ARTICLES

BACKGROUND AND SALIENT FEATURES OF THE UNITED NATIONS CONVENTION ON INTERNATIONAL BILLS OF EXCHANGE AND INTERNATIONAL PROMISSORY NOTES

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1. BACKGROUND

1.1. International Payments: A Priority Topic Since 1968

The United Nations Commission on International Trade Law (UNCITRAL) drew up at its first session in 1968 a program of work which listed as its priority topics the international sale of goods, international payments, and commercial arbitration. In the first two of these areas, important projects have since been completed which contribute significantly to the unification of the laws and rules on international trade. The United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980) entered into force on January 1, 1988, followed on August 1, 1988, by its companion, the Convention on the Limitation Period in the International Sale of Goods

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(517)
(New York, 1974),\textsuperscript{3} which had been completed earlier.

In the field of arbitration, UNCITRAL's achievements include the UNCITRAL Arbitration Rules (1976),\textsuperscript{4} which have become widely known and used around the world; the UNCITRAL Conciliation Rules (1980)\textsuperscript{5}; and, most recently, the UNCITRAL Model Law on International Commercial Arbitration (1985),\textsuperscript{6} already in force in Canada, Cyprus, Nigeria and California.

Within the third area, international payments, a recent achievement relating to a highly modern subject was the completion of the UNCITRAL Legal Guide on Electronic Funds Transfers.\textsuperscript{7} However, the main project relating to a traditional and classic area is currently being completed. This is the United Nations Convention on International Bills of Exchange and International Promissory Notes (the UBNC or "Convention").\textsuperscript{8} The Convention was prepared during fourteen sessions of the Working Group on International Negotiable Instruments and three sessions of the Commission itself. The text, as adopted by the Commission at its twentieth session in 1987, was submitted to the General Assembly, which invited States to make observations and submit proposals on the draft. The responses of the States were considered by a working group of the Sixth Committee of the General Assembly in September, 1988. Since its approval by the Sixth Committee on October 7, 1988, the Convention has been opened for signature and ratification or accession during the last session of the General Assembly.\textsuperscript{9}


\textsuperscript{8} See infra app.

1.2. Approach and Scope of the Convention

1.2.1. Taking Stock

In the law of negotiable instruments, as in other traditional branches of commercial law, the history of the unification effort goes back much farther than the twenty years of UNCITRAL's existence. In fact, legislative actions with unifying effects in a particular region or legal system began in the early nineteenth century with a view towards regaining the harmony which had characterized medieval commercial usage of international bills of exchange and which had been lost by "departmentalization" through national law barriers.¹⁰

French and German laws were used as models in a number of civil law countries. In the first half of the twentieth century, however, more organized efforts towards unification, such as the Conferences at the Hague in 1910 and 1912 and at Geneva, under the auspices of the League of Nations, in 1930 and 1931, led to a considerable degree of harmonization in the civil law world, with more than forty countries either adopting or closely following the Geneva Uniform Laws on bills of exchange, promissory notes and checks (GUL).¹¹

In the common law world, the source of unification was provided by English law, specifically, the Bills of Exchange Act of 1882 (BEA).¹² It has essentially shaped the laws still in force in the member States of the Commonwealth and inspired the Uniform Instruments Law,¹³ the predecessor of the current article 3 of the Uniform Commercial Code (U.C.C.).¹⁴ Looking at this situation, one might well conclude that UNCITRAL's task was "simply" to bridge the gap between the two main systems of negotiable instruments law, the Geneva and the Anglo-American system. However, such a view would be overly narrow for two reasons.

First, if one looks more closely at each of these two systems, one detects considerable disparities within the system, both in the details of the legal régime and, in some respects, even in principal issues. On the


¹¹ *Convention Providing a Uniform Law for Bills of Exchange and Promissory Notes*, June 7, 1930, 143 L.N.T.S. 257 [hereinafter GUL].

¹² Bills of Exchange Act, 1882, 45 & 46 Vict., ch. 61 [hereinafter BEA].

¹³ *Uniform Negotiable Instruments Act*, 5 U.L.A. 1 (1896) (superseded by U.C.C. § 3 (1957)).

¹⁴ U.C.C. § 3 (1957).
common law side, the English Bills of Exchange Act and its derivative
enactments in Commonwealth countries are by no means identical to
the Uniform Commercial Code, and divergences in case law as well as
commercial practice contribute to further disparity. On the civil law
side, the apparent uniformity is punctured in at least four respects. As
indicated earlier, not all States following the civil law tradition have
adopted the Geneva Uniform Laws; only twenty-one States have
adopted it. Second, even the member States to the Geneva Conventions
diverge by virtue of having made a number of different reservations to
the Uniform Law without always making clear the positive rule that
was to prevail. Third, case law differs considerably; nations fail to
agree on crucial provisions such as those concerning claims and de-
fenses available against the holder. Finally, banking and trading circles
feel the need to adjust to modern commercial practices not envisaged at
Geneva more than half a century ago. As a consequence of all these
factors, there have been repeated calls for a revision of the Geneva Uni-
form Laws.

The second aspect of UNCITRAL's task is that, in addition to
these two major legal systems, there still exist other national laws and
legal systems with different traditions and concepts. It seems only fair
to respect the wishes of these States to have a voice in shaping a new
legal régime for worldwide use in international payment and credit
transactions. Moreover, these States have economic interests at stake
which may lead to positions not necessarily taken by other States, even
if they are members of the same legal family. Such divergent interests
and wishes must be taken into account in any serious unification effort
at the global level, for the benefit of the countries of the world irrespec-
tive of their location and their legal, economic, or political systems.

The Convention's truly global orientation, and the prospect of
worldwide acceptability, became a first in the history of the unification
of the law of negotiable instruments and has become a focal point of
UNCITRAL's activities. But how was this formidable and worthwhile
task best to be approached and carried out?

1.2.2. Deciding on Basic Directions

The first phase of UNCITRAL's efforts consisted of careful con-
sideration of a promising approach towards achieving global unifica-
tion. The Commission was aided by preliminary studies of the Interna-
tional Institute for the Unification of Private Law (UNIDROIT) and,
in particular, by extensive and detailed replies of governments and
banks to a number of detailed questionnaires prepared at consultative
meetings with leading experts and knowledgeable representatives of in-
interested organizations. The information obtained proved to be invaluable not only for the later preparation of a first draft but also for guidance in determining which direction to take. The three directional answers given at this early stage have since remained unchanged and have shaped the draft Convention to this day.

1.3. **Geneva Conventions Not Acceptable to All States**

As evidenced by the unification of international sales law,\(^{15}\) UN-CITRAL does not embark on the formulation of a new text without first having assessed the prospects of worldwide adherence to any existing text. One of the basic questions considered by the Commission was, therefore, whether it would be worthwhile to promote wider acceptance of the Geneva Conventions of 1930 and 1931. Representatives of civil law countries proposed to use these Conventions as the basis for global unification and to revise them with a view towards making them acceptable to common law countries.

After extensive deliberations at its second session, the Commission came to the conclusion that the Geneva road would not lead to the desired result of harmony between disparate legal régimes. This decision, although not favored by everyone at the time (and apparently still not fully accepted by all Geneva States), seemed justified by its undeniable sense of realism. Whatever the merits and harmonizing effects of the Geneva Conventions, texts which emanate from one major legal system are not acceptable to other major legal systems and jurisdictions following other rules.

Realism in unification efforts requires not only seeing the pros and cons of any given legal solution, but facing the psychological fact that the foreign legal system is often perceived as strange. To those proponents of the Geneva Uniform Laws who did and possibly still do object, in my view without justification, to UNCITRAL’s text as being too heavily influenced by common law traditions, one might quote from the report of a UNIDROIT Sub-Commission that “[i]t is a widely recognized fact that the Anglo-American circles concerned have never been

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\(^{15}\) Pursuant to a decision by the Commission at its first session, the Secretary-General transmitted the text of the two Hague Conventions of 1964 (relating to a Uniform Law on the International Sale of Goods and a Uniform Law on the Formation of Contracts for the International Sale of Goods), together with a commentary by Professor Tune, to all member States of the United Nations or any of its specialized agencies, inviting them to state whether they intended to adhere to these Conventions and to give reasons for their position. Once the replies had made it clear that these Conventions would not receive adequate adherence, the Commission decided to prepare a new legal text which evolved as the above United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980), *supra* note 2.
particularly sympathetic towards the Geneva Uniform Law, for they consider it too detailed and complicated.\textsuperscript{16}

From the point of view of a neutral observer, another aspect gleaned from experience and considered as particularly objectionable or, rather, objection-generating, should be added. The arduous process of legal unification should be a pragmatic one, in search of practical and sensible solutions with special regard to the particular needs of international trade. This process is often impeded by parochial and conservative attitudes which lead some, for example, to attribute all the unfamiliar features in a text of uniform law to the "other" legal system, even if the provision in question was drafted in the spirit of compromise and sometimes initiated by representatives of one's own legal system.

1.4. **New Negotiable Instrument Only International and Optional**

Once it was clear that a new legal text was to be prepared, important policy decisions had to be made regarding its scope and content. The most fundamental of these decisions, which has been upheld despite opposition by some representatives, was that determining the future scope of the text. At its third session, the Commission was unanimous in determining that the only viable approach was to focus on a Convention that would be applicable to a special negotiable instrument for use in international transactions. The uniform rules set forth therein would be applicable only to an instrument bearing a heading indicating that it was subject to these rules. Use of the instrument would be optional.\textsuperscript{17}

The restriction to international instruments may seem striking and somewhat disappointing in that it creates a dichotomy between the rules governing domestic instruments and those regulating international ones. Such a dichotomy, moreover, was hitherto unknown in the legal systems to which the unification effort was primarily addressed. A response or justification cannot be given simply by pointing to the mandate or orientation of the Commission as signaled by the label "International Trade Law" in its name. However, the grounds generally underlying this orientation are relevant here in a rather specific sense. First, unification is truly needed only where the disparity of laws causes friction and practical problems. It is only in an international


case that different legal systems may collide and a gap may need to be bridged. This ground is in itself unlikely to satisfy anyone familiar with the practical difficulties which face banks in handling instruments governed by two different sets of rules, to the extent they would otherwise be subject to only one legal régime.

A second explanation comes into play which, while possibly not providing full satisfaction, has the strength of realism: uniform rules which would also cover domestic instruments and thus totally replace the existing national laws are not likely to be accepted by many States. The limited willingness to substitute new uniform rules for established and proven national laws also lies at the heart of the further restriction of making the rules purely optional. Both restrictions, which accord with early recommendations of the UNIDROIT Sub-Commission,18 were seen as necessary by the Commission, taking into account the comments not only of governments but also of banking and commercial circles.

The current expression of the two restrictions is to be found in articles 1 and 2 of the Convention. The optional character of the rules follows from the requirement that a bill of exchange or promissory note must bear the words “international bill of exchange (UNCITRAL Convention)” or “international promissory note (UNCITRAL Convention).”19 These “magic words” must be presented as a heading, in order to make them conspicuous, and they must be contained in the body of the text of the bill or note, in order to prevent any tampering. Proposals for enhancing the conspicuous nature of the choice by requiring a fixed logo, color, or format of the instrument were not accepted.

The international character of the instrument follows from the requirement that, out of a number of places listed in article 2, two of the places specified on the instrument must be situated in different States. In the case of a bill, the places to be listed are the place of drawing; the places indicated next to the signature of the drawer, the name of the drawee, and the name of the payee; and the place of payment.

Yet another requirement applied by the Convention was introduced at the last minute, in what may be called the “grand final compromise” within the Working Group of the General Assembly’s Sixth (Legal) Committee. The requirement is that a certain place of importance to a negotiable instrument must be situated in a contracting State, namely, the place of payment in the case of a note and, in the case of a bill, either the place of drawing or the place of payment. What is rele-

19 See infra app., art. 1.
vant here, as in the context of determining the international character, is the place as specified on the instrument, even if that indication is false or otherwise incorrect. Article 2(3) adds further clarification by noting that the Convention does not deal with the question of sanctions that may be imposed under national law in cases involving incorrect or false statements.

Without going into the details of the complex background and guiding considerations of the grand final compromise, one might regard the consensus as a result of a major concession to essentially two motivating forces. The first factor is the fear of future non-contracting States of being exposed to undesirable extraterritorial effects of the Convention. The second is, in the author’s opinion, the inability of conservative, private-international-law-oriented territorialists to imagine the operation of a legal régime without support from a pillar in the soil of a contracting State.

Whatever stand one might take on these two forces, the overall assessment of the consensus solution should be positive. Above all, it preserves to a large extent the transnational principle of having the legal régime run with the instrument—a legal régime expressly chosen at the creation of the instrument and freely accepted by those later signing or taking it. Such a unitary legal régime is most appropriate and needed for an internationally circulating negotiable instrument, with its network of interdependent rights and obligations. A unitary régime is certainly superior to the current “departmentalization” by those legal systems which determine the obligations of each party separately, according to the law applicable to that party’s undertaking, and do not recognize party autonomy in the area of negotiable instruments. This undesirable situation will be cured, one hopes, by a future conflict-of-laws Convention that would be featured on the agenda of the Hague Conference on Private International Law and would replace the 1930 Geneva Convention for the Settlement of Certain Conflicts of Laws in Connection with Bills of Exchange and Promissory Notes.20

This look into the future of private international law, which cannot link the law governing the network of rights and obligations of a negotiable instrument with more than one State, provides another reason for satisfaction with the above consensus solution of only one territorial pillar (rather than two, as proposed by some delegations). In this vein, one may regret that despite the consensus solution, the previous means of accommodating the “territorialists” has been retained through

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the reservation in article 88 which allows a State to declare that *its courts will apply the Convention* only if both the indicated place of drawing or making and the indicated place of payment are in contracting States. The italicized words give rise to a further objection: they lead to the anomalous, yet intended, result that the legal régime governing the same case will change if and when a party takes that case to a court. It is hoped that States will think twice before making this reservation, which could also provide a trap to the unwary in view of the tremendous difficulties banks and merchants face in obtaining up-to-date knowledge of the States which have made that reservation.

### 1.5. A Comprehensive Set of Rules

The aforementioned 1955 report of the UNIDROIT Sub-Commission had recommended "establish[ing] a body of rules aimed at solving the most urgent problems in the field of international negotiable instruments . . . . These rules would be less numerous than those of the laws now in force." This recommendation was based on the conclusion that there were only a small number of essential differences between the major systems, particularly regarding the regulation of protest and forged endorsements.

Unlike the others, this recommendation was not followed by the Commission, which after extensive consultations concluded that such a skeleton approach was neither desirable nor feasible. Although basic principles were common to both major legal systems and many solutions were identical, closer scrutiny revealed considerable divergences in the issues covered and in substantive regulations. As indicated earlier, further disparity exists even within a single legal system, due to differing legislation and case law. Moreover, a fragmentary approach would not do justice to the typical feature of a negotiable instrument which, by its issue and circulation, creates a network of relationships which should be governed by one legal régime in a unitary fashion.

### 2. Salient Features of the Convention

The following presentation of novel provisions provides an overview of some of the Convention's salient features. The first part, which

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22 Id. at 242.
is devoted to what the drafters described as "major controversial issues," should also provide a picture of the main differences between the two major systems and, thus, of the present scene and its legal problems. The second part will depict a number of new provisions of practical importance which are novel from the perspective of at least one of the two systems.

2.1. Novel Solutions to Overcome Some Major Disparities

2.1.1. Holder and Protected Holder

With regard to the right of the holder of an instrument and its limitation by the rights or defenses that others may invoke against him, a sharp contrast between the Geneva system and the common law system had to be reconciled. The cornerstones of the Geneva system in this respect are GUL article 16, which subjects the lawful holder to the right of a dispossessed person provided that the holder had acquired the instrument in bad faith or with gross negligence, and GUL article 17, which opens the door for certain personal defenses only if the holder, in acquiring the instrument, knowingly acted to the detriment of the debtor. These provisions, apart from the fact that they have given rise to considerable divergences in the case law of Geneva States, do not provide a complete list of the defenses which may actually be invoked. In addition to the traditional distinction between real or absolute and personal or relative defenses, a number of other classifications have been suggested.\(^4\)

The common law system, which combines the rights to an instrument and the defenses against liability on the instrument, uses a two-tiered system distinguishing between a normal holder and a holder in due course. While the normal holder is open to a great variety of defenses and claims and is less protected than the lawful holder under the Geneva system,\(^2\) the holder in due course is accorded special protection. However, it is far from easy to acquire the status of holder in due course, particularly because of the requirement that one be without knowledge of any claim to or defense upon the instrument, whether the

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\(^{24}\) Cf., e.g., HUECK & CANARIS, RECHT DER WERTPAPIERE 132-46 (11th ed. 1977); BAUMBACH & HEFERMEHL, WECHSELGESETZ UND SHECKGESETZ, Art. 17 WG, Rdnr. 4-13 (11th ed. 1986); cf. also FERRI, MANUALE DI DIRITTO COMMERCIALE 624-28 (4th ed. 1977).

\(^{25}\) As under the Geneva system, there is no uniform classification of defenses and some uncertainty (or flexibility) as to what particular circumstances constitute a given defense. Cf., e.g., 2 CRAWFORD & FALCONBRIDGE, BANKING AND BILLS OF EXCHANGE 1520-44 (8th ed. 1986); BYLES ON BILLS OF EXCHANGE 213-20 (25th ed. 1983).
claim or defense might be relied upon by the respective debtor or a third person.

It was this all-or-nothing approach which proved especially unacceptable to representatives of the Geneva States, who preferred a more individualized approach sensitive to the individual creditor-debtor relationship. The final consensus, as reflected in UBNC articles 28 to 30, was facilitated by a concession of common law representatives, apparently aided by a realization that the all-or-nothing approach may not be in full accord with legal development and refinement.6

The framework of the Convention as finally agreed is, in short, a two-tiered system that distinguishes between a protected holder (reminiscent of the "holder in due course") and a mere holder (who is not a protected holder). This latter holder is, however, not completely unprotected. He derives a considerable degree of protection from the rules in UBNC article 28, subsections (1)(b), (1)(c), and (2), indicating that claims and certain defenses—in line with the above individualized approach—may be raised against him only if he knew of them or was involved in a fraud or theft concerning the instrument.

2.1.2. Forged Endorsement and Endorsement by Agent without Authority

To the question of who should ultimately bear the loss in the case of a forged endorsement (or an endorsement by an agent without authority), the Convention presents a novel answer in articles 25 and 26. These articles constitute an ingenious proposal of marriage to reconcile the "most striking conflict"27 between the common law and Geneva systems. The bride and groom, whose full pictures cannot be given here,28 may be superficially sketched as follows.

Under common law, a forged endorsement does not confer rights upon the transferee or even qualify him as a holder,29 although certain protection may be given to subsequent transferees by means of a warranty30 or application of the estoppel rule.31 By operation of the various

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6 Without neglecting the special characteristics and needs of negotiable instruments law, one might compare the situation with the longevity of the "clean hands theory" in the law of equity, and in the common law of torts in the form of contributory negligence as opposed to the more modern and refined comparative negligence.


29 BEA § 24 (1882); U.C.C. § 3-404 (1977).

rules, the risk of loss by forgery ultimately falls on the person who dealt with the forger; hence the traditional maxim, "Know your endorser." To those wearing Geneva spectacles who may frown at this legal assessment as foreign and strange, it might be recalled that this was the accepted rule of the civil law system until the middle of the eighteenth century—apparently a time when unification would have been considerably easier or, in this respect, unnecessary.

The Geneva system, through the aforementioned article 16, grants title to the holder of an instrument on which there is an uninterrupted series of endorsements (even if one of them was forged) and, if he has not acted in bad faith or with gross negligence, also confers upon him all rights pursuant to title. With the presumed good faith of the payor, the risk of loss by forgery falls ultimately on the person who suffered the loss or theft of the instrument—that is, on the drawer or maker—if the instrument was stolen before it reached the payee. Otherwise, the risk falls on the payee or endorsee from whom the instrument was stolen and whose endorsement was forged.

Before revealing the essential terms of the contract of marriage, it should be noted that both the bride and groom are supported by reasonable, but different, considerations relating to easy circulation and loss prevention, yet their respective experience suggests well-being on both parts. It may therefore be concluded that the so-called advantages of either legal system cannot provide absolute criteria for the formulation of new uniform rules.

As a result, the marriage contract incorporates the Geneva rule of article 16 and adds rules following the common law policy of "know your endorser" by ultimately placing the risk of loss on the person who took the instrument directly from the forger. In order to meet obvious interests, the rule is qualified in the case of an endorsee for collection or of a party (or drawee) who pays the instrument. The liability of these latter persons depends on their knowledge of the forgery, except where their lack of knowledge is due to failure to act in good faith or to exercise reasonable care. In all cases, the Convention creates a cause of action outside the instrument in favor of the person whose endorsement is forged and of any party who signed the instrument before the forgery and suffered damage as a result of it.

Since forged endorsements are extremely rare, except in the

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31 BEA § 52(2) (1882).
32 Vis, supra note 28, at 550.
33 For details see, e.g., ROBLOT, LES EFFETS DE COMMERCE 381-84, 391-92 (1975).
34 See infra app., art. 25(2), (3).
United States,\textsuperscript{35} the practical importance of this liability rule seems very limited. However, the situation may be different in a case concerning endorsements by an agent without authority, which UBNC article 26 subjects to the same liability régime. The equal treatment of both situations has been objected to on the ground that, unlike the forger (who tends to be a stranger), the agent without authority often operates within the sphere of, and may be known by, the purported principal. In such a case, it is particularly difficult for the transferee to determine whether or not the agent had the purported power to bind his principal in the matter. However, the view that equal treatment was justified prevailed because it was often difficult to draw a precise dividing line between the two situations (not only under national laws which allowed an agent to sign with the principal’s name), and because the policy considerations underlying UBNC article 25 were equally applicable to an endorsement by an agent without authority. Moreover, the actual scope of UBNC article 26 is narrower than it might first appear since it does not apply in cases where the agent acted with apparent or implied authority—a concept which all legal systems, although using differing terms, recognize in substance.

\section*{2.1.3. Liability of Transferor by Endorsement or by Mere Delivery}

UBNC article 45, like articles 25 and 26, establishes liability outside the instrument. The consequence of the act of transfer, irrespective of whether the transferor endorses the instrument or merely delivers it, is based on the assumption that, unless the parties agree otherwise or the actual circumstances are known to the transferee, the transferor of an instrument makes certain implied representations or warranties concerning its quality and his knowledge.\textsuperscript{36} Like a seller of goods, he impliedly warrants the genuineness of what he sells. The infirmities covered by UBNC article 45 are forged or unauthorized signatures, material alteration, and knowledge of any fact impairing the transferee’s right to payment against specified parties primarily liable.

Transferor liability is in part weaker and in part stronger than that of an endorser. It is weaker in that it does not guarantee payment of the instrument, and it is stronger in that it provides an action that is immediately available upon the discovery of the infirmity, even if it is before the instrument’s maturity, and that is independent of presentment, dishonor, or protest. This difference was among the main reasons for including the transferor by endorsement within the scope of UBNC

\textsuperscript{35} Vis, \textit{infra} note 27, at 553 n.37.

\textsuperscript{36} See \textit{infra} app., art. 45.
article 45, since the liability of a transferor by mere delivery would otherwise be stronger than that of an endorser (under his endorsement). The same solution is found in section 3-417(2) of the U.C.C., while section 58(3) of the BEA and other statutes modeled upon it regulate such liability only for the transferor by mere delivery.37

The fact that this liability rule is incorporated in a negotiable instruments law may be striking for civilian lawyers. However, the substance of the rule reflects a principle found in all legal systems. Where the instrument is in fact sold, i.e., discounted, the same or a similar result may arise under the law of sales or the general law of contracts, which may grant a right to take recourse to the underlying obligation if the obligation is not properly discharged by the transferor (e.g., where a defective bill or note is given as conditional payment).38 This situation, coupled with the considerable difficulty of ascertaining which infirmities are covered, whether an action is immediately available, and what the sanction would be under a given national law, led to the conclusion that the Convention should include and clarify the matter in a uniform manner.

2.1.4. Guarantee or Aval

2.1.4.1. Late Revelation of Traditional Differences

UBNC articles 46 to 48, which deal with the guarantor, constitute a most recent and novel compromise, reached during the last days of the final Commission session in an effort to reconcile fundamentally different views that, surprisingly, were revealed only at that late stage. The basic difference rested in the fact that the civil law had developed the concept of an independent guarantee governed by negotiable instruments law and not, as a rule, by the general law of suretyship. However, in the common law, the general law of suretyship remains applicable to the guarantor of a negotiable instrument.

Despite the important economic function of a guarantee on a negotiable instrument, which is its ability to add to the financial strength of another party's promise of payment, the differences between the common law and the Geneva systems relating to the guarantee of payment are rarely written about.39 As a result, they are not well understood40

37 For more details, see BYLES, supra note 25, at 192-95. On the Canadian situation, see, e.g., CRAWFORD & FALCONBRIDGE, supra note 25, at 1505-09.


39 For short descriptions of foreign laws see, e.g., ROBLOT, supra note 33, at 219-
and may in practice be the source of considerable reluctance to deal with instruments with guarantees originating in the other system.

2.1.4.2. The Common Law Surety

For a civilian lawyer who is accustomed to a single type of guarantor (the giver of an *aval*), it is not easy to compare and understand the common law with its numerous terms and categories—surety, accommodation party, anomalous endorser, backer, guarantor—some identical, some overlapping, comprising parties as well as strangers. For example, what is probably the most extensive and profound study on the treatment of this issue by the U.C.C. has concluded:

Article 3 permits the assumption of suretyship status in three ways. Suretyship may flow incidentally from the ordinary rights and privileges of a negotiating indorser. The intentional surety may sign a negotiable instrument in any capacity, with or without words expressly describing his status. If he merely signs without more, he is in the language of the Code an accommodation party; if he signs with identifying legend, he should be deemed to have made the special contract of a guarantor.

In sharp contrast to the Geneva system, an additional difficulty arises under United States law. Specifically, when a person signs as an accommodation party under United States law, it is in many instances impossible to ascertain from the instrument whether the signature is that of an accommodation party and, if so, who the guaranteed/accommodated party would be. Thus a party who appears as drawer, acceptor, maker or endorser may, when asked to pay, come forward with defenses drawn from the law of suretyship of which the creditor was unaware. Evidence extrinsic to the instrument may be brought in to prove that such a party signed as surety for a non-specified party. While innocent holders in due course (under United States law) or

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40 A historical illustration may be the judicial equation, quoted disapprovingly by Crawford and Falconbridge, *supra* note 25, at 1621, of an anomalous endorsement under BEA § 56 with an *aval* in French commercial law.


43 Id. at 843.
holders without knowledge of the suretyship status (under English and Canadian law) are protected against such surprises, suretyship defenses remain applicable in other cases, i.e., against other holders and where the suretyship is not latent.

To mention only two typical suretyship defenses and remedies, the surety may be discharged of liability where the contract between the creditor and the person whose liability is guaranteed is modified (e.g., a prolongation agreement without the surety's consent) or where the creditor impairs the remedy of subrogation, of which the surety may avail himself upon payment (e.g., where the creditor does not perfect security interest). There appears to be some uncertainty as to the accessory nature of the guarantee where the defenses available to the guarantor are concerned. For example, the aforementioned U.C.C. study suggests by way of personal interpretation, though admittedly "not an intuitively obvious" one, that "[t]he surety may limit his liability by reference to defenses of the principal debtor only when he is sued by an ordinary holder, and not in an action by a holder in due course." However, even against an ordinary holder, the guarantor may not set up the defense that the person whose liability is guaranteed had no capacity to sign or that the principal debt was discharged in bankruptcy proceedings.

2.1.4.3. The Geneva Giver of an Aval

The civil law system has created a concept of guarantee in which the guarantor's rights and liabilities are governed solely by the law of negotiable instruments. As a rule, the giver of an aval may not raise the defenses that a surety may raise under the general law of suretyship. Moreover, the creditor (holder) of a bill drawn under the Geneva system can easily determine which party has signed as guarantor and the identity of the guaranteed person. Under GUL article 31(4), an aval must specify for whose account it is given. Otherwise, it is deemed to be given for the drawer.

Under the Geneva system, the liability of the guarantor is an accessory to the liability of the person guaranteed only insofar as the type or category of liability is concerned. Thus, if the person whose liability is guaranteed is the acceptor of a bill, the guarantor's liability will also be primary in that no presentment to the acceptor and no proof of

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44 For details on release or discharge of surety see, e.g., BYLES, supra note 25, at 414-20; CRAWFORD & FALCONBRIDGE, supra note 25, at 1633-37.
45 Peters, supra note 42, at 867-68.
46 GUL art. 32(1). Roblot treats the defenses admitted in the context of GUL art. 32(1) as an application of general suretyship law. ROBLOT, supra note 33, at 213-16.
dishonor are required to trigger his liability. By comparison, present-
ment for payment, notice of dishonor and protest are necessary to pre-
serve the liability of the guarantor if the person, such as a drawer or
endorser, whose liability is guaranteed is only secondarily liable on the
instrument.

However, with regard to the defenses that a guarantor may in-
voke, his liability is independent of that of the person whose liability is
guaranteed, provided that that person's undertaking is formally valid. The
independence of the guarantor's liability is perhaps most dramati-
cally demonstrated by the rule that, in the event the guarantor has
guaranteed the liability of, say, a drawer whose signature appears on
the bill but who is a fictitious person, the guarantor is nevertheless
liable even though the purported drawer is not liable since he does not
exist.

2.1.5. Guiding Conclusions for Unification

In light of these extreme differences between the two main sys-
tems, the difficulties of unification are obvious, and the following con-
clusions proved to be guiding. First, it was thought desirable to devise a
guarantee system which would preclude resort to the widely differing
national laws of suretyship. Second, one had to recognize the existence
of ingrained practices relating to the use of certain terms that indicated
the type and degree of the guarantee. The use of special words often
relates to specific features of a particular negotiable instruments law.
For example, the reason why one sees the words “prior endorsements
guaranteed” on bills in the United States may be found in the afore-
mentioned fact that a forged endorsement is not an effective endorse-
ment for purposes of negotiation and that, therefore, no person may
become a holder under such endorsement. The “P.E.G.” guarantee is
thus essentially a guarantee of title. The words “payment guaranteed,”
addressed in U.C.C. section 3-416, create a straightforward type of in-
demnity guarantee which establishes liability for payment indepen-
dently of presentment and notice of dishonor to parties secondarily lia-
ble. Under the Geneva system, a guarantor may use the words “good as
aval,” “guaranteed,” or other similar words which would trigger the
particular legal effects established by the Geneva Uniform Law.

The most difficult part of UNCITRAL’s unification effort regard-
ing guarantees was, therefore, to devise a uniform rule which would
not set a trap for the unwary by attaching unintended new conse-

47 E.g., Baumbach & Hefermehl, supra note 23, art. 32 WG, Rdnr. 2.
48 Gül art. 32.
quences to the continued use of familiar forms. A number of representatives from common law States did not accept the arguments of representatives from civil law States that the requirement of placing the magic words on the international bill or note provided sufficient notice to the unwary that signing the new instrument as a guarantor would have a legal effect different from that obtaining under familiar domestic law.

In the end, the only acceptable solution was to include in the Convention a two-tiered system of guarantee. One type of guarantee, undertaken by using certain words most commonly used in common law jurisdictions, would establish a guarantor liability similar to that obtaining under the U.C.C. and other similar laws. The second type of guarantee, undertaken by using the words “aval” or “good as aval,” would establish a stronger guarantor liability similar to that obtaining under the GUL.

A particularly difficult problem arose from the fact that an aval or guarantee is often effected by a signature alone, particularly by banks. The compromise solution was to determine the effect of such guarantees by distinguishing between two classes of guarantors. A bank or other financial institution guaranteeing by simple signature would be regarded as having given an aval while other parties would be regarded as having given the less inclusive guarantee.

As illustrated by UBNC article 47(4), the crucial difference between the two types of guarantee lies in the defenses (derived from the person guaranteed) which the guarantor may set up against a protected holder. Without describing further the details of the double system, it is submitted that the double system should not be viewed merely as an unavoidable compromise, but as providing the advantageous option between two different types of guarantee suitable for different commercial purposes. Yet one may venture to predict that once the Convention is in force, the second type of guarantee is likely to prevail even in common law jurisdictions, if only because the aval of the Geneva system has shown its advantages in the growing practice of à forfait discount.49 Initial comments by experts from common law countries lead to the conclusion that the new availability of this strong type of guarantee may be regarded as one of the Convention’s main benefits for banking and commercial circles in those countries.

49 An à forfait discount is the purchase, without recourse to the previous holder of the claims and rights, of existing short-, medium-, and occasionally long-term receivables based on debt instruments as well as letters of credit, guarantee obligations, or, in exceptional cases, other book receivables in connection with delivery of goods and services by an exporter to his importer.
2.2. Other New Provisions of Practical Importance

2.2.1. New Legal Possibilities

The Convention contains a number of additional provisions that open new possibilities for the commercial use of international bills and notes. Of these novelties, two may be singled out having been particularly useful in increasing the attractiveness and usefulness of the Convention as a future-oriented legal regime.

2.2.1.1. Negotiable Instruments with Floating Rates of Interest

Notes bearing variable rates of interest are currently issued in large numbers. However, national laws do not normally allow or recognize their negotiability. The Convention provides, in article 8(6), that both bills and notes may be created with such a provision and become negotiable instruments. This provision will provide banks and traders with considerable flexibility in structuring loans and credits according to changing financial market conditions.

The drafters overcame the traditional objection, based on principle, that a variable rate of interest was contrary to the requirement that the sum payable be "definite." In response to concerns that the new facility might operate unfairly to the detriment of debtors, they introduced certain safeguards. Apart from the possibility of setting a certain limit to the permissible degree of variation in the interest rate, each reference rate, which is related to how the interest rate varies according to the stipulation, must be published (or publicly available) and must not be subject, directly or indirectly, to unilateral determination by a person named in the instrument at the time of issue, unless the person is named only in the reference rate provisions (e.g., a bank whose rate is the reference or index rate).

2.2.1.2. Instruments Denominated and Payable in Monetary Unit of Account

Another novel means of achieving stability in accordance with financial market developments (e.g., for investment securities) is offered by UBNC article 5(1). It defines "money" or "currency" as including a monetary unit of account which is established by an intergovernmental institution—the IMF's Special Drawing Right, the European Currency Unit ("ecu"), or the transferable ruble, for example—or which is established by agreement between two or more States.

See infra app., art. 8(7).
This inclusion provides some very attractive new possibilities, although there are often limits regarding the availability and transferability of units of account. On the latter point, the Convention contains a specific rule for those cases where the sum payable is expressed in a monetary unit of account that is transferable between private individuals. The rule is found in provisions which themselves may be regarded as a further useful novelty. UBNC articles 75 and 76 solve many current problems by creating detailed rules for determining the rate of exchange in cases where more than one currency is involved, for example, where the instrument is payable in currency other than that of place of payment, or vice versa, or where there has been a stipulation to pay in currency other than that in which the sum payable is expressed.

2.2.2. Sample of Additional Useful New Rules

The Convention offers a wealth of other provisions which are of practical value and are unknown in at least one of the two main legal systems. For example, contrary to GUL article 33(2), the Convention permits instruments to be made payable by installments at successive dates and even to contain an acceleration clause. Also, it presents new uniform rules on lost instruments that are different from the treatment of lost instruments under the common law system and under the Geneva system, both of which left the matter to the various national laws.

Of the many other useful provisions, only the following five shall be discussed. They have been selected for a particular reason. They coincide with the suggestions made on the basis of an inquiry about actual legal problems encountered in banking practice. Unlike the many inquiries and consultations carried out in connection with UNCITRAL's project, this account of problems in the application of existing law and the ensuing recommendations was unrelated to the work of UNCITRAL, and may thus be taken as an independent indicator of the Convention's propensity to meet modern banking needs and to resolve legal difficulties. The law in question is the Geneva Uniform

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51 Id., art. 75(2).
52 As to the novel and beneficial character of these provisions, see Guest, Instruments Denominated In A Foreign Currency, 27 AM. J. COMP. L. 533 (1979).
53 See infra app., art. 7(b), (c). As to the disparity between the common law and the Geneva system on this point and the underlying reasons, see Penney, The Draft Convention on International Bills of Exchange and International Promissory Notes: Formal Requisites, 27 AM. J. COMP. L. 523-24 (1979).
54 See infra app., arts. 78-83.
Law, since the inquiry and proposals were made by Sweden for the benefit of discussions within the European Committee on Legal Co-operation (CDCJ) of the Council of Europe with a view towards considering a possible revision of the Geneva Conventions. One may suspect, however, that a similar inquiry in another country and on the application of another law would provide, although possibly emphasizing other issues, a similarly positive indication of the new Convention’s qualities.

2.2.2.1. Stipulation of Interest (and The National Rate of Interest)

GUL article 5 allows for the stipulation of interest only if the instrument is payable at sight or at a fixed period after sight. The historical prohibition of interest on other instruments is criticized in the Swedish memorandum as inappropriate since there exists a commercial need for such interest-bearing instruments, a need which led to the impractical method of issuing a separate bill for the interest.

A more practical solution is found in the new Convention, which allows for the stipulation of interest on all kinds of bills and notes provided, as in GUL article 5(2), that the rate of interest is indicated. As described earlier, the rate of interest may be expressed either as a definite rate or as a variable rate.

Another weak point in the GUL relating to interest rates, as noted in the memorandum, is the low rate (six percent) fixed in GUL articles 48 and 49. Member States which were party to the Geneva Convention were able to alter the rate by reference to a national rate, but only at the time of their ratification or accession. The new Convention provides the desired flexibility by not fixing a definite rate and by referring, in article 70(2), to the rate that would be recoverable in legal proceedings taken in the jurisdiction where the instrument is payable.

2.2.2.2. Drawing the Bill “Without Recourse”

Under GUL article 9(2), the drawer may not release himself from his guarantee of payment, even in the case where the bill is accepted or an aval is given. For example, this prohibition disregards the commer-

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57 Id. at para. 9.
58 Id. art. 8(5).
59 Swedish Memorandum, supra note 54, paras. 10-11.
cial needs, in the frequent case where the exporter/drawer wishes to discount an accepted or guaranteed bill without recourse. As noted in the Swedish memorandum, the way out in practice is a contractual arrangement outside the instrument, which is unsatisfactory as it would not bind any subsequent holder.

The new Convention provides the desired solution which should assist particularly in facilitating and boosting the practice of forfaiting. Under UBNC article 38(2), the drawer may exclude or limit his liability for payment on the instrument, provided that another party, such as the acceptor or guarantor (including the primarily liable guarantor of the drawee), is or becomes liable on the bill.

2.2.2.3. The Person Whose Liability Is Guaranteed (Failing Specification)

Under the new Convention, the primary liability of the guarantor of either the drawee or acceptor characterizes the liability of any guarantor who has not specified the person for whom he has become the guarantor. This rule addresses the concerns expressed in the Swedish memorandum regarding GUL article 31(4), which establishes a presumption that the guarantee was in favor of the drawer in such cases. This presumption has the disadvantage of implying that the liability of the giver of such an aval is more limited than that of certain other parties, particularly the acceptor. It is noted that a more favorable solution, namely, a presumption that the guarantee has been given in favor of the acceptor, has been chosen in some civil law States which are not parties to the Geneva Convention.

An additional advantage of the new Convention’s provision lies in the fact that it is not cast in terms of a presumption, but as a legal rule not subject to contrary proof. It should thus avoid the uncertain and divergent interpretations encountered in the case law of member States of the Geneva Convention.

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60 Id., paras. 6-8; see also Ganten & Jahn, Neues internationales Wechselrecht vor dem Abschluss, DIE BANK, July 1987, at 396.
61 On legal problems of forfaiting (or rather their prevention), see Schinnerer, Rechtsfragen beim Forfaitierungsgeschäft, 28 ÖSTERREICHISCHES BANK-ARCHIV 169-80 (1980).
62 See infra app., art. 46(5).
63 Swedish Memorandum, supra note 55, para. 54.
65 See, e.g., BAUMBACH & HEFERMEHL, supra note 24, art. 31 WG, Rdnr. 8; ROBLANDT, supra note 33, at 219-20.
2.2.2.4. A Uniform Period of Limitation (Prescription)

Under GUL article 70, sections (1) and (2), all actions against the acceptor are barred after three years, and actions by the holder against the endorsers and the drawer are barred after one year. The Swedish memorandum considers the one-year limitation too short and states that the different limitation periods have complicated practice more than is necessary. The suggested single limitation period for all parties is embodied in the new Convention, which provides a uniform four-year time limit for the exercise of all rights of action arising on an instrument. The only exception relates to recourse actions, in which each party has one year from the date of payment.

2.2.2.5. The Procedure of Protesting Bills and Facsimile Signature

The last problem cited in the Swedish memorandum, respecting bills and checks, is the disparity, due to lack of regulation in the Geneva Convention, among different States’ procedures for effecting protest. Admittedly, the new Convention does not provide the desired uniform regulation of procedures. This is in part because the “arcane requirements” of the “ancient ritual of formal protest” are familiar to persons with common law background only as regards foreign bills. However, the Convention does offer some relief, in UBNC articles 60(3) and 61, by allowing four days for protest and, as a facilitating measure that has been particularly warmly welcomed by permitting the replacement of the formal protest by an informal declaration on the instrument by the drawee, acceptor or a person with whom the bill is domiciled. This is a facility that the Geneva Convention does not itself provide but leaves to the choice of its member States.

Looking back at the five Swedish recommendations which have been fully adopted by the new Convention, excepting its half-response to the last point, the success score is impressive. The missing half-point may be recouped by addressing yet another Swedish concern, expressed only with regard to checks, namely that the requirement of a handwrit-
ten signature causes practical problems when a large number of checks are issued by a single person. While the problem is especially acute in cases involving checks, the Convention’s allowance of the use of facsimiles or other mechanical means is of practical value. This is also true with respect to bills and in particular to notes, which are not infrequently issued in considerable quantities. The Convention meets these needs by its definition of a signature in article 5(k): “‘Signature’ means a handwritten signature, its facsimile or an equivalent authentication effected by any other means.”

3. CONCLUSION

It is too early to predict whether the new Convention will become a globally accepted source of law for a new generation of international bills and notes not subject to the old legal systems. It seems clear, however, that a close and unbiased examination of the new text will assist in discerning and appreciating its many attractive and novel features against the background of current legal difficulties. It seems equally clear that, in view of the optional character of the new legal régime and the international negotiable instruments governed by it, ratification or accession by a State would, in actual practice, mean no more than leaving the decision to commercial and banking communities that are in the best position to assess professionally these future options.

One may venture to predict that the new bills and notes will be used primarily in those cases where the attractive novel features and possibilities discussed herein are of particular relevance and interest, at least during the initial phase of the Convention’s operation. It is hoped that the foregoing presentation of selected issues, although providing no more than a superficial first glance at them, may assist in the process of understanding and appreciation.

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72 Swedish Memorandum, supra note 55, para. 3.
UNITED NATIONS CONVENTION ON INTERNATIONAL BILLS OF EXCHANGE AND INTERNATIONAL PROMISSORY NOTES

[AS ADOPTED BY THE GENERAL ASSEMBLY BY ITS RESOLUTION A/RES/43/165 OF 9 DECEMBER 1988]

CHAPTER I. SPHERE OF APPLICATION AND FORM OF THE INSTRUMENT

Article 1

(1) This Convention applies to an international bill of exchange when it contains the heading "International bill of exchange (UNCITRAL Convention)" and also contains in its text the words "International bill of exchange (UNCITRAL Convention)".

(2) This Convention applies to an international promissory note when it contains the heading "International promissory note (UNCITRAL Convention)" and also contains in its text the words "International promissory note (UNCITRAL Convention)".

(3) This Convention does not apply to cheques.

Article 2

(1) An international bill of exchange is a bill of exchange which specifies at least two of the following places and indicates that any two so specified are situated in different States:
   (a) The place where the bill is drawn;
   (b) The place indicated next to the signature of the drawer;
   (c) The place indicated next to the name of the drawee;
   (d) The place indicated next to the name of the payee;
   (e) The place of payment,
   provided that either the place where the bill is drawn or the place of payment is specified on the bill and that such place is situated in a Contracting State.

(2) An international promissory note is a promissory note which specifies at least two of the following places and indicates that any two so specified are situated in different States:
   (a) The place where the note is made;
   (b) The place indicated next to the signature of the maker;
   (c) The place indicated next to the name of the payee;
   (d) The place of payment,
   provided that the place of payment is specified on the note and that
such place is situated in a Contracting State.

(3) This Convention does not deal with the question of sanctions that may be imposed under national law in cases where an incorrect or false statement has been made on an instrument in respect of a place referred to in paragraph (1) or (2) of this article. However, any such sanctions shall not affect the validity of the instrument or the application of this Convention.

**Article 3**

(1) A bill of exchange is a written instrument which:
(a) Contains an unconditional order whereby the drawer directs the drawee to pay a definite sum of money to the payee or to his order;
(b) Is payable on demand or at a definite time;
(c) Is dated;
(d) Is signed by the drawer.

(2) A promissory note is a written instrument which:
(a) Contains an unconditional promise whereby the maker undertakes to pay a definite sum of money to the payee or to his order;
(b) Is payable on demand or at a definite time;
(c) Is dated;
(d) Is signed by the maker.

**CHAPTER II. INTERPRETATION**

**Section 1. General provisions**

**Article 4**

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

**Article 5**

In this Convention:
(a) “Bill” means an international bill of exchange governed by this Convention;
(b) “Note” means an international promissory note governed by this Convention;
(c) “Instrument” means a bill or a note;
(d) "Drawee" means a person on whom a bill is drawn and who has not accepted it;
(e) "Payee" means a person in whose favour the drawer directs payment to be made or to whom the maker promises to pay;
(f) "Holder" means a person in possession of an instrument in accordance with article 15;
(g) "Protected holder" means a holder who meets the requirements of article 29;
(h) "Guarantor" means any person who undertakes an obligation of guarantee under article 46, whether governed by subparagraph (b) ("guaranteed") or subparagraph (c) ("aval") of paragraph (4) of article 47;
(i) "Party" means a person who has signed an instrument as drawer, maker, acceptor, endorser or guarantor;
(j) "Maturity" means the time of payment referred to in paragraphs (4), (5), (6) and (7) of article 9;
(k) "Signature" means a handwritten signature, its facsimile or an equivalent authentication effected by any other means; "forged signature" includes a signature by the wrongful use of such means;
(l) "Money" or "currency" includes a monetary unit of account which is established by an intergovernmental institution or by agreement between two or more States, provided that this Convention shall apply without prejudice to the rules of the intergovernmental institution or to the stipulations of the agreement.

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 a stipulation in the instrument that upon default in payment of any instalment the unpaid balance becomes due;
(d) According to a rate of exchange indicated in the instrument or
(e) In a currency other than the currency in which the sum is expressed in the instrument.

Article 8

(1) If there is a discrepancy between the sum expressed in words and the sum expressed in figures, the sum payable by the instrument is the sum expressed in words.

(2) If the sum is expressed more than once in words, and there is a discrepancy, the sum payable is the smaller sum. The same rule applies if the sum is expressed more than once in figures only, and there is a discrepancy.

(3) If the sum 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 in the instrument, and the specified currency is not identified as the currency of any particular State, the currency is to be considered as the currency of the State where payment is to be made.

(4) If an instrument states that the sum is to be paid with interest, without specifying the date from which interest is to run, interest runs from the date of the instrument.

(5) A stipulation stating that the sum is to be paid with interest is deemed not to have been written on the instrument unless it indicates the rate at which interest is to be paid.

(6) A rate at which interest is to be paid may be expressed either as a definite rate or as a variable rate. For a variable rate to qualify for this purpose, it must vary in relation to one or more reference rates of interest in accordance with provisions stipulated in the instrument and each such reference rate must be published or otherwise available to the public and not be subject, directly or indirectly, to unilateral determination by a person who is named in the instrument at the time the bill is drawn or the note is made, unless the person is named only in the reference rate provisions.

(7) If the rate at which interest is to be paid is expressed as a variable rate, it may be stipulated expressly in the instrument that such rate shall not be less than or exceed a specified rate of interest, or that the variations are otherwise limited.

(8) If a variable rate does not qualify under paragraph (6) of this article or for any reason it is not possible to determine the numerical value of the variable rate for any period, interest shall be payable for the relevant period at the rate calculated in accordance with paragraph
Article 9

(1) An instrument is deemed to be payable on demand:
(a) If it states that it is payable at sight or on demand or on presentment or if it contains words of similar import; or
(b) If no time of 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 in 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 time of payment of a bill payable at a fixed period after sight is determined by the date of acceptance or, if the bill is dishonoured by non-acceptance, by the date of protest or, if protest is dispensed with, by the date of dishonour.
(6) The time of payment of an instrument payable on demand is the date on which the instrument is presented for payment.
(7) The time of payment 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 his visa is refused, by the date of presentment.
(8) If an instrument is drawn, or made, payable one or more months after a stated date or after the date of the instrument or after sight, the instrument is payable on the corresponding date of the month when payment must be made. If there is no corresponding date, the instrument is payable on the last day of that month.

Article 10

(1) A bill may be drawn:
(a) By two or more drawers;
(b) Payable to two or more payees.
(2) A note may be made:
(a) By two or more makers;
(b) 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 rights of a holder may be exercised only by all of them.

Article 11

A bill may be drawn by the drawer:
(a) On himself;
(b) Payable to his order.

Section 3. Completion of an incomplete instrument

Article 12

(1) An incomplete instrument which satisfies the requirements set out in paragraph (1) of article 1 and bears the signature of the drawer or the acceptance of the drawee, or which satisfies the requirements set out in paragraph (2) of article 1 and subparagraph (d) of paragraph (2) of article 3, but which lacks other elements pertaining to one or more of the requirements set out in articles 2 and 3, may be completed, and the instrument so completed is effective as a bill or a note.
(2) If such an instrument is completed without authority or otherwise than in accordance with the authority given:
(a) A party who signed the instrument before the completion may invoke such lack of authority as a defence against a holder who had knowledge of such lack of authority 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.

CHAPTER III. TRANSFER

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.
Article 14

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

(2) An endorsement may be:
(a) 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 a person in possession of it;
(b) Special, that is, by a signature accompanied by an indication of the person to whom the instrument is payable.

(3) A signature alone, other than that of the drawee, is an endorsement only if placed on the back of the instrument.

Article 15

(1) A person is a holder if he is:
(a) The payee in possession of the instrument; or
(b) In possession of an instrument which has been endorsed to him, or on which the last endorsement is in blank, and on which there appears an uninterrupted series of endorsements, even if any endorsement was forged or was signed by an agent without authority.

(2) If 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 by him or any previous holder under circumstances, including incapacity or fraud, duress or mistake of any kind, that would give rise to a claim to, or a defence against liability on, the instrument.

Article 16

The holder of an instrument on which the last endorsement is in blank may:
(a) Further endorse it either by an endorsement in blank or by a special endorsement; or
(b) Convert the blank endorsement into a special endorsement by indicating in the endorsement that the instrument is payable to himself or to some other specified person; or
(c) Transfer the instrument in accordance with subparagraph (b) of article 13.
Article 17

(1) If the drawer or the maker has inserted in the instrument such words as "not negotiable", "not transferable", "not to order", "pay (X) only", or words of similar import, the instrument may not be transferred except for purposes of collection, and any endorsement, even if it does not contain words authorizing the endorsee to collect the instrument, is deemed to be an endorsement for collection.

(2) If an endorsement contains the words "not negotiable", "not transferable", "not to order", "pay (X) only", or words of similar import, the instrument may not be transferred further except for purposes of collection, and any subsequent endorsement, even if it does not contain words authorizing the endorsee to collect the instrument, is deemed to be an endorsement for collection.

Article 18

(1) An endorsement must be unconditional.

(2) A conditional endorsement transfers the instrument whether or not the condition is fulfilled. The condition is ineffective as to those parties and transferees who are subsequent to the endorsee.

Article 19

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

Article 20

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

Article 21

(1) If 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, the endorsee is a holder who:

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

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

(c) Is subject only to the claims and defences which may be set up against the endorser.
(2) The endorser for collection is not liable on the instrument to any subsequent holder.

Article 22

(1) If an endorsement contains the words "value in security", "value in pledge", or any other words indicating a pledge, the endorsee is a holder who:
(a) May exercise all rights arising out of the instrument;
(b) May endorse the instrument only for purposes of collection;
(c) Is subject only to the claims and defences specified in article 28 or 30.
(2) If such an endorsee endorses for collection, he is not liable on the instrument to any subsequent holder.

Article 23

The holder of an instrument may transfer it to a prior party or to the drawee in accordance with article 13; however, if the transferee has previously been a 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 24

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

Article 25

(1) If an endorsement is forged, the person whose endorsement is forged, or a party who signed the instrument before the forgery, has the right to recover compensation for any damage that he may have suffered because of the forgery against:
(a) The forger;
(b) The person to whom the instrument was directly transferred by the forger;
(c) A party or the drawee who paid the instrument to the forger directly or through one or more endorsee for collection.
(2) However, an endorsee for collection is not liable under paragraph (1) of this article if he is without knowledge of the forgery:
(a) At the time he pays the principal or advises him of the receipt of payment, or
(b) At the time he receives payment, if this is later, unless his lack of knowledge is due to his failure to act in good faith or to exercise reasonable care.

(3) Furthermore, a party or the drawee who pays an instrument is not liable under paragraph (1) of this article if, at the time he pays the instrument, he is without knowledge of the forgery, unless his lack of knowledge is due to his failure to act in good faith or to exercise reasonable care.

(4) Except as against the forger, the damages recoverable under paragraph (1) of this article may not exceed the amount referred to in article 70 or 71.

Article 26

(1) If an endorsement is made by an agent without authority or power to bind his principal in the matter, the principal, or a party who signed the instrument before such endorsement, has the right to recover compensation for any damage that he may have suffered because of such endorsement against:

(a) The agent;
(b) The person to whom the instrument was directly transferred by the agent;
(c) A party or the drawee who paid the instrument to the agent directly or through one or more endorseees for collection.

(2) However, an endorsee for collection is not liable under paragraph (1) of this article if he is without knowledge that the endorsement does not bind the principal:

(a) At the time he pays the principal or advises him of the receipt of payment, or
(b) At the time he receives payment, if this is later, unless his lack of knowledge is due to his failure to act in good faith or to exercise reasonable care.

(3) Furthermore, a party or the drawee who pays an instrument is not liable under paragraph (1) of this article if, at the time he pays the instrument, he is without knowledge that the endorsement does not bind the principal, unless his lack of knowledge is due to his failure to act in good faith or to exercise reasonable care.

(4) Except as against the agent, the damages recoverable under paragraph (1) of this article may not exceed the amount referred to in article 70 or 71.
CHAPTER IV. RIGHTS AND LIABILITIES

Section 1. The rights of a holder and of a protected holder

Article 27

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 may transfer the instrument in accordance with article 13.

Article 28

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

   a. Any defence that may be set up against a protected holder in accordance with paragraph (1) of article 30;
   b. Any defence based on the underlying transaction between himself and the drawer or between himself and his transferee, but only if the holder took the instrument with knowledge of such defence or if he obtained the instrument by fraud or theft or participated at any time in a fraud or theft concerning it;
   c. Any defence arising from the circumstances as a result of which he became a party, but only if the holder took the instrument with knowledge of such defence or if he obtained the instrument by fraud or theft or participated at any time in a fraud or theft concerning it;
   d. Any defence which may be raised against an action in contract between himself and the holder;
   e. Any other defence available under this Convention.

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, but only if he took the instrument with knowledge of such claim or if he obtained the instrument by fraud or theft or participated at any time in a fraud or theft concerning it.

3. A holder who takes an instrument after the expiration of the time-limit for presentment for payment is subject to any claim to, or defence against liability on, the instrument to which his transferor is subject.

4. 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. The third person asserted a valid claim to the instrument; or
(b) The holder acquired the instrument by theft or forged the signature of the payee or an endorsee, or participated in the theft or the forgery.

Article 29

"Protected holder" means the holder of an instrument which was complete when he took it or which was incomplete within the meaning of paragraph (1) of article 12 and was completed in accordance with authority given, provided that when he became a holder:

(a) He was without knowledge of a defence against liability on the instrument referred to in subparagraphs (a), (b), (c) and (e) of paragraph (1) of article 28;
(b) He was without knowledge of a valid claim to the instrument of any person;
(c) He was without knowledge of the fact that it had been dishonoured by non-acceptance or by non-payment;
(d) The time-limit provided by article 55 for presentment of that instrument for payment had not expired; and
(e) He did not obtain the instrument by fraud or theft or participate in a fraud or theft concerning it.

Article 30

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

(a) Defences under articles 33(1), 34, 35(1), 36(3), 53(1), 57(1), 63(1) and 84 of this Convention;
(b) Defences based on the underlying transaction between himself and such holder or arising from any fraudulent act on the part of such holder in obtaining the signature on the instrument of that party;
(c) Defences based on his incapacity to incur liability on the instrument or on the fact that he signed without knowledge that his signature made him a party to the instrument, provided that his lack of knowledge was not due to his negligence and provided that he was fraudulently induced so to sign.

(2) The rights to an instrument of a protected holder are not subject to any claim to the instrument on the part of any person, except a valid claim arising from the underlying transaction between himself and the person by whom the claim is raised.
Article 31

(1) The transfer of an instrument by a protected holder vests in any subsequent holder the rights to and on the instrument which the protected holder had.

(2) Those rights are not vested in a subsequent holder if:
(a) He participated in a transaction which gives rise to a claim to, or a defence against liability on, the instrument;
(b) He has previously been a holder, but not a protected holder.

Article 32

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

Section 2. Liabilities of the parties

A. General provisions

Article 33

(1) Subject to the provisions of articles 34 and 36, a person is not liable on an instrument unless he signs it.

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

Article 34

A forged signature on an instrument does not impose any liability on the person whose signature was forged. However, if he consents to be bound by the forged signature or represents that it is his own, he is liable as if he had signed the instrument himself.

Article 35

(1) If an instrument is materially altered:
(a) A party who signs it after the material alteration is liable according to the terms of the altered text;
(b) A party who signs it before the material alteration is liable according to the terms of the original text. However, if a party makes, authorizes or assents to a material alteration, he is liable according to the terms of the altered text.
(2) A signature is presumed to have been placed on the instrument
after the material alteration unless the contrary is proved.

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

Article 36

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

(2) The signature of an agent placed by him on an instrument with the authority of his principal and showing on the instrument that he is signing in a representative capacity for that named principal, or the 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) A signature placed on an instrument by a person as agent but who lacks authority to sign or exceeds his authority, or by an agent who has authority to sign but who does not show on the instrument that he is signing in a representative capacity for a named person, or who shows on the instrument that he is signing in a representative capacity but does not name the person whom he represents, imposes liability on the person signing and not on the person whom he 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) A person who is liable pursuant to paragraph (3) of this article 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 37

The order to pay contained in a bill does not of itself operate as an assignment to the payee of funds made available for payment by the drawer with the drawee.

B. The drawer

Article 38

(1) The drawer engages that upon dishonour of the bill by non-acceptance or by non-payment, and upon any necessary protest, he will pay the bill to the holder, or to any endorser or any endorser’s guarantor who takes up and pays the bill.

(2) The drawer may exclude or limit his own liability for accept-
ance or for payment by an express stipulation in the bill. Such a stipulation is effective only with respect to the drawer. A stipulation excluding or limiting liability for payment is effective only if another party is or becomes liable on the bill.

C. The maker

Article 39

(1) The maker engages that he will pay the note in accordance with its terms to the holder, or to any party who takes up and pays the note.

(2) The maker may not exclude or limit his own liability by a stipulation in the note. Any such stipulation is ineffective.

D. The drawee and the acceptor

Article 40

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

(2) The acceptor engages that he will pay the bill in accordance with the terms of his acceptance to the holder, or to any party who takes up and pays the bill.

Article 41

(1) 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.

(2) An acceptance may be written on the front or on the back of the bill.

Article 42

(1) An incomplete bill which satisfies the requirements set out in paragraph (1) of article 1 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 by non-payment.

(3) If 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 or the holder may insert the
(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 43

(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 in 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.

(3) An acceptance relating to only a part of the sum payable is a qualified acceptance. If the holder takes such an acceptance, the bill is dishonoured by non-acceptance only as to the remaining part.

(4) 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.

E. The endorser

Article 44

(1) The endorser engages that upon dishonour of the instrument by non-acceptance or by non-payment, and upon any necessary protest, he will pay the instrument to the holder, or to any subsequent endorser or any endorser's guarantor who takes up and pays the instrument.

(2) An endorser may exclude or limit his own liability by an express stipulation in the instrument. Such a stipulation is effective only with respect to that endorser.

F. The transferor by endorsement or by mere delivery

Article 45

(1) Unless otherwise agreed, a person who transfers an instrument, by endorsement and delivery or by mere delivery, represents to the holder to whom he transfers the instrument that:
   (a) The instrument does not bear any forged or unauthorized
signature;
(b) The instrument has not been materially altered;
(c) At the time of transfer, he has no knowledge of any fact which
would impair the right of the transferee to payment of the instru-
ment against the acceptor of a bill or, in the case of an unaccepted
bill, the drawer, or against the maker of a note.
(2) Liability of the transferor under paragraph (1) of this article is
incurred only if the transferee took the instrument without knowledge
of the matter giving rise to such liability.
(3) If the transferor is liable under paragraph (1) of this article,
the transferee may recover, even before maturity, the amount paid by
him to the transferor, with interest calculated in accordance with article
70, against return of the instrument.

G. The guarantor

Article 46

(1) Payment of an instrument, whether or not it has been ac-
cepted, 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 signa-
ture of the guarantor. For the purposes of this Convention, the words
"prior endorsements guaranteed" or words of similar import do not
constitute a guarantee.
(4) A guarantee may be effected by a signature alone on the front
of the instrument. A signature alone on the front of the instrument,
other than that of the maker, the drawer or the drawee, is a guarantee.
(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.
(6) A guarantor may not raise as a defence to his liability the fact
that he signed the instrument before it was signed by the person for
whom he is a guarantor, or while the instrument was incomplete.

Article 47

(1) The liability of a guarantor on the instrument is of the same
nature as that of the party for whom he has become guarantor.

(2) If the person for whom he has become guarantor is the
drawee, the guarantor engages:

(a) To pay the bill at maturity to the holder, or to any party who
takes up and pays the bill;
(b) If the bill is payable at a definite time, upon dishonour by
non-acceptance and upon any necessary protest, to pay it to the
holder, or to any party who takes up and pays the bill.

(3) In respect of defences that are personal to himself, a guarantor
may set up:

(a) Against a holder who is not a protected holder only those
defences which he may set up under paragraphs (1), (3) and (4) of
article 28;
(b) Against a protected holder only those defences which he may
set up under paragraph (1) of article 30.

(4) In respect of defences that may be raised by the person for
whom he has become a guarantor:

(a) A guarantor may set up against a holder who is not a protected
holder only those defences which the person for whom he has be-
come a guarantor may set up against such holder under
paragraphs (1), (3) and (4) of article 28;
(b) A guarantor who expresses his guarantee by the words “guar-
anteed”, “payment guaranteed” or “collection guaranteed”, or
words of similar import, may set up against a protected holder
only those defences which the person for whom he has become a
 guarantor may set up against a protected holder under paragraph
(1) of article 30;
(c) A guarantor who expresses his guarantee by the words “aval”
or “good as aval” may set up against a protected holder only:
   (i) The defence, under subparagraph (b) of paragraph (1)
of article 30, that the protected holder obtained the signa-
ture on the instrument of the person for whom he has be-
come a guarantor by a fraudulent act;
   (ii) The defence, under article 53 or 57, that the instru-
ment was not presented for acceptance or for payment;
   (iii) The defence, under article 63, that the instrument was
not duly protested for non-acceptance or for non-payment;
   (iv) The defence, under article 84, that a right of action
may no longer be exercised against the person for whom he
has become guarantor;
(d) A guarantor who is not a bank or other financial institution
and who expresses his guarantee by a signature alone may set up
against a protected holder only the defences referred to in subpara-
graph (b) of this paragraph;
(e) A guarantor which is a bank or other financial institution and
which expresses its guarantee by a signature alone may set up
against a protected holder only the defences referred to in subpara-
graph (c) of this paragraph.

Article 48

(1) Payment of an instrument by the guarantor in accordance with
article 72 discharges the party for whom he became guarantor of his
liability on the instrument to the extent of the amount paid.
(2) The guarantor who pays the instrument may recover from the
party for whom he has become guarantor and from the parties who are
liable on it to that party the amount paid and any interest.

CHAPTER V. PRESENTMENT, DISHONOUR BY NON-
ACCEPTANCE OR NON-PAYMENT, AND REcourse

Section 1. Presentment for acceptance and dishonour by non-
acceptance

Article 49

(1) A bill may be presented for acceptance.
(2) A bill must be presented for acceptance:
(a) If the drawer has stipulated in the bill that it must be
presented for acceptance;
(b) If the bill is payable at a fixed period after sight; or
(c) If the bill is payable elsewhere than at the residence or place of
business of the drawee, unless it is payable on demand.

Article 50

(1) The drawer may stipulate in the bill that it must not be
presented for acceptance before a specified date or before the occurrence
of a specified event. Except where a bill must be presented for accept-
ance under subparagraph (b) or (c) of paragraph (2) of article 49, the
drawer may stipulate that it must not be presented for acceptance.
(2) If a bill is presented for acceptance notwithstanding a stipula-
tion permitted under paragraph (1) of this article 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 51

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) 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;
(c) If a bill is payable on a fixed date, presentment for acceptance must be made before or on that date;
(d) A bill payable on demand or at a fixed period after sight must be presented for acceptance within one year of its date;
(e) 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 52

(1) A necessary or optional presentment for acceptance is dispensed with if:

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

(2) A necessary presentment for acceptance is dispensed with if:

(a) A bill is payable on a fixed date, and presentment for acceptance cannot be effected before or on that date due to circumstances which are beyond the control of the holder and which he could neither avoid nor overcome; or
(b) A bill is payable at a fixed period after sight, and presentment for acceptance cannot be effected within one year of its date due to circumstances which are beyond the control of the holder and which he could neither avoid nor overcome.

(3) Subject to paragraphs (1) and (2) of this article, delay in a necessary presentment for acceptance is excused, but presentment for acceptance is not dispensed with, if the bill is drawn with a stipulation that it must be presented for acceptance within a stated time-limit, and
the delay in presentment for acceptance is caused by circumstances which are beyond the control of the holder and which he could neither avoid nor overcome. When the cause of the delay ceases to operate, presentment must be made with reasonable diligence.

Article 53

(1) 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.

(2) Failure to present a bill for acceptance does not discharge the guarantor of the drawee of liability on the bill.

Article 54

(1) A bill is considered to be dishonoured by non-acceptance:
(a) If the drawee, upon due presentment, expressly refuses to accept the bill or acceptance cannot be obtained with reasonable diligence or if 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 52, unless the bill is in fact accepted.
(2) (a) If a bill is dishonoured by non-acceptance in accordance with subparagraph (a) of paragraph (1) of this article, the holder may exercise an immediate right of recourse against the drawer, the endorsers and their guarantors, subject to the provisions of article 59.
(b) If a bill is dishonoured by non-acceptance in accordance with subparagraph (b) of paragraph (1) of this article, the holder may exercise an immediate right of recourse against the drawer, the endorsers and their guarantors.
(c) If a bill is dishonoured by non-acceptance in accordance with paragraph (1) of this article, the holder may claim payment from the guarantor of the drawee upon any necessary protest.
(3) If a bill payable on demand is presented for acceptance, but acceptance is refused, it is not considered to be dishonoured by non-acceptance.

Section 2. Presentment for payment and dishonour by non-payment

Article 55

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 note signed by two or more makers may be presented to any one of them, unless the 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 in 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;
(h) An instrument which is presented at a clearing-house is duly presented for payment if the law of the place where the clearing-house is located or the rules or customs of that clearing-house so provide.

Article 56

(1) Delay in making presentment for payment is excused if 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 the 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 a guarantor has expressly waived presentment, 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 referred to in paragraph (1) of this article continues to operate beyond 30 days after maturity;
(c) If an instrument is payable on demand, and the cause of delay in making presentment referred to in paragraph (1) of this article 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 by reason of his insolvency, or is a fictitious person or a person not having capacity to make payment, or if the drawee, the maker or the acceptor is a corporation, partnership, association or other legal entity which has ceased to exist;
(e) If there is no place at which the instrument must be presented in accordance with subparagraph (g) of article 55.

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

Article 57

(1) If an instrument is not duly presented for payment, the drawer, the endorsers and their guarantors are not liable on it.
(2) Failure to present an instrument for payment does not discharge the acceptor, the maker and their guarantors or the guarantor of the drawee of liability on it.

Article 58

(1) An instrument is considered to be dishonoured by non-payment:
(a) If payment is refused upon due presentment or if the holder cannot obtain the payment to which he is entitled under this Convention;
(b) If presentment for payment is dispensed with pursuant to paragraph (2) of article 56 and the instrument is unpaid at maturity.
(2) If a bill is dishonoured by non-payment, the holder may, subject to the provisions of article 59, 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 59, exercise a right of recourse against the endorsers and their guarantors.

Section 3. Recourse

Article 59

If an instrument is 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 60 to 62.

A. Protest

Article 60

(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 in that respect 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 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) of this article is a protest for the purpose of this Convention.

Article 61

Protest for dishonour of an instrument by non-acceptance or by non-payment must be made on the day on which the instrument is dishonoured or on one of the four business days which follow.
Article 62

(1) Delay in protesting an instrument for dishonour is excused if 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 the 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 a guarantor has expressly waived protest; 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 the delay in making protest referred to paragraph (1) of this article 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) If presentment for acceptance or for payment is dispensed with in accordance with article 52 or paragraph (2) of article 56.

Article 63

(1) If an instrument 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 on it.

(2) Failure to protest an instrument does not discharge the acceptor, the maker and their guarantors or the guarantor of the drawee of liability on it.

B. Notice of dishonour

Article 64

(1) The holder, upon dishonour of an instrument by non-acceptance or by non-payment, must give notice of such dishonour:
   (a) To the drawer and the last endorser, and
   (b) To all other endorsers and guarantors whose addresses the holder can ascertain on the basis of information contained in the
instrument.

(2) An endorser or a guarantor who receives notice must give notice of dishonour to the last party preceding him and liable on the instrument.

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

Article 65

(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 duly given if it is communicated or sent to the party to be notified by means appropriate in the circumstances, whether or not it is received by that party.

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

Article 66

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 day of receipt of notice of dishonour.

Article 67

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

(2) Notice of dishonour is dispensed with:

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

(b) If the drawer, an endorser or a guarantor has expressly waived notice of dishonour; 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;
(c) As regards the drawer of the bill, if the drawer and the drawee or the acceptor are the same person.

Article 68

If a person who is required to give notice of dishonour fails to give it to a party who is entitled to receive it, he is liable for any damages which that party may suffer from such failure, provided that such damages do not exceed the amount referred to in article 70 or 71.

Section 4. Amount payable

Article 69

(1) The holder may exercise his rights on the instrument against any one party, or several or all parties, liable on it and is not obliged to observe the order in which the parties have become bound. Any party who takes up and pays the instrument may exercise his rights in the same manner against parties liable to him.

(2) Proceedings against a party do not preclude proceedings against any other party, whether or not subsequent to the party originally proceeded against.

Article 70

(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 to be paid after maturity, interest at the rate stipulated, or, in the absence of such stipulation, interest at the rate specified in paragraph (2) of this article, calculated from the date of presentment on the sum specified in subparagraph (b)(i) of this paragraph;
   (iii) Any expenses of protest and of the notices given by him;
(c) Before maturity:
   (i) The amount of the instrument with interest, if interest has been stipulated for, to the date of payment; or, if no interest has
been stipulated for, subject to a discount from the date of payment to the date of maturity, calculated in accordance with paragraph (4) of this article;

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

(2) The rate of interest shall be the rate that would be recoverable in legal proceedings taken in the jurisdiction where the instrument is payable.

(3) Nothing in paragraph (2) of this article prevents a court from awarding damages or compensation for additional loss caused to the holder by reason of delay in payment.

(4) 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 such rate as is reasonable in the circumstances.

Article 71

A party who pays an instrument and is thereby discharged in whole or in part of his liability on the instrument may recover from the parties liable to him:

(a) The entire sum which he has paid;
(b) Interest on that sum at the rate specified in paragraph (2) of article 70, from the date on which he made payment;
(c) Any expenses of the notices given by him.

CHAPTER VI. DISCHARGE

Section 1. Discharge by payment

Article 72

(1) A party is discharged of liability on the instrument when he pays the holder, or a party subsequent to himself who has paid the instrument and is in possession of it, the amount due pursuant to article 70 or 71:

(a) At or after maturity; or
(b) Before maturity, upon dishonour by non-acceptance.

(2) Payment before maturity other than under subparagraph (b) of paragraph (1) 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 liability if he pays a holder who is not a protected holder, or a party who has taken up and paid the instrument, and knows at the time of payment that the holder or that party acquired the instrument by theft or forged the signature of the payee or an endorsee, or participated in the theft or the forgery.

(4)(a) A person receiving payment of an instrument must, unless agreed otherwise, deliver:

(i) To the drawee making such payment, the instrument;
(ii) To any other person making such payment, the instrument, a receipted account, and any protest.

(b) In the case of an instrument payable by instalments at successive dates, the drawee or a party making a payment, other than payment of the last instalment, may require that mention of such payment be made on the instrument or on a slip affixed thereto ("allonge") and that a receipt therefor be given to him.

(c) If an instrument payable by instalments at successive dates is dishonoured by non-acceptance or by non-payment as to any of its instalments and a party, upon dishonour, pays the instalment, the holder who receives such payment must give the party a certified copy of the instrument and any necessary authenticated protest in order to enable such party to exercise a right on the instrument.

(d) 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 under article 58.

(e) If payment is made but the person paying, other than the drawee, fails to obtain the instrument, such person is discharged but the discharge cannot be set up as a defence against a protected holder to whom the instrument has been subsequently transferred.

Article 73

(1) The holder is not obliged to take partial payment.
(2) If the holder who is offered partial payment does not take it, the instrument is dishonoured by non-payment.
(3) If the holder takes partial payment from the drawee, the guarantor of the drawee, or the acceptor or the maker:
(a) The guarantor of the drawee, or 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 acceptor, the maker or the guarantor of the drawee:
   (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 instrument and any necessary authenticated protest in order to enable such party to exercise a right on the instrument.
(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) If the balance is paid, the person who receives it and who is in possession of the instrument must deliver to the payor the receipted instrument and any authenticated protest.

Article 74

(1) The holder may refuse to take payment at a place other than the place where the instrument was presented for payment in accordance with article 55.
(2) In such case if payment is not made at the place where the instrument was presented for payment in accordance with article 55, the instrument is considered to be dishonoured by non-payment.

Article 75

(1) An instrument must be paid in the currency in which the sum payable is expressed.
(2) If the sum payable is expressed in a monetary unit of account within the meaning of subparagraph (1) of article 5 and the monetary unit of account is transferable between the person making payment and the person receiving it, then, unless the instrument specifies a currency of payment, payment shall be made by transfer of monetary units of account. If the monetary unit of account is not transferable between those persons, payment shall be made in the currency specified in the instrument or, if no such currency is specified, in the currency of the place of payment.
(3) The drawer or the maker may indicate in the instrument that it must be paid in a specified currency other than the currency in which the sum payable 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 in the instrument. Failing such indication, the amount payable is to be calculated according to the rate of exchange for sight drafts (or, if there is no such rate, according to the appropriate established rate of exchange) on the date of maturity:

(i) Ruling at the place where the instrument must be presented for payment in accordance with subparagraph (g) of article 55, 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 subparagraph (g) of article 55;

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

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

(i) If the rate of exchange is indicated in the instrument, according to that rate;
(ii) If no rate of exchange is indicated in 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.

(4) 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 by non-payment.

(5) 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 subparagraph (g) of article 55 or at the place of actual payment.

Article 76

(1) Nothing in this Convention prevents a Contracting State from enforcing exchange control regulations applicable in its territory and its provisions relating to the protection of its currency, including regulations which it is bound to apply by virtue of international agreements to which it is a party.

(2)(a) If, by virtue of the application of paragraph (1) of this art-
cle, an instrument drawn in a currency which is not that of the
place of payment must be paid in local currency, the amount
payable is to be calculated according to the rate of exchange for
sight drafts (or, if there is no such rate, according to the ap-
propriate established rate of exchange) on the date of present-
ment ruling at the place where the instrument must be presented for
payment in accordance with subparagraph (g) of article 55.
(b)(i) If such an instrument is dishonoured by non-acceptance,
the amount payable is to be calculated, at the option of the
holder, at the rate of exchange ruling on the date of dishon-
our or on the date of actual payment.
(ii) If such an instrument is dishonoured by non-payment,
the amount is to be calculated, at the option of the holder,
according to the rate of exchange ruling on the date of pre-
sentment or on the date of actual payment.
(iii) Paragraphs (4) and (5) of article 75 are applicable
where appropriate.

Section 2. Discharge of other parties

Article 77

(1) If a party is discharged in whole or in part of his liability on
the instrument, any party who has a right on the instrument against
him is discharged to the same extent.

(2) Payment by the drawee of the whole or a part of the amount
of a bill to the holder, or to any party who takes up and pays the bill,
discharges all parties of their liability to the same extent, except where
the drawee pays a holder who is not a protected holder, or a party who
has taken up and paid the bill, and knows at the time of payment that
the holder or that party acquired the bill by theft or forged the signa-
ture of the payee or an endorsee, or participated in the theft or the
forgery.

CHAPTER VII. LOST INSTRUMENTS

Article 78

(1) If an instrument is lost, whether by destruction, theft or other-
wise, the person who lost the instrument has, subject to the provisions
of paragraph (2) 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 of the instrument.

(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 paragraph (1) or (2) of articles 1, 2 and 3; for this purpose the person claiming payment of the lost instrument may present 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 sum of the lost instrument, and any interest and expenses which may be claimed under article 70 or 71, 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 79

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

(2) Such notice 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 give notice 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 damages do not exceed the amount referred to in article 70 or 71.

(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 the 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 day on which it should have been given.

Article 80

(1) A party who has paid a lost instrument in accordance with the provisions of article 78 and who is subsequently required to, and does, pay the instrument, or who, by reason of the loss of the instrument, then loses his right to recover from any party liable to him, has the right:

(a) If security was given, to realize the security; or
(b) If an amount was deposited with the court or other competent authority or institution, to reclaim the amount so deposited.

(2) The person who has given security in accordance with the provisions of subparagraph (b) of paragraph (2) of article 78 is entitled to obtain release of 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 81

For the purpose of making protest for dishonour by non-payment, a person claiming payment of a lost instrument may use a written statement that satisfies the requirements of subparagraph (a) of paragraph (2) of article 78.

Article 82

A person receiving payment of a lost instrument in accordance with article 78 must deliver to the party paying the written statement required under subparagraph (a) of paragraph (2) of article 78, receipted by him, and any protest and a receipted account.
Article 83

(1) A party who pays a lost instrument in accordance with article 78 has the same rights which he would have had if he had been in possession of the instrument.

(2) Such party may exercise his rights only if he is in possession of the receipted written statement referred to in article 82.

CHAPTER VIII. LIMITATION (PRESCRIPTION)

Article 84

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

(a) Against the maker, or his guarantor, of a note payable on demand, from the date of the note;

(b) Against the acceptor or the maker or their guarantor of an instrument payable at a definite time, from the date of maturity;

(c) Against the guarantor of the drawee of a bill payable at a definite time, from the date of maturity or, if the bill is dishonoured by non-acceptance, from the date of protest for dishonour or, where protest is dispensed with, from the date of dishonour;

(d) Against the acceptor of a bill payable on demand or his guarantor, from the date on which it was accepted or, if no such date is shown, from the date of the bill;

(e) Against the guarantor of the drawee of a bill payable on demand, from the date on which he signed the bill or, if no such date is shown, from the date of the bill;

(f) Against the drawer or an endorser or their guarantor, from the date of protest for dishonour by non-acceptance or by non-payment or, where protest is dispensed with, from the date of dishonour.

(2) A party who pays the instrument in accordance with article 70 or 71 may exercise his right of action against a party liable to him within one year from the date on which he paid the instrument.

CHAPTER IX. FINAL PROVISIONS

Article 85

The Secretary-General of the United Nations is hereby designated as the depositary for this Convention.
Article 86

(1) This Convention is open for signature by all States at the Headquarters of the United Nations, New York until 30 June 1990.

(2) This Convention is subject to ratification, acceptance or approval by the signatory States.

(3) This Convention is open for accession by all States which are not signatory States as from the date it is open for signature.

(4) Instruments of ratification, acceptance, approval and accession are to be deposited with the Secretary-General of the United Nations.

Article 87

(1) If a Contracting State has two or more territorial units in which, according to its constitution, different systems of law are applicable in relation to the matters dealt with in this Convention, it may, at the time of signature, ratification, acceptance, approval or accession, declare that this Convention is to extend to all its territorial units or only to one or more of them, and may amend its declaration by submitting another declaration at any time.

(2) These declarations are to be notified to the depositary and are to state expressly the territorial units to which the Convention extends.

(3) If a Contracting State makes no declaration under paragraph (1) of this article, the Convention is to extend to all territorial units of that State.

Article 88

(1) Any State may declare at the time of signature, ratification, acceptance, approval or accession that its courts will apply the Convention only if both the place indicated in the instrument where the bill is drawn, or the note is made, and the place of payment indicated in the instrument are situated in Contracting States.

(2) No other reservations are permitted.

Article 89

(1) This Convention enters into force on the first day of the month following the expiration of twelve months after the date of deposit of the tenth instrument of ratification, acceptance, approval or accession.

(2) When a State ratifies, accepts, approves or accedes to this Convention after the deposit of the tenth instrument of ratification, acceptance, approval or accession, this Convention enters into force in respect
of that State on the first day of the month following the expiration of twelve months after the date of deposit of its instrument of ratification, acceptance, approval or accession.

Article 90

(1) A Contracting State may denounce this Convention by a formal notification in writing addressed to the depositary.

(2) The denunciation takes effect on the first day of the month following the expiration of six months after the notification is received by the depositary. Where a longer period for the denunciation to take effect is specified in the notification, the denunciation takes effect upon the expiration of such longer period after the notification is received by the depositary. The Convention remains applicable to instruments drawn or made before the date at which the denunciation takes effect.

DONE at New York, this ninth day of December, one thousand nine hundred and eighty-eight in a single original, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic.

IN WITNESS WHEREOF the undersigned plenipotentiaries, being duly authorized by their respective Governments, have signed this Convention.