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UNIFICATION AND PRESENT STATUS OF NEGOTIABILITY LEGISLATION IN AMERICA

HUGO MANUEL BUNGE GUERRICO*

1. INTERNATIONAL PROJECTS AND CONGRESSES

The diversity of negotiable instruments laws introduces a serious element of legal instability in international mercantile transactions that are effectuated by means of bills of exchange. In its passage through different state jurisdictions, an instrument of this type will give rise to very diverse rights and obligations according to the territorial law that may apply.

To remedy the uncertainty of this situation, attention has been given to the desirability of unifying the statutory provisions relating to the subject. In support of the practicability of the idea, Champcommunal most appropriately observes that legislation concerning negotiability is one of the fields of private law in which unification is most readily attainable. The bill of exchange, according to this author:

"Answers to needs which are everywhere the same and which in consequence demand identical measures. Disassociated from all religious, moral, or social ideas, it raises only technical questions, and this abstract character also is highly favorable to unity."

In the international sphere, various endeavors looking to uni-

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"La lettre de change répond à des besoins qui sont partout les mêmes et qui, en conséquence, réclament des mesures identiques. Placée en outre en dehors de toutes les idées religieuses, morales ou sociales, elle ne soulève que des questions techniques et ce caractère d'abstraction est encore bien favorable à l'unité." Champcommunal, "Etude sur la lettre de change" (1894) 8 An. D. Com. Fr. (Doctrine) 1.
fication have been initiated. In 1863, in the course of the meeting of the Association international pour le progrès des sciences sociales, the Dutch jurist Asser maintained the possibility and expediency of uniform legislation relating to bills of exchange.

Years later, under the auspices of the Belgian Government, there were held at Antwerp, 1885, and at Brussels, 1888, congresses of commercial law which approved and recommended drafts of uniform laws.

In 1909, the Government of the Netherlands, having received a proposal from the Governments of Italy and Germany, called an official conference for the purpose of preparing a uniform law of negotiability. The conference met at The Hague, June 23, 1910. Previously, a questionnaire had been circulated among the States which were to participate, which, with the response of the Governments, served as basis of the discussions. At the completion of its deliberations, the conference approved a preliminary draft of a uniform law and petitioned the Dutch Government to call another international meeting in order to fix the definitive text, once the preliminary draft should have been appropriately studied.

In compliance with the recommendation made on this occasion, a second conference took place at The Hague in 1912, which approved a Uniform Regulation and an international convention, whereby the States participating in the conference undertook to introduce the Uniform Regulation in their respective territories. The practical results of the Convention were negligible; it was ratified by a very few countries only.

Until the financial conference at Brussels in 1920, the problem remained untouched. On this occasion, the conference expressed the opinion that the League of Nations might well initiate measures looking to unification. In accordance with this resolution, the Economic Committee of the League designated a committee of four experts, who, after making detailed studies, concluded that the wide divergencies existing among the systems of negotiability would render impossible the establishment of a common universal law. The opinions of the experts on this committee were published by the League and sent in 1923 to all its members.²

In June, 1925, the Congress of Brussels of the International Chamber of Commerce approved a resolution in favor of the unification of negotiable instruments laws. In view of this resolution,

the Economic Committee of the League considered that there was in reality interest in the subject and resolved to resume the work. Accordingly, it appointed a new group of technical experts who, like the former Committee of Experts, expressed a pessimistic point of view at the meeting held in December, 1926.

A year later, the International Chamber of Commerce at the Stockholm Congress of 1927, renewing its emphasis on the topic, approved a draft uniform law and expressed the hope that the League of Nations would convene a third international conference dedicated to unification of negotiable instruments laws.\(^3\)

The Council of the League accepted the suggestion and authorized the holding of the conference, which met in Geneva in 1930. The conference was attended by delegates from many countries, representatives of banking associations, of the International Chamber of Commerce, and of the Rome Institute for the Unification of Private Law. The Hague Uniform Regulation of 1912, the draft of the International Chamber of Commerce, and a report prepared in 1928 by a group of jurists at the instance of the Economic Committee of the League, formed the basis of the deliberations.

On June 7 of the year in question, the Geneva conference approved three conventions. The first, including two annexes, contains the Uniform Law and the text of certain reservations empowering the contracting States to substitute on certain points special provisions of internal law for the dispositions of the Uniform Law. The second convention relates to rules of private international law and the third fixes principles concerning fiscal imposts on commercial paper.\(^4\)

With minor modifications, the Geneva Uniform Law reproduces the text of the Hague Uniform Regulation of 1912. In commendation of the conclusions approved at the conferences of 1910 and 1930, it may be stated that the uniform acts thereby sanctioned represent a most important and advanced step. With an admirable spirit of conciliation, they combine in a unified system provisions

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\(^3\)Ibid.

\(^4\)The 1912 Hague Conference did not create this division. The Uniform Regulation contained also principles on conflicts of laws. The procedure followed at Geneva, making this division into three distinct and separate conventions, facilitates approval of the results by states which may be interested to accept only one of the conventions. For example, England, which has repeatedly shown itself opposed to every plan for unification of negotiable instruments laws, nevertheless has accepted the third convention on stamps. See the discussion in Balogh, “Critical Remarks on the Law of Bills of Exchange of the Geneva Convention” (1934) 9 Tulane L. Rev. 168 at 168.
taken from the English system, from the French doctrine, and from the Italian and German legislation.

From the practical point of view, the Geneva Uniform Law has been more fortunate than the Uniform Regulation of 1912. It is already in effect by virtue of ratification by various European States, including Germany, France, and Italy.⁵

2. Unification in America

Projects in this field have been numerous in America. As Dr. Gregorio del Real, professor at the University of Havana, well says, the work of unification of negotiable instruments boasts an ancient lineage on our continent.⁶

The first precedent appears in 1878. A juridical congress met under official auspices at Lima, Peru, in that year. This international gathering was attended by representatives of various countries in South America. The Juridical Congress of Lima did not attempt to formulate a uniform law on negotiable instruments; it limited its efforts solely to establishing rules of private international law.⁷

Eleven years later there assembled at Montevideo the South American congress that bears its name. As in the case of its pre-
decessor, the motions adopted on this occasion did not seek to unify the American legislations in their divergent points, but endeavored rather to harmonize them by means of conflicts of laws rules.

On May 3, 1900, an American juridical congress convened by the Institute of Lawyers of Brazil met at Rio de Janeiro. In thesis XII on bills of exchange, the congress unanimously agreed that:

(a) A bill of exchange is an instrument of credit, independent of any other contract;

(b) Remission from place to place, declaration of value received, and provision of funds are not essential conditions of a bill of exchange;

(c) Endorsement is inherent in the nature of a bill of exchange. It may not be impaired by any clause prohibiting transfer of the title.

In the year 1915, the First Pan American Financial Congress, held at Washington, supported the need of unifying the American commercial laws and resolved to create the Inter-American High Commission on Uniform Legislation that it might study the means of effectuating the task of unification.

The activities of this Commission have given special impetus to the efforts to unify the negotiable instruments laws in America. In 1916, it held a session at Buenos Aires, at which the provisions of the Uniform Regulation were analyzed. As a result of these deliberations, the Inter-American High Commission resolved to recommend to the American States the adoption of the Uniform Regulation, with certain limitations and reservations. In the prosecution of its activities to promote unification, in 1918 the central executive council of the Commission published in Washington an interesting study of comparative law respecting bills of exchange in the American countries. Finally, in 1931, it set forth a series of principles which might be adopted in a convention of

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8The Provisions on the subject are to be found in title IX, "De las letras de cambio," arts. 26-34, Tratado de Derecho Comercial Internacional. Idem 90 ff.

9In connection with the question, see 5 Carvalho de Mendonça pt. 2, 163, n. 5.

10Alta Comisión Internacional, Buenos Aires, 1916, Actas iv. Owing to the opposition aroused by article 74 of the Uniform Regulation, which established the law of nationality as the rule determining capacity, the Inter-American High Commission expressly resolved to postpone study of the topic to another meeting.

11Alta Comisión Internacional, Estudio sobre una legislación uniforme en materia de letras de cambio y pagarés en las naciones americanas, Wash-

unification of negotiable instruments in America, suggestions which were included in the form of a draft law in the program of the Fourth Pan American Commercial Conference.\(^2\)

The International Conferences of American States, which are held periodically every five years in different parts of the continent, also have evinced particular interest in the topic of unification of negotiable instruments laws.

The Sixth International Conference, held in 1928 at Havana, Cuba, upon the suggestion of the Mexican delegate, Dr. Julio Garcia, resolved to recommend to the American countries the adoption of a uniform negotiable instruments law on the basis of the Hague Regulation.\(^3\) On this occasion, Dr. Garcia presented in addition a first preliminary draft of a uniform law.\(^4\) On the other


\(^3\)The text of the resolution is as follows:

"The Sixth International Conference of American States resolves:

1. To recommend to the States which form the Pan American Union the adoption of a uniform law on bills of exchange and other commercial paper, to be based upon the regulations approved at The Hague in 1912, with the following amendments:

I. The chapter denominated 'on Conflicts of Laws' and therefore Articles 74, 75, and 76, which constitute it, shall be eliminated from Title I of the regulation relative to bills of exchange.

II. Commercial paper equivalent to the bill of exchange, the draft, and the money order shall be the subject of the provisions of said Title I, the preferential use of the word 'draft' in designating all of them being recommended.

III. The voucher shall be the subject of the provision of Title II, dealing with promissory notes, as commercial paper equivalent to the latter.

IV. A third title, dealing with checks, and a fourth title, dealing with letters of credit, shall be added.

2. A commission of jurists, to be appointed for the purpose, or the Inter-American High Commission, shall proceed to draft a project of law to which the preceding resolution refers, carefully revising the text of the Hague regulations, formulating the additions which pertain to the new subjects, and, in general, taking into consideration both doctrinal and scientific principles of the laws regulating foreign exchange and the conditions and needs of commerce on our continent.

3. Once the preceding resolution has been complied with, the project of uniform law drafted shall be submitted to the consideration of the next International Conference of American States, to the end that it may reach a definitive decision with regard to the formal adoption of said law by the nations of this continent.

4. A preliminary draft of a project of uniform law in which the reasons why the Sixth International Conference of American States proposed it are expressed opposite each precept, is attached hereto as a contribution to the work which must be undertaken pursuant to the preceding resolutions. This resolution shall be submitted to the corresponding Technical Commission of Investigation to the end that it proceed to prepare a project of law." Sixth International Conference of American States, Havana, 1928, Final Act 121.

\(^4\)The advance draft of Dr. Garcia reproduces with some modifications the text of the Uniform Regulation. For example, it suppresses all provisions on conflicts of laws, omits denomination as an essential requisite of a nego-
hand, the Conference approved a code of international private law which prescribes rules on conflicts of laws in the field of bills of exchange. Consequently at Havana, as the Argentine author, Williams, pertinently observes, two criteria were established: one which only endeavors to resolve or to determine the conflict of legislations by means of the application of principles of private international law, and the other which seeks to avoid the conflict by complete reform of the national laws, through the adoption of a standard law.

The Seventh Conference, held at Montevideo in 1933, resolved to request the Governing Board of the Pan American Union to designate a commission of experts to study the problem of unification of negotiable instruments laws on the basis of the Geneva and Hague Conventions.

In compliance with this resolution, the Governing Board of the Pan American Union appointed the commission of experts. This commission met at Washington the first of May, 1935, and decided that its short term of existence made it impossible for the commission to formulate in practical form a draft proposal of unification.

The Eighth Conference held at Lima in 1938 resolved to create, the complete text of the advance draft, with commentaries made by the author, is published in the Diario of the Sexta Conferencia Internacional Americana, Havana, 1928, 381 ff.

16 Sixth International Conference of American States, Havana, 1928, Final Act 56 ff.
17 Williams 135 ff.
18 The Seventh International Conference of American States:
"Resolves:
1. That the Governing Board of the Pan American Union shall appoint a Commission of experts composed of five members who shall formulate a draft project on the unification of the law of exchange, taking as a basis the conclusions of the Conventions signed at The Hague and at Geneva, provided such unification is possible; and if it should be found not to be so, to recommend the most adequate procedure to reduce to a minimum the systems now prevailing in the several legislations on bills of exchange, drafts and checks, as well as in the reservations which have been attached to conventions.
2. The report shall be submitted in 1934 and forwarded to the Governing Board so that the latter may in turn submit it to the consideration of the Governments, members of the Pan American Union, for the purposes indicated." Approved December 23, 1933. Seventh International Conference of American States, Montevideo, 1933, Final Act 24.
19 It includes M. Trucco, Ambassador from Chile, M. Lopez Pumarejo, Ambassador from Colombia, Héctor David Castro, Minister from El Salvador, Guerra Everett, Chief of the Section on Commercial Law of the Department of Commerce of the United States, and John Jay O'Connor, Chief of the Financial Section of the Chamber of Commerce of the United States.
20 See the report of the commission in the Diario of the Octava Conferencia Internacional Americana, Lima, 1938, 186 ff.
with more general objectives of unification in view, a permanent commission of jurists, which, in collaboration with the Law Faculty of the Universidad Nacional Mayor of San Marcos, with more general objectives of unification in view, a permanent commission of jurists, which, in collaboration with the Law Faculty of the Universidad Nacional Mayor of San Marcos, should undertake studies and prepare draft proposals of unification comprising the civil and mercantile laws of America.

The permanent commission, at present composed of Professors Manuel Augusto Olaechea, of the said University of San Marcos, and Wesley S. Sturges of Yale University, and Dr. Eduardo Arroyo Lameda, in initiating its activities, elaborated in June, 1941, a plan for the work of unification. In this plan, the permanent commission expresses the opinion that it is not possible to aspire to complete uniformity of American civil and commercial law, and that the task is feasible only for certain special institutions; there are mentioned, among these, instruments of exchange, aeronautical private law, private arbitration, and literary and artistic property.

In 1941, on the occasion of the first meeting of the Inter-American Bar Association, at Havana, Professor Gregorio del Real presented a draft resolution, soliciting the cooperation of the bar associations in the work of unifying American negotiable instruments law in accordance with the rules established at Geneva and The Hague.

We may cite also in connection with the subject, the results of the Second South American Congress of Private International Law, held in Montevideo in 1939 and 1940, for the purpose of amplifying and reforming the provisions sanctioned by the first Congress of 1889. The part of the treaty on commercial law referring to bills of exchange, in addition to repeating the principles approved by the previous treaty of 1889, introduces certain innovations based on the Geneva Conventions.

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21 The plan of the permanent commission is published in 5 Rev. D. y Cien. Pol. (Peru) 421 (1941).
22 Articles 23-35.
23 For example, article 34 of the 1940 Treaty adopts the provision contained in article 1 of the Geneva Convention on the Stamp Laws in connection with Bills of Exchange and Promissory Notes, prescribing:

“Los derechos y la validez de las obligaciones originadas por la letra de cambio, cheques y demás papeles a la orden o al portador, no están subordinados a la observancia de las disposiciones de las leyes sobre el impuesto de timbre. Empero, las leyes de los Estados contratantes pueden suspender el ejercicio de esos derechos hasta el pago del impuesto y de las multas en que se haya incurrido.”

In the same way, articles 30 on payment of a bill in foreign money reproduces almost entirely article 41 of the Uniform Law.
3. **Survey of the Question in the American Doctrine**

In general, the doctrine of the continent is in accord, and believes in the possibility of the unification of negotiable instruments laws in America. Nevertheless, there exist differing opinions concerning the legal provisions which should be taken into account, and respecting the manner of accomplishing the object.

In the view of the majority of authors, any proposal of unification of negotiable instruments laws in America should take as its basis the results of the Geneva and Hague Conferences.

The North American jurist, Phanor J. Eder, expresses an entirely distinct thought. He conceives that only by accepting the Anglo-American provisions and jurisprudence will uniformity of negotiable instruments in America be achieved. He writes:

"It will be necessary to abandon uniformity, unless the United States should succeed in persuading the Latin American countries, not merely to abandon the continental European system which they have at present and to adopt in the first place the Anglo-Saxon system, but also to follow step by step our jurisprudence and interpretation of the law."

The Argentine professor, Malagarriga, contemplating precisely opinions such as those of Eder, maintains that unification of negotiable instruments laws can never be realized in America, if acceptance of the Anglo-American rules of law in their entirety be adopted as the solution. He adds on the point:

"Our legislation respecting negotiable instruments, that of Argentina as well as that of the other Spanish American countries, is not perfect or original, but, while this might be a determining reason for adhesion to a uniform regulation agreed upon at an international congress on the basis of concessions by one legislation to another and by all to the real needs of world commerce, it cannot be sufficient cause to abandon the laws on negotiability that..."
our tribunals have been applying for many years and to adopt en bloc a legislation which we know but imperfectly and which, moreover, is not even applicable in all the states of the North American union.”

Dr. Gregorio del Real, professor of the University of Havana, in expressing his opinion on the manner in which the task of unification is to be accomplished, states that the movement of unification must follow a preliminary process of internal amendments which will eliminate from the national legislations such provisions as are absolutely contrary to the modern principles of negotiability. According to this professor:

“The day on which each country of our continent shall wipe out these internal idiosyncrasies, so far as they are made up of requirements already outmoded in modern doctrine, the adoption of the Pan-American Uniform Law will become a problem to be resolved by the simple convocation of Plenipotentiary Delegates, who shall ratify with their signatures the realities of fact, already in force.”

4. Position of the United States in the Unification Movement

If it be sought to attain complete and satisfactory results in the work of unification of negotiable instruments law in America, the participation of the United States must necessarily be had. Such cooperation will be difficult to achieve, although it does not constitute a completely impossible undertaking.

Fundamentally, two circumstances stand in the way of acceptance of a uniform negotiable instruments law on the part of the United States.

In the first place, the predominant opinion in this country is opposed to the acceptance of principles based on foreign legal systems. The Anglo-American jurist exhibits great predilection for the traditional principles of the common law and regards with

27Nuestra legislación cambiaria no es, la de la Argentina como la de los demás países hispano-americanos, perfecta ni original, pero si esto pudiera ser razón determinante de la adhesión a una reglamentación uniforme convenida en congreso internacional por concesiones de unas legislaciones a las otras y de todas a las verdaderas exigencias del comercio mundial, no puede ser causa bastante para abandonar las leyes cambiarias que desde hace años nuestros tribunales aplican y para adoptar a libro cerrado una legislación que solo imperfectamente conocemos y que, por lo demás, ni aún es aplicable en todos los Estados de la Unión norte-americana.” 4 Malagarriga 63.

28Del Real, “Inter-American Unification of Commercial Law with Respect to Negotiable Instruments” (1941) Inter-American Bar Association, 1 Reports 269 at 271.
suspicion any uniform international statute that contains precepts in conflict with his law.\textsuperscript{29}

In the second place, there are difficulties of a constitutional nature. The Federal Government of the United States is without power to legislate internally on negotiable instruments, in consequence whereof it is unable to cooperate actively in international conferences which may impose upon the participating States the obligation to reform their internal legislations in accordance with a standard law.

This want of authority has been the principal reason for the policy of abstinence by the Government of the United States in the international work of unification, as evidenced first at the Conference of The Hague and followed later at the meeting of the Inter-American High Commission at Buenos Aires and at the Geneva Conference.\textsuperscript{30}

The constitutional difficulty mentioned certainly represents a grave obstacle. Nevertheless, it is the author’s belief that in part this lack of authority could be resolved, if, in view of the situation, in the special case of the United States, the sphere of application of any future draft proposal in its favor should be limited to foreign bills issued in international transactions.\textsuperscript{31} In the writer’s opinion, the Federal Government of this country could validly put into effect an international law containing a limitation of this kind.

Action of this nature would be justified by the broad powers to regulate external commerce with foreign nations and to make international treaties, conferred by the Constitution of the United States upon the central authority.\textsuperscript{32} With special reference to the last power mentioned, the Supreme Court has

\textsuperscript{29}However, there exist at present indications which promise for the future a more favorable change in this attitude of isolationism in the Anglo-American legal circles. As evidence, there may be cited a resolution of the American Bar Association of January, 1940, recommending the formulation of a code of international commercial law in America. 65 A. B. A. Rep. 414 (1940).


\textsuperscript{31}The limitation which we recommend could be established in the form of a reservation in an international agreement on the subject.

It is to be noted that this suggestion only is intended to resolve constitutional difficulties in the United States. For the other countries, the uniform law should cover all kinds of bills, domestic and foreign. In agreement with the majority of the authors, we do not believe it desirable that as a general rule the uniform law should apply only to bills issued internationally; it should control also a country’s internal operations of exchange.

\textsuperscript{32}Constitution of the United States, art. 1, sec. 8; art. 2, sec. 2.
established by various decisions that the Federal authority, in all that refers to rights and obligations having some international character, has competence to sign treaties, even though as a result the peculiar powers of the states in some measure may be impaired. 33

The author does not fail to recognize that the adoption of a uniform law only for international bills of exchange might occasion internal confusions in the United States as a result of thus introducing a double system of negotiable instruments laws, one regulating foreign bills, and the other regulating internal. But in reality the dissimilarity which at the outset would exist between the Federal negotiable instruments law for international commerce and the internal law of the states would gradually disappear. The Federal law would exercise great influence. Serving as a model, it would undoubtedly promote reforms reflecting its principles within the state jurisdictions. 34

5. THE PROBLEM OF UNIFICATION OF NEGOTIABLE INSTRUMENT LAWS IN AMERICA

It is believed that, to have probability of success, the work of unification of negotiable instruments laws in America must inevitably follow three basic principles.

In the first place, as has already been stated, the unification movement has to include the United States. There must be no geographical restriction by countries in the task of unification in America. Even though the writer concedes that Latin America, since it has inherited a tradition tending toward universality is a much more promising field for unification than Anglo-Saxon America, it is not believed that it would be at present opportune to establish regionalisms in American private law. 35

33 See Missouri v. Holland (1920) 252 U. S. 416 and De Geofroy v. Riggs (1890) 133 U. S. 258. 34 Malagarriga, in an article studying the situation in the United States, expresses a contrary opinion. He does not consider practical the jurisdictional division into domestic and foreign bills. "Actual probabilidades de una legislación cambiaria uniforme" (1919) 20 An. Fac. D. y Cien. Soc. Buenos Aires 327. 35 In this connection, Malagarriga points out the error which in his opinion the Second South American Congress of International Private Law of 1940, made by limiting its efforts toward unification to formulation of a unified law for South America, and as a consequence leaving outside of unification activities the countries of North and Central America. He said: "Creo que debe eliminarse de nuestra acción internacional americana, todo cuanto tienda a dividirnos, pues América debe, hoy más que nunca, mostrarse una, a pesar de las diferencias que existen entre los países que la integran." "Las actuales probabilidades de una legislación comercial uniforme en América" (1941) 2 Rev. D. Com. (Arg.) 389.
In the second place, the work of unification should follow very closely the results achieved at the Geneva and Hague Conferences. No more should the principles of negotiability of the Anglo-American legislations be neglected. It is the author’s belief that on certain points the Anglo-American law contains provisions that might advantageously be assimilated. The Geneva Uniform Law itself represents a forward step in concession to Anglo-American rules. Nevertheless, the writer feels that it should be possible to advance further in this direction.

Finally, any plan of future unification of negotiable instruments law must exclude from its text principles relating to conflicts of laws. It was precisely the rules of private international law, inserted in the text of The Hague Uniform Regulation that have been the principal cause operating against acceptance of this Regulation in various South American countries.6

6. BRIEF SURVEY OF EXISTING AMERICAN LEGISLATIONS

This preliminary chapter concludes with a rapid and summary survey of the laws respecting negotiable instruments existing in America and their principal characteristics.

In the Argentine Republic, the present Code of Commerce dates from the year 1889. It is very difficult to determine the orientation followed by this code in the part legislating on bills of exchange. In agreement with the German law of negotiability, it does not require statements of cause; it suppresses remission from place to place; and establishes the principle that a bill of exchange

—The Inter-American High Commission on Uniform Legislation, at its Buenos Aires meeting in 1916, expressly refrained from making any statement on conflicts, an attitude motivated by the grave discussions which that subject stimulates. Also, the Sixth International Conference of American States, in its resolution recommending approval of the Hague Regulation to the American countries, omitted from the text of its recommendation the provisions on conflicts. On this occasion, the delegate from Mexico, explaining his point of view on the matter, said:

“El Capítulo del Reglamento de la Haya relativo a ‘Conflictos de Leyes’ es ocioso e inútil y contrario además a la naturaleza misma de una ley uniforme, que precisamente se aplicará en todos los países por igual, excluyendo toda posibilidad sobre conflictos de leyes, por lo cual debe suprimirse el referido Capítulo, evitándose las discusiones y dificultades a que ha dado lugar.” Sexta Conferencia Internacional Americana, Diario 381.

While the present author opposes the inclusion of provisions on conflicts in the text of the uniform law, on the other hand, he sees no objection to the adoption, to provide for special situations, of the expedient followed at the Geneva Conference of 1930. On this occasion, at the same time that the uniform law was accepted, an independent convention on conflicts of laws was approved.
constitutes as respects each person who signs a distinct and personal obligation. On the other hand, following the French Code and doctrine, it prescribes the clause "to order" as an essential requisite, instead of negotiatory denomination, contains dispositions relating to provision of funds, and directly opposing the principle of independence of signatures on a negotiable instrument. It enacts that a forged endorsement does not transfer title to the bill and that the acceptor of a forged bill can assert the defense of forgery against the holder in good faith. 37

The Mercantile Code of Bolivia has now been in existence more than one hundred years. Promulgated on September 30, 1835, it is based almost entirely on the Spanish Code of 1829. The Bolivian text adopts in its entirety the antiquated concept that a bill of exchange is a humble means to execute a pre-existing contract. Consequently, it requires that the bill be drawn from place to place and prescribes the declaration of "value received" as an essential clause of the bill. 38 Like its Spanish model, the Bolivian Code contains, moreover, a provision that does not at present exist in any other American legislation: it prohibits endorsement in blank. Thus, article 385 provides:

"It is forbidden to sign an endorsement in blank on pain of the author thereof being unable to recover for the amount of the bill which he has transferred in this manner, or of returning what he has received." 39

In Brazil, Decreto No. 2044 of December 31, 1908, has replaced the part of the Code of Commerce of 1850 that legislated on this subject. The principal author of the reform was the eminent Brazilian jurist, José A. Saraiva. Decreto No. 2044 is based on the German law, although not entirely reproducing its provisions. It requires negotiatory denomination, declares the interest clause of no effect, allows bills to the bearer and bills incomplete or in blank, considers endorsability the most essential element of nego-

37 Arg.—C. Com. arts. 602, 606, and 735, 600, 617 ff., 629 and 647. In recent years, emphasis has been given to a movement in favor of reform of the commercial code in accordance with the principles of Geneva. In this connection see Instituto Argentino de Estudios Legislativos, pub. n. 6, Sección de Derecho Comercial n. 1, El derecho cambiario argentino y la legislación uniforme, Proyecto de reforma.

In 1940, the Primer Congreso Nacional de Derecho Comercial Argentino approved a declaration favoring the adoption of the Geneva Uniform Law.

38 Bol.—C. Merc., arts. 349 and 362, inc. 5.

39 "Se prohibe firmar endoso en blanco pena de no poder reclamar el que lo hiciere, por el importe de la letra que haya transferido de esta manera, o de devolver el que lo hubiere percibido." Bol.—C. Merc., art 385.
tiable instruments, and provides for accelerated maturity of bills in case of protest for failure of acceptance.40

By legislative decree No. 3756 of August 27, 1918, Brazil approved the international Convention on the unification of laws relative to bills of exchange and promissory notes celebrated at The Hague in 1912. Nevertheless, the Uniform Regulation to which the Convention refers is not in effect in Brazil and Decreto No. 2044 continues in force. It is considered that the text of the Uniform Regulation, to be effective, must in turn be enacted as law.

Until the year 1925, the Chilean code, adopted in 1865, followed, in the part that is under consideration, the principles of the Spanish and French system of negotiability. Decreto No. 777 of December 19, 1925, introduced fundamental reforms in the Chilean legislation. It suppressed the value clause and remission from place to place, and established the principle of independence of the signatures on negotiable instruments.41

In Canada, the Anglo-Saxon principles of negotiability prevail. In 1890, the Canadian Parliament adopted the English Bills of Exchange Act, with certain minor modifications.42 The Canadian Bills of Exchange Act had the effect of unifying in a single law the various provisions that existed in Canada respecting negotiable instruments.43

In 1902, the Ley de Cambio of Costa Rica replaced the provisions on instruments of credit contained in the Costa Rican Code of Commerce of 1853. This law represents an interesting combination of principles taken from the English Bills of Exchange Act and from the Spanish legislation.

On the instance of a North American financial commission, Colombia in 1923 adopted Ley 46 “sobre instrumentos negociables.” Ley 46 is a translation into Spanish of the Negotiable Instruments Law of the United States. The statutory text referred to replaces the provisions on this subject contained in the Codigo de Comercio Terrestre of 1887, although not completely, since Ley 46 expressly

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40Bra.—Dec. 2044, arts. 1, No. I; 44, No. I; art. 1, No. IV; 4 and 8; 19.
41See arts. 633, 637 and 663 of the C. Com. of Chile, modified by Dec.—ley 777, of December 19, 1925.
42Especially on maturity on holidays, the manner of giving notice of dishonor, and presentment for payment. Can.—B. E. A., secs. 42, 97 and 187.
43In particular, it rendered ineffective articles 2279 to 2354 of the Civil Code of the Province of Lower Canada, which had been in force since 1866. The provisions of this Civil Code are very interesting. On a foundation of French principles of negotiability, it accepts many provisions of the Anglo-American system.
provides that it affects only dispositions that may be contrary thereto. Thus, at the present time in Colombia, Ley 46 and the provisions of the Codigo de Comercio Terrestre which are not in conflict with the said law, are in force. The present author ventures to formulate certain criticisms of this Colombian law of negotiable instruments which, it would seem, was put into effect in a precipitate manner.

In the first place, there are serious errors of translation which render the meaning of the legal text unclear. The Spanish version, accepted by the Colombian legislator, in certain cases alters and transforms the true meaning of the words used in the North American act.\footnote{In accord with the present writer's opinion, Professor Cock, of Colombia, maintains that Ley 46 is not an accurate transcription of the Negotiable Instruments Law, and states:}

"Los errores de traducción que se hallan en el texto español adoptado por el Congreso colombiano o bien les quitan o menoscaban su valor genuino a los preceptos, o los deforman o cambian substancialmente, borrando asi muchas veces el natural alcance de sus principios jurídicos fundamentales." "Instrumentos negociables" (1929) 11 Rev. Acad. Col. J. 410.

In the second place, Ley 46 adopts a procedure of legal techniques that is subject to criticism. It introduces grave difficulties of interpretation by not specifically designating which are the articles of the Codigo de Comercio Terrestre that are repealed and which are those that are in force. At present, it is very difficult to know whether a given provision of the Codigo de Comercio Terrestre has been replaced by Ley 46 or not.

Finally, the third of our criticisms, the most important of all, concerns the adoption as such of the Negotiable Instruments Law in Colombia. In agreement with the opinion of Malagarriga mentioned on preceding pages, the present writer does not consider it desirable that American countries having the continental legal tradition and culture should adopt en bloc the Negotiable Instruments Law or any other Anglo-American statute. He does not oppose acceptance of Anglo-American principles of negotiability; on the contrary, in various parts of this work, their adoption is recommended, but, in turn, the expedient followed by the Colombia legislators seems a serious mistake. The laws of negotiability do not form a unique unit within the legal heritage of a nation. They are intimately linked with provisions of the civil and commercial law, which frequently serve as sources and as complementary and subsidiary bases of interpretation. Thus, it is possible clearly to observe the confusion that the adoption of an Anglo-American negotiable instruments statute, segregated from the other principles of its
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legal background and interpreted in conformity with civil law norms, may occasion.

The Colombian professor, Cock, maintains a similar point of view. Referring to Ley 46, he observes:

"This law, in its character . . . as a specific legal system of negotiability, pertaining to a particular legal group, was crudely attached to a specific legal system of negotiability, pertaining to a different group; and, not only this, but what is perhaps still more grave, is that these differing specific legal systems of negotiability have as substratum, which, while illuminating their respective provisions, serves as subsidiary law, profoundly different civil and commercial legislation, as are those of Roman origin (ours) and those based on the English common law (the Anglo-American), wherefrom it must perforce be agreed that our legislation on negotiable instruments constitutes a legislation sui-genereis and a rare specimen of juridical procreation worthy to be considered by those versed in the study of the formation of law in these days, as a case of the most extravagant abnormality."45

Cuba at present has in force the Spanish Code of Commerce of 1885. This code introduces two important modifications in the first Spanish text of 1829. It suppresses remission from place to place and allows endorsement in blank, which was prohibited by its predecessor. Nevertheless, it retains the requisite that a statement of value in the bill is necessary and does not admit the principle of autonomy of signatures on negotiable instruments.46

In 1930, the commercial section of the National Codification Commission, Dr. José Antonio del Cueto presiding, prepared a draft Cuban commercial code, which contains highly praiseworthy and sound provisions on the subject. It is to be regretted that this draft has not been deemed worthy of any legislative attention thus far.

In the Dominican republic, there is in force a commercial code which is a translation into Spanish of the French Code of 1807. By executive order No. 682, of October, 1921, remission from

45"Dicha ley fué burdamente aglutinada en su calidad . . . de derecho cambial específico, perteneciente a determinado grupo jurídico, a un derecho cambial específico perteneciente a un grupo diverso; y, no sólo esto, sino lo que es quizás más grave aún, que dichos diversos derechos cambiales específicos tienen como substratum, que a la vez que informan sus respectivos preceptos, les sirven de derecho subsidiario legislaciones civiles y comerciales profundamente diferenciadas, como son las de origen romano (la nuestra) y las fundadas en la Common Law inglesa (la anglo-Americana), de donde forzoso será convenir en que nuestra legislación sobre instrumentos negociables constituye una legislación sui-genereis y un raro espéctimen de génesis jurídica digno de ser considerado por los aficionados al estudio de la formación del derecho en nuestros días como un caso de la más extravagante anormalidad." Idem at 411.

46Cuba—C. Com., art. 465, art. 444, inc. 5, and art. 480.
place to place, as provided by article 110 of the Dominican text, was abolished, but the requirement respecting cause, stricken from the French legislation by the law of February 8, 1922, is still effective.47

The Hague Uniform Regulation of 1912 is in force in Ecuador, having become effective under the “Ley sustitutiva de los Títulos VIII y IX del Codigo de Comercio sobre Letras de Cambio y Pagarés a la Orden” of December 5, 1925. In adopting the Uniform Regulation, the statute of Ecuador exercises the reservations contained in articles 2, 12, and 13 of the Hague Convention. It provides, in sum, that a bill of exchange which does not carry a negotiatory denomination shall nevertheless be valid if it contains express indication of being to order, that interest running after maturity and during the action of reimbursement shall be at 6% instead of the 5% fixed by the Uniform Regulation, and that in case of lapse or prescription there shall be an action of enrichment in certain cases.48

The present code of El Salvador was promulgated on March 17, 1904. In the part referring to bills of exchange, the code of El Salvador follows very closely the Portuguese legislation of 1888 and through this the principles of the German law of negotiability.

In the United States, the Negotiable Instruments Law is in force. This act was drafted by John J. Crawford and accepted by the National Conference of Commissioners on Uniform State Law in 1896.49 The National Conference recommended it to the states, which have gradually adopted it, the last adoption being that of Georgia, in 1925. It is nevertheless pertinent to observe that the text of the Negotiable Instruments Law is not identical in all these jurisdictions. Some states have introduced modifications which in certain cases result in important innovations in the original text.

The Negotiable Instruments Law follows almost completely the principles of the English Bills of Exchange Act, but it deviates

47Dom.-C. Com., art. 110.
48Ec.-Ley de 5.XII.1925, art. 1, inc. 1, art. 47, inc. 2, art. 48, inc. 2, and art. 52.
49The National Conference of Commissioners is a semi-official organization composed of representatives designated by the state governors. The Commissioners meet annually at conferences which last six days, during which they study and approve projects of uniform laws. Once accepted by the conferences, adoption of said projects by the states is recommended. To the present time, the National Conference has approved seventy-five uniform statutes.
from its prototype in some respects. As characteristic principles of the Negotiable Instruments Law and of the Anglo-Saxon system of negotiability, mention may be made of the great liberty of form which animates the system, elimination of the value clause and of the requirement of distantia loci, the differentiation of domestic and foreign bills, and the admission of bills to bearer, of the interest clause, and of endorsement in blank.

By decreto No. 874 of May, 1913, Guatemala approved the Convention and Uniform Regulation of The Hague of 1912. Despite this adoption, in a new Code of Commerce, sanctioned on September 15, 1942, in the part relating to bills of exchange, Guatemala includes several article taken from the old code of 1877 which do not appear in the Uniform Regulation of 1912 nor are authorized by the Convention. Among these provisions may be cited chapter I on the contract of exchange: article 614, converted into a simple promissory note signed by the drawer in favor of the payee, article 615, ordaining that a bill must be drawn to order, article 618, stating that the drawer may draw upon his broker (comisionista), provided the latter is in a place distinct from that in which the bill shall have been issued, and article 647, prohibiting the antedating of endorsements.

In 1826, Haiti sanctioned the “Code de Commerce Haitien.” The section relating to bills of exchange is a reproduction of the provisions of the French code of 1807. It is to be noted that, up to the present time, the reforms realized in the French model in 1894 and in 1922 have not been introduced in Haiti. Consequently, the Haitian law still requires issue from place to place and the statement of cause, and does not recognize transfer of bill by endorsement in blank.

In March, 1940, Honduras put a new commercial code into effect. Titles VIII and IX concerning bills of exchange and promissory notes take a large number of their articles from the Argentine code of 1889. It is to be regretted that the Honduran legislators did not consider it desirable to introduce modern principles of negotiability law in this recent legislation.

In Mexico, the “Ley General de Titulos y Operaciones de Crédito” of 1933 replaced the provisions on the subject contained in the Code of Commerce of 1889. This act with a most praise-
worthy method first sets forth general provisions for all instruments of credit and then in various chapters regulates specific types of these instruments. Chapter II refers solely to bills of exchange. In general, the Mexican law follows the results of the Geneva Conference of 1930, although on some points it reforms or complements them. Thus, there may be cited article 13, establishing that in case of alteration, when it cannot be proved whether a signature has been made before or after the alteration, it is presumed to have been before, article 78, ordaining that in a bill of exchange any stipulation of interest or penal clause shall be deemed not written and article 82, prescribing that a bill must be payable at a place different from that at which it is issued, when it is issued against the drawer himself.

Title XII of the Code of Commerce of Nicaragua, in force since October, 1916, has introduced into the legislation of that country the provisions of the Hague Uniform Regulation of 1912, concerning bills of exchange. It must be noted that the Nicaraguan text follows this Regulation completely, without making use of any of the reservations permitted by the Hague Convention.

In 1916, Panama sanctioned the commercial code which is at present in force. The part relating to bills of exchange, in which the provisions of the Uniform Regulation are approved, however, has been replaced by "Ley 52 de 1917 sobre documentos negociables." Corresponding to the Colombian law, Ley 52 of Panama is a translation into Spanish of the Negotiable Instruments Law. Although this law does not contain the errors of translation and legislative technique observed in the Colombian text, the writer extends thereto the same criticism that is formulated above with respect to the adoption in its entirety of an Anglo-American legal enactment by a country with a very different legal tradition.

By a law of October 5, 1903, Paraguay accepted as internal law the Argentine Code of Commerce of 1889. This code still continues in force. It may be mentioned that in September, 1924, the Chamber of Deputies of Paraguay approved a draft law adopting the Hague Convention, but it was not sanctioned, lacking approval by the Senate.

The present code of Peru was promulgated in the year 1902. The articles in section ten on bills of exchange were taken for the most part from the Italian code. Inspired by this model, the Peruvian mercantile law declares the fundamental principle that a bill of exchange is an instrument independent of the underlying
relationship and not a simple means of executing the contract of exchange. Among the principal characteristics of this code, it is observed that the Peruvian text requires negotiatory denomination and regards the interest clause as not written. On the other hand, although it requires that a bill of exchange must be payable in money, it allows an order for the delivery of fruit as a commercial bill.54

The code in force in Uruguay was approved by a law of January 24, 1866. In the part on bills of exchange, it follows almost completely the provisions of the Argentine Code of Commerce of 1862, which in turn have been reproduced in the present Argentine Code of 1889.

Finally, title xi of the Venezuelan code of 1919, now in effect, reproduces the provisions of the Uniform Regulation of 1912. The Venezuelan text makes use only of the reservation allowed by article 2 of the Convention. It prescribes:

Bills of exchange which do not bear the denomination “letra de cambio” shall be valid, provided they contain the express indication that they are to order.54

54“... La letra de cambio que no lleve la denominación ‘letra de cambio’ será válida siempre que contenga la indicación expresa de que es a la orden.” Ven.—C. Com., art. 391.