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UNITED NATIONS COMMISSION ON  
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DRAFT LEGAL GUIDE ON ELECTRONIC FUNDS TRANSFERS

Report of the Secretary-General

1. The subject of international payments was one of the three placed on the priority list of topics at the first session of the Commission in 1968. 1/ At its fifth session in 1972 the significant changes in international banking practices brought about by developments in electronic funds transfer methods and procedures were first brought to its attention and the hope was expressed that the Commission's work in the field of international payments would take account of those developments. 2/ In 1975 in connection with its assessment of the desirability of preparing uniform rules applicable to international cheques, the Working Group on International Negotiable Instruments requested the Secretariat "to obtain information regarding the impact, in the near future, of the increased use of telegraphic transfers and of the development of telecommunication systems between banks on the use of cheques for settling international payments". 3/ In 1978 the subject of electronic funds transfers was added to UNCITRAL's programme of work. 4/

1/ Report of the United Nations Commission on International Trade Law on the work of its first session, Official Records of the General Assembly, Twenty-third Session, Supplement No. 16 (A/7216), para. 48(2).

2/ Report of the United Nations Commission on International Trade Law on the work of its fifth session, Official Records of the General Assembly, Twenty-seventh Session, Supplement No. 17 (A/8717), para. 57.

3/ Report of the Working Group on International Negotiable Instruments on the work of its third session, A/CN.9/99, para 136.

4/ Report of the United Nations Commission on International Trade Law on the work of its eleventh session, Official Records of the General Assembly, Thirty-third Session, Supplement No. 17 (A/33/17), para. 67.

2. By 1978 the subject of electronic funds transfers was already being considered to a minor degree by the UNCITRAL Study Group on International Payments. In connection with its advice to the Commission's Secretariat on practical banking experience on matters arising in the preparation of the draft Convention on International Bills of Exchange and International Promissory Notes and the draft Convention on International Cheques, the Study Group had commented on the questions raised in 1972 and 1975 about the impact of electronic techniques on the future course of development in respect of the international funds transfer system. As a result, in 1979 UNCITRAL requested that the Secretariat's preparatory work on electronic funds transfers be carried on in the framework of the Study Group. 5/

3. In order to obtain more information on the electronic funds transfer networks in operation and in the planning stages and on the legal regime governing those networks, in 1980 a questionnaire was sent to central banks throughout the world. Only a small number of central banks replied to the questionnaire in detail. Several others sent more general information about their funds transfer systems, including the use of electronic funds transfers, and many, including central banks from developing countries, indicated that they would be interested in whatever information they could be given.

4. As a source of information on the legal regimes governing electronic funds transfers, the questionnaire was only a limited success. It made clear, however, that only a few of the central banks which replied in detail - principally central banks in Western Europe and North America - were certain as to what rules governed many of the important issues. In many cases the responses to the questionnaire assumed that some or most of the rules governing paper-based transfers applied, although a number of the responses also indicated an awareness that those rules did not always give appropriate results.

5. In the light of the responses to the questionnaire and an awareness of the rapid growth in the use of electronic means of transferring funds both domestically and internationally, the UNCITRAL Study Group on International Payments recommended to the fifteenth session of the Commission in 1982 that, as a first step, the Commission should prepare a guide on the legal problems arising out of electronic funds transfers. 6/ The guide, it was suggested, should be oriented towards providing guidance for legislators or lawyers preparing the rules governing particular systems.

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5/ Report of the United Nations Commission on International Trade Law on the work of its twelfth session, Official Records of the General Assembly, Thirty-fourth Session, Supplement No. 17 (A/34/17), para. 56.

6/ Report of the Secretary-General: Electronic funds transfers, A/CN.9/221, para. 85.

6. The Commission accepted this recommendation and requested the Secretariat to begin the preparation of a legal guide on electronic funds transfers, in co-operation with the Study Group. <sup>7/</sup> Some draft chapters which are annexed to this report in addenda are the product of that co-operation and are hereby submitted to the Commission for general observations.

7. At the eighteenth session of the Commission, the Secretariat will submit a draft chapter on finality of honour and a check-list of legal issues to be considered by legislators or lawyers in preparing the rules governing electronic funds transfers.

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