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Summary

Multilateral Conventions *erga omnes* and Their Incorporation into National Codifications of Private International Law — Advantages and Disadvantages

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1. First, it should be noted that the law of treaties leaves the method of its implementation in the domestic sphere, in most cases, to the contracting states; it has not developed norms of its own concerning the domestic implementation of treaties. States are responsible, however, for the proper performance of the treaties concluded.
2. Codifications are rationalized forms of legislation. They should not only strive for better and juster solutions, but primarily contribute to an increased measure of certainty in the law. International codifications have to be entirely carried through in the domestic sphere of the contracting states. Viewed in this sense, the way of implementing a treaty, i. e. the conversion of the international codification, also plays a role in the domestic legal sphere.
3. The techniques developed by public law for domestic implementation of treaties, i. e. the different mechanisms of transformation, are neutral from the view of public international law. No technique can claim to be »more favourable« to public international law than the other. In a purely practical sense, the special transformation probably contains a larger danger of a treaty-violating conduct than the general transformation. On the other hand, there are treaties which, for reason of their structure, are difficult to be fitted into the framework of the applicable law of the land without special adjustments; the same may be observed if problems in regard to derogation are to be solved. In this case a special transformation is advantageous to the correct implementation of the treaty.
4. Even more important for the conduct agreed upon than the question of the chosen technique of transformation is the ranking of the treaty in the domestic legal system, in whatever way transformed.
5. Occasionally it happens that treaties themselves provide for the manner of their implementation (e. g. system of the lois uniformes).
6. On the other hand, there are treaties allowing a degree of latitude to the states concerning the extent of their implementation. Typical examples of such treaties are those striving only for a harmonization of law or which provide only for the creation and maintenance of a »mini-

mum standard«. However, such a latitude may not be presumed if doubtful.

7. Beyond that, the obligations of the contracting states arising out of a treaty concerning matters of municipal law may differ; above all, they depend upon the effects on the municipal law intended by the treaty itself.

8. The strongest possible effect of a treaty on municipal law is its direct applicability as may be required by the treaty.

9. Treaties striving for unification of law presuppose, quite naturally, close links between the »instruments« of implementation and the treaty itself as their »model«.

10. Concerning the category of treaties mentioned in the above paragraph, there is no difference in the binding character between bilateral and multilateral treaties, between conventions *erga omnes* and those claiming validity only in the relations between the contracting states.

11. A further consequence of the thesis developed in paragraph 7 is, that even in the case of treaties striving for unification of law (paragraph 9), the intensity of the links to the treaty as a »model« may vary.

12. The rather developed state of unification of law for which the European Communities strive in their field of activity implies notably tight bonds between the instruments of implementation and the model provided by the treaty, especially in regard to conventions of the EEC member states in matters of the common market; in a practical sense, this may only be achieved by the direct applicability of the conventions in the domestic sphere.

13. Apart from the sphere described in paragraph 12, there are no fundamental objections concerning the implementation of treaties on unification of law by incorporation of their stipulations into national codifications, no matter whether in the domestic sphere only the law reproducing properly the contents of the convention is applicable (special transformation) or whether additionally, the convention itself is directly applicable (general transformation).

14. In regard to the technique of codification, objections are to be raised against the method of incorporation: techniques of special transformation endanger the unification of law strived for by the convention. By an incorporation after, respectively with general transformation, the effect of simplification strived for by incorporation is only limited.

15. In the European civil law systems, there is no need for a special transformation of conventions on private international law and on international civil procedure in order to fit them into the framework of the municipal law.

16. Though the incorporation by reference to the convention does not jeopardize the unification of law, it raises a number of questions in the internal legal sphere which need careful clarification. Furthermore, it only partially achieves the strived for effect of simplification.

17. As a result, neither the incorporation by reproducing the contents of the convention in the national codification nor by reference to the convention in the codification is to be recommended.
National codifications should, on the contrary, try to realize in an autonomous way well established or innovative ideas contained in international instruments. Additionally, the conventions should exist apart for the matters governed by them.

18. Because treaties on private international law always provide only for a more or less restricted number of its »special questions«, the unity of law strived for by these treaties may again be torn apart by the application of the »general principles« of each national codification.