and 62). While the proposal attracted some support, the prevailing view was that it should not be adopted.

76. The view was expressed that it was unclear whether article 1 required an instrument to show where all the places mentioned in article 1 (2) (e) and (3) (e) were situated, and whether showing where those places were situated was an essential condition for the validity of an instrument. It was observed in reply that the provisions of article 1 (2) (e) and (3) (e) were only directed to determining when an instrument was international so as to attract the application of the Convention and required that the instrument show that two of the places mentioned therein were situated in different States as a condition for such application. It was agreed that this meaning should be clarified by a suitable amendment to the opening words of article 1 (2) (e) and (3) (e) and the matter was referred to the drafting group. The Commission adopted a proposal by the drafting group to amend the opening words of article 1 (2) (e) and (3) (e) as follows:

"(e) Specifies at least two of the following places and indicates that any two so specified are situated in different States:".

77. A suggestion was made that in order to attract the application of the Convention, article 1 (2) and (3) should require the words "International bill of exchange (Convention of ...)" or the words "International promissory note (Convention of ...)" to be contained only in the heading of an instrument and not in the text of an instrument. A further suggestion was made that those words should be required to be in a single specified language, as that requirement would enable an instrument to which the Convention applied to be easily identified. The Commission did not accept those suggestions.

78. It was agreed that the draft Convention should not contain a definition of the term "writing". Rather, the meaning of the word should be left open so that it could be interpreted in accordance with evolving practices and technological

developments. It was stated that it would be difficult to arrive at a satisfactory definition of "writing". Moreover, the word was usually not defined in national legislation concerning negotiable instruments, and the absence of a definition had not led to difficulties.

79. A view was expressed that a problem could arise where an instrument consisted of several pages. In some cases, for example, the essential terms of the instrument were contained in one or more pages, but the signature appeared only on the last page, and it was questionable whether such an instrument was valid under the draft Convention. It was suggested that if it were intended that the essential requirements of an instrument could be contained in separate pages, the draft Convention should expressly so provide.

80. According to another view, no problems arose with respect to the validity under the Convention of an instrument consisting of several pages, when all the pages were fixed together to form a single document. It was noted, however, that some of the terms of a multi-paged instrument might make the instrument conditional, contrary to article 1 (2) (b) and (3) (b) of the draft Convention.

81. It was agreed that instruments consisting of several pages were covered by the draft Convention.

82. It was observed that a provision excluding cheques from the scope of application of the Convention was necessary for those legal systems where a cheque was regarded as a form of bill of exchange.

83. The Commission, after deliberation, adopted article 1 with the above-mentioned modifications.

Questions relating to article 2

84. A view was expressed that the Convention should require an instrument to be linked in some way with a contracting State in order for the Convention to apply to the instrument. According to that view, it was unacceptable for a drawer in a non-contracting State to be able to draw a bill on a drawee in another non-contracting State and to make the bill subject to the Convention.

85. In addition, it was also noted that some legal systems did not recognize the autonomy of a drawer or maker to choose the law to which an instrument was subject. If an action were brought on the instrument in such a State and that State was not a party to the Convention, it would not be bound to apply the Convention; rather, it would apply the rules of the legal system indicated by its own conflict of laws rules. Those conflict of laws rules were not likely to indicate the rules applied in a contracting State (i.e., the Convention) if there existed no link between the instrument and a contracting State. The possibility that a court in a non-contracting State would not apply the Convention, notwithstanding that a party had purported to make the instrument subject to the Convention, would lead to uncertainties with respect to the application of the Convention and the legal rules governing international negotiable instruments. Although that uncertainty could not be completely eliminated, it might be moderated by requiring, for example, that the place where the instrument was drawn or the place where it was to be paid was situated in a contracting State.

86. According to another view, the uncertainty referred to in the previous paragraph was not a major concern to bankers. They would prefer to be able to determine from the face of the instrument whether the Convention applied. They

could do so with reasonable certainty under article 2 as it was drafted at present. If the Convention were to require a link between a place indicated on the instrument and a contracting State, bank personnel handling an instrument would have to ascertain whether or not the indicated place was in a State that was a party to the Convention.

87. Questions were raised as to the meaning and effect of article 2 as drafted at present. According to one view, article 2 was misleading, since it implied that a court in a contracting State would in all cases be compelled to apply the Convention if a party had made the instrument subject to the Convention, whether or not the places indicated on the instrument were situated in contracting States. It was stated that there were cases in which some States, even if they were parties to the Convention, would, by application of their conflict of laws rules, apply national legal rules rather than the Convention. For example, where an instrument was drawn in a non-contracting State, a court in the contracting State might apply the law of the State where the instrument was drawn, rather than the Convention.

88. The prevailing view, however, was that the intent and meaning of article 2 was that a court in a contracting State must apply the Convention to an instrument meeting the requirements of the Convention, even if the conflict of laws rules of that State would result in the application of some other law.

89. A view was expressed that under that interpretation of article 2, there would exist a conflict between the Convention now being drafted and the 1930 Geneva Convention for the Settlement of Certain Conflicts of Laws in Connection with Bills of Exchange and Promissory Notes. It was questioned, therefore, whether a State which was a party to that convention could also become a party to the Convention currently being drafted by the Commission.

90. Owing to the apparent lack of clarity with respect to the meaning and effect of article 2, the article was referred to the drafting group with instructions to clarify the article so as to reflect its intended meaning and effect. The drafting group proposed to amend the beginning of article 2 to read as follows: "A Contracting State shall apply this Convention without regard to whether ...".

91. During consideration of that proposal by the Commission, it was noted that since the Convention was addressed only to contracting States, the proposed wording would not preclude a non-contracting State from applying the Convention if its conflict of laws rules indicated that the Convention should apply. However, a view was expressed that the proposed wording did not conform to the wording usually found in private international law conventions and that the original wording of article 2 as it appeared in document A/CN.9/274 was preferable, subject to replacing the word "applies" with the words "shall apply". The Commission decided to retain the original wording subject to the suggested change.

Interpretation of the Convention (article 3)

92. A view was expressed that the reference in article 3 to the observance of good faith in international transactions should be deleted. It was suggested that the obligation to observe good faith was incumbent upon the parties to a transaction and should not be directed to a tribunal interpreting the Convention, which was the object of article 3. In addition, it was unclear what was meant by the observance of good faith in international transactions. The prevailing view, however, was that the reference to the observance of good faith should be retained.

Definition of "signature" (articles 4 (10) and X)

93. A view was expressed that the draft Convention should not contain a definition of the term "signature". In support of that view, it was stated that the methods of signature in use and legally recognized varied from State to State, and it would be difficult for the Convention to reflect those local practices and legal requirements; rather, the question of permissible methods of signature should be left to be resolved by national law. It was also stated that no problems had arisen from the absence of a definition of "signature" in the Uniform Law annexed to the 1930 Geneva Convention providing for a Uniform Law for Bills of Exchange and Promissory Notes. That point, however, was disputed.

94. According to another view, the word "signature" should be defined in the draft Convention. It was observed that, under article 1 (2) (f) and (3) (f), the signature of the drawer or maker was an indispensable element for the Convention to apply to an instrument. It was, therefore, important for parties to have some certainty that a signature by a particular method would be valid in States where the instrument might be negotiated or sued upon. Without a definition specifying the methods of signature that were acceptable, that certainty would not exist.

95. The Commission considered various methods of signature that should be included in a definition of the term "signature". It was generally agreed that the definition should refer to handwritten signature, which was the most traditional method. A view was expressed that the mechanical methods of signature referred to in article 4 (10) should also be included in the definition. Further suggestions were made that the definition should refer to "illegible signature", i.e., signature by characters or symbols, and to signature by electronic means. According to another view, however, signature by electronic means should not be included, since that might imply that an instrument need not be on paper.

96. Differing views were expressed with respect to article X. According to one view, if the Convention were to define signature as including both handwritten and non-handwritten forms of signature, article X must be included in order to meet the interests of those States that required signatures made in their territories to be handwritten. It was noted, however, that the concerns of those States might, to some extent, be met by article 30, under which a person whose signature was forged was not liable on the instrument.

97. According to another view, article X should not be included in the draft Convention. In support of that view, it was stated that inclusion of the article would produce uncertainty with respect to the validity of a signature and would impair the circulation of instruments. In dealing with instruments containing signatures by methods other than handwriting, bank personnel would have to determine whether the State where the signature was made had deposited a reservation pursuant to article X. Moreover, the Convention did not require the instrument to indicate the place where the signature was made; it would therefore be impossible in many cases to ascertain whether the signature had been made in a State that had deposited a reservation pursuant to article X.

98. A suggestion was made that if article X were retained, the draft Convention should require the instrument to indicate the place where the signature was made. According to another suggestion, it should be clarified whether or not a State that had not deposited an article X declaration must regard as invalid a signature by non-handwritten means made in a State that had deposited such a reservation.

99. Some of those objecting to article X stated that if retention of article 4 (10) made it necessary to include article X to meet the interests of some States, it was preferable for article 4 (10) to be deleted. Others preferred to retain article 4 (10) and also to include article X, if necessary.

100. It was generally agreed that the most desirable approach would be to attempt to formulate, as a compromise, a definition of "signature" that would take into account the interests of those favouring a broad definition of the word and those favouring a restricted definition and that would make it possible to avoid including article X. In that connection, a view was expressed that the definition should refer expressly to handwritten signature and facsimile thereof, but should also be broad enough to include signatures effected by certain other methods in use in various parts of the world. However, to be satisfactory to those States that required signatures in their territories to be handwritten in order to protect against falsification, those other methods should be limited to methods that afforded a degree of authenticity equivalent to that afforded by handwritten signatures. It was stated that such an approach would allow courts or national legislatures to recognize the validity of methods of signature that might come into practice in the future but that conformed to the general parameters of the definition.

101. It was also suggested that the definition should provide a reasonable degree of certainty that a signature by a particular method would be regarded as valid, although it was recognized that the commercial risk with respect to methods that were not expressly mentioned in the definition could not be completely eliminated.

102. Taking into account these views and based upon a proposal of the drafting group, the Commission agreed to adopt the following definition of signature and to delete article X:

'Signature' means a handwritten signature, or a facsimile thereof, or any other means of effecting the equivalent authentication, and 'forged signature' includes a signature by the wrongful or unauthorized use of such means."

Articles 4 (11) and 71 (1 bis)

103. The Commission considered article 4 (11), which sets forth a definition of "money" and "currency". It also considered a note by the secretariat (A/CN.9/285, paras. 1-4) prepared in response to a request to the secretariat by the Working Group on International Negotiable Instruments to consult with the International Monetary Fund (IMF) on the definition set forth in article 4 (11).

104. The observer of IMF noted that article 4 (11) enabled an instrument governed by the draft Convention to be drawn in a monetary unit of account established by an intergovernmental institution or by agreement between two or more States. In so far as the Special Drawing Right (SDR) established by IMF was concerned, it was intended to be the subject of transactions between States members of IMF who were also members of a special SDR department within IMF. IMF had laid down rules regulating the transfer of SDRs among members qualified to make transfers, and those rules related, for example, to exchange rates and the value dates for transactions. While the draft Convention permitted instruments to be drawn in monetary units of account and regulated the transfer of such instruments, it was not intended that the draft Convention should derogate from the rules laid down by IMF regulating the transfer of SDRs, or the rules laid down by any other intergovernmental institution or by two or more States regulating the transfer of a

monetary unit of account established by such intergovernmental institution or States. In the view of the observer of IMF, it was desirable to reflect this intention in the draft Convention by adding a proviso to article 4 (11) on the following lines: "provided that the Convention shall apply without prejudice to the rules of an intergovernmental institution or to the stipulations of an agreement between two or more States relating to a monetary unit of account established by such institution or agreement".

105. The view was expressed that the addition of the suggested proviso was unnecessary, since there was little danger that the draft Convention would be interpreted as derogating from the rules of an intergovernmental institution or the stipulations of an intergovernmental agreement relating to a monetary unit of account established by such institution or agreement. The view was also expressed that the concerns of IMF might be met by the inclusion of a statement in the report of the Commission on the work of its current session to the effect that, in the understanding of the Commission, the draft Convention was not to be so interpreted. The prevailing view, however, was that the addition of a proviso clearly resolving the issue in question was preferable, and the Commission decided to include a proviso on the lines of that suggested by the observer of IMF.

106. The Commission also examined the following two considerations in respect of monetary units of account established by agreement between two or more States, which had been brought to the attention of the Commission by the secretariat (see A/CN.9/285, para. 4):

(a) The definition in article 4 (11) would include the units of account denominated in specified quantities of gold found in several important liability conventions. Those did not appear to be among the units of account contemplated by the Working Group when they formulated the definition;

(b) Units of account created by agreement of two or more States for specific purposes might be terminated when that purpose was fulfilled. It was possible that no means of converting those units into replacement currencies or units of account would be devised, especially if the States concerned were unaware that private obligations had been created in that unit of account.

107. The Commission entrusted to an ad hoc working party the task of formulating a proviso to be added to the definition in article 4 (11) (see paras. 104-105 above) and also the task of determining whether article 4 (11) needed additional modification in the light of the considerations set forth in paragraph 106 above.

108. The view was expressed that the provisions of article 71 (1 bis) regulating the payment of an instrument the amount of which was expressed in a monetary unit of account needed clarification. That article might be interpreted as providing that, when the amount of an instrument is expressed in a monetary unit of account that is transferable between the person who is to make payment and the person who is to receive payment and when the instrument specifies that payment is to be made in a currency of payment, payment nevertheless cannot be made in the specified currency. The wording of the article might therefore be modified to avoid this interpretation. The Commission referred that article for consideration to the same ad hoc working party examining article 4 (11).

109. The Commission considered a proposal of the ad hoc working party and of the drafting group to add to the end of article 4 (11) the following text:

"provided that this Convention shall apply without prejudice to the rules of the intergovernmental institution or to the stipulations of the agreement."

and to replace paragraph (1 bis) of article 71 by the following text:

"(1 bis) When the amount of an instrument is expressed in a monetary unit of account within the meaning of article 4 (11) and the monetary unit of account is transferable between the person making payment and the person receiving it, then, unless the instrument specifies a currency of payment, payment shall be made by transfer of the monetary unit of account. If the monetary unit of account is not transferable between those persons, payment shall be made in the currency specified in the instrument or, if no such currency is specified, in the currency of the place of payment."

110. After deliberation, the Commission adopted those proposals.

Article 6 (b) and (c)

111. The Commission considered article 6 (b) and (c), which provides that the sum payable by an instrument is deemed to be a definite sum even though the instrument states that it is to be paid by instalments at successive dates (article 6 (b)) or by instalments at successive dates with the stipulation on the instrument that upon default in payment of any instalment the unpaid balance becomes due (article 6 (c)).

112. The view was expressed that those provisions were not acceptable because they led to technical difficulties (e.g. complexity in the provisions of the instruments, difficulties in calculating the interest due). Article 6 (c) in particular was open to objection because it might encourage the drawing of instruments that operated harshly against the debtor.

113. The prevailing view, however, was that since the practices described in those two provisions were current in international trade, the usefulness of the draft Convention would be enhanced if instruments subject to it were permitted to include such provisions. Furthermore, while an acceleration clause under article 6 (c) might be harsh in a given case, a debtor was free to object to such a term which the creditor wished to include in an instrument. After deliberation, the Commission adopted article 6 (b) and (c).

Instruments with floating interest rates (article 7)

114. The Commission considered whether the draft Convention should include a provision permitting the issuance of instruments with floating (or variable) interest rates. In that connection the Commission had before it a note by the secretariat dealing with this issue (A/CN.9/285, paras. 5-12). The Commission considered the issue in the light of the following new article 7 (5) proposed by the secretariat:

"(5) A rate at which interest is to be paid may be expressed either as a definite rate or as a variable rate. For a variable rate to qualify for this purpose, it must vary in accordance with provisions stipulated in the instrument and those provisions must refer to one or more other rates of interest [that are both publicly available and not subject to the control of the payee]."

115. There was support for the view that the draft Convention should not include such a provision. The inclusion of a floating interest rate might lead to uncertainty as to the extent of the debtor's payment obligations. This uncertainty might in turn impede the circulation of instruments with such rates. Furthermore, unless safeguards were adopted, a floating interest rate might be influenced by the creditor in his own favour. In addition, since interest rates tended in general to increase and not decrease, a floating interest rate would probably not favour the debtor. As a result, the view was expressed that such a provision was not in the interest of developing countries. It was also noted that instruments with floating rates had not been regarded as significant in international trade by financial institutions in some countries.

116. The prevailing view, however, was that the inclusion of a provision permitting floating interest rates would greatly increase the attractiveness of the draft Convention to the financial community. Instruments with floating interest rates were currently in use in certain financial markets, although they did not qualify as negotiable instruments. Inclusion of a provision in the draft Convention permitting floating interest rates would allow such instruments to qualify as negotiable instruments and to circulate. This in turn could be expected to reduce the interest charged on those instruments. While a floating interest rate might introduce an element of uncertainty as to the extent of the debtor's payment obligations, article 6 (d) of the draft Convention already countenanced an element of uncertainty by providing that a sum payable by an instrument is deemed to be a definite sum although it is to be paid according to a rate of exchange to be determined as directed by the instrument. Furthermore, recent experience had shown that interest rates often decreased, and therefore it could not be concluded that a floating interest rate would normally favour the creditor.

117. The Commission considered the requirements contained in the new article 7 (5) proposed by the secretariat that in stipulating a variable interest rate, the provisions in the instrument "must refer to one or more other rates of interest [that are both publicly available and not subject to the control of the payee]". The view was expressed that it was undesirable for the proposed paragraph to permit the variation of the interest rate on the instrument to be linked only to a variation in one or more other interest rates; in practice, floating interest rates were linked to commodity price indices or other sources. While there was some support for this view, the prevailing view was that a reference to only one or more other rates of interest should be permitted.

118. The Commission considered whether the proposed new paragraph in the draft Convention should require that the reference rates of interest were to be "both publicly available and not subject to the control of the payee". It was noted that both requirements were directed to reducing the possibility that the reference rate of interest might be influenced by an interested party. It was also noted that the meaning of "publicly available" might be uncertain. For example, there might be differences of view as to whether a rate used by only a few banks and available only upon inquiry from one of those banks was "publicly available". In view of that uncertainty, the suggestion was made that the requirement should be deleted and that the parties should be given autonomy to select a reference interest rate, provided that that rate was determined or determinable on the instrument.

119. With regard to the words "not subject to the control of the payee", the view was expressed that the concept of "control" was unclear, and it was suggested that the clearer phrase "not subject to unilateral variation by the payee" might be substituted. It was also noted that a reference solely to "control of the payee" was insufficient; protection against control of the reference interest rate by other parties to the instrument (e.g. endorser) was also needed.

120. After deliberation, the Commission decided to retain the concepts underlying the use of the wording "both publicly available and not subject to the control of the payee", but referred the text of article 7 (5) prepared by the Secretariat to an ad hoc working party for consideration in the light of the deliberations in the Commission.

121. The Commission considered the following new article 7 (5) proposed by the ad hoc working party:

"(5) A rate at which interest is to be paid may be expressed either as a definite rate or as a variable rate. For a variable rate to qualify for this purpose, it must vary in relation to one or more reference rates of interest in accordance with provisions stipulated in the instrument and each such reference rate must be published or otherwise available to the public and not subject, directly or indirectly, to unilateral determination by the payee or by any person named in the instrument at the time the bill is drawn or the note is made."

122. The question was raised as to the time that was relevant under the proposed paragraph for referring to the reference rate. It was stated in reply that the reference rate contemplated was one that would be published or available during the lifetime of the instrument whenever a need to refer to that rate arose (e.g. when it became necessary to calculate interest).

123. The question was raised as to what words were qualified by the phrase "at the time the bill is drawn or the note is made". It was stated in reply that the phrase qualified the words "named in the instrument". It was agreed that the text of the paragraph needed modification to make this clear.

124. It was observed that the phrase "any person named in the instrument" might lead to difficulties of interpretation where a person was named in the instrument only for the purpose of identifying a reference rate (e.g. the reference rate is identified as that published by a named bank). Since it was not intended that the phrase should cover a person named in the instrument only for that purpose, it was agreed that the text of the paragraph needed to be modified to clarify which persons were intended to be covered by the phrase.

125. After deliberation, the Commission adopted the new paragraph, entrusting to the drafting group the task of making the needed modifications referred to in the previous two paragraphs.

126. A proposal was made that the uncertainty as to the extent of the debtor's payment obligations and hardship to the parties created by extreme fluctuations of interest rates might be mitigated if the provision to be included in the draft Convention permitted the parties to stipulate that the interest rates applicable could neither exceed nor be less than specified rates of interest. Under another proposal, any instrument that provided for floating interest rates would be required to establish a reasonable minimum and maximum rate of interest. The view was expressed that imposing such limitations was undesirable because they were not currently found in the use of floating interest rates in commercial (as contrasted with consumer) loans.

127. The following specific proposals were made to add a new paragraph (5 bis) to article 7 in order to provide for limits on the amount by which variable interest rates on an instrument could fluctuate:

Proposal A

"In order for a floating interest to be agreed to, the instrument shall at the same time indicate the rules agreed on to prevent fluctuations, whether upwards or downwards, from having consequences which, according to reasonable criteria in international trade, are contrary to equity, to the detriment of any of the parties and of the holder of the instrument."

Proposal B

"Where the rate at which interest is to be paid is expressed as a variable rate, it may be stipulated that such rate shall not be less than or exceed a specified rate of interest."

128. In support of proposal A, it was stated that some parties to commercial transactions would be willing to agree to the use of instruments subject to variable interest rates only if the fluctuation of the interest rate, and thus of the amount of interest that they would be required to pay, was limited. The acceptability of instruments covered by the Convention, and of the Convention itself, would therefore be enhanced if the Convention provided for such limits. Proposal A allowed the parties the freedom to agree upon various techniques for limiting the amount of fluctuation in accordance with their commercial needs, while proposal B restricted them to one particular technique. It was also stated that proposal A would require the parties to agree upon a limit to the amount the interest rate could fluctuate, thereby reducing the extent to which a variable interest rate provision on an instrument would depart from the fundamental principle of negotiable instruments law that an instrument should not be subject to circumstances external to it. According to another view, however, by providing for such limits, the Convention would depart even further from that principle.

129. In support of proposal B, it was stated that it was preferable to leave it to the parties to agree as to whether or not the amount of fluctuation of the rate of interest on an instrument should be limited, rather than to obligate them to agree upon such limits. If proposal A were adopted, parties who desired not to have such limits would not be able to use an instrument governed by the Convention. In addition, the criteria specified under proposal A for the validity of limits agreed upon by parties were vague and would lead to uncertainty as to whether a variable interest rate provision would be regarded as valid in particular cases.

130. Some representatives who favoured proposal B in principle suggested that the parties should not be restricted to formulating limits by stipulating a minimum or maximum rate of interest; they should also be permitted to agree upon other techniques. Some such representatives stated that the right of parties to agree upon limits of any nature was implicit in paragraph (5) of article 7 as adopted by the Commission; therefore, it might be preferable not to include a paragraph (5 bis).

131. After deliberation, it was decided to add paragraph (5 bis) to article 7 along the following lines:

"(5 bis) Where the rate at which interest is to be paid is expressed as a variable rate, it may be stipulated on the instrument that such rate shall not be less than or exceed a specified rate of interest, or that the variations are otherwise limited by express provisions."

132. The Commission considered what should be the consequences if the parties selected a floating interest rate that did not meet the requirements of the proposed article 7 (5) (e.g. the parties selected a rate that was not publicly available). It was noted that in those circumstances article 7 (4) would apply and the instrument would bear no interest. The Commission considered an alternative solution prepared by the secretariat (A/CN.9/285, para. 8) and reflected in the following proposed new article 7 (6):

"(6) If a variable rate does not qualify under the preceding paragraph or for any reason it is not possible to determine the numerical value of the variable rate for any period, interest shall be payable for the relevant period at the rate specified in article 66 (2)."

133. The Commission decided that the Convention should provide for a substitute rate of interest to apply when the variable rate selected by the parties did not meet the requirements of the draft Convention.

134. The drafting group, after considering the discussions of the Commission concerning new paragraphs (5), (5 bis) and (6) of article 7, proposed that those paragraphs be worded as follows:

"(5) A rate at which interest is to be paid may be expressed either as a definite rate or as a variable rate. For a variable rate to qualify for this purpose, it must vary in relation to one or more reference rates of interest in accordance with provisions stipulated in the instrument and each such reference rate must be published or otherwise made available to the public and not subject, directly or indirectly, to unilateral determination by any person who, at the time the bill is drawn or the note is made, is named in the instrument as payee, drawee, or actual or prospective party or other holder.

"(5 bis) Where the rate at which interest is to be paid is expressed as a variable rate, it may be stipulated expressly on the instrument that such rate shall not be less than or exceed a specified rate of interest, or that the variations are otherwise limited.

"(6) If a variable rate does not qualify under paragraph (5) of this article or for any reason it is not possible to determine the numerical value of the variable rate for any period, interest shall be payable for the relevant period at the rate calculated in accordance with article 66 (2)."

135. A question was raised concerning the meaning of the words "prospective party" at the end of the proposed paragraph (5). It was stated that the intention in respect of the provision in which those words occurred was to refer to all persons named in the instrument at the time it was drawn or made who were to have rights on the instrument or were expected to have such rights and who should not be able unilaterally to affect the reference rate of interest. The provision was intended to exclude other persons, for example those mentioned in the variation clause, such as a bank, who would set the reference rate of interest.

136. Paragraphs (5), (5 bis) and (6) as proposed by the drafting group were adopted.

Questions relating to article 8 (2)

137. A proposal was made to delete article 8 (2) on the grounds that the legal effects of the rule contained in that provision were not clear, e.g., whether presentment, notice of dishonour or protest were necessary with regard to an

endorser after maturity. Moreover, it was stated that the situation envisaged in article 12) was not likely to occur frequently. After deliberation, it was decided to retain article 8 (2).

Incomplete instruments (article 11)

138. A proposal was made to add to article 11 a new paragraph providing that a holder may complete an instrument only before the instrument has matured. It was contended that if, at the date of maturity, an instrument was not complete in accordance with the requirements of article 1, the instrument could not be regarded as covered by the Convention. That contention was, however, disputed. In opposition to the proposal, it was noted that it was possible for an instrument to be transferred after maturity; thus, it should be possible to complete an instrument after maturity. The proposal was not adopted.

139. Article 11 was adopted.

Clauses prohibiting further transfers (articles 16 and 20 (3))

140. A view was expressed that the treatment of the subject of a stipulation by a drawer or maker restricting transfer of the instrument (article 16) and the subject of a clause by an endorser restricting further transfer of an instrument (article 20 (3)) should be maintained in separate articles. It was noted that the effect of article 16 was to restrict the transferability of an instrument ab initio, while the effect of article 20 (3) was to restrict only transfer subsequent to the transfer under the endorsement. Treating the two subjects in separate articles would avoid any misunderstanding as to the time when the restriction on transfer became effective. According to another view, however, the use and understanding of the Convention would be facilitated if all provisions concerning clauses restricting the transfer of an instrument were included in article 16, which was contained in the chapter of the draft Convention entitled "Transfer".

141. In connection with those articles, the Commission considered what should be the effect of an endorsement and transfer of an instrument that did not conform to the restrictive clause. According to one view, the endorsement and transfer should be regarded as ineffective. According to another view, the endorsement and transfer should be deemed to have been made for collection only. It was agreed that whatever solution was adopted, it should be expressly set forth in the draft Convention.

142. The Commission reached the following decisions on those issues. The subjects of stipulations by a drawer or maker restricting transfer of an instrument and of clauses by an endorser restricting further transfer should both be dealt with in article 16, in separate paragraphs. In both cases, the consequence should be that the instrument was not transferable except for purposes of collection. If an instrument was purported to be transferred with an endorsement that did not indicate that the transfer was for collection only, the endorsement should be deemed to be an endorsement for collection.

143. After considering these questions, the drafting group proposed that article 16 should read as follows:

"(1) When the drawer or the maker has inserted in the instrument such words as 'not negotiable', 'not transferable', 'not to order', 'pay (X) only', or words of similar import, the instrument may not be transferred except for

purposes of collection, and any endorsement, even if it does not contain words authorizing the endorsee to collect the instrument, is deemed to be an endorsement for collection.

"(2) When an endorsement contains the words 'not negotiable', 'not transferable', 'not to order', 'pay (X) only', or words of similar import, the instrument may not be transferred further except for purposes of collection, and any subsequent endorsement, even if it does not contain words authorizing the endorsee to collect the instrument, is deemed to be an endorsement for collection."

144. It was noted that the proposed paragraph (2) consisted of an amended version of former article 20 (3). The Commission adopted the proposal of the drafting group.

Implied acceptance or representation (article 30)

145. It was noted that references to implied waiver had been omitted from articles 52, 58 and 63, but that the reference to implied acceptance or representation had been retained in article 30. A view was expressed that that reference in article 30 should also be deleted. In support of that view, it was stated that uncertainty would exist if a person whose signature had been forged could be made liable on the instrument as a result of conduct from which his acceptance or representation could be implied. It would be difficult for a purported transferee to know whether such an implied act had occurred, and whether the forger or the person whose signature was forged was liable on the instrument. Moreover, covering such implication would be contrary to the scheme of the Convention, according to which matters affecting the rights and duties of the parties arising from the instrument must be explicit. It was noted that deleting the reference would not affect the liability for damages off the instrument of a person who, by his conduct, induced another person to believe that he had accepted or represented the forged signature to be his own.

146. According to another view, however, the reference in article 30 should be retained, on the grounds that it was appropriate for a person to be liable on the instrument when, by his conduct, he impliedly accepted or represented the forged signature to be his own. It was also stated that the underlying question dealt with by article 30 was simply one of authority to sign the instrument, and that such questions generally depended upon circumstances off the instrument. Another view, however, was that article 30 did not deal with the question of authority.

147. A proposal was made to delete the possibility of both express and implied acceptance or representation by deleting the second sentence of article 30. In support of that proposal, it was stated that to make the person whose signature was forged liable on the instrument without his actually having signed it was contrary to the scheme of the Convention. Such a person should only be liable for damages off the instrument. According to the prevailing view, however, at least a person who had expressly indicated that a forged signature was his own or that he would be bound by it should be liable on the instrument. As a result, the proposal to delete the second sentence of article 30 was not accepted.

148. A proposal was made to delete the words "expressly or impliedly" from article 30. In opposition to that proposal, it was stated that the deletion of the words would result in uncertainty as to whether an implied acceptance or representation would be covered.

149. After discussion, it was generally agreed that article 30 should be redrafted without using the words "expressly or impliedly", and in such a way as to enable a court to imply from the conduct of a person whose signature had been forged that he had accepted or represented the forged signature to be his own, with the result that he would be liable on the instrument.

150. A proposal was made to amend the second sentence of article 30 to read as follows:

"Nevertheless, where such person has accepted to be bound by the forged signature or represented that the signature was his own, he is liable as if he had signed the instrument himself, according to the terms of such acceptance or representation."

151. It was stated that the words "according to the terms of such acceptance or representation" were intended to permit a person whose signature had been forged to accept the forged signature or represent that it was his own only towards particular holders. After deliberation, the Commission decided to adopt the proposal to amend the second sentence of article 30, but to exclude those words.

Exclusion of liability by drawer (article 34 (2))

152. With respect to the last sentence of article 34 (2), a view was expressed that a stipulation by the drawer of a bill excluding or limiting liability for payment should be operative only if the drawee had accepted the bill, or if the bill had been signed by a guarantor for the drawer or for the drawee since the drawer should not be able to disclaim his liability unless there was another primarily liable party. The prevailing view, however, was that the present text of article 34 (2), under which the stipulation would be effective if another party was or became liable on the bill, should be retained. In support of that view, it was stated that it was sufficient if there was a party, whether he be an acceptor or an endorser, from whom payment of the bill could be claimed. In addition, it was noted that the present text reflected a compromise between the Geneva and the Anglo-American systems on this point. It was also in accordance with commercial practice.

Article 42

153. The view was expressed that in commercial practice guarantees were sometimes entered into which were not written on the instrument or on a slip affixed thereto ("allonge"). Under most national laws those guarantees were valid, although they might only be effective as between the immediate parties to the contract of guarantee. Since, however, the present wording of article 42 (2) might be interpreted as not permitting those guarantees, it was proposed that the article should be modified to prevent that interpretation. The prevailing view, however, was that the present wording of article 42 (2) was satisfactory. In support of that view, it was observed that the draft Convention did not in general deal with agreements outside the instrument and that the addition of wording which clarified in one instance that those agreements were permitted might lead to the inference that, in other instances where no such words were added, the Convention would exclude agreements outside the instrument. It was also observed that any provision to be added to the draft Convention to permit the creation of guarantees outside the instrument might need to determine the nature of permitted guarantees, and this determination might lead to an undesired limitation on the autonomy of the parties to enter into guarantees of their choice. The Commission therefore did not adopt that proposal.

154. The Commission considered article 42 (6), which was a provision introduced into the draft Convention by the Working Group at its fourteenth session (see A/CN.9/273, para. 110, and annex).

155. After deliberation, the Commission adopted article 42.

Article 46

156. The Commission considered article 46, which had been modified by the Working Group at its fourteenth session (see A/CN.9/273, paras. 112 and 113, and annex). There was support for the view that the possibility given to the drawer under the first sentence of article 46 (1) to stipulate that a bill must be presented for acceptance before the occurrence of a specified event needed reconsideration, since the inclusion of such a term in the instrument might be regarded as making the order contained in the instrument conditional. The instrument would then not satisfy the requirement contained in article 1 (2) (b) that it contain an unconditional order to pay from the drawer to the drawee.

157. It was noted in reply that the provision under consideration had been included because inquiries among banking and trade institutions had shown that stipulations requesting the holder not to present the bill before the occurrence of a specified event (e.g. that presentment was to be delayed until the merchandise sold under an underlying transaction had arrived or until the customs clearance of the merchandise) were not infrequently included in bills of exchange. If the specified event did not occur, presentment for acceptance as directed by the stipulation would obviously be impossible and be dispensed with under article 48 (b), and the holder would acquire an immediate right of recourse by virtue of article 50 (1) (b) and (2). The present wording was therefore a compromise solution directed to the needs of international trade and enjoyed the support of banking circles.

158. After deliberation, the Commission adopted article 46.

Articles 51 (h) and 58 (2) (d)

159. After deliberation, the Commission adopted article 51 (h), which was a provision modified by the Working Group at its fourteenth session (see A/CN.9/273, paras. 115-117, and annex). The Commission also adopted article 58 (2) (d).

Article 66

160. The Commission considered the following issues arising in relation to article 66 (2). It was noted that the article dealt with the rate of interest payable on an unpaid instrument after maturity, and that the first two sentences of the article provided for rates of interest to be payable at 2 per cent per annum above certain rates specified in those two sentences. However, the figure two had been placed by the Working Group within square brackets, leaving it to the Commission to take a final decision on the rate of interest to be payable.

161. In its third sentence article 66 (2) contemplated that a rate to be specified in the draft Convention would apply in the absence of the rates specified in the first two sentences of the paragraph; however, no decision had been taken by the Working Group as to what that rate might be, leaving it to the Commission to decide.

162. In regard to the rates set forth in the first two sentences of the article, the view was expressed that the reference interest rate given in those sentences (i.e. "the official rate (bank rate) or other similar appropriate rate effective in

the main centre of the country ...") might not exist in some countries. In other countries there might be more than one official rate. In still other countries, it was uncertain whether there existed an official or "bank" rate. Accordingly, the interest rate to be specified in the last sentence, which applied in the absence of the rates set forth in the previous sentences, assumed great importance. The view was also expressed that the official rate effective in the main centre of the country where the instrument was payable (first sentence of article 66 (2)) might not be an appropriate rate if the instrument was payable in a currency other than the currency of the country where the instrument was payable.

163. The view was also expressed that setting the rate payable by adding 2 per cent to the reference rate was unjustified and resulted in a rate that was excessive. Under another view, however, a rate of 2 per cent above the reference rate was justifiable, since the reference rate would usually be set by public financial institutions at a level below that set by commercial institutions for default in payment under instruments used in international trade transactions. An addition of 2 per cent to the reference rate was therefore needed to bring the rate payable into line with commercial practice.

164. In regard to the rate to be inserted in the last sentence of the article, there was general agreement that it would be inappropriate for that sentence to contain a specific figure to be effective during the entire period the Convention would be in force. Any figure inserted, even though appropriate at the time it was inserted, might later cease to be appropriate because of changed economic conditions. It was therefore preferable for that sentence to refer to a rate that was determinable, but that would vary with changing economic conditions. It was observed in that connection that it would be desirable to select a determinable rate that would not vary widely in the process of determination in different countries.

165. The following proposals were made as to the rate of interest to be payable under the third sentence of article 66 (2):

(a) The rate that would be adjudged by a court under national law for non-payment of an instrument;

(b) The rate that the creditor would have to pay if he borrowed in a commercial market the amount of money in regard to which there had been default in payment;

(c) A rate that would be set by each State at the time it became a party to the draft Convention. That rate would be applied under the Convention by the courts of that State;

(d) The prime rate of interest in a country;

(e) The reasonable commercial rate existing at the time interest had to be calculated.

166. Views were exchanged on those proposals. It was observed that banking circles in some countries were reluctant to accept a rate that was not clearly and immediately ascertainable at the time that interest had to be calculated. Accordingly, rates that could be identified only after court intervention, or on which there might be differences of view (e.g. reasonable commercial rates), were not acceptable.

167. In opposition to the proposal set forth in paragraph 165 (a) above, it was noted that adoption of a rate that would be adjudged by a national court might result in wide disparities in the rates that were effective in different countries or even in the different constituent units of a federal state. Furthermore, the rates set under national legislation might not reflect the compensation actually awarded by courts for non-payment. For example, in some countries, the interest rates set under national legislation were low in comparison with rates that would adequately compensate creditors, taking into account prevailing commercial conditions. In some of those countries the courts would, in addition to the interest adjudged under the legislation, also award a sum by way of damages as additional compensation. Moreover, if a State had become a party to the 1930 Geneva Convention providing a Uniform Law for Bills of Exchange and Promissory Notes without making a reservation under article 13 of annex II thereto, adoption of this proposal would result in the award of interest at only 6 per cent (article 48 of the Uniform Law), although this rate was not in line with current commercial rates of interest.

168. There was some support for the adoption of the rates referred to in paragraph 165 (b) and (e). The adoption of those rates was opposed on the ground that they might not be easily ascertainable.

169. There was greater support for the following rate devised on the lines of that described in paragraph 165 (a): the rate that would be adjudged under national law in respect of default of payment on an instrument in court proceedings instituted at the place where the instrument was payable. It was noted that court proceedings for default would normally be instituted at the place where the instrument was payable, and accordingly the rate in question would be easily ascertainable.

170. The Commission decided to refer to an ad hoc working party the revision of article 66 (2) and (3) in the light of the deliberations in the Commission. The working party was also requested to consider the effect of modifications to article 66 (2) and (3) on other articles of the draft Convention where article 66 (2) and (3) was referred to. Another issue referred to the working party was whether the reference in article 66 (1) (b) (ii) to "the sum specified in paragraph (1) (b) (i)" was appropriate or whether it should be limited to "the amount of the instrument".

171. In the light of proposals by the ad hoc working party and the drafting group, the Commission decided to amend article 66 (2) to read as follows:

"The rate of interest shall be the rate that would be recoverable in legal proceedings taken in the jurisdiction where the instrument is payable."

172. In connection with article 66 (3), which dealt with discount for payment of a bill before maturity, it was noted that the same problems concerning the existence of "the official rate (bank rate)" encountered in connection with article 66 (2) did not exist with respect to "the official rate (discount rate)". However, observations were made with respect to the stipulation of a rate in the last clause of article 66 (3) comparable to those expressed in relation to the last sentence of article 66 (2). Accordingly, the Commission decided to amend the last clause of article 66 (3) to read as follows:

"or, if there is no such rate, then at such rate as is reasonable in the circumstances."

173. The Commission adopted a proposal to add to article 66 a new paragraph (2 bis), as follows:

"(2 bis) Nothing in paragraph (2) prevents a court from awarding damages or compensation for additional loss caused to the holder by reason of delay in payment."

3. Consideration of further questions and draft articles

Conditional endorsements (article 17)

174. It was generally agreed that, under article 17, an endorsement for the purpose of transferring an instrument to a holder must be unconditional. If an endorsement was made subject to a condition, the condition was to be disregarded with respect to the transfer of the instrument, and the transferee became a holder even if the condition was not fulfilled. However, differing views were expressed with respect to the effect, if any, of a condition upon the liability of the endorser to parties subsequent to the endorsee. According to one view, the condition should also be disregarded with respect to the liability of the endorser towards those parties. It was stated that that approach would promote the circulation of an instrument.

175. According to another view, however, a condition should not be disregarded with respect to the liability of the endorser towards parties subsequent to the endorsee. In support of that view, it was stated that if an instrument was transferred to an endorsee in connection with an underlying transaction between the endorser and the endorsee that was subject to a condition and the condition was not fulfilled, the endorser justifiably expected not to be liable, whether the condition was set forth in the endorsement on the instrument or was only contained in the underlying agreement. If the endorser had a defence against the endorsee based upon the non-fulfilment of the condition, holders subsequent to the transferee could also be affected by the condition by virtue of article 25; i.e., a subsequent holder who knew of the condition and that it had not been fulfilled would be subject to a defence based upon the condition.

176. It was stated that if a condition in an endorsement were to be prohibited and disregarded with respect both to the transfer of the instrument and the liability of the endorser, there would exist an inconsistency between article 17 and article 40 (2), under which an endorser was able to exclude or limit his liability.

177. The Commission decided that article 17 should be redrafted in such a way that a condition in an endorsement was to be disregarded as to parties subsequent to the endorsee, and it referred the article to the drafting group.

178. The drafting group proposed the addition of the following sentence to article 17 (2):

"The written condition is deemed not to have been written as to parties and transferees subsequent to the endorsee."

179. Views were expressed in opposition to that wording, based upon the reasoning set forth in paragraph 175 above. It was stated that it might be wrong to disregard totally the condition in respect of the liability of the endorser towards parties subsequent to the endorsee since it may be relevant as a notice about a possible defence of the endorser. After deliberation, the Commission adopted the proposal of the drafting group.

Pledge of instrument by endorsement

180. A proposal was made to add a new article 20 bis reading as follows:

"When an endorsement contains the statements 'value in security' ('valeur en garantie'), 'value in pledge' ('valeur en gage'), or any other statement implying a pledge, the endorsee

"(a) Is a holder by virtue of article 4 (6) and (7) and article 28;

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

"(c) May only endorse the instrument for purposes of collection;

"(d) Is subject to claims and defences which may be set up against the endorser only in the cases specified in articles 25 and 26.

Such an endorsee, having endorsed for collection, is not liable upon the instrument to any prior holder."

181. In support of that proposal, it was stated that a pledge of an instrument by endorsement ("endossement pignoratif") was used in international trade as a means of obtaining credit and that the draft Convention should contain special rules with respect to the rights and status of a pledgee by endorsement. According to another view, however, there was no practical need for such a provision, since the device contemplated by the provision was not in common use. A number of questions and objections were raised as regards certain elements of the proposed text, in particular the rules set forth in subparagraphs (a) and (b). The Commission decided not to entertain the proposal since it could not at the present stage engage in a careful consideration of the various elements of the proposal and its implications upon other articles of the draft Convention.

Questions relating to articles 34 (1), 35 (1) and 40 (1)

182. A proposal was made to delete the word "subsequent" from article 34 (1). It was stated that it was unclear whether the phrase "any subsequent party" referred to a party subsequent to the holder or one subsequent to the drawer. A further view was expressed that this article should also obligate the drawer to pay a guarantor of an endorser who had paid an instrument. Accordingly, it was agreed to amend article 34 (1) along the following lines: by deleting the words "to any subsequent party" and to replace them with the words "to any endorser or the endorser's guarantor". It was also agreed that the same language should be used in article 35 (1) and, with the word "subsequent" inserted, in article 40 (1), since here it was necessary to clarify that the endorser was not obligated to prior endorsers or their guarantors.

183. The Commission adopted the following proposals of the drafting group:

(a) In article 34 (1), to replace the words "any subsequent party" with the words "any endorser or any endorser's guarantor";

(b) In article 35 (1), to replace the words "any party" with the words "any endorser or any endorser's guarantor".

(As regards article 40 (1), see the proposal of the drafting group in para. 209 below.)

Article 38 (1) and its relationship with article 11

184. The Commission considered the meaning of the term "incomplete instrument" in articles 11 and 38 (1) and whether the provisions in article 38 (1) dealing with the acceptance by a drawee of an incomplete bill of exchange before it had been signed by the drawer were satisfactory.

185. It was noted that different meanings were given to the term "incomplete instrument" in articles 11 and 38 (1). Under article 11, an incomplete bill of exchange was one that satisfied the requirements of subparagraph (a) of article 1 (2) that the bill contain in its text the words "international bill of exchange (Convention of ...)" and of subparagraph (f) that it be signed by the drawer, but that failed to satisfy one or more of the other requirements set out in article 1 (2). Under article 38 (1), however, a bill of exchange that satisfied only the requirements of article 1 (2) (a) was regarded as an incomplete instrument that might be accepted by the drawee.

186. The view was expressed that as a result of the inconsistency in meaning of the term "incomplete instrument" as used in article 11 and in article 38 (1), a drawee who accepted a bill before it had been signed by the drawer pursuant to article 38 (1) did not receive the protection conferred by article 11 (2), since the latter article conferred protection only on an incomplete instrument as defined in article 11 (1). Since commercial needs sometimes made it desirable for a drawee to accept a bill before it had been signed by the drawer, it was desirable that a drawee who so accepted a bill should be given the protection conferred by article 11 (2). That protection might be given by amending the opening words of article 11 (1) to read: "An incomplete instrument which satisfies the requirements set out in subparagraph (a) of paragraph (2) of article 1, and bears the signature of the drawer or the drawee ...".

187. In reply, it was stated that the use of the term "incomplete instrument" in article 38 (1) was inaccurate, since a bill of exchange that had not been signed by the drawer was not an incomplete instrument, but rather a writing that was not a negotiable instrument at all. A negotiable instrument came into being only after signature by the drawer. No attempt should therefore be made to bring within the definition of "incomplete instrument" in article 11 an instrument that had not been signed by the drawer. It was stated that neither article 11 (1) nor article 38 (1) contained a true definition of the term "incomplete instrument" and that it was therefore not inconsistent that the two provisions, for their different purposes, referred to instruments that were not complete as regards different requirements.

188. The Commission, after deliberation, decided to amend either article 11 or article 38 (1) so as to provide that a writing that merely satisfied the requirement of article 1 (2) (a) may be accepted by the drawee and that, in such case, the provisions of article 11 applied accordingly to the signing by the drawer and any further completion by the drawer or another person. (See proposal by the drafting group to amend article 38 (1), para. 209 below.)

Article 48

189. It was noted that while article 48 specified the situations in which a necessary or optional presentment for acceptance was dispensed with, it did not address the situation in which there was delay in making presentment for acceptance by the holder and in which the delay was excusable in that it was caused by circumstances that were beyond the control of the holder and that he could neither avoid nor overcome. In contrast, excusable delay was addressed by article 52 (1)

(in relation to presentment for payment), by article 58 (1) (in relation to protesting an instrument for dishonour) and by article 63 (1) (in relation to giving notice of dishonour). It was proposed that article 48 should be brought into line with the other articles referred to and that the holder should be obligated to make presentment for acceptance with reasonable diligence after the cause for delay ceased to operate.

190. It was noted in reply that article 48 did not address the question of excusable delay in making presentment for acceptance because article 47 required presentment within a fixed period of time rather than within a reasonable period of time, as was the case in some legal systems. The issue raised by excusable delay was resolved through article 48 (b), under which presentment was completely dispensed with if it could not with reasonable diligence be made within the prescribed time-limits. It was also observed that the system reflected in articles 47 and 48 worked with fairness in most instances. For example, when a bill was drawn payable on demand or at a fixed period after sight, article 47 (e) provided that it must be presented for acceptance within one year of its date. Thus the holder had sufficient time for presentment, and if presentment was prevented by excusing circumstances during the whole year, it was fair for the holder to be permitted to dispense with presentment for acceptance and to proceed against the parties to the instrument. It was observed, on the other hand, that the system might not work fairly in other instances. For example, if a bill provided on its face that it was to be presented within 30 days after the date of the instrument and presentment was prevented by excusing circumstances during the 30 days but became possible on the thirty-second day, it was unfair that the holder should be entitled immediately after the lapse of the 30 days to proceed against the parties to the instrument on the basis of constructive dishonour by non-acceptance.

191. In regard to article 48 (b), it was proposed that the words "with reasonable diligence" be replaced by the words "because of circumstances which are beyond the control of the holder and which he could neither avoid nor overcome". In support of that proposal, it was noted that the former words had a subjective meaning while the latter words had an objective meaning; the latter words were therefore preferable. The retention of the words "with reasonable diligence" was supported for the reason that they had a well-understood meaning. In addition, it was noted that a failure to present an instrument for acceptance might occur in two somewhat different situations: first, where circumstances of force majeure prevented presentment, and secondly, when the drawee could not be traced. The words "because of circumstances which are beyond the control of the holder and which he could neither avoid nor overcome" did not readily apply to the latter situation, but the words "with reasonable diligence" did so apply.

192. The following proposal was made with a view to resolving the difficulties noted above in regard to article 48:

(a) To add the following new paragraph to article 48:

"(1) Delay in making a necessary presentment for acceptance within the time-limit stated within the bill 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 the delay ceases to operate, presentment must be made with reasonable diligence."

(b) To transform subparagraph (a) of article 48 into paragraph (2);

(c) To replace subparagraph (b) of article 48 by the following new paragraph (3):

"(3) When a necessary presentment for acceptance cannot be effected within the time-limit prescribed in article 47 (e) due to circumstances which are beyond the control of the holder and which he could neither avoid nor overcome, the necessary presentment for acceptance is dispensed with."

193. After deliberation, the Commission adopted the proposal, with the modification that reference should be made in the proposed new paragraph (3) to both article 47 (d) and 47 (e).

Articles 68 (3) and 73 (2)

194. The Commission considered the consequences of payment by a drawee who had accepted a bill (article 68 (3)), as contrasted with the consequences of payment by a drawee who had not accepted a bill (article 73 (2)). It was noted that in the former case, the drawee, as acceptor, who paid a holder who was not a protected holder, would be discharged of liability only if he did not know at the time of payment that a third person had asserted a valid claim to the instrument or that the holder had acquired the instrument by theft, forged the signature of the payee or an endorsee, or had participated in such theft or forgery (article 68 (3)). Thus, other parties were discharged by virtue of article 73 (1) only if the acceptor was without such knowledge. When the drawee had not accepted the bill, however, it appeared that payment by him, irrespective of such knowledge, discharged all parties (article 73 (2)). It was suggested that this inconsistency was not justifiable and that, therefore, article 73 (2) should be amended by adding wording along the following lines: ", except where the drawee pays a holder who is not a protected holder and knows at the time of payment that a third person has asserted a valid claim to the instrument or that the holder acquired the instrument by theft or forged the signature of the payee or an endorsee, or participated in such theft or forgery".

195. The proposal was opposed on the ground that articles 68 (3) and 73 were directed to different issues. Article 68 (3) was directed to the issue of when a party was discharged by payment. Article 73 (1), however, was directed to the relationship between the discharge of a party and the discharge of other parties who had rights of recourse against the discharged party. Article 73 (2) in turn dealt with the relationship between payment by the drawee and the discharge of all parties.

196. The Commission, after deliberation, decided to adopt the proposal.

Article 68 (4) (a bis)

197. The question was raised how a person other than the drawee, acceptor or maker who paid an instalment under an instrument payable by instalments at successive dates could exercise a right of recourse against prior parties. It was noted that under article 69 (4), a party making a partial payment was entitled to receive from the holder a certified copy of the instrument and any authenticated protest (article 69 (4) (b)) and could exercise his right of recourse by relying on that certified copy. It was agreed that a provision on the lines of article 69 (4) (b) should be included in article 68.

Articles 44, 68, 69 and 73

198. It was stated that the draft Convention did not contain satisfactory rules covering the following situations or issues: discharge in case of payment by guarantor of the liability of the party for whom he became guarantor, the protection of a party paying an instrument payable by instalments at successive dates, and the effect of partial payment by the guarantor of the drawee. To cure these deficiencies, the following proposals were made:

Article 44

The present text of article 44 should be transformed into paragraph (2) and the following text should precede it as new paragraph (1):

"(1) Payment of an instrument by the guarantor in accordance with article 68 discharges the party for whom he became guarantor of his liability on the instrument to the extent of the amount paid."

Article 68

Add in paragraph (4) the following subparagraph (a ter):

"(a ter) If an instrument payable by instalments at successive dates is dishonoured by [non-acceptance or] non-payment as to any of its instalments and a party, upon the dishonour, pays the instalment, the holder who receives the payment must give the party a certified copy of the instrument and any necessary authenticated protest in order to enable such party to exercise a right on the instrument."

Article 69

Amend paragraph (3) (a) to read as follows:

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

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

Amend paragraph (4) (b) to read as follows:

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

(a) ...

(b) The holder must give such party a certified copy of the instrument and any necessary authenticated protest in order to enable such party to exercise a right on the instrument."

Article 73 (1)

Replace in paragraph (1) the words "a right of recourse" by the words "a right on the instrument".

199. As regards the suggested modification of article 44, it was understood that payment by the guarantor would not discharge the party for whom he became guarantor of his liability on the instrument as against the guarantor himself.

200. As regards the proposed new subparagraph (a ter) of article 68 (4), it was agreed to retain the words placed between square brackets (i.e. "non-acceptance or"), although dishonour by non-acceptance of an instrument payable by instalments at successive dates was probably rare in practice.

201. As regards the proposed changes in article 69 (3) and (4), it was agreed that partial payment by the guarantor of the drawee should be covered by paragraph (3) since the liability of such guarantor was a primary liability in that he in fact guaranteed payment. The insertion of the word "necessary" in paragraph (4) (b) was justified by the fact that the party paying did not need any authenticated protest in all circumstances, for example where protest was dispensed with.

202. The proposed replacement in articles 69 (4) (b) and 73 (1) of the words "a right of recourse" by the words "a right on the instrument" was justified on the ground that it would enlarge the scope beyond the rights of recourse as covered by articles 55 to 64 so as to include rights against primary obligors and the rights of a guarantor against the party for whom he became liable.

203. The Commission, after deliberation, adopted the proposals, subject to drafting amendments.

Article 71

204. It was noted that article 71 (1) provided that an instrument must be paid in the currency in which the amount of the instrument is expressed. If the currency in which an instrument was payable were not the currency of the country of the payee and if payment was demanded in currency notes, the person who had to make payment might find it impossible to make payment because he did not, at the time payment was demanded, possess sufficient foreign currency notes to pay the amount due. In that event, a dishonour of the instrument by non-payment would occur. Thus, the article in its present form gave an opportunity to a holder who wished to contrive a dishonour to do so by demanding payment in foreign currency notes without prior notice. This problem might be solved by including in article 71 a provision obligating the holder to give, prior to the demand for payment, notice to the party from whom payment would be demanded that he required payment in foreign currency notes.

205. The prevailing view, however, was that the difficulty sought to be addressed did not arise in practice, since holders of instruments did not usually wish to obtain currency notes when the amount of the sum payable was considerable. If it were decided that a provision should be included in article 71 under which a holder who required payment in foreign currency notes was obligated to give notice of this requirement to the party from whom payment was demanded, such a provision would have to address the following issues: the period of advance notice; whether notice had to be given even in cases where payment was demanded in the exercise of a right of recourse; and the effect of a failure to give notice. The Commission, after deliberation, decided not to include in the draft Convention a provision requiring advance notice.

Article 72 (1)

206. It was noted that article 72 (1) was intended to avert any derogation by the draft Convention of the right of a contracting State to enforce exchange control regulations applicable in its territory. However, some States had enacted provisions for the protection of their currencies that could not be regarded as exchange control regulations, and it was desirable that the draft Convention should not derogate from those regulations as well. To achieve this objective, it was proposed that the words "and provisions relating to the protection of its currency" be added after the words "exchange control regulations". After deliberation, the Commission adopted that proposal.

207. A proposal was made that the words "or may take into consideration" be added after the words "bound to apply". In support of that proposal it was noted that under certain conventions relating to the conflict of laws a contracting State may take into consideration certain legal regulations and, in particular, the mandatory regulations of another State, while not being bound to apply them. While there was some support for this proposal, the prevailing view was that the addition of the proposed words would create uncertainty as to the meaning of article 72 (1). That article was directed to enabling the enforcement of mandatory regulations applicable in the territory of a contracting State, and the article was not the appropriate place to seek to deal with mandatory regulations applicable outside the territory of a contracting State. After deliberation, the Commission did not accept the proposal.

Article 80 (1) (c)

208. It was noted that this article provided that, against the acceptor of a bill payable on demand, a right of action arising on an instrument may no longer be exercised after four years had elapsed from the date on which it was accepted. The provision would not be workable, however, if the acceptor had not indicated the date of his acceptance or if, failing such indication by the acceptor, the drawer or the holder had not inserted the date of acceptance (article 38 (3)). It was therefore proposed to add the words "or, in case no such date is shown, the date of the instrument" at the end of article 80 (1) (c). After deliberation, the Commission adopted that proposal.

4. Certain drafting proposals not considered by the Commission

209. The Commission did not have time at the current session to consider the following recommendations of the drafting group as to the formulation of substantive decisions of the Commission with respect to articles 38 (1), 40 (1), 41, 48, 66, 72 (1), 73 (2) and 80 (1) (c):

Article 38 (1) (see para. 188 above):

Add as a second sentence the following:

"In such case, article 11 shall apply accordingly to completion by the drawer or another person."

Article 40 (1) (see paras. 182-183 above):

For "any subsequent party" read "any subsequent endorser or such endorser's guarantor"

Article 41 (see para. 62 above):

Before article 41 insert the following heading:

"F. The transferor by endorsement or by mere delivery"

Amend paragraph (1) to read as follows:

"(1) Unless otherwise agreed, a person who transfers an instrument, by endorsement and delivery or by mere delivery, represents ..."

Amend the end of paragraph (3) to read as follows:

"plus interest calculated in accordance with article 66, against return of the instrument."

Article 48 (see paras. 189-193 above):

Amend the text of the article to read as follows:

"(1) Delay in making a necessary presentment for acceptance within the time-limit stated within the bill 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 the delay ceases to operate, presentment must be made with reasonable diligence.

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

"(3) When a necessary presentment for acceptance cannot be effected within the time-limit prescribed in subparagraph (d) or (e) of article 47 due to circumstances which are beyond the control of the holder and which he could neither avoid nor overcome, the necessary presentment for acceptance is dispensed with."

Article 66 (see paras. 160-173 above):

Replace paragraphs (2) and (3) with the following paragraphs (2), (2 bis) and (3):

"(2) The rate of interest shall be the rate that would be recoverable in legal proceedings taken in the jurisdiction where the instrument is payable.

"(2 bis) Nothing in paragraph (2) prevents a court from awarding damages or compensation for additional loss caused to the holder by reason of delay in payment.

"(3) The discount shall be at the official rate (discount rate) or other similar appropriate rate effective on the date when recourse is exercised at the place where the holder has his principal place of business, or if he does not have a place of business his habitual residence, or, if there is no such rate, then at such rate as is reasonable in the circumstances."

Article 72 (1) (see para. 206 above):

After "in its territory" insert "and its provisions relating to the protection of its currency"

Article 73 (2) (see paras. 194-196 above):

Amend the end of the sentence to read as follows:

"the same extent, except where the drawee pays a holder who is not a protected holder and knows at the time of payment that a third person has asserted a valid claim to the instrument or that the holder acquired the instrument by theft or forged the signature of the payee or an endorsee, or participated in such theft or forgery."

Article 80 (1) (c) (see para. 208 above):

Amend the end of the text to read as follows:

"it was accepted, or, if no such date is shown, from the date of the instrument;"

210. The Commission decided to incorporate the above drafting proposals into the text of the draft Convention to be circulated to Governments and international organizations for their comments and to indicate that those proposals had not been reviewed by the Commission.

211. The text of the draft Convention as revised by the Commission at the current session is set forth in annex I to this report.

5. Procedure for adopting the draft Convention as a convention

(a) Choice of procedure to be followed

212. The Commission considered the various procedures that might be followed for the adoption of the draft Convention.

213. The Secretary of the Commission indicated that informal consultations held between delegates had shown that there was support for each of three possible procedures. The first possible procedure was that the Commission recommend to the General Assembly that the Assembly convene a diplomatic conference to adopt as a convention the draft Convention as finalized at the current session of the Commission. The second possible procedure was that the draft Convention as finalized at the current session of the Commission be reviewed by the Working Group on International Negotiable Instruments prior to the twentieth session of the Commission and be thereafter considered and approved by the Commission at its twentieth session. The Commission would then recommend to the Assembly that the draft Convention be adopted by the Assembly without a review of the substance of the text. The third possible procedure was that the draft Convention as finalized at the current session of the Commission be considered and approved by the Commission at its twentieth session without any intervening review by the Working Group, but with the necessary preparatory work, including the establishment of draft final clauses, being done by the secretariat. The Commission would then recommend to the General Assembly that the draft Convention be adopted by the Assembly without a review of the substance of the text. Support and opposition was expressed for each of these procedures.

214. There was support for the view that the Commission should recommend the convening of a diplomatic conference to finalize the work engaged in by the Commission during more than 10 years. It was noted that the convening of a diplomatic conference was the normal procedure for the adoption of a universal convention on private law matters. It was also noted that the higher cost of a diplomatic conference would be offset by better methods and conditions of work. The conference, which might be for a duration of three or four weeks, would give all States an opportunity to participate in a very detailed review of the draft Convention. A text that emerged after such a discussion was likely to command wide acceptance. A recommendation for the convening of a diplomatic conference was opposed on the ground that the holding of a conference was the most expensive method proposed and that such an expenditure could not be justified in the light of the current financial difficulties facing the Organization. The view was also expressed that the holding of a diplomatic conference might not be the best procedure for adopting as a convention a text of the extreme technical complexity of this draft Convention. There was no certainty that such a text would be improved by the deliberations at a diplomatic conference. It was also observed that a recommendation for the convening of a diplomatic conference would only be made if the Commission was satisfied that the draft Convention had been reviewed and perfected by the Commission as far as it lay within the powers of the Commission. The deliberations in the Commission had revealed, however, that certain States were of the view that the draft Convention might still have inconsistencies and lacunae. A diplomatic conference, providing a forum for international negotiation with wide participation, was required when a convention had to establish a balance between parties with opposed economic or political interests, but no such opposition of interests was involved in the draft Convention. In reply to the argument that the holding of a diplomatic conference was expensive, it was observed that the proper body to decide whether the expenditure of the sum required was justified or not was the General Assembly; the Commission was not competent to decide on that question.

215. There was wide agreement that if the holding of a diplomatic conference was to be dispensed with as envisaged in the second and third possible procedures noted in paragraph 213 above, those procedures should ensure, to the extent possible, that the draft Convention would receive the same careful examination by all States that it would receive if a diplomatic conference were convened.

216. There was general agreement that whether the second or third possible procedure were to be adopted, a necessary element in both procedures would be the transmission of the text as finalized at the current session to all States for their comments. That would enable States that had not participated in the seventeenth and the current sessions of the Commission to express their views on the draft Convention. The receipt of comments from all States and their consideration by the Commission would enable the Commission to state to the General Assembly that in finalizing the draft Convention account had been taken of the views of all States. It was noted that such transmission could be effected on the authority of a decision of the Commission, although under another view such transmission should more appropriately be made after the consideration of the present report by the Assembly.

217. It was observed that the significant difference between the second and third possible procedures noted in paragraph 213 lay in the fact that, under the second possibility, the draft Convention as finalized at the present session would be reviewed by the Working Group prior to the twentieth session of the Commission; the third possibility did not provide for such a review. A review by the Working Group was supported on the ground that a review might considerably lessen the burden on

the Commission at its twentieth session in finalizing and approving the draft Convention. It was noted that the work of the Working Group at its thirteenth and fourteenth sessions had considerably facilitated the work of the Commission at its present session. Furthermore, the Working Group could consider the comments received from Governments after the draft Convention had been transmitted to them and make recommendations to the Commission as to how any concerns expressed in those comments might be satisfied.

218. Views were expressed opposing a review by the Working Group. It was observed that developing countries experienced difficulties in financing the attendance of their delegates at sessions of working groups. It was also observed that because of the time constraints involved in the transmission of the draft Convention to States and the receipt and analysis of the comments sent in response to the transmission, it might not be possible to place those comments before the Working Group at a session scheduled to be held early in 1987. The usefulness of a Working Group session would be greatly reduced if the comments of Governments could not be placed before the Working Group for examination. It was also observed that a two-week session of the Working Group, combined with two weeks of the Commission's twentieth session at which the final text of the draft Convention would be approved, would result in additional expense, thereby reducing the financial advantages to be gained from following that procedure rather than recommending the convening of a diplomatic conference.

219. It was generally agreed that whether the second or the third possible procedure referred to in paragraph 213 were to be adopted, the draft Convention should be discussed at the twentieth session of the Commission article by article. Such discussion would provide a substitute for the article-by-article discussion that would take place at a diplomatic conference. The view was expressed that in order to limit the deliberations within the Commission to a reasonable time period, it might be desirable that, except in exceptional cases, decisions taken by the Commission at earlier sessions should not be reopened at the twentieth session.

220. At the conclusion of the deliberations on the three possible procedures referred to in paragraph 213, there appeared to be approximately equal support for each of the three possible procedures, with slightly greater support for the adoption of the second procedure. Accordingly, the second procedure was adopted.

(b) Implementation of that procedure

221. The view was expressed that some States members of the Commission might not send delegates to participate in a session of the Working Group as observers. However, if those States were members of the Working Group, they might send delegates to the session of the Working Group. Participation would thereby be enlarged. Accordingly, the Commission decided that the Working Group should be expanded to include all States members of the Commission. The invitation to all States not members of the Commission to participate as observers should indicate the desirability of their attendance if they wished to participate in the preparation of the final text of the draft Convention. That would encourage all States who wished to participate in the session to do so and would result in wide participation in the discussion of the draft Convention. The invitation to participate as observers in the twentieth session of the Commission should be similarly worded.

222. The Commission considered the mandate to be given to the Working Group. It was agreed that the Working Group should consider the comments received from Governments on the draft Convention and should make recommendations to the

Commission as to how any concerns expressed in those comments might be satisfied. The Working Group should also examine the draft Convention with a view to discovering any inconsistencies among its provisions or any lacunae. The Working Group should also be at liberty to suggest improvements to the draft Convention.

223. The Commission requested the secretariat to transmit the draft Convention as finalized at the current session to all States as soon as possible after the conclusion of the session, with a request that comments on the draft Convention be submitted to the secretariat by 15 November 1986, since the Working Group would be scheduled to meet early in January 1987. To the extent that time constraints permitted the preparation of the necessary documentation and translation, the comments received should be submitted to the Working Group in the official languages of the Commission. The secretariat was also requested to submit to the Working Group draft final clauses to be included in the draft Convention. One of those clauses might reflect the results of consultations between States that were parties to the 1930 Geneva Convention providing a Uniform Law for Bills of Exchange and Promissory Notes and the 1930 Geneva Convention for the Settlement of Certain Conflicts of Laws in connection with Bills of Exchange and Promissory Notes as to the procedures to be followed by those States in becoming parties to the draft Convention under discussion. Such consultations, which had been informally commenced on the occasion of the current session of the Commission, were aimed at discussing and overcoming the possible conflict between the two 1930 Geneva Conventions and the draft Convention under discussion.

224. The Commission further decided that a period of two weeks should be allotted at its twentieth session for a discussion article by article of the draft Convention, taking into account the report of the Working Group on the work of its fifteenth session and the comments submitted by Governments. It was expected that the draft Convention, as finalized at the twentieth session, would be transmitted to the General Assembly with the recommendation that it be adopted as a convention by the Assembly without amendment of the substance of the text. A view was expressed that the recommendations to be made for the adoption of the draft Convention by a diplomatic conference or the Assembly might be decided at the twentieth session, after having ascertained in particular whether the Assembly would be prepared to adopt the Convention without amending the substance of the draft text.

B. Electronic funds transfers 6/

Introduction

225. The Commission, at its fifteenth session in 1982, had before it a report of the Secretary-General that considered several legal problems arising out of electronic funds transfers (A/CN.9/221). In the light of those problems, the report suggested that, as a first step, the Commission should prepare a legal guide on the problems arising out of electronic funds transfers. The guide, it was suggested, should be oriented towards providing guidance for legislators or lawyers preparing the rules governing particular systems for such transfers.

226. The Commission accepted that recommendation and requested the secretariat to begin the preparation of a legal guide on electronic funds transfers in co-operation with the UNCITRAL Study Group on International Payments. 7/ Several chapters of the draft legal guide were submitted to the Commission at its seventeenth session in 1984 (A/CN.9/250 and Add.1-4) and the remaining draft chapters were submitted to the Commission at its eighteenth session in 1985 (A/CN.9/266 and Add.1 and 2).

227. At its eighteenth session in 1985, the Commission requested the Secretary-General to send the draft legal guide on electronic funds transfers to Governments and interested international organizations for comment. 8/ It also requested the secretariat, in co-operation with the UNCITRAL Study Group on International Payments, to revise the draft in the light of the comments received for submission to the Commission at its nineteenth session for consideration and possible adoption.

228. At the current session, the Commission had before it a report of the Secretary-General concerning the legal guide and possible future work by the Commission in the area of electronic funds transfers (A/CN.4/278). The report contained a brief summary of the replies received from Governments and international intergovernmental and non-governmental organizations and, in an annex, proposed various modifications to the legal guide in the light of those replies. The report recommended that the Commission consider adopting the legal guide and requesting that it be published in an appropriate manner. In addition, the report concluded that to the extent that the use of electronics had led to changes in banking procedures, new legal rules in the area of electronic funds transfers were needed. It discussed possible approaches and procedures for formulating model legal rules in that area.

Discussion at the session

229. The Commission welcomed the completion of the Legal Guide on Electronic Funds Transfers. It was suggested that in setting forth the various practices worldwide with respect to electronic funds transfers and in pointing out the legal issues arising from those practices, the Legal Guide would itself promote the international harmonization of practices and legal rules with respect to such funds transfers. It was generally agreed that the Legal Guide should be published in such a way as to achieve a wide distribution to interested circles. A view was expressed that the widest distribution could be achieved if the Legal Guide were adopted by the Commission and published as a United Nations publication. The prevailing view, however, was that it would be inappropriate for the Commission to adopt the Legal Guide as a product of the work of the Commission itself without having engaged in substantive discussions on it. Accordingly, the Commission authorized the secretariat to publish the Legal Guide as a product of the work of the secretariat, in all official languages of the United Nations.

230. With respect to possible future work by the Commission in the area of electronic funds transfers, a view was expressed that the Legal Guide was, for the present, sufficient for the promotion of harmonization and unification of national practices and laws in this area and that the formulation of model legal rules need not now be attempted. The prevailing view, however, was that by addressing the relevant issues and suggesting possible solutions at an early stage, such model rules could influence the development of and help prevent disparities in those practices and laws. Therefore, the Commission decided to undertake work on the formulation of model legal rules on electronic funds transfers and to entrust this work to the Working Group on International Negotiable Instruments, which might be renamed for this purpose the Working Group on International Payments. The priority to be given to the work would depend on the other decisions on future work to be adopted at the current session. The Commission agreed that the Working Group should begin its work by considering the legal issues set forth in the last chapter of the Legal Guide as well as any other issues the secretariat might consider appropriate to place before the Working Group.

231. The Commission also agreed that the rules should be flexible and should be drafted in such a way that they did not depend upon specific technology. Where appropriate, the rules should present alternative solutions in order to take into account differences in banking systems. A view was also expressed that the model rules should deal with the relationship between banks as well as the relationship between banks and their customers.

CHAPTER III

NEW INTERNATIONAL ECONOMIC ORDER 9/

A. Industrial contracts

Introduction

232. The Commission had before it the report of its Working Group on the New International Economic Order on the work of its eighth session (A/CN.9/276). The report set forth the deliberations of the Working Group on the basis of the introduction to the legal guide on drawing up international contracts for the construction of industrial works and draft chapters of the guide, which had been prepared by the secretariat (A/CN.9/WG.V/WP.17 and Add.1-9). It was noted that at its ninth session the Working Group would complete its examination of the draft chapters of the guide and thereby discharge the mandate entrusted to it by the Commission. The draft chapters would then be placed before the Commission for adoption at its twentieth session.

Discussion at the session

233. The Commission expressed its appreciation to the Working Group for the progress made in the preparation of the guide. It was noted that due to the anticipated length of the guide, it would not be possible for the Commission at its twentieth session to review the guide in detail to ensure consistency throughout the guide with respect, for example, to the analysis contained in the various chapters and the terminology used. In that regard, it was noted that the Secretariat was engaged at present in revising all the draft chapters of the guide and that it was paying close attention to the matter of consistency within the guide. It was also noted that the secretariat would distribute the draft chapters as early as possible in order to allow delegations and observers sufficient time to review the guide for consistency as well as substance prior to the ninth session of the Working Group.

234. The Commission took note of the report of the Working Group on the work of its eighth session and welcomed the intention of the Working Group to submit the legal guide to the Commission at its twentieth session for its consideration.

B. Future work in the area of the new international economic order

Introduction

235. In view of the fact that the work of the Commission on the legal guide on drawing up contracts for the construction of industrial works was approaching its conclusion, the Commission considered possible subjects in the area of the new international economic order on which work might be undertaken in the future. The Commission had before it a note by the secretariat entitled "Future work in the area of the new international economic order" (A/CN.9/277). The note considered four possible subjects on which work might be undertaken: contracts for industrial co-operation; joint ventures; countertrade; and procurement.

236. With regard to contracts for industrial co-operation, the note suggested that work be deferred until the need for it was more clearly established. With regard to joint ventures, the note suggested that where an enterprise from a developing

country had combined with an enterprise from a developed country in a joint venture whose objects included the construction of industrial works, the legal guide on drawing up contracts for the construction of industrial works would provide sufficient assistance to the enterprise from the developing country. With regard to the legal aspects of joint ventures in general, the note suggested that very different forms of joint venture agreements might be entered into and that, accordingly, it was difficult to envisage work that the Commission might usefully undertake in that area.

237. It was noted that countertrade currently formed an increased part of the trade of many developing countries, and the note suggested that work might be undertaken to ascertain and resolve legal difficulties that might be experienced by developing countries in that area. The note also suggested that procurement was an area of great importance to developing countries and that a study of major issues arising in procurement might be beneficial.

Discussion at the session

238. There was support for commencing work in the areas of procurement, countertrade and joint ventures. There was little support for work in the area of contracts for industrial co-operation.

239. A view was expressed that it would be useful to request the secretariat to prepare information relating to all the issues in the long-term programme of work of the Commission in the field of the new international economic order adopted in 1981 and that the decision on the future work of the Commission in that field should be taken only after that information had been considered.

240. There was very wide support for the view that work on procurement should be given priority. That subject was of great importance for the economic development of developing countries. Furthermore, depending on the results of preliminary studies on the major issues in procurement, it might be possible to prepare model regulations on procurement in the context of international trade. Work on procurement would therefore yield a concrete end-product. It was also noted that procurement was a subject of interest both to developed and developing countries, and work in that area would give developed countries an opportunity to present their experience in the area, which might be of value to developing countries. Moreover, as procurement was a procedure antecedent to and closely linked with the drawing up of contracts for industrial works, work on procurement would be a natural sequel to the work on the legal guide on drawing up contracts for industrial works. The Working Group on the New International Economic Order already had a certain degree of expertise in regard to procurement, and it might be anticipated that work on procurement would proceed expeditiously.

241. There was considerable support for undertaking work in the areas of countertrade and joint ventures. The view was expressed that countertrade had become of increased importance to developing countries, in particular because of shortages of convertible currency to finance international trade. Under another view, however, countertrade was not of great significance to some developing countries. It was also suggested that the Economic Commission for Europe (ECE) had under consideration a proposal to prepare a guide to compensation transactions, and it was suggested that work by the Commission might be deferred until it was ascertained whether ECE would undertake the preparation of that guide. If the preparation of a guide were to be undertaken by ECE, then the need for work by the Commission might be assessed after the guide had been prepared.

242. The view was expressed that the creation of joint ventures between enterprises of developed and developing countries was an important instrument for increasing investment in developing countries and that the creation of such joint ventures was encouraged by many developing countries. The subject of joint ventures was therefore of importance to developing countries, and preliminary studies might accordingly be undertaken with a view to identifying legal issues on which the Commission might work. Under another view, however, joint ventures were of such different types that it was difficult to visualize work which would lead to a useful end-product.

Decision of the Commission

243. The Commission noted that the secretariat did not have the resources to undertake work simultaneously on procurement, countertrade and joint ventures, and that the Working Group on the New International Economic Order could not commence work on more than one subject. Accordingly, it was decided that priority be given to work on procurement. It was also decided that the subjects of countertrade and joint ventures should be placed on the Commission's work programme and that preliminary studies prepared by the secretariat on those subjects should be placed before the Commission at a future session. In the light of the preliminary studies, the Commission could decide on priority between those subjects.

CHAPTER IV

LIABILITY OF OPERATORS OF TRANSPORT TER 10/

244. The Commission, at its sixteenth session in 1983, decided to include the topic of liability of operators of transport terminals in its programme of work and to assign work on the preparation of uniform rules on that subject to a working group. 11/ At its seventeenth session in 1984, the Commission decided to assign that work to its Working Group on International Contract Practices. 12/

245. The Commission had before it the report of the Working Group on International Contract Practices on the work of its ninth session (A/CN.9/275). The report set forth the deliberations and decisions of the Working Group with respect to the draft articles of uniform rules on the liability of operators of transport terminals, which had been prepared by the secretariat. The Commission took note with appreciation of the report of the Working Group.

CHAPTER V

CO-ORDINATION OF WORK 13/

A. General co-ordination of work

Introduction

246. The Secretary of the Commission reported on the co-ordination of work accomplished in the field of international trade law during the preceding year. He noted that this co-ordination was one of the principal tasks entrusted to the Commission and that the General Assembly, in its resolution 40/71 of 11 December 1985, had reaffirmed the mandate of the Commission in this field.

247. The reputation of the Commission both as the core legal body in the field of international trade law and as the principal organ for co-ordination of activities was now well established. Consultations with a view to co-ordination continued on a regular basis with organizations such as the Asian-African Legal Consultative Committee (AALCC), the Hague Conference on Private International Law, the Organization of American States, the International Chamber of Commerce and the International Institute for the Unification of Private Law (UNIDROIT), which had well-established relationships with the Commission for co-ordination of work. Consultative relationships had also been strengthened with bodies within the United Nations system such as the United Nations Industrial Development Organization (UNIDO), the United Nations Conference on Trade and Development (UNCTAD) and the World Bank.

Discussion at the session

248. The Secretary-General of AALCC made a detailed statement in which he described the long history of co-operation existing between the Committee and the Commission. He recalled the collaboration that had taken place between the two bodies in the course of the work on the major projects undertaken by the Commission: the United Nations Convention on the Carriage of Goods by Sea, 1978 (Hamburg); the UNCITRAL Arbitration Rules; the United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980); and the UNCITRAL Model Law on International Commercial Arbitration. He recalled in particular the close co-operation in the development of the UNCITRAL Arbitration Rules, which had resulted in those rules being adopted as the rules of the Regional Centres for Arbitration established under the auspices of the AALCC at Kuala Lumpur and Cairo. The collaboration had existed not merely at an inter-institutional level, but had been very close and harmonious at the inter-secretariat level. He expressed the expectation that that collaboration would continue in the future.

249. The Deputy Secretary-General of the Hague Conference on Private International Law also made a statement on the collaboration existing between his organization and the Commission. He mentioned in particular the recent collaboration during the elaboration of the 1985 Hague Convention on the Law Applicable to the International Sale of Goods. The Hague Conference had invited all States members of UNCITRAL to participate in the Special Commission that had prepared the text submitted to the Diplomatic Conference. All States had been invited to participate in the Diplomatic Conference that adopted that Convention. In addition, the Secretary-General of the Hague Conference had transmitted to the Secretary-General of the United Nations the request of the Diplomatic Conference that the United Nations undertake a translation of that Convention into Arabic, Chinese, Russian

and Spanish, which were not working languages of the Hague Conference. The Secretary-General of the United Nations had acceded to that request. Those translations, though not constituting authentic versions of the text of the Convention, would be extremely useful in securing wider acceptance of the Convention. He stated that his organization greatly appreciated that expression of the co-operation that currently existed with the Commission and the United Nations in general.

B. Current activities of international organizations related to the harmonization and unification of international trade law

250. The Commission had before it a comprehensive report on the subject of the current activities of international organizations related to the harmonization and unification of international trade law (A/CN.9/281). That report updated the information contained in an earlier report on the same subject submitted to the Commission at its sixteenth session (A/CN.9/237 and Add.1-3). The current report dealt with the activities under the following headings: international commercial contracts in general; commodities; industrialization; transnational corporations; transfer of technology; industrial and intellectual property law; international payments; international transport; international arbitration; products liability; European Economic Community (EEC); private international law; other topics of international trade law; and facilitation of international trade.

251. The Secretary of the Commission noted that a report of this nature was usually submitted to the Commission at periodic intervals and had been regarded as serving a very useful purpose.

252. Views were expressed supporting the publication of a report of that nature. It was noted that the report mentioned the preparation of model laws by several organizations, and it was observed that it would be useful if future reports were to indicate the extent to which this form of unification was successful through the adoption of the model laws.

253. The Commission took note of the report with appreciation.

C. Current activities of other organizations in the field of international commercial arbitration

Introduction

254. The Commission had before it a report of the Secretary-General that set forth the activities of other international organizations on certain aspects of international commercial arbitration (A/CN.9/280). The report covered activities of the Hague Conference on Private International Law, the International Bar Association, the International Chamber of Commerce and the International Council for Commercial Arbitration. The aspects of arbitration dealt with in the report were multi-party arbitration, taking of evidence in arbitral proceedings, international court assistance in taking of evidence in arbitral proceedings, the law applicable to arbitration agreements, adaptation or supplementation of contracts by third persons, and a code of ethics for arbitrators in international commercial arbitration.

255. The purpose of the report was to provide information on the activities of other organizations and to invite consideration by the Commission of whether any of the issues warranted closer examination from the point of view of co-ordination of work and possible future work by the Commission itself. If such further examination were decided upon, the secretariat could prepare an in-depth study on the issue or issues selected by the Commission, which would include consideration of the desirability and feasibility of possible future efforts in co-operation with the international organizations concerned.

Discussion at the session

256. It was agreed that the Commission, which had made major contributions in the field of international commercial arbitration, should continue to play a role in that rapidly developing field of law. It was suggested, in that connection, that the secretariat continue to monitor developments and to submit from time to time reports of the kind contained in document A/CN.9/280.

257. As regards the choice of issues for closer examination, the Commission agreed that in-depth studies should be prepared by the secretariat on multi-party arbitration and on the taking of evidence in arbitral proceedings. It was stated in support that both issues were of considerable practical importance and that a closer examination was likely to show the desirability and feasibility of preparing rules, whether or not linked to the UNCITRAL Arbitration Rules. While there was some support for examining more closely the issue of adaptation or supplementation of contracts by third persons, the prevailing view was that such an undertaking was not promising, or at least premature. The Commission agreed that the remaining three issues (i.e. international court assistance in taking of evidence in arbitral proceedings, the law applicable to arbitration agreements and a code of ethics for arbitrators in international commercial arbitration) were not appropriate issues for further examination or future work by the Commission.

Decision of the Commission

258. The Commission requested the secretariat to submit to it at a future session in-depth studies on multi-party arbitration and on the taking of evidence in arbitral proceedings. Those studies should include the complete text of any rules prepared by other organizations, detailed comments on such rules, general considerations as to the desirability and feasibility of further efforts in co-operation with other international organizations concerned and suggestions as to any possible future work by the Commission itself. The Commission also requested the secretariat to continue monitoring developments in the field of international commercial arbitration and to report thereon to the Commission at appropriate intervals.

D. Legal aspects of automatic data processing

259. At its eighteenth session in 1985, the Commission considered a report of the Secretary-General on the legal value of computer records (A/CN.9/265) and adopted a recommendation on that subject. At the current session, the Commission had before it a further report on the legal aspects of automatic data processing, with suggestions for future action to co-ordinate work in this field (A/CN.9/279).

260. The report was divided into two parts, the first describing the work of international organizations active in the field of automatic data processing, and the second analysing the work undertaken by reference to the subject-matter covered

by the work. It was noted that while many organizations were undertaking work in that field, each organization dealt with a special area from the point of view of its own interests and needs. While a substantial degree of co-operation already existed between the organizations concerned through the exchange of documents and by attendance as observers at meetings organized by other organizations, a further degree of co-ordination was desirable. Leadership in the effort at co-ordination might be undertaken by the Commission, and it was proposed that that might take the form of a meeting organized by the secretariat in late 1986 or early 1987 to which all interested international organizations might be invited.

261. The view was expressed that the efforts of the secretariat in co-ordinating the work in that area were to be commended. The Commission took note with appreciation of the report submitted to it and generally approved of the course of action proposed therein.

CHAPTER VI

STATUS OF CONVENTIONS 14/

262. The Commission considered the status of conventions that were the outcome of its work, that is, the Convention on the Limitation Period in the International Sale of Goods (New York, 1974) (hereinafter referred to as "the Limitation Convention"); the Protocol amending the Convention on the Limitation Period in the International Sale of Goods (Vienna, 1980); the United Nations Convention on the Carriage of Goods by Sea, 1978 (Hamburg) (hereinafter referred to as "the Hamburg Rules"); and the United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980) (hereinafter referred to as "the United Nations Sales Convention"), as well as the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958). The Commission had before it a note by the secretariat on the status of those Conventions, which set forth the status of signatures, ratifications and accessions to them as at 12 May 1986 (A/CN.9/283).

263. The Secretary of the Commission noted that, subsequent to the issuance of that note, Zambia had become a party on 6 June 1986 to the Limitation Convention and the United Nations Sales Convention. Thus, only one more party was needed for the Limitation Convention to come into force, and two more parties were needed for the United Nations Sales Convention to come into force. Several delegations reported on progress being made within their countries towards ratification of the United Nations Sales Convention. Noting that trend, the Secretary of the Commission expressed optimism that both Conventions would receive the required number of ratifications and accessions by the time of the twentieth session of the Commission in 1987.

264. The Secretary of the Commission reported on activities of the secretariat towards promotion of the Hamburg Rules. It was co-operating in the preparation by UNCTAD of promotional materials on the Hamburg Rules and the United Nations Convention on International Multimodal Transport of Goods. The materials would be designed to promote greater international understanding of and interest in those two Conventions. The secretariat, assisted by a consultant, was preparing the portion of the materials dealing with the Hamburg Rules. In addition, the secretariat had engaged in discussions with the World Bank concerning means by which the World Bank might promote the Hamburg Rules during its contacts with Governments, particularly in connection with the Bank's transport-related activities. The Secretary expressed the belief that as a result of activities such as those, greater international interest in the Hamburg Rules might be expected.

CHAPTER VII

TRAINING AND ASSISTANCE 15/

265. At the eighteenth session of the Commission, in 1985, 16/ there was general agreement that the sponsorship of symposia and seminars on international trade law should be continued and strengthened. It was noted that such symposia and seminars were of great value to young lawyers and government officials from developing countries.

266. By its resolution 40/71 of 11 December 1985 on the report of the Commission on the work of its eighteenth session, the General Assembly reaffirmed the importance, in particular for developing countries, of the work of the Commission concerned with training and assistance in the field of international trade law. It also reaffirmed the desirability for the Commission to sponsor symposia and seminars, in particular those organized on a regional basis, to promote training and assistance in the field of international trade law. The Assembly also expressed its appreciation to those Governments, regional organizations and institutions that had collaborated with the secretariat of the Commission in organizing regional seminars and symposia, and invited Governments, international organizations and institutions to assist the secretariat in financing and organizing seminars and symposia, in particular in developing countries. The Assembly also invited Governments, relevant United Nations organs, organizations, institutions and individuals to make voluntary contributions that might be utilized to enable candidates from developing countries to participate in symposia and seminars.

267. The Commission had before it a report of the Secretary-General on training and assistance (A/CN.9/282), which described the measures taken by the secretariat to implement the decisions of the Commission and of the General Assembly. The report noted, in particular, the association of the secretariat with the holding of two regional seminars. A regional seminar on international trade law and foreign trade (22-23 April 1985, Bogota) was organized by the Chamber of Commerce of Bogota and the UNCITRAL secretariat, with the support of the Organization of American States. A regional seminar on international commercial arbitration (20-22 January 1986, Cairo) was organized by the Asian-African Legal Consultative Committee and the Cairo Centre for International Commercial Arbitration, with the co-operation of the UNCITRAL secretariat.

268. It was noted that the subject-matter of the majority of the symposia and seminars reflected the considerable interest in the work of the Commission in the field of international commercial arbitration and in particular the current interest in the UNCITRAL Model Law on International Commercial Arbitration.

269. The Commission took note with appreciation of the report.

RELEVANT GENERAL ASSEMBLY RESOLUTIONS AND FUTURE WORK 17/

A. General Assembly resolutions on the work of the Commission

270. The Commission took note with appreciation of General Assembly resolution 40/71 on the report of the Commission on the work of its eighteenth session and of Assembly resolution 40/72 of 11 December 1985 on the Model Law on International Commercial Arbitration of the United Nations Commission on International Trade Law.

B. Date and place of the twentieth session of the Commission

271. It was decided that the Commission would hold its twentieth session for four weeks from 20 July to 14 August 1987 at Vienna. The Commission noted that by holding the session so late in the summer with a duration of four weeks, it was expected that the Commission would complete the two major items on its agenda for that session:

(a) Adoption of the final and definitive text of the draft Convention on International Bills of Exchange and International Promissory Notes for submission to the General Assembly;

(b) Adoption of the legal guide on drawing up international contracts for the construction of industrial works, which would be submitted to it by the Working Group on the New International Economic Order.

C. Sessions of working groups

272. It was decided that the Working Group on International Contract Practices would hold its tenth session from 1 to 12 December 1986 at Vienna. It was decided that the eleventh session of that Working Group should be held in 1987 at a date to be set by the secretariat that would enable the transmission to Governments for their comments of the text of the uniform rules on the liability of operators of transport terminals expected to be finalized at that session and the receipt of the comments in sufficient time to be placed before the Commission at its twenty-first session, in 1988.

273. It was decided that the Working Group on International Negotiable Instruments would hold its fifteenth session from 5 to 16 January 1987 at Vienna. The sixteenth session of the Working Group would be held in 1987 after the twentieth session of the Commission, at which time it would begin its consideration of the topic of electronic funds transfers.

274. It was decided that the Working Group on the New International Economic Order would hold its ninth session from 30 March to 16 April 1987 at Vienna. The Working Group had to consider all the draft chapters of the legal guide as revised by the secretariat, and the Commission decided that a session of three-weeks duration was essential if the Working Group was to complete its task and be able to submit the completed text to the Commission at its twentieth session. It was noted that that single session of three weeks would replace the normal authorization of two sessions of two weeks each.

Notes

1/ Pursuant to General Assembly resolution 2205 (XXI), the members of the Commission are elected for a term of six years. Of the current membership, 17 were elected by the Assembly at its thirty-seventh session on 15 November 1982 (decision 37/308) and 19 were elected by the Assembly at its fortieth session on 10 December 1985 (decision 40/313). Pursuant to resolution 31/99 of 15 December 1976, the term of those members elected by the Assembly at its thirty-seventh session will expire on the last day prior to the opening of the twenty-second regular annual session of the Commission in 1989, while the term of those members elected by the Assembly at its fortieth session will expire on the last day prior to the opening of the twenty-fifth regular annual session of the Commission in 1992.

2/ The elections took place at the 335th and 344th meetings, on 23 and 27 June 1986. In accordance with a decision taken by the Commission at its first session, the Commission has three Vice-Chairmen, so that, together with the Chairman and Rapporteur, each of the five groups of States listed in General Assembly resolution 2205 (XXI), sect. II, para. 1, will be represented on the bureau of the Commission (see report of the United Nations Commission on International Trade Law on the work of its first session, Official Records of the General Assembly, Twenty-third Session, Supplement No. 16 (A/7216, para. 14 (Yearbook of the United Nations Commission on International Trade Law, vol. I: 1968-1970 (United Nations publication, Sales No. E.71.V.1), part two, I, A, para. 14))).

3/ The Commission considered this subject at its 335th to 353rd meetings and at its 355th and 356th meetings, from 23 June to 9 July 1986. Summary records of these meetings are contained in documents A/CN.9/SR.335-353, 355 and 356.

4/ Report of the United Nations Commission on International Trade Law on the work of its seventeenth session, Official Records of the General Assembly, Thirty-ninth Session, Supplement No. 17 (A/39/17), para. 88.

5/ Report of the United Nations Commission on International Trade Law on the work of its eighteenth session, Official Records of the General Assembly, Fortieth Session, Supplement No. 17 (A/40/17), para. 336.

6/ The Commission considered this subject at its 352nd meeting, on 7 July 1986.

7/ Report of the United Nations Commission on International Trade Law on the work of its fifteenth session, Official Records of the General Assembly, Thirty-seventh Session, Supplement No. 17 (A/37/17), para. 73.

8/ Report of the United Nations Commission on International Trade Law on the work of its eighteenth session, Official Records of the General Assembly, Fortieth Session, Supplement No. 17 (A/40/17), para. 342.

9/ The Commission considered this subject at its 354th meeting, on 8 July 1986.

10/ The Commission considered this subject at its 356th meeting, on 9 July 1986.

11/ Report of the United Nations Commission on International Trade Law on the work of its sixteenth session, Official Records of the General Assembly, Thirty-eighth Session, Supplement No. 17 (A/38/17), para. 115.

12/ Report of the United Nations Commission on International Trade Law on the work of its seventeenth session, Official Records of the General Assembly, Thirty-ninth Session, Supplement No. 17 (A/39/17), para. 113.

13/ The Commission considered this subject at its 356th meeting, on 9 July 1986.

14/ The Commission considered this subject at its 356th meeting, on 9 July 1986.

15/ The Commission considered this subject at its 356th meeting, on 9 July 1986.

16/ Report of the United Nations Commission on International Trade Law on the work of its eighteenth session, Official Records of the General Assembly, Fortieth Session, Supplement No. 17 (A/40/17), paras. 366 and 367.

17/ The Commission considered this subject at its 356th meeting, on 9 July 1986.

ANNEX I

Draft Convention on International Bills of Exchange
and International Promissory Notes

(as revised by the United Nations Commission on International Trade Law
at its nineteenth session, New York, 23 June-11 July 1986*)

CHAPTER I. SPHERE OF APPLICATION AND FORM OF THE INSTRUMENT

Article 1

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

(2) An international bill of exchange is a written instrument with the heading "International bill of exchange (Convention of ...)" which:

(a) Contains, in the text thereof, the words "international bill of exchange (Convention of ...)";

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

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

(d) Is dated;

(e) Specifies at least two of the following places and indicates that any two so specified are situated in different States:

(i) The place where the bill is drawn;

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

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

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

(v) The place of payment;

(f) Is signed by the drawer.

(3) An international promissory note is a written instrument with the heading "International promissory note (Convention of ...)" which:

(a) Contains, in the text thereof, the words "international promissory note (Convention of ...)";

* For lack of time, the Commission did not consider certain drafting proposals made by the drafting group with respect to articles 38 (1), 40 (1), 41, 48, 66, 72 (1), 73 (2) and 80 (1) (c), which have been incorporated in this text.

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

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

(d) Is dated;

(e) Specifies at least two of the following places and indicates that any two so specified are situated in different States:

(i) The place where the note is made;

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

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

(iv) The place of payment;

(f) Is signed by the maker.

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

(5) This Convention does not apply to cheques.

Article 2

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

CHAPTER II. INTERPRETATION

Section 1. General provisions

Article 3

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

Article 4

In this Convention:

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

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

(3) "Instrument" means a bill or a note;

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

- (5) "Payee" means the person in whose favour the drawer directs payment to be made or to whom the maker promises to pay;
- (6) "Holder" means a person in possession of an instrument in accordance with article 14;
- (7) "Protected holder" means the holder of an instrument which, when he took it, was complete or, if an incomplete instrument within the meaning of article 11 (1), was completed in accordance with authority given, provided that, when he became a holder:
- (a) He was without knowledge of a claim to or defence upon the instrument referred to in article 25, other than in paragraph (1) (c) (ii) thereof, or of the fact that it was dishonoured by non-acceptance or non-payment; and
 - (b) The time-limit provided by article 51 for presentment of that instrument for payment had not expired;
- (8) "Party" means any person who has signed an instrument as drawer, maker, acceptor, endorser or guarantor;
- (9) "Maturity" means the date of payment referred to in article 8;
- (10) "Signature" means a handwritten signature, or a facsimile thereof, or any other means of effecting the equivalent authentication, and "forged signature" includes a signature by the wrongful or unauthorized use of such means;
- (11) "Money" or "currency" includes a monetary unit of account which is established by an intergovernmental institution or by agreement between two or more States, provided that this Convention shall apply without prejudice to the rules of the intergovernmental institution or to the stipulations of the agreement.

Article 5

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

Section 2. Interpretation of formal requirements

Article 6

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

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

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

Article 7

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

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

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

(4) A stipulation stating that the sum is to be paid with interest is deemed not to have been written on the instrument unless it indicates the rate at which interest is to be paid.

(5) A rate at which interest is to be paid may be expressed either as a definite rate or as a variable rate. For a variable rate to qualify for this purpose, it must vary in relation to one or more reference rates of interest in accordance with provisions stipulated in the instrument and each such reference rate must be published or otherwise available to the public and not subject, directly or indirectly, to unilateral determination by any person who, at the time the bill is drawn or the note is made, is named in the instrument as payee, drawee, or actual or prospective party or other holder.

(6) Where the rate at which interest is to be paid is expressed as a variable rate, it may be stipulated expressly on the instrument that such rate shall not be less than or exceed a specified rate of interest, or that the variations are otherwise limited.

(7) If a variable rate does not qualify under paragraph (5) of this article or for any reason it is not possible to determine the numerical value of the variable rate for any period, interest shall be payable for the relevant period at the rate calculated in accordance with article 66 (2).

Article 8

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

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

(b) If no time for payment is expressed.

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

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

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

(b) At a fixed period after sight; or

(c) By instalments at successive dates; or

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

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

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

(6) The maturity of an instrument payable on demand is the date on which the instrument is presented for payment.

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

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

Article 9

(1) A bill may:

(a) Be drawn upon two or more drawees;

(b) Be drawn by two or more drawers;

(c) Be payable to two or more payees.

(2) A note may:

(a) Be made by two or more makers;

(b) Be payable to two or more payees.

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

Article 10

A bill may:

- (a) Be drawn by the drawer on himself;
- (b) Be drawn payable to his order.

Section 3. Completion of an incomplete instrument

Article 11

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

(2) When such an instrument is completed without authority or otherwise than in accordance with the authority given:

(a) A party who signed the instrument before the completion may invoke such lack of authority as a defence against a holder who had knowledge of such lack of authority when he became a holder;

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

CHAPTER III. TRANSFER

Article 12

An instrument is transferred:

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

Article 13

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

(2) An endorsement may be:

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

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

Article 14

(1) A person is a holder if he is:

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

(b) In possession of an instrument which has been endorsed to him, or on which the last endorsement is in blank, and on which there appears an uninterrupted series of endorsements, even if any of the endorsements was forged or was signed by an agent without authority.

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

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

Article 15

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

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

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

(c) Transfer the instrument in accordance with paragraph (b) of article 12.

Article 16

(1) When the drawer or the maker has inserted in the instrument such words as "not negotiable", "not transferable", "not to order", "pay (X) only", or words of similar import, the instrument may not be transferred except for purposes of collection, and any endorsement, even if it does not contain words authorizing the endorsee to collect the instrument, is deemed to be an endorsement for collection.

(2) When an endorsement contains the words "not negotiable", "not transferable", "not to order", "pay (X) only", or words of similar import, the instrument may not be transferred further except for purposes of collection, and any subsequent endorsement, even if it does not contain words authorizing the endorsee to collect the instrument, is deemed to be an endorsement for collection.

Article 17

(1) An endorsement must be unconditional.

(2) A conditional endorsement transfers the instrument whether or not the condition is fulfilled. The condition is deemed not to have been written as to parties and transferees subsequent to the endorsee.

Article 18

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

Article 19

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

Article 20

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

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

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

Article 21

The holder of an instrument may transfer it to a prior party or the drawee in accordance with article 12; nevertheless, in the case where the transferee was a prior holder of the instrument, no endorsement is required and any endorsement which would prevent him from qualifying as a holder may be struck out.

Article 22

An instrument may be transferred in accordance with article 12 after maturity, except by the drawee, the acceptor or the maker.

Article 23

(1) If an endorsement is forged, the person whose endorsement is forged or any party who signed the instrument before the forgery has the right to recover compensation for any damage that he may have suffered because of the forgery against:

- (a) The forger;
- (b) The person to whom the instrument was directly transferred by the forger;

(c) A party or the drawee who paid the instrument to the forger directly or through one or more endorsees for collection.

(2) However, an endorsee for collection shall not be liable under paragraph (1) if at the time at which:

(a) He pays the principal or advises the principal of the receipt of the proceeds of the instrument, or

(b) He receives the proceeds of the instrument,

whichever comes later, he is without knowledge of the forgery, provided that such absence of knowledge is not due to his negligence.

(3) Also, a party or the drawee who pays an instrument shall not be liable under paragraph (1) if, at the time he paid the instrument, he was without knowledge of the forgery, provided that such absence of knowledge was not due to his negligence.

(4) Except as against the forger, the damages recoverable under paragraph (1) may not exceed the amount referred to in article 66 or 67.

Article 23 bis

(1) If an endorsement is made by an agent without authority or power to bind his principal in the matter, the principal or any party who signed the instrument before such endorsement has the right to recover compensation for any damage that he may have suffered because of such endorsement against:

(a) The agent;

(b) The person to whom the instrument was directly transferred by the agent;

(c) A party or the drawee who paid the instrument to the agent directly or through one or more endorsees for collection.

(2) However, an endorsee for collection shall not be liable under paragraph (1) if at the time at which:

(a) He pays the principal or advises the principal of the receipt of the proceeds of the instrument, or

(b) He receives the proceeds of the instrument,

whichever comes later, he is without knowledge that the endorsement does not bind the principal, provided that such absence of knowledge is not due to his negligence.

(3) Also, a party or the drawee who pays an instrument shall not be liable under paragraph (1) if, at the time he paid the instrument, he was without knowledge that the endorsement did not bind the principal, provided that such absence of knowledge was not due to his negligence.

(4) Except as against the agent, the damages recoverable under paragraph (1) may not exceed the amount referred to in article 66 or 67.

CHAPTER IV. RIGHTS AND LIABILITIES

Section 1. The rights of a holder and of a protected holder

Article 24

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

(2) The holder is entitled to transfer the instrument in accordance with article 12.

Article 25

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

(a) Any defence available under this Convention;

(b) Except as provided in paragraph (3) of this article, any defence based on underlying transaction between himself and the drawer or between himself and the party subsequent to himself or arising from the circumstances as a result of which he became a party;

(c) Any defence resulting from:

(i) The underlying transaction between himself and the holder;

(ii) Any other transaction between himself and the holder that would be available as a defence against contractual liability;

(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) Except as provided in paragraph (3) of this article, 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 holder who is not a protected holder is subject to a defence under paragraph (1) (b) or to a claim under paragraph (2) of this article only if he took the instrument with knowledge of such defence or claim or if he obtained the instrument by fraud or theft or participated at any time in a fraud or theft concerning it. However, a holder who takes the instrument after the expiration of the time-limit for presentment or payment is subject to no claim to or defence upon the instrument to which his transferor is subject.

(4) 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 or forgery.

Article 26

- (1) A party may not set up against a protected holder any defence except:
- (a) Defences under articles 29 (1), 30, 31 (1), 32 (3), 49, 53, 59 and 80 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 27

- (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.
- (2) Such rights are not vested in a subsequent holder if:
- (a) He participated in a transaction which gives rise to a claim to, or a defence upon, the instrument;
 - (b) He has previously been a holder, but not a protected holder.

Article 28

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

Section 2. The liability of the parties

A. General provisions

Article 29

- (1) Subject to the provisions of articles 30 and 32, a person is not liable on an instrument unless he signs it.
- (2) A person who signs an instrument in a name which is not his own is liable as if he had signed it in his own name.

Article 30

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

Article 31

(1) If an instrument has been materially altered:

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

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

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

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

Article 32

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

(2) The signature of an agent placed by him on an instrument with the authority of his principal and showing on the instrument that he is signing in a representative capacity for that named 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.

Article 33

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.

B. The drawer

Article 34

(1) The drawer engages that upon dishonour of the bill by non-acceptance or non-payment, and upon any necessary protest, he will pay to the holder, or to any endorser or any endorser's guarantor who pays the bill in accordance with article 66, the amount of the bill, and any interest and expenses which may be recovered under article 66 or 67.

(2) The drawer may exclude or limit his own liability for acceptance or for payment by an express stipulation on the bill. Such stipulation has effect only with respect to the drawer. A stipulation excluding or limiting liability for payment is operative only if another party is or becomes liable on the bill.

C. The maker

Article 35

(1) The maker engages that he will pay to the holder, or to any endorser or any endorser's guarantor who pays the note in accordance with article 66, the amount of the note in accordance with the terms of that note, and any interest and expenses which may be recovered under article 66 or 67.

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

D. The drawee and the acceptor

Article 36

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

(2) The acceptor engages that he will pay to the holder, or to any party who pays the bill in accordance with article 66, the amount of the bill in accordance with the terms of his acceptance, and any interest and expenses which may be recovered under article 66 or 67.

Article 37

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

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

(b) By the signature alone of the drawee.

Article 38

- (1) An incomplete instrument which satisfies the requirements set out in article 1 (2) (a) may be accepted by the drawee before it has been signed by the drawer, or while otherwise incomplete. In such case, article 11 shall apply accordingly to completion by the drawer or another person.
- (2) A bill may be accepted before, at or after maturity, or after it has been dishonoured by non-acceptance or non-payment.
- (3) When a bill drawn payable at a fixed period after sight, or a bill which must be presented for acceptance before a specified date, is accepted, the acceptor must indicate the date of his acceptance; failing such indication by the acceptor, the drawer or the holder may insert the date of acceptance.
- (4) If a bill drawn payable at a fixed period after sight is dishonoured by non-acceptance and the drawee subsequently accepts it, the holder is entitled to have the acceptance dated as of the date on which the bill was dishonoured.

Article 39

- (1) An acceptance must be unqualified. An acceptance is qualified if it is conditional or varies the term of the bill.
- (2) If the drawee stipulates on the bill that his acceptance is subject to qualification:
 - (a) He is nevertheless bound according to the terms of his qualified acceptance;
 - (b) The bill is dishonoured by non-acceptance.
- (3) An acceptance relating to only a part of the amount of the bill is a qualified acceptance. If the holder takes such an acceptance, the bill is dishonoured by non-acceptance only as to the remaining part.
- (4) An acceptance indicating that payment will be made at a particular address or by a particular agent is not a qualified acceptance, provided that:
 - (a) The place in which payment is to be made is not changed;
 - (b) The bill is not drawn payable by another agent.

E. The endorser

Article 40

- (1) The endorser engages that upon dishonour of the instrument by non-acceptance or non-payment, and upon any necessary protest, he will pay to the holder, or to any subsequent endorser or such endorser's guarantor who pays the instrument in accordance with article 66, the amount of the instrument, and any interest and expenses which may be recovered under article 66 or 67.
- (2) The endorser may exclude or limit his own liability by an express stipulation on the instrument. Such stipulation has effect only with respect to that endorser.

F. The transferor by endorsement or by mere delivery

Article 41

(1) Unless otherwise agreed, a person who transfers an instrument, by endorsement and delivery or by mere delivery, represents to the holder to whom he transfers the instrument that:

(a) The instrument does not bear any forged or unauthorized signature;

(b) The instrument has not been materially altered;

(c) At the time of transfer, he has no knowledge of any fact which would impair the right of the transferee to payment of the instrument against the acceptor or, in the case of an unaccepted bill, the drawer, or against the maker of a note.

(2) Liability of the transferor under paragraph (1) is incurred only if the transferee took the instrument without knowledge of the matter giving rise to such liability.

(3) Where the transferor is liable under paragraph (1), the transferee may recover, even before maturity, the amount paid by him to the transferor, plus interest calculated in accordance with article 66, against return of the instrument.

G. The guarantor

Article 42

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

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

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

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

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

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

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

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

(5) A guarantor may not raise as a defence to his liability the fact that he signed the instrument before it was signed by the person for whose account he is a guarantor, or while the instrument was incomplete.

Article 43

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

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

Article 44

(1) Payment of an instrument by the guarantor in accordance with article 68 discharges the party for whom he became guarantor of his liability on the instrument to the extent of the amount paid.

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

CHAPTER V. PRESENTMENT, DISHONOUR BY NON-ACCEPTANCE OR NON-PAYMENT, AND RECOURSE

Section 1. Presentment for acceptance and dishonour by non-acceptance

Article 45

(1) A bill may be presented for acceptance.

(2) A bill must be presented for acceptance:

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

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

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

Article 46

(1) The drawer may stipulate on the bill that it must not be presented for acceptance before a specified date or before the occurrence of a specified event. Except where a bill must be presented for acceptance under article 45 (2), the drawer may stipulate that it must not be presented for acceptance.

(2) If a bill is presented for acceptance notwithstanding a stipulation permitted under paragraph (1) and acceptance is refused, the drawer, the endorser, and their guarantors are not liable for dishonour by non-acceptance.

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

Article 47

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

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

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

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

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

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

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

Article 48

(1) Delay in making a necessary presentment for acceptance within the time-limit stated within the bill 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 the delay ceases to operate, presentment must be made with reasonable diligence.

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

(3) When a necessary presentment for acceptance cannot be effected within the time-limit prescribed in subparagraph (d) or (e) of article 47 due to circumstances which are beyond the control of the holder and which he could neither avoid nor overcome, the necessary presentment for acceptance is dispensed with.

Article 49

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

Article 50

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

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

(b) If presentment for acceptance is dispensed with pursuant to article 48, unless the bill is in fact accepted.

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

(a) Subject to the provisions of article 55, exercise an immediate right of recourse against the drawer, the endorsers and their guarantors;

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

Section 2. Presentment for payment and dishonour by non-payment

Article 51

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

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

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

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

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

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

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

(g) An instrument must be presented for payment:

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

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

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

(h) An instrument which is presented at a clearing-house is duly presented for payment if the law of the place where the clearing-house is located or the rules or customs of that clearing-house so provide.

Article 52

(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 expressly waived presentment; such waiver:

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

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

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

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

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

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

(e) If there is no place at which the instrument must be presented in accordance with article 51 (g).

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

Article 53

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

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

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

Article 54

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

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

(b) If presentment for payment is dispensed with pursuant to article 52 (2) and the instrument is unpaid at maturity.

(2) If a bill is dishonoured by non-payment, the holder may, subject to the provisions of article 55, exercise a right of recourse against the drawer, the endorsers and their guarantors.

(3) If a note is dishonoured by non-payment, the holder may, subject to the provisions of article 55, exercise a right of recourse against the endorsers and their guarantors.

Section 3. Recourse

A. Protest

Article 55

If an instrument has been dishonoured by non-acceptance or by non-payment, the holder may exercise a right of recourse only after the instrument has been duly protested for dishonour in accordance with the provisions of articles 56 to 58.

Article 56

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

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

(b) The place of protest; and

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

(2) A protest may be made:

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

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

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

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

Article 57

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

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

Article 58

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

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

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

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

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

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

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

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

(d) If presentment for acceptance or for payment is dispensed with in accordance with article 48 or 52 (2).

Article 59

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

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

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

B. Notice of dishonour

Article 60

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

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

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

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

Article 61

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

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

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

Article 62

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 63

(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 expressly waived notice of dishonour; such waiver:
 - (i) If made on the instrument by the drawer, binds any subsequent party and benefits any holder;
 - (ii) If made on the instrument by a party other than the drawer, binds only that party but benefits any holder;
 - (iii) If made outside the instrument, binds only the party making it and benefits only a holder in whose favour it was made;
- (c) As regards the drawer of the bill, if the drawer and the drawee or the acceptor are the same person.

Article 64

Failure to give notice of dishonour renders a person who is required to give such notice under article 60 to a party who is entitled to receive such notice liable for any damages which that party may suffer from such failure, provided that such damages do not exceed the amount referred to in article 66 or 67.

Section 4. Amount payable

Article 65

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

Article 66

- (1) The holder may recover from any party liable:
 - (a) At maturity: the amount of the instrument with interest, if interest has been stipulated for;
 - (b) After maturity:
 - (i) The amount of the instrument with interest, if interest has been stipulated for, to the date of maturity;
 - (ii) If interest has been stipulated to be paid 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;

(c) Before maturity:

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

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

(2) The rate of interest shall be the rate that would be recoverable in legal proceedings taken in the jurisdiction where the instrument is payable.

(3) Nothing in paragraph (2) prevents a court from awarding damages or compensation for additional loss caused to the holder by reason of delay in payment.

(4) The discount shall be at the official rate (discount rate) or other similar appropriate rate effective on the date when recourse is exercised at the place where the holder has his principal place of business, or if he does not have a place of business his habitual residence, or, if there is no such rate, then at such rate as is reasonable in the circumstances.

Article 67

A party who pays an instrument in accordance with article 66 may recover from the parties liable to him:

(a) The entire sum which he was obliged to pay in accordance with article 66 and has paid;

(b) Interest on that sum at the rate specified in article 66, paragraph (2), from the date on which he made payment;

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

CHAPTER VI. DISCHARGE

Section 1. Discharge by payment

Article 68

(1) A party is discharged of liability on the instrument when he pays the holder, or a party subsequent to himself who has paid the instrument and is in possession thereof, the amount due pursuant to article 66 or 67:

(a) At or after maturity; or

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

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

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

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

(i) To the drawee making such payment, the instrument;

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

(b) In the case of an instrument payable by instalments at successive dates, the drawee or a party making a payment, other than payment of the last instalment, may require that mention of such payment be made on the instrument and that a receipt therefor be given to him.

(c) If an instrument payable by instalments at successive dates is dishonoured by non-acceptance or non-payment as to any of its instalments and a party, upon dishonour, pays the instalment, the holder who receives such payment must give the party a certified copy of the instrument and any necessary authenticated protest in order to enable such party to exercise a right on the instrument.

(d) The person from whom payment is demanded may withhold payment if the person demanding payment does not deliver the instrument to him. Withholding payment in these circumstances does not constitute dishonour by non-payment under article 54.

(e) 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.

Article 69

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

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

(3) If the holder takes partial payment from the drawee, the guarantor of the drawee, or the acceptor or the maker:

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

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

(4) If the holder takes partial payment from a party to the instrument other than the acceptor or the maker or the guarantor of the drawee:

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

(b) The holder must give such party a certified copy of the instrument and any necessary authenticated protest in order to enable such party to exercise a right on the instrument.

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

(6) If the balance is paid, the person who receives it and who is in possession of the instrument must deliver to the payor the receipted instrument and any authenticated protest.

Article 70

(1) The holder may refuse to take payment in a place other than the place where the instrument was presented for payment in accordance with article 51.

(2) If in such case payment is not made in the place where the instrument was presented for payment in accordance with article 51, the instrument is considered as dishonoured by non-payment.

Article 71

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

(2) When the amount of an instrument is expressed in a monetary unit of account within the meaning of article 4 (11) and the monetary unit of account is transferable between the person making payment and the person receiving it, then, unless the instrument specifies a currency of payment, payment shall be made by transfer of the monetary unit of account. If the monetary unit of account is not transferable between those persons, payment shall be made in the currency specified in the instrument or, if no such currency is specified, in the currency of the place of payment.

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

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

(b) The amount payable is to be calculated according to the rate of exchange indicated on the instrument. Failing such 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 maturity;

(i) Ruling at the place where the instrument must be presented for payment in accordance with article 51 (g), if the specified currency is that of that place (local currency); or

(ii) If the specified currency is not that of that place, according to the usages of the place where the instrument must be presented for payment in accordance with article 51 (g);

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

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

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

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

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

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

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

(5) The rate of exchange ruling at a certain date is the rate of exchange ruling, at the option of the holder, at the place where the instrument must be presented for payment in accordance with article 51 (g) or at the place of actual payment.

Article 72

(1) Nothing in this Convention prevents a Contracting State from enforcing exchange control regulations applicable in its territory and its provisions relating to the protection of its currency, including regulations which it is bound to apply by virtue of international agreements to which it is a party.

(2) (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 51 (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 on the date of dishonour, or on 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 on the date of presentment or on the date of actual payment.
- (iii) Paragraphs (3) and (4) of article 71 are applicable where appropriate.

Section 2. Discharge of a prior party

Article 73

- (1) When a party is discharged wholly or partly of his liability on the instrument, any party who has a right on the instrument 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 66, discharges all parties of their liability to the same extent, except where the drawee pays a holder who is not a protected holder and knows at the time of payment that a third person has asserted a valid claim to the instrument or that the holder acquired the instrument by theft or forged the signature of the payee or an endorsee, or participated in such theft or forgery.

CHAPTER VII. LOST INSTRUMENTS

Article 74

- (1) When an instrument is lost, whether by destruction, theft or otherwise, the person who lost the instrument has, subject to the provisions of paragraph (2) of this article, the same right to payment which he would have had if he had been in possession of the instrument. The party from whom payment is claimed cannot set up as a defence against liability on the instrument the fact that the person claiming payment is not in possession thereof.
- (2) (a) The person claiming payment of a lost instrument must state in writing to the party from whom he claims payment:
 - (i) The elements of the lost instrument pertaining to the requirements set forth in article 1 (2) or 1 (3); for this purpose the person claiming payment of the lost instrument may present to that party a copy of that instrument;
 - (ii) The facts showing that, if he had been in possession of the instrument, he would have had a right to payment from the party from whom payment is claimed;
 - (iii) The facts which prevent production of the instrument.
- (b) The party from whom payment of a lost instrument is claimed may require the person claiming payment to give security in order to indemnify him for any loss which he may suffer by reason of the subsequent payment of the lost instrument.

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

(d) If the security cannot be given, the court may order the party from whom payment is claimed to deposit the amount of the lost instrument, and any interest and expenses which may be claimed under article 66 or 67, with the court or any other competent authority or institution, and may determine the duration of such deposit. Such deposit is to be considered as payment to the person claiming payment.

Article 75

(1) A party who has paid a lost instrument and to whom the instrument is subsequently presented for payment by another person must notify the person to whom he paid of such presentment.

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

(3) Failure to notify renders the party who has paid the lost instrument liable for any damages which the person whom he paid may suffer from such failure, provided that the damages do not exceed the amount referred to in article 66 or 67.

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

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

Article 76

(1) A party who has paid a lost instrument in accordance with the provisions of article 74 and who is subsequently required to, and does, pay the instrument, or who, by reason of the loss of the instrument, then loses his right to recover from any party liable to him, has the right:

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

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

(2) The person who has given security in accordance with the provisions of paragraph (2) (b) of article 74 is entitled to obtain release of the security when the party for whose benefit the security was given is no longer at risk to suffer loss because of the fact that the instrument is lost.

Article 77

A person claiming payment of a lost instrument duly effects protest for dishonour by non-payment by the use of a written statement that satisfies the requirements of article 74, paragraph (2) (a).

Article 78

A person receiving payment of a lost instrument in accordance with article 74 must deliver to the party paying the written statement required under article 74, paragraph (2) (a), receipted by him and any protest and a receipted account.

Article 79

- (1) A party who has paid a lost instrument in accordance with article 74 has the same rights which he would have had if he had been in possession of the instrument.
- (2) Such party may exercise his rights only if he is in possession of the receipted written statement referred to in article 78.

CHAPTER VIII. LIMITATION (PRESCRIPTION)

Article 80

- (1) A right of action arising on an instrument may no longer be exercised after four years have elapsed:
 - (a) Against the maker, or his guarantor, of a note payable on demand, from the date of the note;
 - (b) Against the acceptor or the maker or their guarantor of an instrument payable at a definite time, from the date of maturity;
 - (c) Against the acceptor of a bill payable on demand, from the date on which it was accepted, or, if no such date is shown, from the date of the instrument;
 - (d) Against the drawer or an endorser or their guarantor, from the date of protest for dishonour by non-acceptance or non-payment or, where protest is dispensed with, from the date of dishonour.
- (2) If a party has paid the instrument in accordance with article 65 or 67 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 from the date on which he paid the instrument.

ANNEX II

List of documents of the session

A. General series

- A/CN.9/272 Provisional agenda
- A/CN.9/273 Report of the Working Group on International Negotiable Instruments on the work of its fourteenth session (Vienna, 9-20 December 1985)
- A/CN.9/274 Draft Convention on International Bills of Exchange and International Promissory Notes: Text of draft articles as revised by the Commission at its seventeenth session and by the Working Group on International Negotiable Instruments at its thirteenth and fourteenth session
- A/CN.9/275 Report of the Working Group on International Contract Practices on the work of its ninth session (New York, 6-17 January 1986)
- A/CN.9/276 Report of the Working Group on the New International Economic Order on the work of its eighth session (Vienna, 17-27 March 1986)
- A/CN.9/277 Future work in the area of the new international economic order
- A/CN.9/278 Electronic funds transfers
- A/CN.9/279 Legal implications of automatic data processing
- A/CN.9/280 Co-ordination of work: Activities of international organizations on certain aspects of arbitration
- A/CN.9/281 Current activities of international organizations related to the harmonization and unification of international trade law
- A/CN.9/282 Training and assistance
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- A/CN.9/284 Bibliography of rec. writings related to the work of UNCITRAL
- A/CN.9/285 Draft Convention on International Bills of Exchange and International Promissory Notes: Response to requests of the Working Group on International Negotiable Instruments

B. Restricted series

A/CN.9/XIX/CRP.1 and Add.1-20	Draft report of the United Nations Commission on International Trade Law on the work of its nineteenth session
A/CN.9/XIX/CRP.2	Proposal by <u>ad hoc</u> working party
A/CN.9/XIX/CRP.3	Proposal by <u>ad hoc</u> working party
A/CN.9/XIX/CRP.4	Proposal by <u>ad hoc</u> working party
A/CN.9/XIX/CRP.5	Proposal by the representative of Mexico
A/CN.9/XIX/CRP.6	Proposal by the representative of the United Kingdom
A/CN.9/XIX/CRP.7	Proposal by the representative of France
A/CN.9/XIX/CRP.8	Proposal by the representative of Japan
A/CN.9/XIX/CRP.9	Proposal by the representative of Japan
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A/CN.9/XIX/CRP.11	Proposal by <u>ad hoc</u> working party
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A/CN.9/XIX/CRP.13	Proposal by <u>ad hoc</u> working party
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A/CN.9/XIX/CRP.15	Proposal by the representatives of Japan and the Netherlands
A/CN.9/XIX/CRP.16	Draft Convention on International Bills of Exchange and International Promissory Notes [text as revised by Commission at this session and set forth in annex 1 to this report]

C. Information series

A/CN.9/XIX/INF/1	List of participants
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