Published in *International Uniform Law in Practice* [ISBN 0-379-20972-1], Acts and Proceedings of the 3rd Congress on Private Law held by the International Institute for the Unification of Private Law (UNIDROIT), Rome, 7-10 September 1987 at pages 181-192. Reproduced with the permission of Oxford University Press, Inc.

THE UNITED STATES UNIFORM COMMERCIAL CODE: INTERPRETATION BY THE COURTS OF THE STATES OF THE UNION

John HONNOLD

The Congress programme states that the topic "Uniform Law in Practice" is concerned with "the fate reserved to uniform texts following their adoption at the international level." This paper reports on experience under the United States Uniform Commercial Code that is relevant to this theme.

Part I reports on experience of the fifty states of the Union on two issues where our problems for domestic unification are comparable to problems that arise at the international level: (A) The freedom of the fifty states from central control in legislation and judicial interpretation, and (B) The interplay between laws of the fifty states and law of higher obligation — national legislation and the United States Constitution.

Part II reports on aspects of domestic unification where the situation is so different from international unification that our experience resembles a buoy that marks hidden rocks rather than a guide to safe harbour.

PART I — USEFUL DOMESTIC EXPERIENCE

A. INDEPENDENT STATES AND UNIFORM LAW

1. Independence of the fifty states

Legislation. Enactment of the Uniform Commercial Code (UCC) depended on the separate and uncontrolled action of fifty state legislatures. One of the states, Louisiana, enacted only those parts that were deemed compatible with that state's civil law system.[1] Other states exercised their freedom to modify the

1. The Uniform Commercial Code has nine substantive parts called Articles. Louisiana enacted Article 1 - General Provisions, Article 3 - Commercial Paper (negotiable money-instruments), Article 4 - Bank Deposits and Collections and Article 5 - Letters of Credit. Omitted were Article 2 - Sales, Article 6 - Bulk Sales, Article 7 - Warehouse Receipts, Bills of Lading and other Documents of Title, Article 8 - Investment Securities and Article 9 - Secured Transactions.

draft offered by the sponsors; these changes involved a small percentage of the Code's provisions but in a few states the changes were substantial.

Interpretation. Independence of the fifty states extends to the interpretation of uniform state laws. Cases under the UCC may be decided by either state or federal (U.S.) courts. However, interpretation by state courts of UCC provisions enacted by that state binds the federal courts.

We may illustrate the degree of state independence by this extreme and improbable case: Assume that the same UCC provision has been enacted by all 50 states and 49 states have given that provision the same construction. Nevertheless, in cases where "conflicts" rules point to Pennsylvania, courts of Pennsylvania are free to adopt a radically different interpretation. Moreover, federal (U.S.) courts are obliged to follow the Pennsylvania decision; the United States Supreme Court will not review the errant Pennsylvania interpretation of the "uniform" statutory text.[2]

2. Measures to maximise uniformity

In spite of this independence in applying uniform state laws, an acceptable degree of uniformity in application has been achieved. The UCC, like other uniform state laws, articulates the self-evident fact that its underlying purpose is "to make uniform the law among the various jurisdictions"; more to the point, the statute directs tribunals to "construe and apply" the law to promote unification (UCC 1-102(1)). Under this mandate, tribunals have concluded that interpretations in other states, while not binding, are to be given substantial weight in order to effectuate the legislature's purpose to unify state law.

As a result, uniformity in application is high. Instances of discordance and dispute in interpreting uniform laws, like the disturbing events that dominate the daily news, receive special attention. However, once the facts are established, application of the provision often is more predictable than for other legislation

---

2. A historical sidelight: In 1821 Joseph Story, prior to his appointment to the United States Supreme Court, called for the enactment of codes to unify commercial law. This call was not heeded; and in 1842 Justice Story wrote the Court's opinion in *Swift v. Tyson*, holding that federal courts, unhampered by divergent state court decisions, could declare uniform rules for "general commercial law". 16 Pet. (41 U.S.) 1 (1842). The federal courts exercised this power (albeit in a sporadic manner and with decreasing effectiveness) until 1938 when the Supreme Court, in an opinion by Justice Brandeis, held such action unconstitutional as exceeding federal judicial power. *Erie Railroad Co. v. Tompkins*, 304 U.S. 64 (1938). A more expansive interpretation of national power subsequent to 1938 has undermined the constitutional basis for the *Erie* decision but the unifying programme that Justice Story instituted in 1842 has not been resumed. J. Honnold, *Sales and Sales Financing* (5th edition, 1984), pp. 3-4; Friendly, In praise of Erie — And of the New Federal Common Law, *New York University Law Review*, 39 (1964), p. 383.

because of the body of persuasive caselaw from other jurisdictions that have enacted the same or a similar provision.

Finding decisions construing the same provision in other jurisdictions is made easy by reporting services that bring together brief summaries (or "head-notes") of decisions on the same point under the same provision in the 49 or 50 jurisdictions that have enacted the uniform law.[3] In discussing international unification (Part I. A. 3) we shall return to the importance of convenient access to interpretation in other jurisdictions.

3. Significance of UCC experience

The independence of the fifty states of the United States in interpreting the UCC is paralleled by the independence of national courts in interpreting uniform international law. Unfortunately, interpreting a uniform international text is subject to a special hazard — the lack of a common heritage of judicial techniques and substantive law among the Contracting States. At a later point (Part II. B.) we shall consider ways to minimise these hazards. For now we need to consider the persuasive force of interpretation in other national jurisdictions.

Uniform international legislation often emphasizes the obvious point that its provisions shall be interpreted to achieve uniformity of result. Thus the 1980 United Nations Convention on Contracts for the International Sale of Goods (CISG), which enters into force on 1 January 1988, provides in Article 7:[4]

> (1) In the interpretation of this Convention, regard is to be had to its international character and to the need to promote *uniformity* in its *application* ... (Emphasis supplied).

The emphasized language necessarily implies an obligation to give regard to the interpretation given the Convention in other States. The open question is how to make the necessary material available on an international basis.

One of the topics for study and discussion at the Twelfth International Congress of Comparative Law (Australia 1986) was "Methodology to Achieve Uniformity in Applying International Agreements." One aspect of this topic was

---

3. Efficient tools for finding decisions on the same point in all jurisdictions: *UCC Reporting Service,* (Callaghan; over 40 volumes of case reports and over 20 volumes of case digests); *Uniform Laws Annotated* (covers the full range of over 100 uniform laws; twenty-one volumes).

4. Document A/CONF.97/18, UNCITRAL *Yearbook*, Vol. XI: 1980, p. 151. For similar rules on interpretation see: United Nations Convention on the Limitation Period in the International Sale of Goods (1974) (A/CONF.63/15), Article 7, UNCITRAL *Yearbook*, Vol. V: 1974, p. 210; United Nations Convention on Carriage of Goods by Sea (1978) (A/CONF.89/13), Article 3, UNCITRAL *Yearbook*, Vol. IX:1978, p. 212; UNCITRAL, Draft Convention on International Bills of Exchange and Promissory Notes (1986) (A/CN.9/XIX/CRP.16, July 1986) Article 3.

"Uniform Rules and Uniformity of Result: Regard for International Case-law and Scholarly Writing". National reporters from fifteen countries supplied valuable material on domestic practices relevant to this and related issues. These national reports, as distilled in the General Report prepared by the present writer, confirmed that national courts, with rare exceptions, would respond affirmatively to this mandate to give weight to interpretations in other States.

In many judicial systems this approach is well established; in others significant steps in this direction have occurred in recent years. Notably, in 1980 the House of Lords in the *Fothergill* case broke with its tradition of literal reading of Acts of Parliament: In construing an international convention the House of Lords decided that a more flexible approach, used in other parts of the world, should be followed to promote international uniformity. The most relevant aspect of this wide-ranging decision is the view by a majority that weight should be given to the judicial decisions (*jurisprudence*) of other Contracting States. National reporters from legal systems that had followed the strict English tradition concluded that the *Fothergill* decision, buttressed by mandates such as Article 7 of the Sales Convention (see *supra*), would lead to an international judicial outlook that would promote uniformity in the interpretation and application of unifying Conventions.[5]

Reports to 1986 Congress also provided valuable information on the most effective channels for gathering caselaw (*jurisprudence*) and scholarly writing (*doctrine*) for international dissemination.[6] For present purposes it is sufficient to draw attention to the work that has been done in this area and to report that barriers to the use by domestic tribunals of caselaw of other Contracting States are falling. One can look forward to the exchange of experience and useful evaluation of the developing *jurisprudence* for international uniform laws — an ap-

---

5. *Fothergill v. Monarch Airlines*, [1980] *All E.R.* 696 (H.L.). For domestic judicial practice see: J. Honnold, General Report to the 1986 Congress, Methodology to Achieve Uniformity in Applying International Agreements (12th International Congress of Comparative Law, Australia, August 1986), Part IV/A. This and other General Reports to the Congress will be published by the Australian hosts. Some of the national reports on this topic have been published in the countries of origin. See: J. Rajski, in: *Rapports polonais presentés au Douzième Congrès International de Droit Comparé*, (Warsaw 1986), pp. 45-54; L. Sevón, in: *Finnish National Reports to the Twelfth Congress of the International Academy of Comparative Law*, edited by K. Burre-Hägglund (Helsinki 1986), pp. 11-26; K. Sutton, in: *Law and Australian Legal Thinking in the 1980's*, edited by A. Tay (Sydney 1986), pp. 91-98; F. van der Velden, in: *Netherlands Reports to the Twelfth International Congress of Comparative Law*, edited by P. Gerver, E. Hondius, G. Steenhoff (The Hague 1987), pp. 22-46; P. Schlechtriem, in: *Deutsche Länderberichte zum 12. internationalen Kongress für Rechtsvergleichung, 1986* (Nomos, Baden-Baden 1987).

6. The General Report, *supra* note 5, at Part IV/A(3)(a), p. 22, drew attention to the valuable service Unidroit provides by the Uniform Law Review reports of caselaw and bibliographic material regarding uniform laws. The UNCITRAL Secretariat has prepared a report on ways to gather and disseminate information on developments concerning UNCITRAL conventions. (U.N. Doc.

proach that as we have seen (Part A.1 *supra*), has served with success in United States unification in spite of the independence of the courts of our fifty states.

B. THE INTERPLAY OF DOMESTIC RULES AND LAW OF HIGHER OBLIGATION

1. Experience gained within a federal system

Those concerned with international unification may be interested in yet another aspect of our domestic unification — experience with solving problems of conflict between legislation adopted by the 50 states of the Union and law of higher obligation — Acts of Congress and the United States Constitution.[7]

(a) The labels given to local law

We shall concentrate on one issue of fundamental importance for both domestic and international unification: the effect of the labels for domestic law that appear to place them outside the scope of a law of higher obligation.

In the United States these problems arise in many settings — restrictions on bringing products (e.g. milk) into the state that are defended as "health" measures (a legitimate purpose for local regulation) which therefore are outside the Constitutional prohibition of discrimination against interstate commerce;[8] remedies allowing a seller to recover property on the buyer's insolvency that are defended as rules of "property" to redress "fraud" and therefore outside exclusive national control of bankruptcy.[9] It is not feasible to explore here the details of these and similar cases. However, those concerned with international unification may be interested in the analytical steps that have proved to be necessary in coping with these problems.

(b) Steps toward a solution

Some of these steps will be obvious. However, to facilitate discussion of comparable problems in international unification the crucial points may be analyzed as follows:

A/CN.9/262). In view of the entry into force of the 1980 Sales Convention action by UNCITRAL is expected at its 1988 session.

7. The supremacy of national over state law is established by Article VI, § 2 of the United States Constitution: "The Constitution, Laws of the United States and Treaties" are "the Supreme Law of the Land ... anything in the Constitution or Laws of any State to the Contrary notwithstanding".

8. Cf. *Dean Milk Co v. City of Madison,* 340 U.S. 349 (1951). This and similar cases are discussed in J. Nowak, R. Rotunda & J. Young, *Constitutional Law* (1978), pp. 259-260; L. Tribe, *American Constitutional Law* (1978), §§6-9, pp. 6-12.

9. UCC 2-502, 2-702, 9-108; United States Bankruptcy Code, 11 U.S.C. §101 *et seq.* See: J. White & R. Summers, *Uniform Commercial Code* (2nd edition, 1980), §§6-6 (note 125), pp. 24-29.

(I) The first and crucial step is to *construe the law of higher obligation*; in our domestic setting these are provisions of the United States Constitution and Acts of Congress. The necessary goal of this process of construction is to ascertain the *concrete factual situations* that are controlled by the law of higher obligation.

(II) The second step is to ascertain whether the *facts* that invoke the law of higher obligation (Step I, above) are the same as those that invoke the state regulation.[10] For this purpose the *label* or *characterization* that the state ascribes to its law *does not control the result* — a point that is essential to prevent evasion of the law of higher obligation. In short, whether the state has stepped outside its permitted sphere depends not on what the state *says* but what the state *does*.

(III) The conclusion follows swiftly from the above steps. If (outside permitted areas of concurrent authority — see note 10 *supra*) the *facts* that invoke the state law are the same as those regulated by a law of higher obligation, the state law may not govern those situations. (The application of this line of analysis will be illustrated under 2 *infra*.)

2. National law and international unification

A national State, by becoming a party to a Convention prescribing uniform law, undertakes to displace its domestic law that falls within the area occupied by the uniform international rules. This creates a relationship between the international rules and domestic law comparable to the above-described relationship (Part B.1, *supra*) between (i) the fifty states of the Union and (ii) the United States Constitution and Acts of Congress.[11] We may illustrate the above approach in the setting of a concrete problem that has led to discussion in connection with the 1980 Sales Convention.

---

10. In domestic law it is also necessary to consider whether this is one of the situations in which the United States Constitution permits concurrent state and national regulation of the same problem. This question seems to be irrelevant for international unification; it may be assumed that if a unification convention governs a situation domestic law is excluded. In domestic constitutional law concurrent controls even with varying and overlapping sanctions have been accepted in some situations to increase the effectiveness of regulation. This reason is inapplicable to an international convention to *unify* the law. In preparing such conventions the scope (and limits) of remedies are a crucial part of the process of drafting and of consensus on the unifying rules.

11. For this analysis we need not deal with the question whether the treaty, under domestic law, is self-executing so that it enters into force simply by ratification. If (as in United States ratification of the 1980 Sales Convention) the treaty is self-executing, its provisions should be construed in the light of the international undertaking described above. On the other hand, when legislation is needed to give domestic effect to the treaty, a State, by becoming a party to the treaty, undertakes to enact legislation to give the above described effect to the terms of the treaty.

(a) Uniform international law governing conformity of goods to the contract and domestic law on mistake (erreur)

The 1980 Sales Convention in Article 35 sets forth the seller's obligations with respect to the quality of the goods. Under Article 35, paragraph 1 the seller "must deliver goods which are of the quantity, quality and description required by the contract". Under Article 35, paragraph 2 "the goods do not conform with the contract unless they: (a) are fit for the purposes for which goods of the same description would ordinarily be used." This obligation is broken if a hidden defect, unknown to both parties, makes the goods unfit for its ordinary purposes.[12] The seller's obligation is not affected by the seller's lack of knowledge of the defect and his due care in the manufacture or procurement of the goods. The Convention sets forth detailed rules on the remedies available for breach of these obligations. Articles 45-52, 71-84.

Without attempting to describe the law of any one Contracting State, let us assume that State X, in addition to limited rules on the seller's obligation to guarantee the goods, also provides that if the parties in good faith believe that the goods are of sound quality but are mistaken in that belief, the agreement may be avoided for mutual mistake (*erreur*); the remedies provided under this theory are different from those provided in the Convention.

On discovery that the goods have a serious hidden defect (e.g. a flaw in a steel crankshaft) may the buyer (or seller) invoke the domestic rules of State X in preference to those of the Convention?

Let us apply the three steps described in Part B.1, *supra*:

I. The first step is to construe the law of higher obligation — the Convention — to determine whether the Convention sets forth the legal consequences of the *facts* of the problem. These facts may be analysed as: (A) The making of a contract of sale[13] and (B) The defect in the goods. Under the Convention Facts (A) plus (B) constitute a breach of the rules on conformity stated in Article 35, and invoke the remedies for breach specified in the Convention.

II. The second step is to determine whether the "mistake" law of State X is invoked by substantially the same facts as those that invoked the Convention. In this example we find that the same facts — Fact (A) the making of the contract of sale and Fact (B) the defect in the goods — invoked both the domestic law on "mistake" and the Convention's rules on conformity of the goods. In

---

12. Under Article 6 the parties by agreement may "derogate from or vary the effect" of these and other provisions of the Convention.

13. The Convention sets forth rules on the making of the contract in Articles 14-24. We may assume that these requirements were satisfied.

more abstact terms, *Facts* (A) plus (B) lead to *Result Y* under the Convention and *Result Z* under domestic law.

For the sake of clarity we need to carry the analysis a bit further: Does the domestic law of State X invoked by one of the parties also require an *additional* fact (Fact (C)) that substantially modifies the situation governed by Article 35 of the Convention?

It was assumed that the domestic rules on mistake require that both parties be unaware of the defect. However, this is not an *additional* operating fact: As we have seen, the Convention makes the seller's lack of knowledge irrelevant in prescribing the rules of liability for Facts (A) and (B). Moreover, Article 35, paragraph 3 denies relief to the buyer if at the time of contracting he knew of the lack of conformity. Thus, we must conclude that ignorance of the defect, as an element of domestic law of "mistake," does not add to or vary the factual situation that invokes the Convention.

III. In short, the above analysis leads to the conclusion that the Convention and State X are prescribing different consequences for facts (A) and (B). Under these circumstances the law of State X cannot apply to this situation without undermining the central, declared purpose of the Convention (Article 7) "to promote uniformity in its application."

Suppose that domestic law provides a remedy that is invoked by Facts (A) and (B) *and also Fact (C),* and the additional Fact (C) is fraud practiced by the seller in inducing the buyer to enter into the contract. Here the situation is different, for the Convention does not address remedies for fraud. Hence, Facts (A) plus (B) *plus (C)* describe a factual situation that is not regulated by the Convention.

To sharpen the point a bit further, we may note applications of the law of "mistake" that lie beyond the scope of the Convention. For example, a fundamental mistake about the identity of one of the parties is not addressed by the Convention. This, analytically and practically, is quite different from a mistake about conformity of the goods since conformity *is* regulated by the uniform international rules.

To sum up, the relationship between domestic law and the international rules must depend on the identity of the *facts* that invoke the rules; the *labels* cannot control the result.[14]

---

14. Different questions arise when state law, on the basis of factual situations not addressed by the Convention, says that the contract is "invalid". Under Article 4 the Convention "is not concerned with (a) the validity of the contract ...". Even here a state court's label of "invalidity" does not necessarily control the result. To take an extreme case, suppose State X provides: "when the goods do not conform to the contract the contract is *invalid*." Such a pronouncement makes the

PART II — DOMESTIC EXPERIENCE TO BE AVOIDED

A. WIDESPREAD RECOURSE TO "COMMON LAW AND EQUITY" TO FLESH OUT THE UNIFORM COMMERCIAL CODE

One of the general provisions in Article 1 of the UCC is the following (Sec. 1-103):

> "Unless displaced by the particular provisions of this Act, the principles of law and equity, including the law merchant and the law relative to capacity to contract, principal and agent, estoppel, fraud, misinterpretation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause shall supplement its provisions."

The words "principles of law and equity" carry heavy weight: They invoke the vast body of the common law, created initially by English judges and developed further by masses of caselaw in the many jurisdictions that, even after the bonds of Empire were broken or relaxed, remained within the framework of the common law tradition. National reports to the 1986 Congress of Comparative Law (Part I.A.3, *supra*) documented the varying degrees of allegiance to English law, ranging from Privy Council review to (at the farthest extreme) the free-wheeling (or, if you like, "creative") approach of courts in the United States.[15]

Under UCC Section 1-103, above, this body of common law is invoked unless it has been "displaced by the particular provisions of this Act." Observers from civil law systems might assume that this "Code" is so complete that it leaves little room for the common law.

In fact, the UCC is far from being a "Code" in the civil law sense. The late Grant Gilmore, a thoughtful UCC draftsman, has remarked that the UCC is more accurately described as a loosely-packed group of statutes.[16] For example, the UCC deals with consensual arrangements but the general rules for con-

---

domestic rules applicable to all cases of defective goods and in substance is like a reservation limiting the scope of the Convention's rules on conformity of the goods and remedies for breach. No such reservation was "expressly authorized by the Convention" and therefore is prohibited under Article 98.

The problems of relationship between domestic and uniform law are explored further in J. Honnold, *Uniform Law for International Sales under the 1980 U.N. Convention*, (Kluwer 1982), §§65, 71-73, pp. 146, 238-240 (cited as "Honnold Commentary").

15. See J. Honnold, General Report to the 1986 Congress, *supra* note 5, Part IV (2), at p. 336.

16. Gilmore, Legal Realism: Its Cause and Cure, *Yale Law Journal*, 70 (1969), p. 1037, at p.1043; Gilmore, On Statutory Obsolescence, *University of Colorado Law Review*, 39 (1967), pp. 461, 475-76.

tracts are not set forth — let alone general rules on obligations on which civil codes depend. The courts' pervasive reliance on the ocean of the common law has been documented by a thorough and valuable study of a thousand pages.[17] This recourse to common law principles has played a vital role in the development of the UCC. Nor have these extra-UCC principles seriously impaired uniformity among the fifty states. True, the "common law" decisions are not identical in all states. However, the caselaw has grown from common roots and a national view of the important principles of uncodified caselaw has been instilled by the "national" law schools, successful legal treatises, *Restatements* by the American Law Institute, and the problems faced by legal counsel for nation-wide enterprises.

The problem that remains is whether such recourse to domestic law is suitable in applying an international unifying law.

B. THE DILEMMA POSED BY INTERNATIONAL UNIFYING CONVENTIONS

The 1964 Hague Convention on Contracts for the International Sale of Goods (ULIS) provides in Article 17:

> "Questions concerning matters governed by the present Law which are not expressly settled therein shall be settled in conformity with the general principles on which the present Law is based".

UNCITRAL concluded that the provision of Article 7, paragraph 1 on uniform interpretation, quoted at Part I.A.3, *supra*, would suffice. The 1980 Diplomatic Conference disagreed, and included, as Article 7, paragraph 2, the above language of the 1964 Convention, supplemented by the following:

> ... or, in the absence of such principles, in conformity with the law applicable by virtue of the rules of private international law.

The dilemma posed by the 1980 Sales Convention and other international laws is this: (I) Unlike the situation under the UCC, gap-filling by reference to domestic law invokes fragments of *diverse* legal systems. Decisions based on a domestic legal system do not contribute to an international *jurisprudence* with international evaluation under the mandate of Article 7, paragraph 1 that the Convention shall be interpreted to promote "uniformity in its application" (See Part I.A.3, *supra*). (II) The second horn of the dilemma is this: International unifying conventions, unlike true (civil law) codes, lack a general framework from which general principles can be derived.

---

17. R. Hillman, J. McDonnell & S. Nickles, *Common Law and Equity under the UCC* (1985).

This writer has not yet seen a clear solution to this dilemma, and can only note possibilites for consideration by colleagues of this Congress. (The following measures can be cumulative rather than mutually exclusive).

(1) *Encourage jurists (especially of common law persuasion) to look hard for general principles and objectives of the Convention*, with the hope that a substantial and increasing proportion of problems can be solved under the Convention and thus contribute to a body of international caselaw.[18]

(2) *Scholarship and litigation giving due attention to the legislative history that led to the uniform international text*. Seeing the genetic development of the law in its international setting should at least discourage a hasty conclusion that the international text was merely attempting, in its peculiar way, to state a familiar rule of domestic law. In addition, examining the debates may help a tribunal to appreciate the policies that underlie the international text. This understanding can counteract a narrow view that produces "gaps" in the statute, and lead instead to a broader, purposive interpretation.[19]

(3) *Comparative studies of general principles of contracts and commercial law*, including the Unidroit preparation of principles for international commercial contracts. Interpretation derived from such general principles (unlike references to rules of a single domestic system) does not import diversity into the Convention's *jurisprudence*.[20]

Does one go too far to suggest that such "general principles" of commercial law and practice come within the reference in CISG Article 7, paragraph

---

18. The early judicial practice in the United States of filling gaps in Acts of Congress by recourse to underlying state law seems to have been abandoned in favor of "extrapolation from the assumed policy of the statute itself." Gilmore, Commercial Law in the United States: Its Codification and other Misadventures, in: *Aspects of Comparative Commercial Law,* edited by J. Ziegel & W. Foster, (1969), p. 449 at p. 460.

19. Reports from civil law countries to the 1986 International Congress on Comparative Law evidenced general and significant use of legislative history (*travaux préparatoires*); the same is true for courts in the United States. Reports from other common law countries showed significant erosion of the traditional resistance to legislative materials, particularly in construing international conventions. General Report, *supra* note 5, at Part IV/B.

The legislative history of the 1980 Sales Convention is scattered through nine volumes of the UNCITRAL *Yearbooks* (2500 pages), plus the *Official Records* of the 1980 Conference (519 pages), making it difficult to obtain the necessary materials and to find the portions that are relevant to any given problem. (For example, the numbering of draft provisions kept changing during the twelve years of gestation.) The present writer has prepared a one-volume *Documentary History* of the Convention that reproduces the relevant documents and, by marginal notes, keys the legislative material to the final provisions of the Convention. (Publication in 1988 by Kluwer, Deventer, Netherlands and Norwell, Mass., U.S.A.).

20. Suggestions for such studies were made in national reports in the 1986 Comparative Law Congress by Schlechtriem (F.R.G.), van der Velden (Netherlands) and Rajski (Poland). For publication of these reports see note 5, *supra*. See John Honnold, General Report to the 1986 Congress, *supra* note 5, Part V/A at p. 50; Honnold Commentary, *supra*, note 14, §94, p. 124.

2 to the "general principles on which [the Convention] is based"? Such was the collective outlook of the world-wide legislative body that framed the Convention. Under this approach, decisions (like interpretation of specific provisions of the Convention) would be entitled to consideration in other States under the mandate of CISG Article 7, paragraph 1 for interpretation to promote uniformity of application.

CONCLUSION

One cannot expect international Conventions to achieve complete uniformity of application. However, experience with efforts towards uniformity, both national and international, shows that the important basic problems — those faced most directly in the drafting process — are solved without serious deviations in application.

The troublesome problems tend to arise from situations that are so abnormal or novel that they were not anticipated, or could not be addressed without unduly complicating the Statute. In such cases national tribunals may read the international text through the lenses of domestic law or conclude that there is a "gap" that must be filled by some domestic rule. Even here we have seen ways to minimise diversity through evaluation and critique by courts in other jurisdictions and through comparative studies.

Even if these diversities were much greater than we can expect, one should not be disheartened about the value of uniform law. The issue is not perfect uniformity. Perfection is not of this world — especially in law-making, domestic and international. The one relevant goal is improvement on the unpredictability that is intrinsic in the widely diverse systems of domestic law. Judged by this standard there is little danger of failure.