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## STATE OBLIGATIONS UNDER TREATIES EMBODYING UNIFIED RULES OF LAW, WITH PARTICULAR REFERENCE TO THE BUSTAMANTE CODE

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This study aims to bring out the essential characteristics of State obligations under treaties<sup>1</sup> containing unified rules of law and to analyse, in the light of those characteristics, the relevant provisions of the Havana Convention on Private International Law of 1928 and of the Code of Private International Law (known as the Bustamante Code) annexed thereto.<sup>2</sup>

It will not deal, with respect to the treaties in question, with such matters as their territorial scope, reservations, the difficulties arising from the diversity of the official languages of the contracting States and the consequences of the breach of obligations under those treaties. These matters, although germane to the subject, do not pertain to its essence.

A treaty incorporating unified rules of law may provide for their general application by the authorities of the contracting States. The rules are thus placed on a par with the majority of purely domestic legal norms applicable by those authorities. The unification of law on the basis of treaties applying this method will be referred to as "absolute unification."

The term "relative unification"<sup>3</sup> will be employed to designate the method used in treaties that render unified rules mandatory only with respect to specific situations.<sup>4</sup> The situations<sup>5</sup> thus specified normally

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involve, except for one category of treaties embodying unified conflict rules,<sup>6</sup> relationships that, by reason of the persons, things or places involved, are, in the abstract, of concern to at least any two of the contracting States.<sup>7</sup> They will henceforth be referred to as "transnational situations".<sup>8</sup> In practise, relative unification is the rule, absolute unification the exception.<sup>9</sup>

There exist treaties for the absolute unification of law that do not prescribe or anticipate, expressly or by implication, that the unified rules they contain are to be incorporated into the legislation of the contracting States.<sup>10</sup> Such treaties may be regarded as self-executing in a contracting State, that is, as susceptible of application by the judicial or administrative organs of that State in the absence of implementing legislation, if its constitutional law does not require legislative action for the implementation of such treaties. But the majority of treaties for the absolute unification of law cannot qualify as self-executing instruments inasmuch as they prescribe or anticipate the incorporation into national legislation of the unified rules they embody.<sup>11</sup>

It is interesting to observe that, in the absence of commitments under treaties providing for unified rules of conflicts in a given area of private law, States parties to a treaty for the absolute unification of substantive private law in that area are, to an extent left undetermined by the treaty, free to replace, pursuant to their domestic conflict rules, the unified rules of the treaty by the laws of States not parties thereto (or by special laws prevailing in territories under the jurisdiction of contracting States but outside the territorial scope of the treaty).<sup>12</sup> In order to eliminate this margin of uncertainty, a treaty aiming at the absolute unification of a branch of substantive private law must either commit the contracting States to the adoption of unified rules of conflicts in the area concerned or be accompanied by another treaty so committing them. The usefulness of this dual approach was recognized in 1930 and 1931 with respect to the unification of substantive rules regarding bills of exchange, promissory notes and checks, for each of the two substantive conventions<sup>13</sup> is matched by a treaty unifying the corresponding conflict rules.<sup>14</sup>

Treaties providing for relative unification of law are as a rule drafted in such a way as to be self-executing.<sup>15</sup> Their areas of application, that is, the range of transnational situations with respect to which the unified rules they contain are mandatory, can be defined positively or negatively.

Treaties providing for relative unification which define their area of application positively lay down that the unified rules they incorporate

are mandatory with respect to specified transnational situations, thus rendering optional their application to any other situation falling within their terms. This method is used in the Warsaw Convention for the Unification of Certain Rules regarding Air Transport of 1929, as amended by the Protocol done at The Hague on 28 September 1955.<sup>16</sup> Article 1 of the former, as amended, defines the concept of international carriage, which constitutes the transnational situation with respect to which this convention binds the contracting parties.

Treaties for the relative unification of law that define their area of application in a negative way provide that the parties shall enforce unified rules except in respect of certain situations, which are excluded altogether from the ambit of the treaty concerned. This means that States do not need to make reservations in order to assert their right not to apply the unified rules with regard to these situations. Thus, the Geneva Convention for the Settlement of Certain Conflicts of Laws in Connection with Bills of Exchange and Promissory Notes of 1930 provides, in Art. 1, that "the High Contracting Parties mutually undertake to apply . . . the rules set out in the following articles," but also lays down, in Art. 10, that each party reserves to itself the right not to apply those rules (1) with respect to obligations undertaken outside the territory of one of the contracting parties and (2) whenever by virtue of the application of such rules a situation would be governed by a law that is not in force in the territory of a contracting party.<sup>17</sup>

Each of the treaties individually considered thus far is characterized by the fact that the contracting States assume the same obligations with respect to every one of the corresponding unified rules. However, a treaty containing unified rules of law may impose upon the contracting States obligations that vary according to the set of rules or the individual rule concerned.

A provision of such a treaty may in fact weld the enunciation of a unified rule of law and the definition of the obligation assumed by the contracting States regarding that rule into a self-contained whole. Thus, Art. 1 of a Convention adopted by the Nordic countries in 1933, in providing that "a declaration of bankruptcy in any of the contracting States shall also apply to the bankrupt's property in the territory of the other States,"<sup>18</sup> combines into a coherent aggregate a unified rule of law (that declarations of bankruptcy abroad are to apply to property situated in the national territory) and the obligation undertaken by the contracting States in relation to that rule (to apply it in respect of declarations of

bankruptcy made in any other contracting State.) Further illustration is offered by Art. 5 of the Berne Convention for the Protection of Literary and Artistic Works, as revised at Brussels on 26 June 1948,<sup>19</sup> under which "authors who are nationals of one of the countries of the Union, and who first publish their works in another country of the Union, shall have in the latter country the same rights as native authors."

Provisions of treaties for the unification of law that thus amalgamate a unified rule and the corresponding obligation under public international law will henceforth be called "self-sufficient provisions."<sup>20</sup>

While in theory it is not inconceivable that self-sufficient provisions may operate by way of absolute unification, in practise they normally constitute instances of relative unification.

Most treaties embodying unified rules of law lay down with fairly sufficient precision the obligations they impose upon the contracting States. Of those that do not do so, one of the most noteworthy is the Convention on Private International Law adopted in Havana in 1928.<sup>21</sup>

Art. 1 of this Convention provides: "The contracting Republics accept and put into force the Code of Private International Law annexed to the present Convention." This clause seems to imply that the contracting States undertook to apply the unified rules of the Code on the basis of absolute unification. But further enquiry shows that this was not the case.

Art. 2 of the Havana Convention lays down that "the provisions of this Code shall be applicable only among the contracting Republics and among the other States which adhere to it in the manner hereinafter provided."

Except for certain provisions of the Code that are or can be regarded as self sufficient,<sup>22</sup> neither the Convention nor the Code contains any rules other than the two articles of the Convention just cited that directly determine or refer to obligations assumed by the contracting States.

Art. 2 of the Havana Convention is unobjectionable, although altogether superfluous, with regard to the self-sufficient provisions of the Code. It is, however, an incongruity with respect to the provisions of the Code that are not self-sufficient, that is, with respect to almost all the rules of conflicts contained therein.<sup>23</sup> Relations between States parties to the Havana Convention, like relations between States in general, are gov-

erned, in the overwhelming majority of cases, solely by rules of general or particular public international law, whereas those provisions of the Code have no other import than to determine the national substantive legal systems that are to govern the situations of a private law character to which these provisions refer. It is by and large incongruous, for example, to provide that a State shall, in its relations with another State, apply the rule laid down in Art. 261 of the Bustamante Code, according to which "the contract of fire insurance is governed by the law of the place where the thing insured is located at the time of its execution."

It will not do to say, in defense of the Havana Convention, that treaties may confer rights and lay obligations upon individuals. No individual can claim a right or be liable to an obligation under a treaty if the latter neither determines the individuals to which its norms are addressed nor lays down that those norms apply to individuals finding themselves in situations defined in the treaty; and Art. 2 of the Havana Convention does neither the one nor the other, for it speaks only of relations between States.

The delegate of the United States at the Second Meeting of the Inter-American Council of Jurists put on record his opinion<sup>24</sup> that the conflict rules of the Bustamante Code are binding upon States parties to the Havana Convention only with respect to situations where compliance therewith results in the application of the law of one of those States. Although based on a misconception, the idea that conflict rules concern relations between the States whose laws and courts are involved has found favor with some specialists of private international law.<sup>25</sup> The interpretation of the Havana Convention thus advocated might accordingly be based on the assumption that the drafters had this idea in mind. The more so since the modality in question has been adopted in several treaties providing for unified conflict rules.<sup>26</sup>

The assumption is ruled out, however, by an examination of the history of the Havana Convention. The Report on the Codification of Private International Law that Eduardo Espinola submitted on 25 January 1928 to the Third Commission of the Sixth International Conference of American States, at which the Havana Convention was adopted, contains the following passage: "It should be noted, in the first place, that in accordance with Art. 2 of the Draft Convention, the Code is to govern only juridical relations between nationals of the contracting States and of States adhering to the Convention."<sup>27</sup> As the Draft Convention was adopted without change first by the Third Commission and then by the

Conference in plenary, it can probably be concluded that the delegates understood Art. 2 of the Convention to mean that the unified rules of the Code that are not self-sufficient were to apply only to relations between nationals of the contracting or adhering States. Thus, the Convention presumably aimed, with respect to those rules, only at relative unification on that basis.

It should be noted, however, that recourse to the history of the Havana Convention in interpreting Art. 2 thereof does not solve all the problems that may arise in practice.

The law of Guatemala provides a means of illustrating such practical problems. Guatemalan statutes enacted after Guatemala's ratification of the Havana Convention contain conflict of laws provisions that are irreconcilable with some rules of the Bustamante Code. The question therefore arises in which cases of a private law nature pending before a Guatemalan court that can be resolved by applying those provisions should the court apply the Bustamante Code rules in preference to them and vice versa. In other words, what principles should guide a Guatemalan court in resolving possible conflicts between Bustamante Code rules and purely statutory conflict of laws provisions?

A case in point is a rule contained in a Guatemalan statute of 1968 under which contracts are to be governed, with respect to their nature, validity, performance, effects and any other matters relating to them, by the law of the place where they are to be executed.<sup>28</sup> This rule is in conflict with Art. 186 of the Bustamante Code, which lays down, as a rule applicable to contracts in general, that "the personal law common to the contracting parties shall be first applied, and in the absence of such law there shall be applied that of the place where the contract was concluded." A Guatemalan court faced with such a conflict between a Bustamante Code rule and a purely domestic statutory provision will be required, given the legislative history of Art. 2 of the Havana Convention, to give preference to the Bustamante Code rule whenever the litigants are nationals of two or more States parties to the Convention (including Guatemala). However, this criterion will not suffice if only some of the litigants are nationals of States bound by the Havana Convention,<sup>29</sup> if one of the litigants is at the same time a national of a State bound by the Convention and of a State not bound by it, or if one or more of the parties to the lawsuit have changed their nationalities after the date on which the private law relationship giving rise to the case was created but before judgment is rendered. In all such situations there will be serious

uncertainty as to which of the divergent provisions, the Bustamante Code rule or the purely domestic rule, should prevail.

As has been noted, the Hague Convention on the Law Applicable to Maintenance Obligations towards Children of 1956 and earlier treaties containing unified conflict rules expressly render those rules mandatory whenever compliance therewith leads to the application of the law of one of the contracting States.<sup>30</sup> The comments made on the Havana Convention of 1928 and the Code annexed thereto make clear the superiority of this system over that adopted by the Havana Convention for defining the obligations of the States it binds.

The author hopes therefore that, if the revision of the Havana Convention and its Code of Private International law is not carried through by way of what he has termed "absolute unification", the formula embodied in the last-mentioned Hague Convention or some other equally rational technique will be applied, on the basis of explicit provisions, in preference to the dubious and faulty system adopted in 1928 to define the obligations of States parties to the Havana Convention.<sup>31</sup>

## NOTES

<sup>1</sup>While, in the nature of things, only treaties concluded by States are of concern here, attention is drawn to the bizarre provision contained in Art. 6 of the Convention on Private International Law signed at Havana in 1928, which entitles "international juristic persons" other than States to accede to the Convention. No such entity has availed itself of this possibility. For a reference to publications containing the text of the Convention, to which the Code of private international law known as the Bustamante Code is annexed, see the following foot-note.

<sup>2</sup>For the text of the Convention and the Code, see 86 L.N.T.S. 246 or 4 Hudson, *International Legislation*, 2279.

<sup>3</sup>To avoid possible confusion, it may be useful to point out that the adjectives absolute and relative can be predicated on the unification of law to convey ideas differing entirely from what these adjectives are intended to mean in the text: unification can be regarded as absolute whenever unified rules are interpreted and applied in exactly the same way by all the courts and other authorities of the contracting States, as relative whenever they are not.

<sup>4</sup>For a searching analysis of the various aspects of what is here called relative unification, see Lemhofer, B., "Die Beschränkung der Rechtsvereinheitlichung auf Internationale Sachverhalte," *Rebels Zeitschrift für Ausländisches und Internationales Privatrecht*, 1960, pp. 401-455. In a yearbook of the International Institute for the Unification of Private Law, A. Malintoppi ably contrasts relative and absolute unification (but without using those terms), employing the expression "règle d'application" to designate the norm by virtue of which contracting States are bound to apply the unified rules in respect of certain situations. (See Malintoppi, A., "Les relations entre l'unification et l'harmonisation du droit et la technique de l'unification ou de l'harmonisation par la voie d'accords internationaux", *Yearbook 1967-1968 of the International Institute for the Unification of Private Law, Rome, Editions "Uni-*

droit" 1969, Volume II, pp. 43-76.) In his study on comparative law, H. C. Gutteridge uses the adjectives entire and partial to draw the distinction between absolute and relative unification, respectively. (See, Gutteridge, H. C., "Comparative Law, an Introduction to the Comparative Method of Legal Study and Research", second edition, Cambridge, at the University Press, 1949, p. 154.) See also David, R., "The Unification of Private Law", in International Encyclopedia of Comparative Law, Vol. II, Chapter 5, New York, Oceana Publications, Inc., 1971, pp. 46-48.

<sup>5</sup>Care should be taken to avoid confusion with respect to the situations in question. Like any other legal norms, unified rules of law embodied in a treaty describe the situations in which they are applicable or that they regulate. These situations are distinct from those mentioned in the text in that they are part and parcel of the unified rules, that is, of norms designed to apply in the realm of municipal law. The situations referred to in the text are, on the other hand, constituent elements of obligations laid upon States by treaties, that is, of norms of public international law. (Cf. footnote 8.) (It may be noted, however, that in the treaties which are the subject of footnotes 6 and 26 a linkage exists between the norms of international law held down in those treaties and the unified rules embodied therein.)

<sup>6</sup>The essential characteristic of treaties in this category is a provision under which the unified conflict rules they embody are mandatory only if compliance with those rules results in the application of the law of one of the contracting States. (For a list of the treaties of this type that are known to the author and comments on their interpretation see footnote 26.) The situations in which the application of the unified conflict rules contained in these treaties is mandatory for the contracting States are thus *sui generis*. (They are unusual in that they contain no reference to persons, things or places and in that they are linked to the corresponding unified rules.)

<sup>7</sup>See Lemhofer, *op. cit.*, in particular at pp. 413-416 and 443-447. There exist treaties for the relative unification of law that define the situations in which the unified rules they contain are mandatory in such a way that, taken literally, the definitions include, by reason of the generality of their terms, the following situations (referred to henceforth as "anomalous situations"); (a) situations of concern to only one contracting State and (b) situations of concern only to a contracting State and to a State (or States) not bound by the treaty in question. This is illustrated by the International Convention for the Unification of certain Rules relating to Bills of Lading adopted at Brussels in 1924 (text in 120 L. N. T. S. 155 and 2 Hudson, *International Legislation*, 1344). On a literal interpretation, Art. 10 of this treaty, which provides that the unified rules of the Convention apply "to bills of lading issued in any of the Contracting States", requires the courts of a State party to the Convention to apply those rules in certain anomalous situations. (This provision, in its literal meaning, covers all bills of lading issued in the territory of a contracting State, even when they are elements of purely domestic situations or of situations concerning only one State—or States—not bound by the Convention.) In the author's opinion, the fact that anomalous situations come within the literal meaning of provisions such as Art. 10 of the Brussels Convention, rather than being viewed as evidence of the drafters' intention to cover anomalous situations, should be ascribed, *prima facie*, to a lack of precision on their part. It follows that such provisions, notwithstanding their literal import, should be interpreted, in the absence of indications to the contrary in the "travaux préparatoires", as covering exclusively situations of concern to at least two contracting States. (See Lemhofer's comments on the Brussels Convention of 1924 in Lemhofer, *op. cit.*, p. 431 and pp. 452-453, and, for a provision along the lines of Art. 10 of the Brussels Convention that explicitly limits relative unification to situations of concern to at least two contracting states, Art. XI of the Convention on the International Recognition of Rights in Aircraft, done at Geneva in 1948 and published in 310 U.N.T.S. 151.)

An example of the rare cases where a treaty for the relative unification of law specifically provides for the mandatory application of unified rules in certain ano-

malous situations is provided by the Convention relating to a Uniform Law on the International Sale of Goods (see article 1 of the Uniform Law annexed thereto), done at The Hague in 1964 and published in Register of Texts and other Instruments concerning International Trade Law, Volume I (hereafter cited as "Register"), United Nations Publications, Sales No. E.71.V.3, pp. 39-63, and Sources of International Uniform Law (hereafter cited as "Sources"), edited by K. Zweigert and J. Kropholler, Leiden, A. W. Sihjoff, Volume I, pp. 41-59.

<sup>8</sup>A provision in a treaty for the relative unification of law that is formulated in terms of a treaty commitment but does not contemplate transnational situations is no more than an element of the unified rules of the treaty. Thus, Art. I (notwithstanding the terms of the first sentence) and Art. 5 of the Convention on the Law Applicable to International Sales of Goods are, despite their being formulated in terms of obligations laid upon the contracting States, no more than integral parts of the unified rules of the Convention, the reason being that the situations contemplated in those provisions are not transnational situations proper. (For the text of the Convention, which by definition cannot provide for transnational situations inasmuch as it prescribes absolute unification, see 510 U.N.T.S. 149 or Register, *op. cit.*, pp. 5-8). Conversely, a treaty containing unified rules of law may incorporate the definition of the relevant transnational situations with the unified rules. Thus, Art. 1 of the Uniform Law annexed to the Convention relating to a Uniform Law on the International Sale of Goods contains the definition of the transnational situations in which the Convention is binding, despite the fact that it is formally a part of the unified rules of the Convention. (For an indication of publications containing the text of the latter, see footnote 7, last sentence.)

<sup>9</sup>See the table appended to Lemhofer's study in Lemhofer, *op. cit.*, pp. 449-455.

<sup>10</sup>An example is provided by the Convention on the Establishment of the Maternal Filiation of Children Born out of Wedlock. (Cf. Art. 8 of the French and German versions of this treaty, the text of which is published in Sources, *op. cit.*, vol. 1, pp. 20-21, 373-374 and 695-696.) It may be noted that a treaty merely recording the agreement of the contracting States on the unified rules incorporated therein without referring to the application of those rules by the authorities of those States would offend against logic. For, while a unified rule can be the object of the obligation of a State under a treaty, it cannot in itself constitute such an obligation. Moreover, such a treaty would leave room for doubt as to whether absolute or only some measure of relative unification was intended. (See the remarks in footnote 21 regarding the Montevideo Treaties of 1889 and 1939-1940 for the unification of private law.)

<sup>11</sup>See, for example, Art. I, paragraph one, of the Geneva Convention providing a Uniform Law for Bills of Exchange and Promissory Notes of 1930, under which "the High Contracting Parties undertake to introduce in their own languages, the Uniform Law forming Annex I of the present Convention". (Text in 143 L.N.T.S. 257 and Register, *op. cit.*, pp. 154-180.) Art. I of the Geneva Convention of 1931 providing a Uniform Law for Cheques contains an identical provision. (Text in 143 L.N.T.S. 355 and Register, *op. cit.*, pp. 192-213.) For an example of a similar commitment to absolute unification in a treaty embodying unified conflict rules, see Art. 7 of the Convention on the Law applicable to International Sales of Goods. (Text in 510 U.N.T.S. 147 and Register, *op. cit.*, pp. 5-8.) For a less explicit formulation, see article I (1) of the Convention on the Liability of Hotel-Keepers concerning the Property of their Guests (text in 590 U.N.T.S. 81 and Sources, *op. cit.*, Vol. 1, pp. 217-219).

<sup>12</sup>See Lemhofer, *op. cit.*, pp. 413-414.

<sup>13</sup>See footnote 11.

<sup>14</sup>Convention for the Settlement of Certain Conflicts of Laws in connexion with Bills of Exchange and Promissory Notes, Geneva, 7 June 1930, and Convention for the Settlement of Certain Conflicts of Laws in connexion with Cheques, Geneva, 19 March 1931. Texts in 143 L.N.T.S. 317 and 143 L.N.T.S. 407, and in Register, *op. cit.*, pp. 181-185 and 214-219, respectively.

<sup>15</sup>An example of a treaty for the relative unification of law that is not self-executing is offered by the Convention to a Uniform Law on the International Sale of Goods done at The Hague in 1964, under article I of which "each Contracting State undertakes to incorporate into its own legislation . . . the Uniform Law on the International Sale of Goods . . . forming the Annex to the present Convention". (For a reference to publications containing the text of this treaty as well as comments on other peculiarities thereof, see footnotes 7 and 8.)

<sup>16</sup>Cf. also Art. 2 of the Convention, as amended by article II of the Protocol, and article XVIII of the latter. (For the text of the Convention, see 137 L.N.T.S. 11 or 5 Hudson, International Legislation 100; for that of the Protocol, 478 U.N.T.S. 371.)

<sup>17</sup>Same provisions in Art. 9 of the Convention for the Settlement of Certain Conflicts of Laws in connection with Cheques of 1931. (See footnote 14.)

<sup>18</sup>Convention between Denmark, Finland, Iceland, Norway and Sweden regarding Bankruptcy, signed at Copenhagen, November 7th, 1933. Text in 155 L.N.T.S. 133.

<sup>19</sup>Text in 331 U.N.T.S. 217. See also Art. II of the Universal Copyright Convention of 1952 (216 U.N.T.S. 132).

<sup>20</sup>Although self-sufficient provisions often refer to the activities of government agencies, it should be noted that by doing so a unified rule does not *ipso facto* constitute a self-sufficient provision. Art. 62 of the Montevideo Treaty on International Civil Law of 1940 (see the following footnote) is a case in point. This provision, in laying down that "the judges of the social domicile are competent to take cognizance of actions between partners which relate to the partnership" refers to the behavior of government agencies, but is clearly not self-sufficient. (The question as to what partnerships the rule applies to is left unanswered.)

<sup>21</sup>See footnote 2. It may likewise be noted that the Treaties adopted at the First and the Second South American Congress on Private International Law held in Montevideo in 1889 and 1939-1940, respectively, are also deficient. Some of these treaties are unusual in refraining totally or partially from laying down obligations that the contracting States agree to assume with regard to the unified rules they contain. For, after the introductory clause to the effect that the parties agree to the contents of the body of the treaty, one finds an enunciation of the unified rules in which some of these are not coupled with a definition, express or implied, of the obligations undertaken by the contracting States with regard thereto, this enunciation being followed only by the final clauses. It is therefore debatable whether the parties intended to adopt the unified rules thus left in a vacuum by way of absolute or of merely relative unification; and, if the conclusion is reached that only relative unification was sought, it is impossible to ascertain, except by resort to the "travaux préparatoires", the situations in respect of which the unified rules were intended to be binding. To illustrate the point made, attention is drawn to the Treaty on International Commercial Terrestrial Law of 1940 (8 Hudson, International Legislation, 498) and to the Treaty on International Civil Law of the same year (8 Hudson, International Legislation, 513). The obligations assumed by States parties to these two treaties are undetermined, except for a few provisions that might be regarded as self-sufficient (Art. 9, 42, 43-53 of the former instrument and 3 and 26, paragraph 1, of the latter). (For the texts of the nine instruments adopted in 1889, see Martens, Nouveau recueil général de traités, deuxième série, tome XVIII, pp. 414-457; the nine instruments signed in 1939-1940 are reproduced in 8 Hudson, International Legislation, 404-421 and 460-532.)

<sup>22</sup>These rules are contained in Art. 1, 2, 8, 31, 40, 56, 100, 104, 114, paragraph 2, 137, 174, 237, 252, 278, 297-308, 310, 311, 315, 318, 326, 333-339, 342, 344-396, 402, 408, 410-418, 419 (partly) and 421-437.

<sup>23</sup>The height of incongruity is reached in the non-self-sufficient provisions of the Bustamante Code dealing with relations between spouses, other aspects of family

law, wills and various other matters that can only concern individuals (Art. 24, 27-30, 36-39, 41-55, 57-99, 101, 102, 144-151, 187-193 and 234-236).

<sup>24</sup>1952-1954 Inter-American Juridical Yearbook, 299, 300.

<sup>25</sup>Cf. Weiss, A. "Manuel de droit international privé", Paris, Librairie de la Société du recueil général des lois et des arrêts, 1905, p. xxv, and Alfonsin, Q., "Curso de derecho privado internacional con especial referencia al derecho uruguayo y a los Tratados de Montevideo de 1889, Teoría del derecho privado internacional", Montevideo, Biblioteca de Publicaciones Oficiales de la Facultad de Derecho y Ciencias Sociales de la Universidad de Montevideo, Section III, LXXVI, pp. 19 and 43.

<sup>26</sup>Art. 6 of the Hague Convention on the Law Applicable to Maintenance Obligations towards Children of 1956 provides: "The Convention shall apply only to cases where the law indicated in Art. I is that of one of the Contracting States" (text in 510 U.N.T.S. 161). Cf. also the Hague Convention to regulate the conflict of laws in regard to Marriage of 1902 (Martens, Nouveau recueil général de traités, deuxième série, volume 31, pp. 706-715), paragraph 2 of Art. 8, the Hague Convention to regulate the conflict of laws and jurisdiction in regard to Divorce and Separation of 1902 (ibid., pp. 715-724), paragraph 2 of Art. 9, the Hague Convention concerning the conflict of laws relating to the effects of Marriage on the rights and duties of the spouses in their personal relations and on the property of the spouses of 1905 (Martens, Nouveau recueil général de traités, troisième série, volume 6, pp. 480-489), Art. 10, as well as the Geneva Convention for the Settlement of Certain Conflicts of Laws in Connection with Bills of Exchange and Promissory Notes of 1930 and the Geneva Convention for the Settlement of Certain Conflicts of Laws in Connection with Cheques of 1931. Art. 10 (2) and 9 (2), respectively. (For a reference to publications containing the texts of the two latter conventions, see footnote 14.)

With respect to the treaties cited above, it is important to guard against one possible error. If the provision to the effect that the unified rules contained therein are mandatory whenever compliance with those rules results in the application of the law of one of the contracting States is interpreted literally by a court of one of those States, that court would apply those conflict rules in any case where such compliance results in the application of the *lex fori*. This would seem to be wrong inasmuch as at first glance the case appears to involve an "anomalous situation" as defined in footnote 7. But this impression is erroneous. For the fact that in delivering a judgment a court of a contracting State has applied the *lex fori* pursuant to the provision in question means that if the case had been brought before the courts of any other of the contracting States the same law would have been applied, so that such literal interpretation of the provision ensures the application to the case of the same law by the courts of all the contracting States, which is precisely the fundamental aim of the treaty concerned.

<sup>27</sup>See Sánchez de Bustamante y Sirvén, A., "Le Code de droit international privé et la Sixième conférence pan-américaine", Paris, Librairie du Recueil Sirey, 1929, p. 126. It should be noted, however, that this interpretation is not in harmony with most of the self-sufficient provisions of the Bustamante Code (enumerated in footnote 22). For the majority of those provisions apply to all persons within their purview, regardless of nationality or country of residence.

<sup>28</sup>"Decreto del Congreso No. 1762, Ley del Organismo Judicial", Art. 18. (See "El Guatemalteco, Diario Oficial de la República de Guatemala, Número 14", of July 26, 1968, first page.)

<sup>29</sup>For example a creditor who is a national of one of these States sues several co-debtors only some of whom are nationals of States bound by the Convention.

<sup>30</sup>See footnote 26.

<sup>31</sup>For an account of the prospects for a revision of the Bustamante Code, see Nadelmann, K. H., "The Need for Revision of the Bustamante Code", 65 A.J.I.L., pp. 782-793.