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Unification and Harmonization of Law Relating to Global and Regional Trading

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International unification means adoption of an agreed set of rules, standards or guidelines for application to transnational transactions. In international trading, this was achieved by custom, international practice or by international agreement within the framework of professional organizations or between states by an international convention.

Unification occurred or is in the process of being achieved in the following matters: (A) negotiable instruments, (B) the contract of international sale of goods, (C) carriage of goods by sea, (D) general average, (E) principles for international commercial contracts, (F) international countertrading, (G) international procurement, (H) electronic data interchange ("EDI"), and (I) unification by the European Union ("EU") and the European Free Trade Association ("EFTA") in relation to jurisdiction and the enforcement of judgments and (J) unification by the Organization of American States ("OAS") and the European Union of the law applicable to contractual arrangements.

Harmonization does not lead to a settled set of agreed rules. It directs a change of rules, standards or processes in order to avoid conflicts and bring about equivalence. Harmonization may be achieved by international agreement between states or by mandate of a regional supranational institution. In the second part, this article will address the following diverse matters: (1) harmonization of intellectual property within the framework of the United Nations World Intellectual Property Organization ("WIPO") and the GATT, (2) harmonization of product liability and company law within the framework of the European Union and (3) anticipated harmonization within the framework of NAFTA. The purpose of this article is to analyze the various

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methods of unification or harmonization and measure their respective utility.

II. INTERNATIONAL UNIFICATION

A. NEGOTIABLE INSTRUMENTS

The League of Nations Geneva Conventions Nos. 3313 and 3314 of June 7, 1930,[1] unified rules of substance and conflict of laws relating to bills of exchange and promissory notes. The treaties were accepted with reservations[2] and modification by many countries. The United Kingdom did not ratify the two conventions.

In the United Kingdom, the law applicable to bills of exchange, promissory notes and checks was codified by the Bills of Exchange Act of 1882. This provided a prototype for many countries of the Commonwealth. It was also used as model for the drafting of the Uniform Negotiable Instruments Law of 1896 which in turn led to Article 3 of the Uniform Commercial Code ("UCC").

Aided by this background of patchy unification, the United Nations Commission of International Trade Law ("UNCITRAL") prepared a U.N. Convention on International Bills of Exchange and International Promissory Notes.[3] This Convention was approved by the U.N. General Assembly[4] and is in the process of being ratified or acceded to by states. Its inclusion in the North American Free Trade Agreement ("NAFTA") is being considered. The Convention enables parties to an international bill of exchange or international promissory note to incorporate the Convention by reference in their negotiable instrument.[5] This is typical of the UNCITRAL approach to unification. The relevant unifying convention leaves the option to the states when they ratify or accede to it to either incorporate it in their domestic law or leave it to the parties to incorporate it in their international transaction. The forum's choice of law provisions will determine whether the convention is applicable.

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1. Convention Providing a Uniform Law for Bills of Exchange and Promissory Notes, June 7, 1930, 143 L.N.T.S. 257.

2. These countries included Austria, Belgium, Denmark, Finland, France, Germany, Greece, Japan, Italy, Monaco, The Netherlands, Norway, Poland, Portugal, Romania, Switzerland, and the U.S.S.R. See GEORGE ZAPHIRIOU, EUROPEAN BUSINESS LAW 66-74 (1970).

3. 28 I.L.M. 170 (1989).

4. G.A. Res. 43/165, U.N. GAOR 43rd Sess., Supp. No. 820.

5. U.N. Convention on International Bills of Exchange and International Promissory Notes, 28 I.L.M. 177 (1989).

The Convention embodies important changes which reflect current international banking practices. It provides for increased negotiability of negotiable instruments by diminishing possible defenses. The new rules enable negotiable instruments to be payable in installments, with variable rates and to be expressed in special drawing rights ("SDRs") or European currency units ("ECUs").

B. INTERNATIONAL SALES

The unification of rules applicable to international contracts for the sale of goods was achieved by the 1980 Convention for the International Sale of Goods.[6] This was prepared by UNCITRAL. The U.N. Convention was preceded by a Uniform Law on International Sales ("ULIS") and Uniform Law on the Formation of International Sale ("ULFIS"). ULIS and ULFIS were prepared by the International Institute for the Unification of Private Law ("UNIDROIT"). UNIDROIT has headquarters in Rome, Italy and is funded by Italy and other states, including the United States. ULIS and ULFIS were incorporated into conventions signed at a diplomatic conference at the Hague.[7]

The U.N. Convention was adopted by the United States and many more countries than ULIS or ULFIS. They include countries of diverse political and economic systems and in different stages of economic development. The prospects are that it will be ratified or adhered to worldwide. However, the domestic systems of these countries were not changed. They only agreed to apply the unified rules to contracts between parties having their place of business in different countries that have adopted the Convention, or whenever the rules

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6. Text reprinted in 19 I.L.M. 668 (1980). Signed April 11, 1980, in effect as of January 1, 1988. Adopted by the United States and other countries which include: Argentina, Australia, Austria, Byelorussia, Bulgaria, Canada, Chile, China, the former Czechoslovakia, Denmark, Ecuador, Egypt, France, Finland, Germany, Ghana, Guinea, Hungary, Iraq, Italy, Lesotho, Mexico, The Netherlands, Norway, Poland, Romania, Singapore, Spain, Sweden, Switzerland, Syria, Uganda, Ukraine, the former U.S.S.R., Venezuela, the former Yugoslavia and Zambia. *See* JOHN HONNOLD, UNIFORM LAW FOR THE INTERNATIONAL SALES UNDER THE 1980 UNITED NATIONS CONVENTION (1987); Alejandro M. Garro, *Reconciliation of Legal Traditions in the U.N. Convention on Contracts for the International Sale of Goods*, 23 INT'L LAW. 443, 444 (1989).

7. Convention Relating to a Uniform Law on the International Sale of Goods, July 1, 1964, 834 U.N.T.S. 169; 3 I.L.M. 854 (1964); *see* ZAPHIRIOU, *supra* note 2, at 59-65. The relevant conventions were ratified by Belgium, Gambia, Federal Republic of Germany, Israel, Italy, Luxembourg, the Netherlands, San Marino and the United Kingdom.

are applicable by operation of a private international law provision.[8] This reflects considerable progress from the pre-existing state of affairs in which the contract law of a particular country or state was chosen by the parties as the proper law of an international contract of sale. Worldwide agreement on a set of rules applicable to international contracts of sale will save transaction costs in the negotiation of an international contract of sale of goods. It will dispense of the argument whether to choose the law of the country of the seller or the country of the buyer or the little known law of a third country. This is particularly useful when the parties to the contract are states or state agencies or instrumentalities.

The U.N. Convention on Sales was complemented by the 1974 U.N. Convention on the Limitation Period in the International Sale of Goods.[9]

C. CARRIAGE OF GOODS BY SEA

The unification of the rules that apply to the carriage of goods by sea under bills of lading illustrates the attainment of unification by the operation of custom, commercial practice, the activity of professional organizations and, finally, by international convention. Some customs created in the Mediterranean and the Atlantic affected worldwide carriage by sea. Commercial practice contributed to the use of standard clauses in time and voyage charter parties and in bills of lading. Building on these foundations and national legislation, the International Law Association and the Comite Maritime International, in repeated sessions, attended by lawyers, underwriters, representatives of ship owners, and representatives of cargo owners drafted a set of rules, which were adopted at a Hague meeting in 1921. They are known as the Hague Rules of 1921. They can be incorporated, as such, in any time or voyage charter or bill of lading by a clause known as "clause paramount." They regulate the rights and liabilities of carriers and cargo owners and provide for minimum standards that have to be observed. The Hague Rules were considered at the Fifth Diplomatic Conference on Maritime Law held in Brussels in October, 1922. This led to the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading, which was signed

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8. U.N. Convention on Contracts for the International Sale of Goods, Apr. 11, 1980, art. 1, 19 I.L.M. 671, 672 (entered into force Jan. 1, 1988).

9. 13 I.L.M. 952 (1974). *See also* 1980 Protocol Amending the Convention on the Limitation Period in the International Sale of Goods, 19 I.L.M. 696 (1980) (aligning the two conventions).

in Brussels on August 25, 1924.[10] The Hague Rules have been adopted by many countries, including practically all maritime nations. They are, in one form or another, incorporated into their domestic legal systems.

The Hague Rules were amended by the Visby Rules contained in a Protocol signed at a diplomatic conference in 1968.[11] The amendments adjust monetary values contained in the Hague Rules to meet past and future inflationary instability. They also adapt the rules to the radical technological changes brought about by containerized trading.

An initiative to revise the Hague Rules was undertaken under the auspices of the United Nations Conference for Trade and Development ("UNCTAD") and UNCITRAL. This led to the United Nations Convention on the Carriage of Goods by Sea of 1978, known as the "Hamburg Rules".[12] The Convention strengthens the rights of cargo owners and reflects the interests of developing countries. The Convention was adopted by the requisite number of 20 states and is now effective.[13] It is doubtful that the United States and nations with large maritime fleets will ratify the convention.

D. GENERAL AVERAGE

The unification of the rules relating to general average was achieved by the York-Antwerp Rules. The International Law Association adopted the Rules in 1890 from a draft provided by the British Association of Average Adjusters. The Rules were revised in 1924 and again by the Comite Maritime International in 1950 and in 1974. They are incorporated by reference in time and voyage charters and in bills of lading. They provide uniform rules, regulating contributions by ship, cargo and freight to make good voluntary sacrifices and general average expenditures, undertaken for the common safety. They have not been generally enacted as law and they were not adopted by international convention, but they regulate worldwide as a result of a standard incorporation by reference.

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10. International Conventions for the Unification of Certain Rules Relating to Bills of Lading, Aug. 25, 1924, 51 Stat. 233, 120 U.N.T.S. 155.

11. The Visby Rules went into force for eleven countries on June 23, 1977. Although the United Kingdom has adopted them, the United States has not yet adopted the Visby Rules. The Rules were amended in 1979. *See* George Zaphiriou, *Amending the Hague Rules*, J. BUS. L. 12 (1971).

12. *See* 17 I.L.M. 608 (1978).

13. Adopted by Barbados, Botswana, Burkino Faso, Chile, Egypt, Guinea, Hungary, Kenya, Lebanon, Lesotho, Malawi, Morocco, Nigeria, Romania, Senegal, Sierra Leone, Tanzania, Tunisia, Uganda and Zambia.

E. PRINCIPLES FOR INTERNATIONAL COMMERCIAL CONTRACTS

UNIDROIT is completing a Restatement of Principles for International Commercial Contracts.[14] The principles cover formation, substantive validity, interpretation, performance and the consequences of non-performance.

Similar to the Hague Rules,[15] the principles will become applicable by incorporation by reference in international commercial contracts unless, and until, they become part of an UNCITRAL convention as is the case with the international contract of the sale of goods. This is a good way to test the utility of the codified principles and save costs. It will also allow, after their publication, wide critical appraisal and, if necessary, modifications.

F. INTERNATIONAL COUNTERTRADING

The U.N. General Assembly recommended the use of a legal guide for drawing up contracts in international countertrade transactions.[16]

Countertrading takes multiple forms. It can be a simple barter which is a straight exchange of goods for a different kind of goods. It may be a counter-purchase which is a sale of goods by a seller to a buyer with an undertaking by the seller to buy under a linked contract different goods from the original buyer. It may be an offset of the supply of goods or services with the counter-supply of other goods.

Countertrading will be of great importance in trading with developing countries. The purchaser of goods from an industrialized country will be able to pay in kind rather than in currency, helping the developing countries' exports and their balance of trade and balance of payments.

The guide provides for a coordinating document that will link the transactions involved in international countertrading. It also provides for the use of arbitration. Here again, the guide will help save transaction costs in negotiating and drafting international countertrading transactions.

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14. UNIDROIT Doc. (Study L-Doc. 40 Rev. 10) art. 7.4.4 (1992).

15. *See supra* note 10, and accompanying text.

16. *Report of U.N. Commission on International Trade Law on the Work of its Twenty-fifth Sess.*, G.A. Res. 47/34, Nov. 25, 1992, *in* ADVANCE TEXT OF RESOLUTIONS AND DECISIONS ADOPTED BY THE GENERAL ASSEMBLY AT ITS FORTY-SEVENTH SESS. 497 (1993).

G. U.N. MODEL LAW ON PROCUREMENT

In 1986, acting by the authority of UNCITRAL, the Working Group on the New International Economic Order undertook the development of a draft model law on procurement. On May 6, 1992, the Working Group released its Revised Draft Articles of Model Law on Procurement.[17] The model law is aimed at facilitating the efficient regulation and promotion of the procurement of goods. It provides a framework of general provisions which states may adopt in accordance with their laws and legislative objectives. The model law is broader in scope than the General Agreement on Tariffs and Trade ("GATT") Procurement Code and more specifically addresses tendering proceedings and other means of procurement. A commentary accompanies the model law and serves as a "guide to legislators" for interpretation purposes. UNCITRAL has approved the model law,[18] and so has the U.N. General Assembly by Resolution 48/33 of December 9, 1993.

The model law is consistent with Organization of Economic Cooperation and Development ("OECD") and GATT guidelines and is more detailed. It reflects procurement concepts prevailing generally in countries. By unifying procurement procedures, it will provide equal opportunities in procurement trading and will contribute to international competition.

H. ELECTRONIC COMMERCE

Electronic commerce covers a number of commercial transactions in which funds, documents or data are electronically transferred. The most advanced form of electronic commerce is the wholesale wire transfer which led to the adoption of Article 4A of the Uniform Commercial Code ("UCC"). The article was adopted on January 15, 1993 and has been incorporated in 44 jurisdictions. It is used by banks from coast to coast. The federal Electronic Transfer Act[19] applies to consumer accounts. UNCITRAL adopted a model law on International Credit Transfers on May 15, 1992.[20] The model law applies exclusively to transnational transactions between bankers.

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17. UN Doc. A/CN.9/WG.V/WP.36 (1992).

18. *See Report of the U.N. Commission on International Trade Law on the Work of its 26th Session*, U.N. GAOR, 48th Sess., Supp. No. 17, at para. 217, U.N. Doc. A/48/17 (1993), *in* 33 I.L.M. 445 (1994).

19. Pub. L. No. 90-321, 92 Stat. 3741 (1978) (codified at 15 U.S.C. §§ 1693-1693(p)).

20. *See* Report, *supra* note 18.

UNCITRAL is now working on projects dealing with the electronic transfer of letters of credit, bills of lading and negotiable instruments.

A third kind of commercial transaction in which electronic messages are used is the electronic data interchange, known as EDI in the United States and TEDIS in Europe. A working group is actively preparing, within the framework of UNCITRAL, model rules on electronic data interchange in international transactions.

EDI follows the fax revolution which emerged twenty years ago and has since dominated government and business transactions. Even the Internal Revenue Service, since 1990, allows individuals to file their income tax returns electronically. Electronic transmission from computer to computer will include transmission of business documents, *e.g.* purchase orders, invoices, shipping notices, acknowledgements and receipts. Extension of EDI to contractual arrangements of all kinds will require radical reform of legislation in all countries. In the United States, it will necessitate reform of several provisions of the UCC requiring writing as a prerequisite of validity. It will affect the Statute of Frauds which has been enacted in one form or another by most state legislatures of the United States. The requirement of writing in connection with most negotiable instruments or documents of title will have to be amended.

More importantly, safeguards will have to be devised to ensure the ascertainment of the identity of parties to the electronically effected or affected transactions and ensure the authenticity of recordings and other relevant evidence.

The United States Department of State, the American Bar Association, the American Association of Law Schools and the American Law Institute are, at present, actively involved in the process. The model rules will fulfill a dual function. First, they will be able to be incorporated by reference in transnational agreements providing for the use of EDI. Second, they will prompt reform by national and state legislatures to facilitate the wide use of EDI.

I. EU AND EFTA UNIFICATION OF JURISDICTION AND ENFORCEMENT OF JUDGEMENTS

Wide uniformity by convention was achieved in the EU on jurisdiction of the courts in civil and commercial matters and in the recognition and enforcement of their judgments.[21] Agreement as to

21. 1968 Brussels Convention on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters, 1982 O.J. (L388), as now amended and ratified by all the member-states.

jurisdictional bases between states leads to effective recognition and enforcement of judgments. Predictability of jurisdiction and reasonable certainty of recognition, which means attribution of res judicata effect, followed by enforcement contribute to trade stability.

The above uniformity on jurisdiction and enforcement of judgments was extended by the Lugano Convention of 1988 to the seven EFTA countries: Austria, Finland, Iceland, Liechtenstein, Norway, Sweden and Switzerland.[22] The extension is a side-effect of the existing free trade area between the EU and EFTA. The next step in trade integration will be the admission of the EFTA countries (except Switzerland) as members of the EU.

J. THE LAW APPLICABLE TO CONTRACTUAL ARRANGEMENTS

An Inter-American Convention on the Law Applicable to International Commercial Contractual Arrangements is now being drafted within the framework of the Organization of American States ("OAS").[23] The Convention deals with choice of law relating to private transnational contracts. The Convention adopts a wide application of the parties' autonomy in selecting the applicable law.[24] When there is no express selection by the parties, the Convention resorts to an implied choice by the parties.[25] Failing an express or implied choice, the Convention provides for the application of the law of the state which has the closest ties.[26] This approach is similar to the Anglo-American trend in favor of the law of the state with the most substantial Connection. The convention adopts *depecage*[27] and rejects *renvoi*.[28] The Convention applies to the form of the contract an alternative choice of law provision consisting of the law applicable under the Convention, the law of the state in which the contract was concluded or the law of the state where the contract is performed.[29]

The drive toward unification of the law applicable to contractual arrangements within the framework of the OAS follows closely the

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22. 1988 EC-EFTA Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, 28 I.L.M. 623 (1989).

23. OEA/Ser.K/XXI.5; CIDIP-V/doc.34/94 rev. 3 corr. 1 (March 18, 1994).

24. *Id.* at art. 7, 8.

25. *Id.* at art. 7.

26. *Id.* at art. 9.

27. The application of the laws of different states to separate issues.

28. The reference to the choice of law rules of a state other than the forum state.

29. Inter-American Convention on the Law Applicable to International Commercial Contractual Arrangements, *supra* note 23, at art. 12.

unification achieved, in relation to the same matter, within the European Union. All member states of the EU have ratified the European Convention on the Law Applicable to Contractual Obligations.[30] This too provides for a wide application of the law selected by the parties.[31] If there is no selection, the contract is to be governed by the law of the state with which it is most closely connected.[32]

III. HARMONIZATION

Harmonization brings closer legal provisions or processes between two or more legal systems, or achieves equivalence.

In the global trading area, it is strenuously pursued with mixed success by WIPO and GATT in connection with trade-related intellectual property ("TRIP"). TRIP covers patents, trademarks, trade-related copyright such as the protection of computer software, trade secrets and the *sui generis* protection of semiconductor chips (integrated circuits).[33]

This section will concentrate on regional harmonization which was successfully pursued in the EU on product liability and company law. Harmonization was carried out under Article 100 of the EEC Treaty, now Article 100a(1) of the EEC Treaty as amended by the Single European Act of 1987. The amended article enables the European Council to take measures by a qualified majority vote, and in cooperation with the European Parliament, for the harmonization or approximation of the legislation of member-states. A measure includes the use of a regulation which has direct effects in the member-states, or a directive which leaves the method of legislative reform to each member-state. Until now, the European Council has used directives in the harmonization process.

A. PRODUCT LIABILITY

The European Council, by Directive 85/374/EEC of 25 July 1985,[34] directed the change from the need to prove negligence to strict liability in cases of injury, death or property damage caused by a defective product. The directive left two important options to the member-states: (1) to opt out from the requirement that the state of

30. 1982 O.J. (L/388) 23, as amended and ratified by all the member states.

31. *Id.* at art. 3.

32. *Id.* at art. 4(1).

33. *See* George Zaphiriou, *Transnational Technology Protection*, 40 AM. J. COMP. L. 877 (1992).

34. 1985 O.J. (L210) 29.

the art, at the time when the producer put the product into circulation, was not such as to enable the defect to be discovered, and/or (2) to put a cap on damages of not less than 70 million ECU.[35]

France and Spain have not yet informed the European Commission of any specific legislative measure. Belgium, Denmark, Germany, Greece, Ireland, Italy, the Netherlands, Portugal and the United Kingdom complied and did not exercise option (1). Luxembourg complied and exercised option (1). Damage caps were set by Germany, Greece and Portugal.

The reason for the Directive is to place importers—expressly included in the Directive—and EU producers on equal footing and protect EU consumers. The directive represents what has become a universal trend. Harmonization solves difficult questions of choice of law in the area of product liability.

B. COMPANIES

The European Council has issued seven directives dealing with publicity, ostensible authority of directors or partners, nullity, maintenance of minimum capital by stock companies, merger of stock companies, content and publication of financial statements and annual reports and balance sheets, and takeovers and reorganization of companies and accounts of affiliated companies. The creation of a European Stock Company—a supranational community company—has encountered difficulties as a result of conflicting views on co-determination. Co-determination means representation of the employees of certain types of companies on the supervisory board.[36]

It is difficult to say whether harmonization in this field is the result of any ill-conceived symmetry or is inspired by utility. Lack of a Security and Exchange Commission in the EU, and in most member-states, requires harmonized rules on publicity, formalized accounts and specificity in annual reports providing the desired transparency. Ostensible authority of directors can be achieved by the courts in a common law country, but requires legislation in civil law countries. Reduction in formalities and accessibility of information relating to powers and authority of the company's organs are bound to reduce transaction costs.

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35. EC currency unit equivalent to about $1.14.

36. R. BUXBAUM AND K. HOPT, LEGAL HARMONIZATION AND THE BUSINESS ENTERPRISE (1988); Alfred Conard, *The European Alternative to Uniformity in Corporation Laws*, 89 MICH. L. REV. 2150 (1991); ZAPHIRIOU, *supra* note 2, at 113-14; George Zaphiriou, *Approximation of Common Law in the Common Market*, 1968 J. Bus. L. 280.

The EU is reluctant to introduce competition between member-states to provide advantageous provisions to companies. This may lead to concentration in one member-state to the exclusive benefit of this particular member-state without benefit to the EU. EU companies mainly pay taxes to the member-state in which they are organized and have their center of management, in this particular context there is no equivalence to federal taxation.

C. NAFTA

There is an important difference between the institutionalized integration of the European Union which is aiming at some form of quasi-federalism and the NAFTA arrangement which is largely contractual. However, there will be harmonization and equivalence between Canada, Mexico and the United States in relation to the following matters: (1) intellectual property which, as in the case of global harmonization, covers patents, trademarks, copyright, trade secrets and integrated circuits. Unlike global harmonization, harmonization is already progressing in the implementation of NAFTA. The required harmonization will be limited in Canada, but very wide in Mexico; (2) measures to enhance safety, health, environmental concerns and consumer protection; (3) government procurement, to promote fairness, transparency and predictability; (4) sanitary and phytosanitary measures ("SPS"). The purpose is to prevent the use of SPS measures as disguised restrictions on trade, but also to safeguard each country's right to protect human, animal and plant life or health. In some cases, equivalence rather than uniformity is achieved. Equivalence to avoid conflict rather than attain identical results; and (5) environmental protection. Specific committees will be established to ensure harmonization or equivalence.[37]

IV. RATIONALE AND CONCLUSIONS

There are several forms of unification and harmonization, varying in utility.

There is much to be said in favor of unification that is brought about by the initiative of contracting parties within the framework or guidelines provided by a supra-national or regional authority. This kind of unification is the result of tested utility. It provides the necessary flexibility to adapt the rules to the prevailing state of the market and the desired degree of protection by each contracting party.

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37. Canada-Mexico-United States; North American Free Trade Agreement of 1992, 32 I.L.M. 289 (1993); The Business Round Table NAFTA Briefing Book (1993).

One of the defects of unification by convention or legislation is that the unified provisions are subjected to varying interpretations in the different countries. A system of revision should be included in the arrangement. Unification is particularly useful in connection with negotiable instruments—including bills of lading—where notice to the transferee of the applicable rules is vital.

Convergence, which is spontaneous harmonization, occurs from time to time between the private rules of different legal systems.[38] In contrast, unification, harmonization and equivalence by agreement, international convention or mandate of regional institutions or committees are prevalent phenomena in global trading and regional trade integration. The degree and extent of harmonization will be affected by the method of integration; whether integration is by some form of quasi-federalism or merely contractual. Emphasis on economic planning or reliance on free market adjustments influence the approach and mode of harmonization.

38. Martin Boodman, *The Myth of Harmonization of Laws*, 39 AM. J. COMP. L. 699 (1991); George Zaphiriou, *Harmonization of Private Rules Between Civil and Common Law Jurisdictions*, 38 A.J.C.L. 71 (1990, Supp.).