New article

(to be inserted between article 13 and article 13 *bis*)

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

"(*b*) An endorsement may be made

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

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

Article 13 bis

(1) A person is a holder if he is

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

(*b*) In possession of an instrument

(i) Which has been endorsed to him; or

(ii) On which the last endorsement is in blank

and on which there appears an uninterrupted series of endorsements, even if any of the endorsements was forged or was signed by an agent without authority.

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

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

Article 14

(deleted)

Article 15

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

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

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

(*c*) Transfer the instrument in accordance with paragraph (*b*) of article 13.

Article 16

[When the drawer, the maker or an endorser has inserted in the instrument or in the endorsement such words as "not negotiable", "not transferable", "not to order", "pay (X) only", or words of similar import, the transferee does not become a holder except for purposes of collection.]

Article 17

(1) (Deleted)

(2) A conditional endorsement transfers the instrument irrespective of whether the condition is fulfilled.

(3) A claim to or a defence upon the instrument based on the fact that the condition was not fulfilled may not be raised except by the party who endorsed conditionally against his immediate transferee.

Article 18

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

Article 19

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

Article 20

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

(*a*) May only endorse the instrument for purposes of collection;

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

(*c*) Is subject to all claims and defences which may be set up against the endorser.

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

Article 21

The holder of an instrument may transfer it to a prior party or the drawee in accordance with article 13; nevertheless, in the case where the transferee was a prior holder of the instrument, no endorsement is required and any endorsement which would prevent him from qualifying as a holder may be struck out.

Article 21 bis

An instrument may be transferred in accordance with article 13 after maturity, except by the drawee, the acceptor or the maker.

Article 22

(1) If an endorsement is forged the person whose endorsement is forged has against the forger and against the person who took the instrument directly from the forger the right to recover compensation for any damage that he may have suffered because of the forgery.

(2) [The drawer or maker of the instrument has a similar right to compensation in circumstances where damage is caused to him by the forgery of the signature of the payee.]

(3) (Deleted provisionally)

[PART FOUR. RIGHTS AND LIABILITIES]

[SECTION 1. THE RIGHTS OF A HOLDER AND A PROTECTED HOLDER]

Article 23

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

(2) The holder is entitled to transfer the instrument in accordance with article 13.

B. Report of the Working Group on International Negotiable Instruments on the work of its sixth session (Geneva, 3-13 January 1978) (A/CN.9/147)*

CONTENTS

* 7 April 1978.

Introduction

1. In response to decisions by the United Nations Commission on International Trade Law (UNCITRAL), the Secretary-General prepared a "Draft Uniform Law on International Bills of Exchange and International Promissory Notes, with commentary" (A/CN.9/WG.IV/WP.2).[1] At its fifth session (1972), the Commission established a Working Group on International Negotiable Instruments. The Commission requested that the above draft uniform law be submitted to the Working Group and entrusted the Working Group with the preparation of a final draft.[2]

2. The Working Group held its first session in Geneva in January 1973. At that session the Working Group considered articles of the draft uniform law relating to transfer and negotiation (articles 12 to 22), the rights and liabilities of signatories (articles 27 to 40), and the definition and rights of a "holder" and a "protected holder" (articles 5, 6 and 23 to 26).[3]

3. The second session of the Working Group was held in New York in January 1974. At that session the Working Group continued consideration of articles of the draft uniform law relating to the rights and liabilities of signatories (articles 41 to 45) and considered articles in respect of presentment, dishonour and recourse, including the legal effects of protest and notice of dishonour (articles 46 to 62).[4]

4. The third session was held in Geneva in January 1975. At that session the Working Group continued its consideration of the articles concerning notice of dishonour (articles 63 to 66). The Group also considered provisions regarding the sum due to a holder and to a party secondarily liable who takes up and pays the instrument (articles 67 and 68) and provisions regarding the circumstances in which a party is discharged of his liability (articles 69 to 78).[5]

5. The fourth session of the Working Group was held in New York in February 1976. At that session the Working Group considered articles 79 to 86 and articles 1 to 11 of the draft uniform law, thereby completing its first reading of the draft text of that law.[6]

6. At the fifth session of the Working Group, held in New York in July 1977, the Working Group commenced its second reading of the draft uniform law (retitled at that session "draft convention on international bills of exchange and international promissory notes") and considered articles 1 to 24.[7]

7. The Working Group held its sixth session at the United Nations Office at Geneva from 3 to 13 January 1978. The Working Group consists of the following eight members of the Commission: Egypt, France, India, Mexico, Nigeria, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland and United States of America. With the exception of Egypt, all the members of the Working Group were represented at the sixth session. The session was also attended by observers of the following States: Australia, Austria, Brazil, Chile, Colombia, Cuba, Ecuador, Germany, Federal Republic of, Ghana, Japan, Pakistan, Panama, Philippines, Syrian Arab Republic, Thailand, Trinidad and Tobago, Turkey and Uruguay, and by observers from the European Banking Federation, the European Economic Community and the Hague Conference on Private International Law.

8. The Working Group elected the following officers:

Chairman.....Mr. René Roblot (France)
Rapporteur .....Mr. Roberto Luis Mantilla-Molina (Mexico)

9. The Working Group had before it the following documents: provisional agenda (A/CN.9/WG.IV/WP.8); draft uniform law on international bills of exchange and international promissory notes, with commentary (A/CN.9/WG.IV/WP.2); draft uniform law on international bills of exchange and international promissory notes (first revision) (A/CN.9/WG.IV/WP.6 and Add.1 and 2); draft Convention on international bills of exchange and international promissory notes (first revision) articles 5, 6, 24 to 45, as reviewed by a drafting party (A/CN.9/WG.IV/WP.9); and the respective reports of the Working Group on the work of its first (A/CN.9/77), second (A/CN.9/86), third (A/CN.9/99), fourth (A/CN.9/117) and fifth (A/CN.9/141) sessions.

Deliberations and decisions

10. At the present session the Working Group continued its second reading of the text of the draft Convention on International Bills of Exchange and International Promissory Notes as revised by the Secretariat on the basis of the deliberations and decisions of the Working Group as recorded in its reports on the work of its five previous sessions.

11. The text of each article as revised appears at the beginning of the report on the deliberations relative to that article.

12. In the course of this session, the Working Group considered articles 5 and 6 and articles 24 to 53. The text of the articles as approved, or deferred for further consideration, by the Working Group is set forth in the annex to this report.

13. At the close of its session, the Working Group expressed its appreciation to the observers of Member States of the United Nations and to representatives of international organizations who had attended the session. The Group also expressed its appreciation to the representatives of international banking and trade organizations that are members of the UNCITRAL Study Group on International Payments for the assistance they had given to the Group and the Secretariat. The

[1] UNCITRAL, report on the fourth session (1971), para. 35 (Yearbook... 1971, part one, II, A). For a brief history of the subject up to the fourth session of the Commission, see A/CN.9/53, paras, 1 to 7; UNCITRAL, report on the fifth session (1972), para. 61 (2) (*c*) (Yearbook... 1972, part one, II, A).

[2] UNCITRAL, report on the fifth session (1972), para. 61 (1) (*a*).

[3] Report of the Working Group on International Negotiable Instruments on the work of its first session (Geneva, 8-19 January 1973), A/CN.9/77 (Yearbook... 1973, part two, II, D).

[4] Report of the Working Group on the work of its second session (New York, 7-18 January 1974), A/CN.9/86 (Yearbook... 1974, part two, II, D).

[5] Report of the Working Group on the work of its third session (Geneva, 6-17 January 1975), A/CN.9/99 (Yearbook... 1975, part two, II, D).

[6] Report of the Working Group on the work of its fourth session (New York, 2-12 February 1976), A/CN.9/117 (Yearbook... 1976, part two, II, 1).

[7] Report of the Working Group on the work of its fifth session (New York, 18-29 July 1977), A/CN.9/141 (reproduced in the present volume, part two, II, A above).

Working Group expressed the hope that the members of the Study Group would continue to make their experience and services available during the remaining phases of the current project.

A. *Articles 5 and 6 (interpretation)*

"Article 5

"(7) 'Protected holder' means a holder of an instrument which, when he became a holder, was complete and regular on its face and not overdue, provided that, at that time, he was without knowledge of any claim to or defence upon the instrument referred to in article 24 or of the fact that it was dishonoured by non-acceptance or non-payment."

"Article 6

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

14. The Working Group adopted these articles.

15. It was noted that, under the definition of protected holder, a party who, having received an incomplete instrument (e.g., it was not dated) inserted a date could not qualify as a protected holder even if he inserted the true date.

B. *Articles 24 to 26 (rights of holder; protected holder)*

"Article 24

"(1) The rights to and upon an instrument of a holder who is not a protected holder are subject to:

"(*a*) Any valid claim to the instrument on the part of any person;

"(*b*) Any defence available under this Convention;

"(*c*) Any defence to contractual liability which is related to the circumstances under which the person raising the defence became a party.

"(2) A party may not raise as a defence against a holder the fact that a third person has a valid claim to the instrument unless such third person has himself claimed the instrument from the holder and informed such party of his claim."

16. The Working Group, after deliberation, decided to subdivide paragraph (1) into two separate paragraphs relating to defences and claims respectively. This new arrangement of paragraph (1) is reflected in paragraph (1) (defences) and paragraph 2 (claims) of article 24 as set out in the annex to this report.

Paragraph (1), subparagraph (a)

17. The Working Group adopted this provision in substance.

Paragraph (1), subparagraph (b)

18. The Working Group adopted this provision.

19. The Group noted that the defences to which a holder who is not a protected holder is subject under this provision were based on provisions in the Convention itself. The following examples were given:

(i) Where a bill had not been duly protested for dishonour by non-acceptance or by non-payment, parties prior to the holder, other than the acceptor and his guarantor, were discharged (art. 60) and, if sued on the bill, could raise the defence of discharge consequent upon the lack of due protest.

(ii) Where the drawer had stipulated on the bill that it be presented for acceptance and the bill had not been so presented, he would have against the holder exercising a recourse against him for non-payment the defence that he was not liable because of the lack of due presentment for acceptance (art. 50).

(iii) Where an instrument had been materially altered subsequent to the drawee having accepted the bill, e.g. by raising the sum payable from Sw.F. 1,000 to Sw.F. 10,000, the acceptor was liable to a holder who took it after the alteration for Sw.F. 1,000 (art. 29) and could therefore set up a defence against liability for the remaining Sw.F. 9,000 based on that provision of the Convention.

(iv) A party could oppose to the holder a defence based on article 79 on the ground that the holder's action on the instrument was time-barred.

Paragraph (1), subparagraph (b)

20. Various comments were made concerning this subparagraph and the Working Group considered a number of proposals designed to define the defences which could be set up against a non-protected holder.

21. There was general agreement that one type of defence to which both the holder and the non-protected holder should be subject were the defences of parties with whom the holder had dealt and which were based on the underlying transaction, as in the following case. The seller of goods draws a bill of exchange on the buyer payable to himself. The bill is accepted by the buyer. The drawer fails to deliver. The buyer-acceptor may raise a defence based on the non-delivery of the goods.

22. The Working Group was also agreed that the non-protected holder should be subject to a defence based on an underlying transaction raised by a party with whom such holder had not dealt. The following example was given. Pursuant to the contract of sale, the buyer (maker) issues a note payable to the seller (payee). The seller fails to deliver and endorses the note to A who is not a protected holder. The maker can interpose the defence of non-delivery of the goods in an action on the note by A.

23. The question was raised whether the wording of subparagraph (*c*) which referred to defences to contractual liability which are "related to the circumstances under which the person raising the defence became a party" covered the case where a latent defect in the underlying transaction came to light after a person had become a party. The Working Group was of the view that, in the example given under paragraph 7 above, the buyer should be entitled to raise the non-

performance of the contract by the seller as a defence against A, even though that defence did not exist at the moment when the buyer, when signing the note as a maker, became a party.

24. The Working Group considered the question whether a party against whom an action on the instrument was brought should be permitted to raise against a non-protected holder a defence based on an unrelated transaction. For instance, if the acceptor from whom the holder claimed payment had a claim against that holder based on a transaction not in any way related to the instrument, should the acceptor be permitted to raise that claim by way of a defence against his liability on the bill? The Working Group, after considerable discussion, was agreed that article 24 should set forth a provision to that effect, but that such a defence could only be raised as between immediate parties.

25. The Working Group was agreed that for the sake of clarity, there should be added to the defences to which a holder was open a paragraph on "real" defences, e.g., those based on incapacity or absence of conduct which rendered the liability of the party sued on the instrument null and void.

26. The Working Group established a drafting party composed of the representatives of France, the Union of Soviet Socialist Republics, the United Kingdom and the United States of America to redraft article 24 in the light of the Group's discussions and conclusions. The Group adopted the text proposed by the drafting party, with slight amendments, as set forth in annex I to this report.

Paragraph (2)

27. The Working Group failed to reach consensus on the retention of this provision, under which the defence of the party from whom payment is claimed is based on the claim of a third person to the instrument (*ius tertii*). Under the provision, where X has, by fraud, induced the payee to endorse the bill, accepted by A, to him, and X presents the bill to A for payment, A could set up the defence based on fraud against X, if P had claimed the bill from X and informed A of his claim. The suggestion was made that, for the purposes of the rule, it should not be necessary that P had claimed the bill from X but that it sufficed that P had informed A of his claim.

28. The Working Group decided to revert to this provision in connexion with article 70, in view of the fact that it related to the question whether a party paying the instrument under the circumstances described in paragraph 12 above should be considered as discharged.

"Article 25

"(1) The rights to and upon an instrument of a protected holder are free from

"(*a*) Any claim to the instrument on the part of any person;

"(*b*) Any defence of any party, except defences based on incapacity or absence of consent rendering the liability of that party on the instrument null and void; and

"(*c*) Any defence based on the absence of liability on the ground that the instrument was not duly presented for acceptance or for payment, or that the dishonour of the instrument was not duly protested.

"(2) The rights of a protected holder are not free from any claim to or a defence to liability upon the instrument arising from a transaction between himself and the party by whom the claim or the defence is raised if that transaction is related to the circumstances under which he became a holder.

"[(3) The transfer of an instrument by a protected holder vests in any subsequent holder the rights to and upon the instrument which the protected holder had, except where such subsequent holder participated in a transaction which gives rise to a claim to or a defence upon the instrument.]"

Paragraph 1, subparagraph (a)

29. The Working Group adopted this provision in substance.

Paragraph 1, subparagraph (b)

30. The Working Group noted that the defences referred to in this provision concerned the so-called "real" or "absolute" defences. The Group was agreed that the protected holder should be subject to such defences even if they were set up by a remote party, i.e., by a party whose legal relations as a party to the instrument did not arise out of direct dealings with the protected holder but out of dealings with another party to the instrument or, in the case of an intervening transfer of the instrument by mere delivery, with the person who so transferred the instrument. The Group was, however, of the view that the proposed wording of the provision should be modified along the lines of paragraph 1 (*b*) of article 25, as redrafted originally by the Secretariat, as follows: "Defences based on the incapacity of such party to incur liability on the instrument or on the fact that such party signed without knowledge that his signature made him a party to the instrument, provided that such absence of knowledge was not due to negligence."

Paragraph 1, subparagraph (c)

31. The Working Group considered a proposal that article 25 should set forth a provision under which the protected holder would be subject to defences based on the Convention. For instance, a party sued on the instrument should be able to set up against a protected holder the defence based on article 79, i.e., that the action on the instrument ws time-barred. The Group was agreed in principle that such a provision should be added to article 25 and requested the Secretariat to prepare, in time for the seventh session, a draft paragraph setting out the defences derived from the Convention which can be opposed to a protected holder.

Paragraph (2)

32. The Working Group noted that this provision concerned the defences which a party could set up against a protected holder if they arose from a transaction between himself and the protected holder. The Group considered three possible solutions:

(*a*) The protected holder should be free from any defences except "real" defences;

(*b*) In addition to "real" defences, the protected holder should be subject to defences based on the underlying transaction;

(*c*) In addition to the defences listed under (*b*), the protected holder should also be subject to defences based on transactions other than the one by reason of which he became a holder.

33. The Working Group was agreed that the defences which could be set up against a protected holder should exclude defences based on unrelated transactions. The Group did not retain the suggestion that a defence based on the underlying transaction could be raised only if the underlying transaction had been annulled. One representative expressed the opinion that defences based on unrelated transactions could be set up against a protected holder.

Paragraph (3)

34. The Working Group agreed to this provision. It was noted that the so-called "shelter rule" was not intended to permit a person who had participated in a transaction which gave rise to a claim or defence to wash the instrument clean by transferring it to a holder. Thus, if a payee, by fraud, induced the drawer to issue a bill to him and endorsed the bill to A who is a protected holder, and A endorsed the bill to B who had participated in the fraud, B could not rely on the fact that he acquires the bill from a protected holder.

35. The Working Group established a drafting party composed of the representatives of France, the Union of Soviet Socialist Republics, the United Kingdom and the United States of America for the purpose of drafting appropriate wording based on the conclusions reached by the Group.

36 The text of article 25, as set out between brackets in the annex to this report, was provisionally approved pending reconsideration of subparagraph (1) (*c*) of the text set out above and of the provision contained in subparagraph (1) (*a*) of the text set out in the annex to be submitted by the Secretariat at the seventh session.

C. *Articles 27 to 45 (liability of the parties)*

"Article 27

"(1) Subject to the provisions of articles 28 and 30, a person is not liable on an instrument unless he signs it.

"(2) A person who signs in a name which is not his own is liable as if he had signed it in his own name.

"(3) A signature may be in handwriting or by facsimile, perforations, symbols or any other mechanical means."

Paragraph (1)

37. The Working Group adopted this paragraph.

Paragraph (2)

38. The Working Group adopted this paragraph.

Paragraph (3)

39. The view was expressed with respect to this paragraph that, in that it would permit signatures by facsimile or other mechanical means, it would go against the rule in certain jurisdictions which recognized only handwritten signatures. The proposal was accordingly made that such a State, upon signing, ratifying or acceding to the Convention, be permitted to make a declaration to the effect that article 27, paragraph 3, does not apply to any signature placed on an instrument by a party having his place of business in a State which had made such a declaration. It was recalled in this connexion that a similar provision had been included in the text of the draft Convention on the International Sale of Goods approved by the Commission at its tenth session.[8]

40. After discussion of this proposal, the Working Group adopted the following text, to be added as a foot-note to the paragraph:

"Article X

"A Contracting State whose legislation requires that signatures on an instrument be handwritten may, at the time of signature, ratification or accession, make a declaration to the effect that signatures placed on an international bill of exchange or an international promissory note by a legal or physical person of the Contracting State must be in handwritten form."

"Article 28

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

41. The question was raised with respect to this article whether it would also cover the case of an agent who signed the instrument although he had no authority to do so. The view was generally expressed that the intent of this article was not to regulate the agency situation although it was, of course, not inconceivable that someone who was an agent could commit forgery, as by signing the principal's name without indicating that he was signing as agent.

42. The Working Group adopted this provision.

"Article 29

"(1) If an instrument has been materially altered

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

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

[8] UNCITRAL, report on the tenth session (A/32/17), para. 134 (Yearbook. . . 1977, part one, II, A).

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

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

Paragraph (1), subparagraph (a)

43. The Working Group adopted this subparagraph.

Paragraph (1), subparagraph (b)

44. Doubts were raised concerning the correctness of this provision. It was noted that the provision could be read as binding a party to a material alteration on the basis of an implied assent, which was undesirable. Concern was also expressed as to the seeming rigidity of the rule as applied to parties who sign after a material alteration and its possible harshness in factual situations. The example was given of a note for $1,000 made by A in favour of B. B endorses the note to C who, having raised the amount of the note to $4,000, endorses it to D. D, unaware of the alteration, endorses to E. In the meantime C has absconded or is without means. E, upon dishonour of the note by A, will be able to collect the full amount of $4,000 from D, but D, who also is innocent, can proceed against B only for $1,000 even though he may have relied primarily on B's prior endorsement in taking the note in the first place.

45. The Working Group was of the opinion that this kind of hardship was unavoidable in a system which must distribute the risk of loss. The underlying principle of the system elaborated in the draft text was "know your endorser" and it would completely alter the basic concepts of the draft to change the result in the example given.

46. The Working Group decided to retain the text of this subparagraph as drafted, noting, however, that the French text was incorrect in that it seemed to refer only to alterations made by a party and not, for instance, by a total stranger.

Paragraphs (2) and (3)

47. The Working Group adopted each of these two paragraphs.

"Article 30

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

"(2) The name or signature of a principal placed on the instrument by an agent with his authority imposes liability on the principal and not on the agent.

"(3) The signature of an agent placed by him on an instrument without authority, or with authority to sign but not showing on the instrument that he is signing in a representative capacity for a named person, or showing on the instrument that he is signing in a representative capacity but not naming the person whom he represents, imposes liability thereon on such agent and not on the person whom the agent purports to represent.

"(4) The question whether a signature was placed on the instrument in a representative capacity may be determined only by reference to what appears on the face of the instrument.

"(5) An agent who is liable pursuant to paragraph 3 and who pays the instrument has the same rights as the person for whom he purported to act would have had if that person had paid the instrument."

Paragraphs (1), (2) and (3)

48. The Working Group adopted each of these paragraphs.

Paragraph (4)

49. It was pointed out that the reference in this paragraph to what appears on "the face of" the instrument was ambiguous in that it might be read to refer only to what appears on the front of the instrument. The Working Group decided to delete from this paragraph the words "the face of", so that the reference would simply be to "what appears on the instrument". The Working Group adopted the paragraph, subject to this change.

Paragraph (5)

50. The Working Group adopted this paragraph.

"Article 30 bis

"The order to pay contained in a bill does not of itself operate as an assignment of a right to payment existing outside of the bill."

51. The Working Group adopted this article.

"Article 34

"(1) The drawer engages that upon dishonour of the bill by non-acceptance or non-payment, and upon any necessary protest, he will pay to the holder the amount of the bill, and any interest and expenses which may be recovered under article 67 or 68.

"(2) The drawer may exclude or limit his own liability by an express stipulation on the bill. Such stipulation has effect only with respect to the drawer."

Paragraphs (1) and (2)

52. The Working Group adopted each of these paragraphs of the article.

Article 34 bis

"(1) The maker engages that he will pay to the holder the amount of the note, and any interest and expenses which may be recovered under article 67 or 68.

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

Paragraphs (1) and (2)

53. The Working Group adopted each of these two paragraphs of article 34 *bis*.

"Article 36

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

"(2) The acceptor engages that he will pay to the holder, or the drawer who has paid the bill, the amount of the bill, and any interest and expenses which may be recovered under article 67 or 68."

Paragraphs (1) and (2)

54. The Working Group adopted each of these two paragraphs of article 36.

"Article 37

"An acceptance must be written on the bill and may be affected

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

"(*b*) By the signature alone of the drawee, but only if placed on the front of the bill."

Paragraph (a)

55. The Working Group adopted this paragraph.

Paragraph (b)

56. The point was made with regard to this paragraph that the requirement that the drawee's signature appear on the front of the bill was unnecessary and out of tune with current practice in a number of countries where it was not uncommon for a drawee to indicate his acceptance on the back of the instrument. Furthermore, since a drawee seldom had reason to sign an instrument except upon his acceptance, it was reasonable to conclude that such a signature appearing anywhere in the instrument was an acceptance unless a contrary indication were given. The view was expressed, however, that the requirement under consideration was in accord with the Geneva Uniform Law and could serve a useful purpose in distinguishing an acceptance from a mere guarantee, especially in the case of a blank endorsement appearing as part of a series of endorsements on the back of the bill.

57. The Working Group decided to delete from this paragraph the words "but only if placed on the front of the bill", on the premise that, barring an indication to the contrary, the signature of a drawee appearing anywhere on the instrument should be construed as an acceptance.

"Article 38

"(1) A bill may be accepted

"(*a*) Before it has been signed by the drawer, or while otherwise incomplete;

"(*b*) Before, at or after maturity, or after it has been dishonoured by non-acceptance or non-payment.

"(2) When a bill drawn payable at a fixed period after sight is accepted, the acceptor must indicate the date of his acceptance; failing such indication by the acceptor, the drawer, before the issue of the bill, or the holder may insert the date of acceptance.

"(3) If a bill drawn payable at a fixed period after sight is dishonoured by non-acceptance and the drawee subsequently accepts it, the holder is entitled to have the acceptance dated as of the date on which the bill was dishonoured."

Paragraph (1) subparagraph (a)

58. A question was raised as to the appropriateness of using the word "bill" in this provision in view of the fact that a "bill" is defined in article 1 paragraph (2) as an instrument which, among other prerequisites, is "signed by the drawer". It was also suggested that the wording of the provision could leave the impression that an "acceptance" could be given on a blank piece of paper which is then subsequently converted into a bill by insertion of the appropriate words in accordance with article 1.

59. The Working Group was of the view that this provision should apply only in the case of an instrument which by the time it came to the drawee already met some of the prerequisites of a bill specified in article 1 (2). Accordingly, the Group decided to redraft this paragraph as follows:

"(1) An incomplete instrument which satisfies the requirements set out in subparagraph (*a*) of paragraph (2) of article 1 may be accepted by the drawee before it has been signed by the drawer or while otherwise incomplete;"

Paragraph (1) subparagraph (b)

60. The Working Group adopted this provision. Two representatives, however, expressed their reservation with respect to the possibility that a bill may be accepted "at or after maturity".

Paragraph (2)

61. It was proposed that since under article 46 (2) (*a*) a bill must be presented for acceptance if it bears a stipulation to that effect, it would be advisable to include a reference to such bills in this provision.

62. The Working Group retained this proposal and inserted the words "or when it must be presented for acceptance before a specified date" after the word "sight" in the first line of paragraph (2).

Paragraph (3)

63. The Working Group adopted this paragraph.

"Article 39

"(1) An acceptance must be unconditional. If the drawee stipulates on the bill that his acceptance is subject to a condition, the bill is dishonoured. Nevertheless, the acceptor is bound according to the terms of his conditional acceptance.

"(2)(*a*) The holder may refuse an acceptance which varies the terms of the bill. Upon such refusal, the bill is dishonoured by non-acceptance. If the holder takes an acceptance relating to only a part of the amount of the bill, the bill is dishonoured for

non-acceptance as to the remaining part of the amount.

"(*b*) If the holder takes an acceptance which varies the terms of the bill, other than an acceptance relating to only a part of the amount of the bill, any party who does not affirmatively assent to the variation is discharged of liability on the bill.

"(3) An acceptance indicating that payment will be made by an agent does not vary the terms of the bill, provided that:

"(*a*) The place in which payment is to be made is not changed, and

"(*b*) The bill is not drawn payable by another agent.

64. The Working Group considered what would be the proper terminology to be used to describe an acceptance which was not a general acceptance, i.e., an acceptance by which the drawee did not assent without qualification to the drawer's order. It was noted that the original Secretariat draft of article 39 used the term "qualified acceptance" and defined such an acceptance as: conditional, partial, qualified as to place and qualified as to time. The view was expressed that the term "unconditional", although used in article 26 of the Geneva Uniform Law, was too restrictive in that it could be interpreted to refer only to those acceptances which stated that payment will be dependent upon the fulfilment of a condition stated in the acceptance. The Group, after deliberation, concluded that the words "qualified" and "unqualified" reflected more correctly all kinds of acceptance which were not general acceptances. The Group accordingly decided to adopt a new paragraph (1), as follows:

"An acceptance must be unqualified. An acceptance is qualified if it is conditional or varies the terms of the bill."

It was noted that an acceptance which "varies the terms of the bill" included:

(i) A partial acceptance, i.e., an undertaking on the part of the drawee to pay part only of the amount for which the bill is drawn;

(ii) A local acceptance, i.e., an acceptance to pay only at a particular specified place other than the place of payment as determined by article 53 (*g*) of the draft Convention;

(iii) An acceptance qualified as to time, i.e., to pay at a time which differs from the time at which the bill is drawn payable.

Paragraph (1)

65. The Working Group agreed with the provision that a qualified acceptance, even if it were not taken by the holder, would nevertheless bind the drawee according to its terms.

Paragraph (2)

66. The Working Group agreed with the provision that the holder had the option between taking a partial acceptance or refusing to take such an acceptance. In the latter case, the bill was considered to be dishonoured. If the holder took the partial acceptance, the bill was considered to be dishonoured for the remaining part of the amount.

67. The Working Group was agreed that any qualified acceptance, other than a partial acceptance which the holder took, should be considered as a dishonour of the bill. Consequently, if the holder took, for instance, an acceptance which was qualified as to time, prior parties and the drawer would be discharged of liability on the bill by reason of the fact that, since there was a dishonour, the holder should have drawn up a protest.

Paragraph (3)

68. There was considerable discussion about the meaning of the "place" of payment. The conclusion was reached that, provided the locality where payment is to be made, is not varied, an acceptance which indicates a particular address in that locality or an address different from the one specified on the bill, but in the same locality, was not a qualified acceptance. The same conclusion was reached with respect to an acceptance stating that payment is to be made by a particular agent: such an acceptance is not qualified, provided the locality where payment is to be made is not changed and the bill is not drawn payable by another agent.

69. The text, as adopted by the Working Group, is set out in the annex to this report.

"Article 41

"(1) The endorser engages that upon dishonour of the instrument by non-acceptance or non-payment, and upon any necessary protest, he will pay to the holder the amount of the instrument, and any interest and expenses which may be recovered under article 67 or 68.

"(2) The endorser may exclude or limit his own liability by an express stipulation on the instrument. Such stipulation has effect only with respect to that endorser."

Paragraphs (1) and (2)

70. The Working Group adopted these two paragraphs of article 41.

"Article 42

"(Alternative A)

"[(1) Any person who transfers an instrument by mere delivery is liable to any holder subsequent to himself for any damages that such holder may suffer on account of the fact that prior to such transfer

"(*a*) A signature on the instrument was forged or unauthorized; or

"(*b*) The instrument was materially altered; or

"(*c*) A party has a valid claim or defence against him; or

"(*d*) The bill is dishonoured by non-acceptance or non-payment or the note is dishonoured by non-payment.

"(2) The damages according to paragraph (1) may not exceed the amount referred to in article 67 or 68.

"(3) Liability on account of any defect mentioned in paragraph (1) is incurred only to a holder who took the instrument without knowledge of such defect.]

"(Alternative B)

"[(1) Any person who transfers an instrument by mere delivery is liable to any holder subsequent to himself for any damages that such holder may suffer on account of the fact that prior to such transfer

"(*a*) A signature on the instrument was forged or unauthorized; or

"(*b*) The instrument was materially altered; or

"(*c*) A party has a valid claim or defence against him; or

"(*d*) The bill is dishonoured by non-acceptance or non-payment or the note is dishonoured by non-payment.

"(2) The damages according to paragraph (1) may not exceed the amount referred to in article 67 or 68.

"(3) Liability on account of any defect mentioned in paragraph (1) is incurred only to a holder who took the instrument without knowledge of such defect.

"(4) Paragraph (1) does not apply where the instrument is transferred by an endorsement for collection in accordance with article 20.

"(5) A person who transfers an instrument without knowledge that liability under paragraph (1) is incurred by him, may exclude or limit such liability. If such exclusion or limitation is by an express stipulation on the instrument, it is effective as against any subsequent holder. Such stipulation is effective only with respect to the person making it.

"(6) Liability under paragraph (5) is excluded by the use of the words 'without liability', 'without guarantee', or words of similar import. However, the use of the words 'without recourse' does not exclude liability under paragraph (1.)]"

71. The Working Group considered whether the draft Convention should contain a provision under which a person who had not signed the instrument, and therefore was not a party, should be liable to any subsequent holder. The following example was given: B, the payee of a note, endorses the note in blank and delivers it to C. C delivers the note to D without signing it. Should C be liable for any damages which D may suffer because of, say, a material alteration of the note made after B signed the note?

72. It was noted that civil law and common law countries took a different approach to the matter dealt with by article 42. In civil law jurisdictions the liability of C in the above example would be a matter for general law, whereas in the comon law jurisdictions such liability was based on the concept of warranties. In opposition to the proposed provision, it was observed that it would be against the policy underlying the draft Convention if a liability outside the instrument were established. However, under a contrary view, a provision along the lines of article 42 was necessary in common law jurisdictions in order to ensure that a holder who had received the instrument by mere delivery was not left without legal remedy in the circumstances contemplated by article 42. Moreover, even in civil law jurisdictions, it was doubtful whether, if the instrument had been further delivered, subsequent holders would have, under the general law, an action for damages against a remote holder who had transferred the instrument by mere delivery.

73. The Working Group, after deliberation, was agreed to include in the draft Convention a provision along the lines of article 42.

Alternative A

Paragraph (1)

74. The Working Group adopted this paragraph.

Paragraph (2)

75. Two examples were given with respect to the damages which a holder could recover under this provision. Firstly, the case was put of a note for Sw.F. 1,000, made by A to B. B endorses the note in blank and delivers it to C, who alters the sum payable to Sw.F. 11,000. C then delivers it to D who is entitled to receive from A or B the sum of Sw.F. 1,000 only. Under article 42, D may recover from C Sw.F. 10,000.

76. The second example concerned the extent to which a holder, such as D in the example given, must first pursue his rights on the instrument against A and B before he could avail himself of the right against C conferred under article 42. The Group was agreed that the issue had to be decided under the ordinary principles of the law of damages, including the duty of mitigation thereof which required only that effective but not extraordinary steps be first taken to obtain satisfaction from the primary obligors. It was, therefore, suggested that D in the example given needed only to make presentment to A, not sue him, before he could go against D.

77. It was also observed in connexion with the interpretation of article 42 that a person is liable for any damages which the holder has suffered "on account of" the factors enumerated in paragraph (1) as to which alone the transferor's warranty runs. Consequently, the insolvency, for example, of the primary obligors would not confer a right of action under article 42 on the transferee by mere delivery, since the transferor is not deemed under the article to have warranted the solvency of such primary obligors. The Working Group agreed with this interpretation and adopted paragraph (2).

Paragraph (3)

78. The Working Group adopted this paragraph.

Alternative B

79. The Working Group considered the question whether the provisions of paragraphs (4), (5) and (6) of alternative B of article 42 should be incorporated in the draft text. Although the view was advanced that it might be useful to retain the substance of paragraph (4) in the draft in order to clarify the position of a bank which makes a transfer by delivery during the process

of collection, the Working Group decided that paragraph (4) would in practice only be relevant in cases of transfer by endorsement and was accordingly not required in article 42. The Working Group for the same reason decided not to adopt paragraph (5) or paragraph (6) of alternative B.

"Article 43

"[(1) Payment of an instrument may be guaranteed, as to the whole or part of its amount, by any person, who may or may not have become a party.]

"[(1) The liability of a party on an instrument may be guaranteed by any person who may or may not have become a party.]

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

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

"(4) A guarantee may be effected by a signature alone. However,

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

"(*b*) A signature alone on the back of the instrument is an endorsement if it can be so construed from the face of the instrument.

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

Paragraph (1)

80. The Working Group first considered which of the alternative formulations of paragraph (1) was to be preferred, the issue being the possibility that one may become a guarantor for the drawee of a bill who may or may not subsequently assume an obligation on the bill by accepting it. It was observed in this regard that if the possibility of guaranteeing such a putative obligation of the drawee was to be excluded from the draft Convention, then the second alternative of paragraph (1) could be admitted; the first alternative, on the other hand, was designed to embrace the possibility that the person for whom the person signing intends to become guarantor is the drawee, as where there appears on a bill, against the name of the drawee, the words "payment guaranteed" followed by the guarantor's signature.

81. The Working Group, after considerable discussion of alternative I, decided to admit, in principle, of the possibility of such a guarantee on behalf of the drawee and to accept the first formulation of paragraph (1) as the basis for its discussion as to the appropriate wording for such a rule.

82. In considering whether to adopt a formulation of the kind "Payment or acceptance of an instrument may be guaranteed, etc.", the Working Group discussed the nature of the guarantor's undertaking in the guarantee of acceptance situation. It was generally agreed that in purporting to become guarantor for the drawee, the person signing could not be undertaking to get the named drawee actually to accept the bill, since this might well be physically impossible; nor would he be undertaking himself to accept the bill, should the drawee fail to do so, since, under the draft Convention, only the drawee can accept a bill. On the other hand, the undertaking must mean more than an assurance simply that the drawee will put his signature on the bill as acceptor with no intention or ability to pay the bill when due.

83. The Working Group accordingly concluded that, in the final analysis, the undertaking of one who becomes a guarantor for the drawee of a bill is to pay the bill when due should the drawee not do so. Hence, it was not very helpful and could be misleading to employ the "guarantee of acceptance" wording in the text. It would be preferable to refer explicitly to the drawee.

84. The proposal was made, and adopted by the Working Group, to redraft paragraph (1) of article 43 as follows:

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

It was explained that the words "for the account of any party" were not meant to lay down a rule as to the form in which the guarantee must be expressed. It was rather intended to relate the guarantee to the obligation (existing or putative) of a specific person (e.g. the drawee) while avoiding express reference to such obligation and to refer to the informal relation between the guarantor and such person.

Paragraph (2)

85. The Working Group adopted this paragraph.

Paragraph (3)

86. The Working Group adopted this paragraph.

Paragraph (4)

87. The Working Group was generally agreed that the rules as to the location of signatures on the instrument enunciated in paragraph (4) should operate as strong but nevertheless rebuttable presumptions. Accordingly, the Group decided to amend the opening of the second sentence of this paragraph by substituting for the word "However" the words "Unless the context otherwise requires".

Paragraph (4), subparagraph (a)

88. The Working Group decided to delete from this subparagraph the words "the front of" so as to conform this provision with the earlier decision of the Group regarding acceptance (see art. 37 (*b*) above, para. 57).

Paragraph (4), subparagraph (b)

89. In the light of the change referred to in paragraph 87 above, the Working Group decided to delete from this subparagraph, as redundant, the words "if it can be so construed from the face of the instrument."

Paragraph (4), new subparagraph

90. The Working Group decided, for the sake of completeness, to adopt the following presumption for the case of a signature alone on the front of the instrument, not being that of the drawer or the drawee:

"The signature alone on the front of the instrument of a person other than the drawer or the drawee is a guarantee."

The foregoing provision would become subparagraph (*a*) of paragraph (4), the present subparagraphs (*a*) and (*b*) being renumbered (*b*) and (*c*) respectively.

Paragraph (5)

91. The main issue discussed by the Working Group with regard to this paragraph was whether in the absence of a specification as for whom the person signing has become guarantor, the guarantee should be deemed to be provided for the drawer or the drawee. There was general agreement, however, that where the bill is accepted, such an unspecified guarantee should be deemed to be given for the acceptor. The only issue was as to an unaccepted bill.

92. A strong argument was made in favour of treating such a signature as a guarantee of the drawer's liability. It was argued that the notion of a guarantee for a liability (the drawee's) which did not already exist and might possibly never exist, was juridically difficult to comprehend. What, under article 45, were the rights of such a guarantor? It was further observed that the rule under the Geneva Uniform Law was that such a guarantee was deemed to be given for the drawer, a party who had liability on the bill, and that one should not depart from such established régime except for very good reasons, which did not appear to exist in the present case.

93. In support of the position that the person for whom the unspecified guarantee is provided should be the drawee, it was noted that there were practical reasons for such a solution even if the conceptual difficulties were granted. Firstly, in the case of sight drafts, which were of major importance in commercial practice, the holder was usually interested in the guarantee because no acceptance was involved and consequently his interest would be that there be a guarantee for the drawee and not the drawer. Secondly, given the decision that upon acceptance the guarantee would be deemed to be for the acceptor, it would lead to practical problems of verification if the guarantee was deemed to be for the drawer and not the drawee in the case of a not-yet-accepted bill. It would become necessary in every case of an accepted bill to determine whether the guarantor's signature was placed on the bill before or after that of the drawee. If it was placed before that of the drawee, then the person for whom he became guarantor would be the drawer, and if after, the acceptor. It was also observed that the relevant provision of article 31 of the Geneva Uniform Law, despite its seeming rigidity, was, in some civil law countries, construed as a rebuttable presumption.

94. The Working Group decided to amend paragraph (5) by substituting for the word "drawer" in the last line the words "acceptor or the drawee", and on that basis adopted the text of the paragraph.

"Article 44

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

95. The Working Group was agreed that in view of the decision to admit of the possibility of a person becoming a guarantor for the drawee who has not yet accepted the bill and is, therefore, not liable on it (see paras. 91 to 94, above), it was necessary to spell out in the article the nature of such a guarantor's undertaking. Recalling its earlier discussion of the issue in connexion with paragraph (1) of article 43 (see paras. 80 and 81, above), and the conclusion there reached, the Working Group decided to make the present text of article 44 into paragraph (*a*) and to adopt the following provision as a new paragraph (*b*) of that article:

"If the person for whom he has become guarantor is the drawee, the guarantor undertakes to pay the bill, when due, if the drawee does not pay or does not accept and pay the bill."

96. With respect to the foregoing formulation, the Working Group agreed that the effect of the words "when due" should be to make the guarantor liable to pay the bill at the time when the drawee, had he agreed to be bound on the instrument, would have had to pay the bill, and not before.

97. The Working Group then considered a number of questions relating to the interpretation and effect of article 44 as a whole. The Working Group came to the conclusion that the effect of article 44 was to put the guarantor in the shoes of the person for whom he has become guarantor with the consequence that the guarantor is liable only to the extent that such a person is or would have been. A corollary of this was that the guarantor may raise against any person the defences which the person for whom he has become guarantor could have raised. The Working Group decided that it was outside of the scope of the draft Convention to attempt to deal with the issue of the guarantor's own personal defences independent of those of the person for whom he has become guarantor. In response to a question whether, in order to go against a guarantor, the holder must first make protest, it was pointed out that under draft articles 55 (3) and 60 (3) (A/CN.9/WG.IV/WP. 10) which the Working Group had still to consider, presentment and protest are dispensed with as regards the liability of the acceptor's or maker's guarantor.

98. The Working Group adopted article 44, including the new paragraph (*b*) referred to in paragraph (1) above.

"Article 45

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

99. The Working Group expressed general agreement with the text of article 45. It was noted that the only situation not covered referred to the rights of the drawee's guarantor against a drawer who did not become a party and concluded that any action that might be taken would be outside of the bill and, therefore, should not be addressed in the Convention. A

question was, however, raised as to whether the mere use of the word "party" was sufficient to emphasize the qualitative difference between the rights of a guarantor where the drawee has accepted the bill and where he has not.

100. The Working Group decided not to make any change in the wording of the text of article 45 and adopted the article.

D. *Articles 46 to 51 (presentment for acceptance)*

"Article 46

"(1) The holder may present a bill for acceptance.

"(2) The holder must present a bill for acceptance

"(*a*) When the drawer [or an endorser or a guarantor] has stipulated on the bill that it must be so presented; or

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

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

"[(3) A stipulation on the bill that it must be accepted,

"(*a*) If made by the drawer, is effective in respect of the drawer and any subsequent party, unless such party has stipulated otherwise on the bill;

"(*b*) If made by any party other than the drawer, is personal to the party making it.]

Paragraph (1)

101. The view was expressed that the wording of this paragraph was unduly restrictive to the extent that it seemed to contemplate presentment for acceptance by the holder alone. This could raise unnecessary doubts in cases where presentment is made, not by the holder himself, but by someone acting on his behalf, such as, for example, a bank, a messenger or even the drawer himself. Furthermore, it was unnecessary for the purposes of the paragraph to say who should make presentment since the paragraph dealt only with the question whether or not a bill may be presented for acceptance. Attention was also drawn to the case of the drawer who might present an incomplete instrument for acceptance under article 38 (1).

102. The Working Group decided, in view of the foregoing observation, to redraft paragraph (1) as follows:

"A bill may be presented for acceptance."

Paragraph (2)

103. The Working Group decided that the opening line of this paragraph should be redrafted to conform with the new wording of paragraph (1).

Paragraph (2), subparagraph (a)

104. The Working Group decided to delete the words in brackets from this subparagraph on the ground that it was inadvisable to introduce the attendant complexity in the absence of evidence that there was a significant practice of endorsers or guarantors stipulating with regard to presentment. The Working Group would, however, reconsider the matter should inquiries among banking and commercial circles by the Secretariat reveal a practical need to provide for such cases. The Working Group also decided that the words "so presented" in the English text should be replaced by the words "presented for acceptance", so that the subparagraph would now read as follows:

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

Paragraph (2), subparagraph (b)

105. The Working Group adopted this subparagraph.

Paragraph (2), subparagraph (c)

106. The Working Group considered whether the word "habitual" before the word "residence" should be deleted. The view was expressed, on the one hand, that to delete "habitual" would complicate the predicament of the holder who might well know the habitual residence of a drawee but not know whether the other place specified on the bill is also a residence. There was no particular problem in most instances of identifying the habitual residence of a person and the concept was well known in international legislation. It was, however, argued that a holder in the international transaction should not be put in the difficult position of having to decide the issue of "habitual" and "non-habitual" residence of a drawee. It should suffice for the purposes of subparagraph (*c*) that the bill is drawn payable elsewhere than at any of the residences of the drawee: deleting "habitual" would accomplish this result. The Working Group decided to delete the word "habitual" in the first line of subparagraph (*c*), it being recognized that the cases where this would make a practical difference in results were very few.

107. The Working Group also considered a proposal to delete subparagraph (*c*) entirely. It imposed the requirement of presentment in a case where it was not necessary and had the undesirable consequence that non-compliance with its requirements would discharge the endorsers of a bill. The Working Group decided to retain this subparagraph in view of the fact that such a provision was necessary in Anglo-American negotiable instruments practice, in order to put the drawee on notice that such a bill had been issued.

108. The Working Group, recalling that it had earlier decided not to make an exception in the case of a demand bill, also decided to remove the brackets around the words "except where such a bill is payable on demand".

Paragraph (3)

109. The Working Group decided to delete this provision in light of the decision taken on the issue of endorsers and guarantors in connexion with paragraph (2) (*a*) (see para. 104 above).

"Article 47

"(1) The drawer [or an endorser or a guarantor] may stipulate on the bill that it must not be presented

for acceptance or that it must not be so presented before a specified date or before the occurrence of a specified event.

"(2) If a bill is presented for acceptance notwithstanding a stipulation as permitted under paragraph (1) and acceptance is refused, the bill is not thereby dishonoured [in respect of the party making the stipulation].

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

"[(4) A stipulation on the bill that it must not be presented for acceptance

"(*a*) If made by the drawer, is effective with respect to any subsequent party, unless such party has stipulated otherwise on the bill;

"(*b*) If made by any other party, is personal to the party making it.]"

Paragraph (1)

110. The Working Group adopted this paragraph subject to deletion of the words between brackets in accordance with its decision regarding endorsers and guarantors in connexion with article 46 (2) (*a*) (see para. 104 above).

Paragraph (2)

111. It was observed that the word "stipulation" was inapposite in this context when translated into Spanish and French; the more correct notion was that of a prohibition.

112. The Working Group decided to adopt the text of this paragraph subject to substituting a better term for "stipulation" in the French and Spanish texts. It was also decided to delete the material in brackets at the end of the paragraph in line with the decision in respect of endorsers and guarantors in article 46 (2) (*a*) (see para. 104 above).

Paragraph (3)

113. The Working Group adopted this paragraph.

Paragraph (4)

114. The Working Group decided to delete this paragraph in the light of its decision not to provide for stipulations by endorsers or guarantors in connexion with article 46 (2) (*a*) (see para. 104 above).

"*Article 47* bis

"(1) Presentment for acceptance must be made to the drawee.

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

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

Paragraph (1)

115. It was recalled that during its consideration of paragraphs (1) and (2) of article 46, the Working Group had decided that questions relating to who may make presentment for acceptance and to whom, should be dealt with elsewhere than in that article. The Working Group was also agreed that, unlike in the Geneva Uniform Law (art. 21) which permits any person merely in possession to make presentment, there should be some restriction as to who may make due presentment under the draft Convention. The Group accordingly decided to amend the text of paragraph (1) to read as follows:

"(1) Presentment for acceptance must be made to the drawee by or on behalf of the holder of the drawer."

Paragraph (2)

116. The Working Group adopted this paragraph.

Paragraph (3)

117. In response to a question as to the scope and application of this provision, it was observed that the provision was intended to cover some of the following situations: bankruptcy of the drawee; liquidation of a body corporate; incapacity of the drawee by reason of insanity; and so forth. It was also pointed out that such a provision was necessary in some jurisdictions in order to make it clear that the persons or authority therein referred to could give a valid acceptance in their own right unrelated to the question whether they were or were not acting "on behalf of" the drawee.

118. The Working Group adopted this paragraph.

"*Article 48*

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

"(*a*) The holder must present the bill to the drawee on a business day at a reasonable hour. Where a place of acceptance is specified in the bill, presentment must be made at that place.

"(*b*) If a bill is drawn payable on, or at a fixed period after, a stated date, presentment for acceptance must be made before or on the date of maturity.

"(*c*) A bill drawn payable at a fixed period after sight must be presented for acceptance within one year of its date.

"(*d*) A bill in which the drawer [or an endorser or a guarantor] has stated a date or time-limit for presentment for acceptance must be presented on the stated date or within the stated time-limit."

Paragraph (a)

119. The Working Group adopted this paragraph.

Paragraph (b)

120. The Working Group decided to substitute, in the first line of this paragraph, "a fixed date" for "or at a fixed period after a stated date" on the ground that "a fixed period after a stated date" was also a fixed date. The Working Group adopted the paragraph subject to this change.

Paragraph (c)

121. The observation was made on this provision

that it did not seem to cover a bill payable at sight on which there was a stipulation for acceptance. The Working Group was agreed that such a bill should be embraced within this provision and adopted a proposal to insert the words "sight or at" before the words "a fixed period" in the first line of the paragraph, so that the sentence would now read as follows:

"A bill drawn payable at sight or at a fixed period after sight must...".

122. The Working Group also considered, but did not adopt, a proposal to reduce the length of the period available for making presentment of a bill subject to paragraph (*c*). It was noted in this connexion that the business world had become accustomed to the one-year rule provided under the Geneva Uniform Law and it was unnecessary to create the risk that people might get caught unawares by the shorter period.

123. The Working Group adopted this paragraph subject to the amendment referred to in paragraph 121 above.

Paragraph (d)

124. In response to the question whether the present provision took due account of the possibility of making presentment by post, the view was generally expressed that the wording did not exclude such a possibility. The fact that it contained no specific provisions relating to lost or misdelivered mail should not, it was observed, lead to the conclusion that presentment by mail was to be ruled out.

125. On the foregoing understanding, and subject to deletion of the words within brackets as earlier decided, the Working Group adopted this paragraph.

"*Article 49*

"[(1) Delay in making presentment for acceptance is excused when the delay is caused by circumstances beyond the control of the holder and which he could neither avoid nor overcome. When the cause of delay ceases to operate, presentment must be made with reasonable diligence.]

"(2) Presentment for acceptance is dispensed with

"(*a*) If the drawee is dead or has no longer the power freely to deal with his assets by reason of his insolvency, or is a fictitious person or a person not having capacity to accept the bill, or if the drawee is a corporation, partnership, association or other legal entity which, under the applicable law, is in liquidation or has ceased to exist;

"(*b*) When, with the exercise of reasonable diligence, presentment cannot be effected within the time-limits prescribed for presentment for acceptance.

"[(*b*) When the cause of delay referred to in paragraph (1) of this article continues to operate beyond 30 days after the expiration of the time-limit for presentment for acceptance.]"

Paragraph (1)

126. The Working Group decided to delete this provision from the text of the draft Convention on the ground that it was vague and difficult of application and, therefore, likely to lead to divergent interpretations. Its deletion, furthermore, should not lead to any hardship since for the most part the same result could be arrived at by invoking paragraph (2) *(b)*.

Paragraph (2), subparagraph (a)

127. In response to a question as to the relationship between this provision and article 47 *bis* (3) under which presentment for acceptance may be made to a person or authority other than the drawee, who is entitled to accept the bill, it was observed that although article 49 (2) (*a*) dispenses with presentment in such circumstances, a holder may nevertheless wish to make presentment and the person or authority be willing to make acceptance. The effect of article 47 *bis* (3) was to permit and recognize such a presentment.

128. A question was raised as to the concept of "a fictitious person". It was pointed out, firstly, that in many civil law countries the term was apt to involve the doctrine of corporate personality as distinguished from natural persons, and, secondly, that, to the extent the terms referred to non-existent drawees, the rule of dispensing with presentment in such a case was unsound in principle. It was never possible to determine at first sight that a drawee was fictitious simply because the name suggested so. It was only by going to the specified place of presentment that one would be able to determine the existence or non-existence of the drawee. The effect of the provision, therefore, was to dispense with presentment in precisely the case where presentment should be required.

129. It was pointed out, on the other hand, that the provision served a useful practical purpose. It was not uncommon for promoters and entrepreneurs to obtain value from third parties by representing that a company or enterprise which had not yet been formed and might never be in existence was actively in and carrying out a certain line of business. Bills of exchange might then be drawn on such fictitious companies. Dispensing with presentment in such a case would not only avoid the logical difficulty of how presentment can be made to a non-existent person, but would also permit rights on the instruments of and against parties, such as endorsers, to crystallize at a determinable time. As regards the necessity to make enquiries before one could conclude that the drawer is fictitious, it was pointed out that this was not a problem peculiar to the fictitious person provision. The same factual and/or legal determination was called for in order to apply the provision relating, for instance, to the incapacity of the drawee, or even that relating to the drawee's death.

130. The Working Group decided to retain the reference to non-existent drawees in this subparagraph.

131. The Working Group decided to substitute the words "incur liability on the instrument as acceptor" for "accept the bill" in the third line of this paragraph so as to bring the reference in line with the terminology employed in articles 24 and 25. It was also decided to delete, as unnecessary, the words "under the applicable law" from the fourth line of the subparagraph.

132. With regard to the reference in the subparagraph to a legal entity "in liquidation", it was observed that under many legal systems the fact of being "in liquidation" did not affect the capacity of an entity to accept or its ability to pay an instrument. Further-

more, the state of being "in liquidation" had many different meanings and legal consequences from one legal system to another so that it was not a workable basis for a uniform rule. The Working Group, accordingly, decided to delete the words "is in liquidation or" from the subparagraph on the understanding that it is open for a court to interpret the words "has no longer the power freely to deal with his assets by reason of his insolvency" or "not having capacity to accept the bill" at the beginning of the subparagraph to cover the case of an entity "in liquidation".

133. The Working Group adopted this subparagraph subject to the foregoing changes.

Paragraph (2), subparagraph (b)

134. The Working Group adopted this subparagraph.

"Article 50

"If a bill which must be presented for acceptance in accordance with article 46 is not so presented, the drawer, the endorsers and the guarantors are not liable on the bill."

135. The Working Group adopted this provision subject to the following modifications:

(i) The words "in accordance with article 46" were deleted because the reference to the mandatory presentment for acceptance under article 46 might be construed as not taking into account the cases in which presentment was dispensed with. For instance, if there was no presentment because the drawee is dead, the drawer, the endorsers and their guarantors would not be discharged, although the bill was a bill drawn payable at a fixed period after sight.

(ii) The words "the guarantors" were changed into "their guarantors" because the guarantor of the drawee would remain liable on the bill since he guaranteed payment by the drawee.

"Article 51

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

"(*a*) When, upon due presentment, acceptance is expressly refused or cannot, with reasonable diligence, be obtained;

"(*b*) When the holder cannot obtain the acceptance to which he is entitled under this Convention;

"(*c*) If presentment for acceptance is dispensed with pursuant to article 49, and the bill is not accepted.

"(2) If a bill is dishonoured by non-acceptance the holder may, subject to the provisions of article 57, exercise an immediate right of recourse against the drawer, the endorsers and the guarantors."

Paragraph (1), subparagraphs (a) *and* (b)

136. The Working Group reworded these provisions into one paragraph as set out in the annex to this report.

Paragraph (1), subparagraph (c)

137. It was observed that the words "and the bill is not accepted" appeared to contradict the fact that presentment for acceptance was dispensed with. It was noted that these words were intended to cover the situation where notwithstanding the dispensation the bill was presented and accepted. The Working Group therefore modified these words to read as follows: "unless the bill is in fact accepted".

Paragraph (2)

138. The Working Group amended this provision by replacing the words "the guarantors" by "their guarantors" in order to make clear that the guarantors concerned were only those who guaranteed the liability of the drawer and the endorsers, and not the payment by the drawee.

E. *Article 53 (presentment for payment)*

"Article 53

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

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

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

"(*c*) If the drawee or the acceptor or the maker is dead, [and no place of payment is specified,] presentment must be made to the persons who under the applicable law are his heirs or the persons entitled to administer his estate.

"[(*d*) If the drawee or the acceptor or the maker is in the course of insolvency proceedings, presentment must be made to a person who under the applicable law is authorized to act in his place.]

"(*e*) An instrument which is not payable on demand must be presented for payment on the date of maturity or on one of the two business days which follow.

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

"(*g*) An instrument must be presented for payment:

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

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

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

139. The Working Group requested the Secretariat to rearrange the paragraphs of this article in a more logical order.

Paragraph (a)

140. The Working Group adopted this provision.

Paragraph (b)

141. The Working Group adopted this provision.

Paragraph (c)

142. The Working Group noted that, in the case of presentment for acceptance, the holder could consider the bill as dishonoured in the event of the death of the drawee. The rationale of that rule was that the acceptance was personal to the drawee. However, the holder, if he so wished, could present the bill for acceptance to the deceased drawee's heirs. In the case of presentment for payment, the death of the drawee, the acceptor or the maker did not dispense the holder of presentment, since payment was not personal to the drawee, the acceptor or the maker and, accordingly, there was need for a provision stating to whom presentment must be made in that event. The Group therefore retained the provision.

143. The Working Group decided to delete the words "and no place of payment is specified" on the ground that, in all circumstances, presentment was to be made to the deceased's heirs or to the persons entitled to administer his estate, who should be given the opportunity to pay the instrument out of the estate.

Paragraph (d)

144. The Working Group noted that the fact that the drawee, the acceptor or the maker were in the course of insolvency proceedings should, under article 54, dispense the holder of presentment for payment. Consequently, the holder should have an immediate right of recourse against the drawer or previous endorsers and their guarantors. However, there might be circumstances in which the holder wished to present the instrument for payment and the Convention should therefore contain a provision stating to whom, in such circumstances, the holder should then make presentment. Accordingly, the Group adopted the following text in replacement of paragraph (d) as it appears above:

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

Paragraphs (e), (f) *and* (g)

145. The Working Group adopted these provisions.

OTHER DECISIONS

146. The Working Group decided to recommend to the Commission that the next (seventh) session of the Working Group be held in New York from 3 to 12 January 1979.

147. The Working Group also decided to set up a drafting group consisting of representatives of the four working languages of the Commission (English, French, Russian and Spanish) to review the text of the draft Convention on International Bills of Exchange and International Promissory Notes as finally adopted by the Working Group so as to ensure the internal consistency of the text and harmony between the various language versions. On the assumption that the Working Group shall have then concluded its consideration of the text, the first meeting of the drafting group was scheduled to take place directly after the Working Group's seventh session.

ANNEX

Draft Convention on International Bills of Exchange and International Promissory Notes

(Text of articles 5 and 6 and 24 to 53 as adopted by the Working Group on International Negotiable Instruments at its sixth session, held at Geneva from 3 to 13 January 1978)

Article 5

(7) "Protected holder" means a holder of an instrument which, when he became a holder, was complete and regular on its face and not overdue, provided that, at that time, he was without knowledge of any claim to or defence upon the instrument referred to in article 24 or of the fact that it was dishonoured by non-acceptance or non-payment.

Article 6

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

Article 24

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

(*a*) Any defence available under this Convention;

(*b*) Any defence based on an underlying transaction between himself and the drawer or a previous holder or arising from the circumstances as a result of which he became a party;

(*c*) Any defence to contractual liability based on a transaction between himself and the holder;

(*d*) Any defence based on incapacity of such party to incur liability on the instrument or on the fact that such party signed without knowledge that his signature made him a party to the instrument, provided that such absence of knowledge was not due to negligence;

(2) The rights to an instrument of a holder who is not a protected holder are subject to any valid claim to the instrument on the part of any person.

[(3) A party may not raise as a defence against a holder who is not a protected holder the fact that a third person has a claim to the instrument unless he had been informed by such a person of that claim.*]

Article 25

(1) A party may not set up against a protected holder any defence except:

(*a*) Defences under articles . . . of this Convention;**

(*b*) Defences based on the incapacity of such party to incur liability on the instrument;

(*c*) Defences based on the fact that such party signed without knowledge that his signature made him a party to the instrument, provided that such absence of knowledge was not due to his negligence.

(2) Except as provided in paragraph (3), the rights to an instrument of a protected holder are not subject to any claim to the instrument on the part of any person.

(3) The rights of a protected holder are not free from any valid

* This paragraph to be reconsidered in connexion with article 70.

** The Working Group requested the Secretariat to identify the defences under this subparagraph and to indicate the corresponding provisions in the draft Convention.

claim to, or any defence to liability upon, the instrument arising from the underlying transaction between himself and the party by whom the claim or defence is raised or arising from any fraudulent act on the part of such holder in obtaining the signature on the instrument of that party.

(4) The transfer of an instrument by a protected holder vests in any subsequent holder the rights to and upon the instrument which the protected holder had, except where such subsequent holder participated in a transaction which gives rise to a claim to or a defence upon the instrument.

Article 26

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

SECTION 2. LIABILITY OF THE PARTIES

[A. General]

Article 27

(1) Subject to the provisions of articles 28 and 30, a person is not liable on an instrument unless he signs it.

(2) A person who signs in a name which is not his own is liable as if he had signed it in his own name.

(3) A signature may be in handwriting or by facsimile, perforations, symbols or any other mechanical means.*

Article 28

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

Article 29

(1) If an instrument has been materially altered

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

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

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

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

Article 30

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

(2) The name or signature of a principal placed on the instrument by an agent with his authority imposes liability on the principal and not on the agent.

(3) The signature of an agent placed by him on an instrument without authority, or with authority to sign but not showing on the instrument that he is signing in a representative capacity for a named person, or showing on the instrument that he is signing in a representative capacity but not naming the person whom he represents, imposes liability thereon on such agent and not on the person whom the agent purports to represent.

(4) The question whether a signature was placed on the instrument in a representative capacity may be determined only by reference to what appears on the instrument.

(5) An agent who is liable pursuant to paragraph 3 and who pays the instrument has the same rights as the person for whom he purported to act would have had if that person had paid the instrument.

Article 30 bis

The order to pay contained in a bill does not of itself operate as an assignment of a right to payment existing outside of the bill.

Article 31

(deleted)

Article 32

(deleted)

Article 33

(deleted)

[B. The drawer]

Article 34

(1) The drawer engages that upon dishonour of the bill by non-acceptance or non-payment, and upon any necessary protest, he will pay to the holder the amount of the bill, and any interest and expenses which may be recovered under article 67 or 68.

(2) The drawer may exclude or limit his own liability by an express stipulation on the bill. Such stipulation has effect only with respect to the drawer.

[C. The maker]

Article 34 (bis)

(1) The maker engages that he will pay to the holder the amount of the note, and any interest and expenses which may be recovered under article 67 or 68.

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

[D. The drawee and the acceptor]

Article 35

(deleted)

Article 36

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

(2) The acceptor engages that he will pay to the holder, or the drawer who has paid the bill, the amount of the bill, and any interest and expenses which may be recovered under article 67 or 68.

Article 37

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

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

(*b*) By the signature alone of the drawee.

Article 38

(1) An incomplete instrument which satisfies the requirements set out in article 1 (2) (*a*) may be accepted by the drawee before it has been signed by the drawer, or while otherwise incomplete.

(2) A bill may be accepted before, at or after maturity, or after it has been dishonoured by non-acceptance or non-payment.

* *Article X*

A Contracting State whose legislation requires that a signature on an instrument be handwritten may, at the time of signature, ratification or accession, make a declaration to the effect that a signature placed on an instrument in its territory must be executed in handwriting.

(3) When a bill drawn payable at a fixed period after sight, or a bill which must be presented for acceptance before a specified date, is accepted, the acceptor must indicate the date of his acceptance; failing such indication by the acceptor, the drawer, before the issue of the bill, or the holder may insert the date of acceptance.

(4) If a bill drawn payable at a fixed period after sight is dishonoured by non-acceptance and the drawee subsequently accepts it, the holder is entitled to have the acceptance dated as of the date on which the bill was dishonoured.

Article 39

(1) An acceptance must be unqualified. An acceptance is qualified if it is conditional or varies the terms of the bill.

(2) If the drawee stipulates on the bill that his acceptance is subject to qualification:

(*a*) He is nevertheless bound according to the terms of his qualified acceptance;

(*b*) The bill is dishonoured by non-acceptance, except that the holder may take an acceptance relating to only a part of the amount of the bill. In that case, the bill is dishonoured by non-acceptance as to the remaining part of the amount.

(3) An acceptance indicating that payment will be made at a particular address or by a particular agent is not a qualified acceptance, provided that:

(*a*) The place in which payment is to be made is not changed;

(*b*) The bill is not drawn payable by another agent.

Article 40

(deleted)

[E. The endorser]

Article 41

(1) The endorser engages that upon dishonour of the instrument by non-acceptance or non-payment, and upon any necessary protest, he will pay to the holder the amount of the instrument, and any interest and expenses which may be recovered under article 67 or 68.

(2) The endorser may exclude or limit his own liability by an express stipulation on the instrument. Such stipulation has effect only with respect to that endorser.

Article 42

(Alternative A)

(1) Any person who transfers an instrument by mere delivery is liable to any holder subsequent to himself for any damages that such holder may suffer on account of the fact that prior to such transfer

(*a*) A signature on the instrument was forged or unauthorized; or

(*b*) The instrument was materially altered; or

(*c*) A party has a valid claim or defence against him; or

(*d*) The bill is dishonoured by non-acceptance or non-payment or the note is dishonoured by non-payment.

(2) The damages according to paragraph (1) may not exceed the amount referred to in article 67 or 68.

(3) Liability on account of any defect mentioned in paragraph (1) is incurred only to a holder who took the instrument without knowledge of such defect.

[F. The guarantor]

Article 43

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

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

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

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

(*a*) The signature alone on the front of the instrument, other than that of the drawer or the drawee, is a guarantee.

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

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

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

Article 44

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

(2) If the person for whom he has become guarantor is the drawee, the guarantor undertakes to pay the bill when due, if the drawee does not pay or does not accept and pay the bill.

Article 45

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

PART FIVE. PRESENTMENT, DISHONOUR AND RECOURSE

SECTION 1. PRESENTMENT FOR ACCEPTANCE

Article 46

(1) A bill may be presented for acceptance.

(2) A bill must be presented for acceptance:

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

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

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

Article 47

(1) The drawer may stipulate on the bill that it must not be presented for acceptance or that it must not be so presented before a specified date or before the occurrence of a specified event.

(2) If a bill is presented for acceptance notwithstanding a stipulation permitted under paragraph (1) and acceptance is refused, the bill is not thereby dishonoured.

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

Article 47 bis

(1) Presentment for acceptance must be made to the drawee by or on behalf of the holder or the drawer.

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

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

Article 48

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

(*a*) The holder must present the bill to the drawee on a business day at a reasonable hour. Where a place of acceptance is specified in the bill, presentment must be made at that place.

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

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

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

Article 49

Presentment for acceptance is dispensed with

(*a*) If the drawee is dead or has no longer the power freely to deal with his assets by reason of his insolvency, or is a fictitious person or a person not having capacity to incur liability on the instrument as an acceptor, or if the drawee is a corporation, partnership, association or other legal entity which has ceased to exist;

(*b*) When, with the exercise of reasonable diligence, presentment cannot be effected within the time-limits prescribed for presentment for acceptance.

Article 50

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

Article 51

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

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

(*b*) If presentment for acceptance is dispensed with pursuant to article 49, unless the bill is in fact accepted.

(2) If a bill is dishonoured by non-acceptance the holder may, subject to the provisions of article 57, exercise an immediate right of recourse against the drawer, the endorsers and their guarantors.

[SECTION 2. PRESENTMENT FOR PAYMENT]

Article 52

(deleted)

Article 53

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

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

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

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

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

(*e*) An instrument which is not payable on demand must be presented for payment on the date of maturity or on one of the two business days which follow;

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

(*g*) An instrument must be presented for payment:

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

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

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

C. List of relevant documents not reproduced in the present volume

Title or description	*Document Symbol*
1. WORKING GROUP ON INTERNATIONAL NEGOTIABLE INSTRUMENTS, FIFTH SESSION	
Draft Uniform Law on International Bills of Exchange and International Promissory Notes (first revision)	A/CN.9/WG.IV/WP.6 and Add. 1 and 2
Provisional agenda	A/CN.9/WG.IV/WP.7
2. WORKING GROUP ON INTERNATIONAL NEGOTIABLE INSTRUMENTS, SIXTH SESSION	
Provisional agenda	A/CN.9/WG.IV/WP.8
Draft Convention on International Bills of Exchange and International Promissory Notes (first revision), articles 5, 6, 24 to 45, as reviewed by a drafting party	A/CN.9/WG.IV/WP.9