

International Commercial Transactions: 1997

By Peter Winship*

As in past years, this Survey reviews the completed, pending, and proposed transnational commercial law projects of particular interest to practitioners in the United States.¹ The principal focus is on the work product of four international lawmaking bodies in which the United States participates: the United Nations Commission on International Trade Law (UNCITRAL); the International Institute for the Unification of Private Law (UNIDROIT); the Organization of American States (OAS); and the Hague Conference on Private International Law.² Reference to the work of non-governmental bodies is made where relevant.

The principal legacy of 1997 was the adoption of the UNCITRAL Model Law on Cross-Border Insolvency.³ In addition, work continued on secured transactions projects reported in previous annual surveys, and growing interest in electronic commerce encouraged further attempts to explore such issues as the law governing electronic signatures. No major new initiative was undertaken. There were, however, significant changes in the personnel that have run the relevant international and domestic institutions for the past several decades. Fortunately, one threatened change—a consequence of the United States' nonpayment of its dues to the United Nations (U.N.)—was avoided when the United States was re-elected by a relatively slim majority to UNCITRAL.

*James Cleo Thompson, Sr. Trustee Professor of Law, Southern Methodist University School of Law, Dallas, Texas. For further information about the matters covered by this Survey, please contact Peter Winship, S.M.U. School of Law, Dallas, TX 75275-0116 (tel. (214) 768-2575; fax (214) 768-4330 or (214) 768-3142; e-mail: pwinship@mail.smu.edu) or Harold S. Burman, Office of the Assistant Legal Adviser for Private International Law, U.S. Department of State, Suite 203, South Building, 2340 E Street, N.W., Washington, DC 20037-2800 (tel. (202) 776-8420; fax (202) 776-8482; e-mail: pildb@his.com).

1. For prior surveys, see Peter Winship, *International Commercial Transactions: 1996*, 52 BUS. LAW. 1643 (1997) [hereinafter *International Commercial Transactions: 1996*], and Peter Winship, *International Commercial Transactions: 1995*, 51 BUS. LAW. 1493 (1996) [hereinafter *International Commercial Transactions: 1995*].

2. For further information about these international bodies, see Peter Winship, *International Harmonization of Private Law*, in INTRODUCTION TO TRANSNATIONAL LEGAL TRANSACTIONS 159 (Marylin J. Raisch & Roberta I. Shaffer eds., 1995).

3. See *infra* notes 4-15 and accompanying text.

COMPLETED PROJECT

UNCITRAL MODEL LAW ON CROSS-BORDER INSOLVENCY⁴

UNCITRAL adopted the Model Law on Cross-Border Insolvency at its annual meeting in May 1997.⁵ UNCITRAL's working group on cross-border insolvency (Cross-Border Working Group) acted with remarkable speed, especially in light of a topic which has defied other international attempts to unify or harmonize insolvency law. The Cross-Border Working Group was assisted in this attempt by the active cooperation of INSOL, an association of insolvency experts, and Committee J of the International Bar Association. As a consequence, these bodies jointly sponsored several colloquia which brought judges and practitioners together to discuss not only the barriers to procedural cooperation but also the details of proposed solutions.⁶

The fact that an agreement could be reached, and reached so promptly, is due in part to the modest coverage of the Model Law on Cross-Border Insolvency. It applies to situations in which: (i) assistance is sought in the enacting State by a foreign court or a foreign representative in connection with a foreign proceeding; (ii) assistance is sought in a foreign State in connection with an insolvency proceeding in the enacting State; (iii) a foreign proceeding and a domestic insolvency proceeding in respect of the same debtor are taking place concurrently; and (iv) creditors or other interested persons in a foreign State have an interest in requesting the commencement of, or participating in, an insolvency proceeding in the enacting State.⁷

The Model Law on Cross-Border Insolvency thus deals principally with procedural matters, not substantive issues which tend to reflect strongly-held national values. It stresses judicial cooperation by removing legal barriers in transnational insolvency cases without creating new institutions. Recognition of foreign proceedings is facilitated.⁸ Foreign insolvency ad-

4. UNCITRAL MODEL LAW ON CROSS-BORDER INSOLVENCY, 36 I.L.M. 1386 (1997) [hereinafter MODEL LAW ON CROSS-BORDER INSOLVENCY]; see also *Guide to Enactment of the UNCITRAL Model Law on Cross-Border Insolvency*, U.N. Doc. A/CN.9/442 (1997) (to be published by the U.N. together with the text of the Model Law on Cross-Border Insolvency in a separate pamphlet).

5. *Report of the United Nations Commission on International Trade Law on the Work of Its Thirtieth Session*, U.N. GAOR, 52d Sess., Supp. No. 17, U.N. Doc. A/52/17, paras. 12-225, Annex I (1997) [hereinafter *1997 Commission Report*].

6. See, e.g., *Report on UNCITRAL-INSOL Colloquium on Cross-Border Insolvency*, U.N. Doc. A/CN.9/398 (1994); *Report on UNCITRAL-INSOL Judicial Colloquium on Cross-Border Insolvency*, 28th Sess., U.N. Doc. A/CN.9/413 (1995); see also *1997 Commission Report*, *supra* note 5, at paras. 17-22 (describing the reports made at the March 1997 Second UNCITRAL-INSOL Multinational Judicial Colloquium on Cross-Border Insolvency).

7. MODEL LAW ON CROSS-BORDER INSOLVENCY, *supra* note 4, art. 1(1).

8. *Id.* arts. 15-24.

ministrators or trustees are authorized to take steps to preserve or collect the assets in the enacting State.⁹

The Model Law on Cross-Border Insolvency does, however, enact several substantive principles. First, an enacting State must agree to give national treatment to foreign creditors.¹⁰ Second, the law provides that, unless otherwise directed by an insolvency court, individual notice must be given to foreign debtors, even if domestic creditors are given general notice by publication or the like.¹¹ Third, distributions to a creditor in an insolvency proceeding in an enacting State must take into account distributions to the same creditor in foreign proceedings (the "hotchpot" principle).¹²

Unlike other international conventions or model laws in recent years, the United States is likely to enact the UNCITRAL text promptly. The National Bankruptcy Review Commission of the United States¹³ unanimously recommended that the United States incorporate the text into the U.S. Bankruptcy Code (Code).¹⁴ In April 1998, Senator Charles Grassley introduced a bill to amend the Code which includes the UNCITRAL Model Law on Cross-Border Insolvency as a new Chapter 6.¹⁵

WORKS-IN-PROGRESS

ELECTRONIC COMMERCE

After adopting the Model Law on Electronic Commerce¹⁶ in 1996, UNCITRAL requested one of its three working groups (Electronic Commerce Working Group) to recommend what additional work, if any, would be useful at that time.¹⁷ The Electronic Commerce Working Group met in February 1997 and recommended that UNCITRAL work on harmonizing the laws on digital signatures and certification authorities.¹⁸ At its annual meeting in May 1997, UNCITRAL concurred with this recommendation and charged the Electronic Commerce Working Group with

9. *Id.* arts. 9-14.

10. *Id.* art. 13.

11. *Id.* art. 14.

12. *Id.* art. 32.

13. National Bankruptcy Review Comm'n Act, Pub. L. No. 103-394, 108 Stat. 4147 (codified in scattered sections of 11 U.S.C.).

14. BANKRUPTCY: THE NEXT TWENTY YEARS, NATIONAL BANKRUPTCY REVIEW COMMISSION FINAL REPORT, § 2.2, at 351-70 (1997); see also *id.* app. E (Report by Prof. Jay Westbrook on UNCITRAL Model Law on Cross-Border Insolvency). The report was filed with Congress on October 20, 1997, and is available on the Internet. See *National Bankruptcy Review Comm'n* (visited July 28, 1998) <<http://www.nbrc.gov/reportcont.htm/cont.htm>>.

15. See S. 1914, 105th Cong. §§ 301-02 (1998).

16. UNCITRAL MODEL LAW ON ELECTRONIC COMMERCE, 36 I.L.M. 202 (1997). For a brief summary of the Model Law on Electronic Commerce and the history leading up to its adoption, see *International Commercial Transactions: 1996*, *supra* note 1, at 1643-45.

17. *Report of the Working Group on Electronic Commerce on the Work of its Thirty-First Session*, U.N. Doc. A/CN.9/437, para. 156 (1997).

18. *Id.* paras. 1, 2, 10.

preparing uniform rules.¹⁹ By the end of 1997, UNCITRAL's Secretariat had completed a draft.²⁰ The draft distinguishes between secure electronic signatures, digital signatures, and other electronic signatures.²¹ It also provides rules for certification authorities and recognition of "foreign" electronic signatures.²² The group gave a first reading to the draft at a meeting in January 1998 and will continue its work at a meeting to be scheduled during the summer of 1998.²³

At the January 1998 meeting, the Electronic Commerce Working Group also acted on a proposal with respect to "incorporation by reference" in a data message.²⁴ Its adoptions included language stating that "[i]nformation shall not be denied legal effect solely on the grounds that it is incorporated by reference in a data message."²⁵ This language parallels the approach taken in the 1996 Electronic Commerce Model Law and, indeed, the Electronic Commerce Working Group recommended that UNCITRAL consider inserting the text into the Electronic Commerce Model Law as Article 5 *bis*.²⁶ The United States delegation present at the January 1998 meeting went even further, proposing that the Model Law on Electronic Commerce be restated as a multilateral convention.²⁷

SECURITY INTERESTS IN MOBILE EQUIPMENT

At a meeting in November 1997, the UNIDROIT study group (Study Group) completed its work on a proposed convention on international interests in mobile equipment.²⁸ Resolving several outstanding issues and approving a draft text (Preliminary Draft),²⁹ the Study Group subsequently reported to the UNIDROIT Governing Council, at its meeting in Feb-

19. *1997 Commission Report*, *supra* note 5, para. 250.

20. *Draft Uniform Rules on Electronic Signatures: Note by the Secretariat*, U.N. Doc. A/CN.9/WG.IV/WP.73 (1997).

21. *Id.* paras. 16-46.

22. *Id.* paras. 47-75.

23. *See Report of the Working Group on Electronic Commerce on the Work of its Thirty-Second Session*, U.N. Doc. A/CN.9/446, paras. 6, 12, 213 (1998) [hereinafter *Report of the Working Group*].

24. *Incorporation by Reference, Proposal by the United Kingdom of Great Britain and Northern Ireland: Note by the Secretariat*, U.N. Doc. A/CN.9/WG.IV/WP.74 (1997).

25. *See Report of the Working Group*, *supra* note 23, paras. 17, 24.

26. *Id.* para. 24.

27. *Proposal by the United States of America: Note by the Secretariat*, U.N. Doc. A/CN.9/WG.IV/WP.77 (1998).

28. A summary of the progress of this project may be found in *International Interests in Mobile Equipment*, UNIDROIT NEWS: 1997-4 (visited June 31, 1998) <http://www.unidroit.org/english/news/news_97_4.htm> [hereinafter UNIDROIT NEWS].

29. *See Preliminary Draft UNIDROIT Convention on International Interests in Mobile Equipment*, APG 1998, Doc. 11 (Jan. 1998) (on file with *The Business Lawyer*, University of Maryland School of Law) [hereinafter *Preliminary Draft*]. The *Preliminary Draft* was established by the Study Group at the conclusion of its fourth session, held in Rome from 3 to 7 November 1997. *See* UNIDROIT NEWS, *supra* note 28 and accompanying text.

ruary 1998.³⁰ If UNIDROIT's normal procedures are followed, upon approval by the Governing Council, the draft will be submitted to at least one meeting of governmental experts.³¹ The draft, if any, which emerges from the experts will be submitted to a diplomatic conference.³²

One of the fundamental issues resolved by the Study Group was the relation of the draft convention to industry-specific protocols. In conjunction with the meetings of the full group, representatives of the aviation industry (including representatives from Boeing and Aérospatiale) met to draft a protocol that would tailor the basic concepts in the convention to the needs of their industry.³³ Other industries, such as the satellite industry, will also be invited to negotiate similar protocols.³⁴ The Study Group concluded that the convention would enter into force for a particular industry only when a protocol also was agreed upon.³⁵ Moreover, for a particular industry, the combined convention and protocol would bind only those Parties that had become Contracting States to both instruments.³⁶

The draft convention covers security agreements,³⁷ title-retention transactions,³⁸ and leases of high-value mobile equipment.³⁹ These international interests are distinct from any similar interest created under national law. Default remedies are provided, including self-help repossession and disposition without judicial intervention.⁴⁰ Although the creditor must act in a commercially reasonable manner, any action taken in accordance with the contract with the debtor will be deemed commercially reasonable unless that agreement is manifestly unreasonable.⁴¹ The draft convention also determines priority of these international interests vis-à-vis third parties, including other creditors and the debtor's representative in insolvency proceedings. As with Article 9 security interests, filing in a register is the key to priority.⁴² The draft convention also governs the assignment of these international interests.⁴³

RECEIVABLES FINANCING

Work continues on uniform rules for receivables financing. The UNCITRAL working group charged with preparing the rules (Receivables

30. See UNIDROIT NEWS, *supra* note 28.

31. *Id.*

32. *Id.*

33. *Id.*

34. *Id.*

35. *Id.*

36. *Id.*

37. See *Preliminary Draft*, *supra* note 29, art. 2(2)(a).

38. *Id.* art. 2(2)(b).

39. *Id.* art. 2(2)(c).

40. *Id.* art 9(1).

41. *Id.* art. 9(2).

42. *Id.* arts. 16-29.

43. *Id.* arts. 30-37.

Financing Working Group) met once in 1997,⁴⁴ once in early 1998,⁴⁵ and is scheduled to meet again in October 1998. The present plan is to submit a finished text to UNCITRAL at its 2000 annual session. The draft's objective is to expand the ability of lower-cost credit in international commerce and finance.⁴⁶

The latest draft of the uniform rules covers all assignments of international receivables.⁴⁷ After much debate, it was tentatively agreed that the draft convention would apply if the assignor's place of business is in a State that is a party to the convention, subject to protection of the account debtor.⁴⁸ The draft also provides that the place of business of a legal entity will be the locale of its "registered office,"⁴⁹ but the Receivables Financing Working Group has yet to debate this provision. The draft rules cover the form and consequences of an assignment as between the assignor and the assignee, and also sub-assignees.⁵⁰ In the absence of a consensus on registration of a public notice in order to determine priority among claimants to a receivable, the draft rules provide that the priority rules of the place of the assignor will govern.⁵¹ Although the details are still sketchy, States that wish to adopt registration have the option under the present draft of doing so in a uniform manner.⁵² The draft also includes applicable law provisions that would supplement the uniform substantive rules.⁵³ As presently drafted, these applicable law rules would apply even when the uniform rules would not govern because the assignor was not located in a State that was party to the convention.

PRIVATELY-FINANCED INFRASTRUCTURE PROJECTS

In 1996, UNCITRAL charged its secretariat with the preparation of a legislative guide on build-operate-transfer and related forms of project finance.⁵⁴ At its 1997 annual session, UNCITRAL agreed to devote a major portion of the 1998 annual session to an in-depth discussion of

44. *Report of the Working Group on International Contract Practices on the Work of its Twenty-Seventh Session*, U.N. Doc. A/CN.9/445 (1997) [hereinafter *Vienna Report*].

45. *Report of the Working Group on International Contract Practices on the Work of its Twenty-Eighth Session*, U.N. Doc. A/CN.9/447 (1998).

46. *See Vienna Report*, *supra* note 44, para. 123.

47. *Revised Articles of Draft Convention on Assignment in Receivables Financing: Note by the Secretariat*, U.N. Doc. A/CN.9/WG.II/WP.96, art.1 (1998).

48. *See id.*

49. *Id.* art. 5(j).

50. *Id.* arts. 9, 10.

51. *Id.* art. 29.

52. *Id.* art. 36 remarks.

53. *Id.* arts. 29-33.

54. *Draft Chapters of a Legislative Guide on Privately Financed Infrastructure Projects: Report of the Secretary-General*, U.N. Doc. A/CN.9/444, para. 1 (1998) [hereinafter *Draft Chapters*].

those chapters of the guide prepared by the secretariat.⁵⁵ The secretariat, among other options, has suggested that UNCITRAL may wish to consider drafting sample legislative provisions on distinct aspects of project finance.⁵⁶

FUTURE WORK

PRINCIPLES OF INTERNATIONAL COMMERCIAL CONTRACTS

The Principles of International Commercial Contracts (Principles)⁵⁷ have been a great success. Since their adoption by the UNIDROIT Governing Council in 1994, the Principles have been looked to by arbitrators and legislators from the United States to Eritrea. This has encouraged UNIDROIT to undertake an expansion of the text to cover assignments, third-party rights, and agency.⁵⁸ Following formal approval of this proposal by the Governing Council, the Working Group for the preparation of a Second Enlarged Edition of the UNIDROIT Principles met for the first time in March 1998, to begin work on these additional topics.⁵⁹

ORGANIZATION OF AMERICAN STATES: CIDIP-VI

In last year's annual survey, it was reported that in 1996, the General Assembly of the Organization of American States (OAS) approved the convening of a sixth specialized conference (CIDIP-VI) on private international law and that harmonization of personal property secured transactions law was among the suggested topics.⁶⁰ In 1997, the OAS consulted with member States about the selection of topics. The United States recommended three topics: security interests for commercial transactions, standardization of trade and transportation documentation, and cross-border insolvency.⁶¹ In light of recommendations from other governments,

55. *Provisional Agenda, Annotations Thereto and Scheduling of Meetings of the Thirty-First Session: Note by the Secretariat*, item 4, U.N. Doc. A/CN.9/443, item 4 (1998) [hereinafter *Provisional Agenda*].

56. *See Draft Chapters*, *supra* note 54, at para. 31; *see also Provisional Agenda*, *supra* note 55.

57. UNIDROIT PRINCIPLES OF INTERNATIONAL COMMERCIAL CONTRACTS, *reprinted without commentary* in 34 I.L.M. 1067 (1995). *See generally*, Michael Joachim Bonell, AN INTERNATIONAL RESTATEMENT OF CONTRACT LAW, 19-39 (2d enl. ed. 1997).

58. *First Session of the Working Group For the Preparation of a Second Enlarged Edition of the UNIDROIT Principles of International Commercial Contracts*, para. 5 (visited August 2, 1998) <http://www.unidroit.org/english/principles/wg_1998.htm>.

59. *Id.* para. 1; *see also UNIDROIT Principles of International Commercial Contracts*, UNIDROIT NEWS: 1998-1 (visited August 2, 1998) <http://www.unidroit.org/english/news/news_1998_1.htm>.

60. *See International Commercial Transactions: 1996*, *supra* note 1, at 1649.

61. Enclosure to letter from Harriet C. Babbitt, Ambassador, United States Permanent Mission to the Organization of American States, to Beatriz Ramacciotti, Ambassador, Permanent Representative of Peru, Chair of the Committee on Juridical and Political Affairs (Mar. 12, 1997) (on file with *The Business Lawyer*, University of Maryland School of Law).

the OAS General Assembly decided in June 1998 that the next specialized conference would take up three topics, including standardization of transportation documentation and the law governing secured loan agreements.⁶²

OTHER DEVELOPMENTS

STANDBY LETTERS OF CREDIT

In previous annual surveys, mention has been made of International Standby Practices (ISP) prepared by a steering committee under the auspices of the Institute of International Banking Law and Practice (Institute).⁶³ The Institute has now published the final text, entitled "ISP98," that will come into force January 1, 1999.⁶⁴ The general approach of ISP98 follows that of the more familiar Uniform Customs and Practice for Commercial Credits prepared and published by the International Chamber of Commerce. Parties may make the rules applicable by a term incorporating the rules by reference, using language such as "[t]his undertaking is issued subject to the International Standby Practices 1998," "ISP98 applies," or "[t]his is an ISP98 standby."⁶⁵ As a purported restatement of generally-accepted international usage, the rules also may be enforceable as usage of trade. Although initially hostile to this project, the International Chamber of Commerce is now supportive.⁶⁶ A commentary, containing Official Comments, will be published by the Institute.⁶⁷

MARITIME BILLS OF LADING

As reported in last year's survey, the Maritime Law Association of the United States (MLA) has proposed a redraft of the federal Carriage of Goods by Sea Act that would incorporate most of the Pomerene Act regulating federal bills of lading.⁶⁸ The text of the MLA proposal has been redrafted to conform with the style used in Congress. Members of the leadership of the MLA have found sponsors in the Senate for the Bill, and

62. Information supplied to author by Jeannette Tramhel, Secretariat for Legal Affairs (June 5, 1998).

63. See *International Commercial Transactions: 1996*, supra note 1, at 1650-51.

64. The text of the ISP is available from *ICC Publishing*.

65. The Introduction to the ISP98 is available from *ICC Publishing*.

66. See *ISP98 Approved by ICC Banking Commission*, DOCUMENTARY CREDIT WORLD, May 1998, at 3.

67. Contact the Institute of International Banking Law & Practice, P.O. Box 2235, Montgomery Village, MD 20886 (tel. (301) 869-9840; fax (301) 926-1265; Internet: <http://www.iiblp.org>).

68. *International Commercial Transactions: 1996*, supra note 1, at 1649-50.

a hearing was scheduled before the House Coast Guard and Maritime Transportation Subcommittee on April 21, 1998.⁶⁹

INSTITUTIONAL DEVELOPMENTS

PERSONNEL

The secretariats of the international law-making bodies covered by this Survey are very small and hard-working. Changes in personnel can consequently have a significant impact on the work of a particular body. In 1997, Malcolm Evans, the Secretary-General of UNIDROIT, died of cancer after twenty-four years with the Institute. Three of the four legal experts at the Hague Conference on Private International Law also retired in 1997, including Adair Dyer, who returned to Texas as a practitioner after more than two decades in The Hague. New appointments have been made, but Adair Dyer has not been replaced by an American.

SECRETARY OF STATE'S ADVISORY COMMITTEE

The United States usually participates in the governmental law-making bodies through its Department of State.⁷⁰ Within the department, the Legal Adviser's Office is charged with preparing the U.S. position at meetings of these bodies. Within the Legal Adviser's Office, there is an office dedicated to private international law matters, including, of course, not only transnational commercial law matters but also all other private law matters such as personal status, family law, and procedural law. For two decades, this office has never had more than two officers, and continuity was maintained by Peter H. Pfund, the deputy legal adviser for private international law. In October 1997, Mr. Pfund retired, although he continues as a special consultant to complete work on a draft convention for the enforcement of judgments. He has been replaced by Jeffrey Kovar, a transfer from another office within the Legal Adviser's Office. Harold Burman continues as Executive Director of the Secretary of State's Advisory Committee on Private International Law.

In November 1997, Mr. Burman convened the Secretary of State's Advisory Committee to review developments since the previous meeting in March 1996.⁷¹ Numerous study groups of the Advisory Committee met during the year, especially the study group on electronic commerce. Notice of these meetings is published in the *Federal Register*, and the public is invited

69. Letter from Vincent M. De Orchis, Chairman, COCOG, to Members of the Committee on Carriage of Goods (Mar. 27, 1998) (on file with *The Business Lawyer*, University of Maryland School of Law).

70. For a description of the organization of the private international law work of the Department of State, see Winship, *supra* note 2, at 187-89.

71. Meeting Notice, 62 Fed. Reg. 60,547-48 (1997).

to attend.⁷² Information about both these meetings and the distributed documents may be obtained from the State Department.⁷³

AMERICAN LAW INSTITUTE

In 1997, the American Law Institute (ALI) announced that it would undertake several international projects.⁷⁴ A transnational insolvency project has already published "international statements" of the bankruptcy law in Canada, Mexico, and the United States.⁷⁵ On the basis of a proposal and outline made by Professor Neil Cohen, the ALI plans to take up a secured transactions project, which is still in formulation but would explore legal mechanisms to support transnational commerce and finance.⁷⁶

IMPLEMENTATION

The United States did not become a party to any of the growing number of international conventions in the field of private transnational commerce during 1997. On December 11, 1997, however, the United States did sign the U.N. Convention on Independent Guarantees and Stand-by Letters of Credit,⁷⁷ subject to ratification. The UNCITRAL Model Law on Electronic Commerce continues to be of interest to the National Conference of Commissioners on Uniform State Laws and individual states who propose to act before the Uniform Law Commissioners approve a uniform law. The Department of State also has suggested that the 1988 UNIDROIT Convention on International Financial Leasing⁷⁸ may be sent to the Senate for its advice and consent in 1999.⁷⁹

72. See, e.g., *id.*

73. Contact Harold S. Burman, Office of the Assistant Legal Adviser for Private International Law.

74. Geoffrey C. Hazard, Jr., *Report of the Director*, A.L.I. ANN. REP., 1, 12-13 (1997).

75. See *id.* at 5-6. The "international statements" (i.e., not *Restatements*) include: INT'L STATEMENT OF CAN. BANKR. L., (Tentative Draft Apr. 15, 1997), and INT'L STATEMENT OF MEX. BANKR. L., (Tentative Draft Apr. 15, 1998).

76. Neil B. Cohen, *The International Secured Transactions Project: A Proposal and Outline*, in *The Emerged and Emerging New Uniform Commercial Code*, at 463 (A.L.I.-A.B.A. Course of Study, 1997). The proposal is described in Geoffrey C. Hazard, Jr., *Report of the Director*, A.L.I. ANN. REP., 1, 11 (1998).

77. U.N. Convention on Independent Guarantees and Stand-by Letters of Credit, 35 I.L.M. 735, 736 (1996). For a brief summary of the Convention, see *International Commercial Transactions: 1995*, supra note 1, at 1493-95.

78. UNIDROIT Convention on International Financial Leasing, 27 I.L.M. 931 (1988).

79. See Harold S. Burman, *Private International Law*, 32 INT'L LAW. 591, 597 (1998).