

**UNOFFICIAL MINUTES OF STATE'S
ADVISORY COMMITTEE ON PRIVATE
INTERNATIONAL LAW (ACPIL)**

The meeting took place at the International Law Institute, 1615 New Hampshire Avenue NW, Washington DC on November 14-15, 2002. Various people were in attendance, including Prof. Peter Winship and Houston Putnam Lowry, representatives of the American Branch of the International Law Association to ACPIL. These minutes were prepared by Houston Putnam Lowry.

ACPIL's non-attribution rules were discussed. Since the meeting was intended to be a candid exchange of views with the State Department, all comments were not to be attributed to a particular speaker or organization.

- I. Hague Judgments Convention.
 - A. This convention has been much harder to negotiate than anticipated.
 - B. The original structure:
 - 1. White list: approved jurisdictional bases
 - 2. Black list: prohibited jurisdictional bases
 - 3. Grey list: option jurisdictional bases
 - C. The move now is towards a more restrictive convention:
 - 1. Choice of forum clauses will be enforced.
 - a. Exclusive clause (the presumption if not otherwise clear)
 - b. Non-exclusive clause
 - 2. Judgments rendered from such courts will be enforced and accorded *res judicata* effects.

- II. 2001 UNCITRAL Convention on accounts receivable finance
 - A. This Convention was approved by ACPIL.

- III. 2001 UNIDROIT-ICAO Convention on mobile equipment finance
 - A. This Convention is applied on a protocol basis. The only current protocol concerns aircraft.
 - B. There will be a central registry to implement this protocol.
 - C. This Convention was approved by ACPIL.

- IV. 2002 OAS CIDIP-VI Model national law on secured finance
 - A. This Model Law was approved by ACPIL.

- V. UNIDROIT Model Franchise Disclosure Law
 - A. The Model Law adopted by UNIDROIT in 2002 is designed for countries that do not yet have a franchise law.

- B. It is generally consistent with U.S. law and is supported by the U.S. franchise community. It balances the need to protect the prospective franchisee from false, misleading or omitted information with the risk of over-regulation create a barrier to entry of prospective franchisers into a country.
- C. This Model Law was approved by ACPIL.

VI. UNCITRAL Model Law on International commercial conciliation

- A. Somewhat similar to the Uniform Mediation Act.
- B. The National Conference of Commissioners on Uniform State Law will be amending the Uniform Mediation Act to incorporate UNCITRAL's Model Law.
- C. The precise way to do this is uncertain. It appears the Uniform Law will be amended to add the Model Law as a new Part II.
- D. This Model Law was approved by ACPIL.

VII. Family Law issues.

- A. The hot topic is still family discipline. This is considered a family (private) matter in two different cultures:
 - 1. Muslim
 - 2. Japanese
- B. As a result, the Hague Convention on the Civil Aspects of Child Abduction don't work well when these issues are encountered in that context.
- C. Parental Child Abduction
 - 1. There has been significant congressional attention to high-profile cases involving children taken by their fathers to Middle Eastern countries (which are not parties to the Hague convention on the Civil Aspects of Child Abduction). In these cases, the fathers have refused to return the children to their mothers in the US, and have prevented the mothers from having access to the children in the foreign countries.
 - 2. The Hague Conference is considering how to deal with the issue of access in the context of international parental child abduction. (Once a child has been abducted, the abducting parent won't risk allowing access by the left-behind parent, for fear that the left-behind parent will take the child back. In addition, some abductions could be prevented in the first place if the potential abductor had meaningful access.)
- D. Adoption: Implementing legislation has been enacted to enable the U.S. to become a party to the Hague Convention on International Adoption. Work is currently underway on the last step prior to entry into force for the US, the drafting of regulations.
- E. Child Support:
 - 1. The U.S. has in recent years concluded a number of agreements with foreign countries for the reciprocal enforcement of child support obligations. The U.S. provides comprehensive, cost-free services to US residents seeking child support, and will provide those same services to foreign residents seeking support from a US resident, if there is an

agreement in place with the country where the foreign person resides. Many countries do not provide comprehensive, cost-free services to their own residents, let alone residents of foreign countries; this has been an obstacle to the conclusion of bilateral agreements, as the US insists that these agreements must be reciprocal.

2. The Hague Conference will begin the negotiation of an important new multilateral convention on child support in May 2003. The U.S., which is not a party to any of the existing multilateral child support conventions, encouraged the Hague Conference to undertake this project. The U.S. will actively participate in this negotiation.

VIII. Electronic issues.

- A. UNCITRAL is still working on a number of concepts beyond:
 1. 1996 UNCITRAL Model Law on Electronic Commerce
 2. 2001 UNCITRAL Model Law on Electronic Signatures
- B. The United States is uncertain about the advisability of such laws until their commercial impact is better understood.