UNIFORM LAW: A BRIDGE TOO FAR?

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I. INTRODUCTION

Some six and a half years ago, the International Institute for the Unification of Private Law (UNIDROIT) convened in Rome its Third International Congress on Private Law under the title "International Uniform Law in Practice."[1] For three and a half days, over 250 eminent figures from academia, the legal profession, government, and business debated in depth many of the most significant aspects of uniform law, in particular, its introduction into national law, its application by judges and arbitrators, as well as its impact on business circles. Not unexpectedly,

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1. INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW, INTERNATIONAL UNIFORM LAW IN PRACTICE (1988).

widely differing opinions were expressed on most topics. The one point on which unanimity seemed to be reached was that, even if the time allotted for discussion had been doubled, it would still not have been possible to do justice to all the thought-provoking issues raised. The subject of this Article is the present status of international uniform private law and its prospects for the future. As a kind of "State of the Union" message on uniform law, this Article will be confined to only a few aspects of the process of unification and harmonization of private law. In particular, this Article will consider (1) some of the criticisms most frequently leveled against it and the benefits which it may have to offer, (2) harmonization at the international rather than the purely national level, and (3) uniform law only as it is developed through the medium of intergovernmental negotiations or at least under the aegis of intergovernmental agencies such as UNIDROIT and the UN Commission for International Trade Law (UNCITRAL).[2]

II. CRITICISMS OF UNIFORMITY AND HARMONIZATION OF PRIVATE INTERNATIONAL LAW

A. Uniformity Compromises Certainty and Effectiveness

One criticism of international uniform private law is that it reflects the misguided view that the world would be a better place if that amalgam of cultural, social, economic, and sometimes spiritual or religious factors which we call law had not developed in such markedly diverse ways in different societies. In other words, the whole unification process might be likened to an attempt to dismantle the Tower of Babel. If this linguistic analogy may seem far-fetched, it is worth recalling that one of the most eminent commercial law judges in the English High Court, Mr. Justice Hobhouse, has gone on record as referring to the utopian ideals underlying uniformity as a concept and has compared them to those which gave rise to the movement for the adoption of Esperanto as a universal language.[3]

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2. This limitation is due only to lack of time and is in no way to be interpreted as underestimating the vital contribution made to the harmonization of law and business practice by such nongovernmental organizations as the International Chamber of Commerce, whose unparalleled familiarity with the day-to-day conduct of international trade and whose flexible procedures permit it in certain areas to respond more speedily to the changing pattern of commercial relations than does the necessarily more lengthy process of intergovernmental cooperation.

3. J.S. Hobhouse, *International Conventions and Commercial Law: The Pursuit of Uniformity*, 106 LAW Q. REV. 530, 534-35 (1990).

To be fair, Justice Hobhouse's strictures are not directed against uniform law across the board. For instance, he recognizes the important and valuable role of international transport law conventions on the grounds that "international carriage requires internationally accepted codes to govern the rights and liabilities of carriers."[4] However, the instruments which he singles out as typifying the "conventions and drafts now coming forward," the sole objective of which is to achieve "a stark uniformity," are, for the most part, concerned with international sales contracts.[5] The main target of his criticism is the 1980 United Nations Convention on the International Sale of Goods[6] (Vienna Sales Convention).[7] Because nearly seventy states took part in the diplomatic conference which witnessed the adoption of the Vienna Sales Convention and still many others participated in one or more of the eighteen preparatory working sessions convened by UNCITRAL since 1968, it is difficult to deny Justice Hobhouse's charge that the Vienna Sales Convention is the outcome of a "multi-cultural compromise."[8] The results of such compromises, he further suggests, "lack coherency and consistency. . . . They create problems about their scope. They introduce uncertainty where no uncertainty existed before. They probably deprive the law of those very features which enable it to be an effective tool for the use of international commerce."[9]

In light of these criticisms, it is remarkable that some forty states—representing an impressive cross-section of the world's leading economic players, including five of the G-7 Members (Canada, France, Germany, Italy, and the United States), as well as Australia, China, Egypt, Argentina, Mexico, Russia, the Nordic countries, the Netherlands, Spain, and Switzerland—have already ratified or acceded to the Vienna Sales Convention. This is an extraordinary number for a private law convention adopted only fourteen years ago. If the Convention was as deficient as the critics suggest, such wide-spread acceptance would be astounding. Have the policy makers, to recall the title of a Pulitzer Prize

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4. *Id.* at 531.
5. *Id.* at 531-32.
6. Final Act of the United Nations Conference on Contracts for the International Sale of Goods, U.N. Doc. A/Conf. 97/18, Annex I (1981) [hereinafter Vienna Sales Convention]. The Vienna Sales Convention was ratified by the United States of America in 1986 and is codified at 15 U.S.C. app. (West Supp. 1991).
7. Hobhouse, *supra* note 3, at 531-32.
8. *Id.* at 533.
9. *Id.*

winning novel by John Kennedy Toole, become a "Confederacy of Dunces"?

If, as this author suspects, that is not the case, there must be some reasons for the widespread adoption of the Vienna Sales Convention. The first such reason is that it represents one of the most up-to-date restatements of the law of sale, drawing as it does on the civil and common law traditions as well as on the experience both of the then socialist states and of those countries which had recently gained their independence. In addition, the Convention provides a good measure of foreseeability as to the rules which will govern a specific contract. Certainly, it is reasonable to suggest that prudent parties to an international contract should choose their forum and governing legal system. If the parties are sophisticated, they will most likely address such issues and reach a mutually acceptable solution. Alternatively, one of the parties may be in a much stronger bargaining position. A party in such a position will, within the permitted limits, be able to impose its choice of law and forum.

Many parties, however, are not so sophisticated and will therefore often fail to include a choice-of-law provision. Consequently, many international contracts will make no provision for the applicable law. As such, the applicable jurisdiction's rules governing the choice of law will be called into play. Those choice-of-law rules may differ widely from one jurisdiction to another. Unfortunately, the track record of conventions which have sought to harmonize the choice-of-law rules applicable to international sales contracts is poor, especially when compared with that of the Vienna Sales Convention. Therefore, if foreseeability is what you are looking for, and you do not enjoy the benefits of the 1980 European Convention on the Law Applicable to Contractual Obligations,[10] then the Vienna Sales Convention might be the best option.

Above all, what characterizes the Vienna Sales Convention is its sense of realism. The Convention permits the parties to any contract to which it applies—that is, where both parties have their places of business in different Contracting States or where the rules of private international law lead to the application of the law of a Contracting State[11]—to exclude the application of the Convention or to derogate from or vary the

10. Convention on the Law Applicable to Contractual Obligations 80/934/EEC, 1980 O.J. (L 266) 1.

11. Vienna Sales Convention, *supra* note 6, art. 1.

effect of any of its provisions.[12] It would therefore not be surprising for a party, astute enough to include in its contract a choice-of-law provision, to insert a clause which expressly excludes or varies the terms of the Convention.

In other words, the Vienna Sales Convention is available to those parties to a commercial contract who choose wholly or partially to incorporate its provisions either expressly or implicitly. As such, it takes its place alongside existing national laws in a climate of "free competition and choice."[13] Moreover, failure on the part of some of the world's leading trading nations, such as Japan and the United Kingdom, to adopt the Convention will not necessarily render their traders immune from its application, since the Convention may apply if the law governing a contract is that of the other party whose place of business is in a Contracting State. Furthermore, because the bulk of the cases interpreting and applying the Convention will be decided by courts in countries which are parties to it, latecomers will find a body of existing case law to which they have made practically no contribution. There will no doubt be differences in interpretation of certain provisions of the Convention by national courts, as has been the case with the uniform law conventions regarding the international carriage of goods.[14] There remain, however, two other objections leveled by Justice Hobhouse against both the Vienna Sales Convention and uniform law in general.[15]

B. Inconsistent Interpretation of Uniform Law When Applied to National Law

One objection to uniform law conventions is that they are by their very nature restricted to specific areas of the law and will therefore have to be interpreted against the background of the domestic law which would otherwise be applicable.[16] Although this is generally true, there are ways of addressing the problem. The first solution is embodied in Article 7 of

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12. *Id.* art. 6.

13. Hobhouse, *supra* note 3, at 535.

14. According to Mr. Justice Hobhouse, the conventions addressing the international carriage of goods are both valuable and important. *Id.* at 531. It might perhaps on another occasion be interesting to examine the extent to which uniform law, as has been addressed by Professor Herbert Hart, is necessarily more open-textured than national law. H.L.A. HART, THE CONCEPT OF LAW 210 (1961).

15. Hobhouse, *supra* note 3, at 533-34.

16. *Id.* at 533. "The second . . . objection is that the quest for uniformity inevitably results in the production of an inadequate legal tool without compensating gain." *Id.* at 534.

the Vienna Sales Convention. Paragraph 1 of Article 7 provides that in the interpretation of the Convention, "regard is to be had to its international character and to the need to promote uniformity in its application."[17] Paragraph 2 of the same Article goes on to stipulate that "[q]uestions concerning matters governed by this Convention which are not expressly settled in it are to be settled in conformity with the general principles on which it is based or, in the absence of such principles, in conformity with the law applicable by virtue of the rules of private international law."[18] A second, and ultimately more satisfactory, solution may well be found in texts such as the UNIDROIT Principles of International Commercial Contracts (Principles).[19]

C. Inability to Obtain Court Decisions and Arbitral Awards from Other Jurisdictions

Another factor frequently mentioned as a barrier to the development of the uniform interpretation of uniform private law is the difficulty of obtaining court decisions and arbitral awards from other jurisdictions. This problem is further complicated by the fact that such decisions and awards may often be in a foreign language. However, UNIDROIT has for almost forty years been publishing court decisions on uniform law conventions from both civil and common law jurisdictions.[20] UNIDROIT is not unique in this respect. UNCITRAL has recently published its first series of digests of case law relating to the Vienna Sales Convention and the Model Law on International Commercial Arbitration.[21] Moreover, a number of initiatives are currently underway to make available genuine data banks on an increasing number of uniform law conventions, in particular the Vienna

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17. Vienna Sales Convention, *supra* note 6, art. 7(1).

18. *Id.* art. 7(2). For those who wish to delve into the intricate drafting history of this provision and its rationale, I would recommend to them its exhaustive treatment by my UNIDROIT colleague, Professor Joachim Bonell, and while it is yet far too early to assess what will be its practical significance in judicial practice, it is worth noting that such clauses are increasingly being included in international commercial law conventions.

19. INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW, PRINCIPLES OF INTERNATIONAL COMMERCIAL CONTRACTS (1994) [hereinafter UNIDROIT PRINCIPLES].

20. For example, this author recently received a decision published in UNIDROIT's Uniform Law Review from a Presiding Judge of a regional Court of Appeal in Nigeria. This decision, based on an international convention, cited decisions from a number of countries with both civil and common law traditions. Oshevire v. British Caledonian Airways Ltd., *in* 1 UNIFORM L. REV. 424 (Ct. App. Kaduna Judicial Div., Nig. 1990).

21. U.N. Doc. A/CN.9/SER.C/ABSTRACTS/1 (1993).

Sales Convention.[22] The greater availability of such services can only accelerate the trend which is already observable in many jurisdictions—namely, the growing number of judges who, when applying and interpreting international private law instruments, refer to decisions from courts in other countries.

A discussion of the Vienna Sales Convention is helpful since the debate as to its practicality illustrates many of the broader issues relating to the unification process as a whole. It would, however, be misleading to suggest that the benefits of harmonization are limited to those areas where the existence of widely differing domestic laws, such as that of sales law, may create problems at the international level. Indeed, it may be argued that uniform law fulfills not only a remedial but also a pioneering function. This latter function denotes technological and scientific advances or innovations in commercial practice which can bring about situations to which domestic law has not yet had time or is ill-adapted to respond.

D. Inability of National Legislation to Keep Pace with the International Unification Process

1. The Warsaw Convention and International Air Transport

One of the classic cases often mentioned to illustrate the inability of nations adequately to respond to technological innovations is the 1929 Warsaw Convention on International Carriage by Air.[23] At the time the Warsaw Convention was adopted, scarcely any national legislation existed in the field. It has been argued that this lack of legislation facilitated the task of its drafters in reaching a consensus on a number of questions associated with the special characteristics of air transport, a then novel mode of transportation as compared to the more traditional modes of maritime and inland transport. The Warsaw Convention and its

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22. Other such initiatives include those of: (1) the Italian National Research Council and the Centre for Comparative and Foreign Law Studies in Rome, UNILEX: A COMPREHENSIVE AND "INTELLIGENT" DATA BASE ON THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS ON DISC (1994); and (2) the Institute of International Commercial Law of Pact University, New York, with its EASE program for electronic availability of sources of international commercial law and information on resolution of international business disputes.

23. Convention for the Unification of Certain Rules Relating to International Transportation by Air, *opened for signature* Oct. 12, 1929, 49 Stat. 3000, T.S. No. 876, 137 L.T.N.S. (1934), *reprinted in* note following 49 U.S.C. § 1502 (1989).

progeny[24] constitute one of the most widely applied systems of uniform law as well as one of the best examples of the "radiation" effect—namely, the incorporation of the uniform law, with or without some degree of adaptation, into domestic law.

At the same time, however, the Warsaw system has enjoyed a somewhat checkered history. Dissatisfaction with the liability limits of carriers under the Convention, along with the attempt made in the 1955 Hague Protocol[25] to increase them, almost led to the withdrawal of the United States from the Convention. This was averted by an eleventh-hour agreement concluded among the airlines themselves in Montreal in 1966.[26] This agreement raised the limits on carrier liability for death of or personal injury to any single passenger during carriage to or from the United States to $75,000. Despite the existence of this ad hoc informal arrangement governing such carriage, most countries with major airlines instead remain wedded to the Hague Protocol while others have called for the entry into force of the latest batch of protocols, the 1975 Montreal Protocols.[27] As a result, the Warsaw system exposes one of the principal weaknesses of uniform law—the inability of the international community to respond to changing circumstances by adopting and implementing updated versions of existing instruments in a timely manner.

While there is more than a grain of truth in this criticism, the case should not be overstated. In the first place, the international community is increasingly developing instruments that are more flexible than the traditional convention, such as model laws, guidelines, and codes of conduct. Moreover, in some areas, a rapid revision procedure is increasingly to be found in international conventions,[28] which may speed up the acceptance by governments of amendments to those instruments.

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24. For a listing of the fifteen conventions or protocols dealing with the international transport of cargo, see Panel Discussion, *Litigation with a Foreign Flavor: A Comparison of the Warsaw Convention and the Hamburg Rules*, 59 J. AIR L. & COM. 907, 915 n.9 (1994).

25. The Hague, Protocol to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air, Sept. 28, 1955, 478 U.N.T.S. 371 (the United States is not a party).

26. Agreement Relating to Liability Limitations of the Warsaw Convention and the Hague Protocol, Agreement CAB 18900, approved by CAB Order No. E-28680, May 13, 1966, 31 Fed. Reg. 7302 (1966).

27. Montreal, Additional Protocols 1-4 to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air, Sept. 25, 1975, ICAO Docs. 9145-9148 (not in force in the United States).

28. *See, e.g.*, United Nations Convention on the Liability of Operators of Transport Terminals, arts. 23, 24, U.N. Doc. A/Conf. 152/13, Annex (1991).

Perhaps we sometimes expect too much of uniform law and the question may fairly be put of whether we might not be better off if, each time we embarked on an international flight, the liability of the carrier were to be determined in accordance with the provisions of the applicable national law. This author entertains considerable doubts as to whether this would constitute an acceptable alternative to the present situation, confused though it may be. If, as is to be hoped, the international air transport industry soon pulls out of its present trough, then a greater degree of order may be expected to be restored to the Warsaw system.

International air transport is, however, not the most up-to-date illustration of high-tech development. A more modern example of uniform law seeking to keep abreast of the times might be the 1992 UNCITRAL Model Law on International Credit Transfers.[29] Unfortunately, as of yet, we have no experience of its operation. In contrast, the Warsaw Convention offers approximately sixty years of case law, as some recent decisions of the Supreme Court vividly demonstrate.[30] Therefore, the Warsaw Convention continues to offer fascinating insights into the interpretation of uniform law and its relationship with domestic law.

2. The Ottawa Convention and International Financial Leasing

Many of the most significant innovations in the field of commercial law have recently been introduced and developed within the United States. A case in point is that of financial leasing, the subject of one of the two UNIDROIT Conventions adopted at a 1988 diplomatic Conference in Ottawa[31] which will enter into force in June of 1995. A financial leasing transaction is one under which a party, often, but not always, a small or medium-sized enterprise, leases equipment which it cannot afford to purchase outright and/or may not wish to buy in view of the likelihood that the equipment will become obsolete within a relatively

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29. *See* UNCITRAL Model Law on International Credit Transfers, 1994 Y.B. Int'l Trade L. Comm'n 413, U.N. Doc. A/CN.9/SER.A/1992.

30. *See, e.g.,* Air France v. Saks, 470 U.S. 392, 105 S. Ct. 1338, 84 L Ed. 2d 289 (1985); Chan v. Korean Airlines, 490 U.S. 122, 109 S. Ct. 1676, 104 L. Ed. 2d 113 (1989); Eastern Airlines v. Floyd, 499 U.S. 530, 111 S. Ct. 1489, 113 L. Ed. 2d 569 (1991).

31. UNIDROIT Convention on International Leasing, *reprinted in* 27 I.L.M. 931 (1988); UNIDROIT Convention on International Factoring, *reprinted in* 27 I.L.M. 943 (1988). *See also* Final Act of the Diplomatic Conference for the Adoption of the Draft UNIDROIT Conventions on International Factoring and International Financial Leasing (done at Ottawa, May 28, 1988), *reprinted in* 27 I.L.M. 927 (1988). All three conventions were signed by the United States in 1990.

short period of time. The lessee will therefore turn to a lessor, usually a bank or other financing institution that is prepared to put up the capital and that will acquire the equipment specified by the lessee from a supplier on terms approved by the lessee.[32] Typically, the leasing agreement will grant the lessee the right to use of the equipment in return for the payment of rentals. Because the transaction is a tripartite one involving two distinct contracts—one between the lessee and the lessor and another between the lessor and the supplier—it creates certain complications.

For example, in some countries, leasing agreements contain an option to purchase at the expiration of the lease. Is therefore the contract one of hire or is it a conditional sale? Since the lessor is normally considered to be the legal owner of the equipment, do the attributes of ownership carry with them liability for damage caused by the equipment to third parties? What are the rights of the lessee, and against whom do the lessee's rights apply if the equipment proves to be defective or if the supplier had no title to it? Many of these, and other potential problems, can be settled in the leasing agreement. Such solutions include the exclusion both by the lessor of the warranty of quiet possession and by the assignment of the lessor's rights against the supplier to the lessee. By and large, commercial practice has satisfactorily come to terms with these challenges. Consequently, few countries have up to now felt the need to introduce domestic legislation on the subject.

At the international level, however, the picture is very different. In most cases, the leasing agreement will provide that it is to be governed by the lessor's law which in turn may be utilized to determine how the contract is to be characterized. On the other hand, the seller's law may be applicable to the supply agreement, depending on the express stipulation of the parties or the applicable choice-of-law rules. If there is an assignment to the lessee by the lessor of its rights under the supply agreement, uncertainty as to the law applicable to assignments arises.[33] One can readily appreciate the reluctance of many lessors to engage in cross-border leasing, independent of the anxieties which they may harbor as to the credit-worthiness of the lessee and the difficulty of finding a suitable guarantor of their investment.

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32. *See* UNIDROIT Convention on International Leasing, *supra* note 31, art. 1.

33. This uncertainty as to the applicable law was graphically demonstrated by that doyen among comparative lawyers, Professor Ernst Rabel. *See* ERNST RABEL, 3 THE CONFLICTS OF LAWS: A COMPARATIVE STUDY 395 *et seq.* (Herbert Bernstein ed., 1964).

By offering a description of the ingredients of a financial leasing transaction and by according a direct right of action to the lessee against the supplier in the event of nondelivery, late delivery, or lack of conformity of the equipment leased,[34] the UNIDROIT Leasing Convention seeks to remove two of the principal impediments to cross-border leasing and thereby strives to promote international trade.[35] While the tripartite relationship and the existence of two separate contracts render the situation slightly more complicated than in the case of a bilateral contract, the Leasing Convention follows the model of the Vienna Sales Convention insofar as it allows the parties to exclude its application or to derogate from its terms, subject in the latter case to some limited exceptions.[36]

While the Vienna, Warsaw, and Ottawa Conventions illustrate various potential benefits of uniform law, these instruments share a common feature—that is, they all attempt to offer a measure of legal certainty to the parties involved and, at the same time, seek to maintain "a fair balance of interests" between the parties.[37]

III. THE MORAL DIMENSION—THEFT AND ILLEGAL EXPORT OF CULTURAL PROPERTY

There is, however, another aspect of uniform law which should not be ignored and may be described as its moral dimension. One of the priority items which has been on the UNIDROIT Work Program for the last seven years has been the preparation of a convention seeking to offer an effective response through the medium of private law to one of the most serious problems facing the international community today—the theft and the unlawful removal from countries of origin of items of cultural property. It is common knowledge that one of the most common ways of laundering the proceeds of the illegal arms trade and the narcotics trade is by investing in works of art or artifacts that have either been stolen from museums or private collections, or removed from clandestine archaeological excavations.

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34. *See* UNIDROIT Convention on International Leasing, *supra* note 31, arts. 1, 10.
35. *Id.* pmbl.
36. *Id.* art. 5.
37. Only the Leasing Convention explicitly states the need for "a fair balance of interests." *Id.* pmbl.

This is not to be thought of solely in terms of organized crime or of the occasional spectacular robbery of a Van Gogh or a Raphael. The heritage of many countries is constantly being pillaged and often goes unreported as has been the case for centuries in countries such as Latin America, Asia, Africa, and the Pacific. Many thefts are of minor works—of the one hundred thousand or so reported in Italy over a thirty-year period,[38] most of the thefts involved small churches, local museums, or private homes. A UNESCO Convention of 1970[39]—ratified by over seventy countries, including the United States, Canada, and Australia, and conspicuously lacking ratification from the so-called "art market countries"—sought to deal with the problem of illegal export essentially from the standpoint of public and administrative law. In response to the one-sided acceptance of the 1970 UNESCO Convention, the UNIDROIT drafters instead considered a complementary approach which has resulted in the Draft UNIDROIT Convention on the International Return of Stolen or Illegally Exported Cultural Objects (Draft Convention).[40] The Draft Convention was worked out in Rome over four sessions by a UNIDROIT committee of governmental experts, consisting of representatives from over seventy countries, and is now ready for submission to a diplomatic conference for adoption, which will be held in Rome in June 1995.

What the Draft Convention does, at least in its present form, is to require the return of cultural objects, as broadly defined under the Convention, which have been either stolen or illegally exported.[41] In addition, the Convention's scope is limited to international situations. Moreover, a person who exercises due diligence when acquiring such an object will be entitled to fair compensation. The Convention provides a high threshold for what constitutes due diligence. Furthermore, inroads have been made on the presumption of the good faith of purchasers.[42] The adoption of such a Convention would be a veritable revolution for many jurisdictions in that it would, apart from possible changes to the law governing good faith acquisition, signify a willingness on the part of

38. *Stoffeler Report on International Criminality*, Eur. Parl. Ass., Doc. No. 5617.

39. UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, 19 U.S.C.A. §§ 2601-2613 (Supp. 1994) (ratified by the United States of America in September 1983 and implemented by the Convention on Cultural Property Implementation Act of 1983).

40. UNIDROIT, DRAFT UNIDROIT CONVENTION ON THE INTERNATIONAL RETURN OF STOLEN OR ILLEGALLY EXPORTED CULTURAL OBJECTS, app. IV, Study LXX, Doc. 48 (1994).

41. *Id.*

42. *Id.*

signatory states to give effect to both the rules of public law of a foreign state and those laws prohibiting or subjecting the export of cultural objects to certain conditions. It remains to be seen whether the spirit of compromise that has until now presided over the intergovernmental negotiations can be given effect and whether the necessary political will exists on the part of the so-called "importing" states to implement the Convention.

The question of whether cultural objects which are illegally exported from one contracting State to another after the entry in force of the Convention should, in certain circumstances, be returned to the state of origin is much more emotionally laden, especially for the victims of the illegal trade in such objects, than that of whether a convention on the international sale of goods should provide that a contract is concluded either when the offeree dispatches its acceptance of the terms proposed by the offeror or only when the offeror receives notice of acceptance. In both cases, a government contemplating ratification of the Convention may well be called upon to sacrifice some long-standing and cherished rules of national law, even though the Convention only applies to international situations. Naturally, governments will consult those groups which are interested; but, more often than not, the response to changes in national legal traditions will be lukewarm if not downright hostile.

IV. CONCLUSION

Since governments are often unpopular (except perhaps during the brief honeymoon period following an election victory) and because the principal concern of most of them is to find solutions to pressing domestic social and economic problems, it would be surprising if they were to put the adoption of uniform private law conventions or model laws at the top of their legislative agenda. Moreover, as work begins on a new subject, national civil servants seem to race from one international meeting to another while the ink is scarcely dry on the last instrument to be adopted. How are those officials to find the time to convince the politicians of the benefits offered by a text which they may themselves have spent years negotiating, while at the same time coping with purely domestic issues?

Some possible solutions spring to mind. The first is that governments might care to consider whether the limited financial resources they make available to intergovernmental agencies such as

UNIDROIT and UNCITRAL could not be better spent by restricting the number of projects on which work is currently being conducted and by allowing the international secretariats to assume a more prominent role in seeking to promote existing instruments. Such promotion may include efforts to make instruments known to practicing lawyers, academics, and, above all, professional circles to whose activities a given convention or model law may be specifically addressed. This would almost certainly result in less uniform law. On the other hand, it might lead to a wider acceptance by governments of a number of those instruments which they will only consider implementing if pressure for such implementation comes from the interest groups most directly affected by them.

Another way of reducing the legislative logjam is the development of the trend towards nonlegislative techniques of harmonization. One of the most striking examples of such a technique is the Principles.[43] It is both a tribute to the far-sightedness of the governments of the UNIDROIT Member States and a recognition of the enormously ambitious character of the project, that the Principles have been cast, not in the form of an instrument requiring parliamentary approval, but in that of what can best be termed a "Restatement" of the rules governing various aspects of the general body of contract law, including the formation, interpretation, validity, performance, and nonperformance of contracts. This task was entrusted to a team of experts drawn from all continents of the world and chosen for their eminence in the fields of comparative and contract law as well as for their familiarity with the day-to-day practice of international commercial transactions. The Principles offer great potential for use by arbitrators, lawmakers in countries embarking on a wholesale or piecemeal reform of their contract law, and parties to contracts who might in the long term find attractive a neutral set of rules embodying genuinely modern solutions. The Principles are an excellent example of one of the alternative techniques available to the uniform law process.

Uniform law can most certainly serve as a bridge between legal systems with different traditions and different concepts. The danger lies in seeing it as an end in itself rather than, as it should be, a practical response to a specific problem. This has not always been the case in the past; however, this author is confident that if sufficient realism is shown in the future in the choice of subjects for unification and that if more is

43. UNIDROIT PRINCIPLES, *supra* note 19.

done to promote existing instruments, then the prospects for uniform law are bright indeed.