

II. INTERNATIONAL PAYMENTS

Negotiable instruments

1. Analysis of replies received from Governments and banking and trade institutions to the questionnaire on negotiable instruments used for making international payments: report of the Secretary-General (A/CN.9/38/Add.1) *

INTRODUCTION

1. At its third session (1970), the United Nations Commission on International Trade Law considered a report of the Secretary-General containing an analysis of the comments made by Governments and banking and trade institutions in response to the Secretary-General's questionnaire regarding (a) current practices followed in making and receiving international payments and (b) problems encountered in settling international transactions by means of negotiable instruments (A/CN.9/38). In view of the fact that several replies were received after the preparation of the analysis, the Commission requested the Secretary-General to analyse the later replies and to submit the analysis to its fourth session.¹

2. The present report has been prepared in response to the above request of the Commission. It contains an analysis of the following replies:²

Reference Number	Country of origin	Respondent
79	Bulgaria	Government
80	Bulgaria	National Bank of Bulgaria
81	Federal Republic of Germany	Deutscher Sparkassen und Giroverband E.V.
82	Finland	Government
83	France	Banque française et italienne pour l'Amérique du Sud
84	Iran	Central Bank of Iran
85	Italy	Banca d'Italia

86	Netherlands	Government
87	Romania	Government
88	Turkey	Central Bank of the Republic of Turkey
89	Uruguay	Central Bank of Uruguay
90	Argentina	Central Bank of Argentina
91	Denmark	Government
92	Pakistan	State Bank of Pakistan
93	Ivory Coast	Government

3. The analysis of the initial seventy-eight replies included the questionnaire and a description of the general setting as to legal rules and banking practice to which the questions relate. This background material is not repeated in the present addendum, which, for a clearer understanding, should be read in conjunction with document A/CN.9/38.

Analysis of replies

4. The analysis of the earlier seventy-eight replies, considered by the Commission at its third session, made it apparent that problems or difficulties encountered in settling international transactions, in so far as they result from disharmony in the law, occur most frequently in certain specific areas of negotiable instruments law. These areas concern: (a) the form and content of negotiable instrument, (b) the effect of forged instruments and forged endorsements, and (c) the requirements as to the mode and time for protest and notice of dishonour.³

5. The additional replies examined in this addendum support that view. Indeed, the types of problems or difficulties referred to in these replies relate almost exclusively to the areas mentioned in (a), (b) and (c) above.

(a) Form and content of negotiable instruments⁴

6. Several replies point to difficulties that may arise as a result of divergencies in the rules in respect of the

* 5 March 1971.

¹ Report of the United Nations Commission on International Trade Law on the work of its third session, *Official Records of the General Assembly, Twenty-fifth Session, Supplement No. 17* (A/8017), para. 118; *Yearbook of the United Nations Commission on International Trade Law* (hereafter referred to as UNCITRAL Yearbook), vol. I: 1968-1970, part two, III, A.

² As in the analyses contained in documents A/CN.9/38 and A/CN.9/48, individual replies will be identified by numbers; seventy-eight replies were analysed in A/CN.9/38; UNCITRAL Yearbook, vol. I: 1968-1970, part three, A, 2. The reference numbers used in A/CN.9/38 and in this addendum correspond to those used in document A/CN.9/48 (analysis of comments regarding the possible content of uniform rules); see section 2 below.

³ A/CN.9/38, para. 70.

⁴ See A/CN.9/38, para. 43-44.

formal requisites of negotiable instruments or permissible stipulations on such instruments.⁵

7. More specifically, reference is made to difficulties that may result from the failure to insert the term "cheque" or "promissory note" in the body of the instrument,⁶ or from divergent rules in respect of the stipulation of interest.⁷

(b) *Forgery*⁸

8. Several replies refer to problems occurring in connexion with forged signatures.⁹ Some of these replies emphasize that the principal cause of legal differences is due to the sharp differences between legal systems.¹⁰

(c) *Protest and notice of dishonour*¹¹

9. Several replies refer to problems that arise as a result of divergencies in the law concerning the form which protest must take and, in particular, the time within which protest must be made or notice of dishonour be given.¹²

⁵ E.g., 81, 82, 85, 88, 93.

⁶ E.g., 81, 82, 85. As to difference in this respect between the Geneva rules and Anglo-American law, see A/CN.9/38, foot-note 67.

⁷ E.g., 87. And see A/CN.9/38, foot-note 71.

⁸ See A/CN.9/38, paras. 51-52.

⁹ E.g., 81 (indirectly), 85, 88, 89, 90, 92.

¹⁰ See in this respect A/CN.9/38, foot-note 86.

¹¹ See A/CN.9/38, paras. 55-62, and foot-notes 91, 100 and 107.

¹² E.g., 81, 82, 84, 85, 87, 88, 92, 93.

10. One respondent notes that an instrument showing certain formal defects cannot, under the law of his country, be protested for non-acceptance or non-payment.¹³

(d) *Other problems*

11. Several respondents draw attention to the uncertainty which results from divergent rules on prescription of actions on an instrument.¹⁴ These divergencies often made it difficult to ascertain whether action on an instrument can still be taken or is prescribed.¹⁵

12. One respondent points to difficulties that sometimes arise in connexion with the interpretation of foreign legal concepts.¹⁶

13. The same respondent raises the question whether parties to an instrument (i.e., a promissory note) are at liberty to agree on the application of certain provisions of a law other than that of the place of issuance.

14. Some respondents refer generally to problems that have arisen as a result of different rules concerning the rights and liabilities of parties to a negotiable instrument.¹⁷

15. Several replies report on the existence of problems occurring in connexion with lost instruments.¹⁸

¹³ See 82.

¹⁴ E.g., 84, 85, 93.

¹⁵ See 85.

¹⁶ See 81.

¹⁷ E.g., 81, 85, 87, 88, 93.

¹⁸ E.g., 81, 85, 88, 93.

2. Analysis of replies of Governments and banking and trade institutions relating to negotiable instrument for optional use in international transactions: report of the Secretary-General (A/CN.9/48) *

CONTENTS

	<i>Paragraphs</i>
INTRODUCTION	1-4
List of respondents	
A. Form and contents	
I. Formal requisites	5-24
(a) Basic rules	5-9
(b) Analysis of replies	10-24
(i) General	10-16
(ii) Designation of the proposed instrument	17-20
(iii) Name of payee	21-24
II. Stipulation for interest	25-28
(a) Basic rules	25
(b) Analysis of replies	26-28
III. Principal amount payable in instalments	29-32
(a) Basic rules	29
(b) Analysis of replies	30-32

* 14 December 1970.