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COMMENTS BY MEMBER STATES, ORGANS AND ORGANIZATIONS
ON THE WORK PROGRAMME OF THE COMMISSION

Note by the Secretary-General

I

1. Since the publication of document A/CN.9/4 a letter was received from the Secretary-General of the International African Law Association (IALA) submitting comments on the work programme of the Commission. The text of the comments is reproduced below.
2. In accordance with the criteria indicated in paragraph 13 of document A/CN.9/7 in connexion with inter-governmental and international non-governmental organizations, the IALA has been notified of the date and place of the first session of the Commission and has been put on the mailing list for the Commission's documents (A/CN.9 series).

II

INTERNATIONAL AFRICAN LAW ASSOCIATION

"Our Association warmly welcomes this initiative and is very happy to offer its co-operation in so far as the programme of the Commission touches on the African field. The study of the problems involved in international unification of laws in Africa is one of the major concerns of the Association, which has set up a special sub-committee to consider this.

"The Council decided to write to all members of the Association asking for their suggestions and co-operation in the study of these problems. A

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similar letter is being written to all law faculties in Africa, as these are the main centres of legislative initiative at theoretical level. The Council is also setting up a small working party, under a convenor to be nominated, to make more specific recommendations.

"Meanwhile I should like to offer one or two preliminary comments on behalf of the Association on the general problems involved in unification of laws in Africa.

"Africa is essentially divided between the civil and common law spheres. In the civil law sphere are to be found the countries of North Africa, the former French and Belgian territories in Africa, and territories currently under Spanish or Portuguese administration. The common law area includes territories formerly under British administration north of the Zambezi, and Liberia. The countries whose legal systems are based on Roman-Dutch law as administered in South Africa, viz. the Republic of South Africa, Botswana, Lesotho, Swaziland and Southern Rhodesia, and the countries which are unions of territories under different administration, viz. Cameroon, Somali Republic and Ethiopia, constitute mixed jurisdictions with both common law and civil law elements present; though in each case the civil law or romanist element is predominant.

"Harmonization of laws in Africa is thus basically a problem of the reconciliation of the civil law and common law systems; at the same time integration may proceed within each law area with a rather greater prospect of immediate success. Harmonization of laws within given regions of Africa, partly as a result of historical development and partly as the result of recent initiatives, has proceeded quite far; though the most recent tendency is, if anything, towards the disintegration of law areas which formerly enjoyed harmonized law.

"Politically African States are committed at the international level to the promotion of unity, more particularly through the O.A.U. However, a successful initiative is more likely to come from independent non-governmental bodies which enjoy governmental support, such as this Association.

"Apart from the political will to continental unity in the legal as in other domains, there would appear to be no specific aspect of the unification problem which is unique to Africa; thus customary laws provide no problem to unification in the commercial field, and Islamic law, though highly important in family law matters, is also of much less significance commercially. The most significant African problems might be considered to be the relatively low scale of industrial and commercial development and the relatively high rate of illiteracy, both of which argue strongly for the preparation of simplified laws suitable for application in less sophisticated countries.

"Of the major topics raised, the most suitable for immediate harmonization would appear to be in the fields of:

- (i) the general law of contract;
- (ii) investment laws;
- (iii) rules governing the formation, operation and dissolution of commercial corporations;
- (iv) the law of agency; and
- (v) the law of debt enforcement.

"It is probably on the procedural side rather than the substantive side that difficulties are experienced at the present. Many of the difficulties relate to the ascertainment and definition in detail of the appropriate laws in force in each country. Restatements of the existing laws, whether or not they form the basis for eventual harmonization, would appear essential.

"As regards the means by which harmonization of laws in Africa may be promoted, several distinct processes have been suggested. The establishment of an international commission which would draft model adoptive laws for adoption by African countries (a very interesting suggestion put forward by Professor David) would seem to have little chance of realization at the moment. The formation of a series of very small study groups, each consisting of at least one representative from the civil law and common law areas respectively and charged with the tasks of restating the existing agreements and disagreements of the several laws and of exploring the possibilities of reducing the area of disagreement, would seem much more profitable. So far as possible, African countries should, and probably wish to, take part in the international movement for unification, so that some of these tasks might equally be met by adherence to the Rome Institute or other comparable bodies. It might be that on the enforcement side African countries within a given region, whatever law family they belong to, could adopt conventions providing for the ready enforcement of judgements similar to those which prevail within the British Commonwealth."
