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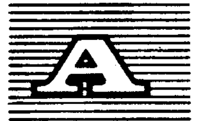

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REPORT OF THE WORKING GROUP ON INTERNATIONAL PAYMENTS ON THE WORK OF ITS NINETEENTH SESSION (New York, 10-21 July 1989)

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INTRODUCTION

1. At its nineteenth session, in 1986, the Commission decided to begin the preparation of Model Rules on electronic funds transfers and to entrust that task to the Working Group on International Negotiable Instruments, which it renamed the Working Group on International Payments. 1/

2. The Working Group undertook the task at its sixteenth session (Vienna, 2-13 November 1987), at which it considered a number of legal issues set forth in a note by the Secretariat. The Group requested the Secretariat to prepare draft provisions based on the discussions during its sixteenth session for consideration at its seventeenth session. At its seventeenth session (New York, 5-15 July 1988) the Working Group considered the draft provisions prepared by the Secretariat. At the close of its discussions the Working Group requested the Secretariat to prepare a revised draft of the Model Rules. At its eighteenth session (Vienna, 5-16 December 1988) the Working Group began its consideration of the redraft of the Model Rules, which it renamed the draft Model Law on International Credit Transfers.

3. The Working Group held its nineteenth session in New York from 10 to 21 July 1989. The Group was composed of all States members of the Commission. The session was attended by representatives of the following States members: Argentina, Cameroon, Canada, China, Costa Rica, Czechoslovakia, Denmark, Egypt, France, Germany, Federal Republic of, Hungary, India, Iran (Islamic Republic of), Iraq, Italy, Japan, Kenya, Lesotho, Mexico, Morocco, Netherlands, Nigeria, Singapore, Spain, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay and Yugoslavia.

4. The session was attended by observers from the following States: Australia, Austria, Finland, German Democratic Republic, Ghana, Guinea-Bissau, Indonesia, Israel, Peru, Poland, Republic of Korea, Saudi Arabia, Swaziland, Sweden, Switzerland, Thailand, Uganda, United Republic of Tanzania, Vanuatu, Venezuela and Zaire.

5. The session was attended by observers from the following international organizations: International Monetary Fund, Bank for International Settlements, Commission of the European Communities, Hague Conference on Private International Law, Banking Federation of the European Community, International Chamber of Commerce, Latin American Federation of Banks and Society for Worldwide Interbank Financial Telecommunication S.C.

6. The Working Group elected the following officers:

Chairman: Mr. José María Abascal Zamora (Mexico)

Rapporteur: Mr. Bradley Crawford (Canada)

7. The following documents were placed before the Working Group:

(a) Provisional agenda (A/CN.9/WG.IV/WP.40);

1/ See Official Records of the General Assembly, Forty-first Session, Supplement No. 17 (A/41/17), para. 230.

(b) International Credit Transfers: Comments on the draft Model Law on International Credit Transfers, report of the Secretary-General (A/CN.9/WG.IV/WP.41);

(c) International Credit Transfers: Major issues to be considered by the Working Group, report of the Secretary-General (A/CN.9/WG.IV/WP.42).

8. The following documents were made available at the session:

(a) Report of the Working Group on International Payments on the work of its sixteenth session (A/CN.9/297);

(b) Report of the Working Group on International Payments on the work of its seventeenth session (A/CN.9/317);

(c) Report of the Working Group on International Payments on the work of its eighteenth session (A/CN.9/318).

9. The Working Group adopted the following agenda:

(a) Election of officers.

(b) Adoption of the agenda.

(c) Consideration of draft provisions for Model Law on International Credit Transfers.

(d) Other business.

(e) Adoption of the report.

I. CONSIDERATION OF DRAFT PROVISIONS FOR MODEL LAW ON INTERNATIONAL CREDIT TRANSFERS

10. The text of the draft Model Law before the Working Group was that set out in the report of the eighteenth session of the Working Group (A/CN.9/318, annex) and reproduced with comments in A/CN.9/WG.IV/WP.41.

A. Acceptance

11. The Working Group began its work by considering the concept of "acceptance" as discussed in A/CN.9/WG.IV/WP.42. It first turned to paragraph 7 of that document, which considered the obligations of notification incumbent on a receiving bank that decided not to accept a payment order it had received.

1. Article 5

Paragraph (1)

12. The view was expressed that article 5, and particularly paragraph (1), placed too heavy a burden on the receiving bank. A receiving bank would

normally execute a payment order that it had received. Therefore, if it decided not to execute such an order, there would normally be a reason that was associated with its sender. Rather than place a burden on the receiving bank to notify its sender that it would not execute the order, the Model Law should provide that it was the sender's obligation to choose an appropriate receiving bank.

13. Under another view, the obligation that article 5(1) placed on the receiving bank to notify its sender that it would not execute a payment order it had received increased the security of the credit transfer system. Neither the originator nor a sending bank should have to make a telephone call to a receiving bank or to the beneficiary's bank to inquire whether the payment order had been executed. They should be able to rely on the assumption that the transfer was being carried out properly unless the receiving bank had not been furnished with sufficient funds to pay for the order or they had been informed that the order would not be executed.

14. It was stated that there was no reason to require the sender and the receiving bank to have had a prior relationship for the obligation of notification to arise, since the obligation did not arise in any case unless sufficient funds to pay for the order had been furnished to the receiving bank. Under another view, the receiving bank should be required to notify in all cases that it would not execute a payment order it had received. It was pointed out that article 5(1 bis) required the receiving bank to give notice that it had received a misdirected payment order even though in most cases the receiving bank would not have received funds to pay for the order.

15. The question was raised as to what was meant by the words "insufficient funds". It was suggested that when the Working Group had adopted the current text of article 5(1) at its eighteenth session it had had in mind the case of the originator who did not have a sufficient account balance to pay for the payment order. It was suggested that further consideration should be given to whether there were insufficient funds in situations such as those in which the reimbursement to a receiving bank had been reduced by service fees, notice of credit to the receiving bank's account with a third bank had not yet been received or the receiving bank was not willing to accept reimbursement by credit to its account in a particular third bank. While the receiving bank would not be required to execute the payment order, it could be questioned whether in cases of that nature it should not be required to give notice of its failure to execute the payment order.

16. After deliberation, the Working Group decided to retain paragraph (1) as drafted subject to later reconsideration.

Paragraph (1 bis)

17. It was observed that in many, if not most, of the occasions when a misdirected payment order was received, the receiving bank would not receive funds to pay for that order. It was said to be an anomaly that a receiving bank should have to notify the sender of the receipt of such a payment order since it was not required to notify the sender that it would not execute a properly addressed payment order for which there was insufficient funds. In reply it was stated that every system needed appropriate mechanisms to correct errors that occurred. The operational burden placed on the receiving bank by paragraph (1 bis) was said not to be unduly burdensome.

18. Concern was expressed over the fact that the duty stated in paragraph (1 bis) was stated objectively. It was pointed out that banks that were potentially subject to the Model Law had widely differing degrees of sophistication and some of them might not readily recognize that the payment order had been misdirected.

19. A similar concern was that the receiving bank should be required to notify the sender only if the identity of the sender and its address could be readily ascertained. It was said that this was likely to be a problem only if the sender was not a bank and only if the payment order was on paper, since electronic funds transfer systems would not permit the transmission of the message unless the proper identification of the sender was included. It was also said that it was not necessary to include any such qualification on the duty to notify because it was self evident that the receiving bank could not be required to notify the sender if the sender could not be identified.

20. After discussion, the Working Group decided to add words such as "and contains sufficient information to identify and trace the sender".

21. The Working Group noted that the financial consequences to the receiving bank for failure to give the required notice were set forth in paragraph (1 bis) in square brackets so that they might be moved to article 9 at an appropriate time. The Working Group engaged in a discussion as to whether the consequences as there set forth were appropriate.

22. There was general agreement that the receiving bank should pay to the sender interest on the funds received for the period of time the receiving bank was in possession of those funds as provided in subparagraph (a). It was noted that the remedy was by its nature one of restoring to the sender that which it had lost and the receiving bank had gained by virtue of the receiving bank's failure to give the required notice. In this respect it was noted that the receiving bank might not have been in a position to invest the funds if they were of a substantial nature and they had been received at the end of the funds' transfer day. It was also suggested that the receiving bank should be required to pay the interest only if the loss to the sender was due to the receiving bank's delay in notifying the sender of the misdirection and the funds were in usable form.

23. After discussion, the Working Group decided to retain subparagraph (a) without change.

24. Under one view, subparagraph (b) operated as a penalty and should be deleted. It was stated that if the receiving bank had not had the use of any funds it should not have to pay the sender any interest. Under another view, the receiving bank that failed to notify the sender of the misdirected payment order should be liable for the loss that had occurred, and subparagraph (b) operated as a limit of liability.

25. In connection with the view that the receiving bank should not have to pay interest if it had not had the use of any funds, it was suggested that the receiving bank should be obligated to give notice of the misdirected payment order only if it had been supplied with funds.

26. It was decided that subparagraph (b) should be retained at present and should be reconsidered when the liability provisions of article 9 were considered.

2. Article 6

27. The Working Group noted that at its eighteenth session it had "agreed to reconsider the question [of the usefulness of the concept of acceptance] at a later time when the consequences of 'acceptance' of a payment order might be seen more clearly and the Working Group might have been sufficiently enlightened in regard to the concept in order to decide whether it would be convenient to retain or to abandon it." (A/CN.9/318, para. 129) The Working Group noted that a discussion of the concept and its consequences had been included in a report of the Secretary-General on major issues in the draft Model Law (A/CN.9/WG.IV/WP.42, paras. 2-42). The Working Group decided that it would consider the concept as it appeared in the draft of the Model Law before it decided whether to retain its use or to abandon it.

Paragraph (1)

28. It was stated that the situations described in paragraph (1) did not really constitute an acceptance by the receiving bank. If the concept of acceptance was to be retained in the Model Law, paragraph (1) should state that the receiving bank was deemed to have accepted a payment order in the described situations.

29. A proposal was made that, in addition to the situations described in subparagraphs (a) and (b), paragraph (1) should provide for the possibility of an express acceptance of the payment order by the receiving bank. In opposition it was questioned whether receiving banks accepted payment orders in express terms. In reply it was stated that an unsolicited express acceptance was unlikely but that in the case of a large transfer a bank might be asked whether it would be prepared to handle the transaction. Its agreement could be understood to constitute an express acceptance of the payment order.

30. A discussion took place as to what would constitute an express acceptance. It was stated that it should be clear that the mere acknowledgement of receipt of a payment order would not be considered to be an acceptance of it. Questions were raised as to whether an acceptance would have to be in writing or whether it could be oral and as to whether an express acceptance could be conditional.

31. It was decided that paragraph (1) should provide for the possibility that a receiving bank that was not the beneficiary's bank could expressly accept a payment order. Consequently, the Working Group decided to add a new subparagraph (c) providing that a receiving bank accepts a payment order "when it sends notice that it will execute the sender's payment order".

32. During its consideration of paragraph (1) the Working Group decided that an express acceptance should relate to one or more specific payment orders and that an agreement to accept all payment orders sent by one or more specified senders would not be considered to be an express acceptance of those orders when they were received by the bank. Subsequently, in connection with its consideration of acceptance of a payment order by the beneficiary's bank, the Working Group decided to include a provision that, when the sender and the receiving bank had agreed that the bank would execute payment orders received from the sender without notification that cover was in place, the payment order would be accepted upon its receipt (see para. 49, below).

33. The Working Group discussed the nature of the obligations undertaken by a receiving bank that accepted a payment order. Under one view, the obligations of the receiving bank would arise out of the Model Law, i.e., they would be statutory obligations. Under another view, the transaction partook of the classical offer and acceptance for the formation of a contract. While the Model Law might determine the types of actions that would be considered an acceptance and might determine some of the obligations of the parties, the obligations would be contractual in nature.

34. The Working Group noted that if the obligations arising out of the acceptance of a payment order by a receiving bank were considered to be contractual in nature, the principle of the relativity of contracts would normally limit the parties who had rights in respect of those obligations to the direct parties to the contract, whereas if the obligations were statutory in nature, a broader range of parties might have rights in respect of the obligations. Moreover, if the obligations were contractual in nature, the entire body of the law of contract might be applied to those obligations in appropriate circumstances. It was also suggested that if the obligations were contractual in nature, the Model Law should not attempt to establish an exhaustive list of ways in which the offer made by the sender could be accepted by the receiving bank. In reply it was stated that, whether or not the obligations of the sender and receiving bank were considered to be contractual in nature, it was important that the Model Law establish an exhaustive list of the means by which the receiving bank could accept the payment order so as to aid in establishing legal certainty.

Paragraph (2)

Consequences of acceptance by the beneficiary's bank

35. Before the Working Group undertook its consideration of the time when the beneficiary's bank accepted a payment order, it discussed the consequences of acceptance. It was noted that the draft of the Model Law before the Working Group provided for a series of consequences in articles 5(4), 7(1)(c), 8(3) and 11(2) that could be characterized as completion of the credit transfer. It was stated that this illustrated the difference between the use of the concept of acceptance in regard to a receiving bank that was not the beneficiary's bank, where acceptance was used only in a technical sense, and its use in regard to the beneficiary's bank, where acceptance led to legal consequences. It was noted in particular that the time when a payment order could no longer be revoked or amended was linked to the retransmission of the order in the case of a receiving bank that was not the beneficiary's bank (article 8(1)) but was linked to acceptance in the case of the beneficiary's bank (article 8(3)). It was also noted that, in the case of a receiving bank that was not the beneficiary's bank, its obligation to its credit party arose when its credit party accepted the payment order sent by the receiving bank (article 4(4)), whereas the obligation of the beneficiary's bank to its credit party, i.e., to the beneficiary, arose when the bank accepted the payment order (article 11(2)).

36. In reply it was stated that there was a basic similarity in the use of the concept of acceptance in regard to the two categories of banks in that in both cases the sender of the payment order became obligated under article 4(4) to pay the receiving bank for the payment order when the receiving bank accepted it, whether or not the receiving bank was the beneficiary's bank.

37. The Working Group discussed the extent to which the Model Law should enter into the civil consequences of a credit transfer. It noted in particular that article 11(1) provided that "unless otherwise agreed by the parties, payment of a monetary obligation may be made by a credit transfer to an account of the beneficiary in a bank" and that article 11(2) provided that "the obligation of the debtor is discharged ... to the extent of the payment order received by the beneficiary's bank when the payment order is accepted by the beneficiary's bank".

38. Under one view the Model Law should not contain either provision. Article 11(1) was said to be contrary to the legal rule that the creditor of an obligation could always require the obligation to be paid in legal tender; the Model Law should not make a credit transfer into an autonomous means of discharging an obligation. The question was raised as to whether the provision would limit the beneficiary's right to reject a payment to him by means of a credit transfer.

39. In respect of article 11(2), it was said to be inappropriate in a law intended to govern banking transactions; the rules in respect of the discharge of an obligation properly belonged in the law relating to the underlying obligation itself. Moreover, the text of the provision as it was before the Working Group was said to raise many problems. Although some obligations could be partially discharged by payment of a part of the money due, other obligations were indivisible. Furthermore, the law governing the means by which and the extent to which an obligation could be discharged might be that of a State in which neither the originator's bank nor the beneficiary's bank was located.

40. Under another view, it was appropriate for the Model Law to contain provisions governing the discharge of an obligation by credit transfer. It was stated that some States had tax laws that required commercial payments to be made by cheque, credit transfer or other similar means. Many other States had statutory provisions similar to article 11(1), while in yet others the courts recognized that commercial payments were normally made by bank transfers, and if a creditor wished to be paid in legal tender he would have to give the debtor sufficient notice so that the debtor could acquire and transmit the legal tender to the creditor. It was also stated that article 11(1) already recognized that the obligation could not be discharged by credit transfer if otherwise agreed between the parties.

41. In regard to article 11(2) it was stated that the important part of the provision was in respect of the time when the obligation would be discharged. The current rules differed from one country to another, to the detriment of legal certainty in international commercial relations. Moreover, the current rules were based on banking procedures used for paper-based credit transfers, and those rules should be reconsidered in the light of the changes in procedures brought about by modern methods of making credit transfers. It was also stated that once the Working Group had finished its consideration of the time when the beneficiary's bank became obligated to the beneficiary as a result of the transfer, the Working Group should consider whether it would be appropriate for the beneficiary to have a claim both against his bank and against the debtor on the underlying obligation in those cases in which the beneficiary's bank accepted the payment order prior to the time when the obligation would be discharged under the otherwise applicable rules of

law. Conversely, the Working Group should consider whether the beneficiary should be in a position of having a claim against neither his bank nor the debtor on the underlying obligation in those cases when the beneficiary's bank accepted the payment order after the time when the debtor would be discharged on the obligation under the otherwise applicable rules of law. As to the argument that a rule of discharge of the underlying obligation did not belong in a law governing the banking transaction, it was suggested that the Working Group could, if it was thought to be necessary, prepare the appropriate rule on the time of discharge as a separate text.

42. In order to accommodate the suggestion that some obligations were indivisible, it was suggested that the provision on discharge might indicate that the obligation would be discharged to the extent that payment of the same amount of money would discharge the obligation, thereby taking no position as to whether an obligation could be partially discharged.

43. The Working Group agreed that the extensive discussion had helped to clarify the consequences that would follow from an acceptance of a payment order by the beneficiary's bank. It decided to defer any decision in respect of the consequences of acceptance of the payment order by the beneficiary's bank until it had discussed the time when acceptance took place.

Time of acceptance by beneficiary's bank

44. The Working Group decided that subparagraph (b) and the new subparagraph (c) of paragraph (1), relative to acceptance by failure to give a required notice of rejection and to express acceptance respectively (see paragraph 31, above), should also be applicable to acceptance by the beneficiary's bank.

45. The Working Group recalled that at its eighteenth session it had decided that paragraph (2)(a) should be modified by adding a volitional element on the part of the beneficiary's bank, but that the subparagraph had not been redrafted to reflect that decision for lack of time (A/CN.9/318, para. 137). At the current session the proposal was made that subparagraph (a) should be retained without the addition of any volitional element.

46. In support of the proposal it was stated that contracts between banks that the receiving bank would execute payment orders when received even if funds to pay for the order were not yet available existed both in regard to multilateral net settlement systems and bilateral banking relations. They were entered into to increase the security of the operation of the funds transfer system. While the credit risk for the receiving bank was increased, there was greater assurance that credit transfers would be carried out promptly. The legal security provided by those contractual obligations would be increased if the receiving bank was considered to have accepted the payment order as soon as it was received.

47. In opposition to the proposal it was stated that the contractual obligation should be considered to be an obligation to accept the payment order; it should not be considered to be the basis on which the order was deemed to be accepted when received unless there had been a volitional act of acceptance by the beneficiary's bank in regard to the specific order. In support of that position, it was stated to be improper to base the legal rights and obligations of third parties on a private contract between the

beneficiary's bank and its sending bank. Affected third parties might include not only the originator and the beneficiary, but also the creditors of the originator, beneficiary, sending bank or beneficiary's bank if one of those parties should become insolvent after receipt of the payment order by the beneficiary's bank and prior to its execution by the bank. Such a rule would violate the principle of the relativity of contracts. It was also pointed out that a decision had been made in respect of paragraph (1) that such a contractual obligation would not furnish the basis for an acceptance by a receiving bank that was not the beneficiary's bank (see para. 32, above).

48. In reply it was stated that inter-bank contracts that structured the credit transfer process had an effect on third parties in spite of the principle of the relativity of contracts. It was important to consider only what that effect should be.

49. After discussion it was decided to retain subparagraph (a) as contained in the text before the Working Group but to delete the words in square brackets. It was also decided to reverse the decision previously made in respect of paragraph (1) (see paragraph 32, above) and to include a similar provision in that paragraph.

50. It was decided to retain subparagraphs (d) and (e) as well as both variants A and C of subparagraph (c), which were to be made into separate subparagraphs.

51. It was suggested that the differences between paragraphs (1) and (2) had been so reduced that it might be possible to combine them into a single paragraph.

3. Retention of the concept of acceptance

52. It was suggested on various occasions during the discussion of the concept of acceptance that it would be preferable to use in article 6 words to the effect that the receiving bank would be "bound to execute" the payment order under the described circumstances. In particular, the Working Group considered the draft text prepared by a small working party at its eighteenth session (A/CN.9/318, para. 142) that had not been considered at that session for lack of time. That text used such a formulation. During the discussions the draft text was withdrawn by its sponsors. Following its consideration of the consequences of acceptance of a payment order by a receiving bank as set forth in the draft of the Model Law and the time when the bank should be considered to have accepted it, the Working Group decided to retain the concept.

B. Insolvency of a bank

53. The Working Group decided to consider the effect on the credit transfer of the insolvency of a bank occurring during the transfer. It used as the basis for its discussion chapter II of the report of the Secretary-General (A/CN.9/WG.IV/WP.42, paras. 43-57).

1. Money-back guarantee, article 5(3)(b)

54. It was noted that article 5(3)(b) provided that, where the beneficiary's bank did not accept a payment order consistent with the contents of the payment order issued by the originator, each receiving bank must refund to its sender any funds received from the sender. This money-back guarantee served to protect the originator in particular.

55. While in the normal course of events each sender would recover any payments it had made to its receiving bank, thereby restoring the situation prevailing prior to the commencement of the failed credit transfer, in some cases one of the sending banks might not be able to recover the funds it had paid to its receiving bank because of the intervening insolvency of that bank, or for other similar reasons. The current text of article 5(3)(b) would leave the loss on the sending bank that had dealt with that receiving bank. It was stated that this rule was incorrect, at least where the use of the receiving bank that had become insolvent had been designated by the originator or by a prior bank in the transfer chain. It was suggested that in those cases the originator or the prior bank that had designated the use of the receiving bank that became insolvent should bear the loss.

56. In reply it was stated that originators would be unlikely to know that the designation of a particular intermediary bank to effectuate the transfer would have potential financial consequences, and that consequently such a rule would be inappropriate unless originators were to be educated as to its effect. It was noted that article 5(3)(b) would not apply to the case in which the beneficiary's bank had become insolvent after it had accepted the payment order addressed to it, since the credit transfer would have been completed and the beneficiary would bear any credit risk in regard to its own bank.

57. It was stated that the money-back guarantee would have the consequence that under the bank supervisory law banks would be required to provide capital for the credit risk involved.

58. The Working Group decided to adopt the text of article 5(3)(b) without change.

2. Reversibility of credit

59. The Working Group noted that a receiving bank that gave credit to its credit party before it had received payment from its sender undertook a credit risk. One of the ways it could reduce that risk was to delay giving credit to its credit party until it had itself received payment. While this reduced credit risk to the bank, the systematic use of such a procedure would delay the operations of the credit transfer system to a degree that would likely be considered unacceptable. It was noted that a procedure that was used in some countries to encourage receiving banks to give prompt credit to their credit parties was to permit them to make the credit reversible if the receiving bank did not receive payment from its sender. While such a procedure generally increased the efficiency of the credit transfer system, it did so by placing the credit risk on the receiving bank's credit party. Moreover, it introduced the possibility that the inability of a sending bank to pay all of its receiving banks would have a cascading effect throughout the banking system, as the reversal of provisional credits deprived those credit parties of the funds they had expected to have available to meet their obligations.

60. It was noted that a proposal of a small working party at the eighteenth session of the Working Group that had not been considered at that session for lack of time had anticipated the possibility of the granting of provisional credit (A/CN.9/318, para. 142). It was further noted that, although the proposal had been withdrawn at the current session, no decision of principle had been made in respect of provisional credit at that time (see para. 52, above). Moreover, the current draft of the Model Law neither expressly permitted nor prohibited the giving of provisional credit. Nevertheless, the prevailing view in the Working Group was that it was undesirable for a receiving bank, including the beneficiary's bank, to be allowed to reverse a credit.

3. Netting

61. The Working Group noted that the report of the Secretary-General suggested that one of the ways in which the credit risk of receiving banks could be reduced prior to receiving payment from the sending bank, thereby encouraging the bank to make credit available to its credit party promptly after receiving a payment order, was to allow it to net its claims against and its obligations to the sending bank. Such a procedure of netting might be of particular importance in a multilateral net settlement system, where the netting might be permitted either bilaterally between pairs of banks or on the basis of the net claims or obligations in regard to the entire group of banks, but it could also be applied bilaterally between banks that settled between themselves periodically outside of any net settlement system.

62. The Working Group engaged in a preliminary discussion of the desirability of introducing a provision on netting into the Model Law. It was stated that in some countries no such provision would be necessary because at least bilateral netting would follow naturally from the general rules on set-off. It was stated that in other countries even bilateral netting might not apply without specific statutory approval, and it was more doubtful whether multilateral netting could be applied without specific statutory approval.

63. In opposition to the introduction of any provision on netting into the Model Law, it was stated that it was unnecessary since the future for large-value credit transfers lay in the direction of prompt payment by senders by credit with the central bank. It was also stated that there were wider public policy issues involved in that, while netting arrangements reduced credit risk for the netting banks, it did so by reducing the amount of assets that might be available for distribution to other creditors of a bank if that bank should become insolvent.

64. The Working Group noted that important studies on netting arrangements by banks were being undertaken by various bodies. In particular, a committee of the central banks of the Group of Ten, presided by the General Manager of the Bank for International Settlements, was studying the "Policy issues raised by both bilateral and multilateral currency settlement arrangements" which were identified in the February 1989 "Report on netting schemes", prepared by the G-10 Group of Experts on Payment Systems of the central banks of the Group of Ten countries. While the studies on netting currently being carried out concentrated on foreign exchange markets in general, they would also be considering the netting of payment obligations. One of several working groups would address legal issues related to netting.

65. It was decided that the Secretariat should follow those studies and, at a later session, report to the Working Group on the conclusions that had been reached, including the submission of a draft text for possible inclusion in the Model Law if that seemed appropriate.

C. Responsibility of originator's bank

66. The Working Group noted that at its eighteenth session it had agreed to consider at its next session the suggestion that article 5 should include a provision similar to article 7(1)(c), first sentence, and article 7(1)(d), spelling out that the originator's bank was responsible to the originator for the proper completion of the credit transfer (A/CN.9/318, para. 155). It was noted that the Working Group had already decided at the current session that article 5(3)(b), the money-back guarantee when a payment order consistent with the contents of the payment order issued by the originator was not accepted by the beneficiary's bank, should apply even though it was not possible for the originator's bank or a subsequent intermediary bank to recover funds it had paid to its receiving bank because of the insolvency of that receiving bank (see para. 58, above).

67. The Working Group considered generally the responsibility of the originator's bank to the originator both for reimbursement of the principal amount transferred under article 5(3)(b) and for damages under article 9. Under one view, the originator's bank and each subsequent receiving bank should be responsible only for its own actions. Under a second view, the originator's bank should be responsible to the originator both for the return of the principal amount and for damages if the credit transfer was not carried out properly. Through the recourse procedures anticipated in articles 5(3)(b) and 9(2), the ultimate loss would be passed to the bank where the failure in the credit transfer occurred. Under a third view, the money-back guarantee should be retained for situations where the credit transfer was not completed, but that in situations where the transfer was completed, a bank should be responsible in damages only for its own improper execution.

68. In favour of a broad responsibility of the originator's bank to the originator, it was stated that the originator's bank was in a much better position than was the originator both to find out what had gone wrong and to recover the funds or damages, as the case might be, from its receiving bank, especially when the receiving bank was in a foreign country. It was stated to be a general principle of law that when a person contracted to undertake an activity and engaged third parties to fulfil that obligation, he remained responsible for the fulfilment of the contractual obligation by those third parties. This was said not to be a question of absolute liability, since article 10 provided for a number of cases in which the bank would have no liability and article 9(5)(d) provided for a limited liability in the one case in which damages were apt to be significant, i.e., loss of profit or similar losses that might arise as a result of an incomplete or improper completion of the credit transfer.

69. It was suggested that as a result of the right of recourse the ultimate financial burden to the originator's bank would not be very high. It was pointed out that the suggested rule for the Model Law was the current rule in a number of countries and that the banks in those countries were able to bear the responsibility without difficulty.

70. In favour of a responsibility limited to the bank's own actions, it was stated that it was also a general principle of law that a person who contracts to undertake an activity could limit his responsibility to the best choice of a competent subcontractor without guaranteeing proper execution by the subcontractor. That would mean that each bank contracted only that it would itself act properly. It was not in a position to control the actions of communications services and other banks. It was said that it would be particularly improper to hold the originator's bank responsible to the originator for the improper actions of a bank that had been designated by the originator.

71. In reply to the latter point it was stated that the draft Model Law already provided in article 5(5) that a bank was not always obligated to follow an instruction of its sender specifying an intermediary bank, funds transfer system or means to be used in carrying out the transfer.

72. In regard to the financial consequences of the proposed rule, it was stated to be a matter of pricing. An increase of responsibility for banks in those countries that did not currently have the suggested rule would probably increase their costs and the price they charged for making credit transfers.

73. It was stated that if the Model Law made the originator's bank responsible to the originator for the successful conclusion of the credit transfer, the Model Law should also provide the possibility for the originator's bank and the originator to contract for a lower level of responsibility. It was also stated that that might lead to the regrettable loss of the desired uniformity of law.

74. After extensive discussion the Working Group reiterated its decision to retain the money-back guarantee in article 5(3)(b) (see paragraph 58, above). It decided to return to the question of the extent of the liability of the originator's bank for damages when it discussed article 9 (see paragraph 144, below).

D. Instructions to receiving banks, article 5(5)

75. The Working Group decided to adopt article 5(5) with the addition of "excessive costs" as a justifiable reason for a receiving bank not to follow the instructions given to it.

E. Time to accept and execute payment order or give notice, article 7

Paragraph (1)

76. It was noted that the definitions of "execution date", "pay date" and "value date" were set forth in article 2 while article 7 set forth the time within which the receiving bank was required to act in respect of those dates.

77. It was stated that the *chapeau* of paragraph (1) was incorrect in that it stated an obligation of the receiving bank to accept and execute a payment order rather than the time within which the receiving bank was required to act.

78. It was suggested that the execution date was significant only in the context of the obligation of the sender to pay the receiving bank under article 4(4); if the receiving bank accepted the payment order prior to the execution date either expressly or by executing the order, the sender was not obligated to pay the receiving bank the amount of the order until the execution date. In that respect premature execution created a credit risk for the receiving bank. In reply it was stated that the execution date might also have significance if one of the parties became insolvent prior to that date. Furthermore, the sender should not lose its power to revoke its payment order prior to the execution date. The Working Group was in agreement that the execution date was the date on which the receiving bank was obligated to execute the order.

79. The Working Group agreed with the definition of "value date" as contained in article 2(n). It was suggested, however, that the value date only provided information to the receiving bank as to when it could expect to receive funds from the sender. Under article 5(1) the receiving bank would have no obligation to accept the order or give notice of rejection until it had in fact received sufficient funds.

80. It was stated that in respect of a payment order that contained a pay date, the originator's bank and an intermediary bank should both be obligated to execute the order in sufficient time for the beneficiary's bank to accept it and to place the funds at the disposal of the beneficiary on that date.

Paragraph (2)

81. It was stated that paragraph (2) should not apply to an originator's bank that received a payment order too late for it to be sent to the beneficiary's bank in time for that bank to place the funds at the disposal of the beneficiary on the pay date. In such a case the originator's bank should be expected to inform the originator that the pay date could not be met.

82. It was suggested that the requirement that a bank might have to act on the date that it received a payment order might not be realistic in the case of a bank with numerous branches. It was stated that the problem was particularly difficult if some of the branches were in foreign countries, but that difficulties would also be faced with domestic branches. In this respect the Working Group recalled that it had decided at its eighteenth session that it would consider the status of branches in respect of the individual substantive rules of the Model Law (A/CN.9/318, para. 53). The Working Group decided that, for the purposes of the time within which a bank was required to act, branches of a bank, including domestic branches, should be considered to be separate banks.

Paragraph (3)

83. The Working Group agreed with paragraph (3).

Paragraph (4)

84. Under one view, the provision requiring a receiving bank that decided to reject a payment order prior to the execution or pay date to give notice of the rejection promptly should be retained since it would be of benefit to the sender. It was suggested, however, that the time when the notice of rejection had to be given should not be measured by the time when the decision had been made, since that raised difficult questions of proof.

85. Under another view, the paragraph served no real purpose. According to article 5(1), no notice of rejection had to be given unless the receiving bank had already received sufficient funds to pay for the order. It would be a rare occasion when that was significantly prior to any decision to reject a payment order.

86. After discussion, the Working Group decided to delete any requirement of early notice of rejection.

Paragraph (5)

87. The Working Group agreed with paragraph (5).

New proposal

88. A working party consisting of the representatives of Japan and the United States of America and the observer from the International Chamber of Commerce was requested to prepare a new draft of article 7 in the light of the discussion. The proposal of the working party was as follows:

"Article 7

"(1) A receiving bank that must give the required notice or execute the order as provided in article 5 must comply with the earliest to occur of the following:

"(a) A receiving bank is obligated to execute an order after it has received sufficient funds and (i) on the execution date as stated in the payment order if such a date is stated, or (ii) when neither an execution date nor a pay date is stated on the payment order, on the date the order is received unless the nature of the order indicates that a different execution date is appropriate.

"(b) When a pay date is stated on the payment order accepted by the originator's bank or an intermediary bank, the obligation of the bank is to execute the order in sufficient time for the beneficiary's bank to act upon the payment order by that date. A beneficiary's bank that accepts a payment order on or before the pay date is obligated to place the funds at the disposal of the beneficiary on that date.

"(2) Notwithstanding paragraph (1), when no pay date is stated on a payment order accepted by the originator's bank, the obligation of the bank is that the payment order be issued to the beneficiary's bank within an appropriate period of time for that type of order.

"(3) A receiving bank that receives a payment order or sufficient funds too late to execute the order in conformity with its terms complies with the provisions of paragraphs (1) and (2) if it either executes the order or gives the notice of rejection provided for under article 5 on the day that it receives both the payment order and sufficient funds.

"(4) A receiving bank that receives a payment order after the receiving bank's cut-off time for that type of payment order is entitled to treat the order as having been received on the following day the bank executes that type of payment order.

"(5) If a receiving bank is required to take an action on a day when it is not open for the execution of payment orders of the type in question, it must take the required action on the following day it executes that type of payment order.

"(6) A branch or separate office of a bank, even if located in the same country, is a separate bank for purposes of this article.

"The second sentence of article 2(1) should be deleted."

89. It was stated that the rule in respect of the cut-off time, now appearing in paragraph (4) of the new proposal, was too short since an order might arrive minutes prior to the cut-off time. It was unreasonable to expect the bank to execute the order that day. In reply it was stated that the bank would fix its cut-off time early enough so that it could execute orders received by the cut-off on the day they were received. It was noted that, depending on the bank and the type of order, a bank's cut-off time for orders to be executed that day might be as early as noon.

90. The deletion of paragraph (4) in the orginal text, to the effect that a receiving bank that makes a decision to reject a payment order prior to the execution date must give notice of the rejection on the day the decision was made, was said to lead to the incorrect result since the sender should have the maximum opportunity to correct its payment order. Other questions were raised as to whether the proposed rules in respect of the execution date and pay date worked in an appropriate manner. In particular, it was suggested that paragraph (1) should include a reference to the need for the receiving bank to have received sufficient funds before it had any obligation to execute a payment order or to give notice of rejection. In reply it was said that the requirement that there be sufficient funds related to the basic obligation to execute or give notice and not to the time requirements discussed in article 7.

91. Since the discussion on the new proposal took place at the end of the session, it was decided that the delegations of Japan and the United States should take those comments into account and make the necessary adjustments. It was also noted that the restructuring of the text that was being undertaken by the drafting group (see para. 145) might affect the structure of paragraphs (1) and (2). The Working Group decided that, since it would not have the opportunity to consider the text as it would be redrafted in the light of the discussion on the new proposal and of the restructuring of the text, it would return to the matter at a future session.

F. Revocation and amendment of payment order, article 8

Paragraphs (1) to (3)

92. Under one view, the right of the originator to revoke his payment order should terminate at an early point of time. That point of time might be as early as when the originator sent his payment order to the originator's bank

or it might be when the originator's bank acted on the payment order by debiting the originator's account or by sending its own order to its receiving bank. Under that view, paragraph (2) would be unnecessary.

93. In support of that view, it was stated that modern electronic systems did not allow sufficient time to revoke payment orders as envisioned in paragraphs (1) and (3), much less to attempt to follow a payment order through the chain of banks and to catch it as envisioned in paragraph (2). Furthermore, if they were to evolve into true payment systems, they ought not to provide for revocation in any circumstances.

94. Under another view, the originator should have a right to revoke his payment order until the latest possible time, which would be when the beneficiary's bank accepted the order sent to it. If the revocation did not arrive in time because of the use of high-speed electronic systems, it would not be effective. However, that was not sufficient reason to preclude the originator from having the opportunity to attempt to revoke his order. Since the Working Group had decided at its seventeenth session that any revocation by the originator of the credit transfer after his payment order had been executed by the originator's bank should be permitted only by sending the revocation through the same chain of banks as the payment order, paragraph (2) was a necessary provision (A/CN.9/317, para. 125).

95. It was noted that both paragraphs (1) and (3) provided that a revocation was effective only if it had been received "in sufficient time" for the receiving bank to act on it before the receiving bank had executed the order. It was stated that it was unclear what was meant by sufficient time, especially since what was sufficient time might be different in respect of large value transfer systems and of batch systems. In particular, it was not clear whether only ordinary speed was anticipated or whether the receiving bank was expected to use extraordinary means to implement the revocation.

96. It was questioned whether a revocation of a payment order would have to be made through the same channels as the payment order itself. It was said that the question was of particular importance when the payment order had been sent by a highly secure channel of communications and the revocation was sent through a less secure channel of communications. In this regard it was noted that at the seventeenth session it had been suggested that the Model Law should make it clear that messages revoking payment orders were subject to the same rules as to authentication and liability for failure to follow the instruction as were payment orders themselves (A/CN.9/317, para. 125).

97. There was general agreement that paragraph (2) was inadequately drafted. It was stated that paragraph (2) did not make it clear that the receiving bank must revoke its own order on receipt of such an instruction from its sender, nor did it make clear within what period of time the receiving bank had to act or the consequences of its failure to act. It was pointed out that the current text stated that the sender might require "a" receiving bank to revoke or amend its payment order whereas the sender should be able to require only "its" receiving bank to do so.

98. It was suggested that the Model Law should provide that the senders and receiving banks might agree with their senders to other rules that made payment orders issued by the sender irrevocable or effective only if received at an earlier point of time than that provided in the Model Law itself.

99. At the conclusion of the discussion the representative of the United Kingdom and the observer from Finland were asked to prepare a new draft which would reflect the discussion and which would retain the current three paragraphs, provide that a payment order could be revoked until its expressed execution or pay date even if it had been executed prematurely and provide that a revocation was subject to the same rules on authentication as were payment orders.

100. The Working Group noted that the discussion had focused on the revocation of payment orders and that the amendment of orders might raise additional policy issues.

Paragraphs (4) and (5)

101. The Working Group deferred discussion on the paragraphs until it had an opportunity to consider the new draft prepared by Finland and the United Kingdom, which it understood might contain a new text of the paragraphs.

Paragraph (6)

102. It was stated that the meaning of the word "incapacity" was unclear and should be clarified at some point in the future. It was noted that the paragraph was not intended to cover cases of duress. It was suggested that the paragraph should make it clear that it applied only to the situation in which the death or incapacity occurred after the issue of the payment order. It was also suggested that the case of bankruptcy should also be covered by the provision.

103. The Working Group decided that the paragraph should be retained with the addition of the word "bankruptcy".

Paragraph (7)

104. Under one view, the Model Law should contain a provision whereby the beneficiary's bank could reverse credits to the beneficiary's account in case of clear error or fraud. It was stated that banks did so regularly and it would be advantageous if their actions were clearly authorized and regulated. It was suggested that the provision might also cover cases in which there had been an effective revocation of a payment order that the receiving bank had failed to act upon.

105. Under another view, the paragraph should be deleted. It was stated that the provision did not deal with the credit transfer itself, but rather with the relations between the beneficiary and the beneficiary's bank subsequent to the credit transfer. It was noted that in any State that adopted the Model Law there would be a different rule for the reversal of credits arising out of domestic credit transfers, which would not be subject to the Model Law. It was also stated that it was necessary that a provision that authorized the reversal of credit to an account should be in accord with the general principles of law in those States in which the Model Law would be adopted, a task that was said to be difficult since the subject was complicated.

106. After discussion the Working Group decided to delete the paragraph.

Paragraph (8)

107. It was noted that the question of the extent to which courts should order banks not to release funds because of fraud or error in the transaction was expected to be considered in the Working Group on International Contract Practices in the context of its preparation of a model law on guarantees and stand-by letters of credit. It was said that the issue was important and complicated.

108. It was suggested that the paragraph should be deleted. The provision added nothing to what would be the situation in any case. A bank would always be required to obey the order of a court so long as the order was in force. It was said that it would be difficult to prepare a provision that added anything new and that could be adopted.

109. The Working Group decided to delete the paragraph but to consider a proposal that was to be presented authorizing courts to restrain a bank from acting on a payment order if proper cause was shown.

Branches

110. The Working Group decided that branches of banks, even if in the same country, should be considered to be separate banks for the purposes of the article.

New proposals

111. The working party consisting of the observer from Finland and the representative of the United Kingdom proposed a new text of the article. In addition, the delegations of France and Italy and of the United States proposed new texts of the article while the observer from the Banking Federation of the European Communities proposed a new paragraph to be added to the article. Because of a shortage of time, the Working Group considered only the text proposed by the working party.

112. The proposal of the working party was to replace paragraphs (1) to (5) of the current text by the following:

"(1) A revocation order issued to a receiving bank other than the beneficiary's bank is effective if:

"(a) it was issued by the sender of the payment order,

"(b) it was received in sufficient time before the execution of the payment order to enable the receiving bank, if it acts as promptly as possible under the circumstances, to cancel the execution of the payment order, and

"(c) it was authenticated in the same manner as the payment order.

"(2) A revocation order issued to the beneficiary's bank is effective if:

"(a) it was issued by the sender of the payment order,

"(b) it was received in sufficient time before acceptance of the payment order to enable the beneficiary's bank, if it acts as promptly as possible under the circumstances, to refrain from accepting the payment order, and

"(c) it was authenticated in the same manner as the payment order.

"(3) Notwithstanding the provisions of paragraphs (1) and (2), the sender and the receiving bank may agree that payment orders issued by the sender to the receiving bank are to be irrevocable or that a revocation order is effective only if it is received by an earlier point of time than provided in paragraphs (1) and (2).

"(4) If a revocation order is received by the receiving bank too late to be effective under paragraph (1), the receiving bank shall, as promptly as possible under the circumstances, revoke the payment order it has issued to its receiving bank, unless that payment order is irrevocable under an agreement referred to in paragraph (3).

"(5) A sender who has issued an order for the revocation of a payment order that is not irrevocable under an agreement referred to in paragraph (3) is not obligated to pay the receiving bank for the payment order:

"(a) if, as a result of the revocation, the credit transfer is not completed, or

"(b) if, in spite of the revocation, the credit transfer has been completed due to a failure of the receiving bank or a subsequent receiving bank to comply with its obligations under paragraphs (1), (2) or (4).

"(6) If a sender who, under paragraph (5), is not obligated to pay the receiving bank has already paid the receiving bank for the revoked payment order, the sender is entitled to recover the funds paid.

"(7) If the originator is not obligated to pay for the payment order under paragraph (5)(b) or has received a refund under paragraphs (5)(b) or (6), any right of the originator to recover funds from the beneficiary is assigned to the bank that failed to comply with its obligations under paragraphs (1), (2) or (4)."

113. The Working Group decided to adopt the proposal. Since the proposal was considered at the end of the session, comments were made on it for the purpose of its refinement at the next session. The other delegations that had submitted proposals in respect of article 8 were invited to present their proposals again at the next session of the Working Group if they believed it opportune.

114. It was suggested that the rule in the new paragraph (1)(c) that the revocation had to be "authenticated in the same manner as the payment order" might not be correct. The case was posed of a paper-based payment order that was revoked by a tested telex. In reply it was noted that the provision was in response to an earlier decision of the Working Group (see para. 96, above). An attempt had been made to draft a requirement that the authentication had to be as good or better than the authentication of the payment order being revoked, but it had not proven possible to do so.

115. Concern was expressed over the effect of the new paragraph (3) since the originator might not know that there were agreements between particular banks through which the credit transfer might pass that made a payment order between those banks irrevocable. Another suggestion was that the amount of the funds to be returned in paragraph (6) should be the original amount of the transfer less costs. It was pointed out that this was a question that arose in respect of the reimbursement of the funds in case of an unsuccessful credit transfer as well and that it would need to be addressed at a later stage.

116. It was stated that the words "as promptly as possible under the circumstances" in paragraph (4) provided a vague test that would be difficult to apply in particular fact situations. As a result, an increase in disputes could be anticipated between the originator and the receiving bank as to whether the bank had acted to revoke its payment order in the requisite time. It was also stated that the proposed time requirement appeared to be more stringent than was the requirement imposed by the Model Law on the receiving bank as to when it had to execute the order by sending its own payment order to the next bank in the transfer chain. This was said to be inappropriate since the function of the banks was to execute payment orders promptly and efficiently while the revocation of orders constituted an interference with that function. It was proposed that the qualification "reasonable" be used in place of the current formulation.

G. Liability and damages, article 9

Paragraph (1)

117. It was noted that paragraph (1) dealt only with the question as to the parties to whom a receiving bank that had failed in its obligations would be liable. The question as to whether the originator's bank should be liable to the originator for the successful completion of the credit transfer was dealt with in paragraph (2). The question as to the types of loss for which the bank could be held liable was dealt with in paragraph (5).

118. Under one view a receiving bank should be liable only to the party with which it had a contractual relationship, which was said to be the sender.

119. Under another view the use of various theories of contract law, such as assignment of claims, would make it possible for a prior party in the credit transfer chain to have a contractual claim against the receiving bank. Therefore, it was suggested that it was preferable to determine as a matter of policy which parties should have a claim against the bank whose failure had led to loss and to give those parties the right to claim for the loss as a statutory right. That might be done by analysing the various types of failure that could occur and by determining the party who had suffered economic loss as a result.

120. It was noted that the Working Group had already decided that in the case of a failed credit transfer, the originator should have the right to recover the principal amount of the transfer from the originator's bank, and that each sending bank in turn had the right to recover any funds it had paid to its receiving bank (see paragraph 58, above). It was also noted that the originator's right was based on a money-back guarantee from the originator's bank to the originator and not as a matter of liability of the originator's bank for the failed credit transfer.

121. It was stated that, since paragraph (5)(d) of the current text restricted significantly the right to claim for lost profits or similar damages, the major form of loss to be considered would be the loss of interest arising out of the late completion of a credit transfer.

122. The case was posed of the transfer in which the originator's account was debited on the appropriate day but, because of a delay at an intermediary bank, the beneficiary's account was credited later than it would have been if the transfer had been carried out in the appropriate period of time. In such a case the bank that caused the delay would have had the use of the funds during the period of the delay, thereby benefiting from the fact of the delay. The Working Group agreed that that result would be improper and that the interest for the period of the delay should not be retained by the bank. The Working Group then considered which party should have a right to claim for the interest from the bank.

123. Under one view it was necessary to look to the underlying contractual relationship between the originator and the beneficiary to determine whether the originator or the beneficary would have a right to recover the lost interest from the bank. It was stated that the beneficiary should recover the interest from the originator and the originator should in turn recover the interest from the bank.

124. Under another view the determination of the proper party to recover interest for late completion of a credit transfer should be analysed only in terms of the credit transfer, which was said to be independent from any underlying transaction that might have given rise to the transfer.

125. It was stated that it was the beneficiary, and not the originator, who suffered the economic loss in such a case, at least in the first instance. The loss to the beneficiary was evident where the beneficiary had a contractual right against the originator to receive the funds on a particular day, thereby having a legitimate expectation that it would be in a position to invest or otherwise use the funds as of that day. It was said that the loss to the beneficiary was equally evident when the beneficiary had an expectation of receiving the funds on a particular day, even though it did not have a contractual right to receive them that day. The least evident case was when the beneficiary had no expectation as to the day when the funds would be received. It was stated, however, that even in such a case the beneficiary would have had the use of the funds if they had arrived when they should. Once it was agreed that the bank should not be allowed to keep the interest it had earned by reason of the delay, the only party who could have a claim to that interest would be the beneficiary.

126. It was noted that it was current banking practice in many important banking centres for a bank at which a transfer was delayed to add the appropriate amount of interest to the amount being transferred. As a result the beneficiary would automatically receive it. This was said to be highly efficient and expeditious, not requiring any inquiry into the facts of the underlying transaction, and a practice that the legal system should recognize. Moreover, in a large number of cases, the interest received by the beneficiary would be approximately equal to the loss it would have suffered as a result of the delay.

127. In reply it was stated that, while the practice was commendable, it was not necessary to provide for it specifically in the Model Law.

128. Concern was expressed as to how granting the beneficiary a legal right to recover the interest arising out of the late completion of a credit transfer would affect the right of the beneficiary against the originator. It was noted that in many cases of delayed payment of an obligation the interest rate on the amount of the delayed payment would be considerably more than the interest rate at which the beneficiary would have been compensated by the bank that caused the delay.

129. It was suggested that the receipt of interest from the bank would serve to reduce the beneficiary's claim against the originator. It was also stated that this left open the question as to whether the beneficiary would continue to have a claim against the originator for the balance of the interest due on the underlying obligation under the law governing the obligation and, if it did, whether the originator would have a claim against the bank for that amount.

130. Concern was also expressed as to what rights the beneficiary would have if the interest for delay was not forwarded to it by the bank. Since the proposal to give the beneficiary a right to recover interest for the delay in completion of the transfer seemed to require that the originator would also have such a right in appropriate cases, it was questioned as to whether it would be necessary to establish the relative priority of the two claims. It was also observed that it might be difficult to establish the rate at which interest would accrue.

131. The Working Group decided that, in the light of the discussion, it would retain the principle of paragraph (1), but would place it in square brackets for the time being. It also decided that it would be useful to consider providing in the Model Law that the beneficiary would have a direct right to recover interest resulting from the delay against the bank that caused the delay. Since the proposal raised a number of questions that would require consultation, the Working Group requested the Secretariat to prepare a draft of a provision for its consideration at its next session.

132. It was suggested that the Secretariat should also be requested to consider including in the provision the right of the beneficiary to recover for loss caused by a change in exchange rates during the delay. That request led to a discussion of exchange losses, at the end of which the request to the Secretariat was adopted.

Paragraph (5)(b)

133. Under one view exchange losses arising out of the delayed completion of a credit transfer should not be recoverable. It was stated that such losses were rare. Where the originator's account was to be debited in a currency other than the currency of the transfer, the originator's bank would normally make the conversion so that its payment order would be denominated in the currency of the transfer. Therefore, the only occasions when there could be an exchange loss arising out of delay was when the originator's bank was not in a position to make the conversion itself. That situation arose only when the originator's bank was a small bank that did not often engage in international transfers or when the currency of the transfer was a currency that was not frequently used for international transfers.

134. It was also said that, while the fact that such losses might occur in case of delay was foreseeable, neither the fact that such losses would occur nor the potential amount of loss was foreseeable. In this regard a distinction was drawn between interest losses, which were an automatic consequence of delay and for which the bank should be liable, and exchange losses, which were not an automatic consequence of delay. It was said that during the period of any delay the exchange rate might not change or might change to the benefit of the originator as well as to his detriment. It was suggested that the loss should be compared to the situation where there was an increase in the price of goods that were to be purchased with the funds transferred. Paragraph (5)(b) might be deleted and exchange losses could be recovered under the provisions of paragraph (5)(d).

135. Under another view exchange losses should be recoverable. It was said that if they were rare, that should decrease the concern over making them recoverable. When the loss did occur as a result of the delay in the transfer, there was no reason why the originator or the beneficiary should bear it. The situation was said not to be the same as when the price of goods rose during the delay since the beneficiary would have received less funds in the currency of the transfer than he should have received. That fact in particular made it easy to calculate the amount of the loss.

136. After discussion the Working Group decided to retain paragraph (5)(b).

Paragraph (5)(c)

137. It was stated that there was no particular value in retaining the first portion of paragraph (5)(c) relating to the costs of a new payment order. Those costs were very small and in the usual situation they would be required to be borne by the banks in any case as a result of their obligation under article 5(3)(c) to assist the originator to complete the transfer.

138. In regard to the costs of legal representation, it was stated that in many countries there were provisions in the procedural law that allocated those costs to the parties. It was recognized that in some other countries each party to a dispute had to bear his own legal costs and that a provision of the nature of paragraph (5)(c) could be of value in those countries. Moreover, even in those countries in which the law of procedure allocated costs of legal representation, it did not always allocate the costs that arose prior to litigation.

139. The Working Group decided to put the second part of paragraph (5)(c) in square brackets. Another suggestion was to place in a footnote words such as "even if not recoverable under the law of civil procedure" so as to reflect the concerns expressed above.

Paragraph (5)(d)

140. In respect of paragraph (5)(d) a proposal was made to delete the paragraph. In support of the proposal it was said that users as well as banks wished the credit transfer system, and especially that used for high value transfers, to be fast, inexpensive and efficient. It was important that the system operate automatically with a minimum of attention to individual payment orders. Liability for losses of the type covered by paragraph (5)(d) would require determination of the facts in respect of the underlying transactions,

a procedure that would be time consuming and costly. It was said that the losses should be recoverable, if at all, only to the extent that at the time of making the transfer the loss was foreseeable to the bank in respect of the fact that loss might occur, the nature of the loss and its amount. That raised difficult questions as to who in the bank would be expected to know of those elements. It was also said that the subparagraph would put the banks in the position of offering two different services, a credit transfer service and an insurance service. It was said that if originators wished to contract for such insurance, it would be preferable for them to do so directly with an insurance company that could better evaluate the risk of loss.

141. In opposition to the proposal to delete the subparagraph it was said that banks were in essentially the same position as any other entity that offered a service to the public. The same arguments were being made as to the efficiency of the service and the proper allocation of losses caused by their failures. It was said that it did not appear that credit transfers were so dangerous for the banks or that it would place such an undue burden upon them to hold them responsible for the losses envisaged under the restricted conditions set out in paragraph (5)(d).

142. The formulation of paragraph (5)(d) was criticized as being imprecise. It was said that it did not make it clear as to what types of losses were to be covered or that those losses should have been the direct consequence of the failure on the part of the bank. Various objections were presented to the formula taken from article 8 of the United Nations Convention on the Carriage of Goods by Sea, 1978 (Hamburg Rules). It was said that while the formula indicated the general nature of the limitation that was to be placed on the right of recovery, it had been drafted with the problems of maritime transportation in mind and not those of making credit transfers.

143. After discussion it was decided that the subparagraph should be retained but that square brackets should be placed around both the words "any other loss" and around the words taken from the Hamburg Rules.

Paragraph (2)

144. Although the Working Group was able to engage in only a short discussion of paragraph (2) for lack of time, it recognized that the basic question as to whether the originator's bank should be responsible to the originator for the successful completion of the credit transfer had underlain much of the debate on other aspects of the draft Model Law throughout the session and had been the subject of an extensive discussion earlier in the session (see paragraphs 66 to 74, above). At the conclusion of the discussion it was decided that the paragraph would remain in the draft Model Law at this time but that it was a subject to which the Working Group would have to return.

H. Drafting group

145. A drafting group consisting of the representative of the United States and the observers from Finland and Switzerland was requested to restructure the draft Model Law and to prepare a new text for discussion at the next session of the Working Group. The new text, which is intended to reflect the decisions of the Working Group at the present session, is contained in annex I to this report.

II. FUTURE SESSIONS

146. The Working Group noted that the twentieth session would be held at Vienna from 27 November to 8 December 1989 and that the twenty-first session would be held in New York from 9 to 20 July 1990.

ANNEX I

Draft Model Law on International Credit Transfers
resulting from the nineteenth session of the
Working Group on International Payments a/

CHAPTER I. GENERAL PROVISIONS

Article 1. Sphere of application *

(1) This law applies to credit transfers where the originator's bank and the beneficiary's bank are in different countries.

(2) For the purpose of determining the sphere of application of this Law, branches of banks in different countries are considered to be separate banks.

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* This law is subject to any national legislation dealing with the rights and obligations of consumers.

Article 2. Definitions

(a) "Credit transfer" means a complete movement of funds from the originator to the beneficiary pursuant to a payment order received by the originator's bank [directly] from the originator. A credit transfer may involve one or more payment orders.

(b) "Originator" means the issuer of the first payment order in a credit transfer.

(c) "Beneficiary" means the ultimate person intended to receive the funds as a result of a credit transfer.

(d) "Sender" means the person who sends a payment order including the originator and any sending bank.

(e) "Bank" means a financial institution which, as an ordinary part of its business, engages in credit transfers for other persons.

(f) A "receiving bank" is a bank that receives a payment order.

(g) "Intermediary bank" means any bank executing a payment order other than the originator's bank and the beneficiary's bank.

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a/ The draft Model Law was restructured by a drafting group during the nineteenth session and a new text was prepared for discussion at the twentieth session of the Working Group. The new text, presented in this annex, is intended to reflect the decisions of the Working Group made at the nineteenth session.

(h) "Funds" or "money" includes credit in an account kept by a bank and includes credit denominated in a monetary unit of account that is established by an intergovernmental institution or by agreement of two or more States, provided that this Law shall apply without prejudice to the rules of the intergovernmental institution or the stipulations of the agreement.

(i) "Payment order" means a message, whether written or oral, that contains an order to the receiving bank to pay, or to cause another bank to pay, to a designated person a fixed or determinable amount of money.

(j) "Authentication" means a procedure to determine whether all or part of a payment order is authorized, and which is the product of an agreement.

(k) "Cover" means the provision of funds to a bank to reimburse it for a payment order sent to it. The provision of cover might precede or follow execution of the order by the receiving bank.

(l) "Execution date" means the date when the receiving bank is to execute the payment order, as specified by the sender. When no execution date is stated on a payment order, the execution date of that order shall be deemed to be the date the order is received, unless the nature of the order indicates that a different execution date is appropriate.

(m) "Pay date" means the date when funds are to be at the disposal of the beneficiary, as specified by the originator.

(n) "Value date" means the date when funds are to be at the disposal of the receiving bank.

Article 3. Contents of payment order

A payment order is required to contain, either explicitly or implicitly, at least the following data:

(i) identification of the sender,

(ii) identification of the receiving bank,

(iii) the amount of the transfer, including the currency or the unit of account,

(iv) identification of the beneficiary,

(v) identification of the beneficiary's bank

CHAPTER II. DUTIES OF THE PARTIES

Article 4. Obligations of sender

(1) Variant A

A purported sender is bound by a payment order, if he authorized it or if it was issued by a person who, pursuant to the applicable law [of agency], otherwise had the power to bind the purported sender by issuing the payment order.

Variant B

A purported sender is bound by a payment order if it was issued by the purported sender or by another person who had the authority to bind the purported sender.

(2) Notwithstanding anything to the contrary in paragraph (1), when a payment order is subject to authentication, a purported sender of such an order is bound if:

(a) the authentication provided is a commercially reasonable method of security against unauthorized payment orders,

(b) the amount of the order is covered by a withdrawable credit balance or authorized overdraft in an appropriate account of the sender with the receiving bank or there is an agreement between the sender and the receiving bank that such payment orders are to be executed despite the absence of such balances or overdrafts, and

(c) the receiving bank complied with the authentication.

(3) Variant A

A purported sender [that is not a bank] is, however, not bound by a payment order under paragraph (2) if

(a) the actual sender was a person other than a present or former employee of the purported sender, and

(b) the actual sender had gained access to the authentication procedure without fault on the part of the purported sender.

Variant B

No sender may become bound under paragraph (2) if the sender proves that the payment order was executed by

(a) a present or former employee or agent of the receiving bank, or

(b) a person acting in concert with a person described in (a), or

(c) any other person who, without the sender's authorization, obtained confidential information about the authentication from a source controlled by the receiving bank, regardless of fault.

(4) A sender becomes obligated to pay the receiving bank for the payment order when the receiving bank accepts it, but payment is not due until the execution date, unless otherwise agreed.

Article 5. Acceptance or rejection of a payment order by receiving bank other than a beneficiary's bank

(1) If a receiving bank decides not to accept a sender's payment order, it is required to notify the sender of the rejection, unless one of the reasons is insufficient funds. A notice of rejection of a payment order must be given not later than on the execution date.

(2) A receiving bank that is not the beneficiary's bank accepts the sender's payment order at the earliest of the following times:

(a) when the time within which a required notice of rejection should have been given has elapsed without notice having been given,

(b) when the bank receives the payment order, provided that the sender and the bank have agreed that the bank will execute payment orders from the sender without notification that cover is in place,

(c) when it notifies the sender of acceptance, or

(d) when it sends a payment order intended to carry out the payment order received.

Article 6. Obligations of receiving bank other than beneficiary's bank

(1) The provisions of this article apply to a receiving bank other than the beneficiary's bank.

(2) When a payment order is received that contains information which indicates that it has been misdirected and which contains sufficient information to identify and trace the sender, the receiving bank shall notify the sender of the misdirection.

(3) If there is an inconsistency in a payment order between the words and figures that describe the amount of money, the receiving bank is required to notify the sender of the discrepancy unless the sender and the bank had agreed that the bank would rely upon either the words or the figures, as the case may be.

(4) A receiving bank that accepts a payment order is obligated under that payment order to issue a payment order, within the time required by article 9, to either the beneficiary's bank or an appropriate intermediary bank, that is consistent with the contents of the payment order received by the receiving bank and that contains the instructions necessary to implement the credit transfer in an appropriate manner.

(5) The receiving bank is not bound to follow an instruction of the sender specifying an intermediary bank, funds transfer system or means of transmission to be used in carrying out the credit transfer if the receiving bank, in good faith, determines that it is not feasible to follow the instruction or that following the instruction would cause excessive costs or delay in completion of the credit transfer. The receiving bank acts within the time required by article 9 if it, in good faith and in the time required by that article, enquires of the sender as to the further actions it should take in light of circumstances.

Article 7. Acceptance or rejection by beneficiary's bank

(1) If the beneficiary's bank decides not to accept a sender's payment order, it is required to notify the sender of the rejection, unless one of the reasons is insufficient funds. A notice of rejection of a payment order must be given not later than on the execution date.

(2) The beneficiary's bank accepts a payment order at the earliest of the following times:

(a) when the time within which a required notice of rejection should have been given has elapsed without notice having been given,

(b) when the bank receives the payment order, provided that the sender and the bank have agreed that the bank will execute payment orders received from the sender without notification that cover is in place,

(c) when it notifies the sender of acceptance,

(d) when the bank credits the beneficiary's account or otherwise pays the beneficiary,

(e) when the bank gives notice to the beneficiary that it has the right to withdraw the credit or the funds,

(f) when the bank otherwise applies the credit as instructed in the payment order,

(g) when the bank applies the credit to a debt of the beneficiary owed to it or applies it in conformity with an order of a court.

Article 8. Obligations of beneficiary's bank

(1) When a payment order is received that contains information which indicates that it has been misdirected and which contains sufficient information to identify and trace the sender, the beneficiary's bank shall notify the sender of the misdirection.

(2) If there is an inconsistency in a payment order between the words and figures that describe the amount of money, the beneficiary's bank is required to notify the sender of the discrepancy unless the sender and the bank had agreed that the bank would rely upon either the words or the figures, as the case may be.

(3) Where the beneficiary is described by both words and figures, and the intended beneficiary is not identifiable with reasonable certainty, the beneficiary's bank must notify, within the time prescribed in article 9, paragraph (4), its sender, and also the originator's bank if it is identified on the payment order.

(4) Variant A

The beneficiary's bank is, upon acceptance of a payment order received, obligated to place the funds at the disposal of the beneficiary in accordance with the payment order and the applicable law governing the relationship between the bank and the beneficiary.

Variant B

A beneficiary's bank that accepts a payment order fulfills its obligations under that payment order

(a) if the beneficiary maintains an account at the beneficiary's bank into which funds are normally credited, by, in the manner and within the time prescribed by law, including article 9, or by agreement between the beneficiary and the bank

(i) crediting the account,

(ii) placing the funds at the disposal of the beneficiary, and

(iii) notifying the beneficiary; or

(b) if the beneficiary does not maintain an account at the beneficiary's bank, by

(i) making payment by the means specified in the order or by any commercially reasonable means, or

(ii) giving notice to the beneficiary that the bank is holding the funds for the benefit of the beneficiary.

Article 9. <u>Time for receiving bank to execute payment order</u>

(1) A receiving bank is required to execute the payment order on the day it is received, unless

(a) a later execution date is specified in the order, in which case the order shall be executed on that date,

(b) the order contains a specification of a pay date and that date indicates that later execution is appropriate in order for the beneficiary's bank to accept a payment order and place the funds at the disposal of the beneficiary by the pay date.

(2) A receiving bank that receives a payment order after the receiving bank's cut-off time for that type of payment order is entitled to treat the order as having been received on the following day the bank executes that type of payment order.

(3) If a receiving bank is required to take an action on a day when it is not open for the execution of payment orders of the type in question, it must take the required action on the following day it executes that type of payment order.

(4) A branch of a bank, even if located in the same country, is a separate bank for the purposes of this article.

Article 10. <u>Revocation</u>

(1) A revocation order issued to a receiving bank other than the beneficiary's bank is effective if:

(a) it was issued by the sender of the payment order,

(b) it was received in sufficient time before the execution of the payment order to enable the receiving bank, if it acts as promptly as possible under the circumstances, to cancel the execution of the payment order, and

(c) it was authenticated in the same manner as the payment order.

(2) A revocation order issued to the beneficiary's bank is effective if:

(a) it was issued by the sender of the payment order,

(b) it was received in sufficient time before acceptance of the payment order to enable the beneficiary's bank, if it acts as promptly as possible under the circumstances, to refrain from accepting the payment order, and

(c) it was authenticated in the same manner as the payment order.

(3) Notwithstanding the provisions of paragraphs (1) and (2), the sender and the receiving bank may agree that payment orders issued by the sender to the receiving bank are to be irrevocable or that a revocation order is effective only if it is received by an earlier point of time than provided in paragraphs (1) and (2).

(4) If a revocation order is received by the receiving bank too late to be effective under paragraph (1), the receiving bank shall, as promptly as possible under the circumstances, revoke the payment order it has issued to its receiving bank, unless that payment order is irrevocable under an agreement referred to in paragraph (3).

(5) A sender who has issued an order for the revocation of a payment order that is not irrevocable under an agreement referred to in paragraph (3) is not obligated to pay the receiving bank for the payment order:

(a) if, as a result of the revocation, the credit transfer is not completed, or

(b) if, in spite of the revocation, the credit transfer has been completed due to a failure of the receiving bank or a subsequent receiving bank to comply with its obligations under paragraphs (1), (2) or (4).

(6) If a sender who, under paragraph (5), is not obligated to pay the receiving bank has already paid the receiving bank for the revoked payment order, the sender is entitled to recover the funds paid.

(7) If the originator is not obligated to pay for the payment order under paragraph (5)(b) or has received a refund under paragraphs (5)(b) or (6), any right of the originator to recover funds from the beneficiary is assigned to the bank that failed to comply with its obligations under paragraphs (1), (2) or (4).

(8) The death, bankruptcy, or incapacity of either the sender or the originator does not affect the continuing legal validity of a payment order that was issued before that event.

(9) A branch of a bank, even if located in the same country, is a separate bank for the purposes of this article.

CHAPTER III. CONSEQUENCES OF FAILED, ERRONEOUS OR DELAYED CREDIT TRANSFERS

Article 11. [Assistance and refund]

A receiving bank other than the beneficiary's bank that accepts a payment order is obligated under that order:

(a) where a payment order is issued to a beneficiary's bank in an amount less than the amount in the payment order issued by the originator to the originator's bank - to assist the originator and each subsequent sending bank, and to seek the assistance of its receiving bank, to obtain the issuance of a payment order to the beneficiary's bank for the difference between the amount paid to the beneficiary's bank and the amount stated in the payment order issued by the originator to the originator's bank.

(b) where a payment order consistent with the contents of the payment order issued by the originator and containing instructions necessary to implement the credit transfer in an appropriate manner is not issued to or accepted by the beneficiary's bank - to refund to its sender any funds received from its sender, and the receiving bank is entitled to the return of any funds it has paid to its receiving bank.

Article 12. Liability and damages

[(1) A receiving bank that fails in its obligations under article 5 is liable therefor to its sender and to the originator.]

(2) The originator's bank and each intermediary bank that accepts a payment order is liable to its sender and to the originator for the losses as set out in paragraph (5) of this article caused by the non-execution or the improper execution of the credit transfer as instructed in the originator's payment order. The credit transfer is properly executed if a payment order consistent with the payment order issued by the originator is accepted by the beneficiary's bank within the time required by article 9.

(3) An intermediary bank is not liable under paragraph (2) if the payment order received by the beneficiary's bank was consistent with the payment order received by the intermediary bank and it executed the payment order received by it within the time required by article 9.

(4) The beneficiary's bank is liable

(a) to the beneficiary for its improper execution or its failure to execute a payment order it has accepted to the extent provided by the law governing the [account relationship] [relationship between the beneficiary and the bank], and

(b) to its sender and to the originator for any losses caused by the bank's failure to place the funds at the disposal of the beneficiary in accordance with the terms of a pay date or execution date stated in the order, as provided in article 9.

(5) If a bank is liable under this article to the originator or to its sender, it is obliged to compensate for

(a) loss of interest,

(b) loss caused by a change in exchange rates,

(c) expenses incurred for a new payment order [and for reasonable costs of legal representation],*

(d) [any other loss] that may have occurred as a result, if the improper [or late] execution or failure to execute [resulted from an act or omission of the bank done with the intent to cause such improper [or late] execution or failure to execute, or recklessly and with knowledge that such improper [or late] execution or failure to execute would probably result].

(6) If a receiving bank fails to notify the sender of a misdirected payment order as provided in articles 6(2) or 8(1), and the credit transfer is delayed, the receiving bank shall be liable:

(a) if there are funds available, for interest on the funds that are available for the time they are available to the receiving bank, or

(b) if there are no funds available, for interest on the amount of the payment order for an appropriate period of time, not to exceed 30 days.

(7) Banks may vary the provisions of this article by agreement to the extent that it increases or reduces the liability of the receiving bank to another bank and to the extent that the act or omission would not be described by paragraph (5)(d). A bank may agree to increase its liability to an originator that is not a bank but may not reduce its liability to such an originator.

(8) The remedies provided in this article do not depend upon the existence of a pre-existing relationship between the parties, whether contractual or otherwise. These remedies shall be exclusive and no other remedy arising out of other doctrines of law shall be available.

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* Consideration may be given to allowing recovery of reasonable costs of legal representation even if they are not recoverable under the law of civil procedure.

Article 13. <u>Exemptions</u>

A receiving bank and any bank to which the receiving bank is directly or indirectly liable under article 12 is exempt from liability for a failure to perform any of its obligations if the bank proves that the failure was due to the order of a court or to interruption of communication facilities or equipment failure, suspension of payments by another bank, war, emergency conditions or other circumstances that the bank could not reasonably be expected to have taken into account at the time of the credit transfer or if the bank proves that it could not reasonably have avoided the event or overcome it or its consequences.

CHAPTER IV. CIVIL CONSEQUENCES OF CREDIT TRANSFER

Article 14. Payment and discharge of monetary obligations; obligation of bank to account holder

(1) Unless otherwise agreed by the parties, payment of a monetary obligation may be made by a credit transfer to an account of the beneficiary in a bank.

(2) The obligation of the debtor is discharged and the beneficiary's bank is indebted to the beneficiary to the extent of the payment order received by the beneficiary's bank when the payment order is accepted by the beneficiary's bank.

(3) If one or more intermediary banks have deducted charges from the amount of the credit transfer, the obligation is discharged by the amount of those charges in addition to the amount of the payment order as received by the beneficiary's bank. Unless otherwise agreed, the debtor is bound to compensate the creditor for the amount of those charges.

(4) To the extent that a receiving bank has a right of reimbursement from a sender by debit to an account held by the receiving bank for the sender, the account shall be deemed to be debited when the receiving bank accepts the payment order.

CHAPTER V. CONFLICT OF LAWS

Article 15. Conflict of laws

(1) Persons who anticipate that they will send and receive payment orders may agree that the law of the State of the sender, of the receiver or of the State in whose currency the payment orders are denominated will govern their mutual rights and obligations arising out of the payment orders. In the absence of agreement, the law of the State of the receiving bank will govern the rights and obligations arising out of the payment order.

(2) In the absence of agreement to the contrary, the law of the State where an obligation is to be discharged governs the mutual rights and obligations of an originator and beneficiary of a credit transfer. If between the parties an obligation could be discharged by credit transfer to an account in any of one or more States or if the transfer was not for the purpose of discharging an obligation, the law of the State where the beneficiary's bank is located governs the mutual rights and obligations of the originator and the beneficiary.

ANNEX II

Table of Concordance

Draft Model Law on International Credit Transfers
with sources of modifications

A/CN.9/328, annex I	A/CN.9/318, annex	Source of modifications (Paragraph numbers refer to to this report. WP.41 refers to A/CN.9/WG.IV/WP.41)
1	1	
2 (a) - (g)	2 (a) - (g)	
2 (h)	2 (h)	WP.41, art. 2, comment 16
2 (i)	2 (i)	WP.41, art. 2, comment 18
2 (j) - (n)	2 (j) - (n)	
3	2 (i)	WP.41, art. 2, comment 18
4	4	
5 (1)	5 (1), 7 (1),(4)	Reworded by Drafting Group
5 (2) chapeau	6 (1)	
5 (2) (a)	6 (1) (b)	Reworded by Drafting Group
5 (2) (b)	6 (2) (a)	Para. 32
5 (2) (c)		Para. 31
5 (2) (d)	6 (1) (a)	
6 (1)		Drafting Group
6 (2)	5 (1 bis)	Para. 20
6 (3)	3 (1)	
6 (4)	5 (3) (a)	
6 (5)	5 (5)	Para. 75
7 (1)	5 (1), 7 (1),(4)	Reworded by Drafting Group
7 (2) chapeau	6 (2)	
7 (2) (a)		Para. 44
7 (2) (b)	6 (2) (a)	Para. 49
7 (2) (c)		Para. 44
7 (2) (d)	6 (2) (c) Variant A	Para. 60
7 (2) (e) - (g)	6 (2) (c) Variant B-(e)	
8 (1)	5 (1 bis)	Para. 20
8 (2)	3 (1)	
8 (3)	3 (2)	
8 (4) Variant A		Drafting Group
8 (4) Variant B	5 (4)	
9 (1)	7 (1)	Reworded by Drafting Group
9 (2)	7 (3)	
9 (3)	7 (5)	
9 (4)		Para. 82
10 (1) - (7)		Paras. 112-113
10 (8)	8 (6)	Paras. 102-103
Chapter III (Title)		Drafting Group
11 chapeau	5 (3)	

A/CN.9/328, annex I	A/CN.9/318, annex	Source of modifications (Paragraph numbers refer to to this report. WP.41 refers to A/CN.9/WG.IV/WP.41)
11 (a)	5 (3) (c)	Drafting Group inserted "less than" in place of "different from"
11 (b)	5 (3) (b)	
12 (1)	9 (1)	Para. 131
12 (2) - (5) (b)	9 (2) - (5) (b)	"Value date" deleted in (4) (b)
12 (5) (c)	9 (5) (c)	Para. 139
12 (5) (d)	9 (5) (d)	Para. 143
12 (6)	5 (1 bis)	Reworded by Drafting Group
12 (7) - (8)	9 (6) - (7)	
13	10	
14	11	
15	12	