CHAPTER II

INTER-AMERICAN CODIFICATION OF PRIVATE INTERNATIONAL LAW

The unification of the rules of private international law has been a source of constant concern in the Americas. Many attempts to achieve such unification have been made, beginning with the Congress of Panama, convoked by Simón Bolívar in 1824, where a motion was presented for the "prompt initiation of the work of codification of private international law". In this respect, Vitta indicates that "the movement towards internal and international codification of this branch of law . . . began in Latin America and subsequently extended to continental Europe"[62].

In this chapter we shall discuss the fundamental elements of the codification process of this discipline in the Western Hemisphere in order to outline the overall context within which the general rules may be found. Therefore, rather than making an exhaustive presentation of the historical development of the codification process in the Americas, which would exceed the limits of this work, we shall present the most relevant aspects of the work done in this hemisphere[63], and discuss briefly the treatment given to the general rules in the various international instruments.

As pointed out in the previous chapter, the codification process in the Americas encompasses two different views with respect to the method to be used to regulate private relations which involve foreign elements: one involving a comprehensive approach seeking to combine in a single instrument – or in a group of related instruments – the regulation of the various categories of relations; and the other involving a gradual and progressive regulation, based on instruments covering specific categories of relations. Until recently, the first tendency prevailed in the Americas, although the second is currently in force.

1. Comprehensive Codification

(a) *Congress of Lima (1877-1878)*

Various undertakings had given rise to the need for holding a congress to deal with topics of private international law. The

Peruvian Government extended an invitation to all the American States to convene a congress of jurists, which took place in Lima in 1877[64].

The doctrinal positions presented in the discussions were the personalism policy and the theory of territorialism. The doctrines of Story, Bello, Freitas, as well as the Italian school represented by Mancini and Fiori, exercised a remarkable degree of influence on various provisions of the "Treaty to Establish Uniform Rules of Private International Law". This instrument was signed on 9 November 1878, by the representatives of Argentina, Bolivia, Chile, Costa Rica, Ecuador, Peru and Venezuela[65].

The agreement consisted of 60 articles divided into eight titles referring to the status and capacity of persons, property and contracts, marriage, succession, competence of the civil courts, penal jurisdiction, execution of foreign judgments, legalization and general provisions. Among the latter, the only provisions in the area of general rules are those establishing the public policy exception (Art. 54) and the factual nature of foreign law (Art. 55).

The treaty never entered into force since only Peru ratified it. There were several reasons for this; some strictly legal in nature concern the adoption of nationality as the controlling principle for all matters relating to status and capacity, whereas most of the American countries had already adopted the principle of domicile.

The treaty signed in Lima represented the first attempt in the world to codify private international law matters, although the failure to ratify it reduces its status to that of a valuable precedent and an instrument of doctrinal relevance. This is evidenced by the fact that several of its articles were reproduced in the treaty known as the Treaty of Quito, which was signed by Ecuador and Colombia on 18 June 1906.

(b) *Montevideo Congresses (1888-1889 and 1939-1940)*

(i) The failure to ratify the Lima Treaty and the interest in supporting in a codified body the choice-of-law principle of domicile – which was common to most of the domestic laws of the States of the Western Hemisphere – led to the convening of the Montevideo Congress, in Uruguay, on 25 August 1888[66].

The Protocol by which it was agreed to hold the Congress stated

that its purpose was "to standardize by means of a treaty the various matters embraced in private international law". However, many of the delegates indicated that the main purpose, rather than to achieve legislative uniformity, was to find formulas to overcome conflicts of laws and jurisdictions[67].

Eight treaties were signed on the following topics: international procedural law, literary and artistic property, patents of invention, trademarks, international penal law, international civil law, international commercial law, the practice of the learned professions, and an additional protocol[68].

With respect to general rules, the Montevideo Treaties of 1889 included provisions concerning the nature of foreign law, which was treated as a question of law by providing for its application *ex officio* (Additional Protocol, Art. 2). The principle of non-discrimination with respect to foreign law was established by providing for adoption of all the procedural remedies of the forum in cases involving application of foreign law (Additional Protocol, Art. 3). The public policy exception was provided (Additional Protocol, Art. 4), although in another of its provisions the notion of public policy was identified with laws of public order (Treaty on International Procedural Law, Art. 5 *(d)*), and finally, brief reference was made to vested rights (Treaty on International Civil Law, Arts. 2, 30 and 31).

It is important to note the universal nature of the treaties, which, by virtue of Article 6 of the Protocol, remained open for accession by nations outside the hemisphere. The concept of legislative harmonization predominated during the drafting of these instruments, and, thus, the principle of domicile was affirmed. Moreover, the introduction of substantive rules in some of the treaties planted the seed for the methodological pluralism which is characteristic of the present stage of codification in the hemisphere, carried out through the Inter-American Specialized Conferences on Private International Law.

(ii) The fiftieth anniversary of the Montevideo Congress was deemed by the Governments of Argentina and Uruguay to be an excellent opportunity to convoke a second congress in order to revise the treaties signed in 1889. Thus, an invitation was sent to all the governments that had sent delegates to the first congress, and the second South American Congress on Private International Law was held in 1939[69].

The treaties adopted[70] did not, in fact, substantially modify those approved in 1889, but the revision produced a greater predominance of the principle of domicile as a connecting factor. With respect to the general rules, those established in earlier treaties were maintained. In addition, a reference to the unknown institution was indirectly incorporated in regard to the regulation of foreign corporations (Treaty on International Overland Commercial Law, Art. 9). The terms of Article 5 *(d)* of the Treaty on International Procedural Law concerning public policy were modified in order to delimit its character as a reservation clause.

In the period immediately following the Lima and the first Montevideo Congresses, various similar activities were undertaken among Central American countries, Bolivarian countries and within the framework of the International Conferences of American States also known as Pan-American Conferences, as discussed below.

(c) *The Central American Juridical Congresses and the Bolivarian Congress*

At the First Central American Juridical Congress, which met in Guatemala in 1897, several treaties were signed. These instruments, largely based on the Montevideo Treaties of 1889, never entered into force due to lack of ratification[71].

The Second Central American Juridical Congress, which met in El Salvador in 1901, revised the agreements of the First Congress. Only El Salvador ratified these treaties[72].

In 1911 the Bolivarian Congress took place at which various agreements were signed[73]. It was convened by Venezuela and attended by Bolivia, Colombia, Ecuador and Peru. According to the organizing committee of the Congress, its purpose was "to examine those points of private international law which may be subject to different interpretations, and to determine the best way to unify them".

The only provision regarding general rules is contained in Article 5 of the Agreement on the Recognition of Foreign Acts, which makes reference to public policy by identifying it with the laws of public order.

With respect to the impact of these Bolivarian treaties, the agreements on Extradition and Recognition of Foreign Acts were replaced by the Bustamante Code in Bolivia, Ecuador, Peru and

Venezuela. The Bolivarian Treaties remain in force between those countries and Colombia, as the latter did not ratify the Bustamante Code. The Montevideo Treaties are in force between Bolivia and Peru[74].

(d) *International Conferences of American States. The Bustamante Code*

The purpose of convoking the First International Conference of American States (1885) was the establishment of a lasting peace among nations. As a result, the American International Bureau was established (1890), which some years later (1910), became the Pan American Union, which in turn became the Organization of American States (1948). Most of the resolutions adopted at the Conference, which met in Washington in 1889 and 1890, cover topics relating to public international law.

With respect to private international law, two resolutions approved on 14 August 1880 are noteworthy. The first resolution recommended that the governments examine and study the treaties adopted in Montevideo (1889) so that within a year they could accede to them or propose the modifications to make them fully acceptable. The second resolution suggested the adoption of a principle on legalization of documents[75].

The Second Conference (Mexico City, 1901-1902) considered the establishment of a commission of jurists to be entrusted with the preparation of uniform rules of public and private international law to regulate relations among the American nations[76]. The commission was not created since the convention containing the proposal was not ratified by a sufficient number of countries.

In the Third Conference (Rio de Janeiro, 1906) another convention was prepared to establish an international commission of jurists to draft a code of public international law and one of private international law. The convention was ratified by 17 countries and the Commission was created. It met in 1912 to study the draft codes prepared by E. Pessoa and L. R. Pereira. At that meeting a draft on extradition and another on foreign judgments were approved. In addition, six subcommittees were created. The fifth subcommittee considered the topics of capacity, legal status of foreigners, bankruptcy and succession. The sixth subcommittee met in Lima in 1913 and studied a draft presented by the United States, which

consisted of four books on the following subjects: rights in real property; obligations; copyrights, patents and trademarks; judicial competence; commercial law; and conflict of penal laws.

The outbreak of the First World War prevented the work of the International Commission of Jurists from advancing beyond the preparatory stage. The Fourth Conference (Buenos Aires, 1910) did not cover any matters of interest in the private international law area.

Work was resumed with the Fifth Conference (Santiago, Chile, 1923), which transformed the Commission of Jurists into a Congress of Jurists and recommended that the Congress prepare a draft code of private international law and another of public international law. This is the origin of the code prepared by the Cuban jurist Antonio Sánchez de Bustamante, which was approved at the Sixth Conference (Havana, 1928). The Bustamante Code has special significance in the history of American private international law and is the first comprehensive code in the world concerning this discipline. Its imperfections do not prevent it from being recognized as a complete and organic body of rules and as an important effort toward unification. Its 437 articles, contained in a preliminary title and four books, provide ample coverage to the chapters on international civil, commercial, penal and procedural law.

The general doctrine of the Code is based on guidelines sustained by the French-Italian school, which explains the considerable departure from the Montevideo Treaties.The predominance of the territorial law *(lex fori),* the wide latitude given to the principle of public policy and the characteristic division of laws (public and private) suggest a clear Mancinian trend that is set aside only in Article 7 which submits the personal law to the albeit ineffectual duality of the opposing systems of nationality and domicile. This and other compromise solutions allowed the Code to be ratified, although with numerous reservations.

With respect to general rules, the Bustamante Code provides for the application *ex officio* of the foreign law (Art. 408), which therefore is treated as a question of law. Consistent with this conception, it establishes the admissibility of the extraordinary writ of cassation (Art. 412). The Code submits characterization to the *lex fori* (Art. 6) and vested rights are expressly recognized (Art. 8). It is well known that the Code accentuates the concept of public policy. Reference to it is made in 46 of the Code's articles, to which must be added

numerous provisions designed to establish the applicability of strictly territorial laws.

The United States was the only country that did not adopt the Code, maintaining that it was not within the jurisdiction of the federal government to enter into agreements on matters of private international law, such matters being within the exclusive jurisdiction of the states.

All of the Latin American countries adopted the Bustamante Code, which was ratified without reservations by Cuba, Guatemala, Honduras, Nicaragua, Panama and Peru. The countries that ratified it with reservations are: Bolivia, Brazil, Chile, Costa Rica, the Dominican Republic, Ecuador, El Salvador, Haiti and Venezuela. It has not been ratified by Argentina, Colombia, Mexico, Paraguay or Uruguay.

The reservations of countries that have ratified the Bustamante Code may be divided into two groups: those of a general nature, made by Bolivia, Chile, Costa Rica, Ecuador and El Salvador; and those of a special nature, made by Brazil, the Dominican Republic, Haiti and Venezuela. Those of a general nature refer to those provisions contained in the Code which are contrary to internal law or policies. Those of a special nature refer to specific principles or institutions mentioned in the various articles of the Code.

The statement contained in almost all of the general reservations, that in case of contradiction, the current of future laws of the respective States will prevail over the Code, is almost equivalent to having no agreement at all. It can be considered that all the general reservations are in violation of Article 3 of the Convention, by virtue of which the Bustamante Code entered into force, since according to its text,

> "Each one of the contracting Republics, when ratifying the present convention, may declare that it reserves acceptance of one or more articles of the annexed Code, and the provisions to which the reservation refers shall not be binding upon it."

The Seventh International Conference of American States (Montevideo, 1933) issued a resolution reaffirming the need to preserve the International Commission of Jurists and undertaking the study of the methods to follow for the codification of international law, which were to be "gradual and progressive"[77]. This concept was reiterated at the Eighth Conference (Lima, 1938)[78].

The Second World War and its aftermath brought a pause in the work of codification of private international law as a joint activity of the nations of the hemisphere. Nevertheless, the subregional activity reflected in the second Montevideo Congress continued. The Charter of the Organization of American States, adopted in 1948, provided for the creation of an Inter-American Council of Jurists, which would have the Inter-American Juridical Committee as its standing committee. The Council ceased functioning in 1965, and the Committee remained as the juridical organ of the OAS. Both the Council, as well as the Committee, carried out useful work in connection with the development and codification of public and private international law.

During the period 1950-1966, the Inter-American Juridical Committee carried out the final effort to achieve an integral codification of the various aspects of private international law. This involved the task of analyzing the Bustamante Code to determine the feasibility of integrating its provisions with those of the Montevideo Treaties, considering, in addition, the relevant rules of the Restatement of Conflict of Laws of the United States. The draft code which embodied this effort, prepared by J. Caicedo Castilla[79], did not receive the approval of the governments of the hemisphere, as some of them raised the need for abandoning the comprehensive approach to codification of private international law and proceeding in a gradual and progressive manner to achieve this end[80]. This led to the celebration of the Inter-American Specialized Conferences on Private International Law.

2. Gradual and Progressive Codification

With a view to unifying the rules of private international law in the Americas, the Inter-American Specialized Conferences on Private International Law (CIDIP-I and II) have followed the method of drafting conventions on specific matters. By the same token, they have sought to include both conflict and substantive rules when the nature of the subject-matter so allows.

The specialized conferences follow the trend established by the aforementioned recommendations of the Seventh and Eighth International Conferences of American States, which determined some of the guidelines for the gradual and progressive codification of private international law. By adopting this method, the specialized

conferences have followed the technique that has been in use for the Hague conventions. Although the methodology selected might be subject to criticism, particularly with respect to its slow pace, it undoubtedly contributes in a realistic way to the process of unification of the rules of private international law in the hemisphere.

(a) *First Inter-American Specialized Conference on Private International Law CIDIP-I, Panama, 1975*[81]

As mentioned above, the draft agenda and the preparatory works for CIDIP-I, which met in Panama in 1975, follow the criterion of adopting special conventions on specific matters. Based on their content, the conventions approved in Panama may be divided into two groups: international commercial law and international procedural law. In the first group are the conventions on conflict of laws concerning bills of exchange, promissory notes and invoices; cheques, and international commercial arbitration. The second group includes the conventions on letters rogatory, on the taking of evidence abroad, and on the legal régime of powers of attorney to be used abroad[82].

(i) *Conventions on International Commercial Law*

– The Inter-American Convention on Conflict of Laws concerning Bills of Exchange, Promissory Notes and Invoices is the most important of the group related to international commercial law. Although the final text of the Convention does not differ much from the content of the Bustamante Code or the Montevideo Treaties, it is a suitable instrument to assure the effectiveness of bills of exchange, promissory notes and invoices, although it does not embrace other negotiable instruments.

The Convention can be considered an important instrument for unifying law in the Americas in that: it espouses the *lex loci* as applicable to the three fundamental aspects of the bills of exchange, promissory notes and invoices (capacity, formalities and obligations arising therefrom); designates the *lex loci* in the absence of specific contractual provisions; determines the exceptions tending to favour commercial traffic; establishes the autonomy of each element of a bill of exchange, which ensures the negotiability of the instrument; specifies the appropriate procedures; establishes the applicable

law in the case of robbery, theft, forgery, loss or destruction of the instrument; and specifically determines the competent jurisdiction.

– The Inter-American Convention on Conflict of Laws concerning Checks has a provisional character pending a broader regulation[83]. The idea behind its approval was to provide for minimum rules on cheques, considering their major importance in commercial relations. Obviously, the Convention is limited to the problems discussed and approved within the framework of the Convention on Bills of Exchange, Promissory Notes and Invoices, with a few minor changes.

– The Inter-American Convention on International Commercial Arbitration may be said to be the first inter-American instrument on the subject, because the only aspect of arbitration regulated by the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958) is the extraterritorial validity of the award. The Panama Convention refers to procedural aspects, especially to the validity of the arbitration agreement and to the effectiveness of the award. The convention lends itself to some confusion due to the elimination of specific grounds for annulment of the arbitral award[84]; and the inclusion of Articles V and VI of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, which are alien to the context of the draft.

Nevertheless, the convention is the result of the good intentions of CIDIP-I and a definite, if not completely successful, step toward the general acceptance of commercial arbitration in the American States. This is shown especially in Articles 2 and 3 of the Convention, whose provisions "internationalize" the arbitral proceedings and recognize the importance of the Inter-American Commission on Commercial Arbitration. This convention was complemented by the Inter-American Convention on Extraterritorial validity of Foreign Judgments and Arbitral Awards, signed in Montevideo in 1979[85].

(ii) *Conventions on International Procedural Law*

CIDIP-I considered the matter of international judicial co-operation to be of great importance, and for that reason maintained the validity of the conventions already signed, while anticipating others that could be signed in the future on this subject. To this

end, clauses common to all the conventions of this group[86] were included.

– The Inter-American Convention on Letters Rogatory expresses the intention to establish formulas of assistance between jurisdictional organs or authorities of the States parties. This co-operation possesses three essential characteristics. In the first place, the Convention is limited to letters rogatory in civil and commercial matters, although the parties may extend it to criminal, labour, contentious-administrative matters, arbitration and to other matters which are the subject of special competence. In the second place, the Convention refers to formal procedural acts, such as service of process, summonses or subpoenas, the taking of evidence and obtaining information abroad. Provisional remedies (especially prejudgment attachment and sequestration), as well as the execution of judgments and arbitral awards, are excluded[87]. In the third place, the co-operation is restricted to organs with a jurisdictional nature[88].

From a technical viewpoint, the Convention adopts a mixed system of conflict and substantive rules. It reflects the influence not only of other inter-American instruments in force but also of the Hague conventions, especially those concerning civil procedure (1896, 1905 and 1954).

The purpose of the Convention on Letters Rogatory is to maximize the development of international procedures. Its scope, limited to formal procedural acts, serves to prevent an obstruction of the administration of justice caused by non-compliance with these ancillary proceedings. The regulation concerning the processing and legalization of letters rogatory serves the same purpose. This convention is the most important in the group on international procedural law.

This Convention constitutes the first step in the process of inter-American unification of the rules of international procedural law. A final touch was achieved by adopting the conventions on preventive measures and on the extraterritorial validity of foreign judgments and arbitral awards, both signed in CIDIP-II. The procedural aspects were the subject, also in CIDIP-II, of an additional protocol to the convention on letters rogatory.

– The Inter-American Convention on the Taking of Evidence Abroad, limited to formal procedural acts, departs from the inter-American codification in force, which purports to solve all matters

pertaining to evidence, including the weight given to it[89]. This Convention, which contains both conflict and substantive rules[90], is influenced by the Hague conventions on the subject, especially the Convention approved in 1973 on the Taking of Evidence Abroad.

The Bustamante Code and the Montevideo Treaties regulate evidence matters in a much broader manner. The Code, in particular (Arts. 398-407), controls the four basic questions concerning evidence: the burden of proof, the classes of admissible evidence, the formalities of the evidence, and its weight.

These important aspects, which were not dealt with by the Convention, will have to be covered in a future convention within the framework of the comprehensive regulation of international procedures. In spite of its incomplete nature, the Convention fills the gap that existed, satisfying for the moment the practical requirements of inter-American judicial co-operation.

– The Inter-American Convention on the Legal Régime of Powers of Attorney to be Used Abroad, like the other conventions on international procedural law, has a mixed character; it contains substantive and conflict rules. This aspect was discussed extensively, in view of the existing Protocol of Washington on the Uniformity of Powers of Attorney[91]. The Venezuelan Delegate recommended that "the draft Convention be limited to the rules of conflict . . . and . . . the American States be exhorted to ratify the Washington Protocol . . ."[92]. This proposal, which in our opinion was proper and which was aimed at keeping the unified rules on powers of attorney from being scattered among several instruments, was rejected and the mixed criterion was adopted.

It is important to underscore the fact that the Convention purports to regulate the power of attorney *per se* and furthers three basic aims: to guarantee the authenticity of the power executed, to protect the interest of the principal, and to protect third parties in their contractual relations with the agent. The Convention aims at harmonizing the various legal systems in force in the Western Hemisphere, which is of great practical importance because it embraces not only powers for litigation but all kinds of powers of attorney so frequently utilized in a world of extensive commercial relations. In the area of general rules, the only reference in the conventions approved by CIDIP-I is to public policy by establishing that foreign law may not be applied when "manifestly contrary" to it[93].

(b) *Second Inter-American Specialized Conference on Private International Law (CIDIP-II), Montevideo, 1979*

The Fifth General Assembly of the Organization of American States convoked CIDIP-II, which was held in Montevideo, Uruguay, in 1979[94]. The Conventions approved in Montevideo may be classified into three groups: those on international commercial law, those concerning international procedural law, and those that deal with institutions of the general part of private international law[95].

(i) *Conventions on International Commercial Law*

– The Inter-American Convention on Conflicts of Laws concerning Checks complements the Convention approved by CIDIP-I and is essentially based on the draft prepared by the Inter-American Juridical Committee, which embodies provisions of the Convention on Bills of Exchange, Promissory Notes, and Invoices (Panama, 1975), the Geneva Convention of 1931 and the Montevideo Treaty on International Overland Commercial Law of 1940. The banner idea was that capacity, formalities and effects of foreign negotiable instruments should be governed solely by one law. The convention does not include rules on cheques payable in foreign currency, nor does it tackle the problem of international jurisdiction, as it would be difficult to reach agreement on topics such as these.

– The Inter-American Convention on Conflicts of Laws concerning Commercial Companies is intended to solve the problems arising from the recognition of a foreign company, as well as those stemming from the choice of the law applicable to their activities.

Although approval of the Convention was a difficult process, consensus was reached on three basic principles: the granting by the State of juridical personality to the commercial company, the assignment of extraterritoriality to the juridical personality of the company, and the regulation of its extraterritorial activity. This consensus came about as a result of lengthy discussions and a great endeavour toward reconciling doctrinal principles. Among these were the departure from the *lex societatis* as a connecting factor, and consequently the submission of the company to the law of the place of its incorporation – a true step forward over the

rules established by the Montevideo Treaties and the Bustamante Code.

(ii) *Conventions on International Procedural Law*

– The Inter-American Convention on Proof of and Information on Foreign Law deals with two topics: elements of proof of the existence of foreign law and information on the scope and interpretation it is accorded. To avoid the possibility that the use of the word "proof" could be interpreted as considering foreign law a question of fact subject to being proved by the parties, it was proposed to refer to "means for establishing the content of foreign law". As for information, it was averred that it should be dealt with through a separate convention. A consensus was not reached on these proposals.

The Convention ensures international co-operation for obtaining proof regarding "the text, validity, meaning and scope of foreign law". It also facilitates and standardizes the methods to be used, by replacing the request for reports through diplomatic channels by the direct request to the central authorities in each State which are to furnish the information requested by the judge[96].

– The Inter-American Convention on Execution of Preventive Measures is in keeping with the new trend of international law to broaden the framework of international judicial co-operation or assistance, so that the judge of one country can execute a provisional remedy decreed by the judge of another country in which the proceeding takes place. The topic is of special importance when considering that the extraterritorial implementation of the provisional remedies is as significant as the extraterritorial validity of the judgment itself. The Convention under analysis represents, therefore, a clear advance from the doctrinal and legislative viewpoints[97], since the Convention on Letters Rogatory (Panama, 1975), which regulated basic forms of judicial co-operation, impliedly excluded provisional remedies (Art. 3).

– The Inter-American Convention on Extraterritorial Validity of Foreign Judgments and Arbitral Awards is intended to facilitate the international recognition of judgments, considering that the evolution of Latin American doctrine favours and makes feasible agreements on this matter. It is for this reason that the Convention has been given flexibility so that workable formulas can be reached with respect to both the civil law and the common law systems,

taking into account that the United States, through case-law, recognizes the validity of the merits of foreign judgments, although constitutional principles allegedly restrict the signing of treaties on the execution of such judgments.

– The Additional Protocol to the Inter-American Convention on Letters Rogatory approved in Panama in 1975, was included upon the proposal of the Representative of the United States in the belief that it would enhance the signing and ratification of the main convention, since it would provide for the regulation of important aspects from the perspective of the common law. A preliminary draft of this Additional Protocol was presented to CIDIP-II by the United States delegation. The approved text differs from the one originally submitted and reaches points of broad agreement on important aspects such as the determination of the central authority, the adoption of a standard form, the elimination of the legalization requirement, and the waiver of costs, except with reference to special procedures. Generally speaking, this Protocol regulates the Convention on Letters Rogatory, specifically, the procedures between central authorities, which serves to facilitate judicial assistance, standardize the procedures and ensure the execution of letters rogatory by means of an innovative mechanism[98].

(iii) *Conventions that Regulate the General Theory of Private International Law*

– The Inter-American Convention on Domicile of Natural Persons in Private International Law consists exclusively of substantive rules. This is especially important because domicile as a connecting factor has been regulated as an autonomous and substantive category, a topic subject to a great variety of theories. It is also significant that consensus was reached concerning this subject which, in the past, split the legislative and jurisprudential trends in the hemisphere due to the opposing view of the principle of nationality which is still partly followed by some American legal systems such as in Venezuela, the Dominican Republic and Haiti.

This Convention specifies the criteria for determining the domicile of natural persons and incorporates rules, which may be improved in the future, concerning the domicile of incompetent persons, as well as rules on the domicile of spouses and diplomats. In addition it includes the criteria to be used in resolving problems of multiple domicile.

– The Inter-American Convention on General Rules of Private International Law is, undoubtedly, the most important instrument produced by CIDIP-II because it adopts uniform criteria on general principles on the subject, thus reconciling different national views. Furthermore, it is the first convention in the world that deals specifically with these general rules. An in-depth analysis of the Convention will be presented in Chapter IV[99].

(c) *Problems arising with Respect to the Ratification of the Conventions*

The problems concerning the ratification of conventions, particularly in Latin American countries, are deep-rooted because of the cumbersome procedures and the traditional assertion that the formulas of the domestic law of each State are "more appropriate". This rejection of the international rule is due to the unwarranted fear that the treaty could violate a current or prospective constitutional or statutory rule or simply contradict alternative sources, such as usage, custom and even national doctrines.

The analysis of relations between internal law and public international law does not lie within the scope of this work, but obviously, the review of such relations would contribute to eliminate the unfounded apprehension of approving international rules, thus aiding the implementation of codification in the Americas.

The trend toward preservation of the internal rules is reflected in the refusal to ratify treaties which have been signed, in the very procedures of ratification themselves and in the reservations made upon ratification. In general terms, the signing of a treaty does not engender rights or obligations. Only through ratification does the State manifest its will to be bound by its provisions. The system of ratification established in the legislation of American countries, however, involves a cumbersome procedure which, after the signature, generally consists of two different interrelated actions: the ratification by the competent legislative authority and the subsequent execution by the executive authority. The internal constitutional rules of the States which are signatories to the Panama and the Montevideo conventions have prevented the ratification of those conventions through simplified or abbreviated procedures. For these reasons, States should promptly initiate the procedures necessary for the adoption of the rules of private international law approved in both specialized conferences.

3. Conclusions

The great interest that has always existed in the Americas in the codification of private international law is readily observable from the foregoing exposition. The evolution of this topic in this hemisphere reflects a shift from approaching the topics of private international law in a comprehensive manner – the prevailing view until recently – toward a gradual and progressive method of codification, presently adopted.

As previously indicated, in our view, this constitutes a positive change, for it allows the process of codification to adapt, in a more realistic manner, to the multiple requirements of international private relations.

Another element resulting from the above description concerns the methodological pluralism that has characterized the work done in the hemisphere. Accordingly, the process of codification has been implemented by elaborating conflict and substantive rules in conformity with the nature and characteristics of private relations which are subject to international regulation. To a certain extent this has accrued from the development of national doctrine and jurisprudence that has made it possible to reach consensus regarding specific methods of regulating various matters.

The evolution of a doctrinal consensus is particularly noteworthy with regard to two essential features pertaining to the general part of the discipline: the connecting factors and the general rules. With respect to the former, the progressive abandonment of nationality as a connecting factor in favour of domicile, independently defined in the Inter-American Convention on Domicile of Natural Persons in Private International Law, is significant.

In regard to general rules, such consensus is apparent in the Convention on General Rules, which, as the subject-matter of this course, will be critically analyzed at a later stage of this work. However, before embarking upon this analysis, it is necessary to present the legislative, doctrinal and jurisprudential situation existing in some American countries, which will be the topic of the next chapter.