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REMARKS ON DOCUMENT C. 175 M. 54 1928. II

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REPORT PRESENTED TO THE LEADING-COUNCIL

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GENERAL REMARKS.

The document drawn by the experts appointed by the Economic Committee contains, besides a general introduction wherein are set forth the criteria which the Commission have complied with, four projects, viz: A draft regulation for bills of exchange and promissory notes divided into 12 chapters including a total of 77 articles; a draft of convention aiming at rendering the validity and the effects of bills of exchange and promissory notes independent of the observance of stamp laws, from the other to establish rules governing the conflict of laws in connection with bills of exchange and promissory notes; a draft regulation for cheques in 29 articles; a draft of a convention aiming at rendering the validity and the effects of a cheque independent of the observance of stamp laws and establishing the rules to govern the conflict of laws in connection with cheques.

It is necessary to remark first of all how the drafts of uniform regulations presented, following a tendency already manifested in the Congress of Stockholm of the International Chamber of Commerce (1927), have taken up the uniform Regulations of the Hague for bills of exchange and promissory notes, and the Hague resolutions for cheques.

An undoubtedly practical and suitable procedure owing to the vastness and importance of the works of the Hague Conference, and that the uniform Regulation of 1912 had been accepted and approved by 30 States among those which were present at the Conference, that the Swiss reform of chapters 24-33 of the Code of obligations inspires itself to it and that it has been received totally by Poland and it has had a profound echo in the Southern States of America.

Nevertheless the same experts have expressed their opinion that an ideal solution of the several problems arising from the variety of legislations in connection with bills of exchange, promissory notes and cheques, could be found at present but by adopting a uniform Regulation to be substituted for the sundry legislations by the States of the Continental Group (including among the latter also the Southern American States). This repeated reference to the States of the Continental Group, allows one to think that at present the experts do not consider it possible to attempt a new approach to the Anglo-Saxon type legislations and the procedure, should the result answer to the expectations, might lead to subdivide in this matter the civilized world into two large groups, i.e.: that of the future uniform regulations and that of the Anglo-Saxon type legislations.

Doubtless, as it has already been often remarked, the obstacles which arise in connection with an amalgamation of the Continental type legislations and the Anglo-Saxon type legislations, are very serious. The differences which appear to whomsoever compares both systems are almost disheartening, inasmuch as the Anglo-Saxon system, which also in connection with bills of exchange, promissory notes and cheques, follows the principles and accepts the spirit of Common Law, neglects many of the forms which are imposed in other Countries, and acknowledges a variety of contents and a freedom of action which cannot be admitted without danger by those Countries wherein the tradition and the customs which rule the juridical and economical life of the Anglo-Saxons do not exist.

Such difference of conception - which one might easily justify by drawing a list of the particulars of the Anglo-Saxon Law on bills of exchange - explains the attitude held by the British Delegates at the Hague Conference, and also somewhat justifies the

tendency followed by the Committee of Experts who, as it has been said, have above all kept Continental Legislations into consideration.

Now, still keeping into account the difficulties which arise for the adoption of a uniform legislature in connection with bills of exchange, it is always convnnient to assume as a guide a well decided tendency so as to arrive, be it even in time and by successive approaches, to uniform regulations. The Leading Council of the/Institute, in their meeting of May 31st, 1927, discussing in a general way the subject of unification, enhanced the danger one is apt to face by creating a rigid Continental system set exactly against the Anglo-Saxon system, thus rendering it more difficult to find a meeting point between the two systems.

The system adopted by the Committee of Experts does not seem to avoid this danger, because it reduces itself to a draft for a uniform regulation (wherein absolute prevalence is given to Continental tendencies) and to a convention destined on one hand to render the validity and the effects of bills of exchange, promissory notes and cheques independent from the observance of the provisions on stamp laws and on the other hand to establish uniform principles of International Private Law. Now, aside the first point (Stamp Law Provisions) to which we shall revert further on, this Institute holds:

I. - That the scope of the uniform Regulation should be to set down the rules for a type of a bill of exchange common to all the different States and particularly adapted for international circulation, without wishing to exclude other types of negotiable instruments which might for the present be still used in the different States.

II. - That however, in a convention added to the uniform Regulation

may be set forth the points in which to the contracting States, which have accepted the Uniform Regulation, be reserved the faculty of introducing rules derogating from the principes of the Regulation itself.

III. - That, to avoid uncertainty in practice, the contracting States in the convention itself, will bind themselves, in case such reserves are made use of, to communicate to all the other contracting States the text of the rules diverging from the Uniform Regulation.

IV. - That also in the draft of the Uniform Regulation may be accepted from the Anglo-Saxon Law some principles which, though not altering the essential lines of the Regulation, will be enough to lessen the discrepancy between that and the Continental system.

It seems to this Institute that while by means of reserves one eliminates the obstacles which might induce some of the States not to adhere to the Uniform Regulation, by communicating to the other States the derogations to the latter, one might rapidly reach not only a sure but a widespread knowledge, above all on the part of the banking institutes, of the rules governing bills of exchange in the sundry States. Without saying that very often the studies directed to establish the suitableness of introducing dercgations to the Uniform Regulation might induce many States to renounce to the derogations themselves, which, in international commerce, might - without practical utility for the bills circulating at home - give rise to obstacles

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NB. By letters R.U. reference is made to the Hague Uniform Regulation of 1912. - By letters C.C.I. to the Regulation suggested by the International Chamber of Commerce. By C.E. the new text proposed by the Experts of the Economic Committee.

or constitute a cause of inferiority.

The observations which follow on the single articles are mostly prompted by the conception of reducing, as far as possible and without altering the fundamental lines of the draft presented, the distance between the Continental system and the Anglo-American system.

REGULATION ON BILLS OF EXCHANGE AND PROMISSORY NOTES.

CHAPTER I. - ISSUE AND FORM OF A BILL OF EXCHANGE. -

C.E.1 = R.U.1 = C.C.I. 1.

The first paragraph of C.E.1 calls for the necessity of the term "Bill of Exchange", inserted in the body of the instrument. Such a requirement, which is connected with the quality of an abstract obligation arising from a bill of exchange, is required by Continental Laws, but viceversa it is unknown to the Anglo-American world. Indeed, the U.R. requirement was the object of severe criticism on the part of the Anglo-Saxons. Then it was tried to have recourse to art.2 of the Convention which permitted to substitute the words "Bill of Exchange" with the clause "to order". But also in this way there was no chance of conciliation with the British law which does not even require this second requisite of form.

It is furthermore necessary to remark that as C.E.1

(No.6) requires the name of the party to whom or to whose order the bill must be paid, a bill to bearer - an instrument accepted by the Anglo-American law - is thereby excluded. The Hague project of 1910 admitted the bill to bearer save the faculty granted to the single States of the adjunct Convention to hold such instrument as devoid of whatsoever efficacy as a bill of exchange if made, accepted, endorsed or payable in their territory. Such regulation was suppressed in R.U.1 thus giving rise to severe criticism on the part of those who remarked that a bill payable to bearer has not a right to be excluded once a blank endorsement has been admitted, as R.U. and to-day C.E. admit. Criticism which, on the other hand, if founded from a practical point of view, does not wipe off the existing difference, from a strictly juridical point of view, between a bill of exchange payable to the order of a stated person and that to bearer.

As regards the question of the name (N.1 of E.C.1) it is first of all thought worth while not insisting on the exclusive use of the term "lettre de change" and it is useful instead to admit any other expression which may serve to specify the instrument. It is suggested therefore that after the term "Lettre de Change" the following wording be inserted:

"or other expression apt to specify the instrument".

As to the question of a bill payable to bearer, it was thought better not to modify the text proposed, inasmuch as the introduction of a bill payable to bearer would undoubtedly cause a flat opposition on the part of the Continental States.

But all the difficulties arising from the different opinions as to the requisites of a bill of exchange between the Continental Law and the Anglo-American Law can be overcome if in the adjunct convention to the uniform regulation, the single contract-

ing states may be allowed not to ask for all those requisites or to ask for different ones in case of bills issued in their territory.

As to No.2 of C.E.1 it must be noticed that the wording "mandat pur et simple" used in the French text, does not exactly answer to the expression "unconditional order" used in the English text; it will therefore be opportune to see that the different expressions used in the different translations express the conception with the utmost exactness, avoiding the word "mandat" which is the most unproperly used.

C.E.2 = R.U.2 = C.C.I.2 =

This article (first paragraph) may give rise to difficulties in the Anglo-American world whither the date is not required, under penalty of nullity, and whither the bearer of a bill of exchange payable within a certain period of time is allowed to insert the true date when the instrument was issued (British Bill 1882 sect.3, under sect. 4 A and 12: Negotiable Instruments Law, State of New York, par.25 and 32).

It must be remarked however that, anyhow, also in the Anglo-Saxon States, whether the date be written by the drawer, whether inserted by the bearer, the bill, so as to be valid, must always bear one. So that the wording of the first paragraph of this art.2, it seems, may be accepted also by the Anglo-Saxon States.

C.E.3 = R.U.3 = C.C.I.3. No remarks.

C.E.4 corresponds to R.U.4 and C.C.I.4 save for the substitution of the word "localité" for "lieu" made for the purpose of avoiding an erroneous interpretation as to the exact meaning of the word "lieu". It may be doubted however whether such substitution is enough to eliminate every uncertainty as to the exact meaning of the rule.

C.E.5. This article only partially reproduces R.U.5 and C.C.I. 5. The first paragraph established that the stipulation of interest may be introduced only for bills of exchange payable at sight or at a certain time after sight, and that in every other bill of exchange such stipulation is to be held as unwritten. This rule is in contrast with the British and American Laws which admit of the stipulation of interest also in connection with bills of exchange at a fixed date or at a certain time date. It is obvious that in bills of exchange at a fixed date or at a certain time date, the stipulation of interest has not great reason of being, inasmuch as being the maturity agreed upon the interest may be reckoned before hand and be added to the principal. Any how it seems advisable to acceed on this point to the Anglo-American Law and thus eliminate whatsoever difference between the sundry types of bills of exchange. It is therefore suggested herewith that the first paragraph of art.5 be modified as follows:

"In every bill of exchange the drawer may stipulate that the sum payable shall bear interest".

With regard to the second paragraph the phrase used: "the stipulation shall be deemed to be unwritten", does not appear quite correct. The scope of this provision is such so that the total amount (principal and interest) of the bill of exchange may not be uncertain and questionable for having omitted to mention the rate of interest; not that to deprive of every and whatsoever efficacy the will of the parties. Therefore it is hereby suggested to substitute to that phrase the following: "The clause shall have no efficacy as to the laws of the Bills of exchange".

C.E. = R.U.6 = C.C.I.6. - No remarks.

C.E.7= R.U.7 = C.C.I.7. - No remarks.

C.E.8 = R.U.8 = C.C.I.8. - The article does not require any remarks. It is true that the British Legislation in such hypothesis does not hold the representative responsible under the bill of exchange obligation, but makes him liable to an action for damages for illegitimate representation or for breach of warranty of authority. However the English experts admit that, keeping into account the nature of a bill of exchange, the principle sanctioned in R.U. constitutes the most convenient rule. It is therefore advisable that the Uniform Regulation should maintain the text of R.U.8.

C.E.9 = R.U.9 = C.C.I.9. - With reference to this article it is remarked that the British Legislation admits also a bill drawn without recourse, a case which, besides, in practice, is little frequent owing to the fact that that clause deprives the bill of exchange of every value whatsoever. Being however a rule sanctioned both by the British Law (Sect. 16 No.1), and by the upholders of the Anglo-Saxon system should insist on their rule, this should not be considered as an unsurmountable obstacle in consideration of the fact that bills of exchange of this kind would hardly succeed in having an international circulation.

CHAPTER 2. - ENDORSEMENT.

C.E.10 = R.U.10 =C.C.I.10. - It calls for no remarks.

C.E.11 =R.U.11 = C.C.I.11. - The first two paragraphs do not offer any cause for remarks. As to the third paragraph it must be observed that the British Law, as it admits of a bill of exchange to bearer, it thus acknowledges the validity of the endorsement to the holder, the prohibition of which is not

easily justifiable when, as it is admitted herein (C.E.12), the endorsement in blank is held as valid. It seems therefore more logical and practical to establish that the endorsement to bearer is equivalent to an endorsement in blank. This means that, in such Countries, like in Continental Countries, where an endorsement to bearer is not customary, an endorsement in blank will continue to be preferred.

C.E.12, corresponds on the whole to R.U.12 save for a modification of form "Every endorsement" and save the obligation to write the endorsement on the back of the bill of exchange; no remarks are required.

C.E.13 = R.U.13. The article needs no remarks. R.U. 13 has been maintained waiving the suggestion of C.C.I.13, partially superfluous, partially not practical.

C.E.14 = R.U.14 = C.C.I.14. - No remarks.

C.E.15 reproduces with a slightly formal difference R.U.15 which was also reproduced by C.C.I.15. This article shows a fundamental difference between the Continental system and the Anglo-Saxon system. It establishes that the possessor of a bill of exchange is considered its lawful holder if he shows his title through an uninterrupted series of endorsements; the same article, second paragraph, provides then that where a person has been unjustly dispossessed of a bill of exchange, the holder of the latter who shows his right thereto in the manner mentioned in the preceeding paragraph, is not bound to give up the bill unless he has acquired it in bad faith, or unless in acquiring it he has been guilty of gross negligence. So a good-faith holder of a bill of exchange owing to a forged endorsement, acquires a full right on the bill it-

self, while, according to the British Law, the holder of such a bill does not acquire any right on the bill of exchange and cannot transfer his right to another person. Mr. Chalmers observes, in connection with R.U.15, that, when a bill has been stolen and the endorsement has been forged and successively the bill finds itself in the hands of a good-faith holder, there are two innocent persons one of whom must suffer the consequences of the fraud of the third. R.U. 15 and now C.E. 15 casts the burden on the person who has lost the bill of exchange because he should have been more careful. But it often happens that the bills are lost or stolen in circumstances where no amount of care could prevent their loss, as, for instance, through the post. The Anglo-American legislation causes the consequences to fall upon him who receives the bill of exchange under a forged endorsement, holding that every person who receives the bill must know the person from whom he acquires it and who, should he accept a bill of exchange from a stranger with whom he is not acquainted, he must undergo the consequences of an eventual irregularity. Therefore to Mr.Chalmers it seemed that R.U.15 rule, second paragraph, was encouraging carelessness in handling bills of exchange. It is supposed however that C.E. 15 has suitably reproduced R.U.15, for the British rule would oblige one to carry on long and sometimes difficult investigations, and it would only serve to hinder the circulation of the instrument, when it is instead one's wish to favour it.

C.E.16 represents an improvement in the wording in comparison with R.U.16, thanks to the substitution of the term "mauvaise foi" for the other "entente frauduleuse" which was too limited.

C.E.17 corresponds with the addition of a paragraph to R.U.17 = C.C.I.17. The paragraph establishes that the order contained in an endorsement by procuration does not end with the death or unexpectedly coming incapacity of the party giving the mandate. It has already been remarked that the latter rule represents a very serious exception to the general principles governing the procuration; nevertheless C.E. justifies this very suitable exception with the necessity to ensure the credit and the facility of circulation of a bill of exchange.

C.E. corresponds to R.U. 18 and C.C.I.18 save the addition at the end of the first paragraph aiming at specifying the right of the mortgaging creditor and the substitution in the second paragraph of the term "bad faith" to the other "fraudulent understanding".

The most serious question ariseshowever about the general problem of the endorsement by the statement "value in security" or "value in pledge". Such form is unknown in Great Britain; and at the Hague Conference some States were inclined to admit it (so Belgium, the Netherlands, Italy and Czecho-Slovakia) and substantially favourable were Germany and Austria as well as the Southern American States. France was doubtful, the Scandinavian States were contrary to it. Notwithstanding such disagreements it is held that the admissibility of such a form of endorsement aiming at assuring and favour a bill of exchange pledge has been suitably acknowledged by draft C.E.

That if such acknowledgment of the suggested Uniform

Regulation should give rise to an unsurmountable resistance, one could in the adjunct Convention have recourse to the same expedient to which Art.4 of the Hague Convention had recourse, wherein each contracting State reserves to itself the faculty to consider the mentioning of the security endorsement when the latter were made in its own territory, as not written.

C.E. 19 = R.U. =C.C.I.19. - No remarks required.

CHAPTER 3.- ACCEPTANCE.

C.E.20 =R.U.20 =C.C.I.20. - No remarks required.

C.E.21 =R.U.21 =C.C.I.22. - No remarks required.

C.E.22 =R.U.22 =C.C.I.22. - In the examination of this article it has been reminded that British and American laws do not establish terms for the presentation of a bill of exchange at sight. They limit themselves to establish that each holder shall present or put into circulation the bill within a reasonable time. Such provision does not however seem of easy application. In case of a controversy the question of a reasonable period of time can be settled only by a lawsuit or a jury. Neither the fact that in practice such difficulties in the Anglo-American world do not arise, can be an argument against the remarks of those States that are not familiar with the traditional Anglo-Saxon custom.

Some one has also remarked that if the holder and the drawee are in the same locality it is excessive to admit that the holder may be authorized to wait six months before present-

ing the bill for acceptance. Viceversa, when a bill of exchange circulates through many distant countries, the period of six months may be even too short. But it has been replied that the second paragraph allows one to abridge or to prolong this time: and the remedy is in most cases enough because, as a rule, the drawer, when the bill is issued, can foresee which will be the lot of the instrument. At any rate it does not seem likely it would be a case to set oneself against an eventual Anglo-American request aiming at lengthening the time contained in the first paragraph.

C.E. 23 = R.U.23 = C.C.I.23. - Does not call for any remarks.

C.E. 24 = R.U.24 = C.C.I.24. - The first paragraph of the article does not call for any remarks.

The same art.24 establishes that when a bill of exchange is payable at a certain time after sight, the acceptance must bear the date of the day on which it has been made unless the holder requires it should be dated on the day when it was first presented. Such principle is in compliance with the English practice which is of the same opinion in holding that the acceptance of a bill of exchange must bear the date of the day on which it has been presented for acceptance.

In the last paragraph art.24 foresees the case in which a bill of exchange at a certain time after sight is undated; in this event the holder in order to preserve his right of recourse against the drawer and the endorsers, must authenticate the omission by a protest drawn up in due time. According to the British legislation instead, when access cannot be the acceptor, the holder himself may fill in the date omitted. Such

principle has not been accepted at the Hague Conference under the plea that it would be dangerous to allow a holder of a bill of exchange to tamper with the contract of another party to the bill. But, as Klein remarked, what matters is that the right date should be established and such result could be obtained by ruling that the holder should get some witnesses to prove the exact date. However one does not see the necessity to recur to this formality, as the necessity of the protest cannot be explained. It is in fact for the drawer to fill in the date of acceptance; but when it is established that the holder may eventually fill in the date instead of the acceptor, the latter can choose between writing the date or leave the trouble to the holder; if the acceptor prefers this way it will be at his risk and peril, for if he does not do so he empowers the holder to insert the date in his stead. Such remarks already made by the British Delegates seem convincing and it is thought therefore useful to modify the last paragraph of art.24 acknowledging in the holder the power to insert the date omitted by the acceptor, without compelling the former to draw up a protest.

C.E.25 presents a better wording in comparison with R.U.25 =C.C.I. 25. The article admits of a partial acceptance, indeed it establishes that the holder may be obliged to content himself with a partial acceptance while, according to the British Law, the holder has the option to take or refuse a partial acceptance. The greater reasonableness of the British system is upheld by remarking that in a partial acceptance imposed upon the holder, the amount of the bill of exchange becomes uncertain, and that if the bill is dishounoured at maturity the holder has to go back on the drawer and endorsers by two separate proceed-

ings, which is both vexatious and costly.

At any rate, owing to the opposition on this point between the British and the Continental system, in this case, it seems suitable to have recourse to the reserve system on behalf of those States which do not want to acknowledge the obligation on the part of the holder to admit a partial acceptance. And such has been in fact the conception accepted by C.E. which in the Convention has introduced art.7 regarding the acceptance and the partial payment.

The second part of art.25 gave rise to a long discussion. In it it is said that every other modification (except the one of the first part of this article) introduced by the acceptance into the tenor of a bill of exchange operates as a refusal of acceptance. Nevertheless the acceptor is bound within the terms of his own acceptance. This evidently means that, notwithstanding the modifications introduced by the acceptance, the acceptor is held responsible towards the holder under the provisions ruling the bills of exchange; but it appears all the same opportune that this nature of the obligation be expressly stated so as to avoid any equivocation. Now if this may be admitted when the changes regard the time or the place of payment it seems instead that it should be excluded when the change introduced consists in submitting the acceptance to a condition, a limitation this for which one cannot acknowledge any efficacy according to the laws governing bills of exchange, but only according to Common Law. It is therefore hereby suggested that in the last sentence: "Nevertheless the acceptor is bound according to the terms of his acceptance" the following wording be added: "under the provisions realing the bills of exchange, except the case of acceptance under condition".

C.E.26,27,28 = R.U.26,27,28 = C.C.I.26,27,28.- No remarks.

CHAPTER 4. - "AVALS."

It must be remembered that such form of guarantee is unknown to English Law. But also at the Hague Conference the British Delegation acknowledged the opportunity that the provisions on the "aval" should be specified owing to the fact that foreign bills of exchange often contain this form of guarantee.

C.E.29 =R.U.29 =C.C.I.29. - No remarks.

C.E.30 =R.U.30. - It has bee reminded that C.C.I. had proposed to admit that the "aval" may be given also by a separate document. In the answers to the question put by the C.C.I., five States, i.e.: Spain, Great Britain, Italy, Poland, and Czecho-slovakia, declared themselves contrary to such form, while Belgium, the Netherlands, the Scandinavian States, France and Luxemburg declared themselves favourable to it. To the theoretical argument of the adversaries for such separation, who remark that a separate document cannot be regulated by special provisions of the laws on bills of exchange, it has been replied that in practice it is better to keep an "aval" concealed so as to furnish a supplementary guarantee for whom deems it necessary, but in such a manner not to weaken the credit of the bill of exchange with a declaration showing the necessity to have recourse to a supplementary guarantee.

But as on this point it does not seem easy to come to an understanding, not even between Continental States, and because, evidently, a separate "aval" cannot be considered as a document of exchange, it seems that the remark contained in C.E.31bis stating that the "aval" by separate document does not fall under

the provisions of the Uniform Regulation proposed, is opportune. However it must be considered whether in the adjunct Convention it were not better to introduce an article similar to art.5 of the Hague Convention, whereby the contracting States were granted the faculty to admit this special type of "aval" by separate document.

C.E.31 = R.U.31 = C.C.I.31. - No remarks.

C.E.31bis. - See remarks at C.E.30.

CHAPTER 5. - TIME OF PAYMENT.

C.E.32 =R.U.32 = C.C.I.32. - It has been remarked that also C.E. excludes, like the foregoing drafts, the payment in market, which, according to the questionnaire of C.C.I. was instead asked by Spain, France, Czecho=Slovakia and Poland which has introduced it in its new law on bills of exchange.

Against such a type of maturity it has been remarked that it has now fallen into disuse, that it has the inconveniency to render the date of payment uncertain and that fairs are usually business places for the conclusion of contracts, not for the payment of bills of exchange. Anyhow, to R.U.32 there corresponded art.6 of the Hague Convention which allowed each contracting State to admit in its territory bills payable in marked. Whenever this point should give rise to unsurmountable divergences, such reserve might be admitted also in the Convention attached to draft C.E. - It has also been remarked that article 32 itself does not admit of bills payable at successive maturity periods, viz: by means of accounts, a faculty which in fact is acknowledged by the English Law. But as such system of payment will be very rare for instruments destined to have an international circulation, it does not seem that

the problem will give rise to serious misunderstandings.

C.E.33 = R.U.33 = C.C.I.33. - The remarks made in connection with C.E.22 may be applied to this article inasmuch as it is but the application to the payment of bills of exchange payable at sight of the provisions governing the acceptance of bills at a certain time after sight; therefore its importance depends on the solution which will be adopted for C.E.22.

C.E.34 = R.U.34 = C.C.I.34 (
C.E.35 = R.U.35 = C.C.I.35 (No remarks
C.E.36 = R.U.36 = C.C.I.36 (

CHAPTER 6. - PAYMENT.

C.E.37 = R.U.37. - The article does not call for any remarks. The experts have most suitably excluded that the sundry States should be left free to maintain and adopt different provisions for the time of presentation and payment as C.C.I. 37 proposed instead. The conflicts which might arise out of a refusal of some States in adopting uniform terms, will be solved through a special article of the Convention draft which on this point refers to the law of the place of payment. Exactly such postponement is such that one must no longer consider the criticisms made against R.U. 37 by Mr. Chalmers, who brought to notice the differences extant between R.U. and the English legislation, as insurmountable. The addition in the same article of the last paragraph which opportunely leaves to the single contracting States the faculty to designate the Institutions which must be considered as clearing houses is quite opportune.

C.E.38 =R.U.38. - As to the partial payment C.C.I.38 bore an addition which empowered the single contracting States to exclude partial payments. Such power was besides granted in connection with R.U.38 by art.8 of the Hague Convention. Today C.E. justly transfers such power in art.7 of the proposed Convention, both in connection with the partial acceptance and the partial payment. In this way one can overcome the serious obstacle that on this point is represented by the English Law empowering the holder to either accept or refuse a partial payment.

C.E.39. - It substantially corresponds to R.U.39 =C.C.I. 39, save the substitution of the words "bad faith" to "fraud", evidently a most suitable substitution also for the purpose of bringing this article in line with art.15.

As to the last paragraph there arose the doubt if in lieu of the absence of "gross negligence", one should not - without further ado - request the absence of "ordinary negligence". But it has been answered, after a long discussion, that greater diligence being required on the part of him who pays and imposing upon him sometimes difficult investigations and ascertainings, one would hamper the negotiability of the instrument. The present wording of the article, whose principles corresponds anyhow to those already accepted in C.E.15, was therefore favourably accepted.

C.E.40 = R.U.40 =C.C.I.40. - No remarks required.

C.E.41 = R.U.41 =C.C.I.41. - Ditto.

CHAPTER 7. - RECOURSE FOR NON-ACCEPTANCE OR NON-PAYMENT.

C.E.42 = R.U.42 = C.C.I.42. - In connection with this article it is remarked that no mention is made therein as to a partial acceptance, which, as it appears from C.E.50, gives rise to an action of recourse for the non-accepted part. It is therefore considered convenient, after No.1 to introduce the case of partial acceptance.

C.E. 43 = R.U. 43, save the extension to the drawe of the rules adopted in case of the drawer's bankruptcy. No remarks are needed, keeping into account that art.8 of the Convention provides for the differences extant in the different States as regards the forms and the terms of the protest and the other acts, differences that can hardly be eliminated for the moment being.

C.E. 44 = R.U.44, save some modifications of form. The article does not require any remarks. Art.8 of the Convention provides to solve the difficulties arising from the differences existing in this matter between the Continental Law and the English Law.

C.E. 45. - Still approving the actual wording of the article, its acceptance on the part of all those countries where-in the exclusion of the validity of the clause: "without protest" inspires itself also for fiscal reasons, is doubtful.

C.E. 46. - C.E.51. - No remarks.

C.E.52. - The experts have most suitably renounced to solve the controversies about the "provision" and by art.6

of the draft of the Convention, have left the solution of this problem to the single legislations.

C.E. 53. This article, resulting from the amalgamation of R.U.53 and C.C.I.53 have rise to a lively discussion both on the effects of an insurmountable obstacle (objective vis maior) and about those of the purely personal calamities. But it was concluded by approving the article as it was worded, still foreseeing that the principle which denies every efficacy to personal calamities will clash against the principles of the English Law, which requires the holder to exercice only a "reasonable diligence."

CHAPTER 7. - INTERVENTION FOR HONOUR.

C.E. 54 = R.U.54 = C.C.I.54. - No remarks required.

C.E.55 = R.U.55 = C.C.I.55. - The remark made by some Experts in the hypothesis wherein a person who is to accept or pay in case of need has been designated by the drawer and particularly in the case wherein the former is in the same place of the drawee, seems reasonable. In such case the holder should be obliged to produce the draft for acceptance to the party mentioned in case of need and, should the latter accept, the holder should be denied the action of recourse for non-acceptance.

C.E.56,57,58 = R.U.56,57,58 = C.C.I.56,57,58.- No remarks required. Ditto from No.59 to 62 inclusive.

CHAPTER 9. - PARTS OF A SET AND COPIES.

I. - Parts of a Set.

C.E.63 is worded better than R.U.63. - No remarks needed.

C.E.64 = R.U.64 = C.C.I.64 (
C.E.65 = R.U.65 = C.C.I.65 ((No remarks needed.

II. - Copies.

C.E.66 = R.U.66 =C.C.I.66 (
C.E.67 = R.U.67 =C.C.I.67 ((No remarks needed.

CHAPTER 10. - FORGERY AND ALTERATIONS.

C.E.68 = R.U.68 = C.C.I.68. - No remarks needed.

C.E.69 = R.U.69 =C.C.I. 69. - With regard to this article it has not been neglected to take into considerations the criticisms of those who remark how, according to the principle adopted, the forgery of the text of a bill of exchange causes the parties who have signed before the alteration was made to be liable according to the original text, and the parties who have signed after the alteration to be instead liable according to the text forged. Also the criticism of those who affirm it is contrary to the principles of good faith to attribute a legal value to a forgery, has also been taken into due consideration. Nor it has been forgotten to remember the English rule according to which the holder in due course may enforce the bill according to its original tenor when the alteration was not apparent.

Anyhow the system accepted by C.E.69 seems still the simplest and that which better answers to practical necessity.

CHAPTER 11. - PRESCRIPTION.-

C.E.70. - Substantially the article corresponds to R.U.70 already somewhat modified by C.C.I.70, but it presents a better wording. It needs no special remarks.

C.E.71 = R.U.71 =C.C.I.71. - As the experts remark, the legislation of each State shall establish the causes of interruption and suspension of prescription in case of actions on bills of exchange. But it will be necessary to consider whether it were not suitable to introduce for this purpose a particular reserve in the Convention analogously to what art.9 of the Convention establishes in case of the loss or the theft of a bill of exchange.

CHAPTER 12. - GENERAL PROVISIONS. -

C.E.72 = R.U.72 =C.C.I.72. - No remarks.

C.E.73 = R.U.73, First paragraph = C.C.I.73, First paragraph. - No remarks.

C.E.73bis =R.U.73, Second paragraph = C.C.I.73, Second paragraph. - No remarks.

These three articles establish very strict provisions which the same British Delegates at the Hague acknowledged were preferable to the extant regulations in Great Britain and which corresponded to the provisions adopted by the largest part of the United States where, different from Great Britain (Bill of 1882, Sect.14), the so-called days of grace have been suppressed.

PROMISSORY NOTES PAYABLE TO ORDER.

C.E.74 = R.U.77 = C.C.I.76. - It is foreseen that No.1 of this article will once more raise the question as to the denomination which has already been examined in connection with bills of exchange at art.1. But here also it is proposed to adopt the solution already pointed out at that point, that is to say to introduce a reserve in the Convention.

C.E.75 = R.U.78. - It is proposed to render the importance of the third paragraph where the expression "special mention" must refer to indicate the place of payment clear. Therefore the following wording is hereby suggested:

"In default of special mention of the place of payment...."

As to the date one might herein repeat the remarks already made about the power granted by the British Law to a holder of a bill of exchange, to insert in the instrument the missing date. And it is also suggested herein the solution indicated in connection with a bill of exchange.

C.E.76 = R.U.79 = C.C.I.78. - It does not call for any special remarks; but it is obvious that the bearing of this article depends on the solutions which have been adopted for bills of exchange.

C.E.77 =R.U.80 = C.C.I.70. - It is remarked that if, as it has been proposed, the last part of art.24 of C.E. were modified, one could suppress the last phrase of C.E.77 so as to avoid here also a protest which serves only to complete an undated visa.

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DRAFT OF CONVENTION (For Bills of Exchange and promissory notes)

The aim of the Convention, according to what has been stated in the preamble, would be twofold. On one hand it aims at rendering the validity and the effects of undertakings entered into by means of bills of exchange and promissory notes independent of the observance of stamp laws, on the other hand to establish principles of International Private Law in connection with bills of exchange and promissory notes.

However, if articles 6 -9 of the Convention itself are taken into consideration, it appears that they contain true and real reserves, while art.10, on its turn, admits of a general reserve as to the application of the principles of International Private Law contained in art.3-5. Thus one must infer that the Convention has not only the scopes indicated in the premise, but also that to admit upon determined points of some reserves on behalf of the States which accept the Uniform Regulation. Nevertheless the connection between the latter and the Convention does not appar clearly set forth.

It would seem therefore opportune that in the Convention, having omitted or changed the preamble, the contents should be arranged in the following order:

A. Article 1 to which we shall revert.

B. The articles embodying the reserves on behalf of the States accepting the Uniform Regulation, reserves which shall regard not only the contents considered in art.6 - 9 of the Convention, but also the other points brought to notice in the remarks already made in the articles of R.U.

C. An article whereby the States which - availing themselves of the reserves - should derogate from the provisions of R.U., shall be bound to communicate the very same derogations to the other States.

D. The rules of International Private Law which the States that - with or without reserve - accept the Uniform Regulation - bind themselves to comply with.

E. The general reserve contained in art.10 of the Convention proposed.

It is clear that there would be no need of the provisions of International Private Law if all the States should accept the R.U. without making use of the reserves. But it is also evident that their importance is subordinate to the various use that the States which accept the Uniform Regulation will make of such reserves. The general reserve has furthermore the evident scope to induce the greatest number of States to adhere to the Convention.

It will also be necessary to consider whether it were not the case to establish a term for the Convention, the contracting States pledging themselves to revise the Convention itself after a certain period of time necessary to experiment the value, the efficacy and the consequences of the principles adopted.

As to the single articles of the Convention proposed by C.E. it is remarked:

Art.1. - Although it corresponds to art.19 of the Hague Convention, it is foreseen that this article will arouse not few difficulties provoked by the fiscal preoccupations of several States.

Art. 3 - 5. - No remarks.

Art.6 - 9. - They ought, as it has been stated, to be placed immediately after art.1 but, provided the remarks made during the examination of the articles of the Uniform Regulation will be accepted, coordinated with the reserves proposed therein.

EXAMINATION OF THE REGULATION ON CHEQUES

Issue and Form of Cheques.

C.E.1. - It has as its basis the resolutions of the Hague Conference of 1912 and, except slight modifications, it corresponds to art. 1 of C.C.1.

With regard to No.1 it must also be remarked herewith that the English and American Laws do not necessarily require the term "cheque", and they do not even require a cheque to state the place where it is drawn nor the date of drawing. An undated cheque is not certainly regular, but if the drawer should not fill in the date the holder may supply this omission.

On this point it will be very difficult to come to an understanding between the Continental and the Anglo-American systems. It will therefore be necessary, also in connection with a cheque to introduce in the additional Convention a reserve both as regards the name, the place and the date.

With regard to the wording used at No.4, keeping into account the remarks already made in the ninth plenary meeting of the Hague, and of the utility that a cheque can be payable at the sundry branch offices of a bank, it is hereby suggested to add after "place", "or of the places ".

C.E.2. - The article does not call for remarks. As to a cheque undated one must refer to what has been said about the preceeding article.

C.E.3, - corresponds, save some slight change of form, to C.C.1.2. But with regard to the first paragraph of this

article, it has been thought that upon having once affirmed that a cheque can be drawn upon a party having some funds at the disposition of the drawer, it is not necessary, nay it is dangerous, to add "and in conformity with an agreement, express or implied, according to which the drawee is bound to pay the cheque". It is obvious that the amount of the funds on hand depends on an operation accomplished with the consent of the drawee, and it is therefore needless to speak of an express or implied agreement. And as a cheque, according to the uniform Regulation, can be drawn but upon bankers, there is no danger whatever for any private party to be under a permanent menace of a cheque for a sum of which, for instance, he owes to another person.

Viceversa the addition "and in conformity" etc. might lead one to think that besides the disposition of the sum, a special convention is necessary so that the drawer may have the power to draw the cheque. And this might give rise to difficulties and controversies in the relations between the banks and their customers.

No remarks about the second paragraph.

C.E.4. - No remarks. It is only remarked that, instead of prohibiting the drawer from drawing a cheque payable to bearer on the drawer himself, the draft leaves to the single States the faculty to declare it invalid. In this way the remarks made in this connection by the English Delegates have no longer a reason to exist.

C.E.5. - Neither the article nor the reserve call for any remarks.

C.E.6. - It has been reminded that the English Law allows also the discharge from the guarantee of payment. For the bill of exchange it has been admitted that on this point one could introduce a reserve in the convention itself on behalf of the States which would grant such exoneration. But for a cheque, nay for the type of a cheque destined to the international circulation like that regulated by the draft, one does not see what value it should have and which function it might exert, where the discharge from the guarantee of payment should be admitted. Besides, as it was stated in the general premises, the Regulation does not wish to exclude that within the single States may circulate some instruments ruled by principles different from those of the proposed uniform Regulation.

C.E.7. - No remarks.

ENDORSEMENT.

C.E.8. = C.C.I.9. - No remarks.

C.E.9. = C.E.10. - Do not call for any remarks. It is to be noticed however that the provisions of the 4th paragraph can be hardly adopted by the English-American Law which is unacquainted with the "aval".

GUARANTEE AND PAYMENT.

C.E.11. = corresponds, save formal changes, to C.C.I.16.- It does not call for remarks.

C.E.12. - No remarks, except the observation that the Anglo-American Laws do not know the "aval".

C.E.13. = C.C.I.18. - It is the improved wording of art. 13 of the Hague Resolutions. It does not call for remarks.

C.E.14. = C.C.I.19. - The criticisms made by the English experts to the terms established by this article are overcome by the reserve contained in paragraph 3rd and by art. 11 of the added Convention; the article does not therefore call for remarks.

C.E.15. = C.C.I.20. - It corresponds to art.15 of the Hague Resolutions. It will be useful that in the sundry texts the participle "referred" be a term which will not give rise to equivocations.

C.E.16 = C.C.I. 21 = art.16. Hague Resolutions. It does not call for remarks.

Recommandations. - Still foreseeing that the second recommendation will not be accepted by the Anglo-American Law, it is thought that the recommentions are very useful to favour the use and the circulation of a cheque in Continental Countries.

C.E.17 = C.C.I.23. - The second paragraph of this article which adopts the principle contrary to that complied with Art. 18 of the Hague Resolutions, has raised a long discussion. Nevertheless, the opportunity of the solution adopted basing oneself above all on the consideration of the interest of the persons liable has been admitted. But it is remarked that the wording is too concise at this point and that it is, therefore, convenient, to avoid the impression that the Bank has almost a right not to pay the cheque, to mention the rules in case of non-payment, no matter whether this fact depends on the lack of funds; it is therefore proposed to add: "save the right of recourse ruled by Art.20 and the measures enacted owing to the above recommendation".

C.E.18 = C.C.I.24.=art.19. - Hague Resolutions. The article does not call for any remarks, except a misprint in the French text of paragraph 6, where must be written: "substituer un autre banquier".

It has been however observed that not even a barred cheque can totally avoid the danger of theft and that it would be suitable to recommend the introduction of a cheque issued or endorsed as not negotiable, payable only to the party that has received it with such clause, or to a representative of his supplied with a written authorization or to a bank to which the receiver has endorsed it for collection. The endorsements successive to the clause "not negotiable" would be considered as not written.

This recommendation inspires itself to a conception opposite to that which in the draft C.E. follows art.18, a recommendation which should therefore be suppressed.

C.E.19 = 21 Hague Resolutions. No remarks. It is a reserve on behalf of particular legislations.

RIGHT OF RECOURSE

C.E.20 =C.C.I.27 = Art.22 of Hague Resolutions. It is observed first of all that the first paragraph does not contemplate the case of partial payment that, evidently, must give rise to a recourse. The omission is explained when thinking that art.20 is but a reproduction of art.22 of the Hague Resolutions which, at art.18, differently from the actual draft, admitted of the refusal of a partial payment. Nevertheless in the first paragraph after the words "is not paid" must be added "or paid partially". As to the second paragraph, it is remarked that the drawee's declaration must have a date certified to within a period which should be that to draw up the protest; therefore to the term "dated" it is hereby proposed to substitute "whose date must be certified within the time for protest".

No remarks about the reserves.

C.E.21 (
(
C.E.22 (No remarks.
(
C.E.23 (

PLURALITY OF COPIES.

C.E.24 (
(No remarks.
C.E.25 (

FORGERIES AND ALTERATIONS.

C.E.26 No remarks

PRESCRIPTION.

C.E.27 (
(No remarks.
C.E.28 (

GENERAL PROVISIONS

C.E.29. - Does not call for remarks.

DRAFT ARTICLES OF A CONVENTION.

As to the convention added to the draft for the cheque one can hereby repeat the remarks already made with regard to the draft of a convention on bills of exchange. Also in this second convention, it seems convenient to drop or to change the preamble, and at Art.1 first of all get articles 7-15, which contains only reserves, to follow, as well as the other eventual reserves which might be introduced after the discussion on the draft.

To the reserves should follow an article whereby the States, which avail themselves of the reserves, bind themselves to communicate the rules introduced to the other contracting States.

At last will be formulated the rules for conflicts of laws (art.2-6 of the draft of Convention) with the general reservation of art.16 of the draft.

Here also it will be convenient to consider the suitableness to fix a term to the convention with the obligation for the contracting States to look it over after a certain time.

As to art.1 of the draft of convention, it is remarked that, also in connection with the cheque, obstacles might be created by the fiscal preoccupations of several States; but, certainly, the problem does not offer the gravity which it has instead in connection with bills of exchange.

The other articles of the draft do not call for remarks.