

INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW

PRELIMINARY DRAFT .UNIFORM RULES APPLICABLE TO
INTERNATIONAL LOANS.

Revised edition.

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I N D E X

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Field of Application.

Article to be inserted in the International Convention for the
Adoption of Uniform Rules.

The Rules laid down in the Annex to the present Convention shall apply to all loans issued abroad and represented by bonds susceptible of being placed on the market, when the borrower is: (a) one of the High Contracting Parties; (b) a public body having its seat in the territory of one of the High Contracting Parties; or (c) any other person or body guaranteed by one of the High Contracting Parties.

The loans above referred to shall be termed in the present Convention and in the aforesaid Rules "international loans". When the said Rules are applicable, they shall be regarded as the law governing the rights and liabilities arising out of the loan, and municipal law shall apply only so far as may be necessary to give effect to the said Rules.

Rule 1.

The terms of international loans may not be modified, directly or indirectly, save with the agreement of the parties.

Rule 2.

- (1) The rights and liabilities of the parties shall be defined by the temporary or final bond, as the case may be.
- (2) The statements contained in the aforesaid documents shall be amplified and elucidated by the statements contained in the other documents of which the bondholder may have had notice when subscribing to the loan, and, in particular, in: the general bond, the issue prospectus, the documents assigning securities to bondholders, and the law authorising the issue of the loan.
- (3) When there is a fundamental discrepancy to the detriment of the subscriber between the statements in the bond and those in the prospectus or in any other document serving the same purpose, the latter shall be decisive, unless it is clear that the changes made have been freely accepted by the subscriber.
- (4) The documents enumerated in paragraphs (1) and (2) are hereinafter referred to as "the loan documents".

Rule 3.

- (1) The provisions of the loan documents must be construed bona fide.
- (2) In thus construing the provisions, the court must ascertain what meaning the borrower intended to give to the terms used and what meaning could reasonably have been attached to them by the bondholder.

- (3) The provisions in question shall be interpreted by reference to one another, each being read in the sense implicit in the document as a whole. The court must also take account of the customs of the market in which the issue is made, so far as they may modify the usual meaning of the words.
- (4) In doubtful cases, the bond shall be interpreted in favour of the holders.

Rule 4.

- (1) When the payment of interest or capital on the loan has been fixed in a national currency without reference to a particular standard, the currency of payment shall be defined in accordance with the currency law in force at the time of payment.
- (2) If the loan documents refer to a national currency as defined by a law in force at the time of issue, the borrower shall, by the effect of this clause, be bound to carry out the service of the loan in legal currency for the amounts originally specified on the bonds and coupons multiplied by the ratio between the value of the currency specified in the loan documents, as it results from the currency law to which the said documents refer, and the value of the legal currency on the day of payment.
- (3) If the currency of payment is indicated by reference to gold bullion, this stipulation shall, if there is no sufficiently explicit indication to the contrary, be interpreted as implying an obligation on the borrower to pay in the currency which is value on the open market of the quantity of gold specified in the loan documents.

Rule 5.

- (1) When the debtor's obligation is expressed simultaneously in various currencies, the number of monetary units due in each currency being fixed for the whole period of the obligation, and when the service of the loan is domiciled in the different countries where the currencies circulate, the bondholder, having the right to choose the place where he wishes to be paid, has the choice of currency (currency option).
- (2) When the borrower is bound to pay only in one country but the number of monetary units due in the currency of that country is also determined by reference to one or more other currencies, the bondholder shall have the option of being paid either for the amount stipulated in the currency of the place of payment or for the equivalent in that currency of the amounts stipulated in any of the other currencies calculated according to the terms of the loan documents (exchange guarantee).
- (3) When the debtor's obligation is contracted in one currency only, but the service of the loan may be effected in several countries in the currencies of those countries, the bondholder shall have the option of being paid either in the currency laid down in the loan documents for the amounts fixed or in the currency of any of the said countries for the equivalent in that currency, on the day of payment, of the amounts expressed in the currency of the loan (place option).

Rule 6.

- (1) The value of coupons and bonds not presented for payment within a time-limit of ten years from the date on which they became payable shall be extinguished in favour of the borrower.

- (2) In calculating the time-limit referred to in the foregoing paragraph, no account shall be taken of a period during which the service of the loan was suspended, wholly or in part, without the consent of the bondholders.

Rule 7.

In cases not covered by the present Rules, the courts shall decide on the basis of the general principles of Law.

R E P O R T

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I.- The general report of the Committee for the Study of International Loan Contracts, communicated to the Council and Members of the League of Nations (Doc. C. 145. M. 93. 1939. II. A), after describing the difficulties and drawbacks inherent in the adoption of a particular national law as the law governing the loan, expresses the following view: "..... but, if the difficulties are "felt to be so serious as to require a final solution, it appears "to the Committee that the only way of dealing with them would be "to embody into an international convention a code of rules applicable to international loans, thus removing the subject from "the filled of municipal law into that of international law. The "Committee therefore sought the co-operation of the International "Institute for the Unification of Private Law, at Rome, whose assistance it was authorised by the Council of the League to seek "at the time of its appointment. The Committee is glad that the "Rome Institute has agreed to undertake this important task. Such "a code might render services in the matter of international "loans comparable to those rendered for many years past by the " "Hague Rules" (1) in respect of maritime transport. The preparation and adoption of such a code would necessarily take a considerable time. Even before its formal adoption, the draft code "might be used as a model by those responsible for drafting loan "contracts".

(1) See resolution of the International Law Association adopted September 3rd, 1921, at The Hague, and the International Convention for the Unification of certain Rules relating to Bills of Lading, signed at Brussels, August 25th, 1924.

Having agreed to undertake the task entrusted to it by the Committee for the Study of International Loan Contracts, the Rome International Institute for the Unification of Private Law drew up in the first place a preliminary study of the chief legal problems affecting international loans, and, as a conclusion to this study, framed a provisional set of preliminary draft uniform rules.

These documents were considered by a Sub-Committee of Jurists appointed by the Committee for the Study of International Loan Contracts. This Sub-Committee and the Committee in plenary session gave instructions to the Rome Institute and formulated observations and suggestions on the basis of which the preliminary draft uniform rules have been amplified and amended.

The purpose of the present report is to illustrate the provisions of the preliminary draft as revised and explain its underlying motives.

II.- Juridical Nature of the Uniform Rules.

In the preliminary study drawn up by the Secretariat of the Institute, the various systems which might be envisaged for the adoption of uniform rules for international loans to be contracted in future are considered in turn. These systems may be summarised as follows:

- a) adoption of uniform rules by States in pursuance of an international convention;
- b) introduction of uniform rules into the national legislation of each State without any international engagement;
- c) adoption of uniform rules by the insertion of a simple reference in loan contracts.

The preliminary study described the advantages and drawbacks of each of the above solutions. After the problem had been more thoroughly examined by the Sub-Committee of Jurists and by experts consulted by the Institute, it was decided to discard the solutions referred to under b) and c) above, mainly because they would leave the adoption and observance of the uniform rules to the discretion of borrowing States. The latter would retain the right to make legislative changes, even substantial changes, in the uniform rules without being held internationally responsible.

On the other hand, the adoption of agreed rules by means of an international convention is the surest and most effective way of giving these rules legal force and safe-guarding them against unilateral changes.

The obstacles which might be met with in adopting such a system - difficulty of securing the accession of States to a convention modifying their national legislation - would be overcome if, instead of being inserted in a multilateral convention for immediate adoption, the uniform rules were embodied in bilateral treaties between the States concerned (the borrowing State and the State where the issue is made) whenever a loan is concluded.

The adoption of agreed rules would be still more effective if followed by accession to a convention recognising the jurisdiction of an international loan tribunal or arbitral tribunal on the lines of the scheme drawn up by the Committee for the Study of International Loan Contracts in its report to the Council of the League of Nations (Doc. C. 145. M. 93. 1939. II. A, sections D (2) and (3) and Annex IV). These two conventions, one setting up an independent tribunal with international jurisdiction and the other laying down the rules of material law

applicable for the settlement of disputes in respect of international loans, would, taken together, constitute a complete and systematic solution of the very important problems which this matter involves.

The convention for the adoption of agreed rules should remain in force as long as the borrowing State is bound to effect the service of the loan, i.e., until the loan is fully repaid. Unilateral denunciation of the convention before that period expires should be prohibited.

III.- Field of Application of the Uniform Rules.

The first essential is to determine to what class of loans the uniform rules should be applied.

In the preliminary study drawn up by the Secretariat of the Institute, the definition of the "international loans" for which uniform regulations were to be made was directly based on the minutes of the first meeting of the Committee for the Study of International Loan Contracts. According to this definition, the term "international loans" was to be taken to mean loans issued by Governments or public authorities by means of an official issue in a foreign country. The Institute also suggested that the uniform rules should be so drawn up as to enable private companies also to refer to them in loan documents.

The Sub-Committee of Jurists reconsidered this point and suggested amending the above definition, for the following reasons:

Firstly, the expression "public authority" might give rise to misunderstanding, as its connotation is not identical in all countries. Secondly, there may be private companies or institutions other than public authorities which, as they are responsible for the operation of very important public services

(e.g., railway companies, shipping companies, etc.), have very close connections with Governments.

In the light of the above considerations, the Institute drew up the following text:

"The Rules laid down in the Annex to the present Convention shall apply to all loans issued abroad and represented by bonds susceptible of being placed on the market, when the borrower is: (a) one of the High Contracting Parties; (b) a public body having its seat in the territory of one of the High Contracting Parties; or (c) any other person or body guaranteed by one of the High Contracting Parties".

The public bodies included in this article are, for instance, municipalities, provinces, State monopolies, and, generally, political or administrative bodies with power to contract obligations. The application of the uniform rules has been extended also to loans which, though issued by private individuals or bodies, would be guaranteed by Governments: this would enable the uniform rules to be applied to the loans, often very large, contracted by undertakings operating public services. In this case the Government guarantee would be evidence of the importance and solvency of the borrowing body.

We consider that the field of application of the uniform rules, assuming that these are embodied in a convention, should be confined within these limits. It would, nevertheless, be open to other institutions and bodies than those above referred to, to adopt the uniform rules by a reference in the loan contracts, though in this case the rules adopted would bear the legal character of ordinary contractual provisions.

IV.- Questions not covered by the Uniform Rules.

The Committee for the Study of International Loan Contracts considered that the uniform rules should aim mainly at laying down the general principles which would govern a loan, without specifying the detailed provisions (letter from the Chairman of the Committee dated December 10th, 1937).

The Committee further suggested excluding from the uniform rules such questions as those concerned with the representation of bondholders and the guarantees for the loan.

The first of these questions, as it relates to the protection of the interests of the lenders and the borrower, would be more usefully dealt with by contract than by international convention; in regard to guarantees for the loan, it was felt that this problem is too closely linked up with the administrative organisation of the borrowing State (particularly if the guarantees are constituted by public revenues earmarked for the service of the loan) to admit of regulation by convention in a manner compatible with respect for State sovereignty.

During the discussions on the preliminary draft drawn up by the Institute, the Sub-Committee of Jurists considered that other questions should be excluded from the uniform rules, viz.:

a) legal questions concerning relations between the borrower and the issue banks;

b) questions regarding the character, powers, and responsibility of financial agents, paying agents, and trustees (agents centralisateurs).

As the purpose of the rules is to introduce uniform legal regulations for the relations between subscribers to international loans and the borrower, it was felt advisable not to touch on questions accessory to the issue of the loan in which

other relations -- between the borrower and the banks, trustees, etc. -- are involved; the more so, as these relations are not always of international importance.

The Sub-Committee of Jurists, lastly, expressed the view that there was no need to have explicit provisions governing the legal remedies applicable in cases of failure to comply with the terms of the loan, either by the borrower or by the lenders. It would be extremely difficult to secure legislative uniformity in such a matter, owing to the essential differences between the various legal systems as regards the penalties applicable in cases of disregard of obligations. Though these questions have not been dealt with in the preliminary draft, it will always be open to the Contracting Parties to adopt uniform regulations on these points. In this case, in the absence of special provisions, the gaps in the uniform rules could be filled up by the court. -- that is, the international loan tribunal or arbitral tribunal -- by reference to the general principles of law (see Rule 7).

V.- Rule 1. Prohibition of Unilateral Modifications.

This provision, which might seem superfluous if inserted in a law governing contractual relations between private persons, is, in this case, of remarkable importance because of the special character of a State loan.

It confirms the obligatory character of the loan, in opposition to the view taken by certain authors who question this character when the borrower is a sovereign State. Consequently, we consider that the express acceptance of this principle by a borrowing State would in the first place offer the advantage of eliminating any possibility of dispute as to the legal nature and obligatory character of the loan.

Further, if the principle in question were adopted by means of an international convention, the intangibility of the loan clauses would follow from the binding character of international treaties. Any modification prohibited by the convention would constitute a breach of the latter, and would make the State committing the breach internationally responsible.

As the law at present stands, the consequences of this international responsibility of the State guilty of the breach would amount merely to diplomatic intervention by the State entitled so to act under the rules of international law, in the absence of a tribunal competent, to declare the unilateral modification null and void. If an international loan tribunal were set up, it could, in addition, refuse to apply any new provisions adopted by the debtor State which were not in harmony with the uniform rules.

The provision proposed to be inserted in the uniform rules specifies that no unilateral change in the contract may be made directly or indirectly, "indirectly" being taken to include any unilateral measure contrary to the spirit or the terms of the loan contract. In point of fact, the contract may be modified either directly, by legislation expressly intended to modify the terms of the contract, or indirectly, by measures which, though they do not expressly refer to the contract, result in a de facto or de jure modification of the terms on the basis of which the contract was concluded.

VI.- Rule 2. Relative Importance of the various Loan Documents.

The court which has to settle a dispute arising out of an international loan will first have to decide on which document or documents the rights and obligations of the parties are based.

In the Institute's preliminary study, an analysis was made of the function of the various documents, both in the system of direct issue and in that of indirect issue (through a bank or issuing house). The Institute found, by reference to the doctrine and jurisprudence on the subject, that the normal function of the prospectus is to complete the statements contained in the contract or amplify them, and therefore concentrated on an examination of the document by which the contract actually concluded. This is the document which the borrower, or the bank placing the loan, hands to the subscriber as a sign of his (its) acceptance of the latter's offer. It usually takes the form of a temporary bond or a receipt on which only the briefest particulars are given. On this point the following observations were made in the preliminary study:

"It should not, however, be forgotten that the loan contract does not operate merely as between the borrower and the first holder, for the latter may transfer the bond to other parties, together with the rights and obligations which it confers. The purchaser will look to the tenor of the bond for the provisions governing the contract. The bond should therefore be regarded as the essential document, seeing that a holder will not always be able to procure, without some trouble, other sources of information (prospectus, subscription form, etc.). It is most important that the tenor of the bond should specify all the essential conditions of the borrower's undertaking and should correspond completely with the statements in the prospectus. The latter statements will always have a certain secondary importance in defining the scope of the obligation".

While agreeing with its general conclusions, the Subcommittee of Jurists suggested that the Institute should consider

the two following questions: a) would it not be advisable to regard as a basic document of the loan not only the final but also the temporary bond? b) what solution should be adopted in the special case of an issue which is entered in the Register of the Public Debt?

A reply to the first question involves a preliminary definition of the features of a "temporary bond". It is sometimes used to describe a "bond" in the strict sense of the term, and sometimes a mere receipt for payment of an amount. The two cases must be carefully distinguished. When the document handed to the subscriber specifies the essential conditions attaching to the loan and can circulate freely, transferring to the holder the rights and obligations attached to it, such a document constitutes a bond in the technical sense of the term. If, on the other hand, a subscriber, when he makes the initial payment, is given merely an ordinary acknowledgment of receipt without any reference to the essential conditions of the loan, it is extremely doubtful whether such a document can be regarded in the same light as a "bond". It is thus out of the question that it could have the legal consequences, the most important of which we have described.

In view of the foregoing considerations, a temporary bond should also be recognised as having the effect of defining the rights and obligations of the parties, provided it is a bond which can circulate and which contains the essential conditions of the loan.

Needless to say, the term "bond" also covers the coupon attached to it, which, though it can circulate independently, is always an integral part of the bond.

In the case of the entry of a debt in the Register, two possibilities must be distinguished. When an entry is made in the Register, the bond still remains the document defining the tenor of the obligation. In such case the effects of registration will be the same as those which arise when registered shares are entered in the registers of a company. While it remains the basis of the parties rights and obligations, the bond will not be sufficient evidence that the said rights and obligations belong to the holder; this function will be discharged by the entry in the Register.

In such a case, we think that there is no need to make exceptions to the general rule laid down, seeing that its sole purpose is to show the court what documents it should examine in order to ascertain the material tenor of the obligation, apart from any question of deciding who is entitled to the rights and obligations conferred by the bond.

In some financial systems provision has been made for replacing the bond entirely by an entry in the Public Debt Register. In this second alternative the bond is withdrawn from circulation and, in its place, an undertaking given by the State to the lender is entered in the Register. The lender merely receives a registration certificate, without any reference to the terms of the loan. The effect of cancelling the bonds withdrawn is to transform the literal obligation embodied in the bond into an obligation governed by the ordinary law, the mere registration of which defines its scope and tenor. Consequently, the rights and obligations of the parties will have to be determined by means of the entry which records the debt.

We think, however, that there is no need to make express provision for this alternative in the uniform rules. The system of making an entry in the Register without issuing a bond is usually applied to debts in perpetuity. It does not seem as

yet to have been adopted for the issue of international loans, and it is very unlikely that this will be done in future, for obvious practical reasons.

The Committee of Experts drew the Institute's attention to the serious risks which a subscriber might run if there were a fundamental discrepancy between the statements in the issue prospectus and in the bond. While it is true that the subscriber may theoretically make sure, before concluding the contract, that the bond corresponds with the conditions laid down in the prospectus, it is equally true that, in practice, such a check is very seldom made. It is thus possible for unfair advantage to be taken of the subscriber's good faith by inserting in the bond conditions totally different from those given in the announcements or prospectus accompanying the loan issue.

In the light of these considerations, the Institute felt it desirable to add to the general rule in paragraph (1) a reservation (paragraph 3) designed to protect the good faith of the subscriber. Should there be a fundamental discrepancy (on essential points) between the statements in the (temporary or final) bond and those in the prospectus, or any other document serving the same purpose, the latter statements would take precedence. This provision, of course, will only operate in favour of a bona fide subscriber; it cannot be invoked when the changes made in the prospectus were brought to the subscriber's notice before subscription and when the latter has explicitly or implicitly accepted them.

Paragraph (2), finally, specifies that the prospectus and the other documents accompanying the loan issue, of which the holder was aware when subscribing to the loan, bear the character conferred upon them by the doctrine and jurisprudence on the subject, that is, they supply the court with the accessory and additional data to be utilised in interpreting the main loan document.

VII.-- Rule 3. General Rules of Interpretation.

The purpose of the Code is to supply the court with legal rules which can be employed to settle disputes and as far as possible avoid reference to any national law; it was subsequently felt necessary also to insert in the Code interpretative provisions designed to clear up doubts as to the tenor of the clauses in loan contracts.

These provisions may lay down rules of interpretation either on the basis of the general code of obligations or by dealing with the details of the loan contract and certain clauses to be inserted therein. The Institute has thought it advisable to settle this question systematically by laying down, first, general rules for the interpretation of the contract, and then special provisions regarding the special clauses.

In stating the general rules of interpretation, the Institute has made allowance for the basic difference between the various legal systems on the following points:

- a) the legal nature of the rules of interpretation, which in some systems of legislation are obligatory and in others are merely recommendations;
- b) the method employed for obtaining an interpretation; a distinction may be drawn between systems which aim at ascertaining the real intention of the parties by taking the contract as a basis (subjective system) and those which attach major importance to the formal declaration made in the contract, using good faith or custom as additional data (objective system);
- c) the technical rules of interpretation: it is possible either to lay down a general rule and define at the same time the purpose of the interpretation and the factors which can be utilised by the court, or to enact a series of detailed rules.

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what he binds himself to do. Any vague or ambiguous agreement shall be construed against the vendor". The reasons underlying this provision may also be cited in support of the rule in question: "It is reasonable to consider the vendor as having dictated the law of the contract, for, in fact, he usually lays down the various sale conditions. Furthermore, he knows his business much better than the buyer can. He is, thus, perfectly well able to define the undertakings which he assumes, and therefore, if he fails to do so, he must suffer the consequences". (Baudry-Lacantinerie - Droit civil - XI, n° 515).

X.- Rules 4 and 5. Interpretation of the Payment Clauses.

Most disputes regarding international loans have been due to differences in the interpretation of the payment clauses, either because these merely state the currency in which the loan is expressed, or because they contain a reference to a particular standard in order to protect creditors against the risk of currency fluctuations. In the former case it is the business of the court to decide, when the contract is mute on the subject, the effects of a change in the nature of the agreed currency; in the latter, the problem consists in ascertaining the meaning and the consequences of the provisions designed to safeguard creditors.

Each of the above hypothesis has been covered in the uniform rules.

Firstly, when the service of the loan has been fixed in a national currency without reference to a particular standard, the uniform rules follow the provision common to most legislations, under which a person owing a sum of money is discharged by payment of the amount due in the currency which is legal tender at the time of payment. Consequently, if no detailed

specification of a currency is given, the risks of devaluation or other changes in the nature of the agreed currency must be borne by the creditors.

Though some authorities hold this provision to be inequitable and extremely dangerous to creditors, it was felt desirable to insert it in the uniform rules, seeing that, as legislation stands as present, the rule of "currency nominalism" is almost unanimously accepted. It was further considered that the creditors could safeguard themselves against the risk of changes in the nature of a currency by special clauses (gold clause, currency option, etc.). Further, if it turned out that a debtor State had altered the nature of the currency solely in order to evade its commitments to its creditors, the latter, we think, would be sufficiently protected by the provision in Rule 1 prohibiting any unilateral modification, even indirectly, of the terms of the loan.

Paragraph 2 lays down an initial exception to the above general rule by enacting that the latter may be set aside by a contractual provision under which the parties refer to a national currency as defined by a law in force at the time of issue. The effect of this clause would be to protect the loan currency against the consequences of changes that might occur in the value of the nominal currency. In most cases this clause would make it unnecessary to have a gold clause or a currency option, since the purpose of these clauses would be achieved by adopting the rule above mentioned.

Paragraph 3 lays down a rule for the interpretation of the gold clause. As is clear from Professor Basdevant's memorandum (Doc. I.L. 30):

"Where there is a gold clause, it has frequently given rise to doubt as to whether it means payment in gold coin of the

"sum due, or payment of the sum due at its gold value in the
"current national currency. In general, the gold clause has
"been interpreted in the latter sense: the Permanent Court of
"International Justice decided in this sense in the case of the
"Serbian loans and Brazilian Federal loans. Indeed, the clause
"is of no real use unless it is taken as involving an obligation
"to pay the gold value. This interpretation of the clause is
"clearly implied in the documents relating to certain loans
"of recent years. The point ought to be cleared up, so as to
"enable all parties to realise their rights and obligations
"from the outset. Hence, it would be desirable for the Commit-
"tee to approve a rule of interpretation holding good for fu-
"ture loans, whereby the gold clause would be taken to prescribe
"the service of the loan on a gold value basis in default of any
"sufficiently explicit indication to the contrary".

The Institute agrees with M. Basdevant's arguments, and a rule of interpretation has been drafted on the basis of the above conclusions, with the backing of an almost unanimous jurisprudence.

In the Institute's preliminary study, doubts were expressed as to whether, in interpreting the gold clause, the court was bound to follow the indications given in the loan documents, or whether it could infer a contrary intention of the parties from other facts not open to misinterpretation. The more restrictive solution has been chosen. It was felt that, if the court were given too much latitude in choosing the data by which to interpret the intention of the parties, there might be a risk of creating the same difficulties of interpretation as the uniform rules were endeavouring to obviate.

Among the other clauses regarding payment of loan interest and capital, which raised difficulties of interpretation, mention should be made of the clauses dealing with currency option and place option.

These difficulties relate chiefly to the following points: 1) in the absence of sufficient details, it is an open question whether the choice between the various currencies specified in the contract for the service of the loan lies with the creditor or the debtor; 2) in certain circumstances, e.g., when the creditor is entitled to claim payment in several countries, it may not be easy to distinguish the currency option from the place option. It was also thought desirable to distinguish the exchange guarantee from the two clauses above referred to.

A comparative study of the doctrine and jurisprudence in the matter has enabled the Institute to deduce from the various bodies of legislation the following rules:

- 1.- Re the currency option clause: For the existence of this clause it is not sufficient that the amount of the debt should be expressed in several currencies and that payment may be made in several places; it is also essential that the number of currency units due in each currency should be defined for the whole period of the obligation. The purpose of this clause is to give the creditor the choice of currency by letting him choose the place in which he wants to be paid.
- 2.- Re the place option clause: The sole purpose of this clause is to place the equivalent of the amount stipulated at the holder's disposal in one or more countries other than that in which the loan was issued. It merely involves a simple calculation to determine, according to the rate of exchange, the sum representing in the currency of the country chosen the amount of the debt after the latter has first been fixed in the light of the principal stipulation.

3.- Re the exchange guarantee clauses: This clause provides for payment in one currency only and in one country only. As, however, the number of currency units due in that country's currency is determined by reference to one or more other currencies, the creditor has the choice of being paid either for the stipulated amount in the currency of the country of payment, or for the equivalent in that currency of the amounts stipulated in any one of the other currencies, calculated as laid down in the contract.

Rule 5 was drafted in the light of the above considerations.

IX.- Rule 6: Uniform Time-Limit for the Extinction of Coupons and Bonds.

In view of the diversity of current national legislation on the subject, it would seem highly desirable to lay down a uniform period of limitation for actions for the payment of interest and capital in respect of bonds; this diversity is confusing to the subscriber, who does not know, when subscribing to the loan, the period of time within which he can exercise his rights.

It is not an easy matter to draft a uniform rule on this subject. As the Institute's preliminary study shows, the differences between legal systems may concern either the duration of the period of limitation or the method followed in determining that period. Further, in some systems of law, though the statutory period of limitation may be shortened, it cannot possibly be extended by agreement; other systems, again, prohibit any contractual change in the period.

As the uniform period of limitation is to be adopted by international convention, the provisions of national legislation prohibiting or limiting changes in the statutory period of

limitation cannot preclude unification. The period of ten years adopted by the Swiss Federal Code of Obligations seems to be that best adapted to the requirements and the accelerated rhythm of commercial affairs and transactions.

The question also arises whether there should be a uniform period of limitation for both coupons and bonds, or whether it would be better to maintain the distinction existing in most systems of law. The former solution, which is adopted in the uniform rules, has the advantage of simplifying the execution of the contract.

The period of limitation should run from the date on which the interest or capital of redeemable bonds falls due for payment. Paragraph 2 deals with the case of suspension of the period of limitation, and is designed to prevent limitation from benefiting a defaulting debtor to the detriment of his creditors. This provision lays down that the period of limitation shall not continue to run when the debtor suspends the complete service of the loan, unless such suspension is the result of an agreement with the bondholders; it is based on the principle that extinction of claim should be a penalty imposed on a careless creditor, but not a premium for a defaulting debtor.

X.- Rule 7: Reference to the General Rules of Law.

The uniform rules are intended to lay down the basic provisions governing the loan, without specifying detailed regulations. These provisions, however, would not be sufficient to settle all the disputes which might arise in this connection. Accordingly, the international tribunal which has to judge the disputes in question might occasionally be unable to exercise its jurisdiction because of the absence of provisions of material law applicable to the particular case.

This drawback might be remedied either by inserting a provision referring to a particular municipal law in cases not governed by the uniform rules, or by a reference to the general rules of law. Seeing that the uniform rules have been devised in order to avoid raising the question of the law applicable, the former solution would not seem wholly satisfactory, even though reference to a municipal law would be limited in this case to a few special points.

The provision adopted lays down that in cases not covered by the uniform rules, the general principles of law should be applied. This expression was not intended to designate the principles underlying a particular system of law, nor the principles of natural law, but the legal principles that may be regarded as accepted by civilised nations (see, by analogy, Art. 38 of the Statute of the Permanent Court of International Justice).

This solution would obviate the drawback of having to decide what law had to be applied. It is, however, not free from difficulty, for it might not always be easy to infer from the general body of legislation the common rules that could be applied in each particular case.