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REPORT OF THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW ON THE WORK OF ITS TWENTY-FIRST SESSION

Draft Convention on International Bills of Exchange and International Promissory Notes

Report of the Secretary-General

Addendum

CONTENTS

* A/43/50.

1. The observations and proposals of Governments on the draft Convention on International Bills of Exchange and International Promissory Notes that had been received by 3 June 1988 are contained in the report of the Secretary-General (A/43/405).

2. The present addendum contains such observations and proposals received between 3 June and 11 July 1988.

AUSTRALIA

[Original: English]

1. Australia remains of the view that the draft Convention on International Bills of Exchange and International Promissory Notes represents a reasonable and workable compromise between quite different legal systems - the civil and common law.

2. The draft Convention, which has been deliberated upon over a 15-year period by international experts, is the product of considerable refinement and careful balancing. Accordingly, care should be taken in making any changes to the draft at this late stage (and in haste) as they could well jeopardize the fine tuning which has been achieved.

3. In this regard, it is noted that while some concepts in the draft Convention are somewhat alien to Australian commercial and legal practice in this area, it is not considered that they would provide major obstacles to the acceptance by the Australian legal and commercial community of the underlying scheme of the draft Convention. As the draft Convention will merely facilitate optional use of a "new" commercial negotiable instrument, and will not apply unless the parties to it agree, problems of acceptance of the instrument should be avoided.

4. Australia strongly supports adoption of the draft Convention by the General Assembly at its forty-third session without substantive change to its text.

CENTRAL AFRICAN REPUBLIC

[Original: French]

Being among the countries that voted in favour of General Assembly resolution 42/153, the Central African Republic plans to communicate its observations and proposals concerning the draft Convention at the latest during the meeting of the working group of the Sixth Committee provided for in paragraph 3 of the resolution.

EGYPT

[Original: French]

INTRODUCTION

1. Since the beginning of the work that has led to the draft under consideration, Egypt has been of the view that the role of the United Nations Commission on International Trade Law (UNCITRAL) in the field of negotiable instruments should be directed solely towards revising the 1930 Geneva Conventions in order to make them more acceptable to all legal systems and more in conformity with the present requirements of international trade. Although these Conventions were not intended exclusively for international transactions, they have been introduced into national legislation not only in the Contracting States but also in a large number of other States which, without ratifying the Conventions, have adopted their provisions, in such a manner that the Conventions have led to considerable unification, de jure and de facto, in the field of negotiable instruments law, thus creating simple and convenient banking practices in a large part of the world.

2. This viewpoint that Egypt (and many other States) adopted at the commencement of the work did not win acceptance. On several occasions, UNCITRAL reiterated its decision to create a new instrument of an international character that could be used on an optional basis, without concerning itself either with the disturbances that the creation of such an instrument might cause in international transactions or with the difficulties that might arise, within Contracting States, from a duality of legal regulations concerning negotiable instruments. Egypt had no choice but to accept that decision. It continued to co-operate in the preparation of the draft with the zeal befitting an undertaking of such importance.

3. It is true that, over the many years during which the draft has been under preparation, several amendments have been introduced that have made it less unacceptable, but it still displays grave defects which, if it remains as it stands, would cause many countries to shy away from it. In the hope that the working group that is to meet within the framework of the Sixth Committee next September will decide to make a last effort to correct at least the most striking of these defects, Egypt is submitting for the group's consideration the following observations which, in the interests of simplification, are directed only to bills of exchange.

I. THE FORM

4. The success of a convention aiming to unify negotiable instruments law depends to a large extent on the rapprochement that it succeeds in bringing about between the two legal systems concerned, namely the so-called "continental" system and the Anglo-American system. The reason why the Geneva Conventions have so far not been completely successful is that these Conventions were not able to bring about a viable compromise between the two systems. It is said that they lean rather towards conceptions prevailing in the so-called "civil law" countries at the

expense of those of the English-speaking countries. It was precisely to correct this supposed imbalance that UNCITRAL prepared its draft. However, instead of establishing the necessary balance, it fell into the same error, but in an opposite direction. It allowed itself to be influenced by Anglo-American conceptions that are foreign to many other countries. Despite the sincere attempts at reconciliation made by many members of the Commission, including the United Kingdom and the United States of America, the draft remained unbalanced, not only in substance but also in form. To give a single example relating to the question of form, we would mention the expression "reasonable", which is in common use in English law as a qualification of diligence or conduct. This term is frequently employed in the draft whereas in other countries it is considered vague and too flexible for something that needs to be exactly regulated, as negotiable instruments law does.

5. In addition to this, there is a complexity resulting particularly from the frequent cross-references that make the text difficult to read. We shall particularly mention article 48, which alone contains 14 cross-references. This method of drafting texts is inappropriate from the point of view of banking circles, where clear, direct texts are preferred to texts drawn up in a more scholarly but abstruse manner and that are hard to understand at first reading.

II. THE INTERNATIONAL CHARACTER OF THE INSTRUMENT

6. Whether a bill of exchange is international in character depends, according to the first two articles of the draft Convention, on its satisfying two conditions: a double mention on the instrument of the formula "International bill of exchange, Convention of ..." (article 1), and the condition that it specifies at least two of the five places listed in paragraph (1) of article 2 and indicates that any two of these places are situated in different States (article 2 (1)). Of these two conditions, the first seems to us lacking in seriousness and the second ineffective.

7. Thus the insertion of the formula mentioned in article 1 depends solely on the will of the drawer who, by inserting this formula, gives the instrument the international character needed for the application of the Convention. Thus the drawer, by his own decision and without being subject to any control, has a discretionary right to decide what legal rules will be applicable to the instrument, a decision that may conceal fraudulent intentions, as, for example, the intention to evade the national law normally applicable to the instrument, with all the legal and fiscal consequences of such evasion. This situation is all the more unfortunate as the second condition offers no serious obstacle to such fraud.

8. As a result of the option offered by the second condition, it may happen that the place where the bill is drawn and the place where it is to be paid are situated in one and the same State and that the bill is nevertheless international because two other places (for example, those indicated next to the name of the drawee and next to the name of the payee) are on the territories of two different States. This result seems to us unacceptable, because the drawing of the bill and its payment are the two main events in the life of a bill of exchange, and the absence of an indication of the place of drawing and the place of payment would constitute

an obstacle to the negotiability of the instrument. Egypt proposes not only that their specification should be obligatory but also that the criterion of internationality should be linked to them. Egypt also considers that an international bill of exchange should be one that specifies a place of drawing and a place of payment situated in different States. This designation must also be correct. If it is false, the instrument must remain outside the scope of application of the Convention. It is surprising that this logical and straight-forward conclusion should be contradicted by article 2, paragraph 3, which says that "Proof that the statements referred to in paragraph (1) or (2) of this article are incorrect does not affect the application of this Convention". For a dishonest drawer, this provision would be an invitation to fraud. It should therefore be deleted.

9. Connected with the international character of the instrument is another problem, that of the limits of the sphere of application of the Convention. We have seen that article 2, paragraph 1, requires, for an instrument to be international, only that two of the places specified in it should be situated in "different" States. It does not require that these two States should be "Contracting" States. Lest the silence of the text should be interpreted in a manner contrary to its wishes, the Convention makes a point of specifically stating in article 4 that it will apply without regard to "whether the places indicated on an international bill of exchange ... are situated in Contracting States". Thus it is enough for the drawer to decide, by his will alone, to mention the formula in article 1 and to specify, even contrary to the facts, two places situated in different States, for the system of the Convention to come into operation and for the national law normally applicable to be supplanted, even if this law is the law of a State that has neither signed nor ratified the Convention.

10. This is extraterritoriality in its most exaggerated form. The scope of application of the Convention is enlarged to an unacceptable extent. This situation must be corrected by a requirement that the States in which the two places specified in the instrument are situated should be not only "different" but also "Contracting States", with the necessary corollary that article 4 would be deleted.

11. With regard to the reservation provided for in article 89, it would be unnecessary if our two proposals set forth above* were accepted. If they are not, the possibility of a reservation should be maintained in order to permit Contracting States, if they consider it appropriate, to limit the scope of application of the Convention.

III. THE CONCEPTS OF A HOLDER AND A PROTECTED HOLDER

12. Since the beginning of the work on the draft Convention, these notions have been the subject of lively discussions. The new conception, unknown or strange in

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* Obligatory mention of the place of drawing and the place of payment and the requirement that these two places should be situated in Contracting States.

States accustomed to the system of the Geneva Conventions, where the distinction is between holders in good faith and those in bad faith, was not favourably received by these countries. Their qualms were increased by the fact that the conception was poorly presented (the ambiguity of the definitions, the intermingling of cross-references, the complexity of the rules concerning defences that may be set up and the inadequate protection for the so-called protected holder).

13. Although praiseworthy efforts were made in UNCITRAL to remedy this situation, the problem remains in all its gravity. It requires further consideration.

IV. THE ROLE OF THE DRAWER

14. Another defect to which Egypt drew attention already in the first version of the draft Convention concerns the role of the drawer. Although he was the creator of the instrument and the first in the list of parties liable, article 34, paragraph 2, (which has become article 39, paragraph 2, in the new version) treated him as a guarantor and not as a principal debtor, even before the acceptance of the instrument by the drawee. The draft derived several consequences from this, the most serious being that the drawer was allowed to exclude or limit his liability by a stipulation in the bill, without any distinction being established between the guarantee of acceptance and that of payment. This situation, hardly to be recommended, was later modified by an amendment allowing the drawer to free himself of his liability to pay only when the instrument bore the signature of another liable party (present article 39, paragraph 2). This solution, although representing a notable improvement over the previous situation, remains insufficient, because logically the drawer, as creator of the instrument, should remain the primary party liable under it until the drawee has accepted it. Only the signature of the drawee, and not that of another liable party, should permit the drawer to act as a guarantor having the right to free himself of his liability, because it is the drawee who holds the provision, and it is the provision, whether one likes it or not, that constitutes the most effective guarantee of payment of the instrument in the eyes of the holder. Let us note in passing that the draft text concerning another similar situation, that of the maker of a promissory note, denies this debtor the possibility of freeing himself of the guarantee of payment. The distinction made by the draft between these two situations seems to Egypt unjustifiable.

V. THE GUARANTEE

15. At the twentieth session of UNCITRAL, at the last meeting devoted to the consideration of the draft Convention, a group of representatives, including those of the Federal Republic of Germany and the United Kingdom, submitted a proposed new version of article 48 concerning guarantees. It is a long text covering over a page and attempting to marry two systems for the guaranteeing of negotiable instruments, that of the Geneva Conventions (aval) and the Anglo-American system ("guarantee"). In spite of the extreme complexity of the text and the importance of the subject, the Commission decided to adopt the text at the meeting on which it was submitted.

16. The text deals with the liability of the giver of a guarantee and the defences that he may, and may not, set up against a holder and against a protected holder. The applicability of this dual system depends on the formula used: the formula "guaranteed" or "payment guaranteed", on the one hand, and the formula "aval" or "good as aval", on the other. The list of defences that may be set up by the giver of the guarantee against a protected holder differs depending on the formula employed. The list is long, thus giving the holder little protection, if the first formula is used; it is short, and therefore strict, when the second formula is employed.

17. When the guarantee is given by a signature alone, everything will depend on the nature of the giver of the guarantee; if the giver of the guarantee is a bank or a "financial institution", an aval is given and a heavy responsibility assumed vis-à-vis the holder. If, on the other hand, the giver of the guarantee is not a bank or a "financial institution", he is a mere "guarantor" and has the benefit of the longer list of defences that may be set up against the holder.

18. Would those engaged in transactions with negotiable instruments be able to cope with such complexities? The Government of Egypt doubts it.

19. To sum up, it is far from being Egypt's intention to oppose the draft Convention, the preparation of which has required several years of serious work. It is only with a desire to ensure the success of the draft Convention that Egypt has sought to draw attention to what it considers obstacles that might hinder its adoption by the largest possible number of countries.

GERMAN DEMOCRATIC REPUBLIC

[Original: English]

1. The German Democratic Republic endorses the result achieved in drafting a Convention on International Bills of Exchange and International Promissory Notes.

2. Years of work on this project have ensured an all-embracing, intensive and broad discussion of all issues related to the draft Convention. The completed draft Convention incorporates all the results obtained in the deliberations and constitutes a consistent new régime covering the relations under international bills of exchange and international promissory notes that require regulation.

3. The German Democratic Republic is in favour of finalizing the draft Convention and of opening it for signature as at 1 January 1989. The German Democratic Republic does not consider it opportune to have the discussion on the substance of the Convention reopened, since the experience gained in the course of drafting the Convention shows that renewed discussion of provisions already agreed upon would not produce substantive improvements.

4. The German Democratic Republic holds the view that the present draft Convention is fully based on the principles of co-operation among States under international law; it is compatible with the national law of the German Democratic Republic.

5. As the present draft of the Convention constitutes a compromise, it includes for regulation a few problems that are little known in the practice of the German Democratic Republic and envisages what is to a certain extent an unusual method of regulation in terms of the practice of the German Democratic Republic. In the interest of co-operation among States in the field of international negotiable instruments, the German Democratic Republic does however not consider it appropriate to have continued discussions about substantive provisions of the Convention that have been agreed upon by way of compromise. Discussions about matters such as the distinction between the holder and the protected holder or the distinction between "aval" and guarantee would once again put up for discussion substantive issues of the draft Convention, and might even question the Convention entirely.

6. It is a merit of the régime provided for in the Convention that it pays particular attention to the developments that have taken place in international dealings in the past few decades, and that it offers up-to-date and practice-related solutions to matters related to bills of exchange and promissory notes. The régime can facilitate international trading and financial transactions, and will promote greater uniformity in applying the law on international bills of exchange and international promissory notes, all the more so as this regulation of the Convention focuses on factual matters of an international relevance.

7. The German Democratic Republic regards the regulation under the draft Convention on International Bills of Exchange and International Promissory Notes as a specific regulation applicable to international dealings, which will be fully justified alongside the respective national laws. The draft Convention gives all parties to international trade and financial dealings the possibility to decide by themselves which legal régime the respective bill or note shall be subject to. Thus, the Convention follows the established principle on which the United Nations Convention on Contracts for the International Sale of Goods is based too. The German Democratic Republic believes that the existing Geneva Conventions in the fields of bills of exchange and promissory notes are no obstacle to introducing this new regulation concerning international negotiable instruments.

8. For these reasons, the German Democratic Republic holds that the draft Convention should be adopted without further discussion, and the Convention opened for signature.

MEXICO

[Original: Spanish]

1. Over the course of the Commission's discussions, the Working Group on International Payments devoted 14 sessions, and the Commission itself three plenary sessions, to the preparation of this draft. On at least two occasions the countries were invited to submit their comments (see A/CN.9/248 and A/CN.9/WG.IV/WP.32). Mexico was represented at all these meetings, at which its delegation played an active role, taking every opportunity to put forward the views of the Mexican Government regarding the draft. In addition, when invited to do so, the Mexican delegation presented its comments in writing, and these may also be found in the aforementioned documents.

2. For these reasons, the Mexican Government believes that its views on the subject have been appropriately expressed. Mexico regards the draft as satisfactory since it meets the basic requirements of the international traffic in bills of exchange and promissory notes, taking into account the juridical solutions and commercial practices encountered in the various legal systems.

3. It is particularly important to note that the document that has been formulated represents the first text of a legal system dealing with negotiable instruments to have found a consensus on the part both of the countries of the romano-germanic law and civil-law family, and also those of the common-law tradition. This fact testifies to the effectiveness of the participating countries' efforts to seek and find compromise formulae.

4. In the light of these facts, the time consumed and the economic resources expended by the States and international organizations that took part in the drafting of this Convention, it would appear pointless to prolong the effort already made and incur still further expense for the purpose of achieving a few betterments and minor improvements. The Mexican Government believes that it would be more useful to allow the draft to pursue its fate and that whatever future improvements are made should result from the experience gained in its application, in line with the opinion expressed by Professor Jorge Barrera Graf during the Commission's nineteenth session.

5. For these reasons, the Mexican Government prefers to refrain from submitting new comments and takes the view that it would be useful if a decision were adopted to invite the States to sign the International Convention, as suggested by UNCITRAL at its past session.

6. Notwithstanding these observations, the Government of Mexico wishes to note that it is a party to the Panama Convention on Conflict of Laws Concerning Bills of Exchange, Promissory Notes and Invoices, and that it therefore considers that the question of the compatibility between that Convention and the UNCITRAL Convention has already been contemplated. Accordingly, the recommendation contained in this note does not imply an undertaking by the Mexican Government to sign the Convention and to accede to it at a later date.

7. This being the case, the Mexican Government should like to express the view that the next meeting on this subject ought seriously to explore the question as to whether this Convention is compatible with the Geneva and Panama Conventions on the conflict of laws.

OMAN

[Original: Arabic]

1. Pursuant to General Assembly resolution 42/153, the competent authorities of the Sultanate of Oman compared the text of the draft Convention with that of the Special Section (Banknotes) of the Omani Banking Law of 1974. Certain differences between them were observed. Thus article 9, paragraph 1, of the draft Convention

differs from article 5.10.2 (c) of the Omani Law in that, in the case of a discrepancy between the sum expressed in words and the sum expressed in figures, the draft Convention provides that the sum payable by the instrument is the sum expressed in words, while under article 5.10.2 of the Omani Banking Law an instrument is to be made for a specified sum of money. Similarly, article 56 (f) of the draft Convention differs from article 5.15.4 (1.6) of the Omani Law as regards the time-limit for presentment; the Omani Banking Law provides that an instrument is presented for acceptance and is transferred within a period not exceeding six months, while the draft Convention provides that an instrument is to be presented within one year of its date.

2. The Sultanate of Oman also considers that the word "visa", which appears in article 10, paragraph 7, of the draft Convention, has not been given a clear definition and that it would be advisable to define it.

VENEZUELA

[Original: Spanish]

1. Under article 1, paragraphs (1) and (2), for the Convention to apply, an international bill of exchange or international promissory note must fulfil both the conditions that in the heading and in the text it should contain the words "International Bill of Exchange (Convention of ...)" or "International Promissory Note (Convention of ...)", respectively. The Government of Venezuela considers that it should suffice, for the Convention to apply, that an international bill of exchange or an international promissory note should contain the words quoted either in its heading or in its text, so that the paragraphs referred to could be drafted as follows:

> "(1) This Convention applies to an international bill of exchange when it contains in its heading or in its text the words 'International Bill of Exchange (Convention of ...)'.
>
> "(2) This Convention applies to an international promissory note when it contains in its heading or in its text the words 'International Promissory Note (Convention of ...)'."

2. In article 4 it is stated that the Convention shall apply without regard to whether the places indicated on an international bill of exchange or on an international promissory note pursuant to paragraph (1) or (2) of article 2 are situated in Contracting States, and these places are: the place where the bill is drawn; the place indicated next to the signature of the drawer; the place indicated next to the name of the drawee; the place where the note is made; the place indicated next to the signature of the maker; and, in both cases, the place indicated next to the name of the payee and the place of payment. The Government of Venezuela considers that the Convention should apply when the places indicated are situated in Contracting States, and so article 4 would have to be reworded as follows:

"This Convention applies when the places indicated on an international bill of exchange or on an international promissory note pursuant to paragraph (1) or (2) of article 2 are situated in Contracting States."

This is a more restrictive solution than the one contained in the draft Convention, but the Government of Venezuela considers that it affords greater legal security. Also related to this matter is the provision contained in article 89 of the draft Convention, which allows a State to enter a reservation in the sense of declaring that its courts will apply the Convention only if both the place indicated in the instrument where the bill is drawn, or the note is made, and the place of payment indicated in the instrument are situated in Contracting States. This provision would be deleted if the foregoing proposal were accepted.

3. Since article 7 contains a tautological definition, in that it states that "a person is considered to have knowledge of a fact if he has actual knowledge of that fact", the Government of Venezuela considers that this article could be redrafted or deleted if it is not strictly necessary.

4. In article 56 (a), the expression "reasonable hour" is used to determine the time at which the holder must present the instrument to the drawee, the acceptor or the maker, and interpretation of what is reasonable may give rise to problems, so that it might be better to replace this term with a more appropriate one.

5. Lastly, the Government of Venezuela wishes to point out that the above comments express only drafting preferences regarding a draft which will certainly help to develop the rules applicable to international bills of exchange and international promissory notes.

GENERAL COMMENTS OF THE CENTRAL AFRICAN REPUBLIC, CHAD, CHILE, COLOMBIA, COTE D'IVOIRE, FRANCE, GUINEA, MAURITANIA, SENEGAL, SPAIN AND TOGO

[Original: French and Spanish]

1. The above-mentioned States consider that the draft Convention has many flaws and that it is essential to limit its field of application strictly to States which, in ratifying it, have agreed to assume the consequences.

2. The text of the draft Convention has the defect of dearth of guiding principles. More often than not it confines itself to laying down solutions for specific cases with a view to dealing with difficulties that in practice only arise exceptionally.

3. The plan of the draft Convention, which comprises many references (the definition of the protected bearer is learned only through reading of 14 articles, each of which provides only a partial element) and the obscure drafting of the text make it excessively complicated for a legal expert - and almost impossible for a bank clerk - to grasp the rules.

4. Not all holders of international bills of exchange or international promissory notes have the same status. The legal arrangements for a protected holder and a non-protected holder are defined simultaneously and in an intertwined way, and a clear distinction does not emerge. A protected holder is far from being protected under all circumstances; a non-protected holder sometimes enjoys some protections. Consequently, the draft convention jeopardizes the security of exchange relations as a whole.

5. As regards aval or guarantees, the draft has failed in its effort to make a synthesis between the Geneva and common law systems. It has confined itself to offering the guarantor an option between the two systems that is not based on any practical consideration. Depending on whether the guarantor is a bank (or some other financial institution) or an individual who does not have such status, a signature alone and the defences that can be set up against the protected holder are not of the same scope.

6. The draft Convention fails to recognize the formalism inherent in exchange law. It compels the person to whom an instrument is presented to give consideration to his possible involvement in the relations of the signer and successive holders. This person must undertake investigations in various areas: forgery (article 26), the powers of the endorser (article 27, paragraph 1), acceptance (article 41, paragraph 1). The accuracy of these checks is complicated by the interpretation of very fuzzy concepts (reasonable care, means appropriate in the circumstances).

7. All these defects will give rise to a proliferation of disputes and, consequently, a growth in the role of the legal departments of banks.

8. In some areas, for example where it is necessary to evaluate disputes relating to the basic relation, banks will have to set up entirely new legal departments that will no longer be concerned with banking law, but will have to apply international trade law, the rules of conflict of laws and the trade law of different States.

9. After 20 years of detailed work in groups of different sizes, it is not reasonable to hope to remedy the disadvantages that have been outlined. Approval of the text by a number of States reveals a deep division in legal philosophy on the matter.

10. This being the case, the States that do not wish to become parties to the future Convention, which appear to be numerous, have a right to demand that the new text should not prejudice the rules of law that have long been in force in their countries.

11. At present, 19 countries are parties to the Geneva Conventions of 1930, 10 countries are parties to the Inter-American Convention on Conflict of Laws Concerning Bills of Exchange, Promissory Notes, and Invoices, signed at Panama in 1975, and 20 States, without having ratified the Geneva Conventions, have modelled their national laws on them.

12. Limitation of the field of application of the Convention is essential, since application of the future text depends, as things now stand, on the sole volition of the drawer, who need only enter in the text of the bill of exchange the words "International bill of exchange (Convention of ...)" for the Convention to be applicable, when two of the five places mentioned in article 2 (place where the bill is drawn, place indicated next to the signature of the drawers, place indicated next to the name of the drawees, place indicated next to the name of the payee, place of payment) are situated in different States, even if these are not Contracting States (article 4).

13. We might recall here that the places thus indicated may be incorrect (article 2, paragraph 3). Even if this provision was deleted, the tentacular scope of the Convention would remain unacceptable.

14. It is not acceptable that a sole, unilateral and discretionary decision by the drawer of a bill of exchange or the maker of a promissory note should be able to bring into play application of the eight chapters of the Convention and remove it from the purview of the law that would normally be applicable under the rules for determining which court is competent.

15. Article 4, paragraph 2, of the Geneva Convention provides that the effects of the signatures of the other parties liable (other than the acceptor of a bill of exchange or the maker of a promissory note) are determined by the law of the country in which is situated the place where the signatures were affixed. Article 3 of the Panama Convention reads: "All obligations arising from a bill of exchange shall be governed by the law of the place where they are contracted".

16. In no case may the choice of the law applicable to an exchange transaction involving at least two (promissory notes) or three (bills of exchange) persons result from the volition of only one of them.

17. In order to protect the States that do not wish to become Parties to the new system, articles 2 and 4 must be amended as follows:

(a) For letters of exchange, it must be provided that the Convention is applicable only on the condition that the actual place where the letter is drawn and the actual place of payment are situated in different Contracting States;

(b) For promissory notes, it must be provided that the Convention is applicable only on the condition that the actual place where the note is made and the place of payment are situated in different Contracting States.
