UNIFORM PRIVATE LAW CONVENTIONS AND THE LAW OF TREATIES

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I. INTRODUCTION

The international unification of private law avails itself of several types of legal instruments. In some areas we find uniform commercial terms drafted by private institutions like the International Chamber of Commerce; examples are the International Commercial Terms or Incoterms relating to sales of goods and commodities or the Uniform Customs and Practices for Letters of Credit. In more recent years model laws such as the Uncitral Model Law on International Commercial Arbitration have been submitted to the global business community. Yet another type of unification instrument is the catalogue of Principles for International Commercial Contracts drafted by the Unidroit Institute for the International Unification of Private Law. But the international treaty is by far the most important vehicle for the unification of private and commercial law. At first sight this observation is surprising since treaties essentially provide for rights and obligations between states and other subjects of international law while private law deals with legal relations between individuals and undertakings. It may be questioned whether a treaty is an appropriate instrument for this purpose. The

unbiased observer may get the impression that the international community has used a wrong tool for more than a century.

The first part of this paper will therefore trace the increasing use of international treaties in the field of private law in a historical perspective (infra I). A second chapter will explore, to what extent and in what context the rules of public international law of treaties are actually suitable for the unification of private law; account will be taken of the codification of the law of treaties in the Vienna Convention on the Law of Treaties (infra II). It appears that this issue has not been discussed very much so far, neither from the view point of public international law nor from that of private law. Closer inspection will reveal that in particular the regime of reservations is not sufficiently adjusted to the characteristics of private law (infra III). Likewise, the application of articles 31 to 33 of the Vienna Convention on the Law of Treaties dealing with the interpretation of international conventions is very controversial and merits a closer look (infra IV).

II. The Treaty as a Vehicle of Uniform Private Law: a Historical Survey

The unification of private law started on both sides of the Atlantic in the second half of the 19th. century. If we scrutinize the treaties concluded until World War I, we shall see that the matters regulated by those treaties invariably transcended the traditional limits of private law as perceived in those days. In a book published in 1894 and entitled "Étude de Droit International Conventionnel" the author, who was secretary general of the International Office for Intellectual Property in Berne at the time, lists what he calls diplomatic "arrangements also called conventions" which serve to avoid conflict of laws. The list comprises conventions on maritime law, inland navigation, railway transport, postal and telegraph communications, trade relations, customs and currency, and finally copyright and industrial property. There is one important common feature about all these matters: All of them affect national interests, and many of those conventions are not limited to provisions dealing with private relations, but also contain regulations pertaining to public law. It is perhaps even more appropriate to say that, in the treaties of the early years, the private law content was considered as a kind of annexe to public law rules. Therefore, the use of the international treaty suggested itself when it came to international unification.

This proposition can be further underpinned in respect of many areas mentioned above. Take the protection of industrial property which was implemented by the Paris Convention of 1883 in Europe and by two of the 1889 Montevideo Conventions in South America. From the very beginning industrial property rights have been considered as a kind of privilege granted by each sovereign state in respect of its own territory and not reaching beyond. Consequently, the owner of a patent or trademark must strive for protection in all states where he expects his invention or trademark to be profitable. For the state authorities granting that protection to foreign applicants this raises the issue of national treatment which is a matter of public law and the central issue covered by the above mentioned conventions. Similar arguments can be made in respect of the Berne Copyright Convention of 1886.

A further subject of the international unification of private law which was of primary importance towards the end of the 19th. century related to the carriage of goods by rail. From a present perspective the relations between rail carriers and shippers are of course of a purely private law nature. But towards the end of the 19th. century the impact of the public interest on the railway sector was strong, at least in Europe. Most countries had nationalized the private railway companies of the pioneer phase; thus, the contracting states of the European Railway Convention were at the same time entrepreneurs and legislators of railway law. Moreover, the basic element of the European Railway Convention is a duty of every national railway to accept rail shipments from the railway companies of other contracting states under a through-consignment note that gives evidence of a through-contract of carriage covering the whole international transit. The contractual relations between a rail carrier and a foreign shipper are therefore the consequence of an obligation that was considered as pertaining to public law at the time and that was therefore appropriately dealt with in an international treaty.

A third area of the law that has been the object of intensive unification efforts ever since the end of the 19th. century is private international law. The ambivalent nature of this discipline is well-known. For continental legal theory in Europe it is part of private law determining the applicable law in private relations. On the other hand, the theory of comity of nations which is rooted in categories of public international law such as the sovereignty of nations has had a strong impact on private international law in

certain countries such as the United States. Before World War I the diplomatic dimension of private international law was perceived on the European continent much more clearly than it is today. Mancini, the influential Italian scholar and foreign minister had declared three principles as fundamental to private international law, two of them being state-related: freedom, nationality and sovereignty. The application of foreign law was considered as a kind of complaisance *vis-à-vis* the foreign state. Therefore the German ministry of foreign affairs successfully objected to the adoption of bilateral conflict rules in the codification of German private international law in the 1890s; conflict rules referring to foreign law were thought to be a matter of diplomatic convention. In accordance with this view the first conventions agreed upon by the Hague Conference on Private International Law in 1902 provided only for the obligation of contracting states to apply the law of other *contracting states*. Contrary to the modern Hague conventions, cases involving the law of non-contracting states were not covered.

Aspects of sovereignty also played an important role in the first conventions on maritime private law which were prepared by the Comité Maritime International and were concluded in Brussels in 1910. While the convention on the collision of vessels is only applicable if both ships involved fly the flag of a contracting state, the convention on assistance and salvage at sea only requires that the assisting or the assisted vessel is registered in a contracting state. These provisions do not refer to the nationalities of parties, but to that of vessels. This reflects an opinion which is wide-spread in public international law up-to-date and which considers a ship as a floating part of national territory. In this view the relation between vessels of different nationality are relations of sovereignty liable to be regulated in international treaties.

As shown by these examples the uniform law conventions of the pre-World War I period invariably had a strong public law dimension. The use of the international treaty as an instrument of unification therefore was logical and may even have suggested itself. The private law content of these conventions gradually increased in course of time. But the breakthrough towards pure private law conventions did not happen until after the First World War. The first convention that exclusively dealt with private legal relations was the Brussels Convention on Bills of Lading of 1924 which is better known as the Hague Rules. It is significant that the scope of application of this instrument is in no way related to the nationality of the

parties or the nationality of the ship, but only to the issue of a bill of lading in a contracting state. Further conventions of the interim period between World Wars I and II give evidence of a clear distinction between private law and public law. This is true for the Warsaw Convention on the International Carriage by Air and also for the various Geneva Conventions of the early 1930s on cheques and bills of exchange where public law and private law issues are dealt with in separate instruments.

In retrospective it is fair to say that the use of the international treaty as an instrument of private law unification is the result of a long lasting process. The beginning was marked by matters of a strong affectation of public interest and public law. In the course of 50 years treaty practice more and more turned to a subject of a purely private law nature. The use of the treaty for the unification of private law has certain advantages, but it also produces some tensions which will now be discussed.

III. International Treaties on Private Law – Accord and Tension Between Form and Substance

1. *The aptitude of treaties for the unification of private law*

The success of the treaty as an instrument for the unification of private law is primarily due to its binding force. The treaty prescribes clear and precise legal rules as an objective which the contracting states have to achieve, either by declaring the convention directly applicable or by adjusting their internal legislation. As compared with unification by means of model legislation this has the advantage of effectively bringing about uniformity. Model laws may be adopted in part and may be deviated from if the national legislator chooses to do so. A binding treaty can be accepted only as a whole and does not permit any deviation unless it so provides. This is important for the political process. The international unification of laws invariably requires consensus at two different levels: At the international level when the unified text is approved, and at the national level when it is ratified. The uniformity achieved in the international arena is imperilled in the national ratification process if deviations in detail are allowed. With the exception of reservations permitted in the convention the binding treaty only leaves the choice between yes and no to national legislators.

A further advantage of the international treaty being used for unification of private law is the existence of a codified legal regime of treaties, i.e. the Vienna Convention on the Law of Treaties. While some authors question its usefulness for uniform law conventions, it is beyond doubt that the Vienna Convention is helpful to the extent that uniform law conventions establish duties of the contracting states as against each other. Thus, the Vienna Convention may help to find out what a "contracting state" is, how the consent of a contracting state can be expressed, when the treaty enters into force, how far the territorial scope of the treaty extends and what the effect of a treaty amendment or of the termination of a treaty is.

There is ample court practice confirming this view. In a dispute between an employer and a worker being employed on an off-shore drilling platform the European Court of Justice had to identify the country where the employee habitually carried out his work; the courts of this place are competent under the European Judgements Convention. With explicit reference to article 29 of the Vienna Convention on the Law of Treaties and further provisions of the Geneva Convention on the Continental Shelf of 1958 the Court made clear that the continental shelf forms part of the territory of the respective contracting state. US courts have referred to the Vienna Convention on the Law of Treaties in order to solve the problems arising from the subsequent amendments of the Warsaw Convention by various instruments and from its replacement by the Convention of Montreal of 1999. In this context the Vienna Convention has been characterized as a codification of customary international law and as an authoritative guideline for its assessment. This move allowed the courts to take recourse to the Vienna Convention despite the prohibition of retroactive effect contained in article 4. The Federal Court of Germany had to decide on the conflict between the Hague Convention on the Law Applicable to Maintenance Obligations of 1956 and the bilateral Treaty of Establishment between Germany and Iran of 1929. In accordance with article 30 (4) of the Vienna Convention on the Law of Treaties the Court decided that the latter convention prevailed since it was effective for both countries whereas the Hague Convention had not been signed or ratified by Iran. These examples suffice to show that the general law of treaties as laid down in the Vienna Convention provides a common frame of reference for the application of international conventions irrespective of their substantive content. Just like the law of contract provides the framework for specific agreements the Vi-

enna Convention may be regarded as a kind of general part of the Law of Treaties dealing with issues that may arise in the context of numerous specific conventions. At closer sight, however, we discover that we cannot follow the Vienna Convention blindly when it comes to the application of private law conventions.

2. *Limits of the law of treaties in uniform private law*

Treaties for the unification of private law put the contracting states under the obligation to bring their internal law in line with the content of the convention. This obligation is incumbent upon the national legislator in the first place. Such treaties are therefore designated as law-making treaties or *traités-lois*. This category is separated from other treaties which, like contracts in private law, provide for mutual commitments of the parties.

While all conventions of uniform private law are law-making treaties, not all law-making treaties deal with private law. Common rules may also be established by appropriate treaties in the field of public law, take for example the WTO Convention or the European Convention on Human Rights. The decisive distinction between these treaties and the conventions on uniform private law relates to their implementation. In the field of public law treaties are primarily enforced by the executive branch of government whereas private law conventions are exclusively applied by the courts. The difference is important for both the flow of information and the judicial independence.

The executive branch of government is usually connected to the national ministry of foreign affairs which has participated in the negotiation of an international treaty. The state authorities will report to the national government about the application of the treaty. Doubts as to its meaning can be clarified at the international level, and the contracting states will be able to instruct the executive branch of their respective governments to apply the treaty accordingly.

In private law litigation there is no comparable flow of information. Generally speaking, governments are not involved and they usually do not monitor the application of a treaty by the courts of their own country or of other contracting states. There is no established mechanism for making governments conscious of divergent interpretations. Even where they are

known they are difficult to overcome. While governments are allowed, in some countries, to advise courts as *amici curiae* on the interpretation of the treaty they usually have no authority to instruct the courts. Divergent interpretations may be overcome by amendments which would, however, have to ratified by the contracting states. Experience shows that the number of ratifications of amendments usually falls short of the number of contracting states of the original convention. As a consequence and as most clearly shown by the development of air law after World War II, the initial uniformity of texts falls apart in the course of later amendments. The problem could be solved by conventional mechanisms which provide for a more or less automatic revision of a convention. But appropriate provisions are lacking in the Vienna Convention on the Law of Treaties.

There are further inconsistencies of uniform private law and the Law of Treaties in the area of dispute settlement. Contracting states are usually not interested in litigation between private parties that arise from conventions on uniform private law. A view taken by a national government in a given case in favour of its own citizen or enterprise may be detrimental to other citizens or companies of the same country in later cases. Therefore, the contracting states will usually abstain from expressing any views on the interpretation of uniform private law in pending cases. On the other hand the rules on dispute settlement contained in international treaties usually confine standing to the contracting parties, i.e. to states. Where private parties have a right to sue as they have in respect of the protection of investment and the law of the sea, this relates only to law suits brought against states or public bodies. Divergences of interpretation of uniform law conventions arise from the practice of national courts and there is hardly any international convention that takes account of this problem at all. There are single conventions such as the European Convention on the International Contract of Carriage by Road of 1956 (CMR) that have at least addressed the problem granting the contracting states a right to sue other contracting states in the International Court of Justice at the Hague for misinterpretation of the convention. But the solution is manifestly absurd and impracticable. Although the convention is applied extremely often by national courts across Europe and although there are some noticeable divergencies not a single case has been brought before the International Court of Justice in more than 40 years. Here again, the Vienna Convention on the Law of Treaties has failed to provide for practicable solutions that allow to main-

tain uniformity in the every day application of conventions on uniform private law.

IV. Reservations in Conventions on Private Law

A reservation in a bilateral treaty is just another word for dissent. In multilateral treaties, however, it is often the permission of reservations that allows states to ratify. Their dissent in marginal issues should not prevent their agreement on the core parts of a convention. Therefore, reservations are a typical feature of multilateral treaties, irrespective of their substantive content. But what is the effect of such reservations on the other contracting parties?

Given the basic principle of reciprocity that governs the law of treaties, article 21 of the Vienna Convention on the Law of Treaties aims at re-establishing reciprocity in the relations between a state that makes a reservation, and the other contracting states. The basic idea of paragraphs 1 and 2 of article 21 is that a provision whose application a contracting state has reserved should not be applied in other contracting states in their relations with the state that has declared the reservation. As among the other contracting states this provision should, however, continue to apply.

The International Law Commission of the United Nations has expressed the view that these principles and the whole regime of reservations laid down in the Vienna Convention on the Law of Treaties should apply to law-making treaties. This may be appropriate for the majority of public law treaties. Doubts may arise, however, in respect of conventions on international civil procedure since reciprocity between the court systems of different states is not a primary objective of a discipline dealing with private relations in international litigation. As far as conventions on substantive private law or on private international law are concerned, the quest for reciprocity is out of the question. The more recent conventions on private international law explicitly point out that the law designated by their rules shall apply irrespective of any requirement of reciprocity and whether or not it is the law of a contracting state. These conventions pursue the objective of designating the national law that is most appropriate to govern the litigated case. This is an objective of private justice. The former view that the application of foreign law is a concession to the foreign state is no longer maintained. Therefore the reestablishment of reciprocity as pursued by

article 21 of the Vienna Convention on the Law of Treaties is no longer compatible with modern conflict of laws conventions.

Similar observations can be made in respect of substantive law conventions. In 1985 the German Federal Court had to decide a litigation between a German winery and a British buyer which was governed by the Hague Sales Conventions of 1964, i.e. the predecessor of the Vienna Convention on the International Sale of Goods of 1980 (CISG). Under article V of the 1964 Convention the United Kingdom had made a reservation to the effect that the uniform sales law would only apply if the parties for the sales contract had agreed on it. The German Federal Court refused to draw any inferences from this reservation for the adjudication of the case in Germany. Without making reference to the Vienna Convention on the Law of Treaties the Court declared that the reservation under article V was relevant only for the contracting state which had made that reservation. The Court admitted that as a consequence of its opinion the same case would be subject to different legal regimes in the United Kingdom and Germany which, however, would not make much difference as compared with the situation resulting from national conflict rules in the absence of the 1964 Convention. There is no doubt that the Court's decision is difficult to be reconciled with article 21 of the Vienna Convention on the Law of Treaties.

A further example that shows the inappropriateness of article 21 as applied to conventions on uniform private law may be taken from CISG. Under article 96 CISG a contracting state whose legislation requires contracts of sale to be in writing may declare that certain provisions of the Convention that allow other forms and in particular oral declarations, *e.g.* article 11, do not apply where one of the parties has its place of business in that state. This reservation has been made by some countries of the former socialist block in Eastern Europe and in Latin America by Argentina and Chile. Suppose that a seller established in a contracting state that has made no such reservation concludes a sales agreement by telephone with a Chilean buyer. Due to the reservation made by Chile a court of that country would not apply article 11 CISG and might hold the contract to be invalid because of a lack of the form required under the national law. But if the litigation is brought before a court of another contracting state that has not made the reservation under article 96 CISG, why should that court follow Chilean law (as suggested by article 21 of the Vienna Convention on the Law of Treaties) if Chilean law does not govern the case under the conflict

of laws rules of that court? There is little doubt that most courts in the world would rather enforce the parties' consent under article 11 CISG.

The cases outlined above can be accommodated to article 21 of the Vienna Convention on the Law of Treaties by a proper interpretation of that provision. It is rather doubtful whether article 21 actually covers reservations formulated against private law conventions. Article 21 relates to "a reservation established with regard to another party", i.e. to a reservation that is meant to restrict the binding force of a treaty as against certain other contracting states. Arguably the reservations addressed by article 21 are selective and not general. Reservations declared under private law conventions are however general in nature; contracting states are usually given the right not to apply certain provisions of the convention that clearly contradict corresponding rules of their national laws. Such reservations are not directed against specific contracting states. They have a general character and therefore are not subject to article 21. It has indeed been argued already 30 years ago that article 21 has to be adjusted, by means of interpretation, to the characteristics of international treaties in the field of private international law. The solution outlined above would be viable in that context, too.

V. The Interpretation of Conventions on Uniform Private Law

A core component of the Vienna Convention on the Law of Treaties are the rules on interpretation of treaties in articles 31-33. They differ from most other provisions of the Vienna Convention on the Law of Treaties since they do not focus on the binding force of treaties for states, but relate to their substantive content. They may therefore become particularly relevant for the interpretation of private law conventions as well. The doctrinal views are however divided in this respect. In the German literature on CISG the application of articles 31-33 of the Vienna Convention on the Law of Treaties is questioned as a matter of principle. Authoritative writers hold that these provisions are only significant for the final Part IV of CISG that contains rules of public international law and that they might occasionally be applied by analogy to the substantive parts of CISG. Some authors take a more differentiated view, however, and take recourse in particular to article 33 on the interpretation of multilingual treaties. More recently there have been more and more authors who basically hold articles 31-33 to be

applicable, either in uniform private law in general or in respect of single conventions, for instance the EC Convention on the Law Applicable to Contractual Obligations, the CMR Convention on Contracts for the International Carriage of Goods by Road, the Hague Convention on Child Abduction or the European Patent Convention.

The reserve of private law scholars as against the rules on interpretation of the Vienna Convention on the Law of Treaties is unfounded. Some of them object that articles 31-33 are essentially made for bilateral treaties, others believe that they are unfit for law-making treaties. Both arguments cannot be approved.

As pointed out before, law-making treaties do not only exist in uniform private law, but also in some areas of public law. International tribunals that were called upon to interpret such treaties have not left any doubt that articles 31-33 of the Vienna Convention on the Law of Treaties are applicable in this respect. Mexico recently sued the United States in the International Court of Justice for violation of the Vienna Convention on Consular Relations. Under article 36 1) (b) of that convention the court had to decide within which time limits news of an arrested person have to be transferred to the consul of his country. The ICJ approached this issue by way of "interpretation according to the customary rules of treaty interpretation reflected in articles 31 and 32 of the Vienna Convention on the Law of Treaties". Similarly and ever since its early days the European Convention on Human Rights which is another law-making treaty has been interpreted by the European Court of Human Rights on the basis of articles 31-33 of the Vienna Convention on the Law of Treaties. This case law is of relevance also for conventions on private law. Nor can the view be accepted that the Vienna Convention on the Law of Treaties is primarily focused on bilateral agreements. The opposite is proven by the detailed regime of reservations which is primarily focused on multilateral treaties.

A further objection points out that the rules on interpretation of public international law are mainly conceived in order to detect the subjective intentions of the contracting parties to a treaty whereas the objective meaning of a provision is what matters in private law. But this objection is not in line with public international law. It suffices to refer to article 32 of the Vienna Convention on the Law of Treaties which accords only a subsidiary significance to the historical intentions of the drafters of a convention; for the interpretation of a convention text, context and purpose of its provi-

sions are more important, see article 31. It follows from the comparative insignificance of the historical dimension that the International Court of Justice has in fact interpreted international treaties in the light of the normative context in force at the time of interpretation and not at the time of conclusion.

In summary it appears that F.A. Mann was correct when he stated in 1983 that:

> the interpretation of uniform statutes is governed by the Vienna Convention on the Law of Treaties… Admittedly these articles were designed primarily with a view to texts which are not only concluded under the control of public international law, but also regulate relations between states. But in law there is no difference between such treaties and those contemplating relations between private persons: articles 31 and 32 apply to both types.

This assessment is underpinned by frequent references to articles 31-33 of the Vienna Convention on the Law of Treaties in the opinions on private law conventions handed down by the upper courts of England, the United States of America and Germany. Recently the European Court of Justice noted in respect of some provisions of the 1999 Montreal Convention for the Unification of Certain Rules for the International Carriage by Air "that, accordance with settled case-law, an international treaty must be interpreted by reference to the terms in which it is worded and in the light of its objectives." The Court explicitly referred to article 31 of the Vienna Convention on the Law of Treaties which was said to "express, to this effect, general customary international law". Arguing on the basis of the objective of the Montreal Convention the Court held that its provisions only purport to unify rules on the redress of passengers' damages in an individual way and do not foreclose the adoption of standardised compensation schemes, *e.g.* for the case of overbooking. Legal practice has not bothered about theoretical issues such as the monistic or dualistic conception of public international law. For even in countries that follow a dualistic tradition it is recognized that the internal law should be interpreted in accordance with public international law. Therefore the interpretive principles governing internal law must be identical to those applied to the underlying obligations arising from public international law.

The practical consequences of an application of the Vienna Convention on the Law of Treaties should not be overestimated. The convention does

not contain an exhaustive codification of all principles of interpretation recognized in public international law. For instance article 31 (3) specifies the instruments which may be referred to for the purposes of a systematic interpretation of a treaty. It lists only instruments which are directly linked to the Convention whose interpretation is at stake; it therefore commands what may be called a *micro-systematic* interpretation. There is no hint in articles 31-33 to a macro-systematic or interconventional interpretation which would have recourse, for the purpose of clarifying the meaning of certain concepts and principles, to other conventions in the same area of the law. Such *macro-systematic* interpretation is neither prescribed nor prohibited; it is left to the further development of the law. It is suggested in areas such as intellectual property law, transport law or private international law where several international conventions have covered similar topics, whereby producing a kind of codification of the respective area of uniform commercial law.

An example is provided by the rules that order the breaking of liability limits and thereby prescribe unlimited liability of the carrier in transport law. Starting with the Hague Protocol of 1955 amending the Warsaw Convention on International Carriage by Air, several conventions in the field of air law, maritime law and inland transport law provide for the carrier's unlimited liability if the plaintiff proves "that the damage resulted from an act or omission of the carrier… done with intent to cause damage or recklessly and with knowledge the damage would probably result". The purpose of this formula is to characterize a degree of fault on the side of the carrier that is particularly serious and goes beyond simple negligence. It turned out, however, that the issue could not be left to national law as it was in the original Warsaw Convention, since national legal systems belonging to the common law or the civil law world use very different concepts that do not allow a uniform application. The Hague formula therefore was made up as a compromise which was later used in further international instruments. It would appear that the rich case law on the Hague Protocol could also help to clarify the meaning of the same formula employed in subsequent conventions, *e.g.* in the Hague Visby Rules on Bills of Lading.

There are other rules of interpretation outside articles 31-33 of the Vienna Convention on the Law of Treaties whose further use should equally be explored in the course of future legal development. This applies for example to the so called restrictive interpretation of international treaties

which protects national sovereignty but may not be appropriate in the context of private law conventions. It equally applies to the prohibition of analogy which is supported by some writers in respect of international conventions. The regime of interpretation as laid down in articles 31-33 of the Vienna Convention on the Law of Treaties may appear fragmentary, but it is nevertheless useful and binding when it comes to the interpretation of private law conventions. On the one hand the express downgrading of preparatory works to a subsidiary means of interpretation has never explicitly been recognized in private law conventions; article 32 of the Vienna Convention gives clear guidance in this respect. A similar clarification is provided by article 31 (2) which makes explicit reference to the preamble of a convention; while some authors have made unclear inferences from the existence or non-existence of a preamble and from its content in the context of private law conventions, there should not be any doubt about its significance. On the other hand, several rules contained in articles 31-33 of the Vienna Conventions nearly restate what has always been recognized in the interpretation of private law conventions. This is particularly true for the relevance of text, context and purpose as expressed in article 31.

VI. Conclusion

The results of this investigation can be summed up in the words of F.A. Mann who said that the Vienna Convention on the Law of Treaties "has …. become one of the principal points at which public international and private law meet". It is true that the application of certain provisions of the Vienna Convention as applied to private law conventions may be questioned. As pointed out above, some rules relating to reservations by contracting states are not appropriate in the context of private law conventions. On the other hand the rules on interpretation referring to text, context, purpose and to the preparatory works as a subsidiary means also suit the content of instruments in the field of private law. Many other provisions of the Vienna Convention which deal with the details of the binding legal force of treaties are helpful in our field.

These practical considerations shed new light upon the gradual rapprochement of private law and the law of treaties in the pre-World War I period. It has not only brought about a formalistic turn of the unification of private law towards the rules of the law of treaties. The codification of

the latter has also been fruitful for the implementation of the content of conventions on uniform private law. What flows from our inquiry is the proposition that a great multitude of conventions on uniform private law may be integrated under the common roof of the Vienna Convention on the Law of Treaties. This observation should stimulate new reflections on the unity of international law, both public and private, in the age of its codification.