**Recommendation 221 (1959)**[1]

# Payment of foreign money liabilities

Parliamentary Assembly

The Assembly,

Considering that the Committee on Monetary Law of the International Law Association has prepared a draft Convention on the Payment of Foreign Money Liabilities, the text of which is appended hereto ;

Considering the report of its Legal Committee (Doc. 1023) from which the importance of this problem is apparent,

Recommends to the Committee of Ministers :

1. that it should convene a Committee of Experts with instructions to study the draft Convention on the Payment of Foreign Money Liabilities prepared by the Committee on Monetary Law of the International Law Association and to consider the desirability of concluding a European convention on this subject ;
2. that it should inform the Assembly in due course of the results of this study.

1. Assembly Debate on 18th September 1959 (21st Sitting) (see Doc. 1023, Report of the Legal Committee). Text adopted by the Assembly on 18th September 1959 (21st Sitting).

**Appendix Draft Convention**

**Introductory**

(a) The purpose of the following Articles is to ensure that, if a sum of money shall be paid in a country the currency of which differs from that in which the sum of money is expressed, the creditor shall receive neither more nor less than he would receive if payment were made at the due place and date in the currency in which the sum of money is expressed.

(b) When incorporating the provisions of the following Articles into their respective substantive and procedural laws, Contracting States shall be at liberty so to adapt the wording of the Articles as to achieve the said purpose most effectively within the framework of their respective legal systems.

*1. Payment*

Article 1. If a sum of money is due in a currency which is not that of the place of payment, such sum may, unless a different intention appears, be paid in the currency of the place of payment.

Article 2. If the debtor alleges that it is impossible for him to pay the sum of money due in a currency which is not that of the place of payment and if the debtor does not exercise the right conferred by Article 1, the creditor may require payment in the currency of the place of payment.

Article 3. If, in accordance with Articles 1 or 2, the debtor pays in the currency of the place of payment, the conversion shall be effected in accordance with the rate of exchange at the place and date of payment.

Article 4. If the debtor does not pay at the date of maturity, and if after such date the currency in which the sum of money is due depreciates in relation to the currency of the place of payment, the debtor, whether he pays in the currency due or in the currency of the place of payment as provided in the preceding Articles, shall pay an additional amount equivalent to the difference between the rate of exchange at the date of maturity and the date of payment, unless the debtor shall prove that his failure to pay results from « force majeure » or default of the creditor or that the creditor has not suffered any damage resulting from the delay.

Article 5. The preceding rules are without prejudice to the right, if any, of a party to claim from the other party such further or other damage or relief as the applicable law may justify.

*2. Proceedings*

Article 6. In case of proceedings instituted to recover a sum of money expressed in a currency which is different from that of the forum, the creditor shall claim the sum of money so expressed and shall be entitled to claim also amounts due to him under Articles 2-5 in respect of the period up to the date of judgment.

Article 7. If and in so far as the Court gives judgment or makes an order in favour of the plaintiff, the judgment or order shall be for a sum of money as claimed in accordance with the preceding Article. It shall be open to the law of the forum to provide that the Court shall give the debtor the option to pay the equivalent at the rate of exchange prevailing in the country of the forum at the date of actual payment.

Article 8. In the event of the depreciation, between the date of judgment and satisfaction of the judgment, of the currency in which the sum of money is due in relation to the currency of the forum, the provisions of Article 4 shall apply and the judgment shall not preclude the creditor from pursuing the claim so arising.

*3. General*

Article 9. The application of the preceding rules shall extend to all monetary liabilities irrespective of whether they were originally expressed in money or not.

Article 10. The place of payment referred to in the preceding Articles shall be the place where payment is due.

Article 11. Subject to any different intentions of the parties, the rate of exchange referred to in the preceding Articles shall be the rate ordinarily and legitimately used for commercial transactions or for the particular type of transaction in question at the place of payment or, in default thereof, at such other place as may be reasonable in the circumstances or, in default thereof, such rate of conversion as may be reasonable in the circumstances.