

ANNUAL REPORT

PETER H. PFUND*

International Unification of Private Law: A Report on U.S. Participation—1987–88

This report describes the status in the United States of several conventions unifying private law, and the status of various projects of the four international organizations involved in private law unification and harmonization of which the United States is a Member State.¹

I. Developments Concerning Conventions

A. CONVENTIONS RATIFIED BY THE UNITED STATES

The most significant development during the reporting period is the entry into force for the United States of three important conventions. The 1980 United Nations Convention on Contracts for the International Sale

*Assistant Legal Adviser for Private International Law, U.S. Department of State, and Vice Chairman, Secretary of State's Advisory Committee on Private International Law. The views expressed in this article (submitted for publication in August 1988) are those of the author and are not necessarily those of the Department of State. For an article summarizing developments in this area between 1971 and 1985, see Pfund, *United States Participation in International Unification of Private Law*, 19 INT'L LAW. 505 (1985). See also Pfund, *International Unification of Private Law: A Report on U.S. Participation, 1985–86*, 20 INT'L LAW. 623 (1986), and a corresponding report for 1986–87, 21 INT'L LAW. 1245 (1987) [hereinafter Pfund, *1986-87 Report*].

The endnotes for this article provide citations for background materials relevant primarily to developments during the period covered. For citations to earlier background documents, see the footnotes for the convention or project provided in the articles cited above.

1. United Nations Commission on International Trade Law (UNCITRAL); Hague Conference on Private International Law; International Institute for the Unification of Private Law (UNIDROIT); and the Organization of American States (OAS), which performs this function at periodic Inter-American Specialized Conferences on Private International Law (CIDIP). The fourth such conference (CIDIP-IV) is currently planned for Summer 1989.

of Goods (CISG) entered into force for the United States and ten other countries on January 1, 1988, as the result of the coordinated deposit by the United States, China, and Italy on December 11, 1986, of their instruments of ratification.² The CISG will enter into force for Austria, Finland, Mexico, and Sweden on January 1, 1989, for Australia on April 1, 1989, and for Norway on August 1, 1989. A number of other countries are expected to become parties in the near future.

Several orientation programs designed to help corporate counsel, practicing lawyers and traders in the United States to become acquainted with the CISG took place recently. These included the programs of the American Bar Association in New York, Chicago, and Los Angeles in May of 1987.

At its annual session in 1988 the U.N. Commission on International Trade Law (UNCITRAL) began its consideration of the role of the Commission and its international Secretariat in collecting and disseminating information about court and arbitral decisions interpreting the Convention. While that role remains to be considered further, it seems likely that the UNCITRAL Secretariat will seek to collect decisions from the countries parties to the CISG that it may make available in the form in which they are received. Moreover, the Secretariat or "national correspondents" from each country would prepare abstracts of decisions that the Secretariat would make available from time to time as U.N. documents. It seems likely, however, that the limited resources of the United Nations and the UNCITRAL Secretariat will not make it possible for the United

2. For the official U.S. Government publication with a photocopy of the U.N.-certified English language version of the CISG, see the notice of the Department of State in 51 Fed. Reg. 6262-80 (Mar. 26, 1987). See also State Department notice in 52 Fed. Reg. 46014 (Dec. 3, 1987), with the announcement of the impending entry into force of the CISG on January 1, 1988, a list of the other original party States to the Convention, and the telephone number of the U.N. Treaty Section from which the latest information about States becoming parties and any declarations and reservations they made on doing so may be obtained. The most important basic U.S. and U.N. materials on the CISG are reproduced in *THE CONVENTION FOR THE INTERNATIONAL SALE OF GOODS: A HANDBOOK OF BASIC MATERIALS* (R. Kathrein & D. Magraw eds. 1987), published by the Section of International Law and Practice of the American Bar Association, which can be purchased by calling the ABA's Order Fulfillment Department at (312) 988-5555. For the standard English language work on the CISG, first published in 1982, see J. HONNOLD, *UNIFORM LAW FOR INTERNATIONAL SALES UNDER THE 1980 UNITED NATIONS CONVENTION* (Kluwer Law and Taxation Publishers, Deventer, Netherlands, 1987). Professor Honnold expects to publish in 1988 with Kluwer a book tracing the history and background of every provision of the CISG, with should become an important research tool for lawyers and legal scholars. For a useful collection in English of chapters on the provisions of the CISG, written from the perspective of foreign sales law experts who were delegates from their countries to the preparatory work of the U.N. Commission on International Trade Law on the CISG and to the 1980 U.N. conference at which the final text of the CISG was adopted, see *COMMENTARY ON THE INTERNATIONAL SALES LAW: THE 1980 VIENNA SALES CONVENTION* (C. Bianca & M. Bonell eds., Guiffré, Milan, 1987).

Nations to provide translations of the complete decisions into the six official languages of the U.N.³ The provision of translations of complete decisions is likely to remain the task of private commercial services, who have the resources and the experience to provide a service attuned to the needs of the legal sector in printed or computer accessible form. Whether this is done by various national private services or in a coordinated manner by a private international consortium remains to be seen.

The second convention that entered into force for the United States in 1988 is the 1980 Convention on the Civil Aspects of International Child Abduction prepared and negotiated by the Hague Conference on Private International Law.⁴ U.S. ratification of that Convention became possible with the passage by Congress of the International Child Abduction Remedies Act—federal legislation prepared by the administration designed to ensure the fullest and most uniform possible implementation of the Hague Convention throughout the United States.⁵ The federal legislation specifies among other things that the parent petitioning for the return of a child

3. For two UNCITRAL Secretariat reports on this topic, see U.N. Docs. A/CN.9/267 (Feb. 21, 1985) and A/CN.9/312 (Mar. 17, 1988). For the summary of the discussion of this question at the 21st session of UNCITRAL in 1988, see Report of the Commission to the U.N. General Assembly on the Work of its 21st Session (1988), Official Records of the General Assembly: Forty-third Session, Supplement No. 17 (A/43/17).

4. For the official U.S. Government publication with a photocopy of the official English language version of the Convention text, see the notice of the Department of State in 51 Fed. Reg. 10,494-516 (Mar. 26, 1986), which includes the detailed legal analysis of the convention prepared by the State Department for the Senate Committee on Foreign Relations. See also notice of the Department of State in 53 Fed. Reg. 23,843 (June 24, 1988) announcing the entry into force of the Convention for the United States on July 1, 1988, naming the nine other countries with which it enters into force on that date, and noting that the U.S. National Central Authority under the Convention will be designated by executive order and is expected to be the Department of State. Within that Department, the function of Central Authority will be performed by the Bureau of Consular Affairs, Office of Citizens Consular Services (CA/OCS/CCS, telephone (202) 647-3666). For the preliminary rules describing the function of the U.S. Central Authority and how applications for services under the Hague Convention are to be submitted, see notice of the Department of State, 53 Fed. Reg. 23,608-10 (1988).

5. The administration bill was introduced in the Senate as S. 1347 and in the House as H.R. 3971 in June 1987. After hearings before the Subcommittee on Administrative Law and Governmental Relations of the House Committee on the Judiciary chaired by Congressman Barney Frank, H.R. 3971 was passed by the Congress on Apr. 25, 1988. President Reagan signed the bill on Apr. 29, 1988. See Pub. L. No. 100-300, 102 Stat. 437 (codified at 42 U.S.C. §§ 11601-10); see also 14 FAM. L. REP., No. 35, Text No. 6 (July 12, 1988), for the texts of the Act and the Convention and the legal analysis of the convention prepared by the State Department; the same issue of the *Family Law Reporter* itself, "Courts and Legislatures," at pages 1426-28 provides a helpful analysis of the Act. The U.S. instrument of ratification was deposited with the Netherlands Government on the same day (Apr. 29, 1988) to make possible the entry into force of the Convention for the United States as of July 1, 1988, at the beginning of the annual high season for wrongful removals and retentions of children.

from the United States pursuant to the Convention may bring the action either in a federal district court or a state court and that the action is to be brought in the jurisdiction where the child is located. The legislation also sets the burden of proof to be met by the petitioning parent as well as the greater burden of proof to be met by the respondent parent resisting the return request and invoking certain of the exceptions provided by the Convention to the treaty obligation it imposes for the prompt return of the child. The Act also requires that the court ordering the return of a child from the United States order the respondent to pay the necessary costs of the petitioning parent in seeking and effecting the return of the child, including attorneys' fees, court costs, and the return transportation costs unless this would be clearly inappropriate. This provision, in addition to the return obligation provided by the Convention itself, should add to the effectiveness of the Convention as a deterrent to international child abductions.

On July 28, 1988, the United States deposited its instrument of ratification for the 1975 Inter-American Convention on Letters Rogatory and its 1979 Additional Protocol—the first products resulting from the Inter-American Specialized Conferences on Private International Law of the Organization of American States to be ratified by the United States.⁶ As a result, the Convention and its Protocol will enter into force for the United States on August 27, 1988, and will provide between the United States and other States parties to both the Convention and its Additional Protocol a legal regime for the service of process similar to that of the Hague Service Convention. U.S. ratification became possible with the signature by President Reagan on April 27, 1988, of Executive Order 12638 naming the Department of Justice as the U.S. Central Authority under the Convention and Protocol. Outgoing requests for service of process and documents in other countries parties to both the Convention and Protocol are to be submitted to the U.S. Central Authority—to be the Office of International Judicial Assistance in the Civil Division⁷—for onward transmission to the Central Authority of the requested State.

Ratification by the United States of these three conventions and their entry into force for this country represents a major step in the direction of greater U.S. acceptance of the work products of the international or-

6. See S. TREATY DOC. NO. 27, 98th Cong., 2d Sess. (1984). The text of the Convention may also be found at 14 I.L.M. 339-43 (1975) (Convention) and 18 I.L.M. 1238-47 (1979) (Additional Protocol). The Convention and Protocol texts will eventually appear in Volume VIII of *Martindale-Hubbell Law Directory* together with the list of contracting States and any declarations or reservations to which their ratifications or accessions were made subject.

7. Address: Todd Building, Room 1234, 550 11th Street, N.W., Washington, DC 20530, Telephone: (202) 724-7455.

ganizations involved in private law unification of which the United States is a Member State. It is important that this process continue if the efforts of U.S. experts and negotiators in pursuing U.S. interests to facilitate international trade and legal transactions and relationships through conventions harmonizing private law are to be as effective in the future as they have been in the past.

B. DEVELOPMENTS ON OTHER CONVENTIONS

An administration-cleared bill⁸ has again been introduced to amend the Federal Arbitration Act⁹ through the addition of a Chapter 3 that would implement the 1975 Inter-American Convention on International Commercial Arbitration.¹⁰ The Senate in October 1986, gave its advice and consent to U.S. ratification of this Convention, which requires the enactment of federal implementing legislation before the United States can deposit its instrument of ratification.

The 1973 "Washington" Convention Providing a Uniform law on the Form of an International Will remains before the Senate Committee on Foreign Relations.¹¹ This Convention, prepared by the International Institute for the Unification of Private law (UNIDROIT), the final text of which was adopted at a diplomatic conference in 1973 hosted by the United States, will require federal implementing legislation to provide for the recognition as to their form throughout the United States of wills executed in conformity with the requirements of the law annexed to the Convention. It will also involve the enactment by the states and territories of the United States of the Uniform International Wills Act¹² designating attorneys admitted to the respective state bar as persons competent to supervise and certify to the execution of an international will within the jurisdiction of that state or territory in conformity with the requirements of the Convention and the annexed uniform law. To date, six states¹³ have enacted the Uniform Act, and the Department of State is prepared to provide information about the Convention to other states and persons interested in this subject.

8. S. 2204, 100th Cong., 2d Sess. (1988).

9. Title 9, U.S. Code.

10. S. TREATY DOC. NO. 12, 97th Cong., 1st Sess. (1981) (and errata sheet correcting chart of signatory countries), 14 I.L.M. 336-39 (1975).

11. See S. TREATY DOC. NO. 29, 99th Cong., 2d Sess. (1986), 12 I.L.M. 1298-1311 (1973); see also Kearney, *The International Wills Convention*, 18 INT'L LAW. 613 (1984).

12. Prepared and approved by the National Conference of Commissioners on Uniform State Law as a free-standing act and as an addition to Article 2 of the Uniform Probate Act and recommended for enactment by all states at the Conference's annual conference in 1977; VIII MARTINDALE-HUBBELL LAW DIRECTORY 213 (1988 ed.).

13. California, Connecticut, Oregon, Pennsylvania, Minnesota, and North Dakota.

The Senate Committee on Foreign Relations will probably act on the International Wills Convention only once it receives the 1984 Hague Convention on the Law Applicable to Trusts and on Their Recognition.¹⁴ That Convention, the final text of which was adopted by the Hague Conference on Private International Law at its fifteenth session in 1984, was signed by the United States on June 13, 1988, after its endorsement by the American Bar Association, the American College of Probate Counsel, and the American Bankers Association. It is expected to be sent forward for transmission to the Senate for advice and consent to U.S. ratification in early 1989. It is hoped that upon receipt of the Trusts Convention, the Senate Committee on Foreign Relations will promptly act on it and the International Wills Convention.

In the area of liability for loss of or damage to seaborne cargo, the absence of any accommodation between U.S. interest groups on future action by the United States concerning the 1924 Hague Rules, which entered into force for the United States in 1937,¹⁵ the 1968 Visby Amendments to the Hague Rules,¹⁶ and the 1978 "Hamburg Rules"¹⁷ has resulted in continued lack of movement in the United States on these Conventions and related federal legislation.

The decision of the U.S. Supreme Court in the *Aerospatiale* case¹⁸ clarified the relationship of the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters with federal or state rules of procedure concerning the production of evidence. As a result there will soon be a review in the private legal sector of the 1975 Inter-American Convention on the Taking of Evidence Abroad and its 1980 Additional Protocol.¹⁹ This Convention with its Protocol is the regional counterpart of the Hague Evidence Convention.

The decision of the Supreme Court in the *Schlunk* case²⁰ clarified the scope of application of the Hague Service Convention by finding that

14. See 15th Session of the Hague Conference on Private International Law, Final Act, The Hague, Oct. 20, 1984, 23 I.L.M. 1388-92 (1984). For citations to articles on this Convention, see Pfund 1986-87 *Annual Report*, *supra* note *, at 1249 n.20.

15. 1924 International Convention for the Unification of Certain Rules Relating to Bills of Lading for the Carriage of Goods by Sea, 51 Stat. 233, T.S. No. 931, 2 Bevans 430, 120 L.N.T.S. 155.

16. Protocol to Amend the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading, signed at Brussels Aug. 25, 1924, done at Brussels on Feb. 23, 1968, Command No. 3743 (1968); TETLEY, MARINE CARGO CLAIMS 489 (2d ed. 1978).

17. U.N. Convention on the Carriage of Goods by Sea, done Mar. 31, 1978, 17 I.L.M. 608 (1978).

18. *Société Nationale Industrielle Aerospatiale v. United States* Dist. Court, 107 S. Ct. 2542 (1987).

19. 14 I.L.M. 328 (1975) (Convention); 24 I.L.M. 472 (1985) (Protocol).

20. *Volkswagenwerk Aktiengesellschaft v. Schlunk*, No. 86-1052, 56 U.S.L.W. 4595 (June 15, 1988).

service upon the parent corporation located abroad in another contracting State through service on its wholly owned and closely controlled subsidiary in the United States was permissible using state rules of procedure and that resort to the procedures of the Convention was not required. The Court, nonetheless, made clear that its decision did not prevent voluntary compliance with the Convention even when it is not required, and the Court mentioned that there might be advantages in using the Convention procedures for service.

At an international diplomatic conference hosted by Canada in Ottawa in May 1988 in which fifty-five States participated, the final texts of two conventions prepared by the International Institute for the Unification of Private Law (UNIDROIT) were adopted—the UNIDROIT Convention on International Financial Leasing and the UNIDROIT Convention on International Factoring.²¹ It is expected that in particular the American Bar Association, the American Association of Equipment Lessors, and the National Commercial Finance Association will be reviewing these Conventions in the near future with a view to possibly endorsing them for U.S. signature and ratification.

With U.S. ratification in particular of the CISG and the Hague Convention on International Child Abduction, it seems likely that a number of the other conventions unifying private law adopted by the Hague Conference, UNCITRAL, UNIDROIT, and the Organization of American States since the 1950s may eventually be considerably more capable of U.S. ratification or accession than they have seemed up to now. With this possibility in mind, the State Department's Office of the Legal Adviser, with the help of experts from the private legal sector, including practicing lawyers, law professors, and relevant interest groups, has begun a systematic review of those conventions not previously seriously reviewed for possible U.S. acceptance. This review will seek to identify those that are designed to ameliorate real problems and do so in a potentially useful and acceptable manner. It seems possible that a number of conventions will merit private sector endorsement for U.S. ratification on accession. Among the most likely candidates is the 1974 U.N. Convention on the Limitation Period in the International Sale of Goods with its 1980 Protocol aligning it with the CISG.²² Should the United States eventually become a party to this Convention and Protocol, two further conventions ancillary to the CISG will merit close scrutiny: the UNIDROIT-prepared 1983

21. Diplomatic Conference, Final Act, Ottawa, May 28, 1988. For the UNIDROIT draft conventions that went to conference and the accompanying explanatory reports, see UNIDROIT Study LIX - Doc. 48, Oct. 1987 (Leasing) and UNIDROIT Study LVIII - Doc. 33, Sept. 1987 (Factoring).

22. 13 I.L.M. 952 (1974) (Convention); 19 I.L.M. 696 (1980) (Protocol).

Convention on Agency in the International Sale of Goods²³ and the Hague Conference-prepared 1985 Convention on the Law Applicable to Contracts for the International Sale of Goods.²⁴ In the family law area, the convention most deserving of close attention seems to be the 1956 U.N. Convention on the Recovery Abroad of Maintenance,²⁵ prepared by the U.N. Economic and Social Council and dealing with the enforcement of child support orders, to which forty-five States are parties.

With a growing number of conventions unifying private law to which the United States is becoming a party, and a number of cases concerning the interpretation of such conventions recently before the courts, including the Supreme Court, the Secretary of State's Advisory Committee on Private International Law at its forty-first meeting on April 29, 1988, devoted time to discussion of the proper role of the federal government with regard to the interpretation of such conventions in connection with pending litigation between private parties in the United States and abroad. No definitive conclusions were reached and it seemed likely that the federal government would need to weigh each case in its particular circumstances. As was true for the line of cases dealing with the scope of application of the Hague Service and Evidence Conventions, it seemed that there may more readily be occasions where the view of the federal government might be helpful or appropriate when the issues in dispute involve the scope of application of a convention or the interpretation of its final clauses rather than the convention's provisions unifying substantive law or procedure.²⁶

II. Status of Projects Pending in International Organizations

A. U.N. COMMISSION IN INTERNATIONAL TRADE LAW (UNCITRAL)

UNCITRAL devoted most of its twentieth session in 1987 to a further review of the draft convention on international bills of exchange and international promissory notes. It was generally accepted that even if the Commission were to recommend the normal next step—that the U.N.

23. 22 I.L.M. 249 (1983).

24. Hague Conference, Extraordinary Session, Diplomatic Conference on the Law Applicable to Contracts for the International Sale of Goods, Final Act, The Hague, 30 Oct. 1985, 24 I.L.M. 1573 (1985).

25. 268 U.N.T.S. 32 (1957).

26. The discussion, based on a paper drafted by the State Department's Office of the Legal Adviser for this meeting, is briefly summarized in the minutes of the Apr. 29, 1988, 41st meeting of the Secretary of State's Advisory Committee on Private International Law. Persons interested may request a copy of the paper and those minutes by addressing their request to the author, c/o L/PIL, U.S. Department of State, Washington, DC 20520.

General Assembly convene a diplomatic conference for the adoption of the final text of the convention—the current financial situation of the United Nations would not make such a conference possible. The Commission was unable to develop a consensus on any recommendation to the General Assembly as to further steps that should be taken and left the decision on this matter to the General Assembly. At its forty-second session in Autumn 1987, the General Assembly did not accept a proposal that it approve the convention as received from UNCITRAL at that session and open it for signature and ratification by States. Instead, the General Assembly instructed the U.N. Secretary General²⁷ to circulate the draft convention to U.N. Member States for the possible submission of written comments, which were given advance circulation to Member States²⁸ for consideration during the forty-third session of the General Assembly in Autumn 1988 initially by a special working group of its Sixth (Legal) Committee. Some of the outstanding issues involve differences between the law and approach of the civil code countries and those of the common law countries and how the draft convention seeks to resolve them.

The International Payments Working Group of UNCITRAL held its first session in November 1987 on a new project to develop model legal rules on international electronic funds transfers.²⁹ That meeting, which was followed in February 1988 by a meeting of a newly established Study Group of the Secretary of State's Advisory Committee on Private International Law dealing with electronic funds transfers (EFT), identified certain basic issues that should be covered. The first draft of model rules prepared by the UNCITRAL Secretariat³⁰ was considered at the second session of the UNCITRAL Working Group in July 1988, and a number of changes to the draft rules were agreed upon. The direction to be taken by the model rules on the most basic issues should become clear by the end of the third Working Group meeting in December 1988. This UNCITRAL project is unique as no nation yet has national legislation to deal with the process by which a large number of transactions are concluded very rapidly using computer and other electronic technologies as well as questions of liability for delay and mistakes in EFTs. UNCITRAL

27. U.N. General Assembly Resolution 42/153 (Dec. 7, 1987).

28. *Report of the U.N. Commission on International Trade Law on the Work of Its 21st Session, Draft Convention on International Bills of Exchange and International Promissory Notes, Report of the Secretary-General*, U.N. Doc. A/43/405 (June 27, 1988).

29. For the Working Group's report on this session, see U.N. Doc. A/CN.9/297 (Nov. 20, 1987); see also *UNCITRAL Legal Guide on Electronic Funds Transfers*, U.N. Doc. A/CN.9/SER.B/1, U.N. Sales No. E.87.V.9.

30. *Draft Model Rules on Electronic Funds Transfers, Report of the Secretary-General*, U.N. Doc. A/CN.9/WG.IV/WP.37 (May 3, 1988).

has the opportunity, by developing model legal rules on a worldwide basis, to assist countries to develop national legislation that may be compatible with the legislation to be enacted by other countries. The Commission and the U.S. experts involved in its work on this topic are keeping a close eye on the work of the Article 4A Project in the United States of the National Conference of Commissioners on Uniform State Laws.³¹ This is an effort to develop draft uniform state law in this field for the United States and, but for the work of UNCITRAL, probably represents the only such effort well underway in the world. Experts involved in the Article 4A Project are similarly watching closely what decisions the UNCITRAL Working Group is taking on basic legal issues. At UNCITRAL's twenty-first annual session in 1988 a number of Member States requested the Secretariat to prepare studies on other areas of electronic contracting in order possibly to apply the Commission's experience in developing international EFT rules to other areas of international commerce employing electronic means of communication and processing data.

The UNCITRAL Working Group on International Contract Practices in January 1988 completed its work on a draft convention on the liability of operators of transport terminals.³² A review of the draft convention by the full Commission is scheduled for UNCITRAL's twenty-second session in May 1989. The next project for that Working Group is a review of the draft rules for international guarantees and stand-by letters of credit prepared by the International Chamber of Commerce.³³ After that review during its November 1988 Session, the Working Group will make recommendations to the Commission whether it should undertake further development of rules for standby letters of credit and guarantees.

In December 1988 the UNCITRAL Secretariat will consult with a group of experts to consider the possibility of developing legal guidelines for international countertrade. That consultation will use an earlier Secretariat study on legal issues in international countertrade as its point of departure.³⁴

UNCITRAL's third working group completed its work in 1987 on the *UNCITRAL Legal Guide on International Construction Contracts*. The *Legal Guide* is now available from the United Nations in book form³⁵ and

31. See Prefatory Note and Comments to the National Conference of Commissioners draft of June 1, 1988 entitled "Uniform Commercial Code Article 4A—Funds Transfers."

32. *Report of the Working Group on International Contract Practices on the Work of its Eleventh Session*, U.N. Doc. A/CN.9/298 (February 8, 1988).

33. Set forth, together with UNCITRAL Secretariat comments, in *Report of the Secretary-General*, U.N. Doc. A/CN.9/301 (Mar. 21, 1988).

34. *Report of the Secretary-General*, U.N. Doc. A/CN.9/302, (Mar. 21, 1988).

35. UNCITRAL LEGAL GUIDE ON THE DRAWING UP OF INTERNATIONAL CONTRACTS FOR THE CONSTRUCTION OF INDUSTRIAL WORKS, UNITED NATIONS, U.N. Sales No. E.87.V.10 (1988). This book can be ordered by calling (212) 963-8302.

has been the subject of at least one panel discussion in the United States.³⁶ The next project of this working group will be the development of a model international procurement code. A first session of the working group on this topic is scheduled for October 1988. A new State Department Advisory Committee study group on international contracting is expected to convene soon in order to develop guidance for the U.S. experts participating in UNCITRAL Working Group sessions on this project.

At the twentieth and twenty-first sessions of UNCITRAL in 1987 and 1988 the Commission Member States have emphasized the need for the UNCITRAL Secretariat to promote the wider use and acceptance by U.N. Member States of UNCITRAL work products in convention, model law, and legal guide form. Towards this end, the Secretariat, jointly with the Preferential Trade Area of Eastern and Southern African States, organized a one-week seminar in July 1988 to brief decision-makers from fifteen African States on the merits and operation of the CISG, the Limitation Period Convention, the 1978 U.N. Convention on the Carriage of Goods by Sea ("Hamburg Rules"), the legal guide on construction contracts, all discussed above, and the UNCITRAL model law on international commercial arbitration.³⁷ The U.S. Agency for International Development (AID) contributed \$50,000 towards the cost of this seminar, to which also Denmark, Finland, The Netherlands, Norway, and Sweden made contributions. This first contribution by the United States to the training and assistance activities of UNCITRAL points up the high regard in which the Commission and its work products are held by the Government of the United States.

B. HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW

After three sessions of a special commission, the Hague Conference has completed the preparation of the preliminary draft convention on the law applicable to succession to the estates of deceased persons.³⁸ That draft will form the basis for the work of the Hague Conference's sixteenth session in October 1988 to review the draft and adopt the final text of the convention.

At its sixteenth session, the Hague Conference will also decide on its work program until its seventeenth session in Spring 1993—the centennial

36. Sponsored jointly by the ABA Section of International Law and Practice and the International Centre for the Settlement of Investment Disputes, Washington, D.C., Nov. 5–6, 1988.

37. For the Model Arbitration Law, *see* Annex I to the Report of the United Nations Commission on International Trade Law on the Work of its 18th Session, U.N. General Assembly Official Records, Fortieth Session, Supplement No. 17 (A/40/17).

38. For the text of the preliminary draft convention and the commentary on its provisions, *see* Hague Conference Successions, Prel. Doc. No. 12 (Mar. 1988).

of the establishment of the Hague Conference. It seems likely that the Conference will accept as one of two priority topics the preparation of a new convention on international cooperation in the intercountry adoption of children.³⁹ A commission of the Hague Conference requested the Permanent Bureau to contact the appropriate authorities of countries that are the primary sources of children for intercountry adoption to inform them that their participation in the preparation of any convention on international cooperation in this field would be essential if work on this topic is to be taken up by the Hague Conference.

At its sixteenth session the Commission will also decide on priority work until 1993 to develop a convention on one of the following three economic topics: (1) the law applicable to unfair competition (including unfair and misleading advertising) with regard to competitors and/or their products, but excluding monopolistic and restrictive business practices; (2) the law applicable to licensing and know-how; and (3) the law applicable to electronic funds transfers and other means of electronic contracting. The Nordic States have proposed Hague Conference work in the field of product liability and plan to submit a paper on this topic for consideration at the sixteenth session; some elements of the private U.S. legal sector have generally come to regard that topic as unlikely to produce widely acceptable international standards.

The special commission at its January session also recommended that there be a meeting of representatives of Central Authorities under the Hague Service and Evidence Conventions to discuss the operation and interpretation of those Conventions with a view to improving cooperation between national Central Authorities. It also recommended that there be a meeting in Summer 1989 of representatives of Central Authorities under the Hague International Child Abduction Convention to compare procedures, the application and interpretation of the Convention by courts and other authorities in contracting States, and to improve cooperation between Central Authorities.

C. INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW (UNIDROIT)

Having completed its work on international financial leasing and international factoring, UNIDROIT will continue work on general principles governing international commercial contracts.⁴⁰ This project of an expert

39. For a discussion of the topic, see the note prepared by the Permanent Bureau of the Hague Conference for a meeting in January 1988 of the Conference's Special Commission on general affairs and policy, Prel. Doc. No. 9 (Dec. 1987).

40. See Consolidated Principles for International Commercial Contracts, UNIDROIT Study L - Doc. 40 (May 1987), prepared by the UNIDROIT Secretariat.

group advising the UNIDROIT Secretariat is an effort to develop a Restatement-like set of principles that could be used to fill gaps in applicable law encountered by courts and arbitral tribunals in connection with the settlement of legal disputes. The project is entirely one of the Secretariat and its chosen experts who are not formally subject to government instructions, and it is not intended that the general principles would be submitted to governments for comments and for any intergovernmental negotiations before they are published by UNIDROIT in final form.

UNIDROIT will also continue its examination of the legal problems involved in the international protection of cultural property and, in particular, the sale and purchase of art objects that have been exported from countries in violation of their laws.⁴¹

The Secretariat will be examining the draft convention concerned with the rights and obligations of travelers and hotelkeepers,⁴² prepared by UNIDROIT in the 1970s but never submitted to and adopted by an international diplomatic conference, with a view to achieving a better balance between the interests of the hotelkeepers and those of hotel guests.

A decision will soon be reached whether UNIDROIT should seek to develop a convention dealing with international franchising.

At the last meeting of the Institute's Governing Council, a proposal was made and accepted that the Commission examine the possibility of preparing a convention on certain as yet not specified aspects of international security interests in movable property, taking into account that the Conventions on International Financial Leasing and International Factoring adopted at the Ottawa conference in May 1988⁴³ had dealt with some aspects of these transactions as they relate to security interests.

D. ORGANIZATION OF AMERICAN STATES (OAS)

The OAS has decided in principle to convene the Fourth Inter-American Specialized Conference on Private International Law (CIDIP-IV) in Summer 1989 and to accept the invitation of the Government of Uruguay to convene CIDIP-IV in Montevideo in commemoration of the first Latin American conference in 1889 in Montevideo to unify private law. Unfortunately, the budgetary crisis of the OAS has delayed the final decision

41. See G. Reichelt, Study Requested by UNESCO from UNIDROIT Concerning the International Protection of Cultural Property in the Light in Particular of the UNIDROIT Draft Convention Providing a Uniform Law on the Acquisition in Good Faith of Corporeal Movables of 1974 and of the UNESCO Convention of 1970 on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, UNIDROIT Governing Council Doc. C.D. 65 - Doc. 11 (Feb. 1986).

42. Draft Convention on the Hotelkeeper's Contract, UNIDROIT Study XII - Doc. 50 (1979).

43. See *supra* note 21.

on the necessary funds for the CIDIP-IV and for the preparatory meeting(s) of experts that the United States in particular seems essential if there is to be sufficient promise that useful and effective conventions would be adopted at the Conference.

The topics on which it is proposed to adopt conventions are: (1) the abduction of minors and their return (international child abduction); (2) maintenance obligations for children; and (3) international carriage by road. A fourth topic—international contractual arrangements—appears too broad and unfocused to lend itself to the adoption of any convention, particularly as CIDIP-IV is planned for one year from now. The OAS General Secretariat has commissioned the preparation of technical studies by specialists in these topics.⁴⁴ It is hoped that the preparation of these technical studies with preliminary draft articles of conventions will facilitate the work of eventual meetings of experts and thereby the likelihood that CIDIP-IV will produce useful and broadly acceptable conventions on these important topics.

44. See document prepared by the OAS General Secretariat for the OAS Permanent Council entitled "Preparatory Work for the Fourth Inter-American Specialized Conference on Private International Law (CIDIP-IV)," OAS Doc. OEA/Ser.G. CP/doc.1887/88 add. 1 (June 15, 1988).