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INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW

P r e l i m i n a r y S t u d y

IN VIEW OF THE UNIFICATION OF LEGISLATION ON COMMERCIAL COMPANIES

Rome, October 1948.

The International Chamber of Commerce, in a resolution adopted by its Montreux Congress (1947), instructed its Committee for Foreign Companies to "examine the legislation on commercial companies throughout the world". The last paragraph of the resolution explained that "by comparing the different legislative systems now in force, we shall be able to estimate the possibility of contemplating a unification of legislations on commercial companies all over the world; this unification, if it is realized, cannot help facilitating the general movement of business".

Following this resolution, and on a suggestion from our Institute, the International Chamber of Commerce asked the latter to draft a preliminary report, in which legislations dealing with commercial companies should be examined and compared, with the object of pointing out their most outstanding affinities and divergences. On the basis of such a report, the I.C.C. intends to conduct an enquiry among its National Committees, so that they may define the problems, whose uniform solution is above all desirable, as a measure apt to favour international trade.

The Institute, on accepting the task conferred upon it by the I.C.C., made it clear that it preferred to confine its inquiry to joint stock companies, ordinarily engaged in international trade; provided it might see, later on, whether it is advisable to extend its study also to certain forms of limited liability companies, which are interesting from an international point of view.

Having thus stated the aim of its study, the Institute prepared a plan of work which the present communication intends to show in a brief summary.

a) Scope of the study

As we have stated above, the Institute has considered it useful to limit its study, at present, to joint stock companies (corporations) only. Indeed the expression "commercial companies"

used by the I.C.C. seems to us extremely vague and of too broad a scope, as it also comprises partnerships and those companies which, having been founded without observing the procedure required by law, are called "de facto companies".

Now, if we consider that our study aims at seeking for possibilities of unification, in view of facilitating the general movement of business, it is perfectly clear that the class of companies affording a remarkable interest is that of joint stock companies (corporations). They are the ones whose activities extend outside the boundaries of the States whose nationality they possess, either by attracting foreign capital to furnish or increase their own, or by founding agencies and branches abroad. Partnerships of a certain importance do exist, the sphere of whose activities extends outside the frontiers of their original State; nevertheless, they only represent an exception. The great majority of companies engaged in international trade belong to the joint stock company's type.

The term "joint stock company" (corporation) is here used as meaning a company, the liability of whose members is limited by the amount of capital subscribed by each shareholder, and in which the property of a part of the capital is represented by a security (share), whose nature is to be freely transferable from one person to another.

The Institute, however, notwithstanding the limits it has set to its task, does not renounce the possibility of extending its research to other types of limited liability companies, having some traits in common with joint stock companies (Corporations).

As to the geographical extension of our study, we have thought it fitting, always considering our aims, to confine comparative research only to the legislation of countries between which unification may be deemed possible, considering the form of their civilization and the present condition of their commercial relations. Hence the Near and Far East legislations have been excluded from

our study, and on the contrary we have included the States of America and certain Dominions of the British Commonwealth, India excepted.

Furthermore, in order not to cumber our study with too detailed data, we have confined it to the most representative legislations of each group of countries. So, for instance, among the States of Latin America, only the legislations of Argentina, Brazil and Chile have been studied.

Finally, some legislations for which, at the present moment, it would be particularly difficult to obtain source material, for instance those of certain countries in Eastern Europe, have been left out of our study, reserving research thereon to a later stage of the work.

b) Character of the study

The Institute, in carrying out its task, does not exclusively aim at doing a research on comparative law, which would of necessity be confined to a statement of facts: it also attempts the unification of rules regulating the subject-matter of companies. Hence the need of seeking, in the different legislations, not the contents and the motives of particular provisions, nor the solution of special problems, but rather the inner essence of the institution in each law-system, with the object of establishing whether the rules adopted by the various legislations were inspired by an ideal type of joint stock company, common to them. In the affirmative case, the I.C.C. will find its task greatly facilitated, as the unification of legislations in this field will take place, we might say, in an almost spontaneous manner. On the contrary, the problem will become more difficult in the negative case. For if all legislations, in dealing with joint stock companies, start from different conceptions, not only from a formal, but also from a substantial point of view, unification becomes a difficult task, as it will be hard to find out which system is capable of satisfying the different social, juridical and economic needs and conceptions

out of which substantial differences between legislations have arisen.

Such being the aim of our study, the authors of the report will not confine themselves to questions of internal organization, which may and must vary from one country to the other. On the contrary, they will engage in thorough-going research into general questions, concerning not only the actual working of shareholders' companies, but also their juridical, economic and social nature.

The study will be based on absolutely scientific standards, and it will describe, objectively, the spirit of the various juridical rules, without taking sides in favour of any particular system. Judgement on the value of the rules, from a practical point of view, and a decision in favour of this or that economic and social system, will be reserved to the commercial circles, as the I.C.C. intends to send them the Institute's report.

c) Methods of research and subjects dealt with

The Institute has appealed to a certain number of specialists, and has divided the work between them, by groups of legislations. Periodical conferences between those cooperating in this study, aim at ensuring contacts between them and at comparing the results of their work.

In examining legislations, it has been decided to proceed by stages, preparing a synopsis for each subject and for each group of legislations, and then comparing them to ascertain resemblances and divergences between them.

The subjects of study have been fixed as follows:

- 1) Legislative sources;
- 2) General provisions;
- 3) Formation of companies;
- 4) The capital of companies (shares);
- 5) The organs of companies;
- 6) Administration and overseeing of companies (auditors);

- 7) Debentures;
- 8) Dissolution and winding up of companies;
- 9) Special kinds of joint stock companies (companies to which the State or public bodies are partners, public interest companies).

This list, which may be modified during the work, embodies the fundamental points of law concerning companies; each item includes, in its turn, several other questions connected with it. Even the order in which research is carried out may have to be changed. One wonders, for instance, whether it would not be preferable to deal with shares and debentures in a single chapter, which might be an appendix to the report.

The Institute contemplates the possibility of finishing its study within 1949. A Report in English and French will be sent to the I.C.C., which later may pass this document on, accompanied by a questionnaire, to its National Committees, to ascertain their point of view. In preparing this Report, the Institute will endeavour to state legal questions in a clear form, accessible even to non-jurists, keeping in mind that the Report is meant for commercial circles.

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