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An Inter-American Uniform Commercial Code

Oliver Schroeder, Jr.

COMMERCE HAS BREACHED THE WALLS separating sovereign nations; law is struggling to follow. The merchant demands uniform rules in his international commercial transactions; the lawyer strives to satisfy. Today, what commercial law uniformity, if any, is practicable internationally? The community of nations geographically described as the Western Hemisphere is the object of this study. Sixty years of Pan-American cooperation buttressed by the more recent "good neighbor" doctrine has created the friendly atmosphere so essential for unification of commercial law. To

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appraise adequately the present possibilities toward achieving this goal of international uniformity requires a consideration of four basic questions: What are the unifying processes in law? What is the history of international unification of commercial law?

What are the current opinions concerning such a code? What can be accomplished now?

The Unifying Processes in Law

Adjudication or legislation can unify law. The common law lawyer is grounded in the former; the civil law lawyer, in the latter.

Adjudication with its steady growth of judicial precedent provided acceptable commercial rules in the Anglo-American legal system for centuries.¹ The final decades of the nineteenth century, however, witnessed a change. Great Britain² and the British Empire³ as

¹ Beale, *Studies in the Conflict of Laws — Conflicting Influences at Work Tending to Differentiate and to Make Uniform Laws of Different States*, 84 CENT. L.J. 104, 107 (1917); Pound, *Unification of Law*, 20 A.B.A.J. 695 (1934); Shelton, *An American Common Law in the Making — The Habit of Thinking Uniformity*, 30 Law Notes 50, 53 (1926).

² The English Bills of Exchange Act of 1882 was the first legislation seeking to codify a part of commercial law.

³ MAITLAND, *ENGLISH LAW AND THE RENAISSANCE*, 33-4 (1901)

well as the United States⁴ began to utilize the legislative process to unify laws of commerce. The importance of unification by the judiciary waned. The merchant demanded to know more definitely in advance what legal rules applied to his transactions; adjudication generally could answer satisfactorily only after the transaction had occurred. Legislation operating prospectively was more appealing. Furthermore, the judiciaries of several sovereign states all within a single economic union, for example, the United States, would answer identical commercial law issues with conflicting decisions. No procedure existed for appeal to a supreme judiciary to bind the entire economic area under one rule. Uniformity of law was only a hope, not a reality.⁵ The flow of commerce in the unified economic region was severely burdened. Tradesmen demanded that the law be adjusted to meet the needs of the new expanding industrial-commercial society. Uniform commercial legislation thus was promulgated to eliminate conflicting court decisions as well as to provide rules which operated prospectively.

International adjudication to unify commercial law has practical obstacles. A world judiciary with compulsory appellate jurisdiction over courts of last resort in the nation-states has never existed. At The Hague Conference in 1907, nations did propose an international court with this compulsory appellate jurisdiction to unify conflicting national court decisions, not in international commercial law but in international prize law. The International Prize Court Convention was never ratified by a sufficient number of states to become operative, however.⁶ The international community was thus deprived of an opportunity to witness the effectiveness of the adjudicative function as a unifying process.

The Permanent Court of International Justice in 1928 in the *Serbian Loan Case*⁷ and *Brazilian Federal Loan Case*⁸ did provide moral precedent for commercial law uniformity among national tribunals. Some nations accepted the commercial law principle evolved in these international cases—Great Britain,⁹ the United States,¹⁰ The Netherlands and Belgium.¹¹

⁴The Uniform Negotiable Instruments Act was promulgated in 1896 by the Conference of Commissioners on Uniform State Laws and adopted by the first state in 1897. Note, *The Negotiable Instruments Law*, 11 HARV. L. REV. 187 (1897)

⁵Schofield, *Uniformity of Law in the Several States as an American Ideal*, 21 HARV. L. REV. 510, 524-26 (1908).

⁶Finch, *Appellate Jurisdiction in International Cases*, 43 AM. J. INT'L L. 88, 89 (1950). For text of the International Prize Court Convention see SCOTT, REPORTS TO THE HAGUE CONFERENCES OF 1899 AND 1907, 746 (1917).

⁷Publications of the Permanent Court of International Justice, Ser. A, No. 20/21, pp. 1-89 (1929); 2 HUDSON, WORLD COURT REPORTS, 340 (1929)

⁸Publications, *id.* pp. 91-155; 2 HUDSON, *id.* at 402.

⁹*Feist v. Société Intercommunale Belge d'Electricité* [1934] A.C. 161, 173-74. See also CHESHIRE, PRIVATE INTERNATIONAL LAW 18-19 (1947).

However, since national courts are not legally compelled to accept an international court's precedent, international commercial law uniformity by such a process is only by the grace of the national tribunals, not by the compulsion of a superior international judiciary.

Additional difficulties beset the achievement of international uniformity of law through the judicial process. Only states are recognized as competent parties before international tribunals;¹² the bulk of commercial transactions are handled by private individuals. Until private persons are recognized as proper litigants in the international court, the effectiveness of adjudication in the unification of commercial law among nations is insignificant.¹³

Legislation, not adjudication, is the modern fountainhead for uniformity, nationally and internationally. Three legislative methods have been utilized.

Mutually enacted legislation is foremost. Several independent states can enact the same uniform commercial act. In the United States, a majority of the states of the union, all commercially independent sovereigns, have individually adopted the same uniform statutes such as the Negotiable Instruments Law and the Uniform Sales Act.

Second, the national legislature can pass one commercial act for the nation. Constituent states or provinces will be subjected to the national law which is supreme.¹⁴ This method is speedier, less cumbersome, and more definite than mutually enacted legislation.¹⁵ The Latin-American federal governments generally have invoked this method of legislation for commercial uniformity—Bolivia, Brazil, Cuba, Mexico, Paraguay, Costa Rica, Guatemala.

Finally, the British Parliament's commercial acts, like the English Sale of Goods Act, represent a third method of legislative unification. The mother parliament's commercial statutes serve as a guide for dominion and colonial legislatures to follow voluntarily. Commercial law unity has thus been attained in the loosely-knit Commonwealth system.¹⁶

¹⁰ Gold Clause Cases, 294 U.S. 240, 358 and 363 (1935) The four dissenting justices and the one concurring justice, making a majority of five out of nine, relied on the Permanent Court of International Justice precedent.

¹¹ Scott and Miller, *The Unification of Maritime and Commercial Law Through the Comité Maritime International*, 1 INT'L L.Q. 482, 492-94 (1947)

¹² STATUTE OF THE INTERNATIONAL COURT OF JUSTICE, 1945, Art. 34, § 1; JESSUP, A MODERN LAW OF NATIONS, 15-26 (1948)

¹³ HUDSON, INTERNATIONAL TRIBUNALS, 218-19 (1944) It must be acknowledged that individuals are rapidly becoming competent litigants in international law. Jessup, *op. cit. supra* note 12, at 136-37

¹⁴ Grant, *The Search for Uniformity*, 32 AM. POL. SCI. REV. 1082, 1091-92 (1938)

¹⁵ Banatt, *The Tendency to Unification of Law in the United States 1868-1922*, 5 J. COMP. LEG. & INT'L L. (3d Ser.) 227, 232-33 (1923)

No international legislature exists either with the supremacy power of a centralized government or the moral influence of the British Parliament in the Commonwealth. Legislation among the nations for commercial law unity, therefore, depends on the mutually enacted legislation method.¹⁷

Legislation alone, however, does not assure unity in the law merchant. The judiciary interprets legislation. Adjudication, already forsaken as the primary process for unification even in the common law countries, has emerged as a vital adjunct to the legislative process. If courts apply diverse interpretations and constructions to the uniform statute, uniformity succumbs. Judges and lawyers must think and act in the spirit of uniformity.¹⁸

The History of International Unification of Commercial Law

Unification of commercial law by independent states began in 1849. The National Assembly of the Confederated States of Germany, following a suggestion from the 1846 General Conference of the German Zollverein, drafted a uniform code for bills of exchange. The commerce of Central Europe was blessed; 56 diverse rules became one.¹⁹ The Scandinavian countries in 1880 adopted uniform laws for bills and notes modeled after this German code.²⁰ The Latin-American region manifested similar unification desires. The Convention of Montevideo in 1889 on civil and commercial law unity was ratified by Argentina, Bolivia, Paraguay, Peru, and Uruguay.²¹ All these regional unifications were aided undoubtedly by the cultural affinities of the peoples in each region.

Extensive activity for expanded international unification of the law merchant was also stimulated by the great world exhibitions in London and Paris in the 1850's.²² By 1885 in Antwerp, and again in 1888 in Brussels,

¹⁶ Hogg, *The Unification of Commercial Law in the Empire*, 26 JURID. REV. 154, 161-62 (1914); Ilbert, *Unification of Commercial Law*, 2 J. COMP. LEG. & INT'L L. (3d Ser.) 77 (1920); Mackay, *The Unification of British Commercial Law*, 91 CENT. L.J. 45 (1920).

¹⁷ Chalmers, *The Movement for International Assimilation of Private Law*, 7 J. COMP. LEG. & INT'L L. (3d Ser.) 248, 250 (1925).

¹⁸ Mann, *The Interpretation of Uniform Status*, 62 L.Q. REV. 278 (1946); Schofield, *supra* note 5, 583 at 588; Shelton, *supra* note 1, at 51-2.

¹⁹ Burdick, *International Bills of Exchange*, 6 ILL. L. REV. 421, 421-22 (1912).

²⁰ Hudson and Feller, *The International Unification of Laws Concerning Bills of Exchange*, 44 HARV. L. REV. 333, 336 (1931); Pound, *Uniformity of Commercial Law on the American Continent*, 8 MICH. L. REV. 91, 99 (1909); Teisen, *World-Wide Interest in the Subject of Uniformity of Law*, 75 CENT. L.J. 134 (1912).

²¹ Lorenzen, *Uniformity Between Latin America and the United States in the Rules of Private International Law Relating to Commercial Contracts*, 15 TULANE L. REV. 165 (1941).

²² Hudson and Feller, *supra* note 20, at 339; Wigmore, *The International Assimilation of Law—Its Needs and Its Possibilities from an American Standpoint*, 10 ILL. L. REV. 385 (1916).

international congresses on commercial law were convened; by 1904, Germany, Austria and Hungary also were seeking a uniform law for checks.²³

The Hague international conferences of 1910 and 1912 adopted a Convention on the Unification of the Law relating to Bills of Exchange and Promissory Notes with an annex entitled Uniform Regulation on Bills of Exchange and Promissory Notes to be enacted in the ratifying nations. Only Brazil, Guatemala, Nicaragua, Paraguay and Venezuela approved the uniform regulation by national action; 28 nations had signed the convention at The Hague including nearly all the European states, many Latin-American countries and China and Japan. The Convention never became operative for no ratifications were ever deposited with The Netherlands government.²⁴ Great Britain and the United States participated in the conferences; both declined to accept the Convention. Great Britain's Parliament could not enforce the Convention's adoption in British dominions or colonial areas;²⁵ the United States' Congress considered commercial regulation an exclusive prerogative of the constituent states of the union.²⁶

The Western Hemisphere also remained active. At Rio de Janeiro in 1906 the Third International American Conference established the International Commission of Jurists to codify private international law including commercial law.²⁷ The International High Commission, which was created in 1915 at the First Pan-American Financial Conference of 18 republics, convened in Washington to study among other topics uniformity of American commercial law.²⁸

The half century prior to World War I also recorded much private action for international uniform commercial rules. The International Association for Reform and Codification of International Law (later named the International Law Association) was born at Brussels in 1873. It proposed in 1878 its "Bremen rules," a scheme for commercial law unification.

²³ Hudson and Feller, *supra* note 20, at 338-41; Pound, *supra* note 20, at 99.

²⁴ Burdick, *supra* note 19, at 422-23; Hudson and Feller, *supra* note 20, at 340-43; Lorenzen, *The Hague Convention of 1912, Relating to Bills of Exchange and Promissory Notes: A Comparison with Anglo-American Law*, 11 ILL. L. REV. 137, 138 (1916); Note, *A Uniform Negotiable Instruments Law of the World*, 93 CENT. L.J. 363, 363-64 (1921). The unification of laws relating to checks was also considered at The Hague conference in 1912 but no convention was ever prepared. Feller, *The International Unification of Laws Concerning Checks*, 45 HARV. L. REV. 668, 671-72 (1932).

²⁵ Hogg, *supra* note 16, at 162-64; MacChesney, *The Uniform Law Movement in the United States*, 8 ILL. L. REV. 518, 521 (1914).

²⁶ Freund, *Unifying Tendencies in American Legislation*, 22 YALE L.J. 96, 96-7 (1912).

²⁷ Moore, *The Passion for Uniformity*, 62 U. OF PA. L. REV. 525, 532-35 (1914).

²⁸ McAdoo, *The International High Commission and Pan-American Cooperation*, 11 AM. J. INT'L L. 772, 772-73 (1917); McGuire, *The Work of the International High Commission in 1917*, 4 A.B.A.J. 120 (1918).

The International Commercial and Industrial Congress in 1889 at Paris prepared a similar plan. The International Congresses of the Chambers of Commerce worked diligently in the same field.²⁹

The years of peace 1919-1939 increased the tempo for international unification of commercial law. World trade was increasing; international economic interdependence was the product of growing industrialization. The International Financial Conference at Brussels in May, 1920, recommended unanimously that the League of Nations exert influence to effect "unification of the laws of different countries relating to Bills of Exchange."³⁰ The idea of unifying commercial law received additional support in 1924. At Geneva, was founded the International Academy of Comparative Law; at Rome, the International Institute for the Unification of Private Law. The latter has flourished and continues in operation. Subsidies from the Italian government have aided the Institute.³¹

The American nations remained sensitive to the commercial needs for law uniformity. Rio de Janeiro was host city in 1927 to the International Commission of Jurists; one project for codification and unification study was identified as International Mercantile Law. The next year at Habana the Sixth International Conference of American States received this project.³² The final Act of the Conference incorporated a Convention on Private International Law (Bustamante Code) which most Latin-American nations have ratified. Book II of the Code was devoted to unifying international commercial law.³³

In 1929 at Warsaw, world-wide efforts at commercial law unification for air transportation resulted in the Convention for the Unification of Certain Rules Regarding International Air Transport. The treaty entered into force February 13, 1933; in the Americas, Brazil, Mexico and the United States have ratified.³⁴ This experience of unifying some laws of

²⁹ Carneiro, *League of Nation's Report on the Unification of the Laws of Different Countries Relating to Bills of Exchange*, 41 CAN. L.T. 581, 582 (1921); Wigmore, *The Movement for International Assimilation of Private Law: Recent Phases*, 20 ILL. L. REV. 42, 43 (1925).

³⁰ Carneiro, *supra* note 29, at 581.

³¹ Chalmers, *The Movement for International Assimilation of Private Law*, 7 J. COMP. LEG. & INT'L L. (3d Ser.) 248, 249 (1925); David, *The International Institute of Rome for the Unification of Private Law*, 8 TULANE L. REV. 406 (1934); Wigmore, *supra* note 29, at 42; Wigmore, *Opening of the New International Institute for the Unification of Private Law at Rome*, 23 ILL. L. REV. 619 (1929). The League of Nations originally appointed the Institute's governing Board.

³² Note, *International Commission of Jurists*, 22 AM. J. INT'L L. 234, 301-08 (Spec. Supp. 1928).

³³ 4 HUDSON, INTERNATIONAL LEGISLATION, 2279-2354 (1931); Lorenzen, *supra* note 21, at 165-66.

³⁴ 5 HUDSON, *op. cit. supra* note 33, at 100-19 (1936); Orr, *The Warsaw Convention*, 31 VA. L. REV. 423 (1945); Sack, *International Unification of Private Law*

commerce in one division of commercial intercourse — air transportation — had precedent in the Comité Maritime International created in 1897 "to achieve and maintain the unification of commercial and maritime law both written and unwritten among the principal maritime countries of the world."³⁵

More extensive efforts for unity were made in 1930-1931. Under the sponsorship of the League of Nations, 31 nations participated in two Geneva conferences — the first unified laws on bills of exchange and promissory notes;³⁶ the second, on checks.³⁷ Among others, Brazil, Colombia, Ecuador, Peru sent official delegates and the United States, an observer. By January 1, 1934, the Geneva Conventions were in force. Only Nicaragua in the Western Hemisphere ratified either convention — the check convention.

The American nations have preferred to concentrate on Pan-American cooperation for commercial law unity. Successive conferences have been devoted to such labors. The Lima Conference in 1938, for example, established a Committee of Experts and the International Conference of Jurists, a national committee for each nation and four permanent committees two of which considered (1) comparative legislation and the unification of legislation, and (2) unification of civil and commercial laws.³⁸

In 1939-1940 the Second South American Congress of Private International Law met at Montevideo; the work of the 1889 Congress was advanced. The 1889 Convention on bills of exchange was amended to include certain innovations accepted by the League of Nations' Conference of 1930.

The Inter-American Bar Association, one of whose purposes is the promotion of "uniformity of commercial legislation,"³⁹ at its initial meeting in 1941 at Habana accepted a resolution seeking the Association's cooperation in unifying the negotiable instruments law of the American

Rules on Air Transportation and the Warsaw Convention, 4 AIR L. REV. 345, 378-79 (1933).

³⁵ Scott and Miller, *supra* note 11, at 483-85.

³⁶ 5 HUDSON, *op. cit. supra* note 33, at 516-69; Hudson and Feller, *supra* note 20, at 333-34, 346-74; Kuhn, *The International Conferences for Unification of Laws on Bills of Exchange, Promissory Notes and Cheques*, 25 AM. J. INT'L L. 318 (1931).

³⁷ Feller, *supra* note 24; 5 HUDSON, *op. cit. supra* note 33, at 889-933; Kuhn, *The International Conference for the Unification of Laws on Cheques*, 25 AM. J. INT'L L. 730 (1931)

³⁸ Yntema, *Comparative Research and Unification of Law*, 41 MICH. L. REV. 261 (1942); see *Report of the Permanent Committee of Jurists for the Unification of the Civil and Commercial Laws of America created by Resolution VII of the Eighth International Conference of American States* (1941)

³⁹ CONST. Art. I. See generally, Patton, *The Inter-American Bar Association*, 28 MINN. L. REV. 255 (1944); Vallance, *Sixth Inter-American Bar Conference*, 43 AM. J. INT'L L. 130 (1949).

nations. The plan advanced in the resolution was patterned after the 1930-1931 Geneva Conventions and the 1910-1912 Hague Conventions.⁴⁰

In 1949 the Sixth Conference of the Inter-American Bar Association at Detroit adopted resolutions calling for: a uniform world law relative to the sales of goods; the study of the uniform law on Bills of Exchange and other Negotiable Instruments formulated by the Colegio de Abogados de Lima for consideration at the Seventh Conference in 1951, cooperation with the Organization of American States to promote uniform laws for the Americas; appointment of a committee to study what branches of commercial law lend themselves best to uniform codification.⁴¹

Meanwhile, in the summer of 1950 the Rome Institute will sponsor an International Congress of Private Law with topic 8 of the agenda listed as:⁴²

The possibility of completing the international uniform law on bills of exchange and promissory notes approved by the Geneva Convention of June the 7th, 1930, with particular reference to the English "Bills of Exchange Act" and to the "Negotiable Instruments Law" of the United States of America.

The historical record manifests these general facts on international commercial law unification: the attempt to achieve uniformity is most successful among nations with common cultures; unity is most effectively achieved by means of codes for individual segments of commercial law, not in one master unifying code; negotiable paper law submits most readily to international unification; efforts by both public and private activities are essential to develop unification.

Current Opinion Concerning a Uniform Commercial Code for the American Nation

Interest in unification of commercial laws has received new stimulus in the United States. The National Conference of Commissioners on Uniform State Laws and the American Law Institute are drafting a Uniform Commercial Code.⁴³ When finally adopted by the drafting bodies, one code embodying the law merchant will be offered to the states of the union for mutual enactment. In its preliminary form the code has been geared to international as well as national commerce, an unprecedented arrangement for commercial laws in the United States.⁴⁴ Legal and commercial societies

⁴⁰ Guerrico, *Unification and Present Status of Negotiability Legislation in America*, 29 MINN. L. REV. 1, 8 (1944)

⁴¹ *Resolutions of the Sixth Conference Inter-American Bar Association*, 24-26 (1949, Mimeographed).

⁴² Prospectus of the International Congress of Private Law, Rome, July, 1950.

⁴³ Schnader, *The New Commercial Code: Modernizing Our Uniform Commercial Acts*, 36 A.B.A.J. 179 (1950)

⁴⁴ Ward and Rosenthal, *The Need for the Uniform Commercial Code in Foreign Trade*, 63 HARV. L. REV. 589 (1950). See particularly, Uniform Commercial Code,

display keen interest in the proposed code. Whether this interest can be developed further to activate a desire to draft, with sister American Republics, an Inter-American Uniform Commercial Code remains unanswered. The uniform code method and the recognition of certain international trade rules in the suggested code raise hope.

Canada, too, has displayed enthusiasm for unification of commercial rules. The dominion government has unified bills of exchange laws by national legislation;⁴⁵ the provincial governments by mutual enactment of legislation have attempted to extend unification of commercial law.⁴⁶ In this development the Commissioners on Uniformity of Legislation in Canada and the Canadian Bar Association have played major roles.⁴⁷ In Canada, however, unification has always proved difficult because of the cultural division between civil law French Quebec and the common law provinces.⁴⁸

Interest in commercial law uniformity, both nationally and internationally, has been most vigorous in Latin America. Codification for commercial law unity has been the practice of a century in some nations;⁴⁹ participation in Inter-American and world conferences for unification of commerce law has also been active. Today, legal scholars of Central and South America display continued zeal for international unification.⁵⁰ None, however, underestimates the task of achieving the goal. The importance of beginning the extended labors is viewed as essential.

Arts. 5 and 6 (Proposed Final Draft, Spring 1950) applicable to letters of credit and miscellaneous banking provisions which include foreign banking.

⁴⁵ The first Bills of Exchange Act was passed in 1890, 53 VICT. Stat. of Canada, c. 33.

⁴⁶ Willis, *Securing Uniformity of Law in a Federal System—Canada*, 5 U. OF TORONTO L.J. 352, 363-65 (1944).

⁴⁷ Shannon, *Uniformity of Laws in Canada*, 7 CAN. B. REV. 534 (1929); Note, *Conference of Commissioners on Uniformity of Legislation in Canada*, 5 U. OF TORONTO L.J. 161 (1943).

⁴⁸ MacTavish, *Uniformity of Legislation in Canada—An Outline*, 25 CAN. B. REV. 36, 50 (1947); Shannon, *supra* note 47 at 534-36.

⁴⁹ Haiti promulgated its commercial code in 1826; Bolivia in 1835; Brazil, 1850; Costa Rica, 1853; Chile, 1865; Uruguay, 1866; Cuba, 1885; Argentina, 1889; Mexico, 1889. Guerrico, *supra* note 40, at 13-21.

⁵⁰ The author is conducting an opinion poll of lawyers, law teachers, and other persons interested in foreign trade to determine the attitudes toward a uniform commercial code for the Americas. The Graduate School of Western Reserve University has supported the project with a research grant-in-aid. A questionnaire has been forwarded to selected individuals in Canada and Latin America. Replies are being received. To date the following persons have replied: Argentina—Enrique V. Galli; Bolivia—Carlos Wálter Urquidí; Brazil—Manuel Jose Machado Barbudo, Eduardo Theiler; Costa Rica—Fernando Fournier; Cuba—Eduardo Rafael Núñez y Núñez, Mariano Sanchez Roca; Guatemala—Octavio Aguilar; Mexico—German Fernandez del Castillo, Carlos Sanchez Mejorado, Gustavo R. Velasco; Paraguay—Luis A.

Opinion is divided on whether the proposed Uniform Commercial Code for the states of the United States could be used effectively as a basis for any international discussions on the subject of unification. Although some basic concepts are similar to those found in the codes of other American nations, the order of presentation and the content differ extensively.

Progress in the study of American commercial law unification resulted from the Inter-American Bar Association's 1949 Conference at Detroit. Papers presented to Section XV Committee C—Uniformity of Law of Civil and Commercial Obligations and Contracts—and resolutions adopted by the Conference involved primarily the preparation of a uniform law for negotiable paper in the Americas.⁵¹ Uniformity of law in the Americas for sales of goods⁵² and a proposed uniform commercial code⁵³ also received attention.

To influential American lawyers and businessmen concerned with hemisphere trade, uniform commercial laws are vital. Specific proposals may cause objections and criticisms, but interest in the general subject apparently runs high.⁵⁴

What Can Be Accomplished Now?

A Uniform Commercial Code for the Americas will be the product of much thought and labor. Immediate attention must be directed to certain basic essentials.

First, legal education should emphasize studies in international and comparative laws. American law schools generally have produced national

Argaña; Peru—Hernando de Lavalle; Uruguay—Mario Nin Pomoli, Miguel V Rocca. Several replies indicate little current interest toward the code in their nation, but these state that interest can be aroused, even in the national legislatures.

⁵¹ Papers by Rodolfo Cepeda Villareal, Mexico D. F., Francisco Orione, La Plata, Argentina; Hessel Yntema, Ann Arbor, Michigan; Fairfax Leary, Jr., Harrisburg, Pennsylvania; Theodore H. Hasted, Jr., New York, N. Y., Felix Navano Irvine, Lima, Peru.

⁵² Paper by Ernst Rabel, Ann Arbor, Michigan.

⁵³ Paper by Eduardo Theiler, Rio de Janeiro, Brazil.

⁵⁴ "There is wide interest on the part of lawyers and business men in the unification of law, but when it reaches the stage of official consideration, serious objections always seem to rise of a practical and nationalistic character." Letter to author from Paul A. Colburn, Assistant Chief, Division of Legal Affairs, General Secretariat, Pan American Union, Organization of American States, dated October 4, 1949.

A letter to the author dated October 6, 1949, from Wilbert Ward, Vice President, The National City Bank of New York, and Chairman, International Chamber of Commerce Commission on Banking Technique, states that the work of the International Chamber of Commerce affords a more practical method to secure international cooperation for commercial rules, but "ultimately and to achieve full effectiveness" a uniform code must be adopted.

The enthusiasm for uniform commercial law in the Americas is not only of recent vintage, see Pound, *Uniformity of Commercial Law on the American Continent*, 8 MICH. L. REV. 91 (1909).

lawyers, not international advocates.⁵⁵ "Bread and butter" courses are paramount; specialization in legal practice has decreed this limitation. Consideration and comparison of foreign legal systems are secondary, cultural not practical. Yet industrialization and urbanization which complicate the laws of a nation also have affected fundamentally international legal relationships. Economically and politically, international cooperation is the keynote; legal education must adapt itself to this theme.

Law schools in the United States fail to educate undergraduate law students in foreign law, particularly Latin-American.⁵⁶ Even in the few schools which provide adequate study, the number of participating students is not large.⁵⁷ All law schools and law students should be concerned with such a program. Today's students are tomorrow's practitioners; international legal cooperation will germinate successfully only when accepted as a basic element in legal education.

To promote professional and law student exchange among the Americas will be helpful. The study of foreign law becomes alive when classroom discussion includes a native of the foreign legal system. It is regrettable that the group of 26 graduate students awarded State Department scholarships to 10 Latin-American Republics for this year did not include one law student.⁵⁸

Second, research centers to analyze, study and compare the various American commercial laws are vital.⁵⁹ Law schools with legal scholars, library facilities and technical staffs can qualify for these jobs.⁶⁰ But independent institutions in the Western Hemisphere, like the Rome International Institute for the Unification of Private Law, might prove more effective.⁶¹

⁵⁵ Horack, *Legal Education in the Latin-American Republics*, 2 J. LEGAL EDUC. 287, 295 (1950)

⁵⁶ Yntema, *Research in Inter-American Law at the University of Michigan*, 43 MICH. L. REV. 549, 554 (1944) In the Teachers Directory, Association of American Law Schools, are listed the law teachers and the courses taught: about 190 teach Real Property; 184, Contracts; 145, Bills and Notes; 56, International Law; 27, Comparative Law; and 14, Roman Law.

⁵⁷ Louisiana law schools already are educating students in the civil and common laws because of that state's civil law background. Horack, *supra* note 55, at 295-96.

The civil and common laws have united in some degree in Arizona, California, Colorado and New Mexico. Cosentini, *The Integral Unification of American Civil Law*, 5 TULANE L. REV. 515, 525 (1931). The Philippine Islands, when United States territory, also furnished an example of the melding of Spanish civil law and English common law. Welch, *Progress of Uniform Law Movement in the Philippine Islands*, 76 CENT. L. J. 303 (1913).

⁵⁸ See Horack, *supra* note 55, for the special difficulties arising in the exchange of law students and teachers.

⁵⁹ Yntema, *supra* note 38, at 262-63; see Rabel, *The Sales Law in the Proposed Commercial Code*, 17 U. OF CHICAGO L. REV. 427, 440 (1950)

⁶⁰ Moore, *supra* note 27, at 543-44.

Third, the businessman is most important. He generally is the pioneer in unifying commercial law.⁶² Already in the Western Hemisphere, merchants meet the problems of conflicting commercial rules by settling or arbitrating commercial disputes through the Inter-American Arbitration Commission. Since 1934, over 1,200 controversies have been resolved amicably.⁶³ The businessman also unifies commercial laws internationally through his commercial organizations, such as the International Chamber of Commerce. Uniform practices and customs are drafted and issued; international business operations conform voluntarily.⁶⁴ These and all other mercantile experiences must be woven into any legal code of unified commercial law.⁶⁵

Fourth, the practicing lawyer must carry the burden in unifying American commercial law.⁶⁶ He represents the catalytic agent which can unite the legal theories emanating from research centers and the commercial practices utilized in Inter-American market places. Local and national bar associations represent the working organs of the legal profession. These along with the Inter-American Bar Association must assume responsibility to stimulate and educate their members to the action necessary.⁶⁷

Fifth, the governments of the Americas also have duties to perform, collectively through the Organization of American States, and individually through their foreign ministries.

⁶² See similar suggestions by Hazard, *A World Organization for Comparative Law*, 2 J. LEGAL EDUC. 80 (1949) (task for UNESCO); Atwater, *A World Law Bureau*, 15 CORNELL L.Q. 54 (1929); Mackay, *The Unification of British Commercial Law*, 91 CENT. L.J. 45, 46 (1920); Editorial, *World Wide Uniformity in All Law*, 17 VA. L. REG. 482, 483, (1911).

⁶³ Note, 15 J. COMP. LEG. & INT'L L. (3d Ser.) 125 (1933).

⁶⁴ *Report of the Inter-American Commercial Arbitration Commission*, Pan American Union, 1938; *Report of the Inter-American Commercial Arbitration Commission, 1938-1947*, Pan American Union, 1947; *Annual Report of the Inter-American Commercial Arbitration Commission 1948*; Domke and Kellor, *Western Hemisphere Systems of Commercial Arbitration*, 6 U. OF TORONTO L.J. 307 (1946).

⁶⁵ See *Uniform Customs and Practice for Commercial Documentary Credits Fixed by the Seventh Congress of the International Chamber of Commerce with Guiding Provisions*, distributed by Committee on Foreign Banking, New York, N.Y. Private agreements and arrangements between private companies permit the flow of railroad, telephone, and telegraph traffic between the United States and Canada under unified rules. This is another example of adjustment to the needs of commerce without the legal sanction of international treaties. 4 HACKWORTH, DIGEST OF INTERNATIONAL LAW 346-49 (1942).

⁶⁶ Horack, *The Future of Uniform Laws—The Commercial Code*, 9 OHIO ST. L.J. 555, 569 (1948).

⁶⁷ "Lawyers can help; they can do the donkey work, but the responsibility belongs to all of us, particularly to the leaders of our nations." Brierly, *The Codification of International Law*, 47 MICH. L. REV. 2, 4 (1948).

⁶⁸ Monis, *The Inter-American Bar Association*, 34 ILL. BAR J. 245, 246 (1946); see Sanders, *Legal Uniformity, Unification and Codification in the Americas* (paper presented at First Conference Inter-American Bar Association 1941) pp.12-15.

At Bogota in 1948, the American States created the Inter-American Council of Jurists, and its permanent Committee, the Inter-American Judicial Committee. One task of the Committee is "to study the possibility of attaining uniformity in the legislation of the various American countries, insofar as it may appear desirable."⁶⁸ As yet the Council has not met. Its work could prove beneficial to any proposed unification of commercial law. Perhaps its activities can be expanded to form a Conference of Commissioners on Uniformity of Legislation in the Western Hemisphere with official delegates representing business, law and government, periodic and frequent meetings, and sufficient financial assistance to provide an adequate staff and widespread publication of its activities.⁶⁹ The Canadian and United States' Conferences have proved most successful in unifying law.

The foreign affairs departments of each American Republic must determine what, if any, official action can be undertaken in this field. Government agencies usually mirror the attitudes of the people they serve. In the past lip-service has been paid to law unification in the Americas. This is especially true, as far as international unification is concerned, in the United States. Action is now imperative. Concerted efforts by bar associations and business organizations in the individual nations can accelerate the foreign offices' actions.

Conclusion

Basically, a uniform commercial code for the Americas requires the assimilation of North American and Latin-American commercial practices. Some would suggest that the Latins accept the North American practices because of economic and commercial superiority of the latter.⁷⁰ Law unity could be the result of totalitarianizing all nations under one dominant legal system. The price would be prohibitive. No one culture or people is endowed with universal wisdom; human progress is the product of cooperation among the world's peoples, a sharing of diverse cultures. Unification of commercial law in the Americas is possible only if all nations and their peoples be considered as economic partners, not as one being economic master with the others as economic servants.

International commercial life shall emerge in the future decades from the darkness of legal chaos to the light of legal order. Perhaps the New World with its traditional spirit of progress can be the pioneer with an Inter-American Uniform Commercial Code.

⁶⁸ CHARTER OF THE ORGANIZATION OF THE AMERICAN STATES Art. 67 See generally Sanders, *The Bogota Conference*, No. 442 International Conciliation 383 (1948).

⁶⁹ See Stanley, *A Pattern for Promotion of Uniform Law in the Western Hemisphere*, 13 J. BAR ASS'N KAN. 127, 133 (1944)

⁷⁰ See *A Uniform Negotiable Instruments Law of the World*, 93 CENT. L.J. 363, 364 (1921).