

"Article 30"

"(1) A cheque may be signed by an agent.

"(2) The name or signature of a principal placed on the cheque 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 a cheque without authority, or with authority to sign but not showing on the cheque that he is signing in a representative capacity for a named person, or showing on the cheque 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 cheque in a representative capacity may be determined only by reference to what appears on the cheque.

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

204. No observations were made in respect of these articles.

Article 30 bis

205. The text of article 30 *bis* as considered by the Working Group is as follows:

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

206. In connexion with this article, one observer alluded to articles 32 and 33 of the Geneva Uniform Law regarding the countermanding of a cheque and the effects of the death or the incapacity of the drawer after the cheque has been drawn. The Working Group decided to take up this question at a future session.

207. The Working Group decided to continue its consideration of the draft uniform rules at its next session.

III. FUTURE WORK

208. The Working Group noted that the budgetary provisions approved for 1980-1981 authorized the Secretariat to convene a Drafting Group for the purpose of harmonizing the language versions of the draft Convention on International Bills of Exchange and International Promissory Notes. Accordingly, the Group requested the Secretariat to convene such a Group in the summer of 1980.

209. The Working Group requested the Secretariat to establish a commentary on the draft Convention on International Bills of Exchange and International Promissory Notes.

210. The Working Group requested the Secretariat to complete the draft Uniform Rules on International Cheques, including rules on crossed cheques, and to submit a study on legal issues arising outside the cheque.

211. The Working Group decided to recommend to the Commission that the next (tenth) session of the Working Group be held in Vienna from 5 to 16 January 1981.

C. Draft Convention on International Bills of Exchange and International Promissory Notes as adopted by the Working Group on International Negotiable Instruments at its eighth session (Geneva, 3-14 September 1979) and its ninth session (New York, 2-11 January 1980) (A/CN.9/181, annex)*

[Part One. Sphere of application; form]***Article 1*

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

(2) An international bill of exchange is a written instrument which

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

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

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

(d) Is dated;

(e) Shows that at least two of the following places are situated in different States

(i) The place where the bill is drawn;

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

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

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

(v) The place of payment;

(f) Is signed by the drawer.

(3) An international promissory note is a written instrument which

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

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

* 13 March 1980.

** Brackets indicate matters which have been reserved for further consideration at a later date.

- (c) Is payable on demand or at a definite time;
 - (d) Is dated;
 - (e) Shows that at least two of the following places are situated in different States
 - (i) The place where the instrument was made;
 - (ii) The place indicated next to the signature of the maker;
 - (iii) The place indicated next to the name of the payee;
 - (iv) The place of payment;
 - (f) Is signed by the maker.
- (4) Proof that the statements referred to in paragraph (2) (e) or (3) (e) of this article are incorrect does not affect the application of this Convention.

Article 2
(deleted)

Article 3

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

Article 4

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

Article 5

In this Convention

- (1) "Bill" means an international bill of exchange governed by this Convention;
- (2) "Note" means an international promissory note governed by this Convention;
- (3) "Instrument" means an international bill of exchange or an international promissory note governed by this Convention;
- (4) "Drawee" means the person on whom a bill is drawn but who has not accepted it;
- (5) "Payee" means the person in whose favour the drawer directs payment to be made or the maker promises to pay;
- (6) "Holder" means the person referred to in article 13 *bis*;
- (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;
- (8) "Party" means any party who has signed an instrument;

(9) "Maturity" means the date of payment referred to in article 9 and, in the case of a demand bill, the date on which the instrument is presented for payment;

(10) "Forged signature" includes a signature which is forged by the wrongful or unauthorized use of a stamp, symbol, facsimile, perforation or other means by which a signature may be made in accordance with article 27.

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.

[SECTION 2. INTERPRETATION OF FORMAL REQUIREMENTS]

Article 7

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

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

Article 8

- (1) If there is a discrepancy between the amount of the instrument expressed in words and the amount expressed in figures, the sum payable is the amount expressed in words.
- (2) If the amount of the instrument is expressed in a currency having the same description as that of at least one other State than the State where payment is to be made as indicated on the instrument and the specified currency is not identified as the currency of any State, the currency is to be considered as the currency of the State where payment is to be made.
- (3) If any instrument states that it is to be paid with interest, without specifying the date from which interest is to run, interest runs from the date of the instrument.
- (4) A stipulation on an instrument stating that it is to be paid with interest is to be disregarded unless it indicates the rate at which interest is to be paid.

Article 9

- (1) An instrument is deemed to be payable on demand;
 - (a) If it states that it is payable on demand or at sight or on presentment or if it contains words of similar import; or
 - (b) If no time for payment is expressed.

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

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

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

(b) At a fixed period after sight; or

(c) By instalments at successive dates; or

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

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

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

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

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

Article 10

(1) A bill may

(a) Be drawn upon two or more drawees;

(b) Be drawn by two or more drawers;

(c) Be payable to two or more payees; or

(2) A note may

(a) Be made by two or more makers;

(b) Be payable to two or more payees.

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

Article 10 bis

A bill may be drawn by the drawer on himself or be drawn payable to his order.

[SECTION 3. COMPLETION OF AN INCOMPLETE INSTRUMENT]

Article 11

(1) An incomplete instrument which satisfies the requirements set out in subparagraphs (a) and (f) of paragraph (2) or (a) and (f) of paragraph (3) but which

lacks other elements pertaining to one or more of the requirements set out in paragraphs (2) or (3) of article 1 may be completed and the instrument so completed is effective as a bill or a note.

(2) When such an instrument is completed otherwise than in accordance with agreements entered into

(a) A party who signed the instrument before the completion may invoke the non-observance of the agreement as a defence against a holder, provided the holder had knowledge of the non-observance of the agreement when he became a holder;

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

[Part Three. Transfer; holder]

Article 12

(deleted)

Article 13

An instrument is transferred

(a) By endorsement and delivery of the instrument by the endorser to the endorsee; or

(b) By mere delivery of the instrument if the last endorsement is in blank.

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 circum-

stances, 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, or the maker, has inserted in the instrument, or an endorser in his 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, any party 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) For the purposes of this article, an endorsement placed on an instrument by a person in a representative capacity without authority has the same effects as a forged endorsement.

[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.

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:

(a) Such third person asserted a valid claim to the instrument; or

(b) Such holder acquired the instrument by theft or forged the signature of the payee or an endorsee, or participated in such theft.

Article 25

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

(a) Defences under articles 27 (1), 28, 29 (1), 30 (2) and (3), 50, 55, 57, 60 and 79 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 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 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 (X)

"A Contracting State whose legislation required 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."

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 or to any party who takes up and pays the bill in accordance with article 67 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 or to any party who takes up and pays the bill in accordance with article 67 the amount of the bill, 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, to any party who takes up and pays the bill in accordance with article 67 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.

(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 or to any party who takes up and pays the bill in accordance with article 67 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

(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. A guarantee may be given by any person who may or may not already be a party.

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

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

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

(a) 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.

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) Notwithstanding the provision of article 46 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.

(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;

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

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

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

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

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

Article 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

(a) Subject to the provisions of article 57, exercise an immediate right of recourse against the drawer, the endorsers and their guarantors;

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

[SECTION 2. PRESENTMENT FOR PAYMENT]

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 a person 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.

Article 54

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

(2) Presentment for payment is dispensed with

(a) If the drawer, an endorser or guarantor has waived presentment expressly or by implication; such waiver;

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

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

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

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

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

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

(e) [See new paragraph (3) below.]

(f) (deleted)

(g) If there is no place at which the instrument must be presented in accordance with article 53 (g).

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

Article 55

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

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

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

Article 56

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

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

(b) (deleted)

(c) If presentment for payment is dispensed with pursuant to article 54 (2) and the instrument is overdue and unpaid.

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

(3) If a note is dishonoured by non-payment, the holder may, subject to the provisions of article 57, exercise a right of recourse against the endorsers and their guarantors.

[SECTION 3. RECOURSE]

Article 57

If an instrument has been dishonoured by non-acceptance or by non-payment, the holder may exercise a right of recourse only after the instrument has been duly protested for dishonour in accordance with the provisions of articles 58 to 61.

Article 58

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

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

(b) The place of protest; and

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

(2) A protest may be made

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

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

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

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

Article 59

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

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

Article 60

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

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

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

Article 61

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

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

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

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

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

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

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

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

(d) (deleted)

(e) If presentment for acceptance or for payment is dispensed with in accordance with article 49 or 54 (2);

(f) If the person claiming payment under article 80 cannot effect protest by reason of his inability to satisfy the requirements of article 83.

Article 62

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

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

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

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

Article 63

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

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

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

Article 64

Notice of dishonour must be given within the two business days which follow

(a) The day of protest or, if protest is dispensed with, the day of dishonour; or

(b) The receipt of notice given by another party.

Article 65

(1) Delay in giving notice of dishonour is excused when the delay is caused by circumstances which are beyond the control of the holder and which he could neither avoid nor overcome. When the cause of delay ceases to operate, notice must be given with reasonable diligence.

(2) Notice of dishonour is dispensed with

(a) If the drawer, an endorser or guarantor has waived notice of dishonour expressly or by implication; such waiver:

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

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

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

(b) If after the exercise of reasonable diligence notice cannot be given;

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

(d) (deleted)

Article 66

Failure to give due notice of dishonour renders a person who is required to give such notice under article 62 to a party who is entitled to receive such notice liable for any damages which that party may suffer directly from such failure, provided that such damages do not exceed the amount due under article 67 or 68.

Article 66 bis

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

Article 67

(1) The holder may recover from any party liable

(a) At maturity: the amount of the instrument with interest, if interest has been stipulated for;

(b) After maturity:

(i) The amount of the instrument with interest, if interest has been stipulated for, to the date of maturity;

(ii) If interest has been stipulated for after maturity, interest at the rate stipulated, or in the absence of such stipulation interest at the rate specified in paragraph (2), calculated from the date of maturity on the sum specified in paragraph (1) (b) (i);

(iii) Any expenses of protest and of the notices given by him;

(c) Before maturity;

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

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

(2) The rate of interest shall be [2] per cent per annum above the official rate (bank rate) or other similar appropriate rate effective in the main domestic centre of the country where the instrument was payable, or if there is no such rate, then at the rate of [] per cent per annum, to be calculated on the basis of the number of days in accordance with the custom of that centre.

(3) The discount shall be at the official rate (discount rate) or other similar appropriate rate effective on the date when recourse is exercised at the place where the holder has his principal place of business, or if he does not have a place of business his habitual residence, or if there is no such rate then at the rate of [] per cent per annum, to be calculated on the basis of the number of days and in accordance with the custom of that place.

Article 68

(1) A party who takes up and pays an instrument in accordance with article 67 may recover from the parties liable to him

(a) The entire sum which he was obliged to pay in accordance with article 67 and has paid;

(b) Interest on that sum at the rate specified in article 67, paragraph (2), from the date on which he made payment;

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

(2) Notwithstanding article 25 (4), if a party takes up and pays the instrument in accordance with article 67 and the instrument is transferred to him such transfer does not vest in that party the rights to and upon the instrument which any previous protected holder had.

[Part Six. Discharge]

[SECTION 1. GENERAL]

Article 69

(deleted)

[SECTION 2. PAYMENT]

Article 70

(1) A party is discharged of his liability on the instrument when he pays the holder or a party subsequent to himself who has taken up and paid the instrument and is in possession thereof the amount due pursuant to articles 67 and 68:

(a) At or after maturity, or

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

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

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

(4) (a) A person receiving payment of an instrument under paragraph (1) of this article must, unless agreed otherwise, deliver to the person making such payment the instrument, any protest, and a receipted account.

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

(c) If payment is made but the payor fails to obtain the instrument, the payor is discharged but the discharge cannot be set up as a defence against a protected holder.

Article 71

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

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

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

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

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

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

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

(b) The holder must give such party a certified copy of the bill, and of any authenticated protest, in order to enable subsequent recourse to be exercised.

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

(6) Where a party pays the unpaid amount, the person receiving the unpaid amount who is in possession of the instrument must deliver to him the receipted instrument and any authenticated protest.

Article 72

(1) The holder may refuse to take payment in a place other than the place where the instrument was duly presented for payment in accordance with article 53 (g).

(2) If payment is not then made in the place where the instrument was duly presented for payment in accordance with article 53 (g), the instrument is considered as dishonoured by non-payment.

Article 73

(deleted)

Article 74

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

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

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

(b) The amount payable is to be calculated according to the rate of exchange indicated on the instrument. Failing such an indication, the amount payable is to be calculated according to the rate of exchange for sight drafts on the date of maturity:

(i) Ruling at the place where the instrument must be presented for payment in accordance with article 53 (g), if the specified currency is that of that place (local currency); or

(ii) If the specified currency is not that of that place, according to the usages of the place where the instrument must be presented for payment in accordance with article 53 (g).

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

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

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

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

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

(4) The rate of exchange ruling at a certain date is the rate of exchange ruling, at the option of the holder, at the place where the instrument must be presented for payment in accordance with article 53 (g) or at the place of actual payment.

Article 74 bis

Nothing in this Convention prevents a Contracting State from enforcing exchange control regulations applicable in its territory, including regulations which it is bound to apply by virtue of international agreements to which it is a party.

Article 75

(deleted)

Article 76

(deleted)

Article 77

(deleted)

Article 78

(1) When a party is discharged wholly or partly of his liability on the instrument, any party who has a right of recourse against him is discharged to the same extent.

(2) Payment of a bill by the drawee to the holder of the amount due in whole or in part discharges all parties to the bill to the same extent.

Article 79

(1) A right of action arising on an instrument can no longer be exercised after four years have elapsed

(a) Against the acceptor or the maker or their guarantor or the guarantors of the drawee, after the date of maturity;

(b) Against the drawer or an endorser or their guarantor, after the date of protest for dishonour or, where protest is dispensed with, the date of dishonour.

(2) (a) If a party has taken up and paid the instrument in accordance with article 67 or 68 within one year before the expiration of the period referred to in paragraph (1) of this article, such party may exercise his right of action against a party liable to him within one year after the date on which he took up and paid the instrument.

(b) (for subsequent consideration)

Article 80

(1) When an instrument is lost, whether by destruction, theft or otherwise, the person who lost the instrument has, subject to the provisions of paragraphs (2) and (3) of this article, the same right to payment which he would have had if he had been in possession of the instrument. The party from whom payment is claimed cannot set up as a defence against liability on the instrument the fact that the person claiming payment is not in possession thereof.

(2) (a) The person claiming payment of a lost instrument must state in writing to the party from whom he claims payment:

- (i) The elements of the lost instrument pertaining to the requirements set forth in article 1 (2) or 1 (3); these elements may be satisfied by presenting to that party a copy of that instrument;
- (ii) The facts showing that, if he had been in possession of the instrument, he would have had a right to payment from the party from whom payment is claimed;
- (iii) The facts which prevent production of the instrument.

(b) The party from whom payment of a lost instrument is claimed may require the person claiming payment to give security in order to indemnify him for any loss which he may suffer by reason of the subsequent payment of the lost instrument.

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

(d) If the security cannot be given, the Court may order the party from whom payment is claimed to deposit the amount of the lost instrument, and any interest and expenses which may be claimed under article 67 and 68, with the Court or any other competent authority or institution, and may determine the duration of such deposit. Such deposit is to be considered as payment to the person claiming payment.

Article 81

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

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

(3) Failure to notify renders the party who has paid the lost instrument liable for any damages which the person whom he paid may suffer from such failure, provided that the total amount of the damages does not exceed the amount of the instrument and any interest and expenses which may be claimed under article 67 or 68.

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

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

Article 82

(1) A party who has paid a lost instrument in accordance with the provisions of article 80 and who is subsequently required to, and does, pay the instrument, or who loses his right to recover from any party liable to him and such loss of right was due to the fact that the instrument was lost, has the right

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

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

(2) The person who has given security in accordance with the provisions of paragraph (2) (b) of article 80 is entitled to reclaim the security when the party for whose benefit the security was given is no longer at risk to suffer loss because of the fact that the instrument is lost.

Article 83

A person claiming payment of a lost instrument duly effects protest for dishonour by non-payment by the use of a writing that satisfies the requirements of article 80, paragraph (2) (a).

Article 84

A person receiving payment of a lost instrument in accordance with article 80 must deliver to the party paying the writing required under paragraph (2) (a) of article 80 received by him and any protest and a receipted account.

Article 85

(a) A party who paid a lost instrument in accordance with article 80 has the same rights which he would have had if he had been in possession of the instrument.

(b) Such party may exercise his rights only if he is in possession of the receipted writing referred to in article 84.

Article 86

(deleted)

D. Report of the Secretary-General: security interests, issues to be considered in the preparation of uniform rules (A/CN.9/186)*

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INTRODUCTION

1. At its tenth session the Commission had before it three reports on security interests.¹ After considering these

* 16 May 1980.

¹ A study on security interests, based on a study prepared by Professor Ulrich Drobnig of the Max-Planck-Institut für Ausländisches und Internationales Privatrecht (A/CN.9/131) (Yearbook ... 1977, part two, II, A); a note by the Secretariat on article 9 of the Uniform Commercial Code of the United States of America (A/CN.9/132) (Yearbook ... 1977, part two, II, B); and a report of the Secretary-General containing information on proposals for reform and on the conclusions reached by a consultative group convened jointly by the Secretariat of the Commission and the International Chamber of Commerce (A/CN.9/130).

reports the Commission requested the Secretary-General to submit to it at its twelfth session a further report on the feasibility of uniform rules on security interests and on their possible content.²

2. At its twelfth session, after considering the report of the Secretary-General,³ the Commission requested the Secretary-General to prepare a report setting out the issues to be considered in the preparation of uniform rules on

² *Official Records of the General Assembly, Thirty-second Session, Supplement No. 17 (A/32/17)*, para. 37 (Yearbook ... 1977, part one, II, A)

³ A/CN.9/165 (Yearbook ... 1979, part two, II, C).