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===== INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW =====

PROGRESSIVE CODIFICATION OF INTERNATIONAL TRADE LAW

by

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In pursuance of the assignment entrusted to us by the Secretariat of the International Institute for the Unification of Private Law (UNIDROIT) involving a preliminary study of the prospects of a progressive codification of international trade law, we have made it a point to examine this question under the following aspects:

1. General considerations on the requirement for a progressive codification of the law on international trade and on the possibilities of attaining this aim.

2. The sphere within which unification should be instituted

Should the law on international trade as a whole be encompassed or should this study be restricted, to start with, to the law on obligations?

Should codification regulate all types of obligations or should it begin by governing contractual obligations?

Should it regulate any such legal relationships as may arise within the sphere of contractual obligations or just merely "international" relationships?

3. The method to be adopted

Should the method already resorted to heretofore in matters of unification be followed, or should the operation be dealt with in a more modern guise from the point of view of method because of the importance of codification of the law on international trade to economic development and the interest which the international community - the United Nations to be specific - has in the unification of the law on international trade?

4. Shall the uniform regulation of legal relationship in international trade be of a mandatory or of a non-mandatory nature?

5. The technique

Should the technique to be followed in the drafting of a law be one that could be applicable to any type of system of law, no matter what the nature thereof, or should it be an appropriate technique well suited to uniform laws?

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The legislative sources which may serve as a pattern are fairly scanty. It should, however, be well worth while citing the following:

- The Uniform Commercial Code prepared by the American Law Institute and the National Conference of Commissioners on Uniform State Laws, 1962 edition; this Code is very useful in that it concerns the American Law System - namely, the "Common Law". But, on the other hand, it represents unification attained inside a State - the United States;

- The Czechoslovak Law on legal relationships in international trade relations - Law n. 101 dated December 18, 1963 and which came into force on April 1, 1964. But this law only regulates any such relationships as may arise in the foreign trade relationships of Czechoslovakia. Its scope is, therefore, rather limited.

- The Franco-Italian draft of the Code on Obligations and Contracts, could likewise be useful, even though it is not intended to govern international legal relationships but domestic relationships only.

The COMECON - General conditions for the delivery of goods between the member countries of the Inter-Aid Economic Council - which came into force on January 1, 1969: on the one hand, because of their covering almost every aspect of the contract for sale and being of a mandatory nature, they constitute a true and proper uniform law on international sales, but, on the other hand, they distinctly portray an economy subject to the monopoly of foreign trade.

Furthermore, the activity of and the experience gained by UNIDROIT since its inception, as well as the activity of and the experience gained by all institutions dealing with the unification of law should also be thrown into the balance.

As far as qualified legal writings are concerned, the appearance of a book especially devoted to law on business deserves to be marked out (1). This book, without admitting it openly, represents a request for a stricter intervention in the regulation of the law on international trade.

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No || It should be clearly specified from the very start that a progressive codification of the law on obligations should be viewed as a first step in the codification of law on international trade - in the manner envisaged in the "Note" of the Secretariat of the Institute sent to the United Nations Commission for international trade law.

Regarding the grounds on which we refer to a law on international trade these are set forth below:

In the first place it should be avoided that the law regulating international commercial transactions be described as: "international commercial law", even if such an expression is to be found in the very definition given by the United Nations Commission for international trade law.

In actual fact, there are certain systems of law which fail to recognize a duality of civil and of commercial law, like for instance the laws of the Socialist countries, as well as many other legal systems (English, Italian, etc.).

(1) Yvon LOUSSOUARN and Jean BREDIN, Le droit du Commerce International, Paris, Sirey, 1969

On the other hand, it is for the very purpose of avoiding such a distinction, based on varying criteria ⁽¹⁾ or disregarded by certain legal systems, that the International Convention providing a uniform law on the international sales of goods (LUVI), makes no distinction between civil and commercial sales and claims to regulate both types of sale even if in actual fact it is called upon to apply mainly to commercial sales.

However, all systems of law, whether they do or do not recognize duality in civil law or commercial law, subject commercial relationships to general principles that are common to private law as a whole and to special rules imposed for the special regulation of commercial relationships ⁽²⁾.

On the other hand, the definition of "international" trade could not be resorted to for the sake of avoiding a definition that would be too difficult to explain, above all if one bears in mind the difficulties which were experienced in reaching a definition of private international law; it is only by referring to its purpose that it was possible to qualify this branch of law as "international".

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- (1) The object of the regulation (trade) as well as the quality of those who partake in commerce (tradesmen) could serve as a basic criterion; one could resort to both criteria simultaneously, like for instance in French law where the trade law covers at times special rules governing commercial transactions, and at other times rules concerning the tradesmen themselves. See RODIERE et HOUIN, Précis de droit commercial, Vol. I, page 1.
- (2) For instance, for the purpose of explaining French trade law particularism one could cite, besides a certain versatility of rules concerning evidence, the institution of bankruptcy, although the law of July 13, 1967 extends the latter to cover civil companies as well.

As a consequence, for the sake of avoiding any difference of opinion in qualified legal writings, we shall confine ourselves to establishing that, for international trade to develop, it must have a set of rules regulating relationships originated by international trade and that the best appellation for this set of legal rules would be "law on international trade", as is in any event suggested by the most recent doctrine (1).

I

1. Unquestionably, international trade is one of the most important factors in economic development and, therefore, an instrument of understanding between the nations, and of peace. On these grounds all States are highly interested in its expansion.

But, if it is to develop, international trade requires speed, confidence, security, a certainty, therefore, that only law can offer. Those who deal in international commerce do business with a much higher degree of confidence if they can gain an advance knowledge of the type of legal system that is to govern the transactions they purport to conclude and all the more so if they are convinced that they can have their rights asserted just as if they were acting under the authority of their own law.

Now, in the present state of affairs, the bulk, the intensification, the variety, the speed, the geographical extent of commercial exchanges occurring on an unprecedented scale are regulated by a multitude of municipal laws representing as many hindrances to the development of international trade. It is thus a matter of finding, in the law, a solution directed at overcoming these obstacles.

2. It should in the first place be noted that tradesmen, acting with a keen sense of awareness of their joint interests and availing themselves of the general contractual autonomy, have contrived to build up a set of rules concerning certain transactions of the international trade. The aforesaid rules, embodied in standard

(1) Yvon LOUSSOUARN and Jean Denis BREDIN, op. cit., Paris, Sirey 1969 p ?

contracts and in general conditions, or summarised in clauses or contractual terms established by a long standing practice, are about to be turned into some kind of a normative charter of international trade, intended to offer a uniform regulation for each contract, known to and understood by the parties concerned, capable of assuring a minimum of security to the respective transactions.

Tradesmen have proceeded in their own manner, and in resorting to techniques that are appropriate to them, with a regulation of the more urgent transactions for the sake of supplying any such legal assurance as they may have found to be absolutely necessary by the very simple method of envisaging any such law as may be applicable to certain relationships in international business world. These rules so established for the purpose of providing an answer to practical requirements are in actual fact implemented by the majority of tradesmen in every country, both East and West. Moreover, their application is abundantly assured by arbitration institutions.

It, therefore, follows that international practice, in noting that economic relationships of an international nature fit none too well in the domestic legal sphere, has taken the initiative in establishing uniform rules, which, jointly with municipal law, should favour international commercial exchanges to the greatest extent possible and within a well defined sphere.

But it should be noted that standard contracts, general conditions, clauses and terms confirmed by practice cannot and never will be able to regulate all legal relationships arising in international trade nor all the aspects of this question with which one may be confronted. This is, at all events the reason why the general conditions either allow that amendments be made by the contracting parties (see the General Conditions established under the auspices of E.C.E.) or refer to the municipal law of one of the parties (see the General Conditions of Sale established between COMECON member countries).

Any such gap as may materialize within the sphere of domestic business shall be filled by municipal commercial law and by the general principles of any municipal law.

It can thus be seen without any difficulty whatsoever, that international trade must be in a position to avail itself of certain fundamental principles to be applied to all unforeseen circumstances (unforeseen by contracts or by related international conventions) and which might be of avail in the interpretation of contractual stipulations, without the necessity of having to refer to the municipal laws of the parties.

This is the reason why a special Article - Article 17 - was introduced in the uniform law on the international sale of goods (LUVI), requiring that all such matters as may concern questions which are not regulated by this law and which are not expressly settled by the law, shall be regulated in conformity "with the general principles on which such law is based".

But this elliptical reference to the general principles did not appear to be completely satisfactory and led to endless discussions: hence, the necessity that certain fundamental principles of all legal relationships (or at least those of a contractual nature) arising within the sphere of international trade, be provided for.

In other words, it appears that also international trade requires a complete and operative universal law.

3. It goes without saying that a universal law on international trade could not be a customary law left to the hazards of private conventional practice. It could only originate from an agreement between States, as it is only in this manner that international business can find in the law any such legal framework as it may require.

It should on the other hand be noted that States are concerned, on an ever increasing scale, with a regulation of international trade. In actual fact, by granting to those who deal in foreign trade transactions the necessary assurance of protection, a law on international trade would contribute, on the basis of this fact alone, to safeguarding national economy. This justifies, to a very considerable extent, State regulation of foreign trade, which is becoming increasingly more sizeable from day to day in both the countries of the East and in countries of the West.

International trade is also of particular interest to all countries now in the process of developing, for whom a uniform regulation of international trade would be a factor of progress of the highest importance.

In fine, as international trade is an important factor in economic development and at the same time an instrument of understanding and of peace, a regulation thereof is of interest to the international community also. This is the reason why the United Nations, whose purposes and aims include that of "achieving international co-operation by the settlement of international matters of an economic, social, intellectual or humanitarian nature ..." (Art. 1, 2

3) have entrusted the General Assembly with the responsibility of making studies and recommendations with a view to encouraging a progressive development of international law and a codification thereof (Article 13, letter a). Such an action fully reveals the extent of the jurisdiction of the United Nations within the meaning of Chapters IX of the Charter.

The United Nations Conference on trade and development (UNCTAD) is, in its turn, particularly inclined to encourage the establishment of rules intended to favour international trade. And these are the very reasons which justified the institution of the United Nations Commission for international trade law (UNCITRAL), the aims and purposes whereof are "to encourage a progressive uniformity and unification of international trade law".

4. Regarding unification of international trade law, this could in the first place be envisaged as a unification of the rules of conflicts. But such a unification would be very far from removing the greater part of the difficulties caused by the differences existing in municipal laws on trade.

In actual fact, international private law, even if unified law, even though permitting to determine what law shall be applicable to a given legal relationship, fails to grant a complete certainty with regard to the content of such law which might, however, refer to another law, of another country, with any such difficulties as this reference may entail. Furthermore, a unification of the rules on conflicts, is in danger of becoming inoperative because of the indiscriminate use which is being made of the exception of public order. Finally, a certain degree of uncertainty would be caused by the difference in quality and interpretation appropriate to each system of law.

It therefore follows that through a unification of the rules of conflicts, efforts are being made to regulate the matter of international trade by implementing municipal law, thus disregarding any such specific nature as may be intrinsic in international relations, with the result that no municipal law could be deemed to be quite fitting for the purpose. That is why the latest qualified legal writings have raised this query in connection with international sales: "whether municipal law can supply a satisfactory regulation of international sales, which are not domestic sales merely characterised by a

foreign element, but original contracts involving stipulations of their own ...?"(1).

5. Therefore, there merely remains a unification of substantive law, as the only means to overcome any such obstacles as may be represented by the differences existing between municipal laws supplying a universal legislative system regulating international trade.

But for purposes of better understanding the reason why the necessity for a unification of the law on international trade has arisen, it should be borne in mind that international business, with its economic, social and technical interests, its requirements and necessities, was formed and developed in an international environment so that the transactions under which it becomes manifest and takes concrete shape forcibly exceed the boundaries of the framework of a system of municipal law and require rules that are compatible with their characteristics and purposes.

The law on international economic affairs has in itself a tendency to becoming a law which transcends the States. The legal relationships established within the sphere of international trade are, because of their very nature, liable to be regulated in an entirely different manner from that wherein domestic law relationships are governed. The very international nature of the legal relationships of international trade leads such relationships to evade the authority of municipal law forcing them to come under a law that is completely detached from any domestic contingency - a universal law on international trade - the only law capable of instituting the legal sphere international business requires for its development.

6. Any such unification as may have thus far materialized has been merely fragmentary and partial for purposes of meeting the most urgent requirements of international business world, like for instance, in matters of transport. But the inconvenience of such a method, regarding the application and interpretation of the particular provisions thus adopted was noted at once. In the absence of a general regulation of the fundamental principles of the law on interna-

(1) Le droit du commerce international, Yvon LOUSSOUARN et Jean-Denis BREDIN, supra cit., p. 9

tional trade, for the sake of filling the gaps which nevertheless existed, one was forced to refer to the fundamental principles of a municipal law which was not, however, easy to determine in advance.

The method adopted by UNIDROIT, which was conformed to by other organizations dealing with the unification of law, and quite recently by the United Nations Commission for the law on international trade, was the only possible method in the first stage of unification. At that time, a distinction between the legislative technique of the civil law countries and the "Common Law" countries was still clear cut. A unification process, in the form of codification, even if restricted to commercial transactions only, would be doomed to failure. In the circumstances, it was necessary to make an effort in attempting to devise texts limited in scope, liable to be accepted by the majority of countries and avoiding as much as possible touching upon the general principles on which the various legal systems are based. A definition and interpretation of certain basic concepts was left to the legislator and to the municipal Courts.

This unification by sections met with some success, especially in the spheres which are international by tradition: air and maritime transport, arbitration, intellectual property. Conversely, it revealed a great weakness like all edifices built on foundations that are not too firm: contradictory provisions, differences of opinion in interpretation due to the lack of common general principles, overlapping and dual use (1).

Such a method is far from offering an international trade law a possibility of finding satisfactory specific solutions. This is why today, as heretofore, international business aims at establishing a veritable jus commune mercatorum of a material law, appropriate for regulating international commercial relationships.

On the other hand, the obstacles which had originally materialized as a hindrance to the technique of codification, have been somewhat reduced in recent years. The ditch separating the "Civil Law"

(1) These considerations have led the Council of Europe to establish, within the sphere of its Legal Co-operation Committee, a sub-committee for basic legal concepts which got under way in this field with a considerably important activity in research and comparison.

area from the "Common Law" area is no longer insuperable. The United Kingdom, as it witnessed by the programs for the works of the "Law Commissions" for England and Scotland has started treading the path leading to codification. The United States preceded the United Kingdom when it drafted the "Uniform Commercial Code".

Another occurrence which represents an important stage in the evolution of unification through codification is the adoption by Czechoslovakia of the law on legal relationships in international trade (Law n. 101 dated December 18, 1963 which came into force on April 1, 1964). In actual fact this law, although liable to being applied merely in cases where, under the terms of the rules governing conflicts of laws, the Czechoslovak law is stated to be applicable in regulating the subject relationships, constitutes a remarkable progress in the unifications thus far attained, representing as it does an organical combination of rules applicable to international legal relationships, preceded by a description of the nature of the relationships involved.

The Czechoslovak Law rallies with the system of unification restricted to international relationships followed by UNIDROIT in its Drafts on the sale of goods which in any event served as a model (1).

Finally, there is a unification of law concerning the contract for sale, realized by the "General Conditions of the Delivery of Goods between Member Countries of the Economic Inter-Aid Council (COMECON)", the latest edition of which came into force on January 1, 1969.

These general conditions, claiming to regulate all aspects of the contract for sale, from its conclusion to its performance,

(1) See the introduction to the annotated edition of the law by Ludvik KOPAK, 1966, page 2, where it is stated that for purposes of drafting this law "besides Czechoslovak experience acquired in international business, also foreign modern rules were considered. In this connection special attention was devoted to the first attempt at obtaining a uniform regulation of sale, known as sale of an international character, included in the Hague Draft Convention providing a uniform law on the international sale of goods, of 1956".

are of a mandatory nature. Recommended by the Permanent Commission on Foreign Commerce of COMECON, the General Conditions were studied by the Member Countries and upon being adopted by the latter, they were implemented under the procedure provided for in each individual country (ratification, Government resolution, etc.), so that they became obligatory.

Notwithstanding their appellation, which could lead to a portraying of conventional rules (such as the general conditions of Western Countries) in actual fact the general conditions of the Socialist Member Countries of COMECON are of a mandatory nature, because the parties may derogate therefrom only in very exceptional and specific cases. Here is thus a matter which, while generally covered both by municipal law and the uniform law on the sales of goods of a merely yielding nature, is regulated, in the relationships between foreign commercial organizations of the Socialist countries in a mandatory manner. That is why one may safely say that the COMECON General Conditions represent, to date, "the only example of uniform law on international sales" (1).

Although the COMECON General Conditions concern the contract for sale only, they represent the results of a very useful experience even in respect with the general scheme of obligations, the fundamental principles whereof may be inferred from this regulation of one of the most important contracts in international trade.

On the other hand, qualified legal writings which for some time past have refrained from dealing with international trade (2) have now directed their attention to the study of legal

(1) Michael Joachim BONELL, Fondamento Giuridico delle Clausole, Regole e Condizioni generali del Commercio Internazionale, Thesis, Rome, 1968, page 30.

(2) Maurice TRAVERS, Le droit commercial international, Vol. 5 1932-1938; Pierre ARMENJON, Le droit international privé commercial, Dalloz, 1948

relationships arising within the sphere of international trade thus offering a support to both practice and the process aimed at obtaining a unification of the law on international trade (1).

It is now hence a question of overcoming the state of partial and fragmentary unification and of proceeding in a systematic manner with the codification of at least the fundamental principles of the law on international trade, which could serve as a basis to any further regulation of the more important legal institutions of this law, including those which are already unified.

The importance of the codification of law on international trade to economic development and the fact that the United Nations are highly interested in the unification and the codification of the law on international trade, justifies continued courageous efforts being made in proceeding forward with the most ambitious schemes; and the progressive codification of the law on international trade should hence be dealt with in a more ambitious manner from the point of view of the extent of its sphere of operation and should be made to become more modern from the method standpoint.

II

7. Concerning the sphere of operation of unification, it should be noted that whenever it is intended to regulate a contract, one first of all necessarily requires a general regulation of the fundamental principles which is to be enforced in every instance where there is an absence of special provisions, or where the stipulations agreed to in the contract are to be interpreted in the light of general principles. This is why codification of the law on international trade should start with a general scheme devoted to obligations.

(1) Yvon LOUSSOUARN and J.D. BREDIN, Droit du commerce international, Sirey 1969.

This general scheme could include any such general principles as are common to all obligations, both contractual and non contractual. In this case it would be of a higher degree of generality and would be more appropriate from a scientific standpoint.

But there is nothing to prevent this general scheme from being envisaged as limited to contractual obligations only, at least in this first stage of codification.

8. With regard to the object of codification, this could be envisaged in two ways: a) the material uniform rules should be intended to regulate simultaneously both domestic and international relationships (such as, for instance, the Geneva Conventions of 1930 and 1931 in matters of bills of exchange and cheques); b) material uniform rules should be appropriate for international relations (different from those governing domestic relationships). Their sphere of operation would then be restricted to international relations only (such as the uniform law on the international sale of goods, the general conditions for the delivery of goods by COMECON Countries, the laws on the international transport of goods by rail CIM or S.G.S.M., Czechoslovak Law n. 101/1963 on legal relationships in international trade relations, etc.).

For purposes of this first stage in codification it would be proper to consider this latter method; codification should be confined to legal relationships arising from international trade relationships, that is to say to international relationships alone.

It would be necessary to give a definition to these international relationships, on the one hand, in order that they may be distinguished from "legal relationships with a foreign element", with which they are often confused, and on the other hand for the purpose of avoiding, as much as possible, any difference of opinion in the interpretation or definition which could arise not only in legal practice but also at the level of legislative interpretation. In actual fact, upon the introduction of an international convention, signed by the States, into municipal law, it often happened that the municipal laws, through the intermediary of which this process was carried into effect, construed the definition contained in the

international Convention in a completely different manner (1).

That is why the definition of the notion "international relationships" requires special attention.

9. The purpose aimed at by codification should also be clearly specified, namely, the development of international trade on the strength of a certainty due to originate from a uniform regulation of substantive law. Such a provision (existing in the Uniform Commercial Code drafted by the American Law Institute and the National Conference of Commissioners on Uniform State Laws as well as in Czechoslovak Law n. 104 dated December 4, 1963 on legal relationships in international trade) could even turn out to be highly valuable in the interpretation of the various provisions of codification and of the contractual stipulations.

The first Article of the afore-mentioned Czechoslovak Law dealing with "The purposes of the Law", is worded as follows:

" The purpose of this law is to regulate completely and on the basis of the principle of total equality of rights and of the inadmissibility of any discrimination on the part of any one participant in international trade, the financial relationships in the sphere of international commercial relations, thus aiding in the development of the economic relations of the Czechoslovak Socialist Republic with every other country, regardless of its social and political system and thus contributing to the consolidation of peaceful co-existence and friendliness between the nations".

(1) Upon the introduction into municipal law of the substance of the Brussels Convention of 1924 on the maritime bills of lading, the field of application of the bills of lading as determined by Article 10 of the Convention, was construed in a broader manner by English Law Carriage of Goods by Sea Act of 1924 (Section 1) and by the Belgian Law of November 28, 1928; and in a completely different and more restrictive manner by American Law - USA - Carriage of Goods by Sea Act, as well as by the Spanish Law of December 22, 1949 and by the Portuguese Law of 1932. See MATTEUCCI, Introduction à l'étude systématique du droit uniforme, Collection of the Courses of the Academy of International Law, The Hague, 1957, p. 387.

There thus exists a declaration on the fundamental principles on which the law is based, which could be of use in the construction of the various provisions of the code, and, should the case so warrant, to fill any gaps in the law. There is even a provision of the Law - Article 723 - referring, for purposes of construing its rules, to the fundamental principles of such law, particularly to those expressed in the first Article.

Regarding the Uniform Commercial Code, the law requires that the provisions of this Code should be construed and applied in the spirit of the fundamental principles on which the subject Code is based, namely, those which would permit the law on trade to be simplified and modernised, and which would favour a permanent development of commercial practice through custom, usage and agreement between the parties. Thus, the law could be uniform in all jurisdictions. The parties may derogate from the provisions of the Code, excepting in cases where it is otherwise provided for by the law, or else when bona fide, diligence or reasonable obligations etc. provided for by this law are involved and which the parties cannot disregard; they may, however, agree to certain general standards by means of which they could value their compliance with the subject provisions, providing these standards do not prove to be manifestly unfair. (1-102).

Regarding questions which are not expressly determined by the Code, the provisions thereof shall be completed by the principles of law and equity, including commercial law and the law concerning the capacity of bargain, pleas to bar, fraud, misrepresentation, duress, coercion, mistake, bankruptcy and other causes for validity and invalidity.

Of these two models we believe it would be sufficient to hold that "the purpose of codification of the law on international trade is to promote international commerce on the basis of the principle of total legal equality between the parties and of equity."

In actual fact, the principle of total equality of the parties under the law necessarily implies the principle of non discrimination (to which the Czechoslovak law refers), while on the other hand such further hypothesis as may be referred to by the Uniform Commercial Code are to be found in the notion of equity (which is in any event fairly vague and hence liable to envisage an endless range of hypothesis).

10. As regards interpretation the difficulties which arise in practice should be stressed because of the fact that certain legal institutions are sanctioned in certain systems while they are completely disregarded in others (such as trust, for instance) and of the fact that the content of certain legal institutions common to all, or at least to most municipal laws, are construed in an entirely different manner; in this connection there should be recalled to mind the disputes which arose on the interpretation of Article 25 of the Convention for the unification of certain rules concerning international air transport, signed at Warsaw on October 12, 1929. And these are merely a few examples amongst the many others that could be cited.

Following the IInd Meeting of the Organizations dealing with the Unification of Law, many participants stressed the difficulties caused by the different interpretations of certain very usual notions, such as "fault", "bona fide", "cause", "equity", "consideration", "trust", "unlawful", etc. In their interventions they stressed that the differences in interpretation could threaten the certainty of the law. That is why the IIIrd Meeting of the Organizations dealing with the Unification of Law was entirely devoted to any such differences of opinion as may arise in the interpretation of uniform law.

This is the reason wherefore the general scheme of codification envisaged should also include the definition or the descriptions of certain notions (such as those which are to be found in the Uniform Commercial Code, or those which certain organizations are making efforts to place in a proper perspective) but without thereby changing the code into some kind of dictionary.

11. The sources of obligations: the contract

The first stage in codification should be restricted to contractual stipulations only. Therefore, of the various existing sources, the contract only should be regulated.

The Czechoslovak Law includes a scheme concerning the legal act. This scheme does not seem to us to be absolutely necessary in that of all legal transactions only the contract is regulated.

Definition

Regarding the definition of the contract, in general, one could take several positions:

a) a short, clear and simple definition, such as that provided for in the Franco-Italian Draft Code on obligations: "the contract consists of an agreement between two or more persons for the purpose of instituting, amending or extending a legal relationship" (Title I, General Provisions, Ch. I Sources of Obligations. Section I, Contracts, General Provisions, Article 1).

b) a definition to be included in the notions to be described in the scheme devoted to definitions (hereinabove) in view of the difficulties encountered when attempting to translate these notions into various languages. Hence, following the 1st Meeting organized by UNIDROIT, these difficulties had been rightly stressed in connection with the word "contract", in German: "Vertrag" - contract, even without cause" (1).

c) one could transfer the decision over to the sphere of the conditions required for the existence of a contract, even if one were to dwell on the "cause" as an essential element of the contract.

It should be noted that the Uniform Commercial Code deals with this question of definitions, in the part entitled "General Definitions and Principles of Interpretation - Part 2, Section I - 201. General Definitions) wherein notion of "Agreement" (3) and the notion of "Contract" (11) are defined at the same time. But these two notions are again defined in the part dealing with sales (Section 2 - 106. Definitions: "Contract"; "Agreement", Contract for Sale", etc.). See also the Civil Code of Malta, which in some manner or other is about half way between the continental concept and the Anglo-American concept, and wherein the contract is described as follows: "A contract is an agreement or an accord between two or more persons under which an obligation is instituted, regulated or dissolved." (Art.1001).

One could even omit giving a definition for a contract (see the Czechoslovak law which defines the legal act only, the uni-

(1) See the proposal made by Prof. Leontin CONSTANTINESCO at the Meeting of September 20, 1956, Annuaire 1956, II, p.437.

form law on international sale of goods, the uniform law on the conclusion of contracts for the international sale of goods; these two latter laws even fail to give a definition of the contract for sale).

The conclusion of a contract should be regulated in conformity with the principle contained in the "uniform law on the conclusion of contracts for the international sale of goods" (including Annex II to the Convention connected therewith) as, generally speaking, it is advisable to follow procedures which have already been accepted by a certain group of Countries. This does not, however, rule out any intervention intended to improve the wording and even the content thereof (see Articles 106-118 of the Czechoslovak Law; Articles 2-4 of the Franco-Italian Draft on Obligations and the report referring thereto, page 38; the Uniform Commercial Code, Part 2, Section 2, pp. 204 et seq.)

Conditions required for the existence of a contract

Civil codes in general make no distinction between the conditions required for the existence of a contract and the conditions for the validity of the contract. They are both regulated together, in the part referring to "the essential conditions for the validity of contracts" and the part which deals with "actions on nullity". This formula, which is fairly vague, has often led in practice, to a confusion which qualified legal writings have attempted to dispel in specifying each of those two categories.

The Czechoslovak Law n. 101/1963 likewise avoids making any distinction between the two categories of conditions and resorts to the following wording:

"There shall be considered as essential elements of a contract those regarding which one of the parties has conveyed to the knowledge of the other party, during the negotiations, that an agreement in their connection constitutes an essential condition for the conclusion of the contract, together with the qualities envisaged in the fundamental provisions relating to the different categories of contract" (Art. 106).

It should be stressed that the law in question makes an attempt at using the notion of "essential elements" instead of "conditions" for the purpose of leaving to the latter its technical meaning of matter of "procedure" which appears to us to be advisable.

But, in general, the formula portrays no position whatever. The question arises first of all in cases where the intent of the parties is not expressed too clearly. It should be further considered whether one could refer to a contract even in cases where this does not fulfill the conditions that are objectively essential to its existence. This issue may materialize in connection with unnamed contracts above all in cases where the law does not provide for any definition concerning them, which is in any event the case of the Czechoslovak Law.

In fine, parties are invariably offered the possibility of subjecting the existence, or the validity rather, of a contract to the condition of the conclusion of an agreement in certain circumstances.

This is why the solution, in its present formula at least, does not seem to be acceptable to us.

It would thus appear to be necessary to make a distinction, commonly admitted by the qualified legal writings of certain European countries and quite often by the practice of these countries, between the conditions of existence and the conditions of validity. This is the direction taken by the Franco-Italian Draft Code on Obligations and Contracts, which states:

"Conditions required for the existence of a contract:

- a) the consent of the parties;
- b) an object that could be the subject of a contract;
- c) a lawful cause.

Regarding the conditions for the validity of a contract these are dealt with in the part concerning actions for nullity. For the sake of avoiding a more complex formula one could maintain such a solution according to which "a contract may be cancelled:

- a) on grounds of legal incapacity of the parties or either one of them;
- b) default of consent."

But this solution of a by-party introduction of the essential elements of a contract, which could be very well accepted by both qualified legal writings and practice, not only in the promoting countries (France and Italy) but also in the other countries on the European continent having a similar system of law, should either be compared with English Law which rules that "a lawful consideration" is an essential element of the contract, or with the German Civil Code which disregards cause as an essential element of "the contract".

The Civil Code of Malta, although in the form of a code of the continental type of "civil law" reflects the influence of the English system, and includes a formula that is somewhat composite: "The following are the conditions essential to the validity of the contract:

- a) the consent of the parties to the contract;
- b) the consent of the party who binds himself;
- c) a certain thing which constitutes the subject-matter of the contract;
- d) a lawful consideration."

A solution could be found only after a very careful study of comparative law were made. But, at this time, it seems to us that legal logic would be in favour of a distinction between conditions of existence and conditions of validity of contracts. For the latter, and above all in cases where there is a default of consent, it appears to us that the law on international business should provide for this question in an altogether different manner from that which it is now provided for in no matter which municipal law, in view of the security required by commercial transactions, none too reconcilable with a subjective concept of the default of consent.

Regarding the contract concluded by agency there already exists a Draft uniform law on agency the provisions whereof could be embodied into a progressive codification of obligations, especially if the Draft were accepted by the States concerned.

12. The effects produced by contracts

In respect to this part of codification we believe that the fundamental principles should be inferred, in general, from the uniform laws in force and first and foremost from the uniform law on the international sale of goods. One could likewise avail oneself, for this purpose, of the general conditions on the delivery of goods agreed upon by the Socialist countries of COMECON, the provisions of which are true and proper uniform rules on international sales. Likewise, certain rules of the Czechoslovak Law and of the Uniform Commercial Code could most certainly be referred to for the purpose of envisaging fundamental principles common to all contracts.

International practice, confirmed in the general conditions, in standard contracts or in the awards of commercial arbitration on disputes arising in international trade relations would be a source which could also be turned to account for the fundamental principles of contracts.

It is more in scanning sources of this type, originating from the international business world, that one should search for solutions to be proposed, rather than civil codes drafted for domestic relationships. Even a codification, of the nature envisaged by the Franco-Italian Draft on Obligations, highly recommendable from a technical standpoint, should be construed in the light of international practice. Thus, for the purpose of giving an example, the material effects of a contract have found in the Franco-Italian Draft a solution which would not appear to be at all acceptable to us in international trade. In actual fact, according to this Draft (as in any event in conformity with the provisions of Article 1138 of the French Civil Code "in contracts the purpose whereof is the transfer of ownership, the institution or the transfer of rights in rem, such ownership are transferred and acquired as a result of the consent of the parties, provided that they have not been heretofore transferred " (Art. 41) (1).

Transfer of
ownership.

The uniform law on the international sales of goods has left this issue open. But a codification could not disregard it.

The Czechoslovak Law provides that the transfer of ownership materializes following the delivery of the goods, by virtue of the contract, but the parties may agree on a different time with regard to the acquisition of ownership title (Art. 324). These provisions concern the contract for sale (Art. 322) but they are

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- (1) The legal history of Western Europe which has introduced the principle that ownership is transferred to the purchaser as a result of the contract for sale alone has in actual fact failed, for centuries, to make a distinction between the legal principles concerning sales and those concerning ownership. The resulting effects are still to be seen in the great confusion existing between the doctrine of the risk of loss and the risk inherent to ownership and between the acquisition of ownership by ascertaining the goods in matters of property sold, for the purpose of transfer thereof, and the acquisition of property under the transfer of ownership title. Ernst RABEL, Projet de la loi uniforme concernant la vente internationale de marchandise. L'unification du droit, 1948, page 58.

likewise applicable any time the result of the effect of a contract is the transfer of ownership (1).

In conformity with the General Conditions of COMECON, the transfer of ownership title to goods is not the result of the effects of consent but of the delivery of the goods. These general conditions in any event regulate this question in the various categories of contracts.

Thus, in cases involving transport by rail and "free on board" delivery in the country of the seller, ownership title as well as the risk of fortuitous loss or damage shall pass from the seller to the purchaser at the time the transfer is effected from the railroad of the country where the goods are sold to the railroad of the country where the goods are received (Art. 5). The solution shall be a similar one if transport is effected by road, in which case the ownership title passes from the seller to the purchaser at the time the goods are unloaded from the vehicles of the seller and loaded on to the vehicles of the purchaser; in cases where air transport is involved, ownership title passes to the purchaser at the time the goods are delivered to the air carrier in the seller's country.

Regarding water transport, the time of transfer of ownership title to the goods shall be made to depend on the manner in which delivery is to be made (FOB, CAF, or C and F at the port indicated in the contract), but the rules are in general those provided for Incoterms (published by the International Chamber of Commerce).

What should be borne in mind is the fact that international practice refuses to accept the solution provided for by the French Civil Code and by the Franco-Italian Draft on Obligations,

(1) According to the provisions of Article 105, paragraph 1 thereof, of this same law "the provisions concerning the acquisition of ownership title to the goods as a result of the stipulations regulating a contract for sale (Art. 321 to 329) shall, by analogy, be applied to the acquisition of ownership title on the strength of a contract falling under the jurisdiction of this law.

but, rather, conversely in this practice the time of the transfer of ownership is linked with the time of the delivery of the goods. This is a rule which seems to us to be sufficiently firmly established for deserving consideration.

As far as the risks are concerned, practice seems to impose a solution by which the risks are passed to the purchaser upon the delivery of the goods, regardless of the time at which the latter acquires ownership title thereon (this the meaning to be found in Czechoslovak Law, Art. 380, paragraph 1). In conformity with the General Conditions of COMECON, the risks are transferred to the purchaser simultaneously with ownership title to the goods, but only because such ownership title is not conveyed to the owner as a result of the consent of the parties - solo consensu - but by the delivery of the goods, either to the purchaser himself, or, in conformity with the distinctions made according to whether transport is effected FOB, CIF, etc.

In Rumanian Law, for instance, civil law, which nevertheless remains the universal law in the subject matter, includes a rule under which "in contracts the purpose whereof is the transfer of ownership or of any other right in rem, ownership or ownership title shall be transferred as a result of the consent of the parties and the property involved shall still be at the risk of the purchaser provided that delivery has not been heretofore effected."

Therefore, the risks are connected with the transfer of the property and they shall be the purchaser's liability inasmuch as owner of such property.

Nevertheless, in cases where international commercial relations are involved, regulated by the General Conditions of COMECON, the rule is, as we shall now see, completely different: neither the transfer of the property nor the risks connected therewith shall pass to the purchaser at the time, and as the result of the consent of the parties (1).

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- (1) A solution appears now to be necessary also in cases involving relations between enterprises acting inside the country, wherein the fundamental conditions (equal to the general conditions of foreign trade) specifically state the time at which transfer of the risks shall take place in varying circumstances.

Here is thus a solution which appears to be necessary in international practice, and this for the more reason that for the purchaser the delivery of the goods is of capital importance. Businessmen, upon binding themselves under a contract never forget to make suitable provisions for the transfer of risks, above all under the present conditions concerning the conclusion of contracts in conformity with the general conditions or standard contracts which almost invariably include provisions concerning the transfer of risks.

The solution is, however, facilitated by the fact that delivery constitutes the most important service to be performed by the seller and hence a point which is given first and foremost consideration by businessmen and which has found an acceptable settlement in the uniform law on the international sale of goods (Art. 19).

It therefore follows that in cases involving obligations arising out of a contract (or at least out of a contract for sale) the processus of unification appears to be realizable..

We are convinced that nihil obstat the other questions concerning the effects of contracts: the binding force of contracts (the theory of relativity of the binding force of a contract; res inter alias acta aliis necque nocere necque prodesse protest); conclusion on behalf of others, the factual promise of a third party, simulation (counter-deed) etc.

13. The interpretation of contracts

This process, which is inevitable during the existence of a contract, and a preliminary stage in the performance thereof, is due to find its regulation in an imaginary code of law on international trade in view of the fact that the silence of the parties, who are not in a position to envisage everything, compels the Court to make up any deficiency. And the Court would be invariably inclined to apply the lex fori in the absence of any other rule to be complied with.

As far as the rules of interpretation of contracts are concerned, it seems to us that the rules provided for in the Franco-Italian Draft Code on Obligations (Art. I-59) could very well serve as a model in that, as they are rules of simple logic, they are to be found in many legal systems.

For the purpose of supplying a few examples we cite below the following rules:

1. In a contract it is necessary to search for the intent (1) of the contracting parties, rather than stopping at the literal meaning of the terms.
2. The rule actus interpretandus est potius ut valeat quam ut pereat holds good whenever a stipulation is liable to be interpreted in two ways: it should be construed within the meaning producing some effect rather than within a meaning producing no effect whatsoever.
3. The terms liable to have two meanings shall be construed within the meaning that is more fitting to the nature of the contract.
4. Any expression that might be ambiguous shall be construed in accordance with the practices and usages of the place where the contract is performed.
5. In cases where reference is made to commonly used terms, clauses, general conditions and standard contracts, these shall be construed within the meaning which the business circles concerned habitually ascribe to them (Art. 9, paragraph 3 of LUV).
6. All clauses of contracts shall be interpreted one with another, and each shall be ascribed the meaning which transpires from the transaction as a whole.
7. In cases where there is any doubt the contract shall be interpreted against the stipulating party and in favour of the party undertaking the obligation. This rule is but a logical

(1) In general one says "common intent" of the contracting parties; in actual fact the "material intent" of the parties is involved in view of the fact that it may be that the intent is not at all "common" each party having ascribed to the respective stipulations the meaning it finds most convenient.

consequence, however, of the provisions concerning the burden of proof. The creditor shall have to prove any stipulation referred to by him as being in his favour: actori incumbit onus probandi.

There may even exist further rules which could be inferred from the legislation of the various States or from international practice.

14. Different types of obligations.

This heading should include the obligations set forth hercunder:

- time obligations;
- conditional obligations (condition precedent, condition subsequent, effects of fulfillment of condition, etc.);
- obligations having a plurality of objects: alternative, optional;
- joint liability obligations (between debtors and creditors);
- dividable and undividable obligations.

But we are of the opinion that the most important type of obligation in international business is that containing a penal clause; this clause has now become typical in relations between Socialist countries (even in domestic and municipal law where relationships between economic organizations are concerned).

15. Extinction of obligations.

As a rule an obligation becomes extinct upon its voluntary fulfillment or a solutio payment. But when a compulsory execution is involved there seems to be a great difference between the "civil law" which permits "specific performance" and the "Common Law" which does not permit that discharge of the obligation be made by specific performance, but merely provides for a right to claim for damages and interest on grounds of default of fulfillment of the obligation involved.

International trade fits rather badly into a law which fails to include a general rule on specific performance. But it appears that in English practice and above all in the American practice there already exist provisions for specific performance within the sphere of equity jurisdiction, especially in cases where the goods are not fungible (res certa) (1). This is why the solution provided for in the uniform law on the international sales of goods (Art. 85) could be taken as a basis for a general regulation, that is to say, that specific performance should be the rule coming closest to meeting, as it does, the requirements of international trade.

This part could be made to cover any such question as may be raised by payment, for instance: who can make the payment (even a third party); whom the payment can be made to (even the holder of the title of credit); part payment; the place where the payment is to be effected; payment under subrogation, inference of payment; offers of payment and delivery, etc.

Regarding the manner in which these obligations shall become extinct by means other than payment, we believe this should be included even if there are here involved certain types of extinction which are unknown to certain legislations (such as the remission of a debt under Socialist Law) or are regulated by civil procedure (such as clearing or extinctive prescription).

Particular attention should be devoted to extinctive prescription (2).

(1) See Ernst RABEL, op. cit., p. 62

(2) It should be noted that up to the last edition which came into force on January 1, 1969 the General Conditions on the Delivery of Goods by the COMECON Countries failed to regulate extinctive prescription, and this was the cause of many difficulties which arose in practice and therefore justifies introducing into a new edition a very detailed regulation on the matter.

16. The transfer of credits.

This is a matter of great practical importance in international trade and should also be included in the general scheme dealing with contractual obligations. It should be stressed that even the Franco-Italian Draft Code on Obligations and Contracts, although intended for civil law relationships nevertheless embodied a regulation of this matter (to be found in the Chapter dealing with sales) in the general scheme. In this Draft even the provisions concerning the transfer of credits were completed by indicating the manner of transfer, likewise applicable to negotiable instruments.

17. Proof of obligations and fulfillment thereof.

The importance of evidence in international trade relationships is doubtless. In practice, to be the holder of a right without being able to furnish proof thereof is the equivalent of holding a right that is subject to the good will of the other party; it is as if the right involved were non-existent: idem est non esse et non probari. This is the reason why when the law requires that the existence of a certain legal relationship should be proved in a given manner, a defect of form makes this right a practically illusive right, provided that form is required only ad probationem and not at validitatem.

Nevertheless, proof was not made the subject of an attempt at unification. This matter is not regulated either by Czechoslovak Law n. 101/1963, or by the Uniform Commercial Code. Likewise, the General Conditions on the Delivery of Goods agreed to by the COMECON Countries (which, in general, have endeavoured to regulate all aspects of international commercial sales) have not regulated proof and this, in practice, constitutes an application of the lex fori.

This may be explained by reason of the fact that the questions of evidence are generally considered as pertaining to the sphere of civil procedure and consequently depending on the rulings of the Courts of Law.

But if certain aspects may be considered as belonging to civil procedure (the manner in which proof should be submitted, for instance) there can be no doubt over the fact that evidence is a matter very closely related to the basic rules on relationships in private law (at the very least, where rules concerning means of proof are involved, the conditions of their admissibility and of

their probative value). Proof is so closely related to the question of merit and its importance to the effectiveness of the law is so great that it could not be left out of a uniform regulation of the law on international trade.

This regulation should include, as far as proof of the existence of an obligation is concerned, certain fundamental principles the observance of which is absolutely essential in the proper administration of justice.

The object of proof raises an issue, which is the cause of so much dispute between the antagonists, regarding evidence supplied by a foreign law, and which presumes that a foreign law is rightly qualified to be considered as proof: either the jura novit curia rule is applied or the foreign law is assimilated to an element of fact (1) from the standpoint of proof (da mihi factum dabo tibi jus et judex indicat secundum allegata et probata). Under the conditions of unification the jura novit curia rule would most certainly become applicable, as the court would have no possibility of consulting any other but the uniform law.

The burden of proof. There is a generally accepted rule according to which "anyone claiming for the performance of an obligation shall supply proof therefor and reciprocally anyone claiming to be released shall justify the payment made (solutio) or the fact which produced the extinction of his obligation". In other words, there is here involved the actori incumbit onus probandi rule completed by the reus in excipiendo fit actor rule and limited by the juris et de jure irrebuttable presumption whereby countervailing evidence is not admitted. It seems that there is nothing to prevent this rule from being embodied into the uniform code of the law on international trade.

Means of proof and probative value thereof: This is a matter wherein the rule of the "freedom of proof" is to be found, confirmed by certain modern legislations (such as the Austrian civil procedure) and which has met with the favour of a part of the qualified legal writings - authors of civil procedure in general.

(1) Henri BATTIFOL, Droit International Privé, 1967, p. 375
Martin WOLFF, Private International Law, p. 219

We are not inclined to believe that this rule has been confirmed in the most absolute manner, and are of the opinion that certain limits should be maintained.

An opinion should also be rendered on the probative value or the effects of the means of proof as such, of modern means of communication.

Presumptions, which are not established by law and those which are established by law (amongst which a particular regulation to be devoted to the authority of res judicata) should also find their place in a uniform regulation.

Regarding an ex parte acknowledgement as a means of proof, it should be stressed that while in Western Law "it is evidence against the party making such acknowledgment" (1) in Socialist Law the acknowledgment, even if judicial, is left to the Court's appraisal thereof, and caution, like all means of proof lacking a special regulation (2).

Finally, there is the question of the agreement of the parties on evidence produced; and the conditions under which such evidence shall be considered as valid must be specified.

III

18. The questions concerning method have already been made the subject of an especially careful preliminary study during the IVth Meeting of the Organizations dealing with the unification of law. It should suffice to refer this subject matter to the reports

(1) See also Articles 307 and 308 of the Franco-Italian Draft Code on Obligations and Contracts.

(2) See Article 1206, paragraph 2 of the Roman Civil Code as amended in 1950.

which were discussed during this Meeting and to the final report of the session, published in 1967-1968, UNIDROIT Year-Book, Volume II, UNIDROIT Ed., Rome, 1969.

Nevertheless, in view of the fact that the successful outcome of unification may depend on the choice of the method, it should be necessary to envisage, at this time, the most effective method for attaining such an end. It thus seems to us that, in making a choice between the various methods, one should, first and foremost, be careful in not hurting the feelings of the States concerned where their sovereignty is involved, and then each State should be completely free to consider or not to consider as effective, on its own territory, the rules of the laws making up the legislation on international trade. But, on the other hand, one should bear in mind the nature of the legal relationships that are the object of unification, as we believe that only relationships coming within the sphere of international law should be the object of unification.

Now, legal relationships in international trade, instituted and developed in an international sphere, escape since their inception the authority of a municipal law. This is the reason why their regulation must be effected bearing in mind their international character and their purpose, that is, the fact that they are to serve international economy. In other words, the regulation of legal relationships originating in the sphere of international trade must fall under the jurisdiction of an international body.

Without dwelling any further on the method to be followed, we are of the opinion that the most suitable method would be that followed by the International Civil Aviation Organization (ICAO), as we believe that a regulation of international trade is, for the international community, at least just as important as that of civil aviation. The law on international trade will come automatically into force, upon being drafted and adopted by the respective international organizations, and the States will have a right to making their reservations, at any time, provided that these reservations (amendments or restrictions) are notified to the international body responsible for the drafting and entrusted with the task of following the evolution of the law ⁽¹⁾. Should it be impos-

(1) This is a solution which was already proposed by René DAVID; see L'unification et l'harmonisation législative sans engagement international, Annuaire 1967-68, pages 86 et seq.

sible to carry this ideal solution into effect the Code could be submitted to the States as a model-law, upon an examination and a discussion thereof being made by the highest international jurisdictions.

IV

19. The mandatory or non-mandatory nature of regulation.

Out of the uniform laws in force stress should be laid on the "General Conditions on Delivery of Goods between the Member Countries of the Economic Inter-Aid Council" which came into force on January 1, 1969 and which are of a mandatory nature as the parties are allowed to derogate therefrom only in very exceptional and particularly specified cases. This solution may be explained on the basis of the nature of the domestic economy of the afore-mentioned countries and particularly on the basis of a monopoly of foreign trade. But in every country there is a tendency to institute an increasingly marked State regulation of foreign trade which could justify the mandatory nature of the rules concerning international commercial relations.

There is, on the other hand, a uniform law on the international sales of goods, the provisions whereof as a whole are of a non-mandatory nature (1).

Lastly, Czechoslovak Law n. 101 dated December 4, 1963 on legal relationships in international trade has adopted an intermediate method: its provisions are, in general, of a non mandatory nature and are indicated as such in the very text of the law itself.

This latter method appears to be the more fitting; if all the provisions were of a an optional nature, the effectiveness of codification and of making laws uniform would be in danger. It should be further ascertained which provisions are to be of a mandatory nature, regardless of the fact as to whether or not in a

(1) "The parties to a contract for sale are free to exclude in whole or in part the application of this law. Such exclusion may be either express or implied". (Art. 3)

municipal law system they are of a mandatory nature, because it may be that the very basis of international trade requires solutions which do not coincide with this method of solving the problem and which in the same circumstances are enforceable under municipal law (1).

V

20. The technique.

The difficulties raised by technique in the drafting of a uniform law were already analysed by the IIIrd Meeting organized by UNIDROIT and in the general report on the methods for the unification of law drawn up during the 1st Meeting of the Organizations dealing with the unification of law.

It is not intended here to resume the study of the questions raised, but merely to stress the importance of the process to the effectiveness of unification, and the value of the experience acquired in their practice by institutions of comparative law and above all by the organizations dealing with the unification of law. It is thus that a technique, to be common to both the drafting of municipal laws and the drawing up of uniform law must be resorted to; this technique should also be particularly suited for the drafting of uniform law. The clarity of style, the wording of the sentences, the punctuation etc. belong to the first category.

Where uniform laws are concerned, besides the provisions referred to above there are other rules which include those concerning the translation of certain terms (because an incorrect translation is liable to cause misunderstandings that could be detrimental to the uniformity of the law) whereby expressions that are difficult to translate should be substituted by definitions for the notions which are described in different manners in the various legal systems.

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- (1) "The impossibility to derogate from certain rules may represent a useful condition for the very purpose of unification and this holds good also in cases where the grounds for the impossibility to derogate are to be found in the requirements of international trade which are not the reflection of a particular situation governed by municipal law." M. MATTEUCCI, Les méthodes de l'unification du droit, Annuaire 1956, p. 60.

One should further be careful not to overlook the rules proposed by the National Conference of Commissioners on Uniform State Laws regarding the technique in the drafting of uniform laws the greater part of which are reproduced in the general report submitted to the 1st Meeting of the Organizations dealing with the unification of law.

Our experience, as members of the Legislative Council of our Country and subsequently of the Legislative Commission, although of great avail for the purpose, is pretty far from placing us in a position to submit any other suggestions concerning the technique to be adopted in the drafting of uniform laws.

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Conclusions

A progressive codification of the law on international trade doubtless constitutes a process that is considerably broad in scope, of long duration and full of difficulties that are far from being negligible. But it would be inconceivable, on the one hand, to allow international trade to be governed by a multitude of municipal laws, thus leading to an intolerable state of affairs, and on the other hand to leave to practice alone any attempt to settle any such legal issues as may arise in international trade.

The conclusion which one is therefore permitted to reach from the foregoing is that it is indispensable to proceed, forthwith, with a progressive codification of the law on international trade.

This proposition which at first sight would appear to be one far too ambitious can instead be carried into effect provided certain conditions materialize.

In the first place codification should be achieved gradually. It is not a question of drafting an international code on commerce immediately and all at once, but rather of laying down a scheme for an ideal code in making a search for all such matters as should be comprehended in this Code. This task could be facilitated somewhat by the model of the Czechoslovak "International Commerce Code" and, in part, by the "Uniform Commercial Code" of the United States of America.

The uniform laws already drafted, or in the process of being drafted, should be included in this Code, thus constituting special Chapters thereof. They should hence be given consideration and, should the case so warrant, be revised and harmonised under this new standpoint.

The first task, within the sphere of general and organical unification plan, will consist in preparing a draft on a general scheme the basic principles whereof shall be intended to constitute the basis and the framework of unification. Drafts relating to special matters, including those which have been prepared or are now in the process of being prepared, should be made to agree with the basic principles appearing in the general scheme.

Thus, codification will develop gradually within the sphere of the uniform general principles, to the extent of covering any such field as may have been assigned to it.

UNIDROIT took the initiative in organizing the four Meetings of the Organizations dealing with the unification of law, referred to in the report. As a result of the discussions which took place during these Meetings, it appeared every time that it would be of great avail if the bodies contributing to the unification of law were to meet at regular intervals, in some manner or other, for the purpose of offering the benefit of their experience, of proceeding with an exchange of views on their plans for action in the matter, of expounding any such issues of methodology as may have come their way and of studying more closely certain questions of common interest.

In view of the fact that it is indispensable to proceed with a progressive codification of the law on international trade without delay, it has now become absolutely necessary, if this aim is to be attained, to concentrate the efforts of all those who wish to partake in this great scientific work. One should, in actual fact, profit by any such experience as may have been acquired in this matter by the Organizations dealing with the unification of commercial law and by anyone who, in some manner or other, could contribute to the successful outcome of this task.

The International Institute for the Unification of Private Law (UNIDROIT) who must face its responsibilities in the work for the unification of private law on the grounds of its institutional aims and purposes, its universal functions, the composition of its members who represent the principal legal systems of the world,

and of the experience gained in more than forty years, should all the more be bound to take the initiative in a work the accomplishment of which will favour to a very considerable extent the progress of international trade in the general interest of economic development and of the peace.

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