

LEAGUE OF NATIONS

Economic Committee

UNIFICATION OF LAWS RELATING  
TO BILLS OF EXCHANGE  
AND PROMISSORY NOTES

GENERAL REPORT AND INDIVIDUAL REPORTS

SUBMITTED BY

Professor D. JOSEPHUS JITTA (Netherlands).

Sir Mackenzie D. CHALMERS, K.C.B. (Great-Britain).

Professor Dr Franz KLEIN (Austria).

Professor Ch. LYON-CAEN (France).



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# UNIFICATION OF LAWS RELATING TO BILLS OF EXCHANGE.

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ECONOMIC COMMITTEE.

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## GENERAL REPORT.

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For more than half a century endeavours have been made to unify the law on bills of exchange and promissory notes, both by the interpreters of international law and by merchants, the development of whose business brings them into contact with the international circulation of bills of exchange and similar instruments.

At first sight the work of unification seems simple. Like most parts of commercial law, the law of bills of exchange—I shall not always mention promissory notes as well—is derived from commercial customs, and—owing to the fact that trade is very frequently international—from international usages in regard to bills of exchange.

In practice, however, unification is not at all easy. In many countries the customary rules regarding bills of exchange have been replaced by laws or regulations founded, not only on the decisions of local courts, but also on theories put forward by jurists and adopted by legislators. The solid foundation of the original customary law has almost wholly disappeared under the accumulated mass of articles, paragraphs and sections.

Nevertheless, attempts to secure the partial or total unification of bills of exchange law have not been wanting. They are all worthy of the highest commendation, but the present general report will only mention the work of the Institute of International Law, that of the International Law Association, and the Conference held, on the initiative of Belgium, at Antwerp and Brussels in 1885 and 1888. I shall then briefly consider the attempt which was made at the Hague Conferences of 1910 and 1912, summoned by the Netherlands Government.

The great majority of the countries in both hemispheres took part in the Hague Conferences. The delegates of these countries included not only jurists, but also merchants, and particularly bankers; the great banks of several countries were represented by eminent men. The Conferences considered the question of unification in all its aspects. The 1912 Conference re-examined the results which had been obtained in 1910. It adopted a Convention, signed by 27 States, whereby these States undertook to put

into force in their respective territories a Uniform Regulation consisting of 80 Articles, which was annexed to the Convention. Articles 2 to 22 of the Convention specify a certain number of exceptions and amplifications which are regarded as permissible. The Regulation relates to bills of exchange and promissory notes. As regards cheques, a series of resolutions has been provisionally adopted.

Various circumstances, chief among which is the war, have prevented the ratification of the Convention.

The question of the unification of the law of bills of exchange was again raised after the war. The Brussels Financial Conference drew the attention of the League of Nations to the subject. The International Chamber of Commerce has devoted all its efforts to finding a solution. The League of Nations, through its Economic Committee, has entered into communication with the Netherlands Government, which has shown all readiness to make a fresh attempt. On the instructions of the Council and the Assembly, the Economic Committee appointed four persons to draw up a report expressing their personal opinions on the question of unification, and more particularly to discover what response has been made throughout the world to the work done at The Hague.

These four persons are, in alphabetical order :

Sir MACKENZIE D. CHALMERS (Great Britain);  
Professor D. JOSEPHUS JITTA (Netherlands);  
Professor FRANZ KLEIN (Austria);  
Professor Ch. LYON-CAEN (France).

The four rapporteurs have duly carried out their instructions. Their individual reports are annexed to the present general report, which embodies their common opinions.

It is scarcely necessary to point out that the reports, a brief summary of which will be given, merely express personal opinions, which in no way bind the respective Governments.

Sir Mackenzie D. CHALMERS, to whom the bill which became the English Act of 1882 is due, laid stress on the reasons which led Great Britain to refuse to adhere to the Hague Convention. The Act, he says, is a work of consolidation, codifying the results of an immense number of decisions given by higher judicial authorities. It has been adopted in principle by the autonomous Dominions in the Empire. The adoption of the Continental system in its entirety would render all the work that has been done of no avail. Great Britain took part in the work done at The Hague, to which she attaches great importance; she would be glad to see the present large number of types of law reduced to two—the Anglo-American type and the Continental type. Sir Mackenzie points out that the United States of America, which were also represented at The Hague in 1910 and 1912, adopted the same attitude. Moreover, the United States Constitution does not empower the Federal Legislature to impose a law covering the entire subject of bills of exchange on the States which form the Union. Approximately uniform laws relating to « negotiable instruments » have with great difficulty been passed in a large majority of the States in the Union. It cannot be contemplated that the uniformity thus secured should be sacrificed.

Professor JOSEPHUS JITTA is of opinion that Anglo-American law will not be completely altered. He notes that, generally speaking, the Uniform Regulation drawn up



at The Hague has been favourably received in a large number of European and American countries, and particularly in Latin America. He considers that the Hague Regulation is well adapted to form the basis of a new agreement, which will lead to a bifurcation, and thence to gradual assimilation. There would thus be only two types of law in the world on the subject of bills of exchange — Anglo-American law, which would gradually come nearer Continental law, and Continental law, which would gradually come nearer Anglo-American law. The rapporteur does full justice to the work of the International Chamber of Commerce, particularly in regard to the reservations which had to be made in the Hague Convention. He discusses briefly the subject of cheques, but, despite the importance which he attaches to the international unification of the law of cheques, he considers that it would be better to confine the next Conference to bills of exchange and promissory notes. The law on cheques gives rise to controversies of every kind, from which the bill of exchange law is free.

The conclusions reached by Professor Franz KLEIN with regard to the Conference of 1912 are similar to those of Professor JITTA. The rapporteur considers that, in future steps towards unification of, the work of the second Conference should be continued, and that the Convention and Uniform Regulation of The Hague should be used as a basis. This does not mean, however, that no rectifications or additions should be made, if their necessity has been proved in the course of the ten years which have elapsed. In spite of these changes, the rapporteur is inclined to think that the Hague Convention, although never ratified has, nevertheless, created an Association of States which is alone in an entitled position to deal with the question of unification of the law on bills of exchange and promissory notes. Further, as regards the keenly discussed question of the abolition of the reservations of the Convention, the rapporteur is not in favour of their abolition; he would like to retain them at any rate until unification has been actually carried into effect in the countries concerned.

The invitation to the new Conference should be sent to all States which took part in the Conference of 1912, and also to those which at that time formed part of a participating State. The countries which took part in the Conference should enjoy absolute equality of rights. The rapporteur further holds that the League of Nations should, in helping to organise the new Conference, take into account the Convention of 1912 and the desires of the States which signed it. The mutual rapprochement of the Anglo-American States and the other members of the Conference on the subject of the law on bills of exchange would be best effected by means of special discussions, apart from the discussions of the Conference on unification. These discussions will chiefly bear upon the means of bringing about conformity in the systems of law of the Continental States. Lastly, the rapporteur agrees with Professor LYON-CAEN in recommending that it would be desirable to postpone the date of the third Conference until peace has been restored to the world, unless the large majority of countries display a clear desire to expedite unification as far as possible.

Professor LYON-CAEN notes the obstacles which have been raised to the ratification of the Hague Conventions, particularly in France. The Convention was a bold proposal. The intention was to impose on the contracting States the obligation, subject to the reservations made in the Convention, to put into force a law consisting of 80 Articles, without allowing any amendment by the national legislatures. The objection based on this fact may be open to criticism, but it does undoubtedly constitute a difficulty. In France the objection has also been raised that the Hague Regulation was based on a system which diverges too far from the French national system. The rapporteur is not opposed to the resumption of the work, but advises that careful

consideration should be given to the question of the desirability of confining the proposals to a model law, or even simply to recommendations.

After exchanging reports, the four rapporteurs met at The Hague, at the house of Professor JITTA, who was unable to travel owing to an operation. They then discussed the subject, and consequently decided not to push to their logical conclusions all the ideas embodied in their individual reports; whereupon they asked Professor JITTA to draw up a general report expressing their common views as to the procedure to be followed. These views are expressed in the nine conclusions given below, which will be followed by a short summary of the considerations on which they are based.

1. It is not at present possible to secure general uniformity in the law of bills of exchange<sup>1</sup>. Generally speaking, Anglo-American law follows, and will continue to follow, its own lines, for constitutional and important practical reasons; this is clear from statements which have been made on many occasions.

2. We must be satisfied with uniformity among the great majority of the States of what is known as the Continental type in both hemispheres.

3. It seems clear that the Hague Regulation, which was signed by the representatives of 27 countries, is well adapted to form the basis of discussion at another meeting; it may perhaps be revised with due prudence.

4. It also seems clear that we cannot expect the complete suppression of the reservations made in the Hague Convention of 1912.

5. The rapporteurs are of opinion that the originally suggested meeting of a new Committee of Enquiry, consisting of experts appointed by a small number of States, is no longer necessary, and might better be abandoned.

6. If the view expressed in the preceding paragraph is followed, the general report given above and the four individual reports might be printed and sent to all States without exception, as being the results of the enquiry made by the League of Nations, together with the information that the League has entered into communication with the Netherlands Government with a view to organising a third Conference to resume the work undertaken in 1912.

7. In that case the League of Nations would consult the Netherlands Government in all matters connected with this third Conference. All countries would be invited to take part on a footing of absolute equality. The date of the Conference would be fixed by agreement between the League of Nations and the Netherlands Government, account being taken of the political situation of the world. As regards the place at which the Conference should be held, the rapporteurs recommend The Hague, on account of the Conferences which have already been held there, so that the name « Hague Convention » could be retained.

The invitations might be issued by the Netherlands Government in a form emphasising the great advantage derived from the support and co-operation of the League of Nations.

8. It is highly desirable that the United States of America, Great Britain, and the other States which form autonomous communities in the British Empire should,

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<sup>1</sup> Bills of exchange must be taken to include promissory notes. The mention of promissory notes has been avoided in these conclusions, in order to increase their clearness and to abbreviate the text.



although their adhesion cannot be counted on, take part in the Conference, as Great Britain and the United States did in 1910 and 1912.

9. The Conference might express the desire that those States which found themselves unable to put into force the Regulation as limited by the reservations, should at all events undertake to follow the Regulation as far as possible in their national legislation.

*Conclusion 1.*—The rapporteurs are of opinion that it is wisest to harvest what is ripe, and to leave the rest to ripen. They realise the almost insuperable obstacles which prevent the United States, Great Britain and the autonomous Dominions of the British Empire from adhering—obstacles the importance of which is shown in the report by Sir MACKENZIE D. CHALMERS. The hope of complete uniformity as regards bills of exchange and promissory notes must therefore be abandoned for the present.

*Conclusion 2.*—This is deduced from No. 1. We must endeavour to secure uniformity as far as possible in the legislations of the Continental type. Legislations of the Continental type should be taken to mean not only those of the Continent of Europe, but also those of other parts of the world, such as Latin America.

*Conclusion 3.*—The representatives of the various countries in which the Continental type of law is in force met at The Hague in 1910 and 1912. The States belonging to the Anglo-American world were also represented. Three of the four rapporteurs mentioned above—Sir MACKENZIE D. CHALMERS and Professors LYON-CAEN and JITTA—were present as delegates at both conferences. The great banks, including the Bank of France and the Bank of England, were also represented. The work went on for weeks. As regards laws of Continental type, it may be said that the Conferences proved the possibility of an agreement, subject to the reservations made in the Convention. The rapporteurs do not suggest that the Hague Regulation should be imposed on the new Conference; but they are of opinion that this Regulation, which was accepted in 1912, after long deliberations, by the delegates of 27 States, may form a basis of discussion at the new Conference. They also consider that a revision of the Regulation is possible.

*Conclusion 4.*—Articles 2 to 22 of the Hague Convention constitute a list of the points on which it was impossible to reach agreement in 1912. The general rapporteurs of 1912 regretted that they were obliged to register so many reservations; but they recognised that necessity knows no law. The most important reservations concern the necessity of inserting the words « bills of exchange » in the document; endorsement for guarantee; the right to refuse partial payment; cover; bill stamps, etc. It is open to question whether all these reservations would have to be retained at the present day. In the opinion of the rapporteurs, the enquiry made by the International Chamber of Commerce shows that the position in regard to the more important reservations has not greatly changed.

*Conclusion 5.*—The appointment of a new and rather large Committee of Experts, to be selected from among the nationals of certain States to be named, was originally contemplated. The duty of this committee would be to examine the work of the four rapporteurs, and to prepare the agenda for a future general Conference. The rapporteurs all agree that the appointment of this committee should be abandoned. They are afraid that the limitation of the number of members might lead to an unfortunate situation in relation to the States which were not represented. Either experts from all



States which made application would have to be included, which would unduly increase the size of the committee, or there would be a risk of wounding the susceptibilities of certain States by refusal. Moreover, the appointment of a committee of this nature would involve considerable waste of time and heavy travelling and subsistence allowances, while there is no real hope of securing any more general uniformity than that contemplated by the four rapporteurs.

*Conclusion 6.*—It is only necessary to explain the expression « all States without exception ». It is obvious that invitations to the Conference cannot be restricted to those States which are at present Members of the League of Nations. Furthermore, it would seem that all limiting formulæ present disadvantages. It was at first thought that the expression : « those States which took part in the 1910 and 1912 Conferences and those States which have been formed since 1912 shall be invited », might be used. This formula, however, would exclude States which, though in existence long before 1912, did not for some reason or other think it desirable to send delegates to The Hague. The rapporteurs are of opinion that in principle no State should be excluded.

*Conclusion 7.*—The rapporteurs have learnt that an exchange of views has already taken place between the League of Nations and the Netherlands Government, and that a most friendly spirit was displayed on both sides. It now remains to reach a full agreement. It will be for the League of Nations and the Netherlands Government to agree upon the date of the Conference, due regard being had to the world political situation. The rapporteurs are of opinion that the present situation is unfavourable. As regards the place, they unanimously recommend The Hague. It was there that the first two Conferences were held on the initiative of the Netherlands Government; and the Netherlands are morally entitled to have the new Convention known as a « Hague Convention ». There will, no doubt, be many other points requiring settlement, such as the organisation of the Conference and the expense involved. The rapporteurs however, do not propose to go into further details.

*Conclusion 8.*—The United States and Great Britain took a very active part in the Hague Conferences. Their representatives gave most useful particulars; they exercised a notable influence over the decisions adopted, and endeavoured to make clear what alterations might be made in the legislation of their countries with a view to bringing it closer to the Uniform Regulation. It is highly desirable that this should be repeated at the new Conference.

*Conclusion 9.*—The object of this particular conclusion is to enable those States which cannot undertake to insert all the provisions of a Uniform Regulation in their own legislation to take part, notwithstanding, in the work. If the Uniform Regulation is clear and simple, almost complete uniformity will soon be secured.

THE HAGUE, *July 1923.*

(Signed) JITTA.

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# REPORT

by **Dr. D. JOSEPHUS JITTA**

*Former Professor at the University of Amsterdam,*

*Conseiller d'Etat,*

*Associate of the Institut de Droit international,*

*Netherlands Delegate to the Hague Conferences  
of 1910 and 1912.*

[Translation.]

## SECOND MEMORANDUM

SUBMITTED TO  
THE ECONOMIC AND FINANCIAL COMMISSION  
(Economic Section)  
OF THE LEAGUE OF NATIONS

by Professor Dr. D. JOSEPHUS JITTA (The Hague).

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### SECTION I.—GENERAL INTRODUCTION.

In August 1922, the author of the present work had the honour to submit a Memorandum to the Economic and Financial Commission (Economic Section) on the unification of laws relating to bills of exchange in various countries. He was much gratified to learn, from the Commission's report to the Council of the League of Nations, that his Memorandum had been greatly appreciated.

After a discussion—which, as the Commission observes, was marked by the greatest frankness and cordiality—between the Economic Section of the Commission and the author of the present Memorandum, representing the Netherlands Government, the Commission, in agreement with the author, recommended to the Council to adopt a procedure of which the first step was to entrust to the author, among other persons, a task of a highly honourable nature. Dr. Josephus Jitta—so runs the Commission's report to the Council—will prepare a Memorandum on the present legal situation, setting forth the several respects in which greater uniformity might be attained between the different legislative codes among themselves, and also between this group of codes and the law of the Anglo-Saxon communities, and examining specially the reasons for the failure of the various signatories of the Convention concluded at The Hague in 1912 to ratify that Convention.

The Commission's report, which describes the first and subsequent stages of the programme, was approved by the Council and by the Assembly of the League of Nations.

In this Second Memorandum, the author will endeavour to throw more light on the questions requiring solution. He merely desires to state in the present Introduction that when, at a later stage in his Memorandum, he contrasts Anglo-American law with the different legislative codes which are based on the Continental systems, this in no way implies that he desires to limit his researches to the legal codes and decrees of the Continent of Europe. He discusses the Continental systems—to use a convenient expression—which are in marked contrast to Anglo-American law, but



he fully recognises the importance of the legal systems prevailing in continents other than Europe. He desires especially to state that he has followed with close attention the efforts recently made in Latin America (Congress of Buenos Aires 1916)<sup>1</sup> to achieve the unification of legislation in this sphere.

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## SECTION 2.—THE ORIGIN AND EXTENT OF THE MAIN DIFFERENCES BETWEEN NATIONAL LEGISLATIONS.

There is no need for us to delve into history and tradition regarding the origin of bills of exchange. Such information can be found in any textbook, but it appears worth noting that the law on bills of exchange was, originally, *a law established by universal usage*, and that during the course of history it has become a law *bearing the stamp of many national legislatures*. This fact may be of importance when we come to consider whether the law on bills of exchange may become, once more, a universal law.

Some of the rules of this primitive universal law have retained their universal application. First, there is the rule which normally compels the drawer to guarantee the payment. This rule is vaguely traceable to the Letter of Credit, an older instrument than the bill of exchange, and which—like the bill of exchange, in case of need—absolves a traveller who carries the bill in his portfolio from the necessity of carrying specie—national or foreign—with him on his travels. Then there is the rule which lays down that the person designed to pay the bill becomes liable thereon to the holder by virtue of his acceptance. Yet another rule enables a person whose name has been endorsed by a previous « holder in due course » on the back of the bill (the bill has a « back » just as it has its « style » and even its « honour ») to demand payment from the acceptor and to obtain the benefit, if necessary, of the drawer's guarantee. Lastly, a fourth rule compels all those who have signed the bill to guarantee to the « diligent » holder the sum which is due to him.

Except for certain minor distinctions, and leaving on one side the definitions of the legal terms employed, these rules still form the groundwork upon which the international circulation of bills of exchange is based.

Legislators have, however, believed that they could render an important service to the commerce of their countries by printing on official parchment the rules established by custom. They took advice from the best lawyers in their countries. These lawyers defined and extended the customary rules in the light of the legal principles which had been instilled into them. To this fact is due the somewhat large diversity of systems. These systems have been so often compared that I think I may dispense with going into details, merely observing that the three chief systems are : the French system, in which traces of the ancient theory of the « contract of exchange » are observable, *e.g.*, as regards the principle of the transfer of cover (« provision »); the general system of regulation in Germany, the main feature of which—leaving minor

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<sup>1</sup> Alta Comisión internacional de legislación uniforme, reunida en Buenos Aires del 3 al 12 de Abril 1916 : Letras de Cambio.

distinctions on one side—is the conception of the « literal obligation »; and the Anglo-American system, which seeks to safeguard the rights of the bona-fide holder who has paid the value of the bill. There are many laws, both in Europe and in other countries, which are based on one or other of these systems.

There are also laws based on peculiar systems of their own, *e.g.*, the laws of Spain and of the Spanish type, the laws of Italy, of Belgium and Brazil, etc.

Legislators have also endeavoured to assist their national commerce by giving certain supplementary guarantees to the holder. The desire to enable a bill of exchange to circulate, as far as possible, as if it were gold may lead to a predominance of the external symbol over the reality on which it is based; it opens the way to a simple and rapid procedure which prevents the debtor from shielding himself behind the ordinary pleas of defence, and makes possible, above all, summary execution on the goods and even the person of the debtor.

On some cases, also, States desiring to turn an honest penny have assigned to themselves a sort of commission in the form of a stamp duty. Indeed, they have often acted on the assumption, which is far from being correct in all cases, that a bill of exchange drawn for a considerable sum is an indication of great wealth, and they have accordingly made the stamp duty proportional to the total of the bill. Finally, they have sought to ensure the collection of this tax by the most drastic fines and even by declaring the bill void.

Such are the ways in which legislators have embroidered rules of varying tenor on the web of the universal primitive law.

Certain comparative studies, which it would be presumption in me to praise, have already been carried out <sup>1</sup>. I do not wish to repeat what has already been said, but I think it desirable to make a rapid survey of the principal differences, in order to bring out clearly the difficulties in the way of unification.

**Issue of bills.**—One is struck, when comparing the various laws, by the importance which is given, in varying degrees, to the form of the bill of exchange. In cases in which the law confers peculiar legal attributes on these bills it is usual to demand some external indication, or even a large number of indications, which will make it obvious at first sight that the document is a bill of exchange and not some other instrument. This is the origin of the old requirements that the bill must be transmitted from one locality to another locality and that it should be noted on the bill that it is for « value received »; this also accounts for the importance attached to the words « to order », and especially for the specific requirement that the term « bill of exchange » should appear in the text. The requirements that the date, the place of issue and the place of payment should be shown, on pain of the instrument being void as a bill of exchange, are also questions connected with the form of the bill. In some cases certain ways of indicating when the bill falls due are forbidden. In other cases certain stipulations are forbidden, *e.g.*, a stipulation that the sum payable shall bear interest, or a clause inserted by the drawer releasing himself from the guarantee of payment. Other stipulations are allowed but are incompletely regulated, *e.g.*, the clause « sans frais ». The capacity to incur liability as a drawer is, in general, dependent on the capacity to incur liability by contract—which is not the

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<sup>1</sup> I will only quote F. MEYER, *Die geltenden Wechselgesetze in vergleichender Darstellung*, Leipzig 1909, and C. STEVENS WALTON, *Leyes comerciales y maritimas de la America Latina*, Washington 1907.



same in all countries; there are in some countries special incapacities based on sex, social position, or vocation. The method of signature by illiterate persons is also the occasion, in certain countries, for special provisions. The same applies to persons signing as agents. A distinction is made in the legislation of certain countries between « inland bills » and « foreign bills ».

**Endorsement.**—It is generally admitted—and this is again a relic of the old universal customary law—that the endorsee, though he is in a certain sense the successor of the previous endorser, acquires a title which is independent of that of the last holder and which is based on the promise (which is implied in the bill of exchange, even if the latter is worded in the courteous form of a mandate). It therefore becomes necessary to insist, as regards endorsements, on certain forms which are similar to those required in the drawing of the bill, *e.g.*, the date, the name of the endorser (this requirement may exclude endorsements in blank and endorsements to bearer), an indication that it is « for value received » or « on account », etc. If endorsements are only considered regular in certain forms, there will be cases of irregular endorsements which will not have the full legal effect of regular endorsements, and which may, for example, be regarded simply as declarations creating a relation of principal and agent (« procurations ») more or less clearly defined. In some codes the endorsement in blank occupies a half-way position between regular and irregular endorsement, and though it is not exactly in the form regarded as indispensable, it is allowed by the law to have the full effect of a regular endorsement. Then there is a whole series of gradations of endorsements. An endorsement may be partial or conditional, it may state specifically that it is only intended as a *procuratio* or as a pledge. A bill may be endorsed after it has fallen due, or even after it has been protested. The endorsement may be without guarantee, it may contain the qualification « sans frais » and various other clauses.

**Acceptance.**—In some countries this is a regular legal formality. The tenor of the laws might convey the impression that the word « accepted » or some similar term must be employed, but, speaking generally, the interpretation is more elastic, and even if the law does not expressly admit it, it is a fairly common practice to recognise the simple signature of the drawee on the face of the bill as equivalent to acceptance. Verbal acceptance and acceptance by telegram, or in a separate instrument, is not, as a rule, allowed the same effect as an acceptance written on the bill. Under some laws acceptance may be partial; partial acceptance does not deprive the holder of his right of recourse for non-acceptance. The general practice, if not the law, admits the use of bills which do not require acceptance and the clauses making it obligatory to present a bill for acceptance. When a bill is payable within a certain time after sight, it must, as a rule, be presented for acceptance and even, in principle, within a reasonable time; but in many legislations it is not left to the Courts to decide what is a reasonable time. In extreme cases a « visa », without acceptance, might suffice, but it is not easy to distinguish between such « visa » and acceptance. When the drawee omits to date his acceptance, in cases where the time-limit begins to run from that date, legislations provide different measures. In some cases, again, the drawee may ask to be given time when the bill is presented to him for acceptance, and this gives rise to difficulties in practice. In some laws the drawee is denied the right of cancelling his acceptance, thus recalling the conception of acceptance as a legal formality, in other cases the drawee is specifically allowed this right, but not in any absolute way.



**Payment.**—There is naturally a connection, which it is needless to emphasise, between the maturity and the payment of the bill. Days of grace have not been abolished in all countries. Holidays and days in the same category as holidays are, of course, different under different legislations and will probably continue to be so; their effects are also different, though there is a fairly general tendency to favour the debtor by allowing him to pay on the first working day following the holiday or holidays. There are differences as to the obligation to accept a partial payment of the bill. The difficulties arising out of the differences of currencies and the fluctuations of exchanges have been increased by the war. The question of the international effect of moratoria remains as it was before the war, but numerous moratoria have been granted during the war even in countries in which the war has only exerted an indirect influence.

**Default of acceptance.**—Default does not produce the same effects everywhere. Some legislations limit the rights of the holder, in such a case, to demanding security; others allow immediate recourse, subject to the right to deduct discount from the total of the bill.

**Default of payment.**—The method of giving notice of dishonour is not the same everywhere. A protest is not always required, and the laws vary as to the exact date on which the bill must be protested and the time-limit within which the protest must be drawn up. The manner in which refusal of payment has to be notified is not always the same and an omission to notify has not always the same legal effects. There are also differences in the various laws regarding the rules for exercising the right of recourse.

**Guarantees by “aval”.**—The granting of guarantees by an « aval » in a separate instrument is also subject to differences of legislation. It may be said that it is no part of the law of bills of exchange, but secrecy has certain practical advantages which are considered important in some countries.

**Intervention for honour.**—There are differences in the various laws as to whether a holder must demand acceptance for honour when some person has been designated to accept responsibility for the bill « in case of need » and whether the holder must be satisfied with such an acceptance. It is not even laid down in all cases whether the holder need take any notice of the fact that a person has been designated to pay « in case of need ».

**Bankruptcy, insolvency, suspension of payment, etc., by a debtor.**—It would require a whole vocabulary, besides an « etc. », to complete this list because the laws are so different. Moreover, it would be out of the question at the present time to unify the legislation on bankruptcy, etc., as well as that relating to bills of exchange. No doubt, when one of the debtors becomes bankrupt or insolvent while the bill is in circulation, the credit of the bill is shaken. The debtor may be the drawee, whether he has accepted the bill or refused to do so; or he may be the drawer, particularly if the bill was issued as a non-acceptable instrument; or again, he may be an endorser or a special guarantor. But the laws have not provided for all these cases and do not even prescribe the same effects for the cases which they have provided for. In particular, the right of immediate recourse is not always allowed, even in case of the bankruptcy of the acceptor.

**Forgeries.**—Apart from the question of substantial alterations—*e.g.*, in the sum to be paid or the date—there may be forged signatures on a bill preceded or

followed by authentic signatures. A not improbable case is that of a forged endorsement preceded and followed by one or more authentic endorsements. The perfectly legitimate horror which legislators feel for forgeries might lead them to regard the sequence of endorsements as broken in such a case. There are laws inspired by this conception. Other laws maintain that, even if there has been a forgery, the declarations which appear on the bill are independent of each other and they thus allow full effect, in principle, to the authentic signatures which follow the forgery.

**Bills in a set and copies.**—There are gaps in certain laws and divergencies between others in regard to the rules relating to bills in a set and copies. The differences occur particularly in regard to the right to demand a set when there has been no agreement on that point. As regards the parts, it is, of course, required that they should be numbered, but there are differences in the laws as to whether it is necessary to state on each part the number of parts issued, or even if a form of words must be employed, as used to be the custom, stating that the « first », or other, part would only be honoured provided that the other parts, referred to by number, were unpaid.

**Loss of a bill.**—Such a loss entails disadvantages to the holder, particularly when the bill has not been issued in a set or if the acceptance was written on the lost document. In any case, the replacement of the lost bill, even if it is possible, requires time and a certain degree of goodwill on the part of the persons liable under it. As to the rights possessed by the holder of a lost bill, the laws recognise various systems, the advantages and disadvantages of which are matters of opinion. Some laws provide for payment, subject to guarantees by order of a Court, thus leaving the rights inherent in the lost copy intact, in principle; others provide for a procedure of amortisation which may lead, in the end, to the cancelling of the bill, if the advertisements published do not lead to its recovery.

**The extinction of liabilities based on a bill of exchange.**—The various national civil codes now in force generally contain provisions regarding the different ways in which liabilities can be extinguished, and the differences between these laws naturally become apparent when it is necessary to apply them to bills of exchange. But it is specially in regard to the length of the prescription, or period after which action is barred, that the differences between the laws are apparent. In some countries, it has not been thought necessary to legislate specially for bills of exchange, and the general legislation is applicable to them. The laws of other countries contain special provisions, but there are wide differences in regard to the length of the prescription for the different parties liable, the dates from which it begins to run, and its interruption or suspension.

**Recourse based on the legal relationship which may exist between two persons independently of the bill of exchange, or on an inequitable gain.**—There are certain laws which provide explicitly for recourse, for one or other of the above reasons, after the prescription or extinction of the rights inherent in a bill of exchange, but the laws which grant such recourse do not always do so in the same way.

**Provisions concerning Conflict of Laws.**—This expression is often used to indicate the rules of private international law which are to be found in certain legal systems, and which refer particularly to the capacity of persons and the forms of



contracts. These questions of capacity and of the forms of contract which may, or must, be adopted arise even when the laws regarding bills of exchange are silent on questions of international law; in such cases these problems must be solved by general rules, in regard to which there is very little agreement. Even the codes which lay down formal provisions contain very noteworthy distinctions. I propose to go more fully into these questions when I come to deal with the provisions regarding « conflict of laws » which appear in the Hague Regulation. For the present, I merely draw attention to their existence.

**Conclusion of the Section.**—This section may appear somewhat long, though I have been careful to avoid details. The reader will perceive, if he was not already aware of it, that the unification of legislation in this sphere is not an easy problem.

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### SECTION 3.—WORK UNDERTAKEN WITH A VIEW TO UNIFICATION OF LEGISLATION.

**Uniformity established in certain groups of States.**—In certain groups of States united by federal or other bonds, uniformity has been established in the legislation regarding bills of exchange. The general system of Regulations established in Germany was at the outset a work of unification. The Scandinavian States, Denmark, Sweden and Norway, brought uniform laws into force on January 1st, 1881. The Swiss law, which was formerly cantonal, is now federal. In the various self-governing dependencies of the British Empire, laws have been passed which are based, subject to certain modifications, on the law of the mother country. In the United States of North America, almost complete unification has been achieved by means of uniform laws passed in accordance with the public law of the States and Territories of the Union. These laws are very similar to the English law.

**Attempts to obtain general unification previous to the Hague Conferences.**—It would seem unfair to pass over in silence the more important of the previous attempts made in this direction, but a detailed account of them has already been written. My fellow-countryman, M. ASSER, who presided over the Hague Conferences in 1910 and 1912, raised the question of unification at a Congress of the International Union for the Advancement of Social Science held at Ghent in 1863. The idea has been advocated by legal societies and by numerous Congresses. The International Law Association and the « Institut de Droit International » have also made most praiseworthy efforts in the same direction. Congresses were held at Antwerp in 1885 and at Brussels in 1888 on the initiative of the Belgian Government. A uniform draft law was drawn up and recommended at these Congresses.

**Summary of the work of the Hague Conferences.**—Conferences were summoned at The Hague in 1910 and 1912 at the instance of the Netherlands Government in consequence of representations made by Germany and Italy. In my previous Memorandum I drew attention to the great value of these Conferences, presided over by M. ASSER with great ability and tact. I mention this only in passing and merely desire to recall the fact that there was, practically speaking, a complete representation of



the States of the world and that among the Delegates of the various States were to be found not only jurists, statesmen, professors and judges, but also bankers and business men. Among the institutions which were represented by men whose merits are too well known to need emphasising here may be mentioned the Banque de France, the Bank of England and the Association of English Bankers, the National Bank and the Société Générale of Belgium, the International Bank of Luxemburg, the firm of Mendelsohn and Co. of Berlin, the Central Bank of Norway, the Swiss National Bank, the Imperial and Royal Privileged Credit Association for Commerce and Industry of Vienna, the Hungarian General Credit Bank, the Bank of Amsterdam and the Bank of the Twenthe District (Netherlands).

The Final Protocol of the 1912 Conference refers, in the first place, to a « Convention regarding the Unification of the Law relating to Bills of Exchange and Promissory Notes » and, secondly, to « A Uniform Regulation regarding Bills of Exchange and Promissory Notes ». The latter consists of 80 articles.

The relation between the Convention and the Regulation is shown in the first article of the Convention, which reads as follows :

*« The Contracting States undertake to introduce into their respective territories, either in the original text or in their national tongues, the annexed Regulation », etc.*

Articles 2 to 22 of the Convention accord to the various States the right of disregarding a fairly large number of the articles contained in the Regulation.

Articles 23 to 29 of the Convention contain a list of supplementary obligations and certain provisions of international administrative law.

Article 30 provides for the summoning of a further Conference to consider the question of adding to or modifying the Regulation or the Convention; the second paragraph of this article provides that, even in the absence of a request on the part of one or more of the Contracting States, the Netherlands Government shall take steps to summon a Conference for that purpose after the expiration of a period of five years from the date of the first exchange of ratifications.

The last article deals with the signing of the Convention.

The Convention was signed by 27 States, the Argentine Representative signing *ad referendum*. Great Britain and the United States did not sign the Convention, but their point of view, which is of great importance in connection with the matter under consideration, is made clear by the declarations of their Delegates, to which I shall again have occasion to refer.

**Conclusions of the present Section.**—The unification of legislation regarding bills of exchange was carried at The Hague in 1912 as far as was then possible, both from the geographical point of view and from the point of view of the law itself.

It is possible that we may be able to go further to-day, but it would appear to be reasonable for us to adopt as the basis of future efforts the Convention and the Regulation of 1912 and to be prepared to take into consideration the trend of ideas since that date. The war created a state of mind which it is not necessary to describe here, but peace brought about the establishment of the League of Nations, which tends to make mankind master of its destiny in the domain of law.

Before any decision is taken as to the advisability of modifying or completing the work accomplished at The Hague, I desire to draw attention to the following questions :

— What attitude has been adopted by the nations of the world, or at any rate by

the great majority of them, with regard to the Uniform Regulation drawn up at The Hague ?

—What attitude has been adopted, in the same connection, with regard to the reservations contained in the Convention ?

—What conclusions must be drawn from the attitude of the Anglo-American world ?

These three questions will be examined in the following three sections.

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#### SECTION 4.—ATTITUDE ADOPTED BY THE VARIOUS STATES WITH REGARD TO THE UNIFORM REGULATION DRAWN UP AT THE HAGUE.

**General considerations.**—The Replies given to the Questionnaire which the Provisional Economic and Financial Committee of the League of Nations addressed to the various States, the communications which the International Chamber of Commerce and the Executive Committee of the American International High Commission were good enough to forward to me and the information which I myself have been able to obtain enable me to form a fairly accurate idea as to the attitude adopted by the various countries with regard to the Hague Regulation.

In the present section, the word « Questionnaire » is used as meaning the Questionnaire of the Economic and Financial Committee and the word « Reply » the Reply to that Questionnaire.

I do not think that it is necessary in the following report to keep to alphabetical order in dealing with the different States, and I shall begin with the Anglo-American world, whose attitude has been quite definite from the beginning.

#### Great Britain.

As regards Great Britain, the attitude which that country felt called upon to adopt in 1910, and which it has maintained since then, will be clearly seen from the declaration made by its first delegate, Sir GEORGE BUCHANAN, at the meeting held on July 21st, 1910<sup>1</sup>. The following extract may be quoted :—

*« We have followed the progress of the work with the closest interest... We shall not fail to submit to our Government a detailed report on the whole of the proceedings of the Conference and to draw attention at the same time to the points with regard to which English law is, in our opinion, capable of improvement... It is, however, our duty again to affirm that it is impossible for our Government to go further... »*

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<sup>1</sup> Acts 1910, p. 68. Documents 1912, pp. 180 et seq.



This declaration is confirmed by Sir MACKENZIE DALZELL CHALMERS in the preface to the eighth edition of his treatise :—<sup>1</sup>

« *Throughout the English-speaking world a practically uniform system founded on the common law has now been arrived at, and any dislocation of this system would be highly inconvenient.* »

In short, Great Britain would have been glad to see the unification of the laws of the Continental type carried into effect, inasmuch as this would reduce to two the number of systems in use throughout the world.

Great Britain replied to the Questionnaire on May 30th, 1921. While not refusing to take part in a further Conference, the British Government declared that it desired to await a communication dealing with the Replies of the States which signed the Convention.

### **British India, Canada, the Union of South Africa and other Colonies and Dependencies of the British Empire.**

India, Canada, the Union of South Africa and the other colonies and dependencies of the Empire were not represented separately at The Hague. According to the legal conception prevailing in 1910-12, which is clearly shown in Article 2 of the Convention—1910 text, slightly modified in 1912—the mother country represented her colonies, possessions and protectorates. To-day the list attached as an annex to the Covenant of the League of Nations mentions, as original Members of the League, after the British Empire, Canada, Australia, South Africa, New Zealand and India.

India, Canada and the Union of South Africa replied to the Questionnaire.

The Government of India declared that it had not been represented at The Hague, and that it did not wish to be represented at a further Conference in any manner which would entail separate representation from that of the United Kingdom, and that for the moment it was awaiting the results of the enquiry which was being carried out by means of the Questionnaire.

Canada also observed that it had not been represented at The Hague; it was not inclined to take part in a further Conference.

The Union of South Africa declared that it had not been represented either; it merely expressed concurrence with the principle of unification.

I think we may agree with Sir COURTENAY ILBERT<sup>2</sup> that experience shows that when Parliament passes a good law, such as the law with regard to bills of exchange, or the law with regard to the sale of goods, the other parts of the British Empire are disposed to adopt it.

### **United States of North America.**

It appears from a declaration made by Mr. CHARLES 'A. CONANT, the delegate of the Republic, at the Plenary Session held at The Hague on July 21st, 1910<sup>3</sup>, that there is great reluctance in America to undo the long and arduous work which has brought about uniformity in the great majority of States and territories of the Union. The

<sup>1</sup> *A Digest of the Law of Bills of Exchange*, 8th edition, London, 1919.

<sup>2</sup> *The Journal of Comparative Legislation and International Law* (January 1890, 3rd series), Vol. II, part 1, p. 77.

<sup>3</sup> Acts, 1910, pp. 68 and 69.

speaker added that an obstacle to uniformity in the United States lay in the fact that the Federal Government had no authority to legislate in the matter. He considered that partial reforms, in accordance with the spirit of the Regulation, were possible, and he assured the Conference of the sympathy of his Government.

Mr. CONANT made a similar declaration in 1912<sup>1</sup> and he expressly confirmed it in a speech which he delivered on January 3rd, 1913, at a meeting of the Law Association of Philadelphia.

### Denmark, Sweden and Norway.

These three States have unified their laws with regard to bills of exchange since 1881. During and after the Hague Conferences, they have put into practice what Professor H. MUNCH-PETERSEN<sup>2</sup> calls « practical Scandinavianism » : *i.e.*, they have agreed to act in concert. After the 1912 Conference an « inter-Scandinavian » Commission met for the purpose of agreeing upon translations, and of considering in what manner each State might take advantage of the reservations contained in the Convention without impairing Scandinavian unity. I have in my possession the draft which was prepared in Norwegian by the President of the Appellate Court of Trondhjem, M. BEICHMANN<sup>3</sup>. This draft did not, according to my information, meet with any objections, but all subsequent negotiations were prevented by the war.

The three Scandinavian States replied to the Questionnaire.

The Danish Government was prepared to take part in a further Conference, provided that the Swedish and Norwegian Governments adopted the same course. The Norwegian Government, in its Reply, forwarded the draft prepared by M. BEICHMANN. The Swedish Government observed that the ratification of the 1912 Convention would probably have taken place if it had been possible to adopt the necessary measures before the war; it was prepared to take part in a further Conference.

### Russia (Esthonia, Latvia, Lithuania).

Russia signed the 1912 Convention. Its Delegates, one of whom specially represented the then Grand-Duchy of Finland, took an active part in the work. The text of Article 22 of the Convention was drawn up with a view to meeting the wishes of the Russian Delegation. It will be realised that the course of events has exercised a greater influence in the case of this country than in any other. As regards the newly-formed States, I think I may say that a proposal for the unification of the law with regard to bills of exchange would be favourably received by them. I should mention that Poland and Finland have replied to the Questionnaire.

### Poland.

The Minister for Foreign Affairs, in his Reply to the Questionnaire, observed that, owing to facts which were sufficiently well known, Poland had not been able to take

<sup>1</sup> Acts 1912, I, pp. 148 and 149.

<sup>2</sup> *En Verdens Vekselret* (Proposed universal law with regard to bills of exchange), a lecture given before the Law Society of Copenhagen in December 1913.

<sup>3</sup> *Louutkast... utarbeidet efter offentlig opdrag av justitiarius i Trondhjems Overret F. V. N. Beichmann* (Draft law drawn up in accordance with official instructions by the President of the Appellate Court of Trondhjem, M. F. V. N. BEICHMANN, Christiania, 1913).



part in the 1912 Conference. The Government was prepared to take part in any further Conference. According to information in my possession, there is reason to believe that unification is regarded in Poland as being desirable.

### **Finland.**

Finland, which was not represented as an independent State at the Hague Conferences, has sent a favourable Reply to the Questionnaire. I fully believe that Finland will be ready, for the sake of unification, to amend her present law, which is somewhat out-of-date in its details, as was admitted by M. G. GRANFELT, who was the special representative of Finland<sup>1</sup> on the Russian Delegation in 1912.

### **Roumania.**

Roumania was represented at The Hague in 1912. No official Reply by that country has reached me, but the Roumanian Government has so often been associated with the work of the Netherlands Government in the domain of international law that its co-operation may be counted on if a further call should be made upon it.

### **Bulgaria.**

Bulgaria signed the 1912 Convention and concurs in the proposal to hold a further Conference.

### **Kingdom of the Serbs, Croats and Slovenes.**

The Reply to the Questionnaire mentions, in the first place, that the Government of Old Serbia was represented at The Hague in 1912, and that its representative signed the Convention. The war with Turkey, which broke out in the same year, prevented ratification. The Reply states that but for that fact the Government of Old Serbia would certainly have ratified the Convention. The present Government is prepared to take part in the work of a further Conference. While willing to agree to the Regulation, the Government desires that an Agreement should be arrived at with regard to the clause concerning bills of exchange.

### **Turkey.**

Turkey signed the 1912 Convention. The uncertainty of the present political situation prevents my drawing any conclusion from that fact.

### **Greece.**

The Greek Government was represented at The Hague in 1912. Greece did not sign the Convention and did not adhere to it subsequently, but her Reply to the Questionnaire adds that non-adoption must be attributed solely to political circumstances.

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<sup>1</sup> *Den internationella Konferensen... i Haag 1910.* (The International Hague Conference, 1910), Helsingfors 1910.

If the Greek Government had adhered, it would not have taken advantage of the reservations contained in the Convention, with the exception of the reservation in Article 2 which permits the disregarding of the requirement that the words « bill of exchange » should be employed in the instrument. In the opinion of the Greek Government, it would have been preferable at the present time to make efforts to obtain the ratification of the Convention; nevertheless, if the Replies to the Questionnaire showed a general desire for a further Conference, Greece would be willing to take part in it. The Greek Government considers that the Regulation might be completed in certain particulars, *e.g.*, as regards the loss of bills of exchange, the formalities of protest and the stipulation in Article 10 of the Regulation with regard to the « not to order » clause (« non à ordre »). The French translation of the new Greek law regarding cheques is given in an annex to the Reply.

### Czechoslovakia.

The Reply to the Questionnaire mentions that the Republic—which was established at a comparatively recent date—did not take part in the Conferences. At the same time, it is greatly interested in the questions raised by the proposals for unifying the law in the matter of bills of exchange. It is prepared to take part in a further Conference. The Reply contains information with regard to the present state of the law in the Republic.

### Hungary.

Hungary was represented at The Hague by a Delegation which took a considerable part in the work. She signed the 1912 Convention. It would appear, from a document in my possession, that preliminary steps were taken to put the Convention into force. The Hungarian Delegation drew up a draft law, a copy of which it was good enough to forward to me in 1913, together with a translation of the Convention and Regulation from French into Hungarian and a translation of the draft from Hungarian into German. In this case also the war put a stop to the work of unification.

### Austria.

The work accomplished at The Hague was welcomed in Austria. The Government introduced the necessary legislative measures, after careful preliminary work had been carried out by a Commission which sat on March 7th, 8th, 10th and 11th, 1913<sup>1</sup>. It drew up a German translation of the Regulation in conjunction with Germany and Switzerland. The present Austrian Government replied to the Questionnaire on June 2nd, 1921. It mentions in its Reply that the Government of the former Austrian Empire, of which the present Government does not consider itself as being the legal successor, signed the 1912 Convention and made preparations for ratifying it, but that the war put a stop to all action in the matter. The Government of the Austrian Republic does not feel able to ratify the Convention, but it would be prepared to adhere to it; it intends to take part in any future Conference.

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<sup>1</sup> Regierungsvorlage über die Vereinheitlichung des Wechselrechts (Government Bill regarding the unification of the law concerning bills of exchange), p. 145 et seq.



### Germany.

The Convention was approved in Germany by Parliament, and a draft law, to replace the former law, was laid before the Federal Council in a message dated January 16th, 1914<sup>1</sup>. The war then broke out.

### Switzerland.

Switzerland has already been mentioned, but only in connection with the translation of the Regulation into German for use in German Switzerland. The attempts made to draw up an authoritative Italian translation in conjunction with Italy and Austria were not successful. In the case of French Switzerland, the Regulation was to be put into force in its original form.

Professor WIELAND of Basle, one of the Swiss Delegates at the Conferences, declared, in a very exhaustive article, that the work accomplished at The Hague constituted the realisation of a desire which had long been expressed<sup>2</sup>.

In its Reply to the Questionnaire, the Political Department stated, in accordance with instructions from the Federal Council, that Switzerland had signed the 1912 Convention. Before the opening of hostilities, the Federal Department for Justice and Police had submitted to a Committee of Experts appointed by the Federal Council a draft message from the Federal Council to the Federal Assembly, concerning the adhesion of Switzerland to the Convention. Owing to the war the meeting of the Committee was adjourned *sine die*.

The Reply goes on to say that the Federal Council doubts if the moment is very favourable for resuming the consideration of a work of so wide a scope. The Council inclines to the view that it would be better to postpone the summoning of the Conference.

### Italy.

There is no need to lay stress on the great interest which is felt in Italy in regard to international law in general and to the unification of laws on bills of exchange in particular. I am informed that preparatory steps for the ratification of the Convention have been taken in Italy, as in other countries. A royal Decree dated June 4th and 11th, 1914, appointed a Commission for this purpose, under the chairmanship of M. SCHANZER, who was one of the Italian Delegates in 1912. This Commission met on June 28th, 1914, but at this juncture the war broke out and the Commission found itself compelled to suspend its labours. Subsequently, there was a reaction of opinion, not so much against the Regulation as against the numerous reservations in the Convention. There seems to be a disposition to favour Conventions concluded between a limited number of States and containing perfectly uniform provisions.

The Government observes, in its Reply to the Questionnaire, that the Convention has not been ratified, not only because of the events which have occurred, but also because it contained the defect of including too many reservations; in the Government's view, it would be necessary to summon a new Conference in order to obtain substantial uniformity.

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<sup>1</sup> 1914 Session, No. 11.

<sup>2</sup> *Zeitschrift f. d. g. Handels- u. Konkursrecht* (Journal of Commercial and Bankruptcy Law), LXXIV, Books 1 and 2,

### **Republic of San Marino.**

The adherence of the Republic to the Hague Agreements was published in a Decree dated June 15th, 1914, which was approved by the « Grand Conseil ».

### **Spain.**

Spain was represented at the Conferences. She signed the Final Protocol of 1912, but her signature does not appear on the Convention. It appears from a report by Don RAMON SANCHEZ DE OCAÑA, who was her Delegate in 1910, that the proceedings at The Hague were followed in Spain with great interest<sup>1</sup>. The King ordered that the widest publicity should be given to Don RAMON'S report. The commercial code of 1885 was not modified so as to conform to the Regulation.

### **Portugal.**

Portugal, like Spain, only signed the Final Protocol in 1912. An examination of the provisions relating to bills of exchange in the Portuguese commercial code of 1888 justifies the belief that the idea of unification, in the question under review, will meet with approval at Lisbon.

### **France.**

France took a very active part in the work at The Hague, and all the observations of the eminent men who composed her Delegations received most serious consideration. France signed the Convention.

It appears, from my information, that some opposition has developed, not against the regulation in general, but against the general idea of an Agreement which would cause a sharp break with tradition by introducing ideas of international origin. Leaving on one side the legislative measures rendered necessary by the economic consequences of the war and the new laws regarding cheques, we note that quite a recent law—of February 8th, 1922—modified certain provisions of the commercial code regarding bills of exchange. This law contains some very striking provisions affecting, among other points, the indication of « value received », the transfer of cover for bills and endorsements in blank. Several of these provisions are in conformity with the principles of the Hague Regulation.

It appears from the documents which were communicated to me by the International Chamber of Commerce that an attempt was made in 1916 by a Franco-Italian Committee to unify the laws of the Latin countries in regard to bills of exchange. The International Chamber of Commerce took the Hague Regulation and the Hague Convention of 1912 as a basis for its labours.

In its Reply to the Questionnaire, the Government of the Republic said that it would be prepared to take part in a further Conference. The new laws regarding cheques are given as an annex to the Reply.

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<sup>1</sup> *Memoria elevada al Gobierno de S.M.*, Madrid 1910.



### **Luxemburg.**

Luxemburg signed the Convention. M. J. WÜRTH-WEILER,<sup>1</sup> the Luxemburg Delegate and Director of the Banque Internationale, stated in his report on the proceedings in 1912 to the President of the Grand-Ducal Government, that it would be superfluous to emphasise the valuable and unquestioned services which the proposed scheme would render to international commerce. He trusts that it will be sympathetically received and promptly adopted by the legislatures of the contracting States so that it may before long fulfil the high hopes which have been centred in it.

### **Belgium.**

Belgium occupies a very honourable place in the history of the unification of the laws on bills of exchange. She signed the Convention. I am informed that a bill for the ratification of the Convention was being prepared when the war broke out and was to be accompanied by a very full report explaining the new system of legislation.

The Belgian Government stated in its Reply to the Questionnaire that it was prepared to take part in a further Conference. It transmitted to the Economic Committee, as an annex, the text of the Belgian law of May 31st, 1919, on Crossed Cheques.

### **Netherlands.**

The Hague Conferences were summoned at the invitation of the Netherlands; the preparations for them were made by a Royal Commission and they were presided over by the chief Delegate of the Netherlands. Measures with a view to ratification were being prepared when the war broke out. The Netherlands Government stated in its Reply that it was willing to take part in a further Conference. Indeed, Article 30 of the Convention entrusts the Netherlands with the duty of convening a fresh Conference, in specified circumstances.

### **Japan.**

Japan was represented at the Conferences. She signed the Final Protocol but not the Convention. The question of future measures to regulate bills of exchange is under consideration; I am informed that a communication, the work of a Japanese expert, is being forwarded to the Economic Commission of the League of Nations. The Japanese Government is convinced of the importance of the problem of unification and appears, from its Reply, to be willing to take part in a fresh Conference.

### **China.**

The Government was represented at The Hague in 1910 and 1912. China signed the Final Protocol, but did not sign the Convention. The Chinese Government states, in its Reply, that a national commercial code is in course of preparation. It adds that it desires to continue to collaborate with the other Governments with the object of

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<sup>1</sup> Luxemburg, October 1912.

simplifying and facilitating commercial transactions by promoting uniform legislation on bills of exchange, and that, in consequence, it approves the proposal for a further Conference in which it would be glad to participate.

### Siam.

The Government was represented at The Hague in 1910 and 1912. In 1912 its Delegate only signed the Final Protocol. In a letter written on February 16th, 1911, by the Foreign Office to the Netherlands Minister at Bangkok, the Siamese Government explained why it was unable to embody the Hague Regulation in the Siamese legal system. However, there is reason to believe that, if China were to adopt the principles of the Regulation in the new commercial code which she is drawing up, the Siamese Government would modify its attitude.

### Egypt.

Egypt was unable to take part as an independent State in the discussions at The Hague. The importance of her geographical situation, from the point of view of international commerce, is so great that I cannot pass her over in silence, though I will content myself with mentioning her.

### Brazil.

Brazil was represented at The Hague in 1910 and 1912. Her Delegation signed the Convention. The report submitted in 1911 to the Minister for Foreign Affairs by her plenipotentiary Delegate, Dr. R. OCTAVIO DE LANGGAARD MENEZES, contains a synoptic table, comparing the Hague draft and the Brazilian law N° 2044 of December 31st, 1908<sup>1</sup>. In a second report, the same Delegate describes the manner in which the draft of 1910 was modified in 1912. A treatise by Dr. ALFREDO PINTO, which appeared in the Brazilian *Rivista Juridica*, recommended the adoption of the Hague Regulation with the modification authorised by Article 18 of the Convention. In Brazil, the principle of nationality is admitted as regards the capacity to contract.

The Brazilian Government stated in its reply to the Questionnaire that it had been unable to ratify the Convention because the latter was not approved by the National Brazilian Congress until August 1919, when the Treaty of Versailles, which did not confirm in any way the validity which the Convention might possess, had already been signed. The Government is prepared to participate in another Conference with a view to submitting to fresh consideration this problem the solution of which arrived at by the Hague Conference appears to have been accepted by the majority of the nations.

I have received from a Brazilian friend the report submitted by M. A. C. DE SALLES, Junior, on December 3rd, 1918, to the Chamber of Deputies<sup>2</sup>. The report points out that the Hague Regulation conformed closely to the Brazilian law of 1908

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<sup>1</sup> *Relatorio apresentado ao Min. das relações exteriores, Rio de Janeiro, 1911.*

<sup>2</sup> « *Lei internacional sobre letras de cambio* », *Rivista*, Vol. III, p. 31 et seq.

<sup>3</sup> Rio de Janeiro, 1918.



and recommends the approval of the Convention. This approval<sup>1</sup> was published in the legislative Decree No. 3756, dated August 27th, 1919.

### The Argentine.

The Argentine Delegate signed the Convention « ad referendum ». It appears from his utterances at The Hague and from information which I have received that the objections felt were not against the Regulation, as a basis for the law on bills of exchange, but solely against Article 74 of the Regulation and Articles 18 and 20 of the Convention<sup>2</sup>, *i.e.*, against the provisions which make the capacity of a person to incur liability on a bill of exchange dependent, in principle, on his nationality. In the Conference of Delegates of the American Republics which sat at Buenos Ayres from April 3rd to 12th, 1916, under the chairmanship of Dr. OLIVER<sup>3</sup>, the Finance Minister, the question of the capacity to incur liability on a bill of exchange was keenly debated. Neither the supporters of « domicile » nor those of « nationality » gained a definite victory, and the question was adjourned for later discussion. However, the Brazilian Senator, Dr. LEOPOLDO MELO, submitted a bill to the Assembly for the approval of the Convention of 1912.

### Uruguay.

I am informed that the Hague Regulation, with the exception of Article 74, was very well received<sup>4</sup>. In 1918, Dr. E. JIMENEZ DE ARÉCHAGA, member of the Uruguayan section of the Supreme Pan-American Financial Commission, submitted to the Executive of the Republic a bill for the revision of the commercial code with a view to bringing it into harmony with the Hague Regulation. This bill is under consideration.

### Chile.

The Convention was signed by the Chilean Delegates. At the Conference of Buenos Ayres, which is referred to in a previous section, the Chilean Representative defended against his Argentine colleagues Article 74 of the Regulation, which was accepted in 1912 by Chile. A new law regarding cheques was passed on February 8th, 1922.

### Guatemala, Nicaragua, Panama, Costa Rica, Salvador, Honduras.

Guatemala adopted the Hague Regulation on May 30th, 1916, and Nicaragua at the end of 1916<sup>5</sup>. The Republic of Panama conformed to the Regulation in its com-

<sup>1</sup> J. X. CARVALHO DE MENDONÇA, *Tratado de direito commercial brasileiro*, Vol V, No. 560.

<sup>2</sup> Dr. C. C. MALAGARRIGA, *Cod. de com.* (Argentino), Vol. IV, p. 24.

<sup>3</sup> *Estudio sobre una legislación uniforme en materia de letras de cambio*, published by the Conseil central exécutif de la Haute Commission Internationale. Washington, 1918. Conf. J. A. BARBOZA CARNEIRO, The League of Nations and the Pan-American Congress, *Revue Economique Internationale*, 4th Year, No. 1, pp. 77-78.

<sup>4</sup> *Informe presentado per el Delegado* Dr. E. JIMENEZ DE ARÉCHAGA (Alta Com. Financ. Panamer). Montevideo, 1916. *Primer Congreso de Expansion Economica*, Montevideo, 1919 : *Memoria y Conclusiones*, pp. 236-240.

<sup>5</sup> T. ESQUIVEL OBREGON, *Latin-American commercial Law*, with the collaboration of Prof. BORCHARD, of Yale. New York, 1921, p. 447.

mercial code of August 22nd, 1916, but it appears that this code was recently revised in accordance with the principles of United States law<sup>1</sup>. The Republic of Costa Rica already conformed closely to the last-named legislation in 1902<sup>2</sup>. It is evident that the movement for closer connection by means of a Federal Union between Guatemala, Salvador, Honduras and Costa Rica<sup>3</sup> must result in the unification of their laws regarding bills of exchange.

### The Republics of Latin America in General.

The Convention of 1912 was signed by the Delegates of Argentina (« ad referendum », as mentioned), Brazil, Chile, Costa Rica, Guatemala, Mexico, Nicaragua, Panama, Paraguay, Salvador.

A comparison between the laws of all Latin American Republics is given in the works of F. MEYER, OBREGON and WALTON, all of which have been already mentioned. These authors have devoted much attention to the Spanish, French, Portuguese, Dutch and German elements which are contained in these laws. The *Estudio* referred to in the foot-note to « Argentina » contains many comparative studies, among others one on the Anglo-American law and the uniform Regulation of The Hague from the pen of Prof. LORENZEN.

The general question is substantially the same in America as in Europe. There are considerable divergencies—so considerable that a complete unification seems almost out of the question—between the law of the United States and that of the majority of the Latin Republics. The cleavage exists and will probably continue to exist.

The movement which is drawing the Republics of Latin America together is very noteworthy, particularly in its bearing on bills of exchange.

The Hague Regulation was accorded the most favourable reception in Latin America. The speakers at the 1916 Conference at Buenos Ayres, the substance of whose speeches is reproduced in the above-mentioned *Estudio sobre una legislación uniforme en materia de letras de cambio*, expressed themselves in most enthusiastic terms. Dr. F. J. PEYNADO, Representative of the Republic of San Domingo, stated that this Regulation formed a code which is most worthy of receiving world-wide recognition, and the Representative of Peru, Don PEDRO D. GALLAGHER, President of the Lima Chamber of Commerce, concurred in this opinion<sup>4</sup>. As has already been mentioned, the only part of the Regulation to which objections were raised was Article 74. Except as regards that Article, the Conference recommended the Governments represented to adopt the Hague Regulation, while maintaining the right to take advantage of the reservations contained in the Convention for any special purpose. I will return to this last point in the following section. It is interesting to compare the reception accorded to these reservations in America with that which they have met with from the International Chamber of Commerce.

In short, if a third Conference is held on the unification of laws on bills of exchange, such a Conference could rely in all probability on the co-operation and certainly on the cordial sympathy of Latin America. If, for the present, it appears almost impossible to unify the laws of Anglo-Saxon America and those of Spanish and

<sup>1</sup> P. 44 (note 2) of *Estudio*, already referred to.

<sup>2</sup> See *Estudio*, p. 47.

<sup>3</sup> *Bulletin of the Pan-American Union*, May 1921.

<sup>4</sup> See *Estudio*, p. 20.



Portuguese America, the Republics of the latter seem prepared to unify their own laws on the basis of The Hague Regulation and to arrive at an agreement as to the extent to which the reservations of the Hague Convention should be put into practice.

I shall refer in Section 9 of the present Memorandum to Article 74 of the Regulation and Articles 18 and 20 of the Convention.

The Pan-American Union publishes an illustrated bulletin containing interesting information with regard to the trend of ideas in Latin America<sup>1</sup>.

In March 1923, another Conference of the American Republics is to be held at Santiago de Chile. It will doubtless have the effect of accentuating the movement in favour of unity.

### **Conclusion of this Section.**

Apart from the attitude of the Anglo-American world, the Regulation and Convention drawn up at The Hague in 1912 have been accorded so sympathetic a reception in all parts of the world that it would only be reasonable to take this Regulation and this Convention as the basis of any third Conference which may be held.

Such a Conference, summoned to consider the problem anew on the lines indicated—though this does not exclude such modifications as may be considered desirable, particularly in order to reduce the number of systems to two and gradually to assimilate those two, and in order to reduce as far as possible the number of reservations contained in the Convention—may rely on the support of the large majority of States of the Old and the New World.

As the difficulties encountered are identical in both hemispheres, all efforts must be co-ordinated and directed towards the same goal. With this end in view, the author of the present Memorandum has given very full consideration both to the work of the Supreme Inter-American Commission in America and the information collected by the International Chamber of Commerce.

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## **SECTION 5.—RESERVATIONS OF THE HAGUE CONVENTION, AND RECEPTION ACCORDED TO THEM IN THE OLD AND THE NEW WORLD.**

### **Opinion of the General Rapporteurs in 1912.**

The opinion of the General Rapporteurs is quoted as follows in the Reply of the Netherlands Government to the Questionnaire sent from Geneva : « It would have been preferable if these reservations had not been made, but it was impossible to secure their omission. In the enquiry instituted by the Netherlands Government, certain States attached special importance to them, and even made their adherence subject to the retention of these reservations, of which they intend to avail themselves ». The existence of these reservations still constitutes one of the difficulties of the question. Those nations which have made reservations attach very great value to the reservations made

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<sup>1</sup> *Bulletin* of August 1917 and January and February 1920.

by themselves, but comparatively little value to those made by other nations. However, the difficulty must be approached boldly and impartially.

The results of the enquiry held by the International Chamber of Commerce, which referred especially to all these reservations, have been sent to me, as were also those of the enquiry among the American Republics by the Supreme International Commission, and the resolutions adopted by the Buenos Ayres Congress. All these adopt as a starting-point the idea that the Hague Regulation of 1912 should be adopted as the basis for unifying the laws of the Continental type, and that the principal subject of discussion should be whether these reservations could not be abolished, either as a whole or in part, by means of a new Agreement. My intention is to consider one by one the questions put by the International Chamber of Commerce to the Institutions and groups of business men with which it is in touch. For the sake of brevity I shall refer to its Questionnaire as Questionnaire II. I shall then deal with the resolutions of a sub-committee of the Chamber, and, lastly, I shall review the Buenos Ayres resolutions.

All this will be a somewhat lengthy process, but I do not aspire to literary fame and I will patiently investigate all the intricacies of the problem.

### First Question (Use of the term "bills of exchange").

*« Should the Uniform Regulation require the use of the term « bill of exchange » or should the stipulation « Payable to Order » be sufficient ? »*

This question is a familiar one.

The compulsory use of the term renders it possible to distinguish between a bill of exchange and a simple order or authorisation for the payment of a certain sum—an instrument which is sometimes termed an « assignation » (order to pay); it is very similar in form to a bill of exchange, but has a totally different legal effect. The requirement that this term be used is also connected with the quality of actual or even abstract liability inherent in a bill of exchange. This requirement exists in a large number of codes—for example, in those of Germany, Austria, Italy, Brazil, Peru and Venezuela, and great importance is attached to it<sup>1</sup>.

In countries in which the law does not provide for the compulsory use of this term, it has been found that in commercial practice it can very well be dispensed with, and these countries are not at all disposed to accept a formality which they consider unnecessary and even harmful.

Article 1 of the Hague Regulation, in combination with the reservation contained in Article 2 of the Convention, is in the nature of a compromise, and authorises the substitution of the « payable to order » clause for the use of the term « bill of exchange ».

An examination of the replies to the question raised by the International Chamber of Commerce shows that this difference of opinion still exists; six replies are in favour of the use of the term, six are in favour of the « payable to order » clause, and one reply is doubtful. In this Memorandum I venture to suggest a means of solving this difficulty on somewhat broader lines than those laid down in the Hague compromise. There is, in fact, besides the alternative presented in this compromise, a third solution, according to which neither the term « bill of exchange » nor the « payable to order »

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<sup>1</sup> C. VIVANTE, *Trattato di diritto commerciale*, III, Nos. 1041-1044.



clause is required, but merely an order to pay a certain sum of money. This is the system adopted in Anglo-American law.

### Second Question (Endorsement constituting a pledge)<sup>1</sup>.

*« May any State lay down, in derogation of Article 18 of the Regulation, that in the case of an endorsement made within its own territory a statement implying a pledge shall be deemed unwritten? »*

The question here is not whether a bill of exchange may be given as a pledge or guarantee, that is to say, whether it may be transferred to the creditor to serve as security; obviously this can be done. The question is simply whether the law should allow a special endorsement for this purpose, as does the Regulation.

If such a special endorsement is not allowed, the debtor must transfer the bill to the creditor to whom he wishes to give a guarantee by means of an ordinary endorsement or even an endorsement constituting a procuration. In the former case, the creditor receives too much—he obtains the absolute ownership of the bill; in the latter, he receives too little, as he is nothing more than the representative of his debtor, whose rights he is exercising. Both these extremes are avoided in Article 18 of the Regulation. The creditor does not obtain full ownership of the bill (paragraph 1), but neither is he a mere representative, except in the case of fraudulent compact (paragraph 2).

The objection to the provisions of article 18 of the Regulation consists in the fact that the endorsement is complicated by a form which is not recognised by the laws of certain countries, and the need for which is not felt in those countries. Moreover, complications are feared with regard to the manner of realising the pledge when the debt for which it is a guarantee falls due. An examination of the replies to Questionnaire II will show that agreement does not exist on this point.

I note that the proposed Scandinavian law referred to in Section 4 makes use of the power given under Article 4 of the Convention. It declares that a statement implying a pledge shall be deemed unwritten<sup>2</sup>. In the bill submitted to the German Federal Council<sup>3</sup> on the other hand, it was not thought desirable to make use of the power of declaring unwritten a statement made within German territory. No doubt, as is said in the Statement of Reasons, the form provided for in § 1292 of the Civil Code, that is to say, ordinary endorsement with transfer of the bill, is that which is used by us for giving a bill of exchange as a pledge; there is therefore no necessity to add another form. There is also no need to declare unwritten a statement made in the country itself; but in any case the effect of the statement « value in security », made in another contracting country which admits such an endorsement, would have to be recognised, and this would lead to great uncertainty, because the place at which the endorsement was made is not usually indicated. The Austrian proposal, too, did not exclude endorsement with a statement implying a pledge<sup>4</sup>. At the Buenos Ayres Congress of 1916, the States were recommended not to avail themselves of the power granted by the Convention.

<sup>1</sup> Article 4 of the Convention.

<sup>2</sup> Norwegian text drafted by President BEICHMANN, I, Statement of Reasons, pp. 14 and 15.

<sup>3</sup> Bundesrat (Federal Council), Session 1914, Statement of Reasons, p. 25.

<sup>4</sup> Statement of Reasons, with reference to Article 18 of the Regulation.

The reply to Questionnaire II sent from Czechoslovakia advocates unification. This recommendation is very sound. I would not venture to make a formal proposal, and I have the greatest respect for the opinion of the Scandinavian experts. Perhaps they may see, in the arguments contained in the Statement of Reasons in the draft submitted to the Federal Council, referred to above, a reason for coming to an agreement which would enable Article 4 of the Convention to be deleted; if it is impossible to reach such an agreement, the only course is to retain this article.

### Third Question ("Aval" [Guarantee] by a separate document)<sup>1</sup>.

*« What should the Regulation lay down with regard to the form of the « aval » ? »*

It may be maintained that a supplementary guarantee, which does not consist of a statement made on the bill of exchange (or on an « allonge »), is outside the scope of the law on bills of exchange. This is certainly logical, but business practice is not always logical. The « aval », which may be concealed and only produced at the pleasure of the holder, possesses the advantage of furnishing an additional guarantee to whoever may consider it necessary, without impairing the credit of the bill of exchange by a statement showing that it requires special safeguards. It is for this reason that the Convention makes a reservation on this point.

An analysis of the replies to Questionnaire II shows that opinions are divided; five replies are in favour of the system of « aval » by means of a separate instrument and four are against it. There are, indeed, arguments on both sides.

With goodwill, there would be no difficulty in coming to an agreement, and Article 5 of the Convention might then be suppressed. In order to do that, a sacrifice must be made on one side or the other.

### Fourth Question (Bills payable at a fair or market—"en foire")<sup>2</sup>.

*« Should the Regulation authorise bills payable « en foire » ? »*

Bills of this kind have become obsolete in certain countries. Such is the case, according to the Replies, in Belgium, Luxemburg, Italy, the Netherlands and Sweden. Other countries state in their Replies that they wish such bills to be authorised, or, at least, that they do not object to their being authorised. The Reply received from France is, on the whole, in favour of their being authorised in the Regulation, provided that a time-limit is fixed for the date of maturity. The Reply of Spain calls attention to Article 451 of the Code of 1885<sup>3</sup>. The Reply from Czechoslovakia lays stress upon the importance which fairs are acquiring to-day.

Article 6 of the Convention takes both opinions into consideration. It was thought that there would be no disadvantage in adopting a conciliatory attitude. Bills

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<sup>1</sup> Article 5 of the Convention.

<sup>2</sup> Article 6 of the Convention.

<sup>3</sup> Certain American Laws contain the same provision. OBREGON quotes the Laws of Bolivia, Chili, Colombia and Honduras. There are other American Laws which do not accept this method of establishing the date of maturity.



payable « en foire » will, generally speaking, only be drawn upon countries in which fairs are held and where the date of maturity is determined by the *lex loci*. Fairs are often of great importance, but hardly from the point of view of determining dates of maturity. Bills payable « en foire » could, if necessary, be authorised by the Regulation; they might also be suppressed by general agreement. The matter is not of great importance.

**Fifth Question (Obligation to present a bill for payment on the actual day of maturity)<sup>1</sup>.**

« *At what date must a bill be presented for payment? Subject to what penalties?* »

In the ordinary course of events a bill is presented and, I may add, paid on the actual day of maturity. But if there exists an obligation to present the bill to the drawee on the day of maturity, although the protest may be postponed until the following day, or even the second day after maturity, it may be necessary for the holder to prove that he has fulfilled his obligation to present the bill on the day of maturity. Two official instruments would, strictly speaking, be necessary, the first showing that the bill had been presented on the day of maturity, and the second, issued on the following day or on the day after, constituting the protest, if the occasion for a protest should arise. Certain States insist on the obligation of presenting bills of exchange on the day of maturity. It is for that reason that Article 7 of the Convention was drawn up; it was felt that it would be undesirable to force the hands of the minority, but the penalty and its international effect were limited.

The Replies to Questionnaire II show that there is still a division of opinion in the matter.

It would appear difficult to insist upon any uniform solution. On the other hand, it is not unreasonable to subject the holder, both in this and other matters connected with the question of payment, to the laws and even to the customs of the country in which the bill is payable.

**Sixth Question (Obligation to accept partial payment).**

« *Should the Regulation contain provisions with regard to the partial payment of bills of exchange, either in the sense of authorising it or of prohibiting it or of regulating it (paiement partiel portable : partial payment at a stipulated place)?* »

In principle, a creditor is under no obligation to accept partial payment. There are laws which uphold this principle, even as regards bills of exchange. Such is the case, *e.g.*, in Spain (see Article 494 of the Commercial Code) and in a certain number of American Republics. The reason for the fact that other legal systems contain different provisions is that they wished to lighten the burden of the guarantors so

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<sup>1</sup> Article 7 of the Convention.

far as possible. They even go so far as to say so, as if it were the duty of the legislator to give reasons for his laws in the text itself. They were influenced by the idea that the drawee who offers partial payment does not do so in order to cause vexation to the holder; there may have been a mistake in the figures, some question as to the rate of exchange, etc.

In any case, it was not possible to obtain general agreement at The Hague.

The Replies to Questionnaire II show that opinion is not unanimous. Doubtless, the holder might be left free to do as he liked. If the difference were very slight, he would probably prefer to have the partial payment. If, however, neither of the two groups of States is willing to yield in the matter, the provisions of the Convention must be maintained. The holder will be bound by the laws of the place where the bill is payable.

### Seventh Question (Form and time-limits of protest).

*« Should the Regulation :*

*« (a) determine the forms of protests, and in particular authorise the drawee to write a declaration of non-payment on the instrument ?*

*« (b) fix a time-limit for the drawing-up of such protests ? »*

As regards the form and time-limits of protests, the unification of the law would certainly be advantageous in international relations, but there are several methods of regulating these forms and time-limits, and it is impossible to say that any one particular method is the best. There exist old-established local usages. If agreement cannot be reached, the law of the country where the protest has to be drawn up must prevail.

The Replies to Questionnaire II show that opinion is divided in the matter.

The legal provision which authorises the drawee, with the consent of the holder, to write a declaration of non-payment on the bill is a desirable simplification, and it is laid down as a measure of precaution that the declaration should be registered with the least possible delay, in order to prevent the drawee from ante-dating his declaration, out of complaisance, in such a manner as to re-establish the obligation of guarantors who are released through the negligence of the holder.

If there are certain States which do not feel able to adopt this simplification, either by reason of the compulsory nature of the registration, or in order to avoid action contrary to established practice, the law of the place where the bill is payable must prevail.

### Eighth Question (Official notice of non-payment).

*« Can notice of non-payment be given by the public official entrusted with the drawing-up of the protest? »<sup>1</sup>*

This question is also one of simplification, which it was not desired either to impose upon all States or to prohibit altogether. The question of the responsibility of the public official and incidentally of the State which appointed him is a delicate one.

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<sup>1</sup> Article 11 of the Convention.



The Replies to Questionnaire II are divergent.

The remark which has been made with regard to observation of the laws of the place where the bill is payable also applies in this case.

### **Ninth Question (Fixing of interest in certain cases).**

*« Should the Regulation fix the interest in cases of non-payment ?*

*« Should the Regulation fix the rate of interest running from the commencement of an action at law ?*

*« (Article 47, Paragraph 1 (2), and Article 48 (2). ) »<sup>1</sup>*

The Regulation fixes the interest in the Articles referred to. The Convention allows a certain latitude, of which the Scandinavian States, in their draft, have considered it advisable to take advantage.

The Replies to Questionnaire II show great divergence of opinion, and I should doubt whether it will be possible to suppress the first part of Article 12 of the Convention.

As regards the date of interest running from the commencement of an action at law, it is somewhat difficult to fix it in a uniform manner in the matter of bills of exchange, as long as the Civil Law continues to differ upon other points. It would appear that paragraph 2 of Article 12 of the Convention must be maintained, together with the limitation which it contains.

### **Tenth Question (Actions based upon an inequitable gain).**

*« In cases of forfeiture or prescription, should the Regulation make provision for an action against the drawer who has not provided cover for a bill (« provision »), or against a drawer or an endorser who has obtained an inequitable gain ?*

*« Should the same remedy be applicable, in cases of prescription, as regards the acceptor who has received cover, or who has made an inequitable gain ? »*

Let us begin with the first question.

It is true, as stated in the Reply from Great Britain to Questionnaire II, that the question at issue is connected with that of cover, but it also arises in the form of an action based upon an inequitable gain in countries in which the law relating to bills of exchange contains no reference to the question of cover. Moreover, we are not at present dealing with the transfer of cover, but merely with the funds or securities which the drawer may have deposited with the drawee, to enable the latter to pay the amount of the bill. It may happen that the holder, through his own negligence, or by reason of special prescription applicable to bills of exchange, is deprived of the right of taking action on the basis of the bill, while the drawer who has received from the payee the amount of the bill withdraws or keeps the funds or securities deposited with the drawee. If he has received twice the amount of the bill, he has made an inequitable

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<sup>1</sup> Article 12 of the Convention.

gain at the expense of the holder, and it is right that an action, based upon that fact, should lie against him. The question at issue is not so much whether such an action would lie as whether the law which deals with bills of exchange should make mention of it.

The Replies to Questionnaire II from Belgium and the Netherlands suggest that the provisions of the common law suffice. I do not think that is the case everywhere. The answers from other countries, on the contrary, give an affirmative reply to the above question.

In any case, I think that it would be very difficult to regulate the matter, in the Regulation itself, in a manner which would be acceptable to everybody. In the case of some countries it would be necessary to refer to cover, while in the case of others that question would have to be passed over in silence. I think that it is preferable to maintain the provisions of the Convention until an assimilation is possible, in which the question of cover would be included. I shall again have occasion to deal with the question of cover when I deal with that of its transfer.

As regards the second part of the question, it is not essentially different from the part which has already been considered. It is absolutely true, as is pointed out in the Reply from Spain to Questionnaire II, that it is dangerous to re-establish a right of action after prescription, but it may also be argued that the right of action which exists after the (curtailed) prescription of the right of action based upon the bill of exchange rests upon an entirely different fact from that on which the latter is based, *i.e.*, the fact of an inequitable gain. It is also possible to draw attention to the character of prescription and to argue that it paralyses the right of action rather than that it abolishes it. The Replies which have been received from France, Italy and Sweden are affirmative.

The difficulties attendant upon an attempt to discover a formula which would be acceptable to everybody are the same as those to which I referred when I was considering the first part of the question.

### Eleventh Question (Cover : "Provision").

*« Should the Regulation contain dispositions regarding the obligation of the drawer to provide cover for the bill and the consequences which flow from the fulfilment of or failure to fulfil this obligation ? »*<sup>1</sup>

The drawer is, as a rule, a guarantor for the acceptance and payment of the bill, and he must also, as a rule, take the necessary steps to arrange that the drawee should accept and pay it. Everything which he does with that object may, in a very wide sense, be called « providing cover ». It is scarcely necessary for this obligation to be mentioned in the law.

I would point out that there is a connection between failure to fulfil the normal obligation to provide cover and an inequitable gain of the drawer. There is, however, a wide difference between the obligation of the drawer to prove that he has provided

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<sup>1</sup> Article 14 of the Convention.



cover and the obligation of the drawee to prove that the drawer has made an inequitable gain.

The question of the legal transfer of cover is quite different, but it is an important one, especially in cases of the failure of the drawer, when the claims of the latter's creditors compete with those of the holder. This paper was already completed in manuscript when I received from Geneva a copy of a report by Professor MOLENGRAAFF, addressed to the International Chamber of Commerce. This report lays stress upon the importance of the transfer of cover in cases of bankruptcy; at the same time, the Rapporteur desires to leave this question untouched in the Uniform Regulation, as was done at The Hague.

Cover in this sense is, no doubt, outside the scope of the law on bills of exchange properly so-called<sup>1</sup>. It belongs rather to the law of bankruptcy. It is for this reason that the legal systems which adopt the view that a bill of exchange is a « titre littéral », an instrument the effects of which are solely dependent on the terms in which it is drawn, and further, that the existence or non-existence of cover is not apparent to a person who is only acquainted with the tenor of the bill, are unwilling to refer to cover in laws dealing with bills of exchange.

This view is a proper one. In many countries, however, business men, and in particular bankers, are of opinion that the preferential right of the holder greatly increases the value of a bill of exchange, although the existence of cover is not evident. I must admit that I was very much struck at The Hague by the attitude adopted by the Banque de France. This impression was confirmed by reading the discussions which took place at Vienna among the members of the Committee of Experts, who examined the Austrian Draft<sup>2</sup> to which I have referred. The question is also connected with many institutions of civil law, transfers, pledges, and the legal right of creditors to exercise rights possessed by their debtors.

Among the nine Replies sent in to Questionnaire II, four are affirmative, four negative and one doubtful.

I should add that France, in particular, insists upon Article 14 of the Convention as a condition *sine qua non* of her adhesion<sup>3</sup>.

There is a great deal to be said with regard to this question of cover.

I will only make one observation, which is based, not upon prophetic inspiration, but upon a study of the progress of ideas. There is a factor in the transfer of cover which is of great practical value, viz, the increase in the value of the bill of exchange, especially of a bill which is drawn by a creditor on his debtor, *e.g.*, by a merchant upon his clients, and which he transmits to his banker for payment prior to maturity, but the importance of this factor must not be exaggerated by always regarding a bill of exchange as the transfer of a money claim or of a security. There must be a specified destination. I believe that it will finally be realised that this consideration is decisive and that assimilation will be achieved by suppressing whatever is superfluous. Yet if ideas progress, they progress, if I may so express myself, at a Lilliputian pace. Time is necessary. Above all, the assimilation of laws must from now onwards be pushed

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<sup>1</sup> See my work on the substance of obligations in private international law, II, § 100.

<sup>2</sup> Regierungsvorlage ü. d. Vereinheitlichung des Wechselrechts (Government Bill for the Unification of the Law on Bills of Exchange), p. 145 et seq.

<sup>3</sup> The law of February 8th, 1922, complete as follows Article 116 of the Commercial Code « The ownership of the cover passes by right to the successive holders of the bill of exchange ».

forward as far as possible. If there is agreement on the question of principle, it is of very slight importance whether the matter is dealt with in laws regarding bankruptcy and insolvency (« déconfiture ») or in the law regarding bills of exchange.

In the meantime, it seems to me advisable to maintain Article 14 of the Convention.

### Twelfth Question (Loss of bills).

*« Should the Regulation determine the consequences of the loss of bills of exchange, especially as regards the issue of new bills, the right of obtaining payment and of instituting proceedings for annulment. »*<sup>1</sup>

Uniformity would be extremely desirable and it should apply to international jurisdiction in such a manner as to ensure the universal application of measures taken by the authorities which are competent in these matters. The Replies to Questionnaire II are in agreement on this point. But there are several systems which are indicated in the question. If everyone agreed to adopt either the system of payment on a judge's order with well, regulated guarantees, or the system of annulment with anticipatory payment, possibly against security, and to give international effect to these measures, good progress would have been made. It was not possible to arrive at an agreement at The Hague. For this reason, Article 15 was inserted in the Convention. Perhaps it will be possible now to obtain more satisfactory results.<sup>2</sup>

### Thirteenth Question (Extinctive prescription).

*« Should the Regulation determine the causes of interruption and suspension of prescription in the case of actions relating to bills of exchange? Should it determine the effects of an action, regarded as a means of causing to run the period of prescription laid down in paragraph 3 of Article 70 of the Regulation? »*<sup>3</sup>

The question is of importance and is one of great difficulty.

The various States represented at The Hague were not willing to adopt the system of passing the matter over in silence and applying the ordinary civil law; agreement was reached with regard to periods of prescription and the date from which they should run, but the question of suspension and interruption was not unanimously decided. The enquiry undertaken at The Hague brought to light profound differences of opinion. There are all kinds of reasons for suspension, even reasons which depend upon the personal status of the creditor, or of personal relations between the creditor and the debtor. The grounds for interruption belong to the domain of civil procedure.

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<sup>1</sup> Article 15 of the Convention.

<sup>2</sup> See below the resolution adopted at Buenos Ayres. I am not now making any proposal in the matter.

<sup>3</sup> Article 16 of the Convention.



The majority of Replies to Questionnaire II were in the negative.

The negative solution is advantageous for the judge, who only has to apply the law of his own country, but it is less so for international commerce. I should, however, be afraid to say that a solution would be welcome which puts on one side all personal grounds for suspension and only maintains as a ground for interruption an action at law, or acts assimilated to such action by the *lex loci*. If no rule of this kind is adopted, it will be necessary, at any rate for the moment, to maintain Article 16 of the Convention.

#### **Fourteenth Question (Working days assimilated to holidays).**

*« As regards presentation for acceptance, payment and all other acts regarding bills of exchange, should the Regulation provide for the assimilation of certain working days to legal holidays ? »<sup>1</sup>*

This reservation was made at the request of a country in which certain working days are assimilated to holidays within the meaning of the question. It would appear from the Replies to Questionnaire II that there is agreement in favour of relying upon national legislation or local usage. The only question is whether Article 14 of the Convention should be maintained or whether the rule should be inserted in the Regulation so as to allow Article 17 of the Convention to be suppressed.

#### **Fifteenth Question (Regulations of international law with regard to the capacity of a person to contract liability on a bill of exchange).**

*« Should each State be allowed the power to refuse to recognise the validity of an obligation with reference to a bill of exchange assumed by one of its nationals, which would not be valid in the territory of the other Contracting States except through the application of Article 74, paragraph 2, of the Regulation ? »<sup>2</sup>*

This question arises in respect of Articles 18 and 20 of the Convention in their relation to Article 74, paragraphs 1 and 2, of the Regulation. Article 74, paragraph 1, establishes the principle of nationality; paragraph 2 provides for an exception, and Article 18 of the Convention limits the extent of the exception and partially re-establishes the principle. This complication was intentional.

The result is not entirely satisfactory, and it is not surprising that there should be a considerable divergence between the various Replies to the Questionnaire. It is a delicate matter to discuss Article 18 of the Convention. I propose to touch upon it as lightly as possible by dealing with the provisions of private international law regarding the conflict of laws (as it is often called) which occur in the Regulation.

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<sup>1</sup> Article 17 of the Convention.

<sup>2</sup> Article 18 of the Convention.

### **Sixteenth Question (Provisions regarding stamps).**

*« Should the Regulation prescribe the effects of failure to observe the provisions concerning stamps ? »<sup>1</sup>*

There is no doubt whatever that fiscal laws are national and territorial in character, in the sense that they are, as a rule, applied by national judges. The Replies to the Questionnaire of the International Chamber of Commerce which would simply leave the question to be dealt with by national laws are not surprising.

But, whatever may be thought of international fiscal law, the business world considers as ultra-drastic any provision laying down that a bill of exchange becomes null and void simply because the regulations regarding stamps are not observed. The first paragraph of Article 19 of the Convention concluded at The Hague gives satisfaction with regard to this point. This provision should, strictly speaking, have been inserted in the Convention rather than in the Regulation, as should also the second paragraph. This paragraph owes its existence to the fact that certain States made their adhesion to the first paragraph conditional upon the admission of the reservations contained in the second paragraph. The reform introduced by the first paragraph is of sufficient importance to make the reservations contained in the second paragraph acceptable.

### **Articles 21 and 22 of the Convention.**

These Articles also contain reservations of a special kind. I merely recall them here; I do not think they require any comment.

### **Supplement 1.—Resolutions of a Sub-Committee of the International Chamber of Commerce.**

After the above had been written, the Secretary to the Chamber was kind enough to send me the resolutions adopted at a meeting of the Sub-Committee on Commercial Instruments (*« effets de commerce »*), held in London on December 1st, 1922, with Sir FELIX SCHUSTER, Bart., in the chair. I attach great value to these resolutions, even though I am not always in entire agreement with them. I will take the liberty of summarising them here, as I think that the reader will not require more than an outline of them.

- (1) It is desirable that a bill of exchange should contain the *« payable to order »* clause.
- (2) There is no need to prohibit endorsement *« in security »*.
- (3) The *« aval »* by separate instrument must, in principle, circulate with the bill, or, if there is a general *« aval »*, this should be mentioned on the bill itself.
- (4) Bills payable *« en foire »* must not be employed.
- (5) Payment must be made on the actual day of maturity.
- (6) The law of each individual country should regulate the obligation to accept partial payment.

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<sup>1</sup> Article 19 of the Convention.



(7) It should also regulate the form of protests and other formalities.

(8) It is not advisable that notice of non-payment should be given by the public official appointed to draw up the protest.

(9) The rate of interest for overdue payments (« intérêts moratoires ») should be fixed by the laws of the country in question. The interest should run as from the day of maturity, and, in the case of bills at sight, from the day of presentation.

(10) and (11) Actions on account of an inequitable gain (« enrichissement injuste ») and cover (« provisions ») are questions of national law.

(12) It would be desirable that there should be an international regulation prescribing, in a uniform manner, the formalities to be complied with by a dispossessed holder. Although this question affects procedure and public order, which are essentially questions of national law, the Sub-Committee recommends that a draft international Convention should be drawn up on the subject.

(13) and (14) The causes of the suspension and interruption of prescription and the assimilation of certain working days to legal holidays are questions of national law.

(15) Any signature which binds the person signing in the country in which the signature is given should also bind him in every other country.

(16) Failure to observe the provisions regarding stamps should not impair the validity of the bill.

### **Remark.**

The above Replies, recommending, as they do, that a considerable number of points be dealt with by national legislation, leave in the Regulation — which they confirm as a whole, though modifying it in certain respects — certain gaps which the existing Convention or another Convention must fill by providing that such points be settled by national legislation. The Regulation itself, which is intended to become part of the national law, can scarcely contain provisions by which points are left to be dealt with by the national law of the country concerned.

## **Supplement 2. — Resolutions and Recommendations of the Supreme International High Commission adopted by the Buenos Ayres Conference of 1916.**

The Conference reserved for a later occasion the consideration of Article 74 of the Hague Regulation and of Articles 18 and 20 of the Convention. It does not express any opinion on this point. As regards the reservations in the Convention, I give below a summary of the Buenos Ayres recommendations regarding the Articles of the Convention.

### **Article 2.—Denomination.**

It is desirable to allow a bill of exchange to be recognised as valid if it contains an express indication that it is « payable to order ».

### **Article 3.—Declarations “in lieu” of signature.**

States should be allowed to retain this right.

**Article 4.—Endorsements constituting a pledge.**

It would be better not to make use of this reservation.

**Article 5.—“Aval” by separate instrument.**

The States should reach an agreement on this point and make all use of the reservation.

**Article 6.—Bills payable “en foire”.**

The Regulation should be adhered to.

**Article 7.—Obligation to present a bill for payment on the date of maturity.**

It is recommended that this reservation should not be made use of.

**Article 8.—Obligation to accept partial payment.**

It would be advisable for all legislative systems to allow the holder to refuse partial payment.

**Article 9.—Substitution of a declaration on the bill for the protest.**

This simplification is recommended.

**Article 10.—Periods within which the protest must be drawn up.**

It is recommended that the States should apply Article 42 of the Regulation.

**Article 11.—Official notice of non-payment.**

This right should be exercised.

**Article 12.—Fixing of interest in certain cases at 6%.**

It is recommended that the rate of interest should be raised to 6 per cent and that the regulation contained in the second paragraph of Article 12 should be adopted.

**Article 13.—Actions based upon an “inequitable gain”.**

Full use should be made of this right.

**Article 14.—Cover “provision”.**

No recommendations are made with regard to this point.



### **Article 15.—Loss of the bill.**

The States are recommended to take the following action in the event of the loss or destruction of a bill of exchange (author's translation) :

« (a) The holder of a bill of exchange which has been lost or destroyed before or after acceptance, and which contains one or more endorsements, may require payment of the amount for which the bill is drawn, as if he had presented it to the obligor, provided that he fulfils the following conditions. The obligor is entitled to require from the payee as a condition of payment of the bill a guarantee which shall be satisfactory both as regards the form and the amount, and also as regards solvency (*calidad*); this guarantee shall apply to all persons who voluntarily pay the total or partial amount for which the bill is drawn. The guarantee thus given shall cover all persons who are liable on the bill as regards any subsequent claim or responsibility arising out of the bill.

« (b) If the holder of a bill of exchange which has been lost or destroyed cannot, for any reason whatever, obtain voluntary payment in the form indicated, he shall, after having made good his claim to ownership and after having established the fact of the loss or destruction, be entitled to sue for payment all persons who are liable on the bill, by offering the same guarantee and with the same effect as in the case of voluntary payment. In this case the judge or court shall decide whether the said guarantee is sufficient. »

### **Article 16.—Extinctive prescription.**

All States should be left free to regulate causes of interruption and suspension.

### **Article 17.—Working days assimilated to holidays.**

It is recommended that this right should be retained.

### **Article 18.—Capacity of a person to contract liability on a bill.**

States are recommended not to exercise this right.

A note from the editor of the *Estudio* recalls the fact that the question of nationality has not been settled.

### **Article 19.—Provisions relating to stamps.**

The right accorded to States should be retained.

### **Article 20.—Reservations regarding the principles of private international law.**

The States are recommended not to make use of this right. The second remark under Article 18 also applies here. I think I need make no reference to the other resolutions, which, though important in themselves, are not necessary for our task of comparison.

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## SECTION 6. — GRADUAL ASSIMILATION OF THE DIVERGENT SYSTEMS.

### **Review of the considerations set forth in my previous Memorandum on the effects of the war.**

I will here make a brief reference to these considerations. The state of mind created by the war renders the work of unification more difficult than it was in 1912. It has also strengthened the ill-considered attitude of those who, even before the war, saw in the adoption of uniform regulations the triumph of a system, whereas they should have seen in it the victory of common sense. These are obstacles, and I take them seriously; but I have no wish to exaggerate their importance. The desire to obtain the unification of laws on bills of exchange is still evident. The Brussels Financial Conference recommended the resumption of the work done at The Hague. The International Chamber of Commerce and the American High Commission, which also have to deal with different national laws, have set to work. The Economic and Financial Committee of the League of Nations, in concert with a representative of the Netherlands Government, has taken the first step on the road towards unification. All this would appear to justify the initiation of a further effort.

### **Review of my observations with regard to the discrepancy which still exists between laws of the Anglo-American type and those of the Continental type.**

The laws of the Anglo-American type and those of the Continental type were established on totally different bases, as I explained in my first Memorandum, illustrated by quotations. Further, as regards the law on bills of exchange, the British Empire, including its self-governing dependencies, and the United States of America, with their territories and dependencies, cannot for practical reasons make any radical change in their law. Then again, however much I may admire the practical spirit of the Anglo-American world, I think I may say that it would not be reasonable to ask States whose laws, despite their discrepancies, may be classed as laws of the Continental type, to adopt the Anglo-American system « en bloc ». A cleavage is inevitable, but it may be made an instrument of progress by combining it with a gradual movement towards unification.

### **The divergency itself.**

The laws of the Anglo-American type differ somewhat among themselves, but it may be said that they are all based on the English Act of 1882. The laws of the Continental type show still greater points of difference, but the result of the work done at The Hague has been to show that it is possible to carry unification very far. The reservations made in the Convention, which leave a great number of points to be settled by national laws, and which it would be difficult to abolish in their entirety, are exceptions which merely confirm the principle of unification. If the work begun at The Hague were continued and brought to a successful conclusion, even without the adherence of the States of the Anglo-American world and without any modification of their laws, the result obtained would be by no means inconsiderable. There would



then be only two groups of laws, and each of the laws coming within either of these groups would become similar — apart from a few derogations — to the other laws in the same group. Comparison would become easier than it is at present; there would be no further need to ransack one's memory over each separate point and to rack one's brains by comparing some fifty different laws with each other. The legal decisions of the courts of one group would then carry considerably greater weight than is possible to-day in other States which are members of the same group. As will be seen, the advantages to be derived from the reduction of the systems to two in number are very considerable, but I am convinced that they can be increased to a great extent by endeavouring to reduce divergences between the two main systems by means of gradual assimilation. At any rate, I will attempt to do so.

### **Points to be considered in the question of gradual assimilation.**

Three ideas must be considered. In the first place, an attempt must be made to introduce slight modifications into the Hague Regulation and the Convention so as to bring the laws of the Continental type more into harmony with Anglo-American laws. Continental susceptibilities would not appear to be opposed to this. At the same time, it would be worth considering whether it would not be possible to introduce into English law certain slight modifications which could be accepted by the other members of the Anglo-American group and which would bring this law nearer to the Hague Regulation. As I will explain later, I am in very good company here, as the British Delegation at The Hague has pointed the way. Lastly, in view of the fact that the two groups will preserve distinct characters, it is possible — even if assimilation cannot be attained immediately as regards the substance of the law on bills of exchange — at least to attempt to establish a certain uniformity in this diversity by means of rules of private international law, or, in a narrower sense, rules for the settlement of conflicts of laws; these rules would be uniform for both groups so as to ensure within each of them the proper application of the laws of the other.

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## **SECTION 7. — A JUDICIOUS REVISION OF THE HAGUE REGULATION AND WHERE NECESSARY, OF THE CONVENTION, IN THE DIRECTION OF GRADUAL UNIFICATION.**

### **Review of the contents of sections 4 and 5 above, as a means of determining the scope of the present section.**

We will admit that the work done at The Hague reveals imperfections. It would be surprising if work of human hands did not; but the reception — referred to in Section 4 — which was accorded to the Regulation and the Convention in many countries of Europe and Latin America proves that this Regulation and Convention are acceptable in their present form as a basis for a system of unification, and that they would be still more acceptable if most of the reservations of the Convention could be removed. I need not refer to this matter again. The Regulation purposely leaves gaps, and corresponding gaps also occur in the Convention. One of these is the

question of cover (« provision »); as I pointed out in Section 5, it does not appear possible at present to find a general solution of this question and it would be better to leave it to national legislation. Then there is the question of the loss of a bill and the causes of the suspension and interruption of prescription. I stated in Section 5 that, if there were general agreement, these questions could be decided in the Regulation, and the provisions of the Convention relating to them could be dispensed with. This would also be quite possible as regards the time-limits and forms of protest, but — provisionally, at any rate — settlement by means of national legislation may be retained in this matter. I shall not return to these questions and the present section will deal solely with the modifications which may be introduced into the Regulation in order to bring it more into line with Anglo-American law. I shall not make any formal proposal; I shall merely show what could be done.

**The denomination “bill of exchange” and the “payable to order” clause as indicative of the nature of the instrument.**

There is excellent precedent for the compulsory denomination of bills of exchange. It is not without its practical value as a distinctive indication, particularly in countries which allow, besides bills of exchange, « assignments » (drafts), which in form bear a resemblance to bills of exchange, and in countries which draw a radical distinction between bills at sight and cheques. But countries where denomination is not compulsory get on very well without it. Bills of exchange are generally drawn to order. This is a very different matter, however, from the formal requirement of the « payable to order » clause, which excludes bills payable to specified persons and bills drawn directly to bearer. Then again, the requirement of the « payable to order » clause as a distinctive sign is also not without practical value, but it is nevertheless merely a question of form.

The Anglo-American world, which is pre-eminently a practical one, dispenses very readily both with denomination and with the « payable to order » clause, provided that the bills contain a simple and unconditional order to pay a fixed sum of money.

What was done at The Hague? A compromise was reached. The text of the Regulation requires denomination, but the Convention allows this to be replaced by the « payable to order » clause; no allowance is made for Anglo-American law.

Could not a step be taken on the road towards general assimilation? It would be possible, if there were a desire to do so, to link up the Regulation with the Anglo-American system; the Convention would then allow countries to add a provision either for compulsory denomination or for the « payable to order » clause. The smooth application of the law, with the necessary limitations, would be secured by a provision of private international law. Thus a great step forward would be taken on the road towards unification, and it is to be hoped that the two formal requirements would in the end both disappear. In this way there would no longer be the least appearance of a victory of one system over the other.

**Compulsory indication of date.**

The date on which the bill is drawn is no doubt useful, for example, in order to ascertain the drawer's capacity to fix, if necessary, the date of maturity, or to fix a starting-point for the running of the stipulated interest. Should the indication of this date be made obligatory? The Regulation replies in the affir-



mative. Anglo-American law, on the other hand, does not absolutely require that the date should be mentioned; it allows the holder of a bill payable at the end of a specified period after date to insert the actual date<sup>1</sup>. We might indeed confidently rely on the practical sense of the Anglo-Saxon business world. I may add that Anglo-American law also grants the right of inserting the date, should it be omitted in the acceptance of a bill payable at a specified period after sight, whereas the Regulation, Article 24, para. 2, requires a protest, drawn up within the proper time. In this respect also the Anglo-Saxon system might be followed and could be extended to include the case in which a bill must be presented for acceptance within a certain period in virtue of a special stipulation.

### **Places of issue and payment.**

The Regulation (Articles 1 and 2) requires in principle that these places should be indicated. There is one contingency for which the two last paragraphs of Article 2 do not provide, except in special cases, namely, that in which no special indication is given; there must be some place indicated under the name of the drawee or under that of the drawer. English and American law lays down that a bill is not invalid if it does not specify the place at which it is drawn or that at which payment must be made. In my view, it would be advisable to consider whether the practice of Anglo-American law should not be followed. It might perhaps be assumed, if the bill does not indicate the place at which it was drawn, that it was drawn at the place of residence of the drawer, and, if it does not indicate the place at which payment should be made, that payment should be made at the place of residence of the drawee. I do not think it is necessary to go further and to suppose the possible existence, at some place other than that of residence, or at several places other than that of residence, of one or more business establishments belonging to the same person. A single assumption is sufficient to supply the gap left in the bill, and if it is untrue it can always be disproved.

### **Stipulation of interest.**

In this respect the Regulation has gone far in the direction of Anglo-Saxon law. The stipulation of interest, which in certain Continental laws is deemed unwritten, or even prohibited under pain of invalidation of the bill, is allowed, but only in a bill at or after sight. Article 5 adds that in any other bill this stipulation is deemed to be unwritten. English law<sup>2</sup> and American law<sup>3</sup> both lay down that the sum to be paid does not cease to be a fixed sum when it is made payable with interest. It is, of course, clear that, if the date of maturity is fixed and known beforehand, there is not much object in any stipulation of interest, because the interest can be calculated in advance and added to the principal; however, it would, at any rate, be well to consider whether it is not possible to take a step further in the direction of unification. If so, there would be no occasion to declare unwritten what is actually written. I would venture to add, by the way, that the stipulation of interest might be of some use when the date is left in blank, though, of course, this is an irregularity.

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<sup>1</sup> British Act of 1882, Section 3, sub-section 4 (a) and Section 12. American Law (State of New York), par. 25 and 32.

<sup>2</sup> Section 9 (a) of the Act.

<sup>3</sup> § 21, No. 1, of the above-mentioned Law.

### **The clause “without guarantee” inserted by the drawer.**

According to Article 9, para. 2, of the Regulation, any clause in which the drawer releases himself from the guarantee of payment is deemed to be unwritten. At The Hague it was thought that this clause was contrary to the nature of a bill of exchange. In Anglo-American law<sup>1</sup> this clause is admitted. There is, I think, something to be said in favour of both opinions. The clause in question takes away from the bill of exchange most of its value, but not all. It proclaims the bill to be but a sorry instrument of credit, but any bill bearing such a clause has no pretension to be a sound instrument of credit. It allows the drawer to obtain, through the intermediary of a holder and his correspondents, a sum due to him from a debtor who is a bad payer. The bill then becomes an order or authorisation for payment — an « assignation », as it were. To sum up, the question might be considered whether it would not be possible to arrive at an assimilation on the lines of Anglo-American law, if only to avoid having to declare unwritten that which is written.

### **Obligation on the part of holder to agree to partial acceptance and to accept partial payment.**

The Regulation (Article 25) allows that acceptance may be limited to part of the sum for which the bill is drawn. In Anglo-American law partial acceptance is considered as a qualified acceptance, which the holder may refuse<sup>2</sup>.

As regards partial payment, Anglo-American law does not impose upon the holder the obligation to accept<sup>3</sup>.

At The Hague there was a clearly drawn division of opinion as regards the laws of the Continental type. Article 38 of the Regulation states that the holder may not refuse partial payment, but Article 8 of the Convention — referred to above (Section 5) — allows each contracting State to authorise the holder to refuse partial payment in respect of bills payable in its territory.

I do not say that it is impossible to succeed in unifying all laws by giving the holder the right to refuse partial acceptance or partial payment if he considers them valueless, but it appears to me somewhat difficult. I mention this matter in order that it may be considered by a committee of experts representing all views.

### **Bearer bills of exchange.**

The draft scheme for a uniform law (Regulation) of 1910 admitted such bills with one reservation contained in the Draft Convention of the same year, the text of which is as follows :—

« .....each contracting State shall be entitled to declare a bill of exchange made out to bearer as null and void within its territory, if it has been drawn, accepted or by « aval » in that State or if it is payable there. »

Both the rule and the reservation were abolished in 1912. Anglo-American law admits bills of exchange advocates of this form of bill were not lacking at The Hague in 1910. It was said that this form is admitted in very many countries, and

<sup>1</sup> Section 16, No. 1 of the English Act ; § 111 of the New York law.

<sup>2</sup> English Act, Section 19, sub-section 3 (b). New York law, §§ 229 and 230.

<sup>3</sup> CHALMERS op. cit., § 59 of 8th edition, p. 229.



arguments were also adduced from the case of, bills endorsed in blank which are not actually bearer instruments but which temporarily have the same effect. Opponents said that it would not be possible for bearer bills of exchange to circulate freely in international business circles. They also expressed a fear that the monopoly of Banks of Issue would be infringed.

I would not dare to say that bearer bills of exchange should be admitted in the Regulation, but I should like to draw the attention of business men and financiers to this question. It is a step in the direction of unification which must be taken sooner or later. Although in the present Memorandum I have not touched on Cheque law, I venture to mention the fact that if cheques payable at sight or to bearer are admitted — as has been done in the Resolutions of 1912 concerning cheques — and bills of exchange at sight or to bearer are not admitted, or are declared null and void as such, a more or less artificial distinction will have to be drawn between cheques and bills of exchange. If bearer bills of exchange were admitted in the Regulation, it would be desirable to consider whether this would not involve changes in the system of endorsing.

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## SECTION 8. — JUDICIOUS REVISION OF ANGLO-AMERICAN LAW WITH A VIEW TO BRINGING ABOUT GRADUAL UNIFICATION.

### **General considerations.**

Any scheme for the revision of Anglo-American law would obviously involve a lengthy and elaborate process. The British Empire includes a large number of autonomous Dominions. The United States is made up of States. Territories and Dependencies which are also autonomous as regards the fundamental principles of the law concerning bills of exchange. But I venture to say that the practical spirit of legislators throughout the Anglo-American world is too well developed for them not to recognise the advantages which must accrue from progressive unification, the final aim of which is to attain universal legislation. No legal system can remain stationary. As a Latin quotation, which has become the motto of a British colony, puts it : « *Damus petimusque vicissim* », « which may be freely translated as — We must give if we wish to receive ».

### **The limits which I set to the present Section.**

I have been informed in a letter from the Secretary-General of the League of Nations that a British expert is to be commissioned to carry out a task similar to my own. This fact limits the field of my work and I accept such limitation with all due modesty. In my first Memorandum I pointed out the differences of principle which exist between Anglo-American law and what is known as Continental law. I shall only refer here to the principal headings in my comparative statement. They include : the distinction between internal and foreign bills of exchange, the form of bills of exchange, the stipulation of interest, partial payment on different dates, cases in which the maturity of a bill is contingent upon some future event which is itself certain but the date of which is uncertain, bearer bills of exchange, days of grace, bills which mature on a holiday, the obligation to present certain bills to the drawee within a reasonable time, endorsements which preclude any further endorsement, endorsement after the date of maturity, insolvency of the acceptor before maturity, the discovery of a forgery, protest and notification of

protest, prescription, collateral relation between two parties (« the consideration ») and actions at law arising out of an « inequitable gain ». I have also referred to the slight differences which exist between English and American law. A further reason for not dealing once more with all the points of comparison is that in the present Memorandum I have gone over most of the ground covered by these points. I have made no proposals concerning changes which might be made in Anglo-American law, but I have drawn attention to certain points, particularly to the amendments drawn up by the British Delegation in 1910; I merely reproduce below what I said in my first Memorandum.

### **I.—The sum payable**

(a) I propose that the following be added to subsection 2 of section 9 of the Law of 1882 :

*« When the sum payable is expressed more than once in words or more than once in figures, and there is a discrepancy, the smaller sum is the sum payable. »*

(b) I propose that the following be added to subsection 3 of section 9 :

*« Where the rate of interest is not mentioned it shall be fixed at five per cent. »*

### **II.—Computation of the day on which the bill is payable.**

The following provision should be substituted for subsection 1 of section 14.

*« Days of grace shall be abolished and when a bill according to its wording matures on a non-working day, it is considered as payable on the following working day. »*

### **III.—Acceptance by signature only.**

In paragraph (a) of subsection 2 of section 17 the words : « *on the face of the bill* » should be added after the words : « *signature of the drawee* ».

### **IV.—Who may accept or pay for honour (par intervention) ?**

In subsection 1 of section 65 the words : « *who is not yet liable on the bill* » shall be omitted and in subsection 1 of section 68 after the words : « *any person* » shall be added the words « *other than the acceptor* ».

### **V.—Action arising out of the collateral relations which may exist between two parties and which gave rise to the drawing, to the acceptance or to the negotiation (the consideration) of the bill of exchange.**

After section 52, a section 52 (a) should be inserted in the following terms :

*« When the drawer or an endorser has been released from liability on the bill of exchange by reason of the fact that the holder has not fulfilled his obligations as regards presenting, protesting or giving notice, the drawer or the endorser shall not be released from his legal collateral relations (« the consideration ») unless an act of negligence on the part of the holder has involved him in any loss, and in that case he will only be released to the extent of his loss. »*

I venture to draw attention to a few points :



**VI.—Uniformity as regards the computation of periods  
(month, half-month, calendar, etc.).**

No reason exists for retaining differences, as persons affected will observe the law.

**VII.—Uniformity in the matter of sets and copies.**

No question of principle stands in the way of unification.

**VIII.—The rights of the holder in case of bankruptcy (suspension of payment, etc.)  
of the drawee, or even of the drawer, before maturity.**

Anglo-American law has only provided for the case of the acceptor's bankruptcy, and the effects of such bankruptcy are very limited in so far as the law of bills of exchange is concerned. The Regulation, in Article 42, para. 3, goes very much further in both respects. I do not submit any proposal; but the question of unification on the lines of the Regulation appears to me to be worth consideration.

**Observations concerning the laws of the United States.**

I have before me a work entitled :

*Amendments to the American Uniform Law regarding Negotiable Instruments.*  
Drafted under the direction of the Commercial Law Committee appointed by the Conference of Commissioners for the Unification of the Laws of the States of the Union.

This work will be found as an appendix to the documents of the 63rd Congress, Senate, No. 162.

The amendments are principally concerned with English law and the criticisms to which the American Uniform Law gave rise in the United States. I do not insist on this point. If the principle of gradual unification is admitted when work is recommenced at The Hague, the question of assimilating American and English Law will be a comparatively easy matter. It is sufficient to note that the first step in this direction has already been taken.

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**SECTION 9. — UNIFYING THE APPLICATION OF CONFLICTING RULES  
BY MEANS OF PRIVATE INTERNATIONAL LAW.**

**Harmony in spite of diversity.**

When the laws of various countries conflict and legal relations between their nationals extend beyond the field of action of the local juridical body, questions of private international law arise and these questions often assume the form of a conflict of laws. It is for the judge, the officer of the State, to solve them, although the law of his country is silent on the subject; each State, as legislator for its own territory, and

all States together, acting as a universal legislator, may lay down rules which, by indicating what form of law or what code shall apply, establish harmony in spite of diversity. Many works have been published dealing with these questions. It would be outside the scope of this paper to give a list of them here and therefore venture to refer the reader to my book on *The Substance of Obligations in Private International Law*.

### **The positive rules of private international law (conflict of laws).**

These are to be found in several laws — for instance, in the German General Ordinance, in the Scandinavian Uniform Laws, in the English Law and in the Treaty of Montevideo, 1889<sup>1</sup>.

The Hague Regulation devotes Chapter 13, containing Articles 74, 75 and 76, to this question; the Convention also contains, particularly in Article 18 and Article 20, provisions dealing with the subject. The almost complete uniformity of laws in the countries which should have adopted the Regulation considerably diminishes the field in which these provisions may be applied, but they will not be without some importance under the uniform regime of the Regulation, because the Convention authorises departures from the Regulation and also because laws will probably continue to differ as regards the capacity to contract liability on a bill of exchange. If the systems are reduced to two in number, it will be desirable to render uniform, in the two systems, the rules of private international law, especially in view of Article 20 of the Convention, under which States reserve to themselves the right not to apply the rules of private international law laid down in the Regulation and in the Convention to an obligation entered into outside the territory of the Contracting States, or even generally when these rules have reference to laws other than those of the Contracting States.

### **It is desirable that certain rules should be followed.**

We should avoid any legislative system that prides itself on being able to settle all imaginable questions and we should leave wide scope to case law, which will be of real universal value when it is applied to groups of countries whose laws are in the main uniform. This point was recognised by the distinguished jurisconsults who drew up the provisions of private international law which were adopted at The Hague. Following their example, I am considering only three subjects, namely : the capacity to contract liability and the form of the instruments necessary for the exercise and protection of rights in connection with bills of exchange. For any further information, I venture to refer the reader to special works which may serve as guides in the matter of case law.

### **The capacity to contract liability on bills of exchange.**

Delicate questions arise in this connection because the various forms of legislation are not in agreement as to the general law which should govern the capacity to enter into an obligation and particularly to contract liability on a bill of exchange.

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<sup>1</sup> For Latin America, *cf.* OBREGON, quoted pp. 554 *et seq.* The Treaty of Montevideo was put into force in Uruguay, the Argentine, Bolivia, Paraguay and Peru. *Cf. Estudio*, pp. 23 and 91.



Rules sometimes do exist with reference to this latter point, and they are based on considerations either of sex or of the social position of the parties.

The Regulation and the Convention have taken for their guidance the rules accepted by the majority of the States represented at the Conferences. The provisions are rather complicated. The principle of nationality is the all-important point in Article 74, para. 1, of the Regulation. In the same paragraph, however, this principle, though not definitely abandoned, is applied in a peculiar manner—by the system of directing that a particular law be applied known as the system of « renvoi »—which I refrain from commenting upon at any length.

It is not so much the law of a person's country which is applied as the law which the law of his country directs to be applied, and, since the « renvoi » must be to some law which can be applied, it may in actual practice result in the application of the domiciliary law, or of the law of the country where the liability was contracted or is deemed to have been contracted, or even of the law of the place where it is to be discharged.

If the « renvoi » does not infringe the principle of nationality, the second paragraph of Article 74 certainly does so by stating that a person who is incapable according to the law of his country, but capable according to the law of the place where he enters into an obligation, is bound by this obligation. The Convention, on the other hand, in Article 18 reacts against this infringement of the principle of nationality by declaring that one State is not obliged to submit the question of the capacity of its own nationals to the provisions of any legislation other than its own.

The system adopted at The Hague met with the approval of most of the States represented, but I would not go so far as to state that it should be made the basis for a universal agreement. It does not accord with Anglo-American law. The States which are prepared to adopt the uniform law in principle, but who, as regards the capacity of persons, follow the principle of domicile, may hesitate if they are required to abandon this principle in the matter of bills of exchange. I have in mind particularly the declaration made at The Hague by the Delegate of the Argentine Republic, and the discussion at the Conference held at Buenos Ayres in 1916. The system of « renvoi » is only a partial answer to this objection. Doubtless, its effect would be (taking Argentine as an example) to apply to Argentine citizens abroad the principle of domicile which their national legislation applies, but the Republic would be obliged to apply to emigrants who have become domiciled in her territory the principle of nationality to which she objects. The principle laid down in para. 2 of Article 74 of the Regulation is very often followed in the laws of various countries, but it is too intricate. It sacrifices the idea of protecting persons under legal disability (incapable). Article 18 of the Convention reverts to this idea of protection, but only carries it partially into effect.

The replies to the Questionnaire of the International Chamber of Commerce make it clear that the system laid down at The Hague has not met with universal approval.

It appears to me possible to find a formula which would be universally accepted, and I will venture to suggest the manner in which this formula may be found. I take two main considerations as a basis.

The first is that it is not necessary to determine a special capacity to contract liability on a bill of exchange. It is possible to rely on the law governing the general capacity to incur liability under a contract. Doubtless, in this manner, complete uniformity will not be obtained, but, in the present state of the world, it will not be easy for any

special decision, adopted by the majority of States, to become a universal decision. I may say that the rule which makes the question dependent on general capacity would assume a far more practical character if some agreement could be reached with a view to abolishing the differences which exist in various legislations concerning the age of majority and the capacity of women who are of age, whether married or single. The reader will allow me to say that the solution of this problem in this way is, for the present, a mere Utopia. As regards the prohibitions imposed upon persons serving in the army and navy, the nobility and so on, it should be possible, if it is not desired to disregard this distinction, to enforce these prohibitions by disciplinary measures.

The second consideration is that the second paragraph of Article 74, quoted above, though founded on correct principles, is too rigid. A man—let us say a foreigner, in order to make our argument clear—who is incapable of entering into an obligation, in accordance with the legal system which governs his capacity, but who is capable under the law of the country in which he enters into an obligation by means of a contract or other legal act of a contractual nature, should not be held to his obligation in every case; the judge should decide according to the circumstances. This is, for instance, the view taken by American law<sup>1</sup>; this is also the principle which French jurisprudence law applied in a special case to a foreigner who had contracted a liability in France<sup>2</sup>.

In this way we arrive at two rules, the first being that the capacity to contract liability on a bill of exchange depends on the law governing the capacity to enter into a contract, and the second, that a person who is incapable, in accordance with this law, but is capable under the law of the country in which he enters into an obligation by means of a bill of exchange, may be considered, in certain cases, as having contracted a valid obligation. In this manner, the judge will also be able to form an opinion as to whether he should take into consideration the law of the country in which the document has actually been signed or that of the country in which the bill, by reason of the place mentioned, must be held to have been signed, at least as far as a bona-fide holder in due course is concerned.

### **The form of liability contracted on a bill of exchange.**

The rule in Article 75 of the Regulation which provides for the application of the laws of the State within whose territory an obligation has been entered into appears to me to be capable of general acceptance. I think that it is quite right to leave to jurisprudence the solution of controversies which may arise in private international law in consequence of the maxim, *locus regit actum*. The judge will have no difficulty in admitting that the bona-fide holder in due course is entitled to consider the bill as valid in form provided that it conforms to the law of the country which has been either expressly or implicitly indicated in the bill as the place in which the obligation has been entered into.

It seems to me, however, that a special provision might be desirable. In cases where an instrument does not constitute a bill of exchange, under the law which governs the form in which a bill shall be drawn, all declarations subsequent to the drawing might have to be considered as not having been written on the bill, and consequently as outside the

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<sup>1</sup> DANIEL, *A Treatise on the Laws of Negotiable Instruments*, I, par. 212 *et seq.*, par. 224 *et seq.*, par. 239 *et seq.*

<sup>2</sup> VALÉRY, *Manuel de droit international privé*. Nos. 599, 600.



scope of the law governing bills of exchange. The consequence would be to undermine to too great an extent the confidence which a bill of exchange ought to inspire. It should be laid down that a declaration made on a bill of exchange, after it has been drawn, is considered as having been written on a bill which is valid as to form, provided that the instrument is drawn according to the form required by the law of the place in which this declaration is made.

**The form of protest and the time within which a bill must be protested and the form of other acts required to exercise or protect rights in the matter of bills of exchange.**

Article 76 of the Regulation properly leaves these matters to be determined by the laws of the State within which the protest must be drawn up or the acts accomplished. The holder must be able to rely upon the universal effect of the measures which he takes in conformity with the laws of the place indicated. It would doubtless be desirable to obtain such uniformity forthwith, at any rate as regards the form of protest and the time within which bills must be protested, but no hard-and-fast rule exists regarding the requirements of form and time, and it is not everywhere and always necessary even to protest a bill. It is obvious that States will not be very ready to modify procedure which has been consecrated by custom and to replace this procedure by other rules which may be quite as good, but not better. Complete uniformity will be attained sooner or later, and sooner rather than later, if uniformity is reached in other matters.

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SECTION 10.—SUMMARY OF MY COMMENTS ON THE LAW RELATING TO CHEQUES.

**General considerations.**

Apart from the special or temporary laws which have been passed in nearly every country and which during the war granted facilities in the matter of bills of exchange, legislative activity has been far more noticeable in the case of cheques than in that of bills of exchange. Communications concerning new laws or modifications of existing laws were sent in reply to the Questionnaire of the Economic and Financial Committee of the League of Nations by several Governments, including those of Belgium, Denmark, France, Great Britain and Greece. The Brazilian Law No. 2591, of August 7th, 1912, offers exceptional interest<sup>1</sup>.

Complete information concerning the legislation of Latin America, as compared with Spanish and United States law, will be found in the works of WALTON (1917) and OBREGON (1921) which have already been mentioned. By consulting the latter work, it is possible to judge what kind of reception the Hague Resolutions concerning cheques

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<sup>1</sup> RODRIGO OCTAVIO, *Do cheque : sua origem, função economica e regulamentação*, 1913. — CARVALHO DE MENDONÇA, already mentioned. Volume V, Nos. 966 *et seq.* ; in particular, No. 989.

have received in several Latin-American Republics<sup>1</sup>. But, all things considered, I maintain what I said in my first Memorandum, of which I reproduce the text below with hardly any modifications.

### **A few remarks concerning the uniformity of the law relating to cheques.**

At first sight it would appear that, having formulated rules for the unification of the law relating to bills of exchange, the unification of cheque law should prove a simple matter. There are, however, several very difficult problems which arise solely in connection with cheques.

In Anglo-American law the laying-down of rules regarding cheques as negotiable instruments is a simple matter. A cheque, according to Anglo-American law, is regarded as a form of bill of exchange, namely a bill of exchange at sight drawn on a banker. The law presents certain peculiarities mainly connected with the relations existing between the banker and his client. I do not propose to touch upon the differences which exist between English and American law.

The laws of other countries, even the most recent ones, differ considerably from one another, but in most cases they accentuate the difference between cheques and bills of exchange. This is due to the fact that two fundamental conceptions govern legislation in regard to this matter.

The first is a fiscal one. It was felt that, with a view to enabling cheques to attain the importance which they possess in English-speaking countries, they should be freed from stamp duty or, at any rate, only subjected to a small fixed duty, whereas bills of exchange, including in most cases bills of exchange at sight or short-term bills of exchange, should remain subject to proportionate taxation. In these circumstances, it was absolutely necessary to be able to distinguish a cheque from a bill of exchange at a glance — for instance, by incorporating the word « cheque » into the wording of the instrument.

The second conception is that of the legal aspect of a cheque. It has often been alleged—I might almost say asserted—that the difference between cheques and bills of exchange is not merely an economic one, but that there really exists a profound legal difference between the two instruments. This theory is founded on the fact that a cheque is most often employed in order to effect prompt payment, whereas a bill of exchange generally circulates also as an instrument of credit, and it is held that this legal difference must involve special regulations covering a great number of points. Among the distinguishing characteristics of cheques which are laid down in special laws, a large number are certainly artificial, as, for instance, the obligation to write the date on a cheque in words, and the stipulation that the date must be filled in by the person who signs, and, again, that the cheque should be required to bear a number and should be taken from a cheque-book. I note that one material element of difference between cheques and bills of exchange is often that in the case of cheques there must have been a previous deposit of funds. In many of the new laws this principle has often been extended so far as to render the drawing of a cheque without funds to meet it an offence *ipso facto*. Moreover, differences of opinion exist on many points; for instance, as regards the necessity for the existence of « a cheque contract »,

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<sup>1</sup> Page 562 *et seq.*



which is either implicitly or expressly entered into between the drawer and the drawee; and this calls to mind the historic « contract of exchange ». There is no agreement either as to the technical status of the drawee, who may be a banker (this term is sometimes defined and sometimes left vague), a stockbroker, a merchant, a public body, etc. Finally, the acceptance of a cheque (or what is called in America its « certification »), and the possibility of an order not to pay between the time it is drawn and the time it is presented, give rise to various differences of opinion.

In these circumstances, it is not difficult to understand that the Resolutions of the Conference of 1912 on the unification of legislation concerning cheques were only of a provisional character. The Conference adopted a Resolution to the effect that a new Conference should be convened by the Dutch Government after the lapse of a period sufficient to permit of the investigation of the Resolutions concerning the law relating to cheques.

I do not for one moment wish to question the importance of the unification of legislation affecting cheques, but it appears to me that it would be better at present to concentrate all our efforts on unifying legislation affecting bills of exchange and promissory notes.

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## SECTION II.—THE FORM OF THE AGREEMENT.

### **The possibility of reaching general agreement.**

I think it would be desirable to conclude an agreement embracing the whole English-speaking world on the basis of gradual assimilation between the two divergent systems. This would not be easy, but it is not impossible.

### **The method consisting in drawing up a convention, with a regulation as annex.**

The Hague Conferences have very rightly followed the above method, for it presents very considerable advantages when dealing with a question which gives rise to so much difference of opinion. The contracting States make mutual concessions and undertake to put them into effect. They might doubtless undertake merely to lay a uniform draft Bill before the legislative authorities of their country, but this procedure, by giving the legislative authorities the right to insert amendments, would probably be detrimental to uniformity and would render uncertain the bringing into effect of any concessions granted. The method of drawing up a Convention, however, allows such differences of opinion as continue to exist to be reduced to a minimum. It offers no obstacle to the drawing up in the countries' own language of the national laws which are promulgated in execution of the Convention, or to the incorporation of these laws in existing codes.

For the third examination of the law concerning bills of exchange and promissory notes, we would recommend that the method employed in the first two instances should again be followed. It would also be well not to attempt to attain what is best, which is the enemy of what is good; not to depart too far from the rules adopted at The Hague, and to progress cautiously along the path of unification, with the double object

of bringing Anglo-American legislation and Continental legislation into closer harmony and of further assimilations in the various forms of the latter, in order that it may be possible to eliminate some of the reservations to the Convention of 1912. It is to be hoped that, by adopting this method, all the nations, both of the Old and the New World, which have collaborated in the work undertaken at The Hague, including the United States, Germany and the Latin-American Republics, will take an active part in the new Conference. In this way we may gather in the harvest which is ripe and leave what is still green to ripen.

**The application at the Third Conference of the principle of gradually welding the two main systems into one.**

At first sight it might have been thought necessary to draw up a Regulation No. 2, based on Anglo-American law, and to allow the various States to choose between Regulation No. 1, as carefully revised, and Regulation No. 2. I think that this is quite unnecessary. Unification of the laws of the Anglo-American group has been attained on all main points, and this is the object of a Regulation.

The grouping of the various laws into two main systems could quite easily be achieved, and I think it would be better to content ourselves with this for a beginning. The Convention could contain a provision by which every State would be entitled to restrict its obligation—after the manner of Article 22 of the Convention of 1912—to the provisions of private international law contained in the revised Convention; they would undertake at the same time to do everything possible to amend their laws in such a way as to bring them into greater conformity with the provisions of the Regulation. States which entered into such obligations would become Contracting States and the unfavourable rules contained in Article 20 of the Regulation would not be applicable to them. If this formula did not meet with the approval of the United States, a formula which would conform to the constitutional law of the Union could be drawn up by American experts. There would then exist a connecting link between the two great groups of laws relating to bills of exchange, and progressive unification would, as Archimedes expressed it, possess a fulcrum to the lever with which to raise the world.

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## APPENDIX.

### TEXT OF THE REGULATION AND OF THE HAGUE CONVENTION 1912.

#### Without a Commentary, but with several Marginal Observations.

I do not think there is any need for a commentary after what has already been said. Moreover, the documents and acts of the two Hague Conferences form in themselves a very extensive commentary.

The author does not wish at present to make any formal proposal; he has limited himself to offering certain comments; if these comments have sometimes assumed the nature of proposals, this has been done with a view to obtaining greater precision.

The aim of these comments is twofold.

They show how, if an agreement were reached, the Regulation might be more or less modified in order to bring it into greater conformity with Anglo-American law.

They also serve to show in what manner it would be possible, if an agreement were reached concerning the reservations made at The Hague in 1912 as a result of the insurmountable obstacles existing at that period, to make further progress in the direction of unifying legislation of the Continental type, in order that it may be possible to eliminate at least some of the reservations which were made in the Convention.

The Regulation has been constantly kept in the foreground because this Regulation dominates the reservations to the Convention.

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## UNIFORM REGULATION.

### TITLE I.—BILLS OF EXCHANGE.

#### CHAPTER I.

#### Issue and Form of a Bill of Exchange.

##### MARGINAL NOTES

by Dr. D. JOSEPHUS JITTA (The Hague).

*Article 1.*—A bill of exchange contains :—

(1) The term « bill of exchange » inserted in the body of the instrument and expressed in the language employed in drawing up the instrument.

*Article 1.*—(Section 5; First Question; Section 7, under the heading « Denomination », etc.).

(a) Item (1) might be omitted, but the contracting States might be permitted to require either the denomination « bill of exchange » or the « to order » clause in Article 2 of the revised Convention. I do

(2) An unconditional order to pay a determinate sum of money.

(3) The name of the person who is to pay (*drawee*).

(4) A statement of the time of payment.

(5) A statement of the place where payment is to be made.

(6) The name of the person to whom or to whose order payment is to be made.

(7) A statement of the date and of the place where the bill is issued.

(8) The signature of the person who issues the bill (*drawer*).

*Article 2.*—An instrument in which any of the requirements mentioned in the preceding article are wanting is invalid as a bill of exchange, except in the cases specified in the following paragraphs :—

A bill of exchange in which the time of payment is not specified is deemed to be payable at sight.

In default of special mention, the place specified beside the name of the drawee is deemed to be the place of payment; and at the same time the place where the drawee resides.

A bill of exchange which does not mention the place of its issue is deemed to have been drawn in the place mentioned beside the name of the drawer.

*Article 3.*—A bill of exchange may be drawn payable to drawer's order.

It may be drawn on the drawer himself.

It may be drawn for account of a third person.

not think that any proposal to insert one requirement to the exclusion of the other, or to omit both, would have any chance of being accepted by all States. Possibly the later solution may come about of its own accord if we are only content to wait.

(b) If it were possible to agree to add at the end of the enumeration that the signature may be replaced by a formal declaration written upon the bill of exchange and testifying to the intention of the person who should have signed, it may be possible to omit Article 3 of the Convention.

(c) The question of admitting bearer bills of exchange into the Regulation (Section 7, last heading) is worth consideration.

*Article 2.*—(Section 7, under the headings : « Compulsory indication of date » and « Places of issue and payment »).

A praiseworthy desire on the part of the coming Conference to avoid formalism may lead it still further to extend the provisions of this Article.

Instead of paras. 3 and 4, it might be laid down :

That, if the place where payment is to be effected is not stated, the domicile of the drawee shall be considered to be the place of payment;

That a bill of exchange which does not show the place at which it was drawn is considered as having been drawn at the domicile of the drawer;

That if the bill of exchange does not contain a statement as to the date on which it was drawn, the holder, acting in good faith, may insert it.

This is the tendency manifested in Anglo-American law.



*Article 4.*—A bill of exchange may be payable at the residence of a third person, either in the place where the drawee resides or in another place (*domiciled bill*).

*Article 5.*—Where a bill of exchange is payable at sight, or at a certain time after sight, the drawer may stipulate that the sum payable shall bear interest. In the case of any other bill of exchange this stipulation is deemed to be unwritten.

The rate of interest must be specified in the bill; in default of specification, it is 5 per cent.

Interest runs from the date of the bill of exchange, unless some other date is specified.

*Article 6.*—Where the sum payable by a bill of exchange is expressed in words and also in figures, and there is a discrepancy between the two, the sum denoted by the words is the amount payable.

Where the sum payable by a bill of exchange is expressed more than once in words or more than once in figures, and there is a discrepancy, the smaller sum is the sum payable.

*Article 7.*—If a bill of exchange bears the signature of persons incapable of contracting, the obligations of the other persons who have signed it are none the less valid.

*Article 8.*—Whoever puts his signature on a bill of exchange as representing a person for whom he had no power to act, is bound himself as a party to the bill. The same rule applies to the representative who has exceeded his powers.

*Article 9.*—The drawer is the guarantor both of acceptance and payment.

He may release himself from guaranteeing acceptance; every stipulation by which he releases himself from the guarantee of payment is deemed to be unwritten.

*Article 5.*—(Section 7, under the heading : « Stipulation of interest »).

I should like to call attention to the fact that there is no particular reason for inserting a stipulation of interest in a bill payable on a fixed date or within some specified period after date, but Anglo-American law proves that there is no need to declare such stipulation to be unwritten.

*Article 9.*—(Section 7, under the heading : « The clause without guarantee »).

There may be some justification for a clause by which the drawer releases himself from the guarantee. Anglo-American law admits a clause of this kind. The practice of declaring it unwritten might be abandoned.

## CHAPTER II.

### Endorsement.

*Article 10.*—Every bill of exchange, even if not expressly drawn to order, may be transferred by means of an endorsement.

When the drawer has inserted in a bill of exchange the words « not to order », or any equivalent expression, the instrument can only be assigned according to the form, and with the effects of an ordinary cession.

The bill may be endorsed to the drawee, whether he has accepted or not, or to the drawer, or to any other party to the bill. These persons may endorse the bill afresh.

*Article 11.*—An endorsement must be unconditional. Any condition to which it is made subject is deemed to be unwritten.

A partial endorsement is null and void.

Also, an endorsement « to bearer » is null and void.

*Article 12.*—An endorsement must be written on the bill of exchange, or on a slip attached thereto (« allonge »). It must be signed by the endorser.

An endorsement is valid even though the beneficiary is not specified, or the endorser has done nothing more than put his signature on the back of the bill or « allonge » (*endorsement in blank*).

*Article 13.*—An endorsement transfers all the rights arising out of a bill of exchange.

*Article 11.*—(Section 7, under the heading : « Bearer bills of exchange »).

If we are prepared to admit a bearer bill of exchange we shall have to consider whether it is desirable :

To retain the provision of Article 12 of the Draft Uniform Law of 1910 : « The endorsement of a bill of exchange payable to bearer operates only as guarantee (« aval ») for the drawer. »

To maintain the provision declaring an endorsement « to bearer » null and void. This provision might if necessary be assimilated to an endorsement in blank by means of a proper formula.



If the endorsement is in blank, the holder may—

1. Fill up the blank, either with his own name or with the name of some other person.
2. Endorse the bill again in blank, or to some other person.
3. Transfer the bill to a third person without filling up the blank, and without endorsing it.

*Article 14.*—In the absence of any contrary stipulation, the endorser guarantees the acceptance and payment.

He may prohibit any further endorsement; in this case he gives no guarantee to the persons to whom the bill is subsequently endorsed.

*Article 15.*—The possessor of a bill of exchange is deemed to be the lawful holder if he shows his title through an uninterrupted series of endorsements, even if the last endorsement is in blank. When an endorsement in blank is followed by another endorsement, the person who signed this last endorsement is deemed to have acquired the bill by the endorsement in blank. Cancelled endorsements are deemed to be non-existent.

Where a person has been dispossessed of a bill of exchange, in any manner whatever, the holder who shows his right thereto in the manner mentioned in the preceding 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.

*Article 16.*—Persons sued on a bill of exchange cannot set up against the holder defences founded on their personal relations with the drawer or with previous holders, unless the transfer has taken place in pursuance of a fraudulent understanding.

*Article 17.*—When an endorsement contains the stipulation « value in collection » (« valeur en recouvrement »), « for collec-

tion » (« pour encaissement »), « by procuration » (« par procuration ») or any other phrase implying a simple mandate, the holder may exercise all rights flowing from the bill of exchange, but he can only endorse it in the capacity of an agent.

In this case the parties liable can only set up against the holder defences which could be set up against the endorser.

*Article 18.*—When an endorsement contains the stipulation « value in security », « value in pledge », or any other stipulation implying a pledge, the holder may exercise all the rights flowing from the bill of exchange, but an endorsement by him only avails as an agency endorsement.

The parties liable cannot set up against the holder defences founded on their personal relations with the endorser, unless the endorsement has taken place in pursuance of a fraudulent understanding.

*Article 19.*—An endorsement after maturity has the same effect as an endorsement before maturity. Nevertheless, an endorsement after protest for non-payment, or after the expiration of the limit of time fixed for drawing it up, operates only as an ordinary cession.

*Article 18.*—(Section 5, Second Question).

Article 18 should be made to conform with Article 4 of the Convention, under which the contracting State is allowed, so far as relates to an endorsement made within its territory, to declare unwritten any statement implying a pledge.

I need only refer to what has already been said on the subject.

It would be difficult, but not impossible, to reach an agreement, under which Article 4 of the Convention might be omitted.

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### CHAPTER III.

#### Acceptance.

*Article 20.*—Up to maturity, a bill of exchange may be presented to the drawee for acceptance at the place where he resides, either by the holder or by a simple possessor.

*Article 21.*—In any bill of exchange, the drawer may stipulate that it shall be presented for acceptance, with or without fixing a limit of time for presentment.



Except in the case of a domiciled bill, or a bill drawn payable at a certain time after sight, he may prohibit presentment for acceptance.

He may also stipulate that presentment for acceptance shall not take place before a certain date.

Every endorser may stipulate that the bill shall be presented for acceptance with or without fixing a limit of time for presentment, unless the drawer has prohibited acceptance.

*Article 22.*—Bills of exchange payable at a certain time after sight must be presented for acceptance within six months of their date.

The drawer may abridge or prolong this time.

These times may be abridged by the endorsers.

*Article 23.*—When a bill of exchange is presented for acceptance, the holder is not obliged to leave it in the hands of the drawee.

The drawee may demand that a bill shall be presented to him a second time on the day after the first presentment. Parties interested are not allowed to set up that the right to make this demand has not been exercised unless this fact is specified in the protest.

*Article 24.*—An acceptance is written on the bill of exchange. It is expressed by the word « accepted », or any other equivalent term. It is signed by the drawee. The mere signature of the drawee on the face of the bill constitutes an acceptance.

When a bill is payable at a certain time after sight, or when it must be presented for acceptance within a certain limit of time in accordance with a special stipulation, the acceptance must be dated as of the day when the acceptance is given, unless the holder requires that it should be dated as of the day of presentment. If it is undated, the holder, in order to

*Article 24.*—(Section 7, under the heading : « Compulsory indication of date »).

Were it not required, on pain of rendering the instrument invalid as a bill of exchange (Article 2, referred to above), to show the date on which the bill was drawn, the second sentence of para. 2 might, as in Anglo-American law, be modified so as to allow the bearer to insert the true date in good faith.

preserve his right of recourse against the endorsers and the drawer, must authenticate the omission by a protest drawn up within the proper time.

*Article 25.*—An acceptance is unconditional, but it may be restricted to part of the sum payable.

Every other modification introduced by an acceptance into the tenor of the bill of exchange operates as a refusal to accept. Nevertheless the acceptor is bound according to the terms of his acceptance.

*Article 26.*—When the drawer of a bill has specified a place of payment, other than the residence of the drawee, without mentioning the domiciliary, the acceptance must specify the person who is to pay the bill. In default of this specification, the acceptor is deemed to have undertaken to pay the bill himself at the place of payment.

If a bill is payable at the residence of the drawee, he may in his acceptance specify an address in the same place where payment is to be effected.

*Article 27.*—By accepting, the drawee undertakes to pay the bill of exchange at its maturity. In default of payment, the holder, even if he is the drawer, has a direct action on the bill of exchange against the acceptor for all that can be demanded in accordance with Articles 47 and 48.

*Article 28.*—Where the drawee who has put his acceptance on a bill has cancelled it before the bill has left his hands, acceptance is deemed to be refused; nevertheless, the drawee is bound, according to the terms of his acceptance, if he has cancelled it after he has in writing informed the holder or any other party who has signed the bill that he has accepted it.

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*Article 25.*—(Section 7, under the heading : « Obligation on the part of the holder to agree to partial acceptance »).

The rule in the first paragraph which permits acceptance to be restricted to part of the sum payable is very frequently met with in the Continental type of legislation, but it would be worth while considering whether the rule, which is not admitted in Anglo-American law, is worthy of the importance ascribed to it.



## CHAPTER IV.

### “Avals”.

*Article 29.*—Payment of a bill of exchange may be guaranteed by an « aval ».

This guarantee may be given by a third person, or even by a person who has signed as a party to the bill.

*Article 30.*—An « aval » is either given on the bill itself, or on an « allonge ».

It is expressed by the words « good as aval », or by any other equivalent formula. It is signed by the giver of the « aval ».

It is deemed to be constituted by the mere signature of the giver of the « aval » placed on the face of the bill, except in the case of the signature of the drawee or of the drawer.

An « aval » must specify for whose account it is given. In default of this, it is deemed to be given for the drawer.

*Article 31.*—The giver of an « aval » is bound in the same manner as the person whom he guarantees.

His engagement is valid even when the liability which he has guaranteed is inoperative for any reason other than defect of form.

He has, when he pays the bill of exchange, the right to go back on the person he has guaranteed, and the guarantors of the latter.

*Article 30.*—(Section 5, Third Question).

Article 5 of the Convention is concerned with « aval » by a separate document. I need only refer to what has already been said on the subject, adding that if it is laid down that the separate instrument containing the « aval » must circulate together with the bill of exchange—and it is not an easy matter to prove that this is necessary—the « aval » by separate instrument is of very small practical value.

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## CHAPTER V.

### Times of Payment.

*Article 32.*—A bill of exchange may be drawn payable—

- On a fixed day;
- At a certain time after date;
- At sight;
- At a certain time after sight.

*Article 32.*—(Section 5, Fourth Question).

Article 6 of the Convention refers to bills payable at a fair or market « en foire ». It is sufficient to mention this fact.

Bills of exchange at other maturities or payable by instalments are null and void.

*Article 33.*—A bill of exchange at sight is payable on presentment. It must be presented for payment within the legal or contractual limits of time fixed for the presentment for acceptance of bills payable at a certain time after sight.

*Article 34.*—The maturity of a bill of exchange payable at a certain time after sight is determined either by the date of the acceptance, or by the date of the protest.

In the absence of the protest, an undated acceptance is deemed so far as regards the acceptor to have been given on the last day of the limit of time for presentment either legal or contractual.

*Article 35.*—Where a bill of exchange is drawn at one or more months after date, or after sight, the bill matures on the corresponding date of the month when payment must be made. If there be no corresponding date, the bill matures on the last day of this month.

When a bill of exchange is drawn at one or more months and a half after date or sight, entire months must first be calculated.

If the maturity is fixed at the commencement or middle (mid-January or mid-February, &c.), or the end of the month, the 1st, 15th, or the last day of the month is to be understood.

The expressions « eight days » or « fifteen days » indicate not one or two weeks, but a period of eight or fifteen actual days.

The expression « half-month » means a period of fifteen days.

*Article 36.*—When a bill of exchange is payable on a fixed day in a place where the calendar is different from the calendar of the place of issue, the date of maturity is deemed to be fixed according to the calendar of the place of payment.

*Article 34.*—(Section 7, under the heading : « Compulsory indication of date »).

If Article 24 is modified to conform with the rule of Anglo-American law, it would be well to consider whether the second paragraph should be retained.



When a bill of exchange drawn between two places having different calendars, is payable at a certain time after date, the day of issue is referred to the corresponding day of the calendar in the place of payment, and the maturity is fixed accordingly.

The time for presenting bills of exchange is calculated in accordance with the rules of the preceding paragraph. These rules do not apply if a stipulation in the bill, or even the simple terms of the instrument, indicate an intention to adopt some different rule.

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## CHAPTER VI.

### Payment.

*Article 37.*—The holder must present a bill of exchange for payment, either on the day on which it is payable, or on one of the two business days which follow.

Presentment at a clearing-house is equivalent to a presentment for payment.

*Article 38.*—The drawee who pays a bill of exchange may require that it shall be given up to him receipted by the holder.

The holder may not refuse partial payment.

In case of partial payment the drawee may require that mention of this payment shall be made on the bill, and that a receipt therefor shall be given to him.

*Article 39.*—The holder of a bill of exchange cannot be compelled to receive payment thereof before maturity.

The drawee who pays before maturity does so at his own risk and peril.

He who pays at maturity is validly discharged, unless there has been fraud or gross negligence on his part. He is bound to verify the regularity of the

*Article 38.*—(Section 7, under the heading : « Obligation on the part of the holder... to accept partial payment »).

Article 8 of the Convention proves that on this point no agreement has been reached. Most States have accepted the rule which lays down that the holder may not refuse part payment.

However, under the system of twofold legislation with progressive unification, this question might be reconsidered.

series of endorsements, but not the signature of the endorsers.

*Article 40.*—When a bill of exchange is drawn payable in a currency which is not current in the place of payment, the sum payable may be paid according to its value, on the day when payment can be demanded, in the currency of the country, unless the drawer has stipulated that payment shall be made in the specified currency (*stipulation for actual payment in foreign currency*). The usages of the place of payment determine the value of foreign currency. Nevertheless the drawer may stipulate that the sum payable shall be calculated according to the rate expressed in the bill, or to be determined by an endorser; in this case the sum payable must be paid in the currency of the country.

If the amount of the bill of exchange is specified in a currency having the same denomination, but a different value in the place of issue and the place of payment, reference is deemed to be made to the currency of the place of payment.

*Article 41.*—When a bill of exchange is not presented for payment within the limit of time fixed by Article 37, every debtor is authorised to make a deposit of the amount with the competent authority at the charge, risk, and peril of the holder.

*Article 40.*—It would be worth while for this Article to be reconsidered by business and financial experts, especially in view of the present economic situation.

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## CHAPTER VII.

### Recourse for Non-acceptance or Non-payment.

*Article 42.*—The holder may exercise his right of recourse against the endorsers, the drawer and the other parties liable—

*At maturity,*

If payment has not been made;



*Even before maturity,*

1. If acceptance has been refused;
2. Where the drawee, whether he has accepted or not, has failed, or has suspended payment, even if the suspension is not authenticated by a judgment; or where execution has been levied against his goods without result;
3. Where the drawer of a non-acceptable bill has failed.

*Article 43.*—Default of acceptance or payment must be evidenced by a formal document (*protest for non-acceptance, or non-payment*).

Protest for non-payment must be made, either on the day when the bill is payable, or on one of the two following business days.

Protest for non-acceptance must be made within the limit of time fixed for presentment for acceptance. If in the case provided for by Article 23, paragraph 2, the first presentment takes place on the last day of that time, the protest may nevertheless be drawn up on the next day.

Protest for non-acceptance dispenses with presentment for payment and protest for non-payment.

In the cases provided for by Article 42 (2), the holder cannot exercise his right of recourse until after presentment of the bill to the drawee for payment, and after the protest has been drawn up.

In the cases provided for by Article 42 (3), the production of the judgment pronouncing the failure of the drawer, suffices to enable the holder to exercise his right of recourse.

*Article 44.*—The holder must give notice of non-acceptance or non-payment to his immediate endorser, and to the drawer, within the four business days which follow the day for protest, or in

case of a stipulation « retour sans frais », those which follow the presentment.

Every endorser must, within two days, give notice to his immediate endorser of the notice which he has received, mentioning the names and addresses of those who have given the previous notices, and so on through the series until the drawer is reached. The limit of time mentioned above runs from the receipt of the preceding notice.

Where an endorser either has not specified his address, or has specified it in an illegible manner, it is sufficient that notice should be given to the preceding endorser.

A person who must give notice, may give it in any form whatever, even by the simple return of the bill of exchange. He must prove that he has given it within the prescribed limit of time.

He shall be deemed to have given it within the prescribed limit of time, if a letter giving the notice has been posted within the aforesaid time.

A person who does not give notice within the limit of time mentioned above, does not lose his right of recourse. He is responsible for the injury, if any, caused by his negligence, but the damages shall not exceed the amount of the bill of exchange.

*Article 45.*—The drawer or an endorser may, by the stipulation « retour sans frais », « sans protêt », or any other equivalent expression, allow the holder to dispense with a protest for non-acceptance or non-payment, in order to exercise his right of recourse.

This stipulation does not release the holder from presenting the bill within the prescribed time, nor from giving notice of dishonour to a preceding endorser or the drawer. The burden of proving the non-observance of the limits of time lies on the person who seeks to set them up against the holder.



When this stipulation is inserted by the drawer, it takes effect as regards all parties who have signed the bill. If, in spite of this stipulation, the holder has the protest drawn up, he must bear the expenses thereof. When the stipulation is inserted by an endorser, the expenses of protest, if it has been drawn up, can be recovered from all the parties who signed the bill.

*Article 46.*—All those who have drawn, accepted, endorsed, or guaranteed by « aval » a bill of exchange are jointly and severally liable to the holder.

The holder has the right of proceeding against all these persons individually or collectively without being required to observe the order in which they have become bound.

The same right belongs to every person who has signed the bill and taken it up.

Proceedings against one of the parties liable do not prevent proceedings against others, though they may be subsequent to the person first proceeded against.

*Article 47.*—The holder may recover from the person against whom he exercises his right of recourse :—

1. The amount of the unaccepted or unpaid bill of exchange with interest, if interest has been stipulated for.

2. Interest at the rate of 5 per cent. from the date of maturity.

3. The expenses of protest and of the notices given by the holder to his immediate endorser and the drawer, as well as other expenses.

4. A commission which, in default of agreement, shall be 1/6th per cent. on the principal sum payable by the bill, and which in no case can exceed this rate.

If the right of recourse is exercised before maturity, the amount of the bill shall be subject to a discount. This dis-

count shall be calculated at the holder's option, either according to the official rate of discount (bank rate), or according to the market rate ruling on the date when recourse is exercised at the place where the holder resides.

*Article 48.*—A party who takes up and pays a bill of exchange can recover from the parties liable to him—

1. The entire sum which he has paid.
2. Interest on the said sum calculated at the rate of 5 per cent., starting from the day when he made payment.
3. Expenses which he has incurred.
4. Commission on the principal sum of the bill of exchange fixed in conformity with Article 47 (4).

*Article 49.*—Every party liable against whom a right of recourse is, or may be, exercised, can require, against payment, that the bill shall be given up to him with the protest and receipted account.

Every endorser who has taken up and paid a bill of exchange may cancel his own endorsement and those of subsequent endorsers.

*Article 50.*—In case of the exercise of the right of recourse after a partial acceptance, the party who pays the sum in respect of which the bill has not been accepted can require that this payment should be specified on the bill, and that he should receive a receipt therefor. The holder must also give him a certified copy of the bill, together with the protest, in order to allow the exercise of subsequent recourse.

*Article 51.*—Every person having the right of recourse may, in the absence of an agreement to the contrary, reimburse himself by means of a fresh bill (redraft) which is not domiciled, and which is



drawn at sight on one of the parties liable to him.

The redraft includes, in addition to the sums mentioned in Articles 47 and 48, brokerage and the cost of the stamp of the redraft.

If the redraft is drawn by the holder, the sum payable is fixed according to the exchange for a sight draft drawn on the place where the original bill was payable, upon the place where the party liable resides. If the redraft is drawn by an endorser, the sum payable is fixed according to the exchange for a sight draft at the place where the drawer of the redraft resides, drawn upon the place where the party liable resides.

*Article 52.*—After the expiration of the limits of time fixed—

1. For the presentment of a bill of exchange at sight or at a certain time after sight;
2. For drawing up the protest for non-acceptance or non-payment;
3. For presentment for payment in the case of a stipulation « *retour sans frais* »;

the holder loses his rights of recourse against the endorsers, against the drawer, and against the other parties liable, with the exception of the acceptor.

In default of presentment for acceptance within the limit of time stipulated for by the drawer the holder loses his right of recourse for non-payment, as well as for non-acceptance, unless it appears from the terms of the stipulation that the drawer only meant to release himself from the guarantee of acceptance.

If the stipulation for a limit of time for presentment is contained in an endorsement, the endorser only can avail himself of it.

*Article 53.*—When presentment of a bill of exchange or drawing up the protest within the prescribed limits of time is

prevented by an insurmountable obstacle (case of *vis major*) these times are prolonged.

The holder is bound without delay to give notice of the case of *vis major* to his immediate endorser, and to specify this notice, which he must date and sign, on the bill or on an « allonge »; as regards other matters, the provisions of Article 44 apply.

After the cessation of the *vis major* the holder must without delay present the bill for acceptance or payment, and, if need be, have the protest drawn up.

If the *vis major* continues to operate for more than thirty days after the maturity of the bill recourse may be exercised, and neither presentment nor drawing up the protest shall be necessary.

As regards bills payable at sight or at a certain time after sight, the term of thirty days begins to run from the date on which the holder, even before the time for presentment, has given notice of the *vis major* to his immediate endorser.

Facts purely personal to the holder or to the person whose duty it is to present the bill or draw up the protest are not deemed to constitute cases of *vis major*.

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## CHAPTER VIII.

### Intervention for Honour.

*Article 54.*—The drawer or an endorser may specify a person who is to accept or pay in case of need.

A bill of exchange may, under the conditions hereafter set forth, be accepted or paid by a person who intervenes for any person who has signed it.

The intervener may be a third person, even the drawee, or the person already liable on the bill, except only the acceptor.



The intervener is bound to give without delay notice of his intervention to the party for whom he has intervened.

### 1.—Acceptance by Intervention (for Honour).

*Article 55.*—There may be acceptance by intervention in all cases where the holder has the right of recourse before maturity on a bill which is capable of acceptance.

The holder may *refuse an acceptance* by intervention, even when it is offered by a person designated to accept or pay in case of need.

If he permits the acceptance he loses his right of recourse before maturity against the parties liable to him.

*Article 56.*—Acceptance by intervention is specified on the bill of exchange. It is signed by the intervener. It specifies for whose account it has been given, and in default of this specification the acceptance is deemed to have been given for the drawer.

*Article 57.*—The acceptor by intervention is liable to the holder and to the endorsers subsequent to the party for whose account he intervened in the same manner as the latter.

In spite of an acceptance by intervention, the party for whose honour it has been given and the parties liable to him can require the holder, in exchange for payment of the sum mentioned in Article 47, to give up the bill, and the protest, if any.

### 2.—Payment by Intervention.

*Article 58.*—Payment by intervention may take place in all cases where either at maturity or before maturity the holder has the right of recourse.

At the latest it must be made on the morrow of the last day allowed for drawing up the protest for non-payment.

*Article 59.*—If a bill has been accepted by intervention, or if persons have been specified to pay it in case of need, the holder must at the place of payment present the bill to all these persons, and, if need be, cause a protest for non-payment to be drawn up at the latest on the morrow of the last day for drawing up the protest.

In default of protest within this limit of time, the party who has indicated the case of need, or for whose account the bill has been accepted, and the subsequent endorsers are discharged.

*Article 60.*—Payment by intervention must include the whole sum which the party for whom it is made would have had to pay, with the exception of the commission provided for by Article 47 (4).

The holder who refuses this payment loses his right of recourse against those who would have been discharged thereby.

*Article 61.*—Payment by intervention must be authenticated by a receipt given on the bill of exchange specifying for whom payment has been made. In default of this specification, payment is deemed to have been made for the drawer.

The bill of exchange and the protest, if the protest has been drawn up, must be handed over to the person paying by intervention.

*Article 62.*—The person who pays by intervention is subrogated to the rights of the holder against the party for whom he has paid, and against the parties liable to him. Nevertheless, he cannot endorse the bill of exchange afresh.

Endorsers subsequent to the party for whom payment has been made are discharged.

In case of competition for payment by intervention, the payment which effects the greater number of releases has the preference.



If this rule is not observed, the intervener who has notice loses his right of recourse against those who would have been discharged.

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## CHAPTER IX.

### Parts of a Set, and Copies.

#### 1.—Parts of a Set.

*Article 63.*—A bill of exchange can be drawn in two or more identical parts.

These parts must be numbered in the body of the instrument, in default of which each part is considered as a separate bill of exchange.

Every holder of a bill which does not specify that it has been drawn as a *sola* bill may, at his own expense, require the delivery of two or more parts. For this purpose he must address himself to his immediate endorser, who is bound to help him in proceeding against his own endorser, and so on in the series until the drawer is reached. The endorsers are bound to reproduce their endorsements on the new parts of the set.

*Article 64.*—Payment made on one part of a set operates as a discharge, even although there is no stipulation that this payment annuls the effect of the other parts. Nevertheless, the drawee is liable on each accepted part which he has not recovered back.

An endorser who has transferred parts of a set to different persons, as well as subsequent endorsers, are liable on all the parts bearing their signatures which have not been restored.

*Article 65.*—A party who has sent one part for acceptance must indicate on the other parts the name of the person in whose hands this part will be found. That person is bound to give it up to the lawful holder of another part.

If he refuses, the holder cannot exercise his right of recourse until after he has a protest drawn up, specifying :—

1. That the part sent for acceptance has not been given up to him on his demand.

2. That acceptance or payment could not be obtained on another of the parts.

## 2.—Copies.

*Article 66.*—Every holder of a bill of exchange has the right to make copies of it.

The copy must reproduce the original exactly, with the endorsements and all other statements to be found thereon. It must specify where the copy ends.

It may be endorsed and guaranteed by « aval » in the same manner and with the same effects as the original.

*Article 67.*—The copy must specify the person in possession of the original instrument. This person is bound to hand over the aforesaid instrument to the lawful holder of the copy.

If he refuses, the holder cannot exercise his right of recourse against the persons who endorsed the copy, until he has had a protest drawn up specifying that the original has not been given up to him on his demand.

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## CHAPTER X.

### Forgery and Alterations.

*Article 68.*—The forgery of a signature, even if it be that of the drawer or of the acceptor, in no wise affects the validity of the other signatures.

*Article 69.*—In case of alteration of the text of a bill of exchange, parties who

have signed subsequent to the alteration are bound according to the terms of the altered text; parties who have signed before the alteration are bound according to the terms of the original text.

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## CHAPTER XI.

### Prescription.

*Article 70.*—All actions arising out of a bill of exchange against the acceptor are barred after three years, counting from the date of maturity.

Actions by the holder against the endorsers and against the drawer are barred after one year from the date of the protest drawn up in proper time or from the date of maturity where there is a stipulation « retour sans frais ».

Actions of recourse by endorsers against each other and against the drawer are barred after six months, counting from the day when the endorser took up and paid the bill, or from the day when he himself was sued.

*Article 71.*—Interruption of prescription only operates against the party with respect to whom the interrupting proceeding has been done.

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*Article 70.*—(Section 5, Thirteenth Question.)

The Article purposely makes no mention of any causes which may suspend or interrupt the process of prescription. Article 16 of the Convention provides for the application of national laws.

I have tentatively pointed out, in the Section referred to, how, if countries were prepared to make the necessary sacrifices, uniformity might be obtained regarding such suspension and interruption, and how Article 16 of the Convention might be omitted. All personal causes for suspension would have to be disregarded and causes for interruption would have to be limited to actions at law and acts which, by the law of the country in which the action is in progress, are considered as being equivalent to an action at law, for instance, the filing of a petition to be admitted as creditor in bankruptcy.



## CHAPTER XII.

### General Provisions.

*Article 72.*—Payment of a bill of exchange which falls due on a legal holiday cannot be demanded until the next business day. So, too, all proceedings relating to a bill of exchange, notably presentment for acceptance and protest, can only be made on a business day.

Where any of these proceedings must be taken within a certain limit of time whereof the last day is a legal holiday, the limit of time is prolonged till the first business day which follows the expiration of that time. Intermediate legal holidays are included in computing limits of time.

*Article 73.*—Legal or contractual limits of time do not include the day which marks their point of departure.

No day of grace, whether legal or judicial, is permitted.

*Article 72.*—(Section 5, Fourteenth Question.)

If reference were made in this Article to working days which the law regards in the same light as legal holidays for the purposes of bills of exchange, Article 17 of the Convention might be dispensed with.

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## CHAPTER XIII.

### Conflict of Laws.

*Article 74.*—The capacity of a person to bind himself by a bill of exchange is determined by his national law. If this national law provides that the law of another State is competent to deal with the question, this latter law is to be applied.

A person who lacks capacity, according to the law specified in the preceding paragraph, is nevertheless bound, if he entered into the obligation in the territory of a State, according to whose law he would have the requisite capacity.

*Article 74.*—(Section 9 under the heading : « the capacity to contract liability on bills of exchange »).

If it were agreed to lay down rules which, being less rigid, would be more readily acceptable throughout the world, they might be as follows :

That the capacity of a person to contract liability on bills of exchange is fixed by the laws which govern his capacity to enter into a contract.

That, nevertheless, a person who is incapable in accordance with the laws which govern his capacity to enter into a contract, but who is capable in accordance with the law of the place in which

*Article 75.*—The form of any contract arising out of a bill of exchange is regulated by the laws of the State within whose territory this contract has been made.

*Article 76.*—The form of and the limits of time for protest, as well as the form of other proceedings necessary for the exercise or preservation of rights arising out of a bill of exchange, are regulated by the laws of the State within whose territory the protest must be drawn up, or the proceeding in question taken.

the obligation is entered into, may be considered, according to circumstances, as having contracted a valid obligation.

*Article 75.*—(Section 9, under the heading referred to above.)

It would be desirable to add that a declaration made subsequently to the drawing of the bill is considered as having been made upon a bill of exchange which is valid as regards its form, when the form of the instrument fulfils the requirements of the law of the State in whose territory such subsequent declaration is made.

## TITLE II.—PROMISSORY NOTES PAYABLE TO ORDER.

*Article 77.*—A promissory note contains :—

1. The denomination of the instrument inserted in the body of it, and expressed in the language employed for drawing up the instrument.

2. An unconditional promise to pay a determinate sum of money.

3. A specification of the time of payment;

4. And of the place where payment must be made.

5. The name of the person to whom, or to whose order, payment is to be made.

6. Specification of the date and place where the promissory note is made.

7. The signature of the person who issues the instrument (*maker*).

*Article 78.*—The instrument in which any of the requirements specified in the preceding article are wanting, is invalid as a promissory note, except in the cases mentioned in the following paragraphs:—

A promissory note in which no time of payment is specified is deemed to be payable at sight.

In default of special mention, the place where the instrument is issued is deemed to be the place of payment, and at the same time the residence of the maker.

A promissory note which does not specify its place of issue is deemed to have been made in the place designated beside the name of the maker.

*Article 79.*—The following provisions relating to bills of exchange apply to promissory notes so far as they are not

*Article 77.*—(Section 5, First Question, and Section 7, under the heading : « Denomination, etc. ».)

If Article 1 of the Regulation is modified, Article 77 will have to be similarly modified.

*Article 78.*—(Section 7, under the headings which relate to the indication of date and places.)

If Article 2 of the Regulation is modified, corresponding changes will have to be made in the last two paragraphs.



inconsistent with the nature of this instrument, namely :—

Endorsement (Articles 10-19).

Guarantee by « aval » (Articles 29-31).

Time of payment (Articles 32-36).

Payment (Articles 37-41).

Recourse in case of non-payment (Articles 42-49, 51-53).

Payment by intervention (Articles 54, 58-62).

Copies (Articles 66 and 67).

Forgeries and alterations (Articles 68 and 69).

Prescription (Articles 70 and 71).

Legal holidays, computation of limits of time, and prohibition of days of grace (Articles 72 and 73).

Conflict of laws (Articles 74-76).

The following provisions are also applicable to a promissory note, namely :

The provisions concerning the domicile of bills (Articles 4 and 26);

Stipulation for interest (Article 5);

Divergent statements of the sum payable (Article 6);

Consequences of signature by an incapable person (Article 7); or

By a person who acts without authority or exceeds his authority (Article 8).

*Article 80.*—The maker of a promissory note is bound in the same manner as an acceptor of a bill of exchange.

Promissory notes payable at a certain time after sight must be presented for the visa of the maker within the limits of time fixed by Article 22. The limit of time runs from the date of the visa, signed by the maker of the note. The refusal of the maker to give his visa with the date thereon, must be authenticated by a protest (Article 24) the date of which gives the point of departure for the limit of time from sight.

*Article 80.*—(Section 7, under the heading : « Compulsory indication of date ».)

If Article 24 of the Regulation is modified, the last sentence of Article 80 could be modified so as to avoid the need for a protest, which would only serve to complete an undated « visa ».

## HAGUE CONVENTION OF 1912.

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### MARGINAL NOTES

by Dr. D. JOSEPHUS JITTA (The Hague).

*Article 1.*—The contracting States undertake to introduce into their respective territories, either in the original text, or in their national tongues, the annexed Regulation concerning bills of exchange and promissory notes payable to order, which shall come into force contemporaneously with the present convention.

This engagement extends, in the absence of any general or special reservation, to the colonies, possessions, protectorates, consular and judicial jurisdictions of the contracting States to the extent to which the laws of the mother country there apply.

*Article 2.*—In derogation of Article 1 (1) of the Regulation, every contracting State may provide that bills of exchange issued in its own territory which do not contain the expression *bill of exchange* shall be valid, provided that they contain an express statement that they are payable *to order*.

*Article 3.*—Every contracting State has, so far as regards bill of exchange obligations, undertaken in its own territory, the power to determine in what manner there may be substitutes for signature, provided that a formal declaration inscribed on the bill verifies the intention of the person who ought to have signed.

*Article 4.*—Every contracting State may provide, in derogation of Article 18 of the Regulation, that so far as relates to an endorsement made within its territory a statement implying a pledge shall be deemed to be unwritten.

In this case the statement shall also be considered as unwritten by the other States.

*Article 1.*—If any self-governing dominions take part in the new conference, the second paragraph may have to be slightly modified.

*Article 2.*—(Section 5, First Question, and Section 7, under the heading : « Denomination, etc. ».)

If it is agreed to omit item (1) of Article 1 of the Regulation, Article 2 of the Convention might be modified so as to allow States to require either the denomination « bill of exchange » or the « to order » clause.

*Article 3.*—This Article is not without importance, but, as has already been said, in the marginal note on Article 1 of the Regulation, it might be possible to omit the Article from the Convention.

*Article 4.*—(Section 5, Second Question.)

I venture to refer to Section 5 and to what has been said in the marginal note on Article 18 of the Regulation.

*Article 5.*—In derogation of Article 30, paragraph 1, of the Regulation, every contracting State may provide that an « aval » (collateral guarantee) may be given in its own territory by a separate document indicating the place where it has been given.

*Article 6.*—In derogation of Article 32 of the Regulation, every contracting State may, within its own territory, permit bills to be drawn payable in market (« en foire »), and fix the date of their time of payment.

These bills shall be recognised as valid by the other States.

*Article 7.*—Every contracting State may supplement Article 37 of the Regulation to this effect, namely, that, in the case of a bill payable in its own territory, the holder shall be bound to present it on its due date. Failure to observe this obligation can only give rise to a claim for damages.

The other States will be empowered to determine the conditions under which they will recognise such an obligation.

*Article 8.*—In derogation of Article 38, paragraph 2, of the Regulation, every contracting State may authorise the holder to refuse the partial payment of instruments payable in its own territory.

The right thus accorded to the holder must be recognised by the other States.

*Article 9.*—Every contracting State may provide that, with the assent of the holder, protests to be drawn up in its territory may be replaced by a declaration dated and written on the bill itself, signed by the drawee, and transcribed in a public

*Article 5.*—(Section 5, Third Question.)  
I venture to refer to the marginal note on Article 30 of the Regulation.

*Article 6.*—It might be possible to omit this Article in view of what has been said in Section 5, Fourth Question.

*Article 7.*—(Section 5, Fifth Question.)  
This Article is in the nature of a compromise.

A State may, in the case of a bill of exchange payable within its territory, make it obligatory for the bill to be presented on the actual date on which it matures, but it cannot punish failure to do so by barring recourse.

The difficulty inherent in any attempt to arrive at complete uniformity has been pointed out in the Section referred to.

*Article 8.*—(Section 5, Sixth Question, and Section 7, under the heading: « Obligation on the part of the holder, etc. ».)

It would be highly desirable to obtain a uniform rule concerning the right to refuse to accept part payment—a matter which has already been referred to in the places quoted above, and to which attention has been drawn in the marginal note on Article 38 of the Regulation. At Buenos Ayres it was thought that a provision should generally be recommended under which the holder might be entitled to refuse to accept part payment.

*Articles 9, 10 and 11.*—(Section 5, Seventh and Eighth Questions.)

It would seem difficult to obtain complete unification.

It should be possible to combine these three articles, which all refer back to



register within the limit of time fixed for protests.

Any such declaration shall be recognised by the other States.

*Article 10.*—In derogation of Article 43, paragraph 2, of the Regulation, every contracting State may provide either that the protest for non-payment must be drawn up on the first business day which follows the day when payment can be demanded, or that it must be drawn up within the two following business days.

*Article 11.*—Every contracting State may provide that the notice of non-payment contemplated by Article 44, paragraph 1, of the Regulation, may be given by the public officer charged with drawing up the protest.

*Article 12.*—Every contracting State may provide that the interest referred to in Article 47, paragraph 1 (2), and Article 48 (2), of the Regulation, shall be at the rate of 6 per cent. for bills of exchange which are both issued and payable in its territory. This provision shall be recognised by the other States.

The rate of interest running from the commencement of an action at law is fixed at the discretion of the legislation of the State where the action is commenced. Nevertheless, the defendant cannot claim reimbursement of the interest he has paid, beyond the rate of 5 or, as the case may be, 6 per cent.

*Article 13.*—Every contracting State is free to decide that in the case of loss of right of recourse or of prescription there shall lie within its territory an action against the drawer who has not provided

national laws, but the question is not an important one.

*Article 12.*—(Section 5, Ninth Question.)

The rate of interest mentioned in the first paragraph does not constitute a principle. I should draw attention to the fact that the Scandinavian States, under the draft scheme mentioned in Section 4, availed themselves of the right conferred by this paragraph. At Buenos Ayres, a 6 % rate of interest was adopted. If certain States prefer to keep this rate, it would appear difficult to force them to make a change. The Buenos Ayres Conference expressed views similar to those held by the Scandinavian States. The last sentence in para. 2 constitutes a somewhat delicate point. It was not desired to empower a person who, as the result of an action at law, was subjected to an exaggerated rate of interest himself to subject his guarantor to the same rate of interest. This is a point which the Conference did not wish to leave entirely to national legislation.

*Articles 13 and 14.*—Section 5, Tenth and Eleventh Questions.)

It will be sufficient for me to refer to what has been said in Section 5. An agreement may possibly be reached later when

cover, or against a drawer or endorser who has made inequitable gain. The same power exists in the case of prescription so far as regards an acceptor who has received cover or has made inequitable gain.

*Article 14.*—The question whether the drawer is bound to furnish cover at maturity, and whether the holder has any special rights on this cover, are to be left outside the Regulation and the present Convention.

*Article 15.*—Every contracting State may, in the case of a bill of exchange payable in its own territory, regulate the consequences of the loss of the bill, more especially with regard to the issue of a new bill, or the right to obtain payment of the bill, or the right to institute proceedings for annulling it.

The other States are empowered to determine the conditions under which they will recognise judicial decisions given in conformity with the preceding paragraph.

*Article 16.*—The legislation of each State shall determine the causes of interruption or suspension of prescription in the case of actions on bills of exchange which come within the competence of the courts of justice.

The other States are empowered to determine the conditions under which they will recognise similar causes. The same rule applies to the effect of an action in making the time of prescription run in the case specified by Article 70, paragraph 3, of the Regulation.

*Article 17.*—Every contracting State may provide that certain business days shall be assimilated to legal holidays so far as relates to the presentation for acceptance or for payment, and all other acts relating to bills of exchange.

unification has been brought about on other points as far as is possible.

*Article 15.*—(Section 5, Twelfth Question.)

I need only refer to what has been said in Section 5, particularly as regards the question of jurisdiction. It is not sufficient for the laws to be identical, they must, when taken as a whole, regulate the matter from an international point of view. A formula was drawn up at Buenos Ayres, but efforts will have to be made to obtain general consent. It is a question which demands the very serious attention of the experts, and it is a delicate one.

*Article 16.*—(Section 5, Thirteenth Question.)

I have nothing to add to what has already been said in Section 5 and in the marginal note on Article 70 of the Regulation.

*Article 17.*—(Section 5, Fourteenth Question.)

As has been said in the marginal note on Article 72 of the Regulation, a provision might be inserted into the Regulation itself concerning working days which are assimilated by the law to legal holidays for the purposes of bills of exchange. Holidays and days assimilated

*Article 18.*—Every contracting State may refuse to recognise the validity of a bill of exchange engagement entered into by one of its citizens, which would not be valid in the territory of the other contracting States, except through the application of Article 74, paragraph 2, of the Regulation.

*Article 19.*—The contracting States cannot subordinate the validity of obligations arising out of a bill of exchange, or the exercise of the rights that flow therefrom, to the observance of the provisions concerning the stamp.

Nevertheless, they may suspend the exercise of these rights till the stamp laws have been complied with. They may also provide that the quality and effects of an instrument « immediately executory » which, according to their legislation, may be attributed to a bill of exchange, shall be subject to the condition that the stamp law has, from the issue of the instrument, been duly complied with in accordance with their laws.

*Article 20.*—The contracting States reserve to themselves the power not to apply the principles of private international law contained in the present Convention or in the Regulation so far as concerns—

1. An obligation undertaken outside the territories of the contracting States.

2. Any law which may be applicable in accordance with these principles, and which is not a law of one of the contracting States.

to holidays must continue to vary according to the different religions, national festivals and historical anniversaries. It will be necessary to leave the questions to be dealt with locally.

Article 24, Section 3, provides that the question should be so dealt with and ensures the universal publication of the dates.

*Article 18.*—(Section 5, Fifteenth Question, and Section 9, under the heading : « Capacity ».)

I have pointed out in the places mentioned and in the marginal note on Article 74 of the Regulation how it would be possible to dispense with Article 18 of the Convention.

*Article 19.*—(Section 5, Sixteenth Question.)

I have nothing to add to what has already been said.



*Article 21.*—The provisions of Articles 2 to 13 and 15 to 20 concerning bills of exchange apply equally to promissory notes.

*Article 22.*—Every contracting State reserves to itself the power to restrict the obligation mentioned in Article 1 to provisions concerning bills of exchange, and not to introduce into its territory the provisions concerning promissory notes contained in Title II of the Regulation. In this case the State which has made use of this reservation shall only be considered as a contracting State so far as regards to bills of exchange.

Each State reserves to itself the power to make provisions concerning promissory notes by a special regulation which shall be in conformity with the provisions of Title II of the Uniform Regulation, and which will reproduce rules concerning bills of exchange to which reference is made, with only the modifications resulting from Articles 77, 78, 79 and 80 of the Regulation and of Article 21 of the present Convention.

*Article 23.*—The contracting States bind themselves not to change the order of the articles of the Regulation when introducing modifications or additions which they are authorised to make.

*Article 24.*—The contracting States will communicate to the Government of the Netherlands all legislative provisions which they may make by virtue of the present Convention, or in carrying out the Uniform Regulation.

Also the States will communicate to the aforesaid Government the terms which, in the language recognised in their territory, correspond with the expressions « *lettre de change* » and « *billet à ordre* ». Where the language is the same the States concerned will as far as possible agree

*Article 22.*—(Sections 9 and 11.)

By means of Article 22, a certain harmony might be realised, if the principle of adopting a double system of legislation with progressive unification were followed, in the application of the laws of one of the two groups within the countries of the other group.

The Contracting States might, under the terms of Article 22 of the Convention, limit their engagement only to the provisions of private international law as laid down in the revised Convention, and they would at the same time undertake to do all in their power to amend their laws so as to make them conform as nearly as possible to the provisions of the Regulation.

As regards the provisions which actually form part of Article 22, it remains to be seen whether any of the States represented at the third Conference insists upon these reservations. They might be maintained with a view to later adherences to the Convention.

*Articles 24 to 31.*—These Articles do not deal with any essential point of the law on bills of exchange and promissory notes; there is no need to comment upon them at present.

among themselves on the choice of one and the same term.

The States also will give to the said Government a list of the legal holidays and other days when payment cannot be demanded in their respective countries.

The States in which a law other than the national law is declared to be competent to determine the capacity of their citizens (« ressortissants ») to bind themselves by a bill of exchange will give information thereof to the Netherlands Government.

The Netherlands Government will immediately give notice to the other contracting States of the information which has been furnished to it in accordance with the preceding paragraphs.

*Article 25.*—The present Convention shall be ratified as soon as possible.

The ratifications shall be deposited at The Hague.

The first deposit of ratifications shall be verified by a *procès-verbal* signed by the representatives of the concurring States and by the Minister of Foreign Affairs of the Netherlands.

The deposit of subsequent ratifications shall be made by means of a notification addressed to the Government of the Netherlands, accompanied by the instrument of ratification.

A certified copy of the *procès-verbal* relating to the first deposit of ratifications and the notifications mentioned in the preceding paragraph, and also of the instruments of ratification which accompany them, shall be immediately sent by the Netherlands Government, through diplomatic channels, to the States which have signed the present Convention, or which wish hereafter to adhere thereto. In the cases contemplated by the preceding paragraph the said Government shall inform them of the date on which it received the notification.

*Article 26.*—Non-signatory States may become parties to the present Convention,

whether they have been represented or not at the International Conference at The Hague for the Unification of the Law relating to Bills of Exchange and Promissory Notes.

The State which desires to become a party must notify its intention in writing to the Government of the Netherlands, transmitting at the same time the instrument of ratification, which shall be deposited in the archives of the aforesaid Government.

The Government of the Netherlands shall immediately transmit to all the other States which have signed the present Convention, or who have afterwards become parties thereto, a certified copy of the notification as well as of the act of ratification mentioning the date on which it received the notification.

*Article 27.*—The present Convention shall come into effect, so far as regards the States which have participated in the first deposit of ratifications, six months after the date of the *procès-verbal* of this deposit, and so far as relates to States which shall hereafter ratify it, six months after the notifications mentioned in Article 25, paragraph 4, and Article 26, paragraph 2, have been received by the Government of the Netherlands.

*Article 28.*—If it shall happen that any of the contracting States desires to denounce the present Convention, the denunciation shall be notified in writing to the Government of the Netherlands, which will immediately communicate a certified copy in conformity with the notification to all the other States, informing them of the date on which it received it.

The denunciation, which cannot be made until the lapse of three years from the date of the first deposit of ratifications, will take effect only as regards the State which has notified it, and one year after the notification has reached the Government of the Netherlands.



*Article 29.*—The State which desires to avail itself of the reservations in Article 1, paragraph 2, or in Article 22, paragraph 1, must specify the reservation in its instrument of ratification or adhesion. If afterwards it wishes to renounce this reservation, it must notify its intention in writing to the Government of the Netherlands, and in this case the provisions of Article 26, paragraph 3, and of Article 27, will apply.

The contracting State which hereafter desires to avail itself of the reservations above mentioned, must notify its intention in writing to the Government of the Netherlands. The provisions of Article 28 shall apply to this notification.

*Article 30.*—After the lapse of two years from the first deposit of ratifications, five contracting States may address to the Government of the Netherlands an application, specifying reasons, to summon the meeting of a conference to consider the question whether additions or modifications in the Uniform Law, or in the present Convention, shall be introduced.

In the absence of any such application the Government of the Netherlands shall convoke a conference for the aforesaid purpose, after a lapse of five years from the first deposit of ratifications.

*Article 31.*—The present Convention, which bears the date 23rd July, 1912, may be signed at The Hague up to the 31st July, 1913, by the plenipotentiaries of the Powers represented at the first or second International Conference for the Unification of the Law relating to Bills of Exchange and Promissory Notes.

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# REPORT

by Sir MACKENZIE D. CHALMERS, K.C.B.

*Former Under-Secretary of State, Home Office,  
British Delegate to the Hague Conferences  
of 1910 and 1912.*

# PROPOSED RESUMED CONFERENCE AT THE HAGUE

## on the Law relating to Bills, Notes and Cheques.

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Now that the war-clouds have to some extent cleared away from the European sky, it is proposed to renew the Conferences of 1910 and 1912 which sought to unify throughout the business world the rules of law regulating the most important negotiable instruments, namely bills of exchange, promissory notes and cheques. It becomes necessary therefore to re-define the English attitude as regards this proposal. The British delegates warmly supported the proposal of a Uniform Law which would supersede the divergent codes of the 35 foreign nations represented at the Conference. In public Conference and in private consultations, they did all they could to explain the English rules, and the reasons on which they were founded, and to get the draft Uniform Law into accord with what seemed to them to be generally convenient for international commerce. But, under instructions from the Foreign Office, and for reasons which we fully appreciated, the British delegates held out no hope that England could become a party to the proposed international code. Sir GEORGE BUCHANAN, who was then our Minister at The Hague, at the conclusion of the 1910 Conference explained the British position in the following terms :—

« We have followed with profound interest the progress of the labours of the Conference, and the discussions in which we have had the honour to take part have brought home to us more than hitherto the effect of the laws which govern bills of exchange in the different countries in the world, as well as the underlying reasons which have brought about the adoption and maintenance of these laws. We shall not fail to submit to our Government a detailed report on the whole of the proceedings of the Conference, and to indicate at the same time those points where, in our opinion, the English law is capable of improvement. When the competent authorities have considered this report, His Majesty's Government will decide whether or no certain rules of the English law should be modified in accordance with the resolutions adopted by the Conference.

« However, it is our duty again to affirm that it is impossible for our Government to go further or to depart from the attitude which it has taken from the beginning of this Conference. It is no question of national pride or obstinacy which has given rise to this attitude, but the necessity of safeguarding the interests of our mercantile community. A law which governs more than 120,000,000 people—including the United Kingdom, the British Colonies, and most of the States of the United States of America—without counting the vast population of the Indian Empire—cannot be modified without disturbing long-settled commercial relations, and without creating divergencies in legislation among the members of the Anglo-Saxon family.



« It is possible that, among the rules of English law, there are some which are antiquated and inconvenient, but in its main lines our law does but incorporate the usages of our commerce. It is not an arbitrary law imposed by the legislature on the commercial community; the legislature has but given the sanction of law to the usages of our commerce and trade, and in modifying that law we should upset long-established customs. There are other reasons in the domain of law which raise equal difficulties. We have no separate *droit de change*. We have no tribunals of commerce. We draw no distinction between traders and non-traders. Our commercial law is an integral part of our common law, and it is the ordinary civil courts which give effect to its provisions in the same manner as they give effect to ordinary debts and obligations.

« You can well understand, after what I have just said, that it is impossible for the British delegation to associate itself officially in the drafting of a proposed uniform law when, by their instructions, they are forbidden to take any such undertaking into consideration. »

The United States took up a very similar attitude, as appears from the following quotation from the declaration made by Mr. CONANT, the American technical delegate, immediately after Sir GEORGE BUCHANAN had spoken :

« In many particulars the provisions of the project follow those of the laws of Great Britain and of the United States, which took the initiative many years ago in seeking to bring about uniformity on this subject among other several colonies and States. In providing for the abolition of days of grace and for the extension of the time within which protest may be made, you have accepted two reforms which will be eminently acceptable to American bankers.

« In accordance with my statement at the beginning of our meetings, there is great reluctance in America to undo the long and arduous work which has brought about uniformity in thirty-five American States, four territories, and in Great Britain and her dependencies. The scope and policy of American laws differ in some respects from the systems of the countries of the Continent. We have no code of commerce distinct from the common law, we recognise no distinction between merchants and others who draw bills or sign notes, and we have no separate tribunals for dealing with commercial cases. Under these conditions, our difficulties would be greater, if we should undertake to adopt a uniform law, than in countries where a long succession of laws and usages are based upon the existence of a special commercial code.

« How great have been these difficulties, in framing the project of the uniform law, is indicated by the fact that, in spite of the great skill of your distinguished rapporteurs, they were compelled to leave no less than twenty-three points in the various articles to be governed by national legislation and practice, or by the ordinary rules of the civil law.

« In the United States, moreover, there is another obstacle to uniformity in the fact that, by the decision of the highest Federal tribunal, the Federal Government has no authority to legislate regarding bills of exchange, whether foreign or domestic. Such documents are considered in the nature of contracts, which are governed by State law, and only reach the Federal tribunals when conflict between the laws of the States requires interpretation and reconciliation. »

Nothing has happened since 1910 to modify the position then taken up by England and the United States. The Continental view of the function of bills and cheques

differs fundamentally from the Anglo-American system. On the Continent a bill of exchange is merely an instrument for settling commercial debts. Finance bills are apparently not recognised. The cheque is not a bill of exchange, but is an instrument *sui generis*. It seems still to be regarded with a certain amount of suspicion, and the rules relating to it are embryonic. In the Anglo-American system bills and cheques have developed into a paper currency of perfect flexibility. In England at any rate bills and cheques now constitute the real currency of the country. The London clearing-house figures for 1922 are instructive. The total of bills and cheques passed through the clearing-house came to £37,161,461,000. The total of banknotes, Treasury notes and coin paid into the clearing-house banks worked out at 0.7 per cent of the money received. For practical purposes the cheque is the currency of the country, while banknotes, Treasury notes, and coin have now become a merely subsidiary currency for the payment of wages and small ready-money debts.

As regards detailed criticism and explanation of the draft « Uniform Regulation » as to bills and notes, and the preliminary draft as to cheques, I see nothing to alter in the Reports submitted by Mr. Huth Jackson and myself in 1912. But a short supplementary note has been added thereto to explain how certain suggestions which we made for amendments in the English law have fared since that date. Our Reports were as follows.

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### **Memorandum on the International Uniform Law on Bills of Exchange and Promissory Notes.**

By the Right Hon. F. HUTH JACKSON and Sir MACKENZIE D. CHALMERS.

The Conferences held at The Hague in 1910 and 1912, under the auspices of the Government of the Netherlands, have resulted in the framing of a Uniform Regulation of bills of exchange and promissory notes. The Uniform Regulation is to be brought into force, in the countries which assent to it, by Convention and not by substantive legislation. The Convention must presumably be ratified by legislation, but the Uniform Regulation cannot be added to or modified except on certain points expressly reserved by the Convention itself. The countries which become parties to the Convention undertake to bring the Uniform Regulation into force within their respective territories within six months of adoption, and they further undertake to bring it into force in their colonies and dependencies so far as these are subject to the legislation of the mother country.

Great Britain and the United States, for the reasons fully stated in the Conference of 1910, were unable to hold out any hope that they could become parties to the Convention, but thirty of the thirty-eight nations represented at the Conference have already signified their adherence to the Convention, and probably it will soon be accepted by the remainder. The result will be that the present multiplicity of laws will be swept away, and that the law relating to bills and notes will be reduced to two great systems, namely, the Anglo-American system, which will apply throughout Great Britain and her Colonies and Dependencies and the United States, and the system of the Uniform Regulation, which will apply to the rest of the commercial world.

On the whole, the Uniform Regulation, as finally settled, approaches the Anglo-



American system more nearly than any existing Continental or South American code. Some of the points of difference are of great importance, while others are almost immaterial. But it must be borne in mind that the points of difference which are preserved in the Uniform Regulation are all contained in some of the now existing codes. For the future, it will be much easier to ascertain the questions in which laws conflict, and it may be hoped that, as time goes on, the points of difference will become fewer, and that wise decisions on questions of conflict will avoid international difficulties.

Before proceeding to comment in detail on the provisions of the Uniform Regulation, we desire to call attention to its scope. It applies only to bills of exchange and promissory notes payable to a specified person or to his order; it has no application to instruments to bearer. It presumably will not affect Exchequer bills or the numerous bearer securities resembling promissory notes which circulate throughout the money markets of the commercial world. It does not apply to cheques, which it is proposed to regulate by a subsequent international law and it draws no distinction between inland and foreign instruments.

The Uniform Regulation is divided into two titles, the first dealing with bills of exchange, the second dealing with promissory notes. The title relating to bills is divided into thirteen chapters, containing seventy-six articles; the title relating to promissory notes contains four articles.

As re-drafted in the Conference of 1912, the Uniform Regulation is simpler, both in form and expression, than the draft of 1910.

The Uniform Regulation (Article 1) enumerates the requisites of a bill of exchange, but does not attempt a complete definition. It starts by requiring every bill of exchange to specify in the body of it that it is a bill of exchange, but any contracting State is allowed to dispense with this provision in its own territories in the case of bills expressly made payable to order. From the English point of view, this requirement is needless, as English law regards only the substance of an instrument, and does not trouble itself with insisting on verbal forms. But in many Continental countries there are instruments resembling bills in point of form, but which have a wholly distinct legal effect. It is therefore important to distinguish between these.

The Uniform Regulation (Articles 1 and 2) requires every bill of exchange to be dated, on pain of nullity. A bill, of course, should be dated, but sometimes the date is accidentally omitted, and then, according to the English rule, the holder may fill it up. The foreign delegates thought this a dangerous rule, and declined to insert any such provision.

The draft law of 1910 allowed bills to be drawn payable to bearer, with a proviso that any contracting State might prohibit their issue, acceptance or payment in its own territory. The Uniform Regulation in its final shape eliminates all mention of bills payable to bearer.

Under some of the Continental codes a bill could not be drawn and payable in the same place (*distantia loci* Rule), and in many countries a bill was required to contain a statement of the value received. Both these requirements are now omitted, and the foreign and English rules are so far assimilated.

The Uniform Regulation (Article 5) provides that a bill payable at or after sight may be drawn payable with interest. Most Continental codes have hitherto refused to recognise bills payable with interest, but it was pointed out that the stipulation for interest was common in oversea bills drawn at or after sight. The uniform law accordingly allows a bill payable at or after sight to be drawn payable with interest. We pointed out that there was no reason for forbidding a bill or note payable after date





or on a fixed date to bear interest, but the foreign delegates declined to make any further innovation in their old rule, urging that, where a bill was payable on a fixed date, or at a fixed period after date, the interest could always be included in the capital sum. The Article goes on to provide that, where the rate of interest is not specified, 5 per cent shall be payable. This is a convenient provision which accords with English usage, and which might, we think, with advantage be incorporated in our Act.

Both the Uniform Regulation (Article 6) and the English Act provide that, when the sum payable is expressed in words and also in figures, the words shall prevail over the figures in case of discrepancy. The Uniform Law then proceeds to add that, if the sum payable be expressed more than once in words, or more than once in figures, then in case of discrepancy the lesser sum is the sum payable. This is in accordance with the practice of English bankers, and is a convenient rule which might with advantage be added to our Act.

The Uniform Regulation (Article 8) provides that, where an agent, signing on behalf of a principal, acts without authority, or exceeds his authority, he is personally liable on the bill. English law does not make the agent liable on the bill, but makes him liable in an action for damages for false representation, or for breach of warranty of authority. Having regard to the nature of a bill of exchange as a form of paper currency, the foreign rule is probably rather the more convenient rule, though there may be little difference in the ultimate result.

The Uniform Regulation (Article 9) prohibits the drawer of a bill from drawing it without recourse. English law allows this to be done. Such bills are very uncommon, though, as we pointed out, they might be justifiable where a man was drawing for the account of a third party or where the drawer was acting in a representative capacity, *e.g.*, as an executor. The Continental delegates adhered to their rules, on the ground that, where a drawer drew a bill without recourse, there was nobody liable on the bill at all at the time of its issue, and if it were refused acceptance there might never be anybody liable on it.

The Uniform Regulation (Article 11) prohibits an endorsement which in terms is payable to bearer. This seems unnecessary, as an endorsement in blank makes the bill payable to bearer. An endorsement to bearer appears to be nothing more than an endorsement in blank written out in full. The next article expressly recognises endorsement in blank; but the point is a very small one, and is unlikely to give rise to any practical difficulty.

The Uniform Regulation (Article 12) expressly provides for endorsement in blank. Under the French and some other Continental codes, an endorsement in blank has hitherto only operated as a procuration, and not as a transfer of the property in the bill. The effect of an endorsement in blank will now be the same as in England.

Article 15 of the Uniform Regulation discloses a fundamental difference between Anglo-American law and the Continental system. It enacts that the possessor of a bill of exchange is to be considered as the lawful holder thereof if his title is evidenced by an uninterrupted series of endorsements, with a proviso that, if the owner of a bill has been wrongfully dispossessed thereof, the holder who proves his title under the conditions indicated above can only be compelled to give up the bill if he has obtained it in bad faith or under circumstances showing gross negligence. This proviso was added in 1912, presumably as the result of the criticism by the French and English delegates. The effect is that the holder in good faith who holds a bill under a forged

endorsement acquires a perfectly good title thereto. According to English law such a holder acquires no right to the bill, and can confer no right on anybody else.

When a bill has been stolen and the endorsement forged, and it afterwards gets into the hands of a holder in good faith, one of two innocent persons must suffer for the fraud of the third. The Uniform Regulation casts the burden on the person who has lost the bill, on the ground that he should have taken better care of it. But bills are frequently lost and stolen in the post, or under circumstances where no amount of care can prevent their loss. English and American law cast the burden on the person who takes a bill under a forged endorsement. Everyone knows the person from whom he received a bill, and if he takes a bill from a stranger concerning whom he knows nothing he ought to take the consequences if anything goes wrong. The rule in question appears to encourage laxity in bill transactions. The question whether the payer of a bill should be bound to verify the endorsements rests on different considerations, and will be discussed later on.

Although the English and foreign law are thus in sharp conflict, it must be noted that the rules of private international law give effect to transfers of movables according to the law of the place where the transfer was effected. This principle has recently been applied by the Court of Appeal to negotiate instruments, so that, if the holder on the Continent has acquired a good title to a bill which is held under a forged endorsement, his title is recognised in England, and so, of course, is the title of any subsequent holder. (See *Embiricos v. Anglo-Austrian Bank* (1905), 1 K.B. 677, C.A.).

The Uniform Regulation (Article 22) provides that bills payable after sight must be presented for acceptance within six months of their date, with a proviso that the drawer may either abridge or extend the time. Endorsers may also abridge the time, but presumably only so far as their own rights are concerned. English and American law fix no limit of time for presenting a sight bill, but require every holder either to present or circulate it within a reasonable time. The Anglo-American rule seems the right one, if it were not so difficult to apply. In case of dispute, the question of « reasonable time » can only be settled by a lawsuit and a jury; on the other hand, difficulties do not appear to arise in practice, and it is many years since any case has been before the Courts on this question. If holder and drawee are in the same place, it is unreasonable that the holder should be allowed to wait six months before presenting the bill for acceptance. On the other hand, when a bill circulates through many distant countries, six months may be too short a time, and the power of the drawer to enlarge the time hardly meets the case, for he cannot tell beforehand what its peregrinations will be. We showed the Conference a bill drawn in Bolivia on London which was circulated in Jerusalem and other Eastern places, and which was accepted after fourteen months of wandering.

The Uniform Regulation (Article 23) provides that, when a bill is presented for acceptance, the holder is not obliged to leave it in the hands of the drawee, but the drawee may require a second presentation on the next business day. But it seems that the drawee must give his answer at once when the second presentation is made. This accords with English practice, though the provisions of the English Act are somewhat vague. Section 42 (1) provides that when a bill is duly presented for acceptance, and is not accepted within the *customary* time, the person presenting it must treat it as dishonoured by non-acceptance. This section was much discussed when the Bills of Exchange Act was in Committee, and was arrived at as a sort of compromise, and, vague though it is, it does not seem to have given rise to any litigation.

The Uniform Regulation (Article 24), departing from the usual rule on the



Continent, proposes to recognise the simple signature of the drawee on the bill as an acceptance. This accords with English law, but the Uniform Regulation goes on to provide that such an acceptance must be written on the face of the bill. The object of this further provision is to prevent the acceptance being confused with the endorsements, and it might be advantageous if we adopted a similar rule.

Article 24 further provides that, when a bill is payable after sight, the acceptance should be dated on the day when it is given, *unless the holder requires that it should be dated on the day when it was first presented*. It was pointed out that the fact that the drawee required a day for deliberation ought not to abridge the rights of the holder by making him lose one day's interest. According to English practice, a bill is accepted as of the day when it was presented for acceptance.

The Article further provides that, where an acceptance of a bill payable after sight is not dated, the holder, in order to preserve his right of recourse against the drawer and endorsers, must authenticate the omission by a protest drawn up in due time. According to English law, if access cannot be obtained to the acceptor, the holder may fill in the date. This, we think, is a more convenient rule, but the foreign delegates thought it dangerous to allow the holder to tamper with the contract of another party to the bill.

The Uniform Regulation (Article 25), in accordance with the universal Continental rule, allows a partial acceptance, but makes any other qualification equivalent to a refusal to accept. Under English law, the holder has the option to take or refuse a partial acceptance, and this seems the sounder rule. If a partial acceptance could be forced on an unwilling holder, it practically makes the amount payable by the bill uncertain. Moreover, if the bill is dishonoured at maturity, the holder has to go back on the drawer and endorsers by two separate proceedings, which is both vexatious and costly.

The Uniform Regulation is silent as to the relations between the drawer and the drawee of a bill, but by Article 27 it provides that the drawer may sue the acceptor on the bill and recover from him the damages detailed in Article 47 and 48. This differs from the English law by making the acceptor liable to a commission, which, unless otherwise agreed, is 1/6th per cent.

The Uniform Regulation (Articles 29-31) details the rules regulating the guarantee of a bill by « aval », a form of guarantee unknown to English law. The only equivalent in our law is the provision contained in Section 56 of the Bills of Exchange Act, which enacts that any person who signs a bill otherwise than as drawer or acceptor shall be liable as an endorser. As foreign bills sometimes bear « avals » on them, it is convenient to have the effect of these contracts clearly detailed.

The Uniform Regulation (Article 32) negatives the English rule that a bill may be made payable by instalments, and a similar prohibition applies to promissory notes. The question is of no importance as regards international bills.

The Uniform Regulation (Article 33) provides that a bill payable at sight must be presented for acceptance within the legal or contractual times fixed for presenting for acceptance bills payable after sight. The effect of this provision is to apply the provisions of Article 22 to sight bills. That Article has already been discussed.

The Uniform Regulation (Article 36) contains some useful rules for calculating the due date of bills which are drawn in countries which recognise the Old-Style calendar, but are payable in a country which recognises the New-Style calendar, and *vice versa*. The rules laid down accord with mercantile practice.



The Uniform Regulation (Article 37) provides that the holder of a bill may present it for payment either on the day that it falls due, or on either of the two following business days. This, in effect, allows two days of grace to the holder, though no time of grace is allowed to the payer. According to English law, the bill must be presented for payment on the day that it falls due, and if it is not so presented the holder loses his right of recourse against the drawer and endorsers. We think the English rule is the sound one. The person who has to pay the bill knows the day that it is due, and, both according to the English and the foreign rule, must have his money ready on that day. But if the bill is not presented and paid that day the drawer and endorsers have a right to prompt notice of that fact, in order that they may take steps to protect their interests. To give an illustration : Suppose a bill falls due on a Saturday, Sunday is a *dies non*, and Monday is a bank holiday. According to the foreign rule, the holder need not present the bill for payment till Wednesday afternoon, and in the meantime the acceptor may have failed.

The rule laid down by this Article was a good deal debated, and as the result, while the rule remained unaltered Article 7 of the Convention provides that any contractings, State may require bills payable within its own territory to be presented for payment on the day that they fall due; but non-compliance with this rule is only to give rise to right to damages and is not to affect the right of recourse.

The Uniform Regulation (Article 38) provides that the holder cannot refuse partial payment, and this rule is defended on the ground that he is bound to accept partial payment, in order to relieve, *pro tanto*, the drawer and endorsers. The English law gives the holder an option to take or refuse partial payment. This seems the sounder rule. It is the rule which prevails throughout our whole law of contract. If the holder has a bill for £300, payable in a certain place, payment to him of £30 at that place might be wholly useless. Again, where an unscrupulous acceptor has some trifling dispute with the drawer, he will be apt to offer in payment something less than the amount of the bill, possibly trusting that the holder will not care to go back on previous parties for a very small sum.

The rule laid down in this Article was somewhat strenuously debated, and, as the result, Article 8 of the Convention provides that any contracting State may authorise the holder to refuse partial payment in the case of bills payable within its own territory. It is curious that the holder may be given the right to refuse partial payment when he has no right to refuse partial acceptance, the objections to which are even stronger.

The Uniform Regulation (Article 39) provides that the drawee or acceptor who pays a bill at maturity is not bound to verify the signature of the endorsers. It is sufficient if the chain of endorsements appear to be in order. The English Act adopts this rule in the case of cheques and other demand drafts on bankers, but not in any other case. There are strong arguments in favour either of extending the provisions of Section 60 of the Bills of Exchange Act to all payments, or of providing that the person who presents the bill for payment shall warrant the genuineness of the endorsements under which he holds the bill. It is impossible for the payer to verify the endorsements on the bill; but, on the other hand, every person who takes a bill from another gets a warranty of the genuineness of all previous endorsements, and ought to know the person from whom he takes it.

In the United States no exception is allowed to common law rule, and a banker who pays a demand draft to a person who holds it under a forged endorsement is

liable to the true owner; but by usage a certain amount of protection is afforded to paying bankers which is unknown to English law. The holder of a bill or cheque who presents it for payment, if unknown to the banker, is bound to prove his identity.

The Uniform Regulation (Article 40) allows the drawer expressly to stipulate that the bill should be payable in a specified foreign currency, *e.g.*, that a bill might be drawn in India on England, payable in rupees, without option of conversion into English currency. The Bills of Exchange Act would not allow this in England. An instrument payable only in bullion or foreign currency would not constitute a bill of exchange.

Article 40 further provides that, when the sum payable by a bill has a common denomination but has a different value in the country of issue and the country of payment, the sum payable is determined according to the currency of the country of payment, *e.g.*, the dollars in Mexico and the dollars in New York have different values, but the amount of a bill drawn in Mexico on New York in dollars will be calculated according to the New York value of the dollar. This is a useful provision, though the question does not arise with regard to bills payable in England.

The Uniform Regulation (Article 41) provides that, if a bill is not presented for payment in due time, any party liable on the bill may pay into court the amount of the bill at the holder's risk and cost. This is possibly a useful procedure, but we have nothing corresponding with it in England.

The Uniform Regulation (Article 42), departing from the former Continental rule, gives an immediate right of recourse:

- (1) When acceptance is refused.
- (2) When the drawee or acceptor has failed, or suspended payment, or when execution has been issued without effect against his goods.
- (3) When the drawer of a bill which cannot be accepted fails.

According to English law, there has always been immediate right of recourse when a bill is dishonoured by non-acceptance, and provision is made that, where the drawee is bankrupt, a bill may be treated as dishonoured by non-acceptance.

As regards accepted bills, Section 51 (5) of the Bills of Exchange Act provides that, where the acceptor of a bill becomes bankrupt, or insolvent, or suspends payment before it matures, the holder may cause the bill to be protested for better security against the drawer and endorsers. The only effect of such protest is to enable the bill to be accepted for honour, and it may be worth considering whether the Continental rule should not be adopted and an immediate right of recourse given to the holder when the acceptor becomes insolvent. No difficulty of proof will arise when a receiving order has been made against the acceptor, but suspension of payment is a very difficult thing to prove; however, that is a difficulty of fact and not of law. On the other hand, we are aware that competent authorities in England are opposed to this provision. They hold that when a bill has been accepted it is a hardship on the drawer and endorsers to compel them to take it up before its maturity because the acceptor has failed.

The Uniform Regulation (Article 43) requires all bills and notes, whether inland or foreign, to be protested in case of dishonour. English law does not require noting or protest except in the case of foreign bills of exchange. The Uniform Regulation does not recognise our convenient English system of « noting » bills. In England, when a bill has been duly noted, the formal protest can be at any time extended as of the date of noting. This often saves the expense of protest. But there is a good deal



to be said in favour of the system of requiring all bills to be noted, and of making the noting *prima-facie* evidence of due presentment and of dishonour.

The Uniform Regulation further provides that an unpaid bill must be protested on one of the two business days following the day for payment. By English law the bill must be protested — or, at any rate, noted for protest — on the day of its dishonour. This rule often gives rise to great inconvenience in country places, where it is difficult to obtain the services of a notary. It would be well to alter the rule if a preliminary difficulty can be got over. The noting or protest is generally taken as showing that the bill was duly presented on the proper day, but if the protest be not initiated until the next day there is nothing to show that the bill was duly presented the day before. Moreover, notice of dishonour must, as a general rule, be sent off on the day after dishonour. Any change in our law requires careful consideration.

As regards notice of dishonour, the Uniform Regulation (Article 44) and the English law differ radically. The Uniform Regulation requires the holder within four days of protest to give notice of dishonour to his immediate endorser, and also to give notice of dishonour to the drawer. The English law allows the holder either to give notice to his immediate endorser, trusting to him to pass it on to previous parties or to give notice at once to all parties liable, and such notice then avails for the benefit of all parties concerned.

Under the Uniform Regulation an endorser who has received due notice of dishonour from the holder is allowed two days to pass it on to his immediate endorser, and so on in succession. Speaking generally, the English law only allows one day where the foreign rule allows two days.

The Uniform Regulation requires every dishonoured bill to be protested. English law requires this only in the case of foreign bills; in the case of inland bills, notice of dishonour takes the place of protest.

Under the Uniform Regulation, if due notice of dishonour is not given, the drawer and endorsers are not discharged, but any drawer or endorser who is prejudiced by the omission may bring an action for damages against the holder. Under English law, if due notice of dishonour is not given, the holder loses both his right of recourse on the bill and, in most cases, also his right of action on the consideration for the bill.

The Uniform Regulation (Article 45) details the effects of the stipulations : « retour sans frais » and « retour sans protêt », which are sometimes inserted in foreign bills, and which hitherto have been somewhat obscure in their scope. It is to be noted that, where any such stipulation is inserted by the drawer, it forms an integral part of the instrument, and affects all subsequent parties.

The Uniform Regulation (Article 47) deals with the measure of damages when a bill is dishonoured by non-payment. The Uniform Regulation substantially agrees with the English law, except that it allows, in addition to the other damages a commission of 1/6th per cent.

As regards bills which are dishonoured by non-acceptance, the holder, under English law, can recover the amount of the bill. Under the Uniform Regulation he can only recover the amount of the bill less discount for the time it has to run up to maturity. The discount is to be calculated at the holder's option, either according to the official bank rate or according to the market rate. The foreign rule may be more exact, but the English rule is much more easily applied.

The Uniform Regulation (Article 53) deals with the difficult question of *force majeure*.

According to English law, the duties of the holder are all duties of reasonable



diligence. If, with exercise of reasonable diligence, the holder cannot present, or protest, or give notice of dishonour, delay is excused in the case of temporary obstacles, and the duties are dispensed with if the obstacles are of a permanent nature. Under the Uniform Regulation the duties of the holder are absolute duties, but an exception is made where, through the operation of some insurmountable obstacle (*vis major*, of a public character, arising at the place where the bill is payable), the holder cannot present or protest the bill. No allowance is made for calamities which are purely personal to the holder, such as the holder's illness or sudden death, or delay in the post. The English rule appears to be the more reasonable one, but it has to be borne in mind that the consequences of the failure of the holder to perform his duties are very different in England and on the Continent. In England the holder loses his right of recourse on the bill and also, in most cases, his right of action on the consideration; but on the Continent the holder only loses his right of recourse on the bill, but retains his right of action on the consideration (« action d'enrichissement »), save so far as the drawer or endorser may have suffered loss through the holder's omission to present or protest in due time. Again, under the Uniform Regulation, it is not essential to present for payment on the due date. The holder has two days' grace, and this provision meets the case in many instances of private calamity (« force majeure personnelle »).

The Uniform Regulation (Article 54) deals generally with acceptance and payment for honour. It provides that any person may intervene for honour even if he be the drawee or a person already liable on the bill. To this rule there is one exception. An acceptor may not dishonour his acceptance and then pay the bill for honour. Under Section 55 of the English Act, a bill may be accepted for honour by any person who is not a party already liable thereon. The exclusion of parties liable on the bill appears to be an unnecessary restriction, and the rule of the Uniform Regulation might be adopted in England.

As regards the provision under the Uniform Regulation which prohibits an acceptor from paying for honour, we pointed out that there might be rare cases in which this might be justifiable, as, for instance, where an acceptor, having been defrauded by the drawer, refused to pay the bill in due course, but offered to pay it for the honour of an endorser. The Conference, however, thought that it was inconsistent with the contract of acceptance to allow the acceptor to refuse payment in due course and then pay for honour. The point is not of much practical importance.

Article 55 of the Uniform Regulation was the subject of a good deal of controversy. It now provides, in accordance with English law, that the holder may refuse an acceptance for honour, even though it is offered by a person indicated by the bill as a referee in case of need.

The Uniform Regulation (Article 57) contains a provision unknown to English law. It provides that, when a bill has been accepted for honour, the person for whose honour it has been accepted may at once take it up and pay it under discount.

The Uniform Regulation (Article 58) contains what appears to us an inconvenient provision. It indicates that payment for honour must be made at the latest on the day following the last day admitted for drawing up the protest for non-payment. The English law contains no such limitation, and it is difficult to understand the reason for this limitation. The foreign delegates said that the rule was required because the holder ought at once to send off the protest to the endorser he sought to hold liable. But take the case of a bill drawn in South America and dishonoured in England. There may be no mail for a fortnight. Why should not the bill be paid for honour

at any time within this fortnight? According to English law, any number of duplicate protests may be drawn up from the original noting, so that the foreign reason for the rule has no application here.

The Uniform Regulation (Article 59) provides that, if a bill has been accepted for honour, or if persons have been specified to pay it in case of need, the holder must present the bill to all these persons at the place of payment. According to English law, a bill accepted for honour must of course be presented to the acceptor for honour, but there is no obligation on the holder to present a bill for payment to a person named as a case in need. But the cases would be few in which, for his own benefit, he would omit to make such presentment. It is to be noted that the Uniform Regulation does not require either acceptance for honour or payment for honour to be authenticated by a notarial act.

The Uniform Regulation (Article 63) deals with bills in a set. In England it is a matter of arrangement between the drawer and the payee whether a bill should be issued in a set or not. Under the Uniform Regulation, any holder is entitled to demand a set, even if the bill has been issued as a sola bill. It seemed to us that this rule might be used vexatiously and give rise to difficulties, but the foreign delegates were unanimous that no such difficulties arose in practice.

The Uniform Regulation (Article 66) deals with copies, and is useful inasmuch as it details the rules for making them. English law contains no regulations dealing with this question.

The Uniform Regulation (Article 69) provides that, where the terms of a bill are altered, parties who sign it after the alteration are liable according to the terms of the instrument as altered. Parties who sign before the alteration are liable according to the original terms of the instrument.

Under English common law, every unauthorised material alteration of a bill avoided it altogether. The Bills of Exchange Act mitigated this hard rule of the common law by providing that, where a bill was materially altered, and the alteration was not apparent, a holder in due course might enforce the bill according to its original tenor.

The foreign rule appears unduly lax. It draws no distinction between visible and invisible alterations, and seems to encourage people to be careless in taking bills which show on the face of them that they have been tampered with.

The Draft Law of 1910 contained provisions for regulating rights in case of the loss of a bill, but these provisions have been cut out of the Uniform Regulation, and are now left to be dealt with by the national law of each country.

The Uniform Regulation (Article 70) deals with « prescription » and provides that all actions against the acceptor must be brought within three years, dating from the maturity of the bill, while actions of the holder against the drawer and endorsers must be brought within a year from the date of protest. Actions by an endorser who has been compelled to pay against a previous endorser must be brought within six months.

There was a good deal of discussion as to the facts which should be held to interrupt the running of the time of prescription, but without result; these are left to be dealt with by national law.

The Uniform Regulation (Article 72 and 73) expressly prohibits days of grace, « whether legal or judicial », and provides that, when a bill falls due on a non-business day, it shall be payable on the next succeeding business day. The English rules are complicated in the extreme. Every bill and note payable otherwise than on demand is entitled to three days' grace. If the last day of grace is a common-law



holiday, the bill is payable on the preceding business day. If the last day of grace is a bank holiday, the bill is payable on the next succeeding business day. A further complication is introduced by the fact that some days which are common-law holidays in England are bank holidays in Scotland. Days of grace have for some years been abolished in Continental countries and in most of the States of the United States. The distinction between statutory and common-law holidays is peculiar to the United Kingdom. The foreign delegates were unanimous in condemning the English rules as confusing and inequitable. We trust that Parliament may see its way to adopt the simple rule of the Uniform Regulation, and bring our law into conformity with the law of the rest of the mercantile world.

The Uniform Regulation (Articles 74-76) deals with the conflict of laws, but it is to be noted that these rules only relate to questions which may arise between contracting States.

When any question arises between England and the contracting States it will have to be determined by the general principles of private international law.

The Uniform Regulation in Articles 77-79 deals with promissory notes. For the most part the rules relating to bills of exchange are applied to promissory notes.

Article 77 requires the note to state on the face of it that it is a promissory note, and a promissory note is required to be dated and to state its place of issue. By the application of provisions relating to bills of exchange, every dishonoured promissory note must be protested.

We have now commented on what appear to us to be the more important divergencies between the Uniform Regulation and the English Act, but we wish to emphasise the fact that a comparison of the Uniform Regulation with the English exchange law by no means exhausts the differences between the English and the Continental systems. If England were to adopt the Uniform Regulation, its working here would still be very different from its working abroad. The English exchange law is set upon a basis of the common law; the Continental exchange law is set upon a basis of Roman law. The law merchant in England is a branch of the common law. On the Continent the exchange law is a chapter in the commercial code, which is quite distinct from the civil code. A sharp distinction is drawn between traders and non-traders, and the commercial codes are administered by commercial courts which are distinct from the ordinary civil courts. They have their own procedure, and their decisions do not form binding precedents. The judges of the tribunals of commerce act rather as judicial arbitrators than as judges. In some countries a dishonoured bill, which has been duly protested, can be put into the hands of a public officer, and execution can be had thereon without the intervention of any court. In England, the debt due in respect of a dishonoured bill is enforced by the same machinery as any other debt. Again, in many Continental countries, there are supplemental laws which are unknown to us. For instance, in Germany and several other countries there is a law of amortisation: when a bill is lost or stolen, the owner can apply to the court to annul the instrument, and in the meantime restrain its payment. The court then, after giving public notice, can make an order annulling the bill, unless someone comes forward and shows a good title to it. Then, again, there is the « action d'enrichissement », which is a kind of extended action on the consideration for the bill. It lies when a party to a bill is discharged from his liability on the bill but has made any inequitable gain out of the bill transaction. Article 13 of the Convention expressly preserves this form of proceeding among the parties to the Uniform Regulation.



Fiscal provisions, of course, are outside the scope of an exchange law, but the Conference, by unanimous resolution (Great Britain standing aside), agreed that failure to comply with stamp laws should never be ground for nullifying a bill or note, and that stamp laws should only be enforced by money penalties, with (if necessary) a suspension of remedies until the penalty is paid. This resolution is now embodied in Article 19 of the Convention. We trust that His Majesty's Government may be able to see their way to bring our stamp law into conformity with the Continental rule. As our law stands at present, every bill (not payable on demand or at not more than three days' sight) which is drawn in the United Kingdom must be drawn on an impressed stamp of the required amount. It cannot be given in evidence unstamped, and it cannot be stamped after issue. Suppose a bill is drawn in London on Berlin without the proper impressed English stamp, and is then negotiated in France and Germany, and finally dishonoured in Berlin. The German holder can sue the French endorser, but neither of them can sue the English drawer, who was the party to blame. It is surely more equitable that the foreign holder, who cannot be expected to know the English stamp laws, should be able to sue on the bill after paying the penalty, and then recover the penalty from the drawer. We may note that the pecuniary penalty is relied on in England in the case of cheques and other demand drafts, and that in the United States bills and cheques are not required to be stamped.

Apart from the question of amendment, we would venture to urge that our stamp laws should be consolidated. The Stamp Act of 1891 has been amended by twenty-six subsequent Acts, and the rules relating to negotiable securities are particularly confusing, even to an Englishman. To a foreigner they must be quite unintelligible. If we cannot become parties to any international convention, we need not put unnecessary difficulties in the way of international commerce by the obscurity of our fiscal laws.

If our suggestion for the abolition of days of grace and the assimilation of statutory and common-law holidays is carried out, it will be advantageous to consolidate and amend the Bank Holiday Acts. The Bank Holiday Acts are now three in number, and they are modified, without express reference, by Section 13 of the Bills of Exchange Act.

There are certain provisions of the Uniform Regulation which are decidedly more convenient than the corresponding English provisions, and there are several others where, in point of utility, there may be little or nothing to choose between the English and Continental rule. As regards the latter, if we had only the United Kingdom to consider, it might be desirable, for the sake of uniformity, to bring our rules into line with the Uniform Regulation. But our main commerce is with the United States and our own colonies and dependencies. Throughout these countries, with their 130,000,000 of English-speaking people, there is now a practically uniform system of exchange law founded on the English common law. We ought to be very slow in making any alteration of our law which would bring it into conflict with the general Anglo-American system. Even if the other countries wished to follow our lead, the action of more than fifty legislatures would be required to again establish a uniform rule. Bearing these considerations in mind, we limit our suggestions for the amendment of the Bills of Exchange Act to the following points, namely:

(1) That days of grace should be abolished.

(2) That in all cases where a bill falls due on a non-business day it should be payable on the succeeding business day.

(3) That where the sum payable by a bill is expressed more than once in words, or more than once in figures, and there is a discrepancy, the lesser sum shall be the sum payable.

(4) That where a bill is expressed to be payable with interest and no rate of interest is specified, interest at the rate of 5 per cent shall be payable.

(5) That where an acceptance consists of the simple signature of the drawee it must be on the face of the bill.

(6) That where a bill is dishonoured by non-acceptance a party who is liable on the bill may nevertheless accept it for honour.

There are three further points which are by no means free from difficulty, but which we should like to have considered by legal and commercial authorities :

(1) Section 60 of the Bills of Exchange Act relieves a banker from the responsibility of verifying the endorsements on a demand draft drawn upon him. There are strong arguments in favour of extending this principle, either to all payors, or at any rate to all demand drafts, whether drawn on a banker or not. An alternative would be to provide that the person who presents a bill for payment should be deemed to warrant his title to receive payment. In that case, if payment were made to a person who could not give a valid discharge, the money paid would be recoverable.

(2) As English law stands at present, a bill must be noted for protest on the day of its dishonour. This makes the notarial presentment an empty formality, and there is much to be said in favour of approximating our rule to the Continental rule by providing that a bill may be noted for non-payment on the day of its dishonour, and must be noted not later than the next succeeding business day.

(3) Under the Uniform Regulation, if the acceptor fails before the bill matures, the holder can at once go back on the drawer and endorsers. Under English law, the holder can only protest the bill for better security, but as there are no means of getting security the proceeding is a pure formality. We are aware that opinions differ as to which is the fairer rule, but we should like to have the question considered in all its bearings.

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### **Memorandum on the Draft International Law as to Cheques**

By the Right Hon. F. HUTH JACKSON and Sir MACKENZIE D. CHALMERS.

The Hague Conference of 1912 has prepared a Draft Uniform Law of Cheques (in the form of resolutions) which is to be circulated to the Powers represented at the Conference, and is then to be considered at a subsequent conference. In many respects it will be more difficult to find common ground with respect to cheques than it was in the case of bills of exchange. Bills of exchange have been in use for centuries in all commercial countries, Russia perhaps excepted. Cheques are of comparatively modern origin. Until the last few years their use on the Continent has been very limited. In England and the United States the cheque may be said to be the main currency of the country, and to be the normal medium by which debts are paid. The daily sum cleared in the London Clearing-House averages £40,000,000 a day. On the whole, our law works well and smoothly, and we ought to be very careful how we adopt any alterations which might put the machinery out of gear.



In England and the United States a cheque is simply a bill of exchange drawn on a banker and payable on demand, and the rules of law applicable to bills on demand apply to cheques. There are certain supplementary rules which apply to cheques by reason of the relationship of customer and banker which subsist between the drawer and drawee of a cheque. On the Continent the nature of a cheque is still a somewhat uncertain question. It is always an instrument *sui generis*. It is not a bill of exchange, though it has many points of resemblance with bills. It may or may not be drawn upon a banker. In France, for example, a cheque may be drawn upon anyone, whether a banker or not, who has funds of the drawer in his hands. The crossing of cheques in that country was authorised by a law of December 1911, but only cheques drawn on a banker can be crossed.

The Draft Law consists of thirty-four articles, and it may be useful to point out the main features in which it diverges from the Anglo-American system.

Article 1 starts by requiring a cheque to state in the body of the instrument that it is a cheque. This at once differentiates cheques from bills of exchange, and is inconsistent with the English and American view of the nature of a cheque.

This article further requires a cheque to state the place where it is drawn and the date of drawing. English and American law do not contain these requirements. An undated cheque is irregular, but, if the drawer does not make the necessary addition, the holder may supply the omission.

Article 4 expressly allows a cheque to be drawn payable to bearer, thereby again differentiating it from a Continental bill of exchange.

The Article further prohibits the drawer from drawing a cheque payable to bearer on himself, *e.g.*, a cheque drawn by a branch on the head office. Our exchange law contains no such prohibition, though in general the Bank Charter Acts would make a cheque so drawn illegal.

Article 5 provides that a cheque must be drawn on a banker, but that nevertheless a cheque drawn on any other person is not to be invalid, and it authorises the contracting States to determine the persons on whom cheques may be drawn.

Article 6 prohibits a cheque from being drawn without recourse to the drawer. English law contains no such prohibition, and it is possible that a cheque of this kind might be drawn by an executor or any person who wished to disclaim personal responsibility, and merely to give authority to the bank to pay the money.

Article 8 provides that any cheque other than a cheque payable to bearer may be transferred by endorsement. According to English law the endorsement of a cheque payable to bearer operates as a guarantee, and it is by no means clear that if the cheque were specially endorsed any person other than the endorsee would be entitled to collect it.

Article 9 prohibits the endorsement of a cheque « to bearer » but as a cheque may be endorsed in blank, this seems (as in case of bills) a somewhat unnecessary provision.

Article 11 forbids the acceptance of a cheque, with the proviso that the contracting States may modify this provision.

In England, the Bank Charter Acts would, for the most part, render illegal the acceptance of a cheque for the purpose of putting it into circulation as an accepted instrument. Cheques, however, are habitually accepted in England for clearing purposes when they are drawn on merchant bankers; this mode of acceptance, however, is not a regular acceptance; it is, in effect, a mere mandate from the banker on whom the cheque is drawn to the paying banker to pass it through the Clearing-house.



This Article also allows contracting States either to adopt or prohibit the certification of cheques according to the system in use in the United States.

Article 12 provides that a cheque may be guaranteed by « aval », a form of guarantee not known to English law.

Article 13, in accordance with English law, provides that a cheque must be payable at sight, and thereby negatives the provision of some Continental codes which allow cheques to be drawn at short periods after date.

Article 14 departs widely from the English rule; it provides that a cheque must be presented for payment within a limit of time fixed by the law of the place of payment, and that this limit shall be at least ten days.

In England, a cheque may be enforced by action against the drawer at any time within six years, unless the drawer has been prejudiced by the delay in presentment, but, on the other hand, if the drawer has suffered prejudice, as, for instance, by the failure of the bank on which the cheque was drawn, the holder is not considered to have presented a cheque in due time unless he has either endorsed it away or forwarded it for payment on the day after he received it.

This Article further provides that presentment of a cheque through the Clearing-house is the equivalent for presentment for payment, and leaves it to the contracting States to determine what institutions are to be recognised as clearing-houses.

Article 16 provides that neither the death of the drawer nor any incapacity on his part arising after the issue of the cheque is to affect its validity. In England, notice of the drawer's death revokes the banker's authority to pay the cheque. As regards business cheques, the Continental rule is undoubtedly a sound one, but a difficulty arises as regards cheques by way of gift in contemplation of death (*donatio mortis causa*). A man almost at the least gasp may be induced to put his signature to a cheque and thus dispose of his property without the formalities required by the law of wills. The English rule certainly protects to some extent the estate of deceased persons.

Article 17 provides that a cheque cannot be revoked until after the expiration of the limit of time fixed for presentment; this seems inconsistent with our view of the relation between banker and customer; a banker who pays a cheque pays it as the agent of his customer and is therefore bound to follow the instructions of his customer. Of course, if a cheque is countermanded without good reason, the drawer can be sued upon it, and made to pay the costs of the action.

This Article further provides that, after the time fixed for presentment of the cheque, the drawee may nevertheless pay it unless payment has been countermanded. The general effect, therefore, of the Continental rule seems to be that, if the cheque is not presented within ten days, the drawer and endorsers are discharged from their liability on the instrument, but the banker will pay it unless he has received notice of countermand.

Article 19 provides for the crossing of cheques, and it agrees generally with the English law, but does not adopt our rule as to cheques crossed « not negotiable ». The expression : « not negotiable », is inexact, because a cheque so crossed is still transferable, though not with full incidents of negotiability. A person who takes a cheque so crossed cannot acquire and cannot give a better title than « the person from whom he took it had ».

When the Bills of Exchange Act was in Committee, it was suggested that the words « not negotiable » should be replaced by the words « limited negotiability », but the Committee declined to alter an expression which had been in use for some years under the Act of 1876.

Contracting States are to be empowered to disallow crossing within their own territories, that is to say, it is left to each country to adopt or to omit provisions as to crossing.

Article 20 deals with the alternative German system, which authorises cheques to be made payable only in account (« nur zur Verrechnung »). Any contracting State, however, may disallow this system. We pointed out that our system of crossing cheques was in no wise inconsistent with the German system « nur zur Verrechnung », *e.g.*, there is nothing to prevent a crossed cheque being drawn payable to a bank for the account of one of its customers.

Article 21 expressly excludes from the law any question as to the rights of the holder against funds in the hands of drawee; thus preserving the rules which prevail in France, Scotland and some other countries, that presentment of a cheque for payment operates as an assignment of funds in the hands of the drawee.

Article 22 again differentiates cheques from Continental bills of exchange. All dishonoured bills have to be protested, but alternative procedures are authorised in the case of a cheque. Non-payment of a cheque may be authenticated by a declaration of the drawee dated and written on the cheque, showing the date of presentment, or by a declaration issued by the Clearing-house. According to English law, a foreign cheque must be protested, but no formality is required to attest the dishonour of an inland cheque, though the holder may, if he likes, have it noted.

Article 25 expressly provides that the contracting States may regulate by their own laws the « action d'enrichissement » and any other remedies outside the rights arising on the cheque itself.

Article 26 provides that foreign cheques other than cheques payable to bearer may be drawn in a set. According to English law, it is a matter of arrangement between drawer and payee whether any instrument should be drawn in a set or not.

Article 29 deals with prescription and provides that actions by the holder against the drawer and endorser of a cheque must be brought within six months of the time fixed for presenting the cheque for payment. Actions by one endorser against another must be brought within six months, counting from the time when the endorser paid the cheque or was sued upon it.

Article 31 leaves to the law of each contracting State what is to be done in the case of the loss of a cheque, but expressly authorises these States to provide a procedure for annulling forged cheques.

Article 32 provides, with certain qualifications, that as a general rule, the capacity of a person to bind himself by cheque is to be determined by his national law. This question does not seem to have been authoritatively determined in England, and it is doubtful whether we should apply the law of domicile or the *lex loci contractus*.

The discussions in the Conference on the Cheque Law were interesting, and we were asked many questions as to the details of our law and its practical effect. Many of the delegates seemed inclined to favour the adoption of the English system, and expressed the opinion that the difficulties in the way of this adoption were fiscal rather than legal.

November 12, 1912.

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Ten years have now elapsed since the Second Hague Conference, so it may be well to review the suggestions made by the British Delegates for amending certain rules of English law, and to consider how far they may be worth proceeding with at the present time.

(1) The British Delegates recommended that, when a bill or note falls due according to its tenor on a non-business day, it should be deemed to be due and should be payable on the next succeeding business day. England is the only country which does not follow this rule. According to English law, if a bill falls due on a Sunday or other common-law holiday, it is payable on the preceding business day, whereas if it falls due on a statutory holiday it is payable on the succeeding business day. This complication often leads to mistakes. The rule has been defended on the ground that when Sunday is followed by a bank holiday there is an accumulation of bills, and it is convenient to have some thrown back and others thrown forward for payment. Now that Saturday is universally recognised as a short day, this argument has lost much of its force. Moreover, Saturday is the Jewish Sabbath, and any excess of work on that day presses hardly on Jewish business.

(2) They recommended the abolition of days of grace. All Continental countries, it is believed, have now got rid of them. The Negotiable Instruments Law, as enacted by the State of New York, negatives days of grace, and most of the other 43 States and territories which have now adopted that law have followed suit. As long ago as 1882, the Institute of Bankers recommended the abolition of days of grace, and when the Bills of Exchange Act was going through Parliament an amendment to that effect was proposed, but it was rejected in Committee in the House of Commons. The matter then slept till after the Hague Conference. Most of the authorities consulted favoured the abolition, but the then Governor of the Bank of England was of opinion that bills on England carrying days of grace sold better abroad than bills without grace. The question might now be reconsidered. On principle it is hard to defend a rule that, when a bill according to its tenor is payable on January 1st it should really be payable on January 4th.

(3) They recommended that the stamp duties should again be reduced into order by a Consolidation Act. The Acts relating to stamp duties were consolidated by the Stamp Act, 1891, but a reference to the official Index to the Statutes for 1922 shows that the Act of 1891 has been amended already by 65 subsequent Acts. It is impossible for a foreigner trading with England to find his way through this welter of confusion, and in private conversation the British Delegates had many complaints from the foreign delegates as to the inconvenience caused by this state of our law.

As an alternative to consolidating and re-enacting the Stamp Laws, which at present may not be feasible, much of the difficulty might be removed if the Inland Revenue would publish annually, as a Parliamentary paper, the schedule to the Stamp Act 1891, corrected up to date. That schedule contains an alphabetical list of the documents required to be stamped, and specifies the stamp duty on each document. Brief explanatory notes would be necessary.

(4) They recommended, with some hesitation, that bills might be noted on the day following dishonour as well as on the day of dishonour, following so far the Continental rule. They did so on the ground that the notarial presentment after business hours was a pure formality, and that when a bill was dishonoured in the country it was sometimes impossible to get the services of a notary to note it on the actual day of dishonour.



It was also suggested to us that, if the notarial presentment was made during business hours on the day after dishonour, a certain number of bills would be paid which had been refused payment the day before because of some informality which in the meantime could be set right.

During the war there was a shortage of notaries' clerks, and an Act was passed authorising notarial presentment on the day following dishonour. War conditions have now passed away, and it is said that the new rule gives rise to inconvenience because, though the notarial presentment was a pure formality, it was accepted in practice as showing that the bill was duly presented and dishonoured on its due date. This question might be reconsidered.

The other amendments suggested by the British Delegates are of very minor importance and need not be commented upon.

*January 1923.*

M. D. CHALMERS.

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# REPORT

by **Dr. FRANZ KLEIN**

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# RESUMPTION OF THE ENDEAVOUR TO UNIFY LEGISLATION REGARDING BILLS OF EXCHANGE.

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## I

This is not the first time that the question of the possibility of unifying the laws relating to bills of exchange has been raised; there is no need, therefore, for me to seek to furnish an original answer to the problem. The most instructive and abundant material is to be found in the documents of the Hague Conference of 1912, in which all the legal aspects of this question were thoroughly explored by jurists, economists, scientists and technical experts. There is no provision, however unimportant, of the laws relating to bills of exchange which has not been examined from the point of view of its international effect. The conclusions of this Conference afford therefore the most valuable guidance as to the best method of dealing with the problem of unification which the League of Nations is now preparing to solve. It is true that neither human nor material conditions are exactly the same as they were at that time; but it is easy to recognise and make allowance for these changed circumstances, for the Conference of 1912 was only a link in an organic process which was in no way terminated by the drafting of the Final Protocol. That Conference was preceded by enquiries, treaties and discussions extending over many decades, and, owing to the steady progress of this evolution and to the immutable nature of most of the legal theories in regard to bills of exchange, we find that even the profound social transformations have not greatly modified the nature of the problem. For the rest, it is unanimously recognised that the Hague Conference proved beyond cavil that the legislation in regard to bills of exchange was peculiarly adapted for unification. The reservations formulated, both in the Convention and in the Regulation, in favour of territorial legislation do not conflict with this view, for although they raised obstacles to unification, this was solely on grounds of expediency. This universal tendency to agreement is accounted for by the fact that the historical evolution of bill legislation has taken place within the narrow field of commercial activities, and also by the general similarity of trade usages. The important point to determine in any discussion of the problem of unification is not, therefore, whether unification is possible, but whether it is likely to prove of general utility, and whether, in consequence, it should be given preference, in the different countries, over territorial legislation. From this point of view, the Conference of 1912 again affords us guidance which is unique of its kind. All the States participating in that Conference made, of their own accord, a profession of faith, and their signatures to that declaration constitute a binding moral engagement, and show that the differences of opinion which may have been evinced in regard to certain points are insignificant in comparison with the advantages unanimously attributed to unification. It is, therefore, unnecessary to institute further investigations and enquiries into the pre-war period, since the

unification of bill formalities and the extension of the conclusions of the Hague Conference are supported by the signatures of 30 associated nations. In order to ascertain how far this instrument retains its value as evidence at the present day, we must consider, above all, the psychological reasons which produced such unanimity among the participating States and which caused their decision to be greeted with so much enthusiasm.

In order to understand these causes, we must go back to a period in which, although the calamities which subsequently befell the world were looming in the background, international organisations, particularly those relating to such matters as traffic, legislation and judicial procedure, and to the spheres of social and moral science, etc., were everywhere sprinting into life and branching out in all directions. It was also realised that, in the presence of the colossal expansion of the credit system and the marvellous efflorescence of world trade and international civilisation, the laws regarding bills of exchange could not remain fixed and immutable, particularly since, owing to their evolution within the three chief legal systems of the day, they contained more features of similarity and resemblance than almost any other branch of legislation. The German and French codes of exchange law—Austria in 1850 adopted the German law of 1849 on bills of exchange—are of ancient origin, while in none of the other great countries are the laws on this subject less than 40 years old. Thus the hour had struck for the unification and modernisation of the system, and, fortunately as it proved, the States which were best equipped as regards legislation of this kind felt the need of renovating their codes not less than the other States, and therefore took the lead in the movement. This unity of interests made it impossible for any radical opposition to be made at the Conference to a policy of revision. The fruit of the Conference was, in consequence, a legal code which bears the impress, in every line, of a sincere and truly international effort for improvement, and which strives, while always preserving a middle course, to satisfy, as far as possible, the most vital requirements of the respective nations. There is scarcely an article in this code which does not express, in one or other of its features, this ideal of social unification, *i.e.*, of a unification which should place the parties to a transaction on a footing of equality. As regards formalities, the new code shows a tendency towards greater latitude. As regards the intentions of the parties to the exchange, more freedom is allowed, both in regard to the drawing up and the circulation of the bill. The endorser may—in the absence of an agreement to the contrary—refuse to guarantee acceptance or payment. The drawers and endorsers are allowed the greatest possible freedom both as regards acceptance and the period for acceptance. The drawee may demand a period for deliberation before acceptance. He may revoke his acceptance, and the holder has full liberty to refuse an « acceptance by intervention », if it is offered to him. The drawer is entitled to stipulate in the bill for a certain rate of exchange for the sum payable, or he may transfer to the endorser the right to fix this rate of exchange in order to ensure that the sum in question shall be paid in the currency of the country at the rate expressed in the bill. If a party fails to give notice of non-acceptance, he does not thereby lose his right of recourse; he merely becomes liable to damages, which cannot, however, exceed the amount of the bill. Further, the holder of a bill cannot be compelled to accept payment thereof before maturity; his protest for non-acceptance dispenses with the necessity of presentment for payment and of protest for non-payment. The holder is allowed three days within which to present the bill, unless the law of the country in which the payment has to be made lays down that the bill must be presented on the day on which it is payable or one day later. The number of objections which may be raised



against the claims of a holder of a bill has been extended; further, the latter is made personally responsible in case of fraudulent collusion. The fact that the holder of the bill has produced formal evidence of identity is declared of no effect as regards proof of bad faith or fraudulent action. When it has proved impossible, owing to *vis major*, for a bill of exchange to be presented by the right date, or for the protest to be made within the prescribed time, these steps may be taken subsequently, or may even be omitted altogether without prejudice to the holder of the bill. Among other provisions which deserve attention, in addition to certain simplifications which are not referred to, are the recognition of interest-bearing bills and endorsements for guarantee, and, lastly, the clause by which infractions of the laws regarding bill stamps can in no case affect the validity of bills of exchange or of anything inscribed on them, nor deprive the holder of the legal benefits conferred by the bill, nor justify the confiscation of the sum payable to the prejudice of creditors acting in good faith.

This very short and incomplete summary will enable the reader to recognise at a glance the characteristic features of the reforms effected by unification; they may be epitomised by saying that the new code relaxes the stringency of the regulations regarding the form of bills, and makes every possible concession and adjustment for the benefit of all parties to bill transactions; that the bill of exchange is no longer segregated in a category apart from the commercial transactions which it serves—as was hitherto the case in countries where the German system had been adopted; and that, as in the English system, the personal and subjective element has been given a place, as a moral obligation, in the abstract conception of debt—a very notable improvement. Progress towards unification has thus made an important advance. The only persons who would attempt to deny that this represents economic progress are those who regard the application of the law, operating with mechanical precision, as the last word in the protection of the credit system; the majority will, however, appreciate at their full value the possibilities offered by the new code of adapting bills of exchange and bill transactions to varying commercial situations. They will certainly prefer this method to one which endeavours to apply a rigid and unyielding system to the most varying circumstances. In any case, the new rules represent a high degree of legal and moral perfection. From a technical or legal standpoint, none of the former codes can be compared to it. Its method of arrangement has, moreover, this advantage over existing codes : that it has profited by all that has been achieved by the development of legal science during the interval. Indeed, no criticisms have been levelled at the essential and characteristic features of the Hague Convention to which we have drawn attention. Economic and financial experts would certainly not have been backward with warnings if they had thought that the policy favoured by the Conference would endanger the employment of bills as credit instruments. A study of the main features of the Uniform Law, as summarised above, conveys the impression of a task carried out on a comprehensive plan, but embodying certain elements of the French and English legislation. It is impossible for anyone who was not present to say if this really represents what occurred, for the minutes contain nothing but the discussions regarding the several articles; it does not appear that any effort was made to incorporate the latter in some wider body of legislation as is so often attempted in juridical treatises on exchange law. However, the general attitude of the Conference towards the whole code of rules adopted was one of unstinted approval, in spite of certain critical passages and of some decisions only carried by majority votes. The fact that this unanimity was reached by gradual stages and as a result of discussion invests it with far greater authority than if it had been due to a planned and pre-determined agreement. The unanimity of



the delegates necessarily involved that of all the Governments, and both have given the Convention and Regulation the imprimatur « entirely suitable for ratification and execution ». The Governments, jurists and financiers who took part in the negotiations in 1912 declared themselves satisfied, without any qualifying reservations. They parted with the conviction that a uniform law of legislation, not of the Anglo-Saxon type, had been created in regard to bills of exchange.

The ratifications which everybody expected were never carried out. The only States to accept the Hague Convention were some Central American Republics; the statement that Brazil has also ratified is not confirmed. The failure to ratify was not, however, due to any change of views. The replies to the enquiry instituted by the League of Nations—the chief points of which have been so ably summed up by Professor Jitta—show that all States, or at any rate all those which answered, were preparing to ratify—and except in two cases, without reservations—when the war broke out, and all further action was suspended. It was only in France and Italy that there was any serious opposition before the war to the ratification of the Convention. In France, the objection was that the Convention « would involve a sudden break with tradition by introducing international conceptions of law ». A number of critics maintained that the unification of the Latin systems of law on bills of exchange was being discussed rather than the wider unification attained at The Hague. In Italy, there was some discontent at the numerous reservations contained in the Convention, and it was suggested, with a view to eliminating them, that the States which felt no need of reservations in their dealings with each other might form special groups together. In both these cases the arguments were clearly adverse to unification. In the other States, ratification was merely postponed, and there was no intention of abandoning the results of the Conferences of 1910 and 1912. This is evident from the fact that, with one exception, the States to whom the enquiries were addressed—including France and Italy, in spite of their opposition—replied that they were prepared to take part in a fresh Conference. Switzerland alone expressed a doubt as to whether the moment was opportune for a conference and whether it would not be better to wait for some time longer. More exact information, fully confirming what we have said as regards both standpoints, is furnished by the action of Germany and the former State of Austria-Hungary. The German Government, like all the other participating States, signed the final protocol of the Second Hague Conference and showed that it was prepared to ratify it by submitting, in May 1913, after the conclusion of the preparatory studies, the Convention and the Uniform Law for ratification by the Reichstag as required by the Constitution; and further by presenting to the Bundesrat, at the beginning of 1914, the text of a Decree relating to bills of exchange and also an Enacting Bill. The Convention was ratified by the Reichstag; as regards the second Bill, it never got beyond the stage of discussion in the Bundesrat. The Austrian Government, for its part, submitted the text of the Hague Convention and an Enacting Bill to the First Chamber of the Reichsrat in December 1913, and asked that it should be ratified for the western portion of the Empire. The Convention was referred to a Commission, in whose files it remained until the collapse of the Monarchy. The German and Austrian memoranda declare themselves unreserved in favour of the Hague decisions, undeterred by the fact that these decisions involve a radical transformation of a large portion of German legislation on bills of exchange. The German memorandum points out that this transformation is necessary because the German and Austrian laws on bills of exchange no longer correspond, as a whole, to the economic situation resulting from the development of international commerce and relations. The Austrian memorandum urged, as an

additional argument for ratification, that the results obtained by the Conference were of exceptional importance in view of the number of States which had adhered; that it would result in a large part of the civilised world, including nearly the whole of Europe, being brought into a single legal domain subject to a uniform exchange law, and there was good reason to hope, having regard to the attractive potency of international conventions, that a large number of other countries would also adhere. The certainty with which ratification was expected is seen from the fact that no sooner had the Conference closed than the German, Swiss and Austrian Governments conferred together with a view to drawing up a common German text of the Uniform Regulation. Furthermore, Austria had adopted and promulgated, as early as the end of 1912, the provisions of the uniform law regarding the effects of *vis major* in bill transactions in terms identical with those of Article 53 of the Regulation. The delay in ratifying during the period which immediately preceded the war was due to various causes; it was largely attributable to a desire to let the other States ratify first. To-day we can take a lenient view of this hesitation, since a more rapid procedure would have served no object. This is shown by the experience of Hungary. She lost no time in submitting the Hague Convention to the Hungarian legislative bodies, and the bill was discussed in the Lower and Upper Houses in 1914. But in spite of all their diligence the war prevented the Hungarian bill from being ratified. Since then, Hungary has been preoccupied with other matters. But in spite of the many dissentient views which she expressed at the Conference, she gave ample proof of her desire to accept the Hague decisions, and she would have been the first European State to ratify if events had not moved too rapidly for her.

In the summary referred to above, Austria is the only Power mentioned as being willing to take part in a fresh conference. Hungary has certainly the same intention and Germany would undoubtedly, if she had been asked, have declared herself in favour of a fresh conference, provided that she were allowed to take part in it on the same footing as the other Powers. Among the countries which formerly belonged to Austria, Czechoslovakia alone expressed a desire to adhere to the Hague Convention. In the middle of 1920, in the National Assembly at Prague, an eminent Czech deputy introduced a motion for the adoption of the Uniform Law recommended by the Hague Conference; no further action has hitherto been taken on this motion. It appeared probable, however, that the Czechoslovak Government would accept the proposal for a new conference. The portion of the old Austria which have become Italian and territory cannot be regarded as new adherents to the scheme of unification. They automatically form part of Italy and Serbia, which were members of the Conference, both of which signed the final protocol, and whose delegates at the Conference of 1912 never adopted a passive attitude. But having regard to the history of these regions when they formed part of Austria and to the well-known views of Italy and Serbia, to which they now belong, we venture to think that the new territories acquired by these Powers will be in favour of unification. The same is true in regard to the Hungarian territories assigned to the Kingdom of the Serbs, Croats and Slovenes and Roumania. The latter Power was also represented at The Hague. In the instances just referred to, minorities have been transferred from one participating State to another; but in regard to Poland the situation is different. Here we have a State composed of portions of participating States and which, in its capacity as a State, has not yet declared its attitude on this question. To judge by her reply to the League of Nations, Poland will not refuse to attend a new conference, and, indeed, Professor JITTA remarks in this



connection that he is informed that Poland is in favour of the unification of the exchange laws.

So far, none of the States which signed the Convention and the Regulation—or which signed the latter instrument only—have receded from their position. They all desire unification, and if they do not appear impatient for it, they at least show no hesitation in joining in any steps calculated to promote it. Thus, in spite of the numerous exchange codes, the conception of a Uniform Law exists in the thought and purpose of mankind as a necessary and desirable ideal, for it cannot be supposed that the favourable replies received were merely inspired by courtesy. The views which took shape during the Hague Conference have thus shown a welcome capacity for endurance, and the replies to the Questionnaire not only prove that the unanimity attained in 1912 still survives, but they throw light upon another point which is of special interest at the present moment. Only one or two of the replies made recommendations in regard to the new conference, and these recommendations are neither numerous nor novel; for instance, they ask that provisions dealing with the loss of bills, the formalities of protest and the clause « Not to Order », etc., should be added to the Regulation. The most interesting recommendation is that by Italy for « substantial uniformity ». This recommendation is in fact merely a repetition of her often-expressed desire for a reduction in the number of reservations. It is true that the States were not under any obligation to notify in advance the amendments which they might wish to bring forward, but it is difficult to see why all the States should have kept silence on the really important and far-reaching modifications which they, no doubt, desire to introduce, especially as the Questionnaire explicitly invited each State « to point out the modification which it is desirous of introducing in the Convention or Regulation of 1912 so as to make them acceptable for its country ». In view of the terms of this invitation, the brevity of the replies in regard to omissions, obscurities, and modifications, and the unconditional assent given to the proposal for a new conference, it may be assumed, at any rate as regards unification, that no serious alteration has taken place since 1912 in the *status quo ante* of exchange legislation or in the requirements in regard to this matter. There is nothing surprising or incredible in this; on the contrary, it confirms the general impression that there was a great falling-off in the circulation of bills of exchange in Europe during the war. The assent which was given by the States to the Hague Convention, and placed on record in the final Protocol of 1912, still holds good; moreover, the validity of the assent thus given by a large majority of the Governments has not been contested—except for a few isolated protests—so that there is no real difference, either in substance or form, between the present situation and that of 1912-1913. The various elements of unification are the same to-day as they were then; and they have been explored to their remotest boundaries, and the ground has been prepared, so far as possible, for the final process. For this very reason, it is most improbable that a third conference would add anything to our present knowledge or would succeed in effecting a more complete unification of the laws relating to bills of exchange in the non-Anglo-Saxon countries. The only way to obtain such a result would probably be to re-introduce these elements, which were excluded from the Regulation by the Second Hague Conference, as the result of decisions adopted unanimously or by a majority of votes, or, alternatively, by eliminating the reservations. To judge by the manner in which the participating States approached the problem of unification, it is unlikely that they would embark on such a venturesome experiment as that of attempting to reconsider decisions which have already been adopted, or of completely abolishing all reservations.



## II.

The Rapporteurs have also been requested to state their views on the possibility of a closer assimilation between the English and other systems of exchange law. By the « other » is presumably intended the conclusions adopted by the Hague Conference, for it would be a futile waste of effort to unweave the fabric of those conclusions and to make a fresh analysis of the various national codes dealing with bills of exchange, and even so it would provide no basis for negotiations with the Anglo-Saxon countries. The latter make no secret of the fact that the last text of the Hague Regulation is much more akin to the Anglo-Saxon legislation than to any of the codes in Europe, or Central or South America. The Regulation represents—for the future if not for the present—a preliminary step towards unification, for it has reduced the three systems to two by amalgamating the French and German systems, and it has also blended with them—though only to a very limited extent—certain elements of the English legislation. The obstacle to a more complete amalgamation of the Anglo-Saxon and Hague laws (if the latter term may be employed) lies in the variety of the methods in which it might be effected. The Hague law is the result of what might be called a chemical process. Thirty States throw their legal systems into the crucible, some ingredients of the Anglo-Saxon legislation were added, and the resulting compound is of a different nature from the raw materials employed, although the original elements are everywhere discernible. The Anglo-Saxon Governments refused to take part in the process. They were content to feel the pulse of these attempts at unification and to consider how far the various articles of the preliminary draft, of the Regulation, etc., could be applied to Great Britain, its Dominions and North America. That is as far as the Anglo-Saxons would go during the negotiations for unification. When these proceedings were concluded, the chemical process, whatever its value might be, could no longer be applied to the Anglo-Saxon and the Hague laws, for these two codes constitute at present two independent and separate entities. They can only be brought into closer harmony by inserting in these codes certain corresponding provisions by a mechanical process, the success of which would largely depend on the elasticity of the systems in question. From the outset, the Anglo-Saxon countries have been unwilling to do more than contemplate the possibility of a common system in the future, and because unification has already been achieved, at least in theory, in the case of the countries attending the Conference, it would be misleading to speak in the same way of any further unification in relation to the Anglo-Saxon system. In reality, all that can be done is to discover points on which an assimilation between the two systems might be proposed and accepted, without attempting to conceal the fact that a mechanical assimilation of this kind, merely affecting isolated elements, would never produce great results, compared with those obtained by the chemical process referred to above. Therefore, if all that was aimed at was a mere assimilation, within the limits of the Anglo-Saxon systems of legislation, the bifurcation of which Professor Jitta speaks in his Memorandum would not lead to very important consequences, either from the point of view of the Hague law or of the circulation of bills of exchange not covered by the regulations which it lays down.

The mere admission that English legislation is remarkably free from formalities seems too narrow a judgment when we contrast it with the French and German systems. The most striking feature of the English system is, not that it disregards the

formalities prescribed in other countries, but that it allows such complete liberty of action. For that reason, the regulations regarding the circulation of bills of exchange are not substantially different, from the legal point of view, in England, from the provisions of the common law, the ordinary law which governs daily commercial transactions. The difference between the English and the two other legal systems in this respect is even more marked than in regard to formalities. Freedom of action is not without danger to the citizen in countries governed by a written law; for this reason, the English law affords loopholes in case of mistakes, and thus, in the bill of exchange legislation, provides the proverbial drop of oil to ease the rigid mechanism of the law. It is a matter of opinion whether the amazing variety of methods of payment which may be used with English bills should come under the heading of freedom of form, or freedom of action. The drawer is allowed to draw his bill to « order » or to « bearer ». He may stipulate that the bill should bear interest, that it shall be payable by instalments, or again, by instalments with a clause providing for the bill to become due in case of non-payment of an instalment, or again, that it shall be payable at a rate of exchange which is specified, or is to be specified later. Moreover, the drawer is allowed considerable freedom regarding the conditions expressed in the body of the bill. He can replace the name of the drawee or of the acceptor by any other description, « with reasonable certainty ». The endorsement may be conditional, but the bearer is not obliged to respect the condition. As regards restrictive endorsements, the English law goes further than the French but not so far as the German law. The drawer and the endorsers may insert provisions in the bill protecting themselves wholly or partially from responsibility towards the holder, or which absolve the latter, so far as he is personally concerned, from any or every obligation. The drawee may accept the bill subject to qualifications and restrictions as to time or place. The drawer is allowed to dispense with the guarantee of any one of the parties, before, at, or after maturity. He may refuse to take a qualified acceptance, and he is also free to apply to the « referee in case of need » or not, as he thinks fit. The freedom to insert stipulations renouncing the right to take certain legal proceedings cannot be regarded as an extension of liberty; it is rather a sort of combination of the procedures for recourse and for recovery of debts. Among the expedients by which the law seeks, in various cases, to prevent the bill from being annulled or invalidated, the following may be mentioned : When the drawer and the drawee are identical, or when the drawee is a fictitious or non-existent person or is incapable of contracting, the holder may use the bill either as a draft or as a simple promissory note. When a bill is accepted or endorsed after maturity, it becomes, so far as the acceptor and endorser are concerned, a bill payable on demand. If one of the necessary dates has been omitted, the successive holders are entitled to insert the date of the issue or acceptance and the bill remains valid, even if it was furnished—in good faith or by mistake—with an incorrect date, or if, after having been incorrectly dated, it was returned to a holder in due course.

The object which the English law has in view in making these provisions is that the bill may be used in as varied a manner as possible according to the circumstances. The parties must be able to individualise, so far as possible, the judicial character of their rights and obligations, according to their requirements, and the bill must be maintained as valid within the limits prescribed by law, even, if need be, by resort to somewhat irregular methods. Another characteristic feature of the English legal system is the manner in which it decides the title to ownership of a bill. A title cannot be made if the bill or the acceptance has been obtained by fraud, constraint, violence or



intimidation, or by other illegal methods, or in return for an illegal consideration, or if the issue of the bill has been accompanied by an abuse of confidence or by fraud. No sort of illegality is tolerated. The holder's title rests therefore on substantial considerations, and only the legitimate holder, from this point of view, enjoys full rights, so that defects of title on the part of previous holders have no bearing on any objections of a purely personal nature which one of the previous endorsers may have raised against other endorsers. The object of this provision, which is merely the first link of a whole chain of mutually complementary rules, is to ensure that the circulation of bills should be based on straightforward dealing. The exceptional importance which is thus assigned to the moral element shows that it is the keystone of the whole English system of bill transactions. The rights and facilities enumerated above are only conceivable if there is complete confidence in the straightforwardness of all the proceedings in connection with the circulation of bills. Accordingly, every possible precaution is taken to prevent the development of dishonest practices and uncertainty; thus, the courts, notwithstanding views expressed to the contrary by bankers and merchants, refuse to recognise the titles of the holder in good faith of a bill with forged endorsements, because any other ruling would, by leading to greater laxity in examining bills on the part of the persons concerned, result in a great increase in the number of forgeries. Many other peculiar features of the English law are traceable to the desire to protect the holder in due course. The period within which bills payable so many days after sight or on demand must be presented is not laid down, but it is stipulated that the bill must be presented within a reasonable time. This reasonable period depends on the nature of the bill, commercial custom, and the circumstances of each case. Not only do these periods vary according to persons and circumstances, but the English law makes allowance for delays in carrying out certain duties for which a time-limit is laid down either in the bill or by law. The general principle which governs all these special provisions is that of « reasonable diligence »; this principle has been made the basis of criticisms of the clauses of the Regulation dealing with *vis major*, first, because the term « insurmountable obstacles » only accounts for a fraction of the impediments to reasonable diligence, and, secondly, because even this fraction is not sufficiently clearly defined. As an example of the amazing extent to which reliance is placed on the diligence, goodwill and honesty of the parties, it should be noted that—in contrast to the practice in regard to foreign bills, which are not covered by this rule—it is not necessary for inland bills to be presented or protested in order to have recourse against the drawer or endorsers.

This very brief survey will suffice for those familiar with English law. It is merely intended to bring out the remarkable extent to which this law is governed by the principles of freedom and fair dealing and to show how strange it is that its best features should have received so little attention at The Hague. Commencing with the preliminary draft, the recommendations submitted by the delegates—and particularly by the English Delegates—dealt almost exclusively with technical points and questions of form. It seems as if the idea of transporting the whole French and German systems in regard to bills of exchange in one step to the platform of British and North American law had been abandoned for different reasons, and that these countries had accordingly confined themselves from the outset to considering and examining the points on which partial compromises appeared possible. This attitude may have been needlessly cautious, for the Second Hague Conference was in no way blind to the advantages of the English system, and if it had been given a little more hope from this quarter, a much larger share of the English law would have been embodied in the uniform Code.

But in view of the obscurity and uncertainty of the situation, the Conference could only advance very cautiously towards the English system; and it deserves credit for having left the door open, in a portion of its conclusions, to a closer assimilation with Anglo-Saxon conceptions. As regards the ultimate goal, there was general agreement in principle. This became more and more evident at the Hague Conference. That this aspiration found so little expression was unfortunate, but the real reasons for this silence, and, indeed, for the whole policy of the Anglo-Saxon delegations, are not to be found in legal and technical considerations.

Of the eighty articles of the Regulation, thirty gave rise to comments on the part of the British Delegates. These comments may be divided into three categories. The first refers to the group of articles, which, on investigation, were held to be acceptable from the standpoint of English law. Such, for example, are the articles providing that, in the absence of indications to the contrary, the rate of interest for an interest-bearing bill is assumed to be 5%; equally acceptable is the article providing that, in the case of a discrepancy between the sums specified in letters and in figures in a bill, the smaller sum shall be the sum payable; or again, the article laying down that a person signing a bill of exchange, as representing a person for whom he had no power to act, or acting in excess of his powers, is bound himself as party to the bill. It appears also that England would be prepared to approve the clause under which acceptance might be expressed by the mere signature of the drawee on the face of the bill; or the article which declares that acceptance or payment by intervention may be made by a person who is liable under the bill. The suppression of days of grace and the recognition of the simple rules of the Regulation in regard to days of payment are recommended. Finally, direct recourse by the holder of the bill in case of failure, incapacity to pay, suspension of payment, etc., which is to be introduced under the Regulation, is declared preferable to the provisions of the English law under which the holder cannot draw a protest, in the absence of guarantee, except against the drawer and the endorsers. As a fact, agreement was not reached on the latter point, but the question is indicated as one requiring investigation. Article 19 of the Convention (bill stamps) also drew the attention of the English authorities to this problem, and led to a revision of the rule; unifications of this kind are greatly to be commended. These are everyday questions, and it is for that reason that they require to be solved in a manner which everybody can understand. The modifications which are required would not involve undue sacrifices from anyone, and in themselves they are perfectly reasonable. Uniformity in regard to the day of payment, and in particular the suppression of holidays, would be very desirable. Possibly the loss of the days of grace and of bank holidays, etc., would be viewed unfavourably by unreliable debtors, but the effort to introduce a higher morality, on the lines of the English law, into exchange transactions should not be arrested by such considerations. Punctual payment on the appointed day and the limiting of the days of payment are essential elements in the « reasonable diligence » to which we have just alluded. The proposals enumerated above might, in a word, serve as a happy beginning for the assimilation of the Hague law and the Anglo-American exchange laws. The ice would be broken, and a commercial and juridical community of practice, which many persist in considering as a Utopian dream, would at last be realised.

The second group of comments refers to the articles of the Regulation which were criticised more particularly by the British Delegation, and which might, if necessary, be modified in the sense indicated by these criticisms without involving an undue disturbance of the work of the Hague Conference. There would certainly not be unanimity



at the outset regarding the articles of the Regulation which ought to be included in this group. The English Delegation has proposed to assimilate interest-bearing bills to drafts payable on a fixed day or at a certain period after date. The difference between instruments of the latter category and bills of exchange payable at sight or so many days after sight—alone recognisable in the Regulation—is not so great as to justify their exclusion from the Regulation. The argument that it is always possible to include the interest in the sum expressed in a bill of this kind has not found favour. It seems desirable to accept the view of those who would place bills of both these kinds on the same footing. The highly controversial question of endorsements to bearer might also be settled by agreement, if only in the form adopted in the preliminary draft, which provides that the different States shall have power to prohibit bearer bills within their respective territories. It is beyond dispute that the bill to bearer is not very different from a bill with a blank endorsement, and it would be futile to prohibit bearer bills while allowing blank endorsements. As there are evidently some authorities who are in favour of endorsements to bearer, and others who fear that this form of bill is a possible danger, the best course would undoubtedly be to find a solution which would satisfy both sides, allaying the fears of those who regard endorsements to bearer as a danger, and giving satisfaction to those who defend them. The case of a holder who has acquired a bill in good faith from a person who has obtained it by illegitimate or dishonest means is treated in diametrically opposite ways in the Hague Convention and in English law. By the terms of the Regulation, the holder in good faith retains all his rights over the bill, whereas the English legislation deprives him of any right. The two views are irreconcilable, and all that can be done is to take note of the difference and transfer it to the debtor side of our account. Some people think that this question has not been sufficiently studied to enable a compromise to be reached with the Anglo-Saxon countries. The soundness of this view cannot be challenged, because, at the request of the French and English Delegates, a text of the Regulation was accepted which did not take sufficient account of the earlier law on the question on the one hand, or of the new law of objections and exceptions on the other hand. It will be necessary to take this problem in hand again, and perhaps then some means will be found of eliminating one of the most serious obstacles to a compromise between the two systems. The period of six months allowed for the presentation for acceptance of bills payable at sight, or at a certain period after sight, is declared to be too little in the case of bills drawn on overseas countries. There is no reason why different rules should not be adopted for bills drawn on foreign countries—or at any rate on overseas countries—and for inland bills, or why the six months' grace allowed for the former should not be considerably prolonged. Such a solution, which has already been adopted in many systems of bill legislation, might also be applied to some of the other clauses of the Regulation. Objection has also been raised to imposing a duty of protest in order to establish the omission of the date in the declaration of acceptance. As we have seen, the English law allows the holder to insert the missing date in the declaration of acceptance. The Conference refused to adopt this plan, considering that it would be dangerous to allow the holder to intervene in the contract of another party to the bill. But the only point which matters is that the right date should be established, and this result could be obtained just as easily by ruling that the holder of the bill must insert the date in the presence of witnesses. But even if witnesses are not required, there seems no absolute necessity for a protest. It is the drawee who is responsible for seeing that the right date of acceptance appears on the bill. If it is generally known that the holder may, in case of need, fill in the

date himself, the acceptor will be able to make his choice. If he prefers to leave it to the holder to fill in the date, he naturally does so at his own risk and peril, because, by abstaining, he confers on the holder full powers to insert the date instead of himself. It appears that there are no serious arguments against the view on which the British proposal is based. Moreover, under the English law, the holder is free to take a partial acceptance or partial payment if it is offered to him. The Regulation exposes itself to criticism by laying down in one place that the holder must take a partial acceptance, while, in another place, it rules that, according to the country in which the bill is payable, the holder may either exact full payment or must accept such part of the sum payable as the drawee tenders. This inconsistency adds to the force of the arguments which are raised against this article, owing to the one-sided preference which it gives to the party liable under the bill. It is impossible, from a legal and moral point of view, to lay down separate standards of justice for acceptance and for payment, still less a standard of justice which, as regards payment, would vary in different countries. There is no answer to the British Delegation's criticism that this is a most unusual arrangement. The adoption of the English point of view would not be justifiable in itself, but would get rid of a needless legal confusion which in no way adds to the attractions of the Regulation.

England, again, does not seem to favour the method which the Regulation proposes for cases in which the presentation of a bill or the drawing of a protest are prevented by *vis major*. While admitting certain advantages which the Hague text presents in regard to this matter, she considers it a retrograde step. Moreover, France and Italy have also protested against the failure of the draft to allow any prolongation of the periods of grace laid down for these duties in case of impediments which only affect individuals. This question has been in dispute ever since the beginning of the Hague Conference. In 1910, it was the cause of « prolonged and animated debates ». As no agreement could be reached, the Conference fell back on a compromise. In 1912, it was thought best not to touch this question at all. It is impossible to reconcile the explanation given, namely, that this question was not discussed because the compromise had proved satisfactory to all the countries, with the fact that England has never concealed her dislike of it, and that France and Italy protested against it in 1912. We gather from the minutes of the Revising Committee that Article 53 is only a makeshift, and we read that « a few minor modifications have been made; for the rest, to avoid complications, no attempt has been made to solve various subsidiary questions ». The fact that neither the illness nor death of the holder nor postal delays have been considered in connection with presentation or protest will be regarded, even in countries which took no part in the Conference, as a flaw in the structure. Therefore, to admit the necessity of reconsidering this clause is merely to recognise the inevitable. Other inconsistencies of the same nature are as follows: According to the Regulation, payment by intervention must take place at latest one day after the expiration of the period allowed for protest. The English law does not recognise such an arrangement, and it seems impossible to justify it. The demand that the delay should not be unduly prolonged seems, in this case also, to have had in view more particularly bills drawn on foreign countries, for the example chosen to illustrate the inconvenience of the Hague clause is that of a bill coming forward from South America and not paid « for honour » in England. An expedient might therefore be found, either by inserting a special provision regarding bills drawn on foreign countries, or by abandoning the attempt to limit so severely the delay allowed for payments for honour. The Article under which the person to whom a bill is issued is entitled to have it « drawn in a set »



is not in accordance with English views, no doubt owing to the difficulties and increased work which it would involve; the furnishing of copies should be a matter of private arrangement between the parties. At The Hague, the English were assured that experience proved there were no grounds for fear in this respect, but they remained unconvinced, and as, when all is said and done, the holder would hardly wish to undertake proceedings to obtain copies, the Regulation really makes the holder dependent on the drawer's goodwill in this matter. It appears also that French law does not impose any legal obligations on the drawer in regard to this point. It would, perhaps, be possible to abandon the ingenious device by which a falsification of the text of a bill transforms it into two bills—in the sense that those who signed before the alteration are bound under the original wording, and those who signed after the alteration are bound under the altered wording. The English Delegates declared that this Article was « unduly lax and may be held to encourage people to be careless in taking bills ». This is perhaps not entirely correct; nevertheless, it is against the principles of honesty to confer full and legal value on a forgery; and the division of the parties into two different groups cannot be reconciled with the tendency—in other respects in the direction of unity—shown in the juridical treatment of bills of exchange. Moreover, a departure from this principle would involve modifications in the procedure of recourse, or at least necessitate more precise instructions, because the Regulation, so far from taking into consideration the division of the parties into the groups referred to, is adapted solely to meet the case of a single group of parties. The above cases should be regarded merely as a list from which a selection can be taken, and opinions will, no doubt, differ as to the method of arranging them; most of the recommendations made will contain an element of justifiability, so that negotiations conducted in an impartial spirit will in some cases result, not in substitutions but in modifications, *i.e.*, in the formulation of articles which will combine whatever is best in the opposing cases. Much depends therefore on the spirit in which the selection is made. Advantages and disadvantages will be carefully weighed and a host of imponderable factors may influence the issue. It is impossible at present to foresee the outcome.

The last group includes modifications which, although they have stood the test of Anglo-Saxon legal practice, cannot be recommended to participating States, because there are long-standing traditions against them, or because they would constitute innovations for which conditions are not ripe in every country. Many developments may take place later, but for the present some of the participating States would consider it premature to make any advance in this direction. These proposals may have very different fates in store for them. The Anglo-Saxon countries may give up the attempt to get certain modifications accepted and incorporated in the Hague Law, without allowing this to impede an assimilation in respect of the other issues; they would merely be postponing the fulfilment of a desire which is of less account to them than the remainder of the programme. Or, again, the Anglo-Saxon countries may attach so much importance to some provision of their law that they will seek to introduce it into the Hague Law at all costs, whereas the other participating States may absolutely refuse to accept it. If the panacea of reservation proves unavailing, or if neither side will give way, it will be impossible to effect an assimilation. But there are very few provisions which fall into these two categories. The following are some examples from the first group :— In English law recourse does not include the right to claim commission (1/6th % of the amount of the bill), whereas the Regulation does allow this; in English law the acceptor for honour is the only person to whom the bearer is bound to present a bill of exchange which has been accepted for honour or in case of need,

whereas the Hague Law lays down that the bill must also be presented to the referee in case of need. These are only trifling differences, especially as the English view is that, in the latter case, the bearer will, in his own interest, seek to obtain the acceptance in case of need. These small differences will, of course, be settled; but, on the other hand, irreconcilable differences of opinion may arise in the second group with regard to points such as the chief conditions to be expressed in the body of the bill of exchange and the effects resulting from the absence of any of them; the fact that, under English law, a drawer may by declaration disclaim responsibility for payment of a bill; the legitimization of the holder, prescription, and so on. The English system of noting bills and the English procedure for notice of non-acceptance or non-payment would also appear to call for reservations in the Convention, and, indeed, this action has already been taken as regards presentation and infractions of the laws regarding the stamping of bills. The relations between the Anglo-Saxon and the Hague systems may vary to a very considerable extent, but a survey of past developments will show that, even if actual unification should not be attained, it may be possible, by the mutual adoption of principles and legal practices, to arrive at such an assimilation between the Continental and Anglo-Saxon laws as will practically amount to unification. Of course, a compromise of this kind could not atone for the absence of actual unification; a machine, however ingenious, can never become a living body. It will lack the vital spark, the single mind which constructs, preserves and renews. In the case of a mere assimilation there are, as a rule, more differences which have to be smoothed over, or allowed to remain; the States stand further apart from each other, and the prospects of success are more uncertain. Unification would make the new Uniform Law the common intellectual possession of all the members of the Conference and the national law of each of them, and it would further create a legal code in which all the heterogeneous elements contributing to its formation would lose their separate identity in the process of fusion. English legislators have not been willing to go so far. England's opposition to unification is clearly shown in the instructions given to the English Delegates for the 1910 Conference. « Convinced that no uniform law could supply the place of unanimity or practical unanimity on the part of various States »—so it was stated in the instructions— « the British Delegation is of opinion that the Conference should merely endeavour to discover how far it will be possible to reconcile the divergent views of the members, and thus to lay down principles of exchange law, without attempting to settle matters of detail. » The instructions for the second Conference were somewhat less strongly worded. The delegates were enjoined to inform their Government of any features of foreign law the adoption of which would prove advantageous to British law. However, even if we admit that English law should be amended in the manner suggested, the result would merely be the assimilation or fusion of a small number of conflicting theses. If a more intimate relationship between the two systems does not lead to an increase in the value and importance of the bills of exchange, the great advance which is anticipated, as a result of the union of the States taking part in the Conference, will not be achieved.

### III.

The question to be studied is how to attain a greater measure of uniformity in the present world-situation of bill-of-exchange legislation. The duty of a scientific commission is to reveal the truth, and even to draw attention to the less pleasant aspects



of the question; and it must be frankly confessed, in view of the foregoing considerations, that the facts themselves have already taken this task out of the rapporteurs' hands, and that they are not in a position to say much about future developments. As regards the pre-war period, the Hague Conference had examined thoroughly, and under the best conditions, the legal situation of bills of exchange in the more important systems of law. On that basis the Hague Convention set forth, exhaustively and with commendable clearness, the degree of unification which it was possible at that time to attain. As regards the period subsequent to the 1912 Conference, the information sent, in reply to the League of Nations Questionnaire already quoted, renders it unnecessary to institute any further scientific or legal-statistical investigations. The development of legislation on bills of exchange since the last Conference could not have been stated more clearly than has been done in the replies to the Questionnaire. No fresh facts or requirements are mentioned. As has been already mentioned, the objections raised by France and Italy, and the observations made by Greece, in their respective replies, dated back to the time of the Conference; they were merely slight breezes which scarcely ruffled the smooth surface of exchange law. The years after 1912, eventful though they were, do not furnish any new material as regards the unification of exchange laws. On this question the world has stood still. Thus the Hague Conference alone forms the main foundation of the work which is now under preparation. No new Uniform Law is contemplated; all that is to be done is to consider anew the problem which was solved in 1912 by a common agreement between the majority of States. To judge from their replies, the States do not desire, so long as circumstances remain unaltered, to undertake anything more than a fresh critical examination. The undertaking will not on that account become less timely or less important; on the contrary, it will in any case be necessary, if only to stimulate the Governments to take action and ratify the Convention, and to prevent the draft Conventions and the Regulation from gradually sinking into oblivion. As Horace says : « *Novum prematur in annos* ». Perhaps a revision of the Convention and Regulation after an interval of ten years will prove fruitful in results. Thus regarded, the undertaking is no longer a new one, but merely a continuation of the work of the Second Hague Conference, just as the latter was merely a continuation of the First Conference of 1910. Even if the Hague Convention were less perfect than it is, we cannot afford to neglect the treasure-house of ideas accumulated at that Conference.

All this would be obvious if the provisions of international law had remained unaltered. The matter would in that case have developed under the guidance of the Netherlands along the lines laid down in the Convention; but a change of persons has taken place which cannot be disregarded, at any rate in connection with international law. It occurs both in public and private life that associations are founded for some common purpose and draw up statutes under the terms of which they deal with some question, take decisions, and thus become corporate bodies with the right to record decisions which are binding upon them, and to acquire rights, particularly exclusive rights over their material and intellectual creations. The same applies in international life. Many examples could be given of associations of States, corporations, societies, etc. Confining our attention to well-known matters, we may mention the Association for the Protection of Industrial Property and Literary and Artistic Works, the Hague Conventions on the Settlement of Questions of Private International Law and of Disputes, the Convention on Private Maritime Law, and so on. These associations of States for the purpose of pursuing in concert certain common aims possess all the characteristics of international treaties, but do not confer rights or impose obligations except upon the contracting

parties. If these associations are open to other nations or associations of nations, the latter may become members by conforming to the prescribed conditions. It is on these terms alone, and within the limits of the powers conferred upon the members, that third parties may contribute towards the development of the work of these associations. If we apply these principles to the Hague Conference, we see that it is not a temporary and unstable association, the members of which may arbitrarily take different decisions from one day to another, but that it is rather a union of States created with a definite aim—namely, the unification of law on bills of exchange—and the Government which is at its head, and the leadership which is recognised by the other States, will afford it the stability necessary for the achievement of its aims. There is no need to discuss in this report whether, in international law, as applied between States or associations of States, the right to original creative thought is safeguarded, or at least recognised. International courtesy would at least require that, as regards the object of their activities, these associations should not be exposed to attacks from other States or other official organisations. The objects of the Hague Conference have not been attained by the decisions taken hitherto. That Conference has not ceased to exist; it still remains an independent association, with a legal existence, and subject solely to the terms, written or otherwise, of its statutes. It would therefore be unjustifiable to use its powers for the purpose of altering or supplementing previous decisions or speaking generally, to recast the original agreements. The members of the Hague Conference expressly claim these rights for themselves under Article 30 of the Convention. Moreover, it is a recognised rule of international law that international treaties cannot be modified except by a fresh agreement between the contracting parties. Accordingly, the Hague Conference cannot be deprived by third parties of its independent authority and its power of regulating exchange law. Such an infringement would not be permissible even with the consent of certain of the Powers, including the Power which exercises the leadership of the Conference. The powers granted by the participating States to the presiding State include, besides the leadership of the Conference, only the receiving and transmitting of information regarding the Regulation, ratifications, the recording of declarations of adhesion or denunciation, and the issue of invitations to further conferences. These powers may be renounced, but the Netherlands Government is not empowered to transfer them to others. For this purpose, a decision of the States members of the Conference would be required, for it is they who express the will of the association, and their consent would therefore be required for the establishment of a new presidium and for the admission of parties which are not members of the Conference. If the Netherlands Government renounced the powers with which it is vested, one of the other participating States members would have to issue invitations to a fresh conference. But there has been no suggestion that that Government would act in this way, and all the members of the association are completely satisfied with its conduct of affairs up to the present. The Hague and its Government are well known throughout the world for all that they have done in other fields of international law, and they have earned universal approval as representing the international unification of the law on bills of exchange.

There is another difficulty, due to the Covenant of the League of Nations. As is known, the latter deals with international organisations, and places them, as regards their various functions, under the authority of the League of Nations. International bureaux already established by general treaties may be placed under the direction of the League if the parties to such treaties consent. All new international bureaux and all commissions for the regulation of matters of international interest have been placed



under the direction of the League. In all matters of international interest which are regulated by general conventions, but which are not placed under the control of international bureaux or commissions, the Secretariat of the League of Nations, if desired by the parties, collects and distributes all relevant information and renders any other assistance which may be necessary or desirable (Article 24). The general treaty under which the Hague Conferences are summoned dates back to the period before the conclusion of peace, but the parties to that treaty have not expressed any wish to work under the direction of the League of Nations. Moreover, the Hague Conferences are neither international bureaux nor commissions for the regulation of matters of international interest. The States taking part in these conferences work as independent members—one might even say associates—and prepare draft laws, the ratification of which depends upon the Governments of the individual States. The draft of the Uniform Law is transformed by the various ratifications into a number of separate and individual laws. The Netherlands Government acts as an intermediary to issue invitations, to receive adhesions or denunciations and to transmit information, but none of these functions make it an international bureau or a commission of the kind referred to above. The subject dealt with by the Hague Conference comes within the category of questions of international interest which are regulated by general conventions, but are not placed under any international control. The League of Nations can only collect information for it and render assistance which it may require if it is requested to do so by one of the contracting parties. The powers of the League of Nations are not prescribed in the Covenant merely as examples; the League cannot exercise powers which have not been expressly assigned to it, and no argument to the contrary can be founded upon the Covenant. Indeed, according to the terms of the Covenant, the Brussels Financial Conference seems to have acted mistakenly in submitting to the League of Nations, without taking into account the question of competence, the recommendation that the unification of the law of bills of exchange should be reconsidered.

A different view was taken by the International Congress of Chambers of Commerce at Rome (1923). In accordance with the opinion set out above, the Congress stated in the resolution that it « urgently called the attention of Governments » to the desirability of convening a further Conference of experts with a view to arriving at an agreement in regard to the points left unsettled at the Hague Conference, and to secure the adoption in the various countries of laws intended to unify as far as is practicable existing legislation on transferable securities. The resolution is worthy of special attention, because it omits any reference to an appeal to the League of Nations, and recognises the exclusive competence of the States assembled in conference; and, again, because it shows that the Congress, after adopting the replies to the Questionnaire, abandoned the idea that unification had already been reached over the greater part of the field and that all that was wanted was a few additional arrangements of minor importance. The League of Nations might therefore have taken the opportunity of transmitting the recommendation of the Brussels Conference to the Netherlands Government and of requesting it to approach the States Members of the Conference in the matter, as had been done before. The drawing-up and sending-out of the Questionnaire inviting the various Governments to prosecute the efforts which they had already made might be justified by necessity, but any other step on the part of the League of Nations would have to be taken in accordance with the Covenant. The theory that, by placing a wide interpretation upon paragraph 2 of Article 24, the League of Nations is assisting the Netherlands Government, which still holds the leadership of the Conference on Bills of Exchange Law, is more defensible than the argument to the contrary.

Neither rapporteurs nor meetings of experts can on their own authority alter this juridical situation.

It has already been pointed out that the new enquiry is a continuation of previous efforts and not the beginning of a fresh enterprise; and, as has also been stated, the majority of States concur in this view. But there are others who oppose this view, and who plead that the Hague Convention has lapsed. A few words on the question of refusals to ratify would not be out of place here. Professor LYON-CAEN has set forth, in his remarkable Memorandum, the reasons which, apart from the war, have rendered it difficult for France to ratify the Hague Convention. If these reasons are carefully examined, it will be seen that they are not objections to particular principles or rules of the law on bills of exchange, but evidently to the principle of unification itself. There can be no doubt at all of this. The advocates of this view argue that it will never be possible to agree upon an absolutely uniform system of international law on bills of exchange, or to induce England and the United States to agree to such a utopian idea, or to devise a law which will be free from all formalism, since England herself has not found it possible to do so; and, finally, that the most impossible ideal of all would be a universal law on bills of exchange which would allow the members of the various legislative bodies an unimpaired right of individual amendment, seeing that the limitation of this right is a necessary concomitant of any international legislation submitted for parliamentary approval. From a juridical point of view, these objections are of such a nature as to render unification impossible of fulfilment, and we must therefore reconcile ourselves to the fact that France, like the Anglo-Saxon countries, though for different reasons, will probably refuse to accept unification. If the only possible solution is to work out a model law and then to recommend the States to bring their domestic legislation into line with it, the whole plan of unification will collapse. A law of this kind, which any State would be free to modify so as to suit its own desires and requirements, would create a situation hardly differing, from an international standpoint, from the present system of independent territorial laws. Moreover, nothing would be gained by thus getting rid of the Hague Convention, for the same difficulties would be experienced in framing a new Regulation. Any new and radical revision must inevitably proceed on the same lines as at least half or three-quarters of the Regulation, since the latter contains in the best possible form the essential elements of the various laws on bills of exchange. If only to save time and labour, the Hague Convention would therefore have to be retained. Professor LYON-CAEN'S Memorandum also refers to this point; he gives an impressive account of the cost, in staff, time and money, required to reconstruct *ab ovo* a uniform law on bills of exchange, promissory notes and perhaps cheques as well. Moreover, the wealth of valuable legal concepts, formulas and inferences which have been accumulated as a result of these conferences will readily be realised. By continuing the Hague negotiations, a uniform law on bills of exchange, which will be in every way satisfactory, can be obtained with great rapidity and with very little labour and outlay. Even if some of the previous signatories refused their adhesion, the plan of unification need not be entirely abandoned. As soon as a sufficient number of States reached an agreement, the uniform law could be put into force, and, by acting as a centre of crystallisation, would attract other systems to become assimilated to itself. The only serious objections are those based on legal grounds, but in business questions business men will find the means, in spite of political opposition, to achieve that unification which they so earnestly desire.

There are three possible methods of establishing a connection between the stage



now reached in regard to unification and that of the Second Hague Conference. The participating States could be approached as to the prospects of ratification; or negotiations could be entered into beforehand with the various States on the basis of the replies to the League of Nations enquiry, in order that, when the Conference takes place, a certain measure of success may be assured; or, lastly, a Conference could be held at once to discuss the modifications necessary in order to obtain ratification. It is hardly likely that any large number of States will decide to make ratification their only object. In the interim, new men and new tendencies have arisen in the Governments, and the latter cannot be blamed for wishing to get into touch with the other States as soon as possible, and for discussing whether advantage should be taken of the opportunity which now presents itself for making corrections and amendments. Similarly, the Anglo-Saxon Governments must also be consulted, as otherwise ratification would, in a sense, imply an unfriendly attitude. The second method would consist in making diplomatic preparations for the Conference; in present circumstances this is the best method of securing unification and of influencing the Governments in a sense favourable to the Conference. Agreement regarding the Hague Convention of 1912 was secured without any pressure or resort to artificial devices; this Convention was, so to speak, « the modern natural law of bills of exchange », and in this light it is as firmly established to-day as ever. The only innovations required are certain improvements in matters of detail; in the decade which has elapsed since 1912 nothing has happened to justify special individual changes of a greater or more fundamental nature. In order, as far as possible, to prevent a failure of the Conference, exchanges of views should take place at once between the Governments of the countries which cannot be counted on to ratify the Convention. The third method—the summoning of a conference without any preliminaries—could only be recommended if the League of Nations enquiry or other sources revealed a prevailing trend towards unification on the lines of the Second Hague Conference, but showed the necessity of further discussion on certain points before ratification. This would be the method to adopt in the most favourable circumstances. It stands half-way between the two others; it is certainly more difficult than the first, but simpler than the second. Each of these three methods postulates certain conditions; they cannot be chosen merely at will. If conferences have to be held, whatever authority is employed to summon them must invite all the States, without exception, which took part in the Conferences of 1910 and 1912. Not only is it essential that none should be omitted from the invitations or excluded from the Conference, but the character of the third Conference must be in every way identical with that of the first two. The after-effects of the war and of the Treaties of Peace must be disregarded, as must also differences in relationship with the League of Nations, and any other inequalities between the participating States (such as refusal of the right to vote, restriction of other rights, etc.). This gives us fresh occasion to point out that the idea of a conference on bills of exchange legislation, open to all States, is incompatible with that of a conference held by an association consisting of a limited number of members. For example, the Questionnaire has apparently not been sent to the German Government, because Germany is not a Member of the League of Nations, and this despite the fact that Germany took a large share in the work of the Hague Conference. Yet, except for the restrictions imposed upon credit during the war, there has always been a very large circulation of bills of exchange in Germany, and her replies to the Questionnaire would certainly have been most valuable. Invitations must, of course, be sent to the new States which have arisen from the Treaties of Peace. They previously formed part of a larger participating State, and have now ceased to be

represented by that State. It would not be advisable to preface the Conference with preliminary discussions by a small group of members of the Hague Conference. At the Hague Conferences no differences were made between the participating States, whether great or small; all, including the Netherlands, had the same rights. The Netherlands, of course, presided, but merely as the Speaker of a parliament. She carried out these duties with the utmost tact, and consequently the discussions took place, and decisions were taken, in complete harmony. If a small group of Governments initiated negotiations with a view to introducing modifications in the Hague Convention, misunderstandings might be created, and an idea might arise that everything would be settled within this group, without the other States being consulted. This would certainly not be a very happy beginning.

The adoption of a different procedure in the new stage of the work would certainly not affect the object of the Conference, namely, unification. That point was made still more clear in the course of the work already done. The original plan was unification, in the ordinary sense of the word; this was followed by the scheme of enriching the law on bills of exchange with new ideas, which it was hoped would gradually be developed. A fresh stimulus was given to existing laws, and this led to the evolution of a law which combined elements of the individual State laws. The law as established by the Hague Convention, though apparently a single unity, is really a piecing together of other laws. Contributions were made by all the systems of bills of exchange. This was, of course, necessary, because a unity which would not consist in setting up one system at the expense of all the rest could only be secured in this way. This procedure is also the key to the question which is now most discussed in connection with unification, *i.e.*, reservations to the Convention. It is these which are now arousing most interest, especially in commercial circles, in connection with the problem of unification. The nationals of any country naturally have a weakness for their own laws, and will not willingly abandon them in favour of a foreign law, even if the latter is obviously the better one. In almost every country, parliament watches jealously over the international interchange of laws. Unification of the law on bills of exchange is only feasible provided that a certain number of mutual concessions and exchanges are made on both sides. Moreover, this combination must be made with the greatest caution, because misunderstandings, wounded national sentiment, fancied humiliations, and so on, would only too easily mar the welcome accorded to unification. Even highly intelligent people are sometimes very sensitive on this point. The Uniform Law is derived from three kinds of legislation skilfully combined, and in The Hague legislation regard is had to the necessity of winning the support of individual countries which might consider that they were being called on to make too many concessions. There are, however, limits to this process. The population of a country, or particular sections of it, may attach great importance to certain national and legal principles or institutions, and ratification might be prevented if the Uniform Regulation of bills of exchange were submitted to parliament without making due allowance for these national susceptibilities. The object of the reservations is to abolish these features in some cases and to retain them in others. Reservations may reconcile opposites by giving due weight to factors on both sides. If the nature of reservations was not so often misunderstood, we should not find such determined efforts to get rid of them, or, at least, to reduce their number. A serious attempt on a large scale to dispose finally of the principal questions which the Conferences had left unsettled was undertaken by the Congress of the International Chamber of Commerce at Rome. The national committees were requested to obtain the views of their respective countries, and then to reply



to the enquiries set out in a questionnaire, the replies of the members of the committees and replies obtained from outside sources being intended to serve as the basis of the discussions. The questions related mainly to the reservations formulated in Article 2 and the other articles of the Convention immediately following it. The resolution gave rise to a number of highly interesting observations. First of all, it should be mentioned that the replies were received only from some ten or twelve of the countries which had been approached. Of greater importance still was the fact that the replies were not unanimous in regard to any one of the sixteen questions. In some cases, the majority of the replies to any one question were in the affirmative, in other cases in the negative. No better evidence could be adduced to show that these matters are actually as highly controversial to-day as they were in 1912, and that it is idle to anticipate a speedy termination to these disputes. Moreover, the Congress could only settle a number of the doubtful points by adopting one of the two opposing views, *i.e.*, by bringing their own personal views into the decision of the question. In other cases, the decision was left in the hands of the national legislatures, and on three points no agreement could be reached. These questions accordingly must remain outside the general scheme of unification, at least for the time being, and must continue to be dealt with under national laws. No better progress was recorded in the case of the question of the lost securities. As a result, the 1912 reservations have proved victorious along the whole front. The Conference held in that year had, with remarkable precision, fixed on the points in regard to which the time for unification had not arrived. An assembly of representative commercial men has not proved successful in getting rid of the divergent views revealed in the reservations. One is tempted to say that it is fortunate they have not succeeded, for the juridical object of reservations would never be more completely defeated than by attempting to reduce contradictory views, for the existence of which good reasons can be given, to a specious unity. Reservations represent a stage in a process, and can only be eliminated by time. They will disappear of themselves or will become fewer in number as soon as unification has received the approval of the parliaments of the States concerned, and as soon as the considerations which gave rise to them have lost their weight, or have ceased to exist. To attempt to reject them absolutely before ratification is a risky policy which might lead to a number of the adhering States abandoning the idea of unification. It is a mistake to seek for a genuine solution simply by means of reservations. They are intended to prevent sacrifice, in the cause of unification, of ingrained beliefs, time-honoured customs and important interests, and countries can hardly be blamed for using this means of protection if there is good reason for so doing. Whoever has the task of steering unification into port must not attempt to do so by means of reservations; he would be serving his cause better by conceding certain reservations—and they will be comparatively few when divided among all the States—and regarding them as the price paid for obtaining unification. Moreover, one or other of the reservations will always commend itself to a number of States.

#### IV.

In Chapter II the question of the extent to which the unification established at The Hague might be combined with Anglo-Saxon law on bills of exchange was considered in connection with the English criticisms of the Regulation. On this occasion it was only the laws dealing with bills of exchange which were enquired into. In the eyes of the Anglo-Saxon States this is, however, not the only, or even, it would seem, the most

important point, as is borne out by the British Government's Note stating its final attitude with regard to the Second Hague Conference. According to this Note, there are many elements in the English law which are in accord with the foreign laws on bills of exchange, and in the interests of unity it would be better in such cases to adopt the foreign law. It is evident, from this Note and also from opinions expressed by the representatives of England and the United States of America, that the reluctance which has been shown is due, not so much to any particular provisions of the Regulation, as to reasons of judicial policy and organisation. According to the above Note, a comparison of the Regulation applicable to bills of exchange does not, in itself, reveal all the differences which exist between English and Continental law, and thus the application of similar laws in England and on the Continent would have very different consequences and results. In support of this view, it may be pointed out that in England the law on bills of exchange is based on common law, whereas in Europe it is based on Roman law, and English commercial law is a branch of common law. This difference also appears in the distinction drawn between merchants and non-merchants, between commercial and civil courts, judges, lawsuits, etc. It is also feared in England that the adaptation of English law to the law of Continental countries might give rise to divergencies between English law and that of the United States and Dominions, because it is by no means certain that the example of England would be followed by the fifty or more legislatures existing in the United States of America and the British Dominions. Moreover, in the United States the Federal Government cannot enact a law on bills of exchange which will be binding on the individual States, and it thus is almost impossible to unify the laws of the thirty-five States of the Union. A careful enquiry would be needed to determine how far this situation accords with recent information, and also whether the legislatures of all these States would also reject unification or the assimilation of the exchange laws. Nevertheless, the difference strongly insisted upon by England between Continental and Anglo-Saxon civil and commercial law and justice seems to have been over-stated, and should be carefully examined in order that it may be seen in its true proportion. In the numerous States in which bills of exchange are subject to the French or German systems there are, of course, whole hosts of legal institutions which are probably not all equally strong and effective in all these States; but, nevertheless, in most countries the difference between civil and commercial law is not so fundamental as is assumed in the British Note. For instance, the provisions relating to commercial transactions are very seldom applied to bill transactions, which, from beginning to end, fall entirely within the province of exchange law. The same is true of the distinction between merchants and non-merchants, as the latter are also subject to the law governing bills of exchange. Commercial courts, with the collaboration of expert consular judges, are in every way qualified to deal with lawsuits concerning bills. It is only in exceptional cases that a procedure is employed for bills of exchange in any way differing from that applied to other lawsuits, and then, as a general rule, the difference consists merely in the fact that, before ordinary proceedings are instituted, and independently of them, a summons to pay is served on the debtor. That is, at any rate, the rule, and so, in the larger Continental countries and in a certain number of smaller ones also, neither the judicial system nor the laws represent so fundamental an obstacle to the unification of the law on bills of exchange as to frustrate all efforts to that end. It would be worth while to investigate these obstacles in the countries themselves, at any rate in the larger States. It would then be possible to ascertain whether the assertions so often made are not sometimes exaggerated and incorrect. Moreover, the Second Conference adopted a method



which was well calculated to dispel any mistrust as regards the legal practice of participating States and thereby removed one of the chief objections raised by the British Government. In the Final Protocol of 1912, the Powers at the Conference were asked to ascertain whether a uniform legal jurisprudence could not be established in connection with the uniform legislation on bills of exchange. If this were done, the way would be clear whenever the time was ripe for putting the scheme into application.

In view of this situation, which cannot, of course, be modified in a night, the new Conference on exchange legislation will have to abandon entirely the original universal scheme. The International Congress of Chambers of Commerce has already made this clear. As appears from the report of the Committee on transferable securities, an English expert, who had closely followed the earlier discussions, made no secret of the fact that, in our time at least, it would be hopeless to anticipate complete unification of bills-of-exchange legislation. In his opinion, all that could be attained was a clear explanation of the law. He stated that the English-speaking countries would be forced to make their law clearer and to bring it into line with Continental legislation « when the latter is unified ». Unification, accordingly, is regarded as a movement affecting only part of the whole ground, and not as a world movement; and England, North America, etc., will continue to hold aloof from this unification. The original scheme has hitherto secured no support except in Continental countries and the States of Central and South America, and it would once again result in disappointment but for the lessons learned from past experience. Professor JITTA'S idea of founding two new legal systems for bills of exchange—the Hague and the Anglo-Saxon systems—with reciprocal relations, is a very attractive one and is quite feasible. Of the two processes of unification which are necessary for that purpose, only one—that of The Hague—is at present making any progress, indeed, it is not going too far to say that success will ultimately be achieved. In view of the apathy in regard to unification shown by the other group, the new Conference will be well advised to begin by setting its own affairs in order by giving effect to the unification (which has hitherto existed only on paper) of the exchange laws of the thirty signatory States of the Final Protocol. It is particularly important that the unification of the Continental systems of exchange laws should become an accomplished fact. Rome was not built in a day and would never have been built at all if the builders had insisted on building it all at once. As it appears that unification as originally conceived cannot be introduced into all countries simultaneously, and as the Anglo-Saxon States, being closely akin, have reached a certain degree of unity, the next step in unification, which ought to be taken after a fresh examination of the Hague Convention, should be its speedy ratification by all the States which had previously intended to do so. Efforts to reach an assimilation with Anglo-Saxon law will not be abandoned; on the contrary, such efforts will find fresh encouragement in the Hague unification, when once its value has been proved. The tendency will be to turn towards it as a well-tryed system, and not a mere draft or preliminary scheme, and it might even become more liberal in its terms than when its chief preoccupation was to consolidate as far as possible the new uniform legislation on bills of exchange. In any case, therefore, Great Britain, her Dominions—now independent—and the United States of America should be invited to the new Conference. Their participation in the Hague Conference of 1912 was due to a desire to learn the differences between the systems rather than to a desire to achieve unification. There would be little use in merely returning to the methods of 1912. The British Government's Note settled the question of the unification of the Continental and Anglo-Saxon laws as regards the immediate future. On the other hand, no plan for assimilation in points of detail has yet been decided on.

The British Delegation and the British Government have more than once indicated points which they have borrowed from the Hague Regulation and regarding which it would be possible to reach an agreement. Perhaps this agreement could also be extended to certain modifications which might be made in the Regulation itself in favour of the Anglo-Saxon States, with a view to making at least a modest beginning with unification in regard to a number of matters where the legal systems are in close agreement. These negotiations should not, however, be considered as forming part of the discussions between the signatory States of the Final Protocol; otherwise they would prove abortive. Special meetings will have to be devoted to considering the Anglo-Saxon problem, and these debates would form a kind of annex to the Conference at which these special questions alone would be discussed. Of course, if, during the debates on unification, any points should come under discussion which might affect assimilation with Anglo-Saxon law, there would clearly be no objection to a discussion in the Conference proper. In view of the different nature of their contents, the agreements concluded with the Anglo-Saxon States cannot be incorporated in the Regulation. They would be added to the Convention and Regulation as a third act of the Conference. Any further additions could also, without difficulty, be treated in the same way. It would be desirable from every point of view that the relations established with the Anglo-Saxon States and the relations of the Conference States *inter se* should also be kept distinct as regards outward form. This would obviate any overlapping and consequent inconsistencies, and the two systems would not be connected more closely than might be desired.

## V.

All the elements necessary for a reply to the League of Nations Questionnaire have now been collected. The conclusions which may be drawn therefrom are as follows :—

(1) The Hague Convention of 1912 was accepted and approved by thirty States which took part in the Conference. They were agreed as to the general contents of the Convention and also as to the manner in which it was compiled by borrowing elements from the various systems of exchange law. The same approval was extended to the reservations made to the Convention.

(2) Now that a fresh endeavour is being made to unify the laws on bills of exchange there is no need to seek for fresh directions in which unification might become possible. It would be better to take the Hague Convention, which provides for all present possibilities, as the only point of departure and to make it the basis of the discussions of the third Conference.

(3) The negotiations would take place at a Conference which would have as its object and programme the revision of the work of the Second Hague Conference, in view of the time which has elapsed since its conclusion. From the legal point of view the third Conference is a continuation of the Conference of 1912 and should be identical with it in all respects. All the members of the Conference of 1912 should be invited to it, and in addition those countries which, in 1912, formed portions of participating States, but which have since become independent Powers.

(4) The Conference should not be preceded by discussions between a limited number of the States which were members of the 1912 Conference; and the discussions of the Conference should not be restricted to certain questions and proposals selected by such a group.



(5) The authorities directing the work of the revisional Conference should, following the example of the 1912 Conference, place no obstacles in the way of holding discussions on subjects within the scope of the Convention, or the Regulation, or coming under the head of relations with the Anglo-Saxon States.

(6) According to international law and under the terms of the Covenant of the League of Nations (Article 24 of the Treaties of Peace), the revisional Conference cannot be under the direction of the League of Nations or subject to its authority. The collaboration of the League of Nations should be conditional upon a request from the participating States, and, subject to any provisions to the contrary, the role of the League would consist solely in collecting information and furnishing any assistance that may be necessary or desirable. In view of the duties assumed by the Netherlands Government under the terms of the Convention, which still has binding force, it would be for that Government to summon and conduct the Conference.

(7) If, however, it were decided that the Conference and the League of Nations should collaborate, it would have to be laid down in such a decision whether this collaboration was limited to the direction of the Conference, or whether the third Conference was no longer to be a free and independent meeting of States such as were the previous Conferences. Under the rules laid down in the Hague Convention, any arrangement of the nature referred to above can only take effect if it is agreed to by the members attending the 1912 Conference. As the organisation of the League of Nations is rigidly and definitely fixed by the recent Treaties, its collaboration would in any case be in no way regulated by the Rules of Procedure of the League of Nations.

(8) Special discussions, entirely separate from the discussions on unification, would be instituted with a view to reaching an assimilation of the exchange laws of the Anglo-Saxon States and the other members of the Conference. In this connection, the participating States must leave no stone unturned to bring about an agreement between these laws, by means of modifications in the Hague Convention, so as to bring it into line, in certain points, with English law. If the nature of the questions under discussion requires it, the discussions on unification and assimilation might be held in common.

(9) Unless the Conference decides otherwise, no new members will be accepted until the end of the revisional Conference. This arrangement does not apply to countries mentioned at the end of paragraph 3.

(10) As regards the date of the meeting of the Conference, it would be preferable, so far as unification is concerned, to select a time when peace has again been restored to the world. If the enquiry instituted by the League of Nations, or circumstances of any other kind, should reveal the existence of a sincere and general desire for unification, the possibility of summoning the Conference at an earlier date might be considered, but no decision should be taken until the Governments have been approached through diplomatic channels.

VIENNA, *May 19th, 1923.*

(Signed) KLEIN.

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# REPORT

by **Mr. CHARLES LYON-CAEN**

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in the Faculty of Law in the University of Paris,  
Permanent Secretary of the "Academie des Sciences morales  
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French Delegate to the Hague Conferences  
of 1910 and 1912.*



[Translation.]

PARIS, April 13th, 1923.

SIR,

You were good enough to inform me of the decision of the competent organs of the League of Nations, to the effect that the League would take in hand the question of the unification of legislation in the matter of bills of exchange and promissory notes. At the same time, you informed me that the Council of the League of Nations had done me the honour to request that I should draw up a preliminary report in the matter, a mission with which Mr. Jitta, State Councillor of the Netherlands, and an English lawyer were also entrusted. Subsequently you gave me to understand that a lawyer representing German-speaking countries had also been chosen as a rapporteur, in accordance with my request.

In your letter of October 24th 1922, you stated the two main questions to which you wished me to reply. I shall attempt to do so as concisely as possible.

I will quote successively the text of the two questions which you addressed to me.

*First question : what are the points with regard to which it would be possible to suggest co-ordination between existing legislative codes and to bring them into line with legislation in Anglo-Saxon countries ?*

The question of bills of exchange and promissory notes forms an indivisible whole, the parts of which have the closest connection with each other. If an attempt is made, therefore, to unify legislation, the task must be undertaken in respect of the question as whole, only leaving matters of form on one side. The regulation of the latter must be left to the legislation of the individual countries. Among such questions for example, may be mentioned the forms of protests for non-acceptance or for non-payment. The diversity of laws as far as formalities are concerned does not cause any difficulty in practice.

It would seem however to be difficult and perhaps impossible to deal with the unification of the law as regards bills of exchange without attempting to achieve the same object in the case of the cheques. There is a very close connection between these two kinds of commercial instruments. The English Law of 1882 (The Bills of Exchange Act) in Article 73 defines a cheque as a bill of exchange drawn on a banker and payable on presentation. Gaps in the law concerning cheques are filled in all countries with the help of the provisions regarding bills of exchange. Thus any modifications which were made in the law regarding bills of exchange would have a repercussion upon the rules applicable to cheques.

In legislation which is common to all countries, efforts must be made to insert the provisions which are considered to be best, without reference to their origin. Ideas must undoubtedly be borrowed from Anglo-Saxon legislation but this legislation could not a priori be taken as a model, any more or less than that of any other country.

*Second question : What are the reasons for which the Governments signatory to the Hague Convention of 1912 have not, generally speaking, ratified it ?*

The work accomplished at the Hague in 1910 and 1912 was considerable and it would certainly be impossible, in any further attempt to unify legislation regarding

bills of exchange and promissory notes, to leave entirely on one side a Convention which was signed by the delegates of more than thirty States.

More than ten years have passed since that Convention was signed. It has not been ratified and it appears to have fallen into oblivion. It is natural that the League of Nations, in its desire to resume the work of unification which was attempted in 1912, should concern itself with the reasons why ratification did not take place.

Before replying to this question it is necessary to recall the general system which was established by the Convention of 1912.

The idea of only undertaking the unification of legislation in respect of bills of exchange and promissory notes drawn in one country and payable in another, was rejected for a decisive reason. It is not only in respect of these commercial instruments that diversity of legislation gives rise to a conflict of laws. A bill of exchange or promissory notes, payable in the country in which it was drawn, is sometimes endorsed in other countries. Moreover by confining oneself to unifying legislation in respect of commercial instruments payable in a country other than that in which they were drawn, one would complicate the existing state of affairs instead of simplifying it. To all the various laws already in force, a new law would be added, dealing particularly with the bills of exchange and promissory notes drawn in one country and payable in another.

The Convention of 1912 contains a fundamental provision whereby the Contracting States undertake to put into force in their respective territories the law annexed to the Convention, under the title of the « Regulation ». The delegates of the various States were not able however to agree on all questions. In respect of thirteen points, the Convention reserved the right to each State to adopt different provisions from those contained in the Uniform Regulation and certain questions were not dealt with in that Regulation such as whether the ownership of cover is transmitted as a matter of course to the successive holders, so that with regard to those questions diversity of laws may continue to exist.

The reasons which prevented the ratification of the Convention of 1912 are numerous and they probably vary according to the different countries. I will only mention the reasons which found favour in France.

No doubt the war of 1914-1918 constituted a general ground for neglecting the Convention of 1912. At the beginning of 1914 the French Government appointed a special Commission to draft a law which would introduce into the commercial code the provisions of the Regulation annexed to the 1912 Convention, subject to modifications with regard to the reserved questions. This draft was drawn up and printed, but it was not even laid upon the table of the Chambers.

The war is not however, the only factor which has impeded the ratification by France of the 1912 Convention. A certain amount of hostility was shown in legal and banking circles. The following are the chief reasons which were advanced against ratification.

The Convention, it was said, does not effectively establish uniformity of legislation. It leaves several questions on one side and with regard to thirteen points, it authorises each State to disregard the provisions of the uniform law.

Moreover, if Great Britain and the United States of America were not among the Powers signatory to the Convention, the advantages to be gained from the unification of legislation would be considerably reduced,—by the very fact that it would not apply to the two chief commercial countries of the world.

Finally, it was suggested that since Parliament could only either authorize or refuse to authorise the ratification of the Convention, together with the uniform law



annexed thereto, the individual right of amendment of the deputies and senators would be abolished in respect of an internal law containing at least eighty articles and that, in consequence, a rule of the constitution would be violated.

To complete the list of objections, it should be added that some persons considered that the uniform law annexed to the Convention of 1912 entered too much into questions of detail and form.

Do these various grounds of opposition to the ratification of the 1912 Convention or any other Convention with regard to the same system, still exist ?

It must be admitted that they have not disappeared.

Many of the reservations contained in the Convention, by virtue of which each State has the right to disregard the uniform law in respect of thirteen points, were inserted at the request of the French delegates and there would appear to be no general disposition in France to abandon these reservations. With regard to the other very numerous points however, uniformity would be obtained. Partial uniformity on an extended scale might prove advantageous.

Great Britain and the United States of America are not more willing now than in 1912, to adhere to a Convention, in virtue of which a law common to all countries would be adopted. The reasons which were given by the representatives of these two great States for not signing the Convention of 1912 still exist. It must, however, be admitted that in spite of this very regrettable circumstance, the achievement of uniformity of legislation as regards the other States would, as had been pointed out, have a very satisfactory result; only two great legislative systems would then exist in the world : (1) the system of the uniform law; and (2) the legislative system of the two great Anglo-Saxon States.

It is doubtful whether it can accurately be asserted that under the 1912 system, the individual right of amendment of Members of Parliament is abolished in respect of an internal law containing a large number of provisions, and that, consequently, a rule of constitutional laws is violated. But it must be admitted that it is in practice objectionable, to say the least of it, that Parliament representatives should have to insert in the internal law of the country many provisions which they cannot amend (except in the case of the questions which form the subject of reservations) even if they consider them to be undesirable.

What consequences may be drawn from these various facts?

It would be quite premature, and indicative of wrong methods to examine one by one the provisions of the uniform law annexed to the 1912 Convention, in order to decide whether they should be maintained or modified. Certain questions of a general character must first be dealt with. The chief of these questions are :

(1) Do Great Britain and the United States of America persist in their refusal to sign a convention similar to that of 1912?

(2) Are the other States which signed the Convention of 1912, and in particular France, prepared to take part again in an attempt to unify legislation in the matter of bills of exchange and promissory notes ?

(3) If such an attempt is again made, should the question of cheques be included ?

(4) Should we persist in the system adopted at The Hague in 1912?

If we do not persist in that system, what other system could be adopted? Should we not, for example, confine ourselves to drawing up the text of a model law and recommending the various States to endeavour to bring their national laws into

conformity therewith? Apart from any Convention imposing obligations upon States, a certain measure of co-ordination is being effected as between the laws of the different countries. Thus a law, which was passed on February 1922 brought the French commercial code more into line with the legislation of the majority of States, by doing away with the necessity for indicating the value given (*valeur fournie*) in bills of exchange and promissory notes and by providing that the ownership of an instrument may be transferred by an endorsement consisting merely of the signature of the endorser.

It is true that the League of Nations made an enquiry among the various Governments in order to obtain their opinion with regard to the advisability of a further attempt at unification. But was this enquiry well conducted? Was it conducted by persons thoroughly acquainted with what happened in 1912 and what has happened since? Were the questions addressed to the various Governments well expressed?

I venture to say that I have the greatest doubt on this subject.

As regards the methods of work, I will only make a few observations: \*

As soon as it is considered that a further attempt should be undertaken to unify legislation in the matter of bills of exchange, promissory notes and, possibly, cheques, it will be necessary to consult both lawyers and practical men of business (bankers and merchants) and to ask them to deliberate in common as was done at The Hague in 1910 and 1912, for it is essential that the uniform law should contain provisions which conform alike to the principles of law and to the requirements of business. If the great mistake were made of causing two categories of persons to deliberate separately, there would be a risk of obtaining contradictory or divergent opinions. Lawyers and bankers possess knowledge in this connection which is often of different kinds, but that possessed by the one category is complementary to that possessed by the other.

It would be advisable if the choice of lawyers and bankers or merchants in each country were made by the Government concerned or, if it is desired to utilise the services of the League of Nations, by that body on the recommendation of the Government concerned. Governments alone are in a position to know who are the most competent men and it is essential that the persons chosen should possess the confidence of their Governments. It is a question of making alterations in the national laws of each State and not purely an international question, such as those with which the League of Nations is generally concerned.

It would certainly be desirable that the four rapporteurs should meet together at not too distant a date, in order to consider questions of a general character and to give their advice with regard to the organisation of the work, leaving entirely on one side the question of the provisions which it may be expected that all countries will adopt.

It cannot be denied that it is a task which will require much time, in spite of the work accomplished at The Hague in 1910 and 1912. Many meetings and conferences of a prolonged character will be necessary, in order to arrive at results of any value. A great quantity of printing will have to be done (reports and minutes of meetings); the persons whose services are requisitioned will have to spend many weeks in foreign countries and travelling expenses will consequently be incurred. In 1910 and 1912, the cost of printing, which was considerable, was borne by the Netherlands Government. The delegates of the various States received allowances from their respective Governments. Who will be responsible for the considerable expenditure entailed in connection with printing and personal allowances if a new attempt is undertaken? Will it be the various States? These are, no doubt, questions of a purely material character, but



they are nevertheless of importance and it would be a great mistake to engage upon the long and complicated task which it is proposed to undertake without having determined them.

In view of the considerable amount of time which the investigations and deliberations are likely to require, there is no objection to beginning the work at once, although we are naturally preoccupied at present with other questions. By the time that important results are obtained, peace, it may be hoped, will be definitely established in the world.

I have the honour to be, Sir, etc.,

(Signed) Ch. LYON-CAEN.







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